

**One Nation Under Threat:
Securing the United States From the Entry of Terrorists**

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Preface

This report was prepared as part of the Capstone Policy Seminar experience at the Pepperdine School of Public Policy. The Seminar, one of the integral parts of the preparation for students receiving the Master of Public Policy degree, provides students with the opportunity to explore a public policy program in depth and to prepare a set of specific recommendations to policy makers to solve the problem. These reports are prepared by a team of 6-8 students over the course of only twelve weeks, providing for an intensive and challenging experience.

The results of the team's analysis is then presented to a panel of experts in a public workshop setting where the student panelists are given the opportunity to interact directly with the policy professionals, not only presenting their findings but engaging in an exchange of ideas and views regarding the specifics of those recommendations. The policy expert panel for this report included Viggo Butler, chairman of United Airports Limited and past President of Lockheed Air Terminal, Jennifer Lake, expert on homeland security issues with the Congressional Research Service, and Dr. Gregory F. Treverton, acting president and director of studies at the Pacific Council on International Policy and senior consultant at RAND.

The School of Public Policy would like to thank our students for their hard work and commitment in preparing this policy analysis. We are proud of your achievement.

Executive Summary

On September 10th, 2001, the threat of terrorism was little more than a passing thought in the minds of most Americans. There had been attacks against Western interests—but these had occurred at embassies, on aircraft carriers, and aboard foreign airliners half a world away. By September 12th, the vulnerability of the United States had become a stark reality, as 3,000 Americans became the first casualties in what was to become the War on Terror. The events of September 11th shifted the nation's priorities regarding domestic security. Suddenly the preservation of the United States required more emphasis to be placed on securing the country against foreign terrorist threat. Now, eighteen months later, as the War on Terror continues into its second and third phases, the nation's mood remains apprehensive. Orange terror levels remind us daily that, despite the wake-up call that the country received two Septembers ago, the U.S. remains shockingly vulnerable to another terrorist attack. It is for this reason that the government must take action to uphold its Constitutional duty to protect the United States' citizens, infrastructure, and economy from another devastating act of terror. The challenge that the nation faces is immense. Because of the scope and complexity of national security, this paper is resigned to focusing on only one aspect of this fight: How to keep foreign terrorists from entering the United States.

The first task in securing the U.S. from foreign terrorist entry is to identify who we are trying to keep out. Thus, it is necessary to establish a definition for both terrorism as well as the specific human threat we are attempting to deter. We have chosen to begin with the Department of Defense's definition that defines terrorism as, "the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population or any segment thereof, in furtherance of political or social objectives." We have extended this definition, for U.S. policy purposes of effective identification of individuals potentially posing a threat, to include raising the level of scrutiny on individuals from states identified as sponsoring terrorism or with some degree of known terrorist ties. These states are drawn from the State Department's current list of known-terrorist supporting states (Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria), and also include additional countries from which anti-American sentiments run strong, terrorist elements organize, and/or terror is supported through the sale of weaponry to terror-supporting states and terrorist organizations. These additional states are Indonesia, Saudi Arabia, Egypt, Pakistan, the Philippines, Columbia, Afghanistan, and Russia.

Secondly, in addressing the current terrorist threat, it must be noted that all of the terrorists in the United States originally entered the country through legal or quasi-legal means. Some were not legal at the time

they committed their crimes—they had overstayed their visa or had not abided by the provisions of their student visas, for example. Problems arise through the non-uniform processes of establishing refugee status and granting asylum. Also, the issue of illegal immigration has not been addressed with any meaningful solutions or programs, especially with regard to the monitoring of U.S. borders. U.S. immigration laws and policy should be enforced with more vigor, if not reformed altogether. Greater concern and attention must now be paid not only to which individuals enter into the U.S., but also to their businesses and affiliations.

Having established a basic premise from which the larger picture of U.S. immigration policy can be handled, it is extremely important to address the procedural issues that concern the operation of this policy. The issuance of visas is a complex set of interactions and procedures that circulate through a mind-boggling bureaucratic structure of overlapping roles and responsibilities between the U.S. State Department and the Immigration and Naturalization service (INS). Issuing visas is the most critical aspect of operationalizing U.S. immigration policy because of the magnitude of individuals that pass through the process to gain access to the United States. The U.S. State Department must reconsider its criteria for application approval as numerous individuals that have proved to be a threat to the U.S. have passed through the currently simple process. This process has been compromised in light of the fact that the State Department has the dual role of balancing diplomacy and national security. In addition, the INS has failed to maintain proper contact and monitor immigrants granted visas for temporary stays. Thus, the United States has tabs on perhaps half of the legal immigrant population in the United States today. For these reasons, visa issuance is of critical importance and requires a balancing of the role of the State Department, the incorporation of the Department of Homeland Security as an overseer of the process, and the establishment of a moratorium on visa applications from selected countries in order to allow the U.S. government ample time to assess the enormous backlog.

Thirdly, we address the issues surrounding the security of U.S. borders. The first part discusses the securing of airport checkpoints. This section will focus on the ability to physically identify suspected terrorist threats as well as the level of scrutiny that should be paid to international arrivals. International flights to the United States have been one of the most common ways in which past terrorists have crossed into the country. With the thousands of flights that land in the U.S. daily and millions of individuals that cross U.S. borders through these numerous points of entry, it is not surprising that past terrorists have been able to infiltrate U.S. airport checkpoints with such ease. Contrary to the popular focus of domestic airport security and screening issues, this analysis on airports will focus on the checkpoints and screening through which individuals must pass to enter the U.S. In order to tackle this intricate aspect of security we will address the difficult task of physically identifying individuals that pose a threat and specify to what

degree increased scrutiny on travelers is appropriate and acceptable. We will also discuss different ways to improve the effectiveness of monitoring points of entry along the U.S.-Mexico and U.S.-Canadian borders as well as the need for surveillance and enforcement of federal lands, seaports, and coastlines as possible sites of terrorist infiltration. In the wake of September 11th, visa issuance and airport security became the main focus of policy reform since the nineteen terrorists entered the country via these portals.

However, it is more reasonable to assume that, since these are the means of entry upon which the U.S. government is more focused, making them more difficult to exploit, the terrorists will look to new avenues of entry. Because of this, it is now necessary in our quest to secure the U.S. against foreign terrorist entry to turn our attention to the other means of gaining entry into the country, i.e. preventing other leaks from springing up as the biggest ones are closed. Therefore, it is of paramount concern to secure the nation's perimeter from terrorist penetration along the U.S.-Mexican border, the U.S.-Canadian border and the nation's coastline of the Atlantic and Pacific as well. To do this, both the number of screening agents and the level of scrutiny paid to the screening process must be increased. Even as we propose methods for securing these avenues against foreign terrorist entry, we understand that the grand scale of the nation's perimeter allows neither for complete monitoring of the border region nor for coastlines, and thus limits the ability of the U.S. to gain complete control over the entry of every individual.

Finally, we offer a comprehensive look at the recommendations that have been presented in each section as well as the modes of implementation. We have chosen to combine our recommendations into one formal policy proposal; however, to better facilitate their implementation we have categorized them into procedural, technological, personnel, and budgetary concerns. This will allow us to relay our recommendations according to their function in the larger picture. The first set of procedural recommendations refers to establishing the operational strategy of current government agencies as they reconcile their new and extended roles in the nation's security. The area of technological recommendations will present new innovations and equipment needed for physical identification and the monitoring of individuals and points of entry. The third section pertaining to personnel outlines the need for an increase in staffing at U.S. border checkpoints as well as additional and extensive training for new staff to increase effective identification and screening. Lastly, we will briefly touch on the budgetary considerations inherent in implementing such an aggressive and ambitious, yet essential, new policy.

In conclusion, we recognize that the task of keeping terrorists from entering the United States is complex and multi-faceted. For each mode of entry, from airports to seaports, to land borders north and south, the task of preventing terrorist entry will depend on the effectiveness of our policies. Our research has

categorically identified the most important policies where improvement is needed, and we have attempted to offer a demanding yet feasible set of solutions. We consider our recommendations to be only the first step in securing our nation against the threat of terrorist entry. We believe without both prompt action and frequent review of the threat and the success of current policies in curbing that threat, the United States may remain vulnerable to yet another devastating terrorist attack.

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Chapter 1. Introduction

On September 10th, 2001, the threat of terrorism was little more than a passing thought in the minds of most Americans. There had been attacks against Western interests—but these had occurred on embassies, aircraft carriers, and foreign airliners half a world away. By September 12th, the vulnerability of the United States had become a stark reality, as 3,000 Americans became the first casualties in what was to become the War on Terror. The events of September 11th shifted the nation’s priorities regarding domestic security. Suddenly the preservation of the United States required more emphasis to be placed on securing the country against foreign terrorist threat. Now, eighteen months later, as the War on Terror wages on in its second phase, the nation remains in a perpetual state of fear. Orange terror levels remind us daily that, despite the wake up call that national security received two Septembers ago, the U.S. remains shockingly vulnerable to another terrorist attack. It is for this reason that the government must take action to uphold its Constitutional duty¹ to protect the United States’ citizens, infrastructure, and economy from another devastating act of terror. The challenge that the nation faces is immense. Because of the scope and complexity of national security, this paper is resigned to focusing on only one aspect of this fight: How to keep foreign terrorists from entering the United States.

There are many aspects to the challenge that the U.S. faces in guaranteeing homeland security. Intelligence gathering, for example, is a major facet in the fight against terrorism, as many signs were missed in the days leading up to September 11th that could possibly have prevented the attacks from occurring. Similarly, international relations with respect to critical nations in the Middle East such as Pakistan, Turkey, Israel, and Syria also present an important part in the battle for domestic tranquility. Arresting terrorists already present on American soil is yet another factor that is necessary to address in order to win the war, as is preventing weapons of mass destruction from being smuggled into the United States to be used by terrorists and their organizations. All of these aspects in the battle to secure the nation from terrorist threat are crucial, and it is necessary that they be addressed. The crucial aspect that this paper seeks to address is the prevention of foreign terrorists themselves from gaining access into the United States – that is, to secure the nation against foreign terrorist entry.

¹ As noted in its Preamble, the Constitution was established, among other purposes, to “ensure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and to our posterity”.

Though terrorism feels like a modern scourge, it is not a new phenomenon, not even with regard to the United States. Towards the end of the 19th Century, the United States experienced a wave of terrorism towards its economic and political centers. In 1886, Chicago's Haymarket square was bombed, as was the Los Angeles Times Building in 1910.² These attacks, however, were related to specific labor disputes, and were aimed at the management against whom the workers were striking. In 1920, a horse-drawn cart exploded into the crowd at the corner of Wall and Broad streets in New York City. This is the first example that can be characterized as an attack on American power, much like the focus of recent terrorist attacks. Throughout the better part of the 20th Century, terrorist threat against Western interests remained outside of U.S. borders. Throughout the 1980's and 1990's the threat moved closer to home, eventually striking at the World Trade Center in 1993.³ The history of terrorist activity toward the U.S. in the 21st Century, on the other hand, reads much differently from that of the Twentieth Century. Today's terrorist may possess the ability to use chemical, biological, or even nuclear weapons in an attack. This capability being dropped into the equation has not only amplified the threat posed to the United States, it allows terrorism to take a step beyond simply terrorizing. Terrorism today can lead to unprecedented destruction and the complete alteration of our way of life. It is for this reason that keeping individual terrorists from entering the United States is a crucial aspect of national security, as weapons of mass destruction are only as dangerous as the terrorist cells that organize their transportation, storage, and strategy for detonation.

The Goals of our Policy Proposals

Though there are many considerations that apply individually to each area of our report, there is an overriding set of criteria by which we aim to measure not only the feasibility of our recommendations but also the value and worth each will contribute to addressing the main issues the United States faces with regard to the threat of foreign terrorist attack.

The first goal that our recommendations must achieve is the securing of U.S. borders and points of entry from terrorist infiltration. We understand that this task cannot be achieved with complete success, as reasonable security tactics will still leave holes in the system; however, our recommendations must at least severely lessen the ability and ease with which an individual that poses a national security threat can enter the United States. In addition, our policy reforms must be economically feasible and fiscally responsible. There is quite a bit of room for adjustment in this area due to the newness of the Department

² Weisberger, B. "How Did the United States Respond in the Past to Bombings by Terrorists?" [History News Network] 17 September 2001 [cited 13 February 2003]; available from <http://historynewsnetwork.org/articles.html?id=244>.

of Homeland Security’s (DHS); i.e.: it is not yet bound by restrictive budget estimates from past years. However, we do realize that the DHS’s current budget is largely a compilation of budget sections from already existing departments and agencies within the government and thus our recommendations require sensitivity to budgetary constraints. In addition to the establishment of an organized government agency, it is our goal to offer recommendations that promote travel, recreation, and trade. This is an important aspect to keep in mind when constructing policy, as much of the U.S. economy depends upon open trade, open markets, and a healthy degree of tourism and recreation. These are crucial to the U.S. economy and must be given serious consideration when altering current U.S. policies—especially with regard to placing even greater restrictions than those already in place.

As borders play such a large part in the securing of our nation from foreign terrorist threat, we aim to create immigration practices that promote the inclusion of foreigners who contribute skills and ideas to our economy and nation,⁴ that establish clear and uniform requirements, rules, and regulations for entry and status, that enforce rules and requirements, outline clear-cut consequences for violations, and that maintain an accurate and useful information system on non-residents. Lastly, because of constitutional restraints and expectations that U.S. citizens (rightly) regarding their privacy, it is essential to the success of our recommendations that the U.S. maintain and secure the individual rights and liberties of the citizens of the United States while implementing these new programs. Debate among U.S. leaders and policy makers pertaining to the rights that are afforded to U.S. citizens and the degree to which those same rights will be afforded to immigrants and non- citizens has been, and will continue to be, required. This is an important consideration when laws and activities may impose upon the civil liberties of persons. These are among the most prized rights in American law and culture and any attempt to curtail them beyond what is absolutely necessary could result in grand upheavals to protect them.

Our Approach to the Problem—and Our Report

Due to the fact that this problem is so large, we have divided our paper into smaller sections so as to compartmentalize the various arguments and issues. We begin by first identifying who it is we are attempting to keep out. This is not a simple problem, since terrorists by their very nature make every effort to conceal their true identities. Chapter Two will establish a definition for both terrorism as well as

³ See Appendix A for a detailed account of terrorist attacks against U.S. interests.

⁴ Foreigners beneficial to our country would be those who could contribute skills, ideas, capital to our country, and who are also are committed to furthering the values of our country.

the terrorist threat we are attempting to deter. This chapter will also offer some insight as to the motivation behind the new breed of terrorist that we find ourselves up against.

In Chapter Three we address overall immigration policy, focusing on the procedures of visa issuance as a major area of reform. Visa issuance is an area in critical need of reform, considering that all of the nineteen September 11th hijackers originally entered the U.S. on valid visas. Until the problems regarding visa issuance are resolved, it is likely that terrorists will continue to slip into the country unnoticed, because they are doing so legally. This chapter will discuss the roles and responsibilities of both the State Department as issuer and the Immigration and Naturalization Service (INS) as enforcer of visas. Furthermore, the areas that collapsed within each agency to allow the September 11th hijackers through will be identified and assessed leading to the proposal of new options geared toward improving effectiveness.

We will begin our analysis of border security in Chapter Four with the complex mission of securing airport checkpoints. Throughout this chapter the focus will be on the physical identification of suspected terrorist threats as well as the level of scrutiny that should be paid to international arrivals. In addition to the problem of airports, we will broaden the discussion on border security by tackling the issues of protecting the U.S./Canadian and U.S./Mexican borders as well as the east and west coastlines from terrorist infiltration. Our final chapter will offer a series of recommendations, an implementation strategy, and an analysis of the potential intended and unintended consequences of our proposed plan.

It is worth noting that we recognize the current efforts of the United States government in tackling national security with respect to foreign terrorist threat. In light of this, we will attempt to cater our recommendations and implementation to coincide with the ongoing changes being made inside the Department of Homeland Security and throughout the government at large. Due to the constantly changing nature of the threats and the government's responses to those threats, it is also important to bear in mind that certain aspects of our analysis and recommendations may already have been implemented or may have been tried and deemed obsolete by the time the reader encounters them in this text. Our aim from the beginning has been to address the matter of the threat of foreign terrorist entry into the country from the point of departure of September 11th, 2001. We thus begin our analysis historically, assuming whatever information the United States government possessed regarding what took place at that time as to how or why the events unfolded, what was accomplished, and why, as well as who was involved at all levels. In addition, our perspective relies on the fact that, currently, the United States has not fully implemented a working system to create, monitor, and enforce effective security policy geared toward deterring future terrorist attack.

The preceding list of considerations is by no means exhaustive. It is clear that the United States faces the threat of possible terrorist attack after September 11th and continued ambiguous relations with countries that have a history of terrorist behavior. There are many components and issues to consider when formulating a coherent policy such as is our goal here, thus we must take into consideration the fact that the nature of terrorism yields a landscape in which heightened precaution and increased security measures can aim no further than to reduce, deter, or minimize the threat.⁵

⁵ For the purpose of this paper our goal is explicitly to prevent terrorists from entering the U.S. A companion piece to this paper would focus on the INS' role in enforcing many of the policies we address; however, the INS' role assumes that terrorists have entered the country despite our policies, which is realistic, but the scope of our paper ends at our border. The importance of enforcing the policies of visa issuance we recommend is noted; however, actual enforcement policies are outside the scope of this paper.

Chapter 2. Who Are We Trying to Keep Out?

Our first task in the effort to secure the U.S. borders from foreign terrorist entry is to identify who it is that we are trying to keep out. This will require the difficult duty of singling out individuals known to pose a threat to the United States as well as determining a blueprint from which to recognize unknown individuals that may pose a threat. Before we can define who is a terrorist, we must define what constitutes a terrorist, and this necessitates defining terrorism itself. According to the Department of Defense (DOD) and the Federal Bureau of Investigation (FBI), terrorism is defined as “the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population or any segment thereof, in furtherance of political or social objectives.”⁶ There are additional definitions of what terrorism is; however, for the purpose of this paper we will follow the lead of the DOD and FBI on this matter.⁷

Identifying the Terrorist

With a working definition of terrorism in mind let us switch the focus to the participants of such activity. Part of the current definition of today’s terrorists may include specific groups that have participated in recent acts of terror or have demonstrated an inclination to do so through declarations, association with, or financial backing of terrorist organizations. Some of the more well-known terrorist organizations have grown out of religious fundamentalist groups. The Middle East has given rise to a number of these groups practicing under various forms of Islam: Hamas, Hezbollah, Islamic Jihad, Algeria’s Islamic Armed Group, and most notably for Americans, Al Q’aeda. The followers of these various religious and political

⁶ LeVine, M. “10 Things to Know About Terrorism” [AlterNet.Com] 4 October 2001 [cited 13 February 2003]; available from <http://www.alternet.org/story.html?StoryID=11647>.

