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INS Reorganization Under the Homeland Security Act of 2002: Effective Dates and Dual Roles

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Summary

As a current agency within the US Department of Justice, the Immigration and Naturalization Service (INS) provides immigration and citizenship services as well as law enforcement functions. Under the Homeland Security Act of 2002, INS will be abolished upon the completion of all transfers from INS to the Department of Homeland Security (DHS). Under President Bush's Reorganization Plans and in accordance with the Act, the dual roles of INS will be transferred on March 1, 2003 and will form three distinct bureaus within the DHS. This report discusses the status of the dual roles provided by INS upon the completion of the transfer of functions from INS to the DHS. This report also addresses the effective dates of the Act and their relation to INS and to the Reorganization Plans submitted by President Bush. This report will be updated in response to relevant legislative or executive activity.

The Homeland Security Act of 2002,¹ created the Department of Homeland Security (DHS) by combining existing agencies with new programs in a single organizational structure.² One of the more highly debated issues during the formation of the DHS, was the restructuring of the Immigration and Naturalization Service (INS).³ Because INS

¹ P.L. 107-296 [hereinafter "Act"].

² At this time it is unclear to what extent the Attorney General's ultimate authority under the Immigration and Naturalization Act of 1952, as amended (INA; 8 U.S.C. 1101 *et seq.*) has technically been transferred to the DHS or its officers. It is anticipated that the Attorney General's authorities under the INA will soon reside in the officers of the DHS after the Secretary submits recommendations for conforming the INA through an implementation plan. *See* P.L. 107-296, §477(c)(2)(F)). This report does not address the interplay or transfer of authority between INS and the Department of State in the administration of visa issuance or consular functions. *See id.* at §§428, 429.

³ Indeed, several different proposals for the restructuring of INS were offered in Congress. For
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provides immigration and citizenship services as well as law enforcement functions, many in Congress were concerned with the transfer of INS programs that do not have homeland security-related roles. Nevertheless, after much debate, the President signed into law on November 25, 2002, a version of the Homeland Security Act that requires INS's dual roles be transferred to the DHS.⁴ The transfer of INS's dual roles will result in the abolishment of INS; moreover, the Act explicitly prohibits the recombination of the two bureaus into a single agency or the consolidation of functions or organizational units of the two bureaus with each other.⁵

Effective Dates in General

The Act became effective 60 days after the date of enactment (i.e., Jan. 24, 2003)⁶ and requires the President to submit a reorganization plan no later than 60 days after enactment.⁷ By allowing the President to submit a reorganization plan, Congress has provided the Executive additional flexibility and discretion to organize the DHS to promote “‘economy and efficiency’ as well as his political priorities.”⁸ President Bush submitted his Reorganization Plan on November 25, 2002,⁹ and submitted a proposal to

³ (...continued)

example, S.Amdt. 4471 to H.R. 5005 would have located all of INS in a DHS Directorate of Immigration Affairs. For a thorough analysis of INS restructuring options see CRS Report RL31560, *Homeland Security Proposals: Issues Regarding Transfer of Immigration Agencies and Functions*, and CRS Report RL31388, *Immigration and Naturalization Service; Restructuring Proposals in the 107th Congress*.

⁴ See P.L. 107-296, §451 (transfer of INS's immigration and citizenship services), §441 (transfer of INS's enforcement functions). Under the Act, the Executive Office for Immigration Review (EOIR) remains in the Department of Justice and is subject to the direction and regulation of the Attorney General. See *id.* at §1101.

⁵ *Id.* at §471(a), (b).

⁶ *Id.* at §4.

⁷ *Id.* at §1502 (“... the President shall transmit to the appropriate congressional committees a reorganization plan regarding the following: (1) The transfer of agencies, personnel, assets, and obligations to the Department pursuant to the Act. (2) Any consolidation, reorganization, or streamlining of agencies transferred to the Department pursuant to this Act.”).

⁸ See CRS Report RL30876, *The President's Reorganization Authority: Review and Analysis*. Generally, the transfer of statutorily vested functions or programs may only be accomplished pursuant to congressional authorization unless Congress has specifically provided authority for another party to reorganize. The now dormant Reorganization Act of 1984 was the last congressional grant of reorganization authority to a President. See 5 U.S.C. §901 *et seq.*. Reorganization authority under the 1984 Act lapsed on December 31, 1984, and has not been renewed. *Id.* at §905(b). Although President Bush is not currently operating under a Reorganization Act, section 1502(d)(3) of the Act specifically states that the reorganization authority provided for in the Act applies, notwithstanding 5 U.S.C. §905(b) (sunset provision from the Reorganization Act of 1984).

