

S U M M A R Y

The organization and purpose of the U.S. immigration system has been a Washington topic for more than a century. As a result of recent embarrassments and serious security breaches by the INS, momentum is now stronger than ever for reforming the immigration function. Most major proposals currently on the table share many common elements, demonstrating a high degree of consensus on key features of reform. They all fail, however, to address the role of the Congress and the Administration in aggravating the INS's problems by creating an immigration policy full of mixed messages and by micro-managing the agency. Moreover, no proposal would consolidate all immigration functions under a single, independent agency. These failures will impede the creation of a unified policy vision on immigration that has clear goals and considers immigration's relationship to such critical public policy issues as health, education, human resources, and economic vitality and competitiveness, as well as national security and services to immigrants.

Reconcilable Differences? An Evaluation of Current INS Restructuring Proposals

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A solid and well-managed public agency must meet at least three sets of expectations: consistent rules that are consonant with and consciously promote major national policy priorities; efficiency and effectiveness in the delivery of key mandates; and adherence to a high standard of accountability. Judged against these criteria the Immigration and Naturalization Service (INS) has been receiving failing grades for most of the last two decades. A recent and continuing string of embarrassments and lapses that could ultimately pose a challenge to national security have motivated principals in the U.S. Congress and the Administration to try to rescue the INS from the rocks of failure.

Rectifying the INS's many woes is no simple task. The problems have persisted through attempt after attempt to revamp the agency by centralizing it, decentralizing it, imbuing it with pride and shoring up its flagging *esprit de corps*, and attempting to create a "new" INS professional cadre. The INS's many critics want fundamental changes to an agency whose failings jeopardize America's security, economic, and humanitarian interests.

Yet, even now, attempts to think comprehensively about changing the INS fall far short of broader goals to define more clearly the country's immigration function writ large. The challenges are myriad and deep. They are as much about the structure itself as about attitudes and habits, about the quality of the management of the agency over time, about the accuracy and quality of its information systems, and about the kinds of management tools available to its senior managers. However, the challenges are also a result of the quality of the thinking and amount of political capital the Congress and the Administration invest in the immigration function. Considering all these challenges, it is unfortunately the structure that always gets the lion's share of the attention.

This MPI Policy Brief examines the main reasons for the agency's performance deficits, addressing each of its three sets of failures as

a public agency. The brief then evaluates the principal proposals currently under discussion on how to right the course of the embattled INS ship and recommends how to proceed.

Background

Where to place and how to structure the immigration function within the U.S. government has been a Washington discussion topic for more than a century. In recent months, four proposals have dominated the policy landscape.

The White House Office of Homeland Security has proposed combining the U.S. Customs Service with either some (the Border Patrol and Inspections) or all of the enforcement functions of the INS or with the entire agency. If the latter version prevails, the resultant combined super-agency of between 70,000 and 80,000 people would fall within the Department of Justice (DOJ). Senator Lieberman (D-CT), Chairman of the Senate Governmental Affairs Committee, would go further and establish a new cabinet-level Department of National Homeland Security, which would incorporate the law enforcement and inspection duties of several existing agencies, including those of Customs, Agriculture, two FBI offices, and the INS. The Lieberman plan would

also fold the Coast Guard and the Federal Emergency Management Agency into the new department.

Chairman Sensenbrenner (R-WI) of the House Judiciary Committee and Immigration Subcommittee Chairman Gekas (R-PA) proposed a restructuring plan that would dismantle the present INS and move its functions directly into the DOJ, under the supervision of an Associate Attorney General for Immigration Affairs (AAGIA). The Sensenbrenner-Gekas plan received bipartisan support within the Committee and passed the House by a 405 to 9 vote on April 25, 2002.

In the meantime, the Administration has zigged and zagged on the issue, not unlike its predecessors. Late last year, it unveiled its own internal reorganization proposal and proceeded to implement it (if at a slow pace, given competing interests on the issue). In fact, on April 17, 2002, the INS Commissioner announced two initiatives in that regard, (a) giving the Chief of the Border Patrol (who is stationed in Washington) direct responsibility for all Border Patrol field operations, as well as line authority over the Patrol's 21 Sector Chiefs, and (b) creating an office of Juvenile Affairs reporting directly to the Commissioner. The Administration's plan, which would not have required legislation, thus seemed well on its way to being implemented when the White House, in an abrupt about-face, announced on April 24, 2002 that it would support Mr. Sensenbrenner's legislation instead.

