

No. 37

April 11, 2002

H.R. 3525 – Enhanced Border Security and Visa Entry Reform Act

Passed the House on December 19, 2001, by voice vote and referred to the Senate Committee on the Judiciary. No written report by House or Senate committee.

NOTEWORTHY

- Pursuant to a unanimous consent agreement propounded today, the Senate will begin floor consideration tomorrow, April 12, 2002, at 11:30 a.m. on H.R. 3525, the Enhanced Border Security and Visa Entry Reform Act of 2001. (The u.c. provides that the bill be discharged from further consideration by the Judiciary Committee; it does not provide any limitation on time or amendments.) Consideration of H.R. 3525 will temporarily displace S. 517, the energy bill.
- H.R. 3525 passed the House by voice vote on December 19, 2001; it is substantially similar to S. 1749, currently in the Judiciary Committee.
- The border security bill makes reforms to our immigration system in response to the increased awareness of America's vulnerability to terrorism after 9/11. It provides for calls for vital improvements in technology to provide more timely information to help with the battle against terrorism. Among the key features:
 - Funds for increased border and State Department personnel and training, including 1,000 new INS inspections personnel, and \$150 million for INS border technology;
 - A report, a plan, and protections for an interoperable information-sharing system;
 - An interoperable information-sharing system with name-matching capacity;
 - Machine-readable, tamper-resistant biometric travel documents and passports;
 - Restriction on nonimmigrant visas for aliens from countries that sponsor terrorism;
 - Reform of the visa waiver program;
 - Requirement of passenger manifest information for commercial flights and vessels;
 - Repeal of the 45-minute time limit on INS inspections of arriving passengers; and
 - Enhanced foreign student monitoring program.
- H.R. 3525 does not include the Section 245(i) program extension passed by the House as part of H.R. 1885. (For more details, see RPC's "Senate Likely to Take Up House-Passed Border Security Bill After Easter Recess," March 21, 2002.)

HIGHLIGHTS

H.R. 3525 represents a significant, bipartisan effort to fill the current gaps in our immigration system in response to the increased awareness of America's vulnerability to terrorism after 9/11. It provides for calls for vital improvements in technology to provide more timely information to help with the battle against terrorism. The bill has broad bipartisan support; the Senate version of the bill has 59 cosponsors.

H.R. 3525 creates an interoperable law enforcement and intelligence data system that will enable agencies to share data in "real time." Critical improvements are also made in immigration documents – utilizing, in particular, biometric technology – to deter terrorism and prevent tampering, misuse, or fraud with respect to those documents. The bill also closes the current monitoring and reporting gaps in the foreign student visa programs.

The bill also provides U.S. border and consular personnel with the training, facilities, and data they need in order to prevent the entry of individuals who intend to harm the nation. These measures will also better equip officials for the day-to-day management of U.S. borders, so that they can intercept terrorists and also maintain the flow of innocent individuals and commerce. Among the specific features of H.R. 3525:

Staffing, Training, and Infrastructure Improvements

- Authorizes an increase in border personnel: at least 200 INS inspectors, INS investigative personnel, and associated support staff in each of the fiscal years 2002 through 2006.
- Raises the pay grade of border patrol officers and inspections assistants to help INS retain experienced officials, and permits the hiring of additional support staff.
- Provides funds for the regular training of border patrol, INS personnel, and agencies staffing U.S. ports of entry to enhance our ability to identify and intercept would-be terrorists at the border.
- Authorizes funding to improve and expand technology available to the Department of State and INS.
- Requires the Attorney General to use authorized funds to install biometric data readers and scanners at U.S. ports of entry.

Interagency Intelligence Sharing

- Directs the President to devise and implement a comprehensive plan to provide the Department of State and INS with the intelligence and law enforcement information they need to identify and intercept alien terrorists.
- Requires the development of an interoperable electronic data system – with specific name recognition capabilities – to provide appropriate foreign service officers and federal agents with immediate access to relevant law enforcement and intelligence database information.