⁷ There is a debate as to the definition and nature of terrorism. Additional factors such as the goal of an act or assassinations are included in specific definitions within the DOD and FBI. David Greenberg from Columbia University notes in an article for Slate.com that the terrorist activity that we see today is not aimed at a specific internal conflict, such as the attacks of the Irish Republican Army (IRA) or Algeria’s National Liberation Front (FLN) had been in the past. These groups had particular internal political goals; the FLN desired independence for Algeria and the IRA still wants a wholly independent Ireland. The terror perpetrated by Al-Q’aeda, Islamic Jihad, et al is a different kind of terrorism altogether. While it is true that Osama bin Laden and others like him would like to see the secular regimes in the Arab world overthrown by virtue of their activities, they will not be satisfied by only this result. Perhaps it is not possible for anyone who is not a member of their particular brand of Wahabist Sunni Islam to understand why, but their religio-political beliefs command them to literally convert or destroy any and all of the world that does not see the universe as they do, and that includes “heretical” Muslims. In fact, other Muslims were their first targets, for instance the first victims of Sunni extremists in Iraq were the Shiites in the Southern city of Kurbala). For these people, the world is divided into two parts, the *Dar al Islam* (the abode of Peace), and *Dar al Jihad* (abode of War). They are convinced that to destroy the latter, of which America is the foremost exemplar, is to do God’s work.

movements have equated the United States and its Western values with Satan. Apologists for Islam call these groups' portrayal of their religion a "mischaracterization" thereof--⁸ a philosophical issue well beyond the scope of this paper. Suffice it to say for our purposes that we know, in theory, who is targeting our country.

So, are religiously fundamental followers of Islam the focus of U.S. security measures? Having to single out individuals based on religious affiliation is an unfortunate necessity that the events of September 11th forced upon the U.S.—a nation whose origins, lifeblood, and calling has long been the preservation of religious freedoms. At this point in the War on Terror, most of the individuals that, at the very least, should be watched with a close eye come from predominantly Muslim cultures, however, this is not exclusively the case, and it must be stressed that it is the countries of origin that dictate the threat, not the religious persuasion *per se*, at least in a legal sense.

The State Department has compiled a list of known terrorist supporting states, which include: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.⁹ In order to establish a thorough list; however, we feel additional states should be added including Indonesia, Saudi Arabia, Egypt, Pakistan, the Philippines, Colombia, Afghanistan, and Russia. These states are classified as potential terrorist threats due to popular anti-American sentiment, terrorist presence within the country, and show of support for terrorist states through the selling of weapons to terror-supporting entities and the like. Since the focus of our paper is on the prevention of foreign terrorist entry we will not address domestic threats. Instead, our focus is on the 70,000 known individuals worldwide presently on the FBI known-terrorist watch-list as well as unknown individuals from the aforementioned states.¹⁰ We now have the makings of an enforceable definition from which to analyze the current threat and propose reasonable recommendations for deterring future attacks.

⁸ Greenberg, D. "Is Terrorism New?" [History News Network] 17 September 2001 [cited 13 February 2003]; available from <http://historynewsnetwork.org/articles.html?id=244>.

⁹ Ackerman, D. M. 25 January 2002. "Suits Against Terrorist States." CRS Report for Congress. [http://fpc.state.gov/documents/organization/8045.pdf].

¹⁰ Meyer, J. "70,000 Terrorist Suspects on Worldwide U.S. List." Sept 22, 2002 [[http://www.latimes.com/la-na-terror22sep22\(0,3686822\).story](http://www.latimes.com/la-na-terror22sep22(0,3686822).story)].

The Final Master List

In order to establish as thorough a definition as possible of individuals that pose or potentially pose a terrorist threat to the United States, we offer our formal and extended definition as a blueprint from which to begin a more effective campaign to prevent terrorist entry. Our current definition states that:

A terrorist is an individual who employs the use of force or violence against persons or property to intimidate or coerce a government, the civilian population or any segment thereof, in furtherance of political or social objectives who is listed on the FBI's working record of terrorists, born or currently residing in a state that sponsors terrorism (Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria), or born or currently residing in a state of heightened concern regarding terrorist activity or sponsorship (Afghanistan, Colombia, Egypt, Indonesia, Pakistan, the Philippines, Russia, or Saudi Arabia).

We offer this definition with the caveat that regular updating is a necessary tool to maintain a handle on the potentially changing threat of terrorist entry and activity within the United States.

Chapter 3. Immigration Policy and Procedure

The U.S., like any country, has a number of ways to present itself to the international community: through its stated and unstated foreign policy goals, its day-to-day relations with other countries, and through its immigration policy. For the last forty years the enforcement of immigration has been quite lax. The reasons for this are intricate, and beyond the scope of this paper. The events of September 11, 2001, however, proved to most people that the world has changed in such a way that U.S. immigration laws and policy should be enforced with more vigor, if not reformed altogether. Greater concern and attention must now be paid not only to which individuals enter into the U.S., but also to their businesses and affiliations. The United States has historically included and excluded various peoples at various times for various reasons. Currently, U.S. immigration policy does not discriminate against immigrants on racial, ethnic, religious, economic, and most other grounds; however, since organized terror has reached the U.S. homeland, a new discussion regarding immigration policy and its role in protecting U.S. citizens, including the importance of being able to discriminate among applicants is warranted. This chapter will analyze the degree to which past and current U.S. immigration policy has succeeded in meeting its policy goals. In addition, it will consider how those policies in the past may have contributed to the terrorist attacks. This chapter will also address the procedural problems of immigration policy that are tied up in the issuance of visas. To begin with, below is a brief history of U.S. immigration policy as a guide to the development of the present system.

Immigration policy in the U.S. began with the passing of the Alien and Sedition Acts of 1798 that aimed to monitor and expel those individuals or groups that were considered a threat to the United States.¹¹ Policy since has gone from excluding only persons from a specific racial group to permitting immigration based on the location or country from which one comes. Changes since the 1924 national quota system policy have opened doors in the name of family reunification with the passing of the 1965 Immigration and Naturalization Act. Shortly after 1965, additional policies were enacted that supported large numbers of refugees and asylum seekers fleeing war-torn countries and political persecution. Current immigration policy is a combination of what has gone before, resulting, on average, in approximately 900,000 legal

¹¹ *The New Americas: Economic, Demographic, and Fiscal Effects of Immigration*, National Research Council, edited by James P. Smith and Barry Edmonston. Washington D.C.: National Academy Press, 1997.

and illegal immigrants from around the world every year.¹² Nearly every way in which an individual can attain permission to enter the United States legally has been used by a terrorist to enter the country.¹³

Current Immigration Policy

Current U.S. policy is based on the 1965 Immigration and Naturalization Act that implemented an equal quota for every country around the world.¹⁴ This policy also was established to move away from permitting entry based on one's benefit to the United States (i.e.: what kind of job skills or financial interest did a prospective immigrant bring to the country), and toward reuniting families. Included in the current total of approximately 900,000 immigrants that are permitted to enter the country legally each year, are those that fill the quota limits of around 700,000, refugees and asylum seekers, and the remainder that enter for a variety of circumstances, which include business and educational immigrants, and winners of the "diversity lottery." Approximately two-thirds of those that are admitted under the quota do so under the auspices of family reunification. In addition to all those entrants listed above, an estimated 300,000 individuals enter into the United States illegally each year. The Refugee Act of 1980, and The Immigration Reform and Control Act of 1986 were two pieces of immigration policy that were established to accommodate both current illegal immigrants and the mass influx of immigrants fleeing other countries.¹⁵ Neither of these acts defines a maximum ceiling for entering immigrants.

Major Problems with Current System

In addressing the current terrorist threat, it must be noted that all of the terrorists in the United States originally entered the country through legal or quasi-legal means. Some were not legal at the time they committed their crimes (they had overstayed their visa or had not abided by the provisions of their student visas, for instance), but none had entered the country illegally in the first place. One of the major problems with current U.S. immigration policy is the lack of monitoring and follow-through enforcement once individuals are in the country. Additional problems arise from the fact that the processes by which refugee status and asylum status are granted are not-uniform. . And lastly, the issue of illegal immigration

¹² See Appendix E for more detailed handling of the various means of entry.

¹³ Appendix D provides a review of the entry means of recent terrorists.

¹⁴ Smith, J.P. and Edmonston, B. eds. The New Americas: Economic, Demographic, and Fiscal Effects of Immigration. National Research Council. Washington D.C.: National Academy Press, 1997.

¹⁵ *Ibid.*

has not been addressed with any meaningful solutions or programs especially with regard to the monitoring of U.S. borders.

Many terrorists entered the United States legally on temporary student or tourist visas, but later forfeited their legal status by allowing their visas to expire. Mahmud and Mohammed Abouhalima, participants in the first World Trade Center bombing, entered using tourist visas.¹⁶ They allowed these visas to expire, stayed illegally in the U.S. for a number of years, and then applied for amnesty by falsely claiming to be agricultural workers. They were granted permanent residency under the Immigration Reform and Control Act of 1986. Their story underscores a major problem with our country's execution of its current immigration policies: certain conveniences, like the ability to petition to change one's status without having to leave the country, are easily exploited by the terrorists. It is well known that U.S. immigration policy allows for visitors or students who are about to lose their legal status to attain legal residency in a variety of ways: they can claim to be refugees or asylum seekers, they can marry a citizen, enroll as a student, etc... One major aspect of current immigration policy that constitutes a rather large loophole is the ease with which individuals who either enter the U.S. illegally or become illegal by overstaying the terms of their visas, can adjust their status through legal means.

U.S. immigration policy contains a certain degree of humanitarian-based policies such as the admittance of refugees and individuals claiming asylum. Unfortunately, terrorists of the past have abused this form of entry to their advantage. Individuals entering the United States based on refugee status or asylum are supposed to meet the same criteria; however, refugee status is determined overseas while asylum is granted once the individual has already been permitted through a port of entry. Recent years have seen as many as 75,000 to 100,000 refugees enter the United States.¹⁷ Though already on U.S. soil, only around 10,000 to 15,000 of the 50,000-75,000 that apply each year are admitted. Mir Aimal Kansi, murderer of two CIA employees, and Ramzi Yousef, mastermind of first World Trade Center bombing; both had applications for political asylum pending when they committed their crimes in the United States.¹⁸

Many of the terrorists in recent years had been in the United States with an illegal status at the time they committed their crimes. Including those that were illegal but whose applications for asylum were pending, illegal immigrants have taken part in every major attack on U.S. soil since 1993. Most of these

¹⁶ Camarota, Steven. The Open Door: How Militant Islamic Terrorists Entered and Remained in the United States, 1993-2001. Center for Immigration Studies, Washington, D.C., 2002.

¹⁷ *ibid.*

¹⁸ *ibid.*

terrorists became illegal by having overstayed the terms of their visas. Crossing a U.S. border illegally is also a common tactic used by many individuals attempting to enter the United States. Many of these individuals are simply seeking work and better living conditions; however, there is no way to tell them apart from terrorists by sight. Gazi Ibrahim Abu Mezer, the Subway bomber, was caught trying to sneak across the Canadian border but was released into the U.S. due to a lack of detention space.¹⁹ Abdelghani Meskini and Abdel Hakim Tizegha, both plotters for the LAX Millennium attack, had been stowaways on ships from Algeria at various times. Tizegha moved to Canada after having been denied asylum in the United States and later snuck across the border through Washington State.

Options For Immigration Policy Reform

There are an extraordinary number of policy changes that can be made with regard to immigration, as immigration law itself is an intricate combination of rules and regulations. Our analysis focuses on a few options that address immigration policy in terms of its larger role in affecting the security of the United States from the entry of foreign terrorists. The first option is to maintain the current set of immigration policies with the only change being the complete compliance with and enforcement of those laws. This option, while from a distance may seem the easiest to achieve, may in fact prove to be the most difficult to implement as a result of the intricate bureaucracy and the lacking of systematic procedure. This option would pass the responsibility of monitoring foreign visitors to the Immigration and Naturalization Service by shifting the focus of immigration policy from one that aims to deter potential threats at the border to one where that chore would be less needed as monitoring of visitor whereabouts and activities improves internally. However, current immigration policy is ineffective with regard to lessening the load that U.S. agencies must currently contend with; this is a major point of divergence given the fact that more intensive scrutiny must be paid to each and every individual attempting to enter the U.S. Thus enforcing current immigration policy through current INS procedure would likely be unsuccessful.

A second option would be to drastically limit the number of applications even considered for either a period of time or indefinitely depending on the need of the INS to assess its backlog, new procedures, and enforcement. This option may appear to run opposite to U.S. tradition in terms of being a “nation of immigrants;” however, the United States is under such an intense state of heightened insecurity that such an option may be greatly beneficial to reestablishing an effective immigration policy. Limiting immigrant

¹⁹ Lack of detention space is a perennial problem with for INS, which is one reason why they utilize what is popularly known as a “catch and release” policy. This policy was responsible for John Lee Malvo, of the D.C. sniper case, being at large to commit those crimes. *ibid.*

entry in this way would not greatly affect the labor market as there is not currently a shortage of workers, skilled or unskilled, in the United States. Limiting visitor entrance on a large scale, however, may adversely affect the tourism industry especially in large cities such as New York, Miami, and San Diego. In addition, it is possible that this policy would lead to public discontent on claims of discrimination against immigrants of specific ethnic and racial backgrounds.

A third option would be to establish a moratorium on immigration for a period of time. This would allow for the same improvements as were mentioned in the second option, however, to a greater degree. A policy this drastic may be needed if the U.S. were to discover that it simply could not cope sufficiently with the current immigration situation as it is currently arranged. In addition, once such agencies as the INS have recovered and established working records, a great deal of enforcement and follow-up may be necessary. This policy option may again bring about public concern over discrimination and worry of profit loss throughout U.S. business and industry in light of there being approximately one million fewer people a year contributing to the economy. With these drawbacks in mind, the public would need to have the reasons for such broad changes explained to them, with an emphasis on the safety of the U.S. and its interests in mind. The severity of the terrorist threat and the massive damage that could potentially be experienced if this threat is not averted must also be presented as crucial and thus warranting such a moratorium.

Recommendations for Immigration Policy

We have noted above that terrorists have attempted to enter the U.S. through any means possible. For this reason a comprehensive policy must be established that addresses every point of entry for immigrants including immigration policy. The central problem lies within the task of enforcement as opposed to creating new or different policies. We would begin by recommending that the U.S. lower the annual quotas until the INS can establish a complete and working system to identify who is already here, where they are, and when they are supposed to leave. This would allow the U.S. to retain the benefits and promotion of foreign travel and immigration into the country. Secondly, we recommend that the U.S. make the enforcement of current deportation laws a priority and a reality. Establishing clear-cut rules and actually enforcing the laws is crucial to maintaining any degree of credibility and thus the hope that U.S. policies will eventually prove effective.

Procedural Issues Related To U.S. Immigration Policy

Having established a basic premise from which the larger picture of U.S. immigration policy can be handled, it is extremely important to address the procedural issues that concern the operation of this policy. The issuance and monitoring of visas is a complex set of interactions and procedures that circulate through a boggling bureaucratic structure of overlapping of roles and responsibilities between the U.S. State Department and the Immigration and Naturalization Service (INS). Issuing visas is perhaps the most critical aspect of operationalizing U.S. immigration policy because of the magnitude of individuals that pass through the process to gain access to the United States. In addition, almost all of the terrorists involved in acts on American interests in the past ten years were granted permission to enter through the U.S. visa issuance process. The U.S. State Department must reconsider its criteria for application approval as numerous individuals that have proved to be a threat to the U.S. have passed through the currently simple process. In addition, the INS has failed to maintain proper contact and monitor immigrants granted visas for temporary stays. Thus, the United States has tabs on perhaps half of the legal immigrant population in the United States today. For these reasons and those that we are about to reveal, visa issuance is of critical importance for a proactive and preventative policy against potential terrorist threats and thus merits individual attention apart from other points of entry into the United States.

As the problems within the State Department illustrate, the criteria involved in visa issuance are at odds with each other. Prior to September 11th, the diplomatic ramifications of visa policy outweighed those of national security. The U.S. was simply not believed to be under the type of threat that came to light in the aftermath of the September 11th terrorist attacks. The post-September 11th criteria for visa policy must be heavily weighted in favor of national security, with diplomatic concerns a distant second. In other words, visa issuance must now be structured to meet national security goals, even when the accommodation of such goals has negative effects on the nation's foreign diplomacy efforts.

But "national security" cannot be the magic talisman which, when waived before legitimate competing issues, causes them to vanish. Were national security the only criterion for a visa issuance policy, no visas would be issued at all. After all, this would be the only way to ensure that no terrorists were allowed in the country via visa issuance. As things stand, the U.S. concern for its foreign diplomatic efforts mandates that some accommodations be made to ensure that the U.S. is not isolated from the world community and that whatever system is put into place includes efficient procedures by which foreign nationals who are permitted to apply for visas are responded to in a timely fashion. This impacts not only foreign diplomacy but the socio-economic composition of the U.S. as a whole, because an

effective and efficient visa system is integral to making secure the immigration patterns which provide the nation a substantial portion of its worker and student populations.

Given these underlying issues, the proper criteria for a post-September 11th visa issuance policy should be a balance in which primacy is given to national security, while allowing as many provisions for diplomatic and immigration issues as are reconcilable to that primacy. This dimension of the application of immigration policy has two primary points of concern: the current dilapidated state of visa issuance, and the policy reforms that will ensure that terrorists are filtered out of the visa application pool in the future.

