Testimony of

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Madame Chairwoman, Senator Kyl, members of the committee, it is a great pleasure to appear before you today to discuss the president's proposal for reorganizing the homeland security effort. This and the many other hearings that are taking place on Capitol Hill are vitally important for making sure that the Congress and the president together reach the right decisions on how to reform our federal government effort. The president earlier this month proposed a massive reorganization effort--larger than any other such effort since Congress passed the National Security Act of 1947 resulting in the Department of Defense, the Central Intelligence Agency, and the National Security Council. The president's proposal, even by its own account, was drawn up hastily and without expert input. It is therefore incumbent on you and the other members of Congress to give the proposal the thorough scrubbing and expert analysis it needs. Doing so, is likely to take some time--months, rather than weeks.

The President's Reorganization Proposal

By its own account, the Bush administration only seriously considered the possibility of reorganizing the federal government in late April 2002--more than seven months after the horrible events of September 11. Up to that point, the administration believed that the establishment of the Office of Homeland Security (OHS), the Homeland Security Council (HSC), and the appointment of former Pennsylvania Governor Tom Ridge as Director of Homeland Security by executive action in October 2001 met the organizational needs of the federal government. There was some interest in consolidating border security functions--but an effort by Ridge to convince key Cabinet members of the value of merging Immigration and Naturalization Service (INS), the Customs Service, the Coast Guard, and the Animal and Plant Health Inspection Service (APHIS)was rebuffed the Department heads most immediately affected by such a merger.

Worried that Tom Ridge was losing out in internal bureaucratic battles, White House Chief of Staff Andrew Card suggested to the president that he lead a small, secret White House effort to examine reorganization options. That effort started in late April. It was conducted in absolute secrecy, involving only a very few White House aides. It received no input from experts within the administration, the Congress, or outside the government. And it was completed even before the administration had decided on its homeland security strategy, which Ridge promised he would deliver to the president some time this summer. The result of this effort is the proposal that is now before us.

Despite the hasty way in which the president's proposal was developed, the administration now wants Congress to move expeditiously in giving its approval. There are even voices in Congress hoping that legislative action can be completed by the time of the one-year anniversary of the World Trade Center and Pentagon's attacks--now just a few legislative weeks away.

However, it would be a mistake to move without a thorough review of the particulars of the president's proposal. Congress and the president need to get it right the first time. It is unliekly that anyone will get a second chance--and certainly not one that will enable a look at the problem and opportunities in as much detail and as comprehensively as is possible right now. If that means a few months of delay, so be it. The president and his administration waited more than seven months to examine these issues--Congress now needs to take the time to get it right.

Getting Some Things Right Several elements of the president's proposal meet an important need. This is especially true for the proposed consolidation of border security functions--bringing into a single agency six critical tasks that are presently housed in five different government departments. Every other reorganization proposal--from the Hart-Rudman Commission in early 2001 to Tom Ridge last December to legislation introduced by Senator Lieberman, Representative Thornberry, and others last year to the proposal we at the Brookings Institution put forward in April--called for consolidating border security functions in a single agency or department. The need for a "common face at the border," as Governor Ridge has frequently argued, is both widely agreed upon and urgent.

The administration's decision to include critical transportation functions in this mix is also very much to be welcomed. Although borders may be static, the people and goods that cross them use the air, rail, road, and sea transportation routes to move from points abroad to the U.S. interior. Border security is of necessity a dynamic, not a static activity. Take the example of foreign visitors. It clearly makes sense for the new department to decide who should be allowed entry into the United States by determining whether or not a person can get a visa, to control border crossings to make sure only those with a valid visa actually enter, and to make sure that persons having entered the country do not overstay their visas. The committee should therefore revisit the administration's decision not to include the State Department's Bureau of Consular Affairs in its proposed merger, even though consular officers are responsible for administrating the visa issuance process.

On its own, consolidation of the border and transportation functions is already a massive undertaking. Over 90 percent of all the people to be housed in the president's proposed Department of Homeland Security will be responsible for just these two functions. And nearly 65 percent of the proposed department's budget will go to these tasks. If on top of that, the critical

infrastructure protection tasks--which are functionally akin to transportation security--were also to be included, then much of what the president has proposed to consolidate will have been accounted for. That, in turn, raises real questions about some of the other components of the president's proposal.

Some Real Questions Remain

It clearly makes sense to consolidate into a single entity those agencies responsible for the security of our borders, transportation routes, and critical infrastructure that are now widely dispersed throughout the federal government. But the president did not stop there. Other key functions related to the terrorist threat at home--from intelligence analysis to training first responders to chemical, biological, and nuclear countermeasures--are also to be included in the new department. And with all these agencies come tasks and functions that have nothing to do with terrorism--fighting counterfeiting, ensuring the health of zoo and circus animals, rescuing mountaineers, responding to national disasters, and researching infectious diseases, to name but a few--all of which are now to become the responsibility of the Secretary for Homeland Security.

Before Congress moves to accept the administration's proposals wholesale, it needs to take a careful look at some of the specifics and the consequences that might flow from them. Three issues in particular stand out: the scope of the department, the information analysis function, and the role of the White House in ensuring government-wide coordination of the homeland security effort.

Should the Department Mix Apples and Oranges? Although the vast bulk of the proposed department's personnel and much of its budget will go to secure the nation's borders and transportation infrastructure, most of the agencies and functions the Bush administration proposes to merge into the new department address other aspects of the homeland security problem. Thus, a second pillar of the proposed department (built around the Federal Emergency Management Agency) deals with responding to attacks that have taken place, a third addresses chemical, biological, radiological, and nuclear (CBR&N) countermeasures, and a fourth responds to the need for integrating analysis of law enforcement and intelligence information.

While each of these pillars are responsible for some aspect of homeland security, it is not immediately obvious that all of them need to be responsive to a single Cabinet secretary. Take FEMA. This is one of the best run federal government agencies. It has excellent record, gained through years of responding to natural disasters, of dealing with state and local government entities and first responders. In its FY2003 budget, the Bush administration proposed that FEMA take central control of all training and grant programs for first responders, providing state and local authorities with the kind of one-stop shopping and integrated training program they have long demanded. Why, then, tear an agency with such a successful record from its roots and integrate into a much larger bureaucracy, with new command and control lines? Much of its day-to-day responsibility has nothing to do with terrorism--and whatever responsibility it does have for this area is fundamentally different from the preventive and protective counter-terrorism functions of other parts of the proposed department. No one proposes to merge the diplomatic functions of the State Department with the military functions of the Pentagon, even though both have a role in national security policy--including in countering terrorism. Might it not be better,

then, to leave FEMA be, and coordinate its counter-terrorism role as part of a well-functioning interagency process?

A similar set of questions arises in the case of the proposal to merge various CBR&N countermeasure activities into the department. To be sure, as the anthrax mailings showed, terrorism using weapons of mass destruction is a serious problem demanding our government's highest attention. We need to do much more in making sure terrorists cannot get their hands on such weapons or the materials needed to manufacture them--be it through more intensive non-proliferation measures abroad or tighter controls of dangerous chemicals, pathogens, and radiological/nuclear materials here at home. But none of these efforts is to be the responsibility of the proposed new unit, which is instead to coordinate the research and development of technologies and other measures to counter this threat here at home. In so doing, the proposal at times move in the opposite direction of what is needed--for example, when it proposes to take some of the bioterrorism work being done under the auspices of the Department of Health and Human Services, but not other parts, thus splitting functions that are now bureaucratically consolidated. It may well be the case that the federal government needs to consolidate its many, dispersed activities for dealing with the threat of weapons of mass destruction. But it is not at all evident that this should be done as part of a new department dealing with homeland security.

These are but two particular areas where the Bush administration proposes to mix different functions within a single department. There are others, notably all the non-homeland security functions that are now part of agencies to be merged. Congress needs to take a careful look at each of these proposals and determine whether the costs of change are worth the supposed benefit of integration.

Can Information be Analyzed without Access to Raw Data? Responding to recent revelations about data sharing problems within the FBI and between it and the CIA, the administration proposed to include in the new department an information analysis unit that would provide the fusion of disparate pieces of intelligence and other information data that until now was so evidently missing. This fusion is a good idea in principle. Today, there is no single entity in the government that has access to all the data collected by the intelligence community through wiretapping, spying, and other means abroad, by the FBI and law enforcement community through interrogation, surveillance, bugging, cybersurfing, etc. at home, and by the various border agencies through visa screening, manifest recording, and various other data gathering activities. The new information analysis unit is supposed to fill that niche.

But will the new unit be able to do its assigned task? As proposed, the answer is no. The new unit will have access only to FBI and CIA "reports, assessments, and analytical information relating to threats of terrorism in the United States," but not to any of the raw intelligence or law enforcement data on which these analyses and assessments are based. But that defeats the whole purpose of the new unit, for the analyses it receives are themselves based on incomplete information--reflecting, in the CIA's case, only the raw intelligence data the intelligence community has collected plus whatever other data the FBI and others may have shared with it and, in the FBI's case, only the law enforcement data it has collected and whatever other data the CIA decides to share with it. In other words, the analyses the information unit will receive and that are to form a major basis of its own assessment may be faulty because the underlying data

would not have been adequately shared. The only way in which the data sharing problem can be overcome--and a true fusion of intelligence and law enforcement information can occur--is if the department's proposed unit were to have access to all the data that forms the basis of the assessments and analyses it otherwise is to receive. Recognizing this problem, the administration suggests that the Secretary of the Homeland Security Department can request copies of specific pieces of raw data--but, of course, one cannot ask for information that one doesn't know exists!

Only if the proposed unit has access to all relevant raw intelligence and law enforcement data is there a chance that someone can connect the dots that might otherwise remain unconnected. Given the amount of data that comes into the various intelligence and law enforcement agencies, this is mammoth task that will likely take many thousands of skilled analysts to get the job done. Yet, according to its own figures, less than 1,000 people will be assigned to the Information Analysis and Infrastructure Protection Agency, and nearly all of those will come from agencies responsible for critical infrastructure protection. In other words, unless the new Secretary decides to hire thousands of new analysts, the proposed department will not have the ability to examine much of the information that will be coming its way--let alone the raw data that should be made available to it.

The questions of data access and available analysts suggest that the larger issue of how best to combine intelligence and law enforcement information collection and analysis efforts is unlikely to be easily resolved. There are critical questions of competencies (with the intelligence community allowed to collect data only abroad and the FBI focused on collecting data on crimes committed at home), questions of imagination (with the need for inventive people to second-guess--"red team"--ways in which the terrorists might choose to attack the next time), and questions of civil liberties (with data collection efforts constricted by the need to ensure the privacy and liberty of law-abiding citizens). These are very serious issues that Congress should debate in detail and with sufficient time. When it does so, it is unlikely to come up with a small information analysis unit that will only have access to work product, but not routinely to raw data, as the appropriate answer. It is, instead, likely to reach well beyond the confines of the proposed new department.

What is the Role of the White House Office of Homeland Security? By the administration's own reckoning, over 100 U.S. government agencies are in some way involved in the homeland security effort. The proposed department merges 22 of these agencies--leaving more than three-quarters of all homeland security agencies outside the new structure. As a result, there will continue to be a need for someone to coordinate the multiple agencies and activities involved in the effort. The Secretary of Homeland Security would presumably want to take on that task, but it is not very likely that his or her counterparts at Defense, Treasury, Justice, HHS, State, and elsewhere would look kindly on seeing their roles and activities coordinated by one of their own. Interagency coordination by Cabinet secretaries has never worked particularly well in the past and it is not likely to do so now.

