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T001	Statement	H.R. 3525 - From: White House	1	05/14/2002	Transferred

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SERIES:

Saunders, G. Timothy (Tim) - Bill Files

FOLDER TITLE:

05/14/2002 [H.R. 3525] [771212] [3]

FRC ID:

6358

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

 *** TX REPORT ***

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 ST. TIME 05/14 08:39
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SS/ RM NO. 521568

WHITE HOUSE STAFFING MEMORANDUM

Date: 5-14-02 8:00 AM ACTION / CONCURRENCE / COMMENT DUE BY: 5-14-02 10:00 AM

ENROLLED BILL H.R. 3525 - ENHANCED BORDER SECURITY AND VISA ENTRY
 Subject: REFORM ACT AND SIGNING STATEMENT

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☒	☐	HUBBARD	☐	☐
CARD	☒	☐	HUGHES	☒	☐
BARTLETT	☒	☐	IRASTORZA	☐	☐
BLAKEMAN	☐	☐	JOHNSON	☐	☐
BOLTEN	☒	☐	LINDSEY	☒	☐
BRIDGELAND	☒	☐	MARBURGER	☐	☐
CALIO	☒	☐	MIERS	☐	☐
CONNAUGHTON	☐	☐	RICE	☒	☐
DANIELS	☒	☐	RIDGE	☒	☐
FLEISCHER	☒	☐	ROVE	☒	☐
GERSON	☐	☐	SPELLINGS	☒	☐
GONZALES	☒	☐	CLERK	☐	☒
HAGIN	☐	☐		☐	☐
HAWKINS	☒	☐		☐	☐

REMARKS:

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HAGIN	☐	☐	_____	☐	☐
HAWKINS	☒	☐	_____	☐	☐

REMARKS:

PLEASE FORWARD COMMENTS DIRECTLY JIM JUKES X53458, FAX X56148, BY 10:00 A.M. TODAY, WITH A COPY TO THE STAFF SECRETARY. THANK YOU.

RESPONSE:

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

May 14, 2002

02 MAY 14 PM 1:25

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 3525 – Enhanced Border Security and Visa Entry Reform Act
Sponsor – Rep. Sensenbrenner (R) Wisconsin

Last Day for Action

May 20, 2002 - Monday

Purpose

Creates new requirements intended to enhance border security concerning: (1) staffing and pay increases for certain immigration personnel; (2) a foreign student tracking system; (3) machine-readable visas and other travel documents; (4) electronic sharing of immigration and law enforcement information; and (5) passenger manifests for aircraft and sea vessels.

Agency Recommendations

Office of Management and Budget

Approval (Signing
statement attached)

Department of Justice
Department of Education

Approval
Defers to Justice and
State (Informally)

Department of State
Department of Transportation
Department of the Treasury
Department of Labor

No objection (Informally)
No objection (Informally)
No objection (Informally)
No comment (Informally)

Department of Defense
Central Intelligence Agency (CIA)

No response
No response

Discussion

H.R. 3525 would set forth new requirements for the President and several agencies, including Justice and State, that are intended to enhance the border security of the United States. Major provisions of the enrolled bill are described below. Other provisions are described in the Attachment.

Staffing and Pay Increases for INS Personnel

The enrolled bill would require Justice, subject to the availability of appropriations, in each of FYs 2003-2006, to increase the number of Immigration and Naturalization Service (INS) inspectors and associated support staff and the number of INS investigators and associated support staff each by the equivalent of 200 full-time equivalents (FTEs) over the number authorized in the USA PATRIOT Act (P.L. 107-56, enacted October 26, 2001). The USA PATRIOT Act authorized Justice to waive any FTE cap on personnel assigned to the INS on the Northern border and authorized appropriations necessary to triple the number of INS inspectors and associated necessary personnel (from the number authorized on the date of its enactment) and facilities in each State along the Northern Border. Your FY 2003 Budget proposes doubling INS staff on the Northern Border.

The enrolled bill would authorize appropriations for Justice of such sums as may be necessary to provide the following increases in pay, effective October 1, 2002: (1) increases for GS-9 journeyman Border Patrol agents and inspectors who have completed at least one year's service to the annual rate of basic pay for GS-11 positions; (2) increases for GS-5 inspections assistants to the annual rate of basic pay for GS-7 positions; and (3) increases for support staff associated with such personnel to "the appropriate GS level." It is expected that INS can absorb the additional estimated costs of \$60 million within requested appropriations.

Student Tracking System

The enrolled bill would require Justice, in consultation with State and Education, to establish an electronic system to collect foreign student information from approved institutions of higher education and designated exchange visitor programs in the United States. The system would be used to monitor and verify information on the visitors, such as acceptance into a school or program, issuance of a visa, arrival into the country, registration and enrollment in an educational institution or participation in an exchange visitor program, and more extensive background information. Educational institutions would have to report to the INS, within 30 days of the deadline for registering for classes, any failure of an alien to enroll or to commence participation.

Prior to issuing a foreign student (F or M) or exchange visitor (J) visa, applicants would have to provide the following: an address in the country of origin; names and addresses of the alien's spouse, children, parents, and siblings; names of contacts of the alien in the alien's country of residence who could verify information about the alien; and previous work history, if any, including the names and addresses of employers. Effective 120 days after the enrolled bill's enactment, an F, M, or J visa could not be issued to an alien unless State has received from an approved educational institution electronic evidence of documentation of the alien's acceptance at that institution and the consular officer has adequately reviewed the applicant's visa record. Upon the issuance of an F, M, or J visa, State would have to transmit to INS notification of that issuance and INS would then have to notify the educational institution when an alien accepted for that institution or program has been admitted to the United States.

The enrolled bill would require INS, in consultation with Education, to conduct biennial reviews of institutions designated to sponsor students to determine if they are complying with recordkeeping and reporting requirements. State would have to conduct biennial reviews of institutions sponsoring exchange visitors for the same purpose. INS and State could suspend or terminate an entity's ability to receive students under the F and M (for INS) or J (for State) visa programs for failing to comply with the recordkeeping and reporting requirements. The enrolled bill would authorize appropriations of such sums as may be necessary to carry out these provisions. Most of the requirements for the student tracking system are already a part of the design for INS' Student and Exchange Visitor Information System (SEVIS) scheduled for release later this year.

Travel Documents

The enrolled bill would require State and Justice, by October 26, 2004, to issue to aliens only travel documents that are machine-readable, tamper resistant, and use biometric identifiers. The enrolled bill would also require by that date the installation of equipment to allow biometric comparison and authentication of all U.S. travel and entry documents issued to aliens. State and Justice would have to jointly establish document authentication and biometric identifiers standards chosen from among those recognized by domestic and international standards organizations. The Departments would have to issue a report, within 180 days of the enrolled bill's enactment, on costs and timing associated with meeting these deadlines. Countries participating in the Visa Waiver Program (VWP) would have to certify by October 26, 2004, as a condition for participation, that they have a program for issuing passports meeting these requirements and participants in the program would have to use these passports (unless issued before that date). (The VWP allows certain citizens from a select group of mostly industrial countries to visit the United States without having to obtain visas.) H.R. 3525 would authorize appropriations of such sums as may be necessary to carry out these provisions, but also authorizes additional land border crossing fees to help INS pay for this effort.

Visa Fees. The enrolled bill would require the machine-readable visa fee to be set at the higher of \$65 or the cost of administering this service, as determined by State after conducting a study of the cost of the service. (In March 2002, State increased the fee by regulation from \$45 to \$65.) The enrolled bill would also authorize State to collect a \$10 surcharge for issuing a machine-readable visa in a nonmachine-readable passport. These fees would be credited as offsetting collections to any State Department appropriation to recover costs of providing consular services.

Entry/Exit System. The enrolled bill would require Justice and State to use the technology standard developed under the USA PATRIOT Act (as discussed below) when implementing the INS Data Management Improvement Act of 2000 (P. L. 106-215, enacted June 15, 2000). (This law requires the implementation of an electronic system that provides alien arrival and departure data.) Justice would be required to: establish a database containing the arrival and departure data from machine-readable visas, passports, and other travel and entry documents possessed by aliens; make interoperable all security databases relevant to making determinations of admissibility; and "consider implementing" the North American National Security Program described below. State would have to provide INS with an electronic version of the visa file of each alien who has been issued a visa to ensure that the data in that visa file is available to immigration inspectors at U.S. ports of entry before the arrival of the alien.

Interagency Information Sharing and Data System

Information Sharing. In the enrolled bill (and in the description below), the term "President" means the President acting through the Assistant to the President for Homeland Security, in coordination with the Secretary of State, the INS Commissioner, the Attorney General, the CIA Director, the FBI Director, the Secretary of Transportation, the Customs Commissioner, and the Secretary of the Treasury. H.R. 3525 would require the President to submit a report to Congress within 120 days of the enrolled bill's enactment identifying Federal law enforcement and intelligence community information needed by State when issuing visas and by INS when identifying aliens who are inadmissible or deportable. (The enrolled bill would repeal a provision of the USA PATRIOT Act that required the Office of Homeland Security to submit a similar report.) The President would be required to develop and implement by October 26, 2002, after consultation with Congress, a plan that: (1) requires Federal law enforcement agencies and the intelligence community to provide to State and INS the information identified in the report; and (2) establishes conditions to limit the redissemination of such information and protect individuals' privacy and the sources of such information. The bill specifies criminal penalties for misuse of this information.

Electronic Interoperable Data System. The President, in consultation with the Commerce Department's National Institute of Standards and Technology (NIST), would be required to develop and implement an electronic interoperable data system (to be known as the "Chimera" system) to provide current and immediate access to the information identified in the implementation plan. The system would have to be readily and easily accessible to consular

officers responsible for issuing visas, Federal officials responsible for determining an alien's admissibility to or deportability from the United States, and Federal law enforcement and intelligence officers responsible for the investigation or identification of aliens. The system would be required to have the capacity to compensate for disparate name formats and be searchable on a linguistically sensitive basis, based on algorithms that account for variations in name formats and transliterations. The enrolled bill would require the development and implementation of linguistically sensitive algorithms for at least four languages that are determined by State as high priorities. Of these, the highest priority language's algorithms must be implemented within 18 months of the enrolled bill's enactment and at least one additional algorithm must be implemented per year in each of the following three years. Also, in order to provide adequate user support, the enrolled bill would require State and Justice to jointly prescribe procedures that consular and immigration officers can use to obtain assistance in resolving identity and other questions that may arise about names of aliens seeking visas or admission to the United States.

The enrolled bill would require the system to be based on a technology standard developed under requirements of the USA PATRIOT Act and would advance deadlines associated with the development of this standard. The enrolled bill would accelerate by nine months, to January 26, 2003, the deadline for development (by Justice and State, through NIST) of a technology standard for verifying the identity of visa applicants and persons seeking to enter the United States with a visa and would add the requirement that it must incorporate "appropriate biometric identifier standards." The enrolled bill would also accelerate by six months, to October 26, 2002, a requirement for a report to Congress describing the development, implementation, efficacy, and privacy implications of the technology standard and electronic database system to be developed based on the standard. The enrolled bill would set deadlines of 60 and 120 days after enactment, respectively, for CIA to comply with previously-enacted requirements to issue a report and guidelines concerning uniform spelling of foreign names and places.

The enrolled bill would authorize Justice to hire and fix the compensation of necessary scientific, technical, engineering, and other analytical personnel for the purpose of the development and implementation of the Chimera system. Within 90 days of the enrolled bill's enactment, Justice would be required to submit an operating plan to Congress describing Justice's intended use of this authority and any provisions of title 5 of the U.S. Code (e.g., personnel laws) being waived for purposes of the development and implementation of the Chimera system. This authority would terminate upon the implementation of the system.

The enrolled bill would require INS to fully integrate all databases and data systems maintained by INS that process or contain information on aliens and make this integrated data system an interoperable component of the Chimera system. The enrolled bill would also require Justice or State, as appropriate, to enter identification numbers for stolen passports into the

Chimera system within 72 hours of receiving notification that a passport was lost or stolen. Within six months of the enactment of H.R. 3525, the President would be required to report on the progress of the implementation of the system. The enrolled bill would authorize appropriations of such sums as may be necessary to carry out these provisions.

Data Sharing Commission. Within one year of the enrolled bill's enactment, the President would be required to establish a Commission on Interoperable Data Sharing to monitor and report annually to Congress on recommendations for dealing with privacy, security, technology, and errors related to the new electronic data system. The President would appoint the commission's nine members, eight of whom would be chosen from a list of nominees provided by Congressional leadership. The enrolled bill would authorize appropriations to the Commission of such sums as may be necessary to carry out these requirements.

Passenger Manifests

Current law requires each vessel or aircraft with passengers on board, upon the arrival at or before the departure from any U.S. seaport or airport, to provide manifests of the persons on board to immigration officers at the port, with the exceptions of alien crewmen and of persons arriving from or departing to a foreign contiguous territory by air. The enrolled bill would remove these two exemptions, require arrival manifests to be transmitted before arrival at a port, and allow transmittal to any U.S. border officer. The enrolled bill would require the following information to be provided for each passenger: complete name; date of birth; citizenship; sex; passport number and country of issuance; country of residence; U.S. visa number, date, and place of issuance, where applicable; alien registration number, where applicable; and U.S. address while in the United States. These provisions would apply with respect to persons arriving in, or departing from, the United States on or after the date of enactment of the enrolled bill.

The enrolled bill would also require all manifest information to be transmitted electronically after January 1, 2003, and raise the fine for the failure or refusal to provide the necessary manifest information from \$300 to \$1,000 for each person for whom accurate and full information is not given.

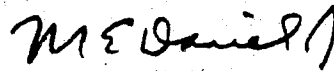
The enrolled bill would require the President to conduct a study regarding the feasibility of extending these reporting requirements to any commercial carrier transporting persons by land to or from the United States. The study would have to focus on the manner in which the requirement would be implemented to enhance the national security of United States and the efficient cross-border flow of commerce and persons. Within two years of enactment, the President would be required to submit a report to Congress setting forth the findings of the study.

Conclusion and Recommendations

The Department of Justice recommends approval of H.R. 3525, but recommends a signing statement to address constitutional concerns with provisions of the bill that purport to require the President to consult with an Executive Branch officer, appoint officers in a manner inconsistent with the Appointments Clause, and submit legislative recommendations to Congress in violation of the Recommendations Clause.

