Identifying, Screening, and Tracking Aliens

The fatal gap in the anti-terrorist shield

by David Simcox

A senior official of the Immigration and Naturalization Service (INS) told Congress that the 1993 Islamic terrorists' attack on the World Trade Center had been a "wake-up call" for his agency. He might have noted the alarm bells that also rang with the 1993 terrorist killing of two Americans and wounding of three by Pakistani asylum seeker Mir Aimal Kansi outside CIA headquarters in Langley, Virginia. Since those events INS has received a number of important new legislative and regulatory authorities and mandates to better monitor and screen the country's 30 million foreign-born residents and the 325 million temporary entrants coming in each year."

America's 'Alien and Sedition Act Hangover'

Despite the alarm bells of 1993, the INS and Justice Department and Congressional leaders on law enforcement and anti-terrorist concerns have in some cases slumbered on. Congress and the White House themselves have at times impeded or reversed some of the tighter controls legislated in 1996 in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and other provisions in legislation dating back to the Immigration Reform and Control Act of 1986.

Senior FBI officials have detailed repeatedly and clearly in Congressional testimony the existence of Middle Eastern terrorist and espionage rings inside the country, such as Hezbollah, Hamas, Islamic Jihad, Al

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Qa'eda, Egypt's Al Gama' Islamyya, and the hard-line Iranian student organization Anjoman Islamie. But the focus of their concern has been on monitoring them, rather than on how they got here and how they can be removed.[1] Similarly, the State Department's 2000 Report on Global Terrorism details the origins and overseas activities of these groups, but has little to say about their numbers and activities in the U.S. or their members' methods for entering and establishing themselves in the U.S. — notwithstanding State's key responsibility of screening U.S.-bound visitors.[2]

America's political leaders have never seen much political opportunity in laws controlling and monitoring the political behavior of aliens in the United States. The nation suffers from a two-century old "Alien and Sedition Act hangover." The outer limits of individual freedom, privacy, and civil rights have steadily expanded in the popular mind since the Vietnam era, along with a willingness to extend these values to aliens just joining or seeking to join our society. The beatific vision of an "inclusionary society" has at times edged out ordinary prudence. Rising anti-regulatory instincts, coupled with the tight labor market of the middle and late 1990s, reinforced the aversions of opinion and business leaders to controls, nearly nullifying employer sanctions legislation.

September 11, 2001, should have been the shrillest and most imperious alarm bell of all. A solid eighty percent of those polled by CBS-New York Times immediately after the trade center bombings agreed that it is too easy for foreigners to enter the U.S. Of the nineteen known hijackers, fifteen entered with visas through legal ports of entry, though a number overstayed. Some were admitted despite being flagged somewhere in federal lookout databases. Several entered on stolen passports. Most easily acquired drivers licenses even

though out of status and misrepresenting their identities. And some detainees acquired the more carefully screened Commercial Driver's License, allowing them to drive hazardous material trucks. The extent of the terrorist groups' illegal presence in the U.S. is apparent in the more than one hundred suspects and possible material witnesses that INS has been able to hold on immigration violations.

The record of immigration control during the last decade and a half shows a pattern of Congressional willingness to adopt mildly restrictive legislation and then either weaken it with provisos and amendments, delay implementation, or fail to provide the funds and political backing to carry it through. Will September 11 awaken Congress and the public to the essentiality of immigration controls to national security and tranquility? Or will they resume business as usual as they did after the 1996 legislative efforts?

This moment of public alarm and shifting perceptions in an endangered nation calls for an assessment of major immigration ID and tracking systems — existing or proposed — to determine how they might be strengthened to meet the threat, put into place more quickly, or moved forward from the recommendation stage.

Uniform, Reliable Identification for All Americans, Legal Residents, and Visitors

Fully seventy percent of respondents told Pew Research Center pollsters following the New York terror that they would favor a national ID card to be carried at all times and shown to police on request. While this is somewhat higher than before September 11, previous polls in the 1990s have regularly shown a solid majority favors national ID.[3]

But in Congress the term "national ID card" is regularly used as a lethal epithet against most measures to improve national identification. Probably the most important casualty of this psychosis was the 1996 law mandating the recording of drivers license applicants' social security numbers and their verification by the Social Security Administration (SSA). Labeled as an effort to "federalize" the state driver's license and "create a national ID card," the provision was first delayed then rescinded by hostile lawmakers.

