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Homeland Security 4.0

*Overcoming Centralization,
Complacency, and Politics*



Douglas and Sarah Allison Center for Foreign Policy Studies



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Homeland Security 4.0

*Overcoming Centralization,
Complacency, and Politics*

By Matt A. Mayer, James Jay Carafano, Ph.D., and Jessica Zuckerman

Abstract

Ten years after 9/11, defending the homeland is still a challenge, as demonstrated by dozens of thwarted terrorist attacks. While the U.S. has made great strides in some aspects of homeland security, efforts in other areas have fallen short and need to be redirected or simply discontinued. Effective homeland security requires a more federalist, decentralized approach of working with state and local government and the private sector. This is particularly evident in immigration enforcement, which has become a federal embarrassment. In addition, the mission of the Transportation Security Administration should be refocused. This paper provides 35 recommendations for improving homeland security while protecting individual freedoms and economic vitality.

About the Authors

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.

James Jay Carafano, Ph.D., is Deputy Director of the 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.

Jessica Zuckerman is a Research Assistant in the Allison Center at The Heritage Foundation.

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214 Massachusetts Avenue, NE
Washington, DC 20002-4999
(202) 546-4400 • heritage.org

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Executive Summary

Getting the national homeland security enterprise right is among the most difficult challenges in Washington because the problems in protecting the homeland are rooted in overcentralization, pervasive complacency, and entrenched politics—problems that often cause Washington to not work properly. This report marks a path through this obstacle course.

The recommendations in this report are essential steps in establishing the right type of homeland security for the United States—one that is enduring and efficacious. The experience of the past decade is a better guide to the future than what was thought in the immediate aftermath of 9/11. These recommendations are drawn from research by Heritage Foundation analysts over the past decade and from extensive outreach to and engagement with many of the stakeholders in the homeland security enterprise.

Among the key proposals are:

- Establishing a framework for empowering state and local authorities to meet their responsibilities for disaster response and domestic counterterrorism operations, particularly for ensuring state and local input into national policies and promoting intelligence-led policing.
- Adopting a fair, honest, and realistic approach to immigration enforcement that recognizes state and local authorities as responsible partners and abjures an “amnesty first” strategy, which would simply encourage more illegal border crossings and unlawful presence. Sensible and functional border security, immigration, and workplace laws are vital to focusing scarce resources on the pressing security threat posed by transnational criminal cartels based in Mexico.
- Overhauling the process for declaring federal disasters and dispensing homeland security grants. Current policies and programs waste resources and do not promote resiliency or preparedness.
- Maintaining the use of key counterterrorism tools, such as those authorized under the USA PATRIOT Act, and establishing a national domestic counterterrorism and intelligence framework that clearly articulates how intelligence operations at all levels should function to combat terrorism.
- Rethinking the Transportation Security Administration (TSA) and restructuring its mission from providing airport security to making aviation security policy and regulations and devolving screening responsibility to the airport level under supervision of a federal security director.

INTRODUCTION

September 11, 2001, the single worst terrorist attack any country has suffered in modern times, changed how Americans protect their homeland. The official U.S. domestic response to the 9/11 attacks began on November 25, 2002, when the Homeland Security Act of 2002 became law. This initiative started a cascade of changes—some good, some not.

Since 9/11, America has done a better job of defending itself, thwarting at least 40 Islamist-inspired terrorist plots aimed at the United States. According to a RAND database, all categories of terrorist attacks against U.S. targets at home and overseas have been declining steadily since 2005. The investigative powers granted under the USA PATRIOT Act and other counterterrorism tools have helped law enforcement to detect and thwart emerging threats.

The U.S. has also taken significant strides in frustrating terrorist travel and financing. The Secure Flight program, the completion of the 2004 and 2007 Passenger Name Record Data Transfer agreements with the European Union and a more integrated and comprehensive Terrorist Watch List, and international cooperation through the Financial Action Task Force have made it much more difficult for transnational terrorist groups to move people and resources.

Additionally, America has improved efforts to safeguard its own sovereignty by investing significantly in border security. State and local cooperation under initiatives such as Section 287(g) of the Immigration and Nationality Act and the Secure Communities Program have increased enforcement activities in communities across the United States. These efforts discouraged illegal border crossing and unlawful presence in conjunction with workplace enforcement, state efforts to prevent illegal employment, and specific state laws on employment, housing, identification, trafficking, and benefits.

Furthermore, efforts to learn what worked and what did not work in the war against terrorism have stopped some practices and programs that contribute little real security. For example, the Obama Administration recently scrapped the confusing and ineffective color-coded Homeland Security Advisory System and replaced it with a more practical National Terrorism Advisory System. Washington has also reduced the number of cities receiving funding under the Urban Areas Security Initiative (UASI) grant program from a high of 63 cities to only 31 cities in 2011. These cities face the highest risk of terrorist attack in America, and spreading the funds across a much larger number of jurisdictions diluted the program's effectiveness. To the Administration's credit, it has attempted to reverse the trend of turning homeland security grants into pork-barrel spending.

However, progress in the homeland security enterprise has been inconsistent. The White House continues to press for an "amnesty first" approach to border security, immigration policy, and workplace enforcement, while undercutting key tools, including the 287(g) program. These initiatives are undermining the progress that had been made in fixing broken borders and restoring credibility to U.S. immigration laws. Meanwhile, the Administration has done little to address the growing challenge of transnational crime from Mexican cartels.

Federal catastrophic disaster planning remains moribund, while Washington declares more federal disaster declarations every year for events of lesser and lesser consequence. Bad policies are endangering progress in disaster preparedness, immigration, and border security.

For its part, Congress's performance has remained lackluster. Unworkable mandates, such as the requirement for 100 percent scanning of inbound transoceanic shipping containers, remain on the books. Congressional oversight, scattered across dozens of committees and subcommittees, remains dysfunctional.

Getting the national homeland security enterprise right remains one of the most difficult challenges in Washington because it runs up against the standard Washington practices of overcentralization, complacency, and entrenched politics.

- **Centralization.** The U.S. Constitution divides power between the federal government and state and local governments. This federalist principle is not some archaic concept dreamt up by the Founding Fathers to placate skeptics of a strong central government, but rather deliberately designed to protect the nation from overcentralization of power in Washington. It also recognizes the reality that state and local governments have the resources, geographic locus, and experience to best deal with physical threats in their own communities.
- **Complacency.** Ensuring national security is a competition between determined, innovative adversaries and the American people. If the U.S. becomes complacent or focuses on the past, it will pay a heavy price. On the other hand, Americans and their representatives must temper expectations with realistic outcomes, realizing that the nation cannot expect to stay one step ahead of the terrorists if it accepts the status quo.
- **Politics.** Homeland security is at least as susceptible to politics as every other function of the federal government. Every Member of Congress has constituents, companies, and other stakeholders lobbying for more money and more resources. Every Member has committee assignments that endow him or her with power and attract powerful “friends.” Congress has a reputation for passing laws that send politically expedient messages, but call for unattainable results. Politics frequently fails to produce good policy results.

Ten years after 9/11 is a good time to address these challenges directly. The Department of Homeland Security (DHS) recently released its 67-page report “Implementing 9/11 Commission Recommendations: Progress Report 2011.” Regrettably, this summary report epitomizes everything that is wrong with the current state of homeland security: too much triumphalism and not enough recognition of the pressing challenges in building the homeland security enterprise that the nation needs. The report does not acknowledge how overcentralization, complacency, and misguided politics have thwarted efforts to address the challenges laid out by the 9/11 Commission. It contains little discussion of whether these recommendations are still relevant or whether they were the right answers in the first place. Finally, the 9/11 Commission findings focused on the problems of 10 years ago as they were understood then, not on today’s threats. The experience of the past 10 years suggests different answers.

The recommendations in this report are based on research by Heritage Foundation analysts over the past decade and on extensive outreach to and engagement with many of the stakeholders in the homeland security enterprise. This is the third in a series of reports in which The Heritage Foundation has participated. “DHS 2.0: Rethinking the Department of Homeland Security” (2004) served as a basis for the reorganization undertaken in 2005. “Homeland Security 3.0: Building a National Enterprise to Keep America Safe, Free, and Prosperous” (2008) provided insights for the department’s first Quadrennial Homeland Security Review (QHSR) in 2010. The Obama Administration also followed the report’s recommendation to integrate the National Security and Homeland Security Council staffs.

Now is the time to think about the next iteration of homeland security. The recommendations in this report outline the essential steps for establishing enduring and effective homeland security for the United States. This report does not address every challenge. For example, it does not discuss cyber security in depth, which has become a critical homeland security concern that the nation is not well poised to address, according to many experts. The first step in addressing the problem of cybersecurity and other emerging challenges that range from bioterrorist threats and pandemics to natural catastrophes is to lay the foundation for homeland security. That is the aim of this report.

The report’s 35 recommendations are organized in three sections, corresponding with the three significant obstacles: overcentralization, complacency, and politics. In each section, the research team has noted critical findings and observations and identified means to address them.

PART I

Making Federalism Work

The U.S. Constitution created a federalist system. It gave the federal government expressed, but limited, powers and reserved all remaining powers for the states and the people. The Ninth and Tenth Amendments firmly established the federalist system of government by stating that the rights contained in the Bill of Rights should “not be construed to deny or disparage others retained by the people”¹ and by adding the corollary provision that “powers not delegated to the United States by the Constitution...are reserved to the States respectively, or to the people.”² As James Madison noted in *The Federalist Papers*, “The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the States.”³

Yet over the past 70 years, Washington has continued to seize or *de facto* possess ever-growing control over activities that had long been the purview of state and local governments. This is equally true in homeland security. For example, the federal government continues to subsidize more and more of the response to disasters, increasing reliance on the federal government and undermining efforts to create stronger and more resilient communities.

This trend is making Americans less safe. The inherent bureaucratic processes of federal decision making, the geographic size and diversity of the United States, and the minimal manpower that the federal government actually controls across America are poorly suited to many homeland security tasks. This problem has also taken the U.S. further away from its constitutional foundation, with the federal government taking still more power away from state and local governments under the guise of the latest emergency.

It is time to end this power grab. The next homeland security agenda should lead the United States back toward its constitutional foundation, in which the federal government possessed limited and discrete powers and the state and local governments exercised the bulk of the powers that impacted lives of Americans. Choosing the right path back toward federalism will not be easy. It will require hard choices by decision makers and an American public willing to stop looking to Washington to solve every problem.

Fixing National Policy Development

Finding: Despite being essential and equal partners with the federal government in defending the homeland against terrorism, state and local governments have little say in the development of national policy.

After 9/11, the federal government created the Homeland Security Council (HSC) and the Department of Homeland Security. The DHS also established a Homeland Security Advisory Council (HSAC) and other task forces and advisory bodies that included state and local representation. In addition, as is required of other federal agencies, the DHS uses instruments, such as notices of proposed rulemaking, to give state and local governments the opportunity to comment when the department adds, removes, or changes a regulation. Finally, the DHS has initiated various efforts to increase its stakeholder outreach, such as creating new outreach offices and state and local working

1. U.S. Constitution, Amend. IX.

2. U.S. Constitution, Amend. X.

3. James Madison, *The Federalist* No. 45.

groups. During the Quadrennial Homeland Security Review, the DHS established a platform to allow state and local first responders and preventers to offer their thoughts and suggestions.

