

## DEPARTMENT OF HOMELAND SECURITY

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### PRIMARY RECOMMENDATION

Our primary recommendation is that the President pursue legislation to dismantle the Department of Homeland Security (DHS). After 20 years, it has not gelled into “One DHS.” Instead, its various components’ different missions have outweighed its decades-long attempt to function as one department, rendering the whole disjointed rather than cohesive. Breaking up the department along its mission lines would facilitate mission focus and provide opportunities to reduce overhead and achieve more limited government. In lieu of a status quo DHS, we recommend that:

- U.S. Customs and Border Protection (CBP) be combined with Immigration and Customs Enforcement (ICE); U.S. Citizenship and Immigration Services (USCIS); the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR); and the Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) and Office of Immigration Litigation (OIL) into a stand-alone border and immigration agency at the Cabinet level (more than 100,000 employees, making it the third largest department measured by manpower).
- The Cybersecurity and Infrastructure Security Agency (CISA) be moved to the Department of Transportation.

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- The Federal Emergency Management Agency (FEMA) be moved to the Department of the Interior or, if combined with CISA, to the Department of Transportation.
- The U.S. Coast Guard (USCG) be moved to DOJ and, in time of full-scale war (i.e., threatening the homeland), to the Department of Defense (DOD). Alternatively, USCG should be moved to DOD for all purposes.
- The U.S. Secret Service (USSS) be divided in two, with the protective element moved to DOJ and the financial enforcement element moved to the Department of the Treasury.
- The Transportation Security Administration (TSA) be privatized.
- The Science and Technology Directorate (S&T) be moved to DOD and the Office of Countering Weapons of Mass Destruction be moved to the FBI.

All of the remaining supporting components could be dismantled because their functions already exist in the moving components as well as the receiving departments. Cutting these costs would save the American taxpayers significant sums.

Unless and until this dismantling recommendation is pursued and achieved, however, DHS will statutorily continue to exist, and it needs many reforms. Accordingly, we now turn to recommended changes in DHS as it exists now.

## **MISSION STATEMENT**

The Department of Homeland Security protects the American homeland from and prepares for terrorism and other hazards in both the physical and cyber realms, provides for secure and free movement of trade and travel, and enforces U.S. immigration laws impartially.

## **OVERVIEW**

The Department of Homeland Security (DHS) was created in the aftermath of the terrorist attacks of September 11, 2001, and subsequent mailings of anthrax spores. The Homeland Security Act of 2002,<sup>1</sup> which created the department, states that DHS's primary mission is to prevent terrorist attacks within the U.S.; reduce the nation's vulnerability to terrorism; minimize the damage from and assist in the recovery from any terrorist attacks; prepare and respond to natural and manmade crises and emergencies; and monitor connections between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and interdict illegal drug trafficking.

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Unfortunately for our nation, the federal government's newest department became like every other federal agency: bloated, bureaucratic, and expensive. It also lost sight of its mission priorities. DHS has also suffered from the Left's wokeness and weaponization against Americans whom the Left perceives as its political opponents.

To truly secure the homeland, a conservative Administration needs to return the department to the right mission, the right size, and the right budget. This would include reorganizing the department and shifting significant resources away from several supporting components to the essential operational components. Prioritizing border security and immigration enforcement, including detention and deportation, is critical if we are to regain control of the border, repair the historic damage done by the Biden Administration, return to a lawful and orderly immigration system, and protect the homeland from terrorism and public safety threats. This also includes consolidating the pieces of the fragmented immigration system into one agency to fulfill the mission more efficiently.

The Cybersecurity and Infrastructure Security Agency (CISA) is a DHS component that the Left has weaponized to censor speech and affect elections at the expense of securing the cyber domain and critical infrastructure, which are threatened daily.<sup>2</sup> A conservative Administration should return CISA to its statutory and important but narrow mission.

The bloated DHS bureaucracy and budget, along with the wrong priorities, provide real opportunities for a conservative Administration to cut billions in spending and limit government's role in Americans' lives. These opportunities include privatizing TSA screening and the Federal Emergency Management Agency (FEMA) National Flood Insurance Program, reforming FEMA emergency spending to shift the majority of preparedness and response costs to states and localities instead of the federal government, eliminating most of DHS's grant programs, and removing all unions in the department for national security purposes. A successful DHS would:

- Secure and control the border;
- Thoroughly enforce immigration laws;
- Correctly and efficiently adjudicate immigration benefit applications while rejecting fraudulent claims;
- Secure the cyber domain and collaborate with critical infrastructure sectors to maintain their security;
- Provide states and localities with a limited federal emergency response and preparedness;

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- Secure our coasts and economic zones;
- Protect political leaders, their families, and visiting heads of state or government; and
- Oversee transportation security.

### OFFICE OF THE SECRETARY (SEC)

In the next Administration, the Office of the Secretary should take on the following key issues and challenges to ensure the effective operation of DHS.

**Expansion of Dedicated Political Personnel.** The Secretary of Homeland Security is a presidentially appointed and Senate-confirmed political appointee, but for budgetary reasons, he or she has historically been unable to fund a dedicated team of political appointees. A key first step for the Secretary to improve front-office functions is to have his or her own dedicated team of political appointees selected and vetted by the Office of Presidential Personnel, which is not reliant on detailees from other parts of the department, to help ensure the completion of the next President's agenda.

**An Aggressive Approach to Senate-Confirmed Leadership Positions.** While Senate confirmation is a constitutionally necessary requirement for appointing agency leadership, the next Administration may need to take a novel approach to the confirmations process to ensure an adequate and rapid transition. For example, the next Administration arguably should place its nominees for key positions into similar positions as "actings" (for example, putting in a person to serve as the Senior Official Performing the Duties of the Commissioner of CBP while that person is going through the confirmation process to direct ICE or become the Secretary). This approach would both guarantee implementation of the Day One agenda and equip the department for potential emergency situations while still honoring the confirmation requirement. The department should also look to remove lower-level but nevertheless important positions that currently require Senate confirmation from the confirmation requirement, although this effort would require legislation (and might also be mooted in the event of legislation that closes portions of the department that currently have Senate-confirmed leadership).

**Clearer, More Durable, and Political-Only Line of Succession.** Based on previous experience, the department needs legislation to establish a more durable but politically oriented line of succession for agency decision-making purposes. The ideal sequence for line of succession is certainly debatable, except that in circumstances where a career employee holds a leadership position in the department, that position should be deemed vacant for line-of-succession purposes and the next eligible political appointee in the sequence should assume acting authority. Further,

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individuals wielding acting Secretary authority should have *explicit* authority to finalize agency actions, including regulations, to ensure that the department's homeland security mission is fulfilled.

**Soft Closure of Unnecessary Offices.** Pending a possible presidential decision to shrink or eliminate DHS itself, the next Administration will still have the obligation to protect the homeland as required by law. The Secretary therefore can and should use his or her inherent, discretionary leadership authority to “soft close” ineffective and problematic corners of the department. While those corners are to be determined, the Secretary could shift personnel, funding, and operational responsibility to mission-essential components of the department, including the Office of the Secretary itself. This effort not only would make the department more efficient, but also would support a legislative move to shrink or dismantle the department by showing that the agency can fulfill national security–critical functions without its current bloated bureaucracy.

**Restructuring and Redistribution of Career Personnel.** To strengthen political decision-making and ensure that taxpayer dollars are being used legally and efficiently, the Secretary should make major changes in the distribution of career personnel throughout the department. For example, personnel from parts of the department undergoing soft closure could be redistributed to what will be workload-intensive corners of the department, including national security–critical and transparency functions. All personnel with law enforcement capacity should be removed immediately from office billets and deployed to field billets to maximize law enforcement capacity.

**Compliance for Grants and Other Federal Funding.** The next Administration should take steps to restore lawfulness and integrity to the department's massive regimen of federal grant programs, most of which are managed and distributed by the Federal Emergency Management Agency. The Secretary should direct FEMA to ensure that all FEMA-issued grant funding for states, localities, and private organizations is going to recipients who are lawful actors, can demonstrate that they are in compliance with federal law, and can show that their mission and actions support the broader homeland security mission. All applicants and potential recipients of such grant funding should be required to meet certain preconditions for eligibility (except for receipt of post-disaster or nonhumanitarian funding) or should simply be considered ineligible for funding. Such preconditions should include at least the following:

- Certification by applicants that they comply with all aspects of federal immigration laws, including the honoring of all immigration detainers.
- Certification by applicants that they are both registered with E-Verify and using E-Verify in a transparent and nonevasive manner. For states

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and localities, that would include certification that *all* components of that government, and not just the applicant agency, are registered with and use E-Verify.

