



FEDERATION FOR AMERICAN IMMIGRATION REFORM

Immigration and National Security

2010 UPDATE

A REPORT BY JACK MARTIN, DIRECTOR OF SPECIAL PROJECTS



“IN A POST-9/11 WORLD, WE MUST KNOW WHO IS COMING INTO THIS COUNTRY AND WHY — WE CANNOT HAVE TRUE SECURITY IF WE DO NOT SECURE OUR BORDERS.”

—Alberto Gonzales, former U.S. Attorney General
Washington Post, August 22, 2010

INTRODUCTION

The terrorist attacks of September 11, 2001 — unlike previous terrorist attacks in the United States — tragically brought home to the American public that we are vulnerable to attack by international terrorists.

While the attacks of 9/11 shocked the nation, they were not unpredictable. In the years leading up to the attacks, FAIR repeatedly warned that our lax immigration policies and failure to enforce our laws exposed our nation to unnecessary risk. Since 9/11, FAIR has issued annual analyses of ongoing threats posed by immigration policies and practices and the reforms needed to reduce those vulnerabilities. The following discussion updates developments in the past year on the needed immigration reforms related to national security.

Despite the passage of nine years, there is broad consensus that much more needs to be done to protect ourselves against a similar attack in the future. The failed effort to detonate a massive car bomb in New York City's Times Square in May demonstrates that a determined terrorist can exploit weaknesses in the system. That attempted act of terrorism failed only because of the ineptitude of the bomber.

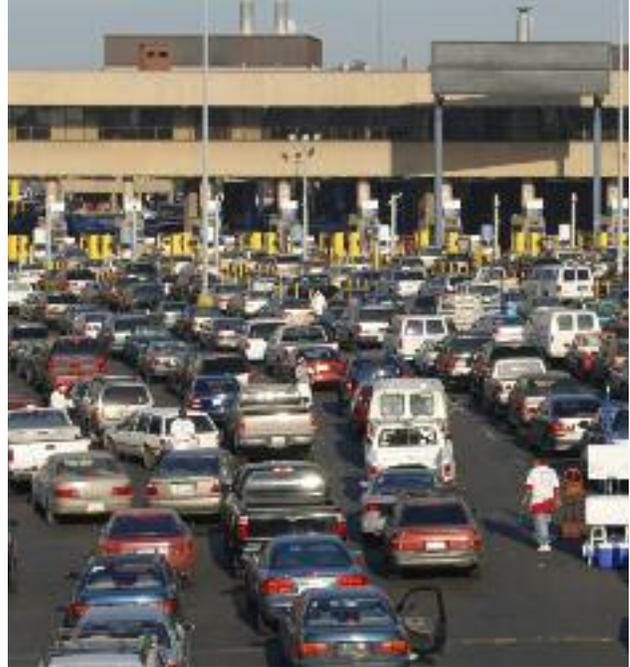
In advocating for the elimination of immigration policy loopholes that we and the 9/11 Commission argue create vulnerabilities, we do not claim that achievement of those reforms will provide absolute security, but we do argue that failing to do so creates an unjustifiable risk for the American public.

CHECKLIST

Our continued vulnerability to terrorist attack persists despite progress that has been made in securing the nation. The government is better regulating the entry and monitoring of foreigners in the United States. Examples include the establishment of a tracking system for the arrival and departure of foreign students and the development of a database with biometric

identifiers for all foreign visitors. These were obvious weaknesses identified in the aftermath of the 9/11 attacks and the subject of early reform recommendations. We have dropped those recommendations from our checklist of needed reforms. The items below, therefore, represent an unfinished agenda.

BORDER CONTROL



the issue

The 19 terrorists who hijacked the four planes that were turned into weapons of mass destruction entered the country with visas. Visa issuance procedures have been modified to make this less likely to happen again. But that does not mean that foreign terrorists could not try to sneak into the country from Mexico or Canada. Ahmed Ressam was apprehended by an alert border agent in December 1999 on his way to explode a bomb in the LAX airport. Would he have been caught if he had tried to sneak in from Canada at an unattended crossing point? Would terrorists likely be intercepted if they were being escorted by a Mexican smuggler? Would our intelligence services accept the assertion by a terrorist who shows up at the border asking for asylum claiming that he is a persecuted Egyptian Coptic Christian?

