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summary

The September 11 terrorist attacks abruptly shifted the U.S. immigration debate from liberalizing policy with Mexico to deep misgivings about border controls. To combat terrorism, the United States must strengthen the weak links in its immigration system. This effort should concentrate on prevention by improving visa screening and admission decisions, the country's first line of defense. Other important measures to modernize systems that provide information about visitors, including foreign students, can be implemented reasonably quickly.

Although not fail-safe, these near-term improvements to the immigration system will establish a necessary balance between enforcing controls and facilitating movement. This balance, which has often been lacking, will enable the United States to deter threats more effectively yet continue to capitalize on the benefits of immigration. The nation thus will maintain its openness to the world and defense of civil liberties while ensuring that immigration rules are made to matter. ■

After the Attacks: Protecting Borders and Liberties

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In the aftermath of the September 11 terrorist attacks, many Americans are asking what is wrong with our nation's immigration policies. After all, the hijackers were foreign visitors who, it seems, entered the country legally and moved about freely to organize their unforeseen, hideous attacks. Are there fundamental flaws in America's immigration system?

This question reflects an abrupt about-face from the national mood of recent years. Then, the stage seemed to be set for a period in which immigration policy would broaden and regularize migration flows to meet labor market demand, capitalize on remittances to poor countries to drive development, and overcome delays and barriers to processing applications. This agenda was at the forefront of public attention just days before the terror attacks when President Vicente Fox of Mexico made a state visit. His highest priority was a new immigration relationship with the United States, a goal President George W. Bush had endorsed. In welcoming his guest, Bush declared that the United States has no relationship in the world more important than

that with Mexico. Immigration as a threat to national security was not at or near the top of anyone's list.

National Security and Immigration

All that has now changed. After Congress hastily authorized the use of military force and emergency funding in response to the September 11 events, the first legislation proposed by the administration asked for expanded law enforcement powers. These provisions—which included open-ended authority to arrest and detain noncitizens suspected of terrorism connections—immediately became the most controversial aspects of the bill and slowed action that the administration had called for within a week. The proposed powers brought to the fore a classic tension in democracy between civil liberties and police powers.

The U.S. attorney general and secretary of state already have broad latitude and discretion on immigration matters. Important elements of their decision making are not subject to judicial review, their existing authority to arrest and detain is considerable, and their power over immigration



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In 1989, Ms. Meissner founded the Carnegie Endowment's International Migration Policy Program, which became one of the world's premier sources of analysis regarding migration and refugees. She left in 1993, when President Clinton appointed her INS commissioner; she served in that post through 2000. She rejoined the Endowment in 2001 to direct a new research project in the Global Policy Program that explores the issues and challenges nations face in implementing global policies.

matters was significantly expanded after the 1993 World Trade Center bombing. So legislation to confer still greater authority deserved careful scrutiny and debate.

In addition, the lessons of history constitute a cautionary tale. Well into the twentieth century, immigration law was deeply discriminatory, explicitly barring Chinese nationals, for example. The internment of law-abiding Japanese-American citizens is another particularly shameful chapter. And for decades, the cold war against communism legitimized deeply unfair immigration practices of guilt by association.

Indeed, the fact that the Immigration and Naturalization Service (INS) is organizationally located within the Department of Justice is based on a security outlook. Before World War II, the INS was in the Department of Labor. Its relocation was part of mobilizing all aspects of government to defend the nation in wartime. The explicit purpose was to control aliens, who were seen as especially prone to engage in subversive activity. To this day, the dominant culture of the agency and most of the technical requirements of immigration law are rooted in a view of immigration as a source of security and law enforcement vulnerability more than of continuing nation building.

Careful, judicious law making at this precarious time is important for another reason. By containing the fear that has sometimes stained the very democratic values we are fighting to preserve, there is the chance to avert a wild swing in immigration policy and public attitudes. Such a swing could plunge us back into seeing the foreign born—particularly Arab Americans at this time—as dangerous. It could also undermine both the openness of our society to diversity and the outward-oriented economic, social, and educational policies that constitute critical U.S. comparative advantages in an era of globalization.

