



FEDERATION FOR AMERICAN IMMIGRATION REFORM

# **Immigration and National Security**

## *A Checklist of Unfinished Reforms*

A Report by Jack Martin, Director of Special Projects



In the seven years since the 9/11 terrorist attacks that took nearly innocent 3,000 lives, national security reform measures have been proposed, legislated, and partially implemented. Yet public officials and security experts warn that we continue to live in danger from the ongoing efforts of al-Qaeda and other international terrorist organizations that strive to inflict damage on our homeland. For example, security experts warn that attacks are possible to disrupt the November elections.<sup>1</sup>

The undetected presence of the 19 foreigners in the United States who carried out the 9/11 attacks demonstrated that immigration law — the regulation of who enters our country under what conditions and for what length of time — is an integral aspect of national security policy. Of course, the issue of national security is much broader than just the immigration-related aspects, and the issue of immigration policy and enforcement is much broader than the aspects that relate to national security, but there is a very large area of overlap between the two. That area is the focus of this checklist of unfinished reforms.

The public needs to know how it can be better protected at home from this threat from abroad. The questions that must be asked are:

- What were the loopholes in 2001 that allowed international terrorists to enter and freely organize to carry out the 9/11 attacks?
- What has been done to close those loopholes?
- What remains to be done?
- What are the impediments to further progress?

Long before the 9/11 attacks, FAIR warned that our unsecured borders and lax enforcement of our immigration laws posed a threat to our national security.<sup>2</sup> We have advocated for specific reforms to minimize the risks to our nation and our citizens. On the seventh anniversary of those attacks we review those proposed remedies and how they would address three aspects of immigration-related threats to national security.<sup>3</sup> These three areas of vulnerability are:

- The ability of terrorists to legally enter the country in order to carry out future attacks.

- The continuing political unwillingness to control our borders against illegal entry, thereby undermining security advances gained by greater control over legal entry.
- The ability of terrorists who have gained entry into the country to escape detection as they prepare to carry out future attacks on the American public.

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### DENYING LEGAL ENTRY TO TERRORISTS

Foreigners enter the United States legally as immigrants or nonimmigrants. Immigrants are systematically screened before being admitted for permanent residence. Because of the screening and waiting times, this is an entry process unlikely to be attempted by terrorists. The one exception is the refugee program, where identity screening is often impossible and the processing time may be much shorter.

Nonimmigrants, however, are more quickly and less rigorously screened. The ease with which the 19 terrorists who participated in the 9/11 attacks obtained nonimmigrant visas demonstrated that the screening policies at that time virtually ignored national security concerns. Consular officers in Saudi Arabia and elsewhere were rubberstamping visas in passports sent to them by tourist agencies. The process had the capability to screen out only persons known to be active in terrorist organizations and only if the name on the passport matched the name on the ‘lookout list’.

The adoption of the Visa Waiver Program (VWP) reduced the two-step screening process of foreign travelers (consular scrutiny abroad followed by immigration inspector scrutiny at ports of entry) to one-step scrutiny at the port of entry. The VWP substitutes reliance on an electronic database for the informed judgment of consular screeners abroad who are trained in the language and customs of the host country. Despite the weak consular screening policies that were in place before the 9/11 attacks, five suspected participants in the attacks were denied visas to the United States.

The operation of the VWP — let alone its expansion — makes sense from a national security standpoint only if it is assumed that travelers from participating countries represent no possible security threat. Experience shows that the assumption that terrorists will not come from VWP countries is wrong. Richard Reid, the ‘shoe bomber’, was traveling to the United States on a UK passport without a visa. Zacarias Moussaoui, the convicted ‘20th member’ of the 9/11 group of terrorists, entered the United States on a French passport. Ahmed Ressam, the ‘millennium bomber,’ was attempting to enter the country with a French passport. Recent terrorist attacks in Europe have been conducted by home-grown terrorists, who could have traveled to the United States without visas to carry out attacks here.

The Government Accountability Office (GAO) continues to warn that, “...DHS needs to better manage risks posed by a program that allows nationals from 27 countries to travel to the United States without a visa for certain durations and purposes.”<sup>4</sup> Similarly, the GAO notes, “The inability of the U.S. government to track the status of visitors in the country, to identify those who overstay their authorized period of visit, and to use this data to compute overstay rates have been longstanding weaknesses in the oversight of the Visa Waiver Program.”<sup>5</sup>

### *What has been done?*

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#### **Visa Issuance**

In the wake of the 9/11 attacks, the ‘Visa Express’ operations in Saudi Arabia and in other countries around the globe were suspended. Visa applicants from countries with ties to international terrorism are now checked comprehensively against a much broader database of terrorist suspects than was previously available to consular officers. Interagency cooperation in sharing information on security suspects has been improved. Visa applicants are now photographed and fingerprinted and an electronic file makes that information available to immigration inspectors at U.S. ports of entry. Department of Homeland Security (DHS) personnel have been stationed at key consular posts abroad to oversee visa issuance procedures.

