

Code Orange:



Diminishing the Terrorist Threat to America

The Fourth Annual Special Report by
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Diminishing the Terrorist Threat to America

A national emergency exists by reason of the terrorist attacks at the World Trade Center, New York, New York, and the Pentagon, and the continuing and immediate threat of further attacks on the United States.

Declaration of National Emergency by
Reason of Certain Terrorist Attacks
By the President of the United States of America
Proclamation 7463 of September 14, 2001

I. EXECUTIVE SUMMARY

America remains under threat and vulnerable to attacks by international terrorists. While progress has been made since September 11, 2001, to tighten visa issuance procedures and enhance intelligence cooperation in preventing international terrorists from entering the country, this makes it more likely that the continuing vulnerability of our borders to illegal entry will be exploited in the next terrorist attack against us. The additional resources that have been allocated to border control since 9/11 are only making a dent in the problem because nothing has been done to deter thousands of foreigners from attempting illegal entry every day in response to the job magnet that draws them here. Only when the assault on our borders is diminished by denying jobs to illegal workers will we be able to gain effective control over our borders.

The measures recently adopted in the 9/11 Intelligence Act and in the Real ID Act will be beneficial if they are fully enforced, but important changes such as new driver's license standards are not due to be implemented until the end of 2007 and their implementation faces strong opposition. Efforts to end sanctuaries abroad for international terrorists must be accompanied by efforts to end sanctuary policies in the United States that may facilitate terrorist operations.

Additional measures are needed to strengthen both border security and security in the interior of the country. Measures that improve security in the interior of the country will assist in gaining control over the border, and greater border control will facilitate the process of diminishing the illegal alien population living in the interior of the country. Granting amnesty to those now living illegally in the country is not a solution to the terrorist threat, and it likely would aggravate the threat by diverting Department of Homeland Security (DHS)

resources from their primary responsibilities and encourage increased illegal entry by persons attracted by the hope of benefiting from recurring amnesties.

On this fourth anniversary of the tragic and horrific September 11, 2001, attacks on our country, we offer in the memory of the innocent victims of those attacks our considered recommendations for lessening the threat of further attacks. The recommendations below address conditions that exist today. They include a call to enforce the law where it is not being enforced, identification of efforts to undermine reform measures already due to be implemented, and for new reform measures that are needed to turn the tide on our continued vulnerability to terrorists.

The measures that are identified are all necessary components to weaving a fabric of security. Failure to take a holistic approach to national security will perpetuate our vulnerability in the same way that it is impossible to control the border today as long as interior immigration law enforcement is slighted.

Gaining Greater Border Security

- Increase the deterrent capability of the Border Patrol.
- Make additional resources available to the tribal police in border areas to assist them in their efforts to control illegal passage across their lands.
- Strengthen secondary interception of illegal border crossers.
- Combat the growing 'Other Than Mexican' problem by aggressively implementing expedited removal of these illegal aliens.
- Construct or lease sufficient detention facilities to detain apprehended illegal entrants.
- Declare an immigration emergency if the surge in illegal entrants continues to be in excess of detention capacity.

- Require U.S. citizens to present a U.S. passport or other secure U.S. Government-issued identity documents to re-enter the United States.
- Expand the US-VISIT entry-exit database tracking system of foreign visitors so that it is comprehensive.
- Require entering Canadian visitors to present secure identity documents.
- Restrict remote electronic entry-exit data collection at land ports of entry to persons with valid U.S.-issued entry documents.
- End the Visa Waiver Program.
- Work permits should not be issued to any foreigners illegally in the country.

II. BACKGROUND: THE CONTINUING THREAT

The reality that America had become a target of international terrorism did not happen on September 11, 2001. That message was clearly conveyed in 1993 with the first attempt to blow up the World Trade Center towers in New York City. That terrorist bombing caused mass destruction, six deaths and more than a thousand wounded. There were several other attacks and attempted attacks between that destruction and the 9/11 attacks, but none mobilized a national commitment to tighten our security. Even the December 1999 apprehension of ‘millennium bomber’ Ahmed Ressam as he tried to bring explosives into the country from Canada to attack the Los Angeles international airport did not result in any systemic change.

Recommendations for change were made after the 1993 attack. They included a call for the development of a foreign student tracking system and the development of an entry-exit database for all visitors, but neither was created over the more than eight intervening years. While Congress enacted in 1996 a requirement for creating the entry-exit database, that provision was subsequently eliminated by Congress before work ever began on its implementation. About the only terrorism-related change that survived from the immigration reform legislation in 1996 was adoption of a provision to make activities that “incite terrorism” or represent a danger to the community or security of the United States grounds for exclusion.

As another anniversary arrives of the horrific and tragic September 11, 2001, attacks on our

Gaining Greater Interior Security

- Reduce the camouflage for potential terrorists provided by illegal aliens by reducing their number through verification of work eligibility documents.
- Encourage communities that have adopted sanctuary policies that shield foreigners who are illegally in the United States to reverse those policies.
- Develop greater state and local law enforcement cooperation with DHS.
- Increase the interior enforcement capability of DHS to respond to reports and other leads identifying aliens illegally in the country.
- Require all foreigners admitted for a period in excess of six months to be registered in a database that tracks their status and whereabouts.
- Use the US-VISIT database system to demonstrate that persons in violation of their entry permit will be located and deported.
- End federal recognition of foreign-government issued identity documents other than passports.
- Resist efforts to weaken the REAL-ID Act driver’s license standards or timetable and further tighten breeder document standards.
- Withhold asylum until persecution claims are investigated as thoroughly as possible

“First, the threat is unclear and complex — but enduring. The condition is not expected to change. We continue to note attempted entry into the U.S. by aliens who according to intelligence pose a threat...we think we are most likely to be attacked with a vehicle borne improvised explosive device. However, it remains very clear that our primary adversaries continue to seek weapons of mass effects with which they intend to strike us.”

—James Loy
DHS Deputy Secretary Administrator,
Senate Select Committee on
Intelligence, Feb. 16, 2005

country, we may take solace in the fact that a further terrorist attack has not yet happened on our shore, while soberly acknowledging our continued vulnerability. At the same time, our grief for the loss of innocent lives now is extended to the victims of new acts of international terrorism. As we saw the results of the recent terrorist massacre in London, we could all think, “There, but for the grace of God, go I.” Yet, even more alarming is the concern that the next terrorist attack on our country could involve a nuclear, radiological, or chemical weapon of mass destruction rather than conventional explosives.

No one who saw the results unfold from the attacks four years ago in New York and Washington will ever forget them. And, as our national leaders have continued to remind us, we cannot relegate the threat of international terrorism to the past. As recently as this past March, Secretary of State Condoleezza Rice said en route to Mexico, there’s “*no secret [al Qaeda will try to get into America] by any means that they possibly can. That’s how they managed to do it before and they will do everything that they can to cross borders.*”

The American public has been repeatedly warned about the continuing threat to our country from international terrorism, as President Bush noted to members of the FBI Academy in Quantico, Virginia, on July 11, 2005, “*The terrorists want to attack our country and harm our citizens. They believe that the world’s democracies are weak, and that by killing innocent civilians they can break our will.*”

More pointed alerts have been issued by other officials, such as the remark by Vice President Cheney in December 2003, “*We’ve seen the threat level escalated to level orange. And we’ve done that because we’ve seen some reporting that leads us to believe it’s necessary. It’s a reminder to all Americans that, in fact, we are faced with a very serious long-term threat to the United States, that we’ve made major progress against these guys, but they’re still out there. They’re still doing everything they can to acquire ever deadlier weapons to use against us.*”¹ Or, consider Mr. Cheney’s comment in 2002, “*In my opinion, [the] prospect of a future attack against the United States is almost certain. We don’t know if it’s going to be tomorrow or next week or next year. [It’s] not a matter of if, but when.*”²

It is, therefore, important that we again take stock of how far our leaders have progressed in implementing measures to lessen our vulnerability to terrorist attack, and what remains to be done.³

FAIR has a unique perspective based on our monitoring of immigration developments and efforts to shape immigration policy for more than a quarter century. FAIR has a policy perspective that transcends the short-term crises of shifting patterns of illegal entry, or the ‘sky is falling’ appeals of high-tech employers claiming worker shortages, or the travel industry’s focus on tourism, or the construction industry’s focus on low-wage workers, or universities’ interest in foreign students and low-wage teaching assistants.

Working to Reduce the Alert Code

The past year has seen some accomplishments in improved national security measures. One of these was Congressional passage of the recommendations of the National Commission on Terrorist Attacks (the 9/11 Commission). Another was adoption of the supplemental reforms in the REAL-ID Act. A third positive development was the further progress towards implementation of the US-VISIT entry-exit database for tracking the status of foreigners who legally enter the country. Finally, the adoption of expedited removal procedures in U.S. border locations shows promise.

The members and staff of the September 11 Commission deserve credit for the well researched effort to draw conclusions from the circumstances that allowed the 9/11 attacks to take place and for their recommendations for remedial measures. The 9/11 report recommendations provided a valuable — but not exhaustive — guide for an agenda of needed changes.

The legislation adopted and signed into law last December (the U.S. Intelligence Reform and Terrorism Prevention Act) based upon those recommendations addressed many loopholes in our security procedures. For example, the law significantly amends and expands the terrorism-based grounds of inadmissibility into our country with respect to terrorist group membership, representation, endorsement or espousal, military-type training, material support, solicitation, and the definition of a terrorist organization. But it is flawed by a watered down approach to strengthening the security of our most commonly used form of identification, i.e., state-issued driver’s licenses, and by ignoring other domestic practices that create a safe haven for illegal residents.

