

The To-Do List Curtailing Terrorist Travel Ten Years after 9/11

By Janice Kephart

Introduction

Ten years after 9/11 we are significantly more secure as a nation. Many of the 9/11 Commission's recommendations have been implemented and, in a post-9/11 environment, the U.S. government has realized a new dimension in protecting America from terrorist acts: protecting our own soil. Prior to 9/11, few had the foresight to consider that a terror organization would have the audacity to strike American civilians at home. The 1993 World Trade Center and 1995 Oklahoma City bombings were categorized as lone wolf anomalies, unattached to terror organizations with strategic plans to hit the United States. The well-planned terrorist attacks overseas — on the Khobar Towers in 1996, the African embassies in 1998, the USS Cole in 2000 — all targeted U.S. government personnel on foreign soil. Even with the Osama bin Ladin fatwah of 1998 calling for an expanded al Qaeda agenda to target American civilians at home, the idea of Americans being killed with American property on American soil seemed absurd to all but the few who had taken the prior attacks seriously.

Once 9/11 occurred, and the 9/11 Commission released its *Final Report and Terrorist Travel* monograph three years later, it became clear that what lay between foreign terrorists and a direct attack in America were our borders. For the first time in our nation's history, borders were understood to be pivotal to keeping terrorists out, and our nation more secure. Thus, for the past seven years, our nation's eyes have turned inward. There has been a significant push to secure our borders while working to understand and prevent radicalization, terrorist acts, and the aftermath of a terrorist attack at home. For certain, more needs to be done, especially in disaster coordination, but overall, our nation is in better shape than it was 10 years ago in identifying terrorists and stopping them before they act.

However, that has not stopped the thousands of potential terrorists who were already here from staying, or getting here subsequently, according to intelligence sources. Some of these may seek to do us harm. State sponsors of terror such as Iran, which supports both Hezbollah and al Qaeda, cause special concern as al Qaeda continues to splinter and pick up support in the Saudi peninsula, Africa, and Southeast Asia; Hezbollah recruits and supports drug cartels south of our border. Meanwhile, groups like Pakistan's violent Lashkar-e-Jhangvi overtly seek to harm America. This is no time for complacency, nor time to assume that if a person is from a certain region in the world, it is safe to have him here. Terrorists self-radicalize or are recruited these days from anywhere in the world. Equal standards must apply equally to all U.S.-bound travelers, regardless of origin. Equal standards must also apply to those who are here seeking to work and burrow in by acquiring driver's licenses and IDs. Equality needs to be our next paradigm for border security.

Background

After the 9/11 Commission *Final Report* and the staff *Terrorist Travel monograph* were published in July and August 2004, and the [9/11 National Intelligence Reform Act](#) was passed in December 2004, it became clear that the 9/11 findings of fact that we termed terrorist travel and ensuing recommendations could not go fallow. Our homeland could not be secure if our borders remained as porous as they were when the 9/11 hijackers exploited them. The task of securing our borders has become an indelible challenge, due to the complexity of the border

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security system and the sheer volume of foreign-born persons involved, combined with an infrastructure that had no basis in security prior to 9/11. Building security into borders and interior had to be done from scratch, within a new department and new responsibilities meted out and combined with customs enforcement.

Ten years later the issues that primarily are driven by technology — like verifying that a person is who he says he is when applying for a visa, seeking entry, attaining legal status, a job or a driver's license — are all significantly improved. Other border areas, however, that are primarily driven by immigration policy, such as enforcement of immigration laws on our borders and interior, that inevitably support national security as well, have proven to be more frivolous enterprises that sometimes are more in tune with politics than apolitical objectives pertaining to security.

Congress deserves credit for listening to the 9/11 Commission on relatively apolitical issues pertaining to terrorist travel and helping provide the statutory and budgetary base to get those programs off the ground. Where Congress has failed to lead policy on issues such as immigration enforcement, the results have been varied and today reflect a White House that has taken upon itself to fill in the congressional gap with failed pre-9/11 policies that seek to separate national security from immigration issues. The most prominent of these is a refusal to use immigration law against anyone but known terrorists and convicted criminals alongside an effort to provide amnesty to over 11 million illegal aliens without really knowing who they are or what their intent is.

Summary

Are our borders safer now?

Yes, our borders, overall, are safer now than before 9/11. We use biometrics to screen people at our borders and require all persons coming into our country now to present a passport. We are improving infrastructure on the border. We have registered-traveler systems that work. Prior to 9/11 those coming across land borders could talk their way across, claiming U.S. citizenship. We now require foreign visitors from countries that do not require a visa to fill out basic travel forms before they even get to their foreign airport for departure to the United States. These travelers are vetted against criminal and terror watchlists, replacing the old system that could not tell whether a terrorist was on board until in flight or, worse yet, at our border. Our watchlisting is vastly improved. We have law enforcement officers supporting visa adjudications in a handful of overseas embassies, re-

ferring terrorists they encounter firsthand to the watchlisting process.

We have E-Verify, replacing an antiquated paper process for determining work authorization of new hires to digital verification of legal status prior to hiring. Some states, interested in assuring a legal workforce too, have passed laws to require use of E-Verify by state agencies, state contractors, or even all employers in the state; the Supreme Court has upheld Arizona's version of that law. Nearly all states have improved security in the issuance of driver's licenses, with over 40 committed to realizing REAL ID minimum standards for securing against false identities and identity theft in the driver's license application process. We have a program that enables local law enforcement to determine the immigration status of criminals called 287(g), but is now being surmounted by another program, Secure Communities, that enables the same work as 287(g), but with better technology, if less authority for non-federal agents. We are trying to assure that our ports have more secure workers and incoming cargo, as well as who has access to our major transportation modes.

We have fencing on the southwest border that is saving the environment from illegal trashing and better protecting communities from crime and drug trafficking, even if the near 700 miles of fencing is scant to the 2,000 or so miles of southwest border. We work closely with the Canadians across the board on our northern border, conducting intelligence joint operations even if our border presence and infrastructure is still insufficient. We have proven technologies that provide a common operating picture to Border Patrol agents to help save lives and make our border resources operate more efficiently. The most controversial of these, the Secure Border Initiative, is enabling progress toward a secure border in large, environmentally sensitive, remote swaths of desert. While America was told the program did not work and DHS cancelled the contract, the administration quietly issued a new request for technologies that strangely mimic the Secure Border Initiative's requirements shortly after canceling the program.

We have technologies available — even if not yet harnessed — which are as diverse as helping locate tunnels being dug under our borders to analyzing illegal patterns of entry and predicting future migration movements. Secure “clouds” of interoperable, near limitless systems that significantly improve both information sharing alongside system security and privacy are broadly applicable to such tasks as watchlisting and border reconnaissance. Such computer hardware and software, widely available in the private sector, can help secure and streamline a federal government desperately in need of

budget cuts and efficiency, while doing a better job to protect America. The work the private sector has done to support our security is a significant improvement from before 9/11, when technology could not meet policy goals.

Granted, none of these programs or policies is perfect. Some are better implemented than others, some more controversial than others. Some have yet to be recognized or prioritized. Some are being neutered or repealed with support of the Obama administration and under guidance from Homeland Security Secretary Napolitano. In fact, for the most part, former Homeland Security Secretary Chertoff deserves the credit for the strides made to date to secure our borders. He proved that enforcement of our laws and 9/11 Commission recommendations regarding identity vetting work including distinguish legitimate travelers prior to U.S. travel; improving US-VISIT, which checks and records biometrics at ports of entry and shares that information with the FBI and state and local law enforcement; and a greater focus on immigration law enforcement across the board. The 9/11 Commission described the notion of identity vetting as “assuring that people are who they say they are,” and there are about two dozen identity vetting programs that exist now that did not exist prior to 9/11 based on this single notion.

