'We Had No Idea That They Were Still Here'

Lawmakers seek answers to unimplemented recommendations and why America's border remains unsecured

The following statements are excerpts from congressional hearings of the House Committee on Homeland Security on The Rising Terrorist Threat and the Unfulfilled 9/11 Recommendation by Committee Chairman Rep. Michael McCaul (R-TX). Reps. Lou Barletta (R-PA) and Paul Broun (R-GA) are questioning key witnesses former New Jersey Governor and Chairman of the National Commission on Terrorist Attacks Upon the United States (9/11 Commission) Thomas Kean, and former Commissioner and Deputy Attorney General of the United States (1994-1997) Jamie Gorelick, July 23, 2014.

REP. LOU BARLETTA (R-PA): Thank you, Mr. Chairman.

As you know, the *9/11 Commission Report* makes several connections between enforcement of our immigration laws and national security. Page 98 of the report describes how terrorists would inevitably benefit from any form of legal status. Terrorists fear deportation, and they don't care about American citizenship. They simply need to find a legal way to remain in the United States.

Another section of the *9/11 Commission report* describes the importance of enforcing the immigration laws Congress has already passed, such as the establishment of an exit system to track visa overstays. The report describes how INS, now CPB, initiated but failed to bring to completion two efforts that would have provided inspectors with information relevant to counterterrorism, a proposed system to track foreign student visa compliance and a program to establish a way of tracking travelers' entry to and exit from the U.S.

The report urged full implementation of a biometric exit system. The report also describes how border security should not be seen as a bargaining chip in immigration reform, but rather a significant national security concern. The report states, indeed, after 19 hijackers demonstrated the relative ease of obtaining a U.S. visa and gaining admission into the U.S., border security still is not considered a cornerstone of national security policy. We believe that it must be made one.

The 9/11 Commission further noted on page 390 of its report that all but one of the 9/11 hijackers acquired some form of U.S. identification document, some by fraud. As a result, the commission recorded that the federal government should set standards for the issuance of birth certificates and sources of identification, such as driver's license.

Now, Governor Kean, why do you think the Department of Homeland Security continues to drag its feet in completing the biometric exit system? And what kinds of threats continue to slip through the crack as a result?

KEAN: Well, part of it, frankly, is just enforcing the laws we have. Sixteen of the 19 terrorists came in with some form of phony visa or phony identification. And then, of course, as you say, they easily got driver's licenses and credit cards and all of that, and they were roaming around this country, even though some of them were wanted in other parts of the world. A lot of that has been corrected.

We believe still very strongly in the biometric system. My understanding is, the resistance has come from certain states. There are a number of states who have done it. A number of the driver's licenses we now carry are biometrically done and would stand up against any kind of scrutiny, but certain states have not yet, I don't think, done it yet, and I would encourage us to make them comply with the law like they're supposed to do it.

So it's a—and everything we said in the report I think we still stand by today. We're not where we should be still. We've done a lot. Most of our recommendations have been fulfilled in part or in full, which you mentioned some of them that haven't been and we still stand by them.

BARLETTA: *Yeah, I quote the* 9/11 Commission Report *often, because it was passed by Congress, signed by the president, is law, but yet we continue to ignore it, whether it's the states offering driver's license to people who are undocumented, and undocumented means we don't know who they are. They don't have documentations.*

KEAN: Yeah.

BARLETTA: So we're issuing a legal form for people to exist here in the U.S. without really knowing who they are. Even when we talk about immigration reform, again, that violates the concept of that report, because of the fraudulent documents, and we don't know who we're allowing to stay here. And without border security first—you know, any state that has an international airport is a border state, in my opinion, because people can

easily—and nearly 50 percent of the people that are here illegally didn't cross the border. They come on a visa.

KEAN: Yeah, and we would also, again, recommend you look at this—you look at finding a way to track people who overstay the visas, because that's what the terrorists did.

BARLETTA: Or method of entry for people that want to hurt us.

KEAN: We had no idea that they were still here, because we have no way of seeing how long people stay in this country.

BARLETTA: So a true border security bill won't be a true border security bill unless we—we implement a biometric entry and exit so that we know everyone that—whether they're coming or going in the country, because just simply at our physical borders, north and south, isn't enough.

KEAN: It's not enough. You're right.

BARLETTA: Thank you. Thank you, Mr. Chairman.

> **Yeah, I quote the *9/11 Commission Report* often, because it was passed by Congress, signed by the president, is law, but yet we continue to ignore it, whether it's the states offering driver's license to people who are undocumented, and undocumented means we don't know who they are. They don't have documentations.**
>
> **—Rep. Lou Barletta (R-PA)**

MCCAUL: The chair recognizes Dr. Broun from Georgia.