Pre-clearance, Pre-inspection, Secure Travel Documents, and the Visa Waiver Program

- Requires consular officers who issue visas to transmit electronic versions of visa files to the INS so that critical information is available to immigration inspectors before an alien arrives at a port of entry.
- Requires the Attorney General and the Secretary of State to begin issuing to all foreign nationals machine-readable, tamper resistant travel documents with biometric identifiers, and requires that countries participating in the Visa Waiver Program issue passports with those qualities.
- Conditions country membership in the Visa Waiver Program on that country's timely sharing of information regarding the theft of blank passports.
- Requires a comprehensive study to determine how best to screen travelers coming to the United States, Canada, and Mexico, and examines the possibility of utilizing/expanding pre-clearance and pre-inspection procedures.
- Requires all commercial flights and vessels coming into or leaving from the United States to electronically provide manifest information about each passenger, crew member, and other occupants prior to arrival into, or departure from, the U.S.
- Removes the existing 45-minute deadline that inspectors are now under to clear planes after they land in the United States so that they have adequate time to screen passengers.

Restrictions on Visas to Certain Countries

- Prohibits visas from being issued to aliens from a country designated as a state-sponsor of terrorism, unless the Secretary of State, after consultation with the Attorney General and other officials, determines that the alien poses no threat to the safety or security of the United States.

Foreign Students

- Improves the reporting requirements placed on the INS, the State Department, and educational institutions to fill the gaps in the foreign student monitoring program that was established in 1996. The monitoring program does not, at present, collect such critical information as the student's date of entry, port of entry, date of school enrollment, or the date the student graduates or quits. That and other significant information will now be collected, and an interim system is to be established until this program is fully implemented.
- Also requires the INS, in consultation with the Department of Education, to periodically review institutions enrolling foreign students and receiving exchange visitors to ensure that they adhere to the reporting and record-keeping requirements. If an institution fails to comply, their authorization to accept foreign students may be revoked.

Study on the Visa Waiver Program

- The Secretary of State and INS Commissioner are required to study the possibility of requiring countries that participate in the visa waiver program to develop an intergovernmental network of interoperable electronic data systems that include relevant intelligence information.

BILL PROVISIONS

TITLE I: FUNDING FOR BETTER BORDER AND CONSULAR SECURITY

Funds for Increased Border and State Department Personnel and Training

More border personnel. This section authorizes an increase of at least 200 INS inspectors, INS investigative personnel, and associated support staff in each of the fiscal years 2002 through 2006.

Better INS pay and staffing. To help INS retain border patrol officers and inspections assistants, this section would raise their pay grade and permit the hiring of additional support staff.

Better INS training. Funds are provided to agencies staffing U.S. ports of entry to provide continuing cross-training, to fully train immigration officers in using lookout databases and monitoring passenger traffic patterns, and to expand the Carrier Consultant Program.

Better State Department information and training. This section authorizes funding to improve the

security features of the Department of State's screening of visa applicants. Improved security features include: better security measures, more staff, and continuous training of consular officers.

Funds for Improvements in Technology and Infrastructure

Technology funding. An additional \$150 million is provided to the INS to improve and expand technology at the border to improve security, and to facilitate the flow of commerce at ports of entry by improving and expanding programs for pre-enrollment and pre-clearance.

TITLE II: INTERAGENCY INFORMATION SHARING

Provides for a report, a plan, and protections for information sharing with federal law enforcement, the Intelligence Community, the State Department and INS.

Report. No later than 120 days after enactment, the President must submit a report to the appropriate congressional committees that identifies the information that the State Department and INS need from federal law enforcement and the Intelligence Community, including information from foreign and international counterparts, to screen visa applicants and identify individuals who are inadmissible or deportable.

Plan. After the report is submitted, the President has one year from the date of enactment of the U.S.A. Patriot Act (Public Law 107-56, enacted 10/26/01) to develop and implement an information-sharing plan, that would incorporate the information identified in the report.

Protections. The plan must contain certain protections against the misuse of the information shared, including limitations on the use and re-dissemination of information.

Criminal penalties. Anyone who obtains information as laid out in the plan without authorization, or exceeds authorized access, and uses the information in a way that violates the limits described above, will be subject to criminal penalties.