It is unhelpful that many of the 9/11 Commission members appear to have put on blinders to one of the major challenges to improving our security. Now that their official inquiry has ended, and they are being funded by a private source, they appear to be loath to recognize the current major challenge to protecting Americans

“The wave of bomb attacks that shattered the morning rush hour in London today should also destroy the complacency with which many Americans had come to view the war being waged against us by terror-wielding foes...While we have been spared such horrors here for nearly four years, anyone who thinks we can safely divert our attention from this threat is kidding himself, and putting the rest of us at grave risk.”

—Frank J. Gaffney, Jr.
National Review Online
July 7, 2005

from future terrorist acts. That threat lies in the thousands of foreigners daily streaming illegally into our country to melt into the shadows of immigrant communities, especially in our major cities, which have a rapidly growing share of persons living and working in our country outside the law.

Some of the weaknesses in the 9/11 legislation were corrected this year when the REAL-ID Act provisions were enacted. These additional measures addressed identity document vulnerabilities in driver's licenses and other issues such as barring the acceptance of foreign consular IDs, limits to judicial review of orders of deportation, and denial of asylum claims for individuals suspected of having ties to terrorist organizations. That additional legislation is heartening, but it is too early to hope for any increased security resulting from it. The timeline for implementation of these identity verification measures is deferred until the end of 2007, and there is an effort among civil libertarians, ethnic advocacy groups, and some state governors to try to reverse the reform measures before they take effect.⁴

The US-VISIT entry-exit database on foreign travelers is on schedule to add all land ports of entry to the airports and seaports that are already using the system. But, the system is not complete yet, and serious challenges to the eventual comprehensiveness of the system continue to exist in the effort to exempt Canadian and Mexican travelers from the data collection system and to avoid collecting exit information at land ports.

As we describe later, the detention facilities for apprehended illegal entrants along the border are insufficient to detain the rising population of aliens subject to deportation. In response, the recent launching of expedited removal proceedings in the Laredo and Tucson border sectors are reportedly having the effect of deterring attempted illegal entry by nationals

of countries other than Mexico. However, it remains to be seen if this deterrence will continue when it is border-wide and illegal entrants can no longer simply avoid its application in one border sector.

Another recent development was the announcement of a timetable to implement a 9/11 Intelligence Act requirement that U.S. citizens and other travelers from neighboring countries present a passport when entering the United States. This new requirement will be phased in by the end of 2007. The Department of State announced that other U.S.-issued documents such as the Border Crossing Card, (BCC or "laser visa"), the Secure Electronic Network for Travelers Rapid Inspection (SENTRI), NEXUS and Free and Secure Trade (FAST) program cards "probably would be accepted" from foreign travelers.

But we remain vulnerable because we do not have control of our borders. The public recognizes this fact and rightfully holds public officials responsible for that vulnerability. The continuing threat from terrorists and our increasingly serious problem with illegal immigration are intertwined, and diminishing our vulnerability cannot be adequately addressed without dealing with illegal immigration and border security.

Why We Are Still Vulnerable

Despite tightened visa issuance procedures, passenger screening, improved intelligence sharing, and evolving databases on nonimmigrant visitors, the warnings about our continued vulnerability to international terrorism persist. Why is this?

The answer is two-fold. First, our ability to defend our borders against illegal penetration is inadequate. Secondly, our capability to monitor the activities of foreigners in our country is inadequate.

As all concerned Americans know, our borders continue to be violated by thousands of people every day. Even though the Border Patrol makes more than one million apprehensions of illegal entrants every year, and the Coast Guard makes additional apprehensions, indications are that hundreds of thousands of new illegal aliens take up residence in our country each year. Some enter on visas and then violate the terms of their entry, as did some of the 9/11 terrorists, but most enter the country illegally by sea or across the Mexican or Canadian border. How can we expect to deny entry to international terrorists as long as we cannot control our borders?

In the following sections we describe the immigration law enforcement challenge in stopping illegal entry into the country and in turning the tide on the rising illegal alien population already in the country. Both are important to national security because a porous border is an open invitation to entry by terrorists, and an enormous population of illegal residents already within the country severely complicates surveillance to identify terrorist activities. It should be remembered that one of the resources used by the 9/11 terrorists to obtain authentic driver's licenses in Virginia was to recruit an illegal alien to assist them in taking advantage of loopholes in the state's license issuance process.

The Tsunami of Illegal Entrants

The average annual number of apprehensions of persons who have illegally entered the country has been more than one million since the 1970s. Since reaching a peak of about 1.8 million in 2000, there has been a drop in apprehensions as the Border Patrol has been reinforced – or at least that was the case until illegal entry again surged with the news last year that President Bush would push a plan to give legal status to persons who had entered illegally. Nevertheless, the trend in the number of new illegal residents has been steadily rising despite enhanced border control efforts.

The threat persists that a terrorist trying to sneak into the country will not be apprehended. Although the likelihood of apprehension may have increased in the past four years, data are unavailable to document that, and they are, therefore, unavailable to indicate how much greater effort may be needed to reduce that threat to a minimal level. This, of course, is an issue that is of vital importance for national security.

As better border control has been achieved in Texas and California

“To defeat an enemy that lurks in the shadows and seeks relentlessly for some small crack through which to slip their evil designs — such a victory requires the vigilance of every American, the diligent preparation of every community, and the collective will of our entire nation.”

—Tom Ridge
DHS Secretary
May 21, 2004

in recent years, especially in the El Paso and San Diego sectors, the Arizona border with Mexico has become the new major illegal alien crossing point, accounting for more than half of all apprehensions of aliens entering illegally from Mexico. Because the most often used entry routes are now in remote and rugged country and illegal entrants are now most often escorted by alien smugglers, it is reasonable to conclude that illegal entry from Mexico is becoming more difficult. Unfortunately, it is also clear that the illegal entrants are more likely to succumb to the hardship of crossing desert regions.

Growing Deportable Alien Population

Even if persons illegally in the country are apprehended and eventually ordered deported, that does not mean that they leave. Most deportation orders are handed down in empty courts because the alien has not shown up for the deportation hearing. Even if the alien is present in court when ordered deported, that does not mean that the alien will be taken into custody. Instead, in most cases the alien is simply ordered to show up for removal from the country at a later date. Therefore, it should not be surprising that in December 2001, after the terrorist attacks, when the government first announced it would give priority to locating and removing deportable aliens, the list of these fugitives had 314,000 names.⁵

On March 30, 2004, DHS/ICE Assistant Secretary Michael J. Garcia testified before the Senate Appropriations Committee Subcommittee on Homeland Security that since March 1, 2003, ICE's Detention and Removal Office (DRO) had removed more than 52,684 criminal aliens and 40,802 non-criminal deportable aliens. He noted that the DRO has more than 18 fugitive absconder teams across the nation and detains more than 230,000 aliens each year.

What Garcia didn't say is that by April 2003 the number of deportable aliens had risen to 389,000 persons, and that the number of deportable aliens was continuing to increase faster than the removal teams could keep up.⁶

If DHS knew that a deportable alien in the United States had ties to international terrorist organizations, it would not let that individual run free. The disturbing prospect is that an alien who is apprehended and put into the slow-moving deportation process may not appear on any of the terrorist watch lists and be turned loose to engage in terrorist plotting. Apart from the two of the 19 September 11 terrorists for whom there was a security alert, if any of the other participants had been apprehended by immigration authorities they would likely have been released for voluntary departure or for a deportation hearing. For example, Satam al-Suqami had overstayed his legally permitted stay in the United States, but that did not lead either to his immediate removal from the country or even his detention. What was true in 2001 remains true today.

III. ESTABLISHING CONTROL OVER THE BORDER

Increasing Border Patrol Resources

The 9/11 Commission recommendations called for a further major buildup of Border Patrol and interior enforcement personnel. In response to these recommendations, the Intelligence Reform bill enacted last December authorized hiring an additional 10,000 Border Patrol officers and 4,000 new interior investigators over five years. The recommendations also included increasing detention facilities for apprehended aliens.

Despite the recommendations of the 9/11 Commission and the mandate from Congress,

the administration's budget submitted in February included funding for only an additional 210 Border Patrol officers. This will not even compensate for the temporary loss of Border Patrol officers being mobilized by the National Guard for service in Iraq. Similarly, Congress authorized an augmentation of detention space for apprehended illegal aliens by 8,000 beds per year over the next 5 years, but the budget proposal included a request for funding for less than one quarter of that number.⁷

Thus, despite recognition in both Congress and the administration that Border Patrol resources need to be augmented, so far implementation plans fall far short of what is authorized in the law.

The Tohono O'odham and Other Tribal Lands

A complicating factor in the shifted pattern of illegal entry is that large patches of land on the border in Arizona are tribal reservations. Tribal lands encompass more than 260 miles of international borders. Thirty-six tribes have lands that are close to or cross over international boundaries with Mexico or Canada. The largest of these, and the one bearing the brunt of the illegal immigrant invasion, is the Tohono O'odham Nation.

These reservations have their own law enforcement agencies, but they are ill-equipped to deal with large numbers of illegal aliens crossing their lands. The Tohono O'odham tribal authorities estimate that their effort to cope with illegal border crossing is costing them upward of \$3 million this year. They are receiving assistance this year of \$1.3 million from DHS.⁸ Issues of jurisdiction, cross-border movement of tribal members, and corruption further complicate border control operations in these areas.

The cooperation of tribal law enforcement

agencies cannot be taken for granted. Although they have a vested interest in being able to exercise effective control over their areas of jurisdiction, without adequate resources to meet the increased challenge neither they nor the Border Patrol are likely to be able to be fully effective. It is in the U.S. national interest to make available sufficient resources and training to the tribal police to help them cope with the new challenge and to promote close cooperative working relations with the Border Patrol.

