

# COMMENT

## CONTAINERIZATION OF CONTRABAND: BATTLING DRUG SMUGGLING AT THE FOURTH BUSIEST CONTAINER HANDLING FACILITY IN THE UNITED STATES

*Adam Smith\**

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## I. INTRODUCTION

As the fourth largest container port in the United States, the Port of Savannah, Georgia (the Port) is a perfect target for criminals seeking to illegally distribute drugs across North America.<sup>1</sup> The Port moves millions of containers in and out of the United States each year, making it one of the busiest sea ports in the nation.<sup>2</sup> Aside from the logistical difficulty of operating a shipping and receiving facility of this magnitude, security personnel have a particularly difficult battle to ensure a high level of safety and security at the Port.

The shipments that enter the Port have global origins and destinations. It is therefore vital to ensure that effective and efficient safety measures are in place to protect not only the employees of the port, but also the citizens of the entire nation. Deterring illegal drugs from entering the nation through the Port is one of these pivotal safety measures. Prior to September 11, 2001, illegal drug traffic was the primary concern of U.S. Customs officers.<sup>3</sup> However, post 9/11, the bulk of public awareness and concern is focused on terroristic threats from worldwide organizations.<sup>4</sup> The terror threat, coupled with recent government financial adversity, has made protecting the nation from illegal importation of drugs through its ports a more difficult task.<sup>5</sup>

Regardless of current public awareness, the indirect attack upon the nation's health and safety stimulated by illegal drugs is still a significant national issue, which the Port continues to fight daily. In May of 2014, a seizure of more than \$9 million worth of cocaine in a container at the Port demonstrated that the problem is still a very relevant threat to the nation.<sup>6</sup> The drug smuggling obstacles faced by security personnel, both state and federal, at the Port directly impact all residents, especially those within the state of Georgia. Despite the large amounts of taxpayer money spent on

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<sup>1</sup> Mary Carr Mayle, *On the River: Working Together to Make Ports Safer*, SAVANNAH MORNING NEWS, Sept. 8, 2011, <http://savannahnow.com/exchange/2011-09-08/river-working-together-make-ports-safer>; *US Customs to Build New Laboratory in Savannah*, ASSOCIATED PRESS STATE & LOCAL WIRE, Jan. 27, 2012.

<sup>2</sup> Mayle, *supra* note 1; *US Customs to Build New Laboratory in Savannah*, *supra* note 1.

<sup>3</sup> Thomas J. Schoenbaum & Jessica C. Langston, *An All Hands Evolution: Port Security in the Wake of September 11th*, 77 TUL. L. REV. 1333, 1368 (2003).

<sup>4</sup> *Id.*

<sup>5</sup> See Edward H. Ziegler, *American Cities and Sustainable Development in the Age of Global Terrorism: Some Thoughts on Fortress America and the Potential for Defensive Dispersal II*, 30 WM. & MARY ENVTL. L. & POL'Y REV. 95 (2005).

<sup>6</sup> *Custom Agents Seize \$9 Million in Cocaine from Georgia Ports*, TIMES-HERALD, May 9, 2014, <http://savannahnow.com/news/2014-05-08/customs-seizes-346-pounds-cocaine-port-savannah>.

screening and safety measures, including the \$12.3 million spent to fortify the Port since September 11, 2001, the smuggling of drugs through the state's largest port poses a risk to the health and safety of its citizens.<sup>7</sup> To permit the importation of these unregulated substances could allow for tainted, dangerous drugs and counterfeit prescription medications to find their way into unsuspecting localities across the state.