Whatever anyone may think of the Bush administration’s foreign policies, our domestic border policies — once they were taken seriously — became a reckoning for terrorists. Khalid Sheikh Mohammed, one of the 9/11 masterminds, stated soon after his capture that our tightening of the border post-9/11 caused him to rethink seriously who he was sending in for infiltration. For a while, he stopped to rethink. The focus then became on finding recruits with easy access to the United States, such as green card holders, American citizens, Canadians, visa holders, or others. Al Qaeda also realized that feigning legality, but still using real names, meant they could be exposed. Passenger manifest lists and more importantly, immigration records, proved entry into the United States. While we did not know necessarily if terrorists left, we certainly knew when they came. Even prior to our more secure identity vetting, al Qaeda was thinking ahead, holding meetings with the Columbian FARC to determine the ability of using smugglers along the southwest border for anonymous entry. Today, Hezbollah is in the mix as well, recruiting drug cartel members to their cause.

With an 11 million-plus illegal immigrant population whose identities are a mix of anonymous illegal crossers and a smaller cadre of visa overstays, preventing their embedding in the United States remains a signifi-

cant challenge. Immigration benefit vetting is not substantially better than it was prior to 9/11, and our physical southwest borders are leaving border states to fend for themselves.

Where does this leave us?

Our work is far from over. We have come a long way but a road remains ahead. The simple fact that we have stopped a few dozen terrorist plots from coming to full fruition hatched by foreign-born terrorists who came here in the last few years means that other terrorists are likely still infiltrating our border apparatus. In fact, the numbers from intelligence sources puts those who pose a potential threat at the tens of thousands. We need to keep more from coming, and do what we can to smoke those out who are already here. As a nation, broadly, we must verify the identity of who is coming and who is being allowed to stay and be vigilant against fraud on all fronts, saving taxpayer monies while securing our nation.

We must insist that our physical borders are respected. We do this by respecting our immigration laws, and enforcing them. We must give our officers the tools they need to do their job well, and support the states and private sector that are trying to do the right thing with the federal immigration legal system. We must do so because if we do, we fight terrorism at home and help secure our borders at the same time. We cannot even pretend as a nation that our borders are secure if we do not make these policy choices. Saying our borders are secure will not make them so; only the hard work of implementing often tedious policies will.

Below are some of the most important aspects of policies and supporting programs that can go a long way toward keeping terrorists out, or at least, keeping them from embedding as easily as they could 10 years ago. These recommendations are not exhaustive, but they should be on top of our priority list for achieving border security.

Curtailing Terrorist Travel from Abroad

The national security of the United States depends, in part, on the robustness of our border security to keep foreign nationals with nefarious intentions from ever reaching our shores. Counterterrorism efforts are best outside of our physical borders. Priorities include expanding visa security, eliminating the worst fraudulent visa program known as the Diversity Visa, and honing watchlisting.

Give DHS Full Visa Security Policy and Expand Visa Security Units

The visa process — both issuance and revocation — must be made as secure as possible. The Christmas Day bomber could have been stopped from boarding a plane if his visa had simply been revoked. It was not, and the result was nearly devastating. The ensuing days after the incident, the State Department, which has its Foreign Service officers in consular posts throughout the world, found numerous excuses as to why Abudulmultallab's visa was not revoked — from name checks misspelling his name, to the National Counterterrorism Center (NCTC) not doing its job, to not having conducted the interview with the bomber's father who suspected his child of terrorist activity. It was not until months later that the State Department quietly released information that the bomber had previously been denied a U.S. visa, and that adjudication should have been considered in assessing his attempt to get a new one.

The State Department remains dependent on the NCTC for information to determine a visa revocation, yet the NCTC does not have the expertise in immigration law to really do the job either. The entity with the mission, expertise, and bureaucratic functioning on border security is the Department of Homeland Security (DHS). In addition, DHS already has authority over visa issuance under the Homeland Security Act of 2002, and an extension of that authority to revocations makes sense, filling a gap left behind by the 2002 law.

Right now, because the State Department still holds visa issuance operation at consular posts overseas, security is trumped by diplomacy or politics whenever the State Department decides. This does not mean the State Department has not made huge strides in securing visa issuance on their end; they have. But it also means that the invaluable extra investigative edge that DHS can provide to make determinations on terrorists is sometimes not supported.

To standardize visa security across the world, it makes sense to expand Immigration and Customs Enforcement's (ICE) role in counterterrorism through the assignment of ICE special agents to overseas consular offices where a high risk of terrorist infiltration exists. Even in the mere 19 locations where the Visa Security Program (VSP) exists to date, it is effective, offering up counterterrorism investigations and watchlist nominations out of consular posts that would not occur but for their presence, as I [testified before House Judiciary Committee](#) earlier this year. According to the [DHS Office of Inspector General Visa Security Program Report](#), "the VSP complements the DOS visa screening process

with law enforcement resources not available to consular officers to ensure ineligible applicants do not receive U.S. visas." The VSP is described as follows:

"The Visa Security Program was established in the Homeland Security Act of 2002 to increase the security of the visa process at U.S. embassies and consulates. The program enhances national security by preventing terrorists, criminals, and other ineligible applicants from receiving visas, and maximizing the visa process as a counterterrorism tool.

"The program assigns experienced special agents to Visa Security Units overseas to review visa applications, initiate investigations, and provide advice and training to consular officers. Agents bring valuable resources to posts and add a layer of security to the visa process. Their mission includes investigating visa and passport fraud in order to protect the visa adjudication process by disrupting criminal and terrorist mobility."

In other words, the VSP does work the consular posts cannot, and would not, do at the level of investigation provided by the Visa Security Unit (VSUs). Results just for FY2007 were as follows:

ICE special agents assigned to VSUs at overseas posts have produced a variety of visa security results. As a result of screening and vetting activities, agents recommended denial of 750 visa applications in FY 2007. Agents also identified 49 "not yet known" terrorists and created 68 watchlist nominations, 933 lookouts, and 557 subject records in FY 2007.

In fact, some State Department Chiefs of Mission undermined VSU expansion for political or diplomatic reasons. Chiefs of Mission should not have a say in VSU operations being established at a post once the need is identified as a security risk.

Recommendation. Legislation expanding DHS visa issuance authority to revocation authority should be passed to both clear up a loophole left by the 2002 Homeland Security Act and because it makes security sense to give revocation authority to the department that is ultimately responsible for border security. In addition, expanding the VSUs to high-risk areas, without State Department veto power, should be considered a congressional priority.

Eliminating the Diversity Visa Program

The Diversity Visa (DV) Program is an unfortunate blind spot in our immigration system that has outlived whatever purpose it might have had. The applicants for these 50,000 “visa lottery” immigration slots require few skills. Neither their qualifications nor identity can be properly vetted. The program does not know, really, who these applicants are or their true purpose in coming to the United States. The program is a national security vulnerability, and has been used by terrorists and organized criminals to not only enter the United States, but to bring others in as well.

According to unofficial statements from the State Department, the program is rife with fraud in part because application standards are so low. The program claims to have strict eligibility requirements, but only calls for a high school education or its equivalent or two years of work experience within the past five years in an occupation requiring at least two years of training or experience. In most of the countries eligible for a diversity visa, neither education nor employment can be verified, let alone identity. Consular officers in U.S. embassies abroad thus spend an inordinate amount of time attempting to determine if people are who they say they are and actually qualify for the program. Checking watchlists based on names or prior U.S. immigration histories thus often has little bearing on making a solid determination of identity, qualifications, or legitimate national security concerns.