Unfortunately, Congress, with the support of the Executive Branch, has diluted the standards of participation in the Visa Waiver Program (VWP) in order to

expand that program to additional countries. A nonimmigrant traveler from a VWP country is required to obtain a visa only if the purpose of the travel is for other than business or tourism.

#### **Port of Entry Screening**

Identity document standards for foreigners entering the country — as well as returning Americans — have been strengthened. Nonimmigrant visitors from VWP countries are required to present machine-readable passports and they are photographed and fingerprinted at the port of entry. A pending regulation proposes that those travelers will have to electronically apply in advance for entry beginning in 2009. An electronic database is maintained on all foreign travelers entering the country by air and sea. Requirements have been enhanced to collect information on lost or stolen passports.

Foreign nationals — other than Mexicans and Canadians — entering by land are also electronically screened and entered into the arrivals database. Americans are now required to present identity documents to reenter the United States and will be required in June 2009 to present a U.S. passport or federal ID card so that foreigners can no longer illegally enter by simply claiming to be U.S. citizens. Admission of Canadian tourist and business travelers is in the process of being restricted to those presenting a passport or a Canadian ID card that establishes their nationality. Mexican tourist and business visitors are restricted in area and length of entry and must present a machine-readable U.S.-issued Border Crossing Card (BCC).

### *What remains to be done?*

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#### **Data Collection**

Despite advances in obtaining, checking and retaining biometric and other information on arriving foreign travelers, a major gap in a comprehensive entry-exit system persists. Electronic collection of identity data on entering travelers is vital because it allows screening for known terrorists, but it is not yet being done comprehensively as long as travelers at land ports are not similarly screened. This allows a terrorist to enter the country with counterfeit identity documents.

**Visa Scrutiny**

Enhancing national security requires ending the VWP and restoring the two-step screening process for nonimmigrant travelers. This does not mean that a foreign traveler must pass consular scrutiny each time he travels, but the traveler must undergo that scrutiny at least once, when first applying for a visa.

**Adequate Staffing**

The volume of international travelers limits the time that immigration inspectors have to query arriving international travelers about their intent and to establish their legitimate nonimmigrant status. Staffing of inspectors at ports of entry must be sufficient to prevent this critical security operation from being a rubber-stamp exercise without time to question arriving passengers and to carefully examine travel documents for authenticity.

*What are the impediments?*  
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**Vested Interests**

Maintaining the flow of foreign visitors into the United States as unrestricted as possible is a major objective of the travel, tourism, and hospitality industries as well as for border area commercial interests. According to the State Department, “Legitimate travel between Mexico and the United States contributes to bilateral trade of over \$1 billion per day...”<sup>6</sup> The flow across the border with Canada would be of a similar magnitude. These interests lobby forcefully against security measures that might discourage or slow international visitors. The travel industry is behind the creation and adoption of the VWP and its pending expansion from the current 27 countries to as many as 30 additional countries.

The DHS and the State Department in 2006 institutionalized an insider’s role for these economic interests by establishing an advisory board of industry representatives to meet in private with federal officials to discuss any proposed policy changes that might affect the flow of travelers.<sup>7</sup>

The objective of keeping our country as open as possible to foreign visitors is legitimate, but that objective must be tempered by national security concerns. That objective will be hurt more by the continuing threat of terrorist attacks within the United States — as demonstrated by

the sharp drop in international visitors following the 9/11 attacks — than a requirement that first time travelers apply for a visa. This reform would require restoring the consular staffing that has been cut since the creation of the VWP.

**Logistical Problems**

The enormous volume of pedestrian and vehicular entry and exit at land ports of entry has so far stymied DHS from meeting its mandate to implement a comprehensive entry-exit system for international travelers. Most entering and all departing travelers in vehicles are routinely waved through checkpoints without verification of identity or record of their entry or exit. Although pedestrian entrants are required to show a BCC, and those cards are machine-readable, the cards are not being used to create a record of the entry, and no effort is made to collect a matching record upon departure. Non-Mexican travelers exiting at land ports are not recorded unless they take the initiative to turn in their entry document.