Immigration has been an area of policy especially given to wild swings. The past ten years represent a particularly vivid example.

In 1990, Congress substantially raised immigration levels, believing that the economy would suffer from serious labor shortages without labor force growth. But beginning in California in 1994, the country fell into a period of virulent anti-immigrant politics, which led to harsh new restrictions in 1996. By 1998, Congress had undone some of the more objectionable features of the 1996 laws, and public officials were crediting immigration as an unsung driver of a decade of economic prosperity. Major constituencies began coalescing around the idea of legalizing millions of undocumented residents and designing new guest worker policies.

In times of prosperity, the United States has overlooked or openly encouraged immigration, authorized or otherwise, often of low-skilled workers. In times of hardship, immigrants become scapegoats for deeper weaknesses in policies or society. With each swing of this pendulum, prevailing administrative practices are viewed as either too strict or too lax. The political consensus and public support needed to steadily, continuously balance enforcement to deter immigration threats with policies to capitalize on its benefits have been elusive.

So far, the administration and Congress have not reacted to the terrorist attacks by tipping the scales in dangerous anti-immigrant directions. The new anti-terrorism law formulates a changed but tolerable accommodation between immigration police powers and civil liberties. And the focal point of the government's efforts has been where it should be, on law enforcement, intelligence, diplomacy, and military action. There is the chance, therefore, to get it right: to strengthen the immigration system in ways that help fight terrorism but strike a sensible balance between effective control and freedom of movement.

Screening and Prevention

Prevention is by far the best policy to protect the nation. In the immigration arena, visa screening abroad and admission decisions at international ports of entry are the country's

first and most important line of defense. The agencies responsible for these functions are the Department of State, principally its Bureau of Consular Affairs, which issues visas in posts around the world, and the Department of Justice, which admits people to the country and regulates their legal status once they are here through the INS. Both work with many other public and private actors to carry out their missions. The most important is the U.S. Customs Service, which clears the movement of goods and cargo into the country. The system is complex, interdependent, and only as strong as its weakest link.

Visa procedures require checking all applicants against an automated database of the names of millions of persons about whom

retary of state can designate which categories of visas will be issued in particular locations and can suspend visa issuance by country. Special requirements can be imposed, such as by mandating Washington clearance for particular names, visa categories, or countries, or by establishing special, more rigorous INS inspection protocols at ports. This is currently the case for nations that are state sponsors of terrorism, such as Iraq. INS powers governing admission are also expansive and were substantially broadened in 1996. For example, without a hearing, inspectors may revoke visas and detain or repatriate people entering with fraudulent or false identity documents.

Thus, an arsenal of tools is already available that should be more aggressively used.

By containing the fear that can stain our democratic values, we can avert a wild swing in immigration policy.

there is concern or who are inadmissible to the United States, including terrorists. The names in this lookout system are posted by all law enforcement and intelligence agencies. A consular officer's visa decision is not subject to supervisory or judicial review. Thus, Congress conceived of the consular power as absolute, to be guided only by statutory provisions for visa eligibility.

A visa entitles a person to travel to an international port of entry. There, actual admission to the country is determined by an INS inspector with independent authority to grant or deny admission. Typically, admission is granted. But the dual-screen formula is an important protection that enables inspectors to act decisively if, for example, the lookout database contains new information not available when the visa was granted.

Many additional tools are available to keep the wrong people out of the country. The sec-

But the system also has weak links that must be strengthened.

Lookout Information

In the 1990s, high priorities for the immigration system included integrating the databases of the INS, Department of State, and other federal agencies; promoting information sharing among agencies; and installing automated access to lookout information at all consulates and international ports. Although improvements have been substantial, further steps must remain a high priority for funding and organizational attention. In addition, greater effort must be devoted to providing front-line officers with criminal histories and other sensitive intelligence information. Security agencies have traditionally been unwilling or unauthorized to share such information because of concerns about improper use of law enforcement information for other

purposes and about compromising intelligence sources and methods.

