

Immigration and U.S. National Security

The State of Play Since 9/11

By Amy Pope

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Executive Summary

The terrorist attacks of September 11, 2001, brought into glaring focus weaknesses in U.S. visa and immigration screening processes that exposed Americans and others to harm. However, it is wrong to categorize all immigration as a threat to U.S. homeland security. While the link between national security and immigration policy is valid, immigration and international visitors bring important benefits to the United States. Furthermore, the reorganization of the federal government to create the U.S. Department of Homeland Security (DHS) in 2002 has allowed for the successful expansion of national security protections in immigration, tourism, and trade policies and practices. The question then is whether the immigration system that has taken shape since 9/11 is able not only to remedy the deficiencies brought to light by those attacks but also to address continually evolving security threats, including overarching national and global security dangers such as the coronavirus (COVID-19) pandemic.

The principal reason for creating DHS was to bridge gaps between the government's intelligence community and border enforcement and immigration functions, as identified by the National Commission on Terrorist Attacks upon the United States (the 9/11 Commission) in its final report. By reorganizing the agencies responsible for border management and immigration and housing them under one roof, DHS was intended to ensure greater clarity of mission in each agency, more focused effort, greater coordination among them, and common policy formulation. As part of this process, the U.S. Customs Service in the Treasury Department and the Immigration and Naturalization Service (INS) in the Department of Justice were reconfigured into three new agencies within the newly created DHS: U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS).

The question then is whether the immigration system that has taken shape since 9/11 is able ... to address continually evolving security threats.

By embracing new technology, increasing information sharing among agencies and cooperation with foreign governments, employing risk-management techniques, and moving their operations increasingly away from the U.S. border itself, these agencies—and the federal government more broadly—have been able to successfully address many complex security threats. These changes have been accompanied by substantial resource investments. As the Migration Policy Institute (MPI) has reported, the federal government now spends more on immigration and border enforcement, most of it through these three agencies, than it does on all other principal federal criminal law enforcement agencies combined.

Despite the substantial investments, these agencies have had uneven degrees of success in developing their specific mandates. Legacy systems and overlapping missions with agencies elsewhere in the government, for example between ICE and the Federal Bureau of Investigation (FBI), have undermined some of the clarity of mission that was intended with the post-9/11 restructuring. And additional mandates along the way have often redirected attention to new or different priorities.

More importantly, the reorganization did little to create mechanisms for setting government-wide policy or ensuring cooperation among the relevant agencies. Thus, policymaking and coordination on immigration and border issues that have security implications have been spotty and fragmented—both within DHS and across the U.S. government more generally. As a result, it has been difficult to anticipate and readily respond to quickly changing conditions on the ground and to political debates with coherent strategies. This has been particularly apparent along the southwest border, where an enforcement system designed for fundamentally different conditions—namely, the illegal immigration of Mexican adults that dominated in prior decades—has failed to adapt to shifting flows, now primarily Central American families and unaccompanied children, many seeking asylum.

Today, President Trump's focus on building a wall at the southwest border and limiting immigration does little to fill the remaining security gaps in the U.S. immigration system, despite the national security rationale offered for many of his administration's policies. And while the tendency to frame immigration functions through a security lens predates the Trump administration, this now routine practice clouds the picture of who and what pose a threat. Concerningly, the national security mission of many agencies with an immigration function is regularly conflated with and diluted by other functions, especially managing

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migration along the U.S.-Mexico border. Resources and political will have been steered away from core DHS national security missions, including disaster response, cyber security, protection against weapons of mass destruction, and general policy and planning in favor of immigration enforcement measures focused on low-risk unauthorized migrants and asylum seekers.

The need for broad-based readiness and planning in which DHS plays critical roles has been vividly illustrated by the lack of coordination surrounding the immigration policy directives issued in response to the COVID-19 outbreak. Hastily decided travel bans and restrictions have led to dangerously long lines and congestion at airports, countries have been exempted from the bans and then added just days later, and when screening at arrival destinations quickly became overwhelmed, international travelers have been kept in overcrowded waiting areas for hours, exposing them to the very health dangers and exacerbating the threat the policies seek to avert.

As security threats continually evolve, it is important to recalibrate national security imperatives with broader economic and national interests. Many of the things that make the nation safer—enhanced interagency coordination, pushing the border out, separating high- from low-risk migration and cargo flows—also facilitate border crossings that make the United States competitive in today's globalized world. National security and competitiveness need not require tradeoffs but are mutually beneficial.

More needs to be done in how government agencies charged with immigration functions carry out their national security missions and learn from past mistakes. The danger of this moment in time is that the current administration, by engaging in counterproductive tactics, such as using valuable resources to target particularly vulnerable migrants, is undermining support for DHS and its mission.

The challenge ahead is to rebuild the department’s credibility at home and with foreign partners, while recalibrating resource allocations and strengthening its capacity to respond to and manage the most pressing national security threats.

BOX 1

About the Rethinking U.S. Immigration Policy Project

This report is part of a multiyear Migration Policy Institute (MPI) project, Rethinking U.S. Immigration Policy. At a time when U.S. immigration realities are changing rapidly, this initiative aims to generate a big-picture, evidence-driven vision of the role immigration can and should play in America’s future. It will provide research, analysis, and policy ideas and proposals—both administrative and legislative—that reflect these new realities and needs for immigration to better align with U.S. national interests.

This expert study was commissioned to spur discussion at one of the roundtables organized around critical immigration issues, which include economic competitiveness, national security, and changing demographic trends. This report represents the views of its author.

To learn more about the project and read the other studies generated by the Rethinking U.S. Immigration Policy initiative, see bit.ly/RethinkingImmigration.

1 Introduction

The wide-ranging reforms that followed the September 11, 2001, attacks on the United States significantly strengthened the national security capabilities of immigration agencies. While reforms were sorely needed, in recent years, immigration functions have been increasingly and now routinely framed almost entirely through an often-politicized national security lens. As a result, the question of who or what poses a national security threat has become increasingly muddled.

While this phenomenon predates the Trump administration and has colored U.S. policy on refugees, student visas, and other admissions throughout its history, President Trump has been more single-minded than his predecessors in suggesting that many immigrants pose a national security threat. He has spoken against categories of immigrants, for example refugees and diversity visa recipients, as well as labeling immigrants from particular countries, for example Mexico or Sudan, as national security or public safety threats.¹ This indiscriminate labeling of foreigners as suspect has created questions and concerns in the public mind about what threats immigrants and foreign visitors pose.

This report considers the range of increasingly complex security threats U.S. immigration policy must manage, the tools available to respond to these threats, and U.S. successes as well as challenges in

1 Eugene Scott, “Trump’s Most Insulting—and Violent—Language Is Often Reserved for Immigrants,” *Washington Post*, October 2, 2019. Among the Trump administration policies that link immigration and national security, see White House, “Executive Order 13769 of January 27, 2017: Protecting the Nation from Foreign Terrorist Entry into the United States,” *Federal Register* 82, no. 20 (February 1, 2017): 8977–82; White House, “Proclamation on Improving Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry” (presidential proclamation, January 31, 2020).

innovating as threats evolve. The report traces the evolution of an immigration and border control bureaucracy built to respond to the most pressing issues of the day but torn in different directions from the outset, as well as called upon to meet new demands, such as responding to pandemics.

With the goal of disentangling national security rhetoric from reality, it evaluates the post-9/11 reforms, recognizes that national security imperatives cannot remain static, and questions whether the most recent changes in immigration policy mitigate or exacerbate threats to U.S. homeland security.

2 Defining the Link between Immigration and National Security

The term “national security” is frequently used loosely—and often for political ends—without an articulated meaning. In the first instance, it means something beyond “public safety” or crime. It implies a threat to the integrity of the United States, its people, or its strategic interests beyond the capability of domestic law enforcement or public officials to manage effectively.

The question then is: what immigration issues—those involving the movement of people, whether they are travelers or immigrants—put U.S. national security at risk?

A. Changing Policy Backdrop

A primary challenge is the evolution of the threat. Throughout much of the 20th century, the United States’ primary national security concern was the influence and intent of other nation states—whether it was Germany, Japan, the Soviet Union, or other adversarial countries.² Immigration and border policies reflected the priorities of the time and, as a result, were frequently tied to U.S. foreign policy. When refugees were admitted, for example, they were often from places such as Vietnam, the Soviet Union, or Cuba, as their resettlement scored the United States geopolitical points in its Cold War strategy. Immigration policy, more broadly, focused on excluding categories of people deemed undesirable. As a result, the level of individualized vetting for travelers was relatively weak.

It was not until the 1990s that terrorists—operating in the vacuum created by the post-Cold War disintegration of certain states—emerged in their own right as a national security threat to U.S. interests.³ The 1993 bombing of the World Trade Center drew the attention of U.S. policymakers and created the modern immigration challenge: adapting a system built to counter threats from state actors to one able to control a threat that is far more diffuse and asymmetric.

2 John Higham, “American Immigration Policy in Historical Perspective,” *Law and Contemporary Problems* 21 (Spring 1956): 213, 228–33.

3 Although terrorist groups formed and expanded throughout that time, the U.S. focus remained primarily on state actors and how they might exploit terrorist groups to attack Western interests. See John Moore, “Evolution of Islamic Terrorism: An Overview,” PBS Frontline, accessed September 10, 2019. See also George Lardner Jr., “2 Libyans Indicted in Pan Am Blast,” *Washington Post*, November 15, 1991; *Washington Post*, “The Bombing of Pan Am Flight 103,” accessed September 10, 2019.

As the threat posed by these nonstate actors grew, so too did the ascendance of the concept of “homeland security”—a phrase that took root following the attacks of September 11, 2001.⁴ The concept, in its earliest iterations, suggested something qualitatively different from “national security” or at least foreign policy. It signaled a shift in focus toward what was happening immediately at U.S. borders or in the homeland.

After 9/11, Congress and the executive branch created a Homeland Security Council, modeled on the National Security Council, but including the secretary of homeland security and other domestic security actors. The George W. Bush White House created a staff for the new council and a homeland security advisor, who held the same rank as the national security advisor.⁵ The two teams—national and homeland security—had different missions. National security staff remained focused on foreign policy, diplomacy, and defense, while homeland security staff responded to natural disasters, migration-related threats, and terrorism that could affect U.S. borders and transportation.⁶

B. Changing Threats

Today, the threat has again evolved. The primary terrorist threat is no longer al Qaeda, intent on attacking U.S. infrastructure.⁷ Terrorist groups such as the Islamic State in Syria (“ISIS”) have been significantly weakened. The primary terrorist threat comes from small pockets of radicalized individuals or “lone wolves,” many of whom were born and raised in the United States or in Europe and would not be obvious targets for exclusion.⁸ The haystack has once again grown larger and the needle even smaller and harder to spot.⁹

Globalization has allowed for the increasingly rapid flow of people and goods across borders, outpacing traditional security-focused immigration policies.

At the same time, globalization has allowed for the increasingly rapid flow of people and goods across borders, outpacing traditional security-focused immigration policies. While countering adversarial state actors has long been a national security objective, today’s espionage is not only the theft of official secrets but also increasingly corporate secrets, with state actors employing sophisticated methods of bypassing U.S.