The 2007 criminal case of *United States v. Pulido-Tejedo* highlights the reality of the ongoing drug threat in the state of Georgia.<sup>8</sup> In *Pulido-Tejedo*, federal agents at the Port discovered multiple kilogram bricks of marijuana hidden within a shipment of washing powder from Mexico and subsequently followed the drugs as they made their way across the state of Georgia.<sup>9</sup> At one point during the elaborate scheme, the defendants left the drugs unattended in the rear of an unlocked U-Haul truck in an Atlanta-area K-Mart shopping center.<sup>10</sup> One driver of the U-Haul entered the store as a replacement driver exited and drove away in the truck containing the drugs.<sup>11</sup> This case shows just one example of the detailed planning that drug smugglers can employ, and the speed with which these illegal substances can make their way across the state.

First, this Comment gives a brief overview of the history and current status of the drug smuggling problem in the United States. Second, this Comment identifies efforts taken by local authorities to prevent the Port of Savannah from becoming one of the nation's largest drug channels. Third, this Comment discusses international regulations—or the lack thereof—that combat illegal drug smuggling before finally proposing an approach to improve current security measures by centralizing security through a single government agency.

## II. BACKGROUND

With the increased globalization of the twentieth and twenty-first centuries, however, ports have regained their significance in the international shipment of goods and resources.<sup>12</sup> This trend toward globalization has

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<sup>7</sup> *US Ports Spend Big on Security in a Post-9/11 World*, ASSOCIATED PRESS ST. & POST STANDARD, Aug. 12, 2011, [http://www.syracuse.com/news/index.ssf/2011/08/us\\_ports\\_spend\\_big\\_on\\_security.html](http://www.syracuse.com/news/index.ssf/2011/08/us_ports_spend_big_on_security.html).

<sup>8</sup> *United States v. Pulido-Tejedo*, No. CR407-037, 2007 U.S. Dist. Lexis 44312 (S.D. Ga. June 18, 2007).

<sup>9</sup> *Id.* at 2–3.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Jerome Verny & Christophe Grigentin, *Container Shipping on the Northern Sea Route*, 122 INT'L J. PROD. ECON. 107, 108 (2009).

increased over the past two decades, resulting in an increased demand for more efficient transportation.<sup>13</sup> With air travel becoming an additional means for the international transportation of goods in the late twentieth century, ports have lost some of their prominence with respect to *rapid* transportation, but, sea shipments remain a cost effective way to move large amounts of cargo internationally.<sup>14</sup>

The effectiveness of cargo shipping by sea is due in large part to the revolution of the port system. Container shipping has “allowed the world to move beyond the transport of bulk goods to a rapid, smooth and secure trade in all sorts of merchandise, simply by asking handlers to work with the packaging rather than the content during loading and transshipment.”<sup>15</sup> The uniform size of containers and the efficient procedures executed within ports have allowed for a dramatic decrease in shipment costs.<sup>16</sup> The importance of this new containerized shipping system is evident at the Port, as it is the fourth busiest container port in the nation and moves the equivalent of 2.8 million twenty-foot boxes each year.<sup>17</sup> The Port processes \$54 billion worth of containerized cargo per year, yielding approximately \$18.5 billion in statewide income.<sup>18</sup> The Port also has a massive impact on the workforce, as it sustains 100,000 Metro-Atlanta jobs and maintains another 250,000 jobs statewide.<sup>19</sup> The upcoming \$652 million dredging project demonstrates the importance of the Port on not only the state of Georgia, but also the entire nation.<sup>20</sup> This project is being financed by both federal and state funding.<sup>21</sup> It will allow the Port to handle larger ships and to stay competitive in the modern shipping market.<sup>22</sup> In a port of this magnitude, it is impossible to thoroughly search each shipment without expending unconscionable amounts of money on security personnel and unduly burdening the flow of shipments throughout the Port. Due to the strategic location of the Port and its security personnel’s inability to fully screen every shipment, the Port is a perfect target for drug smugglers.

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<sup>13</sup> *Id.*

<sup>14</sup> For more information on the costs of air versus ocean freight see David Hummels, *Transportation Costs and International Trade in the Second Era of Globalization*, 21 J. ECON. PERSPECTIVES 131 (2007).