Secondary Inspection Stations

The effort to control the border does not stop at the border. Because some illegal entrants evade apprehension at the border, a further effort is made to apprehend them while they are still near the border. Alien smuggling operations often include pickup at points on the U.S. side of the border and transportation to interior destinations. Secondary inspection operations are designed to disrupt these smuggling operations.

Secondary inspections by the Border Patrol are routinely undertaken at border region airports, bus terminals, and train stations. They also are mounted at 33 locations on roads and highways leading away from the border. These highway checkpoints are the most controversial, because they represent an inconvenience to U.S. and other legal motorists who may be forced to stop and show identity documents. There are recurring efforts to try to close down these highway checkpoints because of the inconvenience.

The highway checkpoints operate on a spot-check basis, rather than stopping all vehicles, in order to disrupt traffic as little as possible. In addition to fixed checkpoints on the major arteries leading away from the border, the Border Patrol also operates mobile checkpoints on secondary routes that smugglers

“We have instances where they are actually flagging down our agents, and they are asking local residents to call the Border Patrol so they can get what they call their permiso,’ [Spanish for permit or permission]. Agents are demoralized.”

—Rep. Silvestre Reyes (D-TX)
former Border Patrol Chief in El Paso
May 2005¹⁰

use to by-pass the major arteries. Only in the Tucson, Arizona, sector is the Border Patrol also using mobile checkpoints rather than stationary ones on major arteries. This results from a legislative restriction on fixed installations advocated by Rep. Jim Kolbe (R-AZ).

A recent report by the Government Accountability Office (GAO) concluded that, “Available data suggest that legislative restrictions on the Tucson sector reduced the performance of its interior checkpoints.”⁹ The logic behind mobile checkpoints is that they will be more likely to catch smugglers unprepared. The smugglers, however, have adjusted to this challenge by using scouting operations to advise whether checkpoints are operating on a chosen route and whether fixed checkpoints are currently waiving traffic through without inspection because of backups. Therefore, there is likely to be no significant difference in efficacy between fixed and mobile checkpoints except that the mobile operations are inoperative every time they are required to move and lose efficiency in the process.

Besides their role in apprehending illegal aliens — nearly 100,000 in fiscal year 2004 — and intercepting drug smuggling operations, the interior checkpoints fulfill another important role. Their experience in apprehending illegal aliens and drugs provides data on the effectiveness of the Border Patrol on the front line in apprehending illegal cross-border trafficking in people and drugs. Without the secondary apprehension data, a decrease in border apprehensions could be interpreted as either more effective deterrence of illegal entry or declining performance. But, if both secondary detection of alien and drug smuggling operations and apprehension on the border decline, this supports the interpretation that border operations are increasingly effective. This second look at operational effectiveness is critical to evaluating the success of border control efforts.

The Surge in Other Than Mexican (OTM) Illegal Entrants

Border Patrol apprehension data clearly establish that the number of illegal border crossers apprehended who are other than Mexican (OTM) is on the rise. Apparently contributing to this rise is the expectation by these illegal entrants that, even if apprehended, they will not be detained and are likely to be released into the United States after being fingerprinted. Some of these OTMs are reportedly turning themselves in to the Border Patrol with the expectation that they will be provided transportation to the nearest bus station.

Although these foreigners have entered illegally and nothing may be known about their background, all but persons who were previously deported or suspected of possible terrorist ties are released after fingerprinting with an order to appear at a later date for a deportation hearing. Tens of thousands of these foreigners never show up for that appointment and disappear into the millions of other illegal aliens residing in our country.¹¹ The explanation for this 'catch and release' policy is attributed to a shortage of detention facilities.

As David Aguilar, Chief of the Border Patrol, testified on July 12, 2005, "*Apprehensions are running at a rate of 175% for FY 05 over FY 04's record number of OTM apprehensions on the southwest border, and 131% over the record national FY 04 OTM apprehension figure of 75,371. The exponential growth in the apprehension of OTM illegal entrant aliens and, in most cases, their subsequent release is a major impediment to the removal process.*"¹²

Aguilar's testimony indicates that apprehensions of OTM illegal entrants are likely to reach about 100,000 this year. Unlike Mexicans, who are put back across the border if apprehended and may end up in the annual apprehension statistics several times, OTMs are likely to be apprehended only once — because they cannot be put back across the border — so about 100,000 apprehensions likely mean about 100,000 non-Mexicans illegally entering the country.

This OTM situation has reached crisis proportions not unlike the situation in the mid 1990s with asylum claimants. At that time foreigners were streaming into airports asking for asylum, being issued work authorization and being told to report for a hearing at some point in the future. The problem became entirely unmanageable until Congress mandated in 1996 that asylum applicants be detained until a hearing

was held on their asylum claim. That change in practice dramatically reduced the problem.

Rep. Solomon Ortiz, ranking Democrat on the House Armed Services Subcommittee on Readiness, teamed up with fellow Texan Republican Rep. Henry Bonilla to express in August 2004 in a letter to President Bush their concern about the practice of releasing OTMs. They wrote that the thousands of OTMs "*...include individuals from nations the U.S. defines as state sponsors of potential terrorism, or from those nations that have produced large numbers of al Qaeda militants. The current 'catch and release' policy appears only to facilitate these illegal immigrants' entry into the United States as media reports indicate that only a small percentage bother to appear at their deportation hearing. We understand... that detaining these OTMs is not a matter of bedspace, it is a matter of money alone. We know of any number of local facilities that could be used to house OTMs we are capturing.*"¹³

Other Texas elected representatives who spoke out strongly on this issue as it gained prominence included Republican Senator John Cornyn, who said about the 'catch and release' policy, "*It simply means that an avenue by which a worker could come into the country illegally is available also to a terrorist who would want to come into our country and do us harm,*" and Rep. Silvestre Reyes (D-El Paso), a former Border Patrol chief in McAllen and El Paso, who commented, "*I think it's unconscionable that at a time when [President Bush] talks about homeland security, that he allows a catch-and-release policy for non-Mexicans. If an attack like [the London bombings] occurs here and it's traced back to one of these people who were released in south Texas, I think it could be grounds for impeachment.*"¹⁴

In September 2004, Sen. Charles E. Grassley (R-IA), a senior member of the Senate Judiciary's Subcommittee on Immigration, expressed concern that since 2000, nearly 16,000 people whose country of origin is outside the Western Hemisphere have been apprehended at the U.S. border — including more than 4,000 from countries deemed national security concerns: Saudi Arabia, Syria, Iran, North Korea, China, Pakistan, Egypt, Lebanon, Jordan, Afghanistan, Yemen, and Somalia.¹⁵

In March of this year, Rep. Ortiz told the House Judiciary Committee's Immigration Subcommittee that, *"Border law enforcement officers routinely release illegal immigrants into the general population of the U.S. because they do not have sufficient funds and space to detain them at detention facilities. Captured OTMs are released on their own recognizance and are ordered to appear at a deportation hearing weeks after their release. The number of 'absconders' — those who never appear for deportation — varies widely, but is said to be 90% of those released, a number now approaching 75,000."* Ortiz added, *"The Southern Border is literally under siege, and there is a real possibility that terrorists — particularly al Qaeda forces — could exploit this series of holes in our law enforcement system along the southern border. ... Central American law enforcement and news reports note that al Qaeda is trying to get the ruthless MS 13 gangs to move high value al Qaeda operatives across the border for a large sum of money, we've heard about \$250,000."* The bottom line, according to Rep. Ortiz, is that, *"This is a clear and present danger inside the United States and the number of released illegal immigrants not returning for deportation grows by the hundreds each week."*¹⁶

On Los Angeles radio station KFI AM's *John and Ken Show*, Rep. John Culberson (R-TX) said on July 16, 2004, that federal prosecutors

had told him that Middle Eastern men with al Qaeda links are adopting Hispanic names, acquiring fake Mexican ID cards and mixing with the stream of illegals coming across our southern border. They're choosing this route, he said, because the screening process for incoming airline passengers is increasingly effective.

The Expedited Removal Response to the OTM Problem

As noted above, the Border Patrol headquarters in the Department of Homeland Security is focused on the surging OTM problem. In August 2004, DHS announced that the Border Patrol would begin using expedited removal powers that were authorized to it in 1986, but had been used previously only at land and sea ports of entry. In the same way in which a foreigner applying for admission at a port of entry can be denied entry, persons who have been apprehended after sneaking into the country can be treated as if they were denied entry at the border and immediately put into removal proceedings. The DHS announcement said that they would begin using this procedure primarily for OTMs and would limit use of expedited removal to persons apprehended within two weeks of their illegal entry and within 100 miles of the Mexican or Canadian border.

Border Patrol Chief Aguillar stated in July 2005 that, *"The U.S. continues to experience a rising influx of other than Mexican nationals (OTMs) illegally entering the country. Currently, Border Patrol places most of these apprehensions in removal proceedings before an Immigration Judge. To help streamline the removal process, DHS expanded the use of Expedited Removal proceedings (ER) for OTMs, initially in the Tucson and Laredo sectors. ER proceedings, when contrasted with traditional removal proceedings, shorten the duration of time spent in detention facilities and the practical elimination of time spent get-*

ting ready for and appearing before immigration courts and judges. Both the Laredo and Tucson Sectors are currently utilizing ER to streamline the removal process. The deterrence effect of the ER process on OTM illegal entry may clearly be seen when comparing these two sectors with sectors without this removal process. The reducing impact of ER on OTM apprehension rates, as compared [with] other sectors is clear. This is especially dramatic with Brazilian OTMs. In both the Laredo and Tucson Sectors, the lower rates of apprehension for OTMs contrast with those of neighboring Sectors that have not been using ER.”¹⁷

This appears to be an encouraging development and the program recently has been extended to the lower Rio Grande Valley. But it remains to be seen if the deterrent effect on OTM illegal entries will hold up when the expedited removal procedure is implemented border-wide, i.e., when OTM illegal entrants have no choice but to take their chances, like Mexicans, on not being apprehended. More importantly, the national security issue is not whether the removal process is working, but whether persons linked to possible terrorism still have a good chance of avoiding apprehension. As Reps. Ortiz and Bonilla made clear in their letter to President Bush, the national security implications of the OTM problem are too serious to disregard it under the guise of a lack of detention facilities.