Finally, the Senate Immigration Subcommittee held hearings on May 2, 2002, focusing on a Kennedy (D-MA) and Brownback (R-KN) reform bill. The Administration worked with the authors of the Senate bill to address provisions of the House bill with which it disagreed.

Each of these proposals addresses some of the changes necessary to enhance the capacity of the INS to carry out its mission as an effective and well-managed public agency. None addresses all necessary reform elements and all are silent on the crucial issues of the function's consonance with

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U.S. national interests and the agency’s “management” by its own masters in the Congress and the Administration.

Challenge One: Policy Coherence, Consistent Rules, and Predictable Outcomes

A 1998 MPI (then known as the International Migration Policy Program of the Carnegie Endowment for International Peace) study, *Reorganizing the U.S. Immigration Function: Toward a New Framework for Accountability*, concluded that the INS was an agency on the ropes. The culture was deeply enforcement-oriented with little regard for its service obligations. Field staff accumulated power and widely viewed INS headquarters as weak and politicized. Employees had insufficient qualifications and inadequate training, yet expectations of them kept increasing. Finally, several weak, ideological, or disinterested agency heads for the past thirty years have lacked the management skills to bring about the necessary shifts in culture and performance.

Nothing has been more important in the plight of the INS, however, than the ambivalence with which we, as a government and as a people, perceive immigration and, by extension, the underlying immigration system. One of the most damaging manifestations of this ambivalence has been the mixed messages sent to the agency’s leaders and managers about the system’s true priorities.

If U.S. immigration policies seem opaque to the non-specialist or appear at times either disconnected from other national priorities or at odds with them, it is because they are so. For more than a century, the INS has unsuccessfully struggled to navigate between two sets of interests that appear to be contradictory, if only on their face: those of U.S. workers and those of U.S. business. The former, and their allies, try to regulate the flow of foreign workers as tightly as possible so as to compel better conditions for U.S. workers. At the same time, business interests have pushed for nearly unfettered access to a global workforce under conditions that will maintain U.S. competitiveness in a global economy with ever fewer

trade protections. Both sides have had some success. That success, however, has been typically at the INS’s expense—as each side’s allies in Congress and the Administration whipsaw the agency on this issue almost regardless of how it does its job.

Challenge Two: Efficiency and Effectiveness in Delivering Key Mandates

The second set of expectations from solidly run public agencies are the effective and efficient delivery of key mandates. Effectiveness and efficiency, in most matters, and timeliness in the delivery of services (such as immigration benefits), have long had a “catch as catch can” quality to them at the INS.

There are reasons for this. Service has not been rewarded bureaucratically and few legislators have paid anything but lip service to it. One only has to look at how the service function is funded. It is overwhelmingly fee-based. More to the point, service fees, which have been increasing at remarkable rates in recent years, have been known to be diverted toward supporting the agency’s enforcement infrastructure. Remarkably, however, massive additional funding (when the pending supplemental appropriations bill is enacted, the INS budget will have approximately quadrupled in about eight years) has not had a commensurate effect on the agency’s performance in the enforcement arena either.

A big part of the reason for this gap reflects again a basic societal cleavage over how far to go with certain aspects of the agency’s enforcement responsibilities, especially—but not exclusively—regarding illegal immigration. As a back channel that fills important labor needs, illegal immigration occupies a unique place in the performance of the immigration function. This ambivalence, felt most strongly within the Congress itself and, by extension, at INS headquarters, sends, over time, maddeningly conflicting signals to the agency’s front lines about the importance they should attach to attacking unauthorized immigration in the workplace and preventing it at the border.

Many senior field managers do their best to implement instructions. Others, however, decide to “go-it-alone,” and services end up getting a short shrift. Their calculus when they do so is generally well-considered: delays in services or lack of quality control in a service function may make for interesting human interest stories but tend to be forgotten quickly. As has been witnessed recently, however, a single failure in the enforcement area can have real consequences for one’s career.