Law Enforcement and Intelligence Data System with Name-Matching Capacity and Training

Data systems. Not more than one year after the plan is implemented, the President must develop and implement an interoperable electronic data system to provide immediate access to relevant law enforcement and intelligence database information. The electronic database system will be accessible to foreign service officers issuing visas, federal agents determining the admissibility of aliens to the United States, and officers investigating and identifying aliens.

Restrictions. The President must establish procedures to restrict access to intelligence information in the data system.

Name Matching Capacity and Training. This section would require the new interoperable data system to include sophisticated, linguistically-based name-matching algorithms so that the lookout databases can recognize that “Muhamad Usman Abdel Raqeeb” and “Haj Mohd Othman Abdul Rajeeb” are transliterations of the same name. New algorithms would be required for at least four priority languages.

Funding Authorized and Progress Reports Required. The legislation would authorize the necessary funds for these data improvements.

Commission on Data Sharing

Commission on Interoperable Data Sharing. No more than one year after enactment, the President must establish a Commission on Interoperable Data Sharing to monitor database protections, provide oversight of the data system, and report to Congress annually with findings and recommendations.

Composition. The Commission will consists of nine members appointed by the President.

TITLE III: VISA ISSUANCE

Electronic Transmission of Visa Files

Electronic visa files. Consular officers issuing a visa to an alien are required to transmit an electronic version of the alien’s visa file to the INS so that the file is available to immigration inspectors at U.S. ports of entry before the alien’s arrival.

Improved Implementation Requirements for the Integrated Entry and Exit Data System

Implementation of E/E system. This legislation requires the Department of Justice (DOJ) and the State Department, in implementing the E/E system, to: implement, fund, and use a technology standard pursuant to the U.S.A. Patriot Act at U.S. ports of entry and consular posts, create a database for compiling arrival/departure data, and make all the security databases that are involved in determining the admissibility of aliens interoperable.

Machine-Readable, Biometric Travel Documents and Passports

Documents. No later than October 26, 2003, the Attorney General and the Secretary of State must begin issuing machine-readable, tamper-resistant travel documents with biometric identifiers, and they must install equipment and software to allow biometric comparisons of travel documents at all U.S. ports

of entry. They must also require machine-readable, tamper-resistant, biometric passports for entry of individuals from countries participating in the visa waiver program.

Terrorist Lookout Committees

Terrorist Lookout Committees. The Secretary of State is required to establish a terrorist lookout committee within each U.S. consulate abroad. The committees will be responsible for regularly notifying the appropriate person in the consulate of suspected terrorists and ensuring that the names of those suspects are included in the appropriate lookout databases. This section also provides for the composition and timing of committee meetings and requires regular reports from the committees.

Improved Training for Consular Officers

Special training. This section would require consular officers to receive specific training in screening visa applicants for security threats, interagency and international intelligence communication regarding terrorism, and cultural sensitivity. It would also require that international and other intelligence be shared with the consular officers who screen visa applicants.

Funding. Funds are authorized as necessary to implement this.

Restriction on Nonimmigrant Visas to Certain Countries

Restriction. No nonimmigrant visa may be issued to an alien from a country designated as a state-sponsor of terrorism, *unless* the Secretary of State, after consulting with the Attorney General and others, determines that the alien poses no safety or national security threat to the United States.

Reform of the Visa Waiver Program

Reform. Before a country may participate (or continue to participate) in the Visa Waiver Program, the Attorney General and the Secretary of State must consider whether that country keeps the United States apprised of blank passport thefts. Also, whenever an alien from a Visa Waiver country seeks to enter the United States, the INS must check the appropriate lookout databases to make sure that the alien does not appear in any of them.

Tracking System for Stolen Passports

System. The Attorney General and Secretary of State must enter stolen passport numbers into the interoperable data system within 72 hours of notification of loss or theft. And until that system is established, the Attorney General must enter that information into the system currently being used.

Identification documents for refugees and asylees

Document requirements. This provision requires that refugees, upon admission to the United States, and asylees, upon a grant of asylum, be provided with an employment authorization document that bears the fingerprint and photograph of the refugee or asylee.

TITLE IV: ADMISSION AND INSPECTION OF ALIENS

North American National Security Program

Feasibility Study. The President is required to study the feasibility of screening travelers to the United States via their transit through Canada or Mexico and report back to Congress within six months.