However, these changes and initiatives did not fundamentally alter the national policymaking structure in Washington, D.C. The HSC and the DHS did not fully and fairly represent the equities and resources outside the federal government. Today, when a staff member at the DHS or any other federal entity has a new policy idea, he or she will draft a policy paper. The policy paper will be circulated internally to a growing group of DHS employees, who will revise it. Once the policy paper receives approval from the DHS executive team, the paper enters the interagency policy structure for revisions through the Interagency Policy Committees (IPCs).

The interagency policy structure includes representatives from all federal departments and agencies. Often, any agency or department can stop a policy from being approved because consensus is required. If the policy gains final approval at the desired level—not all policy must cross the President’s desk—the policy is rolled out.

At some point in this process, usually late in the process, the policy is circulated to state and local government representatives. This circulation could be broad or narrow depending on the issue. Those representatives will then send back comments, revisions, and suggestions to the DHS. Unlike federal agencies or departments, state and local governments are not directly engaged in the policy process and therefore cannot stop policies from being implemented. In fact, the drafters can completely ignore any comment, revision, or suggestion from state and local representatives.

Recommendation #1: Give state and local governments seats at the table.

President Barack Obama should issue an executive order giving states and localities a seat at the federal policy table on homeland security issues. This group should work directly with the National Security Council staff and be included in appropriate IPCs. The Interagency Threat Assessment and Coordination Group (ITACG) might offer a functional model. The National Counterterrorism Center (NCTC), the DHS, and the FBI jointly manage ITACG to bring state and local perspectives into the national intelligence cycle. The ITACG includes an advisory council to recommend policies and ITACG Detail, which integrates state and local analysts with intelligence analysts at the NCTC. States and localities need to have a say when homeland security policies are being proposed, developed, discussed, released, and acted upon. This kind of collaboration is an important key to building the national homeland security enterprise the nation needs.

Dealing with the Federal Failure on Immigration

Finding: State and local governments bear the cost of federal failure on immigration, yet they are discouraged from taking action.

The federal government has failed in one of its most basic functions: controlling who enters the country. A significant portion of the roughly 10.8 million illegal immigrants inside the United States entered with a valid visa, but stayed after their visas expired. Those in favor of granting amnesty—including the Obama Administration—have tried to convince Americans to support this plan by claiming that their actions to secure the border, strengthen interior enforcement, and tighten visa policy are tough. Yet the Administration’s recent actions, including the dismissals of deportation cases against noncriminal illegal immigrants, indicate the opposite. The Obama Administration has moved the U.S. farther from enforcement of immigration laws.

The impact of these decisions and decades of serious failure to enforce immigration policy has fallen largely on state and local governments, which bear the financial burdens of these illegal immigrants. The additional costs come in the form of higher infrastructure costs, social service benefits, crime, lost jobs and tax revenue, and other government costs.

Washington has responded by discouraging state and local governments from enforcing immigration laws, despite the constitutional case and need for state and local immigration efforts. With fewer than 6,000 Immigration and Customs Enforcement (ICE) agents, failing to use the 1 million state and local law enforcement personnel makes little sense. State and local law enforcement could serve as powerful force multipliers. Their familiarity with

their communities also enables them to better navigate the difficult issues involved with the detection, detention, and deportation of illegal aliens.⁴

In 2010, Arizona enacted a law that directs law enforcement officers to ask about a person's legal status, if they have a reasonable suspicion that the person stopped, detained, or arrested is unlawfully present in the United States. The Obama Administration responded by suing Arizona and demonizing Arizonans in a crass effort to further its political agenda.⁵

However, this was not the first time that states have asserted themselves on immigration, and states and localities have won most of the resulting lawsuits. For example, in June, the U.S. Supreme Court upheld Arizona's Legal Arizona Workers Act, which requires businesses to use the E-Verify system and punishes businesses that hire illegal immigrants. These legal victories should embolden states and localities to continue their push to curtail illegal immigration in their jurisdictions with tough laws against employing, housing, and aiding illegal aliens and even tougher laws criminalizing all aspects of human trafficking.

Recommendation #2: The federal government should stop the legal attacks on state and local government attempts to enforce immigration laws.

State officials have clear authority to act in the interests of the public safety of their own citizens. The Constitution clearly reserves these police powers to state and local government and the people. As a result, state and local governments retain inherent authority to enforce federal criminal law. Many legal experts believe that state and local governments also retain inherent authority to enforce federal civil law. Instead of trying to undermine these efforts, Congress and the Administration should amend the laws that limit the actions that states and localities can take.

Recommendation #3: The federal government should support state and local immigration enforcement programs, which serve as vital force multipliers for enforcement efforts.

On the state and local levels, ICE's Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS) program has been extremely popular. It allows localities to take action on illegal immigration if they wish to do so. Despite this popularity and success, the Obama Administration has rolled back or attempted to roll back ICE ACCESS programs, such as Section 287(g) of the Immigration and Nationality Act. However, the Obama Administration has supported Secure Communities, which is an essential database tool for sending information to ICE about illegal immigrants arrested by state and local law enforcement and for helping ICE to prioritize resources.

However, the Administration has not supported ICE ACCESS programs, such as 287(g). Section 287(g) allows law enforcement entities to enter into agreements with ICE to "act in the stead of ICE agents by processing illegal aliens for removal." Before a state or local law enforcement agency can participate, it must sign a memorandum of agreement (MOA) with ICE and participating officers must undergo a five-week training course, a background check, and mandatory certifications.

Section 287(g) was a solid improvement in immigration law enforcement. Before the Section 287(g) program, if state and local law enforcement officers apprehended an individual who could not demonstrate legal presence in the U.S., they would simply notify ICE and wait for ICE to take custody of the individual. In practice, this meant that most illegal immigrants went free and immigration laws were not enforced. In the seven years since ICE started using Section 287(g), roughly 66 state and local agencies have entered into MOAs, and roughly 1,000 law enforcement officers have been "deputized" to enforce federal immigration law.⁶

4. Matt A. Mayer, "Controlling Illegal Immigration: State and Local Governments Must Do More," Heritage Foundation *Special Report* No. 66, August 25, 2009, at <http://www.heritage.org/Research/Reports/2009/08/Controlling-Illegal-Immigration-State-and-Local-Governments-Must-Do-More>.

5. James Jay Carafano, "White House Must Stop Playing Politics with Immigration and Arizona Law," Heritage Foundation *WebMemo* No. 2909, May 20, 2010, at <http://www.heritage.org/Research/Reports/2010/05/White-House-Must-Stop-Playing-Politics-with-Immigration-and-Arizona-Law>.

6. Jena Baker McNeill and Matt A. Mayer, "Section 287(g) Revisions: Tearing Down State and Local Immigration Enforcement One Change at a Time," Heritage Foundation *WebMemo* No. 2543, July 14, 2009, at <http://www.heritage.org/Research/Reports/2009/07/Section-287g-Revisions-Tearing-Down-State-and-Local-Immigration-Enforcement-One-Change-at-a-Time>.

Even more important, more than 120,000 individuals have been identified as illegal immigrants under the program. Yet in the past year, the American Civil Liberties Union, other pro-illegal immigration groups, and a U.S. Government Accountability Office (GAO) report have claimed that Section 287(g) programs encourage racial profiling and have other undesirable consequences. On July 9, 2009, the Obama Administration caved in and announced plans to make the MOAs “more uniform.” However, the announced changes go to the heart of the program and will disrupt any real attempt to enforce the law.

While the Administration has supported some programs such as Secure Communities, it has discouraged participation in vital programs like 287(g). Congress and the Administration should support efforts by state and local law enforcement to assist in immigration enforcement.

Recommendation #4: The federal government should deploy a menu of worksite enforcement tools to discourage the use of illegal labor.

Of the more than 11 million illegal immigrants, an estimated 5 million came to the U.S. to work. Thus, effective immigration enforcement must include mechanisms for employer verification, aimed at both employers of illegal labor and the illegal workers.

While programs such as E-Verify, which allows employers to confirm that a worker can legally work in the United States, have received bipartisan support, the Obama Administration has decreased enforcement in the worksite on a number of fronts. First, the Administration’s “employer”-focused enforcement strategy does not actually enforce the law against anyone. By ignoring the presence of illegal workers and checking employer payrolls through soft I-9 audits, the Administration is sending the message that the country does not take enforcement of immigration laws seriously.

The right worksite enforcement strategy would deploy a menu of enforcement tools aimed at both employers and illegal workers. E-Verify is a valuable tool in this effort, and it should be improved and expanded. E-Verify is being used across the country, and Arizona and other states have passed legislation requiring all employers to use E-Verify. The wide use of the program is a step in the right direction for employer verification. Regrettably, E-Verify cannot catch identity fraud. Thus, additional methods of verifying legal employment are needed.⁷

For example, the government should revive Social Security No-Match and worksite raids, which helped to address identity theft and off-the-books employment—areas that E-Verify cannot reach. Congress should specifically authorize the Social Security Administration to routinely share this data directly with the DHS. Sharing this information and giving the DHS the resources and authority to target large-scale employers in the economic sectors in which undocumented workers are most prevalent (e.g., agriculture, services industries, and construction) would provide incentives and enforcement measures to wean employers from the shadow workforce.

Recommendation #5: Congress should encourage states to implement REAL ID.

If the nation is serious about combating identity theft and stopping terrorism, it should implement REAL ID, which sets minimum security standards for driver’s licenses.

While the rhetoric in Washington has focused on rolling back the act’s provisions, many states have begun to implement it on their own, recognizing the benefit of secure credentialing.

Secure identification cards will make fraudulent documents more difficult to obtain and will simplify employers’ efforts to check documents when verifying employee eligibility. REAL ID is a sensible protection. It encourages states to take serious steps to prevent identity theft with driver’s licenses and requires states to check the lawful status of individuals applying for a license.

7. Jena Baker McNeill, “Homeland Security Investigations: Examining DHS’s Efforts to Protect American Jobs and Secure the Homeland,” testimony before the Subcommittee on Oversight, Investigations, and Management, Committee on Homeland Security, U.S. House of Representatives, July 7, 2011, at <http://homeland.house.gov/sites/homeland.house.gov/files/Testimony%20McNeill.pdf> (August 4, 2011), and Jena Baker McNeill, “E-Verify: Challenges and Opportunities,” testimony before the Subcommittee on Government Management, Organization, and Procurement, Committee on Oversight and Government Reform, U.S. House of Representatives, August 24, 2009, at <http://www.heritage.org/Research/Testimony/E-Verify-Challenges-amp-Opportunities>.

Congress could push implementation along further by holding the Administration accountable for meeting its own implementation deadlines, while providing funding for states that are meeting the mandate's requirements.⁸

Stopping the Over-Federalization of Disaster Response

Finding: America has over-federalized disaster response in a way that threatens the resiliency of the nation's communities.

In the course of 16 years, the yearly average of Federal Emergency Management Agency (FEMA) declarations tripled from 43 under President George H. W. Bush to 89 under President Bill Clinton to 130 under President George W. Bush. In his two and a half years in office, President Obama has issued 360 declarations without the occurrence of one hurricane or large-scale earthquake. In the first six months of 2011, President Obama issued 144 declarations, which puts him on pace for 288 declarations for the year—by far the most in FEMA history. The current single-year record is President Clinton's 157 declarations in 1996.

President Obama already owns the single-year record for major disaster declarations with 81 in 2010, even though not a single hurricane or earthquake above 7.0 on the Richter scale has struck the United States during his presidency.