Furthermore, as has been made obvious repeatedly, the ability of the INS to perform better has much to do with the quality of the agency’s information systems. Having information systems that are reliable and are regularly updated—so as to support the agency’s mission and meet the needs of programmatic responsibilities—is essential to every complex organization; they are even more so to one that makes tens of thousands of decisions each day that affect our security, our economic well-being, and the opportunities and life-chances of millions of people. In fact, the more we rely on these systems to make critical decisions, the greater the need for systems to be managed by competent professionals, be upgraded regularly so as to take advantage of new technologies, and for users to be trained on an ongoing basis. Robust and up-to-date information systems are the lifelines of every agency—public or private; complex bureaucracies must rely on them even more.

Challenge Three: Accountability

The INS has seen the political importance of its function catapult it from the 19th century to the 21st century in less than two decades. This change, however, has occurred with little regard to whether its core personnel and infrastructure were capable of performing at near prime-time capacity. Moreover, the agency’s metamorphosis is being attempted simultaneously with vast changes in mandate and size. (The INS has more than doubled in size during the last ten years—to about 37,000 persons—and is poised to add as many as 10,000 additional workers in the next 18 months). At the same time, INS managers are trying to come to

terms with severe training and even more troubling retention problems. Some of these retention problems stem from the lower civil service rating of INS tasks relative to similar tasks performed by sister agencies, such as Customs, the FBI, or the DEA. Others, however, relate directly to the effect of working for an agency under siege. In both instances, it is the better employees who are likely to leave first.

With management and information systems judged completely inadequate to the task every time they have been placed under the evaluative microscope, and the Congress increasingly impatient, changes could never keep up with demands, let alone expectations. One has only to refer to nearly two decades worth of General Accounting Office and DOJ Inspector General reports to appreciate the often abysmal record the INS information and management systems have compiled despite massive investments. Without reliable systems, no multi-billion dollar business can prepare and deploy its resources strategically and match its capacity to deliver against expectations.

Considering this context, one cannot be surprised that accountability, arguably the well-run public agency’s most valuable asset, has foundered. Both rules and programs are administered seemingly arbitrarily. In fact, regardless of the “client”—the American people and their elected and appointed representatives, as well as the “customer” who pays very large fees for a specific service whose value often extends well beyond the specific immigration benefit (such as with a naturalization petition that gives the successful petitioner true constitutional protections)—accountability has continued to lag far behind even the most modest of expectations.

As with the other issues, it is not that there have been no improvements in accountability. There have been, but they are not nearly enough. This has been so despite widespread appreciation of the fact that the stakes are nothing less than monumental: whether in the enforcement or the service component of a governmental function, nothing undermines an agency’s credibility—and, gradually, both its support

by the public and its effectiveness—more than repeated and public failures in accountability.

Rising to the Challenge? Four Proposals for Reforming the Immigration Function

So, what is one to do? With so many ailments, can the patient be saved? Overhauling the way in which the INS is managed is essential for an agency whose functions range from keeping undesirable people out while facilitating legitimate traffic and reviewing asylum claims, to criminal alien removal and immigration benefit adjudication. Clearly, merely streamlining management lines will not be enough. As we wrote in 1998, "... the effective discharge of the immigration function requires strong leadership that adopts uncompromising rules-based procedures, emphasizes program integrity, and holds officials at all levels responsible to the public trust. It also requires leaders whose actions clearly reflect unmistakable values and priorities." The proposals currently under discussion focus primarily on organizational issues, followed by management reforms. These are indeed important elements of any change. However, it is troubling that the discussion has ignored how much the actions of (and lack of actions by) the Congress and the Administration together have contributed to the INS's problems, in part by failing to articulate an internally consistent vision for immigration in this country.

1. The Administration Proposal. Released in November 2001, and since abandoned in favor of the House Plan, the Administration's restructuring plan declared its commitment to achieving better agency performance through clarification of roles and responsibilities, better-defined chains of command, and improved professionalism and accountability.