Increasing Detention Facilities

It is clear that business as usual policies along the border that allow large numbers of illegal entrants into the country after they have been apprehended is a serious flaw in immigration law enforcement. Even though these aliens are fingerprinted, a significant potential exists for persons with terrorist connections to be waived into the country with a request to show

up later for a removal hearing. In addition, this flow of illegal aliens waived into the country augments the illegal resident population that provides them with cover while they plan their attacks.

The 9/11 Intelligence Reform Act adopted in December 2004 authorized an increase in detention beds of 8,000 per year over five years. Yet the administration’s budget for next fiscal year included a request for less than 2,000 beds. As the discussion above indicates, Reps. Ortiz and Bonilla believe that in the short term the government could contract for additional detention space and that should be a priority objective.

Using Emergency Powers

The continuing terrorist threat facing the country and the continuing invasion of the country by illegal entrants represent a true emergency situation. Both New Mexico Governor Bill Richardson and Arizona Governor Janet Napolitano formally recognized the seriousness of these conditions in August 2005 when they made formal declarations of emergency.

The federal government also has emergency power to deal with immigration crises. Section 103(a)(10) of the Immigration and Nationality Act provides for mobilizing local law enforcement resources including detention facilities in an emergency.¹⁸ As long as conditions persist in which OTM illegal entrants are turned loose to disappear into the country, it is reasonable to consider this an emergency situation, especially because of the terrorist threat. As with the asylum crisis a decade ago, the solution lies in removing the expectation of unhindered entry even if apprehended.

Tracking Visiting Foreigners: US-VISIT

Progress is being made in implementing the congressionally-mandated electronic entry-exit

“...both DHS and State believe that we can strengthen border security and facilitate entry processing by ensuring that travelers present documents in which border inspectors have confidence in both the validity of the document and the validity of the decision originally made to issue the document. To simplify and secure entry requirements, we believe that a limited number of recognized — and secure — identity and citizenship documents is preferable.”

— Frank Moss
Deputy Assistant Secretary of State
June 9, 2005¹⁹

database system for foreign visitors. But the US-VISIT system is not yet fully operational — even though it is required to be completed by the end of this year — and questions persist as to whether it will ever be fully implemented. At present the bulk of border crossers, who are from Canada and Mexico, are not entered into the data system, and the system is not collecting exit data — except in a few demonstration projects — to compare with entry data in order to establish who may be staying illegally in the country. Both of these faults must be corrected to make the system into the comprehensive foreign visitor tracking system that it is intended to be.

At present only Mexicans who enter by land and are intending to travel beyond the border region or for an extended period are entered into the US-VISIT system when they enter. Most Mexican border crossers who use Border Crossing Cards (BCC) do not get entered into the database. Yet, the BCCs are electronically readable and contain a biometric identifier and should be used for entering entry and exit data into the US-VISIT system.

Canadian visitors similarly are not being entered into the database system. Yet it is clear that travelers from Canada include non-Canadians who have Canadian driver's licenses. No one should forget the case of the 'millennium bomber' Ahmed Ressam, an Algerian, who was apprehended with a trunk load of explosives in December 1999 upon entry at Port Angeles, Washington, from Canada using a Canadian driver's license. He was on his way to blow up the Los Angeles airport. It is also publicly reported that there are several groups in Canada with ties to international terrorism.

Apart from the US-VISIT database system, the 9/11 Intelligence Act also specified a requirement for Americans returning to the United States to present a passport. That will end current practice which allows Americans visiting neighboring countries to re-enter the country with a driver's license, birth certificate, or simply an affidavit attesting to U.S. citizenship that was notarized before departure. Needless to say, none of these alternatives offers a form of secure identification, and, therefore, they are an opportunity for clandestine entry into the country by terrorists and others.

The new passport requirement will not go fully into effect until the end of 2007, but already there are efforts to abort implementation of the requirement. Implementing provisions have not yet been promulgated, but all efforts to weaken the passport requirement

must be resisted in the interests of national security.

Similarly, all efforts to weaken the requirement for Mexican and Canadian visitors to be incorporated in US-VISIT should be resisted. President Bush, although signing this requirement into law, has expressed surprise about the requirement — presumably as a result of representations from Mexico or Canada — and has called for the requirement to be restudied. It is difficult to imagine the President being able to justify to Americans their need to have passports to reenter the country if Mexicans and Canadians are being conceded more accommodating treatment.

The argument against incorporation of Canadian and Mexican visitors in the database is that there are so many of their entries and exits on a daily basis that inspection of the entry documents of all of them would cause delays to become so long that it would interfere with commerce. The trade-off between commerce and national security must be resolved in favor of national security. Yet technology offers the prospect that the greater security from comprehensive screening can be achieved with minimal infringement of commerce.

The data collection systems that allow EZ-PASS travelers to speed through toll booths and SMART-TRIP subway riders to pass through turnstiles offer examples of how data can be collected expeditiously on border crossers. Of course, the difference is that in addition to collecting information, border inspection must offer assurance that the data being collected on an individual is valid for the person bearing it. For the thousands of pedestrian border crossers, inspectors must be able to compare the arriving alien and the identity document in order to detect instances when BCCs are being used fraudulently. Similarly, for

travelers arriving in vehicles, if there is more than one passenger, the authorized entry of all passengers must be assured. Secondary inspection must be used to assure that the odds are in favor of detection of abuse of the privilege of expeditious entry. If authorized visitors are caught smuggling in unauthorized travelers, they must at a minimum become barred from entry.

Visa Waiver Program

FAIR has opposed the Visa Waiver Program (VWP) since it was adopted in 1986 for the simple reason that it should not be assumed that all persons coming from an economically developed country will be traveling to the United States for only legal purposes. Even developed countries have populations that seek to find jobs in the United States or to engage in illegal activities in our country.

The purpose of consular interviews for visa applicants is to screen out those who are ineligible under our immigration law. The criteria for admitting nationals of a foreign country into the visa waiver program is that there has been a low rate of visa refusal for applicants for tourist and business visas. But, if the visa screening process is responsible for a low rate of visa refusals, it suggests that applicants for visas are self-selecting based on their likelihood of being approved. It does not mean that non-applicants for visas would also have been approved. Yet these non-applicants for visas are currently provided the opportunity by the VWP to arrive on our doorstep where immigration inspectors are often restricted by severe time pressures in their ability to screen visitors. The success of visa screening by consular officers before the VWP was created is evidence of a successful operation, and it should be restored — not abandoned.

This conclusion is even more valid in the wake of the 9/11 attacks. As **Jan Ting, a Senior**

Fellow of the Foreign Policy Research Institute, Professor of Law at Temple University, and former INS Assistant Commissioner (1990-93), testified to the 9/11 Commission on December 8, 2003:

We now know that visa waiver allowed the entry without a visa of Zacarias Moussaoui, a French citizen of Moroccan descent, believed to have been “the 20th hijacker,” currently charged with conspiracy to commit the murders of 9/11. We know that Richard Reid, the so-called “shoe bomber,” as a British citizen and passport holder was able, because of the visa waiver program, to board an airplane headed for the United States without having to apply for or acquire a U.S. visa.

We know now that all the 9/11 hijackers spent time in Western Europe and that Western Europe as much as the Middle East is the source of Al-Qaida terrorism directed at the United States. We also know that thousands of blank Belgian and Italian passports have disappeared or been stolen from government offices, which might be doctored to facilitate entry to the U.S. via the visa waiver program.

Of course eliminating visa waiver can't eliminate the ability of terrorists to enter the U.S. But will ending visa waiver to any significant extent reduce the ability of terrorists to enter the U.S.? Isn't that the right question to ask? And if the answer is yes, shouldn't Congress and the Administration end the visa waiver program immediately and restore the visa requirement for foreign visitors notwithstanding the lobbying of the travel industry?

The validity of Professor Ting's observations is

even more compelling since the 2004 terrorist acts in Madrid and in London during the summer of 2005. One of the suspects in the Madrid terrorism attacks, which took the lives of 191 innocent people and wounded 1,460 others, is a French national, and could have traveled to the United States without a visa. Those who carried out the first round of London bombings, which killed 52 innocents and injured 700 others, of whom 22 were seriously or critically injured, were British citizens of Pakistani descent. The same is true for the second group of terrorists, who were apprehended after their bombing efforts failed to do mass damage. These same individuals could have entered the United States without visas and executed their attack on the New York City subway system.

As we have documented in other studies, the increase in visitors to the United States since the inception of the VWP has been similar for travelers from both VWP countries and from countries where visas are still required. Similarly, the decrease in foreign travel to the United States by tourists and business travelers following the 9/11 attacks did not result in less of a decline for the VWP countries than for the non-VWP countries. This demonstrates that the tourism industry's assertion that the VWP is needed to maintain a large flow of visitors is unfounded.

IV. INTERIOR ENFORCEMENT OF THE IMMIGRATION LAW

Since 1986, when the employer sanctions provision of the Immigration Reform and Control Act was enacted, the primary interior enforcement effort against illegal immigrants has been relegated to employers. The logic of employer sanctions is that if foreigners know in advance that they will not be able to find jobs in the United States they will not come. Although the logic is on target, the flaw in the system has

been the failure to provide employers with the means to identify counterfeit documents. Congress partially addressed this failure in 1996 when it created employment document verification systems for new employees, but these are available only on a voluntary basis and are little used.