BROUN: Thank you, Mr. Chairman.

A lot has changed. A lot hasn't changed since y'all's commission put out your report 10 years ago. And I appreciate the update from y'all's commission. And I think it's extremely important.

But I want to go to two issues that you did not talk about during your original testimony. And one of those is border security, and the other one is the visa waiver that Ms. Gorelick mentioned just briefly, which I blame four administrations, frankly, for not securing the border. The four administrations, two Republican and two Democrats now, have refused to obey the law that was put on the books in 1986 under the Reagan administration to deal with illegal aliens in this country to secure our border.

Right now, we have a flood of illegal aliens coming into this country. We see on the TV all these kids which is a flood of these unaccompanied alien children, UACs, coming into this country, but that's just a small segment of people who are coming across our border. Would you all agree with me that it's absolutely imperative for our own national security for us to do everything that we can to make sure that anybody who comes in this country is vetted and brought in this country legally?

KEAN: Yes.

BROUN: What could we do to secure our border? What kind of recommendations would you make? I think we ought to put the National Guard on the borders, north and south, and do everything we can to electronically monitor, to use drones, to use every asset that we have to secure the borders. But I see this as a huge national security issue, because there are a lot of people coming across the border today that are OTMs, other than Mexicans. And we know they're coming from the Middle East, they're coming from Africa, places like Somalia, where we have a tremendous growth of groups that want to destroy our country.

KEAN: Yeah, we didn't—as a group, we didn't talk about border security. We have had recommendations, for instance, that REAL ID, which is when somebody's in this country, they should have an ID that can't be copied. And states—we ask states be required to do the driver's licenses so that they can't be duplicated so easily for illegal purposes. That was one of the problems of 9/11, that all these people who were in this country to do damage to us had phony IDs that were duplicated.

Another thing we recommended is that even the people who are allowed to come legally, we don't know when they leave. So, for instance, the 9/11 hijackers overstayed their welcome. They overstayed their visa times, and we didn't know it. And we still don't know it.

If somebody comes in, we know—we know how to let them in, but we don't know how long they stay. And we don't know how many people are here illegally because their visas have run out. That's a couple of our recommendations that are still pending in the area of security, of who's in this country.

But border security is something we—obviously, very important, this committee's addressed it. People are talking about it a lot. But it's not something that we talked about a lot within our commission this time. We simply didn't have the resources at the time to do the investigation.

BROUN: I hope our current Congress and administration will insist that we secure our border, because it's actually a tremendous security problem. I want to go to something that Ms. Gorelick mentioned earlier, and I think that I agree with what she said, and that's about the Visa Waiver Program.

I think we have a marked change in the environment in Europe and in countries that we allow visa waivers. And we're allowing people to come in this country under the Visa Waiver Program. Would you both agree

that we must change—or, I think, end the Visa Waiver Program and stop the ability for people coming in this country that want to do harm to Americans?

GORELICK: I don't know enough to say that it needs to be stopped. And we—as the governor said—didn't have investigative authority. We just were able to talk to individuals within the government and formerly within the government who were kind enough to share their time and their thoughts with us.

But it does strike us as a pertinent inquiry to ask whether the premises of the original program are still correct and, if they're not, whether there needs to be any adjustment to the program, because as I recall, the premises of the program were that these Western countries, whose citizens we allow to come into the U.S. with minimal procedures, were safe, they had strong processes for themselves, protecting against terrorism, and thus to enhance travel among those countries and the U.S., we would have a Visa Waiver Program.

Well, if you have people carrying passports, which allow them simply to get on a plane and come to the U.S., who are fighting with ISIS in Iraq and Syria, perhaps the premise of that program is no longer correct. And I would ask the question, because I think it is a pertinent one.

BROUN: Thank you. Mr. Chairman, my time is expired, and I think you all for being here. But until we secure our borders, until we know who's here, and we start enforcing the laws, nothing else matters, in my opinion, Mr. Chairman. And I yield back. Thank you. ∎

The following congressional testimony is by the former border counsel and 9/11 Commissioner Janice L. Kephart, from the Senate Judiciary Committee, April 22, 2013. Commissioner Kephart was the principal author of the 9/11 staff report, 9/11 and Terrorist Travel.

(A) National Security Component of Exit; Why We Need It

In September 2011, on 9/11's ten year anniversary, 9/11 Commission Chairman Tom Kean and Vice-Chairman Lee Hamilton, who together led the bipartisan commission forward politically and substantively in a manner that has changed the way we look at national security, released their "Tenth Anniversary Report Card: The Status of the 9/11 Commission Recommendations." The report highlights the top nine areas the Commissioners believe require the most work. They term these "Nine Major Unfinished 9/11 Commission Recommendations."

Discussing the "evolving terrorist threat to the U.S.," the commissioners refer to the breadth of al Qaeda affiliates that have multiplied in diversity since 9/11: "In assessing terrorist threats to the American homeland,

senior U.S. counterterrorism officials now call attention to al Qaeda's strategy of 'diversification'—attacks mounted by a wide variety of perpetrators of different national and ethnic backgrounds that cannot easily be 'profiled' as threats." Such could be the description of the Boston Marathon terrorist attack perpetrated by two Chechen refugee brothers brought to the U.S. as children.

Yet despite the diversification of the terrorist threat and the huge volume of border crossings, this nation still lacks a comprehensive exit system.

Not having an exit system in place led the 9/11 commissioners to conclude that our border system must include data about who is leaving and when, with the following recommendation: "The Department of Homeland Security, properly supported by the Congress, should complete, as quickly as possible, a biometric entry-exit screening system. As important as it is to know when foreign nationals arrive, it is also important to know when they leave. Full deployment of the biometric exit...should be a high priority. Such a capability would have assisted law enforcement and intelligence officials in August and September 2001 in conducting a search for two of the 9/11 hijackers that were in the U.S. on expired visas."

Our more recent experience with terrorist threats and attempts reiterates the commissioners point. In the wake of the Christmas Plot and the near-getaway by would-be Times Square bomber Faisal Shahzad (who had already boarded a flight leaving the U.S. when he was arrested), we are once again reminded that border security is an essential element of national security, and exit control is part of that rubric.

(B) S. 744 Confuses Multiple Laws Already on the Books Requiring Exit, While Eliminating the Current Land Border Requirement

Other nations, like Australia, have made a biographic exit part of their immigration controls for years. Yet issues of money, politics, and practicalities of infrastructure have haunted this issue for the last 17 years in this country. Various laws requiring exit control have sat on the books since 1996. There have been discussions, policy platforms, even pilot programs, but to this day, we do not have a full-fledged exit program covering air, sea, and land ports of entry. In the post-9/11 era, the issue of national security and biometrics dominated border security discussion and policy. The issue has never failed to engage Congress. Even before 9/11, 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. 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 were gathered and vetted in real time—would provide overstay data and watchlists hits. Overstays would give CBP and the State Department better data to determine who gets to visit the U.S. again, and ICE better information about who returned or illegally overstayed. Exit data may even give 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—or so those of us on the 9/11 Commission staff hoped. 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 rulemaking for the "Collection of Alien Biometric Data Upon Exit From the U.S. 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 further monies for exit. In the June 2009 pilot programs conducted by US-VISIT at Detroit and Atlanta international airports, one tested TSA checkpoints, the other required CBP to screen departures on the jetway. Airlines refused to participate in the pilot programs, reiterating the emerging agreement that exit, like entry, is primarily a government function. Both programs successfully used border inspection personnel to take biometric exit data, at the jetways (in Detroit) and TSA checkpoints (in Atlanta).

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 considerable watchlists hits were found, proving that a biometric exit fulfilled both immigration and security functions simultaneously. Moreover, 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, Secretary Napolitano decided not to pursue exit, as she testified before this committee stating her conclusions as to why.

(C) Terrorist Abuse of Immigration Loopholes and Amnesties

In light of the Boston Marathon terrorist attack, we are reminded once more that border security is essential to national security, a concept which is reignited with every terrorist attempt by a foreign-born individual in the U.S. since 9/11. S.744 reminds us of past amnesty laws, and their abuse by terrorists. In fact, the 1986 amnesty program was fraudulently used five times in attempts to establish residency. One terrorist, Mir Aimal Kansi, sought amnesty under the 1986 law for illegal entrants. Four others, three convicted for their roles in the 1993 World Trade Center bombing and one in the 1993 Landmarks case, sought amnesty under the Special Agricultural Workers Program. Three who sought amnesty under this program attained it.

Many successfully obtain other immigration benefits while here. These facts I noted in my 2005 report *Immigration and Terrorism: Moving Beyond the 9/11 Staff report on Terrorist Travel*.

This report covered the immigration histories of 94 terrorists who operated in the U.S. between the early 1990s and 2004, including six of the September 11th hijackers. Other than the hijackers, almost all of these individuals were indicted or convicted for their crimes.