The increase in disaster declarations is largely a result of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 (Stafford Act), the controlling federal statute for disasters. Under this act, the federal government pays 75 percent to 100 percent of disaster response bills as long as FEMA has issued a disaster declaration.

Meeting the requirements for such a declaration is relatively easy: The disaster in question must be “of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary.”⁹ The financial threshold is also low: “when a state's storm-related damages reach \$1.29 per capita, [which] for several states...is less than \$1 million in damages.”¹⁰ The ambiguous provisions of the Stafford Act and low damages threshold create enormous incentives for governors to seek federal disaster declarations rather than shoulder most of the cost, especially during this time of tight state budgets.

The federalization of routine disasters requires FEMA to become involved with a new disaster somewhere in the United States every 2.5 days. This high operational tempo is affecting FEMA's overall preparedness because it keeps FEMA perpetually in a response mode, leaving little time and few resources for catastrophic preparedness. With staffing levels and budgets only nominally above pre-1993 levels, it should be no surprise that FEMA is not prepared to handle a catastrophic disaster.

In a similar manner, states have learned to beg Washington for help whenever a natural disaster strikes, in the hope of receiving a FEMA declaration and the accompanying money. This behavior began in 1993, when the yearly number of FEMA declarations first began to climb to the record heights. Every increase in yearly declarations means that FEMA has federalized more natural disasters that the states would have previously handled and paid for entirely on their own.

For example, in 2010, a tornado struck outside Toledo, Ohio, causing some deaths. Even though the tornado inflicted little physical damage outside the small geographic area, Governor Ted Strickland quickly asked FEMA for

8. Janice L. Kephart and Jena Baker McNeill, “The PASS ID Act: Rolling Back Security Standards for Driver's Licenses,” Heritage Foundation *Backgrounder* No. 2288, June 23, 2009, at <http://www.heritage.org/Research/Reports/2009/06/The-PASS-ID-Act-Rolling-Back-Security-Standards-for-Divers-Licenses>.

9. 42 U.S. Code § 5170.

10. Matt A. Mayer and Mark DeBosier, “Federalizing Disasters Weakens FEMA—and Hurts Americans Hit by Catastrophes,” Heritage Foundation *Backgrounder* No. 2398, April 10, 2010, at <http://www.heritage.org/Research/Reports/2010/04/Federalizing-Disasters-Weakens-FEMA-and-Hurts-Americans-Hit-by-Catastrophes>.

a disaster declaration to shift the costs to the federal government. Much to its credit, FEMA declined the request and the subsequent appeal because the total damage did not even meet FEMA's already low threshold.¹¹

Because FEMA has federalized so many routine natural disasters, Ohio and other states have cut their budgets for public assistance believing that they could always obtain FEMA declarations and federal funding. Over the past 10 years, states have slashed their emergency response budgets.

FEMA spends too much time responding to routine natural disasters and not enough time preparing for catastrophic natural disasters, such as hurricanes, earthquakes, and volcanic eruptions, which could have a national impact. This is increasing the likelihood that the federal response to the next catastrophic event will be insufficient.

Recommendation #6: Modify the Stafford Act to establish clear requirements that limit the situations in which FEMA can issue declarations.

As the litmus test for federal disaster dollars, the Stafford Act fails to clearly establish which disasters meet the federal requirements and which do not. Congress should correct this by establishing clear requirements that limit the types of situations in which declarations can be issued. This should include eliminating some types of disasters entirely from FEMA's portfolio. One way to accomplish this is to align declarations with the various scales used for disasters (e.g., the Saffir–Simpson Scale, the Richter Scale, and the Fujita Scale). Another way is to raise the minimum dollar threshold for requesting disaster declarations. Doubling the per capita threshold to a minimum of \$5 million (and a maximum threshold of \$50 million) would significantly reduce the number of events that would warrant a federal disaster declaration.

Congress should reduce the cost-share provision for all FEMA declarations to no more than 25 percent of the costs. This will help to ensure that at least three-fourths of the costs of a disaster are borne by the taxpayers living in the state where the disaster took place. For catastrophes with a nationwide impact—such as 9/11 and Hurricane Katrina—a relief provision could provide for a higher federal cost-share if the total costs of the disaster exceed a certain threshold.

Recommendation #7: Overhaul existing FEMA processes and procedures under the Public Assistance Grant Program.

The Public Assistance Grant Program provides funding to state and local governments for disaster response, but its processes and procedures are not aligned with saving lives and property—the primary focus of catastrophic disaster response. FEMA should increase program staff and training, clearly define and simplify its six funding buckets, and change its project worksheets to ensure that costs and damages are accurately assessed on the front end and include complete statements of work and accurate cost estimates.

These changes will reduce the number of required FEMA deployments, lower the cost of responding to and recovering from minor events, improve service to its “customers,” and ultimately allow FEMA to become the world-class response and recovery administrative agency as it was originally intended.¹²

Recommendation #8: State and local governments should run their own disaster responses because they know their own geography, people, business conditions, and needs better than the federal government ever can.

State and local governments should be weaned from dependency on FEMA so that they can reassert their traditional role in responding to all but the most catastrophic disasters. With any federal response 48 hours to 72 hours away, state and local response capabilities are key to minimizing the loss of life and property. To be effective, state and local jurisdictions must not only build disaster response capabilities, but also use them for the multitude of di-

11. Matt A. Mayer, “States: Stop Subsidizing FEMA Waste and Manage Your Own Local Disasters,” Heritage Foundation *Backgrounder* No. 2323, September 29, 2009, at <http://www.heritage.org/Research/Reports/2009/09/States-Stop-Subsidizing-FEMA-Waste-and-Manage-Your-Own-Local-Disasters>, and Matt A. Mayer and James Jay Carafano, “FEMA and Federalism: Washington Is Moving in the Wrong Direction,” Heritage Foundation *Backgrounder* No. 2032, May 8, 2007, at <http://www.heritage.org/Research/Reports/2007/05/FEMA-and-Federalism-Washington-Is-Moving-in-the-Wrong-Direction>.

12. Mayer and DeBosier, “Federalizing Disasters Weakens FEMA—and Hurts Americans Hit by Catastrophes.”

sasters, large and small, that occur in America every year. This will allow FEMA to focus its finite time and resources on building catastrophic response capabilities.

Congress should reduce the cost-share provision for all FEMA declarations to no more than 25 percent of the costs. This will ensure that at least three-fourths of the disaster costs are borne by the taxpayers living in the states where the disaster occurred. For a catastrophe with a nationwide impact, such as 9/11 or Hurricane Katrina, Congress could provide a higher federal cost-share if the total cost exceeds a certain threshold.¹³

Recommendation #9: The U.S. should build a comprehensive national integrated planning system with shared all-hazards response plans.

Ten years after 9/11, the federal government still lacks a comprehensive regime for planning and preparing for large-scale disasters. In part, this shortfall is the product of an inadequate interagency process, the means by which federal agencies organize and cooperate with one another and their partners in state and local government and the private sector.

Building a true national integrated planning system will require interagency coordination and an integrated planning and exercise effort among federal agencies, their partners in state and local government, and the private sector. Such a system requires three elements:

- A resource function that focuses on the assets, equipment, and personnel that a jurisdiction needs across the relevant capabilities;
- A training function that determines the jurisdiction's needs in relation to disciplines, asset requirements, and equipment training; and
- A capacity function to test competencies through a robust and repeatable exercise program that identifies capability gaps and provides feedback on how to close those gaps over time.

State and local governments are seeking such guidance, but encouraging the adoption of a system across the federal government has proved problematic. One key hurdle has been the disparate resources and needs across the interagency. Congress chartered the Abbot–Keating Commission—headed by Steve Abbot, former White House homeland security adviser, and Frank Keating, governor of Oklahoma at the time of the 1995 Oklahoma City bombing—to assess the Pentagon's capacity to respond to truly catastrophic disasters. Some of the commission's findings are simply stunning. For example, despite nine years of post-9/11 ramping up, “there is currently no comprehensive national integrated planning system to respond to either natural or man-made disasters.”¹⁴ To make matters worse, federal, state, and local agencies are not even sharing what they are doing now. They are not, the report admonished, “making a sustained and comprehensive effort to share all-hazards response plans.”¹⁵

Establishing a Large-Scale Volunteer Network

Finding: States still lack an effective large-scale volunteer mobilization network.

U.S. law allows states to raise and maintain state defense forces (SDFs) composed of citizen volunteers under the command of a state governor. State defense forces and other volunteer groups from local communities can build a stronger response when disaster strikes, and they are an essential part of true preparedness.

Only 23 states and territories have SDFs. The hesitation of many governors makes little sense given that SDFs offer a low-cost force multiplier for homeland security efforts. In particular, the high-risk states without SDFs

13. Matt A. Mayer, Richard Weitz, and Diem Nguyen, “The Local Role in Disaster Response: Lessons from Katrina and the California Wildfires,” Heritage Foundation *Background* No. 2141, June 4, 2008, at <http://www.heritage.org/Research/Reports/2008/06/The-Local-Role-in-Disaster-Response-Lessons-from-Katrina-and-the-California-Wildfires>.

14. Advisory Panel on Department of Defense Capabilities for Support of Civil Authorities After Certain Incidents, *Before Disaster Strikes: Imperatives for Enhancing Defense Support of Civil Authorities*, September 15, 2010, p. 29, at <http://www.rand.org/content/dam/rand/www/external/nsrd/DoD-CBRNE-Panel/Report-Advisory-Panel.pdf> (August 8, 2011).

15. *Ibid.*, p. 37.

would greatly benefit from creating SDFs for disaster recovery and response efforts. SDFs can make an important contribution during catastrophic disaster response by providing a framework for effectively organizing and sustaining volunteers statewide. In particular, they can address liability, accountability, safety, and logistical support issues involving volunteers.¹⁶

Recommendation #10: National policy should promote state defense forces.

To facilitate the creation of SDFs, the Department of Homeland Security, working with the Department of Defense, should create state standards and clarify federal regulations to clarify SDF powers and missions. State standards should be communicated to the Council of Governors and the State Guard Association of the United States to facilitate the sharing of best practices among the states.

Once established, SDFs should be incorporated into existing and future emergency plans and exercises and be permitted to train side by side with the National Guard. SDFs will become significantly greater assets to their states if they are professionally trained and equipped. Congress can help by establishing a legislative framework to require appropriate cooperation on SDF matters among the Pentagon, the DHS, and state governments and by recognizing SDFs as an integral state-controlled military component of the nation's homeland security.

Congress should authorize the Pentagon and the DHS to provide limited support to SDFs at no direct cost to the federal government. SDFs are limited by the restriction forbidding them from receiving in-kind support from the Pentagon. While SDFs should remain funded solely by the states, in-kind support in the form of equipment and facilities would enhance SDF training and capabilities.

However, because the Pentagon does not directly support SDFs, they cannot use federal resources, even surplus equipment and supplies. This is particularly challenging given that many SDFs work closely with their state National Guards, but are not permitted to use National Guard facilities, trucks, or equipment, even when state National Guard troops are deployed elsewhere and SDFs are filling in during their absence.

While SDFs are a low-cost resource, the size and scope of their functionality is hindered by insufficient support and resources. To increase the quality and capability of SDFs, states need to provide adequate support and resources. Despite the undeniable benefits of having an effective SDF, many SDFs lack the resources and the operational standards needed to make them more effective. The U.S. and its states can no longer afford to sideline these national security assets.