- If the applicant is a state or locality, commitment by that state or locality to total information-sharing in the context of both federal law enforcement and immigration enforcement. This would include access to department of motor vehicles and voter registration databases.

**Non-Use of Discretionary Guest Worker Visa Authorities.** To stop facilitating the availability of cheap foreign labor in order to support American workers (particularly poor and middle-class American workers) and follow congressional intent, the Secretary should explicitly cease using at least two discretionary authorities as part of his or her broader effort to support American workers.

- The Secretary should make it clear that he or she will not use the Secretary's existing discretionary authority to increase the number of H-2B (seasonal non-agricultural) visas above the statutorily set cap.
- The Secretary should not issue any regulations in support of the "H-2 eligible" country list, the effect of which would prevent favoring certain foreign nationals seeking an H-2 guest worker visa based simply on their nationality.

**Restoration of Honesty and Transparency.** The Secretary should use his or her inherent authority as leader of the department to follow up with congressional and other partners to disclose information and provide the transparency that has been obstructed during the Biden Administration. The Secretary should proceed from the assumption that congressional inquiries and public information requests were unfulfilled and then seek to fulfill them.

**Replacement of the Entire Homeland Security Advisory Committee.** The Secretary should plan to quickly remove *all* current members of the Homeland Security Advisory Committee and replace them as quickly as is feasible.

## U.S. CUSTOMS AND BORDER PROTECTION (CBP)

If *all* immigration agencies are not merged, including USCIS and ORR, then an appropriate third alternative would be to consolidate ICE and CBP to form a combined Border Security and Immigration Agency (BSIA). This would integrate critical interdiction, enforcement, and investigative resources, enhancing coordination and refocusing collective efforts on the vast and complex cross-border threats impacting our nation's health, safety, and national security. It would

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also simultaneously add efficiencies to our nation's capacity to facilitate lawful trade and travel.

The BSIA should establish clear mission requirements, responsibilities, and mandates under existing law regarding the persistent need for and utilization of U.S. military personnel and resources to assist BSIA with increasing whole-of-government efforts and long-term strategy to secure our nation's borders effectively. In addition, appropriate elements within the newly created BSIA should be designated as part of the U.S. National Security and Intelligence Community.

A conservative Administration should eliminate any prohibitive guidance, direction, or mandate from DHS or the Administration that curtails or limits CBP from publishing detailed border security and enforcement data not impacting intelligence, interdiction, and investigative operations, methods, or sources. DHS should issue a regulation mandating that CBP publish accurate and timely border security data, readily available to the public, on a regular basis that avoid White House and DHS leadership review and approval.

The White House should grant the authority for CBP and DHS executives to utilize component aviation assets under the Office of Air and Marine (OAM). CBP and DHS have worldwide missions with personnel and facilities that are deployed across the globe and in every state in the U.S. With a CBP workforce alone of more than 60,000 people (240,000-plus for DHS) encompassing more than a thousand sea, land, and airports, it is essential that the Commissioner, Deputy Commissioner, Secretary, and Deputy Secretary can travel efficiently to facilities to maintain appropriate situational awareness across the department's vast mission set and interact with the expansive workforce. Although CBP operates one of the largest aviation components of any domestic U.S. law enforcement agency, executives are prohibited from utilizing the agency's aviation assets to facilitate official travel. Executives are required to fly on commercial airlines, and this requirement significantly limits their ability to have classified communications and takes them offline for extended periods of time.

Border Patrol (BP) and OAM should be combined within CBP. BP has more than 20,000 personnel, and OAM has approximately 1,800. OAM's assets are dedicated in support of BP operations the vast majority of the time, yet redundant approvals, strategies, and independent hierarchal commands serve as impediments to efficient and practical resource deployments.

CBP should restart and expand use of the horseback-mounted Border Patrol. As part of this announcement, the Secretary should clear the records and personnel files of those who were falsely accused by Secretary Alejandro Mayorkas of whipping migrants and issue a formal apology on behalf of DHS and CBP.

The Secretary should combine the Office of Trade (OT) and Trade Relations with the Office of Field Operations (OFO). The OT is the smallest of CBP's components, and its operational counterpart, OFO, has a workforce of more than 30,000.

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OT's function is interwoven with that of its OFO operational counterpart. Combining OT with OFO would achieve streamlined operations and increase OT's capacity and capability by leveraging OFO's expansive resources.

CBP, ICE, and USCIS all have authority to issue Notices to Appear (NTA) to removable aliens in their presence, which begins removal proceedings. In most instances, CBP should turn illegal aliens over to ICE for detention, and ICE can then issue any needed NTA. CBP should issue NTAs only in limited situations for humanitarian reasons, such as medical emergencies. In addition, CBP should eliminate use of Notices to Report (NTR) altogether.

CBP's established national standards of Transport, Escort, Detention, and Search (TEDS) have been widely interpreted and expanded by lower courts. This has resulted in unrealistic and differing detention standards for CBP facilities based on the jurisdiction within which they fall, negatively impacting operations. ICE has suffered similarly. A single nationwide detention standard should be codified that prevents individual states from mandating that federal government agencies adhere to widely expansive and ever-changing sets of standards. Such standards should allow the flexibility to use large numbers of temporary facilities such as tents.

The annual costs associated with establishing and maintaining temporary facilities to address the flow of illegal migration and associated care, transportation, and processing are prohibitive, and CBP's budget is inadequate. CBP is forced to forgo critical mission-essential endeavors to fund the additional associated costs. Often, this requires the reprogramming of funding at the DHS level, which has a negative impact on other DHS components' operations. This predictable cost that has to be paid from existing CBP and DHS funding levels reduces CBP's operational readiness and ability to accomplish its diverse and critical missions to protect the American people. The next President should request a realistic budget that fully pays for these costs.

Increased funding is needed for BP to hire additional support personnel, which would relieve uniformed BP agents from administrative duties associated with processing aliens and allow them to return to their national security mission.

Congress should increase funding for facility upgrades at strategic land Ports of Entry (POEs), including expanding state-of-the-art technology such as Non-Intrusive Inspection equipment. Today, the cartels exploit the aging facilities and lack of adequate technology to smuggle illicit drugs, contraband, and more successfully through our nation's POEs.

## **U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE)**

### **Needed Reforms**

Since the formation of DHS, ICE has increasingly been tasked with auxiliary missions that have little or nothing to do with either immigration or customs



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enforcement. To return ICE to its primary mission, any new Administration that wishes to restore the rule of law to our immigration enforcement efforts should:

- **Order ICE to stop closing out pending immigration cases and apply the Immigration and Nationality Act (INA) as written by Congress.**<sup>3</sup>  
The Biden Administration closed out tens of thousands of immigration cases that had already been prepared and were slated for expedited removal processing or hearings before the U.S. Immigration Court. This misguided action constituted an egregious example of lawlessness that allowed thousands of illegal aliens and other immigration violators to go free in the United States.
- **Direct ICE to stop ignoring criminal aliens identified through the 287(g) program.**<sup>4</sup> Ultimately, Congress should prevent ICE from ignoring criminal aliens identified by local law enforcement agencies that are partners in the 287(g) program. However, before congressional action, ICE should be directed to take custody of all aliens with records for felonies, crimes of violence, DUIs, previous removals, and any other crime that is considered a national security or public safety threat as defined under current laws.
- **Eliminate T and U visas.** Victimization should not be a basis for an immigration benefit. If an alien who was a trafficking or crime victim is actively and significantly cooperating with law enforcement as a witness, the S visa is already available and should be used. Pending elimination of the T and U visas, the Secretary should significantly restrict eligibility for each visa to prevent fraud.
- **Issue clear guidance regarding detention and bond for aliens.**  
Thousands of illegal aliens are allowed to bond out of immigration detention only to disappear into the interior of the United States where many commit crimes and many others disappear, never to be heard from again. This occurs primarily because of poorly worded bond regulations, contradictory bond policy memoranda, and poor practices for managing released aliens and the Alternatives to Detention (ATD) Program, which requires significant reform.
- **Prioritize national security in the Student and Exchange Visitor Program (SEVP).** ICE should end its current cozy deference to educational institutions and remove security risks from the program. This requires working with the Department of State to eliminate or significantly reduce the number of visas issued to foreign students from enemy nations.

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Most of the foregoing can be accomplished rapidly and effectively through executive action that is both lawful and appropriate. Additionally, ICE should clarify who is responsible for enforcing its criminal and civil authorities. It should also remove self-imposed limitations on its nationwide jurisdiction.