4 Philip Bump, “How ‘Homeland’ Became Part of Our American Lexicon,” *Washington Post*, September 11, 2014. President George W. Bush linked the origination of the term to the 1997 study National Defense Panel, *Transforming Defense: National Security in the 21st Century* (Washington, DC: National Defense Panel, 1997).

5 President George W. Bush created a Homeland Security Council with a homeland security advisor who, independently from the national security advisor, reported to the president. The Obama administration adopted this model but, recognizing the need for better connectivity between National Security Council and Homeland Security Council staff, created the National Security staff.

6 Harold C. Relyea, *The Executive Office of the President: An Historical Overview* (Washington, DC: Congressional Research Service, 2008).

7 U.S. House Committee on Homeland Security, Subcommittee on Oversight, Investigations, and Management, *A Line in the Sand: Countering Crime, Violence and Terror at the Southwest Border* (Washington, DC: U.S. Congress, 2012), 5, 7, 49.

8 Bruce Hoffman, “The Global Terror Threat and Counterterrorism Challenges Facing the Next Administration,” *CTC Sentinel* 9, no. 11 (2016): 1–7.

9 As of late 2016, experts believed that nearly 7,000 European foreign fighters had traveled to Syria, many to join the Islamic State. See John Gatt-Rutter, Director of Counterterrorism Division, European External Action Service, quoted in Martin Banks, “Returning Foreign Fighters Are Biggest Threat to EU, Parliament Warned,” *The Parliament Magazine*, October 12, 2016. See also Hoffman, “The Global Terror Threat and Counterterrorism Challenges.”



defenses.¹⁰ For example, there is increasing reporting and concerns about China’s efforts through the foreign student program to gain access to sensitive information in U.S. universities and research programs.¹¹

Likewise, large-scale transnational criminal organizations trafficking in narcotics, weapons, people, and money benefit from the same forces of globalization as all organizations, enabling them to diversify, exploit technological advances, and more skillfully breach gaps in border defenses.¹² The threats posed by cyberattacks have expanded exponentially in the past decades and ever-evolving technologies have been used to facilitate attacks against the country and could be used to exploit gaps in its digital defenses.

Finally, despite long-standing concerns with keeping out persons who could spread communicable diseases (the admissions requirements found in the earliest U.S. immigration policy on record required screening for communicable diseases¹³), health emergencies such as the coronavirus (COVID-19) epidemic make clear how easily borders can be breached by disease, potentially posing a significant threat to U.S. persons and interests if not contained. In the case of the coronavirus, infection continues globally—including in the United States—despite increasingly restrictive measures to shut down travel from China, Europe, and other affected areas.¹⁴ As UN Secretary General Kofi Annan recognized more than 20 years ago, today’s national security threats are “problems without passports” transcending borders and not easily addressed by one nation alone.¹⁵

C. *The Need for Changing Responses*

There can be no question that defining “national security” requires looking beyond homeland/domestic security. In a world with increasingly porous borders, threats from other actors or sources—transnational criminal organizations, cyber criminals, chemical and biological weapons, or contagious diseases, for example—have become more powerful and diffuse, unbound by traditional geographic or jurisdictional

10 Jim Finkle, Joseph Menn, and Aruna Viswanatha, “U.S. Accuses China of Cyber Spying on American Companies,” Reuters, November 20, 2014; Mark Clayton, “US Indicts Five in China’s Secret ‘Unit 61398’ for Cyber-Spying on US Firms,” *Christian Science Monitor*, May 19, 2014.

11 See, for example, Zachary Cohen and Alex Marquardt, “U.S. Intelligence Warns China Is Using Student Spies to Steal Secrets,” CNN, February 1, 2019.

12 White House, “Fact Sheet: Strategy to Combat Transnational Organized Crime” (news release, July 25, 2011).

13 See, for example, *The Immigration Act of 1891, U.S. Statutes at Large* 551 (1891): 1084.

14 Natalia Banulescu-Bogdan, Meghan Benton, and Susan Fratzke, “Coronavirus Is Spreading across Borders, but It Is Not a Migration Problem” (commentary, Migration Policy Institute, Washington, DC, March 2020).

15 United Nations Secretary General, “Environmental Threats Are Quintessential ‘Problems without Passports,’ Secretary General Tells European Environment Ministers” (press release, June 23, 1998).

limitations.¹⁶ Keeping the homeland safe depends on what is happening in this increasingly globalized world. This is equally true when conflict, natural disasters, and poor governance drive people out of their homes and toward more prosperous countries, such as the United States.

The ability to identify those who mean harm is significantly enhanced by information sharing between and action by partner countries. Those activities require diplomacy and partnership. For that reason, national security as defined in this report cannot be bounded by the United States' physical borders alone but must encompass actions both in the homeland and by and with foreign partners.

3 Evolution of U.S. Immigration Bureaucracy and Its Role in Protecting National Security

Immigration policy—and its attendant bureaucracy—has long served multiple and sometimes competing objectives. They include economic development, protectionism, diplomacy, and national security, among other things.

A. *Principal Agencies and Their Functions*

Prior to 2002, there were essentially three federal departments that had components responsible for advancing and enforcing these immigration-related objectives: the Immigration and Naturalization Service (INS), which was housed within the Department of Justice; the U.S. Customs Service within the Treasury Department; and the Bureau of Consular Affairs within the U.S. Department of State.

State Department consular officers screened applicants for visas, and customs and INS officials jointly managed the ports of entry and the movement of goods and people into the country. The bulk of the responsibilities fell to the INS, which managed the Border Patrol; the admission of refugees; applications for changes in visa status, permanent residence, and citizenship; and the removal from the country of individuals who had not complied with U.S. immigration law.

These agencies had their roots in the late 19th century, as increasing numbers of immigrants came to the United States in the 1880s.¹⁷ At that time, the law's stated focus was on keeping out "idiots, lunatics, convicts, and persons likely to become a public charge."¹⁸ In 1891, the list of people to be excluded from the country expanded to cover polygamists, persons convicted of crimes of moral turpitude, and those suffering from a "loathsome or a dangerous contagious disease."¹⁹

16 As articulated in 2015, the challenges also include countering "widespread economic slowdown, the proliferation and/or use of weapons of mass destruction; severe global infectious disease outbreaks; climate change; major energy market disruptions; and significant security consequences associated with weak or failing states (including mass atrocities, regional spillover, and transnational organized crime)." See White House, *National Security Strategy* (Washington, DC: White House, 2015), 2. See also White House, *National Security Strategy* (Washington, DC: White House, 2017), 11–12.

17 U.S. Citizenship and Immigration Services (USCIS), *Overview of INS History* (Washington, DC: USCIS, 2012), 5–6.

18 *An Act to Regulate Immigration, U.S. Statutes at Large* 376 (1882): 214.

19 *The Immigration Act of 1891*, 1084.

B. *World Wars I and II Bring New National Security Functions*

With World War I, immigration functions began to reflect national security concerns. The INS was given responsibility for interning “enemy aliens”²⁰ pursuant to the *Immigration Act of 1918*, which prohibited membership in any group that was anarchist in nature or that believed in or advocated for the violent or forceful overthrow of the U.S. government.²¹

After the war ended, several bombings and attempted bombings linked to members of the Industrial Workers of the World (IWW) led to the first immigration raids.²² Officials arrested more than 4,000 mostly Russian and Eastern European immigrants across 33 states, many of whom were alleged to be members of the Union of Russian Workers.²³ When immigration declined during the Great Depression, the INS worked closely with the Federal Bureau of Investigation (FBI) and focused increasingly on removing criminal and subversive aliens.²⁴

In 1940, President Roosevelt moved the INS from the Department of Labor—where it had been formed by consolidating two agencies, the Bureau of Immigration and the Bureau of Naturalization—to the Department of Justice. The goal was to provide more effective control over foreign nationals and enable the federal government to quickly identify and remove any foreign national who affected the public interest.²⁵

During World War II, the national security responsibilities of the INS became more explicit.

During World War II, the national security responsibilities of the INS became more explicit. The number of employees doubled from 4,000 to 8,000, and the agency was responsible for fingerprinting every foreign national in the country, operating internment camps for “enemy aliens,” and conducting record checks for immigrant defense workers.²⁶ INS was also responsible for organizing and operating detention facilities, increasing Border Patrol operations, and administering the program charged with importing agricultural laborers during the war (the Bracero Program).²⁷

C. *The Postwar Years*

Following World War II, attention shifted to two primary immigration responsibilities: admitting war refugees and managing the increasing numbers of unauthorized migrants crossing the U.S.-Mexico border.

²⁰ USCIS, *Overview of INS History*, 5–6.

²¹ *An Act to Exclude and Expel from the United States Aliens Who Are Members of the Anarchistic and Similar Classes*, Public Law 65–221, *U.S. Statutes at Large* 186 (1918): 1012, 1013.

²² Harlan G. Cohen, “The (Un)favorable Judgment of History: Deportation Hearings, the Palmer Raids, and the Meaning of History,” *New York University Law Review* 78, no. 4 (2003): 1454–55.

²³ Cohen, “The (Un)favorable Judgment of History,” 1458–62. Of the more than 2,700 warrants, Acting Secretary of Labor Louis Post upheld only 556 and later testified before Congress regarding the Department of Justice’s warrantless searches and abuse of power.

²⁴ USCIS, *Overview of INS History*, 7.

²⁵ Franklin D. Roosevelt, “Reorganization Plan No. V of 1940” (reorganization plan, Office of the President, Washington DC, June 4, 1940).

²⁶ USCIS, *Overview of INS History*, 8.

²⁷ USCIS, *Overview of INS History*, 8.

Refugee Admissions

Massive numbers of people in Europe had been uprooted by the war or fled persecution. In response, the *Displaced Persons Act of 1948* focused on admitting individuals who were persecuted under the Italian or German governments. Immigrants admitted under this act were subject to “a thorough investigation and written report made and prepared” by the U.S. government, regarding each individual’s history, character, and eligibility for the program.²⁸

Still, public officials expressed concern that the refugee admissions program could be used as a Trojan horse by communists hiding within the displaced populations, waiting until they were admitted to the United States to begin subversive activity.²⁹ Some consular officers testified about the difficulty of verifying a person’s identifying data or nationality, given that very little official documentation was presented with applications and foreign nationals at times had no access to records from their former places of residence.³⁰ Officers also testified that up to 40 percent of the applications were fraudulent.³¹ The resulting screening process—in which applicants were interviewed multiples times, including by security officials—forms the basis of today’s refugee screening program.³²

U.S.-Mexico Border Crossings

The often-dominating concern of the INS was the steadily increasing numbers of migrants crossing the southwest border in the boom years following the war. Apprehensions hit a then-record high in 1954 with 1,028,246, compared to 11,125 just 11 years earlier.³³ The number dropped to fewer than 30,000 in 1960, but by the early 1980s, apprehensions again swelled to more than 1 million per year, generally staying there until the mid-2000s.³⁴

D. *The Rising Terrorism Threat*

The 1993 bombing of the World Trade Center first brought the threat of nonstate terrorism on U.S. soil into public view. In response, Congress passed the *Anti-Terrorism and Effective Death Penalty Act of 1996*, which changed the way terrorist organizations were designated in immigration law and made providing material support to a terrorist organization a basis to exclude or remove foreign nationals from the country.³⁵

At the same time, there were nascent efforts to build out the INS’ counterterrorism capability. INS set up a National Security Unit in 1997 to track potential terrorist cases for possible immigration enforcement

28 *Displaced Persons Act of 1948*, Public Law 80–774, *U.S. Statutes at Large* 647 (1948): 1013.