As a result of the failure of the sanctions law to deter illegal employment and a desultory job-site enforcement effort by the Immigration and Naturalization Service (INS) — and now by DHS — illegal immigration has skyrocketed. The approach of recent administrations and Congress since 1996 has been to allocate increased resources to border control efforts while ignoring the growing illegal alien population. This approach can clearly be seen as a failed effort because it ignores the interior conditions that condemn the border effort to a perpetual exercise in crisis management.

The Camouflage

The problem is not just a border problem. Both those who evade apprehension when they enter illegally and those who are apprehended and then released head for destinations throughout the country. No longer do just gateway cities like New York and Los Angeles have large populations of illegal aliens; growing enclaves of illegal aliens are troubling communities across the country.

What was officially estimated by the federal government as an illegal immigrant population of 3.5 million persons in 1990 had exploded to 7 million by 2000. Our estimate and that of others such as the Pew Hispanic Center place the current illegal immigrant population at about 11 million, and that population is increasing by about half a million a year. Other estimates are even higher.

Locating a foreign terrorist hiding in our country would be a difficult task in the best of times. When that terrorist exists amid a population of 10-12 million other foreigners living illegally in our country who are also trying to evade the attention of law enforcement authorities, the task becomes the equivalent of searching for a needle in a haystack.

As noted in the Staff Report of the 9/11 Commission, *“Thus abuse of the immigration system and a lack of interior immigration enforcement were unwittingly working together to support terrorist activity.”*²¹

“We will not have secure borders until we enforce the laws already in place.”

—Janice L. Kephart
former counsel
National Commission on
Terrorist Attacks²⁰

The problem is not just the number of persons living among us in violation of the immigration law, it is also the practices that cater to this illegality. A terrorist today who illegally enters the country will be able to procure false identity documents for a nominal price. Those documents even include consular identity cards issued by foreign governments. They may use these false documents to obtain state issued driver's licenses and identity cards in some states, or they may obtain those documents from state employees who have been corrupted by the temptation of the large population of persons willing to pay bribes for illegally issued identity documents.

Two approaches for diminishing this camouflage of illegal residents are to adopt measures to decrease the illegal population through aggressive immigration law enforcement or, alternatively, to change the illegal residents into legal residents. The latter approach is currently being advocated by President Bush and by Congressional proposals for a guestworker/amnesty program. The argument in favor of this latter approach is that by registering the current illegal residents as legal residents, we will learn who they are and they will be more inclined to cooperate with law enforcement personnel. But this concept is a ruse. It does not truly reduce the problem. Using the haystack analogy, a partial or total amnesty for these illegal immigrants will not diminish the size of the haystack; it will only cause the wisps of hay to become more neatly aligned.

Another reason to question the logic of the proposed guestworker/amnesty proposals is that by their example of pardoning earlier illegal entry or violation of terms of entry they send the message that the United States condones violation of our immigration law and will periodically accommodate illegal entrants or overstayers with another amnesty. This is a recruitment message for further illegal immigration.

Furthermore, registering and investigating the backgrounds of millions of amnesty/guestworker applicants would be a Herculean task that would degrade the enforcement capability of the immigration authorities for years even with proposed lax screening standards that would deny information gathered in amnesty adjustment background investigations to immigration law enforcement personnel. In this regard, it is worth noting that, with all the resources available to the executive branch, pertinent information was not uncovered about Bernard Kerik, President Bush's first choice to head DHS.

The approach that offers the ability to both deter illegal immigration and encourage those already residing illegally in the country to return to their homelands is effective denial of jobs to illegal workers. This requires providing employers the means to verify employment documents — as is already possible on a voluntary basis with the Basic Pilot system — and requiring that they do so. When that is done, employers will no longer be able to evade penalties for hiring illegal workers because of counterfeit documents.

The faulty logic of attempting a plumbing repair before shutting off the water was highlighted by House Majority Leader Tom Delay (R-TX), who commented in early June that, “...immigration changes must be preceded by tougher border security and enforcement of U.S. laws.” Rep. DeLay reportedly told President Bush that comprehensive immigration law enforcement must be in place “...before turning to a guest-worker program.”²²

Rep. DeLay's approach is logical, but it ignores the already enormous haystack. While shutting off the flow of illegal border crossers is an essential element of an effort to make the illegal entrant population less inviting camouflage for international terrorists, the other essential

element is shrinking the haystack. To achieve this objective requires creating conditions in which members of the illegal alien community are encouraged to depart the country or are identified and removed by immigration authorities, perhaps in cooperation with local law enforcement authorities. Rather than tackling the problem of the illegal alien population, the approach chosen by President Bush, Senators John McCain (R-AZ) and Edward Kennedy (D-MA) and by Senators John Cornyn (R-TX) and Jon Kyle (R-AZ) is to invite this population to stay.

The siren song of the proponents of amnesty for the illegally resident alien population is that we can't solve the problem through law enforcement approaches because we need these illegal alien workers to do the jobs that Americans won't do. This ignores both the fact that a comprehensive law enforcement approach has yet to be tried, and the fact that the jobs that are unattractive to American workers have become so precisely as a result of the presence of so many illegal workers willing to undercut American workers' wage expectations. Recognition of the relationship between declining wages and the increase in illegal workers leads to the question of whether we should accept and institutionalize this downward spiral, which has accelerated the trend in income inequality in the United States, or, alternatively, try to reverse the process by attacking the problem.

Conceding to foreign workers those jobs whose wages have been depressed by illegal workers implies either that this alien population will be permanently consigned to doing these low-wage jobs — which is anathema to a society that believes in equal opportunity — or that this alien population has to be consistently replenished by newly arriving legal or illegal workers. Neither of these alternatives allows for the supply of illegal low-wage for-

ign labor to become diminished in order to restore wages that have been depressed by illegal workers. And both alternatives would perpetuate the rising number of poorly skilled and educated foreigners who live at the margins of our economy. This clearly would do nothing to diminishing this population's capacity to be used as camouflage or a breeding ground for international terrorist activities.

Local Sanctuary Policies

The National Commission on Terrorist Attacks insisted that the United States needs to combat the sanctuaries in foreign countries used by Al Qaeda and other international terrorist organizations. They failed, however, to address the adoption of sanctuary policies by state and local governments in the United States that hinder efforts to detect aliens who are in our country in violation of the law. These provisions have been adopted in recent years by numerous municipal governments and by the state of Maine in March 2004. These provisions generally take the form of prohibiting local government employees asking about immigration status and, often, from cooperating with federal immigration officials. An extreme example of the application of these policies occurred when the Portland, Oregon police, who operate under a sanctuary policy, were prohibited in the aftermath of the 9/11 attacks from cooperating with the FBI and DHS in the effort to interview young males from countries with ties to terrorist organizations.²³

The argument for the adoption of these policies is that illegal aliens will not inform law enforcement personnel of crimes committed on them or cooperate with investigation of crimes perpetrated on others if they are afraid that their illegal status in the country will lead to their detention and removal. Yet, if this is a successful policy, it is difficult to understand why many of the sanctuary cities have crime

rates far in excess of the national average. Some of these sanctuary cities, such as Dallas, Miami and Detroit, have crime rates that are about double the national average. As long as these high crime rates persist, whether sanctuary policies result in greater cooperation in solving crimes is questionable.

At times the sanctuary mentality appears to go to lengths that defy the most elemental common sense. The *New York Sun* reported on July 12, 2005, "Reversing a policy that [New York] City Council members said dates back to the pushcarts of the 1930s, the city opened [street] vending to illegal immigrants yesterday." Suppose that you wanted to spread a communicable disease or poison a large number of people: Wouldn't food vending provide an ideal opportunity? Because the city chose to extend to illegal aliens the opportunity to become legal food vendors, it has exposed the city's residents and visitors to a new level of danger.

It is already the law that local government employees may not be prohibited from reporting to federal authorities information about illegal immigrants that is developed in the course of their official duties.²⁴ Legislative provisions are currently proposed to penalize localities that have non-cooperation policies.

Further, it is an insult to the American taxpayer to reimburse jurisdictions for the costs that result from the presence of persons illegally in the United States if those jurisdictions have adopted policies that encourage illegal aliens to reside there.

Federal-Local Cooperation Against Illegal Immigration

Section 133 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 provided for the Department of Justice to enter into programs with local governments to train

local law enforcement authorities in immigration law enforcement. By doing so, local law enforcers would become able to establish the immigration status of law breakers and arrange for the federal authorities to take responsibility for those individuals. So far only two states have entered these cooperative agreements, but they are being looked at by other jurisdictions that are increasingly concerned about the rise of alien criminal gangs.

As noted above, local authorities may enforce federal immigration law and may be required to do so by a federal declaration of an emergency. However, the training offered as a result of a cooperative program provides an assurance that local officials will not overstep their authority.

Interior Enforcement Resources

In accordance with a recommendation of the 9/11 Commission, Congress adopted legislation last year to increase the interior enforcement capability of DHS. Yet, when the administration's budget request was unveiled in the current Congress, this priority was reduced to a token gesture.

As House Judiciary Committee Chairman John Hostettler (R-IN) stated at a March 10, 2005, hearing on this issue, "*Last year, this Congress passed and the President signed the Intelligence Reform and Terrorism Prevention Act. This Act called for an 800-agent increase in ICE strength in 2006 and for 8000 more detention beds in 2006. Yet, the President's budget calls for only 143 new ICE investigators and 1920 detention beds, both less than 20% of the number we authorized.*" He continued, "*I am deeply disappointed by the Administration's budget. It would be a horrible lapse of duty for this Subcommittee to allow a lack of resources to facilitate the embedding of terrorists and criminals in our country. I will do my utmost to ensure that the promise that*

Congress made to the American people in last year's legislation be fulfilled.”