[In testimony to the House Judiciary Committee](#), I stated that the DV Program is a threat to our national security because it:

- draws from nations that are state sponsors of terror or are known to harbor terrorist organizations that have overtly stated terrorist intentions toward the United States, which [will remain unchanged for the 2012 lottery](#) despite serious shifts in geopolitics since 9/11 and again over the past few months;
- does not include national security standards or reviews of participant countries (which would be resource intensive for the 173 nations included in the program today), such as those standards or reviews made of Visa Waiver countries to maintain their status in that program;
- is susceptible to serious fraud and malfeasance both in and out of the United States because of the program’s inability to assure identities or qualifications

— a similar type of fraud we addressed on the 9/11 Commission pertaining to the processing of visas in Saudi Arabia before 9/11 (stated by the State Department in a [2010 press conference](#) as the biggest problem with the program from an administration standpoint);

- has low applicant standards (admitted as low by the State Department) — a high school education or equivalent — combined with a blind “[computer-generated random lottery drawing](#) [that] chooses selectees,” essentially acting as an invitation to those with nefarious intentions to take advantage of the program’s “blind” picks and negligible standards;
- has been exploited to support human trafficking and a slave trade by crime syndicates, nothing close to promoting straightforward “diversity” from “lower immigration” countries; and
- enables those already in the United States to apply for the lottery, thus enabling those already here to stay while their “change of status” is under consideration as did Hesham Hedayet, a known terrorist, thus increasing the vulnerabilities already built into the program.

Recommendation. Pass legislation to fully repeal the diversity visa program.

Honing Watchlisting

The tedious process of watchlisting and making watchlists available to our frontline border and aviation operators is the most important tool our nation has to curtail attempted “legitimate” terrorist travel — meaning, those terrorists who seek to use our border and aviation system to enter the United States. The 9/11 Commission recommended significant changes to watchlisting, including merging 11 disparate watchlists into one base list. Today, this single list is simply termed the “Terrorist Watchlist.” The entity recommended to accomplish this goal was, and now is, the National Counterterrorism Center (NCTC). The 9/11 Commission’s focus on watchlisting addresses — in part — findings of fact of missed watchlist opportunities of at least two 9/11 hijackers who were known to the CIA in March 2000, but whose entry into the United States was never communicated to the border, aviation, or other members of the intelligence community until August 24, 2001.

The 9/11 Commission recommendations to consolidate terrorist watchlisting and the analytic insti-

tutions responsible for creating and maintaining the Terrorist Watchlist are, for the most part, implemented. The NCTC is responsible for creating the Terrorist Identities Data Mart (TIDE), while the Terrorist Screening Center, run by the FBI, culls and sorts for those individuals who meet a “reasonable suspicion” standard. These individuals are listed on the “Terrorist Watchlist.” It is this list that feeds the more specific border and aviation watchlists to which traveler names are submitted to today.

The pronounced example of the Christmas Day Bomber’s ability to board a plane in 2009 with a still-valid U.S. visa despite being known to the intelligence community seemed, on the surface, to replicate the deep-seated problems with watchlisting — including the intelligence community’s lack of information-sharing with the border and aviation frontline operators — related by the 9/11 Commission. That assumption is inaccurate; the authorities, relationships, and operations are in place to get watchlisting right. Instead, what is lacking are technology, clear standard operating procedures, and implementation of other 9/11 Commission recommendations. These gaps create vulnerabilities that widen quickly when multiplied out over vast quantities of data. The good news? We can fix them.

Recommendations. As detailed in my report, “[Border Watchlisting a Decade after 9/11](#)”, the following recommendations would help hone our watchlisting capabilities to better serve frontline border and aviation operators:

To improve watchlisting, the intelligence community needs complete information access in real time. Privacy and security issues have kept the intelligence community from allowing analysts to acquire all source information across the foreign/domestic divide quickly and efficiently as highlighted by the 9/11 Commission. The problem to date has been, in part, that technology to secure data, but also make sure users who need it have access to it, has been lacking. That is no longer the case. Technical solutions such as “cloud computing” and dynamic encryption keys are now available to store data together, but protect it by source, type, and value, for example. These technical solutions need to be piloted and incorporated into NCTC and TSC operations as soon as possible. To ensure a more accurate watchlist, biometrics, including digitized facial images and fingerprints, need to be fully incorporated into watchlisting. A name-based system remains too easy to game, and too easy to misidentify legitimate travelers.

“Person-centric” traveler histories were recommended by the 9/11 Commission and enacted into law, but still have not been implemented by the DHS. The travel and immigration histories of all foreign-born trav-

elers, including biometrics, should be easily available for analysis by the NCTC and TSC. This will also allow foreign persons applying for benefits to have their information held over time, minimizing fraud on the one hand while easing processing of new benefits sought because information will not need to be re-populated, as caching now does for Internet websites. Where privacy issues exist, these can be written into the information-sharing rules up-front.

Law enforcement data obtained from abroad by Immigration and Custom Enforcement Visa Security Units conducting terrorist investigations of visa applicants abroad need to be incorporated into watchlist analysis. Congress needs to prioritize the VSU expansion, and give DHS visa revocation authority.

The United States must do what it can to keep European Union agreements in place pertaining to Passenger Name Records; these records are absolutely essential to assuring accuracy of matching watchlist information to relevant aviation travelers.

All visa holders and visa waiver participants should have their information vetted at least every two years, and every time they seek to travel to the United States. Right now, visa waiver travelers are subject to higher security thresholds than many visa holders from countries not friendly to the United States. Applying a standardized approach avoids profiling, establishes security away from our borders, and enables real-time vetting where derogatory information develops after visa issuance. Eventually, with cloud technology, vetting could be done in real time, on a daily basis if necessary, for all visa holders.

Curtailing Terrorist Travel Across our Land Borders

Four elements need to be in confluence to achieve a secure border: personnel, technology, infrastructure, and policy. To date, people speak to the first three ad nauseam, rarely acknowledging that laws and resources matter little if there is not policy, and a strategy to back up that policy, in place. Today, the Border Patrol is swelling to near 20,000 employees, more than double 9/11 numbers, while technology and infrastructure in place on the border have meagerly progressed. Nonetheless, at least the latter two exist, even if neither technology nor infrastructure is what it could, or should, be. Yet the most critical element lacking today is sound policy grounded in the underlying principle asserted by the 9/11 Commission that national security is border security. Border

security must insist on respect for our laws, and a system built around law, not the disrespect of it.

So from a practical perspective, how do we infuse such respect into our physical borders and interior? There are obvious answers:

- Enforce immigration laws equally across the board, using biometrics and detection technologies when possible to identify and prioritize case loads.
- Assure appropriations are not decreased despite the inevitable budget axe on homeland security.
- Provide adequate inspection personnel and detection technologies at ports of entry (not just Border Patrol between the ports of entry).
- Require all persons to present a passport or equivalent at ports of entry, a 9/11 Commission recommendation that has been implemented, but not fully enforced.
- Enhance the Border Patrol's ability to operate successfully, safely, and efficiently, including deployment of the fully piloted and tested "common operating picture" technologies where geographically feasible.
- Update wilderness laws to enable proper fencing (shown to help revive environments destroyed by illegal entry) and access for all federal law enforcement personnel, usurping burdensome agreements between agencies that hinder achieving a secure border.
- Build appropriate, even double-layer fencing, in areas where necessary to discourage easy, repeated illegal entry.
- Assure technology is deployed that detects the increasing use of ultralight aircraft and tunneling for illegal entry, as fencing forces greater resourcefulness on drug cartels and alien smugglers.
- Properly engage the National Guard, with maximum legal authority, with flexibility to adjust location to particular border regions experiencing high stress.
- Use removal and deportation procedures that both reduce recidivism and the drain on detention and court costs.

