

# WebMemo



Published by The Heritage Foundation

No. 3010  
September 10, 2010

## Nine Years Since 9/11: When Will Congress Wake Up on Homeland Security?

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

Though it has been nine years since the 9/11 attacks, Congress continues to act as though it is September 10, 2001. From ignoring key 9/11 Commission recommendations to failing to reform the costly and inefficient grant program and disaster declaration process while pursuing dumb legislative initiatives that do not make Americans safer, Congress has failed to provide homeland security leadership.

This failure of leadership puts all Americans at risk. Congress must develop a homeland security agenda that will maintain security while keeping Americans free and prosperous. Such an agenda must include key reforms in oversight, grants and disaster declarations, terrorist detention policies, and immigration enforcement.

**Failure of Leadership.** There are four areas where Congress needs to provide leadership.

**1. Oversight and Authorization.** The 9/11 Commission recommended that Congress consolidate oversight of homeland security. Countless security experts, government officials (both current and former), and even Members of Congress agree that the oversight process is a mess. With 108 committees, subcommittees, and commissions having oversight, the system creates a massive workload for the Department of Homeland Security (DHS), and conflicting messages from Congress often impede policy implementation.

Despite these concerns, little has been done to remedy the problem. Members of Congress do not

want to cede their jurisdiction over security matters, leaving oversight reform at a standstill. This lack of leadership also bleeds into the issue of a DHS authorization bill. In fact, the DHS has never had an authorization bill despite attempts by Members to push one through the House and Senate. Yet such a bill is necessary to set the structure and priorities of DHS.

The lack of progress toward passing a cohesive authorization bill has led some Members to try for a piecemeal approach (i.e., one for Coast Guard, one for Science and Technology, etc.). This effort, however, has proven largely unsuccessful. The lack of an authorization bill decreases morale and signals that Congress does not view DHS as a cohesive entity while also impeding long-term strategy and policy development. It is vital that Congress finish the job.

**2. Over-Federalization of Homeland Security.** Since 2003, DHS has spent more than \$30 billion in taxpayer dollars funding homeland security grants. Yet these grants continue to produce weak outcomes in terms of security and serve to increasingly federalize traditional state and local activities.

This paper, in its entirety, can be found at:  
<http://report.heritage.org/wm3010>

Produced by the Douglas and Sarah Allison  
Center for Foreign Policy Studies

Published by The Heritage Foundation  
214 Massachusetts Avenue, NE  
Washington, DC 20002-4999  
(202) 546-4400 • [heritage.org](http://heritage.org)

Nothing written here is to be construed as necessarily reflecting  
the views of The Heritage Foundation or as an attempt to  
aid or hinder the passage of any bill before Congress.

This is alarming, as states and localities are much better suited than the federal apparatus to lead the domestic homeland security enterprise. Further, these grants have become a money game where politicians direct funding to their districts to make themselves look strong on security matters that have little to no relation to actual security risk.

Simultaneously, the federalization of disaster response has been increasing. In the short span of 16 years, the yearly average of Federal Emergency Management Agency (FEMA) disaster declarations has tripled from 43 under President George H.W. Bush to 89 under President Bill Clinton to 130 under President George W. Bush. In his first year, President Obama issued 108 declarations—the 12th highest in FEMA history—without the occurrence of a hurricane or other major disaster. The increasingly federal direction of disaster response forces all taxpayers to subsidize those in disaster-prone areas.

**3. Holding Terrorists Accountable.** The numerous attacks foiled since 9/11 demonstrate that the U.S. continues to be in a war on terrorism. Since 9/11, the U.S. has detained alien unprivileged belligerents under the law of war and congressional Authorization for Use of Military Force (AUMF). Although the Supreme Court has held that AUMF allows the government to detain the enemy without charge, in 2008, the Court for the first time in history extended the writ of *habeas corpus* to alien unprivileged belligerents apprehended and detained abroad. This decision and related decisions are an example of the Court choosing to make policy in an unprecedented way where no guidance exists from the elected branches.

