

BORDER SECURITY AND TERRORISM PREVENTION ACT
OF 2005

DECEMBER 6, 2005.—Ordered to be printed

Mr. KING of New York, from the Committee on Homeland Security,
submitted the following

R E P O R T

together with

DISSENTING AND ADDITIONAL VIEWS

[To accompany H.R. 4312]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 4312) to establish operational control over the international land and maritime borders of the United States, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Border Security and Terrorism Prevention Act of 2005”.

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—SECURING UNITED STATES BORDERS

Sec. 101. Achieving operational control on the border.
Sec. 102. National strategy for border security.
Sec. 103. Implementation of cross-border security agreements.
Sec. 104. Biometric data enhancements.
Sec. 105. One face at the border initiative.
Sec. 106. Secure communication.
Sec. 107. Border patrol agents.
Sec. 108. Port of entry inspection personnel.
Sec. 109. Canine detection teams.
Sec. 110. Secure border initiative financial accountability.
Sec. 111. Border patrol training capacity review.
Sec. 112. Airspace security mission impact review.
Sec. 113. Repair of private infrastructure on border.
Sec. 114. Border Patrol unit for Virgin Islands.
Sec. 115. Report on progress in tracking travel of Central American gangs along international border.
Sec. 116. Collection of data.
Sec. 117. Deployment of radiation detection portal equipment at United States ports of entry.
Sec. 118. Sense of Congress regarding the Secure Border Initiative.

TITLE II—BORDER SECURITY COOPERATION AND ENFORCEMENT

Sec. 201. Joint strategic plan for United States border surveillance and support.
Sec. 202. Border security on protected land.
Sec. 203. Border security threat assessment and information sharing test and evaluation exercise.
Sec. 204. Border Security Advisory Committee.
Sec. 205. Permitted use of Homeland Security grant funds for border security activities.
Sec. 206. Center of excellence for border security.
Sec. 207. Sense of Congress regarding cooperation with Indian Nations.

TITLE III—DETENTION AND REMOVAL

Sec. 301. Mandatory detention for aliens apprehended at or between ports of entry.
Sec. 302. Enhanced detention capacity.
Sec. 303. Expansion and effective management of detention facilities.
Sec. 304. Enhancing transportation capacity for unlawful aliens.
Sec. 305. Denial of admission to nationals of country denying or delaying accepting alien.
Sec. 306. Report on financial burden of repatriation.
Sec. 307. Training program.
Sec. 308. Expedited removal.

TITLE IV—EFFECTIVE ORGANIZATION OF BORDER SECURITY AGENCIES

Sec. 401. Enhanced border security coordination and management.
Sec. 402. Office of Air and Marine Operations.
Sec. 403. Shadow Wolves transfer.

SEC. 2. DEFINITIONS.

In this Act:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEE.**—The term “appropriate congressional committee” has the meaning given it in section 2(2) of the Homeland Security Act of 2002 (6 U.S.C. 101(2)).

(2) **STATE.**—The term “State” has the meaning given it in section 2(14) of the Homeland Security Act of 2002 (6 U.S.C. 101(14)).

TITLE I—SECURING UNITED STATES BORDERS

SEC. 101. ACHIEVING OPERATIONAL CONTROL ON THE BORDER.

(a) **IN GENERAL.**—The Secretary of Homeland Security shall take all actions the Secretary determines necessary and appropriate to achieve and maintain operational control over the entire international land and maritime borders of the United States, to include the following—

(1) systematic surveillance of the international land and maritime borders of the United States through more effective use of personnel and technology, such as unmanned aerial vehicles, ground-based sensors, satellites, radar coverage, and cameras;

(2) physical infrastructure enhancements to prevent unlawful entry by aliens into the United States and facilitate access to the international land and maritime borders by United States Customs and Border Protection, such as additional checkpoints, all weather access roads, and vehicle barriers;

(3) hiring and training as expeditiously as possible additional Border Patrol agents authorized under section 5202 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458); and

(4) increasing deployment of United States Customs and Border Protection personnel to areas along the international land and maritime borders of the United States where there are high levels of unlawful entry by aliens and other areas likely to be impacted by such increased deployment.

(b) OPERATIONAL CONTROL DEFINED.—In this section, the term “operational control” means the prevention of the entry into the United States of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.

SEC. 102. NATIONAL STRATEGY FOR BORDER SECURITY.

(a) SURVEILLANCE PLAN.—Not later than six months after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the appropriate congressional committees a comprehensive plan for the systematic surveillance of the international land and maritime borders of the United States. The plan shall include the following:

- (1) An assessment of existing technologies employed on such borders.
- (2) A description of whether and how new surveillance technologies will be compatible with existing surveillance technologies.
- (3) A description of how the United States Customs and Border Protection is working, or is expected to work, with the Directorate of Science and Technology of the Department of Homeland Security to identify and test surveillance technology.
- (4) A description of the specific surveillance technology to be deployed.
- (5) The identification of any obstacles that may impede full implementation of such deployment.
- (6) A detailed estimate of all costs associated with the implementation of such deployment and continued maintenance of such technologies.
- (7) A description of how the Department of Homeland Security is working with the Federal Aviation Administration on safety and airspace control issues associated with the use of unmanned aerial vehicles in the National Airspace System.

(b) NATIONAL STRATEGY FOR BORDER SECURITY.—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security, in consultation with the heads of other appropriate Federal agencies, shall submit to the appropriate congressional committees a National Strategy for Border Security to achieve operational control over all ports of entry into the United States and the international land and maritime borders of the United States. The Secretary shall update the Strategy as needed and shall submit to the Committee, not later than 30 days after each such update, the updated Strategy. The National Strategy for Border Security shall include the following:

- (1) The implementation timeline for the surveillance plan described in subsection (a).
- (2) An assessment of the threat posed by terrorists and terrorist groups that may try to infiltrate the United States at points along the international land and maritime borders of the United States.
- (3) A risk assessment of all ports of entry to the United States and all portions of the international land and maritime borders of the United States with respect to—
 - (A) preventing the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States; and
 - (B) protecting critical infrastructure at or near such ports of entry or borders.
- (4) An assessment of the most appropriate, practical, and cost-effective means of defending the international land and maritime borders of the United States against threats to security and illegal transit, including intelligence capacities, technology, equipment, personnel, and training needed to address security vulnerabilities.
- (5) An assessment of staffing needs for all border security functions, taking into account threat and vulnerability information pertaining to the borders and the impact of new security programs, policies, and technologies.
- (6) A description of the border security roles and missions of Federal, State, regional, local, and tribal authorities, and recommendations with respect to how the Department of Homeland Security can improve coordination with such authorities, to enable border security enforcement to be carried out in an efficient and effective manner.
- (7) A prioritization of research and development objectives to enhance the security of the international land and maritime borders of the United States.
- (8) A description of ways to ensure that the free flow of legitimate travel and commerce of the United States is not diminished by efforts, activities, and pro-

grams aimed at securing the international land and maritime borders of the United States.

(9) An assessment of additional detention facilities and bed space needed to detain unlawful aliens apprehended at United States ports of entry or along the international land borders of the United States in accordance with the National Strategy for Border Security required under this subsection and the mandatory detention requirement described in section 301 of this Act.

(10) A description of how the Secretary shall ensure accountability and performance metrics within the appropriate agencies of the Department of Homeland Security responsible for implementing the border security measures determined necessary upon completion of the National Strategy for Border Security.

(11) A timeline for the implementation of the additional security measures determined necessary as part of the National Strategy for Border Security, including a prioritization of security measures, realistic deadlines for addressing the security and enforcement needs, and resource estimates and allocations.

(c) **CONSULTATION.**—In creating the National Strategy for Border Security described in subsection (b), the Secretary shall consult with—

(1) State, local, and tribal authorities along the international land and maritime borders of the United States; and

(2) an appropriate cross-section of private sector and nongovernmental organizations with relevant expertise.

(d) **PRIORITY OF NATIONAL STRATEGY.**—The National Strategy for Border Security described in subsection (b) shall be the controlling document for security and enforcement efforts related to securing the international land and maritime borders of the United States.

(e) **IMMEDIATE ACTION.**—Nothing in this section shall be construed to relieve the Secretary of the responsibility to take all actions necessary and appropriate to achieve and maintain operational control over the entire international land and maritime borders of the United States pursuant to section 101 of this Act or any other provision of law.

(f) **REPORTING OF IMPLEMENTING LEGISLATION.**—After submittal of the National Strategy for Border Security described in subsection (b) to the Committee on Homeland Security of the House of Representatives, such Committee shall promptly report to the House legislation authorizing necessary security measures based on its evaluation of the National Strategy for Border Security.

SEC. 103. IMPLEMENTATION OF CROSS-BORDER SECURITY AGREEMENTS.

(a) **IN GENERAL.**—Not later than six months after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the appropriate congressional committees a report on the implementation of the cross-border security agreements signed by the United States with Mexico and Canada, including recommendations on improving cooperation with such countries to enhance border security.

(b) **UPDATES.**—The Secretary shall regularly update the Committee concerning such implementation.

SEC. 104. BIOMETRIC DATA ENHANCEMENTS.

Not later than October 1, 2006, the Secretary of Homeland Security shall—

(1) in consultation with the Attorney General, enhance connectivity between the IDENT and IAFIS fingerprint databases to ensure more expeditious data searches; and

(2) in consultation with the Secretary of State, collect ten fingerprints from each alien required to provide fingerprints during the alien's initial enrollment in the integrated entry and exit data system described in section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1221 note).

SEC. 105. ONE FACE AT THE BORDER INITIATIVE.

Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to Congress a report—

(1) describing the tangible and quantifiable benefits of the One Face at the Border Initiative established by the Department of Homeland Security;

(2) identifying goals for and challenges to increased effectiveness of the One Face at the Border Initiative;

(3) providing a breakdown of the number of inspectors who were—

(A) personnel of the United States Customs Service before the date of the establishment of the Department of Homeland Security;

(B) personnel of the Immigration and Naturalization Service before the date of the establishment of the Department;

- (C) personnel of the Department of Agriculture before the date of the establishment of the Department; or
- (D) hired after the date of the establishment of the Department;
- (4) describing the training time provided to each employee on an annual basis for the various training components of the One Face at the Border Initiative; and
- (5) outlining the steps taken by the Department to ensure that expertise is retained with respect to customs, immigration, and agriculture inspection functions under the One Face at the Border Initiative.

SEC. 106. SECURE COMMUNICATION.

The Secretary of Homeland Security shall, as expeditiously as practicable, develop and implement a plan to ensure clear and secure two-way communication capabilities—

- (1) among all Border Patrol agents conducting operations between ports of entry;
- (2) between Border Patrol agents and their respective Border Patrol stations;
- (3) between Border Patrol agents and residents in remote areas along the international land border who do not have mobile communications, as the Secretary determines necessary; and
- (4) between all appropriate Department of Homeland Security border security agencies and State, local, and tribal law enforcement agencies.

SEC. 107. BORDER PATROL AGENTS.

There are authorized to be appropriated to the Secretary of Homeland Security such sums as may be necessary for each of fiscal years 2007 through 2010 to carry out section 5202 of the Intelligence Reform and Terrorism Prevention Act of 2004 (requiring the Secretary to increase by not less than 2,000 the number of positions for full-time active-duty Border Patrol agents within the Department of Homeland Security above the number of such positions for which funds were allotted for the preceding fiscal year) (Public Law 108–458; 118 Stat. 3734).

SEC. 108. PORT OF ENTRY INSPECTION PERSONNEL.

In each of fiscal years 2007 through 2010, the Secretary of Homeland Security shall, subject to the availability of appropriations, increase by not less than 250 the number of positions for full-time active duty port of entry inspectors. There are authorized to be appropriated to the Secretary such sums as may be necessary for each such fiscal year to hire, train, equip, and support such additional inspectors under this section.

SEC. 109. CANINE DETECTION TEAMS.

In each of fiscal years 2007 through 2011, the Secretary of Homeland Security shall, subject to the availability of appropriations, increase by not less than 25 percent above the number of such positions for which funds were allotted for the preceding fiscal year the number of trained detection canines for use at United States ports of entry and along the international land and maritime borders of the United States.

SEC. 110. SECURE BORDER INITIATIVE FINANCIAL ACCOUNTABILITY.

(a) **IN GENERAL.**—The Inspector General of the Department of Homeland Security shall review each contract action related to the Department's Secure Border Initiative having a value greater than \$20,000,000, to determine whether each such action fully complies with applicable cost requirements, performance objectives, program milestones, inclusion of small, minority, and women-owned business, and timeliness. The Inspector General shall complete a review under this subsection with respect to a contract action—

- (1) not later than 60 days after the date of the initiation of the action; and
- (2) upon the conclusion of the performance of the contract.

(b) **REPORT BY INSPECTOR GENERAL.**—Upon completion of each review described in subsection (a), the Inspector General shall submit to the Secretary of Homeland Security a report containing the findings of the review, including findings regarding any cost overruns, significant delays in contract execution, lack of rigorous departmental contract management, insufficient departmental financial oversight, bundling that limits the ability of small business to compete, or other high risk business practices.

(c) **REPORT BY SECRETARY.**—Not later than 30 days after the receipt of each report required under subsection (b), the Secretary of Homeland Security shall submit to the appropriate congressional committees a report on the findings of the report by the Inspector General and the steps the Secretary has taken, or plans to take, to address the problems identified in such report.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—In addition to amounts that are otherwise authorized to be appropriated to the Office of the Inspector General, an additional amount equal to at least five percent for fiscal year 2007, at least six percent for fiscal year 2008, and at least seven percent for fiscal year 2009 of the overall budget of the Office for each such fiscal year is authorized to be appropriated to the Office to enable the Office to carry out this section.

SEC. 111. BORDER PATROL TRAINING CAPACITY REVIEW.

(a) **IN GENERAL.**—The Comptroller General of the United States shall conduct a review of the basic training provided to Border Patrol agents by the Department of Homeland Security to ensure that such training is provided as efficiently and cost-effectively as possible.

(b) **COMPONENTS OF REVIEW.**—The review under subsection (a) shall include the following components:

(1) An evaluation of the length and content of the basic training curriculum provided to new Border Patrol agents by the Federal Law Enforcement Training Center, including a description of how the curriculum has changed since September 11, 2001.

(2) A review and a detailed breakdown of the costs incurred by United States Customs and Border Protection and the Federal Law Enforcement Training Center to train one new Border Patrol agent.

(3) A comparison, based on the review and breakdown under paragraph (2) of the costs, effectiveness, scope, and quality, including geographic characteristics, with other similar law enforcement training programs provided by State and local agencies, non-profit organizations, universities, and the private sector.

(4) An evaluation of whether and how utilizing comparable non-Federal training programs, proficiency testing to streamline training, and long-distance learning programs may affect—

(A) the cost-effectiveness of increasing the number of Border Patrol agents trained per year and reducing the per agent costs of basic training; and

(B) the scope and quality of basic training needed to fulfill the mission and duties of a Border Patrol agent.

SEC. 112. AIRSPACE SECURITY MISSION IMPACT REVIEW.

Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the Committee on Homeland Security of the House of Representatives a report detailing the impact the airspace security mission in the National Capital Region (in this section referred to as the “NCR”) will have on the ability of the Department of Homeland Security to protect the international land and maritime borders of the United States. Specifically, the report shall address:

(1) The specific resources, including personnel, assets, and facilities, devoted or planned to be devoted to the NCR airspace security mission, and from where those resources were obtained or are planned to be obtained.

(2) An assessment of the impact that diverting resources to support the NCR mission has or is expected to have on the traditional missions in and around the international land and maritime borders of the United States.

SEC. 113. REPAIR OF PRIVATE INFRASTRUCTURE ON BORDER.

(a) **IN GENERAL.**—Subject to the amount appropriated in subsection (d) of this section, the Secretary of Homeland Security shall reimburse property owners for costs associated with repairing damages to the property owners’ private infrastructure constructed on a United States Government right-of-way delineating the international land border when such damages are—

(1) the result of unlawful entry of aliens; and

(2) confirmed by the appropriate personnel of the Department of Homeland Security and submitted to the Secretary for reimbursement.

(b) **VALUE OF REIMBURSEMENTS.**—Reimbursements for submitted damages as outlined in subsection (a) shall not exceed the value of the private infrastructure prior to damage.

(c) **REPORTS.**—Not later than six months after the date of the enactment of this Act and every subsequent six months until the amount appropriated for this section is expended in its entirety, the Secretary of Homeland Security shall submit to the Committee on Homeland Security of the House of Representatives a report that details the expenditures and circumstances in which those expenditures were made pursuant to this section.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There shall be authorized to be appropriated an initial \$50,000 for each fiscal year to carry out this section.

SEC. 114. BORDER PATROL UNIT FOR VIRGIN ISLANDS.

Not later than September 30, 2006, the Secretary of Homeland Security shall establish at least one Border Patrol unit for the Virgin Islands of the United States.

SEC. 115. REPORT ON PROGRESS IN TRACKING TRAVEL OF CENTRAL AMERICAN GANGS ALONG INTERNATIONAL BORDER.

Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall report to the Committee on Homeland Security of the House of Representatives on the progress of the Department of Homeland Security in tracking the travel of Central American gangs across the international land border of the United States and Mexico.

SEC. 116. COLLECTION OF DATA.

Beginning on October 1, 2006, the Secretary of Homeland Security shall annually compile data on the following categories of information:

(1) The number of unauthorized aliens who require medical care taken into custody by Border Patrol officials.

(2) The number of unauthorized aliens with serious injuries or medical conditions Border Patrol officials encounter, and refer to local hospitals or other health facilities.

(3) The number of unauthorized aliens with serious injuries or medical conditions who arrive at United States ports of entry and subsequently are admitted into the United States for emergency medical care, as reported by United States Customs and Border Protection.

(4) The number of unauthorized aliens described in paragraphs (2) and (3) who subsequently are taken into custody by the Department of Homeland Security after receiving medical treatment.

SEC. 117. DEPLOYMENT OF RADIATION DETECTION PORTAL EQUIPMENT AT UNITED STATES PORTS OF ENTRY.

(a) **DEPLOYMENT.**—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall deploy radiation portal monitors at all United States ports of entry and facilities as determined by the Secretary to facilitate the screening of all inbound cargo for nuclear and radiological material.

(b) **REPORT.**—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the Department's progress toward carrying out the deployment described in subsection (a).

(c) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Secretary to carry out subsection (a) such sums as may be necessary for each of fiscal years 2006 and 2007.

SEC. 118. SENSE OF CONGRESS REGARDING THE SECURE BORDER INITIATIVE.

It is the sense of Congress that—

(1) as the Secretary of Homeland Security develops and implements the Secure Border Initiative and other initiatives to strengthen security along the Nation's borders, the Secretary shall conduct extensive outreach to the private sector, including small, minority-owned, women-owned, and disadvantaged businesses; and

(2) the Secretary also shall consult with firms that are practitioners of mission effectiveness at the Department of Homeland Security, homeland security business councils, and associations to identify existing and emerging technologies and best practices and business processes, to maximize economies of scale, cost-effectiveness, systems integration, and resource allocation, and to identify the most appropriate contract mechanisms to enhance financial accountability and mission effectiveness of border security programs.

TITLE II—BORDER SECURITY COOPERATION AND ENFORCEMENT**SEC. 201. JOINT STRATEGIC PLAN FOR UNITED STATES BORDER SURVEILLANCE AND SUPPORT.**

(a) **IN GENERAL.**—The Secretary of Homeland Security and the Secretary of Defense shall develop a joint strategic plan to use the authorities provided to the Secretary of Defense under chapter 18 of title 10, United States Code, to increase the availability and use of Department of Defense equipment, including unmanned aerial vehicles, tethered aerostat radars, and other surveillance equipment, to assist with the surveillance activities of the Department of Homeland Security conducted at or near the international land and maritime borders of the United States.

(b) **REPORT.**—Not later than six months after the date of the enactment of this Act, the Secretary of Homeland Security and the Secretary of Defense shall submit to Congress a report containing—

(1) a description of the use of Department of Defense equipment to assist with the surveillance by the Department of Homeland Security of the international land and maritime borders of the United States;

(2) the joint strategic plan developed pursuant to subsection (a);

(3) a description of the types of equipment and other support to be provided by the Department of Defense under the joint strategic plan during the one-year period beginning after submission of the report under this subsection; and

(4) a description of how the Department of Homeland Security and the Department of Defense are working with the Department of Transportation on safety and airspace control issues associated with the use of unmanned aerial vehicles in the National Airspace System.

(c) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed as altering or amending the prohibition on the use of any part of the Army or the Air Force as a posse comitatus under section 1385 of title 18, United States Code.

SEC. 202. BORDER SECURITY ON PROTECTED LAND.

(a) **IN GENERAL.**—The Secretary of Homeland Security, in consultation with the Secretary of the Interior, shall evaluate border security vulnerabilities on land directly adjacent to the international land border of the United States under the jurisdiction of the Department of the Interior related to the prevention of the entry of terrorists, other unlawful aliens, narcotics, and other contraband into the United States.

(b) **SUPPORT FOR BORDER SECURITY NEEDS.**—Based on the evaluation conducted pursuant to subsection (a), the Secretary of Homeland Security shall provide appropriate border security assistance on land directly adjacent to the international land border of the United States under the jurisdiction of the Department of the Interior, its bureaus, and tribal entities.

SEC. 203. BORDER SECURITY THREAT ASSESSMENT AND INFORMATION SHARING TEST AND EVALUATION EXERCISE.

Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall design and carry out a national border security exercise for the purposes of—

(1) involving officials from Federal, State, territorial, local, tribal, and international governments and representatives from the private sector;

(2) testing and evaluating the capacity of the United States to anticipate, detect, and disrupt threats to the integrity of United States borders; and

(3) testing and evaluating the information sharing capability among Federal, State, territorial, local, tribal, and international governments.

SEC. 204. BORDER SECURITY ADVISORY COMMITTEE.

(a) **ESTABLISHMENT OF COMMITTEE.**—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall establish an advisory committee to be known as the Border Security Advisory Committee (in this section referred to as the “Committee”).

(b) **DUTIES.**—The Committee shall advise the Secretary on issues relating to border security and enforcement along the international land and maritime border of the United States.

(c) **MEMBERSHIP.**—The Secretary shall appoint members to the Committee from the following:

(1) State and local government representatives from States located along the international land and maritime borders of the United States.

(2) Community representatives from such States.

(3) Tribal authorities in such States.

SEC. 205. PERMITTED USE OF HOMELAND SECURITY GRANT FUNDS FOR BORDER SECURITY ACTIVITIES.

(a) **REIMBURSEMENT.**—The Secretary of Homeland Security may allow the recipient of amounts under a covered grant to use those amounts to reimburse itself for costs it incurs in carrying out any activity that—

(1) relates to the enforcement of Federal laws aimed at preventing the unlawful entry of persons or things into the United States, including activities such as detecting or responding to such an unlawful entry or providing support to another entity relating to preventing such an unlawful entry;

(2) is usually a Federal duty carried out by a Federal agency; and

(3) is carried out under agreement with a Federal agency.

(b) **USE OF PRIOR YEAR FUNDS.**—Subsection (a) shall apply to all covered grant funds received by a State, local government, or Indian tribe at any time on or after October 1, 2001.

(c) **COVERED GRANTS.**—For purposes of subsection (a), the term “covered grant” means grants provided by the Department of Homeland Security to States, local governments, or Indian tribes administered under the following programs:

(1) **STATE HOMELAND SECURITY GRANT PROGRAM.**—The State Homeland Security Grant Program of the Department, or any successor to such grant program.

(2) **URBAN AREA SECURITY INITIATIVE.**—The Urban Area Security Initiative of the Department, or any successor to such grant program.

(3) **LAW ENFORCEMENT TERRORISM PREVENTION PROGRAM.**—The Law Enforcement Terrorism Prevention Program of the Department, or any successor to such grant program.

SEC. 206. CENTER OF EXCELLENCE FOR BORDER SECURITY.

(a) **ESTABLISHMENT.**—The Secretary of Homeland Security shall establish a university-based Center of Excellence for Border Security following the merit-review processes and procedures and other limitations that have been established for selecting and supporting University Programs Centers of Excellence.