Accordingly, the service and enforcement functions would have been divided into two bureaus—the Bureau of Immigration Services and the Bureau of Immigration Enforcement—and INS districts would be replaced with distinct local service and enforcement field structures. A number of key

functions intended to improve policy coordination and consistency, and provide the necessary checks and balances between the activities of the two bureaus, would have been attached to the Office of the Commissioner. Among them would be Policy, Planning, and Programs; Congressional and Public Affairs; and the Office of the General Counsel. All these exist today. A number of new functions would have been added to those above, including that of a Chief Information Officer, Chief Financial Officer, Director of Professional Responsibility, and Director of Juvenile Affairs.

2. The Sensenbrenner-Gekas Proposal.

Congressmen Sensenbrenner and Gekas introduced "The Immigration Reform and Accountability Act" in November 2001. The bill has passed the House and is now titled "The Barbara Jordan Immigration Reform and Accountability Act of 2002," named after the late Texas Congresswoman and civil rights activist who, until her death in January 1996, had been head of a federal immigration study commission. The bill, curiously, bears little resemblance to the "Jordan Commission's" recommendations. That Commission issued its reorganization proposals nearly two years after Jordan's death and it called for eliminating the INS and distributing its component parts among several other federal departments.

The House-approved bill replaces the INS with a new Agency for Immigration Affairs (AIA) housed directly within the Department of Justice and headed by an Associate Attorney General for Immigration Affairs (AAGIA). The AAGIA would be the Department's third-ranking official and would oversee the work of the Directors of the Bureau of Citizenship, Immigration Services and Adjudications and the Bureau of Immigration Enforcement. In addition to the functions indicated in its designation, the "Service" Bureau would also control some of the functions of the Office of Immigration Litigation (OIL). The Enforcement Bureau would be responsible for all law-and-order and border control functions, as well as for the balance of OIL functions. Each bureau would have its own budget authority, would develop local sector and field offices to carry out its functions, and would have its

own Policy and Strategy Office, Legal Advisor, Chief Budget Officer, and Congressional/Intergovernmental/Public Affairs Office.

While the two bureaus would be separate, they would share support functions through a new Office of Shared Services located in the Office of the AAGIA, which would be responsible also for allocating and coordinating those resources. To maintain some policy coordination and consistency in implementation, as well as reconcile differences between the bureaus, the office of the AAGIA would have its own Policy Advisor and General Counsel, who would be responsible for agency-wide legal opinions and for representing both bureaus before the Executive Office of Immigration Review (EOIR). An Ombudsman, a Chief Financial Officer, an Office of Children's Affairs, and Offices of Professional Responsibility and Quality Review would strengthen the AAGIA's ability to oversee the two bureaus.

3. The Kennedy-Brownback Proposal.

Proposed by Senate Judiciary Subcommittee Chair Kennedy and Ranking Minority Member Brownback, the "Immigration Reform, Accountability, and Security Enhancement Act of 2002" is the latest entry into the INS reorganization sweepstakes. The bill tracks the basic elements of consensus between the House Bill and the Administration's original proposal, but with four significant differences.

The first focuses on making explicit the fact that the Director of the Immigration Affairs Agency (IAA) has line authority over the Agency's two constituent Bureaus (each headed by an IAA Deputy Director). Furthermore, while each bureau would receive separate and dedicated funding, the Office of the Director would control each Bureau's budget. The Bill's effort to make clear the Director's overall control of the IAA (in a FBI-like manner) does not stop there. The Director would thus keep within his office all relevant responsibility over legal policy, administrative, public/congressional/intergovernmental affairs, financial policy, and human resources and information systems management, the politically sensitive children's services, as well as

the critically important inspections functions, while also coordinating each Bureau's offices of quality assurance and professional responsibility.

A second set of differences stems from two of Kennedy-Brownback's additional innovations. The first would place the new Office of Ombudsman outside of the IAA (but within Justice). This is a clear reflection of the authors' concern over that office's independence. The second would create an Office of Children's Services, also located outside the IAA. That decision reflects the authors' wish to emphasize their concern over unaccompanied alien children, a concern they punctuate by granting such minors a variety of opportunities to reunify with their relatives in the U.S. or otherwise avail themselves of the services of the juvenile protection and placement authorities.