29 Report by Alexander Wiley, U.S. Senator, before the Committee on the Judiciary, *Displaced Persons in Europe*, 80th Cong. 2d sess., March 2, 1948, 2.

30 Wiley, *Displaced Persons in Europe*, 20.

31 Wiley, *Displaced Persons in Europe*, 26.

32 Wiley, *Displaced Persons in Europe*, 26; Christopher Rudolph, *National Security and Immigration: Policy Development in the United States and Western Europe Since 1945* (Palo Alto, CA: Stanford University Press, 2006), 50; U.S. Commission on National Security/21st Century, *Seeking a National Strategy: A Concert for Preserving Security and Promoting Freedom* (Washington, DC: U.S. Commission on National Security/21st Century, 2000), 5.

33 U.S. Border Patrol, “Nationwide Illegal Alien Apprehensions Fiscal Years 1925 - 2018,” accessed September 20, 2019.

34 U.S. Border Patrol, “Nationwide Illegal Alien Apprehensions.”

35 *Anti-Terrorism and Effective Death Penalty Act of 1996*, Public Law 104–132, *U.S. Statutes at Large* 110 (1996): 1248–49.

action, automated a terrorist watch list, increased work with other law enforcement agencies and the State Department to identify suspected terrorists, and granted immigration officers access to classified information.³⁶

Inspectors at ports of entry still often relied on paper watch lists and did not know they were checking for terrorists when comparing the names of incoming passengers to these lists.

Nonetheless, fundamental policy questions—such as whether the Central Intelligence Agency (CIA) could complete checks prior to naturalization—were not resolved. Furthermore, inspectors at ports of entry still often relied on paper watch lists and did not know they were checking for terrorists when comparing the names of incoming passengers to these lists. Programs to track foreign student

visa compliance by monitoring travelers' entry and exit from the United States were introduced but not completed.³⁷

At a National Security Council Principals Committee meeting in March 2000 to discuss potential future terror attacks, officials recognized the need to strengthen immigration law enforcement. They recommended increasing the number of INS agents assigned to the FBI's Joint Terrorism Task Forces and activating a special court so classified evidence could be used in immigration-related national security cases.³⁸ But funding remained limited, and these efforts competed with the far more politically compelling calls to stem the number of unauthorized migrants crossing the southwest border.³⁹

Eighteen months later, al Qaeda carried out its spectacular attack on U.S. soil, fueling a rapid review and sweeping reorganization of U.S. immigration capabilities.

E. 9/11 as a Catalyst for Change

Although the existence of national security responsibilities within immigration processes were certainly not new to immigration agencies or the federal government, the resources and political will to treat them as essential elements in protecting the nation are largely a post-9/11 phenomenon. The 9/11 Commission, in its final report, identified a host of operational failures that indicted immigration screening processes.⁴⁰ These included failures to:

- ▶ place hijackers on watch lists;
- ▶ inform the FBI about one hijacker's visa or travel to the United States;
- ▶ discover false statements on visa applications;
- ▶ recognize false passports;

36 Thomas H. Kean and Lee Hamilton, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States* (Washington, DC: National Commission on Terrorist Attacks upon the United States, 2004), 80.

37 Kean and Hamilton, *The 9/11 Commission Report*, 81.

38 Kean and Hamilton, *The 9/11 Commission Report*, 187.

39 Kean and Hamilton, *The 9/11 Commission Report*, 384.

40 Kean and Hamilton, *The 9/11 Commission Report*.

- ▶ include individuals who were on terrorist watch lists on no-fly lists;
- ▶ identify that a student-visa holder never attended the institution he enrolled in;
- ▶ identify visa overstays; and
- ▶ search airline passengers.

At the heart of these problems was the failure to connect the dots between agencies that had the relevant intelligence and those that could act on it to protect U.S. borders. To remedy these deficiencies, officials considered increasing the intelligence capability within the border and immigration screening agencies directly or significantly improving connectivity between the intelligence agencies and the border enforcement agencies. The solution that was adopted was a series of institutional changes, as well as improvements in the tools needed to identify potential bad actors. Implementing agencies have done some of both but have not fully fixed the problems identified more than 15 years ago.

4 The Post-9/11 World: Institutional Changes

The creation of U.S. Department of Homeland Security (DHS) was the most significant response to the events of 9/11. The *Homeland Security Act of 2002* made counterterrorism the central mission for agencies tasked with border and transportation security and recognized the importance of connecting the mission and functions of these agencies.⁴¹

Prior to the law's passage, no single government entity was responsible for border management and transportation security.⁴² The act brought together 22 federal agencies, ranging from the Coast Guard to the Federal Emergency Management Agency to the border and transportation agencies.⁴³ It created a Directorate of Border and Transportation Security, pulling together under one organizational roof the U.S. Customs Service and the Federal Law Enforcement Training Center from the Treasury Department, the INS from the Department of Justice, the Federal Protective Service from the General Services Administration, the recently created Transportation Security Administration from the Department of Transportation, and part of the Animal and Plant Health Inspection Service from the Department of Agriculture.

The mission of this new entity was vast: preventing terrorism, securing the border, regulating immigration, and setting immigration policy.⁴⁴ Soon thereafter, DHS reorganized to create three new federal agencies: U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS).⁴⁵

41 Jennifer E. Lake, *Department of Homeland Security: Consolidation of Border and Transportation Security Agencies* (Washington, DC: Congressional Research Service, 2003).

42 Lake, *Department of Homeland Security*.

43 Michelle Mittelstadt, Burke Speaker, Doris Meissner, and Muzaffar Chishti, "Through the Prism of National Security: Major Immigration Policy and Program Changes in the Decade Since 9/11" (fact sheet, Migration Policy Institute, Washington, DC, August 2011).

44 *Homeland Security Act of 2002*, Public Law 107-296, *U.S. Statutes at Large* 116 (2002).

45 Lake, *Department of Homeland Security*, which notes that soon thereafter, the department reorganized to create two bureaus: U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE). See also USCIS, *Overview of INS History*, 11.

The creation of this new department and these new components within DHS was intended to facilitate greater connectivity between the agencies. However, the restructuring was not comprehensive. Other key agencies that bear a significant responsibility for the movement of people—including the Bureau of Consular Affairs, the FBI, and the intelligence agencies, including the National Counterterrorism Center (NCTC)—remained outside the newly created institution. Thus, many pre-existing turf battles and information silos remained in place.

The creation of this new department and these new components within DHS was intended to facilitate greater connectivity between the agencies. However, the restructuring was not comprehensive.

Likewise, the move did not automatically create the infrastructure to link together these disparate agencies. Putting ICE, CBP, and USCIS—many components of which had been part of one INS—into the same department but not the same agency, meant that they were not sharing information, technology, acquisitions, or even offices. The result was a fracturing of mission that often exacerbated, rather than mitigated, some historic gaps, ultimately slowing the ability to identify and adapt quickly to emerging threats.

A. U.S. Customs and Border Protection

CBP may be the most significantly transformed agency since the creation of DHS. Made up of the Border Patrol (the green-uniformed law enforcement force that patrols the territory between land border ports of entry) and immigration and customs inspectors (the blue uniformed officials who manage the flow of people and goods through air, land, and sea ports of entry), CBP's mission evolved the most fully from post-9/11 changes. CBP has aggressively modified its way of doing business. It has expanded foreign partnerships, built partnerships with intelligence agencies, and adapted technology to facilitate legitimate travel while isolating suspect travel.

Identifying Suspect Travelers

Perhaps the most significant development for CBP in the years since 2001 has been its establishment of the National Targeting Center (NTC). The NTC is a nerve center within the Washington, DC, metropolitan area that combines specialists trained in identifying suspected terrorists with technology to identify high-risk people both entering and leaving the United States.⁴⁶

In its early years, the focus was primarily on identifying persons of interest before they were admitted to the country. However, on Christmas Day 2009, a Nigerian citizen boarded a flight bound for Detroit and attempted to ignite an explosive device while over the United States.⁴⁷ Since that time, the NTC has focused on identifying and preventing suspect individuals from boarding flights at all.⁴⁸

⁴⁶ CBP, "Inside CBP's National Targeting Center," *CBP Access* 3, no. 3 (2014).

⁴⁷ U.S. Attorney's Office, Eastern District of Michigan, "'Underwear Bomber' Umar Farouk Abdulmutallab Pleads Guilty" (press release, October 12, 2011).

⁴⁸ Jay Mayfield, "Hitting the Target: The Men and Women at the National Targeting Center Work 24/7 to Keep America Safe from Terrorism," *CBP Frontline* (2010): 19–20.

The NTC uses information from various agencies as well as its own targeting rules to identify persons who warrant closer scrutiny or who should be prevented from entering the United States. Its base is the

The NTC allows for a focused and intelligence-based identification of possible national security risks that was absent before 9/11.

Traveler Enforcement Compliance System (TECS), a legacy data system to which 26 federal agencies contribute information that can then be searched by name.⁴⁹ CBP collects airline passenger manifests and name record data, cross-referencing this information against records extracted from a range of other databases, including the Terrorist Screening Database.⁵⁰

CBP officials vet all travelers before they get on flights, then continue to do so until the traveler lands in the United States.⁵¹ Their rules—developed using information from intelligence and law enforcement agencies—enable them to identify unknown travelers who may not appear in a database, but whose travel patterns or other characteristics warrant further investigation.⁵² In general, the NTC allows for a focused and intelligence-based identification of possible national security risks that was absent before 9/11.

Cooperation with Like-Minded Partners

CBP has also significantly expanded its partnerships with foreign governments, including through the expansion of its predeparture programs, such as preclearance. CBP initiated early preclearance efforts in 1952 with Canadian airports, with the goal of facilitating the arrival of passengers into the United States.⁵³ These efforts expanded to include the Bahamas, Aruba, and Ireland, all well before 2001.

Since 2001, however, CBP has established preclearance agreements with the United Arab Emirates, and has announced its intent to expand to other countries, including Argentina, Belgium, the Dominican Republic, Japan, the Netherlands, Norway, Spain, Sweden, Turkey, and the United Kingdom.⁵⁴ Although travel facilitation was the goal of preclearance in its earlier years, its national security benefit is significant: It allows CBP on-the-ground access to screen passengers bound for the United States before they get on a plane.