- **Homeland Security Investigations (HSI) Special Agents in the 1811 series should enforce Title 8 and 18 crimes as the biggest part of their portfolio.** Alien smuggling, trafficking, and cross-border crime as defined under Title 8<sup>5</sup> and Title 18<sup>6</sup> should be the focus of ICE operations.
- **The role of ICE Deportation Officers should be clarified.** ICE Enforcement and Removal Operations (ERO) should be identified as being primarily responsible for enforcing civil immigration regulations, including the civil arrest, detention, and removal of immigration violators *anywhere* in the United States, without warrant where appropriate, subject only to the civil warrant requirements of the INA where appropriate.
- **All ICE memoranda identifying “sensitive zones” where ICE personnel are prohibited from operating should be rescinded.** Rely on the good judgment of officers in the field to avoid inappropriate situations.
- **To maximize the efficient use of its resources, ICE should make full use of existing Expedited Removal (ER) authorities.** The agency has limited the use of ER to eligible aliens apprehended within 100 miles of the border. This is not a statutory requirement.

### New Policies

U.S. national security and public safety interests would be well-served if ICE were to be combined with CBP and USCIS, as mentioned above. Additionally, ICE/HSI, along with CBP, should be full participants in the Intelligence Community.

The use of Blackies Warrants should be operationalized within ICE. These civil search warrants are commonly used for worksite enforcement when agents have probable cause that illegal aliens are employed at a business. This would streamline investigations.

Safeguarding Americans will require not just securing the border, but continuous vetting and investigations of many aliens who exploited President Biden’s open border for potentially nefarious purposes, including some Afghan evacuees sent directly to the U.S. during America’s disastrous withdrawal from Afghanistan.

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### Budget

- **Congress should mandate and fund additional bed space for alien detainees.** ICE should be funded for a significant increase in detention space, raising the daily available number of beds to 100,000.
- **Congress should fund ICE for at least 20,000 ERO officers and 5,000 Office of the Principal Legal Advisor (OPLA) attorneys.**

### U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS)

U.S. Citizenship and Immigration Services (USCIS) is the agency tasked with administering the legal immigration and certain temporary visa programs.

### Needed Reforms

Since January 2021, USCIS's priorities have been misaligned, and this has transformed it into an open-borders agency, ignoring the critical role that it plays in national security, public safety, and safeguarding the integrity of our immigration system. USCIS should be returned to operating as a screening and vetting agency. Regulatory efforts have focused on easing asylum eligibility in a manner that is guaranteed to exacerbate asylum fraud as people surge at the border. Emphasis also has been placed on removing legal barriers to immigration, such as the use of public benefits. These actions violate statutes, erode congressional intent, and provide a significant magnet for continued illegal immigration.

Additionally, USCIS resources have been misappropriated to focus more on creating and expanding large-scale parole and temporary status programs that violate the law and are otherwise contrary to congressional intent instead of focusing on a more secure and efficient process for those who are seeking benefits. The ever-increasing number of applications filed has made it difficult to vet applications adequately for eligibility, fraud, and specific national security and public safety problems.

The Fraud Detection and National Security Directorate (FDNS) is currently a small directorate with assigned officers reporting through the chain of command in the field, and this has led to stovepiping, lack of coordination in national policy, and inconsistencies throughout the agency. To prioritize vetting and fraud detection, FDNS should undergo a structural shift focused on direct reporting from the field to headquarters, reclassification of leadership, and FDNS directives taking precedence over those of other component entities. Correcting the current misalignment of agency priorities and resources should begin with this primary shift in focus to vetting and fraud detection. These actions would reform the agency, returning it to its screening and vetting mission in protecting the homeland.

Other structural changes should include reimplementing the USCIS denaturalization unit—an effort to maintain integrity in the system by identifying and

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prosecuting criminal and civil denaturalization cases, in combination with the Department of Justice, for aliens who obtained citizenship through fraud or other illicit means. Additionally, USCIS should create a criminal enforcement component within the agency to investigate immigration benefits fraud under Title 8 (perhaps requiring additional legislative and regulatory authorities for the officers themselves) and to prosecute cases through Special Assistant U.S. Attorneys (SAUSAs) with substantive knowledge in the field. Particular attention should be given to addressing increasing incidents of forced labor trafficking in temporary work visa programs.

While the Biden regulatory agenda has focused on at least two major rules—the credible fear rule and the public charge rule—USCIS has utilized other policy and internal procedural mechanisms to extend employment authorization to large groups of people who are in the country without legal status. The agency has taken quiet steps to cut corners and lessen adjudicatory standards. During a transition period, a complete audit of agency policies, memoranda, and management directives issued during the Biden Administration should be completed, and rescission documents should be prepared for issuance within the first few days of the incoming Administration. Additionally, regulatory documents should be drafted to review or reverse all regulations promulgated during the Biden Administration.

### **New Policies**

To advance the national interest, the three core immigration agencies—USCIS, ICE, and CBP—should remerge and have immigration elements outside of DHS (such as ORR of HHS) included. The fragmented immigration enforcement framework that developed in the wake of the Homeland Security Act has weakened each agency and should be remediated. Combining these critical agencies would strengthen their capabilities, ensure cooperation, and promote information-sharing. Agency responsibilities and the delineation of authorities, such as inconsistent use of deferred action and issuance of NTAs by each agency, have long been a point of contention that would be addressed much more easily if they were recombined into a single entity.

Alternatively, new policies for USCIS as it currently exists should focus on matters that can be addressed through administrative action.

- The workforce should be realigned and, as necessary, retrained on base eligibility and fraud detection rather than speed in processing.
- Training should be returned to Federal Law Enforcement Training Centers (FLETC), which would underscore the enforcement role of USCIS as a vetting agency, and be rebranded accordingly.

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- Management Directives and policies should realign to ensure that the workforce, while adaptable and able to handle the bulk of the USCIS mission, is not allowed to be pulled off mission work to focus on unlawful programs (DACA, mass parole for Afghans, Ukrainians, Venezuelans, etc.), which divert resources away from nuclear family and employment programs.

The regulatory agenda should include the immediate submission of notices of proposed rulemaking for the Trump Administration’s public charge rule (including aspects from its original notice of proposed rulemaking), temporary work visa reform, employment authorization reform rules, asylum bars rule, and a third-country transit rule. At a minimum, an enhanced regulatory agenda should include rules strengthening the integrity of the asylum system, parole reform, and U visa reform that prioritizes relief for victims of heinous crimes and ensures that we protect the truest and most deserving victims of crime.

Not all policy changes require formal rulemaking, however, as internal guidance documents are generally exempt under the Administrative Procedure Act (APA).<sup>7</sup> In this subregulatory space, USCIS policy memos and operational guidance should reduce the validity of employment authorization documents and end the COVID flexibilities, including the reliance on biometrics reuse. USCIS should also enforce existing regulations by rejecting incomplete applications and petitions, ensuring both that they are completed before accepted for filing and that FDNS signs off on all approved applications and petitions before approval notices are sent to the alien or petitioner. Other efforts should be focused on adjudication standards returning to nearly 100 percent interview requirements for all appropriate cases.

The incoming Administration should spearhead an immigration legislative agenda focused on creating a merit-based immigration system that rewards high-skilled aliens instead of the current system that favors extended family-based and luck-of-the-draw immigration. To that end, the diversity visa lottery should be repealed, chain migration should be ended while focusing on the nuclear family, and the existing employment visa program should be replaced with a system to award visas only to the “best and brightest.”

Internal efforts to limit employment authorization should be matched by congressional action to narrow statutory eligibility to work in the United States and mitigate unfair employment competition for U.S. citizens. The oft-abused H-1B program should be transformed into an elite program through which employers are vying to bring in only the top foreign workers at the highest wages so as not to depress American opportunities. Additionally, Congress should:

- Improve the integrity of the temporary work visa programs;
- Repeal Temporary Protected Status (TPS) designations;

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- Permanently authorize and make mandatory E-Verify; and
- End parole abuse by legislating specific parole standards.

USCIS should make it clear that where no court jurisdiction exists, it will not honor court decisions that seek to undermine regulatory and subregulatory efforts. Finally, USCIS still requires access to all relevant national security and law enforcement databases in the same vein as any other agency in the intelligence space. This is a key concept that should be addressed as USCIS is returned to functioning primarily as a vetting agency.

### Budget

USCIS is primarily fee-funded, operating on revenue derived by those who are seeking immigration benefits, work permits, and naturalization. The total agency budget requested for fiscal year (FY) 2023, including both fees and a small appropriation, is slightly less than \$6 billion.<sup>8</sup> The bulk of funds are derived from application fees through the Immigrant Examinations Fee Account. As a general principle, adjudication of applications and petitions should be paid by applicants, not American taxpayers. It is critical that any changes in the budget, even in the wake of a realigned agency combined with ICE and CBP, should retain a fee-funded model.