Legislation has been proposed that would designate visa and inspection procedures as law enforcement actions, rather than as administrative actions. Enacting the bill would erase the legal impediment to the information-sharing problem. Next, the Department of State and Central Intelligence Agency must develop a methodology to safely list the sensitive information that is needed to identify the highest-risk cases. Finally, inspectors at some locations have electronic access to visa application information, such as photographs and other identifying data from consulates abroad. This capability, which

tions for more than 7.5 million nonimmigrant visas (up 25 percent in the past ten years), 500,000 immigrant visas, and 7.8 million passports for U.S. citizens. Staffing must increase, but adding more people is not the whole answer. A new organizational model for visa screening is needed.

As important as it is to have comprehensive, integrated lookout information and automated checks, the intelligence required to generate that information will always be imperfect. Accordingly, consular officer expertise and effective antifraud capability are critical. At present, visa officers are the most junior personnel in the Foreign Service. Working the visa line is an obligatory first

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helps inspectors to identify visa fraud, including false identity, should be fully funded so that it can be installed at all locations.

Personnel and Organizational Issues

The major investments made in recent years to strengthen the immigration system have concentrated on border controls, which encompass consulates abroad, international ports of entry, land borders with Canada and Mexico, and the nation's seacoasts. But resource infusions have been uneven. Those parts of the system, such as Border Patrol enforcement, that have strong constituencies and visibility have received the bulk of the new funding. Consular staffing has been the most neglected area. Now, just as the intelligence community has had to wake up to the need for human intelligence, visa screening abroad must get the attention it deserves.

Consular workloads are steadily increasing. This year, consulates will process applica-

assignment in embassies for incoming officers. Consular work—more a rite of passage than a job requiring substantive expertise—does not enjoy high standing in the hierarchy of responsibilities for U.S. diplomats. Expert senior officers are in short supply and are spread too thin. This model is not tolerable in the face of terrorism.

Instead, visa work must be treated as a career specialty for staff who get ongoing training, access to information, and technological support commensurate with the threats the United States faces. If this work is not suited to Foreign Service careers and rewards, it should be done by a new civil service cadre dedicated to this mission, similar to the one successfully created when the nation's asylum system was reengineered in the aftermath of the 1993 World Trade Center bombing.

Beyond personnel, a new organizational model needs to be designed on the basis of a clear strategy to concentrate expertise and

technology on high-risk locations and applicants and to achieve consistent decision making throughout the consular system. This will mean invoking the secretary of state's authority to designate special-purpose posts, frustrate opportunities for consular shopping, reexamine policies for multiple entries and tourists' length of stay, and impose special inspection requirements as needed. It also will mean building broadly based liaisons with host-country law enforcement agencies, other relevant institutions, and the intelligence community, for which visa and inspection activity can represent a valuable barometer of subtle changes in fraudulent document use, travel patterns, and related information.

Ports of Entry and Land Borders

In addition to the millions who enter the United States with visas each year, many millions more enter under visa waiver agreements or through commuter arrangements with Canada and Mexico. These enormous volumes are vital to North America's more and more interdependent economies. Strategies to manage these flows should be based on segmenting populations, so that travel by the vast law-abiding majority can be certified in advance through the use of biometric and other reliable techniques and then safely facilitated. In this way, valuable law enforcement resources, expertise, and attention can be devoted to more carefully screening high-risk travelers, making controls and facilitation of movement two sides of the same coin.

One such initiative, pre-clearance of flights abroad, has been very effective. For another, the visa waiver program, compliance by participating countries with the requirements for secure passport issuance procedures, low rates of overstay by their citizens, and law enforcement cooperation should be reviewed to verify that the criteria are being met.

Other facilitation measures have been partially implemented and can be completed quickly. They include advance passenger

information, which allows airline passenger manifests to be electronically matched against lookout information while flights are en route. Individuals requiring an in-depth inspection are identified before the flight arrives, and inspectors allow others to proceed quickly. This system is in use for three-fourths of international flights. Airline participation should now become mandatory for all flights.

