

AILA BACKGROUNDER

BALANCING SECURITY AND EFFICIENCY AT U.S. PORTS OF ENTRY

BACKGROUND: The debate about consolidating ports of entry inspection functions was taken up in earnest in the early 1970s. From 1973 to 1988, seven studies considered the concept of a single federal agency to manage international port operations. In 1993, the General Accounting Office (GAO) convened a panel to discuss various operational options for managing international ports of entry. The panel determined that vesting responsibility with one agency would result in: “(1) an improved capability to think strategically about related immigration and customs issues; and (2) clearer accountability for border operations by having one spokesperson within the government for issues surrounding the movement of people, goods, and services into the United States.”

ISSUE: On March 1, 2003, the Department of Homeland Security (DHS) took over the responsibility for port of entry inspection functions (with the abolition of the Immigration and Naturalization Service). At that time, the goal of implementing this consolidation became a reality. However, the challenges to effective consolidation are many.

- **We Need to Apply our Immigration Laws Fairly and Consistently:** The importance of applying our immigration laws fairly and consistently at our ports of entry is linked to our dependence on international trade and tourism.
- **We Must Recognize and Preserve the Adjudications Functions at our Ports:** Immigration inspections functions encompass many different kinds of adjudications including: Asylum, Trade NAFTA status, Immigrant Visa Admissions, Nonimmigrant Visa Admissions, Paroles, Documentary Waivers, Inadmissibility Waivers, Status Determinations, and I-94 Issuances.
- **Immigration and Customs Inspectors are not Interchangeable:** Former U.S. Customs Service inspectors typically had a very refined role when assigned to primary and secondary inspections. The Customs inspector might determine whether to admit someone in primary, but the adjudications functions described above were handled solely by immigration inspectors. At major ports of entry, the customs inspector did not determine the tariff schedule under which goods were to be admitted, nor did he or she determine penalties in the case of violations. These duties were assigned and are assigned to different, specially trained customs staff. Immigration inspectors, however, were forced to go back and forth between adjudicating benefits and handling primary inspections on the line. It is critical to understand this adjudicative benefit portion of inspections and staff it with the appropriate specialists to apply our immigration laws consistently and judiciously.
- **Two Agencies at our Ports of Entry:** The Bureau of Customs and Border Protection (BCBP) is charged with staffing the ports of entry, but the Bureau of Immigration and Customs Enforcement (BICE) is charged with implementing Entry/Exit control under the new U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) program announced by Secretary Ridge in May. Vesting responsibility at the border to two bureaus seems to be recreating the very situation that the DHS consolidation efforts were designed to eliminate.
- **Lack of Understanding of the Importance of Immigration:** While BCBP is staffed with former immigration, customs, and agriculture inspectors, the bureau does not seem to appreciate the importance and complexity of immigration at our ports of entry. BCBP does not even include in its

recent posting of openings for all Port Director job duties any immigration-related inspection functions as part of the job duties. However, the job duties do include interdicting terrorists.

- Staffing and Infrastructure Shortages: Our ports of entry are inadequately staffed and their infrastructure needs have not been addressed. To date, most of our ports of entry do not have adequate turnstiles to count the number of pedestrians applying for admission, and we are not even sure about the number of people in vehicles applying for admission to the U.S. We also have not installed scanners at the ports of entry to scan the machine-readable laser visa issued to all qualifying visitors from Mexico. If we want to improve border security at our ports of entry, we must provide appropriate staffing, infrastructure, and technology. Having correct information will enhance accountability, which is a stated goal of the DHS consolidation. The ports of entry will be the proving ground for DHS coordination policy. We need to give the new agency a realistic chance of success, by forcing the review of the true facts regarding the demands at the ports of entry for infrastructure, staffing, and funding and truly applying a rule of accountability tied to performance.
- The Power of Inspectors: U.S. immigration law grants much power to inspectors at U.S. ports of entry. It is possible to be refused admission and subject to a five-year bar from readmission to the U.S. for a failure to have an appropriate immigration visa, with currently no right to counsel. Under post 9/11 security measures, the easiest thing for an inspector to do is just say “no.” Our ports of entry are often the first contact foreign nationals have with the U.S. This first interaction often is colored by prejudice, lack of professional behavior, and disrespect for and/or ignorance of the law on the part of the inspectors. Why is there no continuing education element required for advancement and salary decisions in such positions?

