

KEY FINDINGS AND
RECOMMENDATIONS

Future of DHS Project: Key Findings and Recommendations: Congressional Oversight

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Executive Summary

The first installment of the Atlantic Council's *Future of DHS Project: Key Findings and Recommendations*, released September 9, 2020, concluded the United States will be less secure, and American democracy will be at risk, unless the US Department of Homeland Security (DHS) institutes urgent reforms to (i) refocus its priorities on today's greatest non-military threats; (ii) increase its ability to work effectively with the private sector, states, and local governments; and (iii) address DHS's management challenges.¹ Those recommendations were directed at the executive branch. **Congressional support is vital for DHS to succeed in making essential reforms to meet its challenges.** This report provides key findings and recommendations directed to the US Congress to enable DHS to achieve the missions that Congress chartered it to do in the Homeland Security Act of 2002.²

Congress recognized the value of consolidating security missions into a single Cabinet department when it created DHS in 2002. Congress needs to adopt the same approach for itself by consolidating authority over DHS in a single authorizing committee in each chamber. Legislative jurisdiction and oversight authority over DHS are currently divided among ninety-plus committees and subcommittees that have responsibility for some or all of DHS. Instead, Congress should mirror the approach used for the Department of Defense and other major US government national security Cabinet departments by having DHS leadership work with one major authorizing committee, along with the Appropriations Committees, in each house of Congress.

1 Thomas Warrick, Caitlin Durkovich, and Mark Massa, *Future of DHS Project: Key Findings and Recommendations*, Atlantic Council, September 2020, <https://www.atlanticcouncil.org/wp-content/uploads/2020/09/Future-of-DHS-Report-2020.pdf>.

2 Homeland Security Act of 2002, Public Law 107-296, 6 U.S.C. § 101; "Committee History," House Homeland Security Committee, last visited September 1, 2020, <https://homeland.house.gov/about/committee-history>.

This is also the recommendation of six former secretaries and acting secretaries who have led DHS during the George W. Bush, Barack Obama, and Donald Trump presidencies (see annex), who wrote to congressional leadership on November 4, 2020, about the importance of significant reductions and consolidations of legislative-committee authority over DHS.

The need to reform how Congress engages with DHS has long been urgent, but the urgency is greater now because the non-military threats facing the United States today increasingly require coordinated programs and responses by multiple DHS components. DHS efforts are made more difficult, and the security of the United States put at risk, because different DHS components report to different congressional committees.

The idea that the present arrangement is satisfactory is disproven by the fact that Congress has never passed a comprehensive authorization bill for DHS since the Homeland Security Act first authorized the department in 2002. Currently, more than eleven major committees in the House of Representatives and nine in the Senate have some authority over DHS and its missions and programs. This approach makes it difficult, if not impossible, for DHS to get the clear and consistent support it needs from Congress to make necessary reforms. **Consolidating congressional oversight over DHS into a single major authorizing committee in each chamber is the last unimplemented recommendation of the 9/11 Commission.**

Changing the House and Senate rules that govern committee jurisdiction may not be easy politically. Given the bipartisan interest expressed by the current and two former chairs of the House Committee on Homeland Security, and

the special election for two Senate seats in Georgia scheduled for January 5, 2021, the House may be able to change its rules before the Senate does.³ There is precedent for changing committee jurisdiction in one body first, with the other body following suit in a subsequent Congress. There is also value in separating homeland security from governmental oversight and investigations, which are separate in the House but combined in the Senate. Both functions are important, but the challenges facing DHS call for one authorizing committee in each chamber focused exclusively on DHS and its issues and challenges.

As an interim step to making major changes to committee jurisdiction, Congress should consider other ways to gain the benefits of more effective coordination by measures such as overlapping committee memberships, *ex officio* status to bring chairs of other committees together with the core homeland security committees, and other steps.

Finally, DHS should take its own steps to strengthen its relationships with the core Homeland Security Committees. DHS can work more effectively with Congress by making its reports to Congress and congressional correspondence available to all congressional members and staff, so that all authorizing and appropriating committees and their staffs can know what DHS and the committees are saying to each other. DHS should also consolidate all legislative-affairs personnel under the authority of the Office of Legislative Affairs (OLA). OLA should also serve as an “honest broker” to keep DHS policy and resource officials informed about what the other is saying to Congress—helping to overcome one of DHS’s most important management challenges. By working together, Congress and DHS can enable the Department of Homeland Security to effectively lead the defense of the nation against major non-military threats.

3 Bennie G. Thompson, Peter T. King, and Michael T. McCaul, “Letter to Speaker Nancy Pelosi and Kevin McCarthy,” US House Committee on Homeland Security, November 12, 2020, <https://homeland.house.gov/imo/media/doc/Leadership%20Rule%20X.pdf>, described in the press release “Former DHS Secretaries and Homeland Security Chairs Agree: It’s Time To Consolidate Congressional Homeland Security Jurisdiction,” US House Committee on Homeland Security, November 13, 2020, <https://homeland.house.gov/news/correspondence/former-dhs-secretaries-and-homeland-security-chairs-agree-its-time-to-consolidate-congressional-homeland-security-jurisdiction>.

Key Findings in blue.

Recommendations in black.

Topic headings in red.

Future of DHS Project: Summary of Parts I-IV

Key Findings and Recommendations

This is the second report of the Future of DHS Project of the Atlantic Council's Scowcroft Center for Strategy and Security. The first report focused on recommendations for the executive branch, specifically the Department of Homeland Security (DHS) itself. The key findings and recommendations were written by two former DHS officials, project Director Tom Warrick and Co-Director Caitlin Durkovich, and Atlantic Council Program Assistant Mark Massa, based on input from a Senior Advisory Board of former secretaries and acting secretaries of DHS and a distinguished bipartisan study group of more than one hundred homeland and national security experts, including many who worked on legislative affairs issues at DHS or other Cabinet departments and on the staff of congressional committees or members. This second report is focused on what the US Congress can do to support the mission and people of DHS. This part of the report is the sole responsibility of its authors, Mr. Warrick and Mr. Massa, and while the report reflects a consensus among the experts, not all study-group participants may agree with every recommendation.

Summary of Previous Recommendations

The previous report, *Future of DHS Project: Key Findings and Recommendations*, released September 9, offered recommendations to the executive branch on the mission and operations of the US Department of Homeland Security (DHS) in four parts.

Part I of the report recommended that **DHS refocus its mission to lead the defense of the United States against major non-military threats**—prioritizing the response to COVID-19 and the threat from infectious diseases. DHS also needs to lead the defense against hostile nation-state cyber operations, threats to election security, threats to critical infrastructure, and foreign disinformation campaigns that, collectively, are targeting American democracy. DHS also needs to prioritize the long-term threat to American lives and infrastructure from climate change and extreme weather. The report also urged DHS to consider improving communications to be a core mission of the department—communications with the American people, with DHS stakeholders in the private sector and in state, local, tribal, and territorial governments, and with DHS's own employees.

Part II made the case that DHS's ability to harness public-private partnerships today gives it a unique power and obligation among federal departments to help secure and enhance the resilience of the private sector and US communities from traditional and emerging threats, including protecting critical infrastructure from violent extremism, climate change, and a range of threats from hostile nation-states.

Part III addressed DHS's most pressing internal issue, the decade-long problem of low employee morale, by recognizing DHS's success stories and prioritizing morale at the

Transportation Security Administration (TSA) and Customs and Border Protection (CBP), which together make up more than half of the DHS workforce. The report recommended that DHS increase the pay of TSA screeners and give employees a preference to keep them in DHS and homeland security as a career. The report further recommended that CBP focus on building trust and dealing more effectively with poor performers.

Part IV addressed a number of other DHS management issues, including the need to more closely coordinate policy and resources. DHS should also move away from its current, decentralized management model by more closely linking headquarters and components. The report recommended that DHS adapt the model that the Department of Defense (DoD) developed as a result of the 1986 Goldwater-Nichols Act by having DHS headquarters staffed half by component personnel on detail. DHS should make serving a tour at headquarters a requirement for promotion to GS-15 or Senior Executive Service (SES). The report also recommended that DHS invest more in classified connectivity, given the need for DHS to communicate to its employees how they fit into national strategies and how DHS addresses threats from some of the world's most technically sophisticated adversaries. The report called for DHS not to undertake any major reorganizations for at least the next year, in order to focus on these fundamental issues of mission and capability. One exception to that rule should be establishing an associate secretary position, analogous to the Department of Justice's associate attorney general, to ensure the proper coordination of DHS's law-enforcement components.