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**DENYING ILLEGAL ENTRY TO  
TERRORISTS**

Entry screening applies only to those foreigners entering legally. So, as the screening process for legal entrants has been made more rigorous, illegal entry becomes a more likely option for terrorists.

No one knows how many possible terrorist plotters or ‘sleepers’ may be among the estimated 13 million illegal aliens in our country. However, it would be foolhardy to assume that our enemies are not aware of this gaping vulnerability in our national defense. Nor is the fact that we have not had a repeat of the 9/11 attacks since then by terrorists who sneaked into the country evidence of a lack of threat. We must remember that on September 10, 2001 there was no evidence that foreigners abusing student visas posed a threat to our national security.

The enormous size of the illegal alien population is a result of the continuing flow of illegal aliens into the country by land, sea and air. Despite recent reports of a reduced flow because of improved border security and a weakened job magnet, the border remains porous.

Greater national security requires establishing border security.

The assumption must be that as long as individuals can sneak into the United States or hire smugglers to get them into the country, those routes of entry are available to members of al-Qaeda or other terrorist organizations. Arguably, the threat of illegal entry from Canada may be greatest because the Canadian government allows the operation of groups that the United States considers to be affiliated with terrorist organizations. This suggests the existence in Canada of possible support networks prepared to facilitate terrorist operations against the United States.

***What has been done?***  
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**Illegal Entry By Sea**

Illegal entry by sea has been restricted by improved tracking of international shipping since the Golden Venture ran aground at New York City in 1993.

Cuban illegal entry became somewhat more difficult as a result of the wet-foot-dry-foot policy adopted in 1995 that sent Cubans apprehended at sea back to Cuba if they did not have a probable claim to asylum status. Nevertheless, Coast Guard capabilities to prevent illegal entry by sea remain inadequate to prevent illegal entrant smuggling operations. According to DHS statistics, there were 5,552 “successful [illegal] migrant arrivals” by sea in 2006.<sup>8</sup> This number obviously refers to aliens detected after illegal entry and presumably is composed largely of Cubans who turned themselves in to DHS offices after arrival in order to start the clock on the one-year presence in the United States needed to gain them legal residence. Illegal entrants other than Cubans who enter by sea have no similar incentive to identify themselves to the government unless they are applying for asylum protection.

**Illegal Entry By Land**

Fencing on the U.S.-Mexican border has been and continues to be extended. DHS has announced a study of the need for fence expansion on the border with Canada. The number of Border Patrol agents has been significantly increased and is scheduled to reach 18,000 this year. During the process of expanding Border Patrol staffing, state National Guard units have been sent to the border

as a force magnifier providing backup support. A pilot project for improved electronic surveillance of the border — in lieu of fencing — has been completed and further work is underway to improve that capability. The ‘catch and release’ situation in which apprehended non-Mexicans were released after processing pending a removal hearing — with the result that the vast majority never appeared for the scheduled hearing — has been ended, resulting in decreasing the apparent rate of illegal entry by non-Mexicans as seen in apprehension data.

***What remains to be done?***  
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**Illegal Entry By Sea**

Small speedboats and other craft continue to smuggle Cuban and Haitian illegal immigrants to Florida, Dominicans to Puerto Rico, and Mexicans around fencing that ends at water’s edge. While there has been a recent increase in attempted smuggling by boat from Mexico, the largest of flow by sea is from Cuba, and it is encouraged by the assurance that Cubans who reach our shore will not be deported.<sup>9</sup> The smugglers of the Cubans most often are Cubans or Cuban Americans residing in Florida, and prosecutions against those responsible have been few and far between.

The key reform needed to reduce the smuggling by sea from Cuba is to remove the incentive created by policies that accommodate those arriving illegally. Cubans seeking greater economic opportunity should be treated no differently than illegal entrants from every other country. They should be sent back to Cuba if they do not qualify for asylum protection. That change can be made administratively by ending the waiver of deportability that is given the Cubans by the Executive Branch. Repealing the Cuban Adjustment Act, a relic of the Cold War, that grants legal residence to Cubans after one year of residence in the United States, would reinforce that policy change.

When the incidence of illegal entry from Cuba is diminished, the capability of the Coast Guard to intercept any continuing smuggling efforts will be enhanced. As illegal entry by land becomes more difficult, the sea interception capability of DHS’s Customs and Border Protection (CBP) will likely come under greater challenge and will need to be reinforced.