The State Department's Dual Roles of Diplomacy and National Security

A preeminent lesson learned in the wake of the September 11th attacks was that those charged with the security of the nation must be single-minded and perpetually vigilant in their duties. In light of that lesson, it is crucial to note that the State Department is charged with two separate, but conflicting goals: 1) the diplomatic goal of establishing and maintaining friendly relations with foreign nations, and 2) the goal of national security served by the decidedly unfriendly task of denying entry to citizens of foreign nations whom the U.S. deems to be undesirable or threatening. Historically, the friendly diplomatic side of the State Department's role has dominated, given the relative security enjoyed by the U.S. over the years. As a result, the dominant characteristic at the State Department was its "courtesy culture," whereby foreign nations and their citizens were given the utmost latitude - especially as regards visa issuance - in an effort to foster better diplomatic relations.²⁰

The September 11th attacks fundamentally altered the stage on which the courtesy culture plays out. Given the demonstrable threat to the U.S. that some nations now pose, it is appropriate that the State Department modify its lenient stance toward those nations on the issuance of visas. After all, one key to keeping terrorists out of the U.S. is to deny them legal entry via visa. But while the State Department has voiced platitudes about its actions to strengthen visa procedures, it is quietly waging a battle to retain as much of the courtesy culture as possible. Most of the quasi-reforms implemented since the attacks were only enacted under the duress of high political pressure. The reason for this stems from the decidedly secondary emphasis placed on national security concerns by the State Department in the past. Because of the historical lack of threats to the U.S., the State Department could largely ignore its responsibilities in

²⁰ Editorial, "The State Department: Express Deception" [National Review], 12 August 2002 [cited 22 January 2003]; available from LexisNexis, www.lexisnexus.com

the national security realm and concentrate on making friends with governments around the world. But now that national security must take preeminence - often at the expense of the friendships forged in the past – the State Department is loathe to abandon what it no doubt considers its primary function. As a result, it views its active resistance to changes designed to facilitate national security goals as merely doing its job: ensuring that friendly relations with foreign governments continue.

The State Department's reticence to change its policies in ways that will inhibit its friendly relations with other nations demonstrates that there will always be tension within the State Department between diplomacy and border security as long as foreign governments place a high priority on having access to U.S. visas. The decision as to which goal is primary should be obvious – the problem is that it is not obvious to the State Department. Under the current visa issuance structure, it is the State Department's responsibility to stop undesirable or threatening foreign nationals from entering the country. This requires that 1) the State Department have criteria that are adequate to the task and that it is willing to enforce, 2) the State Department have access to the appropriate information so that it can know which people are the "right" ones to stop.

The State Department's Criteria for Visa Approval

The overarching concerns of the courtesy culture at the State Department overrode security concerns in its dealings with some wealthy Middle Eastern countries, in particular Saudi Arabia. A lack of concern for national security was manifested through the issuance of visas without interviews, completed applications, or supporting documentation.²¹ Prior to September 11th, the State Department's policy of "customer satisfaction" was exemplified by a program in Saudi Arabia known as "Visa Express," which allowed any Saudi resident to submit his or her visa application to private Saudi travel agents.²² They were then passed on to the State Department's consular officers who generally rubberstamped them without ever seeing, much less interviewing, the applicants.²³ As the American Consul General in Riyadh expressed it: "People gotta have their visas."²⁴

²¹ Mowbray, J. "Perverse Incentives" [National Review Online], 22 October 2002 [cited 22 January 2003]; available from National Review Online, www.nationalreview.com

²² Scardaville, M. "Targeting Terrorists," [National Review Online], 25 November 2002 [cited 22 January 2003]; available from National Review Online, www.nationalreview.com

²³ Editorial, "The State Department: Express Deception" [National Review], 12 August 2002 [cited 22 January 2003]; available from LexisNexis, www.lexisnexus.com

²⁴ Mowbray, J. "Visas for Terrorists: They were ill-prepared. They were laughable. They were approved.," [National Review], 28 October 2002 [cited 22 January 2003]; available from LexisNexis, www.lexisnexus.com

Here are the facts: all nineteen of the September 11th terrorists came here on legal visas. Fifteen of the nineteen came from Saudi Arabia. Because they received their visas through the “Express” program, only two of the Saudi terrorists were interviewed before receiving their visas, meaning that no American had any contact whatsoever with at least thirteen of the terrorists before they entered the U.S. Indeed, it would have constituted quite an exception if they had been denied, as the consulate in Jeddah denied only 2% of applications in the twelve months prior to September 11th, 2001, compared to a world denial rate (that is, the average denial rate of each nation surveyed) of approximately 25%.²⁵ Saudi Arabian applicants were simply *presumed* to be eligible for visas, in direct violation of section 214(b) of the Immigration & Nationality Act (INA).²⁶ Even more horrible, in the 30 days *after* the September 11th attacks, the visa approval rate for Saudi Arabian applicants was 100%. The U.S. consulate in Jeddah interviewed only two of 104 applicants, and rejected none. After September 11th, the clamor for reform forced the State Department to putatively cancel “Visa Express”. Tourism industry lobbyists went back to the State Department and essentially told them they would fold financially if the situation couldn’t be brought to *status quo ante*. After all, they said, statistically speaking, only a minute number of the people to whom visas are issued actually turn out to be mass murdering terrorists, so really why should we go to all the trouble that “Visa Express” and its like programs were meant to address in the first place? The administration agreed and therefore, even today, nothing has changed at the State Department with regard to the issuance of visas.²⁷

In an article in the *National Review Online*, Joel Mowbray discusses the reasons why the terrorists involved in the September 11th attacks should never have received visas.²⁸ His critiques include:

- The visas that were issued to the September 11th terrorists should have been denied, among other reasons, under section 214(b) of the INA, which mandates that all non-immigrant visa applicants are presumed to be would-be immigrants. In other words, the law says that when a consular officer reviews paperwork for a temporary visa, the applicant must convince him that the visa will

²⁵ “Visa Denials,” [Department of State website], [cited 14 March 2003]; available from State Department website, <http://travel.state.gov/visadenials.html>

²⁶ “The visas should have been denied because of a provision in the law known as 214(b), which states that almost all nonimmigrant visa (NIV) applicants are presumed to be intending immigrants. The law is clear: “Every alien [other than several narrowly exempted subcategories] shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, that he is entitled to a nonimmigrant [visa].” State’s Deputy Press Secretary Phil Reeker recently remarked that 214(b) is “quite a threshold to overcome.” It just wasn’t for Saudi applicants.” *ibid*

²⁷ Mowbray, J. (June 2002). [Open Door for Saudi Terrorists](http://www.nationalreview.com/mowbray/mowbray061402.asp). National Review Online. Retrieved April 2003 from <http://www.nationalreview.com/mowbray/mowbray061402.asp>

²⁸ Mowbray, J. “Visas for Terrorists: They were ill-prepared. They were laughable. They were approved.”, [National Review], 28 October 2002 [cited 22 January 2003]; available from LexisNexus, www.lexisnexus.com

be used only for travel, work, or school. “As the applicant, you have to prove you’re coming back [to your home country]”

- Of the nineteen terrorists who applied for and received visas, fifteen should have been denied under existing law, according to experts. Every approved application was facially invalid due to missing and/or inaccurate info, warning signs, and/or a lack proof for supporting claims.
- Hani Hanjour, believed to have piloted American Airlines Flight 77 into the Pentagon, was initially denied a visa. He then changed all his unacceptable answers to acceptable ones, re-filed a flawless application, and was granted a visa two weeks later. The field manual for all consulates specifically states that “watertight” corrections to applications should be a red-flag to the officer that the applicant has been coached through the application and is not giving honest answers.
- Khalid al Mihdhar, one of the three terrorists who obtained a visa through “Visa Express,” simply listed “hotel” as his U.S. destination. Many of the terrorists had no visible means of support, some even indicating on their applications that they were unemployed.
- They had unclear destinations, or intentions to stay in accommodations well beyond their declared means. One applicant, in the section for destination, wrote “no.” By law, it is incumbent upon “single, idle, young males with no specific destination” to prove their worthiness to be in this country.
- Finally, many of the applications were simply missing information or were otherwise incomplete. Again, by law, officials were obligated to have the information supplied before the application made any progress toward approval.

In view of the totality of their consequences, the flagrantly lax visa issuance standards indicated above have led to the conclusion that the conduct of the State Department representatives in this regard amounted to “criminal negligence.” Even apart from “the fact that most of the terrorists should have been denied visas on 214(b) grounds, the State Department should have lived up to its duty under Visa Viper, a worldwide program that relies on local intelligence to identify known shady characters; it also should have developed a policy for determining which kinds of applicants should receive closer scrutiny.”²⁹

²⁹ Mowbray, J. “Visas for Terrorists: They were ill-prepared. They were laughable. They were approved.”, [National Review], 28 October 2002 [cited 22 January 2003]; available from LexisNexus, www.lexisnexus.com

State Department's Willingness/Ability to Enforce Its Policies

Despite what appears to be undeniable culpability in the facilitation of the September 11th terrorist attacks, it seems that very little has changed at the State Department since that day. In the thirty days after the attacks, 102 Saudi Arabian applicants were given visas – only two of whom were even interviewed. Since then, the State Department dropped the name “Visa Express” from the Saudi Arabian program and toughened the language used to describe the program on its website, but there is no unambiguous evidence that tougher policies are actually being enacted or followed. In fact, the State Department has made clear that it will issue visas to foreign nationals already on terrorist watch lists if it determines that there is insufficient information to prove their connections with terrorist organizations.³⁰ This ambivalence toward reform in the face of heightened national security concerns since the attacks indicates that the courtesy culture at the State Department is alive and well. In short, while the courtesy culture itself was partially responsible for the ease with which the September 11th terrorists entered the country, the State Department’s overweening interest in maintaining friendly diplomatic relations with foreign nations has caused it to resist any change that would endanger that interest.

Even decisive actions, which appeared to target the courtesy culture at the State Department, were deceptively ineffective. Mowbray points out that, during the period in which the majority of the hijackers found their way into this country, the State Department never even interviewed the field consular officers who issued the Saudi Arabian visas “to determine why they were issued to terrorists whose applications didn’t even live up to standards that Blockbuster demands from people applying for video-rental cards.”³¹ Even more egregiously, 200 senior members of the Foreign Service, including Consular Affairs personnel whose handiwork helped bring about the devastating events of September 11th, were actually given bonuses. The chief consular officer in question *was* subsequently fired, but she was promptly replaced by an employee well known in State circles as her “protégée and clone.” Thus it seems to be the case that even when The State Department appears to be moving forward in a reform effort, it is merely standing still. While there may be some uncertainties regarding all of the details in Mr. Mowbray’s story, there is clearly evidence of major failures of the current visa system to stopping undesired terrorism-minded individuals from entering the United States.

³⁰ Mowbray, J. “Perverse Incentives” [National Review Online], 22 October 2002 [cited 22 January 2003]; available from National Review Online, www.nationalreview.com

³¹ *ibid.*

Presuming that the State Department was willing to enforce a higher standard of screening procedures in the visa issuance process, there remains the looming obstacle of how to identify individuals who pose a threat to the U.S. This is fundamentally an informational, and therefore a technological, problem. The current system is a State Department watch-list, which consists of an agglomeration of names drawn from the information systems of various federal agencies.³² While somewhat overbroad and cumbersome, it at least attempts to place in one database the profiles of all foreign nationals with known links to terrorism. In addition, the gaps in the current structure are in the process of being remedied by the Bush Administration's efforts to implement a "uniform threat advisory system" by which all levels of government will be connected to the same information infrastructure and will thus have access to the same anti-terrorism information pool.³³ But this is only half of the terrorist identification equation. It does not address the problem of identifying those foreign nationals – some of whom will doubtless be visa applicants – who have no known terrorism links and yet are nonetheless terrorist threats.

But informational difficulties do not stop once a foreign national arrives at the U.S. border. In fact, one of the largest problems confronting the INS is the identification and admittance of benign foreign nationals and the tracking of legitimate visa holders after they have entered the U.S. The INS is currently expected "to check all foreign visitors, track foreign students, fingerprint and photograph those arriving from countries of national security concern, review myriad asylum cases, and apprehend more than 300,000 visa over-stayers who have failed to obey explicit court orders to leave the country."³⁴ Clearly, the INS is in need of a new system by which closer watch may be kept on those foreign nationals who have been granted visas and are at or within the U.S. border. No such system has been forthcoming.³⁵

That is not to say that the INS is unaware of its needs. Over \$400 million has been put towards a much-needed entry-exit visa tracking system, but a system to track foreign students, which has been around for years, has been held up by political protests.³⁶ As for the INS's progress in keeping track of the millions

³² Meyer, J. "70,000 Terrorist Suspects Worldwide on U.S. List," 22 September 2002 [cited 24 March 2003]; available from Los Angeles Times Online, [www.latimes.com/la-na-terror22sep22\(0,3686822\).story](http://www.latimes.com/la-na-terror22sep22(0,3686822).story)

³³ Bush, G. W. "Securing the Homeland, Strengthening the Nation," no date available [cited 21 March 2003]; available from The White House Online, www.whitehouse.gov/homeland/homeland_security_book.html

³⁴ Leiken, R. S. "End of an Affair?: Immigration, Security and the U.S.-Mexican Relationship," [The National Interest], Winter 2002/2003 [cited 22 January 2003]; available from LexisNexus, www.lexisnexus.com

³⁵ The role of the INS with respect to this paper will be focused solely on border presence, as noted in the introduction. The INS' enforcement role stretches into deportation and internal monitoring, which is necessary to recognize but ultimately outside the scope of this paper. Therefore references to the INS will be limited to entry -exit points and its role at keeping terrorists out of the country before they get in.

³⁶ Editorial, "A Hole in the Middle," [The Economist], 7 September 2002 [cited 22 January 2003]; available from LexisNexus, www.lexisnexus.com

of immigrants who overstay their visas, the agency has yet to decide what kind of entry-exit tracking system to build, let alone to begin to build it.³⁷ “The INS clearly lacks the personnel and resources to undertake major new programs designed to regularize either the flow of migrants across the border or the status of millions of undocumented Mexicans inside the U.S.”³⁸ It has also faced political opposition to its limited attempts to undertake even one tracking program.

However, the events of September 11th have ensured that the INS situation, while perhaps unchanged, is seen in an entirely different light. Thus, it seems that while the problem confronting the INS is large, its solution is fairly clear. What is required is a national entry-exit tracking system by which the identity of those presenting even legitimate visas at the U.S. border can be checked against the growing and perpetually updated database of terrorists and their sympathizers. Money is available for such a system, but political pressure has kept it from becoming a reality.

Options and Recommendations for Addressing Visa Issuance Reform

The options facing the U.S. with regard to its visa policy are as myriad as the problems they are to address. Nevertheless, some semblance of a systematic approach to the options can be achieved by dividing them into the same three categories as the problems: structural, technological, and procedural.

Structural Options

As to structure, it has been noted repeatedly that the current structure of the State Department – due the dual role it plays – has caused discontinuities in the creation and enforcement of an effective visa policy of. That being said, it follows that one option is to remove the visa function from the control of the State Department, allowing it to concentrate solely on its foreign diplomacy function. Visa issuance policy would then be crafted and implemented by a separate, entity within the Department of Homeland Security (DHS), the sole focus of which would be ensuring that visa issuance policy was conducive to the primacy of national security interests. Another, less extensive option is to leave the visa issuance function within the State Department, but to require DHS oversight of that function to ensure that national security interests are protected. This would provide for increased attention to the national security ramifications of visa policy by an entity concerned solely with those ramifications, while retaining the structure,

³⁷ Brill, S. “On Guard, A Year Later,” [Newsweek], 16 September 2002 [cited 22 January 2003]; available from LexisNexus, www.lexisnexus.com

³⁸ Leiken, R.S. “End of an Affair?: Immigration, Security and the U.S.-Mexican Relationship,” [The National Interest], Winter 2002/2003 [cited 22 January 2003]; available from LexisNexus, www.lexisnexus.com

processes, and expertise that the State Department has acquired as to visa issuance. As of this writing, the second option is in use by the government.

Structural Recommendations

Under the structure rubric, it is recommended that the State Department retain the visa process, but that DHS be given oversight to ensure that national security objectives are being met. This is the best way to deal with the State Department's fundamental problem of a bifurcated mission while retaining the existing procedures, infrastructure, and experience the State Department has developed in visa issuance. After all, the State Department's system works to disseminate requested visas. The problem is that it works too well, because the State Department is unwilling to observe the legal and procedural safeguards set in place to prevent undesirables from entering the U.S. What is primarily required is a willingness to enforce the rules already on the books and create new rules and procedures where necessary – all in the name of national security. Given the State Department's preoccupation with its diplomatic mission on one hand and its vast infrastructure and experience on the other, it seems best merely to impose that willingness from without. This will undoubtedly cause friction between the State Department and DHS, but it is necessary to ensure that both national security and foreign diplomacy have an advocate within the federal government and that national security is given the primacy it requires considering the terrorist threat facing the U.S.

Technological Options

Regarding infrastructure, it is certain that whatever entity is in charge of visa issuance will accept the option of participating in the Bush Administration's effort to create a nationwide information infrastructure connecting federal, state, and local governments to all relevant anti-terrorism information. Given, then, that the ability to identify and detect foreign nationals with known ties to terrorism will improve in the coming years, it remains to be determined what will be done to improve the ability to identify unknown terrorists. One option is to develop and implement the Pentagon's Total Information Awareness (TIA) system, despite the consternation it is causing among those concerned for the individual privacy rights of American citizens.