Most of the above points are often discussed and need no further elaboration in this report. Other important issues, such as inadequate land ports of entry infrastructure and processing, are covered better by others like the [Border Trade Alliance](#), whose mission it is to look closely at port of entry inspection processing in order assure trade in the most secure environment feasible.

However, there are a number of important issues surrounding border security that are not discussed often ("no-apprehension policy" and federal wildlife designations), underestimated in value (National Guard), or simply misunderstood (SBI.net). These more difficult, more nuanced subjects require some background. I attempt to address these topics below. These issues need to be on a border security priority list. None are currently. The section below is intended to put these issues front and center.

Assert an Apprehension Policy Based on the Rule of Law

The Obama administration's unbelievable message that our border with Mexico is "as secure now as it has ever been" puts public safety and U.S. sovereignty increasingly at risk. Today's border is ravaged by violence spilling from Mexico that is already a U.S. national security emergency.

Under the Secure Fence Act of 2006, DHS was to achieve operational control of all the land and maritime borders of the United States within 18 months of enactment. The act defined operational control as "the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband." This law fell within the parameters of the 2006-2010 strategy developed by Customs and Border Protection (CBP), repeated again in the [September 2004 Border Patrol Strategy](#) whose mission as follows:

"The National Border Patrol Strategy directly supports CBP's 2006-2010 Strategic Plan. This strategy specifically addresses three of CBP's strategic goals, including:

"Preventing Terrorism. Detect and prevent terrorists and terrorist weapons, including weapons of mass effect, from entering the United States.

"Strengthening Our Control of the United States Borders. Strengthen national security between the ports of entry to prevent the illegal

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entry of terrorists, terrorist weapons, contraband, and illegal aliens into the United States.

“Protecting America and its Citizens. Contribute to a safer America by prohibiting the introduction of illicit contraband, including illegal drugs, and other harmful materials and organisms, into the United States.”

More specifically, DHS defined operational control more broadly, [according to the GAO](#):

“Controlled. Continuous detection and interdiction resources in place at the immediate border with high probability of apprehension upon entry.

“Managed. Multi-tiered detection and interdiction resources are in place to fully implement the border control strategy with high probability of apprehension after entry.

“Monitored. Substantial detection resources in place, but accessibility and resources continue to affect ability to respond.

“Low-Level Monitored. Some knowledge is available to develop a rudimentary border control strategy, but the area remains vulnerable because of inaccessibility or limited resource availability.

“Remote/Low Activity. Information is lacking to develop a meaningful border control strategy because of inaccessibility or lack of resources.”

According to the same GAO report from February 2011, “Border law enforcement officials recently claimed that have ‘operational control’ of 873 miles of our 2,000 border with Mexico, and claim they will achieve ‘operational control’ in a few years.” So even by administration standards, we do not have operational control of most of the southwest border. What that means is that 1,127 miles are “managed, monitored, low-level monitored, and remote/low activity” areas that now are deemed to incur “acceptable levels of illegal immigration.”

To be clear, just because an area is “remote” does not mean in “low activity.” In fact, my three “Hidden Cameras on the Arizona Border” films ([here](#), [here](#), and [here](#)) show quite the opposite: The more remote and inaccessible an area for the Border Patrol, either because

of geography or wilderness laws preventing easy access, the more likely these areas are to be used to create illegal routes across the border.

Not only has the GAO verified that the border is not secure, or operationally controlled, even by CBP standards, but in addition, in April 2011, Border Patrol agents began speaking out that they are being told by high-ranking CBP officials to not to do their jobs fully. Instead, they were told to turn around those attempting illegal entry and “scare” them back across the border in order to keep apprehension numbers down — the same numbers being used to justify an unsubstantiated claim that the border is secure and the country ready for amnesty. At the same time, the closed-door discussion of a new “acceptable levels of illegal immigration” policy was publicly unveiled on September 10, 2011, by new CBP Assistant Commissioner Borkowski (who ran SBInet) as a new (undefined) policy of “reasonable control.” In addition, no border security strategy has been developed since the first Bush administration, meaning there is no overarching policy to guide operations, personnel, infrastructure, or technology decisions. In fact, whatever operational guidelines exist, they appear to do less, not more.

To be clear, operational control of the border will never occur if border agents are being told not to do their job because the illegal entries are “acceptable” as is. At the very foundation of all border security are policies in Washington that support, encourage, and make safer the process of apprehensions, which helps support deterrence. If policies exist that are aimed at assuring agents do not do their job, then no matter how many agents are using solid technologies to detect illegal entry or how much infrastructure makes illegal entry more difficult, a policy that does not support the rule of law creates an “empty fort” mentality that terrorists and drug and alien smugglers take advantage of to get into the United States successfully.

The 2010 National Association of Former Border Patrol Officers’ [“Proposal for Comprehensive Immigration Enforcement and Reform”](#) provides a solid nine- step plan to assuring border security. The plan has credibility in part because it is drafted by those that have worked on the border, and know the inherent difficulties in securing it, and is detailed enough to be helpful.

Recommendation. Develop a comprehensive border strategy based on rule of law applied equally to all, including apprehension and deterrence. Assert that illegal immigration is not acceptable and all policies, personnel, infrastructure, and technology will be prioritized to achieve operational control as defined by the GAO. The

2004 CBP Border Patrol Strategy and the 2011 NAFB-PO strategy are good starting points for such a strategy.

Equal Access to Federal Border Lands

For years, explanations as to why particular geographic areas are more prone to illegal penetration than others has been hooked to fencing locations, geography, ports of entry, and Mexican access roads to the border. The unspoken factor of environmental laws and federal land designations severely curtailing Border Patrol access was never discussed until the Center's three-part series, "[Hidden Cameras on the Arizona Border](#)", showed the waste, destruction, and unsafe circumstances that borderlands suffer when wilderness laws (and poor federal government policy) create a vacuum of law enforcement presence.

In the context of borderlands, there are two main categories of designation: "public use" and "wilderness." A public use designation allows the Border Patrol relatively unfettered access for law enforcement actions, if they choose to use it. At the opposite end of the spectrum, a wilderness designation on borderlands such as those in the Buenos Aires National Wildlife Refuge and Organ Pipe Cactus National Monument, both in western Arizona, changes the operational landscape so significantly that few operations can occur unless in "hot pursuit" of known, real-time illegal activity. These laws are decades old and well intentioned, but not designed to deal with our borders today. With nearly 70 percent of Arizona's border lands federally owned, the impact of illegal activity has been severe.

To operate in wilderness areas requires tedious bureaucratic requests to the Department of Interior. Operating bases are not permitted. In addition, once land is labeled "wilderness," the Border Patrol must pay mitigation fees for repairing land "harmed" while in the pursuit of illegal activity. To date, the [Border Patrol has paid at least \\$75 million](#) for preserving and repairing wildlife areas, about \$67 million of which has gone directly into the Department of Interior's coffers. Despite the fees, this does not permit greater use of the lands. Instead, every specific task or operational strategy the Border Patrol considers requires approval processes that, in general, prevent timely and effective operations.

As a result of the legal barriers that a wilderness designation brings, the Border Patrol loses both incentive and the ability to work on such lands. For example, low-level flights are of minimal value if Border Patrol agents can only act on what they see if they can assure their Interior Department colleagues afterwards that the activity they acted on was a crime or rescue. In addition,

the Border Patrol has to be willing to incur mitigation fees. The cartels know this, and increased fencing is creating a "squeeze" on areas previously heavily trafficked by smugglers, and more desolate and difficult wilderness lands are increasingly being used by smugglers.

Border Patrol numbers clarify that there has been a significant increase in abuse of these lands since the fencing and operational surges began in 2006; from 2007 to the middle of 2009, the Border Patrol apprehended a total of 5,639 illegals on wilderness lands. However, just for the 90 days of summer in 2009 — when traditionally the heat minimizes illegal activity — there were 3,523 arrests, an increase of over 400 percent in arrests on wilderness lands. In addition, federal government presentations show that nearly all Arizona border park devastation comes from this illegal alien activity.

These numbers are likely a fraction of illegal activity, considering that we are sure many pass through undetected, as shown in our [first](#) and [second](#) "Hidden Cameras on the Arizona Border" mini-documentaries. One particular point of concern from the first film is the Border Patrol map showing thousands of illegal trails on Arizona federal land, making a potential of hundreds of thousands of successful entries based on the numbers we extrapolated in those films. None of these statistics exist in federal reports, however, of course. Obviously, no institution counts the illegal activity not caught.

A 2006 [Memorandum of Understanding](#) (MOU) with the Departments of Interior and Agriculture, initiated by the Department of Homeland Security in an attempt to address these problems, actually appears to further constrain the Border Patrol from successful operations. The MOU includes 21 requirements, or hoops that the Border Patrol must jump through to build infrastructure on protected lands, let alone enter or conduct operations. Exceptions exist only if agents are on foot or horseback, on a public road, or in hot pursuit. However, these exceptions were already spelled out in the wilderness laws. What was added into the MOU was funding for the Department of Interior via "mitigation fee" requirements mentioned above. The U.S. Border Patrol is no better off than it was before the MOU.

While there is no doubt that the incentive for changing a public use designation to a wilderness designation is to support legitimate environmental conservation, on today's borderlands such designations provide the Border Patrol — let alone state, local, and other federal law enforcement — with little ability and little incentive to do their job. Drug cartels and alien smugglers see such laws as a boon to illegal activity. Trash, waste,

public safety, and national security issues need not be such significant issues if laws were adequately structured.

Recommendation. With equal access to all borderlands, operational control comes closer within reach. Congress needs to intervene and change wilderness designations on federal land, allowing equal access to all federal law enforcement, sending a message to smugglers that U.S. laws will support law enforcement, public safety, and national security, while protecting these lands, not the cartels and alien smugglers.

Properly Engage the National Guard

The Border Patrol's mission traditionally has not been defined to handle the intensity or level of violent threat that the drug cartels and their Hezbollah counterparts pose, nor the serious nature of the infiltration that has begun to affect our national security. In juxtaposition, the National Guard is well trained and over 470,000 strong, with a long history of supporting the Border Patrol, since 1993 consistently. In the early years, the Guard predominantly built and maintained border fences and bridges. In 2006, on publicly designated federal land (not wilderness), the Guard helped secure the Yuma sector of Arizona in an unusual operation that played to some of the best talents of both the Border Patrol and Guard: the ability to defend, apprehend, and rescue huge numbers of illegal crossers.

Operation Jumpstart, from 2006 to 2008, was premised on the National Guard playing a pivotal role in search and rescue, hot pursuit of smugglers, reconnaissance, and the building of over 100 miles of effective fencing. The result was that Yuma went from the Border Patrol being outnumbered by 50-to-1 on a daily basis and assaulted daily by smugglers of all kinds with rocks, vehicles, and guns, to a 94 percent drop in apprehensions and a manageable sector. Yuma today provides a model for success in securing a border sector, as San Diego did in years past.

The National Guard is trained to deal with difficult terrain, weather, and exigent circumstances. They can do more than be "frozen binoculars" (look but not pursue), which is essentially their tasking in their more recent Obama administration deployment, which only deployed 532 Guard for the 646 Arizona border miles. Just to put those numbers in context, the Yuma Guard mission deployed 5,000 Guard on 126 border miles. The time frame was also significantly curtailed, to less than a year.

We have more than doubled the Border Patrol since 9/11, and are now approaching 20,000 agents.

With enhanced technologies and a common operating picture, that number should be sufficient. However, with drug cartels outsmarting the Border Patrol by stashing scouts in high Arizona hills to increase safe passage as far north of the border as 80 miles while scaring Americans (and brutalizing Mexicans) with heinous murders on the Mexican side of Texas border towns, the Border Patrol may not be outmanned as much as out-gunned and out-smarted with sophisticated intelligence operations and willingness to be violent, both geared toward successful illegal entry. This is just one of many reasons why the Texas Department of Public Safety is currently consumed with doing Border Patrol work themselves.

Recommendation. Using Operation Jumpstart as a model, the National Guard should be deployed to support the Border Patrol and work alongside state and local law enforcement already deployed to the border, helping to augment the Border Patrol's mission to achieve operational control of vulnerable border regions.

Recognize the Value of a Common Operating Picture: The Technology Exists and the Research Money's Been Spent

Enhancing the Border Patrol's ability to operate successfully, safely, and efficiently was a goal of the government's 2004 Border Strategy. However, even in 2009, streamlined operations seemed frustratingly out of reach. The technology necessary that would act both as operational intelligence and a force multiplier, while making operations safer, was still being researched and piloted. It was not until the second series of pilots to the much-maligned Secure Border Initiative employed in two Arizona remote sectors — in Buenos Aires Wildlife Refuge in the Tucson sector and in Organ Pipe Cactus National Monument in the Ajo sector — that the Border Patrol had a chance at fulfilling 2004 strategic goals. Together, the two sectors have installed a 53 border-mile network of towers, sensors, radars, and other devices that communicate with a central control room in each of the two sectors, providing a "common operating picture" minus the kinks in the system that were so heavily criticized with the initial SBI pilot.

The current version of SBInet in Arizona's Tucson and Ajo sectors — areas trampled by smugglers — provide 80 percent visibility from a control room in places that patrols could previously only see in person. With the new technology, the agents gained "situational awareness," the ability to see illegal activity in real time and decide when and how to interdict. With it, the Bor-

der Patrol could cut the number of agents needed in the field at one time from 24 to just four.

Instead of embracing this new tool, where all the research and development monies have already been spent and reproductions are ready for roll-out, Secretary Napolitano instead decided to waste the R&D, claiming the system did not work well, and announced an end to the program in early 2011. This is the harsh language of Senate appropriators on why they depleted border technologies accounts this year, including specific reference to common operating picture technologies, on p. 44 of Senate Report 112-74:

“Border Technology Deployment Delays

“The Committee recommends \$400,000,000 for Border Security Fencing, Infrastructure, and Technology, \$127,623,000 below the request.

“Since fiscal year 2006, the Committee has been a strong and active supporter of the efforts to secure our Southwest Border through a strategic combination of fencing, tactical infrastructure, and technology, combined with a doubling of the size of the Border Patrol. In fact, at the initiation of this Committee, the Congress has appropriated \$1,909,500,000 in regular, supplemental, and emergency funding above the amounts requested by this and the previous President for this account. These funds have been used to construct the 650 miles of fencing and border infrastructure mandated by the Secure Fence Act, as amended, and they have been used to bring more technology and security to Border Patrol agents than has ever been available.

“The Committee is extremely disappointed that the administration has on two occasions delayed deployment and expansion of security technology along the Southwest Border. As a result of these reviews, more than a year of technology deployment activity has been lost to numerous reconsiderations and reviews. This has resulted in the funds provided by Congress for deployment of border security technologies — including existing systems which have been proven to work along portions of the border for years — sitting in accounts in Washington until a grand solution was determined. These delays and reviews have resulted in the Arizona Border Surveillance Technology Plan announced by the

Secretary in January 2011. Deploying, in many cases, the types of existing and basic technologies called for by the Congress over the past three years, this solution will cover the Arizona border — by 2015. *This is four years later than the estimated deployment of technology along the entire Southwest Border as originally envisioned by the now cancelled SBInet.* [emphasis added] The reduction is based on high levels of unobligated balances. As of July 31, 2011, the program had more than \$440,000,000 available in unobligated balances.

For agents assigned to the Tus-1 SBInet sector in December 2010, on-the-job murder of colleague Brian Terry just east of where SBInet is deployed, the technology was providing unprecedented safety. Agents no longer feared being outnumbered by groups of smugglers or not knowing whether smugglers were carrying guns or drugs. Agents knew ahead of time and were planning reactions accordingly. SBInet was planned for the desert flatter lands south of where Agent Brian Terry was killed in December 2010, but its deployment never happened. If it had, Terry’s special BORTAC group would not have needed to be in the mountains east of Tuscon’s SBInet; the criminals could well have been detected and interdicted safely in the desert south of Terry’s encounter.

Mike Fisher, Chief of the Border Patrol, [testified in 2010](#) about the Secure Border Initiative before House Homeland Security Committee, lauding the second (fixed) pilot of the “common operating picture.” This is what he said in a videotape of that testimony:

“One of the things that impressed me when I first saw this — when the com-ops [common operating picture] were being put together — was the clarity of the picture. What really impressed me from an operator’s perspective was the sense of how protected the Border Patrol agents in the field are going to be because of this.

“Again, not projecting long term that this is a silver bullet, but what impressed me was the fact that an operator, a Border Patrol agent, back away from these smugglers, was able to provide in advance information to the BP agents in the field in real time, relaying that info in real time, enabling them to move back up in advance to the location, and providing cover and concealment and oversight that we have not had in the Border Patrol before ... it does look promising.

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It has given us a better sense of general situational awareness in addition to clarity in seeing what is going on.

“We are more effective. We are seeing it is increasing our capacity in a number of ways. It is helping us learn what is happening on the ground and two, teaching BP agents a new way of thinking of about the threat. Early indications it is helping us achieve our overall objectives and gives BP agents a better perspective on their job.” [Transcribed in December 2010 when link was live on the CBP site.]

Subsequently, Chief Fisher did not publicly discuss SBI. Mr. Borkowski, who later spearheaded canceling the project under the guidance of Secretary Napolitano, said this at the same hearing:

“One of the things this system provides that nothing else we have seen or been shown does is it allows a system to know and see four or five or six groups all at same time and deploy resources to deal with each of those, and in fact kinds of things that agents tell us about such as drug smugglers waiting for another group to come through so they can move in behind them in an effort to divert the Border Patrol, so that BP can deploy resources properly, is all new. That opportunity to see this all in one place ... in one central location ... looks like this is very significant.

“Immediately after the cancellation of SBInet, the Ajo and Tucson sectors began quietly releasing information about apprehensions and rescues that likely would not have occurred but for SBInet’s ability to provide a common operating picture in remote areas, including portions of national parks mentioned above. The Ajo Border Patrol sector has publicized its apprehension of three large groups of illegals totaling 295 individuals using video operators and surveillance systems during the spring of 2011. Those press releases have stopped.”

These catches represent abnormally high numbers of illegals in single groupings crossing the desert before the heat of spring rolls in. Two prior blogs ([here](#) and [here](#)) report those apprehensions, with the first showing a map of the exact location of Ajo’s SBInet (Secure Border Initiative) towers, likely responsible for this snag

as well. Department of Homeland Security Secretary Janet Napolitano canceled the program last month. Note in [this newspaper report](#) the Border Patrol’s emphasis (once again) on the importance of the technology to this success:

“Border agents apprehend group of 91 illegal immigrants near Ajo

“Border Patrol agents apprehended an unusually large group of illegal immigrants Tuesday night 15 miles south of Ajo, authorities said.

“Agents using a radar-based surveillance system found 90 men and a woman in the Arizona desert, said Agent Colleen Agle, a spokeswoman for Border Patrol Tucson sector.

“‘We don’t typically see groups this size,’ Agle said. *‘Our technology is so advanced it’s hard to go undetected, especially a group that big.’*

“‘The group was found walking north about 7:45 p.m. Tuesday,’ Agle said. All 91 illegal immigrants were from Mexico, according to Border Patrol.

“The group was found with the help of members of Operation Trident, which uses resources from the National Park Service and U.S. Fish and Wildlife on joint patrols, the agency said.” [Emphasis added.]

What is unusual about this report is not only that it once again references the importance of technology, but adds in an acknowledgment of a working relationship between the National Park Service and the U.S. Fish and Wildlife Service with the Border Patrol, which often do not work together or when they do, it is not publicized. Such a reference may indicate a growing cooperative relationship that is spurred by the full deployment of SBInet in Ajo about a year ago.

Designed to be environmentally sensitive and help prevent Border Patrol from making unnecessary treks in national parks and wildlife refuges, SBInet has garnered the support of the most senior environmental law enforcement officials in the southwest. Why? SBInet helps assure that when the Border Patrol does pursue an apprehension, they do so (1) with the blessing of the Department of Interior from the outset; (2) have the operational intelligence to know a pursuit will yield results; and (3) can plan the apprehension in a way that takes en-

vironmental concerns into account. SBI-net helps lower the tension on issues of land designations that have kept the Border Patrol off such lands on a regular basis for years. While legal changes are absolutely necessary, technology is clearly not just helping the Border Patrol do its job better, and helping the environment, but improving long-standing tension between federal government bureaucracies.

In sum, the United States has to change the expectations of drug cartels and illegal migrants that if they just go to the undetected entry point, they will get through. Tactical equipment, alongside fencing and SBI-net, could allow the Border Patrol unprecedented opportunities to achieve operational control. That is doable now for the first time ever in our border history. Let's do it.

Recommendation. The concept of a “common operating picture” for the Border Patrol, regionally where feasible, should be revisited and incorporated into a Border Strategy. The technology that has been researched, pilot-tested, and successfully deployed, along with adequate fencing, and other sensing detection technologies for tunnels, maritime, and ultralight detections, are key aspects to achieving operational control of the border. At the same time, in tight budgets, CBP can look toward greater efficiencies in apprehensions and personnel deployment, while increasing agent safety and saving lives of stranded illegals.

Recommendation. The expedited acquisition of readily-available tactical equipment should be encouraged where geography puts fencing and a common operating picture scenario out of reach. Such deployment could also help support a profound change in operational control, changing the illegal cross-border culture, combating organized crime, including drug cartels, alien smugglers, and human traffickers.

Preventing Terrorists from Embedding inside the U.S.

Americans do not want terrorists within our borders. The concept conjures up visions of 9/11 and the few dozen foiled terrorist plots since 9/11. Thus, a vital element of security — both perceived and in reality — must be the prevention of terrorists from embedding, which is the ultimate goal of some terrorist's travel who may be awaiting orders to operationalize, or have other duties such as radicalization and recruitment, fundrais-

ing, or involvement in criminal enterprises, or buying of dual-use weaponry or equipment.

The unfortunate fact remains that any terrorist who has remained clean from law enforcement runs a good chance of not being known by intelligence or if known, left alone. It thus remains relatively easy for a terrorist to obtain immigration benefits once here. Policies that endorse not enforcing immigration law across the board also support illegal embedding — the same illegal embedding tactics used by the 9/11 hijackers and all the other foiled foreign-born terrorists before and since 9/11. If you open the population to illegality, the population is opened to terrorists too.