AILA’s POSITION: Given the situation outlined above, AILA supports the following:

1. Grant authority at our ports of entry to one bureau: Keep the inspections function within one agency, BCBP, and immediately designate immigration specialists to apply immigration laws. For consistency, these specialists’ legal applications should be directed and coordinated by immigration counsel within the office of the DHS General Counsel. Such legal counsel must be coordinated with benefit-related adjudications currently housed in the Bureau of Citizenship and Immigration Services (BCIS) as well as with BICE enforcement policy. Parole authority under our immigration laws recently has been granted to port directors (who have NO background in immigration law), based on the recent DHS reorganization.
2. Realistically assess the staffing and infrastructure necessary to implement US-VISIT. Such an assessment would involve answering many questions including: How many ports have scanners, which read passports, laser visas, etc.? What is the current level of overtime at the ports? What are the processing times for I-94, immigrant visa processing, and other adjudications before deciding the impact on our tourism and trade of US-VISIT requirements? How long does it take to fingerprint and photograph each applicant for admission under US-VISIT? How does that compare to the current time frame for the admissions process?
3. Exempt from the US-VISIT process our Mexican neighbors to the south who hold laser visas. After all, they are better documented and reviewed from a U.S. immigration perspective than others currently exempt from the process.
4. Don’t concentrate US-VISIT at the ports of entry. It is critical that the required biometrics be taken at the time of the visa application to avoid delays at the ports of entry. Also, security away from the border helps us to better enhance our national security.
5. Don’t conduct redundant security checks. Many border residents cross the international border several times per day. It is critical to integrate existing voluntary frequent traveler programs so

that enrollment in one provides a uniform access process at all our ports of entry. There should be one consistent enrollment process for air, land, and sea admissions. The Application Support Centers in the U.S. could help facilitate the process for those already here to enroll in such programs. The former U.S. Customs Service created the C-TPAT program, which is a joint government-business initiative to build cooperative relationships that strengthen overall supply chain and border security. Why not allow and encourage employees of qualifying employers to enroll in frequent traveler programs as well? Goods programs must merge with people-related programs. For example, the NEXUS and SENTRI programs should merge and become the same uniform process. Why not allow such enrollment eventually at consular posts overseas as well? These actions require major funding and staffing, and yet they improve security and reduce congestion at our ports.

6. Right to counsel: The Customs Service has long allowed legal representation at ports of entry to deal with the admission of goods. Custombrokers and lawyers are common sights at the ports. Such a practice should be extended to foreign nationals visiting our country. Just put yourself in their place applying for admission to a foreign country. Would a U.S. citizen want to be denied access to counsel or even an embassy representative due to some misunderstanding or error at a foreign port of entry? If the Golden Rule was ever needed, it is at our ports.
7. Interviews at ports of entry can cross the line to harassment and abuse. Cameras have been used successfully at many ports to record the behavior and statements of the applicant and the officer. Immigration supervisors have praised the tool from a personnel standard and embassies and applicants for admission have benefited from the recordings of this silent witness. In addition, in some cases, these cameras could also implement cutting edge facial recognition technology to assist inspectors. These cameras should be installed at least in all secondary inspection areas.
8. Equal benefits: The pay grade, overtime, and retirement benefits of immigration specialist inspectors must be the same as that of other enforcement brethren at the ports. To do otherwise, is to ignore the importance of both our immigration laws and national security. In addition, a continuing education component focusing on security and legal issues must be linked to pay increases and advancement to improve the quality of those guarding and applying the laws at our ports.
9. Data needed: While the U.S. Customs Service has provided, and still does provide, information about average admission time waits at ports of entry, similar information should be provided about processing times for immigration-related benefits.
10. Make enforcement databases accurate: BCBP should create an office to consolidate all public inquiries concerning enforcement-related database entries, which the general public could contact to timely remove inaccurate information to avoid the continuation of injustices tied to the dissemination and provision of such inaccurate information. Failure to do so should result in a cause of action against the agency for libel or defamation of character.
11. The importance of immigration: All BCBP related job postings should clearly identify the immigration-related components to emphasize the importance of the function.