Illustrating our off-again on-again approach toward better ID is Congress's recent effort (H.R. 4857) to forbid states to use the social security number at all in drivers' licenses or their accompanying databases. The more than twenty states now using the social security number in licensing would be required to cease by 2003.

The irony is inescapable. Those who opposed higher security standards for drivers' licenses by arguing state prerogatives have ended up denying states the right to set their own license security standards. The legislation also proposes other measures to restrict federal, state, and local agencies' use of the social security number. To its credit, Congress did enact legislation (S.2924) in 2000

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that bans the Internet sale of false driver's licenses and other ID documents. The law closes a loophole that has allowed Internet purveyors of counterfeit documents to claim that they are sold for "novelty or entertainment purposes only." At this point, upgrading and verifying our de facto national ID, the driver's license, is the most readily available and practical option for promptly developing a uniform, secure ID.

SSA in 1997 fulfilled its 1996 legislative mandate to present the options for making the social security card a counterfeit-resistant, tamperproof, biometric-based national identification document. SSA's 1997 study[4] presented seven plausible options varying in their degree of technological wizardry. The costs SSA estimated for equipping nearly 300 million Americans and residents with the card ranged from $3.9 billion to $7.3 billion. The concept remains just that, a concept. Neither the Bush Administration nor SSA so far have indicated interest in following up on it and Congress, in HR 4857, has seemed more interested in restricting the use of the social security number as an identification tool.

Birth and Death Certificates and other Vital Records

A reliable national identification system (which would not necessarily involve a card) remains a pipe

dream in the absence of more reliable and secure government breeder documents. Here, as elsewhere, recent progress to improve the integrity and uniformity of vital records has been spotty, notwithstanding explicit direction in the 1996 immigration reforms. Section 656 of IIRIRA and various amendments designated INS as the lead agency in a federal-state working group to develop and issue regulations setting security standards birth certificates must meet for acceptance by federal agencies.

The act also tasked the Department of Health and Human Services (HHS) to work with the states, using grants, to develop a system for matching birth and death records and rapid (electronic) reporting of deaths. SSA, no longer in HHS, has made more progress than INS, though both lag far behind the time frame envisaged by legislators. State vital statistics agencies, and their professional association in Washington, with a grant from SSA, are well along on a pilot for electronic reporting of deaths. A pilot for electronic reporting of births is in the planning stage. INS, however, and its collaborating state and federal agencies, are still far from setting federal standards on birth certificates.

Most of the progress toward more secure vital records in the late 1990s is due to the work of the state vital records and motor vehicle agencies and their professional associations, the National Association of Public Health Statistics and Information Systems (NAPHSIS) and the American Association of Motor Vehicle Administrators (AAMVA). NAPHSIS and its member agencies have cooperated with the State Department on systematizing verification of suspect birth certificates of passport applicants. AAMVA has been working since 1994 to establish a model program for uniform identification practices for state agencies to help them to combat fraud. Among their goals: To see each state's MVA linked electronically with SSA, INS, and vital record agencies for rapid exchange of information on individuals and documents. AAMVA shares the general view among professionals in the field that document fraud cannot be effectively curbed until there is electronic verification.

Despite continued difficulty with applying computerized information systems, the INS has made considerable progress in modernizing and securing its own alien ID and data systems. In the past decade, the agency has adopted tamper-resistant Permanent Resident (green) cards and employment authorization cards. Both now have expiration dates. INS and the State Department instituted a combination tourist visa/border crossing card, using laser technology. INS has also invested heavily in forensic research and scrutiny on questionable documents, and more training of government and private sector document inspectors to recognize fraud. INS's and the State Department's emphasis on machine-readability of ID documents improves databases and watch lists with their rapid and

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accurate capture of high volumes of individual case data.

In the past decade INS has installed IDENT, an automated fingerprint identification system (AFIS), to collect data on captured illegal aliens. The system is promising. It was not technical failure but lack of staff training that caused INS's embarrassing failure to recognize and hold fugitive Mexican serial killer Maturino Resendiz in June 1999. An unamused Congress ordered a five-year project to combine IDENT with the FBI's fingerprint identification system.

