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POLICY BRIEF

Who Reports to Whom?

Immigration in the New Department of Homeland Security

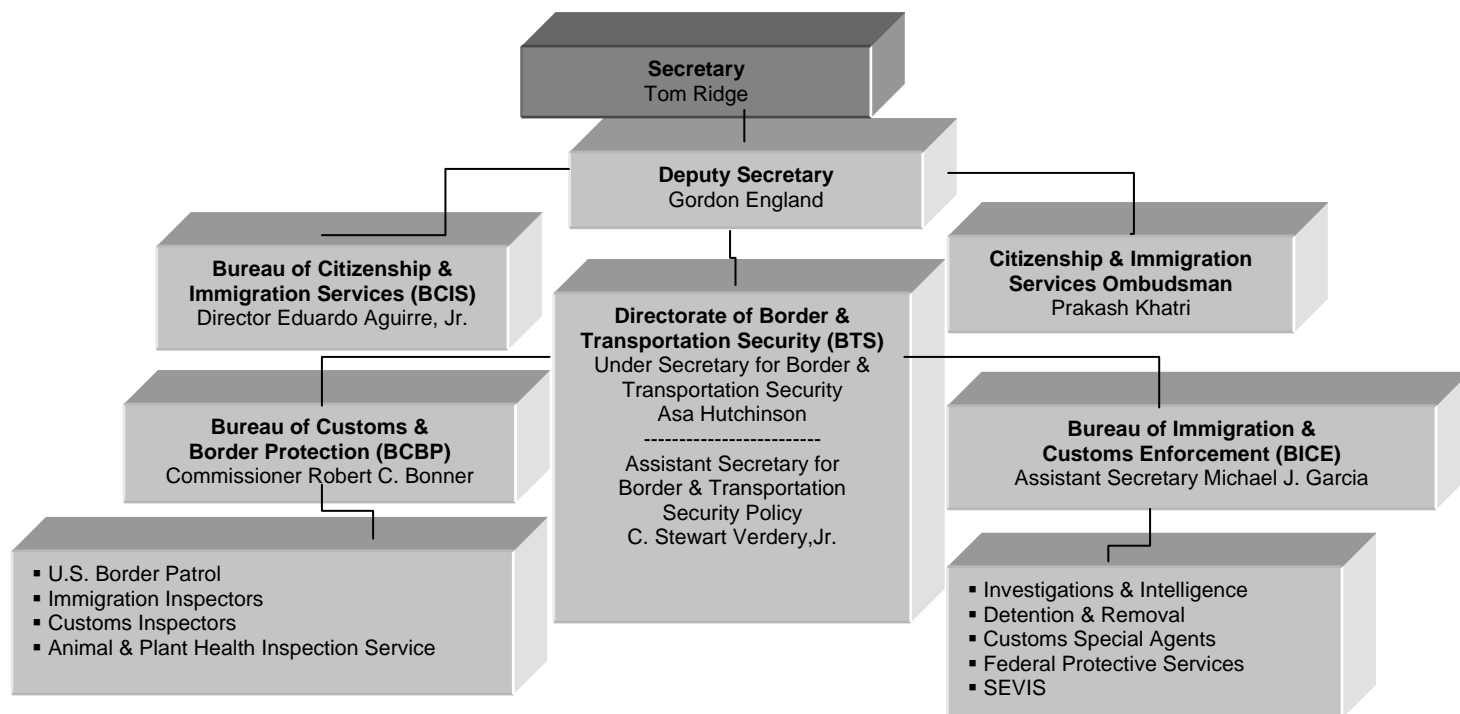
The new Department of Homeland Security divides into three separate agencies immigration functions that previously were combined. This reorganization raises questions about who is in charge of immigration policy as a whole and how immigration services will fare in a department heavily tilted towards enforcement.

The Homeland Security Act of 2002, signed into law by President Bush on November 25, 2002, abolished the Immigration and Naturalization Service (INS) and transferred most of the agency's immigration functions from the Department of Justice to the new Department of Homeland Security (DHS) on March 1, 2003.¹ At the time, the legislation split immigration enforcement and services into two distinct agencies. However, using authority granted in the legislation to engage in additional reorganization, the Administration further divided enforcement operations, thus creating a three-way split of authorities that previously were combined.

In light of this reorganization, who is in charge of immigration policy? And which immigration policy? With immigration functions divided into three parts, is there a single leader with a sense of the overall picture?

Below is an overview of the organization of immigration functions within the Department of Homeland Security and a primer on who reports to whom.

Organization of Immigration Functions in the Department of Homeland Security



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Secretary of Homeland Security. The Secretary of Homeland Security, generally speaking, replaces the Attorney General as the Cabinet official with ultimate responsibility and authority over immigration. Before becoming Homeland Security Secretary on January 24, 2003, former Pennsylvania Governor Tom Ridge served for more than a year as Director of the Office of Homeland Security in the White House. Though extremely influential, this position did not possess direct line-authority over the operations of various agencies in the field. For example, the INS Commissioner reported to the Attorney General through the Deputy Attorney General, the Commissioner of Customs reported through the Department of Treasury's command structure, and the Commandant of the Coast Guard ultimately reported to the Secretary of Transportation.