Similarly, CBP operates nine Immigration Advisory Program and two Joint Security Program locations, as well as three Regional Carrier Liaison Groups. Through them, CBP is able to recommend that air carriers not permit travelers who have been identified as high risks to board U.S.-bound flights, otherwise resolve flags on NTC's high-risk traveler list, and in some cases, interview travelers before they board a flight. CBP data show that the agency identified and interdicted more than 22,000 high-risk air travelers through these programs in fiscal year (FY) 2015.⁵⁵

49 Testimony of Rebecca Gambler, Director, Homeland Security and Justice, U.S. Government Accountability Office (GAO), before the Task Force on Denying Terrorists Entry into the United States, House Committee on Homeland Security, *Border Security: Progress and Challenges in DHS's Efforts to Address High-Risk Travelers and Strengthen Visa Security*, 115th Cong., 1st sess., May 3, 2017.

50 Testimony of Rebecca Gambler, 4.

51 Testimony of Rebecca Gambler, 6-7.

52 Testimony of Rebecca Gambler, 6-7.

53 Ron Nixon, "Preclearance at Foreign Airports Seen as a Necessity to Fight Terrorism," *New York Times*, July 24, 2016.

54 U.S. Department of Homeland Security (DHS), "DHS Announces Intent to Expand Preclearance to 10 New Airports" (press release, May 29, 2015).

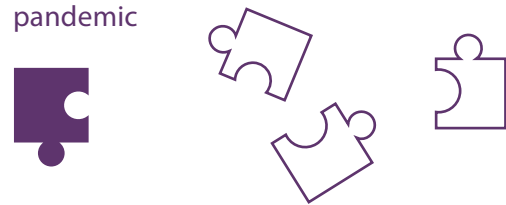
55 Testimony of Rebecca Gambler.

CBP's ability to collect names and passenger information, to run the information through the Terrorist Screening Database, and to vet travelers recurrently are all post-9/11 developments. The agency has continued to refine traveler targeting rules based on intelligence analysis. CBP has also been agile. During the 2014 Ebola outbreak in West Africa, it used its targeting tools to identify travelers who might be at risk of infection and designated special screening procedures at ports of entry to limit the spread of infection in the United States.⁵⁶

Government efforts to deploy such tactics in response to the coronavirus pandemic have not been similarly successful. With the border and immigration policy tools that are now in place, the coronavirus experience demonstrates that border and travel controls and screening measures can be effective only when treated as one aspect of government-wide and global responses to a threat as fast-moving and deathly as a pandemic. In such circumstances, advance planning, readiness, stockpiles of supplies and equipment, and mobilization of public and private resources, among many other capabilities, must also play leading roles.

Border and immigration policies

are just **1 piece** of the puzzle in responding to threats like the coronavirus pandemic



At the same time, the changing nature of threats that the coronavirus crisis represents may also call for broadening the kind of information that screening systems gather and include to protect nations from possible future health emergencies. Systems that collect and verify basic contact information, for example, to allow for tracing those carrying infections may be an information technology capability that is needed going forward.

Border Enforcement between Ports of Entry

Along the United States' southwest land border, CBP's Border Patrol has benefitted from a tremendous infusion of resources over the past 15 years.⁵⁷ In addition to fencing, CBP has made investments in unmanned aerial vehicles (UAVs), a significant air and marine force, cameras, and other surveillance technology to significantly improve its situational awareness of what is happening along the border. It has partnered with Mexico to conduct joint patrols of areas known to be used by transnational criminal networks. With these improvements and investments, the agency has been able to be far more strategic and impactful in its use of resources. By FY 2017, southwest border apprehensions had reached historic lows. From a peak of 1.6 million apprehensions in FY 2000, the numbers had fallen to 304,000 by FY 2017—the lowest since 1971.⁵⁸

Where the true national security dimensions of CBP's work are concerned, and despite the tremendous gains it has made in upgrading border inspection practices, the agency is still hamstrung by a couple

⁵⁶ DHS, "Ebola Response," updated June 21, 2016; Lori Aratani and Lena H. Sun, "U.S. Begins Screening for the Coronavirus at Airports in Atlanta and Chicago," *Washington Post*, January 22, 2020.

⁵⁷ Leigh Ann Caldwell, "The U.S. Already Spends Billions on Border Security," NBC News, Aug. 21, 2016.

⁵⁸ U.S. Border Patrol, "Nationwide Illegal Alien Apprehensions."

important factors. CBP does not own or have unregulated access to key intelligence, so its officials must rely on a series of memoranda of understanding and other agreements with partner agencies to get access to the information they need. Likewise, despite the tremendous value CBP provides in identifying travel information about potential bad actors, agency representatives struggle to be included in investigations at the outset or given credit for the work they do. In cases like the 2012 Boston marathon bombing, it was CBP that provided crucial information about one of the perpetrators' travel, for example.

Yet the case for these capabilities is undermined by the way in which this agency's resources can be and have been diverted to highly partisan, political missions that have little bearing on U.S. national security. Nowhere has this been more evident than in the agency's response to the recent increase in migrant arrivals from Central America. Since 2000, when illegal crossings peaked, the nature of migration across the U.S.-Mexican border has fundamentally shifted.⁵⁹ The number of Central American migrants—especially women and children—has significantly increased as the number of Mexican working-age male migrants has decreased.

CBP has been unable to keep pace with the impact of these changed flows on its capacity, priorities, and workload. The administration's response has been to narrow access to the asylum system by refusing, for example, to consider asylum applications and forcing migrants to wait in often dangerous areas in Mexico. This has led to migrants who would otherwise present themselves to CBP officers instead attempting to cross between ports of entry.⁶⁰ Likewise, through CBP's asylum cooperation agreements with Central American governments, migrants are being returned to countries with little, if any, ability to reintegrate them.⁶¹ This is a recipe for future migration attempts. Such enforcement policies, which further include detaining asylum seekers, have stressed resources across the federal government.

History will demonstrate whether these measures have fundamentally undermined national security, but there is no question that key national security issues are being sacrificed to lower-priority, highly politicized ones. More troubling, they undermine the case that CBP can be a trusted partner in the national security mission.

B. U.S. Immigration and Customs Enforcement

ICE has struggled to define its national security mission since its creation. The agency is divided into two components—Enforcement and Removal Operations (ERO) and Homeland Security Investigations (HSI)—of which the latter has a more pronounced national security mandate. Under the Trump administration, however, ICE's national security and serious crime responsibilities are increasingly subsumed by targeting unauthorized migrants at random. The agency's earlier guidelines prioritizing enforcement at serious criminals, national- and public safety threats, and recent illegal border crossers were done away with early in the administration.⁶²

59 Randy Capps et al., *From Control to Crisis: Changing Trends and Policies Reshaping U.S.-Mexico Border Enforcement* (Washington, DC: Migration Policy Institute, 2019).

60 James Fredrick, "Metering' at the Border," NPR Weekend Edition, June 29, 2019.

61 Carrie Kahn, "Guatemalans React to Trump Administration's New Asylum Rule," NPR All Things Considered, July 15, 2019.

62 Memo from Homeland Security Secretary John Kelly, *Enforcement of the Immigration Laws to Serve the National Interests*, February 20, 2017.

Of the agency's two components, ERO's primary responsibility is the removal of foreign nationals who do not have authorization to remain in the United States—whether they overstayed a visa, arrived unlawfully, or have otherwise been ordered removed by an immigration judge. Its mandate is broad, and given the size of the country's unauthorized immigrant population—an estimated 10.5 million people as of 2017⁶³—ERO's ability to remove even a small percentage of that population is challenging.

Different administrations have taken different approaches to how ICE exercises its removal responsibilities.⁶⁴ The Obama administration, for example, prioritized the removal of criminal aliens, ultimately decreasing the total number of removals across the board. The Trump administration is focusing its efforts on lower-hanging fruit—opting to remove more foreign nationals than occurred during the latter Obama years over removing those with a known criminal history. No matter the approach, of the hundreds of thousands of immigrants removed annually, only a small set fall into the national security categories.⁶⁵

While HSI is meant to prioritize a range of primarily criminal and national security matters, from intellectual property crimes to human trafficking, its role, too, is increasingly diverted to supplement that of ERO. Rather than partnering with foreign law enforcement to identify potential extraterritorial national security threats, including “special interest aliens”⁶⁶ and transnational criminal groups, before they reach U.S. borders, more of its work is now focused on domestic worksite enforcement efforts.⁶⁷

It is not entirely clear how or why ICE's role is distinct from that of the FBI when an individual's case triggers national security concerns.

Even with a more security-minded mission, however, HSI has struggled to articulate its jurisdiction and priorities. The problem is exacerbated because it is not entirely clear how or why ICE's role is distinct from that of the FBI when an individual's case triggers national security concerns. On paper, ICE would play a key investigative role for any foreign

national suspected of criminal or terrorist activity. However, as a practical matter, the FBI is far more likely to run an investigation of terrorism or counterintelligence allegations involving a foreign national. As a result, HSI is often left picking up lower priority criminal investigations that are of less interest to the FBI. Furthermore, HSI is often seen through the same lens as ERO, despite their very different missions and priorities. As a result, some of its supervisors have asked to be spun off from ICE because they fear the association negatively affects their national security mission.⁶⁸

63 Jens Manuel Krogstad, Jeffrey S. Passel, and D'Vera Cohn, “5 Facts about Illegal Immigration in the U.S.,” Pew Research Center, June 12, 2019.

64 Randy Capps et al., *Reving Up the Deportation Machinery: Enforcement under Trump and the Pushback* (Washington, DC: Migration Policy Institute, 2018).

65 ICE, “ERO FY18 by the Numbers,” updated April 2, 2019.

66 “Special interest aliens” (SIAs) are non-U.S. nationals deemed a potential security risk based on analysis of their travel patterns. See DHS, “Myth/Fact: Known and Suspected Terrorists/Special Interest Aliens” (press release, January 7, 2019).

67 Tal Kopan, “ICE Chief Pledges Quadrupling or More of Workplace Crackdowns,” CNN, October 18, 2017.

68 Jason Buch, “ICE Criminal Investigators Ask to Be Distanced from Detentions, Deportations in Letter to Kirstjen Nielsen,” *Texas Observer*, June 27, 2018.

C. *U.S. Citizenship and Immigration Services*

USCIS plays another important national security role, but it too is becoming increasingly politicized, and thus increasingly distracted from using its limited resources to mitigate the most serious national security threats. It is the arm of DHS that has responsibility for the immigration service functions, including adjudicating applications for naturalization and lawful permanent residence (also known as getting a “green card”) in the United States.

Both benefits are critical to the integrity of the legal immigration system. Because applicants may hide their true intent or background in making these applications, USCIS administers a series of internal and external security checks that applicants must complete.

Security Checks

Two USCIS components—the Fraud Detection and National Security Directorate (FDNS) and the Service Center Operations Directorate (SCOPS) Background Check Unit (BCU)—oversee the internal vetting of applicants. These components verify fingerprints through the FBI. If there is a match with the FBI’s records, the FBI will upload any arrest or prosecution records into USCIS’ biometric system, noting the individual’s arrest date, the charge, and known dispositions.