The TIA is designed to "piece together the puzzles of terrorist networks before they launch their attacks...in such a way that our privacy and civil liberties are protected to the maximum extent

possible.”³⁹ Undersecretary of Defense Pete Aldridge [in charge of The Defense Advanced Research Projects Agency (DARPA)] says “the TIA’s mission consists of three parts: to research technologies that would allow rapid language translation, to discover connections between current activities and future events, and to develop ‘collaborative reasoning and decision-making tools to allow interagency communications and analysis’ – just the tools needed to keep one agency informed of the intelligence produced by another agency.” According to DARPA’s Information Awareness Office (IAO), “[t]he goal of the TIA program is to revolutionize the ability of the U.S. to detect, classify, and identify foreign terrorists and decipher their plans – and thereby enable the U.S. to take timely action to successfully preempt and defeat terrorist acts”. With this in mind, the TIA objective is to create a counter-terrorism information system that:

- enhances information coverage by an order of magnitude and affords easy future scaling;
- provides specific warnings within an hour after a triggering event occurs or an evidence threshold is exceeded;
- can automatically signal analysts based on partial pattern matches and has patterns that cover almost all of all previously known foreign terrorist attacks;
- promotes collaboration, analytical reasoning and information sharing so that analysts can hypothesize and test theories and mitigating strategies regarding possible future events so policymakers can effectively evaluate the impact of current or future courses of action.⁴⁰

The key to this \$10 million “experimental” program is to ensure that it is used only to detect and prevent future terrorist attacks . To that end, access to the information it generates will be limited to those government officials with the right security clearances and a demonstrable need to know. A filter is being developed for this purpose. “Moreover, the Genisys program, another component of TIA, is being designed to separate identity information from transactions and match up the information ‘only when we have evidence and legal authority to do so,’ officials say.”⁴¹ In short, “in order to preserve the sanctity of individual privacy, the system is designed to ensure complete anonymity of uninvolved citizens, thus focusing the efforts of law-enforcement officials on terrorist investigations. The idea is for information to

³⁹ Scardaville, M. “Targeting Terrorists,” [National Review Online], 25 November 2002 [cited 22 January 2003]; available from National Review Online, www.nationalreview.com

⁴⁰ Waller, J. M. “Fears Mount Over ‘Total’ Spy System,” [Insight on the News], 6 January 2003 [cited 22 January 2003]; available from LexisNexus, www.lexisnexus.com

⁴¹ Scardaville, M. op. cit.

be anonymous until such time that a warrant is needed for surveillance, arrest or detention. The data are subject to the same Privacy Act restrictions that currently govern law enforcement and government.”⁴²

Another option is, of course, to go without such a system. It may well be that, whatever benefits it might yield in the fight to secure the nation against terrorism, it is simply too intrusive of the legitimate privacy rights of American citizens to be implemented. Advocates of such an approach would hold that the right to privacy is too sacrosanct and too fragile to be imposed upon, even in the name of the most pressing and legitimate governmental interests. The government simply must find another way.

Yet a third option is to encourage the development of a system with less likelihood of impinging on the legitimate privacy interests of American citizens. Here, the argument is that the governmental interest in securing the nation from potential terrorist attack is too compelling to deny the use of whatever tools it finds, but those tools must be modified to ensure that the citizens’ right to privacy is secured from any illegitimate infringement. Here, the government must demonstrate not only that the program works, but that it contains safeguards that ensure government information is never misused to the detriment of law abiding citizens.

Finally, it must be decided what the response will be to the volume of relevant information the INS is receiving. Under a very broad understanding of TIA, the government will be laboring under far too much information, far too much of it will be irrelevant, and the gathering of it might have infringed upon many people’s civil liberties. On the other hand, too narrow a focus of TIA might not allow the useful information the government seeks to get through.

Technological Recommendations

Under the infrastructure rubric, it is recommended that the State Department be made a part of the nationwide information infrastructure, which will help ensure that all relevant information regarding known terrorist groups and their operatives are brought to bear on the operational decisions of the federal government. This will provide officials within the State Department the tools to conduct the background checks necessary to screen out known terrorists from the visa issuance process. When the system is in place, ignorance will no longer be a valid excuse for issuing visas to known terrorists.

As to the identification of unknown terrorists, it is recommended that the TIA system be developed and implemented, regardless of the threat to privacy, for two reasons. First, such a system is required if

⁴² Waller, J. M. op. cit.

terrorism is to be effectively fought in this nation. The State Department is at the front lines of the war on terrorism and will often be the first federal agency to be exposed to persons and their aliases who are involved in terrorist activity. With the TIA, the State Department can feed a visa applicant's name into the system, which will then trigger an indication of any suspect activity to which that name is attached throughout the system's vast network of departments and agencies. If, for example, that name is known to be an alias of another name which has been used in the purchase of bomb-making materials, this fact may well come to light. Without the TIA, that name will not register on the list of persons with known terrorist ties and he or she may well be granted a visa.

Second, though the dangers to the personal privacy of U.S. citizens is a valid concern, as the abuse of information technology is a looming threat inherent with advancement, the data in the TIA will fall under Privacy Act restrictions, allowing the program to function under somewhat of an "honor system". While not the ideal, as waiting for a program that deals with privacy concerns better (for example, by limiting information access for national security purposes only or by ensuring information cannot be stolen or altered) is likely to be fruitless and is sure to be dangerous to U.S. national security. The benefits of the system and the interests of national security greatly outweigh the potential drawbacks. The threat is immediate. The solution should be immediate as well.

Finally, it is recommended that the INS develop and implement a visa entry/exit tracking system. Such a system is long overdue and, while the bulk of its effect will be felt in the tracking and removal of visa overstayers, a substantial secondary effect will be the ability of INS to ensure that the visas presented to its agents are legitimate. Another substantial secondary effect is as a backup to the newly-implemented visa issuance policies. If those policies fail and a suspected terrorist is allowed into the country, the improved tracking function will allow the INS to locate that individual rather than stand by helplessly while that individual disappears into the interior.

Procedural Options

As to procedural strategy, the primary option is blindingly simple: to enforce the policies that are already on the books. This will, of course, be largely addressed by the decisions made under the "structural" rubric. In a similar vein, the State Department has the option of revisiting its practice of entrusting visa approval decisions to its most junior officers. Lastly in this line of options, the State Department may want to consider a shift in its visa scrutiny philosophy. Currently, the focus is on keeping "potential overstayers" out. In the future, a focus on keeping "potential terrorists" out may be more appropriate.

Another line of options has to do with various moratoria on immigration in general or some sub-segment thereof. The State Department is overloaded with visa applications and, as a result, often devotes less time to scrutinizing applications than is consistent with national security objectives. Moratoria will slow the influx of applications and allow the State Department to catch up and then proceed with the processing of applications at a slower pace. The State Department has already implemented two measures in the same vein: 1) the first is a twenty day waiting period for male applicants ages sixteen to forty-five who hail from predominantly Muslim countries known to sponsor terrorism or harbor terrorists, or with known ties to anti-U.S. terrorist organizations. Since the State Department is using the connection to terrorism as its criteria and not religious affiliation, there should not be a problem with First Amendment challenges to the statute. 2) The Second recent policy change is that all male applicants in the 16-45 age range must fill out a questionnaire before their application is considered complete.⁴³ Two further options may be considered. The first is a six-month moratorium on all immigration. The second is a one-year moratorium on all immigration from predominantly Muslim countries, countries known to sponsor terrorism or harbor terrorists, or countries with known ties to anti-U.S. terrorist organizations. Under both options, the State Department and INS will be given the time to upgrade its capabilities and policies and decrease its backlog so that it can deal more effectively with terrorist threats going forward.

Procedural Recommendations

If the State Department could be trusted to equate its own goals to the goals of the country, one could simply recommend that it more aggressively enforce the rules that are already on the books. This would obviate the need for reassigning the issuance of visa applications from junior officials. Unfortunately, it is feared by many that the State Department cannot be trusted to equate its own goals with that of the country's security. This is not to imply that there is no need for tweaking the written procedures under which officials review applications for approval. Current State Department standards do in fact focus on "potential overstayers" and thus it is recommended that they be modified to include separate criteria for identifying "potential terrorists."

As to moratoria, a six-month ban on all immigration – while undoubtedly beneficial to the State Department – would preclude the beneficial effects of immigration on which this nation has come to rely and would have an overly negative influence on U.S. interests and image, both domestically and internationally. In short, such a move would fail the balancing test criteria enunciated above. A one-year

⁴³ Immigration Services and Benefits Programs. (2003). Bureau of Citizenship and Immigration Services. Retrieved April 2003 from <http://www.immigration.gov/graphics/toc.htm>

ban on all immigration from selected countries or, more accurately, from countries with known ties to anti-U.S. terrorist organizations, balances the competing interests better. It will still halt the substantial flow of visa applications from “high risk” nations, thus allowing the State Department to upgrade its capabilities and policies and decrease its backlog so that it can deal more effectively with terrorist threats going forward. Even if a moratorium could pass political muster domestically, there would be strong, possibly belligerent reactions by the nations who would be subject to the moratoria; this would of course defeat the purpose of effecting any moratorium in the first place. However, the U.S. can better answer these complaints with the compelling argument of national security when such a moratorium is tied to the threat it seeks to neutralize. Also, it allows the beneficial effects of immigration to continue uninterrupted. In short, moratoria substantially answer the primacy of national security concerns while allowing for the accommodation of legitimate secondary issues.

Chapter 4. Border Security: How Do We Keep Them Out?

The issue of immigration, and the specific processes by which the U.S. admits individuals into the country on a temporary basis, address the legal and formal ways in which the U.S. can prevent foreign terrorist entry when the state is involved in the process of allowing foreign nationals into our country through legal means. An equally large task; however, may lie in securing the U.S. border against those who would try to enter the country through extra-legal means. In considering the thought process of the terrorist mind, it is only reasonable to assume that as soon as the current most attractive means of entry are no longer exploitable, new avenues of entry will be sought out. Because of this, it is now necessary in our quest to for U.S. security to turn our attention to the other means of gaining entry into the country, through physical borders. This chapter looks to secure the nation's perimeter from terrorist penetration looking at formal barriers such as airport checkpoints, the U.S.-Mexican border, the U.S.-Canadian border, and the nation's coastlines, both Atlantic and Pacific.

The United States perimeter is such that it is neighbored by two vast countries on its northern and southern borders and approximately 3,000 miles of coastline to the east and west. Securing this amount of land is a daunting responsibility especially given that most of the U.S. border is without formal checkpoints or physical barriers of any kind. Compounding the problem of the sheer size of the area that needs securing is the fact that the checkpoints that do exist experience a high volume of traffic every day. The rate of movement across each checkpoint is high, and is often unmonitored either by choice or by inability. The U.S.-Canadian border functions under a rather lax policy, in which very little care has historically been paid to whom or what was crossing into the U.S. On the other hand, though a great deal of lip-service has been paid to the problem of the "porous border" between the U.S. and Mexico, millions of individuals have been, and continue to be able to cross the border illegally without detection, and with very little ill consequence, if any. In light of these border situations, an improved system of surveillance and investigation will need to be installed at both points of entry. Security throughout our national parks has similarly been historically of little concern to policy makers. Further issues arise regarding Indian reservations that lay in or around national parks or border regions in terms of where jurisdiction lays when considering the security of the United States.

Singularly, coastlines are porous to people committed to reaching U.S. soil as refugees will forever attempt to float onto U.S. shores. The traffic at conventional seaports is predominately commercial, but cruise ships and commercial shippers still enter the country at these points and must be addressed. The

U.S. coastline and seaports pose a problem less to do with identification, as may be the case with the border check points, and more to do with monitoring commercial cargo and the potential likelihood of becoming future entry points for terrorists as the security at borders and airports tightens. It is in the potential threat that seaports and coastlines may pose if not given adequate attention now versus the immediate importance of them as historically popular terrorist entry points. This chapter takes a deeper look at each point of entry and the issues particular to affecting their security. For the purpose of our analysis we have divided the U.S. border into four separate cases; airport checkpoints, the Mexican and Canadian borders, Federal Lands including national parks and Indian reservations on the border, and Coastlines. Within each of these areas, we discuss the potential for and likelihood of terrorist penetration as well as offer options for reform of the current systems followed by a recommended course of action. As always, our analyses and conclusion bear the *caveat* that a realistic solution cannot be expected to prevent all foreign terrorist entry; but it can and should be expected to both deter and reduce further infiltration. Evaluating any new policy is difficult, and success rates are unknown until after the fact. However, it is important for the public as well as the policy community to remember that while they may not be hearing about terror cells being broken up or plans for unleashing of WMD's being thwarted, that does not mean that the DHS and its sister agencies are not doing their jobs. In the game of preventing terror, no news is most definitely good news.

Securing Airport Checkpoints

In beginning to approach the issue of preventing the physical entrance of foreign terrorists into the country, it is reasonable to concentrate on points of entry where the largest volume of people enters. Thus, though airport checkpoints are only one of many points of entry, they immediately come to mind because not only were one of the most common ways in which terrorists have entered the country they in the past, but also planes themselves were the weapons the September 11th terrorists used. No one who lived through the horror of that day can forget the devastation that was wrought in part due to the carelessness of airport security measures.⁴⁴ With the thousands of international flights that land in the U.S. daily, and the millions of individuals that cross U.S. borders through these numerous points of entry, it is not surprising that past terrorists have been able to infiltrate U.S. airport checkpoints with relative ease. For these reasons, the analysis of airports as a point of entry has been given particular consideration as to what policy changes would most effectively aid in securing them against terrorist entry from abroad. Note that this chapter only considers the problem of international flights, since we have restricted the

scope of our problem to preventing foreign terrorists from entering this country. Once an individual has passed through a U.S. border and has entered the country, he will likewise have passed outside the scope of this paper.

This chapter will address the difficult task of physically identifying individuals that pose a threat, and specify to what degree increased scrutiny of travelers is appropriate and acceptable within existing civil rights norms. Subsequently, we will ask whether those norms need to be reconsidered in the interests of security. Finally, we will outline some of the recent policy changes with regard to airport security in general, and offer a series of options and our recommended action.

Physical Identification/Identity Authentication

Based on the criteria from Chapter Two regarding individuals who may pose a threat to U.S. security, we are still left with the more difficult task of actually determining the physical identity of these individuals. This task falls into two categories: 1) identifying known terrorists, and 2) identifying individuals unknown by name but suspected to be associated with terrorist organizations. Problems arise in both circumstances. In terms of known terrorists, an individual entering the United States through an airport checkpoint could theoretically be identified through a computer search of the individual's name against the FBI list of known terrorists. Unfortunately, there are many problems inherent in this simple strategy. People can change their names and obtain false documents with little trouble. Even if a computerized database contained photo identification, an individual could easily alter his or her appearance. There is another vexing problem in the fact that names in languages unfamiliar to Americans may be mistyped and can disappear into the system.⁴⁵

Because there is no way to know who the next terrorist is, (since the terrorists' stock-in-trade is deception), in order to find a terrorist you have to beat them at their own game. That means the government has to target certain people based on certain characteristics. The alternative is to live in a police state where anyone can be stopped and searched at any time and for any reason. The terrorists that performed the September 11th attacks were not a random group of individuals with varying philosophies or even varying countries of origin. Their stated aims are the destruction of Israel, the United States, secular culture, and the perversion of "true Islam." It would be laughably disingenuous to pretend that we do not know anything about "who" our enemies are in the abstract— unfortunately we cannot know

⁴⁴ Chapter Five expands the issue of physical border security.

⁴⁵ Milstein, S. "Taming the Task of Checking for Terrorists' Names" New York Times, 12/30/02

exactly who they are in the concrete sense. The Bush administration has made it clear that the War on Terror is not a War on Islam; however, it is unfortunately the case that the millions of non-combatant Muslims seeking liberty in America will ultimately pay the price that nineteen extremists brought upon the world.

Recent Policy Changes

On November 19, 2001, the President signed into law the Aviation and Transportation Security Act (ATSA), which among other things established a new Transportation Security Administration (TSA) within the Department of Transportation (DOT).⁴⁶ The TSA is now part of DHS. The ATSA required the adoption of stricter screening standards and federal supervision of the screening process, background checks, testing and strict oversight. Other key provisions include an increased number of Federal Air Marshals accompanying domestic and international flights, reinforced cockpit doors and additional law enforcement personnel at every screening location. Also, there is a plan in the works to arm pilots in the cockpit and to develop a new passenger pre-screening program to identify potential terrorists before they board the plane. Unfortunately, these plans have encountered some setbacks; with current funding, airports are unable to meet the demands to update technology and increase personnel.

In order to meet the provisions of the ATSA, airports must have sufficient financial support; otherwise “mandatory” will be a meaningless adjective. Money is not the only problem the screening schemes have encountered. It has been argued, for instance, that various screening measures violate individual rights. For instance, The American Civil Liberties Union (ACLU), as well as many more centrist and right-leaning commentators, has objected to the proposed Computer Assisted Passenger Pre-Screening System II (CAPPSII), a nationwide computer system that will check credit reports, bank account activity and compare the names of passengers to federal watch lists in order to identify potential terrorists. Meanwhile, long lines and numerous security checks are impeding the efficiency of U.S. airports. In order to address this issue, the TSA has contemplated initiating a registered traveler program; however, this program would create additional security issues of its own. These include the number of background checks required for participation, the security-screening procedures for registered travelers, and the program scope, cost and financing options.⁴⁷

⁴⁶ See Appendix C for details.

⁴⁷ Brady, J. et al, “Registered Traveler Program Policy and Implementation Issues” [Electronic Bulletin] November, 2002 [cited 29 January, 2003] www.gao.gov/cgi-bin/getrpt/GAO-03-253

Despite the efforts to improve airport security post-September 11th, 2001, there are still flaws in the system, specifically with regard to preventing terrorist entry. The government is funding research into better technology to detect explosives; however, questions of funding for the new technology remain. The results found in an audit by Justice Department Inspector General Glen A. Fine criticized the INS for failing to correct significant problems that had already been identified at a number of airports in a previous audit. The report found that several airports remain vulnerable to illegal entries by foreign travelers, escapes by people detained for questioning, and the smuggling of aliens, drugs and other illegal substances.⁴⁸ Several of these problems had been identified in the 1999 audit, but the INS has largely failed to take action in response to those criticisms. In addition, the report noted badly located or inoperable surveillance cameras, an inability to videotape interviews with detainees, broken alarms and other security features that were never even installed.⁴⁹ While the TSA is responsible for overall security at commercial airports, the INS has oversight of foreign travelers. In fact, the service inspected 43.1 million foreign passengers at 159 U.S. airports during the 2001 fiscal year.⁵⁰ It will be very difficult to prevent terrorists from entering the country if the INS is not doing its job.

Options for Improving Airport Security

There are several options for improving airport security with respect to preventing the entry of terrorists into the United States. The first option is to continue on the path that the administration has followed since the events of September 11th. As mentioned previously, the ATSA requires 100% inspection of all checked bags, greater efforts to hire and adequately train baggage screeners, an enhanced air marshal program, reinforced cockpit doors, and a heightened law enforcement presence on the ground. The U.S. has made an excellent effort to meet all of these requirements, and in light of the fact that there have been no confirmed terrorist attacks in the U.S. since the new policies went into effect, it can be argued that airport security with regard to foreign terrorist entry has been working. On the other hand, it is simply possible that the terrorists have wisely decided to lay off the use of airplanes for a while.