NATIONAL SECURITY CONSIDERATIONS:

SSA and the states are moving haltingly in the direction of higher standards for breeder documents as envisaged in the 1996 act. Problems are lack of money and staff, privacy objections, local politics, revenue issues and, more recently, legislative moves to limit use of the social security number.

• *Public pressure is needed to get greater urgency into these projects and, particularly, to move INS to produce timely rules on tighter federal birth certificate standards.*

• *The attempts of Congress to restrict state use of*

the SSN for drivers' licenses must be resisted.

• *More federal incentives and support are needed for the smaller states to match birth and death records and improve the security of those records.*

• *Federal-state agency networks for electronic verification of INS and State Department documents and state-issued documents are a must.*

Employer Sanctions and Employment Verification

Mere survival of the concept of employer sanctions in the face of employers' ravenous demand in the late 1990s for workers has been the only victory for immigration controls in this area. All parties now accept that existing verification systems requiring employers to check a welter of job applicants' ID and work eligibility documents, most of them subject to easy falsification, just does not and cannot work and is burdensome to employers.

Pilot projects of INS in the late 1990s tested a call-in system for verifying the eligibility of citizens and aliens to work in the U.S., a much-delayed step mandated by the Immigration Reform and Control Act (IRCA) a decade and a half ago. Using SSA data, the pilots produced promising indications that massive numbers of illegal aliens in some industries, such as meat packing, could be detected. But their very success heightened employer

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and congressional opposition and led SSA to put conditions on INS access to its data. There is now a virtual stand-down in immigration enforcement at the work place. And employers, now joined by labor unions, are pressing hard for a complete end to employer sanctions.

NATIONAL SECURITY CONSIDERATIONS:

• *With unemployment rising in 2001 and indications of higher public concern over the unchecked influx of aliens, now is a good time to work for a recommitment to employer sanctions, along with an SSN-based, call-in verification system.*

• *SSA must cease foot-dragging on workplace enforcement and recognize it as an opportunity to clean up its own fraud-plagued databases. Its own surveys have shown a rapid growth in the 1990s of contributions ("wage items") going into the "suspense file" because they cannot be associated with a valid social security number. From 1996 to 1998 6.6 million flawed wage items representing $27.4 billion went into the suspense file. Most involved unassigned numbers (even the legendary 000-00-0000), numbers used by two or more workers, and numbers not valid for employment. (One half of all the erroneous wage items come from just three immigrant-laden industries: agriculture in California and Florida, eating and drinking establishments, and services.[5])*

• *SSA should apply more rigorous penalties against employees who submit false numbers and employers who unquestioningly accept them. A good start would be to enact proposals to have wages reported under false numbers forfeited to the trust fund.*

Tracking Arrivals and Departures of Aliens

Nothing could be more basic for a modern state than knowing who is within its boundaries, particularly those who are not citizens. But the U.S. has rarely been comfortable exercising this faculty. The Attorney General ended the mandatory annual registration of alien residents in the late 1970s. Illegal aliens have surreptitiously settled here by the millions in the last three decades. At least forty percent of the settled illegal alien population of six to eight million did not sneak in to the country, but entered originally documented as temporary visitors. Some thirty million foreigners now enter yearly with temporary authorization, but there has been no process for determining if they leave, and in the case of those who come to study or work, no way of knowing whether they are doing what they came to do or where they are doing it.

A visa waiver authority for citizens of twenty-nine countries deemed to be low-risk for overstaying now allows seventeen million persons a year — more than half of all temporary entrants — to come in for up to ninety days without being vetted at all by U.S. consuls abroad. Legislation in 2000 made the waiver program a permanent feature of immigration law. The U.S. requires only that the waiver country give reciprocity and adopt a machine-readable passport. The waiver country's citizens forfeit the right to certain legal remedies to remain in the U.S., and of course must be from a country that at one time had a refusal rate on visa application in U.S. Consular posts of three percent or less. The increasing use of machine-readable passports eases INS's task of capturing a record of entry — though a number of visa waiver countries will not have passports that meet U.S. standards until as late as 2007. But whether or when those using this privilege actually depart the U.S. is largely unknown.