<sup>15</sup> *Id.* at 109.

<sup>16</sup> *Id.*

<sup>17</sup> Mayle, *supra* note 1.

<sup>18</sup> David William Bobo Mullens, III, Recent Development, *Dredging the Port of Savannah to Deepen Georgia’s Connections Worldwide*, 42 GA. J. INT’L & COMP. L. 269, 269 (2013).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 271.

Illegal drugs have been a longstanding problem within the United States, leading to increased federal efforts to eliminate and combat the problems posed by these harmful substances beginning in the early twentieth century. Due to an increase in the popularity of these substances in the mid-1960s, the nation recognized the problem as a pertinent threat, and efforts to control the issues were taken more seriously.<sup>23</sup> Increased national awareness culminated in strong legislative and executive efforts to control the problem during the Nixon, Reagan, and Bush administrations.<sup>24</sup> However, the proper methods and the extent to which these substances should be controlled have become even more of a political question in the twenty-first century. Traditionally, conservatives were known to take a strong stand against these illegal substances, while liberals wished to loosen criminal convictions for drug crimes, which statistically result in racial disparities in the prison population.<sup>25</sup> These different positions have changed recently, with many conservatives retreating from these ideas due to the obvious failures of the “War on Drugs,” the overwhelming costs of policing the substances, and the racial inequality in prison statistics. Some are even now calling for formerly banned substances to be used recreationally, which has resulted in recreational marijuana being legalized in several states.<sup>26</sup>

### III. ANALYSIS

Attempting to prevent drug smuggling through ports is not a novel endeavor. In fact, security personnel at the Port employ multiple safety procedures and screening mechanisms to check as many shipments as possible, as closely as possible, given their constraints.<sup>27</sup> These efforts must

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<sup>23</sup> See Lisa N. Sacco, Cong. Research Serv., R43749, *Drug Enforcement in the United States: History, Policy, and Trends* (2014).

<sup>24</sup> Jefferson M. Fish, *Is Our Drug Policy Effective? Are There Alternatives?*, 28 *FORDHAM URB. L.J.* 9, 15 (2000).

<sup>25</sup> See Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 *STAN. L. REV.* 1271, 1272–75 (2004); see generally Susan Stuart, *War as Metaphor and the Rule of Law in Crisis: The Lessons We Should Have Learned from the War on Drugs*, 36 *S. ILL. U. L.J.* 1 (2011).

<sup>26</sup> See Silvia Irimescu, *Legalizing Marijuana: State and Federal Issues: Marijuana Legalization: How Government Stagnation Hinders Legal Evolution and Harms a Nation*, 50 *GONZ. L. REV.* 241 (2015); see also Michael Vitiello, *The Road To Legitimizing Marijuana: What Benefit At What Cost?: Why the Initiative Process Is the Wrong Way to Go: Lessons We Should Have Learned from Proposition 215*, 43 *MCGEORGE L. REV.* 63, 83–84 (2012).

<sup>27</sup> For more information on the balance of security and financials, see Mary Carr Mayle, *Port Security: Creativity, Collaboration Helping Commerce to Continue Smooth Sailing*, *SAVANNAH NOW* (Sept. 11, 2011, 10:44 AM), <http://savannahnow.com/exchange/2011-09-11/port-security-creativity-collaboration-helping-commerce-continue-smooth-sailing>.

provide a balance between the resources available to security personnel, the efficient delivery of legal goods through the Port, and the safety of the public. These safety and security efforts are often lucrative, as is evident by the 2014 cocaine seizure mentioned above. Despite these efforts, it remains impossible to determine what each individual shipment that passes through the Port contains, and therefore, there are still opportunities for drug smugglers to move illegal goods through the Port.<sup>28</sup>

Large seizures of drugs bring public approval and highlight the success of security measures, but they also raise the question of what illegal shipments go undiscovered as they travel through the Port. The type of criminal who transports over \$9 million in cocaine through the Port of Savannah is not a beginner in the drug smuggling world. Seizures of this magnitude evidence the vast distribution networks used by organized drug smugglers and crime rings. When most people imagine drugs moving across the state, they envision small-scale drug dealers concealing the products in the trunk of a car. However, given the vast availability of these illegal substances, as indicated through the many arrest reports and convictions on drug charges, these substances move throughout the nation via much more elaborate distribution networks.<sup>29</sup> Large seizures validate that these distribution networks are active. Such confiscations pose the question of whether the \$9 million seizure mentioned above was one shipment among millions of its kind that go undetected, the seizure a mere result of a novice who did not realize the effectiveness of the Port's security measures. A seizure of such magnitude suggests that these types of shipments are not a rare occurrence.

However vast the problem may be, the government agencies that work to protect the Port are doing all they can to combat the problem with their limited resources. One of the new approaches taken by the Port's security is to establish the most effective security shield possible, with coordination and cooperation from multiple government agencies to create a larger, more efficient security force. In a previous statement, Georgia Ports Executive Director, Curtis Foltz, when describing the significance of these new joint ventures, stated "[t]here's no doubt our ports are stronger now. . . . [b]ut we couldn't do it without our federal partners and first responders."<sup>30</sup> This idea was further embraced by officials at gathering of federal and state officials at the Port where Brock Nicholson, Special Agent in charge of Homeland Security Investigations for U.S. Immigration and Customs Enforcement, stated, "[w]orking in conjunction with our state, local, and other federal

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<sup>28</sup> Schoenbaum & Langston, *supra* note 3, at 1368.

<sup>29</sup> See Bruce D. Johnson, *Patterns of Drug Distribution: Implications and Issues*, 38 SUBST. USE MISUSE 1789 (2003).

<sup>30</sup> Mayle, *supra* note 1.

agencies, we are aggressively and effectively disrupting and dismantling the criminal networks that attempt to smuggle drugs . . . through and around the Port of Savannah.”<sup>31</sup> These coordinated efforts allow officials to screen every piece of outgoing containerized cargo for radiation.<sup>32</sup>

Along with the coordinated efforts used to protect the nation from illegal cargo, the officials at the Port have begun using technological innovations, including radiation monitors, x-ray machines, gamma-ray machines, and drug-sniffing dogs to screen shipments.<sup>33</sup> These technological devices increase efficiency and protect against illegal drugs without spending the additional funds required to accomplish the same tasks through manual labor. Technological innovations have proven popular when it comes to government funding, as evidenced by the recent construction of a 35,000 square-foot U.S. Customs facility used to examine contraband, such as illegal drugs discovered in shipments.<sup>34</sup>

The creativity of drug smugglers has made the problem of detection even greater, demonstrated through items such as drug-filled Valentine’s Day rose stems and boa constrictors sewn up with cocaine.<sup>35</sup> Even the U.S. Presidential Election can be a possible disguise, as sneakers labeled with President Obama’s well-known “Yes We Can” slogan were found laced with drugs in 2008.<sup>36</sup>

#### *A. Lack of Funding*

It appears that the real barrier to solving the problem of illegal drug smuggling at the Port is money. The shortage of funding affects all government agencies attempting to work together to keep the Port safe. In late 2014, the Consumer Product Safety Commission acknowledged that it did not have enough money or staffing to screen, search, and seize shipments, despite Congressional approval of an additional \$4 million for the commission’s port surveillance program.<sup>37</sup> This problem was echoed by the Food and Drug Administration (FDA), which screens the Port for illegal drugs and counterfeit prescription medication, when the Commissioner of the

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *US Customs to Build New Laboratory in Savannah, supra* note 1.

<sup>35</sup> Rachel Abrams, *At U.S. Ports, Even Santa’s Bag Might Be Peeked Into*, N.Y. TIMES, Dec. 19, 2014, [http://www.nytimes.com/2014/12/20/business/at-us-ports-even-santas-bag-might-be-peeked-into.html?\\_r=0](http://www.nytimes.com/2014/12/20/business/at-us-ports-even-santas-bag-might-be-peeked-into.html?_r=0).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

FDA said that it only has four inspectors at the Port.<sup>38</sup> Even though this number is expected to double, eight inspectors is an insufficient amount of manpower for the nation's fourth busiest port.<sup>39</sup> The need for funding was further evidenced by the former U.S. Representative from Georgia, Jack Kingston, who voiced his concern for shipments to be adequately inspected but stopped short of endorsing any increase in funding.<sup>40</sup>

Ultimately the real problem these agencies face in their attempt to stop the smuggling of illegal drugs through the Port is available funding. With national attention focused on threats from terrorist organizations and issues that would affect individuals more personally—like public education deficiencies and the nation's struggling job market—pleas for increased funding for security at the ports may fall on deaf ears.<sup>41</sup>

### *B. International Regulation*

One possible way to stem the tide of illegal drugs entering the country at the Port is to stop the drugs at their source, thereby preventing them from making their way to the Port in the first place. One way to accomplish this without increasing funding would be through international law and regulations related to the illegal smuggling of drugs. These regulations would allow smugglers to be apprehended before their products ever made it to the Port.

The shipment of illegal narcotics has received international attention for over 100 years. Efforts to control this problem began in 1909, with the meeting of thirteen states in Shanghai to discuss the transportation of narcotics for non-medical consumption.<sup>42</sup> This international problem continued to increase throughout the twentieth century, eventually leading the United Nations to address the problem with the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Convention).<sup>43</sup> The Convention asserted that the "illicit

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<sup>38</sup> Russ Bynum, *FDA Chief Wants More Inspectors at Savannah Port*, DAILY REP., Apr. 9, 2012, <http://www.dailyreportonline.com/id=1202551082999/FDA-chief-wants-more-inspectors-at-Savannah-port>.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> A Gallup poll indicates in March of 2017 only 1% of individuals think drugs are the number one problem in the United States, whereas 12% think immigration is. *Most Important Problem*, GALLUP, <http://www.gallup.com/poll/1675/most-important-problem.aspx> (last visited Apr. 10, 2017).

<sup>42</sup> R.I.R. Abeyratne, *International Initiatives at Controlling the Illicit Transportation of Narcotic Drugs by Air*, 63 J. AIR L. & COM. 289, 291 (1997).

<sup>43</sup> *Id.* at 362.



traffic is an international criminal activity, the suppression of which demands urgent attention and the highest priority.”<sup>44</sup> Parties to the Convention “were required to ‘take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their perspective domestic legislative systems.’”<sup>45</sup>

Although there was widespread ratification of the 1988 Convention, with 188 state parties ratifying it, the drug trade has continued to flourish.<sup>46</sup> The lack of success of the Convention is highlighted in a 2011 memorandum in which President Obama designated twenty-one of those 188 states as either major drug transit or major illicit drug producing countries.<sup>47</sup> This failure is partially due to the power of the drug cartels to influence politics and government action, especially in impoverished nations. The United Nations’ International Narcotics Control Board reported that drug-related corruption has increasingly weakened the criminal justice systems in such countries.<sup>48</sup> This led the Eleventh Circuit Court of Appeals in 2012 to find that drug trafficking is not yet considered a violation of customary international law, as “[g]overnments corrupted by the interests of drug traffickers are not simply unable to prosecute drug traffickers, but are often unwilling to do so because their economies are dependent upon the drug trade.”<sup>49</sup> The court further found that “[t]he persistent failure of these specially affected States to comply with their treaty obligations suggests that they view the curtailment of drug trafficking as an aspirational goal, not a matter of mutual legal obligation under customary international law.”<sup>50</sup>

This obvious failure of international efforts to control trafficking of illicit narcotics has led to action by the U.S. Congress to stop the movement of these drugs in extrajudicial waters before they make their way into the nation’s ports. In 1980, Congress enacted the first version of what is known today as the Maritime Drug Law Enforcement Act (MDLEA).<sup>51</sup> MDLEA provides that “an individual may not knowingly or intentionally manufacture or distribute, or possess with intent to manufacture or distribute, a controlled substance on board a vessel . . . subject to the jurisdiction of the United States,” and Congress specifically wrote the statute so that it would apply outside the territorial jurisdiction of the United States.<sup>52</sup>

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<sup>44</sup> *Id.* at 363.

<sup>45</sup> *Id.*

<sup>46</sup> *United States v. Bellaizac-Hurtado*, 700 F.3d 1245, 1255 (11th Cir. 2012).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> 46 U.S.C.A. §§ 70501–70508 (West through P.L. 114-327).

<sup>52</sup> *Id.* § 70503.

MDLEA applies when a nation has consented to or waived objection to enforcement of U.S. law, as well as when vessels are in the customs waters of the United States or in the territorial waters of a foreign nation that has consented to the enforcement of the United States laws.<sup>53</sup> The MDLEA definition is important because it gives the United States jurisdiction over stateless vessels commonly used by drug smugglers, which are unregistered and do not claim a nationality.<sup>54</sup>

MDLEA is an explicit recognition by Congress that the international trafficking of illicit drugs poses a serious threat to the United States, one which is not being sufficiently addressed by other nations. This is apparent from the MDLEA's establishment of U.S. jurisdiction over stateless vessels, even when they fall within the jurisdiction of other nations.<sup>55</sup> Such a measure is necessary to combat the cartel-controlled politics of major drug-producing nations that refuse to address narcotics problems.

Unfortunately, MDLEA is not the answer for complete port security. First, MDLEA is a statute, which is "at the outskirts of Congress's power to criminalize extraterritorial conduct."<sup>56</sup> This is evidenced by the Eleventh Circuit's finding that the statute is an unconstitutional exercise of power by the United States in its ruling in *United States v. Bellaizac-Hurtado*.<sup>57</sup> Since the MDLEA stretches the outer bounds of Congressional authority, it is possible that the doctrine will be found to be unconstitutional by the Supreme Court. Thus, it would be unwise for the Port to rely on this statute allowing seizure of illicit drug traffickers in international waters as a means of protecting the Port.

Second, MDLEA is an acknowledgement that international efforts have failed to properly curtail the drug trafficking problem. This has left the United States to combat the problem without much-needed international support. Given the recent difficulties of the United States economy and a political shift toward decreasing defense funding, it is impossible for the United States to solve this problem alone. Even if MDLEA is upheld as constitutional, the government lacks the resources to properly patrol the vast international waterways and combat all international drug shipments before they reach the Port. Increased screening measures at the Port itself will therefore remain important.

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<sup>53</sup> *United States v. Carvajal*, 924 F. Supp. 2d 219, 233 (D.D.C. 2013), *aff'd*, *United States v. Miranda*, 780 F.3d 1185 (D.C. Cir. 2015).

<sup>54</sup> *Id.* at 224.

<sup>55</sup> *Id.* at 233.

<sup>56</sup> *Id.* at 224.

<sup>57</sup> *Id.*; *United States v. Bellaizac-Hurtado*, 700 F.3d 1245 (11th Cir. 2012).

Finally, MDLEA does not guarantee any resources to combat the problem of international drug shipments but only provides jurisdiction for the United States to prosecute individuals apprehended for violations of its provisions. Thus, there is no assurance that the act will provide any incentives or added resources for military or other government organizations that patrol the waters as a matter of national defense. Further, drug shipments in international waters may not even be bound for the United States, and if they are, the shipments may only pose an indirect threat to the health of the nation and not a direct threat of attack upon the nation itself. This is the primary threat addressed by the nation's defense organizations operating in international waters, such as the United States Coast Guard and United States Navy.

### *C. Creating a Centralized Federal Agency*

MDLEA does make it clear that the international shipment of drugs is still a problem affecting the United States.<sup>58</sup> Given the lack of support from other foreign nations and the impossibility of the United States defense forces to combat the problem alone, it is increasingly important for the Port to increase its screening efforts. While the security efforts at the Port work to compensate for the failure of international efforts to control illicit drugs, prosecutorial efforts exist to combat the distribution of these drugs once the drugs make their way into the nation. Such prosecutions, however strong their potential deterrent force, often only reach low-level dealers and users of the drugs. Consequently, they may not serve as a deterrent against the major smugglers who move vast quantities of illegal substances into the nation. An appropriate response to this gap in defense is to centralize security at the Port, thereby increasing the efficient use of resources and strengthening screening measures at the Port.

One of the problems still evident at the Port, regardless of the efforts of the various government groups to work together, is the many different approaches that are taken. Different governmental groups have different goals and objectives with different ways of achieving those objectives, and each of these organizations also has individual leadership and funding. One possible approach to resolving this issue would be to combine the agencies so that they could truly work as one cohesive security body. Instead of each organization allocating funding and implementing techniques and procedures per their individual leadership's suggestions, Congress should statutorily combine port security into one cohesive group.

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<sup>58</sup> 46 U.S.C. § 70501 (2015) (West through P.L. 114-327).

Statutory action by Congress to combine the different agencies working at various U.S. ports into one cohesive port security group could drastically increase efficiency. All of the administrative matters of each individual agency would no longer be handled internally but instead could be centralized in a federal port authority with complete jurisdiction over all ports. It is inefficient for organizations such as the FDA to send their own regulators to the Port in attempts to accomplish their own individual goals.<sup>59</sup> These individualized regulators answer to leadership in their agency who may have their priorities focused elsewhere. In the case of the FDA, the lack of focus on the Port is evident through their allocation of only four inspectors to that site.<sup>60</sup> A new centralized agency with the sole concern of stopping illegal and unsafe goods from entering ports would incorporate the screening goals of the FDA and other organizations currently protecting the Port into one unified body.

This type of statutory centralization could also ease the burden of funding, as it would re-allocate the money currently budgeted to the many separate government agencies handling port security to the one newly-created agency. Such an agency would also allow for greater Congressional oversight of port security as a single agency could be tasked with addressing concerns about port security, ending the mass confusion between agencies about who is searching for what. It would stop any finger-pointing among agencies when a harmful substance is able to make its way into the country because there would be only one agency that was accountable for all illegal or unsafe breaches of security.

Congress could also consider further centralizing this protection by preempting state governments from securing the nation's ports.<sup>61</sup> In *English v. General Electric Company*, the Supreme Court found that federal preemption is possible under the Supremacy Clause. Specifically, "federal law may preempt local law by an express statutory provision; by field preemption, Congress's placing a field within the 'exclusive governance' of federal law; or by conflict preemption when state law actually conflicts with federal law."<sup>62</sup> Currently, the Georgia Port Authority enforces Georgia law at the Port and contributes to the safety measures and screening at the Port.<sup>63</sup> This further confuses jurisdictional problems and screening measures due to

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<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Susan Raeker-Jordan, *The Pre-Emption Presumption that Never Was: Pre-Emption Doctrine Swallows the Rule*, 40 ARIZ. L. REV. 1379 (1998) (discussing the basics of federal pre-emption).

<sup>62</sup> *English v. General Elec. Co.*, 496 U.S. 72, 78–80 (1990).

<sup>63</sup> O.C.G.A. § 52-2-9 (2010).

an overlap of state and federal personnel attempting to perform the same tasks. Express preemption by Congress in the area of port security would dispel this confusion and direct federal funds, which are currently going to the states, to the newly created agency for the purpose of port security.

Funding is the largest barrier to enhancing port security and stopping the inflow of illegal drugs through the Port. Each time Congressional funding goes to a state or federal agency, administrative costs and fees are increased. Divesting all port security funding into one single organization would save administrative costs by cutting out the agencies currently acting as middlemen and allowing the money to be applied directly to security measures.

With funding centralized to one organization, Congress would be able to see a complete breakdown of what is being spent on port security without having to go through the process of discovering which organizations are currently working at a particular port and then searching the records of those organizations to see their fund allocations for port security. The use of a single organization would provide more transparency and would make the level of security at the ports subject to political control, as voters would be able to see how funding was being used to combat the problem. Complete eradication of the flow of all illegal drugs through the Port would cost an enormous amount of taxpayer money, but, with agency centralization voters would be able to decide how much tax funding they would be willing to allocate to the agency in proportion to the importance they placed on the problem. If the public did not feel that port security was being taken seriously enough and illegal drugs were too frequently making their way into the nation, they could vote for elected officials who ran on platforms to increase funding to the security measures. In this way, the issue would be treated similarly to military funding.<sup>64</sup>

#### *D. An Alternative Approach*

Enhancing port security could also be accomplished through a nearly opposite approach by the federal government. For example, Congress could choose to stop funding federal agencies that are currently engaged in port security and leave the problem in the sole care of the states. This approach could be beneficial to the Port and to Georgia, because it would allow the state of Georgia to spend resources in a way that would directly benefit itself. This approach may be flawed, however, because national security is typically handled much more efficiently at the federal level. The Port is extremely

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<sup>64</sup> See Jane S. Schacter, *Digitally Democratizing Congress? Technology and Political Accountability*, 89 B.U. L. REV. 641 (2009) (discussing the accountability of Congress and responsiveness to political opinion in a modern technological society).

important to the state of Georgia, as is obvious from its massive generation of revenue and jobs. As a result, the state would have a much higher interest in securing the Port than the federal government.

Although this state-centered approach may be more lucrative and may seem much more appealing to those who advocate for a less centralized, more state-oriented form of government, it poses very serious threats to the remainder of the country. Georgia's interests would be solely in securing the Port to the extent necessary to protect the state itself from harm. In *most* situations this goal would overlap with the federal goals of port security. Georgia would have no interest, however, in protecting the country broadly from shipments that might ultimately ship to places far outside of the state. Thus, if the only source of security for the Port was the state of Georgia, drug smugglers could hide illegal substances in shipments departing to the West Coast or other destinations far from Georgia, leaving a high probability that state authorities would overlook the shipments as there would be little incentive for the state to screen goods that were leaving the state.

#### IV. CONCLUSION

Given the possible diverse incentives of states attempting to combat the problems of port security alone, the best approach would be to create a centralized federal agency. This newly created federal agency would answer directly to Congress and allow elected officials to hold a single agency accountable for all security breaches and enforcement procedures at the nation's ports. This centralized agency would also allow voters to better comprehend the resources being used to protect the nation from harmful substances traveling through the ports. Voters would be able to see how much money was allocated to port security. Additionally, this approach would serve the incentives of the decentralized state approach, because state voters could elect representatives and senators to the U.S. Congress who run on platforms similar to their views on port security.

The Port of Savannah is the nation's fourth busiest container port.<sup>65</sup> The economic importance of the Port, however, is matched by the threats it may pose to the health and safety of both the State of Georgia and United States as a whole. The size and location of the Port makes it a perfect target for illegal smugglers of drugs to attempt to move their shipments, and the task of stopping these smugglers is more difficult today than ever before. A possible solution to this problem that should be considered, is express Congressional preemption in the area of port security, which would centralize funding,

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<sup>65</sup> Mullens, *supra* note 18.

increase efficiency, and hold Congressional representatives politically accountable if security measures at the Port are found to be inadequate in the eyes of the public.