## Illegal Entry By Land

Our land borders are too extensive to ever be able to guarantee the total inability of aliens to sneak into the country — especially when the millions of dollars collected by the smugglers provide them extensive and often sophisticated resources. The remotest regions can be reached by a determined illegal entrant smuggler. Although fencing is a major deterrent, whether a physical or electronic barrier, it can be breached. Nevertheless, the more that illegal entry can be diminished, the greater will be the likelihood that terrorists will be apprehended. This means that the current process of fence expansion must be continued and continuously reevaluated as smuggling operations shift to try to find new routes into the country.

The objective of border control must be to assure that there is a reasonable likelihood of apprehending a terrorist in the process of sneaking into the country. The apprehension of a terrorist provides the opportunity to expose an entire terrorist plot. For example, the apprehension in 1999 of Ahmed Ressaym when attempting to enter the U.S. from Canada with a carload of bomb-making materials destined for an attack against Los Angeles airport led to the subsequent arrests and convictions of three other Algerian co-plotters.

### *What are the impediments?*

## Illegal Entry By Sea

Politics involving the Cuban community in the U.S. interferes with the logical reform of ending special treatment of Cuban illegal entrants. Because the U.S. Cuban community represents a sizable voting bloc in a swing state, politicians have been unprepared to change a policy that is seen in that community as opposition to the Castro regime. Nevertheless, newer generations raised in the U.S. are less inflexible, and the transfer of power by Fidel Castro to his brother Raul offers a new opportunity to correct this aberrant policy.

## Illegal Entry By Land

The broad structure of interests that see benefit in the uninterrupted flow of illegal aliens into the country, i.e., employers seeking cheap laborers and ethnic advocacy and religious organizations who work to incorporate the newcomers, actively oppose increased fencing. They are joined by the Mexican government and other govern-

ments in Latin America. Besides working at the political level to oppose fencing in Congress, these interests have actively tried to block fencing in the courts, using environmental impact as the pretext. Fencing expansion has proceeded only because Congress has temporarily defeated this tactic by giving the DHS the authority to override environmental concerns.

## ..... 3 ..... DENYING TERRORISTS THE ABILITY TO STAY ILLEGALLY ONCE HERE

Despite stepped-up interior enforcement operations by the Immigration and Customs Enforcement (ICE) branch of DHS, the continuing reality is that aliens who have succeeded in illegally entering the country or have entered with a visa but stayed illegally and found a job, face very little chance that they will be apprehended and deported. This fact explains the expressions of shock when worksite apprehensions take place. It also means that terrorists who succeed in getting into the United States become part of an environment in which they are unlikely to be detected.

Four of the 9/11 terrorists were illegally in the country at the time of the attacks. Others of the attackers took advantage of weak security procedures to evade investigation as they left and reentered the country and changed visa status while they plotted the attacks.

The huge illegal alien population, which we estimate at about 13 million people, provides a form of camouflage for terrorists. The fake ID rackets that supply the illegal alien population are there as well for terrorists. Corrupt and lax driver's license issuance procedures that supply illegal aliens with legitimate ID similarly have supplied IDs to terrorists. All of the 9/11 terrorists had U.S. driver's licenses to use in boarding the flights that they hijacked in their attack.

Fake ID became ubiquitous following the adoption of the employer sanctions system in 1986 that made it illegal for an employer to hire an illegal alien and required that the employer ask for documents to establish legal work status. That situation continues despite the adoption in 1996 of a document verification system, because it is vol-

untary — except in Arizona, where it has been mandatory since this January. The adoption of what is now known as E-Verify as a national mandatory system is the key to reducing the job magnet that attracts illegal immigration and hinders progress in establishing border control. It also is vital to reducing the illegal alien population that provides an environment in which terrorists are able to operate with little chance of detection.

The ability of terrorists to hide here while they plot to carry out attacks is enhanced by the policies adopted by some state and local jurisdictions under the rubric of sanctuary provisions. These provisions generally prevent local law enforcement personnel from inquiring about the immigration status of persons stopped for law infractions. The intent of sanctuary policies is to protect illegal immigrants from federal immigration law enforcement, but they also protect foreign criminals and terrorists from possible identification and apprehension before they can harm the public.

**What has been done?**  
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**Entry-Exit Matching**

The USA PATRIOT Act, enacted in October 2001, restored the mandate first adopted in 1996 for the development of a comprehensive electronic data collection system for arriving and departing foreign travelers. The system (termed US-VISIT) for collecting information on arriving foreign travelers is in place for air and sea ports but not for land ports. The Department of Homeland Security (DHS) has tested procedures for electronically collecting data on departing international travelers at airports and has proposed regulations to require airlines to collect this data.