⁹ See [http://www.whitehouse.gov/news/releases/2002/11/reorganization_plan.pdf]. Additionally, section 872(a) of the Act authorizes the Secretary of the DHS to reorganize the Department provided the Secretary does not abolish any organizational unit or function expressly established either by the Act or another statute in the process. The Secretary may reorganize the

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modify it on January 30, 2003.¹⁰ The President retains the authority under section 1502(c) to modify the plan until it otherwise becomes effective in accordance with section 1502(d) of the Act. Section 1502(d) allows the Reorganization Plan to become effective on the earlier of either the date specified in the Plan (except that it can not be earlier than 90 days after the date the President submitted the Plan to Congress) or the end of the transition period.¹¹ The transition period is the twelve month period beginning on the effective date of the Act.¹² Under the Reorganization Plan, the majority of transfers take place on March 1, 2003 and are completed on June 1, 2003.¹³

The Transfer of INS's Dual Roles Pursuant to President Bush's November 25, 2002, DHS Reorganization Plan

INS Enforcement. Under the Act, the Under Secretary for the Directorate of Border and Transportation Security is responsible for INS's enforcement functions as well as other entities that may play a role at the border.¹⁴ Section 441 of the Act, through the President's Reorganization authority under the Act, transfers the enforcement functions, personnel, assets, and liabilities possessed by the Commissioner of INS to the Under Secretary for Border and Transportation Security. Pursuant to the Act, INS's enforcement functions will be grouped into the Bureau of Border Security, and include: (1) the Border Patrol, (2) the Detention and Removal program, (3) the Intelligence program, (4) the Investigations program, and (5) the Inspections program.¹⁵ The Bureau of Border Security will be headed by the Assistant Secretary of the Bureau of Border Security.¹⁶ Pursuant to President Bush's Reorganization Plan, the transfer of INS functions is to take place on March 1, 2003. Consequently, the Bureau of Border Security (generally the former enforcement arm of INS) will become legally operational on March 1, 2003.

INS Immigration and Citizenship. INS's immigration and citizenship services are to be transferred primarily to the DHS's newly created Bureau of Citizenship and Immigration Services, which is administratively separate from the Directorate of Border

⁹ (...continued)

DHS pursuant to section 1502 or 60 days after giving notice of such action to Congress. *See* P.L. 107-296, §872(a)(1), (2).

¹⁰ *See* Border Reorganization Fact Sheet [<http://www.dhs.gov/dhspublic/display?content=414>].

¹¹ P.L. 107-296, §1502(d).

¹² *Id.* at §1502(2).

¹³ *See* [http://www.whitehouse.gov/news/releases/2002/11/reorganization_plan.pdf]. President Bush's Reorganization Plan states that all incidental transfers associated with the functions transferred by the Act will be completed by September 30, 2003, pursuant to section 1516 of the Act.

¹⁴ Other agencies include: (1) the United States Custom Service; (2) the Transportation Security Administration; (3) the Federal Protective Service (FPS); (4) the Federal Law Enforcement Training Center (FLETC); and (5) the Office for Domestic Preparedness. *See* P.L. 107-296, §403.

¹⁵ *Id.* at §441.

¹⁶ *Id.* at §442(a)(2).

and Transportation Security.¹⁷ The Bureau of Citizenship and Immigration Services is to be headed by a director who reports directly to DHS's Deputy Secretary.¹⁸ The Director of Citizenship and Immigration Services, in accordance with the instructions provided by the President's Reorganization Plan, is to receive the functions, personnel, infrastructure, and funding provided to the Commissioner of INS for the following programs: (1) adjudications of immigrant visa petitions; (2) adjudications of naturalization petitions; (3) adjudications of asylum and refugee applications; (4) adjudications performed at service centers; and (5) all other adjudications performed by the INS immediately before the effective transfer date.¹⁹ Additionally, any other Federal law, executive order, rule, regulation, or delegation of authority that pertains to an immigration and citizenship function transferred to the Director but still otherwise refers to the head of another component is "deemed" to refer to the Director of Citizenship and Immigration Services.²⁰ Furthermore, any official responsible for a transferred INS function in the Bureau of Citizenship and Immigration Services may use the same authority to perform that function that a person may have had who was responsible for that function before the transfer took place.²¹

According to section 455 of the Act, the Bureau of Citizenship and Immigration Services is to become effective on the same date the Bureau of Border Security becomes effective. President Bush's Reorganization Plan calls for the transfer of all INS functions on March 1, 2003. Consequently, the Bureau of Citizenship and Immigration Services will also become legally effective on March 1, 2003. This is the same date that the enforcement functions of INS will be transferred to the Bureau of Border Security. Presuming there are no modifications to the President's Reorganization Plan that change these dates, INS will be legally abolished on March 1, 2003.