We join Justice in recommending approval of H.R. 3525, which passed the Senate by a vote of 97-0 and the House by 411-0.

Attached for your consideration is a signing statement that is based on language supplied by Justice. It has been reviewed and approved by the Office of White House Counsel, the Office of Homeland Security, and the Office of the Vice President.



Mitchell E. Daniels, Jr.
Director

Enclosures

STATEMENT BY THE PRESIDENT

I have today signed into law H.R. 3525, the Enhanced Border Security and Visa Entry Reform Act of 2002. The legislation strengthens the ability of the U.S. Government to control the country's borders, a top priority of my Administration. The Act will improve our ability to screen aliens seeking to enter our country, facilitate the sharing of border-related information among U.S. agencies, and improve efforts to keep track of foreign students and foreign exchange visitors in the United States.

Section 2(4)(G) of the Act defines as a Federal law enforcement agency the "Coastal Security Service." Because no such agency exists, and the principal agency with coastal security functions is the U.S. Coast Guard, the executive branch shall construe this provision as referring to the Coast Guard.

Several sections of the Act raise constitutional concerns.

Sections 2(6), 201(c)(2), and 202(a)(3) purport to require the President to act through a specified assistant to the President or in coordination or consultation with specified officers of the United States, agencies or congressional committees. The President's constitutional authority to supervise the unitary executive branch and take care that the laws be faithfully executed cannot be made by law subject to requirements to exercise those constitutional authorities through a particular member of the President's staff or in coordination or consultation with specified officers or elements of the government. Accordingly, the executive branch shall treat the purported requirements as precatory.

Section 203 requires the President, in appointing the nine members of the Commission on Interoperable Data Sharing, to appoint eight of them from a list of nominees provided by the Congressional leadership acting jointly. Laws that provide for appointment in the government of individuals to exercise significant governmental authority must provide for such appointment by one of the means specified in the Appointments Clause of the Constitution, which includes appointment by the President with Senate consent or by the President alone, but does not include appointment by the President from a pool of persons selected by the Congressional leadership. Accordingly, to give effect to Section 203 insofar as is constitutionally permissible, the executive branch shall construe the Commission's functions as advisory only. Also, the executive branch shall construe the Commission's responsibility to make recommendations to Congress in a manner consistent with the President's constitutional authority to submit for congressional consideration such measures as the President shall judge necessary and expedient.

The executive branch shall construe Section 404(a), relating to U.S.-Canadian joint border inspection operations under an international agreement, in a manner consistent with the President's constitutional authority to conduct the foreign affairs of the Nation and to supervise the unitary executive branch.

Other Provisions of H.R. 3525

Studies and Reports

The enrolled bill would require the President to study, and report to Congress within a year of the enrolled bill's enactment on, the feasibility of establishing a North American National Security Program. The President would have to consider the feasibility of (1) enabling foreign national travelers to the United States to submit voluntarily to a preclearance procedure, and (2) expanding preinspection facilities at foreign airports, including expanding preinspections to foreign nationals on flights to Canada and Mexico.

H.R. 3525 would require the General Accounting Office to study, and report to Congress within one year of the enrolled bill's enactment on, the feasibility and utility of implementing a requirement that each nonimmigrant alien in the United States annually submit to INS a current address and, where applicable, the name and address of an employer.

The enrolled bill would require a study by State and INS, in consultation with the Office of Homeland Security, on approaches for encouraging or requiring Canada, Mexico, and Visa Waiver Program (VWP) countries to develop an intergovernmental network of interoperable electronic data systems that is interoperable with the Chimera system and can be used to access law enforcement and intelligence information of those countries that is needed by State and INS to identify aliens who are inadmissible to or deportable from the United States.

The enrolled bill would also require a Justice report to Congress within six months of the enrolled bill's enactment and not later than January 15th of each year thereafter, on the total number of aliens who, during the preceding year, failed to attend a removal proceeding after having been arrested outside a port of entry, served a notice to appear under the Immigration and Nationality Act, and released on the alien's own recognizance.

Training Provisions

The enrolled bill would require State to implement, and staff the facilities and programs for, enhanced security measures for the review of visa applicants, and provide ongoing training for diplomatic security agents and consular officers.

The enrolled bill would require State to provide all consular officers responsible for adjudicating visa applications, before they begin to perform their consular duties, specialized training in the effective screening of visa applicants who pose a potential threat to the United States.

The bill would also authorize appropriations of such sums as may be necessary to "appropriately train" INS personnel, provide "adequate continuing cross-training" to agencies working along U.S. borders, "fully train" immigration officers to use lookout databases and monitor passenger traffic patterns, and improve and expand facilities for use by INS and State Department personnel. Led by Treasury's Federal Law Enforcement Training Center, efforts are already underway to standardize and accredit training programs, including border security.

Technology Improvements

The enrolled bill would authorize Federal agencies involved in border security to waive all or part of enrollment fees for technology-based programs to encourage participation by U.S. citizens and aliens in such programs. Any agency that waives any part of a fee would be authorized to establish its fees for other services at a level that will ensure the recovery from other users of the amounts waived. The bill would authorize appropriations of \$150 million to INS for technology improvements and authorize Justice to increase land border fees for the issuance of arrival-departure documents to offset technology costs. Your FY 2003 Budget proposes \$83 million for technology improvements.

Miscellaneous Provisions

Other provisions in the enrolled bill would:

- Prohibit issuance of nonimmigrant visas to individuals from countries determined by State to be sponsors of international terrorism, unless State, in consultation with Justice, determines an individual does not pose a national security threat.
- Extend for one year, to October 1, 2002, the deadline for requiring aliens seeking to enter the United States with a border crossing card to present one with a biometric identifier.
- Authorize U.S. border inspection agencies, "acting jointly and under an agreement of cooperation with" Canada, to conduct joint United States-Canada inspections projects on the border between the two countries. Justice and Treasury would be required to report to Congress on these projects.
- Add as a condition of eligibility for the VWP, the reporting of passport thefts and increase the frequency, from five to two years, of reports on the continuing designation of VWP countries.
- Require Justice, beginning within 180 days of the enrolled bill's enactment, to issue, to refugees immediately upon their arrival in the United States and to asylees immediately upon being granted asylum, employment authorization documents containing at least a fingerprint and photograph of the alien.

- Repeal the current requirement for inspections of airline passengers arriving in the United States to be conducted within 45 minutes of their presentation for inspection, but require INS to staff ports of entry with adequate levels of personnel based on the goal of conducting these inspections within 45 minutes.
- Require State to retain all visa applications for seven years after the date of application, whether the application was approved or denied.
- Authorize appropriations of such sums as may be necessary to expand the "Carrier Consultant Program," which requires Justice to assign additional immigration officers to assist air carriers in the detection of fraudulent documents at foreign airports which serve as a point of departure for a significant number of arrivals at U.S. ports of entry without valid documentation, but where no preinspection station exists.
- Require State to have established a terrorist look-out committee to be maintained within each U.S. mission to a foreign country to identify and develop information on known or potential terrorists. These committees would report monthly to the Secretary of State, whether or not information on a known or suspected terrorist was developed during that month, and State would be required to report quarterly to Congress on the status of these committees.
- Specify that nothing in the bill may be construed to impose requirements inconsistent with the North American Free Trade Agreement.

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WHITE HOUSE STAFFING MEMORANDUM

Date: 5-14-02 8:00 AM ACTION / CONCURRENCE / COMMENT DUE BY: 5-14-02 10:00 AM

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REMARKS:

WHITE HOUSE STAFFING MEMORANDUM

Date: 5-14-02 8:00 AM ACTION / CONCURRENCE / COMMENT DUE BY: 5-14-02 10:00 AMSubject: ENROLLED BILL H.R. 3525 - ENHANCED BORDER SECURITY AND VISA ENTRY REFORM ACT AND SIGNING STATEMENT

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HAGIN	☐	☐	_____	☐	☐
HAWKINS	☒	☐	_____	☐	☐

REMARKS:

PLEASE FORWARD COMMENTS DIRECTLY JIM JUKES X53458, FAX X56148, BY 10:00 A.M. TODAY, WITH A COPY TO THE STAFF SECRETARY. THANK YOU.

RESPONSE:

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

May 14, 2002

THE DIRECTOR

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 3525 – Enhanced Border Security and Visa Entry Reform Act
Sponsor – Rep. Sensenbrenner (R) Wisconsin

Last Day for Action

May 20, 2002 - Monday

Purpose

Creates new requirements intended to enhance border security concerning: (1) staffing and pay increases for certain immigration personnel; (2) a foreign student tracking system; (3) machine-readable visas and other travel documents; (4) electronic sharing of immigration and law enforcement information; and (5) passenger manifests for aircraft and sea vessels.

Agency Recommendations

Office of Management and Budget

Approval (Signing
statement attached)

Department of Justice
Department of Education

Approval
Defers to Justice and
State (Informally)

Department of State
Department of Transportation
Department of the Treasury

No objection (Informally)
No objection (Informally)
No objection (Informally)

Department of Labor

No comment (Informally)

Department of Defense

No response

Central Intelligence Agency (CIA)

No response

Discussion

H.R. 3525 would set forth new requirements for the President and several agencies, including Justice and State, that are intended to enhance the border security of the United States. Major provisions of the enrolled bill are described below. Other provisions are described in the Attachment.

Staffing and Pay Increases for INS Personnel

The enrolled bill would require Justice, subject to the availability of appropriations, in each of FYs 2003-2006, to increase the number of Immigration and Naturalization Service (INS) inspectors and associated support staff and the number of INS investigators and associated support staff each by the equivalent of 200 full-time equivalents (FTEs) over the number authorized in the USA PATRIOT Act (P.L. 107-56, enacted October 26, 2001). The USA PATRIOT Act authorized Justice to waive any FTE cap on personnel assigned to the INS on the Northern border and authorized appropriations necessary to triple the number of INS inspectors and associated necessary personnel (from the number authorized on the date of its enactment) and facilities in each State along the Northern Border. Your FY 2003 Budget proposes doubling INS staff on the Northern Border.

The enrolled bill would authorize appropriations for Justice of such sums as may be necessary to provide the following increases in pay, effective October 1, 2002: (1) increases for GS-9 journeyman Border Patrol agents and inspectors who have completed at least one year's service to the annual rate of basic pay for GS-11 positions; (2) increases for GS-5 inspections assistants to the annual rate of basic pay for GS-7 positions; and (3) increases for support staff associated with such personnel to "the appropriate GS level." It is expected that INS can absorb the additional estimated costs of \$60 million within requested appropriations.

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The enrolled bill would require Justice, in consultation with State and Education, to establish an electronic system to collect foreign student information from approved institutions of higher education and designated exchange visitor programs in the United States. The system would be used to monitor and verify information on the visitors, such as acceptance into a school or program, issuance of a visa, arrival into the country, registration and enrollment in an educational institution or participation in an exchange visitor program, and more extensive background information. Educational institutions would have to report to the INS, within 30 days of the deadline for registering for classes, any failure of an alien to enroll or to commence participation.

Prior to issuing a foreign student (F or M) or exchange visitor (J) visa, applicants would have to provide the following: an address in the country of origin; names and addresses of the alien's spouse, children, parents, and siblings; names of contacts of the alien in the alien's country of residence who could verify information about the alien; and previous work history, if any, including the names and addresses of employers. Effective 120 days after the enrolled bill's enactment, an F, M, or J visa could not be issued to an alien unless State has received from an approved educational institution electronic evidence of documentation of the alien's acceptance at that institution and the consular officer has adequately reviewed the applicant's visa record. Upon the issuance of an F, M, or J visa, State would have to transmit to INS notification of that issuance and INS would then have to notify the educational institution when an alien accepted for that institution or program has been admitted to the United States.

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Interagency Information Sharing and Data System

Information Sharing. In the enrolled bill (and in the description below), the term "President" means the President acting through the Assistant to the President for Homeland Security, in coordination with the Secretary of State, the INS Commissioner, the Attorney General, the CIA Director, the FBI Director, the Secretary of Transportation, the Customs Commissioner, and the Secretary of the Treasury. H.R. 3525 would require the President to submit a report to Congress within 120 days of the enrolled bill's enactment identifying Federal law enforcement and intelligence community information needed by State when issuing visas and by INS when identifying aliens who are inadmissible or deportable. (The enrolled bill would repeal a provision of the USA PATRIOT Act that required the Office of Homeland Security to submit a similar report.) The President would be required to develop and implement by October 26, 2002, after consultation with Congress, a plan that: (1) requires Federal law enforcement agencies and the intelligence community to provide to State and INS the information identified in the report; and (2) establishes conditions to limit the redissemination of such information and protect individuals' privacy and the sources of such information. The bill specifies criminal penalties for misuse of this information.

Electronic Interoperable Data System. The President, in consultation with the Commerce Department's National Institute of Standards and Technology (NIST), would be required to develop and implement an electronic interoperable data system (to be known as the "Chimera" system) to provide current and immediate access to the information identified in the implementation plan. The system would have to be readily and easily accessible to consular

officers responsible for issuing visas, Federal officials responsible for determining an alien's admissibility to or deportability from the United States, and Federal law enforcement and intelligence officers responsible for the investigation or identification of aliens. The system would be required to have the capacity to compensate for disparate name formats and be searchable on a linguistically sensitive basis, based on algorithms that account for variations in name formats and transliterations. The enrolled bill would require the development and implementation of linguistically sensitive algorithms for at least four languages that are determined by State as high priorities. Of these, the highest priority language's algorithms must be implemented within 18 months of the enrolled bill's enactment and at least one additional algorithm must be implemented per year in each of the following three years. Also, in order to provide adequate user support, the enrolled bill would require State and Justice to jointly prescribe procedures that consular and immigration officers can use to obtain assistance in resolving identity and other questions that may arise about names of aliens seeking visas or admission to the United States.

The enrolled bill would require the system to be based on a technology standard developed under requirements of the USA PATRIOT Act and would advance deadlines associated with the development of this standard. The enrolled bill would accelerate by nine months, to January 26, 2003, the deadline for development (by Justice and State, through NIST) of a technology standard for verifying the identity of visa applicants and persons seeking to enter the United States with a visa and would add the requirement that it must incorporate "appropriate biometric identifier standards." The enrolled bill would also accelerate by six months, to October 26, 2002, a requirement for a report to Congress describing the development, implementation, efficacy, and privacy implications of the technology standard and electronic database system to be developed based on the standard. The enrolled bill would set deadlines of 60 and 120 days after enactment, respectively, for CIA to comply with previously-enacted requirements to issue a report and guidelines concerning uniform spelling of foreign names and places.