Integrating State and Local Counterterrorism Efforts

Finding: While the U.S. has foiled at least 40 plots since 9/11, the U.S. is still struggling to effectively harness the capabilities of state and local law enforcement as key players in domestic counterterrorism.

Unlike federal agents who enter communities only as part of active investigations, state and local law enforcement personnel see becoming active parts of their community as a source of success. Whether walking a beat or patrolling sections of a city by car, local law enforcement officers come to know their communities inside and out. This familiarity results in two critical developments: (1) Community members trust them and share key information about what is going on in the area, and (2) law enforcement personnel develop a gut instinct that allows them to sense when someone or something is not right.

In addition to their community knowledge, state and local governments house roughly 90 percent of America's prison population. Given the increasing concern that some prison inmates are susceptible to radicalization, the work being done in U.S. jails and prisons to monitor, detect, and thwart terrorist activities must remain closely connected to the same activities occurring in U.S. communities, especially as potentially radicalized

16. James Jay Carafano and Jessica Zuckerman, "The 21st-Century Militia: State Defense Forces and Homeland Security," Heritage Foundation *Backgrounder* No. 2474, October 8, 2010, at <http://www.heritage.org/Research/Reports/2010/10/The-21st-Century-Militia-State-Defense-Forces-and-Homeland-Security>.

prisoners are paroled. This linkage becomes even more important as gangs and drug cartels consider connecting with terrorist groups.¹⁷

While Washington debated the creation of the Information Sharing Environment and the role of the Director of National Intelligence (DNI), it has engaged in little serious discussion of the roles of states and localities. Too often, Washington has viewed states and localities as mere sources of data.

Recommendation #11: Clarify the domestic counterterrorism framework.

Rather than talking about the need for state and local “information sharing,” which really just means sending information to the federal government, the U.S. should properly apportion roles and responsibilities among federal, state, and local government based on their resources (e.g., money, people, and experience). The President should issue an executive order establishing a national domestic counterterrorism and intelligence framework that clearly articulates how intelligence operations at all levels should function to combat terrorism, while keeping citizens safe, free, and prosperous.¹⁸

Recommendation #12: Preserve existing counterterrorism tools, including the PATRIOT Act.

Given that at least 40 known plots have been foiled since 9/11, the United States is clearly still facing a serious terrorist threat. As such, national security investigators still need the authorities provided by the PATRIOT Act to track leads and dismantle plots before the public is put in any danger. These authorities, which Congress has extensively modified over the years to incorporate significant new safeguards, including substantial court oversight, are vital to this success. Congress should not let the provisions expire and instead make the authorities permanent.¹⁹

Thwarting Terrorist Travel

Finding: The best way to safeguard Canada and the United States from transnational terrorists is to keep the bad guys out of North America in the first place.

Canada and the United States share information and intelligence; cooperate extensively on law enforcement issues, particularly border-related crime and terrorist travel; and work together to thwart potential air and sea threats. Both countries routinely produce national intelligence assessments that are published in unclassified forms so that citizens can better appreciate their government’s perception of current and emerging national security challenges.

Of course, more can be done. Both nations need to do a better job of earning the trust and confidence of their citizens that the U.S. and Canada can help to safeguard one another. There is legitimate cause for concern on both sides. Americans remember Ahmed Ressaam, the “millennium bomber” caught trying to drive a car with a trunk full of explosives from Canada to Los Angeles. Canadians remember Omar Khadr, a Canadian citizen deported to Syria and brutally tortured, partly because of U.S.-supplied information that he was a suspected terrorist. Citizens of both countries remember the poorly written and ineptly explained DHS report on “rightwing extremism.”²⁰

17. Jena Baker McNeill, James Jay Carafano, and Jessica Zuckerman, “39 Terror Plots Foiled: Examining Counterterrorism’s Success Stories,” Heritage Foundation *Backgrounder* No. 2556, May 20, 2011, at <http://www.heritage.org/Research/Reports/2011/05/39-Terror-Plots-Foiled-Since-911-Examining-Counterterrorism’s-Success-Stories>, and David B. Muhlhausen and Jena Baker McNeill, “Terror Trends: 40 Years’ Data on International and Domestic Terrorism,” Heritage Foundation *Special Report* No. 93, May 20, 2011, at <http://www.heritage.org/Research/Reports/2011/05/Terror-Trends-40-Years-Data-on-International-and-Domestic-Terrorism>.

18. Matt A. Mayer, “Effective Counterterrorism: State and Local Capabilities Trump Federal Policy,” Heritage Foundation *Center for Data Analysis Report* No. 09–02, June 3, 2009, at <http://www.heritage.org/Research/Reports/2009/06/Effective-Counterterrorism-State-and-Local-Capabilities-Trump-Federal-Policy>.

19. Jena Baker McNeill and Charles Stimson, “Letting the Patriot Act Provisions Expire Would Be Irresponsible,” Heritage Foundation *WebMemo* No. 3139, February 9, 2011, at <http://www.heritage.org/Research/Reports/2011/02/Letting-PATRIOT-Act-Provisions-Expire-Would-Be-Irresponsible>.

20. U.S. Department of Homeland Security, “(U/FOUO) Rightwing Extremism: Current Economic and Political Climate Fueling Resurgence in Radicalization and Recruitment,” Office of Intelligence and Analysis Assessment, April 7, 2009, at <http://www.fas.org/irp/eprint/rightwing.pdf> (August 15, 2011).

The North American Aerospace Defense Command (NORAD) is a binational American and Canadian military command that provides aerospace and maritime warning for North America. Established in 1958 to confront the growing Soviet bomber threat, NORAD has repeatedly adapted to the evolving security environment.

While NORAD has grown into a relevant post–Cold War military organization, it has not fully realized its potential. Virtually every transnational threat to the United States—from terrorism to international criminal gangs and cartels to environmental threats, such as the oil spill in the Gulf of Mexico—has the potential to span North America. U.S. and Canadian security interests do not stop at the U.S.–Mexican border. This necessitates increased security cooperation with Mexico. This cooperation must be effective and respect the sovereignty and security interests of the partner nations. NORAD fits this requirement well.

Over the past decade, the United States has done much to promote intergovernmental cooperation with Mexico and has included Mexico in trilateral programs with Canada. Defense ties between the United States and Mexico are stronger than ever, as exemplified by the Pentagon’s role in building Mexican capacity for counternarcotics operations and in other areas. Yet Mexico remains outside NORAD.

Recommendation #13: The U.S. and Canada should enhance efforts to conduct a joint threat assessment.

The U.S. and Canada are each other’s most important trading partner. Cross-border trade generates more than \$1 billion per day. The U.S. needs to keep that trade engine running as smoothly as possible.

Keeping dangerous people and goods out of the U.S. is important, but spending a lot of money on new security measures along the U.S.–Canadian border is not the best strategy. Instead, the U.S. should seek to increase anti-terrorism cooperation, including information sharing, with Canada. This would strengthen the friendship between the U.S. and Canada and make the border more secure without jeopardizing bilateral economic benefits—a boon to both countries.

DHS Secretary Janet Napolitano’s announcement to engage in a joint threat assessment is the proper approach to gaining a better understanding of the threats facing North America.²¹ A joint threat assessment will likely reveal ways in which both countries can more effectively thwart terrorist travel, target the leadership, break up the organizations, disrupt their plots, cut off their funds, and hamper their recruiting efforts before they reach North America.

Recommendation #14: Invite Mexico to join NORAD.

Including Mexico in NORAD is just the beginning of a better multinational effort to make North America safer and more secure. Making NORAD a more effective instrument will require more than just adding another member. Effective teamwork will require more training and information sharing. Only through mutual cooperation, enhanced understanding, and increased flexibility can NORAD keep North America safe in the 21st century.

Given the U.S. military’s responsibility to monitor air and sea approaches to the United States, NORAD could contribute significantly to counternarcotics efforts through the air and maritime warning portions of its mandate, particularly if NORAD was expanded to include Mexico. The Mérida Initiative, which will increase drug enforcement cooperation among the United States, Mexico, and Central America, does not focus on detecting foreign craft, but rather on improving the resources, training, and methods of the law enforcement agencies responsible for drug control. To succeed, the Mérida Initiative must enable Mexican and Central American police agencies to better identify drug smuggling suspects, find evidence against them, and uncover hidden drugs.

While the Mérida Initiative is providing surveillance aircraft and detection equipment, it relies heavily on local law enforcement and on human intelligence gathering. An expanded NORAD could provide additional hardware, particularly radar equipment, to complement efforts already underway. A joint command structure would facilitate intelligence sharing and the exchange of effective practices. Better coordination and interoperability would benefit all

21. James Jay Carafano, Sharon Cardash, and Frank Cilluffo, “Canada and the United States: Time for a Joint Threat Assessment,” Heritage Foundation *WebMemo* No. 2402, April 19, 2009, at <http://www.heritage.org/Research/Reports/2009/04/Canada-and-the-United-States-Time-for-a-Joint-Threat-Assessment>.

countries involved. Mexico's inclusion in NORAD could serve as the basis of a new multinational and multiagency partnership for counternarcotics operations in North America.²²

Taking Cooperation Global

Finding: Homeland security is a global mission.

Information sharing is the most effective way to track dangerous people and protect the country from attack. Information on a variety of things, such as data in criminal databases and customs information, should be shared between allies to enhance their anti-terrorism capabilities and to enable them to arrest those who seek to do harm.

The best way to promote effective international cooperation is bilaterally. Europe served as a base for recruiting and planning the attacks of 9/11. Terrorists use Latin America for safe havens, recruiting, fundraising, and facilitating international travel. America's homeland security efforts should begin before the threat arrives in the United States. The U.S. needs strong cooperative relations with foreign countries aimed at securing global systems (e.g., commerce, networks, and infrastructure) that connect the U.S. with the rest of the world.

Because of globalization, modern societies are highly interdependent. A terrorist attack that destabilizes one country can tremendously affect U.S. security, including its economic viability. Consequently, sharing best practices for both preventing and responding to acts of terrorism should be a crucial part of DHS international policies.

America's security policies affect not only America's domestic security, but also U.S. allies. Countries look to the U.S. as a world leader in best security practices. Therefore, the U.S. needs to have a smart, risk-based security strategy at home that can be replicated around the globe. Furthermore, U.S. policies can seriously affect the economies and supply chains of U.S. allies. This means that the U.S. needs to consider the economic effects of new policies from both domestic and international perspectives.

The Lisbon Treaty created new European Union (EU) institutions, changed voting rules to eliminate the requirement for unanimity among the European member states, and shifted the allocation of power among European institutions, giving the European Parliament a powerful role in security matters. It is creating a sea change in EU operations, a development that many Europeans have long anticipated.

However, how much this latest EU treaty will affect the United States is still not known. The new EU power structure could make the EU a more effective U.S. partner in the long run. If the qualified majority voting process energizes European action and the parliamentary co-decision rule does not become an obstacle, strengthening Brussels may work in America's favor by providing America with a strong counterterrorism partner capable of acting on behalf of Europe. If it does, the U.S. should welcome that development.

Recommendation #15: The U.S. should maintain traditional relationships and focus on those EU countries that have the capacity to work effectively with America.