**REAL ID**

The REAL ID Act, enacted in 2005, is designed to combat both fake IDs and identity theft. By establishing uniform ID security features and a requirement to verify the authenticity of breeder documents, e.g., birth certificates, and the sharing of data among states, the objective is to close the loophole on persons obtaining legitimate ID in fake names and the ability of persons to obtain multiple IDs in different jurisdictions. These security procedures are only now beginning to be adopted in some states and

compliance has been put off until the end of 2009. But compliance with the new federal standards is voluntary, and at least three states have vowed to ignore the new requirements.

**Employment Document Verification**

Arizona has established the E-Verify system as a requirement for all employers, and several other states have adopted the E-Verify system as a requirement for state government contractors. The federal government announced in June that the system will apply to all federal contractors. Legislation voted on in the last two Congresses has included provisions to make work document verification mandatory nationally, but it has failed to be enacted because of opposition to other provisions.

**Long-Term Tracking Database**

Foreign students, because of their lengthy stays in our country, are now subject to a separate tracking system that the educational institutions that sponsor them are required to administer. This system, the Student and Exchange Visitor Information System (SEVIS), is designed to identify, *inter alia*, a foreign student who enters the country but fails to arrive on campus, as did Hani Hasan Hanjour, one of the four pilots of the 9/11 airplanes. An investigation of institutions sponsoring foreign students for visas revealed numerous ‘store-front’ operations engaged in fraudulent operations that now have been eliminated.

**What remains to be done?**  
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**Entry-Exit Matching**

The DHS has not yet met the challenge of electronically collecting entry-exit information from all international travelers at land ports, nor has it established a routine data collection process for departing international travelers at air and sea ports.<sup>10</sup>

Electronic screening of entering travelers is not just to screen them against a database of known terrorists, although that is vital. But unidentified terrorists might also legally gain entry to the country, and greater national security requires the ability to identify legal entrants who fail to depart at the end of their authorized stay. A pattern of entry and exit or simply information about

illegal overstay — especially for a visitor from a country with ties to international terrorism — may present a ‘red flag’ that should be investigated. If exit data is not collected on departing foreign visitors, there is no means to detect a questionable pattern of travel or identify illegal overstayers.

To date there remain two gaping holes in a comprehensive traveler entry-exit system. One is the continuing lack of electronic exit records that can be compared to the entry data to determine who remains illegally in the country. It serves no purpose to have a record that a foreign student has departed from the campus if there is no means to verify whether the student has left the country. That is true for other nonimmigrant visitors as well. The second is the lack of a comprehensive electronic data entry and exit collection system at land border crossing points. As long as travelers entering by air and sea can exit by land without any record being collected, false ‘red flags’ will pop up on travelers who have in fact left the country. The potential for these false ‘red flags’ will undermine any commitment to investigate suspicious apparent overstays.

While reduced apprehension data from our land borders suggests that greater enforcement efforts may be having some success in discouraging illegal entry, that result may also correlate with sharply reduced job opportunities in construction, which until recently was a major job magnet attracting illegal alien workers. Nevertheless, a stream of hundreds of thousands of illegal immigrants continues to overwhelm the detection and apprehension capabilities of the Border Patrol. While the ongoing program of staffing and fencing increases should continue to make headway against this wave, so long as those seeking to work illegally in the United States are able to find willing employers, it will be virtually impossible to win the battle against alien smugglers.

The most powerful weapon in the battle to gain border security is turning off the job magnet that attracts illegal workers. That can be done effectively by mandating that all employers who now use the I-9 worker screening system also use the E-Verify system to screen out fake identity documents. An additional requirement to enhance the E-Verify system is to close the loophole that allows illegal immigrants who have stolen the identity of a U.S.

citizen to avoid detection. This requires removing the ban on the Social Security Administration sharing information with DHS. The current restriction on data sharing assures that persons falsely claiming the identity of a U.S. citizen when applying for a job are not investigated.

### **REAL ID**

The new ID standards are not mandatory on the states. A few state governments have defied the federal mandate despite the prospect that their state-issued driver’s licenses and IDs will not be recognized by the federal government for federal purposes, such as boarding planes. Because the federal government has provided those states deferrals of the implementation date, the issue has not yet fully come to a head. As noted prominently in the report of the 9/11 Commission, national security depends on secure identity documents, and it is unacceptable for state politicians to jeopardize security for other Americans.