As explained above, the key to gaining control over the border is reducing the ease with which illegal entrants can get jobs in the United States, and that requires enforcement of the employer sanctions law in the interior of the country. As long as our government continues to focus only on the border and ignore the rampant problem of the increasing illegal resident population, it will be impossible to turn the tide on the wave of illegal immigration overflowing our border defenses.

Foreigners in Long-Term Nonimmigrant Status

As a result of the first World Trade Center attacks in February 1993, the FBI requested a system for tracking the movements of foreign students in the country. But it was not until after the 9/11 attacks that all students are now required to be registered in a database that records their entry into the country with updated information supplied by their schools. The pilots of the four aircraft involved in the 9/11 attacks had attended flight schools in the United States and another of the terrorists had entered the country on a student visa but had never registered at the school. Several of the 19 terrorists were in violation of their entry permits at the time of the attack.

The Student and Exchange Visitor Information System (SEVIS), which was set up for registering foreign students, is intended to raise red flags if a potential terrorist in one of these long-term programs leaves the program and uses his visa status as a springboard to plotting an attack. There are other long-term visas that represent the same potential for abuse by terrorists, so all foreigners admitted to the country for a period in excess of six months (excepting foreign government representa-

tives) should be required to be registered in a status tracking database — like the SEVIS and SEVP databases²⁵ — with changes in residence or status reported electronically by their sponsor at the time of a change and at least semi-annually, or — in the case of self-sponsorship — by the visitor.

This requirement would apply, *inter alia*, to temporary workers (H visas), intra-company transferees (L visas), religious workers (R visas), and workers under NAFTA (TN visas).

Use US-VISIT for Enforcement

If the US-VISIT entry-exit database is used just to screen arriving travelers and to collect data on those travelers it will have limited value in reducing the security threat. Just as the London terrorists would have been able to bypass US-VISIT database screening because they had not been identified as having terrorist connections, so could several of the 9/11 terrorists have been admitted if today's data collection system were in force when they arrived. The implication is clear that we must cease operating as if once an alien is admitted to the country he or she is no longer of any interest to security authorities.

The purpose behind the Congressional mandate to develop an entry-exit database was to be able to rapidly identify visitors in the country who are in violation of their entry status. The estimated four million foreigners in the country who were legally admitted and then violated the terms of their entry permit is growing every day, and will continue to do so until the DHS demonstrates that this law breaking will not be tolerated.

The value of a comprehensive entry-exit database is twofold. It will reveal patterns of entry permit abuse by such factors as nationality, sex, age, and intended destination in order to

assist targeted enforcement strategies. It will also be responsive to intelligence that specific individuals with ties to international terrorism may have entered the country.

However, the information gathered on arriving visitors will serve neither of these purposes unless departures are also recorded in a procedure that does not allow false data to be entered into the system. This is why departures by land ports must be recorded as well as departures from air and sea ports. Entry overstay information will be meaningless as long as a traveler arriving by air may have exited by land with no record of that departure. That fact is clear from the largely useless and discredited data collection system that is being replaced by the US-VISIT system.

The perception that entry permit violators are 'home free' must be replaced by a perception that enforcement against entry abuse is a real possibility and that it will result in removal and the inability to return to this country for a significant period of time. Publicity for enforcement actions by DHS is assured because of the outcry from civil liberty and ethnic advocacy groups in opposition to immigration law enforcement. The missing ingredient, then, is for the DHS to remain firm in its law enforcement effort. The public message that must be communicated is that enforcement will happen regardless of the protests of apologists for the immigration law breakers.

Foreign Documents

At a time when we are forced by the security threat to tighten our document security standards and the standards for the entry documents we accept from international travelers, it is inappropriate and unwise to lower the documentary standards we accept from foreigners residing in the country. Yet, this is what is being done by the growing official recognition

that is extended by local governments to consular identity documents issued to Mexicans, Guatemalans, and others. Because legal foreign visitors will have passports and entry permits or U.S.-issued Border Crossing Cards, the applicants for these consular identity cards are virtually all illegal residents.

The foreign consular identity cards are also being accepted for commercial purposes. This includes recognition by banks for opening accounts that are then used for sending remittances out of the country. Because foreign banking transactions are used in the operations of international terrorist groups, the U.S. government has a substantial interest in having access to the identity of persons sending money abroad. This can be done only if such transactions are regulated and the identity of the sender is recorded. Clearly, capturing information based on a foreign government-issued document that is issued to persons who are in the country in violation of the law is likely to represent a weakness in the integrity of the system. Available information indicates that consular IDs may be issued to persons who are using counterfeit breeder documents, e.g., false birth certificates, false residence information, etc., and that the IDs have been fraudulently obtained in some instances and, in other instances, the IDs themselves may be counterfeit.

In policy and practice, we must require that foreigners be held to a documentary standard that assures that we know who they are. In addition, we must know that they are legally in the country, and if they do not leave the country when they are required to do so, we must know that too. This is a standard that is recognized around the world, and the apologists for law-breakers should no longer be allowed to shape a policy that undermines national security.

Resisting Backsliding

We noted above the new requirement mandated by the 9/11 Intelligence Act that U.S. citizens and visitors from neighboring countries will have to start presenting a passport or other U.S.-issued identification document to enter the United States as of the end of 2007. Despite the fact that President Bush signed this provision into law, he commented in April 2005 that he was surprised to learn about the new requirement and ordered a review of whether the new requirement was necessary. The provision may have been brought to his attention by neighboring governments who fear the requirement will hurt their tourism industries by requiring U.S. tourists to get passports before visiting their countries.²⁶

It must not be assumed that visitors from Canada or Mexico represent no terrorist threat. Just as the Pakistani-descent terrorists in London could have entered the United States to carry out their suicide bombings while avoiding visa screening procedures, it is also possible that Canadians, who are admitted without passports or visas, could be recruited for similar attacks here, and reports have circulated about efforts by jihadist terrorists to recruit Mexicans and other Latin Americans into their plotting against the United States.²⁷ Other Latinos often try to pass themselves off as Mexicans if they are apprehended by the Border Patrol so that they will be returned to Mexico, from which they can again attempt illegal entry into the United States.

According to a recent DHS Inspector General's report, from January 2004 to late August 2004, eight Canadian citizens suspected of terrorist activities were intercepted at either United States airports or at U.S. pre-clearance facilities at Canadian airports. They were identified using electronic databases that would not have been available if these same individuals had entered the United States by land ports of

entry. The report says, "We believe [accepting a Canadian driver's license to enter the United States] is a potential vulnerability to the integrity of the immigration process because CBP (Customs and Border Patrol) officers cannot readily verify data on Canadian driver's licenses to confirm the identity of the individual who presents one."²⁸

A similar effort to forestall a new requirement exists with the secure driver's license REAL-ID requirements adopted this year. Because the new standards are not mandated to go into effect until January 1, 2008, there is ample maneuvering room for opponents of the measure to work to reverse the new standards. The American Civil Liberties Union and ethnic advocacy groups have spoken in opposition to the new provision terming it the equivalent of a national ID system. The National Governors' Association and the National Conference of State Legislatures have expressed opposition to the requirements terming them an unfunded mandate.²⁹

As long as states continue to issue driver's licenses to persons regardless of their immigration status, the country remains vulnerable to terrorists obtaining driver's licenses so that they can travel and operate freely while they prepare an attack. That window of vulnerability is not scheduled to be closed by the newly adopted provisions until the end of 2007. State-issued driver's licenses and ID cards are not identification of U.S. citizenship, but they must become identification of legal presence in the United States.

Even the tighter standards for issuance of driver's licenses adopted in the REAL-ID Act contain security loopholes that should be tightened. One of these is the failure to address the practice of accepting a baptismal certificate — which is neither a secure document nor tied by any biometric identifier to an individual — for

issuing a delayed birth certificate. This should be precluded after a child has reached school age. Another loophole is the state-issued 'non-ID' driving certificate allowed by the legislation. While these documents — now being issued in Tennessee and Utah — may not be accepted for boarding airlines or entering federal buildings, they do accommodate and therefore encourage persons illegally residing in the country.

TPS and Asylum Reform

Under the rubric of humanitarian policy, the United States allows persons illegally in the country to stay for extended periods or even permanently. These programs are asylum and Temporary Protected Status (TPS). As the persons accommodated by these programs are persons who have entered the country without the screening that legal immigrants undergo, they represent a threat to the country as well as undermining our immigration law.

Those given TPS status are persons in the United States who may wish not to return home because of unsettled conditions such as civil strife or natural disaster. For persons to benefit from this program, the executive branch has to make a determination that conditions in the home country warrant the use of this policy. The policy makes sense as a measure for students or business visitors who may be temporarily stranded here but who will want to return home at the earliest safe opportunity. It makes no sense, however, for persons illegally in the United States who came seeking a job and have no interest in returning home at the end of a temporary period. Those persons gain with the TPS status what they came for, because getting TPS provides access to a legal work permit.

There are no known examples of terrorists using the TPS program to gain extended status and work permits in the United States, and, there-

fore, the ability to obtain U.S. driver's licenses and the ability move around without suspicion. However, this program too suffers from the same problem of legalizing the status of persons who are in the country illegally and who have not passed through the normal screening process. At the present time the beneficiaries of TPS include persons from Angola, Bosnia-Herzegovina, Burundi, El Salvador, Guinea-Bissau, Honduras, Liberia, Montserrat, Nicaragua, Kosovo, Rwanda, Sierra Leone, Somalia and Sudan.

It is important to distinguish between asylum and the refugee program. Although the criteria are the same for both programs, refugees are screened overseas on the basis of need, security, and medical criteria.