Separately, USCIS runs a fingerprint check through a separate DHS system for any applicant who is applying for a benefit that, if granted, would permit the immigrant to remain in the United States for more than a year.⁶⁹ If an applicant applies to adjust status (for example, to change from a student visa to an immigrant visa), USCIS will petition the FBI for a “name check,” a more in-depth search that queries FBI databases for any records in which the applicant was the primary person of interest or was referenced. This search combs through administrative, criminal, personnel, and other law enforcement records. The adjudicating officer will also run the applicant’s name through TECS, which draws information from 26 federal agencies.⁷⁰ Any time these searches reveal a match to a name in the database, a USCIS officer must investigate and resolve the issue before granting an immigration benefit.⁷¹

Although these checks are comprehensive, their primary weakness is that USCIS is tapping outside agencies for information integral to its decision-making process. For example, it does not have automatic access to the FBI’s Integrated Automated Fingerprint Identification System (IAFIS); instead, USCIS must solicit (and pay for) checks on individual applicants. That means, unless USCIS asks for the information, as it might when an individual adjusts status, it will not necessarily get the information that an individual poses a threat.

Since March 2017, USCIS has been directed to develop a continuous immigrant vetting system.⁷² If it is successfully implemented, it will mark a meaningful move away from the manual “point-in-time” checks and

69 DHS, *Privacy Impact Assessment for the Immigration Benefits Background Check Systems* (Washington, DC: DHS, 2010), 1–3.

70 DHS, *Privacy Impact Assessment*, 4.

71 USCIS Ombudsman, *Annual Report 2016* (Washington, DC: DHS, 2016), 36.

72 White House, “Executive Order 13780 of March 6, 2017: Protecting the Nation from Foreign Terrorist Entry into the United States,” *Federal Register* 82, no. 45 (March 9, 2017): 13209–19.

toward immediate notification of risk-related information about immigrants and nonimmigrants in their databases.⁷³

Paper-Based Records and Repeated Performance Failures

From a national security point of view, the more serious vulnerability is that USCIS still adjudicates many of its cases using paper files, despite decades of efforts to move to a centralized, account-based electronic system. The agency first announced it would move away from its paper-based adjudication process to an electronic one in November 2005. By 2015, those initial attempts were disabled, following reports by both the Government Accountability Office (GAO) and the Office of the Inspector General (OIG) that the new system was slowing adjudication instead of improving it.⁷⁴

The errors were numerous and potentially serious. USCIS had sent hundreds of green cards to an incorrect address because the online system would not let employees update applicants' address;⁷⁵ roughly 200,000 applicants reported never receiving a card despite notification that their applications were approved, and 19,000 cards were issued either with incorrect information or as duplicates.⁷⁶

From a national security point of view, the more serious vulnerability is that USCIS still adjudicates many of its cases using paper files.

Similarly, errors associated with the online naturalization adjudication process meant that the system in many cases either did not complete background security checks or provided inaccurate results for those checks. At least 858 foreign nationals, who may have been ineligible to naturalize due to prior deportation orders under a different identity, were granted citizenship because the fingerprint records that linked these applicants to the deportation order, while recorded on paper, were never digitized and so were not reviewed.⁷⁷ At least 148,000 fingerprint records overall were linked to individuals with a criminal history, fugitive status, or deportation orders but never uploaded to DHS' electronic fingerprint repository.⁷⁸

In November 2017, the OIG concluded that USCIS had not only failed to meet its goals, it had introduced naturalization processing inefficiencies resulting in longer backlogs and processing times, the cancellation of interviews and naturalization ceremonies, and more than 200 individuals naturalizing without full

73 DHS, *Privacy Impact Assessment for the Continuous Immigration Vetting* (Washington, DC: DHS, 2019).

74 DHS Office of Inspector General, *USCIS Automation of Immigration Benefits Processing Remains Ineffective* (Washington, DC: DHS, 2016), 4-5; Testimony of Lori Scialabba, Acting Director of USCIS, before the House Committee on Homeland Security, Subcommittee on Oversight and Management Efficiency, *Immigration Benefits Vetting: Examining Critical Weaknesses in USCIS Systems*, 114th Cong., 2d sess., March 16, 2017.

75 DHS Office of Inspector General, "DHS OIG Urgently Recommends USCIS Halt Plans to Use the Electronic Immigration System (ELIS) for Naturalization Application Processing" (news release, January 23, 2017).

76 Testimony of John Roth, Inspector General, before the House Committee on Homeland Security, Subcommittee on Oversight and Management Efficiency, *Immigration Benefits Vetting: Examining Critical Weaknesses in USCIS Systems*, 114th Cong., 2d sess., March 16, 2017.

77 Testimony of John Roth.

78 Office of Inspector General, "DHS OIG Urgently Recommends USCIS Halt Plans."

background checks.⁷⁹ The most recent agency assessment suggests that its new deadline for moving adjudications to an electronic environment is the end of calendar year 2020.⁸⁰

Diversion of Resources and Increased Processing Times

While there is much meaningful work to be done to improve information sharing and system automation, recent reporting on USCIS's management of the naturalization process calls into question the ways in which the agency is addressing its national security vulnerabilities. Today's naturalization backlog has reached levels not seen in nearly 20 years, causing significant consternation among lawmakers, constituents, and applicants.⁸¹

Rather than working to improve the automation of the system, USCIS is proposing regulatory changes that would make the process more onerous without meaningful security benefits, such as requiring details on applicants' international travel dating back ten—instead of five—years, additional documentation, and evidence of “good moral character.”⁸² Survivors of human trafficking, who are valuable sources of information for law enforcement in identifying and taking down trafficking rings, are being placed in removal proceedings if they commit administrative errors in their T-visa applications.⁸³ In the meantime, many officers responsible for conducting citizenship interviews are being reassigned to the southern border, and USCIS resources are being diverted to bolster ICE detention capabilities.⁸⁴

Today's naturalization backlog has reached levels not seen in nearly 20 years.

Rather than focus on modernizing its operations and fixing fundamental and meaningful problems within its own agency, USCIS appears to be caught within a highly politicized environment where national security is being sacrificed to migration-management aims that carry lower risks.

D. U.S. Department of State: Bureau of Consular Affairs

The Bureau of Consular Affairs (CA) is the only agency with a primary role in the admission of foreign nationals that remains outside of DHS. CA is often the first point of contact for a foreign national who intends to visit or travel to the United States, and it is primarily responsible for managing the adjudication process for nonimmigrant visa applicants. (Visa applications by family members of U.S. citizens, green-card holders, or immigrants with employment-based visas are first filed through USCIS.⁸⁵)

79 DHS Office of Inspector General, *USCIS Has Been Unsuccessful in Automating Naturalization Benefits Delivery* (Washington, DC: DHS, 2017).

80 Letter from L. Francis Cissna, Director of USCIS, in response to letter from Representative Jesús Garcia et al., April 5, 2019, 8.

81 Letter from Senator Thom Tillis et al. to L. Francis Cissna, Director of USCIS, May 13, 2019; Letter from Representative Joaquin Castro et al. to Gene Dodaro, Comptroller General of the United States, May 10, 2019.

82 Miriam Jordan, “Wait Times for Citizenship Have Doubled in the Last Two Years,” *New York Times*, February 21 2019.

83 Jenna Krajeski, “The Hypocrisy of Trump’s Anti-Trafficking Argument for a Border Wall,” *The New Yorker*, February 5, 2019.

84 Jordan, “Wait Times for Citizenship.”

85 Ruth Ellen Wasem, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends* (Washington, DC: Congressional Research Service, 2010), 3.

Outside of the Visa Waiver Program (VWP), which enables citizens of 39 countries to spend up to 90 days in the United States without a visa,⁸⁶ foreign nationals seeking to travel to the country are subject to a multilayered eligibility check. The first is by a consular officer in a U.S. embassy abroad prior to visa issuance; the second is by a CBP officer at a designated U.S. port of entry. Aside from the refugee admissions screening process, this visa screening is the most comprehensive adjudication process for travelers or immigrants to the United States.

With few exceptions, a consular officer or USCIS officer interviews all prospective immigrants, as well as certain nonimmigrants.⁸⁷ Although interviews for B-1 and B-2 visas (for business visitors and tourists) were often waived prior to the terrorist attacks of September 11, 2001, with the passage of the *Intelligence Reform and Terrorism Prevention Act of 2004*, a U.S. official must interview every foreign national who has applied for a nonimmigrant visa and is between the ages of 14 and 79, except in certain limited cases.⁸⁸

Vetting Travelers and Prospective Immigrants

When verifying the identity and motives of a traveler, consular officers rely on a series of security checks. The consular screening process is generally more in depth for immigrants than for nonimmigrants, given that the immigrant will have indefinite contact with the United States, will be vetted less frequently, and must meet certain statutory criteria for admission.⁸⁹

Consular officers screen all applicants through their Consular Consolidated Database (CCD), which as of 2015 contained biometric and biographic information on more than 143 million records of visa applications dating back to the mid-1990s and more than 75 million photographs, stored electronically in the system since February 2001.⁹⁰ The CCD also includes biometric scans of all ten of an applicants' fingerprints (since 2007) and a record of any previous application, with the comments of the previous consular officer. When reviewing visa applications, Department of State officials utilize both biometric checks and facial recognition technology to compare applicants against both CCD records and watch lists of known and suspected terrorists.

The Department of State shares CCD information with DHS' Automated Biometric Identification System (IDENT), as well as the FBI's Integrated Automated Fingerprint Identification System (IAFIS). Consular officers do not generally have direct access to TECS, but the State Department shares CCD information with TECS to flag any issues that may affect future adjudications. In addition, some consular officers are also granted access to CBP's Arrival and Departure Information System (ADIS), which helps identify applicants who have previously overstayed a nonimmigrant visa.⁹¹

86 U.S. Department of State, "[Visa Waiver Program](#)," accessed November 20, 2019. Poland became the 39th country to join the Visa Waiver Program (VWP) on November 11, 2019.

87 USCIS, "[Policy Manual Chapter 5 - Interview Guidelines](#)," updated June 24, 2017. In certain cases, such as children of U.S. citizens and legal permanent residents (LPRs) who are not travelling with family, parents of a U.S. citizen, and fiancés may have their interview waived. Other humanitarian categories and employment categories may be approved without conducting an interview.

88 *Intelligence Reform and Terrorism Prevention Act of 2004*, Public Law 108-458, *U.S. Statutes at Large* 118 (2004): 3735.

89 See Ruth Ellen Wasem, *Immigration: Visa Security Policies* (Washington, DC: Congressional Research Service, 2015), 5.

90 Wasem, *Immigration: Visa Security Policies*, 6.

91 Wasem, *Immigration: Visa Security Policies*, 8.

Prior to issuing a visa, consular officers also check the applicant in CA's Consular Lookout and Support System (CLASS), a database containing more than 42.5 million records (as of 2012).⁹² CLASS receives information from DHS, FBI, and the Drug Enforcement Agency (DEA), as well as information about foreign nationals who have previously been issued or denied a visa. If a case raises security concerns, the consular officer must refer it for a more in-depth review by law enforcement and intelligence agencies through the Security Advisory Opinion (SAO) system. This process is accomplished through a variety of interagency procedures involving both NCTC and the FBI.⁹³

Information Sharing

Although not located in DHS, CA has developed a range of processes—both manual and otherwise—to enhance connectivity with DHS and other relevant security agencies. The most significant from a national security standpoint is a program called the Kingfisher Expansion (KFE). Launched in June 2013 as a partnership with NCTC, the program facilitates counterterrorism screening of visa applicants across the intelligence agencies.