A second option for airport security is to adopt a more pervasive and assertive strategy of profiling, backed up by aggressive interrogation as needed, in the vein of the renowned Israeli state airline, El Al.⁵¹

⁴⁸ Associated Press, "Reports: Airport Security Still Lacking" [electronic bulletin], 24 January 2003 [cited 29 January 2003] available at www.newsday.com/news/politics/wire/sns-ap-airport-security0124jan24,0,6296354.story

⁴⁹ *Ibid.*

⁵⁰ Associated Press, "Airport Security Lags, audit shows" [electronic bulletin] 24 January 2003 [cited 29 January 2003] available at www.iht.com/articles/84494.html

⁵¹ Permian, S. "The El Al Approach," Business 2.0, November, 2001.

No El Al airplane has ever been hijacked since the company's inception in the 1960's. There are a number of different components to the El Al model. First of all, armed guards inspect every vehicle before it enters the airport and plainclothes guards secure all airport buildings. Inside the terminals, highly trained security personnel evaluate passengers people based on a complex profiling system, which takes into consideration, among other, non-published criteria, race, nationality and gender. If there is any suggestion of something amiss in a passenger who has already excited the suspicion of the security personnel, that passenger can be detained and held for questioning. Obviously, all passports and tickets go through a careful screening process. In addition, agents check every name through Interpol before boarding passengers. Baggage screening is also taken very seriously. All checked bags are matched to a passenger on flight and passengers must reclaim bags when making connections. Sophisticated x-ray equipment can screen for liquid explosives and all checked baggage is placed in decompression chambers to check for explosives that are detonated by altitude sensitive triggers. Most pilots are former air force officers and there are armed undercover agents on each flight. Finally, there are restrictions regarding Israeli airspace are strictly enforced. For instance, Israelis shot down a Boeing 707 for entering their airspace in 1973, killing 103 civilian passengers on board.⁵²

The El Al approach has been highly effective in preventing airplane hijacking, but whether it is the kind of approach that would work in the U.S. is another question. Israel is a tiny country whose entire existence is based on the idea of survival for the Jewish people. It is a very different kind of country from the United States, which safeguards personal freedoms over most other values.

A third option for airport security policymakers to consider is an approach in which the policies of the past eighteen months are diligently executed, and which incorporates the aspects of Israeli security that are most amenable to the American socio-political environment. For instance, in November 2001, the Customs-Trade Partnership Against Terrorism (C-TPAT) program was initiated, which incorporated the Advanced Passenger Information System (APIS) program. Up-to-date information on these programs can be found at <http://www.customs.gov/dhs>. Both of these programs incorporate important lessons learned from models such as those developed in Israel.

Further changes can be made, as the situations warrant, specifically with regard to information sharing, resource management, and the implementation of new technologies.

⁵² *Ibid.*

Recommendations for Preventing Terrorist Entry at Airports

The recent changes made with regard to airline security are a step in the right direction; however, more must be done if the U.S. is going to effectively keep terrorists from entering the country. For this reason, a hybrid approach is recommended as the best course of action to pursue – one that uses the best aspects of the Israeli system and also takes advantage of the Information Technology that is available to the United States authorities. The U.S. is currently experimenting with a variety of new technologies including: fingerprint sensors, facial recognition systems, and hand held computers to verify employee identification, track terrorist suspects, and deter criminal trespassers. However great the benefits these tools would be in the battle against terrorist infiltration, implementing these new technologies will take time and especially money, whereas the following system of people-intensive, rather than technology intensive training may be more cost-efficient in the long run.

It would be beneficial to consider incorporating a more discriminating system of passenger profiling, also referred to as “behavior pattern recognition,” into the planned new hybrid approach. According to Rafi Ron, an Israeli Airport Security expert, this involves knowing who the passenger is, where they are coming from, and where they are going.⁵³ Airport personnel would have to learn to make distinctions among those who pose a threat and those who do not in order to focus their security efforts and avoid wasting the time of legitimate passengers. Meanwhile, passengers are going to have to understand that greater security may mean additional time waiting in lines, and/or showing their identification a number of times. Increasing airport security is a long process with a lot of layers. Undersecretary Loy calls it a “system of systems” that includes increased security on the ground and in the air.⁵⁴

So far we are on the right track but there are a number of areas where additional improvement is needed. Most importantly, the level of scrutiny at airport checkpoints must be raised significantly. If the U.S. were to adopt a heightened level of scrutiny with regard to specific groups and individuals, to what degree and in what way would this scrutiny be realized? One of the simplest ways to begin would be to pay special attention to single men aged 16-45, arriving from countries or through countries selected in Chapter Two. Upon verification the individual will be permitted to enter the U.S.; however, their classification under high scrutiny would likely require extensive monitoring of their whereabouts and activities while in the United States.

⁵³ Brooks, A. “Securing the Airports” [Electronic Bulletin Board] [cited 16 January, 2003] www.insideout.wbur.org/documentaries/unfriendlyskies

⁵⁴ “Another Layer of Security Makes Skies Safer than Ever” [electronic bulletin board], 30 December 2002 [cited 16 January 2003]; available at www.tsa.dot.gov

First and foremost, the U.S. needs to focus the majority of its efforts on the ground on the authentication of identification. As mentioned before, there needs to be a system in place in order to determine who will be singled out in the passenger profiling process. Once a security officer has reason to believe that a passenger might pose a threat, he should be put through another level of intense screening that involves questioning, further background checks, denial of entry, and possibly even deportation back to the country from which they came. Airport and airline security also depends on the authentication of identification and travel documents. It is essential that the U.S. improve passenger and employee identification technology. This includes automating the examination and collection of identification documents and their data. With proper technology, this can be done at curbside, at ticket counters, security checkpoints and gates. The next step is to clearly identify the roles of each of the three agencies responsible for maintaining security at airports. This includes federal, local and airline authorities. The process needs to be streamlined so that while statistical certainty can be achieved, time consuming redundancy is prevented. If the airport security were doing its job, there would be no need for additional law enforcement except in times of extreme alert.

Once planes and passengers are in the air, the Federal Air Marshals and armed pilots are their last line of defense. It is essential that they be properly trained and placed on all high-risk flights, where their presence is feasible, to prevent a future terrorist attack. In cases of foreign airlines entering the country, it is essential that Marshals meet all international flights at the gate and escort all passengers through to customs. In addition, airports that serve as portals for a high number of international flights should undergo additional screening checks with a higher level of scrutiny. As there is no mandatory airport law worldwide, it would be in our best interest to place international passengers through additional screening once they have entered the United States. These measures may seem drastic but these are drastic times. The U.S. needs to consider the safety of its citizens as its top priority. This means taking all necessary precautions to prevent terrorists from entering the country via air. In fact, each airport employee needs to feel that he or she is accountable for the security of every passenger on every flight.

The U.S.–Mexican Border

The U.S.-Mexico border is a 2,000 mile stretch of land with few gates and some fencing; however, it remains largely open and without effective official patrol. Through the monitored gates, more than 290

million people, 128 million cars and 11 million trucks entered the United States in 2002.⁵⁵ Canada and Mexico are America's top two trade partners, and much of the flow across the Mexican border reflects the strength of this relationship. Since the signing of the North American Free Trade agreement (NAFTA) in 1993, the trade between the U.S. and Mexico has tripled to \$650 million per day.⁵⁶ These facts make Mexico the United States' second-largest trading partner after Canada.

Due to the economic importance of the U.S.-Mexico border and in particular the de facto U.S. economic reliance on Mexican migrant workers in its southwestern states, post-September 11 security issues on the Mexican border have become increasingly important and of heightened concern to the Bush administration. It is no secret that millions of illegal immigrants from Mexico are currently residing in the United States and have done so through well-established smuggling networks as well as through obtaining false identification documents. This suggests a potential danger in that terrorists could cross the U.S.-Mexico border in much the same way.

There is valid reason to believe that Mexico might be used as a springboard by terrorists. George Grayson, a professor of government at the College of William and Mary, showed in his 2001 study of the conditions for illegal aliens at Guatemalan-Mexican border, that more than 100 criminal organizations continue to move migrants across the frontier, often with the assistance of corrupt border officials. Middle Eastern, African and Asian aliens are among the many passing through from Central America, creating a huge threat to U.S. security in light of the recent attacks. Grayson pointed out that there are more than 200 clandestine crossing points on the Mexican-Guatemalan border alone.⁵⁷ With the porous nature of Mexico's southern borders, the ease by which people in Mexico can enter the United States becomes even more problematic.

Prior to the September 11 terror attacks, various agencies dealt with border issues. The Immigration and Naturalization Service (INS) shared the duties with the Customs Service to watch the cross-border flows of people and goods. The Border Patrol was responsible for deterring illegal border crossers in all areas including mountains, deserts and woods between established crossing points. The Customs Service had 5,000 agents; the INS had fewer than 2,000 agents; and the Border Patrol had about 10,500 agents, but

⁵⁵ "Terrorism: Q & A." (2003). Council on Foreign Relations. Retrieved February 2003 from http://www.terrorismsanswers.com/security/borders_print.html

⁵⁶ Treat, J. "A New, Improved U.S.-Mexican Border?," Americas Program Commentary (Silver City, NM: Interhemispheric Resource Center, March 28, 2002) or <http://www.americaspolicy.org/commentary/2002/0203immig.html>

⁵⁷ "Millions of Mexican Illegal Aliens Endanger U,S, Security." (August 2002). NewsMax.Com. Retrieved February 2003 from <http://www.newsmax.com/archives/articles/2002/8/6/143102.shtml>

among these only 350 were deployed on the Mexican border. Homeland Security Director Thomas J. Ridge has become a key player in negotiations on post-September 11th border policies.

Immediately after the September 11 attacks, all official entry points were in effect shut down. In addition, tightened security measures were put in place that tripled or even quadrupled the time it normally took to pass through many border crossings. Congress approved the hiring of additional personnel to beef up border security. Long delays at the border were not basically eliminated until the agencies asked agents to work longer hours and borrowed additional personnel from the National Guard after the first few weeks.

Increased border security measures and delays have hurt the U.S. economy. Since many large American companies operate factories across the U.S.-Mexico border or buy supplies from Mexico, delays had a great negative influence on shipments. Besides, huge amounts of Mexicans were blocked from crossing into the United States to work and shop. Retail sales all along the southern border were down 30% from September 2001 to early 2002.⁵⁸ Part of the reason for this is that Mexican consumers were reluctant to wait in long lines at the border to go shopping.

Mexico also appears to be increasingly wary of the growing militant atmosphere along the border. An editorial in the national daily *La Jornada* newspaper said that the United States might find benefits in a “regional triangle of security”, with its neighbors, but that could be “clearly injurious to our country’s interests.” The editorial pointed out that the United States has a long list of enemies, while Mexico has few, and that the very act of making common cause with its neighbor on security matters could unnecessarily put [their] country in the crosshairs of those who, with or without just cause, and with legitimate or condemnable means like terrorism, struggle to affect Washington’s interests outside and inside U.S. territory.⁵⁹ Obviously, the Mexican government’s priorities with regard to terrorists and border security issues are different from those of the United States.

Current Policy: Smart Border Plan and Other Policy Options

U.S. officials have already tried to promote more effective management of the U.S.-Mexico border, partly under pressure from U.S. business interests. U.S. President George W. Bush and Mexican President Vicente Fox at their summit on March 22, 2002 announced a twenty-two-point agreement to create a

⁵⁸ “Terrorism: Q & A.” (2003). Council on Foreign Relations. Retrieved February 2003 from http://www.terrorismanswers.com/security/borders_print.html

⁵⁹ Borden, T. Arizona Republic. Mexico City Bureau, March 5, 2002.

“Smart Border”.⁶⁰ The new plan is designed to weed out terrorists while facilitating legal commerce and protecting the growth trend in trade between the two countries. Similar to the agreement signed by the United States and Canada in last December, the plan provides for laser-scan identification cards for frequent border crossers, X-ray facilities, a shared computer database and special express lanes for certain shipments.⁶¹ Concerning anti-terrorism, the plan aims to “cooperate to identify individuals who pose threats to our society before they arrive in North America” and “coordinate to deter smuggling of third-country nationals”.⁶² Obviously this plan’s implementation remains a challenge, because the problem of millions of illegal crossers can only be resolved through a deal with Mexico.

The policy of deterring the illegal border crossers had been a proven failure. As early as 1993, the INS had implemented a series of measures aimed at closing illegal crossings on El Paso and San Diego. In El Paso, the apprehension rate declined 50 percent from 1993 to 1996. Those operations forced the immigrants turning to the border at Arizona, where the INS began Operation Safeguard in 1995. Officials believed the harsh Arizona desert would discourage illegal border crossers from attempting to enter the U.S. They were wrong. Eventually they found the shift occurred in huge numbers and the INS itself was less prepared to perform their function in the desert areas than they had expected, resulting instead in immigrant deaths. Even after September 11th, when illegal immigration across the U.S.-Mexico border declined due to tightened security measures, thousands still made it through.

Another option to consider is to address the problem at its source. In order to effectively handle illegal immigrants from Mexico, immigration experts suggest some changes in U.S. immigration policy toward Mexico. The assumption here is if Mexicans can get their legal working permits easily, there is no need for them to resort to the smuggling networks. They proposed such programs like an expanded guest-worker program allowing more Mexicans to legally cross the border to work in the United States and an amnesty program for the millions of illegal Mexican workers in the United States. Though many people, particularly in Arizona, have long proposed a work-permit program that would allow immigrants to work in the United States for limited periods, current security concerns and economic recession make it unlikely that the public would support those programs. Besides, most economists’ research has pointed out that Mexican immigrants, legal and illegal, act as a taxpayer-funded subsidy to businesses that rely on

⁶⁰ “Smart Border: 22 point agreement.” Office of the White House. Retrieved February 2003 from http://www.whitehouse.gov/news/release/2002/03/20020321/-7_.html

⁶¹ Treat, J. “A New, Improved U.S.-Mexican Border?”, Americas Program Commentary (Silver City, NM: Interhemispheric Resource Center, March 28, 2002)

⁶² “Smart Border: 22 point agreement.” Office of the White House. Retrieved February 2003 from http://www.whitehouse.gov/news/release/2002/03/20020321/-7_.html

low-skilled labor. Their benefit to the U.S. economy is small. Researchers think that U.S. immigration policy should shift to reduce the number of Mexican and other low-skill immigrants. That said, it remains true that cutting down the sheer volume of immigration over the U.S.-Mexican border can only make it easier to catch those attempting to cross with intentions of causing terror.

Recommendation and Implementation

It is recommended that the U.S. continue its efforts of creating a bilateral commitment with Mexico to better monitor border activity while maintaining a mutually beneficial degree of movement and trade. Persuading Mexico to more scrupulously guard its borders should be one of the most important items on the U.S.-Mexico foreign relations agenda, especially after September 11th. In this case, the U.S. should provide Mexico with both special funds and anti-terrorism experts who will train Mexican border guards, and assist Mexico to crack down on domestic criminal activities. The holes in Mexico's southern border present reason enough for the U.S. to offer aid and to beef up Mexican border guards.

To better facilitate the bilateral trade, and lighten the load at border check points, some experts suggest moving some inspections away from the border to the factory loading dock in order to further speed up the inspection process. Under this procedure, after having been loaded under surveillance, a truck's doors would be sealed. A Global Positioning System would then track the truck's movements to ensure the truck travels unmolested across the border, where it would be free to go across without the necessity of being inspected again. This should be added as a part of the Smart Border.

Canada

The United States' northern border presents another complex challenge to policy makers as they struggle to secure the country's borders against terrorist entry. The Canadian border represents an attractive point of entry for terrorists because of the open-door crossing policy, the heavy traffic that crosses it each day, its sprawling uncultivated countryside, the low numbers of agents and inspectors stationed on the border, and the fact that Canada's immigration policy does not accord with our own. Because of these factors, the task of preventing terrorists from entering the United States via Canada is extremely difficult. The policy question then becomes: what can be done by the United States to make the U.S.-Canadian border unattractive to individuals with terrorist designs; and if a terrorist does attempt to cross the border, how can the United States ensure that access into the U.S. is denied?

Issues of Concern

Since the United States and Canada share so many miles of border, securing it is a major policy challenge for the DHS. There are many issues that create challenges to securing the U.S.-Canadian border from penetration by terrorists, including the volume of crossings, thin staffing at the border, and the relative generosity of Canadian Immigration policy.

Volume. There are several important issues surrounding the challenge of securing the nation's northern border. The first and most prominent one is the relative ease that Canadians have crossing the border. In contrast to the barbed wire and army of immigration officials stationed on the Mexican border, the Canadians benefit from an open door policy that is in effect between Americans wishing to enter Canada and Canadians wishing to enter the U.S. This policy is important to both nations because of the beneficial effects of having open lines of commerce. There are large U.S. cities (Detroit and Buffalo) situated directly across the border from Canada that depend greatly on Canadian travelers spending money on the U.S. side of the border. The historic laxness at the border, however, has made it easily crossable by those not wishing to spend money on American businesses, but rather wanting to wreak havoc on American landmarks or establish terror cells in American cities to sabotage American interests from the inside out.

Every day 250,000 people cross the Canadian border—almost all of them shoppers and individuals who commute to work.⁶³ Random searches are conducted of vehicles, but the vast majority of travelers pass through unmolested, answering a short series of questions that usually take less than a minute to answer.⁶⁴ Travelers need to have on them a photo identification card and a proof of citizenship. Aside from the fact that these documents are easily fabricated, it is also true that most Canadians are indistinguishable from Americans and pass freely over the border.

Thin Staffing At the U.S. – Canada Border. Compounding the issue of heavy traffic volume at border crossings is the relatively small number of immigration agents and inspectors. Border check points are staffed by only 306 guards and 926 inspectors. These numbers stand in stark contrast to the U.S.'s Southern border, which is less than half the distance of Canada's but is staffed by a total of 7,761 border guards and inspectors. While three times the number of people cross the Mexican border every day

⁶³ "Canadian Border- U.S. Canada Border" [U.S. Department of Transportation's Bureau of Transportation Statistics] 6, November, 2001 [cited 28, March, 2003]. www.webdesk.com/canadian-border-canada-us.

⁶⁴ This open door crossing policy is evidenced by logging onto the Canadian Customs and Revenue Agency's web site which shows the current border wait times for both entering Canada and entering the US. During an "orange level terror alert", the longest commuter delay was listed at twenty minutes, and fourteen of the twenty-one check points listed "no delay" for commuters at all. When there is no terror threat, one is often able to log on and see all twenty-one check points listing "no delay".