Asylum allows persons who claim to fear persecution if sent home to stay as permanent residents. Asylum claims may be made upon arrival at a port of entry or up to a year after entry even though the person may have no valid identification or may have overstayed their permitted entry. Other asylum claims, known as defensive claims, are filed by persons illegally in the country who have been apprehended and put in deportation proceedings. Although most asylum claims are rejected, they buy time for persons to be in the United States unsupervised. Unless these asylum claimants are identified as a threat to society, they are not detained.

Though the connection between these humanitarian programs and international terrorism is slight, it nevertheless exists.

Sheik Abdel Rahman, the driving force behind the February 1993 bombing at New York's World Trade Center that caused mass destruction, six deaths, and more than a thousand wounded, entered as a tourist, applied for asylum, and received legal residence. The organizer of the attack, Ramzi Ahmed Yousef, entered

the United States in September 1992 without a visa, but was allowed to enter provisionally after asking for asylum, and was not detained because of lack of detention space.

In July 1997, Ghazi Ibrahim Abu Mezer, a Palestinian, and two others were arrested on a tip-off to New York City police and were found to have suicide bombs and a note indicating they intended a terrorist attack in the city's subways. Abu Mezer entered the United States from Canada, where he had been a student, and requested and received political asylum. The United States tried to deport him to Canada, but the Canadians would not take him back because he had committed crimes there. He was then allowed to apply for asylum here, and a judge ordered a hearing for 1998 and released him.

Since those terrorists were able to benefit from our asylum policies, those policies have been tightened so that today beneficiaries and applicants are less likely to be turned loose in our society. Nevertheless, asylum grants are still being made to persons from countries that are on the State Department's list of state sponsors of terrorism: in fiscal year 2003, asylum status was given to 250 Iranians, 92 Sudanese, and 7 Syrians. Others receiving asylum grants in that year included 185 Iraqis, 165 Pakistanis, 41 Bangladeshis, 24 Lebanese, 16 Afghans, and 15 Jordanians.

More recently, one of the suspects in the botched second attempt to bomb the London transit system was an Ethiopian citizen who was granted asylum in Britain by claiming to be a Somali. Individuals using fraudulent documents or no documents at all may attempt to exploit the asylum system by posing as citizens of a country in turmoil.

Getting on Top of the Deportable Alien Scandal

The inability of DHS so far to cope with the

deportable alien situation despite significantly increased efforts is due to the fact that the population of criminal and other deportable aliens is constantly being augmented by newly released deportable aliens. Congress intended that no criminal aliens would be released into society when it established the Institutional Removal Program (IRP). INA Section 238 as amended by the 1996 illegal immigration reform measures specifies that proceedings shall be conducted, "in a manner which assures expeditious removal following the end of the alien's incarceration for the underlying sentence."

The GAO informed Congress in October 1998, "The [INS's] efforts to identify potentially deportable criminal aliens in federal and state prisons and complete removal proceedings before their release have shown limited improvement since 1995, and GAO continues to have concerns about INS's Institutional Hearing Program (IHP)."³⁰ Media accounts suggest that this report card, if updated today, would indicate a continuing problem.

Curtailing Benefits Fraud

Illegal aliens often use fraudulent applications for adjustment of status to legal residence as a means to obtain a valid work permit, which, in turn, facilitates getting a social security number, a driver's license, and a job. According to the Annual Report to Congress by the DHS ombudsman for 2005, "*The current green card application process is highly susceptible to exploitation by unscrupulous persons and ineligible applicants seeking interim benefits ... Consequently, unscrupulous individuals can take advantage of the backlog by filing for a green card merely to receive the interim benefits, not necessarily the green card itself.*"

At present, the time elapsed between filing a petition for adjustment of status and a decision on the application may entail several years, although DHS is working to reduce the process-

ing time to six months. During this period, the adjustment of status applicant is treated as if he or she were entitled to be in the country despite the fact that when the petition is eventually adjudicated about one fifth of the applications are rejected as bogus (and in some jurisdictions the rate is as high as two-fifths). The ombudsman's report noted that, "*Some of these individuals may be national security or public safety risks.*"

The recommendation by the DHS ombudsman for correcting this problem is for the agency to do preliminary eligibility screening at the time that an application is filed and to issue a work permit only if that screening indicates that the application is valid. Where this initial screening has been tested, it has significantly reduced the rejection rate of adjudicated cases to about three percent.

V. Recommendations:

There is no magic solution to making the borders terrorist-proof. Many of the steps that are needed have been proposed before. Some have been adopted but are not yet in force, others are in force but are not being effectively funded or enforced, while still others have yet to be adopted. The recommendations below do not represent a menu of alternative approaches that will be effective if selectively implemented. All are needed, and they can only have the maximum intended effectiveness in providing greater security to the nation if they all are adopted and aggressively implemented.

At the Border

Increase the deterrent capability of the Border Patrol. Progress has been made towards achievement of this objective, but not enough. The starting point must be the recommended augmentation of the Border Patrol by

an additional 2,000 officers per year over the next five years.

Additional resources need to be made available to the tribal police in border areas to assist them in their efforts to control illegal passage across their lands. Among current weak points in border control are the large tracts of Indian reservations near the border. Indian tribal police work with the Border Patrol in controlling these areas, but it is a new problem for them, and they are ill-equipped and have inadequate resources for the job.

Strengthen secondary interception of illegal border crossers. The secondary highway control points and rail, bus, and airport inspections in border areas provide a vital component of deterrence as well as a necessary measure of the effectiveness of front-line border control. These operations need to be strengthened in the effort to establish effective border control.

Combat the growing 'Other Than Mexican' problem by aggressively implementing expedited removal of these illegal aliens. The expedited removal program holds promise for deterring the surging OTM problem by removing the 'home free' aspect of the current 'catch and release' practice. Implementation of expedited removal must be border-wide and consistent to have the greatest effect.

If detention facilities are insufficient to detain apprehended illegal entrants, they must be constructed and/or contracted for. Mexicans, like OTMs, are also increasingly seeking a deportation hearing knowing that they will be released into the country if detention facilities are over-committed. The only effective deterrent to the increasing use of this ploy is to assure that sufficient detention facilities are available so that no apprehended ille-

gal entrant need be released. The facilities that the U.S. military is in the process of de-activating across the country could easily, at relatively little cost, be converted into detention facilities. Installations that no longer play a role in the nation's conventional defense can become integral to defending against the threat of terrorism.

If the surge in illegal OTM entrants continues to be in excess of detention capacity, the Attorney General should declare an immigration emergency based on INA Section 103(a)(10). This provision would allow the federal authorities to draw on state and local law enforcement resources to help manage the problem. Offering an example of what is needed, New Mexico and Arizona Governors Bill Richardson and Janet Napolitano declared a state of emergency along their respective borders with Mexico in August 2005. Gov. Richardson's statement on August 12, 2005, on CNN noted that a fund would be made available to hire additional law enforcement personnel and pay officers overtime. He noted that the Border Patrol is, "... doing a good job, but they don't have the resources."

Returning U.S. citizens must present a U.S. passport or other secure U.S. Government-issued identity document. The current practice of accepting a birth certificate, driver's license, or affidavit is an invitation for fraudulent entry by terrorists. The end to this practice is mandated by the 9/11 Intelligence Act, but not until the end of 2007. All efforts by neighboring countries and the U.S. travel industry to relax this standard or the timetable for its implementation must be resisted.

The US-VISIT entry-exit database tracking system of foreign visitors must be comprehensive for all but minor children to be effective. If visitors who are recorded as enter-

ing the country in the US-VISIT database are able to leave the country without any record, as at present, the database will be worthless as a tool for identifying persons staying illegally in the country. Exit data must be collected comprehensively not just at air and sea ports but also at land ports. The system must also be comprehensive in collecting entry and exit information on all foreign travelers including those from Mexico and Canada.

Entering Canadians must present secure identity documents. The current system that allows visitors from Canada to enter on a Canadian driver's license is a security weakness identified by the 9/11 Commission and by others. Canadians must be required to present Canadian passports or U.S.-issued identity documents such as Border Crossing Cards. Americans will not and should not stand for looser standards for entering Canadians than those for returning U.S. citizens.

Expeditious electronic recording of pre-screened travelers entering and exiting in vehicles must be limited to persons who have valid U.S.-issued entry documents and must be subject to spot checks for abuse. Foreign travelers who are entering the United States at land ports with visas for travel beyond the frontier region or for longer stays must be individually entered into the US-VISIT database upon entry and exit.

The Visa Waiver Program remains an Achilles heel that must be ended. Consular visa screening for all first time travelers to the United States must be reinstated to allow in-country U.S. consular experts to evaluate the bona fides of applicants.

In the Interior of the Country

The camouflage for potential terrorists provided by the illegal alien population must be reduced. The job magnet that attracts hun-

dreds of thousands of aliens to illegally settle in the United States each year must be shut down. Verification of work-related documents will deny jobs in the formal economy to illegal workers. This will expose non-compliant employers to the full force of the law if they persist in hiring illegal workers. Only as illegal immigration is deterred and the current illegal immigrant population is forced to return home by the lack of jobs for them, will we gain control over the border and diminish the camouflage provided to terrorists by millions of immigration lawbreakers.

Communities that have adopted sanctuary policies that shield foreigners who are illegally in the United States must be encouraged to reverse those policies. Policies that prevent federal local cooperation in identifying persons illegally in the country hinder anti-terrorism efforts. The federal government has considerable leverage — primarily in the form of providing or withholding federal funds — to persuade recalcitrant local officials to cooperate in immigration law enforcement.

Greater efforts must be made to develop state and local law enforcement cooperation with DHS. Both carrot and stick incentives must promote this effort. Although state and local law enforcers have the inherent authority to enforce immigration law, that authority can most effectively be exercised by persons trained in immigration law enforcement with formal delegations of authority. Local officials must be assured that the federal authorities will take custody of apprehended illegal aliens and compensate costs incurred in doing so. Officers at the local level should have the same immunity as federal immigration officials in enforcing immigration law during the conduct of their official duties. State Criminal Alien Assistance Program (SCAAP) and housing grant funding should be contingent upon states providing information to federal author-

ities on aliens failing to provide proof of legal presence.