Another important facilitation system allows green cards for permanent residents and border crossing cards, known as laser visas, to be read electronically. These newly issued cards incorporate state-of-the-art security techniques, photographs, and fingerprints. But the equipment to read them must be procured and installed. This should be done on an accelerated basis so that this substantial additional use of biometrics, already proven very effective in other INS work, can proceed.

Technology and biometrics are also the basis for more widespread use of commuter lanes for border vehicular traffic and other opportunities to ease border crossings and free up officers to concentrate on screening more questionable cases in depth. But staffing must keep pace with workload growth, and increasing effort must be devoted to antifraud measures. To that end, immigration inspectors should be formally designated as law enforcement officers. This is an issue for the federal personnel system that would institutionalize the changes already occurring in the roles and responsibilities of inspectors. It would strengthen professionalism, trust, and cooperation among border law enforcement and security agencies—which must be done to combat terrorism successfully.

Finally, there is the long-term agenda of cooperation with Canada and Mexico. Its objective should be to create a North American safety perimeter. This is the best answer to the difficulty of defending thousands of miles of remote territory. Near-term steps with Mexico should be to intensify anti-

Near-Term Actions to Strengthen the Immigration System

- Give high priority to funding look-out systems of persons ineligible to enter the United States
- Provide immigration inspectors with electronic access to visa application information in consulates abroad
- Promote information sharing among agencies by designating visa and inspection procedures as law enforcement actions
- Increase consular staffing and design a new organizational model to screen visas
- Verify compliance with the visa waiver program criteria by all participating countries
- Require advance sharing of passenger information for all international flights
- Procure and install equipment to read new, secure green cards and laser visas at ports
- Expand the availability of commuter lanes and pre-certification programs for law-abiding travelers
- Designate immigration inspectors as law enforcement officers
- Accelerate initiatives with Canada and Mexico to create a North American safety perimeter
- Mandate the use of the automated entry–exit data system for noncitizens by all airlines at all airports
- Implement the international student information system on an accelerated schedule
- Develop active partnerships between the INS and organizations and employers that sponsor temporary visitors to ensure compliance with immigration requirements
- Strengthen safeguards for issuing key forms of personal identification, such as drivers licenses and birth certificates

smuggling initiatives that weaken drug and migrant trafficking organizations and close off routes used to move third-country nationals so they cannot be exploited by terrorists. Moreover, Canada–United States cooperation should mobilize around broadly based information sharing, law enforcement and intelligence coordination, accelerating the design of strategies for joint enforcement, and sharing technology at border crossings.

Compliance and Deterrence

Prevention is also the best policy to protect the nation because once possibly dangerous people enter the country it becomes infinitely more difficult to pinpoint wrongdoing before it occurs. More than 530 million entries are made into the country each year. More than 80 percent are repeat pedestrian or vehicle crossings at our land borders made by Americans, Canadians, and Mexicans who reside, work, or travel in border regions. Still, sheer numbers and the nature of today's globalized economy have demanded reasonably unimpeded cross-border movement for citizens and noncitizens alike.

Beyond such practical considerations, philosophical precepts that reflect America's values as a democratic society are more fundamental. They include the right to privacy and protection from government intrusion. Accordingly, Americans have resisted internal controls, such as a national identification system, because the very same powers that would enable the government to monitor those who might harm domestic security could also be used to curb individual liberties.

Thus, once people are in the United States, stopping terrorism requires actions outside the purview of immigration enforcement: accurate intelligence, joint agency law enforcement, and choking off the money trail, among others. However, some of the conditions that have allowed terrorists to operate in this country can be altered by strengthening immigration compliance and deterrence systems.

Two automated systems that capture important information exist in pilot form and should be fully and quickly implemented. The first records the dates of entry and departure of nonimmigrants traveling by air. The data is collected on the boarding card and transmitted electronically to the INS by participating airlines at selected airports. The system is dependent on voluntary airline cooperation and equipment installation. It should now be made mandatory.