Consular cases proceeding through the KFE are sent electronically to be vetted by NCTC officials, who compare information in the package with their Terrorist Identities Datamart Environment (TIDE), containing information on known or suspected terrorists and terrorist groups. A match triggers an interagency review of the application. KFE also continues to check for new information on threats after a visa is issued.

Depending on the embassy at which they are stationed, consular officers may benefit from the DHS Visa Security Program, in which DHS officers are assigned to embassy posts to provide training on security threats related to application adjudication and to review applications and conduct investigations. ICE's Office of International Affairs (OIA) also operates the Visa Security Program at high-risk consular posts, where special agents perform visa security tasks and conduct additional vetting if the standard checks turn up a match between an applicant and a record in TECS. OIA agents provide briefings and training on threats to the visa process based on their expertise in both immigration law and counterterrorism.⁹⁴

A final information-sharing measure, the Pre-Adjudicated Threat Recognition Intelligence Operations Team (PATRIOT), screens an applicant's information against relevant DHS systems prior to the visa application interview.⁹⁵ All concerns raised during this process must be resolved prior to issuing a visa, and the Department of State reserves the authority to revoke a visa at any time if the applicant is determined to be ineligible or inadmissible.

Successful Connectivity and Cross-Agency Coordination

The State Department's efforts at overcoming bureaucratic barriers have been largely successful. The department may have benefitted from the fact that it was not part of the post-9/11 reorganization;

⁹² Wasem, *Immigration: Visa Security Policies*, 9.

⁹³ Demetrios G. Papademetriou, Betsy Cooper, and Stephen Yale-Loehr, *Secure Borders, Open Doors: Visa Procedures in the Post-September 11 Era* (Washington, DC: Migration Policy Institute, 2005), 133; Wasem, *Immigration: Visa Security Policies*, 9–10.

⁹⁴ Wasem, *Immigration: Visa Security Policies*, 13.

⁹⁵ Wasem, *Immigration: Visa Security Policies*, 14.

instead, it has been able to draw upon years of information and past practice and avoid the growing pains experienced by the newly reorganized agencies as they defined their missions.

The success can also be attributed to two added factors. First, the State Department recognized that regular data connectivity throughout the life cycle of a case, even as it crosses between agencies, is essential to the successful identification of bad actors. KFE is a significant step toward eliminating those gaps. Secondly, the State Department has benefitted from a willingness to submit questionable cases to an interagency review. While several agencies review each application—USCIS, CBP, State, and the FBI—they do not all have access to the same information particularly because, as noted, their databases are not fully interoperable. Likewise, information that comes in through intelligence channels, if not sufficient to warrant input into the Terrorist Screening Database, may never be seen by the frontline officers adjudicating the request for admission. The State Department's participation in this process helps to mitigate the risk that this information will be missed.

Regular data connectivity throughout the life cycle of a case, even as it crosses between agencies, is essential to the successful identification of bad actors.

The primary disconnect between CA and the other border and immigration agencies may be one of culture, a situation that is exacerbated as DHS is increasingly being used to implement an immigration-restriction agenda. Generally, the State Department's core mission is foreign diplomacy—and visa policy is an extension of that mission. In contrast, while DHS' mission and personnel are rooted in law enforcement, the Trump administration has prioritized using DHS resources and authorities to sharply limit immigration. As a result, the agencies must regularly confront different perspectives on how to manage any given challenge. While a certain degree of tension is arguably useful in promoting a more wholistic approach to national security—one in which the two sides moderate each other's natural tendencies—in the current environment, State Department resources are being used to manage cases that would otherwise pose very low risks to national security.

5 The Post-9/11 World: Process Changes

Although many of the post-9/11 changes were bureaucratic—creating new agencies or reorganizing old ones—significant changes were also made to the way agencies do business. This section will consider some of the key processes that have been central to strengthening the role immigration tools play in advancing national security or that have been the subject of significant congressional or public concern: the Visa Waiver Program; refugee admissions screening; the creation of an entry-exit system; and land border controls, including building a southwest border wall.

The ethos underlying the most successful programs is the concept of driving the borders outward. The more government officials can make determinations about a person's identity and intentions *before* they reach U.S. borders, the better able they are to protect the United States from harm, whether at land, air, or sea ports.

In 2018 alone, there were approximately 80 million international arrivals to the United States.⁹⁶ Of those, approximately half involved travelers from outside North America. The U.S. State Department issued more than 533,000 visas to immigrants that year, and more than 9 million nonimmigrant visas.⁹⁷

These visitors are important to the nation's economic security—according to the U.S. Travel Association, travel generated \$2.5 trillion for the U.S. economy in 2018, supporting 15.7 million jobs nationwide.⁹⁸ Thus, the question is how to best isolate threats while facilitating the cross-border movement and travel that is so essential to the United States' global competitiveness and domestic economy.

A. *Visa Waiver Program*

Well before travelers or immigrants board a flight to the United States, they must be screened by U.S. officials. There are two primary ways this happens: the visa adjudication process, detailed above, and the Electronic System for Travel Authorization (ESTA) application process for VWP travelers.

The VWP allows visa-free tourist and business travel for up to 90 days for citizens of 39 countries, facilitating more than 23 million visits a year.⁹⁹ The screening process for this program is less onerous for travelers and for the government, but not necessarily less effective. Unlike the visa application process, the VWP is managed primarily by DHS, not the Department of State.¹⁰⁰

VWP Application Process

Every two years, VWP travelers must submit an online application (via ESTA), providing key identifying information, before they can board flights to the United States. The information is checked against a variety of U.S. government databases, including many used by CA, to detect any potential matches. Unlike visa applicants, VWP travelers do not have to be interviewed by a consular officer, though in a limited number of cases, they may be directed to a U.S. consulate for a visa. Since 2015, visitors who are nationals of or have visited several named countries, including Iraq, Iran, Syria, Yemen, and Somalia, are no longer able to use the VWP. Similarly, travelers who are flagged for any other reason of inadmissibility will need to apply for a visa. Once a traveler is bound for the United States, the NTC uses the information gathered to identify persons who should be further inspected or denied entry.¹⁰¹

Visa Waiver Program

allows visa-free tourist and business travel for...



citizens of **39 countries**



up to **90 days**



23 M+ visits per year

96 U.S. Travel Association, "U.S. Travel Answer Sheet," accessed September 11, 2019.

97 U.S. Department of State, "Report of the Visa Office 2018—Table I. Immigrant and Nonimmigrant Visas Issued at Foreign Service Posts: Fiscal Years 2014 – 2018," accessed December 22, 2019.

98 U.S. Travel Association, "Economic Impact Map," accessed September 11, 2019.

99 DHS Office of Immigration Statistics, *2017 Yearbook of Immigration Statistics* (Washington, DC: DHS, 2019), Table 28.

100 Wasem, *Immigration: Visa Security Policies*, 1, 3.

101 Wasem, *Immigration: Visa Security Policies*.

From a national security point of view, the decreased scrutiny of each individual traveler (e.g., the lack of an interview) is mitigated by information-sharing agreements with the participating countries. The VWP statute requires participating countries to report lost and stolen passports to Interpol, to share information on known or suspected terrorists with the United States, and to update shared information based on encounters with known or suspected terrorists.

In theory, these information-sharing agreements should enable the U.S. government to get and use a much more sophisticated dataset involving nationals of the participating countries. VWP also frees up personnel resources that would otherwise be used for visa interviews, allowing for an increased focus on more questionable travelers. In practice, it is not such a simple story, and the program has evolved as the threat landscape has shifted.

Changing VWP Requirements

Since its inception as a pilot program in 1986, part of the *Immigration Reform and Control Act of 1986*, multiple legislative changes have been made to the program.¹⁰² After the 9/11 Commission released the results of its investigation, Congress passed legislation to implement many of its recommendations. A law to improve the VWP, the *Secure Travel and Counterterrorism Partnership Act*, was combined into the larger *Implementing Recommendations of the 9/11 Commission Act of 2007* (also known as the 9/11 Act) and altered the eligibility requirements for countries attempting to join the program as follows:

- ▶ Although previous program guidelines required that potential participant countries have a visa refusal rate of no more than 3 percent, the 9/11 Act permitted DHS to waive this requirement for countries that had visa refusal rates of between 3 percent and 10 percent.¹⁰³ In exchange, countries would have to agree to cooperate with the United States on counterterrorism information sharing and initiatives, and have sufficient security measures in place to assure that their involvement in the VWP would not pose a risk to U.S. immigration and criminal law enforcement or national security interests.¹⁰⁴
- ▶ Participating countries were to promptly report lost or stolen passport information to Interpol and to share information if a national traveling to the United States could pose a threat to the country. In turn, DHS agreed to provide technical assistance to help VWP countries meet this obligation.
- ▶ VWP countries would have to accept and repatriate any national, citizen, or former citizen of their country ordered removed from the United States within three weeks of the final removal order.

As required, DHS established an electronic travel authorization system (ESTA) to process VWP travelers prior to departure. The use of biographic information became mandatory for all VWP travelers as of January 12, 2009.¹⁰⁵

102 Alison Siskin, *Visa Waiver Program* (Washington, DC: Congressional Research Service, 2015), 24. Countries that received this waiver must not only meet all of the security requirements previously in place under the law, but must also demonstrate both a continuous reduction in visa refusal rates and a plan in place for further decline.

103 *Testimony of Jess T. Ford, Director of International Affairs and Trade, GAO*, before the Senate Committee on the Judiciary, Subcommittee on Terrorism, Technology, and Homeland Security, *The Visa Waiver Program: Mitigating Risks to Ensure Safety of All Americans*, 110th Cong., 2d sess., September 24, 2008.

104 Siskin, *Visa Waiver Program*, 27. The U.S. government may also take into consideration the country's security systems, including passport standards and airport security.