A third difference—and the one most likely to lead to real cultural change—is the inclusion of significant personnel flexibilities, including critical pay authority and recruitment and retention incentives, and voluntary separation incentives (buyouts) for existing employees who may not wish to be part of such a restructuring.

The fourth and final key difference with the House bill is in what the Kennedy-Brownback proposals do not include. Their basic premise appears to be that the deep reorganization contemplated by all proposals cannot just be dictated in its minutest detail by the Congress. As a result, Kennedy-Brownback would give the Administration relatively broad discretion to restructure much of the function and focus instead on how the IAA should be organized at the top, how the functions between the two bureaus should relate both to the Office of the Director and, through that office, to each other, and on the interoperability of statistical and related systems.

4. The Office of Homeland Security

Proposal. President Bush is reported to be leaning toward accepting a recommendation from his Office of Homeland Security to merge either the entire INS or its enforcement functions with the Customs Service. The new entity would be located

within the Justice Department. This seems to be a more limited version of an earlier proposal by Homeland Security “Czar” Tom Ridge to combine all agencies with border-related functions, including the Coast Guard, DEA, portions of the Agriculture Department, and possibly even the Consular Affairs Bureau of the Department of State, into a single Homeland Security Department. As noted, this is a goal also supported by Senators Lieberman (D-CT), Graham (D-FL), and Specter (R-PA), as well as Representative Thornberry (R-TX), among others. Senator Lieberman’s bill (S.2452), introduced on May 2, would establish the Cabinet-level Department of National Homeland Security.

Shared Elements of Reform and Evaluation of the Proposals

All serious restructuring proposals reflect a growing consensus on many of the key features of reform. (The Ridge and Lieberman proposals are silent on how the immigration function might be restructured and are thus not included in this section). These include:

- Upgrading the position of the head of the immigration function and bringing the entire function under more direct control of the Attorney General;
- Separating the service and enforcement functions to clarify missions and career paths;
- Eliminating the current system of regions and districts in favor of local service and law enforcement sectors;
- Prohibiting the transfer of fees between bureaus;
- Hiring chief financial officers to increase financial transparency and accountability in each set of functions;
- Creating offices of professional responsibility, quality assurance, customer service, and ombudsmen;
- Improving databases and information systems to facilitate the delivery of key mandates;
- Implementing measures designed to address critical long-standing issues, such as service backlogs, the treatment of juveniles, and using the Internet more extensively to facilitate services.

No proposal on the table at this time, however, consolidates all immigration functions within a single agency or upgrades the agency to an independent status. In the post-September 11 environment, the rationale for clarifying and strengthening, rather than blurring or diluting, the authority of the immigration agency is nothing less than compelling. This failure will continue to interfere with achieving a unified policy vision on immigration that takes into account the function’s critical interface with policy domains other than national security and services to immigrants. It also will interfere with, or at least delay, the government’s effort to develop and maintain an integrated set of records across the entire continuum of a non-citizen’s contact with U.S. authorities, wherever that contact occurred—from requesting a visa to accessing a benefit.

In fact, the agency’s greater integration within the Justice Department will be likely, over time, to bias the entire function further toward that Department’s principal priorities: law and order. Such an orientation, while important, particularly at this time, is not the sum total of why we engage in immigration or how we perceive it. Furthermore, such an orientation (a) will likely weaken the incentives to provide the necessary “checks and balances” between services and enforcement, (b) may undermine interest in quality integrated information systems, and (c) may impact the consistent delivery of all relevant activities essential to a function as complex and important as immigration. These failures of omission and commission are even more consequential today—in a world where security concerns may be paramount yet the multifaceted issue of immigration requires the fullest integration possible across government policy priorities, from foreign affairs, trade, and economics,

to demographics and the development of our human resource base.