There are two options available to deal with the continuing vulnerability that comes from not having a secure document system available to identify who is and is not legally resident in our country. One is to adopt a national identity card for U.S. citizens and legal residents, as is done in many other countries. The second option is for implementing the REAL ID system of secure, interoperable driver’s licenses without further delay. But for this option to provide the needed document security, all states must cooperate in the system. This means that policymakers must be prepared forcefully to discourage resistance to participation in the system. It will also help if the start-up costs of implementing the reform is borne by the federal government rather than being an unfunded mandate for the states.

### **Employment Document Verification**

Even though the usefulness of the E-Verify system has been recently gaining ground as a result of state actions and the recent federal decision to require its use by federal contractors, the system is being fiercely resisted. Implementation at the state level appears from the experience of Arizona to be to making major inroads in convincing illegal workers to leave the state. But, as long as the system is not a uniform requirement across the country, there will likely be more illegal residents moving from a state where the system is in use to a state where it is not in use. To have the desired effect of degaussing the job

magnet, thereby deterring prospective illegal immigrants from starting their journey, and achieving effective control over the border, the verification system has to be applied and enforced nationally against exploitive employers.

### **Long-Term Tracking Database**

Foreign national who are provided a long-term entry into the country — not just foreign students — are not only a potential agent of international terrorism but are accorded the opportunity to carry out plotting activity as a result of that status. Accordingly, the activity of long-term foreign nonimmigrant residents should be monitored, as it is already for students in the SEVIS database. No effort has been made to expand the reporting system on the whereabouts of long-term foreign nonimmigrants to include such nonimmigrants as temporary workers. These foreigners residing in our country are sponsored by companies or institutions, and — like with foreign students — those sponsors could similarly be required to provide data on changes in status or location of their foreign nonimmigrant employees. At present, those foreigners are free to roam the country indefinitely without any ‘red flag’ being generated at DHS.

### ***What are the impediments?***

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### **Entry-Exit Matching**

The airlines are fighting a currently proposed requirement that they electronically collect records on departing travelers even though such a system would replace their current requirement to collect the paper records of departing international travelers. This should not be a significant new burden beyond the already existing requirement to collect and make available an electronic manifest identifying those passengers.

Expansion of a comprehensive entry-exit system has as its greatest challenge the collection of exit data at land ports. The challenge is similar to that of collecting entry data, but is even greater as some entry data is already collected and the infrastructure is available for that purpose. For departing travelers, however, exit data is collected only occasionally if an international traveler takes the initiative to turn in a departure record to the U.S. authorities. Although the flow of pedestrians and cars follow a pattern with the greatest flow into the United States in the morn-

ing and departing in the evening, there is an around-the-clock flow. Thus, in order to effectively collect data on departing as well as entering travelers an increase in personnel would likely be required.

While collection of data can be done electronically with radio frequency identification (RFID) technology, human oversight of that process is required to prevent scofflaws and smuggling operations. RFID transponders and license plate scanners can identify automobiles approved for entry, and can also be used to identify the ID cards of individuals in those vehicles, but that does not assure that the holder of the card is the person to whom it was issued, nor does it assure that there are not other individuals unauthorized to enter the country in the same vehicle.

### **REAL ID**

The opposition to secure ID comes from the right and left poles of the political spectrum, i.e., from libertarians and civil libertarians. Both argue that the legislated system of secure ID constitutes an infringement on individual privacy. The battle on this issue has been fought before. A requirement for secure driver’s licenses was legislated in 1996 in response to the first attempt to blow up the World Trade towers in New York in 1993. Before it ever took effect, political opponents repealed the law. As a result, the country was no better prepared to deal with fraudulently obtained ID in September 2001 than it was in February 1993. In addition to the left and right libertarians, the ethnic advocacy groups that often work closely with the American Civil Liberties Union on immigration issues, e.g. the National Council of La Raza, have also worked to undermine implementation of the new secure ID standards.<sup>11</sup>

### **Employment Document Verification**

Employer groups and ethnic advocacy organizations are forcefully working to prevent the E-Verify system’s objective of denying jobs to illegal alien workers and exposing exploitive employers to prosecution for continuing to hire illegal workers. Business associations in Arizona have so far failed in a lawsuit to block implementation of the verification system there. There are similar efforts to discourage other states from following the lead of Arizona.

Business interests are actively opposing efforts to require

employers to screen employees to assure that they are legally in the United States. Business interests in Arizona filed suit to enjoin the state from implementing the first state law to make participation in the E-Verify system mandatory for all employers. They were denied an injunction against implementing the new law, but they have pursued a lawsuit against the voter-passed requirement.