This report represents Part V of the Future of DHS Project's key findings and recommendations on Congress's role in authorization and oversight of DHS.

V. Improving Congressional Authorization and Oversight of DHS

Key Findings

Congressional interest in DHS is vital for the security of the nation, but DHS reports to more than ninety congressional committees and subcommittees—far too many for DHS to work effectively with them, and far too many for Congress to work effectively with DHS. Following the passage and signature of the Homeland Security Act on November 25, 2002, DHS was organized in early 2003 from twenty-two different federal agencies and programs. Many of those had established reporting relationships among the committees of the US Congress. The House of Representatives established the House Committee on Homeland Security in 2002 and the Senate added homeland security to the Governmental Affairs Committee effective January 2005.⁴ However, other aspects of jurisdiction over DHS and its components were left unchanged, divided among eleven different committees in the House (Table 1) and nine in the Senate (Table 2).

The irony of this situation is not lost on DHS employees and many on Capitol Hill. **Congress created DHS, in part, to consolidate a number of vital security functions in one Cabinet department, and to give the department's leadership an unobstructed view of the nation's risks and vulnerabilities in order to better defend the United States.** In setting up DHS, Congress cut away many of the stovepipes of authority and jurisdiction for the executive branch. **At the same time, Congress kept most of its own stovepipes of authority and jurisdiction in place. Most importantly, Congress denied itself the clarity of view that it gave to the executive branch.** This has not only weakened the hand of Congress, but has also weakened DHS by making it the only Cabinet department with congressional oversight spread so broadly.

In deciding whether to consolidate congressional oversight of DHS, decision-makers in Congress should ask themselves which approach would make the homeland safer and more secure from the threats the United

States faces today: (1) the present division of congressional responsibility, or (2) a more unified approach by the Congress. Everyone who cares about Congress as an institution should be concerned about how it carries out its constitutional responsibilities toward the third-largest Cabinet department in the US government.

In light of the question in the preceding paragraph, it is noteworthy that DHS has not had an authorization bill signed into law since the Homeland Security Act in 2002. While there are a number of reasons for this, overlapping and cross-cutting congressional-committee jurisdiction has played a role. **The threats to the United States have changed significantly since 2002, and it is time for congressional leadership to update how Congress approaches the authorization and oversight of one of the most important Cabinet departments dedicated to the goal of keeping Americans safe.**⁵

The 9/11 Commission's call for congressional "unity of effort" on homeland security.

The National Commission on Terrorist Attacks Upon the United States, popularly known as the 9/11 Commission, called for consolidating congressional oversight in its report released on July 22, 2004. Its words are still relevant in 2020:

13.4 UNITY OF EFFORT IN THE CONGRESS

Strengthen Congressional Oversight of Intelligence and Homeland Security

Of all our recommendations, strengthening congressional oversight may be among the most difficult and important. So long as oversight is governed by current congressional rules and resolutions, we believe the American people will not get the security they want and need. ...

⁴ "History," Senate Homeland Security and Governmental Affairs Committee, last visited September 1, 2020, <https://www.hsgac.senate.gov/about/history>.

⁵ Taken from John Neely Kennedy's repeated use of the phrase "your job is to keep us safe" at a hearing with Acting Secretary of Homeland Security Chad Wolf on February 25, 2020, quoted in Aaron Blake, "Trump's DHS Head Has a Brutal Exchange on Coronavirus—Courtesy of a GOP Senator," *Washington Post*, February 25, 2020, <https://www.washingtonpost.com/politics/2020/02/25/chad-wolf-john-kennedy-coronavirus/>. The phrase also appears on DHS's "About DHS" page, "Our duties are wide-ranging and our goal is clear – keeping America safe." DHS Office of Public Affairs, "About DHS," July 5, 2019, <https://www.dhs.gov/about-dhs>.

Few things are more difficult to change in Washington than congressional committee jurisdiction and prerogatives. To a member, these assignments are almost as important as the map of his or her congressional district. ...

The leaders of the Department of Homeland Security now appear before 88 committees and subcommittees of Congress. One expert witness (not a member of the administration) told us that this is perhaps the single largest obstacle impeding the department's successful development. The one attempt to consolidate such committee authority, the House Select Committee on Homeland Security, may be eliminated. The Senate does not have even this.

Congress needs to establish for the Department of Homeland Security the kind of clear authority and responsibility that exist to enable the Justice Department to deal with crime and the Defense Department to deal with threats to national security. Through not more than one authorizing committee and one appropriating subcommittee in each house, Congress should be able to ask the secretary of homeland security whether he or she has the resources to provide reasonable security against major terrorist acts within the United States and to hold the secretary accountable for the department's performance.

Recommendation: Congress should create a single, principal point of oversight and review for homeland security. Congressional leaders are best able to judge what committee should have jurisdiction over this department and its duties. But we believe that Congress does have the obligation to choose one in the House and one in the Senate, and that this committee should be a permanent standing committee with a nonpartisan staff.⁶

When the House established the House Committee on Homeland Security (CHS) and when the Senate added homeland security to what became the Senate Homeland Security and Governmental Affairs Committee (HSGAC) in the years after 9/11, **Congress took one important step**

toward accomplishing the 9/11 Commission's objective: CHS and HSGAC are today the core Homeland Security Committees in the US Congress. But Congress did not take the other, equally important step: making that authorization jurisdiction exclusive.

How committee jurisdiction is determined.

Committee jurisdiction is established by the rules of each chamber of Congress: Rule X in the House, as adopted on January 11, 2019, at the start of the 116th Congress, and by the Standing Rules of the Senate, revised on January 24, 2013. In the Senate, the jurisdiction of the Committee on Homeland Security and Governmental Affairs was set by Senate Resolution 445, 108-2, adopted in the 108th Congress, second session, on October 9, 2004.

Rules, including committee jurisdiction, can be amended by a vote of the members of each body, which is usually taken at the start of each Congress. In the House, for example, the rules are usually voted on shortly after the election of the speaker of the House.

Why is consolidating committee jurisdiction over DHS so hard?

As the 9/11 Commission acknowledged, committee jurisdiction is a source of power and influence within the corridors of Congress. The fact that rules are voted on by each chamber, without the input of the executive branch or the other chamber, makes the decision uniquely within each body's control.

The pattern of committee jurisdiction in Tables 1 (page 7) and 2 (pages 8-9) reflects the bureaucratic history of DHS's components. The US Coast Guard (USCG), for example, started in 1790 as an arm of the Department of the Treasury, with other elements made part of the Department of Commerce and Labor when that department was formed in 1903.⁷ The Coast Guard was assigned to the US Navy during World Wars I and II, and in 1967 was moved to the Department of Transportation.⁸ It was made part of DHS in 2003.⁹ In the House, USCG falls primarily under the jurisdiction of the Transportation and Infrastructure Committee. In the Senate, USCG falls primarily under the jurisdiction of the Commerce, Science, and Transportation Committee.

6 Thomas H. Kean and Lee H. Hamilton, "The 9/11 Commission Report," National Commission on Terrorist Attacks Upon the United States, 2004, <https://www.9-11commission.gov/report/911Report.pdf>.

7 "Frequently Asked Questions," US Coast Guard Historian's Office, last visited November 25, 2020, <https://www.history.uscg.mil/Frequently-Asked-Questions/>.

8 Ibid.

9 Ibid.

The entities that now make up Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) were moved to DHS in 2003 by combining the customs functions of the Department of the Treasury and some of the immigration functions of the Department of Justice. To this day, the leads for immigration are the Judiciary Committees in the House and Senate. The lead for revenue collection and “ports of entry” (the legal term for international airports and official land-border crossing points) is the Ways and Means Committee in the House and the Finance Committee in the Senate. However, physical port-of-entry facilities are also subject to the jurisdiction of the House Transportation and Infrastructure Committee. Agricultural inspections of imports—a vital function of CBP, given agriculture’s importance to the United States—currently involve the two Agriculture Committees.