(800,000), the ratio of guards and inspectors stationed at Mexican checkpoints is seven times greater than the number stationed at the North.⁶⁵ This has made sense in the past, as the Mexican border has represented a much greater threat in terms of illegal immigrants; however, now that the U.S. is finally waking up to the danger of terrorists entering from each frontier, security from Canada needs to be increased.⁶⁶

Furthermore, the Canadian border covers over three thousand miles of land, almost all of which is uncultivated countryside that is completely inaccessible by road or rail. Despite the immense geography covered by the U.S.-Canadian border there are only a few roadway checkpoints that make the two countries accessible by car. Between the points of entry concentrated around Detroit, MI and Buffalo, NY 75% of all daily traffic over the national borders are accounted for.⁶⁷ Still, there are three thousand miles of border outside of Detroit and Buffalo to cross, and committed individuals willing to brave the wilderness and make the trek from Alberta over the Canadian Rockies into Montana can be picked up in Kalispell without having to worry about presenting documentation to any immigration official.⁶⁸

Canadian Immigration Policy. The third major issue surrounding the challenge of securing the U.S.-Canadian border is Canada's immigration policy. Canada has an open door immigration policy with regard to international refugees. Political refugees are granted asylum, no questions asked, and once they are in the country very little is done to keep tabs on their behavior. "We are not going to shut the door to legitimate political refugees—only to people with bad intentions" the Canadian Immigration Board spokesman said recently. The reporting article went on to conclude, however, that "distinguishing between the two is a form of art the Canadians do not appear to have mastered"⁶⁹.

⁶⁵ Statistics available at "Terrorism: Q & A." (2003). Council on Foreign Relations. Retrieved February 2003 from http://www.terrorismanswers.com/security/borders_print.html

⁶⁶ On December 14th, 1999 Ahmed Ressay was arrested with 130 pounds of explosives, homemade detonators, and a map of the Tom Bradley International Terminal trying to enter the US at the Port Angeles, Washington check point south of British Columbia. He was asked to get out of his car because the agent became suspicious of his nervous behavior and poor English. He tried to flee, but was caught, preventing his millennium celebration terror plan from coming to fruition. An accomplice of Ressay, Bouabide Chamchi, was arrested five days later in Vermont after he and another woman had successfully entered the state from Quebec. Another five days after that, on Christmas Eve, American police arrested Abdel Hakim Tizegha, who had entered the US from Canada by sneaking through the bushes near Blaine, Washington.

⁶⁷ "BTS Report Shows Detroit, MI and El Paso, TX Continue at Top Gateways for Personal Vehicles Entering the U.S." [Department of Transportation Office of Public Affairs] 12, March, 2003 [cited 28, March, 2003] www.dot.gov/affairs/bts0203.htm

⁶⁸ See Abdel Hakim Tizegha example, two footnotes up.

⁶⁹ Timmerman, K. R. "Canadian Border Open to Terrorists" [Insight Magazine] 23 November, 2001 [cited 28 March, 2003] www.timmerman2000.com/news/insight_canada011123.htm

A 1998 report by the Canadian Security Intelligence Service concluded that there were over fifty known terrorist organizations operating in Canada, including Hezbollah, Hamas, and Algerian, Libyan, and Iranian terror cells.⁷⁰ Because Canada is not the ultimate target of these groups, they are able to practice liberal immigration policies. The United States on the other hand suffers the unintended consequences of such policies. When confronted by the U.S., Canada argues that “terrorism is not an immigration problem,” citing that terrorists are much more sophisticated in their strategizing than their average refugee claimant.⁷¹

Options for the Canadian border

As of February 2003, the Department of Homeland Security has assumed control of the U.S.-Canadian border, and is therefore responsible for the implementation of all policy initiatives.⁷² With this in mind, the United States has several options to consider. The first is to station more guards and inspectors on the border. This option would keep border crossing times low, while at the same time enabling authorities to do a more careful background check on each individual traveler. Such an option would require funding from the Department of Homeland Security to pay the additional inspectors, as well as a widening of roadways to provide more check points along the border (in order to make room for the additional inspectors). It is possible that the terrorists that have been successful at crossing the Canadian border may have gotten through, not because of a flaw in the screening process per se, but rather because guards were either incompetent or because they were overworked and underpaid. Either way, additional agents would likely serve to ease the pressure on the current border guards, regardless of the reasons for their ineptitude.

A second option would be to make the screening process more thorough than it currently is or has been in the past. Such a policy would increase wait times and inconvenience frequent crossers with having to show a passport and I.D. and have the automobile checked before it is allowed entry into the States. Such a process would certainly deter terrorists from attempting to cross over from Canada; however, the everyday lives of the citizens that reside in the area stand to be greatly affected, making such a policy politically unattractive to representatives from the area. Still, in the months after September 11th, people

⁷⁰ Carroll, S. “Homeland Security Takes Over at Border” [The Arizona Republic] 27 February, 2003 [cited 28 March, 2003] www.azrepublic.com/specials/special03/articles/0227border27.html

⁷¹ Timmerman, K. R. “Canadian Border Open to Terrorists” [Insight Magazine] 23 November, 2001 [cited 28 March, 2003] www.timmerman2000.com/news/insight_canada011123.htm

⁷² Carroll, S. “Homeland Security Takes Over at Border” [The Arizona Republic] 27 February, 2003 [cited 28 March, 2003] www.azrepublic.com/specials/special03/articles/0227border27.html

were very agreeable to prolonged wait times to travel, considering the side effects of inconvenience and a loss of business may be a small price to pay for domestic security.

A third option to consider would be to reach out to the Canadian government for help in making Canada an unattractive country for terrorists to work through. The best way to keep terrorists from crossing the U.S.-Canadian border is to keep them out of Canada altogether. Canada currently has a very lax immigration policy which terrorists exploit to set up base before making the journey south of the border. Canada depends on the United States for a lot of their own domestic tranquility, and although the two continental powerhouses do not see eye to eye, the fact is that the U.S. holds most of the cards in the region, and Canada would surely negotiate if presented with the proper incentives. On the reverse side, it puts a lot of faith in the Canadians to prevent terrorist attacks against the U.S.—a role that the U.S. would certainly prefer to play themselves, rather than defer to a nation with a conflicting ideological viewpoint on the issue. The U.S. may feel better watching the door themselves rather than depend on an absentee doorman.

There are, of course, more extreme options to consider, such as closing the border, mining the border, calling in the national guard, reinstating the Alien Enemies Act⁷³, and/or emptying out the penal system and relocating them to their own personal thirty foot segments of land with the lone job of making sure nobody invades their territory. These options are out there, but come up far short of meeting the criteria outlined earlier in this essay.

Recommendation/Implementation for Canadian Border

The United States needs to make border security, specifically with regard to terrorist entry, a high level priority, and with that higher level priority must come additional funding (drawn from the DHS war chest). With the additional funding, more guards and inspectors can be hired and stationed on the border, more money can be invested in the existing agents (ensuring better training, and a better incentive for the best individuals to enter the profession), and a more thorough screening process can thus be implemented without changing too drastically the everyday lives of those who depend on a free-flowing Canadian border.

⁷³ This act, implemented in 1798, allowed the federal government to suspend the writ of *habeas corpus* with respect to unwanted foreigners. The act declared "...all natives, citizens, denizens, or subjects of the hostile nation or government...who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured and removed, as alien enemies".

Border wait times will likely increase, and thus an inconvenience to travelers may occur. Steps could feasibly be taken to aid frequent travelers; however, these steps would have to be rendered un-exploitable by potential terrorists to the greatest degree possible. For example, if a form of E-Z pass was granted to frequent crossers, there is no way to ensure that these cards would not fall into the wrong hands. However, if some kind of bio-mechanical scan were put into effect (something as simple as a thumbprint, which could take as long as dropping a coin in a toll-booth) border-crossing could theoretically be both secure and relatively expeditious. Technological advancements such as these could benefit the checkpoint screening system, but until such technology is available, increased wait times will be a necessary side effect to a terrorist-proof border. Again, as of this writing, some of these changes have been implemented, including increases in pay for border control agents, and a bio-mechanical scan at the border.

A major problem with respect to the Canadian border is that until a terrorist or terror cell is uncovered in America, and the signs point to a Canadian point of entry, it is impossible to evaluate the success of either the current system, or any changes in policy that are implemented. The old system, as far as we know, was not responsible for letting any September 11th terrorists into the country.⁷⁴ It was even successful at preventing the Millennium Bomber from crossing. On the other hand, the old system did allow several of his accomplices to successfully enter the country, and there may yet have been dozens, hundreds, or even thousands of others that have slipped through undetected.

Finally, in implementing these options, it is necessary to include a sunset clause in any new legislation that is timely but inconsistent with the historical founding of the country. The Canadian border will not always be an issue with regard to preventing terrorist entry, and new policies based on specific problems of 2003 will likely be obsolete in coming years, and should be reviewed for its relevancy by every new Congress. For example, Canadian border security could be looser if Canada successfully reforms their immigration policy, or becomes better at monitoring known terrorists residing within their own borders. Congress should take issues like this into consideration, so that valuable resources aren't wasted along the Canadian border when they are no longer needed for the specific threat of terrorism.

⁷⁴ Carroll, S. "Homeland Security Takes Over at Border" [The Arizona Republic] 27 February, 2003 [cited 28 March, 2003] www.azrepublic.com/specials/special03/articles/0227border27.html

Federal Lands

Most of the U.S.-Canadian and U.S.-Mexican border does not enjoy manned checkpoints, but rather consists of vast open spaces that stretch for thousands of miles. National park security is breached each night as thousands of illegal immigrants enter the United States along the U.S.-Mexico border. National parks along the border regions of Arizona, New Mexico, and Texas are frequently targeted. It is not the illegal immigration of Mexicans *per se* that is the threat to our national security. But the fact that immigration laws are regularly flouted, even at the highest levels of government, including regulation and enforcement, makes it easier for terrorists, who *are* a real threat, to gain entry. The existing apparatus, namely “coyotes” that facilitate the illegal immigration of Mexicans, can be easily manipulated to allow the entrance of terrorists. These coyotes, individuals who traffic illegal immigrants across the U.S.-Mexico border, are paid to bring terrorists into the country. Since much of the area along the U.S.-Mexico border is uninhabited desert or National Park territory, the terrorists could take advantage of the minimal law enforcement in and around these regions.

Complicating matters even more, the U.S. Department of the Interior has announced plans to eliminate as many as 70% of the jobs in the National Park Service.⁷⁵ As a result of the National Park Service being under-funded and understaffed, operational efforts are hindered with regard to preventing the entrance of terrorists. Even if the National Park Service had enough funding and manpower, it is unlikely they could provide an effective deterrence to terrorists. The National Park Service is one of the few law enforcement agencies that have employees with little or no background or training in law enforcement. Staff levels, hours of patrol, and investigations are directed by an individual who is not a law enforcement officer and has not had to withstand a background investigation. Those rangers who are trained with law enforcement skills are trained under the direction of the Federal Law Enforcement Training Center (FLETC). (FLETC has now been transferred to DHS under the BTS).

These individuals are provided with the skills to investigate crime scenes, conduct interviews and intelligence gathering, as well as track individuals using GPS and computer-assisted investigations. Nevertheless, law enforcement training is minimal and resources for enforcement are inadequate.

The vulnerability of National Park rangers became evident in August on 2003, when park ranger Kris Eggle of Arizona’s Organ Pipe Cactus National Monument was killed while helping INS Border Patrol

⁷⁵ Mandelbilt, B. “Our National Parks, Crime’s New Frontier” [NewsMax.Com], 15 January 2003 [cited on 3 February 2003; available from www.newsmax.com].

agents apprehend two Mexican drug smugglers. The men had driven a stolen SUV through one of the many holes in the fence that separates the national park from the Mexican state of Sonora.

The death of park ranger Kris Eggle demonstrates just how dangerous the park ranger's job has become, and how poorly the tradition-bound National Park Service has adapted to meet 21st-century circumstances. Critics say rangers are under-trained, under-staffed, and under-equipped to deal with their new front-line role in the war on drugs and illegal immigration. Criticizing resistance to change in the National Park Service, Inspector General of the U.S. Department of the Interior Earl Devaney stated, "I have never seen an organization more unwilling to accept constructive criticism or embrace new ideas."⁷⁶ Devaney criticized the department's superintendent of the Organ Pipe Cactus National Monument for diverting money from law enforcement activities to non-law enforcement activities. Devaney stated, "Law enforcement is a dangerous full-time job and those superintendents and chief rangers who do not understand this fundamental principle of modern policing should not be approving supervising or managing law enforcement officers."⁷⁷

The nature of park policing has changed, but critics say that ranger training has not kept up. Kris Eggle had only been out of the training academy for a couple of months, and unlike Customs Service or INS Border Patrol officers, he wasn't given the advantage of intensive field training or mentoring with an experienced officer. Also, an essential component that is missing from the ranger training is in the use of firearms. Most rangers are not trained in handling firearms and would require police back-up if they were to encounter armed terrorists in the line of duty. In addition, the National Park Service does not have a separate budget for law enforcement. Without additional funding, the National Park Service will be unable to train their rangers to counter the threat of armed terrorists or anyone who poses a threat to them.

Aside from enforcement issues, another major issue facing the National Park Service is the issue of jurisdiction. Several national parks lay within the borders of Native American reservations. Since many reservations have their own enforcement policies, the National Park Service cannot enforce and patrol these areas. The vast stretches of uninhabited land within national parks makes the issue of enforcement even more difficult. Problems with a shortage in staff and funding, weak enforcement and training, and an undefined jurisdiction plague the National Park Service.

⁷⁶ U.S Senate Committee Hearing on Finance, "U.S. Borders: Safe or Sieve," January 30, 2003.

⁷⁷ *Ibid*

Options

There are two options the U.S. has to consider with regard to tightening national park security against terrorist penetration. The first option is to maintain the current status of the National Park Service and use its existing resources in the fight against terrorism. After all, though drug runners make the trek across the regions frequently, there is no evidence that terrorists have entered the U.S. via Federal lands and not been picked up by the existing system.⁷⁸ On the other hand, as visa, airport, and other conventional terrorist entryways are cut off, park rangers may soon find themselves on the front lines of the War on Terror, and if this is to be the case, they should be made ready now.

The other option is to make adjustments to the current system and beef up the existing manpower with better trained rangers, more effective infrastructure within the NPS, and increased information sharing between the players. These changes could include increasing National Park fees in order to create a new anti-terrorism division within the National Park Service to monitor the established jurisdictions of the NPS and provide assistance in enforcement issues; increasing the amount of funding and level of training for National Park rangers, to help to train rangers to become better equipped to deal with law enforcement issues; and encouraging cooperative agreements between representatives of the Native-American nation, National Park rangers, and the Department of Justice in the hope of establishing policing policies within Native American reservations that lie within National Parks.

Recommendations for Federal Lands Security

The U.S. must adopt the option to improve Federal lands security if it hopes to successfully prevent terrorists from crossing its borders. It is therefore recommended that the U.S. government train National Park rangers in law enforcement skills and require each ranger to be armed and efficiently trained in using arms. Additionally, the National Park Service ought to use the National Guard to patrol the remote regions of national parks along the U.S.-Mexico and U.S.-Canada borders. In order to have a fairly complete system of information gathering and patrol with regard to activity throughout the park we recommend the National Park Service create a 4-tier monitoring/surveillance system using, satellite, air patrol (airplanes and helicopters), vehicle patrol, and ranger enforcement.

In order to even begin implementing a new system such as the one just described, an increase in funding for the National Park Service is necessary. Additional funding would also be necessary in order to hire additional rangers, develop security technology, and purchase equipment. Further, it is recommended that

the National Park Service adopt a partnership or liaison in order to establish a closer relationship with Mexican, Canadian, and Native American officials in the surveillance of terrorists and other individuals entering the United States through National Parks along the nation's border areas.

Seaports

Like airport security, seaport security must also make reforms with regard to ensuring that terrorists are prevented from entering the U.S. There are three hundred and sixty one public seaports in the United States. These ports account for an enormous amount of traffic, both human and cargo.⁷⁹ Historically, the nation's seaports were the busiest of all points of entry for immigrants and visitors. Since the age of the commercial airplane, seaports have taken a back seat to airports as the major point of entry for foreigners into the U.S.; however, seaports are still a valid area of exploitation that must be addressed.⁸⁰

Policymakers must ask: what can be done to keep terrorists from entering the U.S. through its seaports without compromising the nation's dependence on international trade, while simultaneously remaining consistent to the promise of Lady Liberty greeting those truly seeking a new life in the New World?

The greatest issue surrounding the security of seaports is the commercial nature of the traffic that passes through them. Gigantic steel canisters are welded shut in their originating country and often pass through customs without being opened. These canisters, though they present a difficult problem with regard to terrorist contraband, are highly unlikely to be used to smuggle actual terrorists. It has been attempted in the past, but smuggling human beings in these canisters is not a major threat—especially when there are easy to obtain tourist visas and land borders that can be walked across. Terrorists, historically, have been much more sophisticated in their approach, leaving the smuggling of human beings to desperate refugees willing to take extreme risks in gaining access to the country.

A more likely scenario is that a terrorist may slip into the country through a seaport as a tourist off of a cruise ship or by posing as a commercial shipper. The greatest barrier to addressing this problem is the extra funding it would require to improve the immigration system at our nation's seaports. Due to the fact that the vast majority of traffic through the ports is commercial, it is possible that the extra funding would

⁷⁸ Once again, see Abdel Hakim Tizegha example, footnote #67.

⁷⁹ There were over 60,000 U.S. vessel calls in 2000. 29% container ships, 24% tankers, 21% dry bulk carriers and 26% others (chemical carriers, gas carriers, ro-ro, etc...). These numbers are according to: "Vessel Calls at U.S. Ports 2000" [Office of Statistical and Economic Analysis] January, 2002 [cited 28 March, 2003] www.marad.dot.gov/Marad-Statistics/vcalls-1.pdf

be used to improve technology (such as radiation detection devices or lead detectors), and other means of checking what is inside the canisters in a more efficient manner. The fact that funding would be spent in that area is not a misuse of money, as the canisters could contain items much more dangerous even than a terrorist. Still, it wouldn't do much with regard to the goal of keeping specific terrorists out of the country.

A second major issue is that commercial traffic through the nation's seaports accounts for 95% of the U.S.'s international trade, and over the next twenty years the volume of trade is expected to double.⁸¹ Any change to the way ships enter and exit the nation's seaports stand to have a heavy effect on the U.S. economy. A change in policy could offer a competitive disadvantage to U.S. seaports, crippling a major staple in its economy.