The enrolled bill would authorize Justice to hire and fix the compensation of necessary scientific, technical, engineering, and other analytical personnel for the purpose of the development and implementation of the Chimera system. Within 90 days of the enrolled bill's enactment, Justice would be required to submit an operating plan to Congress describing Justice's intended use of this authority and any provisions of title 5 of the U.S. Code (e.g., personnel laws) being waived for purposes of the development and implementation of the Chimera system. This authority would terminate upon the implementation of the system.

The enrolled bill would require INS to fully integrate all databases and data systems maintained by INS that process or contain information on aliens and make this integrated data system an interoperable component of the Chimera system. The enrolled bill would also require Justice or State, as appropriate, to enter identification numbers for stolen passports into the

Chimera system within 72 hours of receiving notification that a passport was lost or stolen. Within six months of the enactment of H.R. 3525, the President would be required to report on the progress of the implementation of the system. The enrolled bill would authorize appropriations of such sums as may be necessary to carry out these provisions.

Data Sharing Commission. Within one year of the enrolled bill's enactment, the President would be required to establish a Commission on Interoperable Data Sharing to monitor and report annually to Congress on recommendations for dealing with privacy, security, technology, and errors related to the new electronic data system. The President would appoint the commission's nine members, eight of whom would be chosen from a list of nominees provided by Congressional leadership. The enrolled bill would authorize appropriations to the Commission of such sums as may be necessary to carry out these requirements.

Passenger Manifests

Current law requires each vessel or aircraft with passengers on board, upon the arrival at or before the departure from any U.S. seaport or airport, to provide manifests of the persons on board to immigration officers at the port, with the exceptions of alien crewmen and of persons arriving from or departing to a foreign contiguous territory by air. The enrolled bill would remove these two exemptions, require arrival manifests to be transmitted before arrival at a port, and allow transmittal to any U.S. border officer. The enrolled bill would require the following information to be provided for each passenger: complete name; date of birth; citizenship; sex; passport number and country of issuance; country of residence; U.S. visa number, date, and place of issuance, where applicable; alien registration number, where applicable; and U.S. address while in the United States. These provisions would apply with respect to persons arriving in, or departing from, the United States on or after the date of enactment of the enrolled bill.

The enrolled bill would also require all manifest information to be transmitted electronically after January 1, 2003, and raise the fine for the failure or refusal to provide the necessary manifest information from \$300 to \$1,000 for each person for whom accurate and full information is not given.

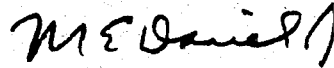
The enrolled bill would require the President to conduct a study regarding the feasibility of extending these reporting requirements to any commercial carrier transporting persons by land to or from the United States. The study would have to focus on the manner in which the requirement would be implemented to enhance the national security of United States and the efficient cross-border flow of commerce and persons. Within two years of enactment, the President would be required to submit a report to Congress setting forth the findings of the study.

Conclusion and Recommendations

The Department of Justice recommends approval of H.R. 3525, but recommends a signing statement to address constitutional concerns with provisions of the bill that purport to require the President to consult with an Executive Branch officer, appoint officers in a manner inconsistent with the Appointments Clause, and submit legislative recommendations to Congress in violation of the Recommendations Clause.

We join Justice in recommending approval of H.R. 3525, which passed the Senate by a vote of 97-0 and the House by 411-0.

Attached for your consideration is a signing statement that is based on language supplied by Justice. It has been reviewed and approved by the Office of White House Counsel, the Office of Homeland Security, and the Office of the Vice President.



Mitchell E. Daniels, Jr.
Director

Enclosures

STATEMENT BY THE PRESIDENT

I have today signed into law H.R. 3525, the Enhanced Border Security and Visa Entry Reform Act of 2002. The legislation strengthens the ability of the U.S. Government to control the country's borders, a top priority of my Administration. The Act will improve our ability to screen aliens seeking to enter our country, facilitate the sharing of border-related information among U.S. agencies, and improve efforts to keep track of foreign students and foreign exchange visitors in the United States.

Section 2(4)(G) of the Act defines as a Federal law enforcement agency the "Coastal Security Service." Because no such agency exists, and the principal agency with coastal security functions is the U.S. Coast Guard, the executive branch shall construe this provision as referring to the Coast Guard.

Several sections of the Act raise constitutional concerns.

Sections 2(6), 201(c)(2), and 202(a)(3) purport to require the President to act through a specified assistant to the President or in coordination or consultation with specified officers of the United States, agencies or congressional committees. The President's constitutional authority to supervise the unitary executive branch and take care that the laws be faithfully executed cannot be made by law subject to requirements to exercise those constitutional authorities through a particular member of the President's staff or in coordination or consultation with specified officers or elements of the government. Accordingly, the executive branch shall treat the purported requirements as precatory.

Section 203 requires the President, in appointing the nine members of the Commission on Interoperable Data Sharing, to appoint eight of them from a list of nominees provided by the Congressional leadership acting jointly. Laws that provide for appointment in the government of individuals to exercise significant governmental authority must provide for such appointment by one of the means specified in the Appointments Clause of the Constitution, which includes appointment by the President with Senate consent or by the President alone, but does not include appointment by the President from a pool of persons selected by the Congressional leadership. Accordingly, to give effect to Section 203 insofar as is constitutionally permissible, the executive branch shall construe the Commission's functions as advisory only. Also, the executive branch shall construe the Commission's responsibility to make recommendations to Congress in a manner consistent with the President's constitutional authority to submit for congressional consideration such measures as the President shall judge necessary and expedient.

The executive branch shall construe Section 404(a), relating to U.S.-Canadian joint border inspection operations under an international agreement, in a manner consistent with the President's constitutional authority to conduct the foreign affairs of the Nation and to supervise the unitary executive branch.

Other Provisions of H.R. 3525

Studies and Reports

The enrolled bill would require the President to study, and report to Congress within a year of the enrolled bill's enactment on, the feasibility of establishing a North American National Security Program. The President would have to consider the feasibility of (1) enabling foreign national travelers to the United States to submit voluntarily to a preclearance procedure, and (2) expanding preinspection facilities at foreign airports, including expanding preinspections to foreign nationals on flights to Canada and Mexico.

H.R. 3525 would require the General Accounting Office to study, and report to Congress within one year of the enrolled bill's enactment on, the feasibility and utility of implementing a requirement that each nonimmigrant alien in the United States annually submit to INS a current address and, where applicable, the name and address of an employer.

The enrolled bill would require a study by State and INS, in consultation with the Office of Homeland Security, on approaches for encouraging or requiring Canada, Mexico, and Visa Waiver Program (VWP) countries to develop an intergovernmental network of interoperable electronic data systems that is interoperable with the Chimera system and can be used to access law enforcement and intelligence information of those countries that is needed by State and INS to identify aliens who are inadmissible to or deportable from the United States.

The enrolled bill would also require a Justice report to Congress within six months of the enrolled bill's enactment and not later than January 15th of each year thereafter, on the total number of aliens who, during the preceding year, failed to attend a removal proceeding after having been arrested outside a port of entry, served a notice to appear under the Immigration and Nationality Act, and released on the alien's own recognizance.

Training Provisions

The enrolled bill would require State to implement, and staff the facilities and programs for, enhanced security measures for the review of visa applicants, and provide ongoing training for diplomatic security agents and consular officers.

The enrolled bill would require State to provide all consular officers responsible for adjudicating visa applications, before they begin to perform their consular duties, specialized training in the effective screening of visa applicants who pose a potential threat to the United States.

The bill would also authorize appropriations of such sums as may be necessary to "appropriately train" INS personnel, provide "adequate continuing cross-training" to agencies working along U.S. borders, "fully train" immigration officers to use lookout databases and monitor passenger traffic patterns, and improve and expand facilities for use by INS and State Department personnel. Led by Treasury's Federal Law Enforcement Training Center, efforts are already underway to standardize and accredit training programs, including border security.

Technology Improvements

The enrolled bill would authorize Federal agencies involved in border security to waive all or part of enrollment fees for technology-based programs to encourage participation by U.S. citizens and aliens in such programs. Any agency that waives any part of a fee would be authorized to establish its fees for other services at a level that will ensure the recovery from other users of the amounts waived. The bill would authorize appropriations of \$150 million to INS for technology improvements and authorize Justice to increase land border fees for the issuance of arrival-departure documents to offset technology costs. Your FY 2003 Budget proposes \$83 million for technology improvements.

Miscellaneous Provisions

Other provisions in the enrolled bill would:

- Prohibit issuance of nonimmigrant visas to individuals from countries determined by State to be sponsors of international terrorism, unless State, in consultation with Justice, determines an individual does not pose a national security threat.
- Extend for one year, to October 1, 2002, the deadline for requiring aliens seeking to enter the United States with a border crossing card to present one with a biometric identifier.
- Authorize U.S. border inspection agencies, "acting jointly and under an agreement of cooperation with" Canada, to conduct joint United States-Canada inspections projects on the border between the two countries. Justice and Treasury would be required to report to Congress on these projects.
- Add as a condition of eligibility for the VWP, the reporting of passport thefts and increase the frequency, from five to two years, of reports on the continuing designation of VWP countries.
- Require Justice, beginning within 180 days of the enrolled bill's enactment, to issue, to refugees immediately upon their arrival in the United States and to asylees immediately upon being granted asylum, employment authorization documents containing at least a fingerprint and photograph of the alien.

- Repeal the current requirement for inspections of airline passengers arriving in the United States to be conducted within 45 minutes of their presentation for inspection, but require INS to staff ports of entry with adequate levels of personnel based on the goal of conducting these inspections within 45 minutes.
- Require State to retain all visa applications for seven years after the date of application, whether the application was approved or denied.
- Authorize appropriations of such sums as may be necessary to expand the "Carrier Consultant Program," which requires Justice to assign additional immigration officers to assist air carriers in the detection of fraudulent documents at foreign airports which serve as a point of departure for a significant number of arrivals at U.S. ports of entry without valid documentation, but where no preinspection station exists.
- Require State to have established a terrorist look-out committee to be maintained within each U.S. mission to a foreign country to identify and develop information on known or potential terrorists. These committees would report monthly to the Secretary of State, whether or not information on a known or suspected terrorist was developed during that month, and State would be required to report quarterly to Congress on the status of these committees.
- Specify that nothing in the bill may be construed to impose requirements inconsistent with the North American Free Trade Agreement.

WHITE HOUSE STAFFING MEMORANDUM

Date: 5-14-02 8:00 AM ACTION / CONCURRENCE / COMMENT DUE BY: 5-14-02 10:00 AM

Subject: ENROLLED BILL H.R. 3525 - ENHANCED BORDER SECURITY AND VISA ENTRY
REFORM ACT AND SIGNING STATEMENT

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☒	☐	HUBBARD	☐	☐
CARD	☒	☐	HUGHES	☒	☐
BARTLETT	☒	☐	IRASTORZA	☐	☐
BLAKEMAN	☐	☐	JOHNSON	☐	☐
BOLTEN	☒	☐	LINDSEY	☒	☐
BRIDGELAND	☒	☐	MARBURGER	☐	☐
CALIO	☒	☐	MIERS	☐	☐
CONNAUGHTON	☐	☐	RICE	☒	☐
DANIELS	☒	☐	RIDGE	☒	☐
FLEISCHER	☒	☐	ROVE	☒	☐
GERSON	☐	☐	SPELLINGS	☒	☐
GONZALES	☒	☐	CLERK	☐	☒
HAGIN	☐	☐		☐	☐
HAWKINS	☒	☐		☐	☐

REMARKS:

PLEASE FORWARD COMMENTS DIRECTLY JIM JUKES X53458, FAX X56148, BY 10:00 A.M. TODAY, WITH A COPY TO THE STAFF SECRETARY. THANK YOU.

RESPONSE:

See AAR

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702



THE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

May 14, 2002

102 MAY 19 10 15 AM '02

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 3525 – Enhanced Border Security and Visa Entry Reform Act
Sponsor – Rep. Sensenbrenner (R) Wisconsin

Last Day for Action

May 20, 2002 - Monday

Purpose

Creates new requirements intended to enhance border security concerning: (1) staffing and pay increases for certain immigration personnel; (2) a foreign student tracking system; (3) machine-readable visas and other travel documents; (4) electronic sharing of immigration and law enforcement information; and (5) passenger manifests for aircraft and sea vessels.

Agency Recommendations

Office of Management and Budget

Approval (Signing
statement attached)

Department of Justice

Approval

Department of Education

Defers to Justice and
State (Informally)

Department of State

No objection (Informally)

Department of Transportation

No objection (Informally)

Department of the Treasury

No objection (Informally)

Department of Labor

No comment (Informally)

Department of Defense

No response

Central Intelligence Agency (CIA)

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Chimera system within 72 hours of receiving notification that a passport was lost or stolen. Within six months of the enactment of H.R. 3525, the President would be required to report on the progress of the implementation of the system. The enrolled bill would authorize appropriations of such sums as may be necessary to carry out these provisions.

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Passenger Manifests

Current law requires each vessel or aircraft with passengers on board, upon the arrival at or before the departure from any U.S. seaport or airport, to provide manifests of the persons on board to immigration officers at the port, with the exceptions of alien crewmen and of persons arriving from or departing to a foreign contiguous territory by air. The enrolled bill would remove these two exemptions, require arrival manifests to be transmitted before arrival at a port, and allow transmittal to any U.S. border officer. The enrolled bill would require the following information to be provided for each passenger: complete name; date of birth; citizenship; sex; passport number and country of issuance; country of residence; U.S. visa number, date, and place of issuance, where applicable; alien registration number, where applicable; and U.S. address while in the United States. These provisions would apply with respect to persons arriving in, or departing from, the United States on or after the date of enactment of the enrolled bill.

The enrolled bill would also require all manifest information to be transmitted electronically after January 1, 2003, and raise the fine for the failure or refusal to provide the necessary manifest information from \$300 to \$1,000 for each person for whom accurate and full information is not given.

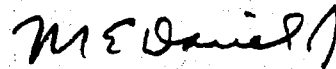
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Conclusion and Recommendations

The Department of Justice recommends approval of H.R. 3525, but recommends a signing statement to address constitutional concerns with provisions of the bill that purport to require the President to consult with an Executive Branch officer, appoint officers in a manner inconsistent with the Appointments Clause, and submit legislative recommendations to Congress in violation of the Recommendations Clause.