Why is congressional jurisdiction so important now?

How Congress and its committees exercise their legislative jurisdiction may seem like an inside-the-Beltway decision with little real-world significance beyond the corridors of the Capitol and its office buildings. Regardless of the truth of this proposition on other issues, this question has real consequences when it comes to DHS. It is a vital national security question whether DHS is focusing on the greatest threats and the most important missions. Those change over time. It is vital that DHS is able to carry out its missions effectively, in a manner consistent with American values and principles. Congressional oversight directly affects the answer to these questions.

When congressional oversight is excessive because jurisdiction is diffuse, it creates three burdens.

First, as a practical matter, overlapping or inconsistent jurisdiction means that the parliamentarians of both houses of Congress must decide which committee will have the lead role on specific issues or bills. This increases the risk of inconsistent treatment of issues, and imposes a burden on congressional staff that is not faced by committees outside of the homeland security domain. Moreover, when committees have narrow fields of view on DHS-related issues, they tend to see issues from their narrow perspective, rather than take a comprehensive view of how DHS should respond to

a cross-cutting challenge. Similarly, committees may decide to narrow the scope of much-needed legislation to ensure that a bill will stay within that committee’s jurisdiction and not be referred to other committees, which (in the minds of some committee members) could imperil passage, risk having the bill loaded down, or lead to compromises that would lose the benefits of the bill in its original form. The result is legislation narrower in scope than what is needed to protect the security of the United States.

The second-most-obvious burden, but still not the most important, is the greater demands on DHS’s senior leaders to be responsive to so many congressional leaders, calls for testimony, or responses to questions. Preparation for a single hearing takes more than just the time spent by the senior DHS official in the witness chair. Each hearing requires hundreds of hours of staff work to prepare briefing materials, anticipate questions, hold internal discussions, and have “murder boards” in which DHS officials try to anticipate all of the hard questions that a member of Congress might ask. Informal statistics kept by those in the DHS Office of Legislative Affairs (OLA) showed that during the Obama administration the secretary of homeland security participated as a witness in more than ten hearings per year. In contrast, former DHS officials recalled, the secretary of defense testified about three or four times a year. All DHS officials testified at a rate of one hearing per calendar week, including weeks when Congress was not in session.

Follow-up from hearings likewise consumes hundreds of staff and principal hours to develop and clear responses.

DHS has traditionally staffed legislative affairs with OLA at headquarters and separate legislative affairs offices in the major components. However, **unlike virtually every other Cabinet department—each of which has a single office of legislative affairs that handles the entire department—DHS components have their own, partly autonomous legislative-affairs offices.**¹⁰ Headquarters OLA has limited authority over component offices, according to Delegation 06000, which was signed on January 19, 2017, the last full day of President Obama’s term.¹¹ Under paragraph II D, component heads must obtain “concurrence” from OLA for the hiring of the senior congressional-relations official in a component, as well as all Senior Executive Service or

10 For example, see: “Our Mission,” Department of State Bureau of Legislative Affairs, last visited November 29, 2020, <https://www.state.gov/bureaus-offices/bureaus-and-offices-reporting-directly-to-the-secretary/bureau-of-legislative-affairs/>.

11 DHS, “Delegation to the Assistant Secretary for Legislative Affairs,” Delegation 06000, January 19, 2017, 2.

Table 1 – Committee Jurisdiction over the US Department of Homeland Security/US House of Representatives

	Homeland Security (CHS)	Foreign Affairs	Judiciary	Energy and Commerce	Oversight & Reforms	Science, Space, and Technology	Transportation and Infrastructure	Ways and Means	Agriculture	Permanent Select Committee on Intelligence	Appropriations
Headquarters	yes	DHS's international capacity building programs, which are funded by the State Department but carried out by DHS			reorganization						appropriations
CBP	partial	visa policy	immigration				border ports of entry physical facilities	customs revenue, collection districts, ports of entry	agricultural inspections of imports		appropriations
CISA	mostly			emergency communications, chemical facilities	federal computer networks	internet					appropriations
FEMA	very limited			public health and quarantine			yes				appropriations
FLETC	partial		partial								appropriations
I&A	partial									yes	appropriations
ICE	partial		immigration and non-border enforcement					customs enforcement			appropriations
TSA	yes										appropriations
USCG	very limited						yes				appropriations
USCIS	very limited		immigration								appropriations
USSS	very limited		yes								appropriations

Source: US House of Representatives, Rules of the House of Representatives, Rule X, <https://rules.house.gov/sites/democrats.rules.house.gov/files/documents/116-House-Rules-Clerk.pdf>, January 11, 2019.

Table 2 – Committee Jurisdiction over the US Department of Homeland Security/US Senate

	Homeland Security and Gov'tal Affairs (HSGAC)	Foreign Relations	Judiciary	Armed Services	Commerce, Science, and Transportation	Finance	Select Committee on Intelligence	Agriculture, Nutrition, and Forestry	Appropriations
Headquarters	yes including inter-governmental relations; holds confirmation hearings for DHS Secretary and other officials, except as noted	DHS's international capacity building programs, which are funded by the State Department but carried out by DHS		common defense					appropriations
CBP	partial	visa policy; transnational criminal organizations; trafficking in persons	DHS functions relating to anti-terrorism; immigration; visa policy relating to security		trade	customs, collection districts, ports of entry; holds conf. hearing for CBP Commissioner		agricultural inspections of imports	appropriations
CISA	yes (extent of cyber jurisdiction is unclear); holds conf. hearing for CISA director				internet				appropriations
FEMA	yes, except flood insurance; holds conf. hearing for FEMA director								appropriations
FLETC	no								appropriations
I&A	some, as the Homeland Security Act is I&A's authorizing statute; holds #2 of 2 hearings for U/S I&A						yes; holds #1 of 2 conf. hearings for U/S I&A		appropriations
ICE	partial; holds #1 of 2 conf. hearing for ICE director	visa policy	immigration; visa policy relating to security; holds #2 of 2 conf. hearing for ICE director			customs enforcement			appropriations

Source: US Senate, Standing Rules of the Senate - Revised to January 24, 2013, <https://www.govinfo.gov/content/pkg/CDOC-113sdoc18/pdf/CDOC-113sdoc18.pdf>, November 4, 2013.

Table 2 – Committee Jurisdiction over the US Department of Homeland Security/US Senate (continued)

	Homeland Security and Gov'tal Affairs (HSGAC)	Foreign Relations	Judiciary	Armed Services	Commerce, Science, and Transportation	Finance	Select Committee on Intelligence	Agriculture, Nutrition, and Forestry	Appropriations
TSA	no; holds #2 of 2 conf. hearings for TSA administrator				yes; holds #1 of 2 conf. hearing for TSA administrator				appropriations
USCG	no			During wartime, USCG assets may be transferred to the Navy	yes; holds conf. hearing for USCG commandant		USCG Intelligence (CG-2) is a member of the Intelligence Community		appropriations
USCIS	no		immigration; holds conf. hearing for USCIS director						appropriations
USSS	limited		yes						appropriations
Relevant Non-DHS functions	government accountability and investigations								

Source: US Senate, Standing Rules of the Senate - Revised to January 24, 2013, <https://www.govinfo.gov/content/pkg/CDOC-113sdoc18/pdf/CDOC-113sdoc18.pdf>, November 4, 2013.

equivalent positions primarily engaged in congressional relations.¹² However, the selection is initially up to the component, not OLA. The DHS assistant secretary for legislative affairs has input into annual employee ratings of these senior officials, but the component head, not the assistant secretary for legislative affairs, has the ultimate authority over ratings and bonuses for senior legislative-affairs staff in the components. If there is ever a conflict of interest between the component and the department's interest as a whole, the interests of the component are more likely to prevail.

The third, and greatest, burden of diffuse and overlapping committee jurisdiction is the barrier that multiple, and sometimes overlapping, congressional-committee jurisdiction imposes on effective negotiations over changes to DHS authorities, programs, and organization.