The second is an international student information system. Although international students are a small subset of visitors, they have always been of security interest because they often stay for several or more years and they may have access, through their courses of study, to technology and training that could be used for hostile purposes. A new, comprehensive student information system has also been operating on a pilot basis. It depends on cooperation from the educational community, which has objected to it as burdensome and intrusive. Since September 11, however, these objections have been dropped. Universal implementation needs to proceed quickly.

Databases will not conquer terrorism. But reliable data can provide two important things we now lack: timely information, which can assist intelligence or investigative activities when specific leads point to temporary visitors, and the tools to foster greater compliance with immigration rules governing nonimmigrants.

Today, the prevailing psychology once people get past border controls is one of impunity. Those who overstay are unlikely to be located and repatriated unless they commit a crime or come to the attention of immigration officials for other reasons. Given the numbers and mobility of temporary visitors, this is unlikely to change. Moreover, antiterrorism resources can be far better used to develop the intelligence and monitoring required to more fully understand, target, and thwart the activities of those in terrorist networks.

Compliance can be fostered to a far greater extent, however, through active partnerships between government and key sectors of society that have a stake and role in maintaining robust immigration. In addition to the airlines, the rest of the travel industry, and educational institutions, these include myriad organizations that sponsor foreign visitors and employers that compete in the global economy. Their cooperation needs to be actively enlisted, and new rules of responsibility need to be established to discourage misuse of the immigration system.

announced it will no longer accept affidavits. Minimum standards for critical identification documents, such as drivers licenses and birth certificates, should be set as a federal mandate to foreclose a well-traveled pathway to misusing our society's freedoms.

Balancing the Scales

The measures proposed in this brief will not make the immigration system fail-safe, but together they form an agenda of near-term actions that would restore public confidence in immigration controls and correct weak-

Compliance can be fostered through partnerships between government and key sectors of society with a stake and role in immigration.

Among the many sources of noncompliance, the most intractable involves employment. Large numbers of people who are undocumented or overstay their visas work without authorization, and employers readily hire them. Changing this situation would require a political consensus on the nature of the economy and on identification systems that would affect citizens and noncitizens alike. Because these issues raise profound civil liberty concerns with a history of unresolvable controversy over many years, such proposals are unrealistic in the near term.

What can be done, however, is to better safeguard the validity and procedures for obtaining existing identification documents, especially drivers licenses, which are issued by states and are regularly used to obtain employment and other prerogatives. Two of the hijackers obtained Virginia drivers licenses by submitting affidavits to meet the proof-of-residency requirement. Virginia has since

nesses that terrorists can exploit (see box at left). Immigration lies at the core of our history and national identity, and it is a fact of modern life and global interdependence that represents the lifeblood of our economy and national interests. What we must not do is sacrifice our openness to the world by shutting down immigration, nor relinquish our basic freedoms to elaborate tracking that would, in the end, not combat terrorism effectively. But what we must do is insist that U.S. immigration rules—all of them—matter and take steps to make them work properly. ■

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Related Resources

Terrorism and Immigration: Our Borders, Security, and Liberties, a Carnegie special briefing by Doris Meissner and David Martin (former INS general counsel) on September 24, 2001. Transcript and audio clips at www.ceip.org/borders

Crisis Links, a special web section with opinions, commentary, and special briefings on the war on terrorism by Carnegie Endowment scholars, at www.ceip.org

Caught in the Middle: Border Communities in an Era of Globalization, Demetrios G. Papademetriou and Deborah Waller Meyers, editors (Carnegie Endowment for International Peace, 2001). Read the first chapter of this book at www.ceip.org

Immigration and National Security, a Background Paper from the Migration Policy Institute (September 28, 2001) at www.migrationpolicy.org

Terrorism: Automated Lookout Systems and Border Security Options and Issues, William J. Krouse and Raphael F. Perla (Report for Congress RL31019, Congressional Research Service, June 18, 2001)

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