We join Justice in recommending approval of H.R. 3525, which passed the Senate by a vote of 97-0 and the House by 411-0.

Attached for your consideration is a signing statement that is based on language supplied by Justice. It has been reviewed and approved by the Office of White House Counsel, the Office of Homeland Security, and the Office of the Vice President.



Mitchell E. Daniels, Jr.
Director

Enclosures

STATEMENT BY THE PRESIDENT

I have today signed into law H.R. 3525, the Enhanced Border Security and Visa Entry Reform Act of 2002. The legislation strengthens the ability of the U.S. Government to control the country's borders, a top priority of my Administration. The Act will improve our ability to screen aliens seeking to enter our country, facilitate the sharing of border-related information among U.S. agencies, and improve efforts to keep track of foreign students and foreign exchange visitors in the United States.

Section 2(4)(G) of the Act defines as a Federal law enforcement agency the "Coastal Security Service." Because no such agency exists, and the principal agency with coastal security functions is the U.S. Coast Guard, the executive branch shall construe this provision as referring to the Coast Guard.

Several sections of the Act raise constitutional concerns.

Sections 2(6), 201(c)(2), and 202(a)(3) purport to require the President to act through a specified assistant to the President or in coordination or consultation with specified officers of the United States, agencies or congressional committees. The President's constitutional authority to supervise the unitary executive branch and take care that the laws be faithfully executed cannot be made by law subject to requirements to exercise those constitutional authorities through a particular member of the President's staff or in coordination or consultation with specified officers or elements of the government. Accordingly, the executive branch shall treat the purported requirements as precatory.

Section 203 requires the President, in appointing the nine members of the Commission on Interoperable Data Sharing, to appoint eight of them from a list of nominees provided by the Congressional leadership acting jointly. Laws that provide for appointment in the government of individuals to exercise significant governmental authority must provide for such appointment by one of the means specified in the Appointments Clause of the Constitution, which includes appointment by the President with Senate consent or by the President alone, but does not include appointment by the President from a pool of persons selected by the Congressional leadership. Accordingly, to give effect to Section 203 insofar as is constitutionally permissible, the executive branch shall construe the Commission's functions as advisory only. Also, the executive branch shall construe the Commission's responsibility to make recommendations to Congress in a manner consistent with the President's constitutional authority to submit for congressional consideration such measures as the President shall judge necessary and expedient.

The executive branch shall construe Section 404(a), relating to U.S.-Canadian joint border inspection operations under an international agreement, in a manner consistent with the President's constitutional authority to conduct the foreign affairs of the Nation and to supervise the unitary executive branch.

Other Provisions of H.R. 3525

Studies and Reports

The enrolled bill would require the President to study, and report to Congress within a year of the enrolled bill's enactment on, the feasibility of establishing a North American National Security Program. The President would have to consider the feasibility of (1) enabling foreign national travelers to the United States to submit voluntarily to a preclearance procedure, and (2) expanding preinspection facilities at foreign airports, including expanding preinspections to foreign nationals on flights to Canada and Mexico.

H.R. 3525 would require the General Accounting Office to study, and report to Congress within one year of the enrolled bill's enactment on, the feasibility and utility of implementing a requirement that each nonimmigrant alien in the United States annually submit to INS a current address and, where applicable, the name and address of an employer.

The enrolled bill would require a study by State and INS, in consultation with the Office of Homeland Security, on approaches for encouraging or requiring Canada, Mexico, and Visa Waiver Program (VWP) countries to develop an intergovernmental network of interoperable electronic data systems that is interoperable with the Chimera system and can be used to access law enforcement and intelligence information of those countries that is needed by State and INS to identify aliens who are inadmissible to or deportable from the United States.

The enrolled bill would also require a Justice report to Congress within six months of the enrolled bill's enactment and not later than January 15th of each year thereafter, on the total number of aliens who, during the preceding year, failed to attend a removal proceeding after having been arrested outside a port of entry, served a notice to appear under the Immigration and Nationality Act, and released on the alien's own recognizance.

Training Provisions

The enrolled bill would require State to implement, and staff the facilities and programs for, enhanced security measures for the review of visa applicants, and provide ongoing training for diplomatic security agents and consular officers.

The enrolled bill would require State to provide all consular officers responsible for adjudicating visa applications, before they begin to perform their consular duties, specialized training in the effective screening of visa applicants who pose a potential threat to the United States.

The bill would also authorize appropriations of such sums as may be necessary to "appropriately train" INS personnel, provide "adequate continuing cross-training" to agencies working along U.S. borders, "fully train" immigration officers to use lookout databases and monitor passenger traffic patterns, and improve and expand facilities for use by INS and State Department personnel. Led by Treasury's Federal Law Enforcement Training Center, efforts are already underway to standardize and accredit training programs, including border security.

Technology Improvements

The enrolled bill would authorize Federal agencies involved in border security to waive all or part of enrollment fees for technology-based programs to encourage participation by U.S. citizens and aliens in such programs. Any agency that waives any part of a fee would be authorized to establish its fees for other services at a level that will ensure the recovery from other users of the amounts waived. The bill would authorize appropriations of \$150 million to INS for technology improvements and authorize Justice to increase land border fees for the issuance of arrival-departure documents to offset technology costs. Your FY 2003 Budget proposes \$83 million for technology improvements.

Miscellaneous Provisions

Other provisions in the enrolled bill would:

- Prohibit issuance of nonimmigrant visas to individuals from countries determined by State to be sponsors of international terrorism, unless State, in consultation with Justice, determines an individual does not pose a national security threat.
- Extend for one year, to October 1, 2002, the deadline for requiring aliens seeking to enter the United States with a border crossing card to present one with a biometric identifier.
- Authorize U.S. border inspection agencies, "acting jointly and under an agreement of cooperation with" Canada, to conduct joint United States-Canada inspections projects on the border between the two countries. Justice and Treasury would be required to report to Congress on these projects.
- Add as a condition of eligibility for the VWP, the reporting of passport thefts and increase the frequency, from five to two years, of reports on the continuing designation of VWP countries.
- Require Justice, beginning within 180 days of the enrolled bill's enactment, to issue, to refugees immediately upon their arrival in the United States and to asylees immediately upon being granted asylum, employment authorization documents containing at least a fingerprint and photograph of the alien.

-- Repeal the current requirement for inspections of airline passengers arriving in the United States to be conducted within 45 minutes of their presentation for inspection, but require INS to staff ports of entry with adequate levels of personnel based on the goal of conducting these inspections within 45 minutes.

-- Require State to retain all visa applications for seven years after the date of application, whether the application was approved or denied.

-- Authorize appropriations of such sums as may be necessary to expand the "Carrier Consultant Program," which requires Justice to assign additional immigration officers to assist air carriers in the detection of fraudulent documents at foreign airports which serve as a point of departure for a significant number of arrivals at U.S. ports of entry without valid documentation, but where no preinspection station exists.

-- Require State to have established a terrorist look-out committee to be maintained within each U.S. mission to a foreign country to identify and develop information on known or potential terrorists. These committees would report monthly to the Secretary of State, whether or not information on a known or suspected terrorist was developed during that month, and State would be required to report quarterly to Congress on the status of these committees.

-- Specify that nothing in the bill may be construed to impose requirements inconsistent with the North American Free Trade Agreement.

WHITE HOUSE STAFFING MEMORANDUM

Date: 5-14-02 8:00 AM ACTION / CONCURRENCE / COMMENT DUE BY: 5-14-02 10:00 AM

ENROLLED BILL H.R. 3525 - ENHANCED BORDER SECURITY AND VISA ENTRY
 Subject: REFORM ACT AND SIGNING STATEMENT

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☒	☐	HUBBARD	☐	☐
CARD	☒	☐	HUGHES	☒	☐
BARTLETT	☒	☐	IRASTORZA	☐	☐
BLAKEMAN	☐	☐	JOHNSON	☐	☐
BOLTEN	☒	☐	LINDSEY	☒	☐
BRIDGELAND	☒	☐	MARBURGER	☐	☐
CALIO	☒	☐	MIERS	☐	☐
CONNAUGHTON	☐	☐	RICE	☒	☐
DANIELS	☒	☐	RIDGE	☒	☐
FLEISCHER	☒	☐	ROVE	☒	☐
GERSON	☐	☐	SPELLINGS	☒	☐
GONZALES	☒	☐	CLERK	☐	☒
HAGIN	☐	☐		☐	☐
HAWKINS	☒	☐		☐	☐

REMARKS:

PLEASE FORWARD COMMENTS DIRECTLY JIM JUKES X53458, FAX X56148, BY 10:00 A.M.
 TODAY, WITH A COPY TO THE STAFF SECRETARY. THANK YOU.

no comment

RESPONSE:

Harriet E. Miers
 Assistant to the President
 and Staff Secretary
 Ext. 62702



THE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

May 14, 2002

02 MAY 14 09:11:03

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 3525 – Enhanced Border Security and Visa Entry Reform Act
Sponsor – Rep. Sensenbrenner (R) Wisconsin

Last Day for Action

May 20, 2002 - Monday

Purpose

Creates new requirements intended to enhance border security concerning: (1) staffing and pay increases for certain immigration personnel; (2) a foreign student tracking system; (3) machine-readable visas and other travel documents; (4) electronic sharing of immigration and law enforcement information; and (5) passenger manifests for aircraft and sea vessels.

Agency Recommendations

Office of Management and Budget

Approval (Signing
statement attached)

Department of Justice
Department of Education

Approval
Defers to Justice and
State (Informally)

Department of State
Department of Transportation
Department of the Treasury

No objection (Informally)
No objection (Informally)
No objection (Informally)

Department of Labor
Department of Defense

No comment (Informally)
No response

Central Intelligence Agency (CIA)

No response

Discussion

H.R. 3525 would set forth new requirements for the President and several agencies, including Justice and State, that are intended to enhance the border security of the United States. Major provisions of the enrolled bill are described below. Other provisions are described in the Attachment.

Staffing and Pay Increases for INS Personnel

The enrolled bill would require Justice, subject to the availability of appropriations, in each of FYs 2003-2006, to increase the number of Immigration and Naturalization Service (INS) inspectors and associated support staff and the number of INS investigators and associated support staff each by the equivalent of 200 full-time equivalents (FTEs) over the number authorized in the USA PATRIOT Act (P.L. 107-56, enacted October 26, 2001). The USA PATRIOT Act authorized Justice to waive any FTE cap on personnel assigned to the INS on the Northern border and authorized appropriations necessary to triple the number of INS inspectors and associated necessary personnel (from the number authorized on the date of its enactment) and facilities in each State along the Northern Border. Your FY 2003 Budget proposes doubling INS staff on the Northern Border.

The enrolled bill would authorize appropriations for Justice of such sums as may be necessary to provide the following increases in pay, effective October 1, 2002: (1) increases for GS-9 journeyman Border Patrol agents and inspectors who have completed at least one year's service to the annual rate of basic pay for GS-11 positions; (2) increases for GS-5 inspections assistants to the annual rate of basic pay for GS-7 positions; and (3) increases for support staff associated with such personnel to "the appropriate GS level." It is expected that INS can absorb the additional estimated costs of \$60 million within requested appropriations.

Student Tracking System

The enrolled bill would require Justice, in consultation with State and Education, to establish an electronic system to collect foreign student information from approved institutions of higher education and designated exchange visitor programs in the United States. The system would be used to monitor and verify information on the visitors, such as acceptance into a school or program, issuance of a visa, arrival into the country, registration and enrollment in an educational institution or participation in an exchange visitor program, and more extensive background information. Educational institutions would have to report to the INS, within 30 days of the deadline for registering for classes, any failure of an alien to enroll or to commence participation.

Prior to issuing a foreign student (F or M) or exchange visitor (J) visa, applicants would have to provide the following: an address in the country of origin; names and addresses of the alien's spouse, children, parents, and siblings; names of contacts of the alien in the alien's country of residence who could verify information about the alien; and previous work history, if any, including the names and addresses of employers. Effective 120 days after the enrolled bill's enactment, an F, M, or J visa could not be issued to an alien unless State has received from an approved educational institution electronic evidence of documentation of the alien's acceptance at that institution and the consular officer has adequately reviewed the applicant's visa record. Upon the issuance of an F, M, or J visa, State would have to transmit to INS notification of that issuance and INS would then have to notify the educational institution when an alien accepted for that institution or program has been admitted to the United States.

The enrolled bill would require INS, in consultation with Education, to conduct biennial reviews of institutions designated to sponsor students to determine if they are complying with recordkeeping and reporting requirements. State would have to conduct biennial reviews of institutions sponsoring exchange visitors for the same purpose. INS and State could suspend or terminate an entity's ability to receive students under the F and M (for INS) or J (for State) visa programs for failing to comply with the recordkeeping and reporting requirements. The enrolled bill would authorize appropriations of such sums as may be necessary to carry out these provisions. Most of the requirements for the student tracking system are already a part of the design for INS' Student and Exchange Visitor Information System (SEVIS) scheduled for release later this year.

Travel Documents

The enrolled bill would require State and Justice, by October 26, 2004, to issue to aliens only travel documents that are machine-readable, tamper resistant, and use biometric identifiers. The enrolled bill would also require by that date the installation of equipment to allow biometric comparison and authentication of all U.S. travel and entry documents issued to aliens. State and Justice would have to jointly establish document authentication and biometric identifiers standards chosen from among those recognized by domestic and international standards organizations. The Departments would have to issue a report, within 180 days of the enrolled bill's enactment, on costs and timing associated with meeting these deadlines. Countries participating in the Visa Waiver Program (VWP) would have to certify by October 26, 2004, as a condition for participation, that they have a program for issuing passports meeting these requirements and participants in the program would have to use these passports (unless issued before that date). (The VWP allows certain citizens from a select group of mostly industrial countries to visit the United States without having to obtain visas.) H.R. 3525 would authorize appropriations of such sums as may be necessary to carry out these provisions, but also authorizes additional land border crossing fees to help INS pay for this effort.