Secretary Ridge brought with him a number of individuals from the White House Office of Homeland Security, including Major General Bruce Lawlor, who became Secretary Ridge's chief of staff. The Office of Homeland Security did not cease to exist with the creation of the new Department, but continues to operate in more of an advisory role than the coordinating and policy-formulating role it adopted under Ridge.

Deputy Secretary. The Deputy Secretary of Homeland Security is Gordon England, formerly Secretary of the Navy. From 1997 to 2001, he served as executive vice president of General Dynamics Corporation. Under the legislation, the Bureau of Citizenship and Immigration Services reports directly to the Deputy Secretary.

Undersecretary for Border and Transportation Security. Asa Hutchinson, previously Drug Enforcement Agency (DEA) Administrator and a member of the House of Representatives (R-3rd/AR) from 1997 to 2001, was confirmed by the Senate as the Department's Undersecretary for Border and Transportation Security on January 23, 2003. This is perhaps the most challenging job in the Department of Homeland Security, with line authority over more than 100,000 former employees of the INS, Customs Service, Transportation Security Administration, Federal Protective Service, Animal and Plant Health Inspection Service (APHIS), Office of Domestic Preparedness, and Federal Law Enforcement Training Center.

On June 19, 2003, the Senate confirmed C. Stewart Verdery, Jr., previously Senior Legislative Counsel at Vivendi Universal Entertainment and former General Counsel to Senator Don Nickles (R-OK), to be Assistant Secretary for Border and Transportation Security Policy, reporting to Asa Hutchinson.

Consular Affairs

The Homeland Security Act provided new mechanisms related to the issuance of visas. The legislation states that "The Secretary, acting through the Under Secretary for Border and Transportation Security, shall be responsible for...Establishing and administering rules, in accordance with section 428, governing the granting of visas or other forms of permission..." Section 428 states that "On-site personnel of the Department of Homeland Security shall review all visa applications prior to adjudication" in Saudi Arabia. In addition, "The Secretary is authorized to assign employees of the Department to each diplomatic and consular post at which visas are issued, unless the Secretary determines that such an assignment at a particular post would not promote homeland security."

Section 428 continues by listing the functions that Homeland Security employees assigned to consular posts shall perform:

- (A) "Provide expert advice and training to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications.
- (B) Review any such applications, either on the initiative of the employee of the Department or upon request by a consular officer or other person charged with adjudicating such applications.
- (C) Conduct investigations with respect to consular matters under the jurisdiction of the Secretary."

Under the newly-passed law, evaluation of consular officers' performance in processing and adjudicating visas shall be made by the Secretary of State but "in consultation with the Secretary [of Homeland

Security], as deemed appropriate by the Secretary,” and “with performance standards developed by the Secretary.”

Commissioner of the Bureau of Customs and Border Protection (BCBP). Robert C. Bonner, previously Commissioner of the Customs Service, became Commissioner of Customs and Border Protection. He leads a bureau that includes Immigration and Customs Inspectors, as well as Agriculture Department employees of the Animal and Plant Health Inspection Service (APHIS). All three groups of Inspectors report to a single port director in their area. These have already been named and are primarily from the former Customs Service. In addition, the U.S. Border Patrol now reports to the Commissioner.

Assistant Secretary for the Bureau of Immigration and Customs Enforcement (BICE). Although the legislation indicated that this position would control all INS enforcement operations, the Administration instead used its reorganization authority to narrow the portfolio on immigration enforcement, but widen it in other areas. This position no longer controls the 10,000 Border Patrol Agents or more than 5,000 Immigration Inspectors, all of whom went to the new Bureau of Customs and Border Protection. Instead, it retains only the Investigations, Intelligence, and Detention and Removal programs of the former INS, in addition to Customs Special Agents, who conduct investigations, and the Federal Protective Service, which provides protection at federal facilities. Under the Homeland Security Act, the Bureau also is “responsible for administering the program to collect information relating to nonimmigrant foreign students and other exchange program participants,” known as SEVIS.

Michael J. Garcia, a former federal prosecutor who became acting Commissioner of the INS in December 2002, is currently Acting Assistant Secretary for the Bureau of Immigration and Customs Enforcement.

Director of the Bureau of Citizenship and Immigration Services (BCIS). The new Bureau of Citizenship and Immigration Services includes primarily the former Immigration Services Division (ISD) of the INS, with additional personnel or positions as necessary to function as an independent bureau. The legislation designates a new position of Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services, who “shall be responsible for promoting instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens of the United States, including the development of educational materials.”