the reform

Greater border control involves physical barriers against illegal entry (which remain unfinished)

Rep. Sue Myrick (R-N.C.), a member of the House Intelligence Committee, stated August 24, 2010, that she worries about Iranians learning Spanish and slipping through the border. She also commented, “People don’t want to face the fact that we have terrorist organizations operating in this hemisphere and this country.”¹

The continuing flow of illegal immigration by sea is another area of vulnerability. When the Golden Venture ran aground in New York carrying a load of nearly 300 Chinese illegal aliens in 1993, it resulted in improved tracking of international shipping to prevent a repetition. But there has been no success in stanching the flow of illegal immigrants from Cuba. Cuba remains on the State Department’s list of states sponsoring international terrorism.²

and reducing the ratio between the number of people attempting illegal entry and the number of

Border Patrol officers attempting to identify, intercept, apprehend, and deport them. While recent increases in the staffing of the Border Patrol are important, and stationing of National Guard forces on the border is worthwhile, true reform requires deterring illegal entry by removing the incentives that attract hundreds of thousands of illegal aliens to the United States each year. The single greatest deterrent would be an effective and universal work authorization verification procedure that would dramatically reduce the availability of jobs for illegal aliens. That disincentive to illegal immigration would apply equally to visa overstayers as well as those who sneak into the country. Reducing the job magnet requires adoption of a national mandatory work authorization document authentication system, namely the E-Verify system, accompanied by a legislative change to allow the Social Security Administration to share information on fraudulent use of Social Security numbers with the Treasury and Homeland Security departments. Intending terrorists are not going to be deterred by the inability to get jobs, but dramatically reducing the number of illegal entrants coming in search of jobs would allow Homeland Security

officials to better focus resources on detecting and apprehending people who pose a significant danger to the nation. A corollary to that needed reform is that the denial of jobs to illegal immigrants will also diminish the number of illegal aliens in the interior of the country among whom intending terrorists may find camouflage.

The flow of illegal immigration from Cuba is a separate issue. Our current practice of granting entry to Cubans who arrive in the United States and giving them legal residence a year later under the Cuban Adjustment Act encourages the illegal flow into the country. False Cuban birth certificates are being sold to other Hispanic illegal aliens. This illegal flow could be stopped by deporting Cubans who arrive illegally unless they establish a legitimate claim to political asylum — in other words, the same standard that applies to foreigners from every other country besides Cuba. The result of that policy change would be to stem the flow of smuggled aliens from Cuba and to increase the chances that any terrorists seeking to enter by sea — or with Cuban birth certificates — would be intercepted by the U.S. Coast Guard.

LEGAL ENTRY



the issue

Foreign visitors from Saudi Arabia, Egypt, United Arab Emirates, Lebanon, and Yemen — the countries from which the 9/11 terrorists came — require visas. But the list of countries whose nationals do not require visas to enter the United States has grown since the 9/11 attacks. There is no reason to believe that terrorists will not be able to obtain travel documents from one of the 36 countries that are now included in our Visa Waiver Program (VWP). Further, homegrown terrorists in several of those countries, e.g. Great Britain, France, Germany or Spain, could just as easily be assigned a target in the United States as in Europe. Our experience with terrorists who traveled to the U.S. in the VWP includes Zacarias Moussaoui — convicted and serving a life sentence for being part of the 9/11 plot. He entered with a French passport. Richard Reid, traveling to the United States with a British passport and no visa, attempted to blow up an American Airlines flight headed for Miami.

The VWP has become more secure with the recent addition of a requirement that travelers

using the program submit identification information in advance so that the data may be run through electronic databases designed to identify persons with known terrorist connections. This reform, however, is only as valuable as the extent to which intelligence services are able to identify persons engaged in terrorist plotting. Even when intelligence on foreigners who have been radicalized by the terrorist network is available, it must be made available to the screening system if it is going to be effective. In December 2009, Umar Farouk Abdulmutallab, a Nigerian, attempted to blow up the passenger plane he was on as it approached a landing in Detroit. Information was available that he had become radicalized by Moslem terrorists, but the information was not placed in the database that would have prevented him from boarding a plane for the United States.