At the national level, President Bush announced in June 2008 a requirement for all firms with federal contracts to participate in the E-Verify system. The U.S. Chamber of Commerce reacted with a 26-page brief challenging the action on the basis that participation should be voluntary.<sup>12</sup> According to a Washington, D.C. news outlet, “Criticism came from Lockheed Martin, Dynamics Research Corporation, IntelliDyne, the Professional Services Council, the Society for Human Resource Management, and a number of religious groups that advocate for immigrants rights.”<sup>13</sup>

### Long-Term Tracking Databases

Academic institutions lobbied long and hard against the requirement that they collect data on the movements of international students whom they have sponsored for visas and against sharing that information with DHS. They argued that this would be a burden and that it would interfere with their efforts to make the foreign students feel at home.

To date, there is no requirement for academic institutions to provide records to DHS on foreign students whom they did not sponsor for a visa. A further expansion of long-term monitoring of nonimmigrants to include temporary workers would no doubt be strongly opposed by academic institutions that hire many of those workers as well as by businesses that employ the majority of such workers. However, the experience with the SEVIS monitoring of students should be instructive; after the initial start-up requirements, the system has faded as a contentious issue.

### Other

The sanctuary movement is fueled by the support network for illegal immigrants. Much of that network is comprised of ethnic advocacy groups and religious-based

organizations. While church-centered practices of offering lodging to illegal aliens are private, the institutionalization of sanctuary policies by local or state governments is a larger problem. An egregious example of the sanctuary challenge appeared in Portland, Oregon in the aftermath of the 9/11 attacks when city police were ordered to not cooperate with federal officials who were seeking help in attempting to contact foreigners from countries with connections to international terrorism in an effort to learn whether other plotters remained undetected. Federal sanctions against locally-adopted sanctuary policies might include denying federal compensation for incarceration and emergency medical care for illegal aliens.

## . . . . . 4 . . . . . UNFINISHED REFORMS

Despite the progress that has been made in tightening procedures for screening arriving international travelers and towards more effective border control outlined above, there remain serious security gaps. The greatest continuing vulnerability lies in the possibility for an terrorist who manages to enter the country either legally or illegally to plot an attack without detection. The major loopholes that must be closed are the following:

- Complete the US-VISIT comprehensive entry-exit system for all foreign travelers. Land ports must not remain outside that system.
- Expand border fencing and deter illegal immigration by denying job opportunities through mandating use of E-Verify by all employers.
- Create a reporting requirement for the sponsors of all long-term foreign nonimmigrants similar to SEVIS.
- Abolish the Visa Waiver Program.
- Implement comprehensive secure ID based on state-issued driver’s licenses.
- Adopt policies to discourage sanctuary provisions.

Most of these reforms require the adoption of new legislation.<sup>14</sup> And, because of the broad array of interests opposing progress on each of these issues, Congress will

need to put national security ahead of narrow interests. The achievement of that objective will be furthered by a clear understanding by the nation's elected representatives that the American public demands that their security must have the highest priority and that they will hold their representatives to that standard.