Given the Obama and Biden Administrations' lack of will, fees should be increased agencywide to keep in step with inflation and the true cost of the adjudications. The incoming Administration should immediately submit a fee rule that reflects such an increase. Aside from an increase in all fees, the rule should drastically limit the availability for fee waivers and should implement a fee for asylum applications. Additionally, Congress should allow for a 10 percent across-the-board increase in all fees for all fee rules to account for the fact that new fee rules always lag behind budget requirements.

USCIS should strive to increase opportunities for premium processing, a benefit by which applicants can expedite their processing times. While this places time burdens on adjudicators, it provides an opportunity for a significant influx of money into the agency, which is not currently available. While simply raising fees to the necessary levels to make the agency run efficiently would be preferable, without the need for expanded premium processing, this short-term measure should be utilized, particularly if longer-term fee rules are unsuccessful.

At least until USCIS is caught up on all case backlogs, all applicants rejected for any benefit or status adjudication should be required to leave the U.S. immediately. Ordinary process can resume once all case backlogs have been adjudicated.

Finally, USCIS should pause the intake of applications in a benefit category when backlogs in that category become excessive. Once USCIS adjudicators can decrease that caseload to a manageable number, application intake should resume.

## Personnel

USCIS should be classified as a national security–sensitive agency, and all of its employees should be classified as holding national security–sensitive positions. Leaks must be investigated and punished as they would be in a national security agency, and the union should be decertified. Any employees who cannot accept that change and cannot conform their behavior to the standards required by such an agency should be separated. USCIS’s D.C. personnel presence should be skeletal, and agency employees with operational or security roles should be rotated out to offices throughout the United States. These USCIS employees should live and work in the communities that are most affected by their daily duties and decisions.

## NECESSARY BORDER AND IMMIGRATION STATUTORY, REGULATORY, AND ADMINISTRATIVE CHANGES

The current border security crisis was made possible by glaring loopholes in our immigration system. The result was a preventable and predictable historic increase in illegal and inadmissible encounters along our southern border. This pulled limited resources from the front lines of our nation’s borders and away from their national security mission, releasing a vast and complex set of threats into our country. To regain our sovereignty, integrity, and security, Congress must pass meaningful legislation to close the current loopholes and prevent future Administrations from exploiting them for political gain or personal ideology.

### Legislative Proposals

- **Title 42 authority in Title 8.** Create an authority akin to the Title 42 Public Health authority that has been used during the COVID-19 pandemic to expel illegal aliens across the border immediately when certain non-health conditions are met, such as loss of operational control of the border.
- **Mandatory appropriation for border wall system infrastructure.** The monies appropriated would be used to fund the construction of additional border wall systems, technology, and personnel in strategic locations in accordance with the Border Security Improvement Plan (BSIP).
- **Appropriation for Port of Entry infrastructure.** Border security is not addressed solely by systems in between the ports of entry. POEs require technology and physical upgrades as well as an influx of personnel to meet capacity demands and act as the literal gatekeepers for the country. This is the first line of defense against drug and human smuggling operations.

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- **Unaccompanied minors**

1. Congress should repeal Section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA),<sup>9</sup> which provides numerous immigration benefits to unaccompanied alien children and only encourages more parents to send their children across the border illegally and unaccompanied. These children too often become trafficking victims, which means that the TVPRA has failed.
2. If an alternative to repealing Section 235 of the TVPRA is necessary, the section should be amended so that all unaccompanied children, regardless of nationality, may be returned to their home countries in a safe and efficient manner. Currently, the TVPRA allows only children from contiguous countries (Canada and Mexico) to be returned while every other unaccompanied minor must be placed into a lengthy process that usually results in the minor's landing in the custody of an illegal alien family member.
3. Congress must end the Flores Settlement Agreement by explicitly setting nationwide terms and standards for family and unaccompanied detention and housing. Such standards should focus on meeting human needs and should allow for large-scale use of temporary facilities (for example, tents).
4. Congress should amend the Homeland Security Act and portions of the TVPRA to move detention of alien children expressly from the Department of Health and Human Services to DHS.

- **Asylum reform**

1. The standard for a credible fear of persecution should be raised and aligned to the standard for asylum. It should also account specifically for credibility determinations that are a key element of the asylum claim.
2. Codify former asylum bars and third-country transit rules.
3. Congress should eliminate the particular social group protected ground as vague and overbroad or, in the alternative, provide a clear definition with parameters that at a minimum codify the holding in *Matter of A-B-* that gang violence and domestic violence are not grounds for asylum.<sup>10</sup>



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- **Parole reform.** Congress should end the widespread abuse of parole in contravention of statute and return it to its origins as an extraordinary remedy for very limited purposes.
- **NGOs and processing.** Congress should halt funds given to nongovernmental organizations (NGOs) to process and transport illegal aliens into and throughout the United States. Such funds and infrastructure, including the DHS joint processing centers, should be redirected to secure the border, detain aliens, and provide space for immigration court proceedings.
- **Other pathways for border crossers.** While Congress should use its oversight authority to ensure that Expedited Removal is used to the fullest extent and followed to the letter of the law, other paths for border crossers should be included in a legislative package.
  1. **Migrant protection protocols.** Update the statutory language providing the basis for the Remain in Mexico program as needed to withstand judicial scrutiny and executive inaction.
  2. **Asylum Cooperative Agreements.** While the agreements themselves must be negotiated, Congress should mandate that the executive branch work faithfully to negotiate and execute ACAs and set parameters to ensure that an unwilling executive cannot renege on an existing agreement or abandon the effort.
  3. **Other expedited pathways.** Congress should explicitly permit programs akin to the Prompt Asylum Claim Review (PACR) and Humanitarian Asylum Review Process (HARP) programs.
- **Employment authorization**
  1. Congress should reassert control of employment authorization, which is subject to rampant regulatory abuse, and limit it to certain categories of legal immigrants and non-immigrants.
  2. Congress should also permanently authorize E-Verify and make it mandatory.
- **State and local law enforcement**

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1. Congress should unequivocally authorize state and local law enforcement to participate in immigration and border security actions in compliance with *Arizona v. United States*.<sup>11</sup>
  2. Congress should require compliance with immigration detainers to the maximum extent consistent with the Tenth Amendment and set financial disincentives for jurisdictions that implement either official or unofficial sanctuary policies.
- **Prosecutorial discretion.** Congress should restrict the authority for prosecutorial discretion to eliminate it as a “catch-all” excuse for limiting immigration enforcement.
  - **Mandatory detention.** Congress should eliminate ambiguous discretionary language in Title 8 that aliens “may” be detained and clarify that aliens “shall” be detained. This language, which contrasts with other “shall detain” language in statute, creates unhelpful ambiguity and allows the executive branch to ignore the will of Congress.

### Regulations

- **Withdraw Biden Administration regulations and reissue new regulations in the following areas:**
  1. Credible Fear/Asylum Jurisdiction for Border Crossers.
  2. Public Charge.
- **T-Visa and U-Visa reform.** Unless and until T and U visas are repealed, each program needs to be reformed to ensure that only legitimate victims of trafficking and crimes who are actively providing significant material assistance to law enforcement are eligible for spots in the queue.
- **Repeal TPS designations.**
- **H-1B reform.** Transform the program into an elite mechanism exclusively to bring in the “best and brightest” at the highest wages while simultaneously ensuring that U.S. workers are not being disadvantaged by the program. H-1B is a means only to supplement the U.S. economy and to keep companies competitive, not to depress U.S. labor markets artificially in certain industries.

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- **Employment authorization.** Along with the legislative proposal, take regulatory action to limit the classes of aliens eligible for work authorization.

### Executive Orders

- **Pathways for border crossers**
  1. Direct the Department of State and the Department of Homeland Security to reinstate Asylum Cooperative Agreements with Northern Triangle Countries immediately.
  2. Recommence negotiations with Mexico to fully implement the Remain in Mexico Protocols.
  3. Reinstall, to the extent possible, expedited pathways with full credible fear/immigration court process (PACR and HARP).
  4. Prohibit the use of Notices to Report, the use of any funds for travel into the interior of the United States, and government flights or transportation for aliens.
  5. Mandate that ICE use all detention space in full compliance with Section 235 of the INA, issue weekly reports on detention capacity, and provide authority for low-level temporary capacity (for example, tents) once permanent space is full.
  6. Eliminate the use of ATD for border crossers except in rare cases and only with the explicit authority of the Secretary.
  7. Prohibit the use of parole except in matters that are certified by the Secretary of Homeland Security as requiring action for humanitarian or significant public benefit reasons, and prohibit the use of parole in any categorical circumstance.
- **Enforcement**
  1. Restrict prosecutorial discretion to eliminate it as a “catch-all” excuse for limiting immigration enforcement.
  2. Mandate the use of E-Verify for anyone doing business with the government.