Until Brussels proves itself a suitable partner for counterterrorism collaboration, the U.S. should not permit the strengthening of the EU to challenge long-standing U.S. bilateral relationships with the sovereign countries of the EU. Today, given the sentiment in the European Parliament, the U.S. is more likely to achieve its political objectives by working with traditional friends than with the new EU institutions.

Europe will never develop a coherent supranational police force or a supranational intelligence community with whom their American equivalents can interact. Nor would the U.S. be likely to welcome such a development. Thus, for practical reasons, the U.S. should continue the information exchange and operational assistance with EU member states and their justice and home affairs services.²³

22. James Jay Carafano, Jena Baker McNeill, Ray Walser, and Richard Weitz, "Expand NORAD to Improve Security in North America," Heritage Foundation *Backgrounder* No. 2443, July 27, 2010, at <http://www.heritage.org/Research/Reports/2010/07/Expand-NORAD-to-Improve-Security-in-North-America>.

23. Sally McNamara, "EU-U.S. Counterterrorism Relationship: An Agenda for Cooperation," Heritage Foundation *Backgrounder* No. 2528, March 28, 2011, at <http://www.heritage.org/Research/Reports/2011/03/The-EU-US-Counterterrorism-Relationship-An-Agenda-for-Cooperation>.

Recommendation #16: The U.S. should expand the Visa Waiver Program.

The Visa Waiver Program (VWP) was created in 1986 as a pilot program to facilitate travel and tourism in the U.S. by individuals from friendly nations. Today, the VWP also serves as a public diplomacy and counterterrorism tool, facilitating information sharing between the U.S. and member nations and promoting a positive image of the U.S. around the globe. Continued expansion of the VWP would help to continue this process, but no new nations have been added to the program in several years. Current law prevents the DHS from adding new countries with a visa refusal rate greater than 3 percent until the DHS develops and implements a system to biometrically track the departure of foreign visitors from U.S. airports. The DHS has had enormous difficulty implementing this system and is not likely to meet the mandate in the near future, making expansion of VWP nearly impossible. To expand the program further, Congress and the Administration should:

- Decouple VWP from the biometric air exit mandate,
- Switch to overstay rates as opposed to visa refusal rates as a primary requirement for admission,
- Encourage interested nations to seek membership and work to ensure that key allies are no longer made to wait in frustration, and
- Promote increased information sharing among member countries to increase the security benefits of the program even further.²⁴

Recommendation #17: Build disaster response capacity and cooperation with partner nations.

The U.S. must be able accept foreign aid in the event of a catastrophe. The Department of Homeland Security should implement the GAO's post-Katrina recommendations for improving assessment of international aid. Some progress has been made in implementing the recommendations detailed in the GAO report, but some recommendations that remain highly relevant today have still not been implemented. Congress should revisit Katrina recommendations on international cooperation and assistance and should work with the DHS to implement them.²⁵ The U.S. should also consider hosting international disaster exercises to increase the ability of countries friendly with the United States to accept aid from one another when disaster strikes.

For some critical infrastructure, the U.S. should promote establishing industry-led, multinational rapid-response capability that could respond worldwide. Further, this could provide an effective mechanism for sharing best practices and integrating responses. This capability should be funded and controlled by the private sector to respond to threats to shared international critical infrastructure, such as telecommunications and the Western Hemisphere electrical grid.

Furthermore, many potential U.S. partners in the Western Hemisphere, particularly small Caribbean island nations, have few large-scale platforms and lack the infrastructure to respond to major disasters. Energizing existing cooperative structures with Caribbean nations would strengthen their capacity to respond to crises, such as oil spills and other large-scale disasters. An effective instrument for building capacity could be modeled on the U.S. government's Millennium Challenge Account (MCA).

The MCA is an alternative mode of providing economic and development aid to developing countries. A MCA grant is provided only after a country meets a set of criteria, including adherence to basic standards of human rights, good governance, fiscal responsibility, and commitment to the kinds of development projects that have a proven record of promoting economic growth. By demanding that a country demonstrate its commitment to freedom and economic development, the MCA greatly improves the likelihood that aid will not be squandered on wasteful projects or corruption. By emphasizing good governance and democratic norms, the MCA lessens the potential for aid to be used to prop up authoritarian regimes and increases the likelihood that it will fund programs that directly help people in need.

24. Jena Baker McNeill, "Jumpstarting the Visa Waiver Program to Increase Security and Economic Prosperity," Heritage Foundation WebMemo No. 3184, March 7, 2011, at <http://www.heritage.org/Research/Reports/2011/03/Jumpstarting-the-Visa-Waiver-Program-to-Increase-Security-and-Economic-Prosperity>.

25. Government Accountability Office, *Hurricane Katrina: Comprehensive Policies and Procedures Are Needed to Ensure Appropriate Use of and Accountability for International Assistance*, GAO-06-460, April 2006, at <http://www.gao.gov/new.items/d06460.pdf> (May 17, 2011).

Overcoming Centralization, Complacency, and Politics

The DHS should have expanded authority in providing international assistance and development. The U.S. should establish security assistance sales, lease, and grant programs that allow the DHS to assist countries in obtaining equipment, support, and financing for homeland security functions. Congress and the Obama Administration should redirect current foreign assistance programs into a “Security for Freedom Fund” to build capacity for security and catastrophic disaster response among cooperative nations in the Western Hemisphere.

The DHS should also establish a formal, integrated education and training program similar to the Pentagon’s International Military Education and Training program. This would include training in the United States, mobile training teams that would deploy overseas, and support for international programs.

Recommendation #18: The U.S. should agree to share qualified security technology with other countries on a reciprocal basis.

If other nations adopted liability protection regimes comparable to the SAFETY Act, they could form a network to promote innovation. As national liability protection proliferates, new opportunities for international cooperation would emerge. The U.S. would be wise to pilot an “international SAFETY Act” regime with a few trusted partners to work out the legal and policy issues that would inevitably arise.

One ideal potential partner is Israel, a country that has focused on developing security technologies against terrorist threats. Israel already has a thriving international business in anti-terrorism technologies, including about 400 Israeli companies exporting about \$1.5 billion each year. As a long-time American ally with a comparable legal system but a relatively small economy, Israel might be just the right partner for a pilot SAFETY Act expansion program.²⁶

26. Paul Rosenzweig, Jena Baker McNeill, and James Jay Carafano, “Using the SAFETY Act to Build a Stronger U.S.–Israeli Terrorism Partnership,” Heritage Foundation *WebMemo* No. 3077, December 8, 2010, at <http://www.heritage.org/Research/Reports/2010/12/Using-the-SAFETY-Act-to-Build-a-Stronger-US-Israeli-Terrorism-Fighting-Partnership>.

PART II

Combating Complacency

The past eight years have shown again how human nature can impede progress. As the new Department of Homeland Security arose, existing entities sought to minimize its influence and control. Conversely, those in the new department sought to increase their influence and control. The collision of these two objectives has resulted in bad outcomes, serial delays, and lost opportunities. Key issues remain unresolved because of inertia and frustration that continued tinkering has produced little real progress.

This section addresses issues that have lingered far too long and remain unsatisfactorily addressed. It is unrealistic to believe that the Gordian knot can be easily cut. Policymakers will need to temper their expectations, but press on with the difficult task of securing a nation in a manner that preserves individual freedoms and economic vitality.

Strengthening Policy Leadership

Finding: The DHS lacks a strong policy leadership position.

The Office of Policy was created in 2005 to improve policy development, coordination, and oversight throughout the department. Among other activities, the office has:

- Led interagency policy development on homeland security matters.
- Coordinated policy development among components to formulate one voice for the DHS in interagency policy negotiations.
- Overseen the DHS's international engagement efforts. For example, the office recently assisted in formulating National Security Decision Directive 38, which governs the DHS footprint overseas, the addition of attachés at key locations, and a new strategy for international engagement. It also helped to create a new memorandum of understanding to manage technical assistance efforts abroad in coordination with the U.S. Department of State.
- Influenced the DHS budget process through program guidance, the acquisition process, and a new strategy development process.

The Office of Policy is home to several key programs, including the Visa Waiver Program. VWP member countries are required to institute certain security protocols and sign information-sharing agreements. These partnerships make the VWP a valuable part of the nation's counterterrorism structure.

The Office of Policy also handles important activities related to screening foreign acquisitions of U.S. companies and assets for national security concerns and provides a representative to the Committee on Foreign Investment in the United States.

Despite these essential roles and its potential capacity to act as a critical resource for the DHS, the office lacks the standing within the department to become a critical player. In 2004, The Heritage Foundation observed that the department "also currently lacks a high-level policy officer with the staff, authority, and gravitas to articulate and

enforce policy guidance throughout and across the department.”²⁷ Regrettably, this finding remains as valid today as it was in December 2004.

Recommendation #19: Congress should make the top DHS policy leader an undersecretary.

Given the important role of policy in homeland security and the other long-range strategic planning efforts spearheaded by this directorate, Congress should elevate the leader of the Office of Policy to the undersecretary level.²⁸

Recommendation #20: Fully fund key programs in the DHS Office of Policy.

The Office of Policy is home to many key programs and activities, such as the Visa Waiver Program and the screening of foreign acquisitions of U.S. companies and assets for national security concerns in coordination with the Committee on Foreign Investment in the United States. Yet Congress has repeatedly cut the budget of the Office of Policy. Hamstringing the Office of Policy will impede—if not completely halt—current efforts and important programs. Congress should demonstrate its commitments to the Office of Policy by fully funding its key programs.

Addressing Interagency Challenges

Finding: The DHS remains a minor player in the interagency.

As the new “kid on the block,” the DHS has had to fight to be seen as an equal to the other departments and agencies, especially in counterterrorism activities. At one point, there was even talk of relegating the DHS to a minor seat within the intelligence community. The DHS also found itself sharing the lead on activities with other entities, such as the U.S. Department of Justice (DOJ), or being dragged into debates over leadership during potential crises. The debate over federal action on the cyber threat is more of the same.

The Bush Administration made little headway in organizing and coordinating the federal response to the cyber threat, and the Obama Administration is faring no better. For example, the Obama Administration took seven months to name a cyber czar—one who would ultimately not have nearly enough authority. The National Security Agency (NSA) and the DHS apparently remain locked in a battle over who will lead the cybersecurity effort. Meanwhile, the Pentagon’s decision to set up a unified cyber command has yet to become a reality, and the command’s relationship to the civilian sector has not yet been defined. These challenges need to be sorted through top-level leadership from the White House.

This also means that the federal government needs to convert NSA expertise into civilian expertise as fast as possible. Cyber policies must put human capital first. The government needs to develop operational civilian expertise. Its initiatives need a robust plan to provide leaders with the skills, knowledge, and attributes to supervise the program. Perhaps most critically, cutting-edge cyber research must be a priority.

In theory, the answer is easy: a civilian response for what is a predominantly civilian network. Yet the civilian side of the government lacks the expertise and manpower to do the job effectively, which is why the DHS has announced plans to hire 1,000 new cyber experts. Until these experts are on board—finding and hiring that many will be a long process—civilian defenses will need to rely on existing expertise, predominantly in the NSA.²⁹

27. James Jay Carafano and David Heyman, “DHS 2.0: Rethinking the Department of Homeland Security,” Heritage Foundation *Special Report* No. 2, December 13, 2004, at <http://www.heritage.org/research/reports/2004/12/dhs-20-rethinking-the-department-of-homeland-security>.