This overreach by the Court has created dangerous uncertainty for those charged with prosecuting the war. When it comes to the prosecution of terrorists, the Administration, for its part, has held a “criminal-justice-only mentality” and has even allowed captured terrorists to go into the custody of other countries to avoid difficult apprehension and detention.

This has undoubtedly reduced American access to critical intelligence information and, when coupled with efforts to shutdown Guantanamo Bay—despite the lack of a courtroom capable of handling

sensitive information and providing the necessary security—makes it that Congress needs provide more leadership.

One appropriate step would be for Congress to define both who the enemy is and the rights he has regardless of where he is captured or held. Too much has been left to federal judges, allowing them to fill in the gaps in current law with policies that reflect their own will.

**4. Amnesty Politics.** The Administration has made it clear that it plans to press for amnesty for the 10.8 million illegal immigrants in the U.S. The Administration’s attack on Arizona’s immigration law, coupled with attempts to roll back enforcement efforts (including a recent trend of simply not prosecuting immigration removal cases), are undermining immigration laws in the U.S.

Congress needs to ensure that future immigration reform measures do not exacerbate the problem of illegal immigration. Reform based on amnesty will simply encourage more people to enter the United States illegally—overwhelming any progress made to secure the southern border and further eroding the rule of law. Americans demand a border and immigration policy that enforces the law; secures U.S. borders, preserves the economy, and maintains security. There are solutions to fix America’s immigration problems without going down the costly and irrational path of amnesty.

**An Opportunity.** Congress has a real opportunity to take leaderships and use this fall to lay out a security agenda that keeps Americans free, safe, and prosperous. This can be accomplished by taking the following steps:

- **Transform the grant process.** Congress should reform the homeland security grant structure. This should include limiting the number of Urban Areas Security Initiative—eligible cities to the 35 highest-risk and moving toward the use of cooperative agreements instead of grants. 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.

- **Modify the Stafford Act to curb the federalization of natural disasters.** The Stafford Act simply does not contain strict enough limits on what can qualify for a federal “disaster” declaration. Congress should establish clear requirements that limit the types of situations in which declarations can be issued, eliminating some types of disasters entirely from FEMA’s portfolio. Furthermore, Congress should limit the cost-share provision for all FEMA declarations to no more than 25 percent of the costs.
  - **Resist amnesty.** Congress should resist pushing forward with amnesty in any comprehensive immigration reform bill. At the same time, it should focus on preserving immigration enforcement and preventing the Obama Administration from rolling back key enforcement efforts. Furthermore, Congress should support efforts to deploy smart technologies and assets at the southern border to provide the resources to allow federal, state, and local law enforcement to match the threat of transnational cartels and shifting patterns of illegal immigration. Key reforms in visa services and additional work with Mexico to enact free-market reforms are needed as well.
  - **Develop an appropriate terrorist detention framework.** This reform includes defining the rights and privileges of unprivileged belligerents, including current detainees and future captures, and providing clear distinctions among unprivileged belligerents, prisoners of war, and domestic criminals.
  - **Fix oversight issues.** Getting homeland security right relies heavily on the ability of Congress to exercise its oversight power in an effective manner. The current structure simply does not provide adequate American security. Congressional leadership should fix this problem immediately by consolidating oversight into the two standing homeland security committees (separating Senate Governmental Affairs from Homeland Security), the appropriations committees, and intelligence.
- Much Is at Stake.** In the nine years since 9/11, Congress has failed to enact much-needed homeland security–related reforms. And yet it is not too late. Tomorrow’s anniversary should serve as a fitting reminder to Congress of just how much is at stake.
- 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, and James Jay Carafano, Ph.D., is Deputy Director of Kathryn and Shelby Cullom Davis Institute for International Studies and Director of the Allison Center, at The Heritage Foundation. Matt A. Mayer is a Visiting Fellow at The Heritage Foundation and President of the Buckeye Institute for Public Policy Solutions in Columbus, Ohio. 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. Paul Rosenzweig is the Principal at Red Branch Consulting, PLLC, and a Visiting Fellow at The Heritage Foundation. He is a former Deputy Assistant Secretary for Policy at the Department of Homeland Security.*