Visa Fees. The enrolled bill would require the machine-readable visa fee to be set at the higher of \$65 or the cost of administering this service, as determined by State after conducting a study of the cost of the service. (In March 2002, State increased the fee by regulation from \$45 to \$65.) The enrolled bill would also authorize State to collect a \$10 surcharge for issuing a machine-readable visa in a nonmachine-readable passport. These fees would be credited as offsetting collections to any State Department appropriation to recover costs of providing consular services.

Entry/Exit System. The enrolled bill would require Justice and State to use the technology standard developed under the USA PATRIOT Act (as discussed below) when implementing the INS Data Management Improvement Act of 2000 (P. L. 106-215, enacted June 15, 2000). (This law requires the implementation of an electronic system that provides alien arrival and departure data.) Justice would be required to: establish a database containing the arrival and departure data from machine-readable visas, passports, and other travel and entry documents possessed by aliens; make interoperable all security databases relevant to making determinations of admissibility; and "consider implementing" the North American National Security Program described below. State would have to provide INS with an electronic version of the visa file of each alien who has been issued a visa to ensure that the data in that visa file is available to immigration inspectors at U.S. ports of entry before the arrival of the alien.

Interagency Information Sharing and Data System

Information Sharing. In the enrolled bill (and in the description below), the term "President" means the President acting through the Assistant to the President for Homeland Security, in coordination with the Secretary of State, the INS Commissioner, the Attorney General, the CIA Director, the FBI Director, the Secretary of Transportation, the Customs Commissioner, and the Secretary of the Treasury. H.R. 3525 would require the President to submit a report to Congress within 120 days of the enrolled bill's enactment identifying Federal law enforcement and intelligence community information needed by State when issuing visas and by INS when identifying aliens who are inadmissible or deportable. (The enrolled bill would repeal a provision of the USA PATRIOT Act that required the Office of Homeland Security to submit a similar report.) The President would be required to develop and implement by October 26, 2002, after consultation with Congress, a plan that: (1) requires Federal law enforcement agencies and the intelligence community to provide to State and INS the information identified in the report; and (2) establishes conditions to limit the redissemination of such information and protect individuals' privacy and the sources of such information. The bill specifies criminal penalties for misuse of this information.

Electronic Interoperable Data System. The President, in consultation with the Commerce Department's National Institute of Standards and Technology (NIST), would be required to develop and implement an electronic interoperable data system (to be known as the "Chimera" system) to provide current and immediate access to the information identified in the implementation plan. The system would have to be readily and easily accessible to consular

officers responsible for issuing visas, Federal officials responsible for determining an alien's admissibility to or deportability from the United States, and Federal law enforcement and intelligence officers responsible for the investigation or identification of aliens. The system would be required to have the capacity to compensate for disparate name formats and be searchable on a linguistically sensitive basis, based on algorithms that account for variations in name formats and transliterations. The enrolled bill would require the development and implementation of linguistically sensitive algorithms for at least four languages that are determined by State as high priorities. Of these, the highest priority language's algorithms must be implemented within 18 months of the enrolled bill's enactment and at least one additional algorithm must be implemented per year in each of the following three years. Also, in order to provide adequate user support, the enrolled bill would require State and Justice to jointly prescribe procedures that consular and immigration officers can use to obtain assistance in resolving identity and other questions that may arise about names of aliens seeking visas or admission to the United States.

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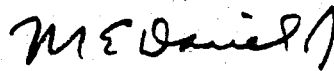
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Attached for your consideration is a signing statement that is based on language supplied by Justice. It has been reviewed and approved by the Office of White House Counsel, the Office of Homeland Security, and the Office of the Vice President.



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I have today signed into law H.R. 3525, the Enhanced Border Security and Visa Entry Reform Act of 2002. The legislation strengthens the ability of the U.S. Government to control the country's borders, a top priority of my Administration. The Act will improve our ability to screen aliens seeking to enter our country, facilitate the sharing of border-related information among U.S. agencies, and improve efforts to keep track of foreign students and foreign exchange visitors in the United States.

Section 2(4)(G) of the Act defines as a Federal law enforcement agency the "Coastal Security Service." Because no such agency exists, and the principal agency with coastal security functions is the U.S. Coast Guard, the executive branch shall construe this provision as referring to the Coast Guard.

Several sections of the Act raise constitutional concerns.

Sections 2(6), 201(c)(2), and 202(a)(3) purport to require the President to act through a specified assistant to the President or in coordination or consultation with specified officers of the United States, agencies or congressional committees. The President's constitutional authority to supervise the unitary executive branch and take care that the laws be faithfully executed cannot be made by law subject to requirements to exercise those constitutional authorities through a particular member of the President's staff or in coordination or consultation with specified officers or elements of the government. Accordingly, the executive branch shall treat the purported requirements as precatory.

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The executive branch shall construe Section 404(a), relating to U.S.-Canadian joint border inspection operations under an international agreement, in a manner consistent with the President's constitutional authority to conduct the foreign affairs of the Nation and to supervise the unitary executive branch.

Other Provisions of H.R. 3525

Studies and Reports

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The bill would also authorize appropriations of such sums as may be necessary to "appropriately train" INS personnel, provide "adequate continuing cross-training" to agencies working along U.S. borders, "fully train" immigration officers to use lookout databases and monitor passenger traffic patterns, and improve and expand facilities for use by INS and State Department personnel. Led by Treasury's Federal Law Enforcement Training Center, efforts are already underway to standardize and accredit training programs, including border security.

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The enrolled bill would authorize Federal agencies involved in border security to waive all or part of enrollment fees for technology-based programs to encourage participation by U.S. citizens and aliens in such programs. Any agency that waives any part of a fee would be authorized to establish its fees for other services at a level that will ensure the recovery from other users of the amounts waived. The bill would authorize appropriations of \$150 million to INS for technology improvements and authorize Justice to increase land border fees for the issuance of arrival-departure documents to offset technology costs. Your FY 2003 Budget proposes \$83 million for technology improvements.

Miscellaneous Provisions

Other provisions in the enrolled bill would:

- Prohibit issuance of nonimmigrant visas to individuals from countries determined by State to be sponsors of international terrorism, unless State, in consultation with Justice, determines an individual does not pose a national security threat.
- Extend for one year, to October 1, 2002, the deadline for requiring aliens seeking to enter the United States with a border crossing card to present one with a biometric identifier.
- Authorize U.S. border inspection agencies, "acting jointly and under an agreement of cooperation with" Canada, to conduct joint United States-Canada inspections projects on the border between the two countries. Justice and Treasury would be required to report to Congress on these projects.
- Add as a condition of eligibility for the VWP, the reporting of passport thefts and increase the frequency, from five to two years, of reports on the continuing designation of VWP countries.
- Require Justice, beginning within 180 days of the enrolled bill's enactment, to issue, to refugees immediately upon their arrival in the United States and to asylees immediately upon being granted asylum, employment authorization documents containing at least a fingerprint and photograph of the alien.

-- Repeal the current requirement for inspections of airline passengers arriving in the United States to be conducted within 45 minutes of their presentation for inspection, but require INS to staff ports of entry with adequate levels of personnel based on the goal of conducting these inspections within 45 minutes.

-- Require State to retain all visa applications for seven years after the date of application, whether the application was approved or denied.

-- Authorize appropriations of such sums as may be necessary to expand the "Carrier Consultant Program," which requires Justice to assign additional immigration officers to assist air carriers in the detection of fraudulent documents at foreign airports which serve as a point of departure for a significant number of arrivals at U.S. ports of entry without valid documentation, but where no preinspection station exists.

-- Require State to have established a terrorist look-out committee to be maintained within each U.S. mission to a foreign country to identify and develop information on known or potential terrorists. These committees would report monthly to the Secretary of State, whether or not information on a known or suspected terrorist was developed during that month, and State would be required to report quarterly to Congress on the status of these committees.

-- Specify that nothing in the bill may be construed to impose requirements inconsistent with the North American Free Trade Agreement.

WHITE HOUSE STAFFING MEMORANDUM

Date: 5-14-02 8:00 AM ACTION / CONCURRENCE / COMMENT DUE BY: 5-14-02 10:00 AM

Subject: ENROLLED BILL H.R. 3525 - ENHANCED BORDER SECURITY AND VISA ENTRY
REFORM ACT AND SIGNING STATEMENT

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☒	☐	HUBBARD	☐	☐
CARD	☒	☐	HUGHES	☒	☐
BARTLETT	☒	☐	IRASTORZA	☐	☐
BLAKEMAN	☐	☐	JOHNSON	☐	☐
BOLTEN	☒	☐	LINDSEY	☒	☐
BRIDGELAND	☒	☐	MARBURGER	☐	☐
CALIO	☒	☐	MIERS	☐	☐
CONNAUGHTON	☐	☐	RICE	☒	☐
DANIELS	☒	☐	RIDGE	☒	☐
FLEISCHER	☒	☐	ROVE	☒	☐
GERSON	☐	☐	SPELLINGS	☒	☐
GONZALES	☒	☐	CLERK	☐	☒
HAGIN	☐	☐		☐	☐
HAWKINS	☒	☐		☐	☐

02 MAY 14 AM 10:59

REMARKS:

PLEASE FORWARD COMMENTS DIRECTLY JIM JUKES X53458, FAX X56148, BY 10:00 A.M.
TODAY, WITH A COPY TO THE STAFF SECRETARY. THANK YOU.

RESPONSE:

legation staff (Alawa.2) - sh

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702



THE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

May 14, 2002

MAY 14 2002

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 3525 – Enhanced Border Security and Visa Entry Reform Act
Sponsor – Rep. Sensenbrenner (R) Wisconsin

Last Day for Action

May 20, 2002 - Monday

Purpose

Creates new requirements intended to enhance border security concerning: (1) staffing and pay increases for certain immigration personnel; (2) a foreign student tracking system; (3) machine-readable visas and other travel documents; (4) electronic sharing of immigration and law enforcement information; and (5) passenger manifests for aircraft and sea vessels.

Agency Recommendations

Office of Management and Budget

Approval (Signing
statement attached)

Department of Justice

Approval

Department of Education

Defers to Justice and
State (Informally)

Department of State

No objection (Informally)

Department of Transportation

No objection (Informally)

Department of the Treasury

No objection (Informally)

Department of Labor

No comment (Informally)

Department of Defense

No response

Central Intelligence Agency (CIA)

No response

Discussion

H.R. 3525 would set forth new requirements for the President and several agencies, including Justice and State, that are intended to enhance the border security of the United States. Major provisions of the enrolled bill are described below. Other provisions are described in the Attachment.

Staffing and Pay Increases for INS Personnel

The enrolled bill would require Justice, subject to the availability of appropriations, in each of FYs 2003-2006, to increase the number of Immigration and Naturalization Service (INS) inspectors and associated support staff and the number of INS investigators and associated support staff each by the equivalent of 200 full-time equivalents (FTEs) over the number authorized in the USA PATRIOT Act (P.L. 107-56, enacted October 26, 2001). The USA PATRIOT Act authorized Justice to waive any FTE cap on personnel assigned to the INS on the Northern border and authorized appropriations necessary to triple the number of INS inspectors and associated necessary personnel (from the number authorized on the date of its enactment) and facilities in each State along the Northern Border. Your FY 2003 Budget proposes doubling INS staff on the Northern Border.

The enrolled bill would authorize appropriations for Justice of such sums as may be necessary to provide the following increases in pay, effective October 1, 2002: (1) increases for GS-9 journeyman Border Patrol agents and inspectors who have completed at least one year's service to the annual rate of basic pay for GS-11 positions; (2) increases for GS-5 inspections assistants to the annual rate of basic pay for GS-7 positions; and (3) increases for support staff associated with such personnel to "the appropriate GS level." It is expected that INS can absorb the additional estimated costs of \$60 million within requested appropriations.

Student Tracking System

The enrolled bill would require Justice, in consultation with State and Education, to establish an electronic system to collect foreign student information from approved institutions of higher education and designated exchange visitor programs in the United States. The system would be used to monitor and verify information on the visitors, such as acceptance into a school or program, issuance of a visa, arrival into the country, registration and enrollment in an educational institution or participation in an exchange visitor program, and more extensive background information. Educational institutions would have to report to the INS, within 30 days of the deadline for registering for classes, any failure of an alien to enroll or to commence participation.

Prior to issuing a foreign student (F or M) or exchange visitor (J) visa, applicants would have to provide the following: an address in the country of origin; names and addresses of the alien's spouse, children, parents, and siblings; names of contacts of the alien in the alien's country of residence who could verify information about the alien; and previous work history, if any, including the names and addresses of employers. Effective 120 days after the enrolled bill's enactment, an F, M, or J visa could not be issued to an alien unless State has received from an approved educational institution electronic evidence of documentation of the alien's acceptance at that institution and the consular officer has adequately reviewed the applicant's visa record. Upon the issuance of an F, M, or J visa, State would have to transmit to INS notification of that issuance and INS would then have to notify the educational institution when an alien accepted for that institution or program has been admitted to the United States.

The enrolled bill would require INS, in consultation with Education, to conduct biennial reviews of institutions designated to sponsor students to determine if they are complying with recordkeeping and reporting requirements. State would have to conduct biennial reviews of institutions sponsoring exchange visitors for the same purpose. INS and State could suspend or terminate an entity's ability to receive students under the F and M (for INS) or J (for State) visa programs for failing to comply with the recordkeeping and reporting requirements. The enrolled bill would authorize appropriations of such sums as may be necessary to carry out these provisions. Most of the requirements for the student tracking system are already a part of the design for INS' Student and Exchange Visitor Information System (SEVIS) scheduled for release later this year.

Travel Documents

The enrolled bill would require State and Justice, by October 26, 2004, to issue to aliens only travel documents that are machine-readable, tamper resistant, and use biometric identifiers. The enrolled bill would also require by that date the installation of equipment to allow biometric comparison and authentication of all U.S. travel and entry documents issued to aliens. State and Justice would have to jointly establish document authentication and biometric identifiers standards chosen from among those recognized by domestic and international standards organizations. The Departments would have to issue a report, within 180 days of the enrolled bill's enactment, on costs and timing associated with meeting these deadlines. Countries participating in the Visa Waiver Program (VWP) would have to certify by October 26, 2004, as a condition for participation, that they have a program for issuing passports meeting these requirements and participants in the program would have to use these passports (unless issued before that date). (The VWP allows certain citizens from a select group of mostly industrial countries to visit the United States without having to obtain visas.) H.R. 3525 would authorize appropriations of such sums as may be necessary to carry out these provisions, but also authorizes additional land border crossing fees to help INS pay for this effort.

