

HOMELAND SECURITY ACT OF 2002

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HOMELAND SECURITY ACT OF 2002

WEDNESDAY, JUNE 26, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Committee met, pursuant to call, at 10:15 a.m. in Room 2172, Rayburn House Office Building, Hon. Henry J. Hyde (Chairman of the Committee) presiding.

Chairman HYDE. The Committee will come to order. Today's hearing will examine the functions and activities of the State Department that bear most directly on the domestic security of the United States.

H.R. 5005, the Homeland Security Act of 2002, will make important changes in the way in which these functions and activities are carried out. As introduced, this legislation would transfer to the new Department of Homeland Security authority over the process by which visas for admission to the United States are granted and denied. Yet the legislation would also preserve the role of the State Department, at least for the time being, as the institution whose employees do most of the work on the front lines. It is hard to know in advance how any new arrangement will work, and this is particularly true of an arrangement in which responsibilities will be divided between an established institution and one that has not yet come into existence.

But this Committee has a responsibility to report the sections of H.R. 5005 that are within our jurisdiction in the form most likely to achieve the goals of the legislation. The evidence we hear today will enable the Committee to fulfill this responsibility.

The proposed creation of the Department of Homeland Security has often been described as a response to the failure of existing institutions. However painful it may be to look back to the days and weeks before September 11th and wonder what we might have done differently, we must recognize that virtually all of the agencies charged with protecting our national security and public safety could have done better—and, by doing better, might conceivably have averted the tragedy. But we simply cannot allow an enterprise of this magnitude to be about assigning bureaucratic blame—or, even worse, about inflicting bureaucratic punishment. On the contrary, the Homeland Security Act must be about providing for the future.

Before we build and empower new institutions, before we demolish or weaken old ones, let us learn as much as is humanly possible about exactly what needs to be done, so that we can be sure the new structure will be one that works.

In the case of visa processing, the first thing to understand is that the United States currently issues approximately six million visas every year. The overwhelming majority of these are non-immigrant visas, mostly for tourists and business travelers. Even if we were prepared to cut this number in half—at great sacrifice to the U.S. economy—we would need an institution or institutions capable of adjudicating millions of visa applications. These institutions would need to subject any application that presents even a hint of a threat to national security or public safety to the strictest possible scrutiny. At the same time, these institutions would be required to address fairly and efficiently all the other questions that go into determining whether each of those millions of applications should be granted or denied.

The sheer magnitude of these tasks strongly suggests that the Administration's proposal is a wise one. In order to protect our borders from terrorists and other evildoers, the Homeland Security Department must have a role in the visa adjudication process. However, if the Secretary of Homeland Security were forced to build a new structure from scratch to adjudicate those millions of visa applications—or to cobble one together from bits and pieces of other agencies—it is hard to know how he would find time to perform any of the other essential functions which this legislation confers upon him.

So we need the Department of Homeland Security in this process, but we need the State Department as well. The question to consider is whether or not the legislation can be fine-tuned to ensure that each institution will have responsibility for what it does best.

I hope our witnesses today will be able to provide some estimate of the number of visas, out of those millions of applications, which present security issues. Even if the number is in the tens of thousands—or even if it is in the hundreds of thousands—this would leave millions of applications in which the questions to be adjudicated are traditional consular issues, such as whether the applicant is likely to overstay his visa or to become a public charge. Can a structure be devised that will ensure that Homeland Security officers get a close look at every application that may present security concerns, and that consular officers continue to adjudicate all other applications, so that the Department of Homeland Security will be able to focus its time and energy primarily on homeland security?

I know the Administration must be devoting considerable thought to this question, and I hope our witnesses will be able to share some of these thoughts with us today. Their testimony will enable the Committee to report legislation that will appreciably enhance the safety, and therefore the freedom of all Americans.

I now yield to the Ranking Democratic Member of the Committee, Representative Tom Lantos, for any opening remarks he would choose to make.

Mr. LANTOS. Thank you, very much, Mr. Chairman. Let me state at the outset that there are probably no two Members of Congress leading a Committee who have been as united and as supportive of the President's goal in defeating terrorism globally, than the

Chairman and the Ranking Member of this Committee, and it is in that spirit that this hearing is conducted.

Mr. Chairman, I would first like to commend you for calling today's hearing on the Administration's plan to create a Department of Homeland Security. Congress must respond quickly and decisively to the President's call, and today's hearing will facilitate this critically important initiative.

In the aftermath of September 11th, our Committee had the responsibility of ensuring that the President received all the powers he needed to conduct the war against global terrorism. Together, you and I managed a 9½ hour marathon session on the House Floor and ultimately approved the resolution with just one dissenting vote.

Mr. Chairman, I am confident that our Committee and this Congress, in its consideration of the proposed Department of Homeland Security, will again give the President the powers and authorities that he needs. I am confident that our President will have the same bipartisan support wall-to-wall that he has had in the fight against terrorism.

The political will to create a new Homeland Security Department exists in Congress, but we must structure the Department correctly; otherwise, America's security will end up suffering. The new Homeland Security Department must make it easier for our nation's law enforcement, intelligence, and diplomatic personnel to fight terrorism, not spark years of disputes in which those who battle terrorism will fight each other.

The State Department has been an interesting test case, Mr. Chairman, of how difficult it is to integrate different entities. As we all know, we have recently been through the integration of the United States Information Agency, the Arms Control and Disarmament Agency, and the Department of State. It was a horrendously complex undertaking, and I hope we learned from this experience. As a matter of fact, although the experience was horrendously complex and difficult, all three agencies basically shared a very similar culture. In creating the Homeland Security Department, we have the task of combining agencies and departments across the full spectrum of our government with profoundly different cultures, and the task will be excruciatingly complex.

The specific issue before us today is whether the new Homeland Security Department, the State Department, or a combination of the two, should be charged with issuing visas to millions of foreigners who visit our country each year. With over six million non-immigrant and 400,000 immigrant visas granted annually, how the issue is resolved will greatly affect the resources which both Departments will have to devote to this issue, the role of the U.S. Foreign Service, and our national interest.

The Administration has proposed that the Department of Homeland Security be responsible for issuing visas, but that this power be exercised through the Secretary of State. This proposal, and I hope Under Secretary Grossman will elaborate on this, sounds rather peculiar to me; because what it tells me is that there is really no change, which, of course, is the formula I personally would favor. This is a very complex undertaking.

A junior foreign service official, serving at a faraway Embassy, is clearly under the authority of the Ambassador. He relies on the whole structure of that large Embassy. He needs the guidance and advice of more senior officers at the Embassy, and to say that it is the Homeland Security office that will do the issuance of the visa, I think is a fiction. It is the Department of State that will continue to do so and, at some level, there will be some liaison.

We are told by the Administration that the personnel who process visa applications, often first-tour foreign service officers and contract employees, will continue to work for the Department of State. But, we have many questions as to how this proposal will work and we hope Under Secretary Grossman will be able to answer that today. Who will set the policy to determine who gets a visa and who doesn't? What issues, other national security, will be considered when considering an application? And which agency will have the resources to carry out the task?

Some in Congress have also discussed the concept of moving all of the State Department's Consular Services Bureau to the Homeland Security Department. Such a move, in my judgment, would be a profound mistake. The Consular Services Bureau handles countless tasks, completely unrelated to Homeland Security—from helping Americans in jail, to dealing with international child abduction cases, to facilitating international adoption matters. These important missions would get lost in a new large department and, at the same time, dilute its central function of focusing on real threats against the United States.

I look forwarding to hearing from our distinguished witnesses and I want to thank you, Mr. Chairman.

Chairman HYDE. Thank you, Mr. Lantos. It is not mandatory that Members make an opening statement. I just thought I would announce that rule. It is an entitlement—no, it is not an entitlement. It is by leave of the Chair. But, I will entertain opening statements—

Ms. MCKINNEY. Mr. Chairman?

Chairman HYDE [continuing]. Reminding everyone that brevity is the sole of eloquence. Yes, ma'am?

Ms. MCKINNEY. Mr. Chairman, I am so happy you said that before it got directly to me.

Chairman HYDE. Well, whatever that means, I agree with the gentlelady.

Ms. MCKINNEY. That means thank you.

Chairman HYDE. Thank you.

Ms. MCKINNEY. And I do have a statement that I would like to submit for the record.

[The prepared statement of Ms. McKinney follows:]

PREPARED STATEMENT OF THE HONORABLE CYNTHIA A. MCKINNEY, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

The need to protect American lives and property against future terrorist attacks, from both domestic and international sources, has never been clearer or more pressing.

Unfortunately, the last 10 months have taught us that our security and intelligence-gathering mechanisms have not performed as well as many of us had hoped. Many serious deficiencies and problems, including lack of leadership, departmental overlap and redundancy, and ineffective intelligence sharing, were known even prior to September 11.

Mr. Chairman, it is imperative that we act—and act boldly—to correct these problems. But it is equally imperative that we do so thoughtfully, deliberately, and responsibly.

The plan before us today is a bold one and its implications for the proper running of various governmental functions are far-reaching. The proposed Homeland Security department would transfer the resources, personnel, and missions of numerous departments and agencies throughout the federal government and employ nearly 170,000 people with a budget of more than \$37 billion. Meanwhile, the process developed for the consideration of this unique new government agency is itself unusual.

Therefore, as we work to create a national framework to enhance and streamline our security and intelligence-gathering apparatus, we have a greater responsibility to ensure that the remedies we seek to enact are consistent with our democratic values and do not create more problems than they seek to solve. Specifically, accountability, through continued public and congressional oversight, and safeguards against threats to our civil liberties must be integral to this process.

This proposal represents a positive response to the need to address the primary deficiencies in our current state of anti-terrorist preparedness—chiefly the lack of leadership and coordination. However, many questions still need to be answered and clarifications need to be made.

Most relevant for this Committee is section 403, which proposes to transfer control over immigration and naturalization laws relating to the functions of diplomatic and consular officers in connection with the granting or refusing of visas from the Department of State to the new Department of Homeland Security. How will this transfer affect consular “non-reviewability”?

Exactly what is meant by the Secretary of Homeland Security’s “exclusive authority” over the granting or refusing of visas and how this will be exercised “through” the Secretary of State is also unclear. Will one Secretary be able to direct the employees of another?

In addition, how will the transfer of visa authority affect non-security related consular and diplomatic functions (e.g., reunification of families, admission of those with specifically-needed skills, opportunities for cultural and educational exchange, facilitation of trade and tourism, commerce and diplomacy)? Will the Secretary of State, to whom will be “delegated” non-security related visa authority by the Secretary of Homeland Security, be subordinated to the Secretary of Homeland Security?

Mr. Chairman, these are some of the many matters that will require clarification in the coming weeks. While I appreciate that the Administration has requested (and congressional leaders on both sides of the aisle have agreed) to move consideration of this bill along an expedited timetable, it is essential that we do so in a manner that is both deliberate and responsible.

There is simply too much at stake for the American people for us to forego serious and thoughtful consideration of the many critical changes offered by this bill.

Thank you, Mr. Chairman.

Chairman HYDE. You are more than welcome to speak it or put it in the record. All Members’ opening statements will be made a part of the record without objection. Mr. Gilman?

Mr. GILMAN. Thank you, Mr. Chairman. I will abide by your advice and be brief.

Mr. Chairman, I want to thank you for holding this hearing and for continued leadership, as this Committee does its part to help reform our national security infrastructure. The President’s proposed creation of a Department of Homeland Security is the most significant transformation of the U.S. Government in over a half a century.

Homeland security starts abroad. The men and women staffing our embassies and consulates, who handle many critical immigration law enforcement responsibilities, including issuing visas and passports, serve as our front line defense against terrorists. We need to make certain that the men and women who will be making visa decisions, no matter who they report to, have the information, discretion, and motivation necessary to make certain that America excludes terrorists and their supporters, while welcoming its

friends and those who want to make a better life for themselves and their families.

The precise future locus of responsibility for visa decisions has raised some concern among our colleagues on the Government Reform Committee, on which I serve, and on the Judiciary Committee. We welcome this distinguished panel, who are here today to testify before our Committee regarding this important issue, and we will be listening carefully. We hope they will advise us on how best to proceed. Thank you, Mr. Chairman.

Chairman HYDE. Mr. Berman?

[No statement.]

Mr. HYDE. The gentleman does not have an opening statement. Mr. Leach?

[No statement.]

Chairman HYDE. The gentleman is very cooperative. Ms. McKinney?

Ms. MCKINNEY. Mr. Chairman, I am also very cooperative and I would like my statement to appear in the record.

Chairman HYDE. It certainly will.

Ms. MCKINNEY. Thank you.

Chairman HYDE. In extra heavy print. The gentlelady from Miami has no statement. The gentleman from Boston, he has no statement. Mr. Dana Rohrabacher.

Mr. ROHRABACHER. Mr. Chairman, I have no opening statement.

Chairman HYDE. Thank you; make a note of that. Mr. Schiff?

[No statement.]

Chairman HYDE. Thank you. Does anybody else have a statement that—Mr. Royce's will go in the record. Thank you.

[The information referred to was not available at time of printing.]

Chairman HYDE. Very well. I'm now pleased to introduce our distinguished witnesses. It is a pleasure today to welcome the Honorable Marc Grossman, who was confirmed by the Senate in March of 2001 as Under Secretary for Political Affairs at the U.S. Department of State. Ambassador Grossman has been a career foreign service officer since 1976. During this span, he has, among other assignments, been Director General of the Foreign Service, Director of Human Resources, Assistant Secretary of State for European Affairs, and U.S. Ambassador to Turkey. He has also served previously as Deputy Director for the private office of the Secretary General of NATO, political officer at the U.S. Mission to NATO, Deputy Special Adviser to President Carter, and in other assignments within the Department of State. Ambassador Grossman earned his B.A. from the University of California and a Master of Science in International Relations from the London School of Economics. We look forward to hearing you today, Ambassador Grossman.

We, also, welcome today the Honorable George Lannon, the Principal Deputy Assistant Secretary in the Bureau of Consular Affairs. Mr. Lannon is a 26-year veteran of the Foreign Service and is a consular specialist. He served in several countries, including Mexico, Lebanon, and El Salvador. Mr. Lannon will not be making a statement, but will be available for questioning.

We are pleased to have both of our witnesses today and I would ask you to summarize your statements within 5 minutes, give or take. Your full statement will be placed in the hearing record. Ambassador Grossman, please proceed.

STATEMENT OF THE HONORABLE MARC GROSSMAN, UNDER SECRETARY FOR POLITICAL AFFIARS, U.S. DEPARTMENT OF STATE

Mr. GROSSMAN. Mr. Chairman, thank you very much. Mr. Lantos and others, I am very pleased to be here to testify this morning and be part of this conversation about the creation of the Office of Homeland Security.

If I might say, Mr. Chairman, taking from your opening statement, I certainly appreciate your comments. I hope that at the end of this conversation, and I hope at the end of the work that you do, you will find, as you said, this to be a wise proposal and something very much worth supporting. I think, Mr. Chairman, the object here is, as you said, to make sure that we are looking after and protecting the safety and freedom of all Americans. That seems to me a very good way to look into this, and I very much appreciate your invitation here. I appreciate your comments.

To Ranking Member Lantos, I also want to say that I appreciate especially your point, as you said, that this has been a Committee which has not only supported the President and supported the Department in the global war on terrorism, and that it is in that spirit that we have this hearing. It is certainly in that spirit that we arrive here.

Two other points, if I could, before I make my statement, to the Ranking Member and also to Mr. Gilman. I think our object here is to make sure that we are focused, as the Chairman said, on safety and freedom of American citizens. And, therefore, the focus on the creation of the Homeland Security Department seems to me absolutely crucial. And I hope, Congressman Lantos, in this conversation, we can tell you that we do not find this particularly peculiar. We believe that given what happened on the 11th of September and given the need to focus carefully on issues of law enforcement, issues of protecting the United States, that the proposition the President has made to the Congress is one that is not peculiar, but indeed worth supporting. And we believe we can make this work.

The Chairman said, you know, "Is there a structure we can find?". I believe the answer to that is yes, and I would be glad to answer further questions on this.

The other question, as Congressman Gilman and Mr. Lantos talked about, is this issue of culture. If I could just say that from our perspective, the issue here is whatever different cultures existed in the past, the culture that has to exist now in the executive branch, seems to be a culture, as the Chairman said, that focuses on the safety and freedom of American citizens. And that means everybody has to change. It means we have to change, other people have to change, and I think the President's proposition for this issue and creation of the Office of Homeland Security shows a way forward.

Mr. Chairman, if I might take the opportunity in my statement, I hope to answer some of the questions that you posed and that the

Ranking Member posed. I thank you, very much, for inviting me to this hearing. As you both said, this is the most extensive reorganization of the Federal Government since the 1940s.

Let me be absolutely clear that the Department of State supports the President's proposal and specifically section 403, which transfers to the Secretary of Homeland Security control over the issuance and denial of visas to enter the United States. From my perspective, September 11, 2001 brought a vigorous, a determined, and an effective response from the people in the Government of the United States. But as the President said in his transmittal of this bill to the Congress, we can do better. And I believe, in fact, we must do better, and that is one of the reasons that we so strongly support the President's proposition. I believe the President's proposition shows the way ahead. As we do everything in our power to protect our country and its people from terrorism in the United States, the Department of State has been, and will continue to be, fully committed to this effort.

Mr. Chairman and Ranking Member, you both said that we have got a lot of important work ahead, and we have no more important work than the protection of Americans at home and abroad. Let me give you some statistics, Mr. Chairman, that you were looking for. On any given day, about three million private Americans are abroad. Americans abroad give birth to 44,000 children that the State Department documents as American citizens; 2,000–3,000 Americans are arrested every year in other countries. They need to be visited. They need to be helped. They need to find their way through a foreign legal system. Some 6,000 Americans abroad die every year, and about half of those families ask that the bodies be returned to the United States.

We search for, and we assist in the search for, almost 40,000 Americans abroad, who are lost or whose families lose contact with them and are concerned about them when they are living and traveling abroad. When a plane crash overseas happens, it is State Department officers who are often the first people on the scene to help those families and parents and survivors. One-hundred-and-fourteen thousand Americans study abroad, a number that has gone up 10 percent a year for a number of years. And our passport offices at home and abroad issue almost seven million passports to our fellow citizens.

Who does this work? And Mr. Gilman said, who is on the front line of America's offense or defense here? Why are they drawn to this career? How do they help us get to where we want to be? And very much, as the Chairman asked, what is the State Department's value added here?

My answer to that question, over my career and some of the things that I have done, is that our Foreign Service employees and our Civil Service employees are drawn from the very best talent in the United States. And what motivates them? What motivates them is patriotism, the desire to promote and protect and defend the United States of America, curiosity about life abroad, and desire to serve their fellow citizens.

One thing that is very interesting to me is over the past year, and certainly since the 11th of September, the number of people who are taking the Foreign Service exam, who want to join the

Foreign Service, has grown in very large numbers. Eight thousand took the exam in September of 2000. Almost double that number took the exam in September 2001. Our officers learn languages. They learn about the cultures, and they get prepared for what I think you would agree can often be a very, very dangerous job abroad.

The amount of work, Mr. Chairman, that you asked about on our visa lines is—the only word I can use is staggering. Mr. Chairman, in fiscal year 2001, the Department of State adjudicated nearly 10.5 million non-immigrant visa applications at 196 posts. Out of this total, we issued about 7.5 million visas, or 71 percent of the applications. And we also handled 628,000 immigrant visa cases.

The Department has committed nearly 75 percent of its total of 880 overseas consular officers to the visa adjudication process, either officers, who are doing the work directly, or supervisors. Applications are reviewed in every case by American consular officers. Our name check system is consulted in every case. Documents are verified and, very often, the applicant is personally interviewed by a consular officer.

You asked, Mr. Chairman, how many people get interviewed; how many would likely be security threats. During Fiscal Year 2001, more than 68 percent of our posts interviewed 50 percent of their visa applicants. That does not mean they are all security risks, but those are the people who people wanted to see in front of them to check their information. Experienced consular supervisors reviewed issuances and refusal, our anti-fraud units monitored attempts of deception, and only then was a visa issued.

I want to say that from my perspective, this idea that is out and about—that consular work is only done by people who stamp visas, by only the most junior people, and only those who are disgruntled—from my perspective, anyway, misses the entire point. That charge made by those people, to me, does not get it.

I think the majority of people in the State Department, and I would say a majority of the people in the Foreign Service, recognize the value to their further careers of a knowledge of foreign society, knowledge of immigration work, and ability to help American citizens abroad. That most officers move on to other jobs in their careers, seems to me, not a negative, but a testament to our career service. Those who do stay with the consular function, one of the five core competencies of the Foreign Service, make a huge contribution to the representation of the United States abroad. And I might say, Mr. Chairman, one of the things that I have found most heartening in the past year is that the number of people who are choosing consular affairs as their specialty coming into the State Department has risen dramatically, and it is now the third most chosen of the five specialties.

Mr. Chairman, I hope you would allow me, for the record, to put in some examples of how, in real life, people have used their expertise to protect the United States. I have four or five of those I would like to put into the record.

The 19 terrorists who attacked the United States on September 11th, entered the United States on legally issued visas and proceeded on their deadly mission undeterred by any U.S. authorities. We have to ask the question why. Why did we not recognize who

they were and what they planned to do and refuse these visas? Because, there was no way, without the identification of these people as terrorists, either through law enforcement or intelligence channels and the conveyance of that knowledge to consular officers abroad, for their intentions to be uncovered. The identification by intelligence and law enforcement and the sharing of that data with consular officers abroad remains the key to fighting terrorism with visa policy.

We have come a long way in a short time, and many new things have happened, including the very great help we have received from the Congress and the U.S. Patriot Act and a number of decisions the President has made. But one of the most important reasons, I believe, to support the President's proposition in this area of homeland security is to make sure that the right information is collected, and the right information goes to our consular officers abroad.

One more point, Mr. Chairman, and then I will stop. In creating this new department, with its very proper focus on homeland security and its very proper focus on law enforcement, it is also important to recognize, as you did in your opening statement, that visas have an important connection to the foreign policy of the United States. The United States uses visa policy to advance our goals of promoting religious freedom, opposing forced abortions and sterilization, enforcing the reciprocal treatment of diplomats, and punishing enemies of democracy around the world. These priorities will continue to inform our policy, and the Secretary of State will support the Homeland Security Department to advance them.

Mr. Chairman, I thank you very much, and I look forward to your questions in this conversation. Thank you, sir.

[The prepared statement of Mr. Grossman follows:]

PREPARED STATEMENT OF THE HONORABLE MARC GROSSMAN, UNDER SECRETARY FOR POLITICAL AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. Chairman and members of the Committee, thank you for inviting my comments on the most extensive re-organization of the Federal Government since the 1940s.

The Department of State supports the President's proposal. September 11, 2001 brought a vigorous, determined, and effective response from the people and government of the United States, but, as the President said in transmitting his bill to Congress, also the knowledge that we can do better. The President's proposal shows the way ahead as we do everything in our power to protect our country and its people from terrorism. The Department of State has been and continues to be fully committed to this effort.

The State Department has no more important work than the protection of Americans at home and abroad. On any given day, about 3 million Americans are overseas. Americans abroad give birth to 44,000 children whom we document as US citizens; 2,000-3,000 Americans are arrested each year in other countries and need to be visited, helped, and their cases monitored. Some 6,000 Americans die each year with 2,000 families choosing to have their loved ones' remains sent back to the US for burial.

We search for and assist over 40,000 Americans abroad whose families have either lost track of them or become alarmed about events where they are living or traveling. When a plane crashes overseas our officers help parents, spouses, and children cope with the tragedy and navigate a foreign bureaucracy. 114,000 Americans study abroad every year; this number is going up by 10% annually. Our passport offices at home and abroad issued 7,000,000 US Passports to our fellow citizens last year.

Who does this work on what Secretary Powell likes to call the first line of America's "offense"? Why are they drawn to this career? How does what they do help protect us at home and abroad? What is the State Department's value added?

Foreign Service Officers and Civil Service employees of the State Department are drawn from among the best talent in the U.S. They are entering motivated by patriotism, curiosity about life abroad, and a desire to serve their fellow citizens. More Americans than ever are taking the Foreign Service written exam: 8,000 took the exam in September of 2000, 13,000 in September of 2001 and 14,000 in April of 2002. Our officers learn foreign languages, prepare to live in some of the least hospitable parts of the world, face grave danger (as the Africa bombings of 1998 and the bombing of Consulate in Karachi witness) in order to protect Americans.

The amount of work on our visa lines is staggering. In Fiscal Year 2001, the Department adjudicated nearly 10.5 million non-immigrant visa applications at 196 posts. Out of this total, we issued visas to over 7.5 million people or about 71 percent of applicants. We also handled 628,000 immigrant visa cases.

The Department has committed nearly 75 percent of the total 880 plus overseas consular officers to the visa adjudication process, either as officers providing direct interview services on a regular basis or as the managers of this function. Applications are reviewed in every case by American consular officers. Our name checking system is consulted in every case, documents are verified and often the applicant is personally interviewed by a consular officer. During FY-2001, more than 68 percent of posts interviewed at least 50 percent of their visa applicants. Experienced consular supervisors review issuances and refusals, anti-fraud units monitor attempts at deception and only then is a visa issued. People who say that consular work is only done by "visa stampers" or disgruntled junior officers who all want to be Ambassadors don't get it.

The majority of Foreign Service Officers recognize the value to their careers of the knowledge of a foreign society, its people, and the complex web of US immigration law and regulations gained in doing consular work. That most officers move on to other specialties within the Foreign Service is a testament to our career pattern and the variety of work we do overseas, but the career track of consular officers is one of the five core competencies of the Foreign Service. I find it heartening that an increasing number of people joining the Foreign Service are choosing to do consular work as their specialty. Consular is now the third most popular choice for new candidates, following the political and public diplomacy cones.

Here are some real-life examples of the value-added I describe:

- Consular Officers in two different posts refused student and tourist visas to Ramzi Binalshibh, a Yemeni who allegedly conspired with Zacarias Moussaoui and the 9/11 hijackers. They believed him to be an intending immigrant and therefore ineligible under the law.
- A female visa applicant in Manila was closely questioned by a consular officer, who elicited information substantiating her ties to the Abu Sayyaf Group. Her visa was refused for involvement in terrorist activities.
- A consular officer in Germany thought the multiple visa applications of a retired refugee from Kosovo odd: how could this man spend so much time in the US, even with his generous pension? Looking more deeply into the case the consular officer found that the man was getting welfare benefits in Germany and the US, and was a member of an alien smuggling ring that had moved 2,000 aliens into the US, and was involved in gun-running and counterfeiting.

The nineteen terrorists who attacked the US on 9/11 entered the United States on legally issued visas and proceeded on to their deadly mission undeterred by US authorities. Why did we not recognize who they were and what they planned to do and refuse those visas? Because there was no way, without prior identification of these people as terrorists through either law enforcement or intelligence channels and the conveyance of that knowledge to consular officers abroad, for their intentions to be uncovered.

Identification by intelligence and law enforcement and the sharing of that data with consular officers abroad remains the key to fighting terrorism with visa policy. We have come a long way in a short time towards the comprehensive data sharing we must have to prevail in this area of the war against terrorism. Executive orders and The USA Patriot Act now require such sharing, and our files on potential terrorists are far better now than they have ever been in the past.

The new Department of Homeland Security will assure consular officers timely access to the best data the US Government keeps on terrorists. A better flow of information is another reason to support the President's proposal.

In creating the new Department, with its proper emphasis on homeland defense and law enforcement, it is important to recognize that visa policy plays a vital role in foreign policy concerns of the United States. For example, the US uses visa policy

to advance our goals of promoting religious freedom, opposing forced abortion and sterilization, enforcing the reciprocal treatment of diplomats, and in punishing the enemies of democracy around the world. These priorities will continue to inform our policy and the Secretary of State will support the Homeland Security Department to advance them.

Thank you very much. I look forward to your questions.

Chairman HYDE. Thank you, Ambassador Grossman. If I may ask the first question. Under the Homeland Security Act, as introduced, the Secretary of Homeland Security is granted broad supervisory authority over all visa processing. Some Members of Congress have felt that the entire operation should be transferred to the Secretary of Homeland Security, because of the sensitivity of people coming in and out of our country.

My own view is a compromise between the State Department handling these millions of applications, as they do now, but having an official or an officer of Homeland Security present at the missions where the visas are issued, to attend to security issues. That person would be available for reviewing an applicant, guidance as to what to look for, resolving questions in dispute, but dealing with homeland security issues. The Administration of these millions of applications would stay with the State Department, but there would be present—physically present in the field at each mission, a security officer from Homeland Security, to take care of those issues.

That, it seems to me, would provide the element of security necessary without interfering with the enormous job of dealing with this mountain of paperwork and applications.

Your comment, please.

Mr. GROSSMAN. Mr. Chairman, I appreciate that. I would say a couple of things.

First, I think we ought to start all of these answers, or certainly I will anyway, by recognizing what I tried to say in my statement, which is that we have got to change the way we do business after the 11th of September. That is what we want to do, and that is why we are supporting the President's proposal. I think it makes the right balance between the guidance and the direction that would come from the Department of Homeland Security and the Administration through the Secretary of the visa process.

As to your suggestion, I think as we go along, we would take ideas and suggestions from the Chair, from any other Member, and I certainly would take one from the Chair of this Committee. My initial reaction is that we ought to figure out whether we can achieve the same goals that you seek, Mr. Chairman, through rapid communication. I, for one, would be a little bit worried about sending someone from Homeland Security to all of our missions overseas, because you then add one more person to the mission, and maybe create a security problem.

These are things I would like to talk about with you. But, I think for the moment, what we have got is a pretty good balance between the direction that we would receive and our consular officers would receive from the Secretary of Homeland Security, through the Secretary of State, and I think we can achieve this. But, as I say, I am very, very glad to have an idea from the Chairman.

Chairman HYDE. Thank you. Mr. Lantos?

Mr. LANTOS. Thank you, very much, Mr. Chairman. This hearing has a very special flavor, Mr. Secretary, because we clearly all share the same goals and objectives. And my questions relate to your envisioning what will unfold on the ground and my understanding of what is unfolding on the ground. Let me just mention two items—or three.

All cabinet secretaries are equal by definition; but if there ever was validity to the concept of *primus inter pares*, first among equals, then the Secretary of State historically in the American governmental structure is the number one cabinet secretary. I have difficulty envisioning my good friend, Tom Ridge, issuing directives to my good friend, Colin Powell. And I have difficulty comprehending how the American people would view this bizarre relationship. We recognize that this is merely a sort of administrative and bureaucratic sleight of hand, Ridge passing on the responsibility to Powell and Powell then making a new system for issuing visas, because certainly the system has to be dramatically restructured, in view of security.

I have infinitely more confidence in the Department of State doing it with people who have lived abroad for their whole career, who understand foreign cultures, who speak the language, etc., etc., etc. And my feeling is—and you served as our distinguished Ambassador to Turkey—if I would be the lone Homeland Security guy assigned to Ankara, presumably not speaking a word of Turkish, never having been to Turkey, trying to prevent visas being issued to people who should not be getting visas, it would be a pretty overpowering responsibility. While tightening within the Department, the issuance of visas in Turkey, maybe I should say Saudi Arabia, where I think the most outrageous pattern has existed for far too long, I would feel much more secure having Colin Powell and you, with years of experience behind you, deal with this.

Tom Ridge was a colleague of ours and then governor of Pennsylvania, and I do not know which people he would find to assign to this. Would they go to the Foreign Service Institute? Would they have language training? Would they have training in culture? Would they then be restricted to one place? I mean, take the Balkans. You would need linguistic training in a dozen-and-a-half languages, some of these very complex languages. How would you handle this?

My own concern with respect to the visa issue, if it has any focus, is the use of foreign nationals in issuing visas. As you know better than I do, Mr. Secretary, in many of our embassies, the majority of the work, in some cases the bulk of the work, is done by not nationals of the United States. We are in a new era, and some of the insanities that we see unfolding even today reflect the fact that security was not the prime consideration prior to September 11, and now it is. Yet our top agencies dealing with this matter are still farming out translation of documents to people of questionable security clearance or qualifications. Those are the issues we need to worry about.

And I truly think we will move on whatever legislation is proposed, probably unanimously. This is not a contentious issue, but it is an issue where not all the wisdom is in the possession of the

Administration. Some of us have considerable experience with embassies and with foreign cultures and foreign societies. And this bureaucratic sleight of hand that Tom Ridge is in charge, assuming he will be the new cabinet officer and he delegates some things to Colin Powell, who then works under Ridge or cooperates with him, this is a sort of a fiction that I have some difficulty dealing with. I would be grateful if you could enlighten me on some of these matters.

Mr. GROSSMAN. Congressman Lantos, let me try to answer all of your questions, because we have also given this a huge amount of thought. First, I think we have to recognize, and we all have to admit, that the structure that was in place before the 11th of September was a structure designed to bring as many people as possible to the United States, who met certain criteria. We were asked by the tourism industry, we were asked by the education industry, we were asked by many of your offices to bring people into the United States. And that is fair enough, and that is what we were doing before the 11th of September. I think we ought to just admit that out in the open.

After the 11th of September, as you said, whereas security was not previously the foremost requirement, it is now. And so, we have to do what you said in your opening statement, which is to change the culture of what it is that we are doing, absolutely. Our people bring to this job tremendous skills; they bring to this job skills that nobody else has.

But the question now is, how do they focus their skills, and on what do they focus those skills? And I would submit to you, sir, that the job we all have in changing this culture, in both executive branch and legislative branch, is to make sure that the skill, the desire, and the patriotism that people bring to their job is now focused not on the job pre-9/11, but on the job post-9/11, which is making sure that security is uppermost.

I would say to you, Mr. Lantos, that all of the positives that you listed about our experience—languages, culture, understanding—all ought to be turned to the ability to better protect the United States of America and how to do that. I would say that what you are calling a bizarre relationship, I think actually has the possibility to turn out to be exactly the right balance.

When the Secretary has talked to me about this, after his conversations with Governor Ridge, after thinking about this a lot, he said exactly what you said about the Congress and the Administration. Nobody any longer has a lock on all wisdom in this regard. State Department does not have a lock on this wisdom. The new Department of Homeland Security might not, other areas might not. But, we think, and I know the President thinks, and I believe the Secretary thinks, that it is time now, given 9/11, to give the authority and the responsibility for issuing regulations, for carrying out the Immigration and Nationality Act, for setting standards, for issuing standards, to the Department of Homeland Security, so that it is absolutely clear what our objective is.

And I think this can work. That is why section 403 talks about working through the Secretary of State, so the Secretary is informed, so he continues to hire, promote, and train the people who are doing this work. But, I think all of the pluses that you put out

there, which I appreciate, now need to focus on the question of homeland defense.

I would also agree with you, sir, that we do need, all of us, to make sure that our Foreign Service national employees, the vast majority of whom, I believe, do a very, very good job, that they need to be part of this culture change as well.

Chairman HYDE. Ms. Ros-Lehtinen?

Ms. ROS-LEHTINEN. Thank you, so much, Mr. Chairman. Thank you for your excellent testimony.

Following up on the questions that have been asked, as you can see, we really have a difficult time understanding the mechanics of how this process will actually work. Under the previous Administration, there were instances where the FBI had objected to or had concerns about particular individuals seeking visas to enter our country. Yet, the State Department essentially vetoed the FBI and approved the issuance of the visas.

Under the structure that this bill seeks to create, if our intelligence and law enforcement agencies raise objections or concerns about the issuance of visas to these individuals, who would make the ultimate determination? The Secretary of State, as Mr. Lantos was asking? The new Secretary of Homeland Security? And what does section 4(3)(a)(1) of the bill actually say when it says that the Secretary of Homeland Security shall have exclusive authority, through the Secretary of State? It is really very difficult for us to get a grasp on that. So, essentially, what would be the relationship between the intelligence and law enforcement agencies, the new Department or Bureau of Information Analysis, and the State Department, regarding the issuance of visas?

Mr. GROSSMAN. Yes, ma'am, let me see if I can answer that question as clearly as I can. First, this is a little bit, in a sense, like a confirmation hearing, in the sense that since we have not done this job yet, I do not know how to answer your question about how exactly the mechanism will work. There is no Department of Homeland Security. So, we have to find a mechanism, and we will find that mechanism in carrying out the law.

I also believe that the sectional analysis, which the President sent up with the law, really has got this clearly defined, extremely well defined, about what the responsibilities are. But it is hard to say, because there is no Department of Homeland Security yet.

In specific answer to your question, it will be the Secretary of Homeland Security who will make the decisions about the issuance and denials of visas. And I kind of tripped over that sentence a couple of times, too, in reading that. The Secretary of Homeland Security shall have the—and then number one and number two—exclusive authority, and then the authority to delegate. So, in the proposition that you make, which is if there is information from the FBI, if there is information from the CIA, it will be the authority of the Secretary of Homeland Security to make that decision.

Ms. ROS-LEHTINEN. I am sure that there will be some follow-ups to that. Let me ask you about the Visa Express Program. Why did you suddenly and abruptly drop the name Visa Express from the program that you had in Saudi Arabia, where Saudi nationals and third country nationals living in Saudi Arabia submit visa applications to travel agents. Why did Secretary Ryan not mention the

program, formerly known as Visa Express, in his testimony before the Senate in October?

Mr. GROSSMAN. I apologize—I do not know the answer to the second question, but I would be glad to come back to you. I think that people decided that the name Visa Express was completely giving the wrong impression. It gave the impression that this was some way around the normal visa process, which indeed it was not. Visa Express in Saudi Arabia and in other countries in which we use it, is a way for consular officers to be able to focus on the hardest cases. It is a way to get your passport into the Embassy. We have not subcontracted the visa function to travel agents. These decisions are still all made by Americans under the law.

So, I think it was a smart thing. And, again, I go back to the point I made to Congressman Lantos, which is that before the 11th of September, of course, what did everybody want? Everybody wanted people to come into the country as quickly and easily and politely and efficiently as possible. And I think after the 11th of September, calling it Visa Express just gives absolutely the wrong impression.

Chairman HYDE. Mr. Berman?

Mr. BERMAN. Thank you, Mr. Chairman. Just a couple of observations and then a question. The first observation is that I think there is a general recognition in this country and I think the law recognizes that there is no absolute right to come into this country, that the standards of rights and due process and carrying the burden for denials does not apply in the context of issuing visas in the way it might apply to a whole variety of benefits and privileges for U.S. citizens. And that is seen by the fact that a consular decision is non-reviewable in a court. And the second point, I guess, is that we would be foolish not to rethink policies and processes after September 11th, given what has transpired.

But, I just want to throw out a concern. I hope it is just an abstract one, but I am interested in your reaction. You point out correctly that visa policy plays a vital role in foreign policy concerns to the United States and you cite visa policies to advance our goals of promoting religious freedom, opposing forced abortion and sterilization, and forcing the reciprocal treatment of diplomats, and punishing the enemies of democracy around the world.

But, there have been times in our country's history where we used our visa policies to enforce policies which were not so wise or sensible. There were times when we denied visas to people based on sexual orientation. There were times when we denied visas because someone was an outspoken opponent of atmospheric nuclear testing. There were times when we denied visas 40 years after a person had expressed sympathies for one side or the other in the Spanish Civil War.

We cleaned up a lot of that in the early 1990s. I remember in the good old days, when the democrats were in the majority, in the State Department Authorization Bill, we made a lot of changes, got rid of a lot of this. Now, we are giving very, very broad authority to deny visas. Tell me what is wrong with the current authority that the Secretary of State now has to decide when—he or his designees decide when and when not to issue visas. Why do we need to broaden that authority further, and risk the fears of absolute

discretion leading to slipping back into sort of abusive and intolerant practices, which do not serve foreign policy or security interests?

Mr. GROSSMAN. Thank you, Mr. Berman. I will give you a personal answer. The personal answer is that I think all of the examples you have cited, and there are many, many more, as well, are important and worth remembering. And it is also worth remembering how many of us either are children or grandchildren of immigrants, or immigrants ourselves. And I do not necessarily think that the answer here is what is wrong with the current system, other than to say, as Congressman Lantos—

Mr. BERMAN. No, the current authority.

Mr. GROSSMAN. No, but it is, as we have been talking about since the 11th of September, it seems to me that there needs to be a change in culture. There needs to be a change in presumption, if you will. There needs to be a change in what it is—on what criteria people are making these decisions. And the idea that you would move this authority, as the President wishes to do, to a Secretary of Homeland Security, I think sends the message to everybody that the idea is different; that what we are interested in is different. And I think that is an important thing, sir.

Mr. BERMAN. Well, I take your point quite seriously. You have made it several times and it is worth making. I just wanted to perhaps throw out some concerns.

I am curious about the situation under this new organizational chart, where the Secretary thinks that American foreign policy interests are served by not granting a visa to someone. At least in the old days, if there was a dispute between the Attorney General and the Secretary of State, the President or the National Security Advisor would decide that dispute. Here, it looks to me like the Secretary of State, in this particular area, is a bit of a supplicant. Can I persuade the Secretary of Homeland Security, or whatever this new department is going to be called, to grant this visa, notwithstanding the regulatory processes, and if I cannot, what do I do? Am I going outside the chain of command, if I want to raise this directly with the President? Just perhaps speak to that.

Mr. GROSSMAN. Well, again, as I tried to answer the Congresswoman from Florida's question, because there is no Department of Homeland Security yet, it is speculative. But, I know from talking to Secretary Powell that he believes that the language that is in this law—through the Secretary of State—is the right place to be. He believes that from his perspective, it keeps him informed, it keeps him in line with what he could consider to be his troops, and it gives him all of the opportunity that he needs to make the kinds of points that you say, if that situation were to arise.

Chairman HYDE. Mr. Gilman?

Mr. GILMAN. Thank you, Mr. Chairman. One of the criticisms of the current visa issuance process is that screening for security is not a top priority; that there is too much emphasis on customer service and that there is too much pressure to show the host country that we welcome visits by their countrymen. Do you think security concerns have been overshadowed by efforts to be customer friendly? And I pose that to our good Assistant Secretary for Consular Affairs, Mr. Lannon.

THE HONORABLE GEORGE LANNON, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. LANNON. No, security is, I think, the prime issue on any visa issuance. Security checks are required before a visa will be issued. They cannot be overcome. They have to be done. They are run through the name check system. We take this very seriously. It is only done by an American. A visa cannot be issued over refusal, without being checked by somebody else, to make sure that it was done correctly. So, I think security is and remains the prime factor in the issuance of a visa, regardless of what the host country nationals or the host country thinks about it. If a person is ineligible for security reasons, they will not be issued a visa.

Mr. GILMAN. Mr. Lannon, let me address a further question. The Consular of Affairs issued all 19 of the hijackers of September 11th valid visas for legal entry into our nation, is that correct?

Mr. LANNON. That is correct.

Mr. GILMAN. In fact, didn't you renew some of those individual visas not long before the September 11th attack?

Mr. LANNON. Yes, I know at least one was issued in June 2001.

Mr. GILMAN. Does this make the case that the system really needs revision and maybe some other authority ought to take charge of the process?

Mr. LANNON. No. I think it makes the case that we need the information in the lookout system that would enable us to deny that visa based on the new information that may have been available.

Mr. GILMAN. What prevents this from having that information in the lookout system?

Mr. LANNON. Well, in the past, there have been issues of just timeliness of getting information from the law enforcement, intelligence community into the system. We have various ways of doing it; but, sometimes, they are just too slow. I think we look to the Department of Homeland Security to speed this process and ensure this information is put into the system.

Mr. GILMAN. Is that being taken care of now?

Mr. LANNON. Well, because of the Board of Securities Act, we received the NCIC information from the FBI. We are in the process of integrating that information into our systems. Since September 11th, we have seen a marked increase of the information flowing in from the intelligence community into the system, as well. So, since the Patriot Act and the Board of Securities Act, we have seen increasing information coming into our lookout system.

Mr. GILMAN. So, we would not be confronted with this kind of a problem in the future, based on that revision?

Mr. LANNON. I hope not.

Mr. GILMAN. I hope not, too. Can you, please, describe the consular training program? Does it train people to detect suspicious behaviors that reveal motivations of the individual, particularly with an eye on possible terrorists?

Mr. LANNON. We have a 26-day course at the Foreign Service Institute, where they go through basically the law. It covers three main segments: Immigrant visas, non-immigrant visas, and American citizen service. There is some interviewing techniques training. But, it covers the law. The problem, I think, is what does a

terrorist look like; how do you discover one without other information. I think one of the things about the 19, they are rather unremarkable. They were middle class people. They did not look like anything. It is very hard to train someone to discover a terrorist. Again, this is why we look to the law enforcement and intelligence communities, who are looking at who these people are, to provide us with this information, so we can get it into our systems, to give the consular officers the tools they need when a person applies for a visa.

Mr. GILMAN. Mr. Lannon—

Chairman HYDE. Mr. Gilman, your time is up.

Mr. GILMAN. I thought I had 1 more minute remaining, Mr. Chairman.

Chairman HYDE. You do. You have 42 seconds, I am sorry.

Mr. GILMAN. Thank you. Mr. Lannon, one more question. What percentage of these applicants are actually interviewed by a U.S. consular officer?

Mr. LANNON. We think it is hard to extrapolate it. We do not have an exact figure, but we think it is 50 percent or more, probably no more than 60, but around 50 percent worldwide.

Mr. GILMAN. Thank you. Thank you, Mr. Chairman.

Mr. GROSSMAN. Mr. Chairman, may I add one sentence, please? Chairman HYDE. Surely.

Mr. GROSSMAN. I feel a little bit badly that perhaps I should have listed the examples in my statement. But, Mr. Gilman, for the record, I put in, with the Chairman's permission, three or four examples of where consular officers, using their intuition, using their knowledge of the host country, actually did find people who turned up for a visa: In two case, terrorists; in another case, someone who was running a huge alien smuggling ring. So, we do have these, and I submit these examples for the record, with the Chairman's permission.

Chairman HYDE. Thank you. Mr. Delahunt?

Mr. DELAHUNT. Ambassador, I think your numbers were about 10 million applications and 7 million non-immigrant visas that are issued per year. Does that mean that there are 3 million visa applications that are denied?

Mr. GROSSMAN. Correct.

Mr. DELAHUNT. What is the basis? I never realized that it was that proportion. That means almost 30 percent that are denied.

Mr. GROSSMAN. Well, of course, it is worldwide. In some countries, and we do not have to go through each one, but in some countries, that proportion is considerably higher, obviously. But the law, as it is currently written—and again, we can only speculate about how it would be enforced in the future—but the law, at the moment, gives consular officers a whole range of possibilities for denying visas.

Mr. DELAHUNT. How many of those three million, if you know, were denied based upon security concerns?

Mr. GROSSMAN. I think we would have to check. But, I would like to come back to you.

Mr. DELAHUNT. Yes, I think that—I think that would be informative.

Mr. GROSSMAN. It is very important. We should have that number. We will come back to you.

Mr. DELAHUNT. I think it was the Chair that indicated that there are some that would put the entire consular function under the aegis of the Homeland Security Bureau. Does the Administration have a price tag on that particular proposal or suggestion?

Mr. GROSSMAN. No, sir, because the Administration does not support it. We have not done any of the work to find out how much it would cost. But, as I said—

Mr. DELAHUNT. Has there been any conversation about what the cost might be?

Mr. GROSSMAN. Only speculative. I mean, as I said in my—

Mr. DELAHUNT. What is the speculation?

Mr. GROSSMAN. No, I am saying only speculative, in the sense that it would cost a lot of money. But, if you—

Mr. DELAHUNT. Are we talking a billion?

Mr. GROSSMAN. I have no idea, sir.

Mr. DELAHUNT. Okay.

Mr. GROSSMAN. But I would be glad to come back to you. Again, if you take what I said in my statement, the numbers of births, deaths, other kinds of consular services, those are things that I know the Secretary believes we ought to be doing, because the Department of Homeland Security should focus on homeland security. And where the Secretary wants to be is totally in support of the President and Tom Ridge on this.

Mr. DELAHUNT. Let me ask you this question: How does this proposal impact—would it impact at all the Visa Waiver Program? I mean, if our purpose now is to protect American citizens and, clearly, that is it, and, as you say, there has been a shift in presumption, how many nations are under the umbrella of the Visa Waiver Program, and do we have adequate security indicators or precautions to discover those that might harm our national interest? And I will follow up with another question: In situations where individuals would have dual passports, dual nationalities, one of which would be issued by a nation that was part of the Visa Waiver Program.

Mr. GROSSMAN. I do not know the answer on dual nationals, but we would be glad to take that. On the question of the Visa Waiver Program, it goes back actually to this whole conversation. Of course, the Visa Waiver Program was, as you say, designed to make it easier and more customer friendly to get into the United States. That presumption should change.

But I would say, Congressman Delahunt, that even before the 11th of September, people looked very, very carefully at the security issues that had to do with the Visa Waiver Program. For example, a number of countries have never gotten in, because they cannot control their blank passports. There are periodic reviews—

Mr. DELAHUNT. I understand that, Ambassador. But, I am thinking, for example, an individual from Great Britain. Presumably, they qualify for the Visa Waiver Program. I do not even know what the population of Great Britain would be, at this point; but, presumably, there are Commonwealth nations where their citizens

would be entitled to a British passport. And, yet, what kind of screening filtering device would we have?

Mr. GROSSMAN. All good questions. I would like to come back to you. And, of course, the Visa Waiver Program would then be under the control of the Department of Homeland Security, and I am sure whoever takes that job will look quite carefully at it.

Mr. DELAHUNT. I can appreciate the fact that you do not have some ready answers here on what it would look like in the mechanisms. Presuming that the legislation passes, it is going to be a work in progress and it really will be incumbent upon both Departments, as well as Congress, to exercise its oversight and to really follow it.

Chairman HYDE. Mr. Green?

Mr. GREEN. Thank you, Mr. Chairman. I think you can see we are all supportive of many of the concepts you outline, but we are struggling with just how this would work, and I have some basic understanding questions in that area. Does the Administration's proposal mean that one Secretary will be able to direct the employees of another Secretary? That seems to be the implication here. And, if so, how do you see that working?

Mr. GROSSMAN. I was waiting for another question. The way we see this working is, is that all the authorities that are currently with the Secretary of State for issuance and denial of visas will transfer to the Department of Homeland Security; that the Department of Homeland Security will issue regulations and directions about how that process should be carried out. And as the law says, the Director—I'm sorry, the Secretary of Homeland Security may or may not wish to delegate some of that authority back to the Department of State or someone else in the Federal Government.

The reason Secretary Powell and Governor Ridge wanted to make sure, and the President agreed, that it said, "through the Secretary of State," is so that these regulations would not be issued directly from the Department of Homeland Security to consular officers abroad. It would go through the Secretary, so he is informed.

Mr. GREEN. I guess I do not understand what you mean by "through the Secretary." In other words, you promulgate regulations. You in essence physically carry them over to the Secretary of State, who then physically passes them along. What does that mean when you say, "through the Secretary of State"? I still, as a basic question, do not understand how that would work.

Mr. GROSSMAN. In a sense, I would agree with your proposition. It means physically that if the Secretary of Homeland Security were to decide on issue x or y—that we should change the way that we are issuing visas or we should look more specifically at a category of people—he would promulgate that change in whatever form that he wished. It would then come to the Secretary of State, and we would, through the Department's communications, through the Department's training, through the Department's apparatus, convey that to our people.

I mean, this happens all the time. We get instructions and we get changes and we get impulse from all kinds of cabinet agencies. So, I know—

Mr. GREEN. When you say it happens all the time, I understand there may be communications between the agencies; but, if the Sec-

retary of Homeland Security makes a policy change, makes a regulatory change, and then passes it to the Secretary of State, what if the Secretary of State disagrees?

Mr. GROSSMAN. Well, again, I would say, as I answered a question before, the Secretary of State has talked to me about this, and he certainly believes nobody after the 11th of September has got a lock on all wisdom here. We do not want to be in that attitude. We want to be supporting what Governor Ridge and the future Secretary of Homeland Security are going to do. But, you know, if the Secretary of State is informed of what is going on and has concerns about it, I am sure he would find a way to raise them.

I think the focus right now should not be on that part of it, with all due respect, sir. It ought to be on the transfer of these authorities, the focus on security, homeland security and law enforcement. And we believe, I know Secretary Powell believes, that that will be the vast, vast majority of the work that gets done. Again, when he has talked to me about this, we do not even talk about the cases where there is going to be disagreement, because, as we have said to the Chairman and Ranking Member, it has got to be a culture change here.

Mr. GREEN. Again, I think we all agree with you, in terms of the purposes of this legislation. But, I think, as we look back on September 11th and the systems in place before September 11th, many of us have concerns that the system is far from seamless. And my concern is that the process that you have outlined also does not appear to be seamless. It appears to be multi-staged, with one stage building upon another. And if there is a breakdown in any part of the process, then this "seamless" model breaks apart. I think that is the concern that we have, that we all want to address.

Under this proposal, as it has been outlined, who is responsible for staffing and managing U.S. passport offices?

Mr. GROSSMAN. The State Department, sir.

Mr. GREEN. So, the State Department is responsible for staffing and managing. Homeland Security is responsible for developing the policies and regulations. See, the concern I have is that as the President outlined this concept of clear lines of authority and accountability. I am not sure that as it has been outlined here, it quite meets those objectives.

Chairman HYDE. The gentleman's time has expired.

Mr. GREEN. Thank you, Mr. Chairman.

Chairman HYDE. Mr. Schiff?

Mr. SCHIFF. I yield back my time, Mr. Chairman.

Chairman HYDE. Mr. Rohrabacher?

Mr. ROHRABACHER. Thank you, very much. Ambassador Grossman, how many visas did you say? It was seven million visas issued a year?

Mr. GROSSMAN. Yes, sir, in Fiscal Year 2001.

Mr. ROHRABACHER. And of those visas that are issued, these are non-immigrant visas; is that correct?

Mr. GROSSMAN. Yes, sir.

Mr. ROHRABACHER. Okay. Of those seven million non-immigrant visas, how many do not return back to their home country?

Mr. GROSSMAN. I will get you that information. I do not have that information.

Mr. ROHRABACHER. It is pretty important—

Mr. GROSSMAN. It is, absolutely.

Mr. ROHRABACHER [continuing]. Fact, isn't it?

Mr. GROSSMAN. Yes, sir.

Mr. ROHRABACHER. Well, could you give me a guess?

Mr. GROSSMAN. I cannot. I apologize.

Mr. ROHRABACHER. Not even anything in the ballpark here? A million? Two million? Three million people? Five-hundred thousand?

Mr. GROSSMAN. Oh, I am sure that is too low.

Mr. ROHRABACHER. So, am I.

Mr. GROSSMAN. I mean, part of this, to go back to the point that Mr. Green was making, is this is one of those seams that I believe the Department of Homeland Security can stitch up, because, right now, you have immigration—

Mr. ROHRABACHER. I would hope so. My guess is we are talking about millions of people who overstay their visa, and that that is a large number of illegal immigrants in our country.

Now, when you are checking people before you grant a tourist visa or whatever, a student visa, is there a greater background check given to someone who wants to immigrate into this country, than is given to someone who wants a tourist visa? Is there more attention paid—

Mr. GROSSMAN. Yes, there is more attention paid to security, medical background, all those things.

Mr. ROHRABACHER. All right. So, if someone comes in and they have overstayed their visa, if they want to stay here permanently, we are actually saying that there is going to be less of a check on someone than if they have immigrated from overseas.

Mr. GROSSMAN. I think, sir, and I am going to sound slightly bureaucratic here; but, I think, sir, that the change of status that would occur in the United States if—of course, the responsibility belongs to the INS and they make the same kinds of checks, health and background security—if they are going to let them immigrate.

Mr. ROHRABACHER. They do make the same—they cannot—right now, they do not change the authority, do they? They have to go home for that. So, you are just postulating that the INS would make that same thorough check.

Mr. GROSSMAN. Well, for someone, who is here—

Mr. ROHRABACHER. Someone, who is here illegally, who overstayed their visa, tourist visa, and you just told us that the immigrant visa is much more extensive background—

Mr. GROSSMAN. I am sorry, I misunderstood. If they are here illegally, absolutely.

Mr. ROHRABACHER. Okay.

Mr. GROSSMAN. But, there are large numbers of people, who change status legally, and I was just trying to say that they get the same check as a legal immigrant.

Mr. ROHRABACHER. Let us note that the background check is much more thorough for immigrant visas and from what I have been told by consular officers, that the INS people here do not have the same intelligence background and resources available to them as our people overseas do. In fact, Mr. Lantos made it very clear that he wanted the real specialist to be able to look into these re-

quests. And, of course, it is the Administration's position, I believe, to make sure that under 245(I), that people, who are here legally, do not have to return back to their home country.

How many student visas do we issue?

Mr. GROSSMAN. I will have to get that exact number for you.

Mr. ROHRABACHER. A million? Two million?

Mr. GROSSMAN. I do not think it is that many, but—

Mr. ROHRABACHER. Five-hundred thousand? All right, you do not know. Let me ask you this: You think we should be concerned about students being given visas from Iran or Iraq or Communist China, who are going to be educated in schools and being trained how to do very technical things, like make atom bombs?

Mr. GROSSMAN. Absolutely.

Mr. ROHRABACHER. Well, good. Do you think we have a policy now that permits that?

Mr. GROSSMAN. We have checks certainly in place.

Mr. ROHRABACHER. You believe that right now, students from Communist China, from Iraq and Iran are not granted visas to participate in graduate studies that would permit them to obtain the skills necessary to build weapons? Let me suggest, sir, that you better study your—

Mr. GROSSMAN. No, there is a clearance procedure in place, it is called the Mantis Program, wherein there are certain disciplines and certain countries that submit student visa applications that are cleared through an interagency process.

Mr. ROHRABACHER. Now, let me just suggest that I think that we have people from those countries, especially from Communist China, who are being trained in very technical scientific training in this country, that can be utilized, maybe it is not directly here on how to make a bomb, but it gives them all of the physics and everything necessary to go back to their home countries and produce weapons of mass destruction.

Chairman HYDE. The gentleman's time has expired. The gentleman from New Jersey, Mr. Menendez?

Mr. MENENDEZ. Thank you, Mr. Chairman. Mr. Secretary, thank you for your testimony. As one of the Members sitting on the Select Committee that is going to determine the final draft of this, I have some serious concerns about what I have heard here today and how I read the legislation. So, let me try to pursue them with you.

First of all, for the record, as a senior State Department official and representing Secretary Powell, are you telling the Committee affirmatively that the Department supports all of the reorganization as it relates to the State Department, as is outlined in the President's legislation?

Mr. GROSSMAN. Yes, sir.

Mr. MENENDEZ. Now, I read, on page 16 of the legislation, which is primarily the focus of what we have been talking about, section 403, the visa issuance, it says,

“Notwithstanding the provisions of section 104 of the Immigration and Nationality Act or any other law, the Secretary”—

referring to the Secretary of the new Department of Homeland Security—

“shall have exclusive authority”—

and I am going to omit the next few words—

“. . . to issue regulations with respect to administer and enforce the provisions of that act and all other Immigration and Nationality laws relating to the functions of diplomatic and consular officers of the United States, in connection with the granting or refusal of visas, and the authority to confer or impose upon any officer or employee of the United States”—

which I read to mean, beyond the State Department, in any other department of the Federal Government—

“with the consent of that agency to serve in the functions and pursuit thereof.”

Now, what that says to me is that the Secretary of Homeland Security has the exclusive authority to do all of these things, notwithstanding the Secretary of State. The Secretary of State and the State Department, in my mind, as I read this, becomes a functionary of the Secretary of Homeland Security, except for the one caveat where the Secretary of State can, assuming that there is no problem with the Secretary of Homeland Security, still deny someone a visa for other interests that the State Department has. Is that a fair statement? Is that your understanding of the legislation? A yes or no will suffice.

Mr. GROSSMAN. Yes, it is my understanding of that legislation.

Mr. MENENDEZ. Okay. Now, if that is the case, I listened to your response to Mr. Berman, that when you describe, well, what we are doing here, saying what criteria, what presumption, that the idea is different in terms of how we are going to approach the issuance of visas. How is it then, if this law is passed as is, assuming that the Secretary of Homeland Security promulgates new visa issuance guidelines, focusing mainly on homeland security, and maybe, in some respects, conditioning under the guise of security a whole host of stated provisions within the law as to what our immigration policy is, how do we continue to pursue our traditional foreign and domestic policy objectives, such as reunification of families, admission of those with much needed skills in this country—for example, computer engineers. Unfortunately, I hope we get to the day soon where every American is going to fill those jobs; but the reality is that the industry needs far beyond what we create—opportunities for cultural and educational exchange, facilitation of trade and tourism. We just spent enormous amounts of money in the airline industry to keep it alive. How is it, under those provisions, which traditionally have been under the Secretary of State, that if the new criteria, the new presumption that the idea is different, how do we preserve all of those particular goals?

Mr. GROSSMAN. Mr. Menendez, thank you, very much, for that question. Let me answer it in three ways. First of all, to go back to the previous answer I gave, you asked me to give a yes or no answer about whether that was my understanding. With a little bit more time here, I think you are using—you can use it if you want—the idea that somehow the Secretary is a functionary in this, and I think that understates his role, because he still is the hirer and the promoter and the trainer of all the people who are out there. So, I think it is more than a functionary's role. But, I

do not disagree that the authority belongs to the Department of Homeland Security.

The second point is when you ask how are we going to do all the old things, if there is the new presumption and the new idea, I would answer your question by saying that nobody is saying that this new presumption of security after the 11th of September is the only thing that we are going to do, but that it now has to play an extremely important role in the decisions the Secretary for Homeland Security is going to make. And so, when you talk about cultural exchange, the reunification of families, businesses getting the right people to come and do our work, these are issues that, of course, will have to be dealt with; but it's necessary that the security and the law enforcement part of this become a bigger part of the pie, if you will.

The only quibble I would have with you, sir, is that I would not say that these are new things and, therefore, the only things. They are new things which are additive to the challenges we already have as a country.

Chairman HYDE. The gentleman's time has expired. The gentleman from New Jersey, Mr. Smith.

Mr. SMITH OF NEW JERSEY. Thank you very much, Mr. Chairman. Secretary Grossman, in 2001, under the Visa Waiver Program, 17.1 million visitors entered the United States from 29 countries. In February, Argentina was removed from the list, leaving 28 approved countries. In addition, 44,500 stolen blank passports from the Visa Waiver Programs are unaccounted for; they are stolen. Earlier you responded that the presumption should change. Can you tell us what reforms are being contemplated? Are those reforms likely to be chilled, paralyzed, or go nowhere because of reorganization?

As you know, we went through reorganization a few years ago—and I was then a part of that as the Co-Chairman of the International Operations and Human Rights Subcommittee—it seemed like some things got crowded out. I am wondering, since this far exceeds the seven million or so who go through the normal route, or whatever we want to call it, of having an interview, what is the deal here?

Secondly, let me ask you: Based on your statement, there is about a 30 percent refusal rate. What percent of those refusals are later issued visas due to a reapplication?

Finally, what criteria do consular officers use to grant visas without interviews? Even in a case where the applicant looks good on paper, wouldn't consular officers be in a far better position to evaluate whether the applicant presents a security risk if they had the opportunity to observe his or her demeanor and extemporaneous answers to the sorts of questions that would be asked in an interview?

Mr. GROSSMAN. Yes, sir. Let me see if I can answer all of those questions. First of all, on the Visa Waiver Program, certainly, since the 11th of September, this program has gotten more scrutiny. As you say, we have taken a country off of it. We have also sent teams out where we have concerns: Loose passports, for example, people, who don't look after their passports. So, I think people in the Con-

sular Affairs Bureau and our Diplomatic Security Service are much more focused on the Visa Waiver Program.

Second, obviously, I cannot speculate about the future, but for me, personally, I would think that the Visa Waiver Program would be among those things that the new Secretary of Homeland Security would look at first. And I would not say, Mr. Smith, that this was something that would be pushed aside in any reorganization, because, as you say, the numbers are high. And to be fair, there is a lot of interest in this Committee and in the Congress in the Visa Waiver Program, both pro and con. We get plenty of letters from people who want more countries to be put into VWPP, not less.

I would ask Mr. Lannon to talk on the issue of reapplication. But, let me talk on your fourth point, which is, you know, wouldn't it be better if we could interview everybody, and how is it that we make these decisions. In a perfect world, I think you would still try to strike a balance. You would have to do a risk assessment. A businessman from Britain or France or Italy or Brazil, who has been in and out of the country for a period of years, who works for an American company, who has got a 10-year visa, who is an investor in the United States, who has shown over time that he lives by our laws and he is the kind of person we want to have in the country. No, sir, I do not think that you would gain much, other than probably, you know, an interesting conversation, from talking to that person.

The second point I would make is that which Assistant Secretary Lannon made earlier. The key thing here is information coming from our law enforcement agencies, from CIA, from FBI, and getting it to the person at the point of attack, at the person who has to make that decision. And as I said in my statement, it seems to me this is one of the biggest reasons for being in favor of the President's proposal, to bring all these things together.

And, third, again, we have talked about this a couple of times during this hearing, if you actually tried to interview everybody, the enormity of it and the capacity, you would not meet your security goals, I do not believe, sir. You certainly would not meet other goals that people on this Committee, such as Mr. Menendez are interested in, in having people come to the United States.

We have to have the best regulation, the best information, the best trained people and make sure they have the wherewithal to carry out their jobs.

Mr. LANNON. That 30 percent rate is the adjusted rate. That is not to say someone a year later could apply and get one; but, generally, that is the adjusted rate, where the person that came in initially was refused, was told to bring back something else, and then brought it and was subsequently issued. That represents the adjusted rate.

Chairman HYDE. Mr. Davis?

Mr. DAVIS. Thank you, Mr. Chairman. Mr. Ambassador, I am a little concerned about how general your comments have been today on the recurring question about the integrity of the visa process, and, in fairness to you, I know this is a very tough issue. But, I think we need to resist the temptation to assume that just because we move this function to this new department, we have solved the

problem, that we have thoroughly understood what the problem was and what the causes were, as distinguished from the symptoms. This issue about information sharing between the consular officers and the INS at the point of entry, as well as all of the agencies that contain this very sensitive information is too important not to get it right and it is unforgivable if we do not.

Now, my impression from conversations with a number of people involved in this, including Mary Ryan, is that there are a couple of problems. One has been an attitudinal issue and as you have described, there has been a change in culture. And it has been my impression that after September 11th, that lookout list suddenly became a lot more lush.

My concern is whether we need to institutionalize something to make sure attitudes do not lapse over time back to where they were. The second issue is a resource issue and that has to do with whether there is sufficient confidence in the security, the sanctity of the INS database, the people that have access to it—I know that is not your issue—and State, whether there is sufficient trust and confidence in that database and the people that have access to it among all the law enforcement and intelligence community, who jealously guards that information. And it seems to me, particularly at the INS, because this all runs together, there are some resource issues there about getting their information infrastructure in tact.

I just want to urge you to work with us on the function and the end result and the bottom line, and not just how we connect the boxes and where the line of authority and line of communication are. I would be interested in any comments you might have.

Mr. GROSSMAN. Yes, sir. I think all of that is advice well given. I think that I particularly agree with you and we certainly, Assistant Secretary Lannon and I, are not here to tell you that if you move the authority for the visa process from over here to over here, all problems are solved; definitely not. There is still a huge amount of work to do. I think the work that has been done since the 11th of September, as you say, has been good, but there is still a lot of work to do and a lot of culture to change.

I guess I would say to you, secondly, Mr. Davis, which is to say that, to me anyway, if you want to continue to pursue this culture change, I say the way to do it is to create a Department of Homeland Security, because for the legislative branch, for the executive branch, people have to pay attention. It is not business as usual. This is the largest reorganization since World War II, and I think it is called for, I think it is right, and I think it will change attitudes. I hope it will, because, as you say, the culture has to change.