That means something like the existing White House-based operation must remain in operation. The president would like the existing structure to remain in place. Set up by Executive Order last October, this structure consists of a homeland security council composed of the president and his senior advisers, and a homeland security office and director who advise the president and

manage the interagency process (including that of the HSC). It is a process that can, in principle, work effectively, as the national security decision-making process (on which this is modeled) has shown. But so far it hasn't. More than nine months after the terrorist attacks, the OHS still has not delivered the president and the country the national homeland security strategy that according to the Executive Order, is its job one. Tom Ridge proposed a major border security reorganization over six months ago, only to be shot down by his colleagues at Justice, Treasury, and Transportation. And rather than using the HSC inter-agency process to consider a major reorganization of the homeland security effort, the White House decided to go around it and to shut out the very administration officials who possess the greatest expertise in these matters.

If the president's proposal for a new department becomes a reality, this brief history suggests that the new 800-pound gorilla will be a mighty adversary of the OHS and its director. The president will have to fully back his OHS director and the inter-agency process run by that office, but that may be difficult if this means opposing the very department and secretary his own efforts helped create. (Nor is the record here very encouraging. During the first eight months of its operation, Bush did not adequately support Ridge and the OHS against criticism and attack from within the administration.)

If the Office of Homeland Security is to stand any chance of performing its vital coordinating functions successfully, then Congress may need to step in by giving the homeland security office, council, and director a status in law. There is ample precedent for this. The National Security Council was created by an act of Congress, and numerous other entities within the Executive Office of the President (from the drug czar and OMB to USTR and the Council of Economic Advisors) have statutory authority. Moreover, if the OHS and its director are to continue to have a major role in drawing up an integrated homeland security budget (as was the case for the FY2003 request), it is absolutely critical that the director not only have statutory authority but be accountable and answerable to Congress.

The Way Ahead

The president's proposal for creating a Department of Homeland Security is impressively ambitious. Congress should move with deliberate speed to review the proposal and decide on how best to proceed. There appears to be widespread agreement that parts of the president's proposal are both worthwhile and deserving of support. Merging the border and transportation security agencies (including consular affairs, as well as TSA, the Coast Guard, INS, Customs, and APHIS) with those agencies responsible for protecting the country's critical infrastructure is one such proposal. Creating a Cabinet-level agency composed of just these dozen or so agencies would represent a huge step forward--one Congress can, and probably should, take sooner rather than later.

Other elements of the president's proposal deserve more detailed study and consideration. For now, FEMA is likely to operate and contribute to the terrorist response effort more effectively if it remains outside the new department. The threat of terrorism employing weapons of mass destruction is deserving of a concerted and vigorous national response, but one that goes well beyond the limited consolidation of R&D tasks that the administration proposes for this department. And while the fusion of international and domestic intelligence and law enforcement information is clearly needed, how best to accomplish this result is something that ought to be

considered on the basis of the outcome of ongoing investigations by the intelligence committees on the Hill and an independent commission that still must be appointed.

The urgency of the threat counsels against delaying reorganization efforts--and it is a refrain the president and his supporters keep on repeating. But what good does it do to reorganize quickly if the end result is a government structure no better--and possibly even worse--than that exists today?

Meanwhile, all of us have a job to do, which is to make every effort to make our country more secure against terrorist attack. In the absence of any reorganization, it falls to Tom Ridge and his staff to take the lead in this effort. Unfortunately, the president has appointed Ridge to lead the effort on Capitol Hill and elsewhere to get his proposal turned into reality. But what about Ridge's day job--which is to lead, coordinate and mobilize the U.S. government in the effort to secure our nation against attack? If Ridge is going to focus on the legislative campaign, the president should immediately appoint another senior person with stature to head the Office of Homeland Security. We cannot afford to let down our guard even for one moment. Reorganization is important--but so is the ongoing effort to ensure we do everything possible to prevent another attack.