Visa Fees. The enrolled bill would require the machine-readable visa fee to be set at the higher of \$65 or the cost of administering this service, as determined by State after conducting a study of the cost of the service. (In March 2002, State increased the fee by regulation from \$45 to \$65.) The enrolled bill would also authorize State to collect a \$10 surcharge for issuing a machine-readable visa in a nonmachine-readable passport. These fees would be credited as offsetting collections to any State Department appropriation to recover costs of providing consular services.

Entry/Exit System. The enrolled bill would require Justice and State to use the technology standard developed under the USA PATRIOT Act (as discussed below) when implementing the INS Data Management Improvement Act of 2000 (P. L. 106-215, enacted June 15, 2000). (This law requires the implementation of an electronic system that provides alien arrival and departure data.) Justice would be required to: establish a database containing the arrival and departure data from machine-readable visas, passports, and other travel and entry documents possessed by aliens; make interoperable all security databases relevant to making determinations of admissibility; and "consider implementing" the North American National Security Program described below. State would have to provide INS with an electronic version of the visa file of each alien who has been issued a visa to ensure that the data in that visa file is available to immigration inspectors at U.S. ports of entry before the arrival of the alien.

Interagency Information Sharing and Data System

Information Sharing. In the enrolled bill (and in the description below), the term "President" means the President acting through the Assistant to the President for Homeland Security, in coordination with the Secretary of State, the INS Commissioner, the Attorney General, the CIA Director, the FBI Director, the Secretary of Transportation, the Customs Commissioner, and the Secretary of the Treasury. H.R. 3525 would require the President to submit a report to Congress within 120 days of the enrolled bill's enactment identifying Federal law enforcement and intelligence community information needed by State when issuing visas and by INS when identifying aliens who are inadmissible or deportable. (The enrolled bill would repeal a provision of the USA PATRIOT Act that required the Office of Homeland Security to submit a similar report.) The President would be required to develop and implement by October 26, 2002, after consultation with Congress, a plan that: (1) requires Federal law enforcement agencies and the intelligence community to provide to State and INS the information identified in the report; and (2) establishes conditions to limit the redissemination of such information and protect individuals' privacy and the sources of such information. The bill specifies criminal penalties for misuse of this information.

Electronic Interoperable Data System. The President, in consultation with the Commerce Department's National Institute of Standards and Technology (NIST), would be required to develop and implement an electronic interoperable data system (to be known as the "Chimera" system) to provide current and immediate access to the information identified in the implementation plan. The system would have to be readily and easily accessible to consular

officers responsible for issuing visas, Federal officials responsible for determining an alien's admissibility to or deportability from the United States, and Federal law enforcement and intelligence officers responsible for the investigation or identification of aliens. The system would be required to have the capacity to compensate for disparate name formats and be searchable on a linguistically sensitive basis, based on algorithms that account for variations in name formats and transliterations. The enrolled bill would require the development and implementation of linguistically sensitive algorithms for at least four languages that are determined by State as high priorities. Of these, the highest priority language's algorithms must be implemented within 18 months of the enrolled bill's enactment and at least one additional algorithm must be implemented per year in each of the following three years. Also, in order to provide adequate user support, the enrolled bill would require State and Justice to jointly prescribe procedures that consular and immigration officers can use to obtain assistance in resolving identity and other questions that may arise about names of aliens seeking visas or admission to the United States.

The enrolled bill would require the system to be based on a technology standard developed under requirements of the USA PATRIOT Act and would advance deadlines associated with the development of this standard. The enrolled bill would accelerate by nine months, to January 26, 2003, the deadline for development (by Justice and State, through NIST) of a technology standard for verifying the identity of visa applicants and persons seeking to enter the United States with a visa and would add the requirement that it must incorporate "appropriate biometric identifier standards." The enrolled bill would also accelerate by six months, to October 26, 2002, a requirement for a report to Congress describing the development, implementation, efficacy, and privacy implications of the technology standard and electronic database system to be developed based on the standard. The enrolled bill would set deadlines of 60 and 120 days after enactment, respectively, for CIA to comply with previously-enacted requirements to issue a report and guidelines concerning uniform spelling of foreign names and places.

The enrolled bill would authorize Justice to hire and fix the compensation of necessary scientific, technical, engineering, and other analytical personnel for the purpose of the development and implementation of the Chimera system. Within 90 days of the enrolled bill's enactment, Justice would be required to submit an operating plan to Congress describing Justice's intended use of this authority and any provisions of title 5 of the U.S. Code (e.g., personnel laws) being waived for purposes of the development and implementation of the Chimera system. This authority would terminate upon the implementation of the system.

The enrolled bill would require INS to fully integrate all databases and data systems maintained by INS that process or contain information on aliens and make this integrated data system an interoperable component of the Chimera system. The enrolled bill would also require Justice or State, as appropriate, to enter identification numbers for stolen passports into the

Chimera system within 72 hours of receiving notification that a passport was lost or stolen. Within six months of the enactment of H.R. 3525, the President would be required to report on the progress of the implementation of the system. The enrolled bill would authorize appropriations of such sums as may be necessary to carry out these provisions.

Data Sharing Commission. Within one year of the enrolled bill's enactment, the President would be required to establish a Commission on Interoperable Data Sharing to monitor and report annually to Congress on recommendations for dealing with privacy, security, technology, and errors related to the new electronic data system. The President would appoint the commission's nine members, eight of whom would be chosen from a list of nominees provided by Congressional leadership. The enrolled bill would authorize appropriations to the Commission of such sums as may be necessary to carry out these requirements.

Passenger Manifests

Current law requires each vessel or aircraft with passengers on board, upon the arrival at or before the departure from any U.S. seaport or airport, to provide manifests of the persons on board to immigration officers at the port, with the exceptions of alien crewmen and of persons arriving from or departing to a foreign contiguous territory by air. The enrolled bill would remove these two exemptions, require arrival manifests to be transmitted before arrival at a port, and allow transmittal to any U.S. border officer. The enrolled bill would require the following information to be provided for each passenger: complete name; date of birth; citizenship; sex; passport number and country of issuance; country of residence; U.S. visa number, date, and place of issuance, where applicable; alien registration number, where applicable; and U.S. address while in the United States. These provisions would apply with respect to persons arriving in, or departing from, the United States on or after the date of enactment of the enrolled bill.

The enrolled bill would also require all manifest information to be transmitted electronically after January 1, 2003, and raise the fine for the failure or refusal to provide the necessary manifest information from \$300 to \$1,000 for each person for whom accurate and full information is not given.

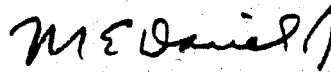
The enrolled bill would require the President to conduct a study regarding the feasibility of extending these reporting requirements to any commercial carrier transporting persons by land to or from the United States. The study would have to focus on the manner in which the requirement would be implemented to enhance the national security of United States and the efficient cross-border flow of commerce and persons. Within two years of enactment, the President would be required to submit a report to Congress setting forth the findings of the study.

Conclusion and Recommendations

The Department of Justice recommends approval of H.R. 3525, but recommends a signing statement to address constitutional concerns with provisions of the bill that purport to require the President to consult with an Executive Branch officer, appoint officers in a manner inconsistent with the Appointments Clause, and submit legislative recommendations to Congress in violation of the Recommendations Clause.

We join Justice in recommending approval of H.R. 3525, which passed the Senate by a vote of 97-0 and the House by 411-0.

Attached for your consideration is a signing statement that is based on language supplied by Justice. It has been reviewed and approved by the Office of White House Counsel, the Office of Homeland Security, and the Office of the Vice President.



Mitchell E. Daniels, Jr.
Director

Enclosures

STATEMENT BY THE PRESIDENT

I have today signed into law H.R. 3525, the Enhanced Border Security and Visa Entry Reform Act of 2002. The legislation strengthens the ability of the U.S. Government to control the country's borders, a top priority of my Administration. The Act will improve our ability to screen aliens seeking to enter our country, facilitate the sharing of border-related information among U.S. agencies, and improve efforts to keep track of foreign students and foreign exchange visitors in the United States.

Section 2(4)(G) of the Act defines as a Federal law enforcement agency the "Coastal Security Service." Because no such agency exists, and the principal agency with coastal security functions is the U.S. Coast Guard, the executive branch shall construe this provision as referring to the Coast Guard.

Several sections of the Act raise constitutional concerns.

Sections 2(6), 201(c)(2), and 202(a)(3) purport to require the President to act through a specified assistant to the President or in coordination or consultation with specified officers of the United States, agencies or congressional committees. The President's constitutional authority to supervise the unitary executive branch and take care that the laws be faithfully executed cannot be made by law subject to requirements to exercise those constitutional authorities through a particular member of the President's staff or in coordination or consultation with specified officers or elements of the government. Accordingly, the executive branch shall treat the purported requirements as precatory.

Section 203 requires the President, in appointing the nine members of the Commission on Interoperable Data Sharing, to appoint eight of them from a list of nominees provided by the Congressional leadership acting jointly. Laws that provide for appointment in the government of individuals to exercise significant governmental authority must provide for such appointment by one of the means specified in the Appointments Clause of the Constitution, which includes appointment by the President with Senate consent or by the President alone, but does not include appointment by the President from a pool of persons selected by the Congressional leadership. Accordingly, to give effect to Section 203 insofar as is constitutionally permissible, the executive branch shall construe the Commission's functions as advisory only. Also, the executive branch shall construe the Commission's responsibility to make recommendations to Congress in a manner consistent with the President's constitutional authority to submit for congressional consideration such measures as the President shall judge necessary and expedient.

The executive branch shall construe Section 404(a), relating to U.S.-Canadian joint border inspection operations under an international agreement, in a manner consistent with the President's constitutional authority to conduct the foreign affairs of the Nation and to supervise the unitary executive branch.

Other Provisions of H.R. 3525

Studies and Reports

The enrolled bill would require the President to study, and report to Congress within a year of the enrolled bill's enactment on, the feasibility of establishing a North American National Security Program. The President would have to consider the feasibility of (1) enabling foreign national travelers to the United States to submit voluntarily to a preclearance procedure, and (2) expanding preinspection facilities at foreign airports, including expanding preinspections to foreign nationals on flights to Canada and Mexico.

H.R. 3525 would require the General Accounting Office to study, and report to Congress within one year of the enrolled bill's enactment on, the feasibility and utility of implementing a requirement that each nonimmigrant alien in the United States annually submit to INS a current address and, where applicable, the name and address of an employer.

The enrolled bill would require a study by State and INS, in consultation with the Office of Homeland Security, on approaches for encouraging or requiring Canada, Mexico, and Visa Waiver Program (VWP) countries to develop an intergovernmental network of interoperable electronic data systems that is interoperable with the Chimera system and can be used to access law enforcement and intelligence information of those countries that is needed by State and INS to identify aliens who are inadmissible to or deportable from the United States.

The enrolled bill would also require a Justice report to Congress within six months of the enrolled bill's enactment and not later than January 15th of each year thereafter, on the total number of aliens who, during the preceding year, failed to attend a removal proceeding after having been arrested outside a port of entry, served a notice to appear under the Immigration and Nationality Act, and released on the alien's own recognizance.

Training Provisions

The enrolled bill would require State to implement, and staff the facilities and programs for, enhanced security measures for the review of visa applicants, and provide ongoing training for diplomatic security agents and consular officers.

The enrolled bill would require State to provide all consular officers responsible for adjudicating visa applications, before they begin to perform their consular duties, specialized training in the effective screening of visa applicants who pose a potential threat to the United States.

The bill would also authorize appropriations of such sums as may be necessary to "appropriately train" INS personnel, provide "adequate continuing cross-training" to agencies working along U.S. borders, "fully train" immigration officers to use lookout databases and monitor passenger traffic patterns, and improve and expand facilities for use by INS and State Department personnel. Led by Treasury's Federal Law Enforcement Training Center, efforts are already underway to standardize and accredit training programs, including border security.

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-- Specify that nothing in the bill may be construed to impose requirements inconsistent with the North American Free Trade Agreement.

STATEMENT BY THE PRESIDENT

I have today signed into law H.R. 3525, the "Enhanced Border Security and Visa Entry Reform Act of 2002." The legislation strengthens the ability of the U.S. Government to control the country's borders, a top priority of my Administration. The Act will improve our ability to screen aliens seeking to enter our country, facilitate the sharing of border-related information among U.S. agencies, and improve efforts to keep track of foreign students and foreign exchange visitors in the United States.

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Several sections of the Act raise constitutional concerns.

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Section 203 requires the President, in appointing the nine members of the Commission on Interoperable Data Sharing, to appoint eight of them from a list of nominees provided by the congressional leadership acting jointly. Laws that provide for appointment in the Government of individuals

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Section 203 requires the President, in appointing the nine members of the Commission on Interoperable Data Sharing, to appoint eight of them from a list of nominees provided by the Congressional leadership acting jointly. Laws that provide for appointment in the government of individuals to exercise significant governmental authority must provide for such appointment by one of the means specified in the Appointments Clause of the Constitution, which includes appointment by the President with Senate consent or by the President alone, but does not include appointment by the President from a pool of persons selected by the Congressional leadership. Accordingly, to give effect to Section 203 insofar as is constitutionally permissible, the executive branch shall construe the Commission's functions as advisory only. Also, the executive branch shall construe the Commission's responsibility to make recommendations to Congress in a manner consistent with the President's constitutional authority to submit for congressional consideration such measures as the President shall judge necessary and expedient.

The executive branch shall construe Section 404(a), relating to U.S.-Canadian joint border inspection operations under an international agreement, in a manner consistent with the President's constitutional authority to conduct the foreign affairs of the Nation and to supervise the unitary executive branch.