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3. Designate USCIS as Intelligence Community–adjacent, ensuring that it has access to national security and law enforcement databases.
4. Rescind all memoranda limiting enforcement of immigration laws including those identifying sensitive zones.
5. End ICE’s widespread use of termination and administrative closure of cases in immigration court.

- **Averting or curtailing a mass migration event**

1. Provide that whenever the Secretary of Homeland Security determines that an actual or anticipated mass migration of aliens en route to or arriving off the coast of the U.S. presents urgent circumstances requiring an immediate federal response, the Secretary may make, subject to the approval of the President, rules and regulations prohibiting in whole or in part the introduction of persons from such countries or places as he or she shall designate in order to avert or curtail such mass migration and for such period of time as is deemed necessary, including through the expulsion of such aliens. Such rule and regulation making shall not be subject to the requirements of the Administrative Procedures Act.
2. Provide that notwithstanding any other provision of law, when the Secretary makes such a determination and then promulgates, subject to the approval of the President, such rules and regulations, the Secretary shall have the authority to waive all legal requirements of Title 8 that the Secretary, in his or her sole discretion, determines are necessary to avert or curtail the mass migration.

## **Subregulatory Matters**

- **USCIS priorities/structural changes**

1. Ensure that focus is returned to vetting, base eligibility of applicants, and fraud detection.
2. Realign the Fraud Detection and National Security Directorate (FDNS) to ensure agencywide consistency on implementation of fraud detection and vetting policies.
3. Review and repeal any internal agency memo that is inconsistent with the priorities described in this chapter.

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- **287(g) program.** Issue a memo prohibiting any jurisdiction that applies from being denied access to the program unless good cause is shown.
- **Homeland Security Investigations (HSI) priorities.** Issue Department Management Directive (and ICE companion Directive) to refocus HSI on immigration offenses and criminal offenses typically associated with immigration (for example, human trafficking). All criminal investigative work without a clear nexus to the border or otherwise to Title 8 should be turned over to the appropriate federal agency.
- **Blackie's Warrants.** ICE OPLA, ERO, and HSI should issue a joint internal memo on operationalizing Blackie's Warrants for immediate use on worksite enforcement and other appropriate investigations and operations.

## FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

### Needed Reforms

FEMA is the lead federal agency in preparing for and responding to disasters, but it is overtasked, overcompensates for the lack of state and local preparedness and response, and is regularly in deep debt. After passage of the 1988 Stafford Act,<sup>12</sup> the number of declared federal disasters rose dramatically as most disaster costs were shifted from states and local governments to the federal government. In addition, state-friendly FEMA regulations, such as a “per capita indicator,” failed to maintain the pace of inflation and made it easy to meet disaster declaration thresholds. This combination has left FEMA unprepared in both readiness and funding for the truly catastrophic disasters in which its services are most needed. Reform of FEMA requires a greater emphasis on federalism and state and local preparedness, leaving FEMA to focus on large, widespread disasters.

Under the Stafford Act, FEMA has the authority to adjust the per capita indicator for damages, which creates a threshold under which states and localities are not eligible for public assistance. FEMA should raise the threshold because the per capita indicator has not kept pace with inflation, and this over time has effectively lowered the threshold for public assistance and caused FEMA's resources to be stretched perilously thin. Alternatively, applying a deductible could accomplish a similar outcome while also incentivizing states to take a more proactive role in their own preparedness and response capabilities. In addition, Congress should change the cost-share arrangement so that the federal government covers 25 percent of the costs for small disasters with the cost share reaching a maximum of 75 percent for truly catastrophic disasters.

FEMA is also responsible for the National Flood Insurance Program (NFIP), nearly all of which is issued by the federal government. Washington provides

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insurance at prices lower than the actuarially fair rate, thereby subsidizing flood insurance. Then, when flood costs exceed NFIP's revenue, FEMA seeks taxpayer-funded bailouts. Current NFIP debt is \$20.5 billion, and in 2017, Congress canceled \$16 billion in debt when FEMA reached its borrowing authority limit. These subsidies and bailouts only encourage more development in flood zones, increasing the potential losses to both NFIP and the taxpayer. The NFIP should be wound down and replaced with private insurance starting with the least risky areas currently identified by the program.

### **Budget Issues**

FEMA manages all grants for DHS, and these grants have become pork for states, localities, and special-interest groups. Since 2002, DHS/FEMA have provided more than \$56 billion in preparedness grants for state, local, tribal, and territorial governments. For FY 2023, President Biden requested more than \$3.5 billion for federal assistance grants.<sup>13</sup> Funds provided under these programs do not provide measurable gains for preparedness or resiliency. Rather, more than any objective needs, political interests appear to direct the flow of nondisaster funds.

The principles of federalism should be upheld; these indicate that states better understand their unique needs and should bear the costs of their particularized programs. FEMA employees in Washington, D.C., should not determine how billions of federal tax dollars should be awarded to train local law enforcement officers in Texas, harden cybersecurity infrastructure in Utah, or supplement migrant shelters in Arizona. DHS should not be in the business of handing out federal tax dollars: These grants should be terminated. Accomplishing this, however, will require action by Members of Congress who repeatedly vote to fund grants for political reasons. The transition should focus on building resilience and return on investment in line with real threats.

### **Personnel**

FEMA currently has four Senate-confirmed positions. Only the Administrator should be confirmed by the Senate; other political leadership need not be confirmed by the Senate. Additionally, FEMA's "springing Cabinet position" should be eliminated, as this creates significant unnecessary challenges to the functioning of the whole of DHS at points in time when coordinated responses are most needed.

## **CYBERSECURITY AND INFRASTRUCTURE SECURITY AGENCY (CISA)**

### **Needed Reforms**

CISA is supposed to have two key roles: (1) protection of the federal civilian government networks (.gov) while coordinating the execution of national cyber defense and sharing information with non-federal and private-sector partners

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and (2) national coordination of critical infrastructure security and resilience. Yet CISA has rapidly expanded its scope into lanes where it does not belong, the most recent and most glaring example being censorship of so-called misinformation and disinformation.

CISA's funding and resources should align narrowly with the foregoing two mission requirements. The component's emergency communications and Chemical Facility Anti-Terrorism Standards (CFATS) roles should be moved to FEMA; its school security functions should be transferred to state homeland security offices; and CISA should refrain from duplicating cybersecurity functions done elsewhere at the Department of Defense, FBI, National Security Agency, and U.S. Secret Service.

Of the utmost urgency is immediately ending CISA's counter-mis/disinformation efforts. The federal government cannot be the arbiter of truth. CISA began this work because of alleged Russian misinformation in the 2016 election, which in fact turned out to be a Clinton campaign "dirty trick." The Intelligence Community, including the NSA or DOD, should counter foreign actors. At the time of this writing, release of the Twitter Files has demonstrated that CISA has devolved into an unconstitutional censoring and election engineering apparatus of the political Left. In any event, the entirety of the CISA Cybersecurity Advisory Committee should be dismissed on Day One.

For election security, CISA should help states and localities assess whether they have good cyber hygiene in their hardware and software in preparation for an election—but nothing more. This is of value to smaller localities, particularly by flagging who is attacking their websites. CISA should not be significantly involved closer to an election. Nor should it participate in messaging or propaganda.

## U.S. COAST GUARD (USCG)

### Needed Reforms

The U.S. Coast Guard fleet should be sized to the needs of great-power competition, specifically focusing efforts and investment on protecting U.S. waters, all while seeking to find (where feasible) more economical ways to perform USCG missions. The scope of the Coast Guard's mission needs to be focused on protecting U.S. resources and interests in its home waters, specifically its Exclusive Economic Zone (200 miles from shore). USCG's budget should address the growing demand for it to address the increasing threat from the Chinese fishing fleet in home waters as well as narcotics and migrant flows in the Caribbean and Eastern Pacific. Doing this will require reversing years of shortfalls in shipbuilding, maintenance, and upgrades of shore facilities as well as seeking more cost-effective ship and facility designs. In wartime, the USCG supports the Navy, but it has limited capability and capacity to support wartime missions outside home waters.