The waiver allows the State Department to save on visa officer positions, but the Justice Department is less enthusiastic about it. The procedure increases the time demands on its inspection staff at U.S. ports of entry. A further, growing problem is that the waiver increases the value of waiver country passports to prospective illegal entrants, criminals, and terrorists. Counterfeiting of visa waiver passports has flourished in frequency and sophistication.[6]

Section 110 of the 1996 IIRIRA aims at documenting the departures of temporary visitors. The provision directed the Attorney General to develop within two years an automated entry and exit control system for collecting a departure record of every alien and match it with an arrival record to identify visa overstayers.

The plan's subsequent fate is an example of Congress's ambivalence on tracking systems. Following its adoption, and reacting to the anger of U.S. border-area business interests, a coalition of border state legislators led by then Senate immigration subcommittee chairman Spencer Abraham of Michigan worked to delay

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implementation of the project and, later, change it from an action program to a pilot. Since snarled land border traffic to and from Canada was the dominant concern, INS was allowed to proceed with improving ongoing collection of departure records at air and seaports, where departing aliens are already required to surrender their I-94 entry forms (but often do not). The Clinton administration and INS itself showed little enthusiasm for pressing ahead with the system as originally enacted because of its size and scope and drain on manpower.

Five years after the passage of Section 110, immigration officials are authorized to verify departures of only a fraction of visiting aliens. Congress's latest reenactment of Section 110 (Public Law 106-215) in June, 2000, still showed no urgency in getting a system up and working. The latest law authorizes an "Integrated Entry and Exit Data System" to be in operation by the end of 2003 for the 210 air and seaports of entry, the end of 2004 for fifty of the 190 land ports of entry, and the end of 2005 for all 400 full service ports of entry. Congress insisted that the systems chosen must rely on existing data sources. It is uncertain how the Secretary of State and the Attorney General can develop effective systems at land ports of entry in the face of the law's explicit denial of authority to "…impose any new documentary or data collection requirements on any person."

NATIONAL SECURITY CONSIDERATIONS:

• *Washington would be justified in revisiting Section 110 to advance the effective dates at all categories of ports of entry and permit reasonable additional data collection.*

• *The visa refusal rate is an insufficient measure of a nation's suitability for a visa waiver. The visa waiver law provides for emergency revocation of the privilege to any country. This authority should be applied against countries whose passports show more than a minimal propensity to forgery or alteration.*

• *Revocation of the waiver should be mandatory for countries that the new entry-exit verification*

systems show have more than a negligible overstay rate. Reviews of country overstay rates should be made now using available INS information on sea and air departures.

• To aid data collection, the government should consider closing smaller ports of entry and exit and require that all overland entry and departures by non-NAFTA temporary entrants be limited to selected border crossing points.

Monitoring Foreign Students and Temporary Workers

Steven Emerson, an expert on terrorism, warned Congress in 2000 that at least two hundred terrorists' agents received student visas in the 1990s and have pursued graduate or undergraduate training here. It is now known that some of the terrorist pilots of September 11 received their training at U.S. aviation schools with technical training (M) visas. Emerson noted that terrorists and militants have used university student (F) or cultural exchange (J) visas to enter the U.S. for shorter periods, often with invitations to religion-based conferences and meetings of Islamic organizations. But their true mission is to recruit activists, raise funds, coordinate strategies, indoctrinate U.S. Moslems, and even in some cases train in terrorist tactics. Many are able to get the visas with false identification or by omission from or inadequate checking of U.S. watch lists.[7]

A 1998 report of the federal Commission to Assess the Ballistic Missile Threat to the United States stated that the "acquisition and use of transferred technologies in ballistic missiles and weapons of mass destruction has been facilitated by foreign students training in the U.S." FBI Director Louis Freeh warned Congress in 1996 that "some foreign governments task foreign students specifically to acquire information of a variety of technical subjects… And on completion of their studies are encouraged to seek employment with U.S. firms to steal proprietary information." FBI chief of anti-terrorism Dale Watson in 1998 cited Iran as a country whose government relies heavily on students in the United States for low-level intelligence and technical expertise.[8] Senator Diane Feinstein, who serves on the Senate's subcommittee on terrorism, has noted that between 1991 and 1996 the State Department issued 10,000 student visas to nationals of Iran, Iraq, Syria, Sudan, and Libya, all cited by the State Department as sponsors of

terrorism.