The panoply of interior enforcement issues, including worksite enforcement and detention and removal policies, state passage of immigration enforcement laws, immigration court resources and increasingly mandatory use of programs such as E-Verify, and the failure to deploy state and local immigration training and immigration authority programs nationwide through 287(g) all reflect vulnerabilities that had begun to be closed in a post-9/11 environment, now being reopened. The result is a substantial complication to creating an atmosphere that discourages illegal, and thus terrorist as well, settlement and embedding.

On that note, there are two 9/11 Commission recommendations, ironically the same two picked by the 9/11 Commissioners in their [9/11 Tenth Anniversary Report Card](#), that go the furthest in discouraging illegal embedding while encouraging self-deportation. The first is establishing an exit-tracking program for foreign visitors that will go a long way to encourage self-deportation, minimize overstays, and help track terrorist travel. The second is implement measures that apply equally to all persons, protecting legitimate U.S. persons and helping snuff out identity thieves and fraudsters; these are the full and complete implementation of minimum driver's license security and vital record digitization laws.

Establishing an Exit Program at Air Ports

The 9/11 Commission recommended a biometric and comprehensive screening system of foreign visitors, including an exit-tracking system, based on findings of fact that determined the intelligence community was unable to find two 9/11 hijackers in late August 2001, in large part because there was no way to know whether they had left the country after entering in 2000. Their trail went cold, law enforcement shrugged off trying to find the two, and 9/11 happened.

The irony was that Exit was already law. Even though the 9/11 Commission proved that Exit has value

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beyond overstay statistics and should be prioritized, today the program still sits on the books. There have been discussions, policy platforms, even pilots, but to this day, we do not have an Exit program.

In the last two years, the Christmas Day Plot and the Times Squares near getaway by Faisal Shahzad, who had already boarded on an international flight leaving the United States when arrested, acted again as reminders that immigration data can play a key role in national security.

The politics and practicalities of employing Exit has made it difficult to implement. Not until 2009 did real technology choices become available to meet the mandate, at least at international airports, where technology is ready for deployment if a decision can be made. (The land ports remain a bit of a quandary due to infrastructure issues. Therefore, for practical reasons, they are left out of this discussion.) In addition, politically, Exit is tied into issues pertaining to biometric entry, called US-VISIT; the Visa Waiver Program; our national views on identification, biometrics, and privacy; and government allocation of resources and infrastructure that differ substantially between air and land ports of entry.

In 2000, two separate laws were passed, one that set up Exit and the other that tied it to the Visa Waiver Program. In 2001, the USA Patriot Act chimed in again, demanding Exit. In 2002, the Border Security Enhancement law again required Exit, and in 2004, the intelligence reform act emanating from 9/11 Commission recommendations included it again. Beginning in 2004, and until 2007, pilot programs for Exit were undertaken at the demand of Congress. The technology worked, but compliance rates were low since the kiosks were not manned by government and not clearly mandatory.

Then in 2007, the 9/11 Commission Recommendations Act reiterated the need for Exit and required Exit apply to all foreign nationals entering under the Visa Waiver Program, adding in a biometric component, as opposed to merely a name check. The basic idea behind a biometric Exit requirement was to reassert the 9/11 Commission recommendation that the federal government assure that people are who they say they are in real time, and that no derogatory information be linked to them to prevent departure.

Data gathered — depending in part on whether the data was gathered and vetted in real time — would provide overstay data and watchlist hits. Overstays would give CBP and State better data to determine who gets to visit the United States again, and ICE better information about who returned or illegally overstayed. Exit data would give the FBI's Joint Terrorism Task Forces the ability to curtail terrorist absconders who sought to

slip out of the U.S. unnoticed based on verified watchlist hits — akin to what we saw with the Times Square bomber. US-VISIT, the DHS program that takes 10 fingerprints and a digital photo of foreign nationals when they enter the country, seemed the perfect fit to do a biometric Exit.

Then in 2008, DHS put out a proposed rule-making for the “Collection of Alien Biometric Data Upon Exit From the United States at Air and Sea Ports of Departure,” but it put the onus on airlines to collect biometric data anywhere in the international departure process, with no money. The airlines balked. A viable Exit system was far from implementation.

In 2009, congressional appropriators, clearly frustrated by the lack of progress in implementing Exit, required two airport pilot programs before appropriating money for a fully implemented Exit.

In June 2009, US-VISIT conducted the required pilot programs at Detroit and Atlanta. One tested TSA checkpoints, the other required CBP to screen departures on the jetway. Both went very well, with no increase in processing time that amounted to missed flights, or even flow time or longer lines. Those processed complied. Overstays and watchlist hits were found even in the small pilot populations tested. The technology worked. Overall, the Air Exit pilots confirmed the ability to biometrically record the Exit of those aliens subject to US-VISIT departing by air.

In October 2009, the appropriations committees received the evaluation report from US-VISIT as required by law. However, DHS Secretary Napolitano has firmly stated her disinterest in implementing Exit, stating that the “added value and expense of a biometric Exit program is dubious at best,” and that the nation is better off at looking at other options, like biometrics taken when an illegal is criminally arrested under Secure Communities. (See colloquy between Secretary Napolitano and long-time Exit advocate Dianne Feinstein during a Senate Judiciary Hearing on December 9, 2009, [minute 111](#).) Napolitano further states that our current airport exit data from passenger manifest lists is sufficient, even though such data is not real time, is wholly reliant upon airlines, and does not necessarily match passport, biographic, and identity data with entries to create clear histories on who is coming in and when, and who is leaving and when.

However, there are solutions to Exit, and those solutions reside in the 2010 unreleased internal reporting by DHS discussed above showing how efficiently and reliably technologies work, whether with CBP or TSA. Secretary Napolitano is well aware of the success of these pilots, and that is likely one solid reason why the

US-VISIT reports findings submitted to Congress a year and a half ago were never summarized and made public.

To move the issue to resolution, the discussion heads in two directions: either give the mandate to CBP, substantially adding cost and additional duties to an already insufficient inspector allocation at airports that would cost millions annually to retain, requiring them to conduct outbound, roaming processing on the jetway, or give it to TSA who already has personnel in place to check IDs at security check points. Just as importantly, putting the onus on TSA helps further take the airlines out of the business of conducting security. There is also a huge boon to aviation security by having TSA fulfill the Exit mandate.

The TSA model would enable the government to enhance the current practice of physical screening with actual identity screening as well at the checkpoint. Currently, Secure Flight is pinged at check-in through the airlines. If Secure Flight, immigration, and criminal watchlists were pinged during an Exit passport check (which means running the passport through a reader that also takes a digital photo or fingerprints) at the TSA security checkpoint instead, Exit data would serve two important purposes that are not currently served: (1) accumulate Exit data; and (2) determine if additional screening is necessary based on watchlist or biometric hits in other criminal or immigration databases that contain derogatory information. This would replace TSA's two-tiered secondary inspection method being used today: blind "random" physical screening or a narrow Secure Flight hit conducted by the airlines.

Essentially, a revamped TSA system could meet the goals of Exit while significantly improving aviation security, killing two birds with one stone. In addition, TSA would be privy to the immigration, travel document, and watch list information only CBP has access to today, better informing aviation secondary screening decisions. There are potential issues here, however. A TSA checkpoint could amount to a check that the passenger has departed the country, when in fact a foreign national could simply turn around after screening and leave the gateway immediately. However, if that happens, the flight manifest list would pick up the anomaly.

In addition, TSA is part of the government, not private airlines, and thus data is better protected. Most importantly, TSA would benefit significantly from more robust screening of identities, and determinations of whether terrorist information is associated with a passport while a person is going through security with watchlist "pinging." Remember, a terrorist is a terrorist whether not he has been operationalized and is, on this particular flight, carrying a bomb. Yet right now,

TSA focuses on physicality — cargo and a person's body — but does nothing more than use a flashlight on IDs presented or rely on the airlines' ID review at check-in. Even while the airlines' watchlist checking is significantly improved with the federal government now supplying the Secure Flight watchlists at check-in, a far more robust and secure system would be to have TSA holistically screen, and that screening also include a biometric Exit data forwarded onto US-VISIT. Such a system would have prevented the Times Square bomber, Shahzad, from having to be stopped on the tarmac, nearly safely out of the country while trying to abscond. He would have been stopped by TSA initially, and not been able to board at all.

As to potential objections, the TSA pilot program found no problems with compliance, longer lines, or border inspection cooperation and management alongside TSA personnel. If the immigration processing were integrated into aviation security processing, aviation screening would be stronger, plus our nation would finally fulfill its Exit mandate and supply customers of Exit data — CBP, Immigration and Customs Enforcement, US Citizenship and Immigration Services, the State Department, the FBI, the intelligence community — key information they have been lacking.

As Stewart Baker, former DHS Assistant Secretary for Policy, [states](#), "We should not devote too much effort on designing an absolutely escape-proof Exit recordkeeping system. Instead we should keep our eye on the security ball. There are manageable ways to get a workable Exit system that adds to security, and we just need to do it." In other words, while arguments may abound about foreign visitors checking-in with the airline, going through TSA, then turning out of the gateway and not departing, such concerns are minuscule compared to the win-win of enhancing both aviation security and providing Exit data that is important to both policy development, intelligence, and law enforcement information gathering.

Recommendation. Implement Exit at TSA checkpoints in a manner that both completes the legal Exit mandates while also providing operational intelligence for TSA secondary screening. A TSA Exit will apply equally to all travelers; minimize TSA's wasteful, blind, random screening at international checkpoints; and increase significantly the opportunities to stop a terrorist from traveling.

REAL ID Implementation

While driver's licenses and birth certificates remain a tool sought by terrorists to support jihad in the United States, Secretary Napolitano supports repealing driver's license and birth certificate standards supported by 9/11 Commission recommendations. Ironically, in my January 2011 report, "[REAL ID Implementation: Less Expensive, Doable, and Helpful in Reducing Fraud](#)", information I received quietly from inside of DHS showed that 41 states, plus D.C., have embraced REAL ID implementation even without DHS support or new monies. Subsequent information showed that at least 32 have reached the first threshold of implementing the 18 key benchmarks. Nearly one-third have submitted packages to DHS showing full compliance. Today, even a last holdout, New Mexico, is currently desperately trying to get compliance legislation passed in its state. Even so, this administration bucked compliance to the next administration, to January 2013, a deadline already delayed twice before by the Bush administration.

Eighteen of the 19 hijackers obtained 30 state-issued IDs amongst them that enabled them to more easily board planes on the morning of 9/11. Due to the ease with which fraud was used to obtain legitimate IDs that helped the hijackers embed for the purpose of carrying out a terrorist act, the 9/11 Commission recommended that "The federal government should set standards for the issuance of birth certificates and sources of identification, such as driver's licenses."

Another reminder of why securing driver's license issuance is important to national security was revealed on February 23, 2011, when the FBI filed an extensive, detailed [criminal complaint](#) with a tremendous amount of forensic evidence indicating that a Saudi foreign student, Khalid Ali-M Aldawsari, who entered the United States on a student visa, had done so for the sole purpose of using our educational and visa system to commit major terrorist acts. His targets included former President Bush's home, dams and other key infrastructure, intending to use a variety of homemade car bombs assembled with knowledge gained in chemical engineering classrooms and chemicals and materials purchased here in the United States. What did Aldawsari intend to use in order to embed in the United States and avoid detection? Multiple state-issued driver's licenses and a U.S. passport based on fake birth certificates, not a particularly dissimilar method to the 9/11 terrorists. The Khalid Ali-M Aldawsari criminal complaint specifically mentions that his plan for jihad depended in part on well-known terrorist travel methodology — obtaining U.S.-issued IDs:

"In a 'synopsis of important steps,' ALDAWSARI listed: obtaining a forged U.S. birth certificate; applying for a U.S. passport and driver's license; traveling to New York for at least a week; renting a car via the Internet; changing clothes and appearance before picking up the car; using a different driver's license for each car he rents; preparing the bombs for remote detonation; putting the bombs into the cars and taking them to different places during rush hour; and leaving the city for a safe place. [p. 10]"

The Aldawsari case shows that not much has changed in the world of terrorist travel since the publication of the [9/11 Commission Report](#) and the supporting staff monograph, [9/11 and Terrorist Travel](#) — driver's licenses are still an important tool in the terrorist's toolbox, whether a lone actor or a member of a larger organization. Aldawsari is a significant example of why it is important to prevent fake birth certificates and other lies about identity from being used to obtain legitimate state-issued driver's licenses. It is important to remain vigilant about assuring that people are who they say they are. At its base, that is what the REAL ID Act is about: assuring that driver's license applicants are who they say they are, from the sum-total of the identity documents they present as applicants.

Recommendation. Finish REAL ID implementation by not further delaying compliance with the law; the states are pursuing REAL ID for their own reasons of minimizing fraud, catching criminals, keeping out illegals, and honing budgets for future years. Maintain a separate account for REAL ID at DHS, and do not permit it to be rolled over into state homeland security grants. Last, fund REAL ID compliance to reimburse implementation in a fair and equitable manner.

Birth Certificate Standard Implementation

The 9/11 Commission also recommended minimum standards for birth certificates, for reasons made evident in the above excerpt from the Aldawsari criminal complaint. In February 2011, I took an updated look at birth record standardization in "Update on Digitization of Vital Records." Today, there are 34 states online ready to perform interstate birth certificate verification for DMVs and other government customers. In addition, the Social Security Administration uses digitized vital records as they come online to verify identities in every state, as do state public health and human resource departments.

If states want to shore up against attempts by terrorists such as Aldawsari, criminals, and illegal aliens, they should provide DMV connectivity to vital record checks as soon as practicable, even though it is not a strict requirement of REAL ID. Vital records can also help minimize fraud in E-Verify, where currently many hires present driver's licenses that employers cannot verify; "date of birth" checks on those driver's licenses would go a long way to reducing the fraud that illegal aliens are still able to use to game the system.

Recommendation. Issue regulations for minimum standards for birth certificate issuance that have been waiting to be published for five years. Continue to support the digitization of vital records in every state, with connectivity required to every DMV and other state. To do so, REAL ID should be modified to require that DMVs check digitized vital records when vetting an applicant's identity. The \$100 million it would take to complete the digitization process could be funded by E-Verify, a program that would benefit significantly from vital records checks, minimizing the need for an entire new worker authorization ID that would likely cost billions to implement and years to put in place.

Conclusion

We have better borders today, but we will not have secure borders unless we choose to underscore the importance of a *comprehensive border strategy* whose principles are applied equally to all foreign visitors in all facets of the border system. Within this border strategy fundamentals must be focused upon — those that provide the most benefit across the board in curtailing terrorist travel. Doing so creates efficiencies throughout the system because so much of the strategy is based on getting physical access or information to frontline officers so they can do their job better, minimizing fraud, or deploying assets strategically to get the most bang for today's tight buck.

Must priorities exist? Yes, but that does not mean whole facets of security become undone pertaining to huge swathes of the foreign population. Terrorists can needle themselves into any variety of haystack — any nation, any U.S. community, any ethnicity. We will not have secure borders when policies of "acceptable illegal immigration" and administration-mandated amnesty are swapping out solid immigration enforcement and identity programs that reflect 9/11 Commission findings of fact and recommendations aimed at securing borders. Current lax immigration policies need active reversal, or we risk our nation's safety to terrorists all over again.