My work on the 9/11 Commission made it clear that terrorists need travel documents for movement at some point during their journey here as much as they need weapons for operations. Once within U.S. borders, terrorists seek to stay. Or, some are radicalized once here. Doing so with the appearance of legality helps ensure long-term operational stability. Terrorist travel handlers overseas are well aware of this fact, and seek out those with legal status in the U.S. At the 9/11 Commission we called this practice *embedding*.

The 2005 report findings show widespread terrorist violations of immigration laws. The terrorist events of the last decade highlight the danger of our lax immigration system, not just in terms of who is allowed in, but also how terrorists, once in the country, used weaknesses in the system to remain here. The 2005 report makes clear that strict enforcement of immigration law—at American consulates overseas, at ports of entry, and within the U.S.—must be an integral part of our efforts to prevent future attacks on U.S. soil. Unfortunately, these findings remain relevant today.

The 2005 report's findings included:

• Of the 94 foreign-born terrorists who operated in the U.S., the study found that about two-thirds (59) committed immigration fraud prior to or in conjunction with taking part in terrorist activity.

• Of the 59 terrorists who violated the law, many committed multiple immigration violations—79 instances in all.

• In 47 instances, immigration benefits sought or acquired prior to 9/11 enabled the terrorists to stay in the U.S. after 9/11 and continue their terrorist activities. In at least two instances, terrorists were still able to acquire immigration benefits after 9/11.

• Temporary visas were a common means of entering; 18 terrorists had student visas and another four had applications approved to study in the U.S. At least 17 terrorists used a visitor visa—either tourist (B2) or business (B1).

• There were 11 instances of passport fraud and 10 instances of visa fraud; in total 34 individuals were charged with making false statements to an immigration official.

• In at least 13 instances, terrorists overstayed their temporary visas.

• In 17 instances, terrorists claimed to lack proper travel documents and applied for asylum, often at a port of entry.

• Fraud was used not only to gain entry into the U.S., but also to remain, or "embed," in the country.

• Seven terrorists were indicted for acquiring or using various forms of fake identification, including driver's licenses, birth certificates, Social Security cards, and immigration arrival records.

• Once in the U.S., 16 of 23 terrorists became legal permanent residents, often by marrying an American. There were at least nine sham marriages.

• In total, 20 of 21 foreign terrorists became naturalized U.S. citizens. ∎

Another Death in San Francisco

BY BRENDA WALKER

The July 1 shooting death of Kate Steinle was a shocking crime in several ways. The 32-year-old woman was suddenly hit as she strolled with her parents on a San Francisco pier near the Ferry Building in an area popular with both tourists and locals. Fortunately, passers-by snapped pictures of the shooter which helped police arrest the man a short time later. He turned out to be a Mexican national, Francisco Sanchez, whose U.S. record included seven felony convictions, four of which involved drugs, and five deportations.

San Francisco and its liberal immigration policies share much of the blame for the crime. In a jailhouse interview a few days later, Sanchez said that he chose that city because of its sanctuary policy, which protects illegal aliens from deportation. Plus, he should have been deported a sixth time, but the San Francisco jail where he had been sent by Immigration and Customs Enforcement released him onto city streets instead of returning him to ICE for repatriation.

Consider the federal-state relationship here (and San Francisco's sanctuary policy is based upon California's). When Arizona wanted to do its own border enforcement a few years ago because Washington wouldn't, the feds insisted the state back off because immigration was a federal job. But when the federal agency ICE handed Sanchez over to San Francisco police for an earlier drug crime, ICE requested notification of when the city was done with him so he could be deported, but SF's policy of non-compliance with ICE detainers swung into gear and the criminal was released. The feds complained mildly, but that was it. In short, the system is flexible either way to advantage foreign lawbreakers rather than to protect Americans' public safety.

Sadly, the Steinle killing was not the first instance of preventable death caused by a dangerous illegal alien in San Francisco. In 2008, city resident Tony Bologna and his two sons were murdered as they drove home from a family picnic by Edwin Ramos, an MS-13 gangster, who mistook them for rivals. There was great public anger at that time that the city's sanctuary policy had protected Ramos from deportation even after his arrests for assaulting a bus passenger and an attempted robbery of a pregnant woman. Even liberal San Franciscans believe their government should protect them from dangerous foreigners.

Instead, in 2013 the city doubled down on its sanctuary policy by passing legislation prohibiting law enforcement from co-operating with most federal immigration detainer requests. San Francisco didn't learn a thing from the Bologna family triple murder, as shown by the preventable Steinle death. ∎