DHS Reorganization as modified on January 30, 2003

In an effort to "enhance efficiencies and create greater accountability in one seamless border service" President Bush submitted to Congress a modification to his November 25, 2002 DHS Reorganization Plan that effected the transfer of INS's dual roles.²² The President has the authority pursuant to section 1502(c) of the Act to modify the provisions relating to INS functions in his November 25, 2002, DHS Reorganization plan until

¹⁷ *See id.* at §451. All functions under the immigration laws of the U.S. with respect to the care of unaccompanied alien children vested in the Commissioner of INS are to be transferred to the Director of the Office of Refugee Resettlement in the Department of Health and Human Services. *Id.* at §462. For information on unaccompanied alien children, see CRS Report RS21389, *Immigration: Unaccompanied Alien Children*.

¹⁸ *Id.* at §451(a)(2)(A).

¹⁹ *Id.* at §451(b). The Act also specifically authorizes the transfer of appropriations and personnel from the Department of Justice for those functions associated with the newly created Bureau of Citizenship and Immigration Services. *See id.* at §456(b)(2).

²⁰ *Id.* at §456(a)(1). Furthermore, such component is deemed to refer to the Bureau of Citizenship and Immigration Services. *Id.* at §451(b)(2).

²¹ *Id.* at §456(b)(1).

²² *See* Border Reorganization Fact Sheet [<http://www.dhs.gov/dhspublic/display?content=414>].

February 28, 2003.²³ The Modification only makes changes within the Border and Transportation Security Directorate, thus INS's Immigration and Citizenship functions discussed above remain the same, as does every other provision of the November 25, 2002 Reorganization Plan.

INS Enforcement. Under the modified reorganization plan, the DHS will bring together the various border agencies into the Bureau of Customs and Border Protection. Specifically, this new bureau will be comprised of the resources and missions relating to borders and ports of entry of the Customs Service, INS's Border Patrol and inspections program, and the US Department of Agriculture's Agricultural Quarantine Inspection program. The Bureau of Customs and Border Protection will be headed by the Commissioner of Customs, but will still report to the Under Secretary of Border and Transportation Security.²⁴

Separate from "border" enforcement, the Bureau of Border Security will be renamed the Bureau of Immigration and Customs. It is anticipated this new bureau will enhance "interior" security while promoting information sharing with the FBI and developing stronger relationships with the US Attorneys' Office. This new bureau will bring together the interior enforcement and investigation arms of the Customs Service, with INS's detention and removal, intelligence, and investigation programs. The new Bureau of Immigration and Customs will also contain the Federal Protective Service. As required by section 442(a)(2) of the Act, the Bureau of Immigration and Customs will be headed by an Assistant Secretary who will report directly to the Undersecretary for Border and Transportation Security. March 1, 2003, is still the implementation date for the new bureaus under the modified Reorganization Plan.

Effective Calendar Dates and Transfer Authority

The following table details the calendar dates that correspond to the Act's transfer authority presuming there are no modifications to the President's Reorganization Plan that change the effective dates. The table also address those dates that correspond to INS's transfer to the DHS under the President's Reorganization Plans.

²³ Section 1502(d) designates the effective date for an agency the earlier of the date specified in the plan or the end of the transition period. Since the Reorganization Plan calls for the transfer of INS on March 1, 2003, the end of the transition period (Jan. 23, 2004) is not an issue and all modifications in the Reorganization Plan relating to INS functions must occur before that date.

²⁴ See Border Reorganization Fact Sheet [<http://www.dhs.gov/dhspublic/display?content=414>].

Date	Language	Authority
November 25, 2002 (signed into law)	The Homeland Security Act of 2002	P.L. 107-296
November 25, 2002 (issued)	President's Department of Homeland Security Reorganization Plan	§1501
Effective on January 24, 2003	This Act shall take effect 60 days after the date of enactment	§4
January 24, 2003 thru January 23, 2004	The term transition period means the 12-month period beginning on the effective date of this Act	§1501(2)
Plan must be submitted by January 24, 2003	Not later than 60 days after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a reorganization plan . . .	§1502(a)
Transfers by the President must be after February 23, 2003 _____ Transfers by the President must be no later than January 23, 2004	The Reorganization Plan shall become effective for an agency on the earlier of- (A) the date specified in the plan, except that such date may not be earlier than 90 days after the date the President has transmitted the reorganization plan to the appropriate congressional committees or (B) the end of the transition period	§1502(d)
March 1, 2003	Transfer of INS to DHS pursuant to the Reorganization Plan	§1502
President may modify INS provisions until February 28, 2003	The President may modify or revise any part of the plan until that part of the plan becomes effective in accordance with subsection (d)	§1502(c)

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