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Eight Years after 9/11: Analyzing Congress's Homeland Security Agenda

Jena Baker McNeill, James Jay Carafano, Ph.D., and Matt A. Mayer

Having returned from its summer recess, Congress will soon construct its legislative agenda for the rest of the year. Given that this week marks the eighth anniversary of 9/11, Congress should honor the memory of that tragedy by solidifying its homeland security agenda. That means taking the right steps to keep the nation safe, free, and prosperous.

At the same time, legislators must resist dumb initiatives that add no security while impairing invaluable aspects of American life. It is time for Congress to exert some leadership and set the tone for homeland security for the rest of the year.

Homeland Security Today. Although some progress has been made, threats to the U.S. remain. Recent foiled plots, such as the synagogue terror plot, demonstrate that terrorists are still determined to kill as many Americans as possible—and they must be stopped.

Since 9/11, over 23 attacks have been publicly foiled. Much of this success is the result of legislation enacted after the September 11 attacks—such as the PATRIOT Act and the Homeland Security Act—that has paved the way for:

- Extensive information sharing between federal, state, and local law enforcement,
- The creation of a world-class Department of Homeland Security (DHS), and
- An ever-growing homeland security enterprise.

These relationships have helped keep Americans safer and should be maintained, cultivated, and expanded. At the same time, Congress has enacted

or is considering some homeland security measures that have much in common with bumper stickers: cute phrasing but precious little substance. These measures should be rejected. Likewise, Congress still has unfinished business to attend to, important tasks that are yet to be completed.

What Congress Should Not Do. Some of what Congress has done or plans to do fail to enhance security, protect individual freedoms and privacy, or allow America's economy to grow and prosper. These initiatives are on the list following list of don'ts:

Do Not Encourage Illegal Immigration. This year Congress has pushed forward several proposals that would encourage illegal immigration. These “silent amnesties,” such as the DREAM Act (which would give education benefits to illegal immigrants) and the Ag JOBS Act (which would give amnesty to illegal agricultural workers), would erode rule of law and be costly to the American public.

Congress is also considering the PASS ID Act, which would roll back the REAL ID Act of 2005. Instead, Congress should just properly implement the existing REAL ID Act—doing so would prevent the kind of identity theft and fraud that weakens the identification system and facilitates illegal immigration.

This paper, in its entirety, can be found at:
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(202) 546-4400 • heritage.org

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Do Not Punish Tourists. Tourism dropped after 9/11, but taxing tourists to get them to come back makes no sense. The Tourism Promotion Act was reintroduced this year in both the Senate and House. This legislation would create another government entity—this time a corporation, funded on the backs of foreign tourists—to promote travel to the U.S.

While promoting tourism is absolutely vital to America's economic well-being, this is just the kind of activity that the government should stay out of. Taxing tourists so that the U.S. can encourage tourism simply makes no sense and sends the wrong message to America's allies.

Instead of taxing tourists, the government should focus on making travel to the U.S. easier by expanding the Visa Waiver Program, improving visa services, and upgrading infrastructure at key ports of entry.

Do Not Subsidize Hurricanes. The Homeowners Defense Act (HDA) would create a catastrophic insurance fund—like the bankrupt and highly inefficient National Flood Insurance Program—that would provide government insurance to homeowners and businesses to protect against the next catastrophic hurricane.

Such legislation would, essentially, require all Americans to subsidize those who live in hurricane-prone areas and would allow the states to create unrealistic disaster insurance programs and once again turn to the federal government to cover losses.

One of the weaknesses in the HDA is that it uses the term *catastrophic* to decide which disasters would be covered by the act, but it fails to define what constitutes “catastrophic.” As a result, the HDA could easily be interpreted to mean any disaster.

The Do's. Going forward, Congress needs to stop playing politics and pandering to stakeholders and start looking at homeland security in a holistic, long-term, sustainable fashion. Congressional priorities should include the following:

Scrap the 100 Percent Mandates. Congress's 100 percent scanning mandate for maritime security and air cargo continue to plague DHS. The department cannot find a way to meet the mandate in a way that is practical and cost-effective and actually

enhances security. Furthermore, most security and supply chain experts argue that the mandates are unnecessary and would add little security. Congress should rethink these unworkable mandates before more time, money, and resources are wasted.

Amend the Stafford Act. Much like the HDA, the 1988 Robert T. Stafford Disaster Relief and Emergency Assistance Act did not contain strict enough limits on what can qualify for a federal “disaster” declaration. As a result, the Federal Emergency Management Agency has routinely ignored the Stafford Act's pliable requirement and treated even comparatively small disasters as requiring a federal response.

Although very few disasters that occur in America are truly beyond the capabilities of state and local governments, this reality does not aid those who see natural disasters as “very political events.” Congress should redefine what constitutes a disaster under the Stafford Act in a way that includes only those disasters that truly overwhelm state and local response—a step that would ensure that scarce tax dollars are used when needed the most.

Reform the Homeland Security Grant Structure. The 9/11 Commission said homeland security grants were becoming pork barrel legislation. The commission was right. DHS continues to hand out grants based on highly suspect criteria.

This is, for example, the case with UASI grant program for urban areas. DHS continues to expand the number of eligible cities, spreading even thinner the finite resources available. And it also allows states to keep some of the funding, depriving high-risk urban areas even further.

Congress should reduce the number of UASI-eligible cities to the 35 highest-risk cities and require 100 percent pass-through of UASI funds, ensuring that the money goes in the locations where it is needed the most.

More fundamentally, the grant structure is the wrong tool for increasing homeland security because it does not foresee substantial federal involvement when in fact DHS is integrally involved—from issuing requirements to unfunded mandates to requiring yearly applications for funds.

A better approach would be the use of cooperative agreements. With cooperative agreements, the

federal government and the states and localities can sit down as true and equal partners and negotiate outcomes at the beginning, including covering programmatic and financial oversight requirements, and then direct funds to achieve those desired outcomes without the need for yearly applications.

Encourage State and Local Immigration Enforcement Efforts. The federal government has consistently failed to address the ever-growing illegal immigration crisis. As a result, states have begun enacting their own legislation and policies aimed at reducing illegal immigration from a grassroots level.

But federal law still hangs over the states and localities as they take these steps. For instance, the Immigration Reform and Control Act carves out exceptions for state and local initiatives only if they deal with “licensing or similar laws” concerning the employment of illegal immigrants. States, however, still retain extensive police powers by which they can control illegal immigration in their jurisdiction and have the inherent power to enforce federal law.

Given these powers, the federal government should encourage states and localities to devise innovative methods of enforcement that do not call for federal intervention. Congress, for its part,

should look to eliminate statutory restrictions that limit the actions that states and localities can take to curtail illegal immigration.

Going Forward. Setting the right homeland security agenda this autumn is the best way to mark the eighth anniversary of 9/11 and the best way for Congress to meet its responsibilities for keeping the nation safe, free, and prosperous.

—Jena Baker McNeill is Policy Analyst for Homeland Security in the Douglas and Sarah Allison Center for Foreign Policy Studies, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies, at The Heritage Foundation. James Jay Carafano, Ph.D., is Deputy Director of Kathryn and Shelby Cullom Davis Institute for International Studies and Director of the Douglas and Sarah Allison Center for Foreign Policy Studies, a division of the Davis Institute, at The Heritage Foundation. Matt A. Mayer is a Visiting Fellow at The Heritage Foundation, President and Chief Executive Officer of Provisum Strategies LLC, and an Adjunct Professor at Ohio State University. He has served as Counselor to the Deputy Secretary and Acting Executive Director for the Office of Grants and Training in the U.S. Department of Homeland Security.