105 CBP, "About the Electronic System for Travel Authorization (ESTA)," updated November 25, 2019.

Continuing Concerns

Yet even after the 9/11 Act introduced these revised program requirements, lawmakers continued to express concerns that terrorists would be able to enter the United States using VWP country passports. Congressional committee members were also concerned that VWP countries were not consistently sharing vital terrorism data until after high-profile attacks occurred in other countries.¹⁰⁶ The Charlie Hebdo attacks in France in January 2015, and the increasing numbers of Europeans traveling to Syria to become foreign fighters, further increased fears that terrorists would use VWP passports to evade U.S. border controls.¹⁰⁷

In August 2015, Homeland Security Secretary Jeh Johnson announced that new security measures would be added to the VWP. They required that all participating countries use electronic or e-passports for travelers coming to the United States, and that they be screened through Interpol's Lost and Stolen Passport Database (LSPD). Countries also had to consent to the expanded use of U.S. federal air marshals on U.S.-bound flights.¹⁰⁸

After the November 2015 terrorist attacks in Paris, DHS again announced changes to the VWP:

- ▶ ESTA would be modified to capture any previous travel to terrorist "safe haven" countries.
- ▶ DHS was required to propose a report on the use of potential biometric data collection (versus biographic data collection) pilot programs to the president, as well as to report any VWP countries not complying with cooperation measures.
- ▶ The FBI was required to provide an evaluation on how terrorism information is shared between the United States and VWP countries, with potential solutions to resolve any deficiencies. To help partner countries improve terrorism information sharing and increase the use of biometrics, the United States would offer assistance and deploy "foreign fighter surge teams" to work with countries to prevent terrorist travel.
- ▶ The United States would accelerate the review process for VWP countries and promote each country's use of the Global Entry program.¹⁰⁹

Many of the policy changes were formalized in the *Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015*, which was signed into law on December 18, 2015. However, the act went a step further, excluding from the program any national of a VWP country who had previously travelled to Iraq, Syria, or a country designated by the secretary of state as supporting terrorism. Travelers who are dual citizens of a VWP country and a country of concern were also ineligible for the program. The secretary of

¹⁰⁶ U.S. House of Representatives, *Visa Waiver Program Improvement Act of 2015 Report* (Washington, DC: U.S. Congress, 2015), Part 1, 7–8.

¹⁰⁷ Testimony of Mark Frey, Senior Director, Steptoe & Johnson, LLP, before the House Homeland Security Committee, Subcommittee on Border and Maritime Security, *Combating Terrorist Travel: Does the Visa Waiver Program Keep Our Nation Safe?* 114th Cong., 1st sess., March 17, 2015.

¹⁰⁸ DHS, "Statement by Secretary Jeh C. Johnson on Intention to Implement Security Enhancements to the Visa Waiver Program" (news release, August 6, 2015).

¹⁰⁹ Siskin, *Visa Waiver Program*, 13.

homeland security could grant waivers on a limited basis but was required to submit a report documenting such waivers to Congress annually.¹¹⁰

The legislation also increased the demands on participating countries. For example, it shortened the time in which a VWP participant country must report a lost or stolen passport, and it put countries on notice that failure to share information could lead to expulsion from the program. DHS must also provide an annual report on all national security threats posed by VWP countries, and any country that represents a threat can be suspended from the program. Finally, the legislation required that ESTA be expanded to enable fraud detection and capture information on travelers' previous or additional citizenships.¹¹¹

A Report Card

While the laws and policies underpinning the VWP have grown increasingly demanding of participant countries, in practice, the program relies heavily on the sophistication, skill, and political will of partner governments. For example, many European governments were long prohibited by their privacy laws from collecting or sharing certain information on their nationals with the United States, particularly in the absence of a criminal conviction. Compliance with the requirement to report lost and stolen passport data to Interpol was strikingly low.¹¹² Many of the European governments did not have comprehensive screening mechanisms in place, particularly when travelers crossed at land or sea ports, as was dramatically illustrated during the surge in maritime arrivals in 2015.

For countries such as Greece and Italy, hit hardest by the heightened arrivals of asylum seekers and other migrants from North Africa and the Middle East, the task of improving the security of their own migration flows is dependent on more systematically identifying those entering their territory. Meanwhile, for countries such as Germany, France, and Belgium, which have seen high numbers of their own nationals leave to become foreign fighters, sharing information on the travel patterns of these individuals as well as encounters with them is key. To date, and even with the threat of VWP termination, the economic and diplomatic repercussions of doing so have meant that the U.S. government has relied on incentives, not penalties, to encourage compliance.

Given the evolving nature of national security threats and the low compliance rate of VWP participant countries in the past, the United States is increasingly focused on strengthening information sharing. This has included, for example, establishing direct data sharing relationships with every European country in the VWP and continuing to build these relationships through multiple channels and agencies. In recent years, the U.S. government has offered technical exchanges with both the FBI and CBP to help European partners maximize their use of U.S. terrorism information, as well as secure and real-time access to U.S. biometric data to support refugee and immigration processing, terrorist and foreign fighter screening, and border security.¹¹³ Likewise, the Department of Defense is working with European partners to expand their screening and vetting capabilities through various security-sector assistance programs and initiatives. These

110 *Consolidated Appropriations Act, 2016*, Public Law 114–113, *U.S. Statutes at Large* 129 (2015).

111 Siskin, *Visa Waiver Program*, 8–19.

112 GAO, *Visa Waiver Program: DHS Should Take Steps to Ensure Timeliness of Information Needed to Protect U.S. National Security* (Washington, DC: GAO, 2016).

113 Abigail F. Kolker, *Visa Waiver Program* (Washington, DC: Congressional Research Service, 2016), 13–14.

efforts extend to working with NATO to establish common data-sharing capabilities and architectures that can be used to support both military operations and other national security screening activities.

Additionally, the U.S. government is working with Interpol and Europol to share more criminal and terrorism information, as well as lost and stolen passports, and other threat data.¹¹⁴ Following the passage of UN Security Council Resolution 2178 in 2014, more European partners have also passed counterterrorism legislation granting the legal authority to share data internationally to help identify and interdict criminals, foreign fighters, and terrorists attempting to cross international borders.¹¹⁵

However, the more restrictive approach to immigration taken by the Trump administration, as well as the provision in the 2015 U.S. law requiring visas for certain persons who are dual nationals from designated countries, have created diplomatic tensions with many VWP countries.¹¹⁶ The administration significantly exacerbated these tensions when it called for a blanket denial of admission for nationals of any of these countries in January 2017.¹¹⁷ Since then, DHS's enforcement policies and the president's criticism of some VWP partners have raised eyebrows in capitals around the world. This may be eroding the trust needed between governments to enable the level of information sharing that allows for increasingly accurate, sophisticated identification of bad actors.

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B. Refugee Screening

One of Trump's first executive orders—"Protecting the Nation from Foreign Terrorist Entry into the United States"—severely curtailed refugee admissions based on the premise that refugees posed a significant national security threat.¹¹⁸ Refugees, by definition, are often fleeing war-torn countries, where their ability to document their identity may be limited. And there are a few, albeit very small in number, reported instances of refugees who were admitted to the United States and later arrested in connection with a terrorist plot.¹¹⁹

114 Kolker, *Visa Waiver Program*.

115 The resolution, focused on mitigating the threat of foreign terrorist fighters, called on states to—among other things—require airlines to provide advance passenger information to national authorities, prevent the entrance or transit of terrorists, and improve use of Interpol. See United Nations Security Council, "Resolution 2178 (2014)," September 24, 2014.

116 The VWP is no longer available to persons who have traveled to or been present in Iran, Iraq, North Korea, Sudan, Syria, Libya, Somalia, or Yemen on or after March 1, 2011 (with limited exceptions for travel for diplomatic or military purposes in the service of a VWP country) or to nationals of VWP countries who are also nationals of Iran, Iraq, North Korea, Sudan, or Syria. See CBP, "Visa Waiver Program," updated March 2, 2020.

117 White House, "Executive Order 13769 of January 27, 2017"; Anthony Faiola, "Trump's Travel Ban Is Having a Spillover Effect on European Dual Nationals," *Washington Post*, January 30, 2017.

118 White House, "Executive Order 13769 of January 27, 2017."

119 Michelle Ye Hee Lee, "The Viral Claim That 'Not One' Refugee Resettled Since 9/11 Has Been 'Arrested on Domestic Terrorism Charges,'" *Washington Post*, November 19, 2015.

The president has now cut the U.S. refugee admissions ceilings to a number not seen since the program's inception.¹²⁰

At the same time, the world is facing the biggest displacement crisis since the United Nations began keeping statistics on refugee movement.¹²¹ At the end of 2018, more than 70 million people were forcibly displaced worldwide, about 25.9 million of whom are considered to be refugees under international law.¹²² The conflicts forcing people from their homes are multiplying and lasting longer, meaning people have to wait more time before it is safe to return home.

Given these facts, how well is current security vetting protecting the United States from national security threats and, more broadly, how big a threat are refugee admissions to U.S. national security?

Refugee Admissions to the United States

For purposes of U.S. law, "refugees are generally people outside of their country who are unable or unwilling to return home because they fear serious harm."¹²³ The definition of the harm for refugee status is persecution or a well-founded fear of persecution on account of race, religion, nationality, political opinion, and/or membership in a particular social group.¹²⁴

While this definition of harm is essentially the same for asylum seekers, there is a key difference from a national security perspective: the location of the applicant. Asylum seekers apply for protection when they are already at or across the U.S. border. There is very little U.S. government control over who shows up at (particularly land) borders to claim asylum. A refugee, by contrast, remains outside U.S. borders until screened and admitted. For refugees, the process for admission is strictly controlled, time-consuming, unpredictable, and involves multiple government agencies.

The process of refugee resettlement review—particularly in the United States—is slow and cumbersome. People spend years in refugee camps or displaced in foreign cities. For the small share that is ultimately resettled to a third country, the question of where, how, and when these refugees will be resettled is uncertain. Once a refugee has been identified as eligible for resettlement, the process of being admitted to the United States can often take more than a year, and for Syrians and others fleeing active conflict it can take even longer.¹²⁵

Vetting

The review process for refugee resettlement is the most thorough vetting of any immigrant or nonimmigrant population accepted into the United States.¹²⁶ Security screening involves multiple agencies,

120 Bobby Allyn, "Trump Administration Drastically Cuts Number of Refugees Allowed to Enter the U.S.," NPR All Things Considered, September 26, 2019.

121 United Nations High Commissioner for Refugees (UNHCR), *Global Trends: Forced Displacement in 2018* (Geneva: UNHCR, 2019).

122 UNHCR, *Global Trends 2018*, 3.

123 USCIS, "Refugees and Asylum," updated November 12, 2015.

124 See *Immigration and Nationality Act*, 8 U.S. Code 1101(a)(42).

125 U.S. Committee for Refugees and Immigrants, "Security Screening of Refugees Admitted to the U.S.," accessed March 30, 2020.

126 USCIS, "Refugee Processing and Security Screening," updated August 31, 2018.

including the Departments of State, Homeland Security, and Defense; the FBI; NCTC; and the Terrorist Screening Center.¹²⁷

The review process for refugee resettlement is the most thorough vetting of any immigrant or nonimmigrant population accepted into the United States.

Refugee security screening was significantly enhanced during the Obama administration, particularly for individuals coming from places such as Syria. Under current procedures, applicants undergo biometric (fingerprint) and biographic checks, and a lengthy interview by specially trained government officials who scrutinize applicants' explanation of their individual circumstances.¹²⁸

The Obama administration also created a cross-agency Refugee Coordination Center with representatives from the Department of State, DHS, and the U.S. Digital Service (part of the Executive Office of the President), to allow for real-time sharing of information and process improvements.¹²⁹ For example, a digital approval process allows DHS officers to approve a refugee registration form without having to physically travel to apply an ink stamp on paper to a file prepared by the State Department. The solution was created by granting DHS access to the State Department's electronic refugee case management system.¹³⁰

The arrangement also increased information sharing, communication, and education about processes among all U.S. government entities involved in the program. This, in turn, has led to innovative thinking on how to make the program more effective. This model, which breaks down the bureaucratic and technological barriers to information sharing between agencies with a common mission, is a prototype for enhancing security for other screening functions in the immigration system.