28. Jena Baker McNeill, “Looming Budget Cuts at the DHS Office of Policy,” Heritage Foundation *WebMemo* No. 3274, June 1, 2011, at <http://www.heritage.org/Research/Reports/2011/06/Looming-Budget-Cuts-at-the-DHS-Office-of-Policy>.

29. Paul Rosenzweig, “10 Conservative Principles for Cybersecurity Policy,” Heritage Foundation *Backgrounder* No. 2513, January 31, 2011, at <http://www.heritage.org/Research/Reports/2011/01/10-Conservative-Principles-for-Cybersecurity-Policy>.

Recommendation #21: The DHS should be an equal partner in the interagency.

The Intelligence Reform and Terrorism Prevention Act of 2004 neglected the DHS's role in counterterrorism operations. Congress and the Obama Administration should consider whether the department should play a more prominent leadership role in the Terrorist Screening Center and the NCTC. In addition, they should consider how to better integrate the myriad of counterterrorism capabilities, operations, and activities into the command, possibly through a "joint" structure similar to that employed by the U.S. military Combatant Commands or by emulating operations such as those conducted by Joint Interagency Task Force South in Key West.

Defining the Role for Defense

Finding: The Quadrennial Defense Review (QDR) shortchanges domestic defense.

The QDR suggested that the DOD cut the number of specially trained and equipped forces to respond to chemical, biological, nuclear, radiological, and high explosive attacks by 20 percent. The Pentagon also plans to realign the Consequence Management Response Forces (CCMRFs) from three to one and move personnel from the two CCMRFs to 10 smaller Homeland Response Forces in each of the FEMA districts. This change and reduction in the number of specially prepared and dedicated personnel would significantly reduce the ability of the U.S. to respond to a large-scale disaster.

The long-term defense strategy should be to find the right mix of resources and personnel to accomplish all of the missions under the Pentagon's purview. A regional approach to homeland defense would facilitate an effective response to both catastrophic and noncatastrophic attacks on U.S. soil. In fact, decentralizing homeland security and homeland defense response could reduce response times. However, reducing the number of personnel dedicated to catastrophic response equates to an overall decrease in resources, leaving the remaining forces more vulnerable to being overwhelmed in situations that require intensive manpower.

Recommendation #22: Maintain three fully resourced Consequence Management Response Forces and better synchronize the QDR and the QHSR.

Three full-size CCMRFs are necessary for U.S. Northern Command to have enough personnel available to handle truly catastrophic disasters. These personnel investments would leave a sufficient force in place to reach the site of a small-scale or large-scale attack in a flexible fashion, while maintaining troop levels sufficient to respond to a catastrophic disaster.

The planned CCMRF cut shows the continued disconnect between the QDR and the domestic homeland security requirements. Remedying this disconnect will require synchronizing the QDR better with the QHSR. This can best be accomplished by establishing and maintaining a permanent QHSR office to prepare the way, including working with the Pentagon and Congress to determine the statutory requirements for the report, conducting long-term analytical studies to support QHSR analysis, and coordinating with the interagency community and state, local, tribal, private-sector, and international partners.

With this office making long-term preparations for the QHSR, the time and effort required for a new Administration to conduct a review during its first year would be significantly reduced. The QHSR also should be viewed as an ongoing process that includes not only developing statutory reporting requirements, but also consultation during the review process and after the report is delivered. The review can and should be the premier instrument for strategic dialogue with Congress and the Pentagon.³⁰

30. Jena Baker McNeill, "Quadrennial Defense Review's Homeland Defense Realignment Leaves U.S. Less Prepared," Heritage Foundation *WebMemo* No. 2865, April 15, 2010, at <http://www.heritage.org/Research/Reports/2010/04/Quadrennial-Defense-Reviews-Homeland-Defense-Realignment-Leaves-US-Less-Prepared>.

Building a Framework to Address Emerging Threats

Finding: The DHS is not focusing adequately on emerging threats.

The National Infrastructure Protection Plan (NIPP) defines the main roles and responsibilities of the federal, state, and local government agencies and the private-sector actors that protect critical infrastructure and key resources (CIKR). It also provides a unifying structure for integrating CIKR protection and resiliency into a single national framework based on risk-prioritization to protect America's CIKR from terrorist attacks and natural or technological hazards.

The DHS is responsible for continually developing CIKR protection from the ground up, resisting the urge to govern from the top down. The reason for this is twofold. First, principles of limited government call for increased roles for the private sector and state and local governments. Second, economic realities require solutions that achieve security goals, but maintain the flexibility of the private sector to operate in the most cost-effective manner.

The problem with the criticality designation is that it is often overused. Policymakers, uncomfortable with acknowledging that not all attacks or accidents can be prevented, turn to criticality as a crutch and pour more and more resources into all infrastructure instead of targeting what is truly critical. Essentially, there is an incentive to deem infrastructure critical because of the resources that such a designation makes available.

Addressing this challenge will require a shared effort between the private sector and the federal government and making hard choices to disaggregate what is "critical" (essential for sustaining and supporting Americans' daily lives) from what is "dangerous" (e.g., chemical facilities), but not necessarily critical.

When the DHS issued the Sector Specific Plans in December 2007, leaders stressed that these plans were not finished products, but rather living documents meant to provide a general framework for future planning. However, part of changing in the face of new threats means developing an accurate picture of risk, and the NIPP is not agile enough to do this.

The DHS has made some changes to the NIPP, including the addition of a "critical manufacturing" sector; CIKR mission integration within state and local fusion centers; expansion of CIKR protection-related education, training, outreach, and exercise programs; and an examination of how adversaries can use CIKR as weapons of mass destruction. However, these efforts still fail to interweave risk as the litmus test for change, instead reverting to a stovepipe system of criticality.³¹

The Department of Homeland Security needs to seek better ways to examine risk. As a 2010 report from the National Academies noted, "with the exception of risk analysis for natural disaster preparedness, the committee did not find any DHS risk analysis capabilities and methods that are yet adequate for supporting DHS decision making, because their validity and reliability are untested."³²

Deciding how to grow and adapt to evolving threats is fundamentally a product of sound risk-assessment methods, something that neither Congress nor the DHS has interwoven sufficiently in the law or policymaking process.

Finding: U.S. Intelligence entities still have problems with "connecting the dots."

After the Christmas Day plot, the White House acknowledged a failure to "connect the dots" and "human errors," such as the delayed dissemination of a finished intelligence report. In the case of the Detroit bomb plot, the intelligence system failed to work effectively. What is most surprising is the acknowledgement that "[n]o single

31. Jena Baker McNeill and Richard Weitz, "How to Fix Homeland Security Critical Infrastructure Protection Plans: A Guide for Congress," Heritage Foundation WebMemo No. 2404, April 27, 2010, at <http://www.heritage.org/Research/Reports/2010/04/How-to-Fix-Homeland-Security-Critical-Infrastructure-Protection-Plans-A-Guide-for-Congress>.

32. National Research Council of the National Academies, Committee to Review the Department of Homeland Security's Approach to Risk Analysis, *Review of the Department of Homeland Security's Approach to Risk Analysis* (Washington, D.C.: National Academies Press, 2010), p. 80, at http://www.nap.edu/catalog.php?record_id=12972 (August 9, 2011).

component of the CT [counterterrorism] community assumed responsibility for the threat reporting and followed it through by ensuring that all necessary steps were taken to disrupt the threat.”³³

As President Obama said, the intelligence community did not “prioritize streams of intelligence.”³⁴ The intelligence apparatus simply moved too slowly, and some staff failed to attach sufficient urgency to key bits of information, especially when the father of Umar Farouk Abdulmutallab told the U.S. embassy in Nigeria in late November about his son’s radicalization and ties to Yemen. The father’s visit to the embassy should have raised a major red flag and provoked action. It is troubling that such an oversight could occur eight years after 9/11 and after a significant reorganization of the intelligence community.

Information sharing with industry partners still needs a framework to protect the competitive advantage of industry partners, while allowing them to share valuable counterterrorism and other information with authorities. The lack of a workable framework has led to significantly less information sharing with government.³⁵

Recommendation #23: Setting realistic goals for intelligence reform.

The DHS and the DOJ are still fighting over which department is the primary federal partner with state and local law enforcement on information and intelligence sharing. The DOJ has far more connections to the nation’s major law enforcement entities. Almost every major law enforcement jurisdiction belongs to a Joint Terrorism Task Force, while only 72 jurisdictions participate in or have a fusion or data center. Because state and local law enforcement agencies already face budget constraints and limited resources, the demands—in many cases redundant—by the DHS and the DOJ can overwhelm them. Washington needs to end interagency fighting and instead present a federal enterprise solution to state and local governments.

Similarly, the relationship between the DHS and the State Department is weak and needs to be vastly improved. Specifically, the two agencies fail to coordinate on visa security matters. Abdulmutallab’s visa was not revoked on December 25, 2009, despite information to warrant this type of action, nor was this information communicated to the NCTC. The poor relationship between the two agencies also contributed to the lack of information sharing between the DHS and the State Department’s consular office in Nigeria.

The DHS was granted legislative authority to set policy for these offices, but it has not done so. This should include visa security coordination. Serious questions have been raised over why Abdulmutallab’s visa was not revoked and why there was no additional follow-up and interaction with the NCTC—measures that might have placed him on a no-fly list. By law, the DHS is supposed to set security policies for the State Department consular affairs offices that issue visas. This has never happened because of squabbling between the two departments.

Likewise, embassies have been reluctant to accept visa security officers from the DHS to work with the consular officers in identifying security gaps and threats. Presently, only the U.S. embassy in Saudi Arabia is required by law to have visa security officers present.

In the decade since the 9/11 attacks, too much of the debate about fixing domestic intelligence deficiencies has focused on the federal aspect. Whether the debate centered on the creation of the Information Sharing Environment or the DNI’s role, little serious discussion focused on the role of states and localities. Too often, Washington views states and localities as mere data sources.

Rather than spending even more years talking about the need for state and local information sharing, which really means just sending information to the federal government, the United States should first properly apportion the roles and responsibilities among the federal government and the states and localities based on their respective resources (e.g., money, people, and experience).

33. The White House, “White House Review Summary Regarding 12/25/2009 Attempted Terrorist Attack,” January 7, 2010, at <http://www.whitehouse.gov/the-press-office/white-house-review-summary-regarding-12252009-attempted-terrorist-attack> (August 16, 2011).

34. John Brennan, quoted in Massimo Calabresi, “The Flight 253 Bomb Plot: What Did Obama Know?” *Time*, January 12, 2010, at <http://www.time.com/time/nation/article/0,8599,1953012,00.html> (August 16, 2011).

35. James Jay Carafano, “After Detroit: Presidential To-Do List for Plugging Gaps in Stopping Terrorist Travel,” Heritage Foundation *WebMemo* No. 2743, December 30, 2009, at <http://www.heritage.org/Research/Reports/2009/12/After-Detroit-Presidential-To-Do-List-for-Plugging-Gaps-in-Stopping-Terrorist-Travel>.

Improving Research and Acquisition

Finding: The federal government is still failing to leverage the private sector on innovation and security.

The private sector is often the source of technological innovations in homeland security. Yet the federal government fails to understand the competitive realities of the marketplace and how these realities affect how businesses interact with government.