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ENDNOTES

- 1 "U.S. Headed for 'Heightened Alert' Stage," ABC News.go.com, July 28, 2008. "Anti-terror officials in the U.S. cite this summer and fall's lineup of two major political parties' conventions, November's general election and months of transition into a new presidential administration as cause for heightened awareness and action."
- 2 See for example, "*Ten Steps to Securing America's Borders*," FAIR, January 1989.
- 3 Another immigration-related security issue is the ability of immigrants and nonimmigrants working in the United States to conduct defense-related and industrial espionage, but is not discussed further as it does not relate to the issue of international terrorism, which is the focus of the checklist.
- 4 Testimony of Richard Stana, Director, Homeland Security and Justice Issues, GAO, House Subcommittee on Homeland Security, March 6, 2008.
- 5 Testimony of Jess Ford, Director, International Affairs and Trade, GAO, "State Department Expects to Meet Projected Surge in Demand for Visas and Passports in Mexico," June 25, 2008 (GAO-08-931T).
- 6 *ibid.*
- 7 "Business Travel Association Praises DHS-State Joint Vision for Travel and Border Security; NBTA Labels Components of the Plan 'Victories for the Travel Industry,' Business Wire, January 26, 2006. ([http://findarticles.com/p/articles/mi\\_m0EIN/is\\_2006\\_Jan\\_17/ai\\_n26727833](http://findarticles.com/p/articles/mi_m0EIN/is_2006_Jan_17/ai_n26727833)) website consulted August 12, 2008.
- 8 "Protect our Nation from Dangerous People," DHS website ([http://www.dhs.gov/xnews/testimony/gc\\_1170955059184.shtm](http://www.dhs.gov/xnews/testimony/gc_1170955059184.shtm)) consulted August 18, 2008.
- 9 "Smuggling operations have contributed to the sharp rise in Cuban migrations across the Florida Straits, U.S. authorities said. The number of Cubans intercepted at sea doubled last year over 2004. (*Miami Herald*, January, 24, 2006). The 'wet-foot-dry-foot' policy gives parole to any Cuban who reaches our shore, thereby obviating the requirement to apply for asylum that applies to nationals of every other country. Those paroled Cuban illegal immigrants are automatically granted legal permanent residence after one year in the country under the provisions of the Cuban Adjustment Act.
- 10 Testimony of Richard Stana, GAO, March 6, 2008, op. cit. "Today, because no detailed exit program plans are available, prospects for successfully delivering this half of US-VISIT remain unclear. ...According to DHS, at this time, the only proven technology available for biometric land exit verification would necessitate mirroring the processes currently in use for entry at these ports of entry, which would create costly staffing demands and infrastructure requirements, and introduce potential trade, commerce, and environmental impacts."
- 11 "The fight against the REAL ID Act is not over, and NCLR continues to work hard to challenge the new law and make its implementation as harmless as possible." (<http://www.nclr.org/content/policy/detail/29762/>) website consulted August 18, 2008.
- 12 "Businesses balk at immigration checks: New screening targets illegals," *Washington Times*, August 12, 2008.
- 13 "Contractors oppose rule on employee citizenship verification," *The Federal Times*, August 18, 2008.
- 14 The US-VISIT data collection requirement is already mandated, but funding will be required for its expansion. Discouraging sanctuary policies can be done within existing law, similar to the U.S. suit against Illinois for its challenge to the E-Verify system, but new legislation would strengthen the power of the federal government.

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APPENDIX

**FAIR'S National Security Recommendations**

	DONE	IN PROGRESS	UNDONE
<b>DENY LEGAL ENTRY TO POTENTIAL TERRORISTS</b>			
Assign DHS role over visa issuance procedures (2002).	<b>X</b>		
End Visa Waiver Program (2002)			<b>X</b>
Make exit-entry system electronic & comprehensive (2002)		<b>X</b>	
Deny asylum to persons admitted to third countries (2002)			
Develop common asylum admission policy with Canada (2002)	<b>X</b>		
Require returning U.S. travelers to present secure nationality ID (2004)	<b>X</b>		
Require Canadian visitors to present secure ID of nationality (2004)	<b>X</b>		
<b>DENY ILLEGAL ENTRY TO POTENTIAL TERRORISTS</b>			
Increase Border Patrol staff and resources (2002)		<b>X</b>	
Enact Mandatory work verification system (2002)			<b>X</b>
Authorize SSA-DHS cooperation on no-match cases (2002)			<b>X</b>
Limit SSNs to citizens and authorized workers (2002)	<b>X</b>		
Increase staffing to remove absconders (2002)		<b>X</b>	
Increase border back-up control points (2005)			<b>X</b>
<b>DENY POTENTIAL TERRORISTS THE OPPORTUNITY TO STAY ILLEGALLY</b>			
End Section 245(i) amnesty for illegal residents (2002)	<b>X</b>		
Monitor schools sponsoring foreign students (2002)	<b>X</b>		
Follow up on SEVIS evidence of status violation (2002)		<b>X</b>	
Require uniform, secure driver's license standards (2002)		<b>X</b>	
Require verification of 'breeder' documents (2002)		<b>X</b>	
Federally control licenses to foreign nonimmigrants (2002)			<b>X</b>
Increase local-federal cooperation (2002)			
Adopt policies to discourage sanctuary policies (2002)			<b>X</b>
Provide FBI and State Dept. access to DHS resident alien database (2002)	<b>X</b>	<b>X*</b>	
Provide DHS access to FBI and State data on alien crimes and fraud (2002)	<b>X</b>		
Add alien fingerprint records from DHS and State to FBI file (2002)			<b>X</b>
Make asylum protection temporary (2002)			<b>X</b>
Refuse recognition of foreign ID for domestic use (2003)			
Increase detention and removal of OTMs (2005)	<b>X</b>		
Increase detention facilities to reduce 'catch and release' (2005)	<b>X</b>		
Increase DHS interior enforcement capability (2005)		<b>X</b>	
Track all long-term nonimmigrants in a database (2005)			<b>X</b>

\* State Dept. has access, FBI access is in progress.



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