DHS must increase its interior enforcement capability to respond to reports and other leads indicating aliens illegally in the country. The current inability of the immigration authorities to get on top of the growing number of deportable criminal aliens in the country, let alone act on reports identifying non-criminal illegal aliens in the country, is an open invitation to terrorists or illegal job seekers to ignore our immigration laws.

All foreigners admitted to the country for a period in excess of six months should be required to be registered in a separate entry/exit database. Changes in location or status for these visitors must be reported electronically by their sponsor at the time of a change as well as at least semi-annually. Self-sponsored nonimmigrants must provide these reports for themselves.

The US-VISIT database system must not only collect and match departure records to entry records, interior immigration personnel must demonstrate that persons in violation of their entry permit will be located and removed. The value of a comprehensive entry-exit database on foreign visitors is of little value if DHS does nothing with the information obtained.

Federal recognition of foreign-government issued identity documents — other than passports — must cease. Vigilance over financial transactions that may be used to fund international terrorism is undermined by federal acceptance of transactions based on foreign identity documents that may be counterfeit or issued on the basis of counterfeit documents. Federal acceptance of mortgages issued to persons with similar unverifiable documents,

such as foreign consulate-issued identity documents, also facilitates the long-term presence of persons illegally in the country.

Efforts to weaken the REAL-ID Act driver's license standards or timetable must be resisted, and further tightening of breeder document standards is needed. Secure, verifiable, and interoperable driver's license standards called for by legislation enacted in 2005 are being opposed by advocates for illegal immigrants and some state governments. The more than two years before the new standards are due to take effect leaves open a window of vulnerability and room for efforts to undermine the needed reform. Not addressed by the new standards is the opportunity for foreigners to assume the identity of U.S. citizens using counterfeit documents, such as baptismal certificates. Remaining security loopholes in the driver's license issuing system need to be closed.

Foreigners applying for asylum should not be granted that status until the likelihood of their persecution if returned abroad is investigated as thoroughly as possible by U.S. authorities abroad. Asylum claims must not continue to be available to potential terrorists with fabricated stories to gain legal status in the United States. Generic information about human rights practices abroad, if accepted for granting asylum, encourages natives of that country, including terrorists, to illegally enter the United States and apply for asylum.

Work permits should not be issued to any foreigners illegally in the country. Persons who have sneaked into the country or who have chosen to overstay their permitted entry may apply for asylum protection or adjustment to permanent residence through some other provision, but until they have undergone security and eligibility screening they should not be

documented as if they were legally in the country. This applies to applications for Temporary Protected Status as well as for adjustment of status applications.

VI. Conclusion

We are living in an age of international terrorism, and it is necessary that we adopt appropriate defensive measures. We learned on September 11, 2001, that we had made a tragic mistake in not taking more seriously the threat that was demonstrated by the first terrorist attack on the World Trade Center in February 1993.

The horror and the tragedy of the 9/11 attacks has finally mobilized action to reduce our vulnerability to future attacks. But the response continues to ignore major components of our vulnerability, i.e., our inability to control the country's borders. As long as we fail to deter hundreds of thousands of foreigners from crossing illegally each year in search of jobs, terrorists plotting against our country can continue to find cover among the millions of persons who are in the country illegally. Amnesty proposals will only perpetuate these problems and further complicate efforts.

In today's interdependent world, we cannot isolate ourselves from all threat of international terrorism. We want to be able to continue to welcome immigrants and visitors, whether tourists or students or temporary workers or some other status, but we can only do that without exposing Americans to needless risk if we assure that those foreigners have been properly screened to enter the country legally. The recommendations that we offer above are not only intended to decrease our vulnerability to international terrorism, they are also intended to increase our confidence that a continued flow of foreigners into our country does not represent an unacceptable risk. The substance

of those recommendations is that interior enforcement against immigration law violation is integral to the process of establishing border control, and both interior enforcement and border control are essential to reducing the country's threat from international terrorism.

Endnotes

¹ Remarks by the Vice President at McChord Air Force Base, Tacoma, Washington, December 22, 2003.

² NBC's "Meet the Press," May 19, 2002.

³ Earlier related reports by FAIR are: "Invitation to Terror: How Our Immigration System Still Leaves America at Risk" — Sept. 2002, "State of Insecurity: How State and Local Immigration Policies Are Undermining Homeland Security" — Sept. 2003, and "International Terrorism: Serious Solutions for Immigration Controls" — Sept. 2004.

⁴ EPIC Alert July 28, 2005 — "More than seventy individuals from local, state and national organizations gathered in Washington, D.C. on Wednesday for the National Driver's License Strategy Meeting convened by the American Civil Liberties Union, Electronic Privacy Information Center, National Asian Pacific American Legal Consortium, National Immigration Law Center, and National Council of La Raza. The privacy, civil liberties, and immigrant rights' groups discussed strategies to fight the implementation of the REAL ID Act, a national ID program passed in May, which mandates federal identification standards and requires that state DMVs collect sensitive personal information."

⁵ *Atlanta Journal-Constitution*, May 8, 2003.

⁶ *Ibid.*

⁷ Press Release of Rep. Solomon P. Ortiz, March 3, 2005.

⁸ Associated Press news report, "Money scarce, Indian reservation struggles amid wave of illegal immigrants," on FOX News.com (consulted Aug. 19, 2005).

⁹ "BORDER PATROL: Available Data on Interior Checkpoints Suggest Differences in Sector Performance," U.S.GAO-05-434, July 2005.

¹⁰ "Non-Mexicans are 'caught, released': Some say this practice reveals gap in security," *The Arizona Republic*, July 17, 2005.

¹¹ According to a report, "Security fears grow at Southwest border," in the *Boston Globe*, Aug. 21, 2005, which cited Justice Department data, "In fiscal 2004, the 54,261 suspects who did not appear in court included 530 from Pakistan, 206 from Iran, 164 from Jordan, 93 from Iraq, 80 from Yemen, and 29 from Afghanistan."

¹² Statement of David Aguilar, Chief, Office of Border Patrol, Department of Homeland Security, to the U.S. House Cte. on Appropriations Subcte. on Homeland Security, July 12, 2005.

¹³ Press release of August 9, 2004, by the office of Rep. Ortiz.

¹⁴ "Other Than Mexicans," *Tucson Weekly*, Sept. 2, 2004.

¹⁵ *The Washington Times*, Sept. 21, 2004.

¹⁶ Testimony on March 3, 2005.

¹⁷ Statement of David Aguilar, July 12, 2005 *op.cit.*

¹⁸ INA Section 103(a)(10) permits the Attorney General in an actual or imminent immigration emergency to authorize any state or local law enforcement officer under certain conditions to perform or exercise powers, privileges, or duties of immigration officers during the period of a declared "mass influx of aliens." This provision, enacted in 1996, is designed to enlist the force enhancing capability of local law enforcement personnel in dealing with a situation such

as a new 'Mariel' boatlift of Cubans or other Caribbeans, or a surge of illegal entry from Mexico. It has never been activated, but a mass influx of aliens is occurring across the Mexican border that is beyond the resources of the Border Patrol to stem.

¹⁹ Congressional Testimony to the U.S. Senate Foreign Relations Committee Subcommittee on Western Hemisphere, Peace Corps and Narcotics Affairs, June 9, 2005.

²⁰ Testimony before the House Subcommittee on Immigration, Border Control and Claims, May 5, 2005.

²¹ "9/11 and Terrorist Travel, A Staff Report of the National Commission on Terrorist Attacks upon the United States," p.49.

²² See Associated Press, June 9, 2005, account on newsMax.com and Washington Times, July 21, 2005.

²³ "A Police Force Rebuffs F.B.I. on Querying Mideast Men," New York Times, November 21, 2001.

²⁴ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Sect. 434, Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Sect. 642.

²⁵ The U.S. Department of State identifies these programs as, "The Student and Exchange Visitor Program (SEVP) is designed to help the Department of Homeland Security and Department of State better monitor school and exchange programs and F, M and J category visitors. Exchange visitor and student information is maintained in the Student and Exchange Visitor Information System (SEVIS). SEVIS is an Internet-based system that maintains accurate and current information on non-immigrant students (F and M visa), exchange visitors (J visa), and their dependents (F-2, M-2, and J-2)."

²⁶ *Washington Post*, April 15, 2005.

²⁷ See "Islam on march south of border," by Joseph Farah, editor and chief executive officer of WorldNetDaily.com, June 7, 2005.

²⁸ Implementation of the United States Visitor and Immigrant Status Indicator Technology Program at Land Border Ports of Entry, DHS/OIG (OIG-05-11), Feb. 2005.

²⁹ More than seventy individuals from local, state, and national organizations gathered in Washington, D.C., on July 27, 2005, for a National Driver's License Strategy Meeting convened by the ACLU, EPIC, National Asian Pacific American Legal Consortium, National Immigration Law Center, and National Council of La Raza. Reported at http://www.epic.org/privacy/id_cards/ (consulted Aug. 12, 2005).

³⁰ Code Orange: 9/11 Report

About FAIR

The Federation for American Immigration Reform (FAIR) is a national, non-profit, public interest organization of concerned citizens working to reform our nation's immigration policy. FAIR seeks to improve border security, to stop illegal immigration, and to promote immigration levels consistent with the national interest. FAIR is the largest and most effective organization in the United States dedicated exclusively to immigration issues. It is financially supported by 70,000 members and over 40 foundations nationwide. FAIR is a tax-exempt organization under §501(c)3 of the Internal Revenue Code.

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