Private-sector companies also provide the innovations that make Americans safer. They create anti-terrorism technologies, such as cameras, sensors, and other detection and surveillance equipment that are critical to stopping terrorist attacks in the planning stage. Equally as important, these companies also create the infrastructure, buildings, wires, and networks that keep America running.

A government effort to meaningfully engage the private sector cannot wait until the next disaster strikes. Government should begin now to cultivate and maintain partnerships with the private sector. Yet too often, partnerships that are invoked tend to be government-dictated, and private-sector organizations are treated as an afterthought or essentially commandeered by government rather than respected as invaluable partners. The DHS needs to focus on reaching out to businesses of all sizes.

The importance of large businesses, such as major producers and providers in the energy and communications sectors, is apparent. However, small and medium-sized businesses are vitally important in many critical infrastructure sectors, and they have unique vulnerabilities. Small enterprises usually have one location and generally do not have backup plans or store files, records, and other critical data offsite.³⁶

Recommendation #24: Foster greater U.S. private-sector engagement.

Engagement with the U.S. private sector has been dismal. While there is some dialogue with large companies, engagement with small and medium-sized businesses is wholly inadequate. The Department of Homeland Security should fully implement the Voluntary Private Sector Preparedness Accreditation and Certification Program to foster greater engagement.

Recommendation #25: Promote the SAFETY Act.

The Support Anti-Terrorism by Fostering Effective Technologies (SAFETY) Act of 2002 provides liability protection for anti-terrorism technologies developed by private-sector companies. Such protection helps to encourage innovation by promoting research and development and the deployment of these technologies in the marketplace. While the DHS has done tremendous work in promoting the act, significantly more work needs to be done.

Finding: The DHS's acquisition and research and development capabilities remain weak.

In 2006, Congress criticized the DHS Science and Technology (S&T) Directorate as a rudderless ship without a clear way to get back on course. It cited a lack of responsiveness to customer needs; an inability to manage large, complex programs; limited success in partnering with other federal agencies and international partners; and a failure to convert technologies for use by non-federal customers.

The directorate has taken significant strides in addressing these problems. As a result, its current organization is a significant improvement in aligning research portfolios, establishing effective representation of stakeholder interests, and improving the directorate's capacity to contribute to acquisition and operational analysis. Furthermore, the department has announced plans to expand the directorate's role in testing and evaluation and to involve the directorate in life cycle assessment of acquisition programs. The directorate has made additional efforts to leverage

36. Jena Baker McNeill, "More Than Lip Service: Why Private Sector Engagement Is Essential," Heritage Foundation WebMemo No. 2988, August 25, 2010, at <http://www.heritage.org/Research/Reports/2010/08/More-Than-Lip-Service-Why-Private-Sector-Engagement-Is-Essential>.

Overcoming Centralization, Complacency, and Politics

its Centers of Excellence and to establish federal research partnerships. Yet despite the leadership team's hard work, significant concerns remain, including:

- **The DHS still lacks an integrated requirements and acquisition process** and a means for integrated development of human capital, operational, training, education, and sustainment programs. Essentially, the DHS needs an integrated end-to-end process. This system needs to be formal and robust and include both a deliberate process for developing long-term needs and a crisis action process for meeting unanticipated requirements and ensuring rapid acquisition to meet challenges, such as those faced during the 2010 oil spill.
- **The Domestic Nuclear Detection Office (DNDO) model remains a concern.** The DNDO office has tried to do too much, overseeing everything from concept development to testing and evaluation to acquisition and deployment. Furthermore, creating a stovepipe activity to manage the nuclear detection portfolio as a separate activity made little sense.
- **The S&T Directorate has a weak track record on transitioning technologies.** This is particularly the case outside the department. The S&T Directorate has improved stakeholder input, primarily through its Integrated Product Teams. Particularly noteworthy is the directorate's Community Perceptions of Technology Program managed by the Homeland Security Studies and Analysis Institute, which provides early stakeholder input on the policy implications of fielding new technologies. Nevertheless, transitioning technology is still a significant challenge.
- **The department still lacks a truly strategic approach to research and innovation** that would enable it to prioritize and focus its efforts appropriately. The Homeland Security Advanced Research Projects Agency (HSARPA) has been a disappointment.

In the future, the S&T Directorate needs to focus on getting close to its internal department customers while limiting itself to a coordinating and standards-setting role on technologies for state and local governments, first responders, and the private sector. By stressing partnerships, the DHS can become a full partner in key federal efforts, such as nanotechnology, cementing its role in the game-changing innovations of the future.

Recommendation #26: Refocus the S&T Directorate to better fulfill its missions and serve its customers.

It is time for a serious strategic debate on the direction of the department's homeland security research. Tinkering ought to be kept to a minimum. Congress and the DHS should:

- **Give S&T a defined statutory mission** under an authorization bill that clearly lays out its role in acquisition, life-cycle management, and integration.
- **Rethink DNDO.** It is time to reconsider whether these activities would be better managed under major department activities rather than as a stand-alone activity.
- **Make a decision on HSARPA.** The act establishing the DHS created HSARPA. At the time, legislators assumed its mission would parallel the function that the Defense Advanced Research Projects Agency (DARPA) serves for the Department of Defense. That vision has never been fully realized, and it is an open question whether a DARPA-like activity is truly essential for the DHS. The DHS might be better off spending most of its resources on present operational needs and leveraging existing organizations, such as DARPA, for the rare occasion when it needs to look at truly futuristic or out-of-the-box solutions.
- **Step up cyber research.** Cyber research should be a high priority for the government, and the DHS needs to play an important part. There is no area of homeland security threats, including knowledge of the dangers of weapons of mass destruction, where government's basic knowledge of the challenge is more deficient.

Fixing FEMA

Finding: FEMA remains mired in the past.

FEMA systems have fallen behind in effective customer service. For example, disaster victims can register by phone, by Internet, or in person at disaster relief centers, but FEMA cannot merge all of the data in real time to prevent duplicate registrations. Many FEMA systems are also paper-based, meaning that information is entered into the system only after paper documents are received. This failure contributes to waste, fraud, and abuse by allowing situations in which, for instance, multiple checks are sent to the same household because of duplicate registrations. FEMA also has no way to track supplies during a disaster.

Recommendation #27: To be prepared for future catastrophic events, FEMA needs to become a 21st-century agency with 21st-century tools and technologies.

Six years after its poor performance during Hurricane Katrina, FEMA still needs to put in place the basic inventory tracking systems which are used widely in the private sector. For FEMA to respond effectively to a catastrophic event, it must possess in-transit visibility of its supplies (e.g., water, ice, and food) so that it can efficiently move the supplies from the warehouse to the disaster relief center and monitor inventory levels to avoid shortages. Similarly, FEMA needs a registration system capable of detecting fraud at the onset and eliminating costly payments, which become virtually impossible to recoup after the erroneous payment has been made.

PART III

Taming Politics

Washington and the politicians cannot entirely expunge politics from homeland security issues, but it is to be hoped elected leaders can work to set aside politics on issues of national security. Regrettably, far too often over the past decade, politics has played too big a part in policy decisions.

Politics has wasted billions of dollars in homeland security grants, created oversight inefficiencies, prevented progress on key issues, and left America less secure than if the politicians had left politics at the committee door. The U.S. can and should do better. This section tackles shortfalls that have persisted because of Congress's poor choices and mandates and indicates where Congress has demonstrated far too little will to fix the problem.

Exercising Effective Oversight

Finding: Congress has failed to exercise effective oversight over the DHS.

This proliferation of congressional review has harmed national security, frustrated the ability of Congress to guide how the homeland security enterprise should operate, and wasted precious departmental resources.

Currently, the DHS reports to 108 committees, subcommittees, and commissions, in contrast to the 36 committees and subcommittees that oversee the Pentagon, which has a budget 10 times greater and millions more employees. This jurisdictional structure is illogical, impractical, and corrosive to congressional oversight of the executive branch. While many in and out of Congress complain that the current system is too confusing, Members of Congress have been reluctant to give up jurisdiction. Members like having a slice of the homeland security oversight pie, because being tough on homeland security translates into tremendous political rewards. Yet the current system is confusing and highly burdensome and impedes policy progress by often placing conflicting demands on the DHS.³⁷

Recommendation #28: Congress should streamline DHS oversight, supervision, and appropriations.

The oversight problem is more than one of workload for the department, although the workload of responding to more than 100 committees and subcommittees has become overwhelming at times. This debilitating proliferation of congressional review has significant adverse effects on national security because it frustrates the ability of Congress to guide how the homeland security enterprise should operate while draining precious departmental resources.

A simpler solution would be to consolidate DHS oversight into only six full committees, three in the House of Representatives and three in the Senate: the House Committee on Homeland Security, the House Permanent Select Committee on Intelligence, the House Committee on Appropriations, and the three corresponding committees in the Senate.

Given the volume of work that would come with such reorganization, the Senate should divide its Committee on Homeland Security and Governmental Affairs to create a separate committee focused only on homeland security. This would mirror how Congress oversees the Department of Defense, the only department in the executive branch that is in any way comparable to the DHS.

37. Jena Baker McNeill, "Congressional Oversight of Homeland Security in Dire Need of Overhaul," Heritage Foundation *Backgrounder* No. 2161, July 14, 2008, at <http://www.heritage.org/Research/Reports/2008/07/Congressional-Oversight-of-Homeland-Security-in-Dire-Need-of-Overhaul>.

The two newly created homeland security committees should each have seven subcommittees, dividing their responsibilities along functional lines of existing DHS activities. While these functions could be divided in a number of ways, this report suggests creating the following subcommittees:

- Border Security, Citizenship, and Visa Policy;
- Emergency Preparedness and Response;
- Counterterrorism and Law Enforcement;
- Intelligence and Information Sharing;
- Critical Infrastructure and Supply Chain Security;
- Cybersecurity, Science, and Technology; and
- Oversight and Management.

This would provide a total of 14 subcommittees within the two committees. With the two appropriations subcommittees and the four subcommittees in the House Intelligence Committee, this plan would reduce the number of oversight subcommittees to 20.³⁸

Recommendation #29: Establish a bipartisan caucus that meets regularly to consider issues affecting the national homeland security enterprise.

Congress currently lacks a forum to inform members on these issues in a holistic manner, including important issues such as risk management and national security professional development. A caucus could help to fill this role.

Ending Pork-Barrel Spending

Finding: Homeland security grants have become the newest form of pork-barrel spending and suffer from a severe lack of accountability or oversight. Washington does not know what capabilities it has purchased with its expenditures.

While federal spending on homeland security has increased exponentially since 9/11, state spending on homeland security has remained almost flat as a percentage of total state appropriations. Studies suggest that this trend may indicate a more dangerous practice of federal grants supplanting state spending on homeland security. Instead of assisting states in providing needed services, Washington has acted as an enabler for the states’ addiction to federal funding by requiring little accountability via matching grants and consistently allocating more money regardless of how past funds have been spent.

This lack of oversight provides little incentive for the states to accurately measure risk and make progress toward developing robust state homeland security programs commensurate with the risks. When state and local officials can rely on federal money to finance projects that are clearly local responsibilities, competing interests engender a horde of unnecessary, wasteful projects that would probably never be funded if the localities had been forced to bear the financial burden themselves.³⁹

Recommendation #30: Congress should reform the federal grant programs to use cooperative agreements.

