

## MINORITY VIEWS

This bill largely continues the Subcommittee's bipartisan tradition of cooperation and we sincerely appreciate the open and collaborative process undertaken by the majority, culminating with the fiscal year 2013 Department of Homeland Security Appropriations bill. We are supportive of the funding levels provided in the bill, with certain exceptions; we object however, to a number of unnecessary policy provisions.

The bill provides adequate funding for the front line employees of the Department of Homeland Security, so that they can continue to conduct critical operations along our borders, protect our nation's airports and seaports, and respond to the spate of natural disasters our country experiences. The bill substantially increases funding for critical grant programs while rejecting the Administration's poorly articulated changes to the grant structure—changes that have not been authorized. Specifically, we are pleased that funding for FEMA State and Local grants was increased by \$413 million over fiscal year 2012, and that both fire grants and emergency performance grants are funded at the requested levels. Equally important, the bill provides ample funding for research and development efforts in the Department, most notably at the Science and Technology Directorate, allowing work on all high priority research efforts to continue as well as new projects to begin. The bill also increases funding for critical Coast Guard, as well as Air and Marine, acquisitions, to recapitalize aging assets while bringing the latest aviation and vessel technologies on line to ensure these personnel can operate more effectively. The bill keeps intact the agreement Congress enacted last year as part of the Budget Control Act but only as it relates to disaster spending. And finally the bill includes a substantial increase for cyber security protective efforts to continuously monitor and detect intrusions to our Federal networks from foreign espionage and cyber attacks.

### CONCERNS WITH THE BILL: OVERALL FUNDING LEVEL

We are disappointed that House Republicans unilaterally walked away from the bipartisan agreement to establish \$1.047 trillion as the Committee's overall allocation. A majority of their conference voted for the Budget Control Act agreement less than nine months ago. By renegeing on the agreement, and disregarding the law, the Committee has been forced to absorb \$19 billion in reductions below the Budget Control Act levels, mainly to finance tax reductions for the wealthiest Americans. This puts House Republicans at odds with House Democrats, Senate Democrats, Senate Republicans, and the White House. Senate Minority Leader McConnell recently voted for allocations at \$1.047 trillion, and Ranking Member Cochran stated that it is appropriate "for the Committee to proceed on the basis of the discretionary caps enacted into law." House

Republicans have thus introduced uncertainty about the overall discretionary allocation and raised questions about the intent of the House majority to keep the government running. This uncertainty will slow down the appropriations process, and the austere House allocation, if it stands, could stall economic growth and impede job creation.

#### BURDENSOME IMMIGRATION PROVISIONS

While we appreciate the willingness of the Chairman to continue statutory language on the deportation of criminal aliens, continued oversight of 287(g) agreements, and funding increases for the Alternatives to Detention program, we have serious reservations about expanded immigration provisions included in this bill, which constitute an unwise use of taxpayer resources.

We strongly oppose inclusion of statutory language mandating that Immigration and Customs Enforcement (ICE) maintain a level of not less than 34,000 detention beds through September 30, 2013, which is 1,200 more beds than the budget request. This language may compromise ICE's ability to satisfy its stated enforcement priorities and accomplish detention reform. As ICE Assistant Secretary John Morton has stated, not only does this language mandate that he maintain 34,000 detention beds, but that he fill those beds with detainees on a daily basis.

While we have no problem funding the capacity for 32,800 beds, as requested, the use of those beds should be determined by the enforcement actions and judgment of ICE on whether detention is required for particular detainees based upon flight risk and danger posed to the public. Mandating government spending on a pre-set number of detention spaces is contrary to the government's priorities to reform the detention system and target its use for only those individuals who require it. Further, in an environment of fiscal restraint, telling a federal agency that they're not permitted to spend less than a certain amount limits the ability of ICE to achieve its objectives with a savings to the taxpayer. For example, this bill could provide ICE the flexibility, as requested, to transfer funds between immigration detention and the Alternatives to Detention program, commensurate with the level of risk a detainee present, yet it does not. This flexibility could result in significant daily cost savings. Furthermore, we are unaware of any other law enforcement agency with a statutory requirement to detain no less than a certain number of individuals on a daily basis.