Another weakness in the legal entry channel is the documented fraud in the refugee admission process.

the reform

The only terrorists who sought to participate in the 9/11 attacks but failed to get into the United States were those whom U.S. consular officers denied visas. There is no reason not to require that all foreign travelers except children and government officials undergo consular screening. That does not mean that a traveler would have to have a visa for every trip. Visas may be valid for years or even indefinitely, but they should not be issued without an initial screening. That can be

done with appointments at the U.S. embassy or consulate. This reform would provide an additional professional assessment as to whether the visa applicant is a bona fide nonimmigrant traveler rather than the current situation in which the only check besides the electronic watch list is the scrutiny of immigration and customs authorities at U.S. points of entry, who are under pressure not to slow down long lines of arriving travelers.

TRACKING FOREIGNERS IN THE UNITED STATES



the issue

With the exception of foreign students, the United States has no effective system for tracking whether foreign visitors have left the country when their period of legal admission has expired. FAIR, the 9/11 Commission, and Congress have all insisted that the country must have such a system. In response, the executive branch has established a tracking system that electronically collects identity data on all foreign visitors entering at ports of entry by air and by sea, but it is not doing so for most travelers by land. It has tested the possibility of collecting matching electronic data from departing travelers, but such a system is not yet implemented. The situation still exists, therefore, that a person who is identified through intelligence operations abroad as involved in terrorist activities may be identified as having earlier entered the United States, but no record will exist to establish whether that person is still in the United States.

Homeland Security Secretary Napolitano acknowledged the problem in testimony on December 10, 2009, before the Senate Judiciary

Committee. She said, “I don’t think that we can say with precision what percentage of visa holders are stay over. But I think we can say that the issue of the visa overstays has been one of the kind of most difficult but top priority problems that we’ve been working on this last 10 months.” A report from anonymous official sources indicates that DHS is currently contemplating asking Congress to scrap the mandate that they develop an exit system that matches the records of incoming foreign travelers because it would be expensive and would interfere with the speedy flow of departing foreign travelers.³

Data received in response to a Freedom of Information Act request by CNSNews.com document that 481 fugitive illegal aliens from countries designated as state sponsors of terror are unaccounted for after entering the United States. The data relate to fugitives from Cuba (137), Iran (29), Sudan (14), and Syria (13). Other fugitive illegal aliens being sought are from “countries of interest,” i.e., Pakistan, Lebanon, Somalia, Iraq, Yemen, Afghanistan, Algeria, and Saudi Arabia.⁴

The news outlet also provided the information based on a Department of Homeland Security (DHS) report that, “Of the 774,112 illegal aliens apprehended during the past three years [2003-2006], 280,987 (36%) were released largely due to a lack of personnel, bed space, and funding needed to detain illegal aliens while their immigration status is being adjudicated.”⁵

Although more recent data are not available, the practice of releasing deportable aliens for lack of detention facilities is shown in the fact that the

the reform

The government must complete implementation of a comprehensive entry-exit system for all foreign travelers. The system must allow Homeland Security to determine whether a foreigner is in the United States, whether that person has overstayed a permitted entry, and patterns of overstay by persons with common characteristics, i.e. nationality, age, sex, type of visa. These data are essential to any investigation aimed at locating possible terrorist plotters as well as persons who are deliberately violating the immigration law. In addition, the tracking system for students, based on information supplied by their sponsoring educational institution, should be expanded to apply to all long-term foreign

number of “absconders,” i.e. illegal aliens apprehended and released, continues to grow. It is also evident in the newly outlined triage system adopted by DHS. That policy limits the locally apprehended illegal aliens that it takes off the hands of local police agencies to those who have convictions for serious crimes or are known to have terrorist ties and results in all others being released back into society. This means that DHS may unwittingly release international terrorists who are in the country illegally instead of deporting them.

residents in H-visa or L-visa categories with information provided by their employers. Data collection must be comprehensive, including entry and exit data by air, sea and land. Otherwise, persons who entered by air or sea who have exited by land will appear in the records to still be in the country. In addition, until DHS achieves a major reduction in the illegal alien population, it must seek increased funding for the additional 40,000 detention beds authorized by Congress in 2004 — to approximately 60,000 beds — so that it is no longer releasing or refusing to accept illegal aliens from local police agencies for lack of detention space.⁶

SECURE IDENTITY



the issue

The ability of the 9/11 terrorists to obtain numerous state-issued driver's licenses, in some cases using the same methods as used by illegal aliens, allowed them to avoid presenting their foreign passports — some of which would have revealed they were illegally in the country — when they boarded the planes they hijacked and crashed. The response to that obvious security loophole was the enactment in 2005 of the REAL ID Act, a recommendation of the 9/11 Commission. REAL ID prescribes standards for the issuance of state driver's licenses, which include verifying the identity source documents, e.g., birth records, use of tamper-proof features, and making the information accessible to other state governments and the federal government. Congress could not outright mandate these changes because license issuance is a state prerogative, but Congress has provided that the federal government will not recognize non-compliant licenses for federal purposes such as boarding an aircraft. A few states are openly defying the requirement to comply with the new standards, and several others are foot-dragging in

an effort to get Congress to fund the costs of the change to the new compliant licenses. About half the states are already entirely or nearly compliant. Homeland Secretary Napolitano opposed the REAL ID mandate when she was governor of Arizona, and as Homeland Security Secretary, she spearheaded an effort to replace the REAL ID program with a watered-down system. That effort has apparently failed for the moment.

A related problem is the granting of citizenship to any person born in the United States regardless of the immigration status of the parents. Through this practice of birthright citizenship, a child born here to foreign nationals who are non-immigrants or present illegally is considered a U.S. citizen and may obtain a U.S. passport for reentering the United States. Some of these children may be raised abroad, where they may become radicalized and recruited into international terrorism specifically because of their U.S. citizenship. Others may grow up in the United States and travel abroad to be trained as terrorists. Anwar al-Awlaki, born in New Mexico to Yemeni

parents, was described by Rep. Jane Harman (D-Calif.), the head of the House of Representatives subcommittee on intelligence, as “probably the person, the terrorist, who would be terrorist No 1

in terms of the threat against us.”⁷⁷ He is considered to be a chief recruiter and planner for al-Qaeda.

the reform

It is inexcusable that nine years after the 9/11 attacks and five years after adoption of the REAL ID Act, the national system of secure identity documents is not yet fully implemented. Most experts agree that once the federal government begins refusing to recognize non-compliant state driver’s licenses, the holdout states will quickly come into compliance. The Obama administration needs to ignore appeals from illegal alien advocates and act decisively to end further delays in bringing the system into effect.

A change in U.S. citizenship law to deny citizenship and U.S. passports to children born in this country to foreigners without legal residence would have the effect of assuring that those persons are subject to the same security scrutiny upon applying for visas and upon entering the United States as other foreigners.

ENDNOTES

- 1 "Myrick: 'Homegrown' terrorists are working within U.S." *Charlotte Observer*, August 25, 2010.
- 2 Cuba and the State Sponsors of Terrorism List, Congressional Research Service, May 13, 2005.
- 3 "U.S. visa violators unlikely to be fingered; Biometric exit loses appeal, *Washington Times*, August 24, 2010.
- 4 "Report: 481 Fugitives From Terror-Linked Nations Now Loose in U.S.," *Newsmax*, August 13, 2010.
- 5 "Detention and Removal of Illegal Aliens," DHS Office of Inspector General, April 2006.
- 6 The number of detention beds was approximately 20,000 when Congress authorized the 40,000 increase (8,000 beds per year from 2006 to 2010). In 2010, the number of detention beds funded was 33,400 according to the Congressional Research Service. "Immigration-Related Detention: Current Legislative Issues," January 27, 2010 (Report number: RL32369).
- 7 "Obama gives order to kill American terror imam," *The Times*, April 8, 2010.

ABOUT FAIR

The Federation for American Immigration Reform (FAIR) is a national, nonprofit, public-interest, membership organization of concerned citizens who share a common belief that our nation's immigration policies must be reformed to serve the national interest.

FAIR seeks to improve border security, to stop illegal immigration, and to promote immigration levels consistent with the national interest — more traditional rates of about 300,000 a year.

With more than 250,000 members and supporters nationwide, FAIR is a non-partisan group whose membership runs the gamut from liberal to conservative. Our grassroots networks help concerned citizens use their voices to speak up for effective, sensible immigration policies that work for America's best interests.

FAIR's publications and research are used by academics and government officials in preparing new legislation. National and international media regularly turn to us to understand the latest immigration developments and to shed light on this complex subject. FAIR has been called to testify on immigration bills before Congress more than any organization in America.

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