The right approach to funding disaster preparedness will recognize the legitimate role that federal funding can play in boosting state and local capabilities, while allowing states and localities to work on a more level playing field with their federal counterparts. The need for such equality downplays the need for the grant structure and invites

38. Paul Rosenzweig, Jena Baker McNeill, and James Jay Carafano, “Stopping the Chaos: A Proposal for Reorganization of Congressional Oversight of the Department of Homeland Security,” Heritage Foundation *WebMemo* No. 3046, November 4, 2010, at <http://www.heritage.org/Research/Reports/2010/11/Stopping-the-Chaos-A-Proposal-for-Reorganization-of-Congressional-Oversight-of-DHS>.

39. Jena Baker McNeill and Matt A. Mayer, “Homeland Security Grants Should Not Become Another Federal Entitlement Program,” Heritage Foundation *WebMemo* No. 3151, February 14, 2011, at <http://www.heritage.org/Research/Reports/2011/02/Homeland-Security-Grants-Should-Not-Become-Another-Federal-Entitlement-Program>.

another approach, such as using cooperative agreements in which the federal government and the states negotiate as equal partners and decide the outcomes at the beginning, including programmatic and financial oversight requirements. Then, they direct funds to achieve those desired outcomes without the need for yearly applications. Cooperative agreements would help to target the maximum amount of federal funds at the highest-risk states, cities, and counties, where the additional funding could meaningfully increase the security of Americans.⁴⁰

Moreover, when the DHS does the right thing, it must hold firm. Requiring certain activities that are fundamental to America's ability to respond effectively is sound practice. The DHS issued a mandate on interoperable communications, provided funding for that mandate, tied future grant funding to that mandate, and then ignored its own requirement the following year. As a result, state and local governments have failed to achieve interoperable communications.

The DHS needs to ensure that states and localities achieve a certain standard of clear interoperable communications by a certain date. It also needs to provide funds for that action. However, the DHS should allow state and local governments the flexibility to decide how to achieve that standard. The homeland security enterprise will have failed if first responders still cannot communicate on demand during a crisis 10 years after this same failure led to the unnecessary deaths of many firefighters on 9/11.

Looking Beyond Amnesty

Finding: Amnesty encourages future immigrants to enter the U.S. illegally and is not a solution to the nation's immigration problems.

In 2010, reports indicated that an internal U.S. Citizenship and Immigration Services (USCIS) memorandum blatantly advised USCIS leadership—presumably including Secretary Janet Napolitano—to ignore the law. According to reports, the memo advised officials not to issue Notice to Appear letters to illegal immigrants who have no other avenue to delay their deportations. In conjunction with that memo, it was uncovered that ICE has begun to review and dismiss cases of non-criminal illegal immigrants, thereby allowing them to remain in America.

The Obama Administration is sending an unequivocal message to the American people that it knows best which laws should be enforced and which ones should be ignored. Equally problematic, the Obama Administration is sending a clear signal to the millions of illegal immigrants in the U.S. and millions of potential immigrants still in their home countries that entering and staying in the U.S. illegally will not be penalized. This message will only encourage more illegal immigration, especially when the economy rebounds.⁴¹

Recommendation #31: Examine innovative and compassionate means to efficiently process and deport illegal immigrants.

There is a continued need for resources for prosecution and deportation to ensure that the U.S. continues detention and removal operations. As removal actions increased during the Bush Administration, courts were overwhelmed, leading to complaints.

Worksite raids also disrupt local communities because of the large number of people arrested. ICE has been conscious of this and has attempted to find ways to target egregious abusers of illegal workers while being compassionate toward the families hit by deportation. ICE has started several initiatives to allow families to stay together during the deportation process, including opening the T. Don Hutto Residential Detention Center, which is a 512-bed facility that allows families to stay together during the detention and removal process. In addition, ICE allows the release of sole caregivers from detention facilities.

40. Jena Baker McNeill and Matt A. Mayer, "Homeland Security Grant Guidelines Make Security and Fiscal Sense," Heritage Foundation *WebMemo* No. 3263, May 19, 2011, at <http://www.heritage.org/Research/Reports/2011/05/Homeland-Security-Grant-Guidelines-Make-Security-and-Fiscal-Sense>.

41. Matt A. Mayer and Jena Baker McNeill, "Time to Stop the Rush for 'Amnesty' Immigration Reform," Heritage Foundation *Backgrounder* No. 2385, March 18, 2010, at <http://www.heritage.org/Research/Reports/2010/03/Time-to-Stop-the-Rush-For-Amnesty-Immigration-Reform>.

ICE needs to find innovative ways to move illegal immigrants expeditiously through detention centers. Using initiatives such as Operation Scheduled Departure and expedited removal could greatly increase its ability to process illegal immigrants.⁴²

Recommendation #32: Properly fund USCIS.

It makes no sense for Congress to require USCIS to process applications and petitions of immigrants without providing the funding to cover the costs. More critically, it is fundamentally unfair for Congress to place the burden of these costs on the backs of other immigrants seeking entry into America, many of whom can barely afford to pay for their own costs.

Stopping Stupid Measures

Finding: 100 percent screening or scanning solutions are not based on risk and create a false sense of security.

In 2007, Congress passed the Implementing Recommendations of the 9/11 Commission Act. This act mandated that the DHS screen 100 percent of cargo transported on passenger aircraft by August 1, 2010, and scan 100 percent of maritime cargo entering the United States by July 1, 2012. Many experts have long considered both mandates as unrealistic and as offering little added security at a very high cost.

Rather than using manifest and shipper information to designate cargo for additional inspection, these mandates attempt to apply a blanket approach to security, requiring examination of each piece of cargo regardless of risk. However, 100 percent screening and scanning does not equal 100 percent security. This perception only gives the American people a false sense of security, based on the idea that 100 percent screening or scanning can catch all threats. Any attempt to make policy on the idea of perfection is destined to fail. America needs a smarter approach to both maritime and air cargo security.

Recommendation #33: Repeal the 100 percent mandates.

Recognizing its folly, the department has largely tried to sidestep the 100 percent cargo mandates, citing continued impediments and delays. However, simply postponing implementation is not enough. Congress should repeal both 100 percent screening mandates and return to a risk-based approach to maritime and air cargo security. This approach should recognize that some cargo may be of a higher risk because of its contents, origin, or other attributes, as indicated by the cargo's detailed manifest, but that not all cargo represents a threat.⁴³

Rethinking Aviation Security

Finding: TSA strategy focuses too heavily on the TSA screening line.

TSA is a massive bureaucracy that was created too hastily in the aftermath of 9/11. TSA's structure and funding is out of proportion to the threat. Of the 40 known terrorist plots against the United States thwarted since 9/11, few have been directed at airlines. Of those, none have been uncovered in the TSA screening line. One lesson that emerges from the foiled plots is the need to stop the attempt early, before the terrorist can put the public in any danger.

42. Diem Nguyen, Matt A. Mayer, and James Jay Carafano, "Next Steps for Immigration Reform and Worksite Enforcement," Heritage Foundation *Backgrounder* No. 2241, February 13, 2009, at <http://www.heritage.org/Research/Reports/2009/02/Next-Steps-for-Immigration-Reform-and-Workplace-Enforcement>.

43. Jena Baker McNeill and Jessica Zuckerman, "The Cargo-Screening Clog: Why the Maritime Mandate Needs to Be Re-examined," Heritage Foundation *Backgrounder* No. 2357, January 13, 2010, at <http://www.heritage.org/Research/Reports/2010/01/The-CargoScreening-Clog-Why-the-Maritime-Mandate-Needs-to-Be-Reexamined>, and Jena Baker McNeill, "Air Cargo Security: How to Keep Americans Secure Without Harming the Economy," Heritage Foundation *Backgrounder* No. 2422, June 21, 2010, at <http://www.heritage.org/Research/Reports/2010/06/Air-Cargo-Security-How-to-Keep-Americans-Secure-without-Harming-the-Economy>.

If a terrorist is in the airport screening line, the American public is already at risk. Airport security depends on more than x-rays and scanners. Robust intelligence gathering and information sharing among local, state, federal, and international law officers are vital to an effective defense. This information should be used to inform the physical security process, but more importantly to stop terrorists long before they ever reach the airport.⁴⁴

Recommendation #34: Update the Secure Flight Program.

Secure Flight expands America's capacity to find possible terrorists while minimizing the impact on the airline industry and protecting the rights and privacy of individuals. Under the program, the TSA checks a passenger's data against a federal database of the FBI Terrorist Screening Center, a center that integrates all available information on known or suspected terrorists into a central repository. The only charge upon airlines is to gather basic information (full name, date of birth, and gender) when the passenger makes a reservation. Further, the program protects privacy and civil liberties because only the TSA, not outside entities, can check the watch list.

The DHS should work to enhance the Secure Flight Program by ensuring that the FBI Terrorist Screening Center databases are up to date. The Secure Flight already works to minimize misidentification by checking passenger data against the passenger's name, gender, and date of birth, but this process can be improved.⁴⁵

Recommendation #35: Reconsider privatization of airport security.

Congress should change the TSA's mission from providing airport security to making aviation security policy and regulations. It should also devolve screening responsibility to the airport level under the supervision of a federal security director. Without the burden of running a massive screening force, the TSA should turn its attention to developing a 21st-century international passenger and cargo security system that does not waste resources by treating every person and package as an equal risk that requires scrutiny and screening. A new model system would allocate security resources in proportion to the risk, relying on "focused security" that targets the most resources against the greatest risks.

44. Jena Baker McNeill, "Aviation Security: Policy Responses to Address Terrorism Threats," testimony before the Committee on State Government, Pennsylvania House of Representatives, March 30, 2011, at <http://www.heritage.org/Research/Testimony/2011/03/Aviation-Security-Policy-Responses-to-Address-Terrorism-Threats>.

45. Jena Baker McNeill, "Secure Flight Program Creates Safer Skies," Heritage Foundation WebMemo No. 2376, April 1, 2009, at <http://www.heritage.org/Research/Reports/2009/04/Secure-Flight-Program-Creates-Safer-Skies>.

Acronyms

ACCESS	Agreements of Cooperation in Communities to Enhance Safety and Security
CCMRP	Consequence Management Response Force
CIKR	Critical Infrastructure and Key Resources
DARPA	Defense Advanced Research Projects Agency
DHS	U.S. Department of Homeland Security
DNDO	Domestic Nuclear Detection Office
DNI	Director of National Intelligence
DOJ	U.S. Department of Justice
EU	European Union
FEMA	Federal Emergency Management Agency
GAO	Government Accountability Office
HSAC	Homeland Security Advisory Council
HSARPA	Homeland Security Advanced Research Projects Agency
HSC	Homeland Security Council
ICE	Immigration and Customs Enforcement
IPC	Interagency Policy Committee
ITACG	Interagency Threat Assessment and Coordination Group
MOA	Memorandum of Agreement
MCA	Millennium Challenge Account
NIPP	National Infrastructure Protection Plan
NORAD	North American Aerospace Defense Command
NSA	National Security Agency
NCTC	National Counterterrorism Center
PATRIOT Act	Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001
QDR	Quadrennial Defense Review
QHSR	Quadrennial Homeland Security Review
SAFETY Act	Support Anti-Terrorism by Fostering Effective Technologies Act of 2002
SDF	State Defense Force
S&T	Science and Technology Directorate
TSA	Transportation Security Administration
UASI	Urban Area Security Initiative
USCIS	United States Citizenship and Immigration Services
VWP	Visa Waiver Program



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