The Director of the bureau reports directly to the Deputy Secretary of Homeland Security. On June 19, 2003, the Senate confirmed Eduardo Aguirre, Jr., a former vice chairman and COO of the Export-Import Bank and a former executive for Bank of America, as the bureau’s first director. Mr. Aguirre has served as acting director since February 2003.

Citizenship and Immigration Services Ombudsman. One of the more idiosyncratic features of the Homeland Security Act is the amount of space devoted to the new position of Citizenship and Immigration Services Ombudsman, who reports directly to the Deputy Secretary. The Ombudsman makes reports to Congress, according to the legislation, without “without any prior comment or amendment from the Secretary, Deputy Secretary, Director of the Bureau of Citizenship and Immigration Services, or any other officer or employee of the Department or the Office of Management and Budget.” The Ombudsman may propose administrative changes to improve service and shall establish local offices of the Ombudsman. The main mission of the Ombudsman is “to assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services.”

On July 29, 2003, Homeland Security Secretary Ridge appointed Prakash Khatri, an immigration attorney previously in charge of immigration and visa processing for Walt Disney Co., to be the first Citizenship and Immigration Services Ombudsman.

Conclusion

Given the massive scale of government reorganization entailed in creating the Department of Homeland Security, a considerable period of adjustment will be necessary and coordination issues, particularly among enforcement entities and between service and enforcement personnel, are a major concern. Moreover, it remains to be seen if service operations receive priority and efforts are made to reduce waiting times and improve service.

The biggest problem to emerge thus far is uncertainty as to who controls immigration policy. On July 23, 2003, Assistant Secretary for Immigration and Customs Enforcement Michael Garcia called for greater involvement by local police in enforcing federal immigration law. Is this a new Administration policy? Previously, the White House indicated that such empowerment of local police in immigration enforcement would be limited. At a July 15, 2003 hearing of the Senate Judiciary Subcommittee on Immigration, Border Security and Citizenship², witnesses from neither the Bureau of Customs and Border Protection nor the Bureau of Immigration and Customs Enforcement could answer a simple question regarding estimates of how many undocumented immigrants are in the United States (See Box). Both of these incidents illustrate the problems which inevitably arise when there is no longer a single official responsible for understanding the immigration system as a whole.

In addition, new proposals emanating from the Department of Homeland Security to fingerprint and photograph all visa holders arriving at ports of entry in the United States, combined with the State Department's plan to interview nearly all visa applicants, reveal little sense of balance between security considerations and the needs of commerce.

It is becoming clear that the Department is heavily weighted toward immigration policies that may make sense from an isolated enforcement perspective, but which show little understanding of how America's immigration policy relates to the U.S. economy or society, or to America's place in the world.

Below is an exchange between Senator Richard J. Durbin (D-IL) and a variety of witnesses with immigration responsibilities: Janice L. Jacobs, Deputy Assistant Secretary of State for Visa Services; Michael T. Dougherty, BICE Operations Bureau Director; and Jayson P. Ahern, BCBP Assistant Commissioner. The exchange took place at a July 15, 2003, Senate Subcommittee on Immigration, Border Security and Citizenship hearing on visa issuance.

SEN. DURBIN: I'd just ask of the panel – anybody can answer this. At any given time, how many people are in the United States illegally? Rough guess, anybody, anybody? OK. How many are in the United States on expired or revoked visas at any given time? Mr. Ahern, isn't that your area of responsibility?

AHERN: Not exactly. We're actually responsible for the admissibility and determinations at the ports of entry. And once they've been entered into the United States, that becomes...

SEN. DURBIN: Ms. Jacobs, is that yours?

JACOBS: Once someone has come into the states, we have no way to track their whereabouts. That usually is DHS' responsibility.

SEN. DURBIN: Well, Mr. Dougherty, you're the last one in line here. So can you answer the question?

DOUGHERTY: I can answer with respect to what our responsibilities are.

SEN. DURBIN: But the numbers, do you have any ideas? How many people in the United States at any given time are here on expired or revoked visas?

DOUGHERTY: I do not have the specific information with respect to that. There are, I believe, estimates out there which we would be happy to find.

SEN. DURBIN: If you want to ask your staff – this is not the final exams, so you can ask your staff. If anybody does know, I'd like to put it on the record if they do know.

DOUGHERTY: No?

SEN. DURBIN: Maybe you can get back to me with that...

¹ Not transferred to the Department of Homeland Security were the Executive Office for Immigration Review (EOIR), which remained in the Justice Department, and responsibility for the care of unaccompanied foreign-born children, which was transferred to the Office of Refugee Resettlement (ORR) within the Administration for Children and Families of the Department of Health and Human Services.

² Hearing of the Senate Judiciary Subcommittee on Immigration, Border Security and Citizenship, "Visa Issuance, Information Sharing and Enforcement in a Post 9-11 Environment: Are we ready yet?" July 15, 2003.