In addition to a set figure for detention beds, the bill includes new statutory spending floors for both worksite enforcement and the 287(g) program. In regards to worksite enforcement, the bill has *never* included a statutory minimum funding level. Similar to our concern about detention beds, we should not be telling a federal agency that they are not able to spend less than \$134.6 million on worksite enforcement efforts. This language reduces Assistant Secretary Morton's flexibility to respond to current immigration concerns or changing conditions.

The bill raises the minimum amount ICE must spend on the 287(g) program from \$5.4 million to \$68.3 million. We are concerned about a twelve-fold increase to the statutory minimum for a program that nine years after it was first initiated has had re-

peated documentation of abuses and poor management. Three audits by the DHS Inspector General have found serious concerns about the 287(g) program, and ICE has had to terminate some 287(g) Taskforces, notably in Maricopa County, Arizona, after the Justice Department clearly documented racial profiling and other programmatic abuses. The Administration's FY 2013 budget sought to reduce funding for the 287(g) program by \$17 million, and ICE has notified communities that they will no longer consider any 287(g) taskforce model requests from states and local jurisdictions. Instead these funds were to be devoted to the expansion of other ICE programs and the continued deployment of Secure Communities, a program to check immigration status that is more cost-effective than 287(g) and that distinguishes federal and local authority more precisely. Yet, the bill both rejects the requested decrease and raises the statutory floor that must be spent on this flawed program, reducing the Administration's ability to fund more effective immigration initiatives. As the Secure Communities program reaches nationwide operability in FY 2013, the 287(g) program should be reduced, not continued at this arbitrarily high level.

#### REDUCTIONS TO FACILITIES CONSTRUCTION AND INFORMATION TECHNOLOGY

Recognizing that the majority had to make cuts to meet the Ryan budget figures, it is nonetheless disappointing that the bill fails to provide funding for construction activities at the new DHS headquarters and to consolidate data center activities. Both of these decisions are penny-wise and pound foolish.

Specifically, the bill does not fund the request of \$64.8 million in fiscal year 2013 that would have permitted DHS to migrate component resources to two consolidated data centers, a project that is already under way and will reduce the risk of locating all of the Department's data at one facility or at aging, non-DHS facilities that are already overloaded. The bill also fails to provide the \$89 million for site access, including necessary road and interchange improvements, for DHS personnel to access the new DHS headquarters. The new DHS headquarters project has been short-changed over the past few years, causing repeated schedule delays and increasing the costs from \$3.4 billion to just over \$4 billion if all three phases are constructed. In the interim, the Coast Guard may be the only tenant at this new facility for the next 3–5 years, as the bill funds only this relocation in 2013. The bill does not include any funding for Phase 2, which was to begin construction for DHS central headquarters and FEMA. We would hope to increase this level of funding as the bill progresses towards enactment because, in the long run, this would save taxpayer funds and improve agency performance.

At the same time that this bill eliminates funding for vital initiatives, it includes \$75 million that was not requested for the National Bio and Agro-defense Facility in Manhattan, Kansas. While we have supported the construction of this facility, our support has been contingent upon completion of a site security risk assessment to ensure that this facility does not release harmful pathogens, such as the foot-and-mouth virus, into America's heartland. The first review indicated a 70 percent risk over a 50 year period. Ear-

lier this year, the Department indicated this risk has been greatly mitigated with additional design features. However, the National Academy of Science is reviewing the revised site security risk assessment now, and until the results are published we believe it is premature to appropriate additional funds for NBAF construction. This is especially true when funding from fiscal years 2011 and 2012 remains unobligated. DHS tells us that these previous appropriations will support all construction activities through fiscal year 2013. We believe the \$75 million included in this bill should be re-allocated to critical research projects within the Science and Technology Directorate or to other critical construction activities, such as the new DHS headquarters, instead of being provided to NBAF.