WHITE HOUSE STAFFING MEMORANDUM

Date: 5-14-02 8:00 AM ACTION / CONCURRENCE / COMMENT DUE BY: 5-14-02 10:00 AM

Subject: ENROLLED BILL H.R. 3525 - ENHANCED BORDER SECURITY AND VISA ENTRY
REFORM ACT AND SIGNING STATEMENT

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☒	☐	HUBBARD	☐	☐
CARD	☒	☐	HUGHES	☒	☐
BARTLETT	☒	☐	IRASTORZA	☐	☐
BLAKEMAN	☐	☐	JOHNSON	☐	☐
BOLTEN	☒	☐	LINDSEY	☒	☐
BRIDGELAND	☒	☐	MARBURGER	☐	☐
CALIO	☒	☐	MIERS	☐	☐
CONNAUGHTON	☐	☐	RICE	☒	☐
DANIELS	☒	☐	RIDGE	☒	☐
FLEISCHER	☒	☐	ROVE	☒	☐
GERSON	☐	☐	SPELLINGS	☒	☐
GONZALES	☒	☐	CLERK	☐	☒
HAGIN	☐	☐	_____	☐	☐
HAWKINS	☒	☐	_____	☐	☐

REMARKS:

PLEASE FORWARD COMMENTS DIRECTLY JIM JUKES X53458, FAX X56148, BY 10:00 A.M. TODAY, WITH A COPY TO THE STAFF SECRETARY. THANK YOU.

RESPONSE:

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702



THE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

May 14, 2002

MAY 14 2002

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 3525 – Enhanced Border Security and Visa Entry Reform Act
Sponsor – Rep. Sensenbrenner (R) Wisconsin

Last Day for Action

May 20, 2002 - Monday

Purpose

Creates new requirements intended to enhance border security concerning: (1) staffing and pay increases for certain immigration personnel; (2) a foreign student tracking system; (3) machine-readable visas and other travel documents; (4) electronic sharing of immigration and law enforcement information; and (5) passenger manifests for aircraft and sea vessels.

Agency Recommendations

Office of Management and Budget

Approval (Signing
statement attached)

Department of Justice

Approval

Department of Education

Defers to Justice and
State (Informally)

Department of State

No objection (Informally)

Department of Transportation

No objection (Informally)

Department of the Treasury

No objection (Informally)

Department of Labor

No comment (Informally)

Department of Defense

No response

Central Intelligence Agency (CIA)

No response

Discussion

H.R. 3525 would set forth new requirements for the President and several agencies, including Justice and State, that are intended to enhance the border security of the United States. Major provisions of the enrolled bill are described below. Other provisions are described in the Attachment.

Staffing and Pay Increases for INS Personnel

The enrolled bill would require Justice, subject to the availability of appropriations, in each of FYs 2003-2006, to increase the number of Immigration and Naturalization Service (INS) inspectors and associated support staff and the number of INS investigators and associated support staff each by the equivalent of 200 full-time equivalents (FTEs) over the number authorized in the USA PATRIOT Act (P.L. 107-56, enacted October 26, 2001). The USA PATRIOT Act authorized Justice to waive any FTE cap on personnel assigned to the INS on the Northern border and authorized appropriations necessary to triple the number of INS inspectors and associated necessary personnel (from the number authorized on the date of its enactment) and facilities in each State along the Northern Border. Your FY 2003 Budget proposes doubling INS staff on the Northern Border.

The enrolled bill would authorize appropriations for Justice of such sums as may be necessary to provide the following increases in pay, effective October 1, 2002: (1) increases for GS-9 journeyman Border Patrol agents and inspectors who have completed at least one year's service to the annual rate of basic pay for GS-11 positions; (2) increases for GS-5 inspections assistants to the annual rate of basic pay for GS-7 positions; and (3) increases for support staff associated with such personnel to "the appropriate GS level." It is expected that INS can absorb the additional estimated costs of \$60 million within requested appropriations.

Student Tracking System

The enrolled bill would require Justice, in consultation with State and Education, to establish an electronic system to collect foreign student information from approved institutions of higher education and designated exchange visitor programs in the United States. The system would be used to monitor and verify information on the visitors, such as acceptance into a school or program, issuance of a visa, arrival into the country, registration and enrollment in an educational institution or participation in an exchange visitor program, and more extensive background information. Educational institutions would have to report to the INS, within 30 days of the deadline for registering for classes, any failure of an alien to enroll or to commence participation.

Prior to issuing a foreign student (F or M) or exchange visitor (J) visa, applicants would have to provide the following: an address in the country of origin; names and addresses of the alien's spouse, children, parents, and siblings; names of contacts of the alien in the alien's country of residence who could verify information about the alien; and previous work history, if any, including the names and addresses of employers. Effective 120 days after the enrolled bill's enactment, an F, M, or J visa could not be issued to an alien unless State has received from an approved educational institution electronic evidence of documentation of the alien's acceptance at that institution and the consular officer has adequately reviewed the applicant's visa record. Upon the issuance of an F, M, or J visa, State would have to transmit to INS notification of that issuance and INS would then have to notify the educational institution when an alien accepted for that institution or program has been admitted to the United States.

The enrolled bill would require INS, in consultation with Education, to conduct biennial reviews of institutions designated to sponsor students to determine if they are complying with recordkeeping and reporting requirements. State would have to conduct biennial reviews of institutions sponsoring exchange visitors for the same purpose. INS and State could suspend or terminate an entity's ability to receive students under the F and M (for INS) or J (for State) visa programs for failing to comply with the recordkeeping and reporting requirements. The enrolled bill would authorize appropriations of such sums as may be necessary to carry out these provisions. Most of the requirements for the student tracking system are already a part of the design for INS' Student and Exchange Visitor Information System (SEVIS) scheduled for release later this year.

Travel Documents

The enrolled bill would require State and Justice, by October 26, 2004, to issue to aliens only travel documents that are machine-readable, tamper resistant, and use biometric identifiers. The enrolled bill would also require by that date the installation of equipment to allow biometric comparison and authentication of all U.S. travel and entry documents issued to aliens. State and Justice would have to jointly establish document authentication and biometric identifiers standards chosen from among those recognized by domestic and international standards organizations. The Departments would have to issue a report, within 180 days of the enrolled bill's enactment, on costs and timing associated with meeting these deadlines. Countries participating in the Visa Waiver Program (VWP) would have to certify by October 26, 2004, as a condition for participation, that they have a program for issuing passports meeting these requirements and participants in the program would have to use these passports (unless issued before that date). (The VWP allows certain citizens from a select group of mostly industrial countries to visit the United States without having to obtain visas.) H.R. 3525 would authorize appropriations of such sums as may be necessary to carry out these provisions, but also authorizes additional land border crossing fees to help INS pay for this effort.

Visa Fees. The enrolled bill would require the machine-readable visa fee to be set at the higher of \$65 or the cost of administering this service, as determined by State after conducting a study of the cost of the service. (In March 2002, State increased the fee by regulation from \$45 to \$65.) The enrolled bill would also authorize State to collect a \$10 surcharge for issuing a machine-readable visa in a nonmachine-readable passport. These fees would be credited as offsetting collections to any State Department appropriation to recover costs of providing consular services.

Entry/Exit System. The enrolled bill would require Justice and State to use the technology standard developed under the USA PATRIOT Act (as discussed below) when implementing the INS Data Management Improvement Act of 2000 (P. L. 106-215, enacted June 15, 2000). (This law requires the implementation of an electronic system that provides alien arrival and departure data.) Justice would be required to: establish a database containing the arrival and departure data from machine-readable visas, passports, and other travel and entry documents possessed by aliens; make interoperable all security databases relevant to making determinations of admissibility; and "consider implementing" the North American National Security Program described below. State would have to provide INS with an electronic version of the visa file of each alien who has been issued a visa to ensure that the data in that visa file is available to immigration inspectors at U.S. ports of entry before the arrival of the alien.

Interagency Information Sharing and Data System

Information Sharing. In the enrolled bill (and in the description below), the term "President" means the President acting through the Assistant to the President for Homeland Security, in coordination with the Secretary of State, the INS Commissioner, the Attorney General, the CIA Director, the FBI Director, the Secretary of Transportation, the Customs Commissioner, and the Secretary of the Treasury. H.R. 3525 would require the President to submit a report to Congress within 120 days of the enrolled bill's enactment identifying Federal law enforcement and intelligence community information needed by State when issuing visas and by INS when identifying aliens who are inadmissible or deportable. (The enrolled bill would repeal a provision of the USA PATRIOT Act that required the Office of Homeland Security to submit a similar report.) The President would be required to develop and implement by October 26, 2002, after consultation with Congress, a plan that: (1) requires Federal law enforcement agencies and the intelligence community to provide to State and INS the information identified in the report; and (2) establishes conditions to limit the redissemination of such information and protect individuals' privacy and the sources of such information. The bill specifies criminal penalties for misuse of this information.

Electronic Interoperable Data System. The President, in consultation with the Commerce Department's National Institute of Standards and Technology (NIST), would be required to develop and implement an electronic interoperable data system (to be known as the "Chimera" system) to provide current and immediate access to the information identified in the implementation plan. The system would have to be readily and easily accessible to consular

officers responsible for issuing visas, Federal officials responsible for determining an alien's admissibility to or deportability from the United States, and Federal law enforcement and intelligence officers responsible for the investigation or identification of aliens. The system would be required to have the capacity to compensate for disparate name formats and be searchable on a linguistically sensitive basis, based on algorithms that account for variations in name formats and transliterations. The enrolled bill would require the development and implementation of linguistically sensitive algorithms for at least four languages that are determined by State as high priorities. Of these, the highest priority language's algorithms must be implemented within 18 months of the enrolled bill's enactment and at least one additional algorithm must be implemented per year in each of the following three years. Also, in order to provide adequate user support, the enrolled bill would require State and Justice to jointly prescribe procedures that consular and immigration officers can use to obtain assistance in resolving identity and other questions that may arise about names of aliens seeking visas or admission to the United States.

The enrolled bill would require the system to be based on a technology standard developed under requirements of the USA PATRIOT Act and would advance deadlines associated with the development of this standard. The enrolled bill would accelerate by nine months, to January 26, 2003, the deadline for development (by Justice and State, through NIST) of a technology standard for verifying the identity of visa applicants and persons seeking to enter the United States with a visa and would add the requirement that it must incorporate "appropriate biometric identifier standards." The enrolled bill would also accelerate by six months, to October 26, 2002, a requirement for a report to Congress describing the development, implementation, efficacy, and privacy implications of the technology standard and electronic database system to be developed based on the standard. The enrolled bill would set deadlines of 60 and 120 days after enactment, respectively, for CIA to comply with previously-enacted requirements to issue a report and guidelines concerning uniform spelling of foreign names and places.

The enrolled bill would authorize Justice to hire and fix the compensation of necessary scientific, technical, engineering, and other analytical personnel for the purpose of the development and implementation of the Chimera system. Within 90 days of the enrolled bill's enactment, Justice would be required to submit an operating plan to Congress describing Justice's intended use of this authority and any provisions of title 5 of the U.S. Code (e.g., personnel laws) being waived for purposes of the development and implementation of the Chimera system. This authority would terminate upon the implementation of the system.

The enrolled bill would require INS to fully integrate all databases and data systems maintained by INS that process or contain information on aliens and make this integrated data system an interoperable component of the Chimera system. The enrolled bill would also require Justice or State, as appropriate, to enter identification numbers for stolen passports into the

Chimera system within 72 hours of receiving notification that a passport was lost or stolen. Within six months of the enactment of H.R. 3525, the President would be required to report on the progress of the implementation of the system. The enrolled bill would authorize appropriations of such sums as may be necessary to carry out these provisions.

Data Sharing Commission. Within one year of the enrolled bill's enactment, the President would be required to establish a Commission on Interoperable Data Sharing to monitor and report annually to Congress on recommendations for dealing with privacy, security, technology, and errors related to the new electronic data system. The President would appoint the commission's nine members, eight of whom would be chosen from a list of nominees provided by Congressional leadership. The enrolled bill would authorize appropriations to the Commission of such sums as may be necessary to carry out these requirements.

Passenger Manifests

Current law requires each vessel or aircraft with passengers on board, upon the arrival at or before the departure from any U.S. seaport or airport, to provide manifests of the persons on board to immigration officers at the port, with the exceptions of alien crewmen and of persons arriving from or departing to a foreign contiguous territory by air. The enrolled bill would remove these two exemptions, require arrival manifests to be transmitted before arrival at a port, and allow transmittal to any U.S. border officer. The enrolled bill would require the following information to be provided for each passenger: complete name; date of birth; citizenship; sex; passport number and country of issuance; country of residence; U.S. visa number, date, and place of issuance, where applicable; alien registration number, where applicable; and U.S. address while in the United States. These provisions would apply with respect to persons arriving in, or departing from, the United States on or after the date of enactment of the enrolled bill.

The enrolled bill would also require all manifest information to be transmitted electronically after January 1, 2003, and raise the fine for the failure or refusal to provide the necessary manifest information from \$300 to \$1,000 for each person for whom accurate and full information is not given.

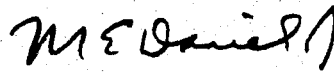
The enrolled bill would require the President to conduct a study regarding the feasibility of extending these reporting requirements to any commercial carrier transporting persons by land to or from the United States. The study would have to focus on the manner in which the requirement would be implemented to enhance the national security of United States and the efficient cross-border flow of commerce and persons. Within two years of enactment, the President would be required to submit a report to Congress setting forth the findings of the study.

Conclusion and Recommendations

The Department of Justice recommends approval of H.R. 3525, but recommends a signing statement to address constitutional concerns with provisions of the bill that purport to require the President to consult with an Executive Branch officer, appoint officers in a manner inconsistent with the Appointments Clause, and submit legislative recommendations to Congress in violation of the Recommendations Clause.

We join Justice in recommending approval of H.R. 3525, which passed the Senate by a vote of 97-0 and the House by 411-0.

Attached for your consideration is a signing statement that is based on language supplied by Justice. It has been reviewed and approved by the Office of White House Counsel, the Office of Homeland Security, and the Office of the Vice President.



Mitchell E. Daniels, Jr.
Director

Enclosures

STATEMENT BY THE PRESIDENT

I have today signed into law H.R. 3525, the Enhanced Border Security and Visa Entry Reform Act of 2002. The legislation strengthens the ability of the U.S. Government to control the country's borders, a top priority of my Administration. The Act will improve our ability to screen aliens seeking to enter our country, facilitate the sharing of border-related information among U.S. agencies, and improve efforts to keep track of foreign students and foreign exchange visitors in the United States.

Section 2(4)(G) of the Act defines as a Federal law enforcement agency the "Coastal Security Service." Because no such agency exists, and the principal agency with coastal security functions is the U.S. Coast Guard, the executive branch shall construe this provision as referring to the Coast Guard.

Several sections of the Act raise constitutional concerns.