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### **New Policies**

The Coast Guard's mission set should be scaled down to match congressional budgeting in the long term, with any increased funding going to acquisitions based on an updated Fleet Mix Analysis. The current shipbuilding plan is insufficient based on USCG analysis, and the necessary numbers of planned Offshore Patrol Cutters and National Security Cutters are not supported by congressional budgets. The Coast Guard should be required to submit to Congress a long-range shipbuilding plan modeled on the Navy's 30-Year Shipbuilding Plan. Ideally this should become part of the Navy plan in a new comprehensive naval long-range shipbuilding plan to ensure better coherency in the services' requirements.

Outside of home waters, and following the Caribbean and Eastern Pacific, the Coast Guard should prioritize limited resources to the nation's expansive Pacific waters to counter growing Chinese influence and encroachment. Expansion of facilities in American Samoa and basing of cutters there is one clear step in this direction and should be accelerated; looking to free association states (Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands) for enhanced and persistent presence, assuming adequate congressional funding, is another such step.

The Secretary of the Navy should convene a naval board to review and reset requirements for Coast Guard wartime mission support. To inform and validate these updated requirements, the Chief of Naval Operations and the Coast Guard Commandant should execute dedicated annual joint wartime drills focused on USCG's wartime missions in the Pacific (the money for these activities should be allocated from DOD). An interagency maritime coordination office focused on developing and overseeing comprehensive efforts to advance the nation's maritime interests and increase its military and commercial competitiveness should be established.

Given the USCG's history of underfunded missions, if the Coast Guard is to continue to maintain the Arctic mission, money to do so adequately will be required over and above current funding levels. Consideration should be given to shifting the Arctic mission to the Navy. Either way, the Arctic mission should be closely coordinated with our Canadian, Danish, and other allies.

### **Personnel**

USCG is facing recruitment challenges similar to those faced by the military services. The Administration should stop the messaging on wokeness and diversity and focus instead on attracting the best talent for USCG. Simultaneously, consistent with the Department of Defense, USCG should also make a serious effort to re-vet any promotions and hiring that occurred on the Biden Administration's watch while also re-onboarding any USCG personnel who were dismissed from service for refusing to take the COVID-19 "vaccine," with time in service credited



to such returnees. These two steps could be foundational for any improvements in the recruiting process.

## **U.S. SECRET SERVICE (USSS)**

### **Needed Reforms**

The U.S. Secret Service must be the world's best protective agency. Currently, the agency is distracted by its dual mission of protection and financial investigations. The result has been a long series of high-profile embarrassments and security failures, perhaps most notably its allowing of then-Vice President-elect Kamala Harris to be inside the Democratic National Committee office on January 6, 2021, while a pipe bomb was outside. Despite the great size and scope of the January 6 investigation, this high-profile incident of danger to a protectee remains unresolved.

The failures of the USSS protective mission are too numerous to list here. A December 2015 bipartisan report from the House Oversight Committee listed dozens of such incidents as well as needed recommendations for reform.<sup>14</sup> This chapter adopts those findings and recommendations in whole, especially the finding that USSS's dual-mission structure detracts from the agency's protective capabilities.

At the time of that report, USSS agents spent only one-third of their work hours on protection-related activities as opposed to investigative activities. USSS was established initially to investigate counterfeit currency, but its mission has evolved over the decades to prioritize electronic financial crimes. For example, as this chapter was being written, all 15 of the USSS's most wanted individuals were wanted for financial crimes, many of them international in nature.

Notably, the last head of the agency left not for a protection-related job, but to be the Chief Security Officer of social media company SnapChat. This is a pattern that has developed over the years, with agents seeking to burnish their online financial crimes credentials to secure corporate security jobs. Coupled with some of the lowest morale in the federal government, the agency has completely lost sight of the primacy of its protective mission.

### **New Policies**

USSS should transfer to the Department of Justice and Department of the Treasury all investigations that are not related to its protective function. It should begin the logistical operation of closing all field offices throughout the country and internationally to the extent they are not taken over by Treasury or Justice. USSS agents stationed outside of Washington, D.C., should be transferred to work in Immigration and Customs Enforcement field offices where they would continue to be the "boots on the ground" to follow up on threat reports throughout the country and liaise with local law enforcement for visits by protectees.

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The only investigations not related to USSS's protective function that agents should pursue would be directed by HSI and relate to tracking the financial crimes associated with illegal immigration. This should include tracing remittances, any funds that are used to pay coyotes or the cartels, and payments by businesses to illegal aliens and all other crimes associated with illegal immigration.

USSS should keep visitor logs for all facilities where the President works or resides. The Biden Administration has evaded such transparency with President Biden spending a historic amount of time for a President at his Delaware residence. This has left the American people in the dark as to who is influencing the highest levels of their own government.

### **Budget**

The suggested reforms would result in a significant USSS budget reduction, primarily because the agency would relinquish dozens of physical offices throughout the U.S. and internationally. Some amount of savings should be used to fix the personnel problems and for recruitment initiatives aimed at individuals who are inclined to join a protection-focused agency.

### **Personnel**

As documented extensively in the above-referenced 2015 bipartisan congressional report, low morale and high turnover are key drivers of USSS problems. With their mission focused on protection, agents would no longer spend the bulk of their time developing unrelated skillsets. Instead, USSS agents could hone their protection skills and pursue a protection career path in the agency rather than quickly leaving USSS for high-paying corporate security jobs.

The Uniform Division (UD) of USSS requires a significant staffing increase. As documented in the bipartisan report, understaffing results in unpredictable and long hours, which in turn result in high turnover, which only compounds the problem.

Another key issue is that UD officers lack the ability to enforce criminal laws outside the immediate vicinity of the White House. As the District of Columbia is a federal jurisdiction and currently is beholden to the trend of progressive pro-crime policies, UD officers should enforce all applicable laws. The result would be to allow UD officers to gain more law enforcement experience—an attractive credential that would improve morale.

## **TRANSPORTATION SECURITY ADMINISTRATION (TSA)**

The TSA model is costly and unwisely makes TSA both the regulator and the regulated organization responsible for screening operations. As part of an effort to shrink federal bureaucracies and bring private-sector know-how to government programs, TSA is ripe for reform. The U.S. should look to the Canadian and

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European private models of providing aviation screening manpower to lower TSA costs while maintaining security. Until it is privatized, TSA should be treated as a national security provider, and its workforce should be deunionized immediately.

TSA could privatize the screening function by expanding the current Screening Partnership Program (SPP) to all airports. TSA would turn screening operations over to airports that would choose security contractors that meet TSA regulations and would oversee and test airports for compliance. Alternatively, it could adopt a Canadian-style system, turning over screening operations to a new government corporation that contracts screening service to private contractors. Contractors would bid to provide their services to a set of airports in a particular region, likely with around 10 regions nationally. TSA would continue to set security regulations and test airports for compliance, and the new corporation would establish any operating procedures or customer service standards. With either model, the intelligence function for domestic travel patterns should remain with the U.S. government.

The federal government could expect to save 15 percent–20 percent from the existing aviation screening budget, but savings could be significantly larger. Service to travelers should also improve.

### **MANAGEMENT DIRECTORATE (MGMT)**

The Management Directorate is unnecessarily large because each individual component also maintains its own respective management office. Too much overlap and red tape exist between headquarters (HQ) and components with regard to such functions as hiring, information technology, and procurement. Finance is unique given that HQ needs to address reprogramming, and component budgets need to roll up into all-department budgets. The Directorate requires intense reform, the specifics of which should be further assessed given its expansive nature.

**Front Office (FO).** Immediately place a small team of advisers with a deep understanding of operational management—but who have some experience in government because they will need to understand the nuance of Reduction in Force (RIF), appropriations hurdles when dealing with U.S. government reorganization, etc.—to sit in the MGMT FO (reporting to the Secretary, ultimately either S1 or S2). One of these advisers should understand U.S. government employment law and be prepared to relocate personnel and downsize offices accordingly. This includes reverting to the original understanding of the function of individuals appointed to the Senior Executive Service: competent managers who can work capably with any subject matter and in any location.

Over the first few months of the Administration, the advisers' role should be to assess what structural and procedural changes are appropriate. They should dissect the current standing Management Directives and the approval processes in place to implement and/or change them; Office of the Chief Human Capital Officer's processes and procedures; hurdles to the Office of Chief Procurement

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Officer's procurement of innovative technology; and the facilities plan, including the consolidation into the St. Elizabeth's campus. They should also be prepared to help implement any end to unionization of DHS components in response to an executive order pursuant to 5 U.S.C. 7103.<sup>15</sup>

**Office of the Chief Financial Officer (OCFO).** DHS responsibilities to work with Congress have been split between the Office of Legislative Affairs (OLA) and OCFO. OLA deals with the authorizing committees on policy issues, and OCFO works with the appropriations committees on budget planning, execution, and reprogramming. This split creates communication and visibility issues within DHS and inconsistency in answers to Congress. This is an issue not only within the HQ model, but also throughout the components. Either appropriations personnel should be moved to OLA and there should be a "dotted line" reporting structure to OCFO, or a policy that OLA personnel must be included on communications to Congress should be implemented.