Given the euphoria of opinion leaders about immigration, and resistance from the universities and colleges, the proposal to create a system to track foreign students has lagged badly since its enactment in 1996. The law directed Justice, State, and Education to work

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together on a system to electronically collect information from educational institutions on the identity, address, academic status, and disciplinary actions of foreign students holding F, J, and M category visas from five countries. This phase was to be completed by January 1, 1998, and was to be financed by fees, paid by the foreign students, now set at $95 a year. A serious sticking point has been the refusal of colleges and universities to collect the fees. The INS will now do it. The full program will begin with the spring semester of 2002 and will apply only to students enrolled since 1999. Originally known by the acronym CIPRIS (Coordinated Interagency Partnership Regulating International Students), the system was renamed SEVIS this year (Student and Exchange Visitor Information System).

NATIONAL SECURITY CONSIDERATIONS:

Except for its four-year delay in implementation, SEVIS is an innovative and promising system for monitoring a particularly mercurial group of long-term, overstay-prone foreign visitors and holding the universities who recruit them more accountable for ensuring their compliance with long-neglected student visa law and regulations. It also adheres to the growing conviction in Washington that immigrants, whether visitor or temporary, should pay

much more of the cost of the services and oversight they receive.

• *The downside of the program is its refusal to address the sizable numbers of foreign students who enrolled before 1999, many of whom have fallen into irregular status. This limitation should be dropped.*

• *The successful testing and startup of SEVIS provides an opportunity to extend the system, or a similar one, to other temporary worker, student, or researcher categories that impinge on national security or the high tech economy and labor force. Long-term temporary categories that merit similar reporting and tracking, most of which are sponsored or hosted by U.S.-based institutions, would be treaty traders (E), professional and technical workers (H), journalists (I), intracompany transferees (L), and (R) religious workers.*

• *Bring the Departments of Defense and Energy into the interagency group running SEVIS to improve assessments of the transfer of sensitive technology through foreign graduate students.*

• *Suspend issuance of all student visas for one year and reduce the number of schools eligible to enroll foreign students, eliminating immigration and diploma mills and marginal vocational and technical schools.*

General Considerations and Recommendations

The terrorist threat will not wait for languorous interagency studies and pilot projects. Speed is vital. **Those systems already up and running must be put to full use. Those successfully tested must be installed rapidly**. *Resources will inevitably be a major consideration.*

• *The built-in tendency to treat immigration as a marginal security interest must be resisted, as should the temptation to draw on INS resources, such as Border Patrol officers, to more spectacular, but not necessarily more vital, duties.*

• *The INS cannot afford more disruption at this critical point. Plans for massive reorganization of the agency should be held in abeyance. Political leaders particularly should avoid imposing vast new*

immigration and naturalization benefit programs — such as amnesties, guest worker intakes, and broad humanitarian projects — that would divert the staffs of INS and the State Department from security and enforcement projects.

• *The most efficient way of monitoring prospective terrorists is to deny them entry in the first place. INS should get the funds and people to open pre-inspection stations at additional major foreign airports and to supplement the work of U.S. officers in posts of high visa demand.* •

NOTES

1. See testimony of Dale Watson, Chief, International Terrorism Section, FBI, to Senate Judiciary Committee, Subcommittee on Technology, Terrorism, and Government Information, Washington, 24 February 1998; also testimony of Louis B. Freeh to Subcommittee on Commerce, Justice, State, and the Judiciary, Senate Appropriations Committee, Washington, 4 February 1999.

2. "Patterns of Global Terrorism — 2000," Department of State, 30 April 2001.

3. David Simcox, "Screening People Electronically," *The Social Contract*, Vol. IX, No. 2, Winter 1998-99, p. 74.

4. *Report to Congress On Options for Enhancing the Social Security Card,* SSA Publication No. 12-002, Social Security Administration, September 1997.

5. Taken from www.ssa.gov/oig, 31 July 2001.

6. Testimony of Walter D. Cadman, INS Counter-terrorism Coordinator to Senate Judiciary Committee, Subcommittee on Technology, Terrorism and Government Information, Washington, 24 February 1998.

7. Testimony of Steven Emerson, Director of *Terrorism Newswire,* to Senate Judiciary Committee, Subcommittee on Immigration, Washington, 25 January 2000.

8. Ed Timms and Jayne Noble Sulder, "Security worries putting spotlight on student visas," *Dallas Morning News*, 20 September 1998.