Sections 2(6), 201(c)(2), and 202(a)(3) purport to require the President to act through a specified assistant to the President or in coordination or consultation with specified officers of the United States, agencies or congressional committees. The President's constitutional authority to supervise the unitary executive branch and take care that the laws be faithfully executed cannot be made by law subject to requirements to exercise those constitutional authorities through a particular member of the President's staff or in coordination or consultation with specified officers or elements of the government. Accordingly, the executive branch shall treat the purported requirements as precatory.

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The executive branch shall construe Section 404(a), relating to U.S.-Canadian joint border inspection operations under an international agreement, in a manner consistent with the President's constitutional authority to conduct the foreign affairs of the Nation and to supervise the unitary executive branch.

Other Provisions of H.R. 3525

Studies and Reports

The enrolled bill would require the President to study, and report to Congress within a year of the enrolled bill's enactment on, the feasibility of establishing a North American National Security Program. The President would have to consider the feasibility of (1) enabling foreign national travelers to the United States to submit voluntarily to a preclearance procedure, and (2) expanding preinspection facilities at foreign airports, including expanding preinspections to foreign nationals on flights to Canada and Mexico.

H.R. 3525 would require the General Accounting Office to study, and report to Congress within one year of the enrolled bill's enactment on, the feasibility and utility of implementing a requirement that each nonimmigrant alien in the United States annually submit to INS a current address and, where applicable, the name and address of an employer.

The enrolled bill would require a study by State and INS, in consultation with the Office of Homeland Security, on approaches for encouraging or requiring Canada, Mexico, and Visa Waiver Program (VWP) countries to develop an intergovernmental network of interoperable electronic data systems that is interoperable with the Chimera system and can be used to access law enforcement and intelligence information of those countries that is needed by State and INS to identify aliens who are inadmissible to or deportable from the United States.

The enrolled bill would also require a Justice report to Congress within six months of the enrolled bill's enactment and not later than January 15th of each year thereafter, on the total number of aliens who, during the preceding year, failed to attend a removal proceeding after having been arrested outside a port of entry, served a notice to appear under the Immigration and Nationality Act, and released on the alien's own recognizance.

Training Provisions

The enrolled bill would require State to implement, and staff the facilities and programs for, enhanced security measures for the review of visa applicants, and provide ongoing training for diplomatic security agents and consular officers.

The enrolled bill would require State to provide all consular officers responsible for adjudicating visa applications, before they begin to perform their consular duties, specialized training in the effective screening of visa applicants who pose a potential threat to the United States.

The bill would also authorize appropriations of such sums as may be necessary to "appropriately train" INS personnel, provide "adequate continuing cross-training" to agencies working along U.S. borders, "fully train" immigration officers to use lookout databases and monitor passenger traffic patterns, and improve and expand facilities for use by INS and State Department personnel. Led by Treasury's Federal Law Enforcement Training Center, efforts are already underway to standardize and accredit training programs, including border security.

Technology Improvements

The enrolled bill would authorize Federal agencies involved in border security to waive all or part of enrollment fees for technology-based programs to encourage participation by U.S. citizens and aliens in such programs. Any agency that waives any part of a fee would be authorized to establish its fees for other services at a level that will ensure the recovery from other users of the amounts waived. The bill would authorize appropriations of \$150 million to INS for technology improvements and authorize Justice to increase land border fees for the issuance of arrival-departure documents to offset technology costs. Your FY 2003 Budget proposes \$83 million for technology improvements.

Miscellaneous Provisions

Other provisions in the enrolled bill would:

- Prohibit issuance of nonimmigrant visas to individuals from countries determined by State to be sponsors of international terrorism, unless State, in consultation with Justice, determines an individual does not pose a national security threat.
- Extend for one year, to October 1, 2002, the deadline for requiring aliens seeking to enter the United States with a border crossing card to present one with a biometric identifier.
- Authorize U.S. border inspection agencies, "acting jointly and under an agreement of cooperation with" Canada, to conduct joint United States-Canada inspections projects on the border between the two countries. Justice and Treasury would be required to report to Congress on these projects.
- Add as a condition of eligibility for the VWP, the reporting of passport thefts and increase the frequency, from five to two years, of reports on the continuing designation of VWP countries.
- Require Justice, beginning within 180 days of the enrolled bill's enactment, to issue, to refugees immediately upon their arrival in the United States and to asylees immediately upon being granted asylum, employment authorization documents containing at least a fingerprint and photograph of the alien.

-- Repeal the current requirement for inspections of airline passengers arriving in the United States to be conducted within 45 minutes of their presentation for inspection, but require INS to staff ports of entry with adequate levels of personnel based on the goal of conducting these inspections within 45 minutes.

-- Require State to retain all visa applications for seven years after the date of application, whether the application was approved or denied.

-- Authorize appropriations of such sums as may be necessary to expand the "Carrier Consultant Program," which requires Justice to assign additional immigration officers to assist air carriers in the detection of fraudulent documents at foreign airports which serve as a point of departure for a significant number of arrivals at U.S. ports of entry without valid documentation, but where no preinspection station exists.

-- Require State to have established a terrorist look-out committee to be maintained within each U.S. mission to a foreign country to identify and develop information on known or potential terrorists. These committees would report monthly to the Secretary of State, whether or not information on a known or suspected terrorist was developed during that month, and State would be required to report quarterly to Congress on the status of these committees.

-- Specify that nothing in the bill may be construed to impose requirements inconsistent with the North American Free Trade Agreement.

STATEMENT BY THE PRESIDENT

I have today signed into law H.R. 3525, the "Enhanced Border Security and Visa Entry Reform Act of 2002." The legislation strengthens the ability of the U.S. Government to control the country's borders, a top priority of my Administration. The Act will improve our ability to screen aliens seeking to enter our country, facilitate the sharing of border-related information among U.S. agencies, and improve efforts to keep track of foreign students and foreign exchange visitors in the United States.

Section 2(4)(G) of the Act defines as a Federal law enforcement agency the "Coastal Security Service." Because no such agency exists, and the principal agency with coastal security functions is the U.S. Coast Guard, the executive branch shall construe this provision as referring to the Coast Guard.

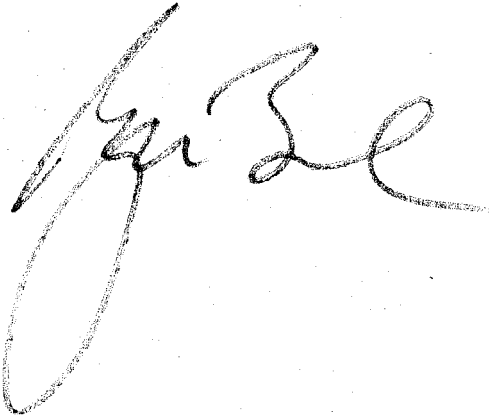
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The executive branch shall construe section 404(a), relating to U.S.-Canadian joint border inspection operations under an international agreement, in a manner consistent with the President's constitutional authority to conduct the foreign affairs of the Nation and to supervise the unitary executive branch.

A handwritten signature in dark ink, appearing to read "G. W. Bush", is written over the signature line.

THE WHITE HOUSE,

May 14, 2002.

● Rachael L. Sunbarger

05/14/2002 04:11:13 PM

Record Type: Record

To:

cc:

Subject: REMARKS BY THE PRESIDENT AT SIGNING OF THE ENHANCED BORDER SECURITY AND VISA ENTRY REFORM ACT

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

May 14, 2002

REMARKS BY THE PRESIDENT
AT SIGNING OF THE ENHANCED BORDER SECURITY
AND VISA ENTRY REFORM ACT

Presidential Hall
Dwight D. Eisenhower Executive Office Building

3:29 P.M. EDT

THE PRESIDENT: Thank you all. Please be seated. Thank you all for coming. I'm honored today to sign a bill that is an important step in an effort to secure our border, while promoting trade and commerce. It's a good piece of legislation. It's bipartisan legislation. And I want to thank the members of both parties who have worked hard to get this bill to my desk.

I want to thank Tom Ridge, who's here. Where are you, Tom? Oh, you're Tom Ridge, yeah. (Laughter.) At least that's what some of the members are saying. I particularly want to thank Senators Kyl, Brownback, and Kennedy, Feinstein, and Hatch for being here, as fine, fine members of the United States Senate. I want to thank you for coming. I also want to appreciate Chairman Jim Sensenbrenner and George Gekas, as well. These members worked hard on this legislation. I want to thank the members of my administration who are here.

I also want to say hello to Arlene Howard. Ms. Howard, it's

good to see you. A lot of folks might -- you can stand up. Thank you for coming. (Applause.) Arlene gave me her son, George's badge, and -- as a reminder of the evil the had been done to our country. You look great. I remember when I went over to Yankee Stadium to throw out the ball there at the World Series, Arlene's -- one of Arlene's other sons was there. Where is he? Oh, there he is. Thanks for the advice -- aim high. (Laughter.)

I want to thank Peter Johnson, who was George's partner for 12 years. Peter, thanks for coming. It's good to see you. I appreciate you being here. Thank you, sir. (Applause.)

I want to welcome you all. I was looking at Arlene and the brave folks here -- it reminds me of what was done to us there on September 11th, and how important it is that we remain tough and strong and diligent, as we seek justice -- as we chase down these killers one by one, and bring them to justice. (Applause.)

And that's a major responsibility of all of ours, and it's a responsibility we take seriously. The country is united in our drive for justice. This nation is determined, and we're patient, much to the chagrin of the enemy. It must make them really worried to know that we don't have a calendar that says, on such and such a date we're going to quit; that when it comes to our freedoms -- defending our freedoms, and securing our homeland, and protecting our innocent Americans, and never forgetting what happened on September the 11th, we are some kind of tough. And that's the way it's going to be. (Applause.)

We've got responsibilities here at home, as well, and it starts with our borders. Our borders process an incredibly huge number of people. It may come as a surprise to some of you, but there's -- over 500 million people a year enter America, and half of those are our own citizens that may have been traveling. We have 11 million trucks come across our borders. We have 51,000 foreign ships call into our ports. It reminds us that no nation can be totally secure, or more secure, unless we're well-protected, and unless our borders are well-screened. We must know who's coming into our country and why they're coming. We must know what our visitors are doing and when they leave. That's important for us to know. It's knowledge necessary to make our homeland more secure.

America is not a fortress; no, we never want to be a fortress. We're a free country; we're an open society. And we must always protect the rights of our law -- of law-abiding citizens from around the world who come here to conduct business or to study or to spend time with their family. That's what we're known for. We're known for respect.

But, on the other hand, we can do a better job of making our borders more secure, and make our borders smart. We must use

technology and be wise about how we use technology, to speed the flow of commerce across our borders, and to identify frequent travelers who pose no risk. We should be directing resources to risk. We ought to be routing out smugglers and focusing on criminals -- and, of course, stopping terrorists from coming into the country.

The bill I sign today enhances our ongoing efforts to strengthen our borders. The purpose of this bill is to help our country do a better job of border security. It authorizes 400 additional inspectors, investigators, and other staff on the INS over the next five years. We're adding manpower, obviously. It makes it easier for the INS and other federal agencies to get better information about people and products that come into America. It requires every foreign visitor desiring entrance into the United States to carry a travel document containing biometric identification -- that would be fingerprints or facial recognition -- that will enable us to use technology to better deny fraudulent entry into America.

It strengthens the requirements that all commercial passenger ships and airplanes entering the United States provide a list of passengers and crew before arrival, so that border authorities can act immediately to prevent someone from entering the country if he or she poses a threat to our citizens. It makes a lot of sense to do that. We should have probably been doing it a long time ago.

These new measures will only be effective if federal authorities have access to important information. One of the things we've learned is how to better share information. Right now, the FBI and the CIA do a good job of sharing information. Information is getting better shared from the federal to the state to the local levels.

But we've got to do a better job of sharing information and expanding information to the INS and the State Department and Customs agents, and throughout the intelligence community. We've just got to do a better job. This bill enables us to modernize our communication, so the information flows freely and quickly. The legislation requires law enforcement and intelligence communities to continue to develop a list of suspected terrorists, and to maintain that list, and to make it readily available, so that nobody is granted entry into the United States that's on the list.

In other words, we're beginning to gather information overseas in a much better way. We've got a vast coalition of nations that are still with us. They heard the message, either you're with us, or you're not with us. They're still with us. And we're sharing information. And we can use that -- better use that information with our own agencies here at home, to make sure that we really button this up, that we do our job, the job the American people expect.

The bill didn't have everything I wanted. I wanted a temporary extension of 245-I in the bill, which basically allowed certain immigrants, sponsored by their families or employers, to become legal residents without having to leave the country, so that families can stay together. I thought that made sense. It's not a part of the bill; I intend to work with Congress to see if we can't get that done here pretty quick.

Yet, the common sense measures will help us meet the goal, and that's important. It will help us meet the goals of legitimate commerce and important travel. And at the same time, it will help us keep the country secure. Basically what we're saying is, this is part of a -- legislative part of a national strategy. Tom's worked on the national strategy. He's worked with our respective agency heads. And Congress has been a great partner in this strategy. This is good work.

You know, sometimes in Washington we actually are able to put our political parties aside and focus on what's best for the country. And we're able to say, let's make sure America comes -- is the first priority of all of us. And this has happened in this bill.

So it's my honor to welcome both Republicans and Democrats from the Legislative Branch of government here as I sign this important legislation. Thank you all for coming. God bless. (Applause.)

(The bill is signed.)

THE PRESIDENT: Thank you all very much. (Applause.)

END

3:38 P.M. EDT

OFFICE OF THE EXECUTIVE CLERK
TRACKING SHEET FOR PRESIDENTIAL DOCUMENTS

TITLE: H.R. 3525, "Enhanced Border Security and Visa Entry Reform Act of 2002"

TYPE DOCUMENT:

PROCLAMATION

LETTER(S)

EXECUTIVE ORDER

MESSAGE TO THE CONGRESS/SENATE

MEMORANDUM

STATEMENT BY THE PRESIDENT

DECISION MEMORANDUM

SIGNING STATEMENT

DETERMINATION (numbered)

TREATY/CONVENTION/AGREEMENT, etc.

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NOTIFICATIONS:

(Person/time) NSC (#____), when appropriate -- Desk Officer;
W.H. Situation Room -- x6-9425.

(Person/time) Ginger Gregory, x6-2230, Legislative Affairs
(for messages to the Congress)

(Person/time) _____ (Other)

(Person/time) _____ (Other)

OTHER INFORMATION: