

Borders and Terrorism

Testimony before a Senate Subcommittee on Terrorism

by Steven Camarota

The nation's responses to the horrific attacks of September 11 will clearly have to be in many different areas including military retaliation, freezing terrorist assets, diplomatic initiatives, improvements in intelligence gathering, and expanded security measures at airports, utilities and other public places. But one aspect of increased preparedness must not be overlooked – changes in immigration and border control. Though all the details have been released, it seems clear that the nineteen terrorists of September 11 were foreign citizens and that most entered the United States legally as tourists, business travelers, or students. This was also true of the perpetrators of previous terrorist acts, including Ramzi Yousef, mastermind of the first World Trade Center bombing in 1993; Mir Amal Kasi, murderer of two CIA employees the same year; and Sheik Omar Abdel-Rahman, convicted in 1995 of plotting a terror campaign in New York.

While it is absolutely essential that we not scapegoat immigrants, especially Muslim immigrants, we also must not overlook the most obvious fact: the current terrorist threat to the United States comes almost exclusively from individuals who arrive from abroad. Thus, our immigration policy, including temporary and permanent visa issuance, border control, and efforts to deal with illegal immigration are all critical to reducing the chance of an attack in the future.

Much has been written about how we are

involved in a new kind of war. In this new kind of conflict, America's borders are major theaters of operations. This is because the primary weapons of our enemies are not aircraft carriers or even commercial airliners but rather the terrorists themselves; thus keeping the terrorists out or apprehending them after they get in is going to be an indispensable element of victory. The simple fact is that if the terrorists can't enter the country, they won't be able to commit an attack on American soil.

The president implicitly acknowledged this fact in announcing the creation of a new Office of Homeland Security, which "will lead, oversee and coordinate a comprehensive national strategy to safeguard our country against terrorism." In a very real sense, we already have a homeland security agency; it's called the Immigration and Naturalization Service (INS). The precursor of the INS was established in the Treasury Department in 1891 and moved to the new Department of Commerce and Labor in 1903. But in 1940, as war neared, it was moved to the Department of Justice. As Cornell professor Vernon Briggs has written, the move was made because "it was feared that immigration would become a way of entry for enemy spies and saboteurs," and President Roosevelt himself said the change was made solely for reasons of "national safety." A history of the INS describes its war-related duties: "Recording and fingerprinting every alien in the United States through the Alien Registration Program; ...constant guard of national borders by the Border Patrol; record checks related to security clearances for immigrant defense workers..."

A Fundamental Change in Attitude About Nation's Borders

Most Americans understand that our border is a critical tool for protecting America's national interests. (By border I mean any place where foreign citizens enter the United States.) A Zogby International poll taken in the wake of the attacks

Steven Camarota is Director of Research at the Center for Immigration Studies (www.cis.org) in Washington, DC. This testimony was presented to the Senate Judiciary Committee's Subcommittee on Technology, Terrorism, and Government Information, October 12, 2001

found that the overwhelming majority of Americans, across all races, regions, incomes, and political beliefs blamed lax border control and screening of immigrants for contributing to the attacks and believed that improved immigration enforcement would reduce the likelihood of future atrocities. There can be little doubt that greatly stepped-up efforts to control the border

***"...our mechanisms for
controlling and monitoring
the movement of foreign
citizens across our borders
must be improved...overseas,
at the border itself, and
inside the country."***

would be met with overwhelming support by the American people. Unfortunately a small but politically very influential portion of America's leadership has come to see our borders as simply obstacles to be overcome by travelers and businesses. This attitude clearly has to change.

If we take the physical safety of our people seriously, our mechanisms for controlling and monitoring the movement of foreign citizens across our borders must be improved in three places: overseas, at the border itself, and inside the country.

Visa Processing Overseas

Entry to the United States is not a right but a privilege, granted exclusively at our discretion. For the most part, that discretion is exercised by members of the State Department's Bureau of Consular Affairs, often referred to as the Consular Corps. Among their other duties, these men and women make the all-important decisions about who gets a visa to enter the United States, making them the forward guard of homeland defense – America's other Border Patrol.

RECENT IMPROVEMENTS

Unfortunately, the Consular Corps has neither the manpower nor the tools to fulfill this heavy responsibility properly. Most importantly,

management of the Consular Corps offers distorted incentives to officers in the field. Mary Ryan, who became Assistant Secretary of State for Consular Affairs in 1993 and is in charge of visa issuance and the other consular responsibilities, has overseen genuine technical improvements in the issuing of visas. These changes have included making visas machine-readable and more difficult to forge than in the past. Also, the "watch list" of people who should not be granted visas is now computerized, replacing the old microfiche-based system in place until just a few years ago.

THE AMERICAN PEOPLE AND NOT VISA APPLICANTS
ARE THE CUSTOMERS

But along with improvements, the Consular Corps has also adopted a culture of service rather than skepticism, in which visa officers are expected to consider their customers to be the visa applicants. Thus, satisfying the customer – the foreign visa applicant – has become one of the most important goals, leading to pressure to speed processing and approve marginal applications. As one former Foreign Service officer has written, "State Department procedures call for supervisory review of refusals, but not issuances – thus, relatively inexperienced junior officers are trusted to issue visas but are second-guessed on refusals." Visa officers are judged by the number of interviews conducted each day and politeness to applicants rather than the thoroughness of screening applicants. This is especially ironic given that the law requires precisely the opposite approach, placing the burden of proof on the applicant for a temporary non-immigrant visa.

A CONFLICT OF INTEREST BETWEEN VISA
PROCESSING AND DIPLOMACY

Responsibility for issuing visas fell to the State Department because it was the only agency with offices overseas, where the demand was. But it is difficult to imagine two less complementary functions than diplomacy and immigration enforcement. The diplomat's goal of promoting cooperation and compromise is sometimes in conflict with the gatekeeper's goal of exposing fraud and ensuring compliance with the law. This systemic mismatch is likely to persist regardless of management changes and may be remedied only by transferring all visa-

issuing responsibilities overseas to the INS or perhaps a new "Visa Corps."

A NEW SEPARATE "VISA CORPS?"

A new free-standing visa-issuing agency would have offices in consulates around the world and would issue visas and be answerable not to the local ambassador, but to the head of this new agency or perhaps even the head of homeland security. If INS were to take control of visa-processing overseas, then the Visa Corps could be answerable to INS headquarters in Washington. Moreover, if visa-

"The visa process should start with each applicant's fingerprints being digitally scanned into an integrated system which can be accessed by everyone involved in the immigration process."

processing were the career choice of all visa officers, those who would work in this area would be able to hone their skills at spotting fraud or security risks. Visa officers need to be highly-trained professionals, specializing in their function, respected by their agency, and insulated, to the extent possible, from political pressure. Such a system would be an invaluable asset in making our nation safer from terrorism.

MORE RESOURCES ARE NEEDED

Administrative changes, of course, won't matter much if there aren't enough people to handle the work. The Bureau of Consular Affairs has only 900 Foreign Service officers overseas, assisted by 2,500 foreign nationals, and the demand for visas to visit the United States is enormous. Last year, the State Department issued 7.1 million non-immigrant visas, up fifteen percent from 1995, and more than triple the number issued thirty years ago, when the majority of visas were issued to citizens of countries (mainly Western Europe and Japan) who now no longer need visas

when arriving on short visits.

Because of this ballooning workload, all junior Foreign Service officers are required to adjudicate visa applications for a year or more, turning this profound responsibility into a dreaded rite of passage for new Foreign Service officers. Consular officers often have no more than a few minutes to assess each application. What's more, visa responsibilities are held in such low regard institutionally that consular ranks are often filled by unemployed spouses of local Foreign Service officers.

WATCH LISTS AND BIOMETRIC IDENTIFICATION

But even with adjusted incentives and adequate personnel, successfully handling such an enormous workload and keeping out those who would do us harm require the right tools. The primary tool in flagging terrorists is the "watch list" (also called the "look out" system), a compilation of several million people who are not to be issued visas. Obviously, effective intelligence is required for the watch list to be valuable, but being based as it currently is solely on names, rather than also using a biometric identifier like a fingerprint, means that many possible terrorists might slip through. While fingerprints will never be available on most of those on the list, many persons on the watch list have been arrested or detained by authorities in other countries or on previous stays in the United States. To the extent possible, we need to obtain these fingerprints and make them part of the watch list database.

To be most effective, the visa process should start with each applicant's fingerprints being digitally scanned into an integrated system which can be accessed by everyone involved in the immigration process – overseas, at the border, and within the country. These fingerprints should be checked against the watch list. Ideally, visitors' fingerprints should be scanned again when they enter the country and again when they leave. This wouldn't be inexpensive to establish, but the technology is already widely used; in fact, the Border Patrol has been scanning fingerprints of illegal aliens apprehended on the Mexican border for several years now. Gathering applicant fingerprints and scanning them again when a person enters and leaves the country would serve many purposes: First, it would be a way of definitively determining that certain individuals have entered the country and also

that they have left when they were supposed to. Second, it would be a way of excluding those from the watch list for whom we have fingerprints. Third, it would establish identification, ensuring that the person issued the visa is the same person entering the country. Fourth, it would prevent individuals from going from consulate to consulate using different identities if they have been denied a visa at one location. Fifth,

"...getting a visa to come to America is a privilege, not a right, and it is only common sense to exclude those who advocate violence toward our country."

providing the U.S. government with fingerprints would by itself be a significant deterrent to would-be terrorists who certainly would be reluctant to give the government this information.

To the extent possible, we also need to put photos of suspected terrorists on the watch list as well. If we took a digital photo of every visa applicant and ran it through facial recognition software (which is already pretty well developed), along with fingerprints for each applicant, we might also be able to identify suspected terrorists even if they apply for a visa using a false identity. While something like a facial recognition system would take time to implement, there are other simpler things we can do right away to make the list much more effective. The State Department's watch list could include access to the FBI criminal database; at present it does not. With the right management, staffing, and technology, the process of screening those we want to keep out would be much more effective. A number of procedural and legal changes would also help.

EXCLUDE ALL ENEMIES OF AMERICA

Visa officers should be instructed to deny visas to people who are clearly enemies of America but who have not actually committed a terrorist act.

Currently, the law makes it extremely difficult to

turn down an applicant because of his "beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States." As the law now reads, keeping out a terrorist sympathizer, who publicly organizes demonstrations calling for the destruction of America or actively distributes Osama bin Laden videos, but who, as far as we know, hasn't yet raised money for terrorist groups or planned out an assault, requires the Secretary of State to personally make the decision and then report each individual instance to congress. As a result, few if any individuals are excluded based on their anti-American beliefs.

We will not, of course, know the political beliefs of most applicants. However, just as we learn about the possible terrorist links of some individuals from friendly governments as well as our own intelligence, we will also learn of those who express strong anti-American views. These individuals can then be added to the watch list. Some may object to the idea of excluding people based only on their political beliefs, but it is important to remember that getting a visa to come to America is a privilege, not a right, and it is only common sense to exclude those who advocate violence toward our country. This is especially true during a time of war when the only way for the terrorists to attack us on our own soil is if we allow them into the country. Moreover, being denied a visa does not prevent such a person from continuing to express his views. He is free to do so in his own country. One can only imagine the American public's reaction if it is revealed in the aftermath of another attack that the anti-American views of the terrorist were known and he was still issued a visa to come to America. It is simply irresponsible not to exclude all such individuals.

MORE THOROUGH SCREENING FOR APPLICANTS FROM SOME COUNTRIES

Additionally, citizens of those countries whose governments do not sponsor terrorism but whose citizens have come here as terrorists (Egypt or Saudi Arabia, for example) should have to pass a much higher bar for visa issuance, including a thorough security clearance (working with local authorities) and confirmation with universities of each student visa application. This should also apply to visa applicants born in these countries but now holding other

citizenship. In addition, no visas should be issued to citizens of Middle Eastern countries at U.S. consulates outside their home countries; this is because an American visa officer in Germany is less likely to be able to identify a problem applicant from Saudi Arabia than his counterpart based in Saudi Arabia.

There is nothing unprecedented about such country-specific temporary visa policies; for instance, a person from Poland currently needs a visa to vacation in the United States, whereas a person from Japan does not, because Poles are more likely to overstay their visas than Japanese. It is true that these provisions apply only to temporary visas, but a much higher bar for both temporary and permanent visas for nationals from some countries is simply a logical extension of this kind of policy.

EXCLUDING PERSONS BASED ON RELIGION OR NATIONALITY IS NOT JUSTIFIED

The fact that the terrorist attacks of September 11 were perpetrated by foreign-born Muslims may tempt some to support the elimination of visas for all Muslims or Middle Easterners in an effort to reduce or eliminate the foreign terrorist threat in the future. While more vigorous background checks for persons born in some countries makes sense and may result in a higher percentage being denied visas, efforts to exclude entire countries or religions should be resisted. Changes of this kind would harken back to immigration law prior to 1965 when the number of permanent residency visas was severely restricted for southern and eastern European countries, while immigration from Western Europe was much less restricted. Using religion or nationality as a basis for issuing visas is not only inconsistent with American values but may also anger Middle Eastern countries whose cooperation we very much need in the war on terrorism.

There may well be compelling national security or other reasons to reduce both temporary and permanent immigration, but changes should apply equally to all countries not just those in some parts of the world. Later in my testimony I explore some of the reasons we may wish to reduce the overall level of immigration.

Selective enforcement of immigration law also must not be undertaken. For example, we should definitely not pursue visa overstayers who are from the

Middle East more vigorously than those from other countries. Instead, we need to develop enforcement strategies that apply forcefully to all overstayers. By definition, all those who have overstayed their visas or entered the country without permission have broken the law and should be made to leave the country. Singling out one group for enforcement is not only unfair and un-American but it is probably unconstitutional as well.

Controlling the Border

The next layer of protection is the border itself, which has two elements – “ports of entry,” which are the points where people traveling by land, sea, or air enter the United States, and the stretches between those entry points. The first are staffed by immigration and customs inspectors, the second monitored by the Border Patrol and the Coast Guard.

The need for improvements at the ports of entry is dire. Last year there were more than 500 million entries at these legal entry points, mostly at land border crossings and many of them commuters. Close to half of these entries are returning U.S. citizens, and others are border commuters, but the number of foreign visitors is still enormous. In 1999, there were more than 31 million “non-immigrant” admissions (not counting Canadians and Mexicans on short visits), almost *triple* the number of twenty years ago. These were mostly tourists (24 million) and business travelers (4.5 million) but also included nearly a million students and exchange visitors and about the same number of “temporary” workers and corporate transferees. In fact, the INS states of the above numbers, “Inspections data for land passenger traffic are estimates that may contain unspecified margins of error.” Put simply, the INS does not know how many people are entering the country.

A GREATER INVESTMENT IN MANPOWER AND INFRASTRUCTURE AT THE BORDER

The land crossing points are often not fully staffed, and not every car or truck is examined. Part of the solution here is straightforward – many more inspectors and more inspection lanes at crossing points. Immigrant smuggling through ports of entry, using fake papers or hiding in secret compartments, was almost completely shut down when security along the borders was tightened in the wake of the

September 11 attacks. The problem, of course, was that inadequate staffing and infrastructure caused long waits; but thorough checking plus additional inspectors can lead to better security without excessive delay.

This attitude toward border security should have changed in December 1999, when one Ahmed Ressim was stopped by a border inspector at a crossing in Washington state. It turns out that he had trained at bin Laden's terrorist camps in Afghanistan and had a car full of explosives with which he was going to disrupt millennium celebrations in Seattle and blow up Los Angeles International Airport. He had entered Canada with a forged passport, had requested political asylum, and was released into the population, pending a court date. This is standard practice in Canada and underlines the importance of better border control.

ENTRY EXIT SYSTEM

There is also a long-standing and very real problem that the INS also does not know whether foreign visitors admitted on visas actually leave the country when their visas expire. There is no mechanism for tracking land departures, and the system for tracking arrivals and departures by air, which is how most visa holders travel, is completely broken. The current system requires a foreign visitor to fill out a two-part form with his name, passport number, destination. The visitor then hands one part to the U.S. immigration inspector upon arrival. The other half is collected by the flight attendants on the outbound flight and later transferred to the INS. The opportunities for failure are enormous: airlines often don't collect the forms or forward them to the INS; visitors may enter by air but leave by land, leaving no trace of their departure; the information on the paper forms may be improperly keyed in. This system is so dysfunctional that the INS's own statistics division considers any departure data after 1992 to be worthless.

TIME-LIMITED VISAS ARE POINTLESS WITHOUT AN ENTRY-EXIT SYSTEM

Temporary visas are meaningful only if we know whether the deadline has been honored. Because we do not collect accurate exit information, we have no way of knowing if someone has left the country. The result of this situation is a list of millions of people

who appear not to have left, most of whom really have. Because of this, it is impossible to pick out the actual "visa over-stayers." As a result, if the FBI asks the INS if a particular individual is in the country, in many cases the INS must respond they simply do not know. In total, there are an estimated three to four million people living in the United States who entered the country legally, but never left, accounting for perhaps forty percent of the total illegal-alien population.

The bipartisan U.S. Commission on Immigration Reform, headed by the late Barbara Jordan, in 1994 called for computerized tracking of all arrivals and departures by land, sea, and air (including Canadians who don't need visas). Congress, in the 1996 immigration law, directed the INS to develop such a system, but partly at the behest of the business community in border states, this provision was postponed and in 2000 effectively shelved. The concern was that the system would create interminable traffic jams as people lined up to enter and leave the United States, but a technologically modern system with an adequate number of scanners should not significantly impede traffic at all. This, of course, would mean greatly increased investment in equipment, personnel, and infrastructure at the borders as well. For example, where there are now ten lanes of traffic and inspection stations, there may need to be twenty; and where there are now twenty lanes, there may need to be forty. The only alternative is to expose the country to unacceptable risk.

BORDER PATROL IS GROSSLY INADEQUATE

The situation isn't much better between the ports of entry. Better screening of visa applicants and a tightly monitored entry-exit system would be almost meaningless if it continues to be easy to cross the border illegally. A serious attempt has been made in recent years to increase the size of the Border Patrol, although the total number of agents there is still only about 9,000 overall; and on any given shift, there are only about 1,700 agents on duty at the southern border or an average of less than one agent per mile. Moreover, there are only a few hundred agents patrolling the entire Canadian border, and this is where terrorists are more likely to enter for a variety of reasons, including the fact that immigrant communities in many Canadian cities provide

excellent cover, whereas someone from the Middle East could not blend in so easily on the Mexican border.

A February 2000 report by the Justice Department's Inspector General sheds light on how inadequately the northern border is patrolled. It found that at one 300-mile sector of the border, agents identified sixty-five smuggling corridors but had only thirty-six sensors to monitor them. Such sensors, designed to detect motion or heat or metallic objects, can be a valuable force-multiplier, but they will not be useful unless there are enough of them to cover the border and enough agents to respond when they are triggered. What's more, the IG report found that in some short-handed sectors there are times when there are no agents on duty at all, a fact which quickly becomes apparent to various kinds of smugglers and terrorists trying to cross the border.

The answer, of course, is increased personnel and a serious commitment to border security. The Border Patrol has actually increased significantly since the mid-1990s, and has been doing a much better job of patrolling the southern border, dramatically reducing illegal crossings near major cities and forcing smugglers to resort to more remote areas, where they are more easily detected. These successes need to be expanded upon while improving coverage of the northern border as well. The Border Patrol could be increased from its current total of less than 10,000 up to 30,000 or 40,000 people without even nearing the point of diminishing returns. This cannot be accomplished overnight, however, because it takes time to build a trained and experienced force. Nonetheless, failure to properly police the border between crossing points would be a huge invitation to terrorists rendering all our other efforts at immigration enforcement irrelevant.

INCREASED BORDER PATROL IS NOT MILITARIZATION

Some may object to such measures, and even to the increased border enforcement that has already taken place, as "militarization" of the border. Such objections highlight the important difference between the respective roles of soldiers and law enforcement; soldiers are supposed to find and kill the enemy, while law enforcement agencies, like the Border Patrol (and the Coast Guard), deter or apprehend wrongdoers. Assigning troops to patrol our borders would indeed

be a militarization of border enforcement, and should be a very last resort (although using military support capabilities, such as radar and road-building, to assist the Border Patrol is appropriate, even necessary). But the way to avoid militarization is to build up the capacity of the Border Patrol such that there would be no reason to call for troops on the border.

Interior Enforcement

The final layer of effective immigration control lies inside the country. As already discussed, the federal government has no idea whether foreign visitors have left when their visas expire. In addition, it has no idea where foreign citizens live while their visas are still valid.

Tracking tourists and business travelers would be difficult – even in the current environment, it is unrealistic to require all foreign visitors to submit their passports every time they check into a hotel and to expect hotels to report that information. Currently, foreign travelers are required to write down their destination upon entering the United States, but no effort is made to verify the information; in fact, two of the September 11 jihadists listed "Marriott Hotel, New York" as their destination. Resources could be more fruitfully spent elsewhere. Of course, this is why more stringent controls on issuing visas and real-time tracking of visa overstay are so important. But even with better screening and tracking of overstay, if we continue to almost entirely neglect enforcement of immigration law and allow millions of illegals to live in the country, we will also continue to expose our country to very significant terrorist threats. Fortunately there are several steps that can be taken to enforce the law within the United States.

A TRACKING SYSTEM FOR TEMPORARY VISA HOLDERS

Tracking of foreign citizens residing here for extended periods of time, affiliated with some American institution responsible for their whereabouts, is both possible and desirable. It's desirable because these long-term visitors (here from one to six years, or more) reside here for long periods of time in a legal status, whereas short-term visitors are less likely to have the time to hatch sophisticated plots before their visas expire. In our open society, there has been only the most perfunctory oversight of such long-term foreign students and workers – so

perfunctory, in fact, that at least one of the September 11 terrorists entered the country on a student visa but never showed up for class, without triggering any concern anywhere.

And although short-term tourists and business travelers, who are not attached to any American institution, make up the majority of non-immigrants, the number of long-term visa holders requiring oversight is still quite large. In 1999, there were more than 923,000 foreign students and exchange visitors admitted (including their spouses and young children), up 45 percent just from 1995. The number of long-term foreign workers, plus family members, was about 1 million in 1999, up 123 percent from 1995.

The 1996 immigration law mandated the INS to develop a computerized tracking system for foreign students, to replace the current manual, paper-based system. Unfortunately, the system has not gone beyond the pilot stage, and is tested only in a couple of dozen southeastern schools, largely because of opposition from universities and colleges. Institutions have opposed it, fearing the extra administrative burden associated with such a system. Many also do not like the idea of treating foreign students differently from their American counterparts. But given the very real threats we face, tracking all visitors makes perfect sense.

The problem with the whole foreign students program is not simply one of visa fraud or overstay; the nature of their studies is also a matter of concern. In 1997, the Washington Institute for Near East Policy published a report highlighting the weaknesses in our efforts to prevent students from terrorism-sponsoring states from studying subjects that would benefit those countries' weapons programs. Not only are very few students denied visas based on their desired fields of study, but the lack of monitoring allows them to declare their intention to study some innocuous social science, for instance, but then change majors to nuclear engineering or the like, without anyone in the government being alerted to this fact.

TRACKING SYSTEM FOR FOREIGN STUDENTS MUST BE EXPANDED TO NON-STUDENTS

The experimental INS system to track foreign students will almost certainly be accelerated in the wake of September 11. But this will not address the fact that there are an additional million temporary

workers and trainees and intra-company transferees who are not included in the system and are not effectively tracked by any other means. Expanding the new tracking system to cover both foreign students and foreign workers is needed to ensure the system is as comprehensive as possible.

In a nutshell, to effectively control our border, the government needs an integrated system that uses a biometric identifier like a fingerprint to create a single file for each foreign citizen planning to visit the United States and to track that person during the entire process – at each step in the visa process, each land-border crossing, each entry and exit at airports, each change in status at school or work, each arrest, each

***"...lack of monitoring allows
[foreign students] to declare
their intention to study some
innocuous social science...then
change majors to nuclear
engineering or the like..."***

application for government benefits. This file should be accessible to law enforcement and linked to the databases of the FBI, IRS, Social Security, Selective Service, and other federal agencies. There is no other way to keep admitting large numbers of foreign citizens and maintain security as well.

It is important to emphasize that at a time when there is much discussion of curbs on the civil liberties of Americans, better tracking of foreign citizens not only addresses the core of the security problem but should also be especially appealing because it does not affect the civil liberties of any Americans, only those of guests from overseas whose presence here is a privilege.

ENDING SECTION 245(i)

Another change regarding immigrants that would enhance homeland security would be the permanent elimination of a provision in the immigration law known as section "245(i)." This allows illegal aliens on the waiting list for a green card (because, for

instance, they have married an American) to undergo visa processing and receive their permanent residence visa without having to leave the country and go to the U.S. consulate in their home country.

This provision is problematic not only because it rewards immigration line-jumpers but because it compromises homeland security. The INS official who processes the visa in the United States is much less

"...fewer visas mean fewer foreign nationals living in the U.S., making it much easier to keep track of those allowed into the country."

likely to detect a possible terrorist or criminal among applicants than is a consular officer in the alien's home country, who is familiar with the local language and has contacts with local law enforcement. Not only does 245(i) undermine efforts to screen out terrorists but it also negates our ability to keep out those judged to be dangerous, because they're already here, whereas an alien who went home only to be found ineligible would, in effect, have deported himself.

ENFORCING THE BAN ON HIRING ILLEGAL ALIENS

The centerpiece of any interior enforcement strategy has to be enforcing the prohibition on hiring illegal aliens. While worksite enforcement, as it is commonly called, may not seem to be vital to national security at first glance, it is in fact critically important to reducing the terrorist threat. In 1986, Congress prohibited the employment of illegal aliens, although enforcement was at first spotty and has been virtually non-existent for the past couple of years. Although it is obviously directed at turning off the magnet of jobs attracting conventional illegal aliens, such worksite enforcement is also important for anti-terrorism efforts. Gaining control of the border between crossing points is probably possible only if we dramatically reduce the number of illegal job seekers who routinely cross into the United States. If prospective illegal aliens knew there was no job waiting for them in the United States, many fewer would try to cross illegally.

In addition, it would be much harder for terrorists who overstay their visas to blend into normal life if finding a job is made much more difficult. Of course, they could still come with wads of cash, and some might still live undetected; but doing so would be much harder to pull off if getting a job were much more difficult.

Even if one favors a guestworker program for workers from Mexico or elsewhere as the solution to illegal immigration, it would still be absolutely necessary to put in place a strong worksite enforcement regime before implementing a guest worker program. Otherwise, there would be no incentive for those illegals already in the country or those thinking about entering illegally to sign up for such a program.

How would such a system work? There are two steps that are needed to make worksite enforcement effective. First, a national computerized system that allows employers to verify instantly that a person is legally entitled to work in the United States needs to be implemented. Employers would submit the name, date of birth, social security number (SSN) or alien registration number to the INS of each new hire. Much of this information is already collected on paper but is not used by the INS. After an instant check of its database, the employers would then receive back from the INS an authorization number indicating that the person is allowed to work in the United States. The authorization number from the INS would provide employers with an iron-clad defense against the charge that they knowingly hired an illegal alien. Tests of such systems have generally been well received by employers.

Document fraud, of course, is widespread, but a computerized system would be a key tool in uncovering it. For example, a valid SSN that is attached to different names submitted to the INS or a SSN and name that show up in many different employers' lists across the country would both be indications that a worker is trying to skirt the law. The INS could develop procedures to identify potential problems of this kind. When a potential problem is found, the INS would then go out to the employer and examine all the paperwork for the employee, perhaps conduct an interview with the worker, and determine the source of the problem. This would require the

second important change that is needed: a dramatic increase in the number of worksite inspectors. At present, there are only the full-time equivalent of three hundred INS inspectors devoted to worksite enforcement, whose job it is to enforce the ban on hiring the five or six million illegal immigrants now working in the country. These numbers would have to be increased to perhaps 3,000.

These inspectors would perform two main tasks: they would go out to employers identified by the verification system as having a potential problem, and secondly they would randomly visit worksites to see that employers were filing the paperwork for each worker as required by law. Those employers found to be knowingly hiring illegals would be made to pay stiff fines. Because the data needed for such a system is already collected and the law already forbids the hiring of illegals, all that is need is a verification system and significantly more resources for worksite inspectors. Failure to develop such a system means that millions of illegal immigrants will continue to work and live in the United State facing little or no penalty. Not only does this make a mockery of the rule of law, but it also exposes the country to significant security risks.

EMPLOYMENT VERIFICATION AND ALIEN REGISTRATIONS

Most of the recommendations outlined above have dealt with temporary visa holders or efforts to reduce illegal immigration. More effective monitoring is also needed of permanent residents, i.e., legal immigrants, with "green cards," who will after a time become eligible for citizenship. Several past terrorist attackers have been legal immigrants, and that may well increase as a result of military reprisals against terrorists overseas.

In 1940, as a homeland security measure, Congress required all non-citizens living in the United States to register annually their whereabouts with the INS. This provision was repealed in the 1980s and should probably not be revived in that form. Potential terrorists cannot be expected to dutifully send in their addresses. However, the employment verification system outlined above could be a very effective tool in locating non-citizen legal immigrants. This is especially important when a person is placed on the watch list after he has entered the country. At present,

there is often no way for the INS to know where that individual lives. However, the employment verification process would provide the INS with the name of the employer for non-citizen legal immigrants who work. Thus, if it became necessary to arrest or at least undertake surveillance of a non-citizen, the last known employer would be a place to start. The verification system would in effect be alien registration for most resident aliens.

INTEGRATED DATABASES

One reform that would probably be relatively easy to undertake would be for the INS to integrate all of its various databases. At present, separate databases are maintained for non-immigrants, immigrants, citizenship applications, and deportations. The INS needs to establish a single integrated file on each foreign citizen that uses a biometric identifier like a digital fingerprint. This file would contain information from each step in the visa process: including each land-border crossing, each entry and exit at airports, each change in status at school or work, each arrest, as well any application for permanent residence. This file should be accessible to law enforcement and would remain open until the person becomes a citizen.

Reduce the Number of Permanent and Temporary Visas?

The responses outlined above, whether overseas, at the border, or inside the United States, would not catch all malefactors. But the improvements outlined above would almost certainly be very helpful in alerting us to large conspiracies like the September 11 attacks. If only a few of the dozens of conspirators had been identified by consular officers or border inspectors, it is very likely that the entire conspiracy would have unraveled.

LESS IMMIGRATION MEANS BETTER ENFORCEMENT

But what of the actual number of people we admit via these mechanisms? There are two fundamental reasons to consider reducing the number of student, exchange and worker temporary visas, as well as permanent residence visas: the fewer visas we issue the more thorough the background checks that can be conducted. Moreover, fewer visas also mean fewer foreign nationals living in the United States, making it much easier to keep track of those allowed into the country.

It seems very unlikely that the INS and State Department can undertake the necessary reforms and expansions if they also have to continue processing hundreds of thousands of new immigrant, foreign student, exchange and worker visas each year. The Government Accounting Office reported in May that the receipt of new applications (green cards, citizenship, temporary workers, etc.) has increased 50 percent over the past six years, while the backlog of unresolved applications has quadrupled to nearly 4 million. Few if any government agencies could be expected to handle such a crush of new work while assuming added responsibilities, even if provided with increased resources. The INS in particular has had a great deal of difficulty in modernizing and using additional resources. Its computer systems, for example, are among the most outdated in any part of the federal government. This stems from a decision in the 1970s not to automate the files so as to preserve low-level clerical jobs. Then-Commissioner Doris Meissner told *Government Executive* magazine in a 1999 interview, "You don't overcome a history like that in four to five years."

Solving the many problems with our immigration system will not be easy. There have been various plans to reorganize the INS altogether, including splitting the service and enforcement functions, into either two agencies or two separate chains of command within the current INS. But money and institutional reorganization won't be enough on their own. The best way to give the INS the breathing room it needs to put its house in order and to address homeland security concerns is to reduce its workload by reducing temporary and permanent immigration.