- A difficult negotiation with one committee chair, a ranking member, or their staffs can become effectively impossible if DHS must negotiate with two, three, or more sets of committee leaders and staffs.
- For the same reason, overworked members of Congress and their staffs have to coordinate positions with two, three, or half a dozen other committees, while also engaging DHS.
- Overlapping jurisdiction can lead to legislative compromises between committees that can hurt the DHS secretary's ability to lead the department effectively.

- Despite several DHS secretaries trying to create a culture of "One DHS" and unity of effort, the present congressional setup allows DHS components to work directly with their specific authorizing committees, rather than the core Homeland Security Committees. Thus, powerful DHS component leaders can head off outcomes where they have competing interests with other DHS senior officials.

These three considerations make effective legislating more difficult for DHS than for any other national security department.

This problem is worse for several key DHS components, especially those like CBP and ICE that, as noted above, were set up in 2003 by combining functions of the Treasury and Justice Departments while committee jurisdiction was kept as it had been for years. The two core Homeland Security Committees today have only partial jurisdiction over CBP and ICE. The Judiciary Committee in both bodies has authority over immigration, and two committees in the House and the Finance Committee in the Senate have authority over customs and key parts of CBP's administrative infrastructure, such as ports of entry.

Table 3 shows the number of committees with jurisdiction over each DHS component.

Table 3 – Committees with Jurisdiction over DHS Components

Component	House	Senate
Customs and Border Protection (CBP)	7	7
Cybersecurity and Infrastructure Security Agency (CISA)	5	3
Federal Emergency Management Administration (FEMA)	3	2
Immigration and Customs Enforcement (ICE)	4	5
Transportation Security Administration (TSA)	2	3
US Coast Guard (USCG)	3	2*
US Citizenship and Immigration Services (USCIS)	3	2*
US Secret Service (USSS)	3	3

* - Neither of which is HSGAC, DHS's core authorizing committee in the Senate.

¹² "DHS Delegations Report," US Department of Homeland Security, September 12, 2017, 7, <https://www.dhs.gov/sites/default/files/publications/2017-HQFO-01350%20records.pdf>.

A comparable table for DoD, the military services, and the combatant commands would list two principal committees in each chamber—Armed Services and Appropriations—with the Intelligence Committees having a role overseeing DoD’s intelligence agencies.

One argument against consolidating jurisdiction is that authorizing committee staff have developed expertise in the present division of responsibilities, such that consolidating congressional responsibilities would require transferring staff on an issue like immigration from one committee to another, or building additional expertise in the core Homeland Security Committees. However, **both the House and the Senate Appropriations Committees have consolidated expertise onto one subcommittee that deals with homeland security, showing that staff consolidation can be achieved.**

The greatest security challenges facing DHS as of January 2021 are multidimensional, multilayered, and addressed by three or more DHS components—making it more important than ever before that congressional authority over DHS be consolidated. Ideally, DHS should be—and often *is*—looking for cross-component policies and solutions to defeat these threats. This is one of the advantages of consolidating twenty-two security organizations into a single Cabinet department. In other cases, obvious reforms are taking far too long to enact into law. It took almost ten years (until November 2018) to create CISA, even though there was broad agreement about the need for CISA as a DHS component to address cybersecurity and infrastructure threats to the security of the United States. If DHS wants to propose new initiatives against new threats, or develop new programs that require additional authorities or authorizing legislation, the complex web of overlapping jurisdictions will make congressional action that much more difficult.

Examples of these modern threats illustrate their cross-cutting nature:

- **China** is both a rival and a leading trading partner. It is a non-kinetic threat in cyberspace, a potential conventional military threat, and is currently trying to steal both US technical innovations and the personal data of US officials and private citizens. China was, and will continue to be, a potential source of pandemic disease.
 - **DHS Headquarters, CBP, CISA, FEMA, the Office of Intelligence and Analysis (I&A), ICE, TSA, USCG, USCIS, and USSS are all engaged in China-related defense of the homeland and ensuring the handling of legitimate trade with China.** In July 2020, DHS Acting Secretary Chad Wolf set up a China Working Group to address the multidimensional China threat.¹³
 - **A comprehensive effort to address both the threat and the opportunity of engagement with China would require DHS to engage with eight committees in the House and seven in the Senate.**¹⁴ (This count and the other examples in this section exclude the Appropriations Committees.)
- **Russia and Iran** pose threats through their cyber operations, as conventional military rivals of the United States (requiring export controls that DHS enforces), and because of their efforts targeting US democratic institutions and critical infrastructure.
 - **DHS Headquarters, CBP, CISA, I&A, ICE, TSA, USCG, USCIS, and USSS are engaged in the defense of the United States against threats from Russia and Iran.**
 - **Eight committees in the House and six in the Senate have jurisdiction over some or all of these DHS components.**¹⁵

13 “Acting Secretary Wolf Establishes China Working Group to Address Intensifying Threat,” DHS Office of Public Affairs, press release, July 24, 2020, <https://www.dhs.gov/news/2020/07/24/acting-secretary-wolf-establishes-china-working-group-address-intensifying-threat>. DHS’s press release did not publicly disclose the offices and components participating in the working group.

14 This count—which is based on an element of judgment by the authors—includes for the House: CHS; Foreign Affairs; Judiciary; Energy and Commerce; Oversight and Reforms; Ways and Means; Agriculture; and Intelligence. For the Senate: HSGAC; Foreign Relations; Judiciary; Commerce, Science, and Transportation; Finance; Intelligence; and Agriculture, Nutrition, and Forestry.

15 This count includes for the House: CHS; Foreign Affairs; Judiciary; Energy and Commerce; Oversight and Reforms; Transportation and Infrastructure; Ways and Means; and Intelligence. For the Senate: HSGAC; Foreign Relations; Judiciary; Commerce, Science, and Transportation; Finance; and Intelligence.

- The **COVID-19 response** has engaged **DHS Headquarters, FEMA, S&T, CBP, CISA, I&A, ICE, TSA, USCIS, and USSS**. This involves eight committees in the House and seven in the Senate.¹⁶
- **International and domestic terrorist threats** engage **DHS Headquarters, CBP, CISA, I&A, ICE, TSA, USCG, USCIS, and USSS** in different aspects of preventing terrorist attacks. This involves seven committees in the House and six in the Senate.¹⁷
- **Immigration reform and border management**, including possible mass-migration movements through Central America or the Caribbean, engage **DHS Headquarters, CBP, FEMA, I&A, ICE, USCG, and USCIS**. This involves seven committees in the House and seven in the Senate.¹⁸
- **Climate change** is addressed most directly by **DHS Headquarters, FEMA, and USCG**, although its implications affect all DHS components in different ways—for example, to the extent that climate change in Central America drives mass migration northward, this will involve CBP, ICE, and USCIS. This involves four committees in the House and two in the Senate.¹⁹

Some amount of this congressional oversight is valuable. However, having DHS subjected to the jurisdiction of this many committees is excessive, and creates risks for the security of the homeland that more consolidated and

effective congressional authority and oversight would provide.

Consolidating congressional-committee jurisdiction over DHS has bipartisan expert support.

More than a dozen bipartisan commissions and reports have called for consolidating DHS’s congressional oversight. This is one of the most studied aspects of DHS, and one on which there is bipartisan unity across more than twenty years.

The following is a non-exhaustive list of experts’ recommendations to streamline congressional oversight of DHS:

1. The 9/11 Commission Report, pages 419-421 (July 2004).²⁰
2. The Brookings Institution and the American Enterprise Institute (May 2003).²¹
3. The Center for Strategic and International Studies white paper on congressional oversight of DHS (December 2004).²²
4. The Heritage Foundation (July 2008) (backgrounder).²³
5. The Heritage Foundation (November 2010) (report).²⁴

16 This count includes for the House: CHS; Foreign Affairs; Judiciary; Energy and Commerce; Transportation and Infrastructure; Ways and Means; Agriculture; and Intelligence. For the Senate: HSGAC; Foreign Relations; Judiciary; Commerce, Science, and Transportation; Finance; Intelligence, and Agriculture, Nutrition, and Forestry.

17 This count includes for the House: CHS; Foreign Affairs; Judiciary; Energy and Commerce; Transportation and Infrastructure; Ways and Means; and Intelligence. For the Senate: HSGAC; Foreign Relations; Judiciary; Commerce, Science, and Transportation; Finance; and Intelligence.

18 This count includes for the House: CHS; Foreign Affairs; Judiciary; Transportation and Infrastructure; Ways and Means; Agriculture; and Intelligence. For the Senate: HSGAC; Foreign Relations; Judiciary; Commerce, Science, and Transportation; Finance; Intelligence; and Agriculture, Nutrition, and Forestry.

19 This count includes for the House: CHS; Energy and Commerce; Science, Space, and Technology; and Transportation and Infrastructure. For the Senate: HSGAC and Commerce; Science; and Transportation.

20 Kean and Hamilton, “9/11 Commission Report,” 2004, <https://govinfo.library.unt.edu/911/report/911Report.pdf#page=436>. The hypertext version is at <https://www.9-11commission.gov/report/>.

21 Norman J. Ornstein and Thomas E. Mann, *A New Permanent Standing Committee on Homeland Security?* Brookings Institution, May 19, 2003, <https://www.brookings.edu/testimonies/a-new-permanent-standing-committee-on-homeland-security/>. Ornstein was a resident scholar at the American Enterprise Institute and Mann was a senior fellow in governance studies at Brookings.

22 “Untangling the Web: Congressional Oversight and the Department of Homeland Security,” Center for Strategic and International Studies and the Business Executives for National Security, December 10, 2004, https://csis-website-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/attachments/041210_dhs_whitepaper.pdf.

23 Jena Baker McNeill, *Congressional Oversight of Homeland Security in Dire Need of Overhaul*, Heritage Foundation, July 14, 2008, http://thf_media.s3.amazonaws.com/2008/pdf/bg2161.pdf.

24 Paul Rosenzweig, James Carafano, and Jena Baker McNeill, *Stopping the Chaos: A Proposal for Reorganization of Congressional Oversight of the Department of Homeland Security*, Heritage Foundation, November 4, 2010, <https://www.heritage.org/homeland-security/report/stopping-the-chaos-proposal-reorganization-congressional-oversight-the>.

6. The Heritage Foundation (September 2012) (issue brief),²⁵
7. The Aspen Institute (September 2013).²⁶
8. The Bipartisan Policy Center, Tenth Anniversary Report Card: The Status of the 9/11 Commission Recommendations.²⁷
9. Full-page ad in the *Wall Street Journal*, May 21, 2014, signed by sixty experts.²⁸
10. The Bipartisan Policy Center, “Reflections on the Tenth Anniversary of the 9/11 Commission Report (July 2014) (“Congressional reform is the most important unfulfilled recommendation of the 9/11 Commission”).²⁹
11. Annenberg Public Policy Center graphic.³⁰
12. Aspen Institute letter (March 2018) (also referenced Annenberg Public Policy Center).³¹
13. R Street Institute (April 2018).³²
14. Center for New American Security (May 2020).³³
15. Open letter by six former secretaries and acting secretaries of DHS to congressional leadership (November 2020) (in Annex 1).³⁴
16. Atlantic Council-Center for a New American Security joint event, December 17, 2020.³⁵
17. Atlantic Council Future of DHS Project report Part V (November 2020).³⁶

Recommendations for congressional action

Consolidating congressional-committee jurisdiction over DHS.

5.1 Congressional-committee jurisdiction over DHS should be consolidated around a single core authorizing committee in the House, and a single committee in the Senate that has comparable jurisdiction. Congress should fulfill the recommendation of the 9/11 Commission and consolidate legislative and oversight authority for DHS around one primary committee in each body of Congress. This would mirror Congress’s approach to the DoD and other national security departments and agencies.

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- 25 Jessica Zuckerman, *Politics Over Security: Homeland Security Congressional Oversight In Dire Need of Reform*, Heritage Foundation, September 10, 2012, http://thf_media.s3.amazonaws.com/2012/pdf/ib3722.pdf.
 - 26 “Task Force Report on Streamlining and Consolidating Congressional Oversight of the U.S. Department of Homeland Security,” Annenberg Foundation Trust at Sunnylands and the Aspen Institute Justice & Society Program, September 2013, https://assets.aspeninstitute.org/content/uploads/files/content/docs/pubs/Sunnylands%20report%2009-11-13.pdf?_ga=2.234195486.148422448.1588369844-1216381931.1588369844.
 - 27 “Tenth Anniversary Report Card: The Status of the 9/11 Commission Recommendations,” Bipartisan Policy Center National Security Preparedness Group, September 2011, <https://bipartisanpolicy.org/wp-content/uploads/2019/03/CommissionRecommendations.pdf#page=18>. The co-chairs of this group were Thomas Kean and Lee Hamilton, the chairman and vice chairman, respectively, of the 9/11 Commission.
 - 28 Tom Ridge, et al., “The Nation Is Not as Safe as It Could and Should Be,” Annenberg Public Policy Center, May 21, 2014, <https://www.annenbergpublicpolicycenter.org/dhs/>.
 - 29 Thomas Kean and Lee Hamilton, “Today’s Rising Terrorist Threat and the Danger to the United States: Reflections on the Tenth Anniversary of The 9/11 Commission Report,” Annenberg Public Policy Center and the Bipartisan Policy Center, July 2014, <https://bipartisanpolicy.org/wp-content/uploads/2019/03/BPC-9-11-Commission.pdf#page=39>.
 - 30 “The 9/11 Commission Urged Congress to Simplify the Oversight of Homeland Security. Instead We Have This,” Annenberg Public Policy Center and the Bipartisan Policy Center, July 2014, <http://cdn.annenbergpublicpolicycenter.org/wp-content/uploads/NYT-ad-July-2014.pdf>.
 - 31 “Former Department of Homeland Security Secretaries Urge Senate to Streamline Congressional Oversight in Reauthorization Bill,” Aspen Institute, March 28, 2018, <https://www.aspeninstitute.org/news/press-release/urge-senate-streamline-congressional-oversight-reauthorization-bill/>.
 - 32 Paul Rosenzweig, “Streamlining Congressional Oversight of DHS,” *Lawfare*, April 2, 2018, <https://www.lawfareblog.com/streamlining-congressional-oversight-dhs>.
 - 33 Carrie F. Cordero, *Reforming the Department of Homeland Security Through Enhanced Oversight & Accountability*, Center for a New American Security, May 2020, 17, <https://s3.us-east-1.amazonaws.com/files.cnas.org/documents/CNAS-Report-HomelandSecurity-final-updated-060820-web-2.pdf?mtime=20200609093103&focal=none - page=20>.
 - 34 “Six Former and Acting Secretaries of Homeland Security Sign Open Letter on Consolidating Congressional Oversight of DHS,” Atlantic Council, November 4, 2020, <https://www.atlanticcouncil.org/content-series/future-of-dhs/six-former-and-acting-secretaries-of-homeland-security-sign-open-letter-on-consolidating-congressional-oversight-of-dhs/>.
 - 35 “The Future of DHS project: Time to reform Congressional oversight of the Department of Homeland Security,” Atlantic Council, December 17, 2020, <https://www.atlanticcouncil.org/event/time-to-reform-congressional-oversight-of-the-dhs/>.
 - 36 This report.

Appropriations Committee jurisdiction should remain as is, consolidated around one subcommittee on homeland security in the Appropriations Committees of the House and the Senate.

Because committee jurisdiction is difficult to change, a change in authorizing and oversight jurisdiction may need to happen in stages, with one body, such as the House of Representatives, acting before the Senate. This has happened in the past, such as when the Senate moved State Department appropriations authority from the Appropriations Subcommittee on Commerce, Justice, State, and the Judiciary to the Subcommittee on Foreign Operations in 2005, and the House followed suit two years later in 2007.³⁷

Currently the House has separate committees for (i) Homeland Security and (ii) Oversight and Reform. On the Senate side, HSGAC combines both homeland security and government-wide oversight and investigations. The connection between the two issues is relatively weak, and, while adding homeland security to an existing committee structure might have made sense in 2004, today there is a stronger case for separating the two functions. This change would allow senators more interested in the committee's investigative work to focus entirely on investigations—and would allow those senators interested more in homeland security to focus exclusively on DHS. (Those few senators interested in both could choose to serve on both committees.) **Separating HSGAC into two separate committees would allow a Senate Homeland Security Committee to devote its full attention to the Department of Homeland Security.** The new Senate Homeland Security Committee should have strong, DHS-wide jurisdiction, just as Armed Services has over the Department of Defense. A weak Senate Homeland Security Committee could end up being worse than the present approach.

5.2 As an interim step, for those DHS components that have different functions under the jurisdiction of several different committees, Congress should consolidate functions into the jurisdiction of the core authorizing committee. As noted above in Table 3, authority over CBP is split among seven different committees, counting Appropriations, in each body of Congress.

Reducing the number of committees to three (the core Homeland Security Committee, Judiciary, and Appropriations) would be one straightforward approach. Another would be to carve out particular issues, with legislative jurisdiction and authorization being done by the core Homeland Security Committee, and specific issues like trade policy being handled by the Senate Finance Committee or oil-spill legislation being retained by the Senate Committee on Environment and Public Works.

5.3 The Senate should separate the Homeland Security and Governmental Affairs functions of HSGAC into two committees to give each committee a unified purpose. While the House set up a separate Committee on Homeland Security, the Senate chose in January 2005 to add Homeland Security to the Committee on Governmental Affairs.³⁸ This recommendation would be most effective if the Senate transferred jurisdiction over DHS components that currently report to more than one authorizing committee to this new standalone Senate Homeland Security Committee, as outlined in recommendation 5.2.

5.4 If immediate significant consolidations are not feasible, particularly given the Senate runoff election in Georgia on January 5, 2021, **the 117th Congress should create a congressional commission comprised of members of Congress and their appointees to examine whether to create a DHS oversight structure that resembles the one governing other national security departments.** Former members of Congress who have experience working with DHS could be included as members of this commission. Congressional leadership should then listen to current and former members of Congress regarding which reforms should be made.

Consolidating congressional expertise.

5.5 Another alternative way to consolidate congressional authority would be for **congressional leadership to empower the core Homeland Security Committees by consolidating expertise to bring members and experts from different committees together to serve on subcommittees with overlapping membership.**

37 James V. Saturno, "Appropriations Subcommittee Structure: History of Changes from 1920 to 2019," Congressional Research Service, February 6, 2019, 9-10, https://www.everycrsreport.com/files/20190206_RL31572_417ed18a2498f8dfb0a79db8ca126c4f70c5faa7.pdf - page=12.

38 "History"; Rule 24(k)(1), footnote 13, Standing Rules of the Senate, Revised to January 24, 2013, November 4, 2013, <https://www.govinfo.gov/content/pkg/CDOC-113sdoc18/pdf/CDOC-113sdoc18.pdf>.

This could be done by **unifying key issues such as immigration that are currently outside the jurisdiction of the core Homeland Security Committees, by making those other committee chairs and ranking members *ex officio* members of the core Homeland Security Committees.** Other members could be added *ex officio* as well. For example, immigration issues could be taken up by an immigration subcommittee of the core Homeland Security Committee, with that subcommittee led by the chair and ranking member of the Judiciary Committee sitting *ex officio*. This would bring together members and staff with expertise on DHS and the DHS-related immigration expertise currently in the Judiciary Committees. Given the focus that President-elect Joe Biden’s administration is expected to give to immigration issues, this approach would allow for unified consideration of both immigration laws and policies *and* the ways in which multiple DHS components—USCIS, CBP, ICE, and I&A—are authorized, staffed, and operated to administer those laws and policies. Congress will not succeed if it changes immigration laws without giving DHS and its components the authorities and resources to implement those changes.

When the full Committee on Homeland Security or its Senate counterpart takes up an immigration issue, for example, the chairman and ranking member of Judiciary, along with several other members, would participate as members and subcommittee chairs of CHS.

5.6 Establish subcommittees of the core Homeland Security Committees based on issues and missions, not components. As shown in Tables 1 and 2, committee jurisdiction is presently defined primarily based on DHS’s components, not issues. Aligning subcommittees by issues would allow subcommittees to reflect the cross-cutting nature of policies and programs that DHS handles through multiple components. CHS is currently organized this way. CHS’s current subcommittees are:³⁹

- **Transportation and Maritime Security;**
- **Emergency Preparedness, Response, and Recovery;**
- **Border Security, Facilitation, and Operations;**
- **Cybersecurity, Infrastructure Protection, and Innovation** (see text following);

- **Oversight, Management, and Accountability;** and
- **Intelligence and Counterterrorism.**

The following minor adjustments could help deal with emerging threats.

- **Cybersecurity** may be better as a separate subcommittee because of the extensive amount of work this subcommittee may need to do. This would align with one of the recommendations of the Cyber Solarium Commission.⁴⁰
- Whatever subcommittee takes up **infrastructure protection**, it should be expressly chartered to address the **effects of climate change**. As noted in the Future of DHS Project September 9 report, the effects of climate change are among the most important issues facing the United States, affecting both lives and infrastructure.
- **Non-kinetic nation-state threats to US democracy**. As noted above, issues like Russia, China, and Iran involve multiple DHS components and congressional committees. These threats do not fit entirely under cybersecurity—they more logically align with counterterrorism and emerging threats, and should probably be added (along with innovation) to the subcommittee currently dealing with counterterrorism. Intelligence informs all these issues, so the subcommittee could be named **“Counterterrorism, Emerging Threats, Innovation, and Intelligence”** to reflect a role to develop legislative responses that anticipate threats to the homeland.

In the Senate, HSGAC’s formal subcommittees were set up to reflect HSGAC’s governmental affairs roles:⁴¹

- Permanent Subcommittee on Investigations;
- Subcommittee on Federal Spending Oversight and Emergency Management; and
- Subcommittee on Regulatory Affairs and Federal Management.

In a department as large and diverse as DHS, handling all department issues at the level of a full committee is unusual, to say the least. Additional HSGAC subcommittees would help strengthen HSGAC’s ability to work with DHS. Separating responsibility for homeland

39 “Subcommittees,” Committee on Homeland Security, last visited November 24, 2020, <https://homeland.house.gov/subcommittees>.

40 “Report of the U.S. Cyberspace Solarium Commission,” US Cyberspace Solarium Commission, March 2020, https://s.wsj.net/public/resources/documents/CSC_Final_Report.pdf.

41 “Subcommittees,” Homeland Security and Governmental Affairs Committee, last visited November 24, 2020, <https://www.hsgac.senate.gov/subcommittees>.

security from that for governmental affairs would bring further focus to Congress's work with DHS.

- 5.7 The core Homeland Security Committees should focus on passing an authorization bill to strengthen their jurisdictional oversight, and try to do so on an annual basis.** As noted above, Congress has tried before, but has not had a comprehensive DHS authorization bill signed into law since the Homeland Security Act was passed in 2002. This could be an achievable goal, even without wholesale reorganization, if there were an express rule that the core Homeland Security Committees should have jurisdiction to lead the development of a comprehensive authorization bill for DHS.

DHS should strengthen its relationships with the core Homeland Security Committees.

DHS has a number of steps it can take to strengthen its relationships with the core Homeland Security Committees. These committees, for their part, can help play a unifying role in DHS's engagement with Congress.

- 5.8 DHS should set a rule that the secretary and deputy secretary of homeland security testify before only (a) the House and Senate Homeland Security Committees and (b) House and Senate appropriators, but not the other authorization committees.** This will work if the core Homeland Security Committees support it and other committees are willing to work with, or through, the core committees on legislation. The other committees with jurisdiction over individual components or specific issues would still hear testimony from the respective component heads or an under-secretary-level witness, such as the under secretary in charge of the Office of Strategy, Policy, and Plans (PLCY) for policy issues or the under secretary for management on managerial issues.
- 5.9 For congressional correspondence, DHS should adopt the rule that the secretary or deputy secretary sign letters only from the House or Senate leadership, the chair or ranking member of the core Homeland Security Committees, or the two Appropriations Committees.** This will encourage members of Congress to coordinate with the committee chairs on letters in order to get a secretarial response. Every member of Congress has the right to write to the secretary, but not every letter merits the extensive internal review and coordination required for secretary or deputy-secretary correspondence. Other Cabinet departments, such as State and Justice, generally follow a similar practice.

DHS should ensure wider availability of its reports to Congress and congressional correspondence.

- 5.10 DHS should set up searchable full-text databases with every report requested by Congress from DHS (including its operational components), every letter from a member of Congress, and DHS's responses to those letters.** The database should be available to DHS (including components), and to congressional staff. Information would still be subject to protections and limits on sharing for personally identifying information (PII), controlled unclassified information (CUI), law-enforcement sensitive (LES) information, sensitive security information (SSI), and other current restrictions on how widely information is disseminated. Separate databases should be run on classified DHS or congressional systems for classified reports and correspondence. These databases will promote information sharing both within Congress—so each committee can see what other committees have asked DHS to provide—and so that all parts of DHS can see the responses of other parts of DHS.
- 5.11 DHS should copy the core Homeland Security Committees on all correspondence to other committees,** to ensure they are aware of information that DHS provides to those other committees. Correspondence from the secretary, deputy secretary, or headquarters principals should be prioritized for distribution to the core Homeland Security Committees.
- 5.12 DHS should send authorizers all reports sent to appropriators, and vice versa.** This will help keep authorizers and appropriators aware of issues of interest to others. It will also avoid duplication of efforts when both are requesting the same, or similar, information.

Strengthen DHS headquarters to respond effectively to consolidated congressional oversight.

Any effort to improve congressional oversight of DHS should start with identifying how to strengthen the ability of DHS Headquarters to respond to consolidated congressional oversight. **A stronger, more empowered, and more accountable DHS Headquarters—similar to how the US Department of Defense organizes and resources its Office of the Secretary of Defense—would centralize policy and stakeholder management in one overarching entity in DHS,**

accountable to the secretary and, ultimately, to Congress and the American people.

In the context of legislative oversight, a strengthened headquarters function should unify and standardize legislative outreach and create a structure that would empower the core Homeland Security Committees to conduct their oversight activities and communications through a consolidated DHS OLA.

5.13 To ensure coordination with Congress, DHS's OLA should have authority over all operational component legislative affairs staffs. This is comparable to the authority of other cross-component specialized functions, such as the DHS Office of the General Counsel's authority over DHS's attorneys. DHS has a strong need to have coordination and close knowledge across components' congressional exchanges. Consolidating legislative affairs under the authority of OLA would help ensure consistency of positions on issues of importance to the department as a whole. Under this recommendation, component leadership would have a seat at the table for interviews of OLA personnel for their components, and input into hiring and evaluation decisions. This would be a change from the current Delegation 06000 of January 19, 2017, which gives component leadership the say over the hiring of legislative-affairs senior personnel and the final say over their ratings and bonuses, with OLA having the right to concur or not.⁴² Component legislative-affairs officials should continue to be co-located with senior component officials, to ensure good communications and ready access to senior component personnel.

In theory, this would require the possible shifting of personnel from components to headquarters, or between components, but it should be a net-zero reallocation of slots (with one exception, noted below) and resources from components to headquarters, but with no net effect on DHS budgets and staffing levels. The one exception that is recommended is that DHS OLA, like PLCY, should add a career Senior Executive Service official—in this case, at the rank of deputy assistant secretary—whose portfolio should include the management, training, and career development of OLA personnel, and who would provide institutional memory at an SES level across changes of presidential administrations. The DHS Office of PLCY, similarly, has by statute

a career SES who serves as a deputy under secretary. The logic applies to both PLCY and OLA functions.

In practice, with the incoming Biden administration, the DHS front office should assess the staffing levels of the Office of Legislative Affairs and component legislative offices in light of DHS's legislative agenda and whether the consolidation of congressional authority recommended here, if adopted by the leadership of the Congress, would lead to reinvigorated action between DHS and Congress. This will depend, in part, on the outcome of the January 5, 2021 special election in Georgia for two Senate seats. There is no doubt that DHS needs action from Congress to reform its missions and address its other problems. If Congress expects DHS to be responsive, then the overall DHS legislative-affairs operation may need additional personnel, or the internal reassignment of personnel, to engage usefully with Congress.

5.14 The Office of Legislative Affairs can help with the coordination between policy and resource decisions if OLA is in the loop on all communications between the Appropriations Committee staffs and the chief financial officer (CFO). One area of potential controversy in OLA having authority over all legislative-affairs staff concerns the Appropriations Committee staffs' preference to talk directly to the CFO. As noted in Part IV of the Future of DHS Project recommendations, DHS needs better coordination between policy and resource decisions. The CFO's reporting chain is through the under secretary of management to the secretary, which bypasses DHS's policy process that is coordinated by the under secretary for strategy, policy, and plans. However, the CFO has more authority over component budgets than PLCY has over component policy decisions.

Requiring OLA to be in the loop on communications between the Appropriations staff and the CFO would allow OLA to be an important "honest broker" to ensure that DHS's policy officials are kept abreast of what the CFO and the Appropriations Committees are saying to each other. This also works in the other direction: OLA can keep the CFO and other budget officials aware of the equally important conversations going on between PLCY and the authorizing committee staffs. The secretary and deputy secretary would still have the authority

⁴² Delegation 06000, Delegation to the Assistant Secretary for Legislative Affairs, 2017.

to restrict knowledge of sensitive financial discussions, just as they have the authority to restrict knowledge of sensitive policy discussions. But, OLA needs to ensure that the “default value” of the communications switch is set to “on,” rather than “off,” as it presently is. DHS needs better coordination between policy and resource decisions, and OLA is in an important, and unique, position to help ensure this happens.

Conclusion

As the Future of DHS Project’s key findings and recommendations for the executive branch showed, the forward defense of the United States faces different challenges from those that US leaders faced in 1945, 1989, or even in 2016. A strong military, backed by a strong economy, a vibrant democracy, and US diplomacy, are all vitally necessary but are no longer sufficient.

The US Congress created the Department of Homeland Security in 2003 to help ensure the United States never again experienced an attack like 9/11. Today’s threats are different, and include pandemic disease, climate change, and nation-states waging non-kinetic warfare directly against the American people, infrastructure, and democratic systems. None of the former threats have gone away.

Just as the executive branch should seek to reform DHS, Congress should reform how it engages with DHS. In order to refocus DHS and fix DHS’s internal problems so it can lead the defense of the nation against non-military threats, **Congress should be an active and effective partner in providing DHS with the authorities and resources it needs.** Congress also should conduct oversight to ensure that DHS is able to achieve its missions while respecting the civil rights, civil liberties, and privacy that the US Constitution guarantees. The time has come to implement the last major unfulfilled recommendation of the 9/11 Commission to unify congressional efforts over the Department of Homeland Security.

While the conclusions of this report are the sole responsibility of the authors, these key findings and recommendations draw from the inputs of the more than one hundred homeland and national security experts listed on pages 46-49 of the Future of DHS Project report released September 9, 2020. Among the many contributors, the authors especially thank the following for their advice on this section of the report (in alphabetical order): Christian Beckner, Brian de Vallance, Dan Gerstein, Connie LaRossa, Coleman Mehta, Sue Ramanathan, Phil Stupak, and Stephen Viña. These individuals contributed in their individual, rather than institutional, capacities.

The views expressed are those of the authors and do not reflect the official policy or position of the Department of Homeland Security (DHS) or the U.S. Government. DHS does not attest to the substantive or technical accuracy of the information.

Annex 1: Letter from Six Former Secretaries and Acting Secretaries of Homeland Security to Congressional Leadership on Consolidating Committee Jurisdiction over DHS

Wednesday, November 4, 2020

Representative Nancy Pelosi
Speaker of the House
235 Cannon House Office Building
Washington, DC 20515

Senator Mitch McConnell
Majority Leader
Russell Senate Office Building, 317
Washington, DC 20510

Representative Kevin McCarthy
Minority Leader
2468 Rayburn House Office Building
Washington, DC 20515

Senator Charles E. Schumer
Minority Leader
Hart Senate Office Building, 322
Washington, DC 20510

Dear Representative McCarthy, Senator McConnell, Speaker Pelosi, and Senator Schumer:

As the country awaits the result of yesterday's election, we write to bring to your attention an important decision that Congressional leaders should make between today and the date the 117th Congress convenes on January 4, 2021: the need to consolidate and strengthen Congressional oversight of the Department of Homeland Security (DHS) in order to make possible the fundamental changes that DHS urgently needs to protect the American people from the threats we face in 2021.

As former Secretaries and Acting Secretaries of Homeland Security, we have served under every President since DHS was established in 2003 by the Homeland Security Act. We know firsthand the value and importance of working closely with the Congress. However, under House Rule X and S. Res. 445, more than 90 different committees or subcommittees today have jurisdiction over DHS—far more than any other cabinet department.

In contrast, a single committee in the House and the Senate has the lead responsibility for developing legislative proposals and oversight over the Department of Defense (DoD). The same singular focus is true for all the other national security departments. Needing to work legislation through sometimes competing and overlapping committees makes needed, fundamental reforms at DHS difficult or impossible to achieve. DHS has [not had a comprehensive re-authorization](#) signed into law since its inception in 2002. In contrast, Congress passes a DoD authorization bill almost every year to keep our national defense coordinated, focused, and—ultimately—successful.

DHS urgently needs to make major reforms, improvements, and enhancements to ensure the Department can protect the nation in the way Congress envisioned nearly two decades ago. DHS's leadership, whether Democratic or Republican, needs to work with a single authorizing committee with broad subject matter authority to enact the changes and authorize the programs that DHS needs to address the threats of 2021.

We are the Senior Advisors of the Atlantic Council's "[Future of DHS Project](#)" that made [forty-one recommendations](#) to the executive branch to address DHS's most urgent problems. First, while DHS needs to sustain its current missions, it needs to refocus on the most urgent non-

kinetic threats to the homeland: (1) [Help end](#) the COVID-19 pandemic; (2) Protect against the [long-term threat](#) from climate change and extreme weather; and (3) Counter [threats to US democracy](#) from Russia, China, Iran, and elsewhere through cyber operations, threats to US elections and our critical infrastructure, and foreign disinformation operations. Second, DHS needs an [updated approach](#) to the public-private partnerships that are instrumental to the homeland security mission, and DHS needs an updated strategy for sustained engagement with both industry and state and local governments. Third, DHS should address urgent management issues, starting with [employee morale](#). Fourth, DHS should [improve](#) its communications, strengthen its trust relationships with its 240,000 employees and the American people, and make fundamental changes to how headquarters works with DHS’s operational components.

Congressional support for these reforms is vital to the security of the homeland, but we know that achieving these reforms is not possible with fragmented jurisdiction. The most significant threats to our security today are multi-layered and multi-dimensional, and are addressed by six or more DHS components. To the United States, China, for example, is both a rival and a leading trading partner. It is a non-kinetic threat in cyberspace, a potential military threat, and is currently trying to steal both America’s technical innovations and our personal data. It was, and will continue to be, a potential source of pandemic disease. DHS Headquarters, CBP, CISA, FEMA, I&A, ICE, TSA, USCG, USCIS, and USSS are all engaged in the defense of the homeland and ensuring the handling of legitimate trade with China. A comprehensive effort to address both the threat and the opportunity of engagement with China would require DHS to engage with eight committees in the House and seven in the Senate.

Other examples of major threats that require a more effective DHS and an integrated DHS response include (i) taking on Russian and Iranian use of cyberspace to target American democratic institutions and our critical infrastructure, (ii) responding to COVID-19 and future pandemics, and (iii) taking on the threat from domestic and international terrorism. Each of these major threats involve DHS Headquarters and eight or more DHS components—which fall under the jurisdiction of seven or more major Congressional committees in each body of Congress.

The problem is apparent. If DoD tried to deter and, if necessary, fight kinetic wars with a similar division of Congressional responsibility, our military would not succeed. DoD could not modernize fast enough to stay ahead of evolving military threats to our security if DoD had to report to seven or more different authorizing committees. Just as the jurisdiction of the House Committee on Armed Services includes “Common defense generally” and the Senate Committee on Armed Services’ jurisdiction includes “Common defense,” DHS needs to be able to focus its work with the Congress through a single authorizing committee whose jurisdiction includes “Common homeland security generally” so that DHS and the Congress can make the legislative changes and program authorizations needed to address the threats of 2021.

There are few issues in Washington with a stronger claim to bipartisan support than keeping the American people and our democracy safe. Restructuring Congressional oversight of DHS is the [most important un-implemented recommendation of the 9/11 Commission](#). More than a dozen think tanks across the political spectrum from the Brookings Institution to the Heritage Foundation, and numerous bipartisan commissions on which we have served, have

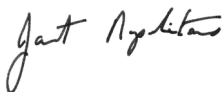
In 2021, DHS needs to begin to make fundamental changes and reforms to protect the American people from threats that are different from what they were in 2003 when DHS was first authorized. We urge that House and Senate provide stronger direction to DHS in the 117th Congress by amending House Rule X and S. Res. 445 to consolidate committee jurisdiction around a single primary authorizing committee in each body.

We would be happy to meet with you or your staffs to discuss these ideas further.

Respectfully,



Tom Ridge



Janet Napolitano



Rand Beers



Michael Chertoff



Jeh Johnson



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About the Authors



Thomas S. Warrick is a nonresident senior fellow with the Middle East programs and the Scowcroft Center for Strategy and Security at the Atlantic Council. Prior to joining the Atlantic Council, from August 2008 to June 2019 he was the Deputy Assistant Secretary for Counterterrorism Policy at the US Department of Homeland Security (DHS) and a career member of the Senior Executive Service. He was an international lawyer in private practice for seventeen years, representing companies in connection with investments in the Middle East and elsewhere.

From 1997 to 2007, he served in the US Department of State on Middle East and international justice issues. From 1997 to 2001, Warrick was Deputy in the Office of the Secretary / Office of War Crimes Issues. In 2001, he became Special Adviser, then Senior Adviser, to the Assistant Secretary of State for Near Eastern Affairs, working on Iraq, Iran, and other issues. From 2002 to 2003, he led the State Department's "Future of Iraq" project. From October 2003 to June 2006, he served in both Baghdad and Washington. From July 2006 to July 2007, he was Director (Acting) for Iraq Political Affairs. He was briefly Senior Political Adviser on the Iran desk in 2007.

Warrick joined the US Department of Homeland Security in August 2007 as Director for the Middle East, Africa, and South Asia in the Office of Policy. He became Deputy Assistant Secretary for Counterterrorism Policy, in the Office of Policy, in August 2008. In February 2015, Warrick was named Deputy Counterterrorism Coordinator for Policy by the DHS Counterterrorism Coordinator and Under Secretary for Intelligence & Analysis. In July 2018, when the counterterrorism policy mission was returned to the DHS Office of Policy, Warrick resumed his title of Deputy Assistant Secretary for Counterterrorism Policy in the Office of Policy / Office of Threat Prevention and Security Policy. Warrick concluded his service as Deputy Assistant Secretary for Counterterrorism Policy on June 14, 2019.



Mark J. Massa is a program assistant in Forward Defense within the Scowcroft Center for Strategy and Security at the Atlantic Council. Massa contributes to FD programs and research on nuclear security and arms control, the Future of DHS Project, the Commanders Series, and other endeavors. Having supported the launch of *Forward* Defense as the Scowcroft Center's newest practice area, he continues to carry out program administration in strategy, budgeting, business development, and event planning. He is a second-year MA candidate in the Security Studies Program at the Georgetown University School of Foreign Service. His research focuses on nuclear weapons, emerging technology, and the Arctic.

Massa graduated magna cum laude from Georgetown University with a degree in Science, Technology, and International Affairs. He was awarded honors in his major for a senior thesis on a theory of nuclear ballistic missile submarine strategy. He was elected to several honors societies, including Phi Beta Kappa (national), Pi Sigma Alpha (political science), and Pi Delta Phi (French).



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