Third, obviously, as you rightly say, we will not comment on the INS question. We are doing a huge amount to try to protect the security of our data, and not just the security of the data in the consular world, but the security of all of the data at the State Department. And I believe that, again, changes, certainly since Secretary Albright started us on this path, certainly since Secretary Powell, since the 11th of September, you will find a much tighter degree of control on all of the information at the State Department now, and I think that is a good thing. Is there more to do? Absolutely. But, I appreciate your raising this.

Mr. DAVIS. Let me just close and this may be more of a subject for the Intelligence Committee. I think we need to understand how many names are added September 11 and why they had not been added sooner, because I think that tells us something about the magnitude of the problem. I am not suggesting it had anything to do with September 11th. I think that is clear. This is about prevention in the future. And I think that gives the cause and helps us enact a permanent change.

I support the creation of the Department, Mr. Ambassador. That is not the hard part. The hard part is getting the function right. Thank you.

Mr. GROSSMAN. I agree with that, and we will be glad, either open or in a classified way, to try to get you the information you asked for.

Chairman HYDE. The gentleman from Iowa, Mr. Leach?

Mr. LEACH. Thank you, Mr. Chairman. I would like to make a distinction between processes and policies. And it strikes me that you have got a pretty good balance on your homeland security bill and you have got, I think, the only credible basis for giving some authority to that State Department over the basic policies, although I would hope the Department would have some input as policies are made. But when one thinks it through, we are creating this large department and it presumably will have some people. It does not take that many people to come up with the policies. To implement the policies does, however. And you are now the implementing department and the Department of State, to my knowledge, has made no indication that given this greater degree of scrutiny that is being required by the American people, that you need another soul, individual, people.

And I think I would like to ask you to think that through and to make some recommendations to this Committee. This Committee has jurisdiction over the Department of State and its people and you are now being given substantially upgraded responsibility. And it is minor that there is a little bit of policy being transferred to the Department of Homeland Security. It really simply means for the President of the United States that is a non-people intensive effort. Implementation is a totally people intensive effort, and it is going to be a lot harder.

The second thing on policy I would like to stress is that the Department of State's major issue, with regard to homeland security, is to have good policies. All of these processes to protect homeland security are fairly minor, if we have lousy policies.

And so, I would only stress, from the brief experience we have all had in the aftermath of the 9/11 terror, that this is a pretty good time to assert American leadership; but American leadership is only going to be accepted if we put a lot of attention on the listening pretty attentively to the news of some other people. It is impressive how some other people have in their societies in place more assertive techniques at looking at individuals in their societies than we do, and that the number of helpful breaks that come from potential terrorists have largely come through processes implemented by other countries abroad, sometimes with the assistance of the United States. But, my impression, it is not trivially at their own initiative.

I think if we are going to have a Homeland Security Department that works, we are going to have to have a Department of State that is upgraded, itself, both in a leadership and a listening function. I would like to hear from the Department of State on your advice, in this regard, and very substantively.

I mean, I am very impressed that some steps that have been taken by the Secretary in building up the Department of State. I am not impressed that they are as significant as they should be. And I think all of you are going to have to think this through, because, psychologically, it sounds like we are creating a Department of Homeland Security that takes responsibility from the Department of State and, therefore, State is left with lesser needs for upgraded people. And I think it is the reverse circumstance.

Finally, I would just like to stress that you have got a difficult balance. Obviously, national security requires greater rigor to be applied to the visa review process. But at the same time, the national interest of the United States is and increasingly will be related to how people have an understanding of America. And, interestingly, the visa program for education, for example, is like an exchange program paid for by them. So, it is an economic benefit to the United States. It is, also, a cultural benefit to the United States, particularly with countries that cooperate with us on the war on terrorism. I think one has to be very concerned about not instituting blanket policies for all countries that really should be narrowed to other kinds of countries. And so, I would hope that the Department would weigh in on this issue, as carefully as it can.

Chairman HYDE. The gentleman's time has expired. The distinguished gentlelady from California, Ms. Watson.

Ms. WATSON. Thank you, Mr. Chairman and thank you, so much, for holding this hearing on homeland security. I want to thank Ambassador Grossman for coming. And I want to make this statement, because I think everybody ought to understand the hardships that the Department of State has been laboring under, and I have firsthand experience.

I found the Consular Corps very well trained to identify those applicants that would present problems. There is no problem with what the Consular Corps puts them through. I have seen it. I am pleading for the applicant, in some cases, because she is the babysitter who wants to travel with the American family. So, they do their work well.

The problem is having the resources to do the job and the follow up. It was just mentioned about function, and I think the function ought to stay with the people who are trained to do it. If the White House is going to make those decisions, I would hope that it would move State Department people, who are trained in the Consular Corps, into that new department. Just passing it through is not good enough. If they are not trained to recognize those aspects and those issues and false passports and papers and so on, like the Corps is, if they do not have some familiarity with the language and the culture and so on, they are going to miss a lot.

Another point that has to be made, remember, is the terrorist had no records. They were trained to come and melt in with our society. These were not people—even if you traced them back, you

would not be able to determine that they were going to be a threat to us.

Now, we have seen what can happen. It is the follow up, when people are in this country, immigrants, visas and so on, where we need to have the resources to be able to check them out. There was a question asked, how many. Well, how would you know? I mean, you do not have the resources. I was always told that in the State Department, we cannot do it, because we do not have the budget, we do not have the resources.

So, I think that it is incumbent upon the Department of State to recommend to the President that this new agency, department, have new resources, budget. The President said, it would be revenue neutral. It cannot be revenue neutral. You are going to have to have trained people in the right places. You are going to have to have a larger staff. They are going to have to follow up on people, who come and are on time-limited visas, to be sure that they are back in their countries or leaving this country in time.

So, I want to say just in closing that we need the State Department and its functionaries need to clarify—and we are all frustrated, because we do not know the fine details. We need to have it clarified to us, how all of this is going to be worked out or how it is going to be housed and who will do the work. And we need to, along with it, have a well-defined budget, to be able to do these functions. And so, I would appreciate Ambassador, that you come up with these recommendations to the Secretary of State, who then can take it back to the White House. Thank you, so much, and good luck. I do not envy your position.

Chairman HYDE. The gentleman from New Jersey has come up with two additional questions.

Mr. SMITH OF NEW JERSEY. Oh, thank you very much, Mr. Chairman.

Chairman HYDE. So with great pleasure, I yield to the gentleman.

Mr. SMITH OF NEW JERSEY. I just say to our distinguished witnesses, as you know, the December 2001 Office of Inspector General's report on the Visa Waiver Program found that the INS inspectors were not consistently clearing passport numbers against the lookout system. You know the FBI's list of the most wanted people. Can you assure us today that all of these individuals' names and known aliases are in the computer lookout list, so that we do not give them a visa if one or more of them has applied somewhere around the globe?

Secondly, and this is very important, because it is very timely, when Jiang Jamin, a high Chinese official, visited Iceland, there was a very concerted effort made to preclude Americans, who happened to be Falun Gong practitioners, from traveling to Iceland. Our citizens were being very negatively impacted. I wrote to the officials in Iceland protesting it. A couple of days later—and I am sure you protested as well—they changed it. But, meanwhile, many people did not get their opportunity to have their voices heard.

We also know that here, in this country, there have been threats against Falun Gong practitioners. And this is part of homeland security, I would think. You know, it is not just who comes in, but who is actually here from the Chinese government, fomenting and

making these threats against American citizens who are Falun Gong. But what are we doing about that? And, again, this list here, does the lookout system have them adequately factored into our system?

Mr. LANNON. This is the FBI list—

Mr. SMITH OF NEW JERSEY. Yes, the FBI list.

Mr. LANNON. Yes, those names were put into the lookout system, our lookout system. We did it ourselves.

Mr. SMITH OF NEW JERSEY. And their aliases, as well?

Mr. LANNON. Excuse me?

Mr. SMITH OF NEW JERSEY. And their aliases, as well?

Mr. LANNON. Alias, everything. All the information we had and information that is gleaned, as we get it, is put into the lookout system.

Mr. SMITH OF NEW JERSEY. I appreciate that. Mr. Grossman?

Mr. GROSSMAN. As you say on Falun Gong, we followed this issue closely. We went right to the Icelandic government. We also went to the Icelandic airlines, since they were complacent in this as well. We also, through our Embassy in Reykjavik, did our very best to make sure that our citizens, who were detained there for a short amount of time, knew that we were with them. But I take your point, and it is a very, very important one.

Mr. SMITH OF NEW JERSEY. And perhaps you could check into the threats that are being made against Americans of Chinese extraction who are Falun Gong.

Mr. GROSSMAN. I would be glad to.

Mr. SMITH OF NEW JERSEY. It is outrageous.

Mr. GROSSMAN. I would be glad to.

Mr. SMITH OF NEW JERSEY. Thank you, Mr. Chairman.

Chairman HYDE. Mr. Sherman?

Mr. SHERMAN. Thank you. I guess coming within this Committee's jurisdiction the biggest effect is a change in the responsibility for who would issue visas. I have, in the last 6 years on this Committee, been more than a little bit critical. We have horrendous delays in issuing of visas. No real success in keeping out those who have killed thousands of Americans. And I have been dealt with more than a little absence of courtesy, whenever I have asked those out in a field to look at a particular case, including one of our consul generals, who called me at 4 o'clock in the morning and then said he did not know there was a difference in time zones. And so, I, at least, cannot see any reason why transferring this responsibility to a new agency would not be an outstanding idea.

Perhaps, I could ask Mr. Lannon to comment on the delays that we have had in—or what is the level of delay, if somebody comes in, who married an American, say, in the Dominican Republic or the Philippines, how long would it take, in the absence of any security concern, for that person to be given a visa and be able to continue their married life here in the United States? And I realize my criticisms all relate to a prior Administration. I have no criticisms that are now applicable, that I brought to your attention.

Mr. LANNON. When we get the case, basically, we will schedule an appointment within 30 days. I think where the jam up on the process tends to be with the filing of the petition. And most petitions have to be filed in the United States, so they have to work

their way through the INS and then they go to our facility in Portsmouth, where there is a couple of weeks processing there. But, by and large, once we get the case, it is 30 days from the time we actually receive it at post, where we will process it through. That is the American citizen. Also——

Mr. SHERMAN. Okay. So, if I had a situation where a married couple of no challenge to legitimacy of the marriage, no challenge to the national security, had to live, just because people were too tired to follow the paperwork, for 3 years separate lives, married, with a child, so there is not a lot of doubt as to the legitimacy of the marriage, that would be an unusual case? Because, at the time, I was told, gee, Congressman, why are you calling us; it is pretty difficult.

Mr. LANNON. For an American citizen or is this a——

Mr. SHERMAN. No, obviously, American citizens do not need visas to come to this country.

Mr. LANNON. No, no, I am saying——

Mr. SHERMAN. For the spouse of an American citizen.

Mr. LANNON. Spouse of an American citizen. I think 3 years would be very unusual. But, I will add that there were problems that last year, it was at the end of 2000, when Congress passed the law of the K-3 visa, which was to deal with this, because of the backlogs and processing, to allow these people to come to the United States and wait their time in the United States.

Mr. SHERMAN. If we had a situation where the average wait in the Philippines was 2 years, the average wait in London was 2 weeks, would you transfer personnel, so as to even out the weight, or would you decide that those who married English citizens, should wait only 2 weeks and those who married Filipinos, should wait 2 years?

Mr. LANNON. No, we would move people to deal with the problem. We want to get this done within 30 days, so we would put people out there.

Mr. SHERMAN. Now, the next issue relates to the economic concerns. I want to assume that your officers have no reason to be concerned about the national security threat and that their only concern is that somebody will not return to their job in India or Guatemala or whatever. So, it is purely an economic situation. Now, if a person had a really good job, you would issue them a visa. But, what is your stand on accepting a performance bond, so that you are given an economic assurance that the person will return?

Mr. LANNON. Well, the bond itself does not overcome the presumption of 214(b). So, generally, a bond cannot be accepted in lieu of 214(b), the idea that the person will not return.

Mr. SHERMAN. Shouldn't we have a situation where a bond would play a role in making the 214(b) decision? After all, I mean, you can point to that statute, as if it is a real standard. It is really just whatever the whim of the consular officer is, or the guess.

Mr. LANNON. Well, it could play a role, but it does not necessarily have to play a role.

Chairman HYDE. The gentleman's time has expired.

Mr. SHERMAN. Yes, it has.

Chairman HYDE. I want to thank our witnesses for their excellent testimony. We are at the opening chapter of a long tale, I am

sure. But, we are getting started in the right direction. I appreciate your cooperation.

Mr. GROSSMAN. Thank you, sir, for the opportunity.

Chairman HYDE. The Committee stands adjourned.

[Whereupon, at 12:07 p.m., the Committee was adjourned.]

**MARKUP OF H.R. 5005, THE HOMELAND
SECURITY ACT OF 2002**

WEDNESDAY, JULY 10, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Committee met, pursuant to call, at 9:35 a.m. in Room 2172, Rayburn House Office Building, Hon. Henry J. Hyde (Chairman of the Committee) presiding.

Chairman HYDE. The Committee will come to order.

Pursuant to notice, I now call up the sections of the bill H.R. 5005, the Homeland Security Act of 2002, referred to this Committee under House Rule X for purposes of markup and move their submission to the Select Committee on Homeland Security.

[The bill, H.R. 5005, follows:]

107TH CONGRESS
2D SESSION

H. R. 5005

To establish the Department of Homeland Security, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2002

Mr. ARMEY (for himself, Mr. HASTERT, Mr. DELAY, Mr. WATTS of Oklahoma, Mr. COX, Ms. PRYCE of Ohio, Mrs. CUBIN, Mr. TOM DAVIS of Virginia, Mr. BLUNT, Mr. PORTMAN, Mr. ADERHOLT, Mr. AKIN, Mr. BALLENGER, Mr. BARR of Georgia, Mr. BASS, Mr. BEREUTER, Mr. BOEHLERT, Mr. BONILLA, Mrs. BONO, Mr. BRADY of Texas, Mr. BROWN of South Carolina, Mr. BURTON of Indiana, Mr. BUYER, Mr. CALVERT, Mr. CAMP, Mr. CANTOR, Mrs. CAPITO, Mr. CASTLE, Mr. CHAMBLISS, Mr. COOKSEY, Mr. CRENSHAW, Mrs. JO ANN DAVIS of Virginia, Mr. DREIER, Mr. DEMINT, Ms. DUNN of Washington, Mr. EHRlich, Mr. ENGLISH, Mr. FERGUSON, Mr. FORBES, Mr. FOSSELLA, Mr. GANSKE, Mr. GEKAS, Mr. GIBBONS, Mr. GILMAN, Mr. GILLMOR, Mr. GOODE, Ms. GRANGER, Mr. GREEN of Wisconsin, Mr. GREENWOOD, Mr. GRUCCI, Mr. HANSEN, Ms. HARMAN, Ms. HART, Mr. HASTINGS of Washington, Mr. HAYES, Mr. HAYWORTH, Mr. HEFLEY, Mr. HERGER, Mr. HOEKSTRA, Mr. HORN, Mr. HOUGHTON, Mr. ISSA, Mr. JENKINS, Mrs. JOHNSON of Connecticut, Mr. KELLER, Mrs. KELLY, Mr. KING, Mr. KOLBE, Mr. LAHOOD, Mr. LINDER, Mr. MCCREY, Mr. MCKEON, Mr. MALONEY of Connecticut, Mr. MANZULLO, Mr. DAN MILLER of Florida, Mr. GARY G. MILLER of California, Mrs. MORELLA, Mrs. MYRICK, Mr. NUSSLE, Mr. OSBORNE, Mr. OXLEY, Mr. PICKERING, Mr. PITTS, Mr. PUTNAM, Mr. REHBERG, Mr. ROHRABACHER, Mr. ROYCE, Mrs. ROUKEMA, Mr. RYUN of Kansas, Mr. SAXTON, Mr. SCHROCK, Mr. SENSENBRENNER, Mr. SESSIONS, Mr. SHAW, Mr. SHAYS, Mr. SHERWOOD, Mr. SIMPSON, Mr. SKEEN, Mr. SOUDER, Mr. SWEENEY, Mr. TANCREDO, Mr. TAUZIN, Mr. THORBERRY, Mr. TIBERI, Mr. UPTON, Mr. SHIMKUS, Mr. WALDEN, Mr. WAMP, Mr. WELDON of Pennsylvania, Mr. WELLER, Mr. WHITFIELD, Mr. WICKER, Mrs. WILSON of New Mexico, and Mr. WILSON of South Carolina) (all by request) introduced the following bill; pursuant to House Resolution 449, referred to the Select Committee on Homeland Security for a period to be subsequently determined by the Speaker, and in addition to the Committees on Agriculture, Appropriations, Armed Services, Energy and Commerce, Financial Services, Government Reform, Intelligence (Permanent Select), International Relations, the Judiciary, Science, Transportation and Infrastructure, and Ways and Means, for a

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period ending not later than July 12, 2002, in each case for consideration of such matters as fall within the jurisdiction of the committee concerned

A BILL

To establish the Department of Homeland Security, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Homeland Security Act of 2002”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Construction; severability.
- Sec. 4. Effective date.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

- Sec. 101. Executive department; mission.
- Sec. 102. Secretary; functions.
- Sec. 103. Other officers.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE
PROTECTION

- Sec. 201. Under Secretary for Information Analysis and Infra-
structure Protection.
- Sec. 202. Functions transferred.
- Sec. 203. Access to information.
- Sec. 204. Information voluntarily provided.

TITLE III—CHEMICAL, BIOLOGICAL, RADIOLOGICAL, AND
NUCLEAR COUNTERMEASURES

- Sec. 301. Under Secretary for Chemical, Biological, Radiological, and Nuclear
Countermeasures.
- Sec. 302. Functions transferred.
- Sec. 303. Conduct of certain public health-related activities.

Sec. 304. Military activities.

TITLE IV—BORDER AND TRANSPORTATION SECURITY

Sec. 401. Under Secretary for Border and Transportation Security.

Sec. 402. Functions transferred.

Sec. 403. Visa issuance.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

Sec. 501. Under Secretary for Emergency Preparedness and Response.

Sec. 502. Functions transferred.

Sec. 503. Nuclear incident response.

Sec. 504. Definition.

Sec. 505. Conduct of certain public health-related activities.

TITLE VI—MANAGEMENT

Sec. 601. Under Secretary for Management.

Sec. 602. Chief Financial Officer.

Sec. 603. Chief Information Officer.

TITLE VII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; GENERAL PROVISIONS

Subtitle A—Coordination With Non-Federal Entities

Sec. 701. Responsibilities.

Subtitle B—Inspector General

Sec. 710. Authority of the Secretary.

Subtitle C—United States Secret Service

Sec. 720. Functions transferred.

Subtitle D—General Provisions

Sec. 730. Establishment of human resources management system.

Sec. 731. Advisory committees.

Sec. 732. Acquisitions; property.

Sec. 733. Reorganization; transfer.

Sec. 734. Miscellaneous provisions.

Sec. 735. Authorization of appropriations.

TITLE VIII—TRANSITION

Sec. 801. Definitions.

Sec. 802. Transfer of agencies.

Sec. 803. Transitional authorities.

Sec. 804. Savings provisions.

Sec. 805. Terminations.

Sec. 806. Incidental transfers.

TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

Sec. 901. Inspector General Act.

Sec. 902. Executive schedule.

Sec. 903. United States Secret Service.
Sec. 904. Coast Guard.
Sec. 905. Strategic national stockpile and smallpox vaccine development.
Sec. 906. Select agent registration.
Sec. 907. National Bio-Weapons Defense Analysis Center.

1 **SEC. 2. DEFINITIONS.**

2 Unless the context clearly indicates otherwise, the fol-
3 lowing shall apply for purposes of this Act:

4 (1) The term “American homeland” or “home-
5 land” means the United States, in a geographic
6 sense.

7 (2) The term “assets” includes contracts, facili-
8 ties, property, records, unobligated or unexpended
9 balances of appropriations, and other funds or re-
10 sources (other than personnel).

11 (3) The term “Department” means the Depart-
12 ment of Homeland Security.

13 (4) The term “emergency response providers”
14 includes Federal, State, and local government emer-
15 gency public safety, law enforcement, emergency re-
16 sponse, emergency medical, and related personnel,
17 agencies, and authorities.

18 (5) The term “executive agency” means an ex-
19 ecutive agency and a military department, as de-
20 fined, respectively, in sections 105 and 102 of title
21 5, United States Code.

22 (6) The term “functions” includes authorities,
23 powers, rights, privileges, immunities, programs,

1 projects, activities, duties, responsibilities, and obli-
2 gations.

3 (7) The term “local government” has the mean-
4 ing given in section 102(6) of the Robert T. Stafford
5 Disaster Relief and Emergency Assistance Act (Pub-
6 lic Law 93–288).

7 (8) The term “major disaster” has the meaning
8 given in section 102(2) of the Robert T. Stafford
9 Disaster Relief and Emergency Assistance Act (Pub-
10 lic Law 93–288).

11 (9) The term “personnel” means officers and
12 employees.

13 (10) The term “Secretary” means the Secretary
14 of Homeland Security.

15 (11) The term “United States”, when used in
16 a geographic sense, means any State (within the
17 meaning of section 102(4) of the Robert T. Stafford
18 Disaster Relief and Emergency Assistance Act (Pub-
19 lic Law 93–288)), any possession of the United
20 States, and any waters within the jurisdiction of the
21 United States.

22 **SEC. 3. CONSTRUCTION; SEVERABILITY.**

23 Any provision of this Act held to be invalid or unen-
24 forceable by its terms, or as applied to any person or cir-
25 cumstance, shall be construed so as to give it the max-

1 imum effect permitted by law, unless such holding shall
2 be one of utter invalidity or unenforceability, in which
3 event such provision shall be deemed severable from this
4 Act and shall not affect the remainder thereof, or the ap-
5 plication of such provision to other persons not similarly
6 situated or to other, dissimilar circumstances.

7 **SEC. 4. EFFECTIVE DATE.**

8 This Act shall take effect thirty days after the date
9 of enactment or, if enacted within thirty days before Janu-
10 ary 1, 2003, on January 1, 2003.

11 **TITLE I—DEPARTMENT OF**
12 **HOMELAND SECURITY**

13 **SEC. 101. EXECUTIVE DEPARTMENT; MISSION.**

14 (a) ESTABLISHMENT.—There is established a De-
15 partment of Homeland Security, as an executive depart-
16 ment of the United States within the meaning of title 5,
17 United States Code.

18 (b) MISSION.—(1) The primary mission of the De-
19 partment is to—

20 (A) prevent terrorist attacks within the United
21 States;

22 (B) reduce the vulnerability of the United
23 States to terrorism; and

1 (C) minimize the damage, and assist in the re-
2 covery, from terrorist attacks that do occur within
3 the United States.

4 (2) In carrying out the mission described in para-
5 graph (1), and as further described in this Act, the De-
6 partment's primary responsibilities shall include—

7 (A) information analysis and infrastructure pro-
8 tection;

9 (B) chemical, biological, radiological, nuclear,
10 and related countermeasures;

11 (C) border and transportation security;

12 (D) emergency preparedness and response; and

13 (E) coordination (including the provision of
14 training and equipment) with other executive agen-
15 cies, with State and local government personnel,
16 agencies, and authorities, with the private sector,
17 and with other entities.

18 (3) The Department shall also be responsible for car-
19 rying out other functions of entities transferred to the De-
20 partment as provided by law.

21 **SEC. 102. SECRETARY; FUNCTIONS.**

22 (a) SECRETARY.—(1) There is a Secretary of Home-
23 land Security, appointed by the President, by and with the
24 advice and consent of the Senate.

1 (2) The Secretary is the head of the Department and
2 shall have direction, authority, and control over it.

3 (3) All functions of all officers, employees, and orga-
4 nizational units of the Department are vested in the Sec-
5 retary.

6 (b) FUNCTIONS.—The Secretary—

7 (1) may delegate any of his functions to any of-
8 ficer, employee, or organizational unit of the Depart-
9 ment;

10 (2) may promulgate regulations hereunder; and

11 (3) shall have such functions, including the au-
12 thority to make contracts, grants, and cooperative
13 agreements, and to enter into agreements with other
14 executive agencies, as may be necessary and proper
15 to carry out his responsibilities under this Act or
16 otherwise provided by law.

17 **SEC. 103. OTHER OFFICERS.**

18 (a) DEPUTY SECRETARY; UNDER SECRETARIES.—

19 To assist the Secretary in the performance of his func-
20 tions, there are the following officers, appointed by the
21 President, by and with the advice and consent of the Sen-
22 ate:

23 (1) A Deputy Secretary of Homeland Security,
24 who shall be the Secretary's first assistant for pur-

1 poses of chapter 33, subchapter 3, of title 5, United
2 States Code.

3 (2) An Under Secretary for Information Anal-
4 ysis and Infrastructure Protection.

5 (3) An Under Secretary for Chemical, Biologi-
6 cal, Radiological, and Nuclear Countermeasures.

7 (4) An Under Secretary for Border and Trans-
8 portation Security.

9 (5) An Under Secretary for Emergency Pre-
10 paredness and Response.

11 (6) An Under Secretary for Management.

12 (7) Not more than six Assistant Secretaries.

13 (b) INSPECTOR GENERAL.—To assist the Secretary
14 in the performance of his functions, there is an Inspector
15 General, who shall be appointed as provided in section
16 3(a) of the Inspector General Act of 1978.

17 (c) COMMANDANT OF THE COAST GUARD.—To assist
18 the Secretary in the performance of his functions, there
19 is a Commandant of the Coast Guard, who shall be ap-
20 pointed as provided in section 44 of title 14, United States
21 Code.

22 (d) OTHER OFFICERS.—To assist the Secretary in
23 the performance of his functions, there are the following
24 officers, appointed by the President:

1 (1) A General Counsel, who shall be the chief
2 legal officer of the Department.

3 (2) Not more than ten Assistant Secretaries.

4 (3) A Director of the Secret Service.

5 (4) A Chief Financial Officer.

6 (5) A Chief Information Officer.

7 (e) PERFORMANCE OF SPECIFIC FUNCTIONS.—Sub-
8 ject to the provisions of this Act, every officer of the de-
9 partment shall perform the functions specified by law for
10 his office or prescribed by the Secretary.

11 **TITLE II—INFORMATION ANAL-**
12 **YSIS AND INFRASTRUCTURE**
13 **PROTECTION**

14 **SEC. 201. UNDER SECRETARY FOR INFORMATION ANALYSIS**
15 **AND INFRASTRUCTURE PROTECTION.**

16 In assisting the Secretary with the responsibilities
17 specified in section 101(b)(2)(A), the primary responsibil-
18 ities of the Under Secretary for Information Analysis and
19 Infrastructure Protection shall include—

20 (1) receiving and analyzing law enforcement in-
21 formation, intelligence, and other information in
22 order to understand the nature and scope of the ter-
23 rorist threat to the American homeland and to de-
24 tect and identify potential threats of terrorism with-
25 in the United States;

1 (2) comprehensively assessing the vulnerabilities
2 of the key resources and critical infrastructures in
3 the United States;

4 (3) integrating relevant information, intelligence
5 analyses, and vulnerability assessments (whether
6 such information, analyses, or assessments are pro-
7 vided or produced by the Department or others) to
8 identify protective priorities and support protective
9 measures by the Department, by other executive
10 agencies, by State and local government personnel,
11 agencies, and authorities, by the private sector, and
12 by other entities;

13 (4) developing a comprehensive national plan
14 for securing the key resources and critical infra-
15 structures in the United States;

16 (5) taking or seeking to effect necessary meas-
17 ures to protect the key resources and critical infra-
18 structures in the United States, in coordination with
19 other executive agencies and in cooperation with
20 State and local government personnel, agencies, and
21 authorities, the private sector, and other entities;

22 (6) administering the Homeland Security Advi-
23 sory System, exercising primary responsibility for
24 public threat advisories, and (in coordination with
25 other executive agencies) providing specific warning

1 information to State and local government per-
2 sonnel, agencies, and authorities, the private sector,
3 other entities, and the public, as well as advice about
4 appropriate protective actions and countermeasures;
5 and

6 (7) reviewing, analyzing, and making re-
7 commendations for improvements in the policies and
8 procedures governing the sharing of law enforce-
9 ment, intelligence, and other information relating to
10 homeland security within the Federal Government
11 and between such government and State and local
12 government personnel, agencies, and authorities.

13 **SEC. 202. FUNCTIONS TRANSFERRED.**

14 In accordance with title VIII, there shall be trans-
15 ferred to the Secretary the functions, personnel, assets,
16 and liabilities of the following entities—

17 (1) the National Infrastructure Protection Cen-
18 ter of the Federal Bureau of Investigation (other
19 than the Computer Investigations and Operations
20 Section), including the functions of the Attorney
21 General relating thereto;

22 (2) the National Communications System of the
23 Department of Defense, including the functions of
24 the Secretary of Defense relating thereto;

1 (3) the Critical Infrastructure Assurance Office
2 of the Department of Commerce, including the func-
3 tions of the Secretary of Commerce relating thereto;

4 (4) the Computer Security Division of the Na-
5 tional Institute of Standards and Technology, in-
6 cluding the functions of the Secretary of Commerce
7 relating thereto;

8 (5) the National Infrastructure Simulation and
9 Analysis Center of the Department of Energy, in-
10 cluding the functions of the Secretary of Energy re-
11 lating thereto; and

12 (6) the Federal Computer Incident Response
13 Center of the General Services Administration, in-
14 cluding the functions of the Administrator of Gen-
15 eral Services relating thereto.

16 **SEC. 203. ACCESS TO INFORMATION.**

17 The Secretary shall have access to all reports, assess-
18 ments, and analytical information relating to threats of
19 terrorism in the United States and to other areas of re-
20 sponsibility described in section 101(b), and to all infor-
21 mation concerning infrastructure or other vulnerabilities
22 of the United States to terrorism, whether or not such
23 information has been analyzed, that may be collected, pos-
24 sessed, or prepared by any executive agency, except as oth-
25 erwise directed by the President. The Secretary shall also

1 have access to other information relating to the foregoing
2 matters that may be collected, possessed, or prepared by
3 an executive agency, as the President may further provide.
4 With respect to the material to which the Secretary has
5 access under this section—

6 (1) the Secretary may obtain such material by
7 request, and may enter into cooperative arrange-
8 ments with other executive agencies to share such
9 material on a regular or routine basis, including re-
10 quests or arrangements involving broad categories of
11 material;

12 (2) regardless of whether the Secretary has
13 made any request or entered into any cooperative ar-
14 rangement pursuant to paragraph (1), all executive
15 agencies promptly shall provide to the Secretary—

16 (A) all reports, assessments, and analytical
17 information relating to threats of terrorism in
18 the United States and to other areas of respon-
19 sibility described in section 101(b);

20 (B) all information concerning infrastruc-
21 ture or other vulnerabilities of the United
22 States to terrorism, whether or not such infor-
23 mation has been analyzed;

24 (C) all information relating to significant
25 and credible threats of terrorism in the United

1 States, whether or not such information has
2 been analyzed, if the President has provided
3 that the Secretary shall have access to such in-
4 formation; and

5 (D) such other material as the President
6 may further provide; and

7 (3) the Secretary shall ensure that any material
8 received pursuant to this section is protected from
9 unauthorized disclosure and handled and used only
10 for the performance of official duties, and that any
11 intelligence information shared under this section
12 shall be transmitted, retained, and disseminated con-
13 sistent with the authority of the Director of Central
14 Intelligence to protect intelligence sources and meth-
15 ods under the National Security Act and related pro-
16 cedures or, as appropriate, similar authorities of the
17 Attorney General concerning sensitive law enforce-
18 ment information.

19 **SEC. 204. INFORMATION VOLUNTARILY PROVIDED.**

20 Information provided voluntarily by non-Federal enti-
21 ties or individuals that relates to infrastructure
22 vulnerabilities or other vulnerabilities to terrorism and is
23 or has been in the possession of the Department shall not
24 be subject to section 552 of title 5, United States Code.

1 **TITLE III—CHEMICAL, BIOLOGI-**
2 **CAL, RADIOLOGICAL, AND NU-**
3 **CLEAR COUNTERMEASURES**

4 **SEC. 301. UNDER SECRETARY FOR CHEMICAL, BIOLOGICAL,**
5 **RADIOLOGICAL, AND NUCLEAR COUNTER-**
6 **MEASURES.**

7 In assisting the Secretary with the responsibilities
8 specified in section 101(b)(2)(B), the primary responsibil-
9 ities of the Under Secretary for Chemical, Biological, Ra-
10 diological, and Nuclear Countermeasures shall include—

11 (1) securing the people, infrastructures, prop-
12 erty, resources, and systems in the United States
13 from acts of terrorism involving chemical, biological,
14 radiological, or nuclear weapons or other emerging
15 threats;

16 (2) conducting a national scientific research
17 and development program to support the mission of
18 the Department, including developing national policy
19 for and coordinating the Federal Government's civil-
20 ian efforts to identify, devise, and implement sci-
21 entific, technological, and other countermeasures to
22 chemical, biological, radiological, nuclear, and other
23 emerging terrorist threats, including directing, fund-
24 ing, and conducting research and development relat-
25 ing to the same;

1 (3) establishing priorities for, directing, fund-
2 ing, and conducting national research, development,
3 and procurement of technology and systems—

4 (A) for preventing the importation of
5 chemical, biological, radiological, nuclear, and
6 related weapons and material; and

7 (B) for detecting, preventing, protecting
8 against, and responding to terrorist attacks
9 that involve such weapons or material; and

10 (4) establishing guidelines for State and local
11 government efforts to develop and implement coun-
12 termeasures to threats of chemical, biological, radio-
13 logical, and nuclear terrorism, and other emerging
14 terrorist threats.

15 **SEC. 302. FUNCTIONS TRANSFERRED.**

16 In accordance with title VIII, there shall be trans-
17 ferred to the Secretary the functions, personnel, assets,
18 and liabilities of the following entities—

19 (1) the select agent registration enforcement
20 programs and activities of the Department of Health
21 and Human Services, including the functions of the
22 Secretary of Health and Human Services relating
23 thereto;

24 (2) the following programs and activities of the
25 Department of Energy, including the functions of

1 the Secretary of Energy relating thereto (but not in-
2 cluding programs and activities relating to the stra-
3 tegic nuclear defense posture of the United States):

4 (A) the chemical and biological national se-
5 curity and supporting programs and activities
6 of the non-proliferation and verification re-
7 search and development program;

8 (B) the nuclear smuggling programs and
9 activities, and other programs and activities di-
10 rectly related to homeland security, within the
11 proliferation detection program of the non-pro-
12 liferation and verification research and develop-
13 ment program, except that the programs and
14 activities described in this subparagraph may be
15 designated by the President either for transfer
16 to the Department or for joint operation by the
17 Secretary and the Secretary of Energy;

18 (C) the nuclear assessment program and
19 activities of the assessment, detection, and co-
20 operation program of the international mate-
21 rials protection and cooperation program;

22 (D) the energy security and assurance pro-
23 gram and activities;

24 (E) such life sciences activities of the bio-
25 logical and environmental research program re-

1 lated to microbial pathogens as may be des-
2 ignated by the President for transfer to the De-
3 partment;

4 (F) the Environmental Measurements Lab-
5 oratory; and

6 (G) the advanced scientific computing re-
7 search program and activities, and the intel-
8 ligence program and activities, at Lawrence
9 Livermore National Laboratory;

10 (3) the National Bio-Weapons Defense Analysis
11 Center of the Department of Defense, including the
12 functions of the Secretary of Defense related there-
13 to; and

14 (4) the Plum Island Animal Disease Center of
15 the Department of Agriculture, including the func-
16 tions of the Secretary of Agriculture relating there-
17 to.

18 **SEC. 303. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED**
19 **ACTIVITIES.**

20 (a) CERTAIN ACTIVITIES CARRIED OUT THROUGH
21 HHS.—(1) Except as the President may otherwise direct,
22 the Secretary shall carry out his civilian human health-
23 related biological, biomedical, and infectious disease de-
24 fense research and development (including vaccine re-
25 search and development) responsibilities through the De-

1 partment of Health and Human Services (including the
2 Public Health Service), under agreements with the Sec-
3 retary of Health and Human Services, and may transfer
4 funds to him in connection with such agreements.

5 (2) With respect to any responsibilities carried out
6 through the Department of Health and Human Services
7 under this subsection, the Secretary, in consultation with
8 the Secretary of Health and Human Services, shall have
9 the authority to establish the research and development
10 program, including the setting of priorities.

11 (b) TRANSFER OF FUNDS.—With respect to such
12 other research and development responsibilities under this
13 title, including health-related chemical, radiological, and
14 nuclear defense research and development responsibilities,
15 as he may elect to carry out through the Department of
16 Health and Human Services (including the Public Health
17 Service) (under agreements with the Secretary of Health
18 and Human Services) or through other Federal agencies
19 (under agreements with their respective heads), the Sec-
20 retary may transfer funds to the Secretary of Health and
21 Human Services, or to such heads, as the case may be.

22 **SEC. 304. MILITARY ACTIVITIES.**

23 Except as specifically provided in this Act, nothing
24 in this Act shall confer upon the Secretary any authority

1 to engage in warfighting, the military defense of the
2 United States, or other traditional military activities.

3 **TITLE IV—BORDER AND**
4 **TRANSPORTATION SECURITY**

5 **SEC. 401. UNDER SECRETARY FOR BORDER AND TRANS-**
6 **PORTATION SECURITY.**

7 In assisting the Secretary with the responsibilities
8 specified in section 101(b)(2)(C), the primary responsibil-
9 ities of the Under Secretary for Border and Transpor-
10 tation Security shall include—

11 (1) preventing the entry of terrorists and the
12 instruments of terrorism into the United States;

13 (2) securing the borders, territorial waters,
14 ports, terminals, waterways, and air, land, and sea
15 transportation systems of the United States, includ-
16 ing managing and coordinating governmental activi-
17 ties at ports of entry;

18 (3) administering the immigration and natu-
19 ralization laws of the United States, including the
20 establishment of rules, in accordance with section
21 403, governing the granting of visas or other forms
22 of permission, including parole, to enter the United
23 States to individuals who are not citizens or lawful
24 permanent residents thereof;

1 (4) administering the customs laws of the
2 United States; and

3 (5) in carrying out the foregoing responsibil-
4 ities, ensuring the speedy, orderly, and efficient flow
5 of lawful traffic and commerce.

6 **SEC. 402. FUNCTIONS TRANSFERRED.**

7 In accordance with title VIII, there shall be trans-
8 ferred to the Secretary the functions, personnel, assets,
9 and liabilities of the following entities—

10 (1) the United States Customs Service of the
11 Department of the Treasury, including the functions
12 of the Secretary of the Treasury relating thereto;

13 (2) the Immigration and Naturalization Service
14 of the Department of Justice, including the func-
15 tions of the Attorney General relating thereto;

16 (3) the Animal and Plant Health Inspection
17 Service of the Department of Agriculture, including
18 the functions of the Secretary of Agriculture relating
19 thereto;

20 (4) the Coast Guard of the Department of
21 Transportation, which shall be maintained as a dis-
22 tinct entity within the Department, including the
23 functions of the Secretary of Transportation relating
24 thereto;

1 (5) the Transportation Security Administration
2 of the Department of Transportation, including the
3 functions of the Secretary of Transportation, and of
4 the Under Secretary of Transportation for Security,
5 relating thereto; and

6 (6) the Federal Protective Service of the Gen-
7 eral Services Administration, including the functions
8 of the Administrator of General Services relating
9 thereto.

10 **SEC. 403. VISA ISSUANCE.**

11 (a) **AUTHORITY.**—Notwithstanding the provisions of
12 section 104 of the Immigration and Nationality Act (8
13 U.S.C. 1104) or any other law, and except as provided
14 in subsection (b) of this section, the Secretary shall have—

15 (1) exclusive authority, through the Secretary
16 of State, to issue regulations with respect to, admin-
17 ister, and enforce the provisions of that Act and all
18 other immigration and nationality laws relating to
19 the functions of diplomatic and consular officers of
20 the United States in connection with the granting or
21 refusal of visas; and

22 (2) authority to confer or impose upon any offi-
23 cer or employee of the United States, with the con-
24 sent of the executive agency under whose jurisdiction

1 such officer or employee is serving, any of the func-
2 tions specified in paragraph (1).

3 (b) REFUSAL OF VISAS.—The Secretary of State may
4 refuse a visa to an alien if the Secretary of State deems
5 such refusal necessary or advisable in the interests of the
6 United States.

7 **TITLE V—EMERGENCY**
8 **PREPAREDNESS AND RESPONSE**

9 **SEC. 501. UNDER SECRETARY FOR EMERGENCY PREPARED-**
10 **NESS AND RESPONSE.**

11 In assisting the Secretary with the responsibilities
12 specified in section 101(b)(2)(D), the primary responsibil-
13 ities of the Under Secretary for Emergency Preparedness
14 and Response shall include—

15 (1) helping to ensure the preparedness of emer-
16 gency response providers for terrorist attacks, major
17 disasters, and other emergencies;

18 (2) with respect to the Nuclear Incident Re-
19 sponse Team (regardless of whether it is operating
20 as an organizational unit of the Department pursu-
21 ant to this title)—

22 (A) establishing standards and certifying
23 when those standards have been met;

24 (B) conducting joint and other exercises
25 and training and evaluating performance; and

1 (C) providing funds to the Department of
2 Energy and the Environmental Protection
3 Agency, as appropriate, for homeland security
4 planning, exercises and training, and equip-
5 ment;

6 (3) providing the Federal Government's re-
7 sponse to terrorist attacks and major disasters, in-
8 cluding—

9 (A) managing such response;

10 (B) directing the Domestic Emergency
11 Support Team, the Strategic National Stock-
12 pile, the National Disaster Medical System, and
13 (when operating as an organizational unit of
14 the Department pursuant to this title) the Nu-
15 clear Incident Response Team;

16 (C) overseeing the Metropolitan Medical
17 Response System; and

18 (D) coordinating other Federal response
19 resources in the event of a terrorist attack or
20 major disaster;

21 (4) aiding the recovery from terrorist attacks
22 and major disasters;

23 (5) building a comprehensive national incident
24 management system with Federal, State, and local

1 government personnel, agencies, and authorities, to
2 respond to such attacks and disasters;

3 (6) consolidating existing Federal Government
4 emergency response plans into a single, coordinated
5 national response plan; and

6 (7) developing comprehensive programs for de-
7 veloping interoperative communications technology,
8 and helping to ensure that emergency response pro-
9 viders acquire such technology.

10 **SEC. 502. FUNCTIONS TRANSFERRED.**

11 In accordance with title VIII, there shall be trans-
12 ferred to the Secretary the functions, personnel, assets,
13 and liabilities of the following entities—

14 (1) the Federal Emergency Management Agen-
15 cy, including the functions of the Director of the
16 Federal Emergency Management Agency relating
17 thereto;

18 (2) the Office for Domestic Preparedness of the
19 Office of Justice Programs, including the functions
20 of the Attorney General relating thereto;

21 (3) the National Domestic Preparedness Office
22 of the Federal Bureau of Investigation, including the
23 functions of the Attorney General relating thereto;

1 (4) the Domestic Emergency Support Teams of
2 the Department of Justice, including the functions
3 of the Attorney General relating thereto;

4 (5) the Office of the Assistant Secretary for
5 Public Health Emergency Preparedness (including
6 the Office of Emergency Preparedness, the National
7 Disaster Medical System, and the Metropolitan Med-
8 ical Response System) of the Department of Health
9 and Human Services, including the functions of the
10 Secretary of Health and Human Services relating
11 thereto; and

12 (6) the Strategic National Stockpile of the De-
13 partment of Health and Human Services, including
14 the functions of the Secretary of Health and Human
15 Services relating thereto.

16 **SEC. 503. NUCLEAR INCIDENT RESPONSE.**

17 (a) NUCLEAR INCIDENT RESPONSE TEAM.—At the
18 direction of the Secretary (in connection with an actual
19 or threatened terrorist attack, major disaster, or other
20 emergency), the Nuclear Incident Response Team shall
21 operate as an organizational unit of the Department.
22 While so operating, the Nuclear Incident Response Team
23 shall be subject to the direction, authority, and control of
24 the Secretary.

1 (b) CONSTRUCTION.—Nothing in this title shall be
2 understood to limit the ordinary responsibility of the Sec-
3 retary of Energy and the Administrator of the Environ-
4 mental Protection Agency for organizing, training, equip-
5 ping, and utilizing their respective entities in the Nuclear
6 Incident Response Team, or (subject to the provisions of
7 this title) from exercising direction, authority, and control
8 over them when they are not operating as a unit of the
9 Department.

10 **SEC. 504. DEFINITION.**

11 For purposes of this title, “nuclear incident response
12 team” means a resource that includes—

13 (1) those entities of the Department of Energy
14 that perform nuclear or radiological emergency sup-
15 port functions (including accident response, search
16 response, advisory, and technical operations func-
17 tions), radiation exposure functions at the medical
18 assistance facility known as Oak Ridge National
19 Laboratory, radiological assistance functions, and re-
20 lated functions; and

21 (2) those entities of the Environmental Protec-
22 tion Agency that perform such support functions (in-
23 cluding radiological emergency response functions)
24 and related functions.

1 **SEC. 505. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED**
2 **ACTIVITIES.**

3 (a) IN GENERAL.—Except as the President may oth-
4 erwise direct, the Secretary shall carry out the following
5 responsibilities through the Department of Health and
6 Human Services (including the Public Health Service),
7 under agreements with the Secretary of Health and
8 Human Services, and may transfer funds to him in con-
9 nection with such agreements:

10 (1) All biological, chemical, radiological, and
11 nuclear preparedness-related construction, renova-
12 tion, and enhancement of security for research and
13 development or other facilities owned or occupied by
14 the Department of Health and Human Services.

15 (2) All public health-related activities being car-
16 ried out by the Department of Health and Human
17 Services on the effective date of this Act (other than
18 activities under functions transferred by this Act to
19 the Department) to assist State and local govern-
20 ment personnel, agencies, or authorities, non-Federal
21 public and private health care facilities and pro-
22 viders, and public and non-profit health and edu-
23 cational facilities, to plan, prepare for, prevent, iden-
24 tify, and respond to biological, chemical, radiological,
25 and nuclear events and public health emergencies, by
26 means including direct services, technical assistance,

1 communications and surveillance, education and
2 training activities, and grants.

3 (b) PREPAREDNESS AND RESPONSE PROGRAM.—
4 With respect to any responsibilities carried out through
5 the Department of Health and Human Services under this
6 section, the Secretary, in consultation with the Secretary
7 of Health and Human Services, shall have the authority
8 to establish the preparedness and response program, in-
9 cluding the setting of priorities.

10 **TITLE VI—MANAGEMENT**

11 **SEC. 601. UNDER SECRETARY FOR MANAGEMENT.**

12 In assisting the Secretary with the management and
13 administration of the Department, the primary respon-
14 sibilities of the Under Secretary for Management shall in-
15 clude, for the Department—

16 (1) the budget, appropriations, expenditures of
17 funds, accounting, and finance;

18 (2) procurement;

19 (3) human resources and personnel;

20 (4) information technology and communications
21 systems;

22 (5) facilities, property, equipment, and other
23 material resources;

1 (6) security for personnel, information tech-
2 nology and communications systems, facilities, prop-
3 erty, equipment, and other material resources; and

4 (7) identification and tracking of performance
5 measures relating to the responsibilities of the De-
6 partment.

7 **SEC. 602. CHIEF FINANCIAL OFFICER.**

8 The Chief Financial Officer shall report to the Sec-
9 retary, or to another official of the Department, as the
10 Secretary may direct.

11 **SEC. 603. CHIEF INFORMATION OFFICER.**

12 The Chief Information Officer shall report to the Sec-
13 retary, or to another official of the Department, as the
14 Secretary may direct.

15 **TITLE VII—COORDINATION WITH**
16 **NON-FEDERAL ENTITIES; IN-**
17 **SPECTOR GENERAL; UNITED**
18 **STATES SECRET SERVICE;**
19 **GENERAL PROVISIONS**

20 **Subtitle A—Coordination With**
21 **Non-Federal Entities**

22 **SEC. 701. RESPONSIBILITIES.**

23 In discharging his responsibilities relating to coordi-
24 nation (including the provision of training and equipment)
25 with State and local government personnel, agencies, and

1 authorities, with the private sector, and with other enti-
2 ties, the responsibilities of the Secretary shall include—

3 (1) coordinating with State and local govern-
4 ment personnel, agencies, and authorities, and with
5 the private sector, to ensure adequate planning,
6 equipment, training, and exercise activities;

7 (2) coordinating and, as appropriate, consoli-
8 dating, the Federal Government's communications
9 and systems of communications relating to homeland
10 security with State and local government personnel,
11 agencies, and authorities, the private sector, other
12 entities, and the public;

13 (3) directing and supervising grant programs of
14 the Federal Government for State and local govern-
15 ment emergency response providers; and

16 (4) distributing or, as appropriate, coordinating
17 the distribution of, warnings and information to
18 State and local government personnel, agencies, and
19 authorities and to the public.

20 **Subtitle B—Inspector General**

21 **SEC. 710. AUTHORITY OF THE SECRETARY.**

22 (a) IN GENERAL.—Notwithstanding the last two sen-
23 tences of section 3(a) of the Inspector General Act of
24 1978, the Inspector General shall be under the authority,
25 direction, and control of the Secretary with respect to au-

1 dits or investigations, or the issuance of subpoenas, that
2 require access to information concerning—

3 (1) intelligence, counterintelligence, or
4 counterterrorism matters;

5 (2) ongoing criminal investigations or pro-
6 ceedings;

7 (3) undercover operations;

8 (4) the identity of confidential sources, includ-
9 ing protected witnesses;

10 (5) other matters the disclosure of which would,
11 in the Secretary's judgment, constitute a serious
12 threat to the protection of any person or property
13 authorized protection by section 3056 of title 18,
14 United States Code, section 202 of title 3 of such
15 Code, or any provision of the Presidential Protection
16 Assistance Act of 1976; or

17 (6) other matters the disclosure of which would,
18 in the Secretary's judgment, constitute a serious
19 threat to national security.

20 (b) PROHIBITION OF CERTAIN INVESTIGATIONS.—

21 With respect to the information described in subsection
22 (a), the Secretary may prohibit the Inspector General
23 from carrying out or completing any audit or investiga-
24 tion, or from issuing any subpoena, after such Inspector
25 General has decided to initiate, carry out, or complete

1 such audit or investigation or to issue such subpoena, if
2 the Secretary determines that such prohibition is nec-
3 essary to prevent the disclosure of any information de-
4 scribed in subsection (a), to preserve the national security,
5 or to prevent a significant impairment to the interests of
6 the United States.

7 (c) NOTIFICATION REQUIRED.—The Secretary shall
8 notify the President of the Senate and the Speaker of the
9 House of Representatives within thirty days of any exer-
10 cise of his authority under this section.

11 **Subtitle C—United States Secret** 12 **Service**

13 **SEC. 720. FUNCTIONS TRANSFERRED.**

14 In accordance with title VIII, there shall be trans-
15 ferred to the Secretary the functions, personnel, assets,
16 and liabilities of the United States Secret Service, which
17 shall be maintained as a distinct entity within the Depart-
18 ment, including the functions of the Secretary of the
19 Treasury relating thereto.

20 **Subtitle D—General Provisions**

21 **SEC. 730. ESTABLISHMENT OF HUMAN RESOURCES MAN-** 22 **AGEMENT SYSTEM.**

23 Title 5, United States Code, is amended by insert-
24 ing—

25 (1) after part III a new part as follows:

1 **“PART IV—DEPARTMENT OF HOMELAND**
 2 **SECURITY**
 3 **“CHAPTER 100**

“Sec.
 “10001. Human Resources Management System.

4 **“§ 10001. Human Resources Management System**

5 “Notwithstanding any other provision of this title,
 6 the Secretary of Homeland Security may, in regulations
 7 prescribed jointly with the Director of the Office of Per-
 8 sonnel Management, establish, and from time to time ad-
 9 just, a human resources management system for some or
 10 all of the organizational units of the Department of Home-
 11 land Security, which shall be flexible, contemporary, and
 12 grounded in the public employment principles of merit and
 13 fitness.”; and

14 (2) the following after the matter relating to
 15 part III in the analysis:

“Part IV—Department of Homeland Security
“1. Human Resources Management System 10001”.

16 **SEC. 731. ADVISORY COMMITTEES.**

17 The Secretary may establish, appoint members of,
 18 and use the services of, advisory committees, as he may
 19 deem necessary. The service of an individual as a member
 20 of an advisory committee established under this paragraph
 21 shall not be considered to be service bringing him within
 22 the provisions of sections 203, 205, or 207 of title 18,

1 United States Code, unless his act, which by any such sec-
2 tion is made unlawful when performed by an individual
3 referred to therein, is with respect to any particular mat-
4 ter that directly involves the Department or in which the
5 Department is directly interested. An advisory committee
6 established under this section shall not be subject to Pub-
7 lic Law 92-463, but the Secretary shall publish notice in
8 the Federal Register announcing the establishment of
9 such a committee and identifying its purpose and member-
10 ship.

11 **SEC. 732. ACQUISITIONS; PROPERTY.**

12 (a) RESEARCH AND DEVELOPMENT PROJECTS.—(1)
13 When the Secretary carries out basic, applied, and ad-
14 vanced research and development projects, he may exercise
15 the same authority (subject to the same limitations and
16 conditions) with respect to such research and projects as
17 the Secretary of Defense may exercise under section 2371
18 of title 10, United States Code (except for subsections (b)
19 and (f) of such section), after making a determination that
20 the use of a contract, grant, or cooperative agreement for
21 such project is not feasible or appropriate. The annual re-
22 port required under subsection (h) of such section, as ap-
23 plied to the Secretary by this paragraph, shall be sub-
24 mitted to the President of the Senate and the Speaker
25 of the House of Representatives.

1 (2) The Secretary may, under the authority of para-
2 graph (1), carry out prototype projects in accordance with
3 the requirements and conditions provided for carrying out
4 prototype projects under section 845 of the National De-
5 fense Authorization Act for Fiscal Year 1994 (Public Law
6 103–160). In applying the authorities of such section 845,
7 subsection (c) thereof shall apply with respect to prototype
8 projects under this paragraph, and the Secretary shall
9 perform the functions of the Secretary of Defense under
10 subsection (d) thereof.

11 (b) **PERSONAL SERVICES.**—Notwithstanding the time
12 and pay limitations of section 3109 of title 5, United
13 States Code, the Secretary may procure personal services,
14 including the services of experts and consultants (or orga-
15 nizations thereof).

16 (c) **EXEMPTION FROM CERTAIN AUTHORITIES.**—
17 Section 602(d) of the Federal Property and Administra-
18 tive Services Act 1949 (40 U.S.C. 474(d)) is amended by
19 striking “; or (21)” and inserting “; (21) the Department
20 of Homeland Security; or (22)”.

21 (d) **REAL PROPERTY.**—Notwithstanding any other
22 provision of law, the Secretary, in accordance with regula-
23 tions prescribed jointly with the Administrator of General
24 Services and the Director of the Office of Management
25 and Budget—

1 (1) may acquire replacement real property (in-
2 cluding interests therein)—

3 (A) by transfer or exchange of the Depart-
4 ment's property with other executive agencies;
5 or

6 (B) by sale to or exchange of the Depart-
7 ment's property with non-Federal parties;

8 (2) by lease, permit, license, or other similar in-
9 strument, may make available to other executive
10 agencies and to non-Federal parties, on a fair mar-
11 ket rental value basis, the unexpired portion of any
12 government lease for real property occupied or pos-
13 sessed by the Department;

14 (3) may make available by outlease agreements
15 with other executive agencies or with non-Federal
16 parties, any unused or underused portion of or inter-
17 est in any real or related personal property occupied
18 or possessed by the Department; and

19 (4) may deposit the proceeds of any exercise of
20 the authority granted by this subsection into any ac-
21 count in the Treasury available to him, without re-
22 gard to fiscal year limitations.

23 (e) DELEGATION OF CERTAIN RESPONSIBILITIES.—
24 Upon the written request of the Secretary, the Adminis-
25 trator of General Services shall delegate to him all respon-

1 sibilities and authorities provided by law to the Adminis-
2 trator for the care and handling of the Department's sur-
3 plus real and related personal property, pending its dis-
4 position, and for the disposal of such property.

5 (f) RECOVERY OF COSTS.—Notwithstanding any
6 other provision of law, the Secretary may retain, from the
7 proceeds of the sale of personal property, amounts nec-
8 essary to recover, to the extent practicable, the full costs
9 (direct and indirect) incurred by the Secretary in dis-
10 posing of such property, including but not limited to the
11 costs of warehousing, storage, environmental services, ad-
12 vertising, appraisal, and transportation. Such amounts
13 shall be deposited into an account available for such ex-
14 penses without regard to fiscal year limitations.

15 **SEC. 733. REORGANIZATION; TRANSFER.**

16 (a) ALLOCATION OF FUNCTIONS.—The Secretary is
17 authorized to allocate or reallocate functions among the
18 officers of the Department, and to establish, consolidate,
19 alter, or discontinue such organizational units within the
20 Department, as he may deem necessary or appropriate,
21 but such authority does not extend to—

22 (1) any entity transferred to the Department
23 and established by statute, or any function vested by
24 statute in such an entity or officer of such an entity,
25 unless not less than ninety days' notice has been

1 given to the President of the Senate and Speaker of
2 the House of Representatives; or

3 (2) the abolition of any entity established or re-
4 quired to be maintained as a distinct entity by this
5 Act.

6 (b) TRANSFER OF APPROPRIATIONS.—Except as oth-
7 erwise specifically provided by law, not to exceed five per-
8 cent of any appropriation available to the Secretary in any
9 fiscal year may be transferred between such appropria-
10 tions, except that not less than fifteen days' notice shall
11 be given to the Committees on Appropriations of the Sen-
12 ate and House of Representatives before any such transfer
13 is made.

14 **SEC. 734. MISCELLANEOUS PROVISIONS.**

15 (a) SEAL.—The Department shall have a seal, whose
16 design is subject to the approval of the President.

17 (b) GIFTS, DEVISES, AND BEQUESTS.—With respect
18 to the Department, the Secretary shall have the same au-
19 thorities that the Attorney General has with respect to the
20 Department of Justice under section 524(d) of title 28,
21 United States Code.

22 (c) PARTICIPATION OF MEMBERS OF THE ARMED
23 FORCES.—With respect to the Department, the Secretary
24 shall have the same authorities that the Secretary of
25 Transportation has with respect to the Department of

1 Transportation under section 324 of title 49, United
2 States Code.

3 (d) REDELEGATION OF FUNCTIONS.—Unless other-
4 wise provided in the delegation or by law, any function
5 delegated under this Act may be redelegated to any subor-
6 dinate.

7 **SEC. 735. AUTHORIZATION OF APPROPRIATIONS.**

8 There are authorized to be appropriated such sums
9 as may be necessary to carry out the provisions of this
10 Act.

11 **TITLE VIII—TRANSITION**

12 **SEC. 801. DEFINITIONS.**

13 For purposes of this title—

14 (1) the term “agency” includes any entity, or-
15 ganizational unit, or function; and

16 (2) the term “transition period” means the 12-
17 month period beginning on the effective date of this
18 Act.

19 **SEC. 802. TRANSFER OF AGENCIES.**

20 The transfer of an agency to the Department shall
21 occur when the President so directs, but in no event later
22 than the end of the transition period. When an agency
23 is transferred, the President may also transfer to the De-
24 partment any agency established to carry out or support
25 adjudicatory or review functions in relation to the agency.

1 **SEC. 803. TRANSITIONAL AUTHORITIES.**

2 (a) PROVISION OF ASSISTANCE BY OFFICIALS.—
3 Until the transfer of an agency to the Department, any
4 official having authority over or functions relating to the
5 agency immediately before the effective date of this Act
6 shall provide to the Secretary such assistance, including
7 the use of personnel and assets, as he may request in pre-
8 paring for the transfer and integration of the agency into
9 the Department.

10 (b) SERVICES AND PERSONNEL.—During the transi-
11 tion period, upon the request of the Secretary, the head
12 of any executive agency may, on a reimbursable or non-
13 reimbursable basis, provide services or detail personnel to
14 assist with the transition.

15 (c) TRANSFER OF FUNDS.—Until the transfer of an
16 agency to the Department, the President is authorized to
17 transfer to the Secretary not to exceed five percent of the
18 unobligated balance of any appropriation available to such
19 agency, to fund the purposes authorized in this Act, except
20 that not less than 15 days' notice shall be given to the
21 Committees on Appropriations of the Senate and House
22 of Representatives before any such funds transfer is made.

23 (d) ACTING OFFICIALS.—(1) During the transition
24 period, pending the advice and consent of the Senate to
25 the appointment of an officer required by this Act to be
26 appointed by and with such advice and consent, the Presi-

1 dent may designate any officer whose appointment was re-
2 quired to be made by and with such advice and consent
3 and who was such an officer immediately before the effec-
4 tive date of this Act (and who continues in office) or im-
5 mediately before such designation, to act in such office
6 until the same is filled as provided in this Act. While so
7 acting, such officers shall receive compensation at the
8 higher of—

9 (A) the rates provided by this Act for the re-
10 spective offices in which they act; or

11 (B) the rates provided for the offices held at
12 the time of designation.

13 (2) Nothing in this Act shall be understood to require
14 the advice and consent of the Senate to the appointment
15 by the President to a position in the Department of any
16 officer whose agency is transferred to the Department
17 pursuant to this Act and whose duties following such
18 transfer are germane to those performed before such
19 transfer.

20 (e) TRANSFER OF PERSONNEL, ASSETS, LIABIL-
21 ITIES, AND FUNCTIONS.—Upon the transfer of an agency
22 to the Department—

23 (1) the personnel, assets, and liabilities held by
24 or available in connection with the agency shall be
25 transferred to the Secretary for appropriate alloca-

1 tion, subject to the approval of the Director of the
2 Office of Management and Budget and notwith-
3 standing the provisions of section 1531(a)(2) of title
4 31, United States Code; and

5 (2) the Secretary shall have all functions relat-
6 ing to the agency that any other official could by law
7 exercise in relation to the agency immediately before
8 such transfer, and shall have in addition all func-
9 tions vested in the Secretary by this Act or other
10 law.

11 **SEC. 804. SAVINGS PROVISIONS.**

12 (a) COMPLETED ADMINISTRATIVE ACTIONS.—(1)
13 Completed administrative actions of an agency shall not
14 be affected by the enactment of this Act or the transfer
15 of such agency to the Department, but shall continue in
16 effect according to their terms until amended, modified,
17 superseded, terminated, set aside, or revoked in accord-
18 ance with law by an officer of the United States or a court
19 of competent jurisdiction, or by operation of law.

20 (2) For purposes of paragraph (1), the term “com-
21 pleted administrative action” includes orders, determina-
22 tions, rules, regulations, personnel actions, permits, agree-
23 ments, grants, contracts, certificates, licenses, registra-
24 tions, and privileges.

1 (b) PENDING PROCEEDINGS.—Subject to the author-
2 ity of the Secretary under this Act—

3 (1) pending proceedings in an agency, including
4 notices of proposed rulemaking, and applications for
5 licenses, permits, certificates, grants, and financial
6 assistance, shall continue notwithstanding the enact-
7 ment of this Act or the transfer of the agency to the
8 Department, unless discontinued or modified under
9 the same terms and conditions and to the same ex-
10 tent that such discontinuance could have occurred if
11 such enactment or transfer had not occurred; and

12 (2) orders issued in such proceedings, and ap-
13 peals therefrom, and payments made pursuant to
14 such orders, shall issue in the same manner and on
15 the same terms as if this Act had not been enacted
16 or the agency had not been transferred, and any
17 such orders shall continue in effect until amended,
18 modified, superseded, terminated, set aside, or re-
19 voked by an officer of the United States or a court
20 of competent jurisdiction, or by operation of law.

21 (c) PENDING CIVIL ACTIONS.—Subject to the author-
22 ity of the Secretary under this Act, pending civil actions
23 shall continue notwithstanding the enactment of this Act
24 or the transfer of an agency to the Department, and in
25 such civil actions, proceedings shall be had, appeals taken,

1 and judgments rendered and enforced in the same manner
2 and with the same effect as if such enactment or transfer
3 had not occurred.

4 (d) REFERENCES.—References relating to an agency
5 that is transferred to the Department in statutes, Execu-
6 tive orders, rules, regulations, directives, or delegations of
7 authority that precede such transfer or the effective date
8 of this Act shall be deemed to refer, as appropriate, to
9 the Department, to its officers, employees, or agents, or
10 to its corresponding organizational units or functions.
11 Statutory reporting requirements that applied in relation
12 to such an agency immediately before the effective date
13 of this Act shall continue to apply following such transfer
14 if they refer to the agency by name.

15 (e) EMPLOYMENT PROVISIONS.—(1) Notwith-
16 standing the generality of the foregoing (including sub-
17 sections (a) and (d)), in and for the Department the Sec-
18 retary may, in regulations prescribed jointly with the Di-
19 rector of the Office of Personnel Management, adopt the
20 rules, procedures, terms, and conditions, established by
21 statute, rule, or regulation before the effective date of this
22 Act, relating to employment in any agency transferred to
23 the Department pursuant to this Act; and

24 (2) except as otherwise provided in this Act, or under
25 authority granted by this Act, the transfer pursuant to

1 this Act of personnel shall not alter the terms and condi-
2 tions of employment, including compensation, of any em-
3 ployee so transferred.

4 **SEC. 805. TERMINATIONS.**

5 Except as otherwise provided in this Act, whenever
6 all the functions vested by law in any agency have been
7 transferred pursuant to this Act, each position and office
8 the incumbent of which was authorized to receive com-
9 pensation at the rates prescribed for an office or position
10 at level II, III, IV, or V, of the Executive Schedule, shall
11 terminate.

12 **SEC. 806. INCIDENTAL TRANSFERS.**

13 The Director of the Office of Management and Budg-
14 et, in consultation with the Secretary, is authorized and
15 directed to make such additional incidental dispositions of
16 personnel, assets, and liabilities held, used, arising from,
17 available, or to be made available, in connection with the
18 functions transferred by this Act, as he may deem nec-
19 essary to accomplish the purposes of this Act.

20 **TITLE IX—CONFORMING AND**
21 **TECHNICAL AMENDMENTS**

22 **SEC. 901. INSPECTOR GENERAL ACT.**

23 Section 11 of the Inspector General Act of 1978
24 (Public Law 95-452) is amended—

1 (1) by inserting “Homeland Security,” after
2 “Transportation,” each place it appears;

3 (2) by striking “; and” each place it appears
4 and inserting “;”;

5 (3) by striking “,” and inserting “;” and

6 (4) by striking “;” and inserting “;”.

7 **SEC. 902. EXECUTIVE SCHEDULE.**

8 Title 5, United States Code, is amended—

9 (1) in section 5312, by inserting “Secretary of
10 Homeland Security.” as a new item after “Affairs.”;

11 (2) in section 5313, by inserting “Deputy Sec-
12 retary of Homeland Security.” as a new item after
13 “Affairs.”;

14 (3) in section 5314, by inserting “Under Secre-
15 taries, Department of Homeland Security.” as a new
16 item after “Affairs.” the third place it appears;

17 (4) in section 5315, by inserting “Assistant
18 Secretaries, Department of Homeland Security.”,
19 “General Counsel, Department of Homeland Secu-
20 rity.”, “Chief Financial Officer, Department of
21 Homeland Security.”, “Chief Information Officer,
22 Department of Homeland Security.”, and “Inspector
23 General, Department of Homeland Security.” as new
24 items after “Affairs.” the first place it appears.

1 **SEC. 903. UNITED STATES SECRET SERVICE.**

2 (a) IN GENERAL.—The United States Code is
3 amended in sections 202 and 208 of title 3, and in section
4 3056 of title 18, by striking “of the Treasury”, each place
5 it appears and inserting “of Homeland Security”.

6 (b) EFFECTIVE DATE.—The amendments made by
7 this section shall take effect on the date of transfer of
8 the United States Secret Service to the Department.

9 **SEC. 904. COAST GUARD.**

10 (a) TITLE 14, U.S.C.—Title 14 of the United States
11 Code is amended—

12 (1) in sections 1, 3, 53, 95, 145, 516, 666, 669,
13 673 (as added by Public Law 104–201), 673 (as
14 added by Public Law 104–324), 674, 687, and 688,
15 by striking “of Transportation”, each place it ap-
16 pears, and inserting “of Homeland Security”; and

17 (2) after executing the other amendments re-
18 quired by this subsection, by redesignating the sec-
19 tion 673 added by Public Law 104–324 as section
20 673a.

21 (b) TITLE 10, U.S.C.—Section 801(1) of title 10,
22 United States Code, is amended by striking “the General
23 Counsel of the Department of Transportation” and insert-
24 ing “an official designated to serve as Judge Advocate
25 General of the Coast Guard by the Secretary of Homeland
26 Security”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on the date of transfer of
3 the Coast Guard to the Department.

4 **SEC. 905. STRATEGIC NATIONAL STOCKPILE AND SMALL-**
5 **POX VACCINE DEVELOPMENT.**

6 (a) IN GENERAL.—The Public Health Security and
7 Bioterrorism Preparedness and Response Act of 2002 is
8 amended—

9 (1) in section 121(a)(1)—

10 (A) by striking “Secretary of Health and
11 Human Services” and inserting “Secretary of
12 Homeland Security”;

13 (B) by inserting “the Secretary of Health
14 and Human Services and” between “in coordi-
15 nation with” and “the Secretary of Veterans
16 Affairs”; and

17 (C) by inserting “of Health and Human
18 Services” after “as are determined by the Sec-
19 retary”; and

20 (2) in subsections 121(a)(2) and (b), by insert-
21 ing “of Health and Human Services” after “Sec-
22 retary” each place it appears.

23 (b) EFFECTIVE DATE.—The amendments made by
24 this section shall take effect on the date of transfer of

1 the Strategic National Stockpile of the Department of
2 Health and Human Services to the Department.

3 **SEC. 906. SELECT AGENT REGISTRATION.**

4 (a) PUBLIC HEALTH SERVICE ACT.—The Public
5 Health Service Act is amended—

6 (1) in section 351A(a)(1)(A), by inserting “(as
7 defined in subsection (l)(9))” after “Secretary”;

8 (2) in section 351A(h)(2)(A), by inserting “De-
9 partment of Homeland Security, the” before “De-
10 partment of Health and Human Services”;

11 (3) in section 351A(l), by inserting after para-
12 graph (8) a new paragraph as follows:

13 “(9) The term ‘Secretary’ means the Secretary
14 of Homeland Security, in consultation with the Sec-
15 retary of Health and Human Services.”; and

16 (4) in section 352A(i)—

17 (A) by striking “(1)” the first place it ap-
18 pears; and

19 (B) by striking paragraph (2).

20 (b) PUBLIC HEALTH SECURITY AND BIOTERRORISM
21 PREPAREDNESS AND RESPONSE ACT OF 2002.—Section
22 201(b) of the Public Health Security and Bioterrorism
23 Preparedness and Response Act of 2002 is amended by
24 striking “Secretary of Health and Human Services” and
25 inserting “Secretary of Homeland Security”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on the date of transfer of
3 the select agent registration enforcement programs and
4 activities of the Department of Health and Human Serv-
5 ices to the Department.

6 **SEC. 907. NATIONAL BIO-WEAPONS DEFENSE ANALYSIS**
7 **CENTER.**

8 There is established in the Department of Defense
9 a National Bio-Weapons Defense Analysis Center, whose
10 mission is to develop countermeasures to potential attacks
11 by terrorists using weapons of mass destruction.

○

Chairman HYDE. Without objection, the sections will be considered as read and open for amendment at any point. The Chair yields himself 5 minutes for purposes of presenting a statement.

On June 6th of this year, President Bush proposed creating a new Department of Homeland Security to bring together vital preparedness, law enforcement and emergency response functions that are currently scattered among numerous departments and agencies of the Federal Government. On June 18, Majority Leader Armev introduced the President's homeland security proposal as H.R. 5005, the Homeland Security Act of 2002.

Today's markup is an important step in bringing this urgent project to fruition. Today the Committee on International Relations will markup the provisions of the Homeland Security Act that are within the Committee's jurisdiction. We will then submit our recommendations on these provisions to the Select Committee on Homeland Security.

The most important provision of the Homeland Security Act that falls within the Committee's jurisdiction is section 403, which would transfer to the Secretary of Homeland Security all responsibility for enforcing and administering the laws relating to processing of visa petitions at United States diplomatic and consular posts abroad. Those responsibilities are currently vested in employees of the State Department, including the Secretary of State and consular officers who are members of the Foreign Service. Section 403 provides that the authority vested in the Secretary of Homeland Security shall be exercised through the Secretary of State. Section 403 further provides that the Secretary of Homeland Security may delegate some or all responsibility for visa processing to any officers and employees of the Federal Government.

I strongly support this provision of the President's homeland security plan, and today, Mr. Lantos and I will offer an amendment to clarify and reinforce the provision. Our amendment will address concerns expressed by some who believe the President's proposal does not go far enough. These critics have suggested not only giving the Secretary of Homeland Security exclusive authority over the visa process, but also requiring Homeland Security personnel to do the actual adjudication of all visa applications at all of our embassies and consulates—over 12 million applications per year.

In my view, this proposal is well intentioned but ultimately self-defeating. It would require the creation of a whole new bureaucracy, and would cause enormous practical difficulties in our embassies and consulates abroad. Even more important, it would risk overwhelming Homeland Security personnel with non-Homeland Security functions, and thereby making it difficult or impossible for them to perform their central mission.

Our amendment will provide for a compromise on the issue of visa adjudication by Homeland Security employees. The amendment will explicitly authorize the assignment of Homeland Security employees in U.S. diplomatic and consular posts abroad. Rather than assume all visa processing functions; however, these employees will concentrate on identifying and reviewing cases that present homeland security issues.

Under our amendment, Homeland Security officers at U.S. Embassies and other overseas posts would train consular officers, en-

sure their access to appropriate information, coordinate the gathering and analysis of intelligence-related information on threats to homeland security, and review individual visa petitions that present homeland security issues. This arrangement will preserve the essence of the Administration's proposal; the sensible division of labor under which Homeland Security officers will be allowed to concentrate on Homeland Security functions, while helping to ensure that security concerns will be central to key decisions made abroad.

Our amendment will also address a possible unintended consequence of the present language in the bill whereby certain visa decisions may be subject to administrative and judicial review, which they are not subject to under current law. With over 3 million visa applications denied each year, this change would have enormous implications for our judicial system as well as for the security of our borders. By transferring to the Secretary of Homeland Security exactly these authorities currently vested in the Secretary of State, and by explicitly providing that no private rights of action are created, our amendment will ensure that denials of visa petitions in our overseas posts will continue to be non-reviewable.

Finally, our amendment would provide that the Secretary of State may deny any visa application which the Secretary has reason to believe would have potentially serious adverse foreign policy or security consequences for the United States. This language would be substituted for a broader authority in the introduced version of H.R. 5005, which states that the Secretary of State may deny a visa if he deems it "necessary or advisable in the national interests of the United States." We felt "national interests" was too broad.

We will also offer an amendment which addresses section 302, regarding the transfer of certain programs from the Department of Energy. The amendment will strike a clause relating to certain assistance programs designed to reduce the risk of nuclear proliferation abroad. Under this section, certain parts of the Department of Energy, including the Nuclear Assessment Program which, among other things, is relied upon to assess the credibility of nuclear bomb threats and extortion plots and to follow nuclear smuggling incidents, would be moved to the new Homeland Security Agency.

In addition, section 302 includes a clause which would transfer to Homeland Security certain assistance programs to the former Soviet Union relating to protecting nuclear materials there, which are currently part of the Cooperative Threat Reduction Program. Administration representatives have told this Committee that this language is no longer necessary because the final decision has been made to not transfer those programs. Therefore, the amendment will make the correction so that the assistance programs are not transferred.

We intend to offer these amendments to section 302 and 403 en bloc. In conclusion, I urge my colleagues on the Committee to support the President's proposal for overseas visa processing as perfected by the amendment Mr. Lantos and I will offer.

By retaining a role for consular officers in adjudicating the millions of applications presenting no security-related issues, the President's plan will allow Homeland Security officers to perform

their Homeland Security mission. By authorizing the presence of Homeland Security officers in our overseas posts to identify and deal with homeland security issues, our amendment will ensure that the President's plan works as intended.

I now recognize, with great pleasure, the Ranking Democratic Member on the Committee, Representative Tom Lantos, for any opening statement he may wish to make.

Mr. LANTOS. Thank you very much, Mr. Chairman. Let me first commend you for scheduling today's markup on the Administration's plan to create a Department of Homeland Security.

Congress is moving expeditiously to address this wide-ranging proposal creating a huge new department that consolidates dozens of governmental functions. Mr. Chairman, I would also like to commend you on the remarkably bipartisan approach with which you and your staff have approached this critically important project.

In the aftermath of September 11th, our Committee had the responsibility of ensuring that the President received all of the powers he needed to conduct the war against global terrorism. And today we will again demonstrate to the world that the Congress and the President stand shoulder to shoulder in the war on terrorism. I do not believe there is a Committee of Congress in either House which has displayed the degree of bipartisanship that, under your leadership, our Committee has.

The specific issue before us today is whether the new Homeland Security Department, the State Department, or a combination of the two should be charged with issuing visas to the millions of foreigners who visit our country each year.

There are about 10 million nonimmigrant visa applicants, and 600,000 immigrant visas processed annually. It is difficult to understand how some in Congress believe that an entirely new visa bureaucracy could be created in the Homeland Security Department without a substantial reduction in our national security.

If I may digress for a moment. The morning newspapers are filled with the outrageous story of a bribery scheme at a facility in Qatar in issuing visas. Apparently an employee was selling visas at \$10,000 apiece. I hope that the full weight of our laws will be brought down upon him and he will be punished with the severity that this horrendous crime merits. But I think it is very naive to assume that transferring the function from the Department of State to the newly established department can eliminate all such potential future outrages.

Mr. Chairman, the Department of State has some of our government's finest civil servants, trained in over 60 languages, with decades of experience in dealing with foreign cultures. Their continuation in the foreign service is predicated on carrying out their responsibilities successfully. If they don't, they don't get promoted and will be forced out of government service all together.

I believe that the current system can be improved, particularly through providing additional resources for the Department of State to allow more detailed interviews of visa applicants. But I do not believe that we need any fundamental changes in the structure of adjudicating the issuance of visas from the one that currently exists.

The President and the Secretary of State have agreed that the policy functions relating to visas needs to be centralized in the new Department of Homeland Security. I support the Administration's proposal, although it needs considerable clarification. We will be offering, you and I, Mr. Chairman, an amendment which will clarify and refine the Administration's proposals.

I obviously strongly support our joint amendment and I ask all of my colleagues to do so. Our amendment will include a proposal to authorize the new Secretary of Homeland Security to assign employees of the new department abroad to address particular security concerns relating to visas, and to coordinate more effectively the intelligence gathered abroad so that it gets to the right agency and officials without delay.

Mr. Chairman, I think this is a wise compromise, particularly given the fact that there are those who want to go much further than the President, including proposals in our body to move the entire visa function to the new department.

I urge all of my colleagues to support the thoughtful compromise embodied in the Hyde-Lantos amendment, and I want to thank you for bringing this extremely important issue to the attention of our Committee.

Chairman HYDE. Thank you very much, Mr. Lantos. The Judiciary Committee is marking up this same bill at 10. We have nine Members of this Committee who also serve on Judiciary. So with the indulgence of the Committee, we will eschew opening statements and move right along.

I have two amendments at the desk. I ask unanimous consent they be considered en bloc and be considered as read. All Members have copies of the amendments in front of them. Without objection, the amendments will be considered en bloc and considered as read.

In my opening statement, Mr. Lantos and I have described these two amendments. The first amendment is to section 302 relating to nonproliferation matters.

The amendment to section 403 relates to organizational changes regarding visa issuance. I believe these are appropriate amendments, and my understanding is the White House supports the inclusion of these amendments in our recommendation to the Select Committee.

[The information referred to follows:]

AMENDMENT TO H.R. 5005

OFFERED BY MR. HYDE

Page 18, lines 18 and 19, strike “and activities of the assessment, detection, and cooperation program”.

AMENDMENT TO H.R. 5005
OFFERED BY MR. HYDE AND MR. LANTOS

Page 23, strike line 10 and all that follows through
line 6 on page 24, and insert the following:

1 **SEC. 403. VISA ISSUANCE.**

2 (a) IN GENERAL.—Notwithstanding section 104(a)
3 of the Immigration and Nationality Act (8 U.S.C.
4 1104(a)) or any other provision of law, and except as pro-
5 vided in subsection (b) of this section, the Secretary—

6 (1) shall be vested exclusively with all authori-
7 ties to issue regulations with respect to, administer,
8 and enforce the provisions of such Act, and of all
9 other immigration and nationality laws, relating to
10 the functions of consular officers of the United
11 States in connection with the granting or refusal of
12 visas, which authorities shall be exercised through
13 the Secretary of State, except that the Secretary
14 shall not have authority to alter or reverse the deci-
15 sion of a consular officer to refuse a visa to an alien;
16 and

17 (2) shall have authority to confer or impose
18 upon any officer or employee of the United States,
19 with the consent of the head of the executive agency
20 under whose jurisdiction such officer or employee is

1 serving, any of the functions specified in paragraph
2 (1).

3 (b) AUTHORITY OF THE SECRETARY OF STATE.—

4 (1) The Secretary of State may direct a con-
5 sular officer to refuse a visa to an alien if the Sec-
6 retary of State considers such refusal necessary or
7 advisable in the foreign policy or security interests
8 of the United States.

9 (2) Nothing in this section shall be construed as
10 affecting the authorities of the Secretary of State
11 under the following provisions of law:

12 (A) Section 101(a)(15)(A) of the Immigra-
13 tion and Nationality Act (8 U.S.C.
14 1101(a)(15)(A)).

15 (B) Section 212(a)(3)(C) of the Immigra-
16 tion and Nationality Act (8 U.S.C.
17 1182(a)(3)(C)).

18 (C) Section 212(f) of the Immigration and
19 Nationality Act (8 U.S.C. 1182(f)).

20 (D) Section 237(a)(4)(C) of the Immigra-
21 tion and Nationality Act (8 U.S.C.
22 1227(a)(4)(C)).

23 (E) Section 104 of the Cuban Liberty and
24 Democratic Solidarity (LIBERTAD) Act of
25 1996 (22 U.S.C. 6034).

1 (F) Section 616 of the Departments of
2 Commerce, Justice, and State, the Judiciary,
3 and Related Agencies Appropriations Act, 1999,
4 as amended.

5 (G) Section 801 of H.R. 3427, the Admiral
6 James W. Nance and Meg Donovan Foreign
7 Relations Authorization Act, Fiscal Years 2000
8 and 2001, as enacted by reference in Public
9 Law 106–113.

10 (H) Section 568 of the Foreign Oper-
11 ations, Export Financing, and Related Pro-
12 grams Appropriations Act, 2002 (Public Law
13 107–115.

14 (c) ASSIGNMENT OF HOMELAND SECURITY EMPLOY-
15 EES TO DIPLOMATIC AND CONSULAR POSTS.—

16 (1) IN GENERAL.—The Secretary is authorized
17 to assign employees of the Department of Homeland
18 Security to diplomatic and consular posts abroad to
19 perform the following functions:

20 (A) Provide expert advice to consular offi-
21 cers regarding specific security threats relating
22 to the adjudication of individual visa applica-
23 tions or classes of applications.

24 (B) Review any such applications, either
25 on the initiative of the employee of the Depart-

1 ment of Homeland Security or upon request by
2 a consular officer or other person charged with
3 adjudicating such applications.

4 (C) Conduct investigations with respect to
5 matters under the jurisdiction of the Secretary.

6 (2) PERMANENT ASSIGNMENT; PARTICIPATION
7 IN TERRORIST LOOKOUT COMMITTEE.—When appro-
8 priate, employees of the Department of Homeland
9 Security assigned to perform functions described in
10 paragraph (1) may be assigned permanently to over-
11 seas diplomatic or consular posts with country-spe-
12 cific or regional responsibility. If the Secretary so di-
13 rects, any such employee, when present at an over-
14 seas post, shall participate in the terrorist lookout
15 committee established under section 304 of the En-
16 hanced Border Security and Visa Entry Reform Act
17 of 2002 (8 U.S.C. 1733).

18 (3) TRAINING AND HIRING.—

19 (A) The Secretary shall ensure that any
20 employees of the Department of Homeland Se-
21 curity assigned to perform functions described
22 in paragraph (1) shall be provided all necessary
23 training to enable them to carry out such func-
24 tions, including training in foreign languages,
25 in conditions in the particular country where

1 each employee is assigned, and in other appro-
2 priate areas of study.

3 (B) Prior to assigning employees of the
4 Department to perform the functions described
5 in paragraph (1), the Secretary shall promul-
6 gate regulations establishing foreign language
7 proficiency requirements for employees of the
8 Department performing the functions described
9 in paragraph (1) and providing that preference
10 shall be given to individuals who meet such re-
11 quirements in hiring employees for the perform-
12 ance of such functions.

13 (C) The Secretary is authorized to use the
14 National Foreign Affairs Training Center, on a
15 reimbursable basis, to obtain the training de-
16 scribed in subparagraph (A).

17 (d) NO CREATION OF PRIVATE RIGHT OF ACTION.—
18 Nothing in this section shall be construed to create or au-
19 thorize a private right of action to challenge a decision
20 of a consular officer or other United States official or em-
21 ployee to grant or deny a visa.

Chairman HYDE. And so I ask Mr. Lantos if he has any remarks he wishes to make on the amendments. Mr. Lantos.

Mr. LANTOS. Thank you, Mr. Chairman. I again want to commend you for your leadership on this issue. My understanding is that your staff, my staff, and the White House will continue working on some technical details of the proposal, but I fully support your recommendation and I urge all of our colleagues to do so on a bipartisan basis.

Chairman HYDE. Thank you, Mr. Lantos. Are there any amendments to the amendment? I go to Mr. Paul.

Mr. PAUL. Thank you, Mr. Chairman. I do have an amendment at the desk.

Chairman HYDE. The clerk will report.

Ms. RUSH. Amendment to H.R. 5005 offered by Mr. Paul. At the end of section 403(b)——

[The information referred to follows:]

AMENDMENT TO H.R. 5005
OFFERED BY MR. PAUL

At the end of section 403(b) insert the following new paragraphs (and redesignate accordingly):

1 (2) PROCEDURE FOR ISSUANCE OF STUDENT
2 VISAS.—Notwithstanding any other provision of law,
3 an alien may not be granted a visa for study in the
4 United States under subparagraphs (F), (J), or (M)
5 of section 101(a)(15) of the Immigration and Na-
6 tionality Act without review by the Secretary of
7 State if the alien is a national of a country des-
8 ignated under section 620A of the Foreign Assist-
9 ance Act of 1961 (22 U.S.C. 2371) as a country
10 that has repeatedly provided support for acts of
11 international terrorism, section 6(j) of the Export
12 Administration Act (50 U.S.C. app. 2405(j)) as a
13 country that supports acts of international ter-
14 rorism, or section 40A of the Arms Export Control
15 Act (22 U.S.C. 2781) as a country not cooperating
16 fully with United States antiterrorism efforts.

17 (2) PROCEDURE FOR ISSUANCE OF DIVERSITY
18 IMMIGRANT VISAS.—Notwithstanding any other pro-
19 vision of law, an alien may not be granted an immi-
20 grant visa under section 203(c) of the Immigration

1 and Nationality Act (8 U.S.C. 1153(c)) relating to
2 diversity immigrants without review by the Secretary
3 of State if the alien is a national of a country des-
4 ignated under section 620A of the Foreign Assist-
5 ance Act of 1961 (22 U.S.C. 2371) as a country
6 that has repeatedly provided support for acts of
7 international terrorism, section 6(j) of the Export
8 Administration Act (50 U.S.C. app. 2405(j)) as a
9 country that supports acts of international ter-
10 rorism, or section 40A of the Arms Export Control
11 Act (22 U.S.C. 2781) as a country not fully cooper-
12 ating with United States antiterrorism efforts.

Mr. PAUL. I ask unanimous consent that it be considered as read.
Chairman HYDE. Without objection. The gentleman is recognized for 5 minutes in support of his amendment.

Mr. PAUL. I thank you, Mr. Chairman. I have an amendment—

Mr. BERMAN. Mr. Chairman, is this an amendment to your amendment?

Chairman HYDE. Yes. An amendment to the amendment. Mr. Paul.

Mr. PAUL. Thank you. Originally I had an amendment that would have called for a blanket visa denial of student visas and diversity visas to citizens of those countries designated as promoting state-sponsored terrorism or a country designated as not fully cooperating with the U.S. antiterrorism effort.

I think this is very important because it would deal with the precise problem of individuals who come into this country. Unfortunately, it was not to be made so that I could offer and get accepted a blanket visa denial.

That is exactly what we did in World War II. We didn't have German citizens coming in and we didn't have Japanese citizens coming in. We targeted the individuals that were so important. But, nevertheless, we have been able to, with the help of staff, rewrite this amendment to at least make a strong point along the way.

Instead of the blanket denial of visas, we are going to require that a specific process for more scrutiny of each individual coming from these countries be carried out by the Secretary of State. And I think this will serve to protect us to a larger degree. It will not solve all of the problems, obviously. But, the main reason why I am doing this is that I do think that we are dealing with probably the most important part of the reform coming about since 9/11. It is dealing with the individuals that cause the crimes and the terrorism.

When I look at a lot of the things that we have done since 9/11, it concerns me a whole lot because so much of that has been directed toward the privacy and the civil liberties of many Americans. The whole idea of searching and monitoring children and grandmothers and pilots makes so little sense compared to this.

So I think it is the dangerous immigration that is key to making our country more safe and more secure. I understand this will be accepted, and I appreciate that very much. And it will make the point. It will help. But, quite frankly, I think we should just deny visas to these countries until we get a better understanding of what is going on. And I think that is really the essence of the amendment. I don't have a whole lot more to add to that, and I hope that it will be accepted.

Chairman HYDE. The Chair is pleased to tell the gentleman from Texas that our staff and Mr. Lantos's staff have reviewed and worked with your staff, and we are prepared to accept the amendment. Unless there are further discussions—Mr. Berman.

Mr. BERMAN. Yes, Mr. Chairman. I just want to point out that I think the amendment as drafted would allow this, but I just wanted to clarify. Should a person seek refugee status for fear of persecution from the government of a country that is on the terrorists list? As I understand it, this amendment, if accepted, will re-

quire review by the Secretary, but it would allow a situation where that person could end up being granted refugee status after the special review imposed by this requirement; is that correct?

Mr. PAUL. That is my understanding. That would be the purpose of the review. Otherwise, it would be a blanket prohibition.

Chairman HYDE. The question is on the amendment to the amendment. All those in favor say aye. Opposed no. The ayes have it. The amendment to the amendment is agreed to.

Are there further amendments?

Mr. PAUL. I move to strike the last word.

Chairman HYDE. The gentleman is recognized for 5 minutes.

Mr. PAUL. Mr. Chairman, I did have another amendment, but I understand that it would be ruled out of order. But if I may be permitted, I would like to just mention it, because I think it too is very, very important. And it emphasizes a point that we have been in denial of—and that is dealing with Saudi Arabia. I know it is not politically correct to do anything or mention Saudi Arabia for various reasons, which I won't get into right now.

But, I think there is a very specific reason that we do not. But just think about it—among the terrorists—15 out of 19! Currently people with Saudi passports can get into this country pretty easily.

Now, my amendment really wasn't that harsh. It didn't deny passports and entry to Saudis. It was only a sense of Congress resolution that Saudi Arabia be designated not fully cooperating. Now, that is an excellent category, and it is one that I am attracted to because it makes a point that a country should be watched, but it isn't that onerous. It doesn't impose boycotts, it doesn't impose embargoes, it is not nearly like designating a nation as a state sponsor of terrorism.

But, it does mean that we wouldn't sell weapons to that particular country. It would make the point that we don't think that they are cooperating enough. There is pretty good evidence for this. Of course, the large number that had passports who committed the terrorism, most of the ones, or many of the ones in Camp X-Ray right now have Saudi passports.

The regime, we do know, did establish and funded some of the terrorist schools. We also know that most likely the funding for the terrorists came through the Saudis. And yet, we don't want to deal with that.

And I think we are missing something there. I am disappointed that we couldn't just have a sense of Congress resolution to say that we should watch Saudi Arabia more carefully, because I think this would have helped. This to me is very minimal. I would have hoped that a resolution could have passed. And some day I think we will be forced into this decision.

When you think of the serious complications of our foreign policy by putting an air base in Saudi Arabia—for instance, I mean, why just stick our thumbs in their eyes and further alienate individuals that may not want to be alienated? And my purpose was to make that point, that we certainly can have friendly relationships, and that is what my goal is. That is why I like this category, because it doesn't close the door. It doesn't close off trade, because I am in favor of that.

It also distracts from the intense interest in putting more regulations on the American people. I want to watch for the bad guys. I don't want more regulations and violations of civil liberties here at home. I want to watch those individuals. And I think Saudi Arabia deserves more attention. I hope in the future that we can pay more attention. I will look for the opportunity to bring this up once again. And I yield back to the Chairman.

Chairman HYDE. I thank the gentleman. I want to point out that Mr. Paul is not offering this amendment, so if we could abbreviate the discussion, that would help us move along.

Mr. Lantos.

Mr. LANTOS. Well, Mr. Chairman, I will respect your request to conclude this session. So I will just speak for a moment. Several of the things that my friend from Texas said I fully concur with. And I merely need to advise him that the definition of what is politically correct is changing daily.

Several of us have very severe concerns about the failure of Saudi Arabia to cooperate with us in our policy in the region. We have made our objections clear along many lines.

Our Subcommittee dealing with this region held a hearing on Saudi Arabia, during the course of which harsh criticism of Saudi Arabia was presented by several Members of our Committee.

So I think that the gentleman is onto something significant. Saudi Arabia would not exist today had we not sent a half a million American troops into the region. The House of Saud would be a villa on the French Riviera. And I think it is important to realize that some of us are outraged at a country where half of its citizens, its women, are denied the most fundamental human rights.

So political correctness has changed, as I am sure my friend from Texas understands. And speaking for this side of the aisle, we will be very happy to look at amendments and resolutions involving Saudi Arabia. This has been a one-way relationship for too long. It is an outrage that the most modern, up-to-date military facility in the region apparently would not be made available for our use in case hostilities were to arise in that region. Thank you, Mr. Chairman.

Chairman HYDE. Mr. Schiff.

Mr. SCHIFF. Mr. Chairman, I move to strike the last word.

Chairman HYDE. The gentleman is recognized for 5 minutes.

Mr. SCHIFF. Mr. Chairman, I merely wanted to inquire as to a portion of the amendment dealing with section 302. In the Committee analysis, it mentions that this section pertains to a proposal to move from the Department of Energy a nuclear assessment program which, among other things, is relied upon to assess the credibility of nuclear bomb threats and extortion plots and to follow nuclear smuggling incidents, to the new Homeland Security agency, along with portions of the Cooperative Threat Reduction Program.

I understand from the analysis the Administration has decided to no longer move these programs to the new department, and that the amendment follows through on that decision not to transfer the program.

The question I have is, why has the decision been made not to transfer those programs? It seems, on first blush, that nuclear bomb threats, extortion plots, and nuclear smuggling incidents are

a quintessential part of the homeland defense mission. I wonder if I could inquire of the Chair what the policy rationale was for not transferring those to the new agency?

Chairman HYDE. I am informed that the language that was available was overbroad and ambiguous and generally unsatisfactory. So that was one reason why the change was made, but the intent was to transfer research programs, but not on-the-ground activities.

In any event, it is very complicated. There were good and sufficient reasons. But the most readily available was that the language was inappropriate. The idea will still be worked on.

Mr. SCHIFF. I don't know if there is anyone present from the Administration who may be able to delineate what aspects of the nuclear threat would be under the roof of the new agency and what aspects would remain under DOE.

Mr. BERMAN. Is there anyone from the Administration here?

Chairman HYDE. Everything is being transferred except foreign assistance programs. Foreign assistance programs are not being transferred. Everything else is.

Mr. BERMAN. Will the gentleman yield?

Mr. SCHIFF. Yes.

Mr. BERMAN. Mr. Chairman, are you saying that the Nunn-Lugar programs will not be transferred? And I think appropriately so.

Chairman HYDE. That is right.

Mr. BERMAN. But the issues raised by the gentleman from California, Mr. Schiff, regarding smuggling into this country—what was that list you read initially?

Mr. SCHIFF. Reclaiming my time. The Committee analysis says the Nuclear Assessment Program, which among other things is relied upon to assess the credibility of nuclear bomb threats and extortion plots and to follow nuclear smuggling incidents, would be moved to the new agency.

Nunn-Lugar is separately identified in the analysis as something else that would be moved. But the Administration has now decided, according to this analysis, to move neither of those programs.

Chairman HYDE. That is correct.

Mr. SCHIFF. The analysis seems to indicate it is broader than foreign assistance, unless I don't understand what foreign assistance encompasses. If we are moving the assessment of nuclear bomb assessments, extortion plots and nuclear smuggling incidents out of the new Homeland Security Agency, it seems like we are leaving a fairly gaping hole in what that agency would do.

Chairman HYDE. The intention of the Administration, I am informed, is to move research programs to the Department of Homeland Security.

Mr. ACKERMAN. Point of information, Mr. Chairman. Is the Administration not aware that we are marking this bill up today?

Chairman HYDE. I am not sure what the Administration is aware of. I don't get daily communiques as to the scope of their knowledge. Are you being critical that there is no one here? Maybe they just don't choose to identify themselves.

Mr. ACKERMAN. That is very understandable, Mr. Chairman. But it would be helpful to this Committee to know that first they were

invited; and second, that they are in attendance or that they have refused to attend, because the gentleman from California asks very important questions to which this Committee is entitled to learn the Administration's point of view as to why this is being done in a major reshuffling of our government.

Chairman HYDE. Well, as a practice in this Committee, at least under this Chairman, we don't take people from the audience and ask them questions without laying a very strong foundation. I would say that we never do it.

The Administration is transferring research programs and not anything else.

Mr. LANTOS. Mr. Chairman, may I suggest that our joint staffs contact the Administration at the conclusion of this hearing and we obtain the necessary information and distribute it in writing to all Members of the Committee before the close of business today?

Chairman HYDE. You are seeking an explanation as to what the Administration wants to do?

Mr. LANTOS. Exactly. And its reasons for doing that.

Chairman HYDE. We will try to get that as quickly as we can and have it reduced to writing.

Mr. SCHIFF. I thank the Chairman.

Chairman HYDE. Any further discussion?

Ms. Berkley of Nevada.

Ms. BERKLEY. Thank you, Mr. Chairman. But my comments have already been made by others.

Chairman HYDE. Not half as well, I might add. All right.

Mr. Engel.

Mr. ENGEL. Thank you, Mr. Chairman. I will be brief. I just want to express the fact that I share Mr. Schiff's concerns. It is not under the jurisdiction of this Committee, but in my other Committee, the Commerce Committee, I am going to be introducing an amendment. I think that the Nuclear Regulatory Commission (NRC) should be under the umbrella of the new Homeland Security.

I am very concerned about security at nuclear power plants, particularly a power plant in New York not far from the New York metropolitan region. I think when we are talking about nuclear security, it does not make sense to have part of it under Homeland Security and part of it left out. I think it all ought to be taken as one.

So I just wanted to identify with Mr. Schiff's concerns and say that I hope we revisit it. And when the package is ultimately out there for voting, I hope that there will be more of a consistency than there is now.

Chairman HYDE. I might comment that I agree with the gentleman. I think it is a very reasonable request. And we will get that information.

Are there any further amendments to the Hyde-Lantos amendments en bloc? If not, the question occurs on the amendments en bloc, as amended by the Paul amendment.

All in favor say aye. Opposed no. The ayes have it. The amendments are agreed to. The question occurs on the motion to submit the recommendations of the Committee on H.R. 5005 favorably to the Select Committee on Homeland Security.

All in favor say aye. All opposed no. The ayes have it. The motion to submit the recommendations of the Committee to the Select Committee is adopted.

Without objection staff is directed to make any technical and conforming changes. The Committee stands adjourned with the thanks of the Chair.

[Whereupon, at 10:15 a.m., the Committee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE CHRISTOPHER H. SMITH, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

JUNE 26, 2002

Mr. Chairman, I thank you for calling this hearing today to discuss the implications of legislation we will be considering shortly that is vital to our national security. I would like to thank Under Secretary Grossman and Assistant Secretary Lannon for coming before this Committee to provide testimony and answer questions as to how the new Homeland Security Department will impact security with respect to our embassies and consulates overseas.

Under Secretary Grossman and Assistant Secretary Lannon, the directions you give and the many staff that work for you in our embassies throughout the world are the first line of defense in the War on Terrorism. The prevention of future attacks on our nation may hinge on the success of the State Department in denying visas to potential terrorists who wish to destroy our country.

While those who serve America abroad at our embassies are first in the line of defense, they are also many times the most susceptible to attack, as we saw even before September 11th through the 1998 bombings that occurred at our embassies in Kenya and Tanzania. I was the prime author of PL 106-113, the Embassy Security Act. Signed into law in 1999, this legislation helped strengthen security requirements at our embassies. The new Department of Homeland Security is designed to protect Americans in the 50 states and US territories, but can it also help ensure greater protection for Americans at our embassies?

This Congress has already passed legislation to strengthen our immigration system by mandating the creation of an entry-exit system that will require the implementation of technology upgrades, the sharing of information between agencies through a common database, and the bio-metric screening of visas. While full implementation of these measures will take time, we must make absolutely certain we do everything possible to root out terrorist threats attempting to enter our nation today.

I was pleased with the Attorney General's announcement earlier this month requiring the rigorous registration and fingerprinting of nationals entering the United States from Iraq, Iran, Sudan, Syria and Libya. Some have said immigration and travel should be cut off completely from nations that pose serious threats to our national security. We must remember nationals from these nations may be fleeing persecution and seek refuge in our nation and I believe that people from any nation should be given the opportunity to enter our nation after thorough, careful screening.

I am afraid, however, that the Attorney General's announcement did not go far enough. While the governments of Iraq, Iran, Sudan, Syria and Libya are vehicles for terror themselves and may have many terrorists residing within their borders, nations which are our allies, such as Saudi Arabia and Egypt, have extremist factions within their borders who are eager to inflict great harm on the United States. We all know that the majority of the September 11th terrorists were not from Afghanistan, Iraq, or Iran, but rather Saudi Arabia.

Undersecretary Grossman and Assistant Secretary Lannon, I know that our embassies are inundated with millions of visa requests each year and that programs such as Visa Waiver Programs and Visa Express are designed to help facilitate what might otherwise be an insurmountable work. However, our national security must come first and foremost and should be considered above all else. I have grave con-

cerns that these programs, as currently carried out through US consulates, offer tremendous loopholes for those who wish to harm our nation to enter it.

I hope testimony is presented here today as to how the Department of State, in conjunction with the newly forming Department of Homeland Security, will work to close these loopholes as quickly as possible. I also hope the CIA, FBI and INS are and will continue to get crucial information concerning potential threats to officials at our embassies. The safety and well-being of the American people depends on it.

QUESTIONS FOR THE RECORD, AS EXPRESSED BY MEMBERS TO UNDER SECRETARY MARC GROSSMAN DURING THE HEARING, TOGETHER WITH ANSWERS SUBMITTED FOR THE RECORD

Question:

Out of 7.5 million visas granted, how many people overstay?

Answer:

We refer you to the Immigration and Naturalization Service (INS) for further information on this issue. Under Section 103 of the Immigration and Nationality Act, the Attorney General and Commissioner of the Immigration and Naturalization Service are responsible for issues dealing with aliens who arrive at and enter the United States.

Question:

Please check into these threats that are being made against Americans who are Falun Gong of Chinese extraction.

Answer:

The State Department takes seriously any allegation that foreign diplomats are abusing their status in the United States. Falun Gong representatives have been in contact with us regarding their allegations, and we have urged them to file charges with local police following any incidents of alleged harassment. We have facilitated their direct contact with appropriate officials at the Civil Rights divisions of the Federal Bureau of Investigation and the Department of Justice.

The State Department is not aware of any case where Chinese diplomatic or consular personnel have been detected conducting activities incompatible with their diplomatic status. The United States Government will take strong measures if concrete evidence emerges of official misconduct by Chinese diplomats.

Question:

How many visas are denied annually based on security concerns?

Answer:

Under Section 212 (a) of the Immigration and Nationality Act (INA), consular officers decide to refuse visas on several ground related to security concerns, including suspicion of terrorism, sabotage, espionage, technology transfer, other criminal activity, attempted violent overthrow of the United States government, Nazi war crimes, and genocide. The law requires a report only on denials based on suspicion of involvement in terrorist activity. Every three months, the Consular Affairs Bureau submits a report to Congress of the number of visas refused for terrorist reasons. The most recent report we submitted to Congress for the period March, 2001 through February, 2002 shows that sixty-six (66) individuals had been refused visas because of terrorist activities.

Question:

How much would it cost to move the consular function from the DOS to the HST?

Answer:

The FY 2002 DOS budget estimate for the consular function is \$573.58 million. This pays for all consular activities: visa services, passport services as well as American Citizen Services. This funding covers the cost of operations and salaries of all domestic and overseas staff (including Foreign Service Nationals). Included within this budget estimate is \$284.488 million for overseas visa services.

We do not have an estimate of the one-time cost to move the visa function out of the State Department. An estimate of this cost could not be developed without considering these factors:

- Consular activities are integrated within the Department's worldwide operations, infrastructure, and management systems at more than 220 visa issuing posts in more than 160 different countries, 16 passport facilities do

mestically, and within the Department of State headquarters in Washington, D.C.

- Consular activities include:
 - responding to non-immigrant visa requests from foreign tourists, students, business people, investors and government officials;
 - responding to immigrant visa demands in accordance with U.S. immigration laws;
 - providing routine and emergency assistance overseas to American citizens in distress;
 - keeping American travelers and the U.S. travel industry aware of dangerous situations abroad through Consular Information Sheets, Travel Warnings, and tips to travelers;
 - adjudicating passport applications for the millions of U.S. citizens wanting to travel abroad; and
 - the Border Security Program—with major initiatives to strengthen U.S. border security through improvements in consular systems and programs through information, infrastructure, connectivity, human resources and document integrity.

Question:

How are dual-nationals naturalized in a Visa Waiver Program (VWP) country treated by VWP?

Answer:

Any dual national who has been naturalized in a VWP country and travels to the United States on his or her VWP-country passport is treated the same way as native-born citizens of a VWP country.

Question:

How are people who enter on the VWP screened?

Answer:

Most nationals of countries under the visa waiver program (VWP) do not apply for visas at Embassies or consulates abroad and are therefore not screened by U.S. consular officers. INS Inspectors admit passport holders from VWP countries; we refer you to the INS for specific questions on their screening procedures.

Not all nationals of VWP countries are eligible to travel to the U.S. without a visa. For example, if they have previously been refused visas, have criminal convictions, have previously been deported, or have ever been members of a terrorist organization, they may not travel under VWP. These residents of visa waiver countries must apply for visas at our consular sections abroad. These applicants are screened by U.S. consular officers, who make determinations on their applications following the requirements of the Immigration and Nationality Act.

Question:

Why didn't Mary Ryan mention the program formerly known as "Visa Express" during her testimony October 17, 2001?

Answer:

Assistant Secretary Ryan was asked to testify on visa security and technology. The program formerly known as "Visa Express" was simply a visa application tool—a means to deliver documents to the Embassy—and had no bearing on visa adjudication or security.

At many posts, travel agencies and other third parties distribute visa application forms and submit to the Embassy completed applications on behalf of their customers, with supporting documents for subsequent screening by U.S. consular officers. Internal security concerns raised by long lines of visa applicants were one important factor considered when these application programs were established. This program acts as an important security measure by regulating the number of applicants on the Embassy compound.

Third parties, whether they are travel agents, courier services, or a national postal service, have no roles whatsoever in the visa process beyond delivering the application materials. The decision on whether to issue or refuse a visa is always made by American consular officers.

Question:

How many student visa are issued annually?

Answer:

The Department issued 319,518 Academic Student (F) visas and 5,657 Vocational Student (M) visas in FY 2001, including visas issued to students' spouses and children. In FY 2000, the Department issued 308,044 Academic Student (F) visas and 6,564 Vocational Student (M) visas.

MATERIAL SUBMITTED FOR THE MARKUP RECORD

PREPARED STATEMENT OF THE HONORABLE CHRISTOPHER H. SMITH, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

JULY 10, 2002

Mr. Chairman, after the shock and the horror of September 11th, I resolved to myself that I would do everything in my power as a Member of Congress, and as a Member of this Committee, to prevent such a tragedy from ever happening again. The Department of Homeland Security legislation we are considering today represents our best and most significant opportunity to correct the mistakes of the past. I commend the President for recognizing that only a wholesale reorganization of our government can prevent a return to the tunnel vision, red tape, and petty turf battles that created the weaknesses Al Qaeda exploited to such deadly effect.

Mr. Chairman, I commend you as well for your strong leadership on this and other important issues, and lend my strong support for your Amendment to this bill, which will build upon and enhance the President's legislative proposal.

As all of us know, the central purpose of the President's proposal is break down the barriers that prevented agencies from coordinating and sharing their antiterrorism efforts by centralizing the many different agencies responsible for protecting our nation from people like Osama Bin Laden. However, we must tread carefully. If we act hastily or sloppily, the Department of Homeland Security, which will become our third largest federal agency and employ an estimated 170,000 federal workers, could fall victim to the same problems experienced in other bureaucracies, where too many times tasks overlap and inefficiency runs rampant.

Take the issue of visas, for example. Obviously it will be helpful if people from the Department of Homeland Security could assist the State Department in detecting potential threats when they process visas. But if we're not careful, the Department of Homeland Security could wind up with the responsibility of actually processing 10 million visas a year. They are not equipped or trained to perform that enormous task. And if the Department of Homeland Security tries to take that responsibility on, they will fail, and terrorists will slip through the system.

The Hyde amendment will help protect against this by ensuring that Americans working for the Department of State, and serving at US consulates abroad, work side-by-side with the Department of Homeland Security officials monitoring the visa process. Under the Chairman's amendment, both agencies can work together and share information while still performing their unique and distinct roles.

The overwhelming majority of the 10 million visa applicants do not pose a security threat to our nation. In a very real way, our mission is to find the needle in the haystack. If Homeland Security personnel had to oversee and review each and every one of these applications, it would take energy and focus away from the most pressing security risks. The Hyde Amendment will help protect against this potential problem by ensuring that the State Department maintains a large degree of autonomy to continue to handle the visa screening process, while giving Homeland Security personal the ability to intervene and act when necessary.

Homeland Security officials will still be able to examine visas when they choose to, provide vital intelligence information to State Department personnel when needed, and concentrate their efforts and presence in countries where Al Qaeda operatives are active.

The Homeland Security Bill will establish a solid framework for the men and women who protect America in a variety of capacities to serve to their fullest potential. With the Hyde Amendment, this committee can leave a solid mark on this historic legislation. Again, I commend the Chairman for his leadership on this legislation and am hopeful of its swift passage.

PREPARED STATEMENT OF THE HONORABLE JO ANN DAVIS, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF VIRGINIA

JULY 10, 2002

Mr. Chairman, today we are marking-up what I consider to be a critical piece of legislation. In particular, I believe that H.R. 5005, The Homeland Security Act of 2002, will provide an important and critical comprehensive response to the attacks which occurred on September 11, 2001.

Without a doubt, I believe that we need to reform and modify all of our government agencies to reflect the new demands of our national security. In this sense, I could not agree with the President more that we need a fundamental reorganization of the government to address the needs of Homeland Security.

However, Mr. Chairman, I do have some reservations about the way the President has addressed the visa issuance process with respect to Homeland Security. Today, while I am supporting your amendment, I do believe that I need to flesh out where I believe we should go with respect to visas.

While the visa issuance process is not completely within our jurisdiction, I do believe that what we have to say as a committee is important. In particular, I believe that we should more strongly advocate in the future for wholesale reform of the visa process. In this sense, I do not believe that we, as the House of Representatives, will go far enough in addressing the problems that are present in our current system.

Mr. Chairman, after studying the issue, I am more convinced than ever that what we need is wholesale visa reform, not just nibbling at the edges of reform. I am afraid that this all that we will be able to accomplish now. However, I am supporting your amendment because I believe it to be a significant improvement over the President's.

To accomplish reform, I believe a close examination and reform of the Diversity Visa program is required. Additionally, we must determine what the genuine staffing needs are for visa issuance and oversight, and we must ensure that we have better investigations of foreigners who wish to come to our country.

Mr. Chairman, I appreciate the opportunity to speak on this issue.