Pre-clearance and pre-inspection. The security measures reviewed in determining the feasibility of a perimeter national security program should include the possibility of expanding and developing procedures that screen travelers before they arrive at the United States and then expedite their entry once they do.

Passenger Manifest Information

Manifests. All commercial flights and vessels coming to the United States from outside the country must provide manifest information about each passenger, crew member, and other occupants prior to arrival. In addition, each commercial vessel or aircraft departing from the United States for any destination outside the United States must provide manifest information before departure. By 2003, the manifests must be transmitted electronically.

Penalties. If manifest information is not provided, or is inaccurately or incompletely provided, fines may be charged.

Repeal of Time Limitation on Inspections

Elimination of the 45-minute INS deadline. This section eliminates the 45-minute deadline for clearing arriving passengers and directs the INS to staff ports of entry to adequately meet traffic flow and inspection time objectives without compromising safety and security.

TITLE V: FOREIGN STUDENTS AND EXCHANGE VISITORS

Foreign Student Monitoring Program

Reporting requirements. This section closes the gaps in current law with respect to the student tracking system. It requires the Justice Department, in consultation with the State Department, to monitor

the various steps involved in admitting foreign students and to notify the school of the student's entry. It also requires the school to notify INS if a student has not reported for school no later than 30 days after the deadline for registering for classes.

Data collection. The monitoring program does not, at present, collect such critical information as the student's date of entry, port of entry, date of school enrollment, date the student leaves school (e.g., graduates, quits), and the degree program or field of study. That and other significant information will now be collected.

Review of Institutions and Other Entities Authorized to Enroll or Sponsor Certain Nonimmigrants

Failure to comply. If an institution or program fails to comply with the reporting requirements in the bill, their authorization to accept foreign students may be revoked.

TITLE VI: MISCELLANEOUS PROVISIONS

Border-Crossing Cards

The deadline for border-crossers to acquire machine-readable border crossing cards from the State Department is extended by a year so card use can be expanded.

General Accounting Office Study

The Comptroller General is required to conduct a study, and to report to Congress within one year, on the feasibility of requiring every nonimmigrant alien in the United States to provide the INS with a current address, and where applicable, the name and address of an employer.

International Cooperation

The Secretary of State and the Commissioner of the INS, in consultation with the Homeland Security Director, must conduct a study on the procedures necessary for encouraging or requiring Canada, Mexico, and countries participating in the Visa Waiver Program to develop an intergovernmental network of interoperable electronic data systems.

Statutory Construction

NAFTA exemption. This section precludes changes in this Act from changing or adding to the documentary requirements of the North American Free Trade Agreement.

Report on Aliens Who Fail to Appear after Release on Own Recognizance

Report. The Attorney General must report annually on the number of aliens who fail to appear for a removal hearing after the alien has been released on his or her own recognizance.

Retention of Nonimmigrant Visa Applications for Evidentiary Purposes

Retention of applications. This section requires the Department of State to retain nonimmigrant visa applications, whether approved or denied, for a period of seven years and in a form that will be admissible in court under the Federal Rules of Evidence.

ADMINISTRATION POSITION

No Statement of Administration Policy (SAP) is available specifically on H.R. 3525. The Bush Administration favors prompt enactment of the border security provisions of H.R. 3525. However, the Administration also favors passage of the 245(i) extension which was passed by the House as part of H.R. 1885 but is not included in H.R. 3525. The following is the portion of the SAP on H.R. 1885 relevant to the provisions of H.R. 3525:

“Improving border security is one of the Administration’s top priorities in securing the Nation’s homeland and the Administration understands that the bill as it will be considered on the House floor will address this issue. This amendment would require personal identification documents to be more tamper-resistant and secure, enhance the alien applicant screening process to help eliminate entry of unwanted individuals, and require monitoring of foreign students and exchange visitors to ensure they maintain their status. The Administration believes these provisions will contribute to the Nation’s security as foreign guests are welcomed into the Nation. Although some of the implementing time requirements in the bill are very short, the Administration believes they are appropriate considering the important security improvements involved.”

COST

No cost information is currently available for H.R. 3525.

**POSSIBLE
AMENDMENTS**

Unknown. Add 245(i) program extension.

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