Conclusion

The fundamental changes in our immigration system proposed above should be an especially attractive option because not only would they be politically popular but they also would not involve any infringement on the civil rights of American citizens. If the American people are going to have to wait in much longer lines at airports and in other public places from now on, it is not too much to ask foreign citizens to do the same.

Some may object to greatly increased screening, interior enforcement and border control because only a tiny fraction of the millions of immigrants and

visitors (or non-immigrants) who come to the United States each year represent a security threat. We are, some would say, looking for "a needle in a hay stack" by focusing on immigration reforms. But this objection makes little sense. All security measures are directed at only the tiny fraction of the population who wish to break the law. Every persons who boards an airplane, for example, must pass through a metal detector and have his baggage x-rayed. This is done not because most or many intend to hijack the plane but rather for the one out of a million who is planning to do so. It is the same with screening immigrants and controlling the border.

To be sure, no steps to reform immigration will catch all those who mean us harm. But a lower level of immigration and dramatic improvements in visa processing and border security could make an enormous difference. If only a few of the dozens of people involved in the September 11 plot had been identified by consular officers or border inspectors, or been apprehended when their visas expired, it is very possible that the entire conspiracy would have been uncovered. Persistent terrorists will, of course, continue to probe our immigration system for weaknesses. It is for this reason that we cannot, for example, improve visa processing but leave large sections of our land border undefended. Only a vigorous, well-funded, integrated border management infrastructure which employs the latest technology and enjoys sustained political support can be expected to adapt to the ever-changing terrorist threat. Moreover, only a well-funded and well-run immigration system will be able to utilize the new information that is expected to result from the added resources that are now being devoted to intelligence gathering. Today's under-funded and fragmented border control system, using out-of-date technology, will certainly not be able to respond to the shifting challenges of the future.

There can be little question that the suggested changes outlined above would cost taxpayers billions of dollars to implement. But the alternative is to expose the country to very significant risks that could be avoided. If we want the American people to continue to support legal immigration, we must make every effort to reduce the possibility of terrorism in the future. ■

Immigration and National Sovereignty

Testimony by Mark Krikorian

Immigration is not a right guaranteed by the U.S. Constitution to everyone and anyone in the world who wishes to come to the United States. It is a privilege granted by the people of the United States to those whom we choose to admit.

— Barbara Jordan, August 12, 1995

Thank you for the opportunity to participate in this briefing on immigration and civil rights in the wake of the September 11 jihadist atrocities. We are faced with two questions relating to civil liberties. First, Is immigration a civil right? And second, What is the best way to create an environment respectful of immigrants living among us?

Immigration Is Not a Civil Right

Article I, Section 8, Clause 4 of the Constitution grants Congress the power to establish a “uniform Rule of Naturalization.” From this has developed the “plenary power doctrine,” which holds that Congress has complete authority over immigration matters. The Supreme Court has said that “over no conceivable subject” is federal power greater than it is over immigration. As a consequence, as the Court has said elsewhere, “In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.”

This is as it should be, since control over immigration is fundamental to national sovereignty. If “We the People of the United States” have ordained and established the Constitution, then we by definition retain the power to determine who is, and is not, a

member of the American people. Thus, the decision to admit or exclude foreign citizens is a matter solely in the hands of the elected representatives of the people, and anyone from abroad who is admitted to travel or live among us does so as a guest, remaining here at our pleasure, until such time as we agree to permit him to become a member of our people. In effect, foreign citizens, even if they are here illegally, enjoy the human rights with which they are endowed by God, but they remain here at our discretion and the specifics of their due process rights are determined by Congress.

This is relevant in assessing many of the measures to tighten immigration control recommended in the wake of the September 11 attacks. All nineteen hijackers were, after all, foreign citizens, as are many of those detained as possible accomplices or witnesses. This was also the case with the conspirators in the first World Trade Center attack, the 1993 CIA assassinations, and the foiled bomb plots in New York in 1995 and in Washington state in 1999. Foreign citizens, or naturalized immigrants, are almost certain to be responsible for the next attack, whether it comes in the next few days, as the FBI has warned, or further in the future.

To begin at the first step in the process of coming to the United States, there is likely to be special scrutiny applied to visa applicants from Muslim countries and even to people of Middle Eastern birth who now hold other citizenship. Whether or not ethnic or religious profiling is an appropriate tool in the government’s dealings with American citizens, there are no civil rights implications against such profiling of foreign citizens overseas. The United States government may refuse entry to any foreign citizen, for any reason, at any time. It is precisely to preserve this irreducible element of national sovereignty that repeated attempts to subject visa refusals to review have been rebuffed by Congress.

One of the grounds for exclusion may well be expanded as a result of the jihadist attacks, one that

Mark Krikorian is executive director of the Center for Immigration Studies (www.cis.org) in Washington, D.C. This statement was delivered before the U.S. Commission on Civil Rights, October 12, 2001.