To avoid "answer shopping" by congressional staff, particularly appropriations staff, all budget communications from the OCFO, including from the CFO him/herself, should first be provided to the Director of OLA to ensure consistency of information, messaging, and answers. This may be deemed awkward given that the OCFO is a Senate-confirmed position, but it is necessary to avoid inaccuracies and inconsistencies in messaging.

**Federal Protective Service (FPS).** FPS needs federal agents to develop, share, and receive operational information and maintain direct contact with the Secretary in the midst of heightened threats. Before the summer 2020 civil unrest, positioning FPS under MGMT was justified, but given the current climate, they should not be reporting through MGMT. This may be especially problematic if a Management Directorate Under Secretary lacking law enforcement or military experience is in place when a situation like summer 2020 arises. FPS should report to the Secretary as other components (e.g., FLETC) do. This would add little to the Secretary's current burden unless or until civil unrest arises, at which point reporting to the Secretary creates a direct line between the primary DHS decision-maker (S1 or S2) and the FPS Director.

Regarding operational communication, there should be information-sharing mandates (MOAs)—which are applicable under specific circumstances where federal facilities are involved—between FPS and the U.S. Marshals, U.S. Park Police, and FBI. Agreements with U.S. Capitol Police and Supreme Court Police should also be considered, but it is noteworthy that those entities are jurisdictionally outside of the executive branch.

## OFFICE OF STRATEGY, POLICY, AND PLANS (PLCY)

**Department-Level Reforms.** PLCY should perform a complete inventory, analysis, and reevaluation of the department's domestic terrorism lines of effort to ensure that they are consistent with the President's priorities, congressional authorization, and Americans' constitutional rights.

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PLCY should likewise do a complete inventory, analysis, and evaluation of any of the department's work, in coordination with social media outlets, to censor or otherwise change or affect Americans' speech. PLCY should comprehensively report on and publish this history in full so that the American people can know the facts. The department should remove all personnel who participated in any of this activity.

The department has significant authority and budget to provide grants for various purposes. This effort is diffused across components and lacks central policy thought and coordination. PLCY should set a departmentwide policy that establishes how granting choices are to be made and is consistent with the President's priorities. PLCY should clear all granting decisions to ensure that they are consistent with the new policy.

**PLCY-Wide Reforms.** PLCY should work with Congress to streamline the department's reporting requirements. Because there has not been a departmental reauthorization bill and these requirements have been added piecemeal over two decades, they significantly overlap and even conflict—wasting resources and distracting from the department's mission. PLCY should seek the elimination of the Quadrennial Homeland Security Review.

**Issue-Area Reforms.** PLCY should bolster its Immigration Statistics program and make it the one-stop shop for the timely production of all department immigration statistics and analysis.

## OFFICE OF INTELLIGENCE AND ANALYSIS (I&A)

The Office of Intelligence and Analysis should be eliminated both because it has not added value and because it has been weaponized for domestic political purposes.

The Intelligence Community (IC) already provides raw intelligence to DHS components. In addition, the FBI, National Counter Terrorism Center, and other agencies where necessary already provide holistic threat assessment products to federal, state, local, tribal, and territorial governments as well as to private-sector entities at both the classified and unclassified levels where appropriate. I&A's work as an interlocuter between the IC and DHS components' individual intelligence operations on the one hand and government and the private sector on the other, as well as between the IC and the components, is at best duplicative. At worst, it is used and discussed in the media as a political tool, resulting in more harm than good to the U.S. government and IC writ large.

The Cybersecurity and Infrastructure Security Agency, which is not a member of the IC, should create cyber intelligence products in a collaborative fashion with the National Security Agency and U.S. Cyber Command. Such efforts would lead to timelier usable classified and unclassified products for stakeholders that exceed the quality and capability of I&A's efforts. This same principle applies to other

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components as well: CBP, TSA, etc. all have their own intelligence operations and are better situated with their subject-matter experts to make their own assessments.

The National Operations Center (NOC) within the Office of Operations Coordination (OPS) should absorb those select I&A functions and tactically proficient personnel that need to be maintained (for example, technical support to the National Vetting Center). The remainder of I&A should be eliminated. The OPS entity should maintain IC status, and the only intelligence mission set should be to provide situational awareness and the dissemination of operational information or raw intelligence (no analysis or products) at classified and unclassified levels to executive leadership across the department, not outside of DHS.

### **OFFICE OF THE GENERAL COUNSEL (OGC)**

#### **Needed Reforms**

OGC should advise principals as to how DHS can execute its missions within the law instead of advising principals as to why they cannot execute regulations, policies, and programs.

Instead of each component's chief counsel reporting to the Headquarters General Counsel (with a solid line) and indirectly to his or her component head (with a dotted line), the accountability should be reversed. Due to the different missions throughout the department, the components can better manage the legal issues of their specific mission than headquarters can. Thus, the chief counsel (or equivalent) of each component should report directly to the component head, report indirectly to the DHS General Counsel, and be accountable to the component head. The report to the General Counsel is to ensure consistency of advice across DHS.

OGC should hire significantly more Schedule C/political appointees who in turn supervise career staff and manage their output. DHS's mission is politically charged, and the legal function cannot be allowed to thwart the Administration's agenda by providing stilted or erroneous legal positions and decision-making.

OGC should serve as the center of the response to the legal challenges facing the department to ensure a streamlined, consistent response to a litany of issues facing the department. It is important to ensure consistency across all potential legal positions taken by the department, including those arising in litigation, congressional oversight, and inquiries received from the Inspector General, U.S. Government Accountability Office (GAO), and Congressional Research Service and pursuant to the Freedom of Information Act.

OGC should invest in e-discovery software and contract with a vendor to manage the department's e-discovery. This would be beneficial both in litigation and in responding to congressional oversight. Removing delays in e-discovery processing would also reduce the issuance of subpoenas to the department and the generation of negative press for the Administration that comes from delayed responses.

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The old practice of relying on Executive Secretary taskings to pull documents for congressional requests does not work: It is slow, the metrics for what documents are gathered and how are unclear, and the components do not gather responsive material in an efficient manner. Document gathering should come from the Office of the Chief Information Officer or a relevant technological element within the department that can pull responsive communications quickly.

### **OFFICE OF LEGISLATIVE AFFAIRS (OLA); OFFICE OF PUBLIC AFFAIRS (OPA); AND OFFICE OF PARTNERSHIP AND ENGAGEMENT (OPE)**

DHS's external communications function should be consolidated and reformed so that the President's agenda can be implemented more effectively. The Office of Partnership and Engagement should be merged into the Office of Public Affairs. In many Cabinet agencies, outreach to companies and partner organizations is similarly performed by the Office of Public Affairs. This would also accomplish a needed DHS organizational and management reform to decrease the number of direct reports to the Secretary.

Both public and legislative affairs staff in the components should report directly to their respective headquarters equivalent. This would help to avoid a failure by the department to speak with one voice. It would also allow the component staff to perform more efficiently, overseen by expert managers in their trade. This would also allow DHS to respond to crises effectively by shifting staff as needed to the most pressing issues and better use underutilized staff at less active components.

Only political appointees in OLA should interact directly with congressional staff on all inquiries, including budget and appropriations matters. To prevent congressional staff from answer shopping among HQ OLA, the DHS OCFO, and components, DHS legislative affairs appropriations staff should be moved from MGMT OCFO into OLA. Regarding components, budget/appropriations staff should move from component budget offices into component legislative affairs offices.

Because dozens of congressional committees and subcommittees either have or claim to have jurisdiction over some DHS function, DHS staff from the Secretary on down spend so much time responding to congressional hearing and briefing requests, letters, and questions for the record that they are left with little time to do their assigned job of protecting the homeland. The next President should reach an agreement with congressional leadership to limit committee jurisdiction to one authorizing committee and one appropriations committee in each chamber. If congressional leadership will not limit their committees' jurisdiction over DHS, DHS should identify one authorizing and appropriations committee in each chamber and answer only to it.

To focus more precisely on the DHS mission, OLA staff should also identify outdated and needless congressional reporting requirements and notify Congress



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that DHS will cease reporting on such matters. For other congressional reports, OLA should implement a sunset date so that Congress must regularly demonstrate the need for specific data.

In both OPA and OLA, a change in mission and culture is needed. The clients of both components are the President and the Secretary, not the media, external organizations, or Congress. OPA and OLA should change from being compliance correspondents for outside entities airing grievances to serving as messengers and advocates for the President and the Secretary.

### **OFFICE OF OPERATIONS COORDINATION (OPS)**

OPS was originally conceived by then-Secretary Jeh Johnson as an entity tasked with coordinating cross-DHS assets on an as-needed basis using a joint operations approach. This role is particularly challenging because of the disparate nature of mission sets across DHS.

OPS should absorb a very small number of tactical intelligence professionals from I&A as the rest of I&A is shut down. Such intelligence officers would be a subordinate element within OPS placed within the National Operations Center. The intelligence officers would provide tactical intelligence support for upcoming or ongoing operations in addition to liaising with their agency/component counterparts. There would be no strategic intelligence analysis done as part of OPS or its new I&A sub-element.

In addition to facilitating all-of-DHS coordination on a task-by-task basis, OPS would be responsible for ongoing situational awareness for the Secretary and Deputy Secretary.

In addition to long-term staffing, OPS would have cycling billets from each of the major agencies and components to facilitate its most effective working relationships across DHS.

### **OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES (CRCL) AND PRIVACY OFFICE (PRIV)**

The Homeland Security Act established only an Officer of CRCL, not an office. The only substantive function Congress then assigned to the officer was to review and assess information alleging abuses of civil rights. Since then, Congress and CRCL itself have significantly expanded CRCL's scope and size well beyond its original intent or helpful purpose. CRCL now operates and views itself as a quasi-DHS Office of Inspector General. This results in a considerable waste of limited component resources, which are routinely tasked to address redundant, overly burdensome, and uninformed demands from CRCL. It is therefore important to recalibrate CRCL's scope and reach.

The organizational structure of both CRCL and the Privacy Office should be changed to ensure proper alignment with the department's mission. The Office of General Counsel should absorb both CRCL's and PRIV's necessary functions



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and staff. Although the CRCL Officer and the Freedom of Information Act (FOIA) Officer/Privacy Officer are statutory, their offices are not mandatory. CRCL and PRIV Officers and employees should report to a Deputy General Counsel, who would be a political appointee.

The CRCL Officer should focus on equal employment opportunity (EEO) compliance and the civil liberties function and investigate matters only within Headquarters or support components. Operational components' civil liberties officers should investigate incidents regarding their own agencies. The CRCL Officer should ensure that all civil liberties or civil rights complaints are sent to the Office of Inspector General (OIG) for review. If the OIG chooses not to investigate, the CRCL Officer should only provide supportive information on possible courses of action for complainants.

The PRIV Officer and FOIA Officer should focus on FOIA, Privacy Compliance Policy, and Privacy Incident Response. The Deputy General Counsel should provide guidance to DHS leadership regarding Privacy Compliance and Privacy Incident Response. To ensure that only U.S. persons and Lawful Permanent Residents are provided protections as required by the Privacy Act, all DHS issuances should be updated to reflect that DHS protects the privacy of individuals as required by the Privacy Act (U.S. persons and lawful permanent residents);<sup>16</sup> the Judicial Redress Act of 2015;<sup>17</sup> and any U.S.–European Union Data Protection and Privacy Agreement.

Because of the lack of public trust in the Office of Intelligence and Analysis, CRCL and PRIV staff should no longer review intelligence products or provide guidance on any intelligence products or reports.

A consistent, clear, and singular message is necessary for DHS's mission. Therefore, all communications and/or meetings with any federal, state, local, or nongovernment groups should be limited to the Deputy General Counsel. In addition, given the narrower scope of work, OGC should disband the outside advisory boards and the more than 50 working groups in which CRCL and PRIV currently participate. Finally, CRCL and PRIV should no longer issue bulletins or periodicals.

### **OFFICE OF THE IMMIGRATION DETENTION OMBUDSMAN (OIDO) AND OFFICE OF THE CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN (CISOMB)**

**OIDO.** The Office of the Immigration Detention Ombudsman should be eliminated. This requires a statutory change in Section 106 of the Consolidated Appropriations Act of 2020.<sup>18</sup>

OIDO was designed to create another impediment to detention through an additional layer of so-called oversight. Several agencies already perform detention oversight. ICE conducts internal audits of facilities and investigates complaints against ICE agents through the Office of Professional Responsibility. Similarly, CBP accepts individual complaints regarding facilities through the Joint Intake Center

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and manages complaints against agents through the OPR. In addition, CRCL, OIG, GAO, and Congress all perform detention oversight. These multiple bodies place unmanageable and unreasonable burdens on ICE to manage several sometimes inconsistent audits/inspections at the same time.

If OIDO remains a DHS component, the Secretary should immediately issue a directive stripping CRCL of its immigration portfolio. OIDO is in a better position with dedicated resources and immigration experts to perform this function than CRCL is. Allowing both offices to conduct detention oversight is duplicative and wasteful.

The Secretary should conduct a thorough review of the effectiveness of Directive 0810.1,<sup>19</sup> which is widely interpreted as requiring a wholesale referral of cases to OIG. In reality, OIG investigates only a small fraction of them and often sits on cases for longer than the five-day window specified in the directive. Meanwhile, the other agencies wait in limbo to execute their duties.

**CISOMB.** The Office of the Citizenship and Immigration Services Ombudsman should be eliminated. The DHS bureaucracy is too large, and the Secretary has too many direct reports. CISOMB's policy functions can be performed (and sometimes already are) by OIG and GAO. The specialized case work can be moved into USCIS as a special unit, much like the IRS Taxpayer Advocate. This would require a statutory change to Section 452 of the Homeland Security Act of 2002.<sup>20</sup>

If CISOMB continues as a DHS component, a policy should be issued that prohibits CISOMB from assisting illegal aliens to obtain benefits. Currently, approximately 15 percent–20 percent of CISOMB's workload consists of helping DACA applicants obtain and renew benefits, including work authorization. This is not the role of an ombudsman. In addition, the government should be a neutral adjudicator, not an advocate for illegal aliens.

### AGENCY RELATIONSHIPS

It is critical to the achievement of the President's policy objectives that all agencies and departments touching immigration policy work in sync with one another. While there are numerous areas in which such cooperation is critical, immigration has proven to be the most difficult. Accordingly, several objectives will be necessary for each of the following departments.

- **Department of Health and Human Services:** Agree to move the Office of Refugee Resettlement (ORR) to DHS or, alternatively, implement an aggressive and regular effort by the Secretary of HHS to ensure that ORR is fully pursuing presidential objectives in support of DHS.
- **Department of Defense:** Assist in aggressively building the border wall system on America's southern border. Additionally, explicitly acknowledge and adjust personnel and priorities to participate actively in the defense

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of America's borders, including using military personnel and hardware to prevent illegal crossings between ports of entry and channel all cross-border traffic to legal ports of entry.

- **Department of Justice:** Agree to move the Executive Office for Immigration Review and the Office of Immigration Litigation to DHS and/or, alternatively, to treat the administrative law judges (immigration judges and Board of Immigration Appeals) as national security personnel, decertify their union, and move to increase hiring significantly to enable the processing of more immigration cases.
- **Department of State:** Allow DHS to lead international engagement in the Western Hemisphere on issues of security and migration. Additionally, quickly and aggressively address recalcitrant countries' failure to accept deportees by imposing stiff sanctions until deportees are in fact accepted for return (not just promised to be taken).
- **Department of Housing and Urban Development:** Ensure that only U.S. citizens and lawful permanent residents utilize or occupy federally subsidized housing.
- **Department of Education:** Deny loan access to those who are not U.S. citizens or lawful permanent residents, and deny loan access to students at schools that provide in-state tuition to illegal aliens.
- **Department of Labor:** Eliminate the two (of four) lowest wage levels for foreign workers.
- **Department of the Treasury:** Implement all necessary regulations both to equalize taxes between American citizens and working visa holders and to provide DHS with all tax information of illegal aliens as expeditiously as possible.
- **Intelligence Community:** Cooperate in the shrinking or elimination of the I&A role in the IC while replacing it with CBP and HSI representation to the IC.

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**AUTHOR'S NOTE:** I had the honor of coordinating the efforts of the experts listed as contributors to this book, nearly all of whom have spent more time inside or interacting with the Department of Homeland Security than myself. I wrote only a small portion of the chapter and relied on the contributors' experience and expertise to give the chapter both its depth and policy impact. No views expressed herein should be attributed to any single contributor.

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### ENDNOTES

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