The Kennedy-Brownback bill, the restructuring proposal that provides the most thoughtful framework for reform, is itself a tip-of-the hat to much of the Administration's original plan. From the perspective of this analysis, the bill's weaknesses are as follows:

- First, it does not consolidate all immigration functions into a single, high level agency.
- Second, it does not create a single Administration reference point engaging Congress and the other executive agencies on all immigration-related matters.
- Third, it does not move the Executive Branch explicitly toward developing a seamless and integrated set of records for non-citizens. (The just signed Enhanced Border Security and Visa Entry Reform Act [PL.107-173] also authored principally by Senators Kennedy and Brownback, however, may take us toward that goal.)
- Fourth, it gives the IAA Director less authority than we believe is necessary to move around managers, as needed, outside of civil service rules. (The rationale for greater authority is compelling: while an extremely gifted manager might be able to make significant strides in these regards without a grant of extraordinary powers, the proper authority will get him or her there much faster. In fairness to the bill's authors however, considering the political battles associated with creating a new, independent agency, the decision to place the IAA within the DOJ may be the only viable compromise at this time.)

The House bill also has many strengths, most of which have been incorporated already in the Kennedy-Brownback bill. In addition to sharing all four of the aforementioned shortcomings of the Kennedy-Brownback proposals, however, the House bill has numerous additional fundamental

flows. Giving each bureau its own full complement of quasi-independent policy, legal, budgetary, and support services likely will lead to confusion, delays, and mistakes where the two functions intersect, further undermining the overall function's coherence. Over time, even with a much stronger AAGIA than the one envisioned by the House bill, this separation likely will lead to two separate agencies, each guarding jealously its own turf and each focusing on demonstrating success and accountability in its primary function only.

Moreover, parts of the House plan, such as the areas of legal, policy, and intergovernmental activities, seem extraordinarily duplicative both between the two bureaus and between the bureaus and the Office of the AAGIA. These duplications are not just unnecessary and wasteful, they also are likely to encourage further inter-bureau competitiveness, rather than cooperation, and may affect adversely the agency's ability to carry out all its mandates in a timely manner. The House bill also mandates the creation of dozens of specific new positions, itself a classic example of legislative overreach, but fails to create adequate personnel flexibilities for the robust reorganization and cultural change required.

In the House bill's scenario, and in an era of tight budgets and preoccupation with national security, the service bureau is likely to continue to draw the short straw, both in terms of public funds and the AAGIA's attention. This may be the intent of some of the bill's supporters. More likely, however, is that this may not be an outcome that many of the bill's supporters would oppose, hence the resistance of the bill's principal authors to give the AAGIA full line authority over the two bureaus.

More significantly, perhaps, the outcome of creating two distinct and nearly-separate bureaus may be most consistent with the White House's and the Justice Department's apparent interest in consolidating all of the government's border control and domestic law enforcement functions within a single chain of command. (In terms of electoral politics and given the President's own commitment to

improving the delivery of services to immigrants, the present White House is unlikely to countenance the atrophy of the immigration service function.) This interpretation would in fact explain much of the Administration's about-face regarding the House bill. It is to that proposal that this policy brief turns next.

Improving Domestic Security?

While the various ideas for restructuring the immigration function attempt to address many of the INS's shortcomings more or less directly, the proposal to merge Customs with the INS does not attempt to address any of the challenges facing the agency. In fact, the merger proposal gives insufficient thought to interior enforcement and many other responsibilities of the INS and would likely complicate matters by adding a wild card—integration with Customs—into terrain already torn by wars over resources, priorities, management ethos, and bureaucratic fiefdoms.

The blending of cultures is every merger's soft underbelly. The list of private sector mergers that have added up to less than the sum of their parts is long and growing. Accordingly, merging the INS with Customs is much more likely to increase dysfunctionality than lead to a more consistent delivery of each agency's key enforcement mandates, let alone to a better agency that balances properly a variety of discrete yet interrelated functions. Lost in that discussion is also the fact that Customs has had its own cultural issues and struggles with reform in the late 1990s; they simply have been much less publicized than the INS's.

If the Homeland Security Council's principal concern is indeed the delivery of consistent border controls, the goal might be more easily and more effectively accomplished by having only one agency attend to the primary inspection lines, while having both agencies represented in secondary inspection. Canada and most other countries do that—as do we at international airports. Anything else, besides creating additional problems, also would run afoul of jurisdictional issues

in Congress. This is a point that Representative Istook (R-OK), the Appropriations Subcommittee Chair with jurisdiction over Customs, has made abundantly clear.

One must question also whether any Attorney General can effectively manage a post-Customs-INS merger Department of Justice (DOJ) of 160,000 -180,000 employees. Justice already has a vast portfolio of domestic and, increasingly, international law enforcement mandates. It is responsible for administering our justice system and has solemn constitutional responsibilities. With INS and its 37,000-plus employees, DOJ also oversees constantly expanding border enforcement and facilitation functions, while delivering an equally vast network of services. The addition of Customs would multiply DOJ enforcement responsibilities while adding unfamiliar service and revenue collection tasks.

Remarkably, very little public attention has focused on the management failures of recent Attorney Generals, and hardly any studies have addressed the ability of a single executive team to oversee so many discrete functions. Instead, the focus has been on the failings of the sub-agency heads, such as the FBI or INS, whose agencies are constantly second-guessed and micromanaged by middle-level DOJ officials. This fact deserves far greater attention than it has garnered.

Whatever confusion may remain regarding Justice's ability to undertake the proposed array of activities is probably due to the distorting effect of today's national security emergency. Emergencies tend to heighten the sense of purpose, focus the mind, and make possible otherwise improbable things—including access to almost limitless resources. The reality of the other 99 percent of the time is quite different. Major reorganization decisions should be made with all seasons in mind.

More enlightening perhaps is the path of other countries, some of which have tried to merge major functions in “super-ministries,” most frequently in the economic and social policy realms. Such

attempts quickly have been abandoned in favor of more discrete, coherent, and manageable functions. Furthermore, in many European countries, as well as in Canada, the Justice Department handles legal matters while an Interior (or Home) Ministry is responsible for internal security and immigration control issues, and yet another ministry is responsible for the national police. These structures are worthy of benchmarking before unthinkingly building a DOJ empire that could further place at risk the integrity of the entire immigration function.

The Lieberman National Homeland Security initiative would multiply these problems by a significant, if at this time unknown, factor. Its proponents naturally argue that, at the very least, it will enhance cross-governmental coordination in preventing another attack and may allow for a more cohesive response to any such attack. Neither part of that hypothesis is self-evident.

Reconciliations

With so many competing visions, are there viable ideas that build on the political will and the progress made to date to shore up, and indeed, recraft the INS? Indeed there are and the analysis so far has pointed them out. The very fact that the major proposals on the table share so many elements demonstrates further that key actors agree on the scope of the problem and have mostly common goals for reforming the immigration function. These goals include building a well-managed, effective, and efficient agency that has 21st century information systems, can act decisively when needed, and is mindful both of the complexity of its mission and of its responsibility to treat its clients with respect and efficiency. We thus seem to be at a historic juncture where we can begin to clear the cloud of uncertainty that has long been hanging over the INS, with its extraordinary toll on effectiveness, on the delivery of crucial mandates, and on agency morale. The Congress and the Administration must now do the following.

First, the president should table his Homeland Security Council's recommendation on the merger

with Customs and resist the Lieberman approach as not being *prima-facie* superior to a more orderly way of strengthening the various agencies and coordinating their crosscutting activities from the White House. Fitting square pegs into round holes, bureaucratically speaking, will not improve our security. Focusing on institutionalizing, strengthening, and streamlining the authority of the Council, however, might. Mr. Ridge's power, just like that of his fellow senior assistants to the president, stems from the clarity of the function's purpose, proximity to and engagement of the issue by the president, and personal skills. His counterparts within the White House also have multifaceted responsibilities and they must manage relationships with powerful cabinet secretaries and key members of Congress well if they are to be effective. Mr. Ridge should be allowed to do likewise and if he proves unequal to his assignment he will need to be replaced.

Second, Congress and the Administration should agree on an INS restructuring process and the roughest of reorganization outlines. (The Kennedy-Brownback bill points the way—but the final legislation should perhaps mandate even less. The bill's relocation of the statistical function to the Bureau of Justice Statistics, for instance, is something that should be decided after the restructuring has been completed, rather than at this time.) Anything more would follow on the long tradition of legislative hubris on this issue and likely would lead to endless waves of additional reforms as the agency's masters discover again and again that they did not, after all, have all the answers up front. The entity responsible for reform should be given all legislative authority necessary to accomplish changes within a pre-agreed timeline and outline. Both Congress and the White House should then pull back from micromanaging the process and allow restructuring to move forward. Endless oversight hearings and accompanying grandstanding may make for juicy headlines but do little to give an agency the room and confidence it needs to implement the radical changes that will move it toward the future we all desire.

Third, Congress and the White House should establish a small advisory panel made up of experts in management, civil service rules, law enforcement, and services delivery systems—rather than the generic “notables” typically appointed to serve on governmental commissions—and charge it to work with the Commissioner to reorganize the entire immigration function, not just the INS. Some of the agency’s managers also should sit on the panel, if only *ex officio*. Doing so will allow the Commissioner and his management team to continue to give their full attention to their other responsibilities while the needed deep changes occur. Given the stakes and the politics, two members of Congress and two senior administration officials (one from the Office of Personnel Management and the other from Justice) might also serve on the panel—the former to facilitate the passage of any additional legislative authority that may be needed, the latter to safeguard the Administration’s interests. If properly constituted, the panel also could serve as the arbiter and legitimizer of some of the deeper personnel changes likely to be necessary.

Finally, the Commissioner should be given all legal tools and resources he needs to implement the reorganization developed jointly with and agreed to by the advisory panel. (The various proposals’ granting of these powers to the Attorney General, however nominally, only will serve to continue to have too many DOJ hands making too many decisions without the necessary expertise.) This must include the authority to hire talented outsiders in new career and non-career slots, to move agency managers in ways that maximize effectiveness, and to keep the various federal unions at bay. The ability of federal unions to distort and even scuttle deep reorganization is all too easily overlooked both by the Congress—which exempts itself from such “inconveniences”—and by outside observers.

Final Thoughts

Improving both management and organizational culture at the INS while thinking through the function itself is essential if we are to have an immigration system that serves us well at a time when the demands of national security and economic recovery make America’s immigration policies more important than at most other times. But what if the real problem has not been the structure of the INS but a combination of (a) the patchwork nature of our immigration policies, (b) the intermittent nature of and wrong kind of attention by the Congress and the Administration, and (c) inconsistent and/or weak upper-level management? These are the tough issues the present discussion is ignoring. Yet, these issues must be addressed if we are to have an immigration system that actively assists our country to remain globally competitive, tolerant, diverse, and secure.

For years, Congress and the Executive Branch have allowed immigration policy priorities to wander across the horizon, shifting and treacherous. Without steady guiding stars, no agency can navigate the ever-choppier waters of globalization and national security. With so much at stake and so much in question, it will take extraordinary effort to keep a foundering INS, and with it, critical U.S. economic, political, and security interests, off the rocks. Any serious restructuring will require management savvy, the setting of goals that allow the agency to succeed, rather than fail, and legal authorities and resources commensurate with the task at hand. Beyond the tangibles, however, progress may be only made with thoughtful Congressional and Administration guidance—rather than micromanagement—coupled with a generous helping of humility and patience.

The Migration Policy Institute (MPI) is an independent, non-partisan, non-profit think-tank dedicated to the study of the movement of people worldwide. The institute provides analysis, development, and evaluation of migration and refugee policies at the local, national, and international levels. It aims to meet the rising demand for pragmatic responses to the challenges and opportunities that migration presents in an ever more intergrated world. MPI produces the Migration Information Source web site, at www.migrationinformation.org.

- Read a summary of the 1998 report "Reorganizing the U.S. Immigration Function: Toward a New Framework for Accountability" by Demetrios G. Papademetriou, T. Alexander Aleinikoff, and Deborah W. Meyers at www.migrationpolicy.org/pubs/reorganizing.html (Carnegie Endowment for International Peace, 1998).
- Visit the Migration Information Source, www.migrationinformation.org, MPI's new on-line resource for current and accurate migration and refugee data and analysis. The Source provides fresh thought, authoritative data, and global analysis of international migration issues.
- In June 2002, MPI released the third and final book of the Comparative Citizenship Project, *Citizenship Policies for an Age of Migration*, by T. Alexander Aleinikoff and Douglas Klusmeyer (Carnegie Endowment for International Peace, 2002). Visit our web site, www.migrationpolicy.org, for more information.

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