(b) **ACTIVITIES OF THE CENTER.**—The Center shall prioritize its activities on the basis of risk to address the most significant threats, vulnerabilities, and consequences posed by United States borders and border control systems. The activities shall include the conduct of research, the examination of existing and emerging border security technology and systems, and the provision of education, technical, and analytical assistance for the Department of Homeland Security to effectively secure the borders.

SEC. 207. SENSE OF CONGRESS REGARDING COOPERATION WITH INDIAN NATIONS.

It is the sense of Congress that—

(1) the Department of Homeland Security should strive to include as part of a National Strategy for Border Security recommendations on how to enhance Department cooperation with sovereign Indian Nations on securing our borders and preventing terrorist entry, including, specifically, the Department should consider whether a Tribal Smart Border working group is necessary and whether further expansion of cultural sensitivity training, as exists in Arizona with the Tohono O’odham Nation, should be expanded elsewhere; and

(2) as the Department of Homeland Security develops a National Strategy for Border Security, it should take into account the needs and missions of each agency that has a stake in border security and strive to ensure that these agencies work together cooperatively on issues involving Tribal lands.

TITLE III—DETENTION AND REMOVAL

SEC. 301. MANDATORY DETENTION FOR ALIENS APPREHENDED AT OR BETWEEN PORTS OF ENTRY.

(a) **IN GENERAL.**—Beginning on October 1, 2006, an alien who is attempting to illegally enter the United States and who is apprehended at a United States port of entry or along the international land and maritime border of the United States shall be detained until removed or a final decision granting admission has been determined, unless the alien—

(1) is permitted to withdraw an application for admission under section 235(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225(a)(4)) and immediately departs from the United States pursuant to such section; or

(2) is paroled into the United States by the Secretary of Homeland Security for urgent humanitarian reasons or significant public benefit in accordance with section 212(d)(5)(A) of such Act (8 U.S.C. 1182(d)(5)(A)).

(b) **REQUIREMENTS DURING INTERIM PERIOD.**—Beginning 60 days after the date of the enactment of this Act and before October 1, 2006, an alien described in subsection (a) may be released with a notice to appear only if—

(1) the Secretary of Homeland Security determines, after conducting all appropriate background and security checks on the alien, that the alien does not pose a national security risk; and

(2) the alien provides a bond of not less than \$5,000.

(c) **RULES OF CONSTRUCTION.**—

(1) **ASYLUM AND REMOVAL.**—Nothing in this section shall be construed as limiting the right of an alien to apply for asylum or for relief or deferral of removal based on a fear of persecution.

(2) **TREATMENT OF CERTAIN ALIENS.**—Nothing in this section shall be construed to change or alter any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) relating to an alien who is a native or citizen of a coun-

try in the Western Hemisphere with whose government the United States does not have full diplomatic relations.

SEC. 302. ENHANCED DETENTION CAPACITY.

There are authorized to be appropriated to the Secretary of Homeland Security such sums as may be necessary for each of fiscal years 2007 through 2010 to carry out Section 5204 of the Intelligence Reform and Terrorism Prevention Act of 2004 (related to an increase in the number of beds by not less than 8,000 each fiscal year available for immigration detention and removal operations of the Department of Homeland Security) (Public Law 108–458; 118 Stat. 3734).

SEC. 303. EXPANSION AND EFFECTIVE MANAGEMENT OF DETENTION FACILITIES.

Subject to the availability of appropriations, the Secretary of Homeland Security shall fully utilize—

- (1) all available detention facilities operated or contracted by the Department of Homeland Security; and
- (2) all possible options to cost effectively increase available detention capacities, including the use of temporary detention facilities, the use of State and local correctional facilities, private space, and secure alternatives to detention.

SEC. 304. ENHANCING TRANSPORTATION CAPACITY FOR UNLAWFUL ALIENS.

(a) **IN GENERAL.**—The Secretary of Homeland Security is authorized to enter into contracts with private entities for the purpose of providing secure domestic transport of aliens who are apprehended at or along the international land or maritime borders from the custody of United States Customs and Border Protection to detention facilities and other locations as necessary.

(b) **CRITERIA FOR SELECTION.**—Notwithstanding any other provision of law, to enter into a contract under paragraph (1), a private entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. The Secretary shall select from such applications those entities which offer, in the determination of the Secretary, the best combination of service, cost, and security.

SEC. 305. DENIAL OF ADMISSION TO NATIONALS OF COUNTRY DENYING OR DELAYING ACCEPTING ALIEN.

Section 243(d) of the Immigration and Nationality Act (8 U.S.C. 1253(d)) is amended to read as follows:

“(d) **DENIAL OF ADMISSION TO NATIONALS OF COUNTRY DENYING OR DELAYING ACCEPTING ALIEN.**—Whenever the Secretary of Homeland Security determines that the government of a foreign country has denied or unreasonably delayed accepting an alien who is a citizen, subject, national, or resident of that country after the alien has been ordered removed, the Secretary, after consultation with the Secretary of State, may deny admission to any citizen, subject, national, or resident of that country until the country accepts the alien who was ordered removed.”.

SEC. 306. REPORT ON FINANCIAL BURDEN OF REPATRIATION.

Not later than October 31 of each year, the Secretary of Homeland Security shall submit to the Secretary of State and Congress a report that details the cost to the Department of Homeland Security of repatriation of unlawful aliens to their countries of nationality or last habitual residence, including details relating to cost per country. The Secretary shall include in each such report the recommendations of the Secretary to more cost effectively repatriate such aliens.

SEC. 307. TRAINING PROGRAM.

Not later than six months after the date of the enactment of this Act, the Secretary of Homeland Security—

- (1) review and evaluate the training provided to Border Patrol agents and port of entry inspectors regarding the inspection of aliens to determine whether an alien is referred for an interview by an asylum officer for a determination of credible fear;
- (2) based on the review and evaluation described in paragraph (1), take necessary and appropriate measures to ensure consistency in referrals by Border Patrol agents and port of entry inspectors to asylum officers for determinations of credible fear.

SEC. 308. EXPEDITED REMOVAL.

(a) **IN GENERAL.**—Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(A)(iii)) is amended—

- (1) in subclause (I), by striking “Attorney General” and inserting “Secretary of Homeland Security” each place it appears; and
- (2) by adding at the end the following new subclause:

“(III) EXCEPTION.—Notwithstanding subclauses (I) and (II), the Secretary of Homeland Security shall apply clauses (i) and (ii) of this subparagraph to any alien (other than an alien described in subparagraph (F)) who is not a national of a country contiguous to the United States, who has not been admitted or paroled into the United States, and who is apprehended within 100 miles of an international land border of the United States and within 14 days of entry.”

(b) EXCEPTIONS.—Section 235(b)(1)(F) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(F)) is amended by inserting before the period at the end the following: “or in any manner at or between a land border port of entry”

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to all aliens apprehended on or after such date.

TITLE IV—EFFECTIVE ORGANIZATION OF BORDER SECURITY AGENCIES

SEC. 401. ENHANCED BORDER SECURITY COORDINATION AND MANAGEMENT.

The Secretary of Homeland Security shall ensure full coordination of border security efforts among agencies within the Department of Homeland Security, including United States Immigration and Customs Enforcement, United States Customs and Border Protection, and United States Citizenship and Immigration Services, and shall identify and remedy any failure of coordination or integration in a prompt and efficient manner. In particular, the Secretary of Homeland Security shall—

- (1) oversee and ensure the coordinated execution of border security operations and policy;
- (2) establish a mechanism for sharing and coordinating intelligence information and analysis at the headquarters and field office levels pertaining to counter-terrorism, border enforcement, customs and trade, immigration, human smuggling, human trafficking, and other issues of concern to both United States Immigration and Customs Enforcement and United States Customs and Border Protection;
- (3) establish Department of Homeland Security task forces (to include other Federal, State, Tribal and local law enforcement agencies as appropriate) as necessary to better coordinate border enforcement and the disruption and dismantling of criminal organizations engaged in cross-border smuggling, money laundering, and immigration violations;
- (4) enhance coordination between the border security and investigations missions within the Department by requiring that, with respect to cases involving violations of the customs and immigration laws of the United States, United States Customs and Border Protection coordinate with and refer all such cases to United States Immigration and Customs Enforcement;
- (5) examine comprehensively the proper allocation of the Department’s border security related resources, and analyze budget issues on the basis of Department-wide border enforcement goals, plans, and processes;
- (6) establish measures and metrics for determining the effectiveness of coordinated border enforcement efforts; and
- (7) develop and implement a comprehensive plan to protect the northern and southern land borders of the United States and address the different challenges each border faces by—
 - (A) coordinating all Federal border security activities;
 - (B) improving communications and data sharing capabilities within the Department and with other Federal, State, local, tribal, and foreign law enforcement agencies on matters relating to border security; and
 - (C) providing input to relevant bilateral agreements to improve border functions, including ensuring security and promoting trade and tourism.

SEC. 402. OFFICE OF AIR AND MARINE OPERATIONS.

(a) ESTABLISHMENT.—Subtitle C of title IV of the Homeland Security Act of 2002 (6 U.S.C. 201 et seq.) is amended by adding at the end the following new section:

“SEC. 431. OFFICE OF AIR AND MARINE OPERATIONS.

“(a) ESTABLISHMENT.—There is established in the Department an Office of Air and Marine Operations (referred to in this section as the ‘Office’).

“(b) ASSISTANT SECRETARY.—The Office shall be headed by an Assistant Secretary for Air and Marine Operations who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall report directly to the Secretary. The Assistant Secretary shall be responsible for all functions and operations of the Office.

“(c) MISSIONS.—

“(1) PRIMARY MISSION.—The primary mission of the Office shall be the prevention of the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States.

“(2) SECONDARY MISSION.—The secondary mission of the Office shall be to assist other agencies to prevent the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States.

“(d) AIR AND MARINE OPERATIONS CENTER.—

“(1) IN GENERAL.—The Office shall operate and maintain the Air and Marine Operations Center in Riverside, California, or at such other facility of the Office as is designated by the Secretary.

“(2) DUTIES.—The Center shall provide comprehensive radar, communications, and control services to the Office and to eligible Federal, State, or local agencies (as determined by the Assistant Secretary for Air and Marine Operations), in order to identify, track, and support the interdiction and apprehension of individuals attempting to enter United States airspace or coastal waters for the purpose of narcotics trafficking, trafficking of persons, or other terrorist or criminal activity.

“(e) ACCESS TO INFORMATION.—The Office shall ensure that other agencies within the Department of Homeland Security, the Department of Defense, the Department of Justice, and such other Federal, State, or local agencies, as may be determined by the Secretary, shall have access to the information gathered and analyzed by the Center.

“(f) REQUIREMENT.—Beginning not later than 180 days after the date of the enactment of this Act, the Secretary shall require that all information concerning all aviation activities, including all airplane, helicopter, or other aircraft flights, that are undertaken by the either the Office, United States Immigration and Customs Enforcement, United States Customs and Border Protection, or any subdivisions thereof, be provided to the Air and Marine Operations Center. Such information shall include the identifiable transponder, radar, and electronic emissions and codes originating and resident aboard the aircraft or similar asset used in the aviation activity.

“(g) TIMING.—The Secretary shall require the information described in subsection (f) to be provided to the Air and Marine Operations Center in advance of the aviation activity whenever practicable for the purpose of timely coordination and conflict resolution of air missions by the Office, United States Immigration and Customs Enforcement, and United States Customs and Border Protection.

“(h) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to alter, impact, diminish, or in any way undermine the authority of the Administrator of the Federal Aviation Administration to oversee, regulate, and control the safe and efficient use of the airspace of the United States.”

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) ADDITIONAL ASSISTANT SECRETARY.—Section 103(a)(9) of the Homeland Security Act of 2002 (6 U.S.C. 113(a)(9)) is amended by striking “12” and inserting “13”.

(2) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act (6 U.S.C. 101) is amended by inserting after the item relating to section 430 the following new item:

“Sec. 431. Office of Air and Marine Operations.”

SEC. 403. SHADOW WOLVES TRANSFER.

(a) TRANSFER OF EXISTING UNIT.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall transfer to United States Immigration and Customs Enforcement all functions (including the personnel, assets, and liabilities attributable to such functions) of the Customs Patrol Officers unit operating on the Tohono O’odham Indian reservation (commonly known as the “Shadow Wolves” unit).

(b) ESTABLISHMENT OF NEW UNITS.—The Secretary is authorized to establish within United States Immigration and Customs Enforcement additional units of Customs Patrol Officers in accordance with this section, as appropriate.

(c) DUTIES.—The Customs Patrol Officer unit transferred pursuant to subsection (a), and additional units established pursuant to subsection (b), shall operate on Indian lands by preventing the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States.

(d) BASIC PAY FOR JOURNEYMAN OFFICERS.—A Customs Patrol Officer in a unit described in this section shall receive equivalent pay as a special agent with similar competencies within United States Immigration and Customs Enforcement pursuant to the Department of Homeland Security’s Human Resources Management System established under section 841 of the Homeland Security Act (6 U.S.C. 411).

(e) SUPERVISORS.—Each unit described in this section shall be supervised by a Chief Customs Patrol Officer, who shall have the same rank as a resident agent-in-charge of the Office of Investigations within United States Immigration and Customs Enforcement.

PURPOSE AND SUMMARY

The purpose of H.R. 4312 is to establish operational control over the international land and maritime borders of the United States, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The international land borders of the United States span more than 6,000 miles of mostly open territory, not including the thousands of miles of coastland. The porous nature of the border has long been exploited by individuals seeking to circumvent United States immigration laws, as well as smugglers transporting narcotics and other contraband. Terrorists could also exploit these vulnerabilities to bring individuals and instrumentalities of terrorism into the United States undetected.

While the terrorist attacks of September 11, 2001, made it clear that our Nation must be more aggressive in preventing terrorists from entering the United States, the number of illegal aliens apprehended along the United States border has grown significantly over the past few years, reaching 1.2 million in Fiscal Year 2005. Border experts say that well over that number succeeded in making it past our current border defenses disappearing into United States communities. Additionally, the Department of Homeland Security released over 120,000 non-Mexican aliens into the United States due to a lack of available detention beds; the majority of these individuals will never appear for their hearing dates.

A series of hearings, site visits, and oversight work by the Committee on Homeland Security led to the conclusion that the Department of Homeland Security needs to bolster its border security capabilities. Therefore, the Committee on Homeland Security developed this legislation which will expand the use of surveillance equipment along the entire border; enhance coordination of border security efforts not only within the Department of Homeland Security, but also with other Federal agencies, and State, tribal, and local authorities; and ensure that all aliens apprehended attempting to cross a United States land or maritime border illegally, will be detained and quickly removed in order to gain control of our borders.

HEARINGS

No legislative hearings were held on H.R. 4312.

COMMITTEE CONSIDERATION

H.R. 4312 was introduced by Mr. King of New York, Mr. Daniel E. Lungren of California, and Ms. Loretta Sanchez of California on November 14, 2004, and referred to the Committee on Committee on Homeland Security, and in addition to the Committee on the Judiciary and the Committee on Armed Services. Within the Committee on Homeland Security, H.R. 4312 was retained at the Full Committee.

On November 16 and November 17, 2005, the Full Committee met in open markup session, and on November 17, 2005, ordered H.R. 4312 favorably reported to the House of Representatives, amended, by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto.

H.R. 4312, to establish operational control over the international land and maritime borders of the United States, and for other purposes; was ordered favorably reported to the House, amended, by voice vote. The following amendments were offered:

An Amendment in the Nature of a Substitute offered by Mr. King (#1); was Agreed to, as amended, by voice vote.

A Substitute amendment offered by Mr. Thompson (#1A) to the Amendment in the Nature of a Substitute offered by Mr. King; was Not Agreed to by a recorded vote of 14 yeas and 15 nays (Rollcall Vote No. 12). The vote was as follows:

COMMITTEE ON HOMELAND SECURITY
U.S. House of Representatives
109th Congress

Date: Wednesday, November 16, 2005 Convened: 10:10 a.m.

Adjourned: _____

Meeting on : Markup of H.R. 4312 - The Border Security and Terrorism Prevention Act of 2005

Amendment #1A offered by Mr. Thompson

Attendance Recorded Vote Vote Number: 12 Total: Yeas 14 Nays 15

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Don Young Alaska				Mr. Bennie G. Thompson Mississippi, Ranking Member	✓		
Mr. Lamar S. Smith Texas		✓		Ms. Loretta Sanchez California	✓		
Mr. Curt Weldon Pennsylvania				Mr. Edward J. Markey Massachusetts	✓		
Mr. Christopher Shays Connecticut		✓		Mr. Norman D. Dicks Washington	✓		
Mr. John Linder Georgia		✓		Ms. Jane Harman California	✓		
Mr. Mark E. Souder Indiana		✓		Mr. Peter A. DeFazio Oregon			
Mr. Tom Davis Virginia		✓		Ms. Nita M. Lowey New York	✓		
Mr. Daniel E. Lungren California		✓		Ms. Eleanor Holmes Norton District of Columbia	✓		
Mr. Jim Gibbons Nevada		✓		Ms. Zoe Lofgren California	✓		
Mr. Rob Simmons Connecticut		✓		Ms. Sheila Jackson-Lee Texas	✓		
Mr. Mike Rogers Alabama		✓		Mr. Bill Pascrell, Jr. New Jersey	✓		
Mr. Stevan Pearce New Mexico		✓		Mrs. Donna M. Christensen U.S. Virgin Islands	✓		
Ms. Katherine Harris Florida		✓		Mr. Bob Etheridge North Carolina	✓		
Mr. Bobby Jindal Louisiana				Mr. James R. Langevin Rhode Island	✓		
Mr. Dave Reichert Washington				Mr. Kendrick Meek Florida	✓		
Mr. Michael McCaul Texas		✓					
Mr. Charlie Dent Pennsylvania		✓					
Ms. Ginny Brown-Waite Florida		✓					
Mr. Peter T. King New York Chairman		✓					
				Total	14	15	

An en bloc amendment offered by Mr. King (#1B) to the Amendment in the Nature of a Substitute offered by Mr. King; on page 8, after line 23, to insert a new subsection (f) entitled "Reporting of Implementing Legislation"; a Sense of Congress relating to the Secure Border Initiative; to insert a new section entitled "Border Patrol Unit for Virgin Islands"; to insert a new section entitled "Report on Progress in Tracking Travel of Central American Gangs Along International Border"; a Sense of Congress relating to cooperation with the sovereign Indian Nations on securing our borders; to insert a new section entitled "Border Security Advisory Committee"; and to make conforming corrections on pages 25 and 26, and to insert a new section relating coordination; to make conforming changes and to insert a new paragraph in section 102(b) relating to an assessment to infiltration along borders; was Agreed to by voice vote.

An amendment offered by Mr. McCaul (#1C) to the Amendment in the Nature of a Substitute offered by Mr. King; to insert a new section entitled "Permitted Use of Homeland Security Grant Funds for Border Security Activities"; was Agreed to by a recorded vote of 15 yeas and 12 nays (Rollcall Vote No. 13). The vote was as follows:

COMMITTEE ON HOMELAND SECURITY
U.S. House of Representatives
109th Congress

Date: Wednesday, November 16, 2005Convened: 10:10 a.m.

Adjourned: _____

Meeting on : Markup of H.R. 4312 - The Border Security and Terrorism Prevention Act of 2005Amendment #1C offered by Mr. McCaul
 Attendance Recorded Vote Vote Number: 13 Total: Yeas 15 Nays 12

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Don Young Alaska	✓			Mr. Bennie G. Thompson Mississippi, Ranking Member	✓		
Mr. Lamar S. Smith Texas				Ms. Loretta Sanchez California		✓	
Mr. Curt Weldon Pennsylvania	✓			Mr. Edward J. Markey Massachusetts		✓	
Mr. Christopher Shays Connecticut		✓		Mr. Norman D. Dicks Washington		✓	
Mr. John Linder Georgia	✓			Ms. Jane Harman California		✓	
Mr. Mark E. Souder Indiana	✓			Mr. Peter A. DeFazio Oregon		✓	
Mr. Tom Davis Virginia	✓			Ms. Nita M. Lowey New York			
Mr. Daniel E. Lungren California	✓			Ms. Eleanor Holmes Norton District of Columbia			
Mr. Jim Gibbons Nevada	✓			Ms. Zoe Lofgren California		✓	
Mr. Rob Simmons Connecticut	✓			Ms. Sheila Jackson-Lee Texas			
Mr. Mike Rogers Alabama	✓			Mr. Bill Pascrell, Jr. New Jersey		✓	
Mr. Stevan Pearce New Mexico		✓		Mrs. Donna M. Christensen U.S. Virgin Islands			
Ms. Katherine Harris Florida	✓			Mr. Bob Etheridge North Carolina		✓	
Mr. Bobby Jindal Louisiana	✓			Mr. James R. Langevin Rhode Island			
Mr. Dave Reichert Washington				Mr. Kendrick Meek Florida		✓	
Mr. Michael McCaul Texas	✓						
Mr. Charlie Dent Pennsylvania	✓						
Ms. Ginny Brown-Waite Florida	✓						
Mr. Peter T. King New York	✓						
				Total	15	12	

An amendment offered by Mr. Markey (#1D) to the Amendment in the Nature of a Substitute offered by Mr. King; to insert a new section entitled "Verification of Security Measures under the Customs-Trade Partnership Against Terrorism (C-TPAT) Program and the Free and Secure Trade (FAST) Program"; was Not Agreed to by a recorded vote of 14 yeas and 15 nays (Rollcall Vote No. 14). The vote was as follows:

COMMITTEE ON HOMELAND SECURITY
U.S. House of Representatives
109th Congress

Date: Wednesday, November 16, 2005

Convened: 10:10 a.m.

Adjourned: _____

Meeting on : Markup of H.R. 4312 - The Border Security and Terrorism Prevention Act of 2005

Amendment #1D offered by Mr. Markey

Attendance Recorded Vote Vote Number: 14 Total: Yeas 14 Nays 15

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Don Young Alaska		✓		Mr. Bennie G. Thompson Mississippi, Ranking Member	✓		
Mr. Lamar S. Smith Texas				Ms. Loretta Sanchez California	✓		
Mr. Curt Weldon Pennsylvania		✓		Mr. Edward J. Markey Massachusetts	✓		
Mr. Christopher Shays Connecticut	✓			Mr. Norman D. Dicks Washington	✓		
Mr. John Linder Georgia		✓		Ms. Jane Harman California	✓		
Mr. Mark E. Souder Indiana		✓		Mr. Peter A. DeFazio Oregon	✓		
Mr. Tom Davis Virginia		✓		Ms. Nita M. Lowey New York			
Mr. Daniel E. Lungren California		✓		Ms. Eleanor Holmes Norton District of Columbia			
Mr. Jim Gibbons Nevada		✓		Ms. Zoe Lofgren California	✓		
Mr. Rob Simmons Connecticut		✓		Ms. Sheila Jackson-Lee Texas	✓		
Mr. Mike Rogers Alabama		✓		Mr. Bill Pascrell, Jr. New Jersey	✓		
Mr. Stevan Pearce New Mexico		✓		Mrs. Donna M. Christensen U.S. Virgin Islands			
Ms. Katherine Harris Florida		✓		Mr. Bob Etheridge North Carolina	✓		
Mr. Bobby Jindal Louisiana		✓		Mr. James R. Langevin Rhode Island	✓		
Mr. Dave Reichert Washington				Mr. Kendrick Meek Florida	✓		
Mr. Michael McCaul Texas		✓					
Mr. Charlie Dent Pennsylvania		✓					
Ms. Ginny Brown-Waite Florida	✓						
Mr. Peter T. King New York Chairman		✓					
				Total	14	15	

An amendment offered by Mr. DeFazio (#1E) to the Amendment in the Nature of a Substitute offered by Mr. King; to insert a new section entitled "Visa Waiver Program and Immediate International Passenger Pre-Screening Pilot Program"; was Withdrawn by Unanimous Consent.