OVERLY BURDENSOME OVERSIGHT PROVISIONS IMPACT PEOPLE'S  
ABILITY TO DO THEIR JOBS

While we are pleased by the bill's commitment to oversight—a theme this Subcommittee has held constant since the Department was formed in 2003—we are concerned that the bill applies overly punitive withholdings and burdensome restrictions on the Secretary, Under Secretary for Management, Chief Financial Officer, Commandant and Vice Commandant of the Coast Guard, and the Customs and Border Protection.

It is interesting to recall that when the Democrats were in the majority, additional views submitted by the Full Committee and Subcommittee Chairmen on our bills noted vehement opposition to withholdings of funds and additional restrictions because it delayed essential security resources. Yet, three years later, this bill withholds 60 percent of all funding appropriated for the Secretary, Under Secretary, and CFO offices until receipt of *all* statutorily reports and plans required at the time the budget is submitted; 10 percent (or \$836.6 million) from CBP Salaries and Expenses; and 37 percent (or \$75 million) from Coast Guard Headquarters due to failures to submit statutorily required plans. While we agree that the Department has been unacceptably delinquent in providing statutorily required reports that are critical to our decision making, the withholdings in the bill are particularly excessive this year.

These withholdings enter the realm of parody with the addition of a new General Provision that prohibits the Secretary, Deputy Secretary, Commandant or Vice Commandant of the Coast Guard to use their aircraft, except in limited emergency situations, until receipt of the comprehensive acquisition review plan and the Coast Guard's Capital Investment Plan. We were disappointed that an amendment we offered striking these excessive and redundant restrictions on the use of Coast Guard aircraft was not accepted in Full Committee.

Both of these provisions are extreme, and the withholdings will compromise the ability of DHS leaders to do their jobs. We will continue to voice our concerns about these issues and attempt to work with the Majority in an effort to further improve the bill as it moves toward enactment.

## ABORTION AMENDMENT ADOPTED IN FULL COMMITTEE

Over Democratic objections, the Full Committee adopted three General Provisions on abortion. These amendments: (1) prohibit federal funds to be used to pay for abortions except which the life of the mother would be endangered or in the case of rape; (2) prohibit funds for a person to perform or facilitate the performance of an abortion; and (3) permit Immigration and Customs Enforcement to provide escort services for a female detainee to receive abortion services outside the detention facility (if she pays), with an exception for philosophical beliefs. While these provisions have been in the Commerce, State, Justice Appropriations bill intermittently since at least 1987, they have NEVER been carried on the DHS appropriations bill. And the provisions offered did not even include an exception for incest, which we modified by amendment.

However, even with the additional exception for incest, there is no reason that this language should be on the Department of Homeland Security bill, other than for political gamesmanship. This Department was formed in 2003. Since that time, neither the first nor the second Chairman of the Subcommittee felt the need to add these three abortion amendments to the bill, because they are unnecessary. ICE already follows the procedures laid out for the Bureau of Prisons, prohibiting the use of federal funds to provide abortions. In fact, ICE has not paid for an abortion procedure throughout the entire course of the Obama Administration, and any services provided by ICE in the last decade have been solely for post-miscarriage care.

Numerous restrictions in law have already conditioned and qualified reproductive choice in practice. Among those are prohibitions on the use of federal funds for abortion procedures in President Obama's Executive Order 13535, issued on March 24, 2010, which we believe specifically applies to ICE and the Department of Homeland Security.

Having met with numerous ICE agents and the Director, not once has anyone mentioned to this Committee that women's reproductive health makes their job more difficult. The focus of this bill should be equipping our Homeland Security professionals with the tools they need to keep us safe. Weighing down this bill with divisive, ideological riders is a disservice to our entire first responder community.

It is a shame that we have had to cast aside the bipartisan and cooperative effort we have shared in crafting this bill for a politically charged amendment that accomplishes nothing and makes no change whatsoever in current law or procedures. We will continue to oppose these redundant, unnecessary, and provocative provisions.

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