Options for Securing Seaports

With these issues in mind, the U.S. is left with the following options to prevent terrorist entry into the country via seaports. The first option is to put a moratorium on vessels entering into the country.

Terrorists are not going to wait for us to get our defense policies in order, and time is of the essence. If the fear is that terrorists may be entering by boat, then the U.S. can ill afford to allow ships to enter without a clear strategy for screening them. Unfortunately, this stance against shipping would cripple the U.S. economy. Still, Senator Feinstein of California, whose state includes three of the largest ports in the country (Oakland, San Diego, and Long Beach), says that, "if it comes to commerce or protection, protection will always come first".⁸²

A second option would be to do nothing to the current policy, allowing ships to come and go as they always have. After all, none of the terrorists responsible for the attacks on September 11th entered the U.S. via seaports. However, the DHS must be several steps ahead of the terrorists; thus we have to assume that as certain points of entry become more difficult to bridge, the malefactors will attempt any and all others.

⁸⁰ The Cruise Ship industry accounts for most of the human traffic through American seaports. Aside from bringing people in and out of the country, the Cruise Ship industry spends \$6.6 billion on American goods & services and provides 176,433 jobs in the US. The major ports of entry for cruise ships are Miami, Ft. Lauderdale, Port Canaveral, New York City, and Los Angeles.

⁸¹ "Position Paper of the American Association of Port Authorities" [AAPA] 30 May, 2002 [cited 28 March, 2003] www.aapa-ports.org

⁸² Seigle, G. "U.S. Response I: Strike at U.S. Port Would Ripple Across The Globe" [Global Security Newswire] 27 February, 2002. [Cited 28 March, 2003] www.nti.org/d_newswire/issues/2002/2/27/1s.html

A third option would be to take conservative, yet noticeable steps geared towards deterring terrorists from attempting to enter the country via seaports. Ships must be allowed to continue to come and go, however, additional screening techniques should be implemented, especially with regard to tourist entry and passport control. This option would establish a visible tightening on entry regulation, while at the same time not cripple an important sector of the economy.

Recommendation/Implementation for Seaport Security

This third option is the best option for the nation to pursue. Shutting down the nation's seaports is not politically feasible. Maintaining the *status quo* fails to meet the most necessary criteria of preventing terrorists from entering the country. Taking calculated and responsible steps is the option that is most consistent with the goals of this project, and would be the most beneficial to the country in the long run. The implementation of this policy would include the following: increasing INS presence at seaports; information sharing between the INS, the Coast Guard, the CIA and FBI, and the ports themselves; and installing new technology at seaports.

By increasing the INS presence at seaports, the INS must be given the necessary resources to track those individuals entering and exiting the U.S. in an efficient and timely manner. Crew and manifest information must be gathered in a uniform format prior to a vessel's entry into a U.S. seaport – this is already the law, but it is not always followed. This will allow the INS to more effectively target high-risk individuals entering the states, and put them through a more rigorous screening process, while not detaining low-risk individuals at the same time. Dual use facilities must also be implemented with regard to INS and Customs in an effort to promote information sharing. Ultimately, the goal of such policies towards boosting the INS presence at seaports is to get the word out to terrorists looking to gain entry that seaports are not a cost effective way in, and that the likelihood of being caught is severely increasing.

Along the same lines as augmenting the INS is to promote information sharing between the ports and the agencies with jurisdiction over them. Such communication would allow local seaport security to better manage their resources and make the new system more effective. Such communication would have the side effect of helping to combat the international smuggling of drugs and other contraband—one of the few perks that the War on Terror could provide the U.S. citizenry. Again, these changes have already been implemented, but their fruits have yet to be seen.

Finally, there is technology available that has yet to be implemented at seaports that would allow the Coast Guard to track vessels before they enter the United States. The Automatic Identification System approach to traffic management provides a ship's identity, position, course, and speed. The U.S. can

require the installation of such a system on all ships interested in entering the United States.⁸³ Such technology would enhance U.S. domain awareness, and facilitate the first two steps of this implementation process.

Coast Guard efforts could build on the efforts of other agencies. For example, the Container Security Initiative (CSI) is a Customs initiative that was begun in January 2002 designed to prevent the smuggling of terrorist weapons in ocean-going cargo containers. It is an excellent candidate for joint efforts.

Coastlines

Protecting our nation's coastlines represents a very important aspect of Homeland Security. Recently, a boat containing two hundred Haitian refugees reached the Florida shores, allowing many of the immigrants to make it safely to land.⁸⁴ This most recent act of illegal immigration along our coastlines raises questions about the vulnerability of U.S. shores and the threat of terrorism. Can the United States Coast Guard, now acting under the newly created Department of Homeland Security, protect the United States from coastal terrorist infiltration?

Under Title IX of the Omnibus Diplomatic Security and Antiterrorism Act of 1986, the Coast Guard is authorized to "prevent or respond to acts of terrorism."⁸⁵ With its small size and limited resources, though, the Coast Guard is unable to fulfill its obligation to prevent and respond to terrorism. The current size of the Coast Guard includes a population of 35,000 active duty personnel and 1,634 Coast Guard vessels. Prior to September 11, 2001, the Coast Guard was forced to reduce law enforcement operations by up to 30% due to insufficient funds. Both the fiscal year 2002 budget resolution and the House passed Coast Guard Authorization Act of 2001 (H.R. 1699) increased Coast Guard funding levels by \$250-\$300 million to correct ongoing funding shortfalls.⁸⁶

In addition to the financial problems affecting the Coast Guard, resources for its counter-narcotics and war on Iraq campaigns have further reduced the Coast Guard's capability of protecting the coastlines against a terrorist entry or attack. Coast Guard assets are now concentrated in and around U.S. ports

⁸³ "Position Paper of the American Association of Port Authorities" [AAPA] 30 May, 2002 [cited 28 March, 2003] www.aapa-ports.org

⁸⁴ Klarreich, K. *Detention of Haitian Refugees Stirs Debate*. The Christian Science Monitor. Retrieved February 2003 from www.csmonitor.com

⁸⁵ "The Subcommittee on Coast Guard and Maritime Transportation Hearing on Port Security" [Press Release] 6 December, 2001 [cited 15 February, 2003] <http://www.house.gov/transportation/cgmt/12-06-01/12-06-01memo.html>

instead of patrolling the Caribbean Sea or Gulf of Mexico to intercept illegal immigrants or possibly terrorists.

In response to the terrorist attacks on September 11th, Congress passed a \$40 billion emergency supplemental appropriation to combat terrorism. The Coast Guard received \$18 million to cover operating expenses in the New York harbor. With an infusion of even more money, including a White House proposal to increase its operations budget 18% in 2003, many within the President's administration and within the Coast Guard insist that the additional funding will be needed to maintain its other missions.⁸⁷

With more money for training and equipment, the biggest challenge the Coast Guard faces now is manpower. The ultimate goal is 2,200 new recruits over the next year.² Without the additional manpower, it will be essentially impossible for the Coast Guard to effectively protect our coastlines against terrorism.

Options

The following options should be considered when assessing a strategy to strengthen the security of our coastlines. First: maintain the status quo. Since many of our Coast Guard's resources are currently being used to fight the war on terrorism abroad, it is unlikely the Coast Guard would be able to provide additional resources to protect our coastlines.

The second option would be to expand the role of the Coast Guard to include resources at the local and state levels. This option would include using state and city lifeguards to monitor the coastlines for suspicious activity. In addition, lines of communication would be established between the Coast Guard and local/state agencies to warn against the threat of terrorist attack.

Recommendations for Securing the U.S. Coastline

We recommend that the U.S. coordinate a coastal protection campaign between the Coast Guard, county and city lifeguards, and residents in coastal communities. The campaign would be designed to improve communication, raise awareness, and report suspicious activity. Second, the U.S. should create a central line of communication between the Coast Guard, commercial vessels, and private vessels, to report

⁸⁶ *Ibid*

⁸⁷ *Ibid*

terrorist related threats or activities. It is also advised that the U.S. government redefine the role of the Coast Guard to include protection of coastlines and beaches. The Coast Guard should continue being responsible for monitoring and intercepting “boat people” and other individuals entering U.S. waters on small marine vessels. Lastly, we recommend that the Coast Guard establish a review body with local and state non-governmental agencies, such as the California Coastal Commission, to annually assess the security of our coastlines and to offer recommendations to improve the current structure. A program akin to this, though different in structure, is currently being implemented by the Coast Guard.

Chapter 5. An Integrated Approach To Preventing the Entry of Terrorists

Thus far we have covered an enormous amount of information in our analysis. Thus, we will offer a more comprehensive look at the recommendations that have been presented in each section as well as the modes of implementation. We have chosen to combine our recommendations into one formal policy proposal; however, to better facilitate their implementation we have categorized them into procedural, technological, personnel, and budgetary concerns. This will allow us to relay our recommendations according to their function in the larger picture. The first set of procedural recommendations refers to establishing the operational strategy of current government agencies as they reconcile their new and extended roles in the nation's security. The area of technological recommendations will present new innovations and equipment needed for physical identification and the monitoring of individuals and points of entry. The third section pertaining to personnel and manpower outlines the need for an increase in staffing at U.S. border checkpoints as well as additional and extensive training for new staff to establish an effective identification and screening process. Lastly, we will briefly touch on the budgetary considerations inherent in implementing such an aggressive and ambitious yet essential new policy.

Procedural Recommendations

The operational strategy that the U.S. must implement centers on visa issuance reform. The most important change that must be made is that the annual visa quota must be lowered while the structural flaws in the system are ironed out. A moratorium on all visa issuance or an overhaul of the visa process is not necessary, with the exception of a one-year suspension of visas to countries with known anti-U.S. terrorist organizations. Less traffic through the visa pipeline is a requirement if an effective operating system is going to be in place. Another recommendation is to give the Department of Homeland Security oversight over the visa issuance process, without taking the job of issuance out of the State Department's jurisdiction. By involving DHS, a balance can be reached between the State Department's quest for smooth international relations and America's national security.

In a further effort to make visa screening more economical at keeping terrorists from entering the United States, the State Department must be included in the nationwide information infrastructure that the Bush administration has sought to establish. The DHS was created to facilitate information sharing between different government agencies. The State Department is necessarily not a part of Homeland Security; however, it too must be included in the joint effort to openly exchange information. The INS must also

expand its role at the borders of the U.S. in order to effectively enforce the visas that are issued. INS needs a comprehensive visa entry/exit tracking system in order to confirm that visas are authentic, and subsequently locate people who overstay their visas—a job their current system has not allowed them to do. The final operational recommendation with regard to Visa issuance is that the U.S. enforces the visa issuance laws that are already on the books. This should be an easier task, if the above steps are taken.

Not unrelated to visa reform is the recommendation that individuals seeking asylum be investigated in a more scrupulous manner, and suggest that admittance into the country be granted overseas to ensure that those whose applications are denied are not permitted to penetrate the border. Also, in conjunction with visa enforcement, airport security must focus its efforts on the authentication of identification. Passengers that have suspicious documents ought to be put through an additional screening process that involves a more intimidating line of questioning, further background checks, and possible deportation back to the country from which he or she originated.

Once the critical visa issuance aspect of shutting terrorists out of the country is solved, the problem of porous borders can be addressed. With respect to the Mexican and Canadian borders, the U.S. must work bilaterally with each in an attempt to keep terrorists not only out of the U.S., but also out of Canada and Mexico too. In addition to depending on the assistance of neighbors the U.S. must also tighten the border crossing process by requiring more thorough screenings before cars are waved through—especially at the Canadian border which, even in the wake of September 11th, has the rough equivalent of an open border.

With regard to coastline security, the role of the Coast Guard must be redefined to include the protection of coastlines and beaches. Also, a review body is necessary with local and state non-governmental agencies to annually assess and offer recommendations for coastline security improvements. Seaports should also mandate that crew and manifest information be gathered in a uniform format prior to a vessel's entry into a U.S. seaport.

Technological Recommendations

The next set of recommendations focus on existing and potential technology that would help enable the United States to keep terrorists out of the country. The most significant technological advancement in the field is the Total Information Awareness system in development by the Pentagon. It is recommended that the TIA system be developed and implemented, despite its potential threat to individual privacy. Such a system is required if terrorism is to be effectively fought in this nation. With the TIA system, the State Department can link an applicant's name with any suspect activity to which that name is attached

throughout the system's vast network of departments and agencies. This database will prove to be vital in the joint effort to keep terrorists from entering onto United States soil.

Another technological recommendation is to enact a plan for adding biometric identifiers, such as fingerprints or iris scans, to U.S. passports and visas. State should also require the twenty-eight countries whose citizens are currently able to enter the U.S. without a visa to add a biometric ID to their passports if they want to remain in the Visa Waiver Program. At the same time, it is essential that the U.S. improve passenger and employee identification technology at airports. This includes automating the examination and collection of identification documents and their data. With proper technology, this can be done curbside, at ticket counters, security checkpoints and gates. It is also recommended that as soon as retinal scanning equipment becomes available, and reliable, it should be implemented at airports in an effort to crack down on identity fraud.

The nation's physical borders can also benefit from technological improvements. Traffic can be moved away from the country's actual border by clearing trucks crossing the border at the warehouses where they are loaded, and then using a Global Positioning System to monitor the shipments as they cross into the United States. Using such existing technology would make for a more efficient border without sacrificing its screening effectiveness. Similarly, it is recommended that the U.S. require ships wishing to enter American ports to install an Automatic Identification System to ease traffic management around the nation's seaports. Finally, it is recommended that to benefit federal lands along the Canadian and Mexican borders, the U.S. create a four-tier monitoring and surveillance system that uses satellite, air patrol, vehicle patrol, and ranger power in an effort to more efficiently monitor the challenging wilderness.

Manpower and Budgetary Considerations

Manpower represents an area of border security that is always going to be lacking. The amount of people who work for INS or as customs inspectors and border guards is crucial to the success of stopping terrorist entry. The number of people employed is also dependent on funding. Luckily, DHS has a war chest of over forty billion dollars to work with, making the following recommendations economically feasible.

More guards and inspectors must be placed at the Mexican and Canadian border checkpoints. Similarly, salaries ought to be increased as an incentive for the best people available to enter and stay in the profession. Mexico and Canada, too, ought to be supplied with the resources to train their own officials to

perform anti-terrorist activities in an effort to weed out terrorists at the source. It is further recommended that more manpower be implemented at seaports with a greater INS presence at passport control stations, and more money be put towards the recruiting of additional park rangers.

More manpower is not enough on its own, though. At the same time, manpower must be made more efficient and effective. Border guards and inspectors must be trained better at interrogating and identifying red flags. Also, National Park rangers should be trained in law enforcement, and should carry firearms. At airports, the roles and responsibilities of the federal, local, and airline authorities must be clearly identified, and accountability must be created by holding employees responsible for security at every checkpoint. As a last line of defense, it is recommended that air marshals be present on predetermined international flights based upon location of departure, and that these air marshals and armed pilots should have increased training.

The National Guard is a source of manpower at the state's disposal. It is recommended that states consider using the National Guard to patrol remote regions of national parks, focusing on the areas directly along the Canadian and Mexican border. Another source of manpower are local employees, such as lifeguards and other coastal community participants, who should be coordinated into a coastal protection campaign to improve communication, raise awareness, and report suspicious activity along the difficult to monitor national seacoasts.

Addressing the Unintended Consequences of These Measures

Some of the unintended consequences of enhanced security measures against terrorist invasion are already known to the populace. It takes longer to get on airplanes than it used to, and some people have to take off their shoes or have their luggage ransacked. When air travel is more time-consuming and troublesome, fewer people do it recreationally, and as a result the business of the airlines falls off (indeed, we have noted in Chapter Three the lobbying efforts by the airline and tourism industries for the government to forgo security measures that will further jeopardize their cash flows).

In addition, it is possible that by including Saudi Arabia as one of the countries to target increased scrutiny towards, our international relationship with them could turn sour. The U.S. is highly dependent on the region for oil, and gas prices could stand to rise if they feel offended at being singled out. To not include them on the list, however, would be irresponsible to our task, as most of the September 11th hijackers were of Saudi origin. Still, with high gas prices, people travel less by car leading to a ripple effect through the country's entire economy, as drop-offs in one sector of the economy lead to declines in

other sectors.

There is another prickly civil rights issue that presents itself at the moment that people attempt to enter the country. In terms of recording bio-statistical information on people entering the country, once there is a system in place to record DNA, fingerprint, or retinal information from non-citizens, it will be easier for the government to try to institute a requirement that all people have such information on file with the government. In fact, “equal protection” would require it, since there is no way to guarantee that the government would trash the information once people became citizens and thus there would be two classes of citizens—native and naturalized—with two different sets of rights.

There is no way to make the country totally safe, without having a police-state, and that would be irreconcilable with the Constitution. Every other accommodation is a matter of degree; how much safety will you purchase for how much inconvenience; or in other words, how much curtailing of another’s rights for what level of security?

Conclusion

Our country was built on a vision of freedom and equality for all men, as articulated in the Declaration of Independence. Throughout its history, our country has consciously promoted itself as a haven offering freedom, opportunity, and succor to those who need it. Our immigration and visitor/tourist/guest-worker or guest-student programs, therefore, have always emphasized these virtues. We are also a country very strongly dedicated to the principle that one is innocent until proven guilty, and we are by nature a generous people. It is unlikely American values such as these have developed because we are a particularly good people. Rather, it is more likely a result of an abundant land in a relatively comfortable time and place that our society breeds the luxury of such tolerance. One of the drawbacks of such a pampered life, however, is the failure of a society to possess any real sense of danger lurking around the corner, or even to acknowledge it when it actually occurs. Thus the surprise and shock experienced by Americans in the wake of September 11th was not only sincere, but was also indicative of a society fairly unaware of its place in the world—though quickly able to adapt to the gravity of its new circumstances.

Keeping foreign terrorists out of the United States is a daunting, multi-faceted, and complicated task. Therefore, any solution or set of solutions will be both complex and eclectic. Given the breadth and complexity of this issue, our project has not addressed a number of topics relating to terrorists and terrorism. For example, there are problems with the post-graduate recruiting and financing system in this country, especially in regard to sensitive nuclear, chemical and biological, and information systems, all of

which are intricately linked with the government and the scientific/military establishment. This system is potentially, and in many cases actually, an American taxpayer-funded system for training foreign terrorists whose main target is the United States and her allies. In addition, there is the grave problem of Muslim recruiting in prisons, especially in the most brutal prisons, and especially by the most extreme clerics of the most fanatical sects of Islam. There is the problem of quasi-religious and communal associations acting as front organizations for terrorist funding and training, as well as the issue of intra-continental movement of terrorists and their accomplices. In the interests of concision, we have had to exclude all of these issues from our paper, but of course they are all interrelated aspects of the challenge America currently faces.

For reasons of economy of space, this paper has been constrained to focus only on the ways foreign terrorists might enter the country. Studying just this aspect of the problem has clarified both the enormity of the difficulties involved in protecting the U.S. from invasion, and also how vitally important it is that the DHS be structured in such a way that it can both function most effectively in its own arena, and also coordinate with other federal, state, and local agencies in the most efficient manner. Immigration policy must contend with the massive numbers of people, both legal and illegal, who travel to and through the U.S. annually. In addition, a firm grasp must be held on the process by which individuals are legally accepted into the United States, the conditions of their stay, and the enforcement of their departure. From airports to seaports, to borders both North and South, including areas that are very loosely controlled, such as National Parks, or areas that legally do not belong to the Federal government to control, such as Native American reservations, the United States is faced with an enormous task of vigilance merely in terms of security from physical invasion. Our research has categorically identified the most important polices where improvement is needed; and, moreover, we have attempted to offer a reasonable though demanding set of solutions. We consider our recommendations to be only the first step in securing our nation against the threat of terrorist entry. We believe that without prompt action to contain the current threat, and frequent reviews of both the threat and the success of current policies in curbing it, the United States may remain vulnerable to yet another devastating terrorist attack.

The events of September 11, 2001, finally brought home to the American people the incalculable price of terrorism in a very literal sense. The attacks destroyed not only two landmark buildings, part of the great symbol of our defensive strength, but the lives of thousands of our fellow citizens and their families. The attacks of September 11, 2001 were attacks on every American. We may find, unhappily, that for the sake of preserving the ideals of the United States, we may have to alter its character in ways we would never have wished to do. After researching this paper, our group is prepared to say that if America is to survive, she may have to cease to be the America of the past, and that is a tragedy. The United States must

attempt to survive with her noblest ideals intact. Perhaps she will have to pull the door partway closed, become a little stingier with the gift of freedom, and dim the Lady's lamp to accomplish that survival. Either way, when the particular buildings and the individual lives have long been forgotten, what will be remembered is how this great nation rose to the challenge she now faces.

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Appendix A. Recent Terrorist Attacks Against Western Interests

Terrorist Event Description	Date
Puerto Rican nationalists bomb Wall Street bar, killing four, injuring 60	1/27/75
Weather Underground claims responsibility for explosion at State Department	1/29/75
U.S. Embassy in Pakistan Attacked	11/22/79
World Trade Center Bombing	2/26/93
Terrorist shooting in New York. Rashid Najib Baz fired repeatedly from his vehicle into a van on the Brooklyn Bridge, killing one, injuring three	3/1/94
Alfred P. Murrah Federal Building Bombed in Downtown Oklahoma City	4/19/95
Sheikh Omar Abdel Rahman convicted in plot to blow up UN, other landmarks in New York	10/1/95
Khobar Towers Bombing	6/25/96
Ramzi Yousef convicted for 1995 plot to blow up 12 U.S. airliners in East Asia.	9/5/96
Brooklyn Subway Bombing Plot (Thwarted)	1997
U.S. Embassy Bombings (Kenya and Tanzania)	8/7/98
Ali Mohamed charged with plotting with Bin Ladin group in global conspiracy to kill U.S. citizens abroad	5/19/99
LAX Millennium Bomb Plot (Thwarted)	12/14/99
U.S.S Cole	10/12/00
World Trade Center	9/11/01
Pentagon Attack	9/11/01
Flight 93 (Diverted by passengers/crew; assumed to have been headed for Capitol or White House)	9/11/01
First victim of Anthrax attack dies in Boca Raton, Florida	10/05/01
Additional anthrax contaminations in New York and Washington, DC	Oct and Nov 2001

SOURCE: American History. "Terrorism Through America's History" [AmericanHistory.Com] 2002 [cited 24 January 2003]; available from <http://americanhistory.about.com/library/fastfacts/blffterrorism.htm>.

Appendix B. VISA Classifications in the United States

Non-Immigrant Temporary Worker

Temporary Worker - An alien coming to the United States to work for a temporary period of time. The Immigration Reform and Control Act of 1986 and the Immigration Act of 1990, as well as other legislation, revised existing classes and created new classes of nonimmigrant admission. Nonimmigrant temporary worker classes of admission are as follows:

- 1) H-1A - registered nurses (valid from 10/1/1990 through 9/30/1995);
- 2) H-1B - workers with "specialty occupations" admitted on the basis of professional education, skills, and/or equivalent experience;
- 3) H-1C - registered nurses to work in areas with a shortage of health professionals under the Nursing Relief for Disadvantaged Areas Act of 1999;
- 4) H-2A - temporary agricultural workers coming to the United States to perform agricultural services or labor of a temporary or seasonal nature when authorized workers are unavailable in the United States;
- 5) H-2B - temporary non-agricultural workers coming to the United States to perform temporary services or labor if unemployed persons capable of performing the service or labor cannot be found in the United States;
- 6) H-3 - aliens coming temporarily to the United States as trainees, other than to receive graduate medical education or training;
- 7) -1, O-2, O-3 - temporary workers with extraordinary ability or achievement in the sciences, arts, education, business, or athletics; those entering solely for the purpose of accompanying and assisting such workers; and their spouses and children;
- 8) P-1, P-2, P-3, P-4 - athletes and entertainers at an internationally recognized level of performance; artists and entertainers under a reciprocal exchange program; artists and entertainers under a program that is "culturally unique"; and their spouses and children;

- 9) Q-1, Q-2, Q-3 - participants in international cultural exchange programs; participants in the Irish Peace Process Cultural and Training Program; and spouses and children of Irish Peace Process participants;
- 10) R-1, R-2 - temporary workers to perform work in religious occupations and their spouses and children. <http://www.immigration.gov/text/glossary4.htm#V>

Natives of Underrepresented Countries

The Immigration Amendments of 1988, Public Law 101-658 (Act of 11/5/88) allowed for 10,000 visas to be issued to natives of underrepresented countries in each of fiscal years 1990 and 1991. Underrepresented countries are defined as countries that received less than 25 percent of the maximum allowed under the country limitations (20,000 for independent countries and 5,000 for dependencies) in fiscal year 1988. (See Diversity.) <http://www.immigration.gov/text/glossary4.htm#V>

Visa Waiver Program

Allows citizens of certain selected countries, traveling temporarily to the United States under the nonimmigrant admission classes of visitors for pleasure and visitors for business, to enter the United States without obtaining nonimmigrant visas. Admission is for no more than 90 days. The program was instituted by the Immigration Reform and Control Act of 1986 (entries began 7/1/88). Under the Guam Visa Waiver Program, certain visitors from designated countries may visit Guam only for up to 15 days without first having to obtain nonimmigrant visitor visas.

<http://www.immigration.gov/text/glossary4.htm#V>

Appendix C. Key Provisions of the ATSA

- **Organization** – Establishes a new Transportation Security Administration within DOT responsible for security for all modes of transportation and headed by a new Under Secretary (Adm. James Loy). This new Administration would have personnel and management flexibility.
- **Security Screening** – Federalizes, but does not nationalize, airline security screening. Requires the Administration to adopt new stricter standards for screening. Requires Federal supervision of the screening process, background checks, testing, and strict oversight. Provides the Administration the option of either using Federal employees or contracting with private screening companies.
- **Rulemaking** – Expedited procedures could be used to get important security directives in place.
- **Marshals** – Requires the deployment of Federal Air Marshals.
- **Cockpit Security** – Directs the new Under Secretary, in consultation with the FAA, to take action to strengthen cockpit doors.
- **Fee** - Requires a fee to be charged for each one-way trip to cover the cost of providing the screening function. The fee would have to be based on the cost of providing the service but would be capped at \$2.50 per one-way trip. Any additional funds needed would be authorized to be appropriated or could come from a fee imposed directly on the airlines. The fee could be spent on security screening services only.
- **Law enforcement personnel**– Requires Federal or State law enforcement personnel at each screening location, not merely at each airport.
- **Aviation Oversight Board** – Establishes an oversight board composed of representatives from other agencies (DOT, DOD, DOJ, Treasury, and either NSC or Homeland Security) of the Federal government to share intelligence information and oversee the actions of the new Under Secretary.
- **Advisory Council** – Establishes an advisory board composed of industry and labor stakeholders to advise the new Under Secretary on transportation and security issues.

Airports – Authorizes funding and provides flexibility in the use of Airport Improvement Program (AIP) and Passenger Facility Charges (PFC) funds to help airports pay for the increased security costs and to help general aviation airports adversely affected by the restrictions on Visual Flight Rule (VFR) flights in Class B airspace.

Appendix D. U.S. Entry Means of Selected Terrorists

The following table describes the means used for entry into the United States for selected individuals who committed, or attempted to commit, terrorist acts against the United States

Terrorist	Immigration Status	Evidence of Immigr. Violation	Terrorist Plot
Nidal Ayyad	Naturalized/U.S. Citizen	No	1st WTC Attack
El Sayyid Nosair	Naturalized/U.S. Citizen	No	NY Landmarks
Ali Mohammed	Naturalized/U.S. Citizen	No	African Embassy Bombing
Khalid Abu al Dahab	Naturalized/U.S. Citizen	Yes	African Embassy Bombing
Wadih el Hage	Naturalized/U.S. Citizen	No	African Embassy Bombing
Essam al Ridi	Naturalized/U.S. Citizen	No	African Embassy Bombing
Mahmud Abouhalima	Permanent Res.	Yes	1 st WTC Attack
Mohammed Abouhalima	Permanent Res.	Yes	1st WTC Attack
Ibrahim el Gabrownny	Permanent Res.	No	NY Landmarks
Mohammed Saleh	Permanent Res.	No	NY Landmarks
Amir Abdelg(h)ani	Permanent Res.	Yes	NY Landmarks
Fadil Abdelg(h)ani	Permanent Res.	Yes	NY Landmarks
Tarig Elhassan	Permanent Res.	No	NY Landmarks
Fares Khallafalla	Permanent Res.	No	NY Landmarks
Siddig Ibrahim Siddig Ali	Permanent Res.	No	NY Landmarks
Matarawy Mohammed Said Saleh	Permanent Res.	No	NY Landmarks
Abdo Mohammed Haggag	Permanent Res.	No	NY Landmarks
Ahmad Ajaj	Illegal Alien	Yes	1 st WTC Attack
Mohammed Salameh	Illegal Alien	Yes	1st WTC Attack
Eyad Ismoil	Illegal Alien	Yes	1st WTC Attack
Terrorist	Immigration Status a	Evidence of Immigr.	Terrorist Plot

Violation b			
Terrorist	Immigration Status	Evidence of Immigr. Violation^b	Terrorist Plot
Gazi Ibrahim Abu Mezer	Illegal Alien	Yes	NY Subway
Lafi Khalil	Illegal Alien	Yes	NY Subway
Ahmed Ressam	Illegal Alien	Yes	Millennium
Abdelghani Meskini	Illegal Alien	Yes	Millennium
Abdel Hakim Tizegha	Illegal Alien	Yes	Millennium
Zacarias Moussaoui	Illegal Alien	Yes	9/11 Attacks
Satam al Suqami	Illegal Alien	Yes	9/11 Attacks
Nawaf al Hamzi	Illegal Alien	Yes	9/11 Attacks
Hani Hanjour	Illegal Alien	Yes	9/11 Attacks
Mir Aimal Kansi	Asylum App.	Yes	Murder of CIA Employees
Ramzi Yousef	Asylum App.	Yes	1st Attack on Trade Center
Sheik Omar Abdel Rahman	Asylum App.	Yes	Plot to bomb NY Landmarks
Waleed al Shehri	Tourist	No	9/11 Attacks
Wail al Shehri	Tourist	No	9/11 Attacks
Mohammed Atta	Tourist/Student	Yes	9/11 Attacks
Abdulaziz Alomari	Tourist	No	9/11 Attacks
Marwan al Shehhi	Tourist/Student	No	9/11 Attacks
Fayez Ahmed	Tourist	No	9/11 Attacks
Mohand al Shehri	Tourist	No	9/11 Attacks
Hamza al Ghamdi	Tourist	No	9/11 Attacks
Ahmed al Ghamdi	Tourist	No	9/11 Attacks
Khalid al Midhar	Business	No	9/11 Attacks
Majed Moqed	Tourist	No	9/11 Attacks
Salem al Hamzi	Tourist	No	9/11 Attacks
Ahmed al Haznawi	Tourist	No ^c	9/11 Attacks

Ahmed al Nami	Tourist	No	9/11 Attacks
Ziad Samir Jarrah	Tourist	No	9/11 Attacks
Saaed al Ghamdi	Tourist	No	9/11 Attacks

NOTES

^a Immigration status at the time they committed their crimes.

^b A “yes” means that the public record indicates that the individual violated immigration law at some point. A “No” means that there is no evidence in public sources of a violation. Of course, technically, all persons issued visas who came to America with the intent of engaging in terrorism violated immigration law because they assured the State Department they were coming for legal reasons.

^c Individual probably should not have been issued temporary visa because he either had characteristics of an intending immigrant, someone who is likely to overstay their temporary visa and live in the U.S. illegally, or because he was on the “watch list” of suspected terrorists at the time he received his visa.

^d The individuals who took part in the African embassy bombing also took part in a wide range of activities in support of al Qaeda.

SOURCE: Camarota, Steven A. The Open Door: How Militant Islamic Terrorists Entered and Remained in the United States 1993-2001. Center for Immigration Studies, Washington, D.C. 2002.

Appendix E. Existing Visa Categories

The following is a list of the different categories under which an immigrant can attain a visa for entry into the United States under current immigration policy:

Category	Priority	Detailed Description
Family-sponsored preferences	1 st	<ul style="list-style-type: none"> • Unmarried adult children of U.S. citizens • Children of those unmarried adult children
	2 nd	<ul style="list-style-type: none"> • Spouses, minor children, and unmarried adult children of permanent residents
	3 rd	<ul style="list-style-type: none"> • Married adult children of U.S. citizens • Spouses of those married adult children • Children of those married adult children
	4 th	<ul style="list-style-type: none"> • Brothers sisters of U.S. citizens (over 21 years old) • Spouses of those brothers and sisters • Children of those brothers and sisters
Employment-based preferences	1 st	<ul style="list-style-type: none"> • Aliens with extraordinary ability • Outstanding professors or researchers • Multinational executives or managers • Spouses and children of 1st preference immigrants
	2 nd	<ul style="list-style-type: none"> • Professionals with advanced degrees • Spouses and children of those professionals
	3 rd	<ul style="list-style-type: none"> • Skilled workers and professionals • Professionals with baccalaureate degree • Spouses and children of skilled workers and professionals • Chinese Student Protection Act • Needed unskilled workers • Spouses and children of unskilled workers
	4 th	<ul style="list-style-type: none"> • Ministers and their spouses and children • Other religious workers and their spouses and children
	5 th	Employment creation (“investors”)

Category	Priority	Detailed Description
IRCA dependents (Immigration Reform and Control Act of 1986)		
Diversity Immigrants		
Immediate Relatives of U.S. citizens: Spouses, children, parents		
Children born abroad to permanent residents		
Refugee and asylee adjustments to permanent resident		
Miscellaneous ⁸⁸		

SOURCE: *The New Americas: Economic, Demographic, and Fiscal Effects of Immigration*, National Research Council, edited by James P. Smith and Barry Edmonston. Washington D.C.: National Academy Press, 1997.

⁸⁸ Miscellaneous categories and other adjustments and arrivals include: Amerasians, employees of US government abroad, Panama Canal Act, foreign medical graduates, retired employees of international organizations, juvenile court dependants, aliens serving in the US Armed Forces, displaced Tibetans, employees of U.S. businesses in Hong Kong, Cuban/Haitian entrants, former H-1 nurses, parolees from the Soviet Union or Indochina, American Indians born in Canada, and the spouses and children of such immigrants

Appendix F. Budgetary Analysis

The Department of Homeland Security was created in an effort to better fight the war on terror. An initial budget estimate for 2003 allocates money this way⁸⁹:

- \$3.5 billion (1000% increase) - for nation's "first responders"
- \$11 billion (\$2 billion increase) – for border security
- Nearly \$6 billion – to defend against bioterrorism
- \$700 million – to improve intelligence gathering and information sharing
- \$230 million – to create Citizen Corps

The Department of Defense was recorded as spending \$330.6 billion in 2002.⁹⁰ The categories of spending are such that many aspects of their budget could have gone toward the fight against terrorism.

On February 3rd, President Bush asked Congress to approve \$41.3 billion to fund domestic security efforts. The Democrats are criticizing this number as too low. The new request for monies spent toward border security is up from the original \$11 billion to \$18.1 billion. In addition, the president is asking that \$820 million (a 370% increase from 2003) be allocated for support of the analysis of potential threats by the new department. An allocation of \$350 million in new funding is requested for research and development for projects like nuclear and bioterrorism detection technologies. An amount of \$6.7 billion is requested to allow the Coast Guard to ensure the safety of U.S. waterways. The Justice Department is asking for a \$2.5 billion counter-terrorism budget (up \$600 million from 2003) and \$25 million more to boost courtroom security.

Overall, the Homeland Security Department would have a budget of \$36.1 billion for fiscal year 2004, which begins October 1, 2003. This is approximately a 5.1 percent increase over 2003 estimates.⁹¹

⁸⁹ U.S. Department of Homeland Security. "The President's Plan to Strengthen Our Homeland Security" [DHS Organization] 2003 [cited 24 January 2003]; available from <http://www.dhs/dhspublic/display?theme=12&content=19>.

⁹⁰ Department of Defense. "New Challenges in the National Security Environment" [Office of Management and Budget] 24 January 2003 [cited 24 January 2003]; available from <http://www.whitehouse.gov/omb/budget/fy2003/bud12.html>.

⁹¹ Deborah Charles, [Reuters News Service] 2003 [cited 3 February 2003]; available from <http://www.reutersnewservice.com>.