An amendment offered by Mr. Pearce (#1F) to the Amendment in the Nature of a Substitute offered by Mr. King; on page 16, line 8 insert a new section 113 entitled "Repair of Private Border Fencing"; was Withdrawn by Unanimous Consent.

An amendment offered by Mr. Thompson (#1G) to the Amendment in the Nature of a Substitute offered by Mr. King; on page 13, line 4; Page 13, line 18 and page 14, line 2 make conforming corrections and insert a new section entitled "Authorization of Appropriations"; was Agreed to by voice vote.

An amendment offered by Ms. Jackson-Lee (#1H) to the Amendment in the Nature of a Substitute offered by Mr. King; to insert new sections entitled "Authorization for Appropriations for Increased Border Resources"; "Study to Determined Appropriate Level and Allocation of Personnel at Ports of Entry and Border Patrol Sectors"; "Assessment of Study by Comptroller General"; "Additional and Continuous Training for Inspectors"; "Radio Communications"; "Hand-held Global Positioning System Devices"; "Night Vision Equipment"; "Border Armor"; "Weapons"; "Maximum Student Loan Repayments for United States Border Patrol Agents"; "Recruitment and Relocation Bonuses and Retention Allowances for Personnel of the Department of Homeland Security"; "Law Enforcement Retirement Coverage for Inspection Officers and Other Employees"; "Increase United State Border Patrol Agent and Inspector Pay"; "Compensation for Training at Federal Law Enforcement Training Center"; and "Foreign Language Awards"; was Not Agreed to by a recorded vote of 12 yeas and 15 nays (Rollcall Vote No. 16). The vote was as follows:

COMMITTEE ON HOMELAND SECURITY
U.S. House of Representatives
109th Congress

Date: Wednesday, November 16, 2005

Convened: 10:10 a.m.

Adjourned: _____

Meeting on : Markup of H.R. 4312 - The Border Security and Terrorism Prevention Act of 2005

Amendment #1H offered by Ms. Jackson-Lee

Attendance Recorded Vote Vote Number: 16 Total: Yeas 12 Nays 15

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Don Young Alaska				Mr. Bennie G. Thompson Mississippi, Ranking Member	✓		
Mr. Lamar S. Smith Texas		✓		Ms. Loretta Sanchez California	✓		
Mr. Curt Weldon Pennsylvania				Mr. Edward J. Markey Massachusetts			
Mr. Christopher Shays Connecticut		✓		Mr. Norman D. Dicks Washington	✓		
Mr. John Linder Georgia				Ms. Jane Harman California			
Mr. Mark E. Souder Indiana		✓		Mr. Peter A. DeFazio Oregon	✓		
Mr. Tom Davis Virginia		✓		Ms. Nita M. Lowey New York	✓		
Mr. Daniel E. Lungren California		✓		Ms. Eleanor Holmes Norton District of Columbia			
Mr. Jim Gibbons Nevada		✓		Ms. Zoe Lofgren California	✓		
Mr. Rob Simmons Connecticut		✓		Ms. Sheila Jackson-Lee Texas	✓		
Mr. Mike Rogers Alabama		✓		Mr. Bill Pascrell, Jr. New Jersey	✓		
Mr. Stevan Pearce New Mexico		✓		Mrs. Donna M. Christensen U.S. Virgin Islands	✓		
Ms. Katherine Harris Florida		✓		Mr. Bob Etheridge North Carolina	✓		
Mr. Bobby Jindal Louisiana		✓		Mr. James R. Langevin Rhode Island	✓		
Mr. Dave Reichert Washington				Mr. Kendrick Meek Florida	✓		
Mr. Michael McCaul Texas		✓					
Mr. Charlie Dent Pennsylvania		✓					
Ms. Ginny Brown-Waite Florida		✓					
Mr. Peter T. King New York Chairman		✓					
				Total	12	15	

An amendment offered by Mr. Langevin (#11) to the Amendment in the Nature of a Substitute offered by Mr. King; to insert a new section entitled "Deployment of Radiation Detection Portal Equipment at United States Ports of Entry"; was Agreed to by a recorded vote of 15 yeas and 12 nays (Rollcall Vote No. 17). The vote was as follows:

COMMITTEE ON HOMELAND SECURITY
U.S. House of Representatives
109th Congress

Date: Wednesday, November 16, 2005 Convened: 10:10 a.m.
 Adjourned: _____

Meeting on : Markup of H.R. 4312 - The Border Security and Terrorism Prevention Act of 2005
Amendment #11 offered by Mr. Langevin

Attendance Recorded Vote Vote Number: 17 Total: Yeas 15 Nays 12

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Don Young Alaska				Mr. Bennie G. Thompson Mississippi, Ranking Member	✓		
Mr. Lamar S. Smith Texas		✓		Ms. Loretta Sanchez California	✓		
Mr. Curt Weldon Pennsylvania				Mr. Edward J. Markey Massachusetts			
Mr. Christopher Shays Connecticut	✓			Mr. Norman D. Dicks Washington	✓		
Mr. John Linder Georgia				Ms. Jane Harman California			
Mr. Mark E. Souder Indiana		✓		Mr. Peter A. DeFazio Oregon	✓		
Mr. Tom Davis Virginia		✓		Ms. Nita M. Lowey New York	✓		
Mr. Daniel E. Lungren California		✓		Ms. Eleanor Holmes Norton District of Columbia			
Mr. Jim Gibbons Nevada		✓		Ms. Zoe Lofgren California	✓		
Mr. Rob Simmons Connecticut		✓		Ms. Sheila Jackson-Lee Texas	✓		
Mr. Mike Rogers Alabama		✓		Mr. Bill Pascrell, Jr. New Jersey	✓		
Mr. Stevan Pearce New Mexico		✓		Mrs. Donna M. Christensen U.S. Virgin Islands	✓		
Ms. Katherine Harris Florida		✓		Mr. Bob Etheridge North Carolina	✓		
Mr. Bobby Jindal Louisiana		✓		Mr. James R. Langevin Rhode Island	✓		
Mr. Dave Reichert Washington				Mr. Kendrick Meek Florida	✓		
Mr. Michael McCaul Texas		✓					
Mr. Charlie Dent Pennsylvania	✓						
Ms. Ginny Brown-Waite Florida	✓						
Mr. Peter T. King New York Chairman		✓					
				Total	15	12	

An amendment offered by Ms. Lofgren (#1J) to the Amendment in the Nature of a Substitute offered by Mr. King; to strike line 18 on page 22 through line 7 on page 23 and insert a new section 305 entitled "Ensuring Return of Removed Aliens". The Chair sustained a point of order that the amendment was not germane, and the amendment thus fell.

An amendment offered by Ms. Lofgren (#1K) to the Amendment in the Nature of a Substitute offered by Mr. King; on page 19, line 15, make a conforming change; and page 20, line 3 through 12 insert a new subsection (b) entitled "Ensuring Appearance of Aliens Apprehended at or Between Ports of Entry". A point of order by Mr. Smith on germaneness was overruled by the Chair. The amendment by Ms. Lofgren was Not Agreed to by voice vote.

An amendment offered by Ms. Lofgren (#1L) to the Amendment in the Nature of a Substitute offered by Mr. King; on page 20, line 25 insert a new subsection (d) entitled "Exceptions for Vulnerable Populations"; A point of order by Mr. Smith on germaneness was overruled by the Chair. The amendment by Ms. Lofgren was Not Agreed to by a recorded vote of 12 yeas and 16 nays (Rollcall Vote No. 18). The vote was as follows:

COMMITTEE ON HOMELAND SECURITY
U.S. House of Representatives
109th Congress

Date: Wednesday, November 16, 2005

Convened: 10:10 a.m.

Adjourned: _____

Meeting on : Markup of H.R. 4312 - The Border Security and Terrorism Prevention Act of 2005

Amendment #1L offered by Ms. Lofgren

Attendance Recorded Vote Vote Number: 18 Total: Yeas 12 Nays 16

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Don Young Alaska				Mr. Bennie G. Thompson Mississippi, Ranking Member	✓		
Mr. Lamar S. Smith Texas		✓		Ms. Loretta Sanchez California	✓		
Mr. Curt Weldon Pennsylvania				Mr. Edward J. Markey Massachusetts			
Mr. Christopher Shays Connecticut		✓		Mr. Norman D. Dicks Washington	✓		
Mr. John Linder Georgia		✓		Ms. Jane Harman California			
Mr. Mark E. Souder Indiana		✓		Mr. Peter A. DeFazio Oregon	✓		
Mr. Tom Davis Virginia		✓		Ms. Nita M. Lowey New York	✓		
Mr. Daniel E. Lungren California		✓		Ms. Eleanor Holmes Norton District of Columbia			
Mr. Jim Gibbons Nevada		✓		Ms. Zoe Lofgren California	✓		
Mr. Rob Simmons Connecticut		✓		Ms. Sheila Jackson-Lee Texas	✓		
Mr. Mike Rogers Alabama		✓		Mr. Bill Pascrell, Jr. New Jersey	✓		
Mr. Stevan Pearce New Mexico		✓		Mrs. Donna M. Christensen U.S. Virgin Islands	✓		
Ms. Katherine Harris Florida		✓		Mr. Bob Etheridge North Carolina	✓		
Mr. Bobby Jindal Louisiana		✓		Mr. James R. Langevin Rhode Island	✓		
Mr. Dave Reichert Washington				Mr. Kendrick Meek Florida	✓		
Mr. Michael McCaul Texas		✓					
Mr. Charlie Dent Pennsylvania		✓					
Ms. Ginny Brown-Waite Florida		✓					
Mr. Peter T. King New York Chairman		✓					
				Total	12	16	

An amendment offered by Ms. Lofgren (#1M) to the Amendment in the Nature of a Substitute offered by Mr. King; on page 21, line 2, insert a new subsection (e) entitled "Appropriate Conditions for Detention of Vulnerable Populations". The Chair sustained a point of order that the amendment was not germane, and the amendment thus fell.

An amendment offered by Ms. Loretta Sanchez (#1N) to the Amendment in the Nature of a Substitute offered by Mr. King; on page 23, line 4, insert after the first period the following: "The previous sentence shall not apply to admission of an alien as a refugee or to the granting of asylum to an alien." The Chair sustained a point of order that the amendment was not germane, and the amendment thus fell.

An amendment offered by Mr. Meek (#1O) to the Amendment in the Nature of a Substitute offered by Mr. King; on page 29, strike line 7 through page 3, line 15. Page 29, after line 6, insert a new title entitled "Reorganization of Border Security Enforcement Agencies"; was Withdrawn by Unanimous Consent.

An amendment offered by Mr. Thompson (#1P) to the Amendment in the Nature of a Substitute offered by Mr. King; to insert a new section entitled "9/11 Commission Full Funding"; was Not Agreed to by a recorded vote of 12 yeas and 14 nays (Rollcall Vote No. 15). The vote was as follows:

COMMITTEE ON HOMELAND SECURITY
U.S. House of Representatives
109th Congress

Date: Wednesday, November 16, 2005

Convened: 10:10 a.m.

Adjourned: _____

Meeting on : Markup of H.R. 4312 - The Border Security and Terrorism Prevention Act of 2005

Amendment #1P offered by Mr. Thompson

Attendance Recorded Vote Vote Number: 15 Total: Yeas 12 Nays 14

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Don Young Alaska				Mr. Bennie G. Thompson Mississippi, Ranking Member	✓		
Mr. Lamar S. Smith Texas		✓		Ms. Loretta Sanchez California	✓		
Mr. Curt Weldon Pennsylvania				Mr. Edward J. Markey Massachusetts			
Mr. Christopher Shays Connecticut		✓		Mr. Norman D. Dicks Washington	✓		
Mr. John Linder Georgia				Ms. Jane Harman California			
Mr. Mark E. Souder Indiana		✓		Mr. Peter A. DeFazio Oregon	✓		
Mr. Tom Davis Virginia		✓		Ms. Nita M. Lowey New York	✓		
Mr. Daniel E. Lungren California		✓		Ms. Eleanor Holmes Norton District of Columbia			
Mr. Jim Gibbons Nevada		✓		Ms. Zoe Lofgren California	✓		
Mr. Rob Simmons Connecticut		✓		Ms. Sheila Jackson-Lee Texas	✓		
Mr. Mike Rogers Alabama		✓		Mr. Bill Pascrell, Jr. New Jersey	✓		
Mr. Stevan Pearce New Mexico		✓		Mrs. Donna M. Christensen U.S. Virgin Islands	✓		
Ms. Katherine Harris Florida				Mr. Bob Etheridge North Carolina	✓		
Mr. Bobby Jindal Louisiana		✓		Mr. James R. Langevin Rhode Island	✓		
Mr. Dave Reichert Washington				Mr. Kendrick Meek Florida	✓		
Mr. Michael McCaul Texas		✓					
Mr. Charlie Dent Pennsylvania		✓					
Ms. Ginny Brown-Waite Florida		✓					
Mr. Peter T. King New York Chairman		✓					
				Total	12	14	

An amendment offered by Ms. Jackson-Lee (#1Q) to the Amendment in the Nature of a Substitute offered by Mr. King; on page 19, line 21, strike: "or". Page 19, after line 21, insert a new paragraph (2) relating to the Immigration and Nationality Act; was Withdrawn by Unanimous Consent.

An amendment offered by Ms. Jackson-Lee (#1R) to the Amendment in the Nature of a Substitute offered by Mr. King; make conforming changes and on page 19, line 21, insert a new paragraph (2) relating to trafficking in persons; was Not Agreed to by a recorded vote of 14 yeas and 18 nays (Rollcall Vote No. 19). The vote was as follows:

COMMITTEE ON HOMELAND SECURITY
U.S. House of Representatives
109th Congress

Date: Thursday, November 17, 2005 Convened: 10:05 a.m.

Adjourned: _____

Meeting on : Markup of H.R. 4312 - The Border Security and Terrorism Prevention Act of 2005

Amendment #1R offered by Ms. Jackson-Lee

Attendance Recorded Vote Vote Number: 19 Total: Yeas 14 Nays 18

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Don Young Alaska		✓		Mr. Bennie G. Thompson Mississippi, Ranking Member	✓		
Mr. Lamar S. Smith Texas		✓		Ms. Loretta Sanchez California	✓		
Mr. Curt Weldon Pennsylvania				Mr. Edward J. Markey Massachusetts	✓		
Mr. Christopher Shays Connecticut		✓		Mr. Norman D. Dicks Washington	✓		
Mr. John Linder Georgia		✓		Ms. Jane Harman California	✓		
Mr. Mark E. Souder Indiana		✓		Mr. Peter A. DeFazio Oregon	✓		
Mr. Tom Davis Virginia		✓		Ms. Nita M. Lowey New York	✓		
Mr. Daniel E. Lungren California		✓		Ms. Eleanor Holmes Norton District of Columbia	✓		
Mr. Jim Gibbons Nevada		✓		Ms. Zoe Lofgren California	✓		
Mr. Rob Simmons Connecticut		✓		Ms. Sheila Jackson-Lee Texas	✓		
Mr. Mike Rogers Alabama		✓		Mr. Bill Pascrell, Jr. New Jersey			
Mr. Stevan Pearce New Mexico		✓		Mrs. Donna M. Christensen U.S. Virgin Islands	✓		
Ms. Katherine Harris Florida		✓		Mr. Bob Etheridge North Carolina	✓		
Mr. Bobby Jindal Louisiana		✓		Mr. James R. Langevin Rhode Island	✓		
Mr. Dave Reichert Washington		✓		Mr. Kendrick Meek Florida	✓		
Mr. Michael McCaul Texas		✓					
Mr. Charlie Dent Pennsylvania		✓					
Ms. Ginny Brown-Waite Florida		✓					
Mr. Peter T. King New York Chairman		✓					
				Total	14	18	

An amendment offered by Mr. Meek (#1S) to the Amendment in the Nature of a Substitute offered by Mr. King; to insert a new section entitled "Enhanced Information-Sharing, Coordination and Oversight Immigration Detention Policies, Practices and Operations within the Department of Homeland Security"; was Not Agreed to by a recorded vote of 15 yeas and 18 nays (Rollcall Vote No. 20). The vote was as follows:

COMMITTEE ON HOMELAND SECURITY
U.S. House of Representatives
109th Congress

Date: Thursday, November 17, 2005

Convened: 10:05 a.m.

Adjourned: _____

Meeting on : Markup of H.R. 4312 - The Border Security and Terrorism Prevention Act of 2005

Amendment #1S offered by Mr. Meek

Attendance Recorded Vote Vote Number: 20 Total: Yeas 15 Nays 18

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Don Young Alaska		✓		Mr. Bennie G. Thompson Mississippi, Ranking Member	✓		
Mr. Lamar S. Smith Texas		✓		Ms. Loretta Sanchez California	✓		
Mr. Curt Weldon Pennsylvania				Mr. Edward J. Markey Massachusetts	✓		
Mr. Christopher Shays Connecticut		✓		Mr. Norman D. Dicks Washington	✓		
Mr. John Linder Georgia		✓		Ms. Jane Harman California	✓		
Mr. Mark E. Souder Indiana		✓		Mr. Peter A. DeFazio Oregon	✓		
Mr. Tom Davis Virginia		✓		Ms. Nita M. Lowey New York	✓		
Mr. Daniel E. Lungren California		✓		Ms. Eleanor Holmes Norton District of Columbia	✓		
Mr. Jim Gibbons Nevada		✓		Ms. Zoe Lofgren California	✓		
Mr. Rob Simmons Connecticut		✓		Ms. Sheila Jackson-Lee Texas	✓		
Mr. Mike Rogers Alabama		✓		Mr. Bill Pascrell, Jr. New Jersey	✓		
Mr. Stevan Pearce New Mexico		✓		Mrs. Donna M. Christensen U.S. Virgin Islands	✓		
Ms. Katherine Harris Florida		✓		Mr. Bob Etheridge North Carolina	✓		
Mr. Bobby Jindal Louisiana		✓		Mr. James R. Langevin Rhode Island	✓		
Mr. Dave Reichert Washington		✓		Mr. Kendrick Meek Florida	✓		
Mr. Michael McCaul Texas		✓					
Mr. Charlie Dent Pennsylvania		✓					
Ms. Ginny Brown-Waite Florida		✓					
Mr. Peter T. King New York Chairman		✓					
				Total	15	18	

An amendment offered by Ms. Lofgren (#1T) to the Amendment in the Nature of a Substitute offered by Mr. King; to strike Sec. 305; was Not Agreed to by a recorded vote of 16 yeas and 17 nays (Rollcall Vote No. 21). The vote was as follows:

COMMITTEE ON HOMELAND SECURITY
U.S. House of Representatives
109th Congress

Date: Thursday, November 17, 2005Convened: 10:05 a.m.

Adjourned: _____

Meeting on : Markup of H.R. 4312 - The Border Security and Terrorism Prevention Act of 2005Amendment #1T offered by Ms. Lofgren
 Attendance Recorded Vote Vote Number: 21 Total: Yeas 16 Nays 17

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Don Young Alaska		✓		Mr. Bennie G. Thompson Mississippi, Ranking Member	✓		
Mr. Lamar S. Smith Texas		✓		Ms. Loretta Sanchez California	✓		
Mr. Curt Weldon Pennsylvania				Mr. Edward J. Markey Massachusetts	✓		
Mr. Christopher Shays Connecticut		✓		Mr. Norman D. Dicks Washington	✓		
Mr. John Linder Georgia		✓		Ms. Jane Harman California	✓		
Mr. Mark E. Souder Indiana		✓		Mr. Peter A. DeFazio Oregon	✓		
Mr. Tom Davis Virginia	✓			Ms. Nita M. Lowey New York	✓		
Mr. Daniel E. Lungren California		✓		Ms. Eleanor Holmes Norton District of Columbia	✓		
Mr. Jim Gibbons Nevada		✓		Ms. Zoe Lofgren California	✓		
Mr. Rob Simmons Connecticut		✓		Ms. Sheila Jackson-Lee Texas	✓		
Mr. Mike Rogers Alabama		✓		Mr. Bill Pascrell, Jr. New Jersey	✓		
Mr. Stevan Pearce New Mexico		✓		Mrs. Donna M. Christensen U.S. Virgin Islands	✓		
Ms. Katherine Harris Florida		✓		Mr. Bob Etheridge North Carolina	✓		
Mr. Bobby Jindal Louisiana		✓		Mr. James R. Langevin Rhode Island	✓		
Mr. Dave Reichert Washington		✓		Mr. Kendrick Meek Florida	✓		
Mr. Michael McCaul Texas		✓					
Mr. Charlie Dent Pennsylvania		✓					
Ms. Ginny Brown-Waite Florida		✓					
Mr. Peter T. King New York Chairman		✓		Total	16	17	

An amendment offered by Ms. Jackson-Lee (#1U) to the Amendment in the Nature of a Substitute offered by Mr. King; to insert a new section entitled "Establishment of a Special Task Force for Coordinating and Distributing Information on Fraudulent Immigration Documents"; was Not Agreed to by a recorded vote of 15 yeas and 18 nays (Rollcall Vote No. 22). The vote was as follows:

COMMITTEE ON HOMELAND SECURITY
U.S. House of Representatives
109th Congress

Date: Thursday, November 17, 2005Convened: 10:05 a.m.

Adjourned: _____

Meeting on : Markup of H.R. 4312 - The Border Security and Terrorism Prevention Act of 2005Amendment #1U offered by Ms. Jackson-Lee
 Attendance Recorded Vote Vote Number: 22 Total: Yeas 15 Nays 18

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Don Young Alaska		✓		Mr. Bernie G. Thompson Mississippi, Ranking Member	✓		
Mr. Lamar S. Smith Texas		✓		Ms. Loretta Sanchez California	✓		
Mr. Curt Weldon Pennsylvania				Mr. Edward J. Markey Massachusetts	✓		
Mr. Christopher Shays Connecticut		✓		Mr. Norman D. Dicks Washington	✓		
Mr. John Linder Georgia		✓		Ms. Jane Harman California	✓		
Mr. Mark E. Souder Indiana		✓		Mr. Peter A. DeFazio Oregon	✓		
Mr. Tom Davis Virginia		✓		Ms. Nita M. Lowey New York	✓		
Mr. Daniel E. Lungren California		✓		Ms. Eleanor Holmes Norton District of Columbia	✓		
Mr. Jim Gibbons Nevada		✓		Ms. Zoe Lofgren California	✓		
Mr. Rob Simmons Connecticut		✓		Ms. Sheila Jackson-Lee Texas	✓		
Mr. Mike Rogers Alabama		✓		Mr. Bill Pascrell, Jr. New Jersey	✓		
Mr. Stevan Pearce New Mexico		✓		Mrs. Donna M. Christensen U.S. Virgin Islands	✓		
Ms. Katherine Harris Florida		✓		Mr. Bob Etheridge North Carolina	✓		
Mr. Bobby Jindal Louisiana		✓		Mr. James R. Langevin Rhode Island	✓		
Mr. Dave Reichert Washington		✓		Mr. Kendrick Meek Florida	✓		
Mr. Michael McCaul Texas		✓					
Mr. Charlie Dent Pennsylvania		✓					
Ms. Ginny Brown-Waite Florida		✓					
Mr. Peter T. King New York Chairman		✓					
				Total	15	18	

An amendment offered by Ms. Jackson-Lee (#1V) to the Amendment in the Nature of a Substitute offered by Mr. King; to insert a new title entitled "Rapid Response Measures"; was Not Agreed to by voice vote.

An amendment offered by Mr. Lungren (#1W) to the Amendment in the Nature of a Substitute offered by Mr. King; to insert a new section entitled "Expedited Removal"; was Agreed to by a recorded vote of 18 yeas and 14 nays (Rollcall Vote No. 23). The vote was as follows:

COMMITTEE ON HOMELAND SECURITY
U.S. House of Representatives
109th Congress

Date: Thursday, November 17, 2005Convened: 10:05 a.m.

Adjourned: _____

Meeting on : Markup of H.R. 4312 - The Border Security and Terrorism Prevention Act of 2005Amendment #1W offered by Mr. Lungren
 Attendance Recorded Vote Vote Number: 23 Total: Yeas 18 Nays 15

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Don Young Alaska	✓			Mr. Bennie G. Thompson Mississippi, Ranking Member		✓	
Mr. Lamar S. Smith Texas			Pass	Ms. Loretta Sanchez California		✓	
Mr. Curt Weldon Pennsylvania				Mr. Edward J. Markey Massachusetts		✓	
Mr. Christopher Shays Connecticut	✓			Mr. Norman D. Dicks Washington		✓	
Mr. John Linder Georgia	✓			Ms. Jane Harman California		✓	
Mr. Mark E. Souder Indiana	✓			Mr. Peter A. DeFazio Oregon	✓		
Mr. Tom Davis Virginia	✓			Ms. Nita M. Lowey New York		✓	
Mr. Daniel E. Lungren California	✓			Ms. Eleanor Holmes Norton District of Columbia		✓	
Mr. Jim Gibbons Nevada	✓			Ms. Zoe Lofgren California		✓	
Mr. Rob Simmons Connecticut	✓			Ms. Sheila Jackson-Lee Texas		✓	
Mr. Mike Rogers Alabama	✓			Mr. Bill Pascrell, Jr. New Jersey		✓	
Mr. Stevan Pearce New Mexico	✓			Mrs. Donna M. Christensen U.S. Virgin Islands		✓	
Ms. Katherine Harris Florida	✓			Mr. Bob Etheridge North Carolina		✓	
Mr. Bobby Jindal Louisiana	✓			Mr. James R. Langevin Rhode Island		✓	
Mr. Dave Reichert Washington	✓			Mr. Kendrick Meek Florida		✓	
Mr. Michael McCaul Texas	✓						
Mr. Charlie Dent Pennsylvania	✓						
Ms. Ginny Brown-Waite Florida	✓						
Mr. Peter T. King New York Chairman	✓						
				Total	18	14	

An amendment offered by Ms. Harris (#1X) to the Amendment in the Nature of a Substitute offered by Mr. King; to insert a new section entitled “Plan for Combating Human Smuggling and Trafficking”; was Withdrawn by Unanimous Consent.

An amendment offered by Mr. Pearce (#1Y) to the Amendment in the Nature of a Substitute offered by Mr. King; on page 16, line 8 insert a new section 113 entitled “Repair of Private Infrastructure on Border”; was Agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

On March 2, 2005, the Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity held a hearing entitled “Proposed FY 2006 Budget: Integrating Homeland Security Screening Operations.” The Subcommittee received testimony from Mr. Jim Williams, Director, US-VISIT Program, Border and Transportation Security Directorate, U.S. Department of Homeland Security; Ms. Carol DiBattiste, Deputy Administrator, Transportation Security Administration, U.S. Department of Homeland Security; and Ms. Deborah J. Spero, Deputy Commissioner, Bureau of U.S. Customs and Border Protection, U.S. Department of Homeland Security.

On March 9, 2005, the Subcommittee on Management, Integration, and Oversight held a hearing entitled “CBP and ICE: Does the Current Organizational Structure Best Serve U.S. Homeland Security Interests?” The Subcommittee received testimony from Dr. James Carafano, Senior Research Fellow, The Heritage Foundation; Mr. Michael Cutler, Former Senior Special Agent, U.S. Immigration and Naturalization Service; Mr. David Venturella, Former Director, Office of Detention and Removal Operations, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security; Mr. T.J. Bonner, President, National Border Patrol Council; Mr. Randy Allen Callahan, Executive Vice President, American Federation of Government Employees, AFL-CIO; and Mr. Kenneth C. Klug, Former Special Agent in Charge, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security.

On April 20, 2005, the Subcommittee on Management, Integration, and Oversight held a hearing entitled “Management Challenges Facing the Department of Homeland Security.” The Subcommittee received testimony from Mr. Richard L. Skinner, Acting Inspector General, Office of Inspector General, Department of Homeland Security; Mr. Norman Rabkin, Managing Director, Homeland Security and Justice, Government Accountability Office; the Honorable Asa Hutchison, Chairman of the Homeland Security Practice, Veneble, LLC; the Honorable James S. Gilmore, III, Chairman, National Council on Readiness and Preparedness; and the Honorable Clark Kent Ervin, Director, Homeland Security Initiative, The Aspen Institute.

On May 24, 2005, the Subcommittee on Management, Integration, and Oversight held a hearing entitled “Training More Border Agents: How the Department of Homeland Security Can Increase Training Capacity More Effectively.” The Subcommittee received testimony from Chief Thomas Walters, Assistant Commissioner for

Training and Development, Bureau of Customs and Border Protection, Department of Homeland Security; Mrs. Connie Patrick, Director, Federal Law Enforcement Training Center, Department of Homeland Security; Mr. T.J. Bonner, President, National Border Patrol Council; and Mr. Gary Jackson, President, Blackwater USA.

On September 28, 2005, the Subcommittee on Management, Integration, and Oversight received a Member briefing and demonstration on canine units. The Committee also held a hearing entitled "Sniffing Out Terrorism: The Use of Dogs in Homeland Security." The Subcommittee received testimony from Mr. Lee Titus, Director of Canine Programs, U.S. Customs and Border Protection, Department of Homeland Security; Mr. David Kontny, Director, National Explosives Detection Canine Team Program, Transportation Security Administration, Department of Homeland Security; Special Agent Terry Bohan, Chief, National Canine Training and Operations Support Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice; Chief Ralph Eugene Wilson, Jr., Chief of Police, Metropolitan Atlanta Rapid Transit Authority (MARTA); Dr. C. Michael Moriarty, Associate Provost and Vice President for Research, Auburn University; and Ms. Terri Recknor, President, Garrison and Sloan Canine Detection.

On September 28, 2005, the Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity held a hearing entitled "Solving the OTM Undocumented Alien Problem: Expedited Removal for Apprehensions along the U.S. Border." The Subcommittee received testimony from Chief David V. Aguilar, Border Patrol, U.S. Customs and Border Protection, Department of Homeland Security; Mr. John Torres, Acting Director, Office of Detention and Removal Operations, Immigration and Customs Enforcement, Department of Homeland Security; and Mr. Daniel W. Fisk, Deputy Assistant Secretary, Bureau of Western Hemisphere Affairs, U.S. Department of State.

On October 27, 2005, the Subcommittee on Management, Integration, and Oversight held a hearing entitled "The Department of Homeland Security Second-Stage Review: The Role of the Chief Medical Officer." Testimony was received from Dr. Jeffrey W. Runge, Chief Medical Officer, Department of Homeland Security; Mr. Timothy Moore, Director of Federal Programs, National Agricultural Biosecurity Center, Kansas State University; Dr. Jeffrey A. Lowell, Professor of Surgery and Pediatrics, Washington University School of Medicine; and Mr. David Heyman, Director and Senior Fellow, Homeland Security Program, Center for Strategic and International Studies.

On November 14, 2005, the Subcommittee on Management, Integration, and Oversight held a hearing entitled "CBP and ICE: Does the Current Organizational Structure Best Serve U.S. Homeland Security Interests? Part 2." Testimony was received from Mr. Robert L. Ashbaugh, Assistant Inspector General for Inspections and Special Reviews, Office of Inspector General, Department of Homeland Security; and the Honorable Stewart A. Baker, Assistant Secretary for Policy, U.S. Department of Homeland Security.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The purpose of H.R. 4312, the "Border Security and Terrorism Prevention Act of 2005," is to provide the Secretary of Homeland

Security with necessary tools and authority to gain operational control over the international land and maritime borders of the United States through enhancing border security, detaining and removing all aliens ineligible to enter the United States, and provide greater organizational efficiencies within the Department of Homeland Security.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX
EXPENDITURES

In compliance with clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 6, 2005.

Hon. PETER T. KING,
*Chairman, Committee on Homeland Security,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has completed the enclosed cost estimate for H.R. 4312, the Border Security and Terrorism Prevention Act of 2005.

The CBO staff contact for this estimate is Mark Grabowicz.
Sincerely,

DONALD B. MARRON
(For Douglas Holtz-Eakin, *Director*).

Enclosure.

H.R. 4312—Border Security and Terrorism Prevention Act of 2005

Summary: H.R. 4312 would direct the Department of Homeland Security (DHS) to increase the number of border inspection personnel, deploy radiation portal monitors at ports of entry, and establish an Office of Air and Marine Operations within DHS. The bill also would make many other amendments to current law and changes to existing DHS procedures that aim to increase the security of U.S. borders.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 4312 would cost about \$870 million over the 2006–2010 period. Enacting the bill would not affect direct spending or receipts.

H.R. 4312 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, and tribal governments.

Estimated Cost to the Federal Government: The estimated budgetary impact of H.R. 4312 is shown in the following table. The cost

of this legislation falls within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars—				
	2006	2007	2008	2009	2010
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Additional Port of Entry Inspectors and Canine Detection Teams:					
Estimated Authorization Level	0	24	73	128	193
Estimated Outlays	0	22	70	126	190
Radiation Portal Monitors at Ports of Entry:					
Estimated Authorization Level	277	20	20	20	20
Estimated Outlays	139	158	20	20	20
Office of Air and Marine Operations:					
Estimated Authorization Level	0	20	16	17	17
Estimated Outlays	0	19	17	17	17
Additional Funding for Inspector General:					
Estimated Authorization Level	0	4	5	6	0
Estimated Outlays	0	4	5	6	0
Other Programs:					
Estimated Authorization Level	0	6	5	5	5
Estimated Outlays	0	4	5	5	5
Total Changes:					
Estimated Authorization Level	277	74	119	177	235
Estimated Outlays	139	207	117	174	233

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted in 2006. CBO estimates that implementing H.R. 4312 would cost about \$870 million over the 2006–2010 period, assuming appropriation of the necessary funds. We assume that the necessary amounts will be appropriated by the start of each fiscal year after 2006 and that spending will follow the historical spending patterns for these or similar activities.

Additional port of entry inspectors and canine detection teams

H.R. 4312 would direct DHS to increase the number of port-of-entry inspectors by 250 for each of fiscal years 2007 through 2010. Currently, there are about 19,000 inspectors, so this would represent an increase of just over 1 percent annually. In addition, for each of fiscal years 2007 through 2011, the bill would require DHS to increase the number of canine detection teams by at least 25 percent over the number of such positions for the preceding year. (Currently, there are a total of 647 canine detection teams, each consisting of one officer and one dog.)

Based on information from DHS, CBO estimates that it costs about \$100,000 a year to hire an additional inspector and \$130,000 a year for each new canine detection team, including salaries, benefits, training, and support costs. Assuming that each annual cohort required by the bill would be hired over the course of a year, we estimate that implementing this provision would cost \$400 million over the 2007–2010 period, with spending split evenly between the inspectors and the canine detection teams.

Radiation portal monitors at ports of entry

H.R. 4312 would direct DHS, within one year of the bill's enactment, to deploy radiation portal monitors at U.S. ports of entry selected by the agency to facilitate the screening of inbound cargo for concealed nuclear and radiological material. Based on information from DHS, we expect that the agency would implement the bill by deploying such monitors at all U.S. ports.

According to DHS, there are 613 radiation portal monitors currently deployed at 110 points of entry in 85 U.S. ports, leaving a total of 270 points of entry that lack these devices. Because the unmonitored ports generally experience lesser volumes of inbound cargo, CBO assumes that remaining points of entry would need, on average, four monitors. The radiation portal monitors that are currently used cost \$280,000 each, but a more effective device is now available at a cost of \$470,000 per unit.

Assuming that the roughly 1,000 additional monitors required to implement H.R. 4312 would include approximately equal numbers of monitors of each type (\$280,000 and \$470,000 models), the costs to deploy the monitors at the remaining ports would be about \$400 million. However, because \$125 million has already been appropriated for fiscal year 2006 for monitors, we estimate that implementing H.R. 4312 would cost about \$280 million over the 2006–2007 period.

In addition, we expect that there would be some maintenance and replacement costs for those monitors in subsequent years. CBO estimates that such costs would probably be no more than 10 percent of the initial cost of the new monitors, or about \$20 million annually.

Office of Air and Marine Operations

H.R. 4312 would establish an Office of Air and Marine Operations within DHS that would be headed by an Assistant Secretary who would report directly to the Secretary of Homeland Security. We expect that this office would consist of about 1,200 personnel currently in the Bureau of Customs and Border Protection who direct and carry out aviation and marine operations.

As a new agency within DHS, the Office of Air and Marine Operations would need its own human resources, legal, finance, technical support, and other administrative offices. Based on the number of support personnel at other federal agencies that employ between 1,000 and 2,000 persons, CBO estimates that it would cost about \$16 million annually for these functions, beginning in fiscal year 2007. This estimated annual cost represents about 10 percent of current spending for the transferred personnel and assumes that some existing administrative staff would be transferred to the new office. In addition, we estimate that there would be one-time costs of about \$4 million to relocate personnel and carry out other activities necessary to establish a new agency within DHS.

Additional funding for inspector general

H.R. 4312 would authorize the appropriation of sums necessary to increase funding above the current level for the DHS Office of the Inspector General (IG) by 5 percent for fiscal year 2007, 6 percent for 2008, and 7 percent for 2009. For fiscal year 2006, \$83 million was appropriated for the IG. We estimate that implementing this provision for increases in IG funding would cost \$4 million in 2007, \$5 million in 2008, and \$6 million in 2009.

Other programs

H.R. 4312 would direct DHS to establish a university-based Center of Excellence for Border Security. Based on spending for similar university programs already established by DHS, we estimate that

implementing this provision would require funding of about \$5 million annually, beginning in fiscal year 2007.

In addition, the bill would require DHS and the Government Accountability Office to prepare various reports relating to improving border security. CBO estimates that the costs to prepare these reports would total about \$1 million.

Border patrol in Virgin Islands

H.R. 4312 would direct DHS, by September 30, 2006, to establish at least one border patrol unit for the U.S. Virgin Islands. However, the Department of Homeland Security Appropriations Act, 2006 (Public Law 109–90) already directs DHS to determine whether or not a border patrol unit in the Virgin Islands is necessary and, if deemed necessary, to establish such a unit by March 1, 2006. CBO cannot predict whether this unit will be established under Public Law 109–90. Based on information from DHS, however, CBO expects that a unit in the Virgin Islands would probably cost no more than \$1 million annually.

Intergovernmental and private-sector impact: H.R. 4312 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, and tribal governments.

Estimate prepared by: Federal Costs: Mark Grabowicz; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

An advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act is created by this legislation. H.R. 4312 establishes the Border Security Advisory Committee. Members of the advisory committee shall be appointed by the Secretary of Homeland Security consisting of representatives from State, local, Tribal, and community representatives from States located along international land and maritime borders of the United States. The advisory committee shall advise the Secretary on issues relating to border security and enforcement in such areas.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 1, which grants Congress the power to provide for the common Defense of the United States.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Title I—Securing United States Borders

Sec. 101. Achieving operational control on the border

While the United States relies heavily upon global commerce and tourism—our prosperity and way of life depend upon it—the same openness that has enabled our country to flourish in the global economy has also facilitated the unlawful entry of millions of aliens into our country. And as such, the United States is more vulnerable to attacks by terrorists and increasingly sophisticated global criminal networks.

The Committee on Homeland Security (Committee) believes that the issue of border security presents urgent national security implications, and efforts to secure the border from the entry of terrorists and terrorist weapons should not be preformed in an ad-hoc manner. The National Commission on Terrorist Attacks Upon the United States (9/11 Commission) report cited that as early as March of 2000, government officials recognized the threat from Al-Qa’ida and identified immediate steps needed to protect and prepare against a possible attack, including the need to secure our “porous borders and weak enforcement of immigration laws” within the United States (page 186). The Committee believes that the urgency with which this task was imparted, and the urgency with which it was addressed in the months following the attacks of September 11, 2001, must not be lost.

Therefore, this section directs the Secretary of Homeland Security (Secretary) to immediately take all actions necessary and appropriate to achieve and maintain full operational control over the entire land and maritime borders of the United States. Operational control will require gaining a comprehensive domain awareness of the Nation’s borders so that enforcement efforts and resources can be directed most effectively and appropriately. To accomplish this, this section identifies several actions necessary, including but not limited to the following: systematic surveillance coverage, additional physical infrastructure, additional Border Patrol agents as authorized in the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108–458), and deployment of Border Patrol agents to high risk areas as well as other impacted border areas.

Prior to the creation of the Department of Homeland Security (Department), efforts to improve surveillance along the border were initiated, but inadequate contract management and oversight lead to cost overruns and ineffective use of border security technology. The Secretary is directed to provide systematic surveillance over the entire land and maritime borders of the United States using multiple layers of technology integrated into a systems architecture. Additionally, the Secretary is directed to enhance physical infrastructure and procure necessary and appropriate all-terrain vehicles, air assets, and other equipment to provide border security

personnel within the Department with the resources necessary to gain operational control along the entire international land and maritime borders of the United States.

The Committee recognizes that achieving full operational control may take several years and considerable resources. However, the Committee believes that the Secretary should be continually working towards this goal and requires that the Committee be provided with regular updates on progress made towards achieving this goal and the personnel, resources, and legislative authority that may still be needed.

Sec. 102. National strategy for border security

This section requires the Secretary of Homeland Security (Secretary) to submit to the Committee on Homeland Security (Committee) a two-phase National Strategy for Border Security. However, the Committee cautions the Department of Homeland Security (Department) that nothing in this section shall be construed by the Department, or any agency within the Department, as a reason for not taking immediate action as proscribed by section 101 of this Act or any other section of this Act.

Subsection (a) requires the Secretary to submit a plan, within six months after enactment of this Act, to provide systematic surveillance coverage of the United States land borders by: integrating current capabilities with new surveillance technology; coordinating with the Science and Technology Directorate within the Department to identify and test new technology; outlining specific technology that will be added to the current surveillance infrastructure; and identifying obstacles to deployment, including detailed costs.

Prior to the creation of the Department, the former Immigration and Naturalization Service (INS) was responsible for development of the Integrated Surveillance Intelligence System (ISIS). ISIS was purported to provide surveillance coverage of the United States land borders through use of cameras and ground sensors. The Committee conducted oversight hearings in the 109th Congress and concluded that contract management deficiencies has resulted in only two to four percent of the United States' land borders being monitored by ISIS. The Committee believes, however, that a robust surveillance system is essential to gaining operational control and maintaining domain awareness of the United States land and maritime borders, including the ability to rapidly detect and respond to threats.

In developing this plan for such systematic surveillance, the Secretary must develop the overarching systems architecture necessary to support resource capabilities and emerging technology to ensure installation of the technology is not indiscriminate but rather is connected to the larger architecture. The plan shall include input from the Privacy Officer of the Department.

The Committee believes that the use of Unmanned Aerial Vehicles (UAVs) will increase efforts to control access to the borders of the United States. The Committee recognizes that there are airspace safety issues that must be addressed with the application and deployment of these assets. Moreover, the Committee also recognizes that the Federal Aviation Administration (FAA) has authority over the National Airspace System (NAS) and that every ef-

fort should be taken to make certain that safety within the NAS remains unchanged by implementation of this section.

Nothing in this section shall be construed to alter the Federal Aviation Administration's (FAA) current authority to oversee, regulate, and control the safe and efficient use of the airspace over the United States. Moreover, in order to carry out this section U.S. Customs and Border Protection (CBP) shall coordinate with the Transportation Security Administration (TSA) in order to resolve all issues related to UAV security, including but not limited to UAV piracy, prior to the operation of any UAV within United States civilian airspace.

Subsection (b) requires the Secretary to submit a comprehensive plan for border security within one year that will outline how the Department will achieve operational control of United States land and maritime borders. The plan must include the following: an implementation timeline for the surveillance plan in subsection (a), an assessment of the threat posed by terrorists that may try to illegally enter the United States; a risk assessment of ports of entry and the entire border relating to the prevention of unauthorized entry by terrorists and illicit materials; an outline of additional staffing and resources necessary; a description of the border security roles and missions of Federal, State, and local authorities; prioritization of research; a description of methods to ensure the flow of legitimate trade and travel across the borders; an assessment of necessary detention space; a plan for personnel accountability; and a timeline for completion of all parts of the plan.

In implementing Section 102(b)(2) of the National Strategy for Border Security, the Secretary shall designate the Chief Intelligence Officer of the Department of Homeland Security as the primary coordinator of this threat assessment.

In conducting the risk assessment the Secretary shall include an analysis of threat, vulnerability, and consequence analysis. Additionally, the Secretary shall utilize the risk assessments previously conducted by the United States Coast Guard under the Maritime Transportation Security Act (P.L. 107-295) and those conducted as part of the National Infrastructure Protection Plan.

It is essential that the Department develop unambiguous milestones and performance metrics as part of the National Strategy in order to ensure that border security programs and initiatives are successful and achieve the goal of gaining operational control over the borders. DHS must establish a mechanism to ensure accountability at all levels within the Department and in developing the National Strategy, the Secretary must ensure that border security agencies and missions are fully coordinated with the interior customs and immigration enforcement efforts of the Department.

The Committee is concerned that the methodology used by the Department to determine appropriate staffing levels for border security agencies, as well as the risk assessment used to determine the optimal locations for additional personnel is not transparent or understandable. Therefore, the Secretary must update existing or develop new methodologies used to determine the best utilization of personnel authorized in sections 107 and 108 of this Act and provide patent evidence of whether and levels of additional staffing.

Subsection (c) requires that in developing the National Strategy for Border Security in subsection (b) that the Secretary shall con-

sult with State, local, and tribal authorities along the border, as well as an appropriate cross-section of private sector and non-governmental organizations. The Committee believes that the Secretary, in carrying out this subsection, should consult with relevant organizations with national security, privacy, agriculture, immigration, customs, transportation, technology, legal, and commercial expertise. As well, participants from the trade community must include an appropriate cross section of United States importers and exporters.

Subsection (d) reiterates the importance of the National Strategy for Border Security as described in subsection (b), as the leading document for the Department on border security. Moreover, through the consultation process with other Federal agencies, other government authorities, and the private sector, the Secretary must ensure that the National Strategy coordinates all border security efforts and responsibilities at all levels.

Subsection (e) reinforces that immediate action is necessary and nothing in subsection (b) shall relieve the Secretary of the responsibility of taking all actions necessary to gain and maintain operational control over the land and maritime borders of the United States.

Sec. 103. Implementation of cross-border security agreements

This section requires the Secretary of Homeland Security (Secretary) to report within six months after the enactment of this Act, on the implementation of cross-border security agreements with Canada and the United Mexican States (Mexico). Included among these agreements are the Smart Border Accord and the Security and Prosperity Partnership of North America.

These important partnerships establish a cooperative, international approach to establishing common prosperity and security. While the Committee on Homeland Security (Committee) supports the efforts of these agreements and recognizes they are integral to achieving operational control of our borders, the Committee is concerned about the availability of information on the progress of these partnerships and therefore directs the Secretary to provide the Committee with regular reports for the next 18 months after enactment of this Act and thereafter as appropriate.

Sec. 104. Biometric data enhancement

This section requires that by October 1, 2006, the Secretary of Homeland Security (Secretary) to enhance the connectivity between the Automated Biometric Identification System (IDENT) and Integrated Automated Fingerprint Identification System (IAFIS) biometric databases. The IAFIS system is maintained by the Department of Justice's Federal Bureau of Investigations (FBI), while the IDENT system is maintained by the Department of Homeland Security. Each system was developed to support different mission needs. IAFIS serves as the FBI's national fingerprint and criminal history repository, and is based on ten rolled fingerprints. IDENT performs watch list checks against biometric identified records for immigration violators, persons of interest to law enforcement, and individuals who may be a threat to national security and is based on two fingerprints.

Since September 11, 2001, several pieces of legislation have called for an interoperable electronic data system for such biometric checks, among them are the USA PATRIOT Act (P.L. 107–56), the Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107–173), the Fiscal Year 2004 Department of Homeland Security Appropriations Act (P.L. 108–90), and the Fiscal Year 2005 Consolidated Appropriations Act (P.L. 108–447). The Congressional concern with the security gap created by the lack of IDENT/IAFIS interoperability is obvious and this section is intended to reiterate the importance of such interoperability.

This section also directs the Secretary, in consultation with the Secretary of State, to transition to a ten fingerprint standard for each alien required to provide fingerprints during initial enrollment in the integrated entry and exit data system also known as the United States Visitor and Immigrant Status Indicator Technology (US–VISIT). Both the importance of connecting the IAFIS and IDENT databases and increasing the number of fingerprints captured at the point of entry are based on a single objective—to increase the accuracy and reliability of the biometric searches conducted under the US–VISIT program.

Sec. 105. One face at the border initiative

This Section directs that the Secretary of Homeland Security (Secretary) shall, not later than October 1, 2007, submit to Congress a report on the quantifiable benefits, improvements planned, and statistics related to the “One Face at the Border” initiative at United States ports of entry. Under this initiative, the duties of legacy inspectors from U.S. Customs, the Immigration and Nationalization Service (INS) and the Animal and Plant Health Inspection Service (APHIS) were unified under one primary inspector at the border.

The Committee on Homeland Security (Committee) recognizes that the benefits of streamlining the inspections process include maximizing use of personnel, enhanced security, and cost efficiencies. However, the Committee also recognizes that it is essential that current levels of expertise must be maintained in each of the three critical areas of enforcement, especially in the secondary inspection process. While the Committee supports consolidating responsibilities in order to provide for greater efficiency, doing so must not be detrimental to critical homeland security enforcement efforts.

Sec. 106. Secure communication

This section directs the Secretary of Homeland Security (Secretary) to immediately develop plans for secure, two-way communications between Border Patrol agents in the field. Through the Committee on Homeland Security’s (Committee) oversight efforts, the Committee identified the problem that Border Patrol communications are often not encrypted and are therefore easily intercepted by smugglers and alien traffickers seeking to thwart Border Patrol’s efforts. Although the Border Patrol has the capability to encrypt its communications, outdated technology creates a disincentive for encryption as it significantly reduces communications capabilities. A widespread upgrade of radio systems will allow for encrypted communications, irrespective of geography and distance.

It is imperative that the Border Patrol be given the necessary resources to enable them to fulfill their responsibility of fortifying our borders against intrusion by illegal people and cargo.

The Secretary shall provide the Committee with information on the status of current communications infrastructure within the Department of Homeland Security, including the capabilities and limitations.

Sec. 107. Border patrol agents

In each of the Fiscal Years 2006 through 2010, the Secretary of Homeland Security (Secretary) shall, subject to the availability of appropriations for such purpose, increase by not less than 2,000, the number of positions for full-time, active-duty border patrol agents within the Department of Homeland Security (Department) above the number of such positions for which funds were allotted for the preceding fiscal year. In each of the Fiscal Years 2006 through 2010, in addition to the border patrol assigned along the northern border of the United States during the previous fiscal year.

This increase was mandated in the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) and Committee on Homeland Security (Committee) supports increased staffing at the authorized level. The Secretary is directed under Section 102 of this Act to develop a staffing methodology to determine necessary border security staffing levels and the Committee will revisit the issue of necessary and appropriate staffing levels once the Secretary provides additional information based on the Department's assessment.

Sec. 108. Port of entry inspection personnel

This section increases in each of the Fiscal Years 2007 through 2010, subject to the availability of appropriations, the number of positions for full-time, active-duty, port of entry personnel within the Department of Homeland Security (Department) by 250 above the number of such positions for which funds were allotted for the preceding fiscal year. There are currently over 17,000 inspectors to cover 317 ports of entry, 14 pre-clearance stations, and assigned to the 36 foreign ports under the Container Security Initiative (CSI). While other border security positions in the Department of Homeland Security were enhanced in the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458), U.S. Customs and Border Protection inspectors at ports of entry were not increased. The Committee on Homeland Security supports additional staffing at ports of entry to ensure that thorough security screening for individuals and cargo is maintained without disrupting the flow of legitimate goods.

As required in the accompanying report to the Homeland Security Act (P.L. 107-296), the Secretary of Homeland Security shall not decrease the funding or staffing for specific Customs revenue functions, including Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialists, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, and Financial System Specialists.

Sec. 109. Canine detection teams

This section increases the number of trained detection canines for use in border security activities by 25 percent each year for the next five years. Congress has addressed a shortage of trained personnel to protect the nation's borders against illegal activities—such as illegal immigration, drug trafficking, and smuggling of counterfeit currency—by authorizing the Department of Homeland Security (Department) to hire, train, and deploy 2,000 new Border Patrol agents each year for the next five years (P.L. 108–458). It is essential that the number of trained detection canines also increase in order to support their activities.

U.S. Customs and Border Protection personnel and trained canines work together at and between the Nation's ports of entry and are an important component of a layered approach to border protection and defense against terrorist threats. Canines support the law enforcement and anti-terrorism missions of the Department and help Border Patrol agents detect such things as concealed humans, narcotics, explosives, currency, and harmful agricultural pests and products.

On September 28, 2005, the Subcommittee on Management, Integration, and Oversight held a hearing entitled, "Sniffing Out Terrorism: The Use of Dogs in Homeland Security." At this hearing, the Committee on Homeland Security received testimony from several Federal agencies that train and deploy canines, including U.S. Customs and Border Protection, all of which indicated that there is a need for more trained detection canines.

Sec. 110. Secure Border Initiative financial accountability

This section requires the Inspector General (IG) of the Department of Homeland Security (Department) to review all contract actions over \$20,000,000 pertaining to the Department's new Secure Border Initiative. This review would begin within 60 days of a contract action—such as the award of a contract, subcontract, or blanket purchase agreement—as well as the conclusion of the contract in order to prevent waste, fraud, and abuse in contract awards and management. The findings of a review will include cost overruns, significant delays in contract execution, lack of adequate contract management, and insufficient financial oversight.

Upon completion of the review, the IG is to submit the findings to the Secretary of Homeland Security (Secretary). Within 30 days of receiving the review, the Secretary shall report to Congress on the findings of the review and how the Department is addressing the issues raised by the IG.

An urgent need exists for the installation of additional surveillance equipment, including cameras and ground sensors, to secure the Nation's borders. There is also an urgent need to ensure that Federal funds are used efficiently and effectively to acquire, install, and integrate these technologies into the new Secure Border Initiative, announced on November 2, 2005, by the Secretary.

This provision ensures that the Department will take steps to address the financial and management weaknesses of previous border security initiatives, such as the Integrated Surveillance Intelligence System (ISIS). ISIS was initiated in 1998 by the legacy Immigration and Naturalization Service to install cameras and ground sensors to monitor targeted expanses of the Nation's borders. A De-

ember 2004 audit conducted by the General Services Administration Office of Inspector General found that ISIS had a disturbing lack of management control over the project's procurement and contracting practices, which led to the spending of Federal funds to pay for work that was poor, incomplete, or never delivered. During a June 16, 2005, hearing held by the Subcommittee on Management, Integration, and Oversight, the Committee on Homeland Security received testimony regarding numerous improper task orders and contract awards, involving millions of dollars that failed to comply with procurement laws and regulations. As the Department implements its new Secure Border Initiative and expands the number of surveillance cameras and sensors along the Nation's borders, rigorous financial management procedures must be in place to ensure the efficiency and cost-effectiveness of this new multi-billion dollar program.

Sec. 111. Border Patrol training capacity review

This section requires the Government Accountability Office (GAO) to review the basic training provided to new Border Patrol agents, including: the length and content of the training curriculum and how the curriculum has changed since September 11, 2001; a detailed breakdown of the costs to U.S. Customs and Border Protection and the Federal Law Enforcement Training Center to train one new Border Patrol agent; and a comparison of the costs, scope, and quality, including geographic characteristics, of current training provided to Border Patrol agents to other similar law enforcement training programs provided by State and local agencies, non-profit organizations, universities, and the private sector.

The review will also include an evaluation of how Border Patrol agent basic training can be streamlined and made more cost-effective through the utilization of comparable non-Federal training programs, and the use of proficiency testing, long-distance learning, and waivers for courses including physical fitness or language instruction.

This Act authorizes 2,000 new Border Patrol agents each year from fiscal year 2007 through fiscal year 2010 for deployment along our Nation's borders, in accordance with the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458). It is essential that training of these agents be conducted in the most effective and cost-efficient manner possible. Towards this end, the Committee on Homeland Security (Committee) has requested information from the Department of Homeland Security (Department) regarding the costs to hire and train one new Border Patrol agent. At a May 24, 2005, hearing held by the Management, Integration, and Oversight Subcommittee, the Committee was informed that U.S. Customs and Border Protection uses an estimate of \$179,221 to train one new Border Patrol agent, of which \$23,118 is for basic agent training. This figure, however, does not include the \$8,734 in training costs borne by the Federal Law Enforcement Training Center. Multiple requests to the Department by the Committee for additional clarification of these costs have not yielded sufficient information. Therefore, the Committee is requesting the assistance of GAO to provide an independent analysis of Border Patrol training costs.

Sec. 112. Airspace security mission impact review

This section instructs the Secretary of Homeland Security (Secretary) to report to the Committee on Homeland Security (Committee) the impact of the National Capitol Region (NCR) airspace security mission on border security missions, to evaluate the resources required to fulfill the mission, and the impact of transferring assets from the border to provide coverage for the NCR.

The Department of Homeland Security (Department) is one of several agents that are collectively responsible for protecting the NCR against air intrusions. The Department is presently transferring responsibilities from the U.S. Customs and Border Protection Office of Air and Marine Operations (AMO) to the United States Coast Guard. AMO pulled air and personnel assets from other stations in order to fulfill its responsibility in protecting the NCR, and it is likely that the Coast Guard will be forced to do the same. The Department is instructed to assess and report to the Committee on the potential affects of transferring these Coast Guard assets from current locations along the maritime border. This transition must not negatively impact the border security mission of the Department. The Department must plan accordingly for this transfer of resources.

Sec. 113. Repair of private infrastructure on border

The Committee on Homeland Security (Committee) has learned through its oversight activities including trips to the border, one of the consequences of continued unlawful entry of aliens across the United States land borders is the damage and destruction they cause to private property along the international land borders. This section would authorize an initial \$50,000 in funds to reimburse private property owners for costs associated with repairing damages to the property owner's private infrastructure constructed along the international border that is a United States government right-of-way. This section also requires the Department of Homeland Security to submit to the Committee a report six months after enactment and every six months following detailing the expenditures under this section.

Sec. 114. Border Patrol unit for Virgin Islands

In order to ensure that the U.S. Virgin Islands are not an entry point for illegal entrants and narcotics, this section authorizes the establishment of at least one Border Patrol unit for the U.S. Virgin Islands by September 30, 2006.

In light of the additional 2,000 new Border Patrol agents authorized in this Act, the Committee on Homeland Security directs the Secretary of Homeland Security to establish a permanent Border Patrol unit in the United States Virgin Islands. There currently is no Border Patrol station within the U.S. Virgin Islands territory and the station responsible for covering this area is the Ramey Sector, located in Puerto Rico. The United States Virgin Islands has 175 miles of coastal borders and is a gateway to the continental U.S. This region has been increasingly exploited by human and drug smugglers to move people and narcotics, undetected, into the U.S. mainland. A dedicated Border Patrol unit will assist the Department of Homeland Security in gaining operational control over the border.

Sec. 115. Report on progress in tracking travel of Central American gangs along the international border

Every criminal organization that can exploit the border is viewed as a potential national security threat. In the last decade, the United States has experienced a dramatic increase in the number and size of transnational street gangs such as Mara Salvatrucha (commonly known as MS-13). These gangs have significant foreign-born membership and are frequently involved in human and contraband smuggling, immigration violations, and other crimes with a nexus to the border. Their members have been connected to violent crimes such as robbery, extortion, assault, rape and murder once inside the United States.

Currently, the Department of Homeland Security (Department) maintains a close working relationship with Mexico, Honduras, El Salvador and Guatemala in the exchange of intelligence pertaining to MS-13 and other gang activity. This section requires the Secretary of Homeland Security to report to the Committee on Homeland Security on the Department's efforts and progress in tracking such violent gangs through Central America, Mexico and across our borders into the United States.

Sec. 116. Collection of data

This section requires the Secretary of Homeland Security, beginning on October 1, 2006, to annually compile data on the following categories of information: (1) the number of unauthorized aliens who require medical care taken into custody by Border Patrol officials; (2) the number of unauthorized aliens with serious injuries or medical conditions Border Patrol officials encounter, and refer to local hospitals or other health facilities; (3) the number of unauthorized aliens with serious injuries or medical conditions who arrive at United States ports of entry and subsequently are admitted into the United States for emergency medical care; and (4) the number of unauthorized aliens described in subsections (2) and (3) who subsequently are taken into custody by the Department of Homeland Security.

The number of illegal aliens in the United States is estimated to be 11 million. In Fiscal Year 2004, the Border Patrol apprehended 1.16 million people who illegally crossed the Nation's border; however, this figure represents only one-third of the estimated three million people who illegally cross the border each year.

The local communities into which these unauthorized persons arrive bear the burden of providing social services, including emergency medical care, to these unauthorized individuals. In September 2002, the United States/Mexico Border Counties Coalition released a report reviewing the cost of medical care provided to unauthorized aliens in border counties in the States of Texas, New Mexico, Arizona, and California. This study found that southwest border counties incurred over \$200 million in uncompensated emergency medical costs that were provided to undocumented aliens. The study further noted that the \$200 million did not include all costs borne by border counties and local medical providers.

In May 2004, the Government Accountability Office (GAO) issued a report on the costs incurred by hospitals for treating undocumented aliens. The GAO, however, was unable to determine the

total costs because of a lack of data collected by the Federal government and other entities.

Therefore, this provision would require U.S. Customs and Border Protection (CBP) to annually collect statistics on unauthorized persons whom CBP personnel encounter, or take into custody, and subsequently refer for medical treatment. The provision also would require CBP to collect statistics on the number of unauthorized persons arriving at ports of entry whom subsequently are admitted into the United States for emergency medical treatment, and how many of those individuals CBP ultimately takes into custody.

Sec. 117. Deployment of radiation detection portal equipment at United States ports of entry

This section requires the Secretary of Homeland Security (Secretary) to install radiation portal monitors at United States ports of entry and other facilities as determined necessary by the Secretary for the purpose of screening all inbound cargo for radioactive and nuclear material. The Secretary shall determine the appropriate locations based on a risk assessment. Deployment decisions should be made cognizant of the effectiveness of existing technologies and the near term availability of more effective detection systems. This effort should be consistent with the global detection architecture currently under development by the Department of Homeland Security (Department).

The Domestic Nuclear Detection Office (DNDO) was established in March 2005, within the Department as an inter-agency office to serve as the primary entity in the United States Government to develop a global nuclear detection architecture, and acquire and support the deployment of a domestic nuclear detection system. It is testing advanced spectroscopic portals which can better identify radioactive materials and reduce false alarm rates. Domestic deployments will begin in 2006. The DNDO also conducts advanced research and development programs for radiation detection systems.

The DNDO has oversight over the U.S. Customs and Border Protection (CBP) Radiation Portal Monitor Project (RPMP), which has been installing radiation portal monitors at international mail handling and express consignment courier facilities, seaports, airports, and land border crossings throughout the United States, in an effort to screen cargo and packages that could be utilized by terrorists in an attempt to smuggle a nuclear device or radioactive materials into the United States.

Sec. 118. Sense of Congress regarding the Secure Border Initiative

This section provides a Sense of Congress that recommends that as the Secretary of Homeland Security, implements the Secure Border Initiative and other Department of Homeland Security (Department) initiatives to strengthen security along the border, the Secretary shall conduct outreach to and consult with members of the private sector, including business councils, associations, and small, minority-owned, women-owned, and disadvantaged businesses. The purpose of such outreach and consultation shall be to: (1) identify existing and emerging technologies, best practices, and business processes; (2) maximize economies of scale, cost-effectiveness, systems integration, and resource allocation; and (3) identify the most

appropriate contract mechanisms to enhance financial accountability and mission effectiveness of border security programs.

The Committee on Homeland Security (Committee) continues to receive input from the private sector—ranging from large corporations to small, disadvantaged businesses—about the difficulties they encounter working with the Department. The Committee recognizes that the Department could benefit significantly from the expertise of companies in the areas of best practices, financial accountability, and mission effectiveness as it develops and implements border security programs. The Committee recognizes further that the Department should conduct outreach to small, minority-owned, women-owned, and disadvantaged businesses.

Through this process, the Department will be able to identify existing and emerging technologies, best practices, and business processes, to maximize economies of scale, cost-effectiveness, systems integration, and resource allocation, and to identify the most appropriate contract mechanisms to enhance the financial accountability and mission effectiveness of border security programs.

Title II—Border Security Cooperation and Enforcement

Sec. 201. Joint strategic plan for United States border reconnaissance and support

Subsection (a) requires the Secretary of Homeland Security and the Secretary of Defense to develop a joint strategic plan to increase the availability of Department of Defense surveillance equipment using their current authority under chapter 18 of title 10 U.S.C., to assist the Department of Homeland Security's along the international land and maritime borders of the United States.

Subsection (b) requires the Secretary of Homeland Security and the Secretary of Defense to submit a report to the Congress within six months describing the Department of Defense will assist with border security surveillance operations of the Department of Homeland Security, provide a copy of the joint strategic plan, and describe the type of equipment and support to be provided under the joint strategic plan. To ensure that safety with the National Airspace System (NAS) is not compromised by the use of surveillance technologies, especially unmanned aerial vehicles (UAVs), this section requires the Department of Homeland Security and the Department of Defense to work with the Department of Transportation and the Federal Aviation Administration (FAA) to address safety and airspace control issues associated with the use of UAVs.

Subsection (c) provides that this section will not alter or amend the prohibition on the use of the Army or the Air Force as a *posse comitatus* under section 1385 of title 18 U.S.C.

The purpose of this section is to expand upon the current relationship between the Department of Homeland Security and the Department of Defense Joint Task Force North (JTF-North). JTF-North, formerly known as Joint Task Force Six, currently provides support along the border through the collection, fusions and disseminations of actionable intelligence, surveillance support, and coordination of military training exercises to provide enhanced domain awareness on the border. The Committee supports these efforts and believes that additional surveillance coordination and support is es-

sential for gaining operational control along the international land and maritime borders of the United States.

Sec. 202. Border security on protected lands

Subsection (a) requires the Secretary of Homeland Security (Secretary) to assess border security vulnerabilities on Department of Interior land directly adjacent to the international land border of the United States to prevent the entry of terrorists and illicit materials.

Subsection (b) requires the Secretary to provide additional border security assistance as necessary based on the evaluation in subsection (a).

The purpose of this section is to enhance security along the 45 percent of the northern and southern border combined under the jurisdiction of the Secretary of the Interior; this land includes national parks and tribal land. In most cases there are sensitive environmental and cultural considerations that add to the border security challenges in these areas. The Committee on Homeland Security believes that a focused review of the 800-plus miles under the management of the Department of Interior will be beneficial to the Secretary in increasing and adapting security enhancements on this land.

Sec. 203. Border security threat assessment and information sharing test and evaluation exercise

This section requires the Secretary of Homeland Security (Secretary) to conduct a training exercise on border security information sharing within one year after the date of enactment. This exercise shall be led by the Chief Intelligence Officer of the Department of Homeland Security (Department) in consultation with relevant border authorities and other appropriate federal, state, and local officials. The exercise shall involve officials from all levels of government and representatives from the private sector to test the Nation's capacity to detect and disrupt threats to the integrity of the border, and evaluate information sharing capabilities between the participants. The Secretary is required to report to the Committee on Homeland Security (Committee) with an assessment of the exercise.

The purpose of this section is to evaluate and strengthen the Department's capabilities to share, analyze and act on border intelligence information to detect and disrupt cross-border terrorist and criminal-related activities that threaten the United States. The Committee intends that this border security exercise be designed and implemented similar to past TOPOFF (Top Officials) exercise carried out by the Department.

Sec. 204. Border Security Advisory Committee

The section requires the Secretary of Homeland Security (Secretary) to establish a Border Security Advisory Committee to provide advice and recommendations to the Secretary of Homeland Security on issues relating to border security and enforcement along the international land and maritime borders of the United States.

In order to ensure a broad cross-section of perspectives about border security, the members of the Advisory Committee will be comprised of state and local government representatives from

States that are located along the international land and maritime borders of the United States, community representatives from such states, and tribal authorities of such States.

Sec. 205. Permitted use of Homeland Security grant funds for border security activities

This section gives the Secretary of Homeland Security the authority to permit a State, local government, or Indian tribe to use the Federal funds that they have received under the State Homeland Security Grant Program, the Urban Area Security Initiative, and the Law Enforcement Terrorism Prevention Program for border security activities usually performed by a Federal agency but that the State, local, or Tribal governments have performed on behalf of the Federal government pursuant to an agreement.

Since the attacks of September 11, 2001, many States, local, and Tribal governments have increasingly assumed some of the Federal government's terrorism preparedness duties. The Federal government should encourage States, local governments, and Indian tribes to assist the Federal government in providing security where it would otherwise be lacking. This section supports and encourages such a policy.

This section does not permit grant recipients to use their Federal funds to supplant State, local, or tribal expenses. It is also limited in scope. States, localities, and tribes may defray the costs of assumed duties only with the Secretary's consent. Moreover, only States, localities, and tribes that have assumed Federal border security duties pursuant to an agreement with a Federal agency would be eligible to use their Federal funds for such purposes.

Sec. 206. Center of Excellence for Border Security

This section directs the Secretary of Homeland Security to establish a university-based Center for Excellence for Border Security (Center) utilizing the same merit-review processes and procedures that the Science and Technology Directorate within the Department of Homeland Security (Department) has established for selecting such centers. This Center shall prioritize its activities on the basis of risk to address the most significant threats, vulnerabilities and consequences posed by the Nation's borders and border control systems. Among other things, this Center should conduct research, examine border security technologies and systems, and provide educational, technical, and analytical assistance in order for the Department to effectively secure the Nation's borders. The Committee on Homeland Security (Committee) also believes that this Center should examine the need to secure our borders from terrorists in a cost-effective manner, as well as how to achieve security without impeding legitimate trade and travel, or adversely impacting the economic and social stability of surrounding communities.

The Committee notes that the Homeland Security Centers of Excellence program, administered by the Department's Science and Technology Directorate, is establishing university-based centers for multi-disciplinary research to address critical homeland security missions. Centers of Excellence bring together leading researchers, scientists, and technical experts to focus on the most significant terrorist threats facing our country. To ensure the Centers include

the broadest range of expertise available nationally, the Undersecretary for Science and Technology shall, to the maximum extent practicable, review on an ongoing basis the applicant pool for the Centers of Excellence program to ensure a diverse cross-section of our Nation's higher educational institutions is represented.

Sec. 207. Sense of Congress regarding cooperation with Indian Nations

This section is a sense of Congress that in developing the National Strategy for Border Security, the Department of Homeland Security should include recommendations from sovereign Indian Nations, consider whether a Tribal Smart Border working group is necessary, and ensure that border security agencies work cooperatively on issues involving Tribal lands.

Title III—Detention and Removal

Sec. 301. Mandatory detention for aliens apprehended at or between ports of entry

The Committee on Homeland Security (Committee) believes that in order to secure our Nation from terrorist attacks, it is necessary to detain all illegal aliens who are apprehended by the Border Patrol or at a United States port of entry, until they are admitted into or removed from the United States. The Committee has determined that this shift in current border security policy is necessary to address the dramatic increase in non-Mexicans, commonly referred to as “Other Than Mexicans” or OTMs, apprehended illegally entering the United States. The numbers of OTMs illegally crossing the border has grown steadily over the past several years. In the first ten months of Fiscal Year (FY) 2005, 135,097 OTMs were apprehended out of the 1.02 million undocumented aliens arrested by the Border Patrol. By contrast, in FY 2004, the number of OTMs apprehended was 75,392. In FY 2003, the figure was only 49,545.

Among such OTMs are those from special interest countries and state sponsors of terrorism. Due to limited detention bed space, most OTMs apprehended by the Border Patrol are not detained, but rather are released into the United States with a formal Notice to Appear (NTA) before an Immigration Judge at a future date. Some estimate as many as 75 percent of OTMs that are released, fail to appear for their immigration hearing. For example, in FY 2004, 54,261 aliens nationwide did not appear in court as required by their NTAs. This number includes 530 from the Islamic Republic of Pakistan, 206 from the Islamic Republic of Iran, 164 from the Hashemite Kingdom of Jordan, 93 from the Republic of Iraq, 80 from the Republic of Yemen, and 29 from the Islamic Republic of Afghanistan.

This “catch and release” policy has been viewed as providing an incentive for other aliens to enter the United States illegally. This section requires the Department of Homeland Security (Department) to end the “catch and release” policy by October 1, 2006. Between enactment of this Act and October 1, 2006, aliens who are released prior to their immigration removal hearing will be required to post bond of not less than \$5,000 before release. The Committee recommends that any bond money collected during this

interim period that is forfeited by the alien be used for border security purposes.

The Committee recognizes that the majority of Mexican nationals apprehended by the Border Patrol who are not eligible to be admitted into the United States will withdraw their application for admission and depart from the United States immediately, in accordance with section 235(a)(4) of the Immigration and Nationality Act (INA; P.L. 104–208). Therefore, subpart (1) of this section provides for an exception to the mandatory detention requirement in subsection (a) for such Mexicans. However, Mexicans who withdraw their application for admission under section 235(a)(4) of the INA but do not immediately depart from the United States will be detained according to this section.

Subpart (2) of this section provides an exception for certain aliens who are paroled into the United States under authority already granted to the Secretary of Homeland Security (Secretary) in section 212(d)(5)(A) of the INA (8 U.S.C. 1182(d)(5)(A)). This section of the INA provides that parole will be granted by the Secretary to certain aliens on a case-by-case basis for urgent humanitarian reasons or significant public benefit. The Committee strongly urges the Secretary to carefully consider the decision to release an alien into the United States and recommends that such authority should be exercised in very limited circumstances.

One such circumstance pertains to unaccompanied alien juveniles. While the Committee recognizes that certain juveniles may be dangerous criminals or pose a threat to national security and should not be paroled into the United States under this authority, the Committee also urges the Secretary to exercise this discretionary parole authority, as appropriate, for unaccompanied alien juveniles who are not violent juveniles or deemed a national security threat. Additionally, the Committee intends this section to apply to those aliens requiring urgent medical care.

Subpart (1) of subsection (c) is included in this section for the purpose of clarifying that this section is not intended to change, alter, or amend any current statutes, regulations, policies, and/or practices pertaining to the detention of those aliens who are citizens or nationals of the Republic of Cuba (Cuba) who are apprehended at a United States port of entry or along the international land and maritime borders of the United States. As well, this section is also not intended to change or alter the current detention statutes, regulations, policies, or practices pertaining to those aliens who are citizens or nationals of Cuba who may be detained on criminal and related grounds or national security grounds.

The Committee recognizes certain aliens may have valid claims for asylum in the United States. Subpart (2) of subsection (c) clarifies that this section is not intended to change, alter, or amend existing law concerning those aliens who indicate an intention to apply for asylum under section 208 of the INA or express a fear of persecution to U.S. Customs and Border Protection personnel.

Sec. 302. Enhanced detention capacity

This section authorizes an increase of 8,000 beds over existing detention bed space from Fiscal Year 2007 through 2010, for a total increase of 32,000 over existing capacity in accordance with the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108–

796), which called for an additional 40,000 detention beds incrementally added between fiscal year 2006 through 2010.

The Fiscal Year 2005 Supplemental Appropriations Act (P.L. 109–13) combined with the Department of Homeland Security Appropriations Act for Fiscal Year 2006 (P.L. 109–90) provides an additional 3,870 detention beds. In addition to the approximately 18,000 beds the U.S. Immigration and Customs Enforcement Detention and Removal Office (DRO) says that it has funding for, the additional funding should provide DRO a total detention capacity of nearly 22,000. This is a positive step in improving detention capacity, but the Committee supports the authorization of 8,000 additional beds.

Sec. 303. Expansion and effective management of detention facilities

This section requires the Secretary of Homeland Security (Secretary), subject to the availability of appropriations, to fully utilize all bed space owned or contracted by the Department of Homeland Security (Department) to maximum capacity. This section also requires the Secretary to utilize all other possible options to cost effectively increase detention capacity including temporary facilities, contracting with state and local jails, and secure alternatives to detention.

In order to carry out sections 301 and 302 of this Act, the Committee on Homeland Security recognizes that additional bed space is necessary. However it is anticipated that the shift in detention policy as proscribed by this legislation will provide a decrease in the number of aliens that must be detained. The Secretary is therefore directed to improve bed space management within the Department and to also utilize temporary facilities, including secure tent facilities, contracting additional space with existing correctional facilities, and non-permanent facilities such as those used by evacuees and the Department of Defense for military deployments.

Sec. 304. Enhancing transportation capacity for unlawful aliens

This section permits the Secretary of Homeland Security (Secretary) to enter into contracts with private companies for the purpose of providing secure transportation of aliens from the site of their apprehension to a Department of Homeland Security (Department) detention facility and other locations as directed by the Secretary. This section seeks to expand necessary resources as demands for transportation increase under the mandatory detention requirements in Section 301 of this Act. This section will help alleviate the high burden of administrative duties performed by Border Patrol agents, allowing these individuals to more fully focus on patrolling and apprehending aliens illegally crossing between United States ports of entry.

The Department should award contracts only to those vendors who will provide low cost, effective and efficient service, and who can ensure the secure transport of aliens to detention facilities.

Sec. 305. Denial of admission to nationals of country denying or delaying accepting alien

Section 243(d) of the Immigration and Nationality Act (INA; P.L. 104–208) currently provides authority for the United States to meet the challenges posed by non-cooperative foreign governments.

This provision in the INA states that if a foreign country denies or unreasonably delays accepting an alien who is a citizen, subject, national, or resident of that country after requested by the Secretary, the Secretary of State can discontinue granting immigrant or nonimmigrant visas, or both, for individuals seeking to travel from that country to the United States. Although this statutory sanction has only been threatened by the State Department in the past, it has proven useful to elicit cooperation from foreign governments from such countries as Guyana, Vietnam, and Cambodia.

A September 30, 2005 oversight hearing of the Subcommittee on Economic Security, Infrastructure Protection and Cybersecurity of the Committee on Homeland Security (Committee), found that the Department of State has not used their current statutory authority to deny admission to nationals of countries that cause delays in this process. The Committee believes that failure to use such authority is creating an unnecessary vulnerability in our border security system. Therefore, this section provides the Secretary of Homeland Security with similar authority to refuse visas to nationals of any foreign country not cooperating with United States repatriation procedures. The Department of Homeland Security is the primary agency in the Federal government responsible for apprehension, detention, and removal of illegal aliens, and cannot fully carry out their mission without such authority.

Sec. 306. Report on financial burden of repatriation

This section requires that the Secretary of Homeland Security (Secretary) submit a report to the Congress and to the Secretary of State detailing the costs associated with the repatriation of foreign nationals and provide recommendations to make the process more cost-effective. The report should detail both repatriation costs to the United Mexican States and Canada, as well as to non-contiguous countries. This report should not only include costs of commercial and charter flights, but also include employee costs, as well as detention costs for delayed or denying repatriation.

As outlined in section 305, the Committee on Homeland Security (Committee) is concerned that foreign countries are delaying or denying repatriation of their own nationals and as a result, the Federal government is incurring significant costs. It is the Committee's belief that greater cooperation is necessary from foreign nations and this report will provide further evidence that such cooperation is necessary. It will also assist the Secretary in identifying foreign countries that delay or deny repatriation of their own nationals and support the use of the Secretary's 243(d) sanction authority.

Sec. 307. Training program

When an alien is seeking entry into the United States or is apprehended by Border Patrol, the immigration officer (either a port of entry inspector or a Border Patrol agent) is required to ask the alien a series of "protection questions" to identify individuals that are afraid to return to their home country. If the alien expresses a fear of return in response to this interview, current law states that the alien is to be detained and interviewed by a U.S. Citizenship and Immigration Services Asylum Officer. According to the Report on Asylum Seekers in Expedited Removal (February 2005) by the U.S. Commission on International Religious Freedom

(USCIRF), 93 percent of aliens referred by an immigration officer for a credible fear determination were approved in Fiscal Years 2000 through 2003. In the same report, the USCIRF raises concerns about the initial interview process by an immigration officer. This section requires the Secretary of Homeland Security (Secretary) to ensure the integrity and consistency of the inspection process by evaluating the current training provided to Border Patrol agents and port of entry inspectors.

The Committee on Homeland Security (Committee) recognizes that the results of this study may indicate one of two possibilities: (1) Border Patrol agents and port of entry inspectors need to exhibit additional sensitivity to those seeking asylum or (2) Border Patrol agents and port of entry inspectors do not show sufficient discretion in determining a fear to be credible. It is of concern to the Committee that of the 93 percent of asylum-seekers granted asylum (mentioned above), it is estimated that only 25 percent of this number had legitimate claims. While the Committee is committed to ensuring that legitimate fears are recognized and those individuals protected within the borders of the United States, it also recognizes that at least two of the September 11, 2001, hijackers were erroneously granted asylum and allowed entry in to the United States.

Sec. 308. Expedited removal

This section will codify the policy announcement made by the Secretary of Homeland Security (Secretary) on September 14, 2005, to expand Expedited Removal (ER) authority along every sector of the southwest border of the United States.

The Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA; P.L. 104-208), provided the Attorney General with new authority for dealing with aliens who attempt to enter the United States by engaging in fraud or misrepresentation (e.g., falsely claiming to be a United States citizen or misrepresenting a material fact) or who arrive with fraudulent, improper, or no documents. Expedited Removal provisions were drafted in IIRIRA to target perceived abuses of the asylum process. By restricting the hearing, review and appeals process for aliens arriving at ports of entry, immigration officers may deny admission and order aliens without proper documentation to be summarily removed from the United States. When ER is used to remove an alien from the United States, the removal has the same legal effect as a formal order of deportation.

Until 2004, ER had been used by the former Immigration and Naturalization Service (INS) and now—the Department of Homeland Security (Department) in only very limited circumstances—for those aliens with obviously fraudulent documents who were arriving at United States air or sea ports of entry. Thus, when the Department announced its new policy in the Federal Register on August 11, 2004, it represented a fundamental shift in removal policy. For the first time, expedited removal would be used by Border Patrol agents who apprehended aliens between United States ports of entry. The policy is limited to nationals who are not from the United Mexican States or Canada, unless they have histories of criminal activity or immigration violations, and requires that the

aliens must be apprehended within 14 days of entry into the United States and within 100 miles of the border.

According to U.S. Customs and Border Protection (CBP), the average detention time for those subject to ER is approximately 30 days, compared with an average detention time of 89 days for those who go through the formal immigration court system. The Department reports that it has successfully implemented ER in three Border Patrol Sectors along the southwest border: Tucson, Arizona; McAllen, Texas; and Laredo, Texas. Since September of 2004, of the 34,000 undocumented aliens apprehended by Border Patrol from these three sectors subject to expedited removal, 20,000 have been returned to their country of origin. As of September 14, 2005, all Border Patrol agents along the southwest border had received the necessary training to begin using ER.

In compliance with current policy guidelines, mandatory ER will be applied only to those aliens who have spent less than 14 days in the United States and are apprehended within 100 miles of the United States border by Border Patrol agents. However, nothing in this provision limits the Secretary's ability to expand the use of ER within the limits of IIRIRA.

The Secretary stated that "[e]xpanding Expedited Removal gives Border Patrol agents the ability to break the cycle of illegal migration." By substantially reducing the time from arrest to removal of undocumented OTM's, the Department anticipates that ER will disrupt human smuggling along the southwest border.

Mandatory implementation of the ER authority along the southwest border will inevitably result in an immediate increase in detentions and thus the need for detention capacity. The Department has indicated that it will seek funding to increase detention capacity through funds that will be made available in the Fiscal Year 2006 budget.

Title IV—Effective Organization of Border Security Agencies

Sec. 401. Enhanced border security coordination and management

On March 9, 2005, the Subcommittee on Management, Integration, and Oversight of the Committee on Homeland Security (Committee) held an oversight hearing entitled, "CBP and ICE: Does the Current Organizational Structure Best Serve U.S. Homeland Security Interests?" at which Members received testimony from six non-governmental witnesses. The hearing revealed that the current organizational structure of U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) has created "bureaucratic walls" and has resulted in poor cooperation and information sharing between the two agencies. On December 13, 2004, a joint report by The Heritage Foundation and the Center for Strategic and International Studies entitled, "DHS 2.0: Rethinking the Department of Homeland Security," recommended the merger of the two agencies.

Due to unrelated events, both the Commissioner of CBP, Robert Bonner, and the former Assistant Secretary of ICE, Michael Garcia, have since resigned. Many have urged the Secretary of Homeland Security (Secretary) to take this opportunity to reorganize the agencies and eliminate the bureaucratic problems identified by Congress and outside think tanks. However, on July 13, 2005, the

Secretary announced his reorganization plans based on his "Second Stage Review" (2SR), but did not include a provision to merge CBP and ICE. Instead the Secretary recommended, among other things, that the Border and Transportation Security Directorate within the Department of Homeland Security (Department), which previously oversaw and coordinated CBP and ICE, be eliminated in its entirety and that both CBP and ICE directly report to the Secretary.

The DHS Office of Inspector General (OIG) initiated a review to examine both the merits and potential negative consequences of merging CBP and ICE. Throughout the review process, the OIG attempted to determine whether the organizational and management problems they discovered were due to pre-existing conditions carried over from legacy Immigration and Naturalization Service and legacy Customs or if they were new problems arising from the implementation of the new structure under the Department's reorganization plan of February 2003. The OIG also considered whether the financial management problems at ICE contributed to their findings. After eliminating these factors, the OIG concluded that the current organizational structure has resulted in challenges in three main areas:

- (1) Coordination between apprehension and detention and removal efforts;
- (2) Coordination between interdiction and investigative efforts; and
- (3) Coordination of intelligence activities.

While this section recognizes that there may be problems with coordination of activities, the committee does not call for the merger of these two agencies at this time but rather requires the Department to immediately and directly address the problems created by the separation of border security and immigration enforcement personnel, assets and missions including the following:

- (1) Creating a Secure Borders Program Office;
- (2) Creating a mechanism for sharing and coordinating intelligence information and analysis at the headquarters and field office levels pertaining to counter-terrorism, border enforcement, immigration, human smuggling, human trafficking;
- (3) Establishing task forces to better coordinate border, customs and immigration enforcement;
- (4) Coordinating Border Patrol with ICE on all cases involving violations of United States' customs and immigration laws;
- (5) Examining border security and customs and immigration related resources; and
- (6) Creating measures and metrics for determining the effectiveness of coordinated border enforcement efforts.

The Committee will continue to monitor the progress of the Department in addressing these issues. If there are no tangible improvements from such measures, the Committee will revisit the possibility of merging the two agencies during the next session of the 109th Congress.

Sec. 402. Office of Air and Marine Operations

Since 1969, the Office of Air and Marine Operations (AMO) has served to defend our Nation from the smuggling of narcotics and other contraband through the air or in the territorial waters of the United States, supported the illegal immigration interdiction mis-

sions of the Border Patrol, Coast Guard, and other agencies, as well as provided aerial and marine support for drug and migrant smuggling investigations by U.S. Immigration and Customs Enforcement (ICE). Prior to the merger of AMO with similar Border Patrol assets into one single, new agency—"CBP Air"—AMO served as an aviation resource for Department of Homeland Security (Department)-wide missions. The merger intended to unify the aviation and marine resources of the border under one operational Departmental force. Instead, the aviation organization has become a single-mission Border Patrol air force. More than 60 percent of its assets and personnel are now in the day-to-day chain of command of the Border Patrol sector chiefs. Additionally, one year after the transfer, there are still no decisions on consolidation of the marine force.

The Committee of Homeland Security (Committee) recognizes that a robust and coordinated air program within the Department is essential to effective and improved security along our Nation's borders by providing surveillance, tracking, deterrence, rapid response capabilities, and investigative support. By placing AMO directly under the authority of the Secretary of Homeland Security (Secretary), this section of the bill seeks to ensure that AMO will be an effective partner with other Department agencies, primarily ICE and U.S. Customs and Border Protection (CBP). Together, these agencies are responsible for keeping out terrorists, illegal narcotics, weapons of mass destruction, and eliminating human smuggling across our borders. This organizational change will eliminate the need for AMO to seek bureaucratic approvals and agreements prior to responding to immediate threats to the Nation's homeland security.

It is the intention of the Committee that the new AMO established under this section be comprised of all legacy AMO personnel, facilities, resources, and training programs.

In September 2005, the Chairman of the Committee sent a letter to the Department requesting information on how the break up of AMO would impact missions Department-wide. The Department has failed to present a clear plan ensuring that AMO assets will continue to be available for other important security missions. Terrorists do not acknowledge or respect the boundaries of Border Patrol Sectors. Assets must therefore be immediately deployable to meet threats.

Through the operation of its Air and Marine Operations Center (AMOC), in Riverside, California, AMO supports its own air and marine operations and those of other Federal, State, and local law enforcement agencies. The Committee has become aware of instances where important flight operations information was either not provided to the AMOC or not provided in a timely manner, compromising the safety of all aircraft operating in the area of such operations. This section would require advance flight information to be filed with AMOC to prevent accidents and duplication. Required information shall include the identifiable transponder, radar, and electronic emissions and codes originating aboard such aircraft or similar assets used in the aviation activity.

The Committee also directs the Secretary to conduct a review of the assets and personnel currently assigned to AMO, and then prepare a report describing the additional assets, personnel, and other

resources necessary for AMO to carry out its responsibilities under this Act. This report shall be used to develop a separate line item budget request for AMO.

Sec. 403. Transfer of Shadow Wolves

The “Shadow Wolves” are a specialized unit of Customs Patrol Officers (CPO) created by Congress in 1972, to patrol the international land border within the Tohono O’odham Nation, a sovereign Indian Nation, located in the State of Arizona. The Shadow Wolves officers are Native Americans who combine modern technology and ancient tracking techniques to identify, pursue, and arrest smugglers along the 76 miles and 2.8 million acres within the Tohono O’odham Nation. This unit has proven to be one of the Nation’s most valuable assets against narcotics smuggling. Each year the Shadow Wolves unit has seized more than 100,000 pounds of illegal narcotics.

After the creation of the Department of Homeland Security, the Shadow Wolves unit was transferred to U.S. Customs and Border Protection and placed under the administrative control of the Tucson Sector of the U.S. Border Patrol. This reorganization has produced uncertainty and a lack of clear direction for the unit, negatively impacting operations and retention of personnel.

This section transfers the Shadow Wolves to U.S. Immigration and Customs Enforcement (ICE), as the unit’s work most closely resembles that of ICE Special Agents who investigate and attempt to close down large drug smuggling operations. In addition, this section sets the pay scale of the Shadow Wolves at the same rate as ICE Special Agents and specifies that the Chief Customs Patrol Officer will have a rank that is equivalent to a resident agent-in-charge of the Office of Investigations with ICE.

This section also authorizes new units, similar to the Shadow Wolves, to operate on other similarly situated Indian reservations—such as the Akwesasne (Mohawk) Reservation in upstate New York.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

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TITLE II—IMMIGRATION

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**CHAPTER 4—INSPECTION, APPREHENSION, EXAMINATION,
EXCLUSION, AND REMOVAL**

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INSPECTION BY IMMIGRATION OFFICERS; EXPEDITED REMOVAL OF
INADMISSIBLE ARRIVING ALIENS; REFERRAL FOR HEARING

SEC. 235. (a) * * *

(b) INSPECTION OF APPLICANTS FOR ADMISSION.—

(1) INSPECTION OF ALIENS ARRIVING IN THE UNITED STATES
AND CERTAIN OTHER ALIENS WHO HAVE NOT BEEN ADMITTED OR
PAROLED.—

(A) SCREENING.—

(i) * * *

* * * * *

(iii) APPLICATION TO CERTAIN OTHER ALIENS.—

(I) IN GENERAL.—The **Attorney General** *Secretary of Homeland Security* may apply clauses (i) and (ii) of this subparagraph to any or all aliens described in subclause (II) as designated by the **Attorney General** *Secretary of Homeland Security*. Such designation shall be in the sole and unreviewable discretion of the **Attorney General** *Secretary of Homeland Security* and may be modified at any time.

* * * * *

(III) EXCEPTION.—*Notwithstanding subclauses (I) and (II), the Secretary of Homeland Security shall apply clauses (i) and (ii) of this subparagraph to any alien (other than an alien described in subparagraph (F)) who is not a national of a country contiguous to the United States, who has not been admitted or paroled into the United States, and who is apprehended within 100 miles of an international land border of the United States and within 14 days of entry.*

* * * * *

(F) EXCEPTION.—Subparagraph (A) shall not apply to an alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry or in any manner at or between a land border port of entry.

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PENALTIES RELATED TO REMOVAL

SEC. 243. (a) * * *

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DISCONTINUING GRANTING VISAS TO NATIONALS OF COUNTRY DENYING OR DELAYING ACCEPTING ALIEN.—On being notified by the Attorney General that the government of a foreign country denies or unreasonably delays accepting an alien who is a citizen, subject, national, or resident of that country after the Attorney General asks whether the government will accept the alien under this section, the Secretary of State shall order consular officers in that foreign country to discontinue granting immigrant visas or nonimmigrant visas, or both, to citizens, subjects, nationals, and

residents of that country until the Attorney General notifies the Secretary that the country has accepted the alien.】

(d) DENIAL OF ADMISSION TO NATIONALS OF COUNTRY DENYING OR DELAYING ACCEPTING ALIEN.—Whenever the Secretary of Homeland Security determines that the government of a foreign country has denied or unreasonably delayed accepting an alien who is a citizen, subject, national, or resident of that country after the alien has been ordered removed, the Secretary, after consultation with the Secretary of State, may deny admission to any citizen, subject, national, or resident of that country until the country accepts the alien who was ordered removed.

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HOMELAND SECURITY ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

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

Sec. 1. Short title; table of contents.

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TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

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Subtitle C—Miscellaneous Provisions

Sec. 421. Transfer of certain agricultural inspection functions of the Department of Agriculture.

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Sec. 431. *Office of Air and Marine Operations.*

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TITLE I—DEPARTMENT OF HOMELAND SECURITY

* * * * *

SEC. 103. OTHER OFFICERS.

(a) DEPUTY SECRETARY; UNDER SECRETARIES.—There are the following officers, appointed by the President, by and with the advice and consent of the Senate:

(1) * * *

* * * * *

(9) Not more than **【12】 13** Assistant Secretaries.

* * * * *

TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

* * * * *

Subtitle C—Miscellaneous Provisions

* * * * *

SEC. 431. OFFICE OF AIR AND MARINE OPERATIONS.

(a) *ESTABLISHMENT.*—*There is established in the Department an Office of Air and Marine Operations (referred to in this section as the “Office”).*

(b) *ASSISTANT SECRETARY.*—*The Office shall be headed by an Assistant Secretary for Air and Marine Operations who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall report directly to the Secretary. The Assistant Secretary shall be responsible for all functions and operations of the Office.*

(c) *MISSIONS.*—

(1) *PRIMARY MISSION.*—*The primary mission of the Office shall be the prevention of the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States.*

(2) *SECONDARY MISSION.*—*The secondary mission of the Office shall be to assist other agencies to prevent the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States.*

(d) *AIR AND MARINE OPERATIONS CENTER.*—

(1) *IN GENERAL.*—*The Office shall operate and maintain the Air and Marine Operations Center in Riverside, California, or at such other facility of the Office as is designated by the Secretary.*

(2) *DUTIES.*—*The Center shall provide comprehensive radar, communications, and control services to the Office and to eligible Federal, State, or local agencies (as determined by the Assistant Secretary for Air and Marine Operations), in order to identify, track, and support the interdiction and apprehension of individuals attempting to enter United States airspace or coastal waters for the purpose of narcotics trafficking, trafficking of persons, or other terrorist or criminal activity.*

(e) *ACCESS TO INFORMATION.*—*The Office shall ensure that other agencies within the Department of Homeland Security, the Department of Defense, the Department of Justice, and such other Federal, State, or local agencies, as may be determined by the Secretary, shall have access to the information gathered and analyzed by the Center.*

(f) *REQUIREMENT.*—*Beginning not later than 180 days after the date of the enactment of this Act, the Secretary shall require that all information concerning all aviation activities, including all airplane, helicopter, or other aircraft flights, that are undertaken by either the Office, United States Immigration and Customs Enforcement, United States Customs and Border Protection, or any subdivisions thereof, be provided to the Air and Marine Operations Center. Such information shall include the identifiable transponder, radar, and electronic emissions and codes originating and resident aboard the aircraft or similar asset used in the aviation activity.*

(g) *TIMING.*—*The Secretary shall require the information described in subsection (f) to be provided to the Air and Marine Operations Center in advance of the aviation activity whenever prac-*

licable for the purpose of timely coordination and conflict resolution of air missions by the Office, United States Immigration and Customs Enforcement, and United States Customs and Border Protection.

(h) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to alter, impact, diminish, or in any way undermine the authority of the Administrator of the Federal Aviation Administration to oversee, regulate, and control the safe and efficient use of the airspace of the United States.

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COMMITTEE JURISDICTION LETTERS

COMMITTEE ON ARMED SERVICES,
HOUSE OF REPRESENTATIVES,
Washington, DC, December 6, 2005.

Hon. PETER KING,
*Chairman, Committee on Homeland Security,
Adams LOC, Washington, DC.*

DEAR MR. CHAIRMAN: On November 17, 2005, the Committee on Homeland Security ordered H.R. 4312, the “Border Security and Terrorism Prevention Act of 2005” to be reported. As you know certain provisions in H.R. 4312 fall within the jurisdiction of the Committee on Armed Services.

Our Committee recognizes the importance of H.R. 4312 and the need for the legislation to move expeditiously. Therefore, while we have a valid claim to jurisdiction over these provisions the Committee on Armed Services will waive further consideration of H.R. 4312. In the event of a conference with the Senate on this bill, the Committee on Armed Services reserves the right to seek the appointment of conferees.

I would appreciate the inclusion of this letter and a copy of the response in your Committee’s report on H.R. 4312 and the Congressional Record during consideration of the measure on the House floor.

With best wishes.
Sincerely,

DUNCAN HUNTER,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
Washington, DC, December 6, 2005.

Hon. DUNCAN HUNTER,
*Chairman, Committee on Armed Services,
Rayburn House Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your recent letter expressing the Armed Services Committee’s jurisdictional interest in H.R. 4312, the “Border Security and Terrorism Prevention Act of 2005.” I appreciate your willingness to waive further consideration of the bill in order to expedite further proceedings. I agree that, by waiving further consideration, the Armed Services Committee does

not waive any jurisdiction it may have over any provisions of the bill.

As you have requested, I will include a copy of your letter and this response as part of the Committee on Homeland Security's report and the Congressional Record during consideration of the legislation on the House floor. Thank you for your cooperation.

Sincerely,

PETER T. KING,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC, December 6, 2005.

Hon. PETER T. KING,
*Chairman, Committee on Homeland Security,
Adams Building, Washington, DC.*

DEAR CHAIRMAN KING: I am writing concerning H.R. 4312, the "Border Security and Terrorism Prevention Act of 2005," which the Committee on Homeland Security ordered reported on November 17, 2005.

As you know, the Committee on Ways and Means has jurisdiction over trade and customs revenue functions. A range of provisions in H.R. 4312 and its report affect the Committee's jurisdiction, including: requiring reports and analyses covering these trade and revenue functions at the border; setting new requirements for inspectors and ensuring they retain customs revenue expertise; and establishing requirements related to the involvement of U.S. exporters and importers in setting policy recommendations. Additionally, the bill contains language that closely reflects that included in a customs authorization bill passed out of the Committee on Ways and Means last year (H.R. 4418). However, in order to expedite this bill for floor consideration, the Committee will forgo action. This is being done with the understanding that it does not in any way prejudice the Committee with respect to the appointment of conferees or its jurisdictional prerogatives on this bill or similar legislation.

I would appreciate your response to this letter, confirming this understanding with respect to H.R. 4312, and would ask that a copy of our exchange of letters on this matter be included in your Committee Report to the bill.

Best regards,

BILL THOMAS,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
Washington, DC, December 6, 2005.

Hon. WILLIAM THOMAS,
*Chairman, Committee on Ways and Means,
Longworth House Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your recent letter expressing the Ways and Means Committee's jurisdictional interest in H.R. 4312, the "Border Security and Terrorism Prevention Act of

2005.” I appreciate your willingness to forgo action on the bill in order to expedite further proceedings, and agree that, by not seeking a sequential referral, the Ways and Means Committee does not waive any jurisdiction it may have over provisions of the bill.

As you have requested, I will include a copy of your letter and this response as part of the Committee on Homeland Security’s report on H.R. 4312. Thank you for your cooperation.

Sincerely,

PETER T. KING,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC, December 6, 2005.

Hon. PETER T. KING,
*Chairman, Committee on Homeland Security,
Adams Building, Washington, DC.*

DEAR MR. CHAIRMAN: I am writing to you concerning the jurisdictional interest of the Transportation and Infrastructure Committee in matters being considered in H.R. 4312, the Border Security and Terrorism Prevention Act of 2005.

Our Committee recognizes the importance of H.R. 4312 and the need for the legislation to move expeditiously. Therefore, while we have a valid claim to jurisdiction over a number of provisions of the bill, I do not intend to request referral. This, of course, is conditional on our mutual understanding that nothing in this legislation or my decision to forego the referral waives, reduces or otherwise affects the jurisdiction of the Transportation and Infrastructure Committee.

I appreciate your willingness to address several concerns that I have, from my committee’s perspective, with the legislation. Some were addressed during your markup of the bill and I am pleased that you are agreeable to a manager’s amendment when the bill is considered on the Floor to satisfy the remaining concerns.

The Committee on Transportation and Infrastructure also asks that you support our request to be conferees on the provisions over which we have jurisdiction during any House-Senate conference. I would appreciate it if you would include a copy of this letter and of your response acknowledging our jurisdictional interest in the Committee Report and as part of the Congressional Record during consideration of the bill by the House.

Thank you for your cooperation in this matter and your leadership in homeland security matters.

Sincerely,

DON YOUNG,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
Washington, DC, December 6, 2005.

Hon. DON YOUNG,
*Chairman, Committee on Transportation and Infrastructure,
Rayburn House Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your recent letter expressing the Transportation and Infrastructure Committee's jurisdictional interest in H.R. 4312, the "Border Security and Terrorism Prevention Act of 2005." I appreciate your willingness not to request a sequential referral of the bill in order to expedite further proceedings, and acknowledge the agreement I made to work with you to address your Committee's remaining concerns. I agree that, by not requesting a referral, the Transportation and Infrastructure Committee does not waive any jurisdiction it may have over any provisions of the bill. In addition, I agree to support representation for your Committee during the House-Senate conference on any provisions determined to be within your Committee's jurisdiction.

As you have requested, I will include a copy of your letter and this response as part of the Committee on Homeland Security's report and the Congressional Record during consideration of the legislation on the House floor. Thank you for your cooperation.

Sincerely,

PETER T. KING,
Chairman.

DISSENTING AND ADDITIONAL VIEWS

INTRODUCTION

The Committee reported H.R. 4312, the “Border Security and Terrorism Prevention Act of 2005,” on Thursday, November 17, 2005. This is the first significant piece of legislation before the Committee since Representative Peter King (R–NY) became Chairman of the Committee. While we commend the Chairman in his efforts to make this legislation bipartisan by working with Representative Loretta Sanchez (D–CA) and including ideas of other Minority Members, the final legislation is lacking and contains some provisions that are problematic and do not contribute to the security of our nation.

The effort of this Committee to address border security, one of the biggest homeland security challenges of our time, in a bipartisan and thoughtful way should be commended. We thank our colleagues across the aisle for working with us to maintain open dialogue in the Committee, beyond the rhetoric and partisanship that often accompanies discussion of this issue. Unfortunately, because of jurisdictional turf battles and the desire to rush a bill through Congress, the bill voted out of Committee is incomplete and does not address the toughest issues with border security. Albert Einstein once said, “we can’t solve problems by using the same kind of thinking we used when we created them.” Yet, that is what the Committee did this week. We talked about technology, fences, personnel, and equipment, but we ignored the biggest problem in the room—comprehensive immigration reform. If our nation is to be secure, Congress must change our piece-meal approach and start solving the real problem at our borders.

An estimated seven to twelve million undocumented immigrants reside illegally in the United States. Many seek to cross our borders in a desperate plight for economic survival. Others flee persecution. Others overstay their legal visas, sometimes to remain with family already in the United States. To ensure that our homeland security efforts focus on terrorists and those who come into our nation with criminal intent, action must be taken to address the presence of these millions of people. Legislation to ensure that these individuals do not remain hidden underground will help us focus on the few that are intent on doing harm to our nation.

We realize that many citizens are concerned about the number of individuals who are entering this country illegally. Comprehensive immigration reform would allow us to address this issue. Such legislation, for example, could emphasize the use of automated employer verification systems that assist employers in their efforts to check the status of jobseekers. These systems would at least allow the nation to protect those employment sites most at-risk and vulnerable to attack—critical infrastructure—from terrorists who

might try to gain access to such sites under the guise of seeking employment. Lastly, it would be wrong for any border security bill to ignore the plight of vulnerable populations, such as unaccompanied undocumented immigrant minors, victims of trafficking, refugees and asylum seekers. These groups do not represent hotbeds for terrorism, but rather people in need of protection.

Only when Congress addresses these key issues will we end the continuous immigration enforcement failures that we have experienced over the past two decades, despite the passage of several immigration enforcement measures. Lastly, while Congress can pass laws, it is up to the Administration to fully enforce the law. Members from both sides of the aisle agreed during debate that this was not happening.

Before discussing the substance of the legislation that was before the Committee, we would like to note our concerns about narrow interpretations of the Committee's jurisdiction taken during the mark-up. The National Commission on Terrorist Attacks Upon the United States ("9/11 Commission") specifically found that Congress "fractured oversight of the various federal intelligence, law enforcement, and security agencies prior to September 11, 2001 prevented us from uncovering many of the systemic security problems that were exploited by al Qaeda. The Commission recommended that Congress designate a single committee with homeland security authority in the House and Senate. With the creation of the House Homeland Security Committee at the beginning of this year, we hoped this recommendation was fulfilled.

Unfortunately, this mark-up demonstrated that homeland security jurisdiction remains fractured and subject to arbitrary interpretation. Points of order were sustained against several amendments offered by the Minority, while amendments addressing similar issues by the Majority were found in order. For example, an amendment offered by Representative Dan Lungren (R-CA) that would affect the expedited removal of undocumented immigrants in the U.S. caught as far as hundred miles away from the border was found to be within the Committee's jurisdiction. As both Representatives Lofgren and Sanchez noted during the mark-up, Disneyland is almost a hundred miles away from the California border. Very few people in this country would argue that Disneyland is on our nation's border. Yet the Chairman found Disneyland to be within our jurisdiction, while ruling out of our jurisdiction several amendments offered by Representative Zoe Lofgren (D-CA) that would have affected the detention rights of undocumented immigrants in the U.S., including those at the border.

The logic in the difference between these two rulings is difficult to uncover. At the very least, we believe many of these Democratic amendments were in the joint jurisdiction of the Homeland Security Committee and other committees. In the future, we hope the Majority will adhere to a more reasonable interpretation of the Committee's jurisdiction in the interests of preventing the kind of fractured authority the 9/11 Commission condemned.

H.R. 4312, even as amended during mark-up, does not contain many initiatives offered by the Minority that would have provided the Department of Homeland Security with the personnel, equipment, training, support, and authority needed to truly secure the

border. In the end, this legislation requires extensive new planning, but gives little tangible assistance.

Nonetheless, we applaud Chairman King for including Representative Sanchez' call for the Department to complete a National Strategy for Border Security. Beginning with H.R. 5130, "The Secure Border Act," introduced in the 108th Congress, Democrats on the Select Committee on Homeland Security urged the Republican Congress to force the Administration and the Department to produce a comprehensive border security plan, something it has yet to do. By producing a comprehensive plan, the Department will finally have to decide what mix of personnel, equipment, technology, and other assets are needed to secure the border. In April of this year, Ms. Sanchez and Representative Sheila Jackson-Lee (D-TX) offered an amendment to H.R. 1817, the Homeland Security Authorization Act for Fiscal Year 2006, which would have required the development of a comprehensive land border security strategy. That amendment was rejected by the Majority. This Committee has finally done the right thing by requiring the Department to plan for a long-term approach to border security.

The Minority also appreciates Chairman King's decision to include other provisions in H.R. 4312 that have been advocated by our Members for several years, including making interoperable the fingerprint databases used by the Federal Bureau of Investigation and the Customs and Border Patrol and creating a Center of Excellence to study border security.

Additionally, we fully support the en bloc amendment offered by Chairman King. This amendment includes provisions advocated by the Minority including:

- (1) Creating a United States Border Patrol Unit in the U.S. Virgin Islands;
- (2) Expressing the Sense of Congress that Tribal governments should be involved in planning the National Strategy for Border Security;
- (3) Creating an intelligence assessment of the threat posed by terrorists that may try to infiltrate the nation's borders;
- (4) Improving communications with state, local, and tribal governments along the border; and
- (5) Directing the Secretary to develop and implement a comprehensive plan to protect the northern and southern land borders of the United States and address the different challenges each border faces.

The Minority also appreciates several amendments offered by the Majority that were included in the en bloc amendment, including the amendment offered by Representative Mike Rogers (R-AL) expressing the Sense of Congress that small, disadvantaged, minority-owned, and woman-owned businesses should be better involved in the Department's border security work.

Despite these positive steps included in the legislation, it still does not address several key areas where the Department needs more resources and authority to secure the border, including the following:

- Dedicated funding to hire more Border Patrol agents and customs inspectors and to obtain more beds for detaining undocumented immigrants at risk of flight;

- Better training for agents and inspectors working at the border and incentives to keep them from leaving public service;
- More high-tech equipment to monitor and secure the borders and protect the people working there;
- Strengthened programs to speed the passage of frequent travelers going through land border crossings; and
- More authority to penalize smuggling and trafficking of undocumented immigrants that result in death.

Additionally, this legislation mandates the removal of some categories of undocumented individuals who are captured along the border without considering the need for exceptions for certain humane reasons. While we support the general principle that immigrants caught at the border entering our nation illegally should be swiftly removed, we recognize that the Secretary should have adequate authority in certain cases where removal can be inhumane, such as for victims of sex trafficking.

Perhaps our greatest disappointment in H.R. 4312 is that it represents a failed opportunity to correct major flaws in the relationship between Immigrations and Customs Enforcement (ICE) and Customs and Border Enforcement (CBP), the Department's agencies primarily responsible for patrolling the border and conducting customs and immigration enforcement. The day before the mark-up of this legislation, the Subcommittee on Management, Integration, and Oversight held a hearing on the Office of Inspector General's new report finding a dysfunctional relationship between ICE and CBP. The report recommended the merger of ICE and CBP as the best solution to these problems. Despite having a draft copy of the Inspector General's report before he announced his recent reorganization of the Department, Secretary Chertoff chose not to merge ICE and CBP.

At the markup, and consistent with the Inspector General's recommendation, Representative Kendrick B. Meek (D-PL) offered an amendment to correct the broken working relationship between these agencies by merging them. The Chairman indicated at markup that he is not yet convinced a merger of ICE and CBP is necessary, and prefers to wait to observe the effect of the Secretary's efforts to reorganize their relationship. However, after holding two hearings on ICE and CBP's problems working together, reviewing the Inspector General's report, and reading numerous letters from frustrated ICE and CBP agents, we are not sure how much longer we should wait for the Department to fix these problems. We believe the Committee must keep this issue at the top of its agenda until these problems are resolved.

“COMPREHENSIVE BORDER SECURITY ACT OF 2005”—DEMOCRATIC
SUBSTITUTE BILL

The Democratic substitute to H.R. 4312, the “Comprehensive Border Security Act of 2005,” better secures the border by taking steps in three main areas insufficiently addressed in the base bill: (1) stronger planning and coordination; (2) more accountability for struggling efforts to screen travelers and speed commerce and travel; and (3) genuine commitments to provide the resources, training, and incentives needed by the people working everyday to secure the border.

The Democratic substitute provides for stronger border security planning and coordination by requiring the development and implementation of a national border security strategy that includes specific information on the personnel, infrastructure, technology and other resources needed to secure the border, including surveillance equipment necessary to monitor the entire northern and southern borders. The substitute also strengthens planning and coordination by establishing an Office of Tribal Security to help the Department coordinate with tribes along the border who are overwhelmed by illegal border crossings. It also creates northern and southern border coordinators who can be held accountable for the security of the border in their respective geographic areas.

The Democratic substitute strengthens accountability for programs designed to screen travelers and speed commerce and travel by requiring regular reports on Smart Border accords with Mexico; expanding expedited land border traveler programs by putting their enrollment systems in more locations and reducing fees, creating a North American travel card usable by certain low-risk American, Canadian, and Mexican travelers; creating a pilot of a system for prescreening of U.S.-bound passengers before they get on a plane; developing a new tool to replace the Department's antiquated method for checking names against terrorist databases; requiring on-site verification of the security measures taken by entities participating in the Customs-Trade Partnership Against Terrorism (C-TPAT) program and the Free and Secure Trade (FAST) program; and requiring annual reporting on the implementation of the "One Face at the Border" initiative.

Finally, the Democratic substitute makes genuine commitments to provide the tools and authority needed to better secure the border, including the following provisions not included in H.R. 4312:

- Authorizing an actual dollar figure to hire, equip, and train the 2,000 new Border Patrol agents per year recommended by the Intelligence Reform and Terrorism Prevention Act of 2004 (a law also known as the "9/11 Act" because it was passed to fulfill the recommendations of the 9/11 Commission);
- Authorizing the exact amount needed to fund the additional 1,600 border inspectors over the next 4 years called for in the 9/11 Act;
- Requiring the use of at least 1,080 full-time import specialists in fiscal year 2007 to put more experienced inspectors on the front-lines of customs inspections;
- Providing Border Patrol agents with the modern radios, global positioning systems, night vision equipment, body armor and weapons they need to do their job and stay safe.
- Providing incentives to U.S. Customs and Border Protection agents and inspectors to continue their training after they leave the academy, especially language training;
- Providing \$1 billion a year to reimburse states for the costs they incur in detaining and incarcerating criminal undocumented immigrants in the U.S.; and
- Creating a \$1 billion trust fund for renewing badly decaying infrastructure at ports of entry which threaten security

and slow commerce, such as out-of-date narrow lanes and crossings.

Finally, the Democratic substitute increased the penalties for smuggling and trafficking of undocumented immigrants that result in death.

Despite the tangible impact the Democratic substitute would have on border security, it was rejected by the Majority. We then offered a number of amendments to each title of the bill, some of which were contained in the Democratic substitute and others that were only offered as stand-alone measures.

Title I—Securing United States Borders

LONG-SOUGHT DEMOCRATIC PROPOSAL ON A NATIONAL BORDER SECURITY STRATEGY

As noted earlier, the Minority is pleased that H.R. 4312 includes a provision directing the Department to establish a National Border Security Strategy. We have pushed this proposal since last Congress and were repeatedly rebuffed in our efforts. The inclusion of this provision in H.R. 4312 demonstrates that the Majority finally appreciates the need for the Department to develop a comprehensive vision to execute the enormous task of securing the Nation's borders. Democrats strongly support this provision, and once the strategy is issued, this Committee should hold the Department accountable for implementing it.

Democrats are pleased that the Majority accepted an amendment to Title I, offered by Ranking Member Thompson, to ensure that small, disadvantaged, women-owned, and minority-owned businesses have access to future border security technology contracts. This amendment built on language in H.R. 4312 directing the Office of Inspector General to review such border security contracts to ensure that financial management controls are in place.

LOSS OF EXPERTISE AND LACK OF TRAINED PERSONNEL AND EQUIPMENT AT THE BORDER

The Minority is also pleased that H.R. 4312 directs the Department to report to Congress regularly on the status of the Administration's "One Face at the Border Initiative." Democrats have long expressed concern that One Face at the Border has led to an erosion of specialized knowledge in customs, immigration and agriculture inspections at the border. With the inclusion of this reporting requirement, it appears that the Majority is finally recognizing this issue.

It is essential that we develop and retain inspectors and Border Patrol agents with the expertise to make complicated judgments about which people and cargo should be permitted to enter the country. The Minority observes that this population of experts is dwindling and faces severe morale problems, as demonstrated in a recent poll of 1,000 Border Patrol Agents which revealed that two-thirds of the Border Patrol Agents did not believe that they had the "tools, support, and training" necessary "to be effective in stopping potential terrorists and to protect the country from terrorist threats."

The Majority did address some of these concerns by including provisions that authorize hiring the number of Border Patrol agents called for in the 9/11 Act, but it did not provide a specific dollar figure to do so. Moreover, the Majority rejected other amendments that would have provided more of the tools, support, and training needed by the people trying to secure our border. For example, Representative Jackson-Lee and Ranking Member Thompson offered an amendment providing specific amounts to hire the inspectors and Border Patrol agents called for in the 9/11 Act and authorizes funding to give them the radios, night-vision equipment, and weapons that they need to safely do their job. The amendment also enhanced foreign language training for border agents and inspectors in order to give them the skills they need to communicate with the populations they encounter on a regular basis. Finally, the amendment provided incentives to improve the morale of border inspectors, such as new student loan payments and retirement incentives. The Minority is disappointed that this important amendment was rejected.

SPREADING THIN HOMELAND SECURITY AND FIRST RESPONDER
PROGRAMS TO MEET BORDER SECURITY NEEDS

The Minority is deeply concerned with an amendment introduced by Representative McCaul (R-TX), which the Committee passed on a narrow vote, which allows states to divert their homeland security grant funds to pay for border security functions that would normally be carried out by federal agencies. While we share the concern that an increasing amount of local government funds in border states are having to be spent enforcing federal immigration laws, we do not support forcing states and local governments to forgo funding they need to meet their traditional law enforcement and first responder missions. We note that the State Homeland Security Grant program, one of the grants affected by the McCaul amendment, has already been cut in half, from \$1.1 billion in FY 2005 to \$550 million in FY 2006. Spreading thin the remaining dollars in this program will only weaken state and local government first responder and homeland security preparedness. We note that the International Association of Fire Fighters opposed the McCaul amendment in a letter stating: "If money is needed for immigration enforcement, then Congress should provide funding to the appropriate programs. Diverting funds from fire departments is not the solution." In addition, we also agree with the National Volunteer Fire Council, who also opposed the McCaul amendment in a letter stating that, "using funds designated to strengthen first response preparedness to pay for border enforcement activities is not a solution." Both letters were included into the Committee record.

DEMOCRATIC PROPOSAL TO FIX WATCH LIST DATABASES USED AT THE
BORDER

Other vital provisions in H.R. 4312 are very similar to proposals offered by the Minority in the past, such as a provision to require connectivity between the IAFIS and IDENT databases used for watch-listing purposes by the FBI and the Customs and Border Patrol (CBP), respectively. Right now the FBI's IAFIS system uses 10 fingerprints while the CBP's IDENT system uses two fingerprints,

leading to a lack of interoperability between the two systems. Criminals or even terrorists could enter the country because although they are wanted by the FBI and listed in IAFIS, that data is not always searchable when they are screened at the border by CBP personnel using the IDENT system. Representative Norm Dicks (D-WA) has argued for over two years that this security gap should be closed through a mandate that the IDENT database be made a 10 print system interoperable with IAFIS. We are glad the Majority finally accepted this view. However, we are disappointed that funds were not authorized to cover the transition costs of moving the IDENT database from a two to 10 fingerprint system.

STOPPING TERRORISTS BEFORE THEY BOARD PLANES TO THE UNITED STATES

In addition to ensuring that watch lists can actually work when they are used, the Minority remains concerned that watch lists are not always used when appropriate. Representative Peter DeFazio (D-OR) offered an amendment to ensure that the Department begins using technology to ensure that U.S.-bound passengers are checked against watch lists for admissibility before their flights depart. The Department's current policy of requiring passenger information to be transmitted no later than 15-minutes after a flight departs is inadequate in the post-9/11 era. Representative DeFazio withdrew his amendment after the Majority agreed to work with him to craft bipartisan language to close this security gap for inclusion in the Manager's amendment to be offered when H.R. 4312 is considered in the full House. We look forward to continued discussion on Mr. DeFazio's proposed amendment in the coming weeks.

STOPPING TERRORISTS FROM BRINGING WEAPONS OF MASS DESTRUCTION INTO THE UNITED STATES

Two amendments offered by Democrats addressed the risk that a terrorist will pass through a port of entry with a device that can inflict mass casualties, such as a chemical, biological, radiological or nuclear weapon.

The first amendment, offered by Representative Edward Markey (D-MA), would require the Department to complete validations of companies that receive the benefit of expedited cargo clearance under the Free and Secure Trade Initiative (FAST) or the Customs Trade Partnership Against Terrorism program (C-TPAT). Regrettably, this amendment failed narrowly. We remain concerned about the verification process in these programs, and hope the Majority will work with us to address this issue.

We are extremely pleased that the second amendment, offered by Representative James Langevin (D-RI), Ranking Member of the Subcommittee on Prevention of Nuclear and Biological Attacks, was accepted during the markup. Congressman Langevin's amendment requires the Department to complete the deployment of radiation portal monitors one year after the date of enactment and authorizes the funds needed to complete this deployment. The Department already has a six-phase plan to deploy radiation portal monitors at U.S. border crossings, airports, and seaports to screen inbound cargo containers. The Department's six-phase plan has a total cost of \$496 million, of which \$404 million has been appro-

priated through FY 2006. Jay Ahearn, Assistant Commissioner for Operations, Customs and Border Protection, testified before the Select Committee on Homeland Security on May 5, 2004 that if provided with the remaining \$92 million, CBP could complete the deployment of portal monitors within a year. Currently, many of the nation's major seaports, southern border crossings, airports, and other locations designated by the Department do not have these monitors. With the addition of Mr. Langevin's amendment, H.R. 4312 will close that security gap.

ADDRESSING TRIBAL AND TERRITORY BORDER SECURITY

Democrats are pleased that the Majority accepted two amendments offered by the Minority to address border security issues on Tribal lands and in territories. The Majority accepted an amendment offered by Representative Donna Christensen (D-VI) to provide the U.S. Virgin Islands with a Border Patrol Unit. It also accepted an amendment, offered by Ranking Member Thompson, expressing the Sense of Congress that Native Americans should be included in the process for developing and implementing the National Strategy for Border Security. Many Native American tribes along the border, such as the Tohono O'odham Nation in Arizona, are overwhelmed by thousands of immigrants illegally crossing their lands on a daily basis. On the Northern Border, the St. Regis Mohawk Tribe of New York has combated smugglers and other criminals crossing their borders.

Title II—Border Security Cooperation and Enforcement

BETTER COORDINATING MILITARY ACTIVITIES ALONG THE BORDER

The Democratic Members of the Committee were generally satisfied with section 201 of H.R. 4312, which would require the Secretary of Homeland Security and Secretary of Defense to develop a joint strategic plan to increase the availability and use of Department of Defense equipment to assist with the surveillance activities along the nation's international and maritime borders. We recognize that such cooperation between the two agencies is already occurring, and that these provisions only require the development of an explicit plan to better coordinate these joint activities. We also take note of the provision in this section explicitly stating that no exceptions to the Posse Comitatus Act, which prohibits Department of Defense forces from engaging in domestic law enforcement, were made by this legislation.

ASSESSING THE TERRORIST THREAT TO THE BORDER

We were pleased that the Committee agreed to an amendment, introduced by Representative Jane Harman (D-CA) and Ranking Member Thompson, which would require the Department of Homeland Security and its new Office of Intelligence and Analysis (OIA) to conduct a detailed, specific assessment of the threat posed by terrorists who may attempt to infiltrate our country at points along our international land and maritime border. The OIA will play a critical role not only in promoting information sharing between federal intelligence agencies and their state, local, and tribal law enforcement partners, but also in developing terrorist threat assess-

ments. It will oversee intelligence units within CBP, Immigration and Customs Enforcement (ICE), the Transportation Security Administration (TSA), and other agencies that maintain contact with undocumented immigrants seeking entry into the United States. Those threat assessments are critical to helping America prioritize where to spend its homeland security dollars in order to make our country more secure.

Title III—Detention and Removal

MANDATORY DETENTION PROVISION FAILS TO EXEMPT VICTIMS OF TRAFFICKING, UNACCOMPANIED MINORS, ASYLEES, AND VULNERABLE POPULATIONS

Section 301 of H.R. 4312, would, beginning on October 1, 2006, require the mandatory detention of an undocumented immigrant “who is attempting to enter the United States illegally and who is apprehended at a United States port of entry or along the international land and maritime border of the United States” until he or she is removed from the United States or until a final decision has been rendered granting the undocumented immigrant admission to the United States. Undocumented immigrants who choose voluntary departure under section 235(a)(4) of the Immigration and Nationality Act or are paroled into the United States for urgent humanitarian reasons in accordance with section 212(d)(5)(A) of the Immigration and Nationality Act would be excepted from mandatory detention.

While mandatory detention is a vital part of any strategy to secure our borders, we do not have the physical capacity—even with greatly increased numbers of beds and facilities—to hold all illegal entrants for months or years. The logical solution to this problem is to focus on expediting the judicial process for captured undocumented immigrants in the U.S. and detaining those who are a threat to our communities or at risk of flight. Representative Lofgren introduced an amendment that would have sped the judicial process by requiring the Department to make a determination of whether an individual should be detained within seven days of arrest. It also put in place better controls to ensure that an undocumented immigrant in the U.S. who has been released will appear at future proceedings. Unfortunately, this amendment was defeated.

Members of the Minority presented a number of amendments to section 301 that would interject more of a respect for humanitarian concern into the mandatory detention requirement. For example, Representative Jackson-Lee offered an amendment that would have exempted from mandatory detention asylum seekers found to have a credible fear of persecution, unaccompanied undocumented children, and victims of severe form of human trafficking. This amendment would not have taken away the Secretary’s discretion to detain any of these populations, but would have instead clarified that he would not have to detain them unless he so desires. Section 301, as written, fails to provide this clarity. If this section is not adjusted to make the Secretary’s discretion clear, members of these groups, such as unaccompanied minor children who have committed no offense and who are neither violent nor criminal, may be

subject to mandatory detention for the first time in history. Unfortunately, the Majority rejected Ms. Jackson-Lee's clarifying amendment. We hope that the Majority will reconsider the effects the broad language in H.R. 4312 could have on these populations.

Representative Jackson-Lee also offered two other amendments providing relief for asylum seekers and unaccompanied, nonviolent minor children. She withdrew her amendment after receiving assurances the Majority would work with her to clarify the language in H.R. 4312 with respect to these groups.

Representative Lofgren introduced an amendment to exempt unaccompanied children, the elderly, asylum seekers, refugees, undocumented immigrants in the U.S. seeking protection under the United Nations Convention against Torture, and victims of trafficking from the blanket mandatory detention provision that this bill would introduce. Unfortunately, like the other humanitarian amendments that received votes, this amendment was defeated.

Representative Kendrick B. Meek (D-FL) also called for protections for asylum seekers. He offered an amendment to address the ambiguity of Section 301 with respect to Cubans, Haitians, and other populations specifically fleeing persecution. Citing the cases of Reverend Joseph Dantica, an 81-year-old Haitian asylum seeker who died in the Department's custody, and Erns Joseph, a Haitian orphan who was in and out of the Department's custody for several years before being granted an adjustment of status, Mr. Meek called for codified detention regulations setting standards for treatment and clearly distinguishing criminals from asylum seekers.

Mr. Meek's amendment also would have required the Department's policy officer to promote immigration policies that ensure fairness in immigration, asylum, and refugee policy, including for the treatment and detention of vulnerable populations who are at risk of abuse or other mistreatment that threaten their health and safety. The amendment also would have authorized the Immigration Ombudsman to inspect and monitor on-site the treatment of detainees, including through the use of unscheduled inspections. Despite the fact the amendment did not affect the Secretary's authority to remove or detain undocumented immigrants in the U.S., but merely created more accountability for treatment and improved information sharing, the amendment was defeated.

The Minority offered a number of other humanitarian amendments that the Chairman sustained points of order against, finding they were outside the Committee's jurisdiction or non-germane, despite the fact that each of them addressed detention issues that would arise along the border. These unfortunate rulings only serve to emphasize the importance of Ranking Member Thompson's statement in his opening remarks that Congress' jurisdictional boundaries are being used as an excuse to slow progress on truly comprehensive border security and immigration reform. We hope a more expansive view of the Committee's jurisdiction will be adopted in the future.

One of these amendments ruled non-germane, offered by Representative Lofgren, pressed for appropriate conditions for detention of vulnerable populations. Her amendment sought to keep unaccompanied children separate from adult detention facilities or facilities housing delinquent children; ensure that individuals with

violent or criminal behavior are detained in appropriate facilities; and meet humanitarian needs, such as medical care and educational services for children.

DENIAL OF ADMISSION TO NATIONALS OF A COUNTRY DENYING OR DELAYING ACCEPTING UNDOCUMENTED IMMIGRANTS THE U.S. WANTS RETURNED

Section 305 of H.R. 4312 would repeal Section 243(d) of the Immigration and Nationality Act, which currently requires the Secretary of State to deny issuance of a visa to nationals of a foreign country on being notified by the Attorney General or the Secretary of Homeland Security that the foreign government has denied or unreasonably delayed accepting the return of an undocumented immigrant who is a citizen, subject, national, or resident of that country. H.R. 4312 would repeal the Secretary of State's authority and allow the Secretary of Homeland Security to deny admission to citizens or nationals of countries that deny or unreasonably delay return of a citizen removed from the United States. Because the Secretary of State is responsible for issuing visas while the Secretary of Homeland Security has the power to deny admission to those presenting themselves at our border for entry with visas, section 305 could create a serious conflict of power. If the Secretary of State grants a visa and the foreign national presents him/herself at a port of entry, pursuant to section 305, the Secretary of Homeland Security could deny admission to the foreign national and force this person to return home. We are concerned about how this disjointed approach will affect visa seekers, including students and others who might find themselves stuck in governmental bureaucratic squabbles.

The Minority expressed serious concerns about the impact this section could have on citizens from certain countries who will be completely unresponsive to the pressure on their citizens that this new requirement might exert. To address this problem, Representative Lofgren introduced an amendment requiring the Secretary of Homeland Security to deny admission not to average citizens, but rather to government officials traveling to the United States on official government business. This amendment would put the pressure on the government officials causing the problem, rather than on innocent foreign nationals merely wanting to come to the U.S. for travel, trade and family visits. This amendment was found non-germane. We do not agree that the underlying language in section 305 could be within our Committee's jurisdiction while Representative Lofgren's amendment limiting the populations to which it would apply is not.

Finally, Representative Sanchez introduced an amendment that would protect refugees and asylum seekers from being returned under section 305 to the countries where they suffered persecution. It was also ruled non-germane. Once again, we believe this amendment should have been found within our Committee's jurisdiction.

EXPEDITED REMOVAL CONCERNS

The Minority is concerned about an amendment offered by Representative Dan Lungren (R-CA), which was accepted by the Committee, to give the Secretary the power to remove from the country,

without hearing, any immigrant illegally in the United States caught within 100 miles of the border and within 2 weeks of the person crossing into the United States, unless the person is from Canada, Mexico, or Cuba.

While we again note that we view the Committee's jurisdiction as far broader than the Chairman's ruling during mark-up, we do not understand how Mr. Lungren's amendment is within our Committee's jurisdiction when other amendments offered by the Minority are not. Imposing expedited removal on all undocumented immigrants in the U.S. apprehended at or between all land borders and within 100 miles of that border will apply expedited removal to thousands of people who are currently subject to regular immigration proceedings. Suddenly, thousands of people will go from having rights to appeal removal orders, rights of release from detention by immigration judges, and other due process rights in regular immigration proceedings to no appeal option and no opportunity for counsel. The only proceeding these individuals will receive is an on-the-spot decision by a Border Patrol Agent as to whether they should be removed. Furthermore, these individuals will face 5-year bars on reentering, all based on a very quick decision by a Border Patrol agent. If these types of changes are not immigration policy subject to the jurisdiction of the Judiciary Committee, then we are not sure what is. Indeed, imposing expedited removal within 100 miles of the land borders is not border security. We are certain that Disneyland and Southern Los Angeles County are not border communities.

We also feel strongly that the rule of law must be paramount in our practices, and expedited removal should be a method of last resort. It is far preferable to hold a hearing to ascertain the status and intentions of a detained undocumented immigrant than to remove the person without trial for two reasons. First, security may be threatened by expedited removal as it may lead to the removal of an undocumented immigrant in the U.S. who, if detained for a longer period or subjected to a judicial hearing, may be discovered to be a terrorist. Second, removing individuals without at least some sort of hearing undermines the perception that the United States is a nation that believes in a fair judicial process governed by the rule of law. At a time when we are engaged in a War on Terror where our respect for fairness and the law is one of the most important principles we can export abroad, we should not take steps to eliminate these principles in our immigration enforcement process—even for those caught here illegally.

Title IV—Effective Organization of Border Security Agencies

TASK FORCE ON FRAUDULENT IMMIGRATION DOCUMENTS

Representative Jackson-Lee offered an amendment to establish a task force for the coordination and distribution of fraudulent immigration documents. The proposed task force was meant to serve as a central clearing-house for Federal, State, and local coordination and guidance reports relating to the production, sale and distribution of fraudulent immigration documents. Similar to the responsibilities of the Forensic Document Laboratory (FDL) of ICE, which provides services such as document analyses and intergovern-

mental relations, the proposed task force would have ensured proactive collection of information and dissemination of analysis. Ms. Jackson-Lee withdrew the amendment after receiving assurances from the Majority that they will work with her to address the issue.

MISSED OPPORTUNITY TO STRENGTHEN BORDER SECURITY BY
MERGING ICE AND CBP

Representative Meek offered an amendment that would transfer CBP and ICE into a new Bureau of Border Security and Customs. The head of this Bureau, a Commissioner appointed by the President with the advice and consent of the Senate, would report directly to the Secretary. The Commissioner would be assisted by five Assistant Commissioners leading the offices of Immigration Enforcement, Customs Enforcement, Inspection, Border Patrol, and Mission Support.

This amendment addressed the serious concerns raised by a number of experts from within the government, private sector, and academia, most notably, the Department of Homeland Security's own Inspector General, that ICE and CBP's relationship is a failure.

In a report and at a hearing the day before the mark-up, the Inspector General discussed this dysfunctional relationship between ICE and CBP, especially in three areas:

- Lack of coordination between apprehension and detention and removal operations;
- Insufficient coordination of investigative operations; and
- Dysfunction in the coordination of intelligence activities.

At this same hearing, Assistant Secretary for Policy Stewart Baker could provide no explanation for why the two agencies were even originally separated during the formation of the Department.

In addition to the Inspector General's report, proposals to merge ICE and CBP enjoy widespread support in the academic community and from agents in the field. In 2004, a joint study by the Heritage Foundation and the Center for Strategic and International Studies recommended that the two agencies be merged. The Federal Law Enforcement Officers Association supports the merger. Additionally, the Minority received letters and phone calls from numerous ICE and CBP agents who support the merger. The following is a representative sample of those letters:

- "I remain convinced that Immigration and Customs Enforcement was established as an entity apart from CBP for the purpose of maintaining the bureaucratic status quo."
- "From the outset, I, along with many of my colleagues in the management ranks, have opposed the arcane decision to separate the inspection and the investigative personnel . . . [t]his is [an] absurd division . . ."
- "ICE inherited a broken-down administration from the former Immigration and Naturalization Service, which needed a home to avoid being reduced in force."

Unfortunately, although Secretary Chertoff had a draft copy of the Inspector General's report and knew of these problems and proposed solutions before he announced his recent reorganization of the Department, he chose not to merge ICE and CBP. Instead, Sec-

retary Chertoff chose to require ICE and CBP to report directly to him, an option the Inspector General specifically stated was not the premier means of correcting their relationship.

Despite the widespread support of a merger and the Secretary's failure to act, the Majority declined to support a merger of ICE and CBP. Instead, H.R. 4312 would only require the Secretary "to ensure full coordination of border security efforts and agencies within the Department of Homeland Security, including United States Immigration and Customs Enforcement, United States Customs and Border Protection, and United States Citizenship and Immigration Services, and shall identify and remedy any failure of coordination or integration in a prompt and efficient manner." This provision is an empty mandate. Representative Meek withdrew his amendment after receiving strong assurances from the Chairman that he intends to carefully monitor the Secretary's efforts to correct ICE and CBP's relationship. We will join in the Chairman's oversight, and we hope that if the Secretary's efforts do not reveal progress in the very near future, the Committee will act more firmly to resolve ICE and CBP's problems.

CONCLUSION

Passing a comprehensive border security bill is an essential step in ensuring our national security. Democrats have long called for a comprehensive border security strategy, introducing several pieces of legislation over the past 2 years that would have created a national border initiative. While we commend the Chairman for introducing the "Border Security and Terrorism Prevention Act of 2005," it is not enough to protect America. Too much has been left undone and we cannot say that the bill will provide comprehensive border security.

H.R. 4312, even as amended during mark-up, does not contain many initiatives offered by the Minority that would have provided the Department of Homeland Security with the personnel, equipment, training, support, and authority needed to truly secure the border. The Democratic substitute would have provided the funding authorized by the 9/11 bill for more detention beds, more ICE investigators, and more Border Patrol agents. Instead, the Majority rejected full funding for these critical areas. The Democratic substitute would have held the Department accountable to Congress by requiring it to fulfill critical reporting obligations, which it has neglected to do in the past. These reporting requirements would have allowed the Congress to better respond to the challenges facing the Department; instead, Congress will remain reliant on the Department's self-reporting, which has been lacking in the past.

We firmly believe that Congress must not continue to repeat the same steps in dealing with our porous borders and their security. We must give our border agents the tools and the technology to adequately protect our homeland. The governmental structure which they operate in must be responsive and accountable for its decisions. And Congress must engage in long-term solutions by finally taking up comprehensive immigration reform. The American people deserve no less.

BENNIE G. THOMPSON.
ED MARKEY.
JANE HARMAN.
ELEANOR H. NORTON.
LORETTA SANCHEZ.
NORM DICKS.
NITA LOWEY.
ZOE LOFGREN.
BILL PASCRELL, Jr.
BOB ETHERIDGE.
KENDRICK B. MEEK.
SHEILA JACKSON LEE.
DONNA M. CHRISTENSEN.
JIM LANGEVIN.

ADDITIONAL VIEWS OF REPRESENTATIVE EDWARD J.
MARKEY

During Committee mark-up of H.R. 4312, the Border Security and Terrorism Prevention Act, I offered an amendment to require Customs and Border Protection to “trust and verify” that shippers participating in CBP’s Customs-Trade Partnership Against Terrorist (C-TPAT) and Free and Secure Trade (FAST) programs comply their security obligations under these programs. There are approximately 11,000 shippers who take part in C-TPAT and FAST and about 100 CBP inspectors responsible for validating that participants implement the required security measures in return for the expedited entry benefits they receive. Currently, only about 11 percent of the facilities operated by C-TPAT and FAST shippers have been validated for compliance by CBP. Nevertheless, the shippers still receive the benefits even in the absence of validation of their security obligations. This Bush Administration’s “trust but don’t verify” policy is unacceptable, and the Majority should have supported my amendment to resolve this dangerous security loophole.

Seven million cargo containers arrive at U.S. ports every year. These containers represent an important component of our economy, providing consumers with an enormous array of choices. In Massachusetts, the port of Boston—which became an international cargo port in 1630 and is the oldest continually active major port in the Western Hemisphere—handles 1.3 million tons of general cargo, 1.5 million tons of non-fuels bulk cargo and 12.8 million tons of bulk fuel cargos every year. Clearly, such global commerce is critical to the economic health of our country.

At the same, however, cargo containers represent tempting targets for terrorists. Harvard University arms control expert Graham Allison has said that “more likely than not” there will be terrorist attack using a nuclear bomb in our country. He has described the detonation of a nuclear explosive device in a cargo container in one of our ports as a nightmare scenario for our country. Stephen Flynn, a senior fellow at the Council on Foreign Relations and former officer in the Coast Guard, wrote in his book *America the Vulnerable* about “catastrophic consequences of terror in a box” delivered by a cargo ship to one of our ports.

To balance the need to participate in the global economy and the security concerns associated with the millions of cargo containers entering our ports every year, the Department of Homeland Security’s Customs and Border Security division developed the Customs-Trade Partnership Against Terrorist (C-TPAT). Under C-TPAT, shippers commit to improving the security of their cargo shipments, and in return, they receive a range of benefits from our government. Specifically, if shippers provide information about their operations to Customs and Border Protection, their goods are

less likely to be inspected at the border. They basically receive an “E-Z Pass” from our government, sort of like drivers who speed right through toll booths without having to stop. The problem is that Customs and Border Protection grants these special benefits *without verifying that the security information provided by the shippers* is reliable, accurate and effective. That means that CBP is not routinely checking—or validating—that the security promises made the shippers are actually true.

In its May 2005 report, the Government Accountability Office (GAO) found that CBP has conducted validations at the facilities of only 11 percent of all the C-TPAT members. [“Key Cargo Security Programs Can be Improved,” May 26, 2005] Furthermore, GAO determined that even at facilities where CBP has conducted validations, “the validation process is not rigorous, as the objectives, scope and methodology of validations are *jointly agreed upon with the member* (emphasis added), and CBP has no written guidelines to indicate what scope of effort is adequate for a validation.”

Customs and Border Protection also has a related program, called “FAST,” which stands for Free and Secure Trade program. The FAST program requires that trucking companies subject their drivers to background checks and participate in C-TPAT program. Again, the problem is that the truckers get waved through the FAST lane, but the trucking companies’ facilities are rarely, if ever, inspected to validate that the security policies they’ve promised to implement are fact or fiction.

My amendment was very simple. It required that Customs and Border Protection verify the security measures at the facilities of each member of the C-TPAT and FAST programs *within one year of the enactment of this bill*. Moreover, the amendment would have required Customs and Border Protection to establish policies if members do not live up to their obligations under the C-TPAT and FAST programs.

Some of my Republican colleagues argued that we simply do not have the resources to conduct these validations, and real validations would bring global commerce to a grinding halt.

We have heard these arguments before. They were made before 9/11 when it became clear that we should be inspecting the *checked* bags of airline passengers, not just their carry-on bags. Opponents of checked baggage screening were successful in blocking 100 percent checked-baggage screening until the 19 hijackers perpetrated their deadly attack upon our country more than 4 years ago. Today, we require that your checked bags be screened. And the long lines a crippling blow to global trade never materialized.

We must not wait until an attack before we close this dangerous loophole in the C-TPAT and FAST programs.

I understand that CBP has only about 100 inspectors to conduct validations at approximately 11,000 C-TPAT and FAST members. The answer is NOT to *give up* on validations, but to *back up* the programs with resources devoted to these validations.

The Bush Administration has been nickel-and-diming homeland security, while writing a blank check for the War in Iraq. This is unacceptable.

Following the markup, I introduced H.R. 4374 along with my colleague Rep. Christopher Shays (R-CT) to require that validations

are performed of all C-TPAT and FAST programs within one year of enactment and then twice a year thereafter. I will continue to work to close this dangerous loophole that leaves our country at risk.

EDWARD J. MARKEY.