Like visa applicants processed through the Kingfisher Expansion, refugee applicants undergo recurrent vetting throughout the application process. If there is any doubt about whether a refugee poses a security concern, he or she is not permitted to enter the United States.

Assessing Refugee Admissions Risks

From a global security perspective, the slow, cumbersome process for resettling refugees to the United States leaves the primary pressure of hosting large numbers of displaced persons on countries of first asylum. As of 2018, the top refugee hosting country by far was Turkey, with 3.7 million refugees, followed by Pakistan and Uganda.¹³¹ This can significantly strain these countries' resources and capacity. Unintended consequences—such as increased radicalization or unmanaged onward migration, as in the case of migrants leaving Turkey for Western Europe—can result, potentially destabilizing partner countries or U.S. relationships with them.

127 U.S. Department of State, "U.S. Refugee Admissions Program FAQs" (fact sheet, January 20, 2017).

128 U.S. Department of State, "U.S. Refugee Admissions Program FAQs."

129 U.S. Digital Service, *Report to Congress – December 2016* (Washington, DC: U.S. Digital Service, 2016), 44–48.

130 U.S. Digital Service, *Report to Congress*.

131 UNHCR, *Global Trends 2018*.

There are significant national security benefits to admitting refugees: it alleviates the strain on partner countries, undermining radicalizing pressures on individual refugees, signaling solidarity with oppressed people, and building goodwill for the United States. For that reason, until 2018, the United States had historically been a leader in admitting refugees resettled from third countries.¹³²

From a purely U.S. homeland security perspective, the process for refugee resettlement does not pose the security risks suggested by some political and media reports. In fact, a bad actor who intends to do harm in the United States would likely find it easier to gain admission through *any* other process.

This does not mean that bad actors will not try to exploit the refugee admissions program, but they are less likely to succeed. Not only is the security screening process exhaustive and recurrent, but of the millions of refugees in the world, the United States admits considerably less than 1 percent each year, even in its more generous years.¹³³ The likelihood of being admitted if one is male, single, and of military age—the common demographic for individuals who engage in terrorist activity—is significantly lower.

C. *Biometric Entry-Exit Controls*

The *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* (IIRIRA) directed INS to create an entry-exit system that would record the arrival and departure of all non-U.S. nationals in an online database. However, the system was not to significantly increase the time required to complete the inspection process,¹³⁴ nor was funding appropriated for implementation.

At airports, practical problems of building design and carrier cooperation created obstacles that government efforts could not overcome. At land ports, every option proved to increase the amount of time needed to cross the border, given the sheer volume of crossings and space limitations.¹³⁵

New Post-9/11 Priorities

The September 11 attacks gave new impetus to pressure from Congress for entry-exit controls.¹³⁶ In 2003, this time with significant dedicated funding, the newly created DHS launched an automated biometric entry

132 Jynnah Radford and Phillip Connor, “Canada Now Leads the World in Refugee Resettlement, Surpassing the U.S.,” Pew Research Center, June 19, 2019.

133 For example, the United States admitted 84,995 refugees in FY 2016, the highest number of any year since 9/11. This represented roughly 0.3 percent of the 22.5 million refugees worldwide in 2016. See Migration Policy Institute Data Hub, “U.S. Annual Refugee Resettlement Ceilings and Number of Refugees Admitted, 1980-Present,” accessed March 9, 2020; UNHCR, *Global Trends: Forced Displacement in 2016* (Geneva: UNHCR, 2017).

134 William J. Krouse and Ruth Ellen Wasem, *Immigration: Visa Entry/Exit Control System* (Washington DC: Congressional Research Service, 1998), 1–2.

135 Testimony of Michael Hrinayak, Deputy Assistant Commissioner for Inspections, Immigration and Naturalization Service, before the House Committee on the Judiciary, Subcommittee on Immigration and Claims, *Alternative Technologies for Implementation of Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 at Land Borders*, 105th Cong., 2d sess., July 23, 1998.

136 *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001* (USA PATRIOT Act), Public Law 107–56, U.S. Statutes at Large 115 (2001): 272; *Enhanced Border Security and Visa Entry Reform Act of 2002*, Public Law 107–173, U.S. Statutes at Large 116 (2002): 543; Lisa M. Seghetti, *Border Security: Immigration Issues in the 108th Congress* (Washington, DC: Congressional Research Service, 2004), 5–6.

system called United States Visitor and Immigrant Status Indicator Technology (US-VISIT).¹³⁷ In tandem with advanced passenger manifest requirements and terrorist watch lists, biometric entry screening has been successfully implemented and constitutes a highly effective deterrent to the admission of terrorists and others meaning harm to the United States.

However, collecting information that confirms departures has continued to be elusive.¹³⁸ DHS has tried multiple solutions. Every pilot has proved unsatisfactory.¹³⁹ Accordingly, CBP is increasingly relying on other mechanisms to document departure.¹⁴⁰

Other Data Sources for Determining Departures

To plug the gap at its northern land border, the United States negotiated an agreement with Canada to exchange border-crossing information so that an entry into Canada could be used as a record of exit from the United States. As of 2017, the match rate was slightly more than 98 percent.¹⁴¹ The United States does not have a similar agreement in place with Mexico. However, a significant portion of departures across the southwest border are reconciled due to the frequency with which many travelers come and go; once a foreign national re-enters the United States, the previous arrival is closed.¹⁴²

CBP also continues to test technology tools that confirm exit, such as social media analysis, checks against publicly available information, and facial recognition.¹⁴³ Thus, although DHS has failed to meet the congressional requirement of establishing a comprehensive biometric entry-exit procedure at all ports of entry, it was able to match 97 percent of departing aliens to their arrivals as of 2016.¹⁴⁴

Looking Ahead

Decades of effort have been invested in developing a solution for capturing exit information. During that period, other improvements in sharing information have emerged that may outweigh the value of a record of exit. Moreover, once DHS knows that an individual has not exited the United States within the time permitted by his or her visa, the question is: “So what?” The government does not have sufficient

137 Lisa M. Seghetti and Stephen R. Viña, *U.S. Visitor and Immigrant Status Indicator Technology (IS-VISIT) Program* (Washington, DC: Congressional Research Service, 2005), 8, 10; DHS, *Privacy Impact Assessment for the Advance Passenger Information System* (Washington, DC: DHS, 2005), 3–4.

138 Testimony of Randolph C. Hite, Director of Information Technology Architecture and Systems Issues, GAO, and Richard M. Stana, Director of Homeland Security and Justice Issues, GAO, before the House Committee on Homeland Security, Subcommittee on Border, Maritime and Global Counterterrorism, *Homeland Security: Prospects For Biometric US-VISIT Exit Capability Remain Unclear*, 110th Cong., 1st sess., June 28, 2007, 4.

139 GAO, *Homeland Security: US-VISIT Pilot Evaluations Offer Limited Understanding of Air Exit Options* (Washington, DC: GAO, 2010), 23, 25, 29; DHS, *US-VISIT Air Exit Pilots Evaluation Report* (Washington, DC: DHS, 2009), 28–29, 37.

140 DHS, *Comprehensive Biometric Entry/Exit Plan: Fiscal Year 2016 Report to Congress* (Washington, DC: DHS, 2016), 7.

141 Testimony of Michael Dougherty, Assistant Secretary of Border, Immigration, and Trade, Office of Strategy, Policy, and Plans; Scott A. Luck, Acting Deputy Chief of U.S. Border Patrol, U.S. Customs and Border Protection; and Kevin Kelly, Special Agent in Charge, Buffalo, HSI, ICE, before the House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *Looking North: Assessing the Current Threat at the U.S.-Canada Border*, 115th Cong., 1st sess., November 14, 2017, 4.

142 Testimony of Michael Dougherty, Assistant Secretary, Border, Immigration, and Trade, Office of Strategy, Policy, and Plans, DHS; John Wagner, Deputy Executive Assistant Commissioner, Office of Field Operations, CBP, DHS; and Louis A. Rodi, III, Deputy Assistant Director, National Security Investigations Division, Homeland Security Investigations, ICE, DHS, before the Senate Committee on the Judiciary, Subcommittee on Border Security and Immigration, *Examining the Problem of Visa Overstays: A Need for Better Tracking and Accountability*, 115th Cong., 1st sess., July 12, 2017, 2–3.

143 Testimony of Michael Dougherty, John Wagner, and Louis A. Rodi, III, 8.

144 DHS, *Comprehensive Biometric Entry/Exit Plan*, 1.

resources to take enforcement action against every immigrant who overstays a visa, diminishing the value of recording each exit.

Similarly, if information surfaces to suggest that an individual is a suspected terrorist, the absence of information about that individual's exit is of minimal value. U.S. officials are far more likely to identify the presence of an individual in the United States through a host of other traditional law enforcement techniques. Thus, efforts to improve data connectivity between agencies in the first instance constitute more fruitful investments.

This is not to suggest that there is no benefit to exit data as a metric and an operational tool to advance compliance with immigration and travel control requirements. However, the value of biometric exit records as a national security tool is questionable, given that the federal government cannot readily locate individuals who have not left the country before their visas expire. Despite improvements in information sharing, the basic technology to connect the dots between a foreign national's entry, detention, immigration benefits adjudication, criminal investigations, and related functions across federal agencies still does not exist.

D. Managing Land Borders: Whither the Wall?

The rallying cry “build the wall” helped galvanize support for Donald Trump's election in 2016, and his push for \$5.7 billion in funding during FY 2019 budget negotiations led to the longest partial government shutdown in history (35 days).¹⁴⁵ The administration's efforts to build or replace barriers along the southern border raises hotly debated questions about such barriers' overall utility in protecting the United States' national security, particularly whether the potential benefits are proportionate to the costs.

Unique Challenges at Land Borders

There are many common challenges in responding to national security threats across all official ports of entry—whether land, air, or sea. Government officials need the tools to spot fraudulent documents, query appropriate databases to identify national security threats, and benefit from the information and efforts of foreign partners. Yet, there are some challenges unique to land borders that are not usually experienced at airports.

Government officials at land ports of entry generally do not have the benefit of advance notice, as is available with air travel, when assessing the threat posed by individual travelers. They must make real-time decisions about a person's identity and intent, often within moments. CBP officers can exercise their discretion to divert travelers into secondary inspection for a more detailed examination, but as a practical matter, this is a limited subset of the nearly 700,000 travelers who enter the United States in this manner every day—almost twice the number of daily airport arrivals.¹⁴⁶

It is also far easier for a person or illicit commodity to enter the United States undetected at land borders than via air. Whether hidden in vehicle compartments or crossing stretches of land between ports of entry,

¹⁴⁵ Marianne Levine and Quint Forgy, “White House Asks Congress for \$5.7 Billion for ‘Steel Barrier,’” Politico, January 6, 2019.

¹⁴⁶ CBP, “CBP Snapshot (January 2020)” (fact sheet, CBP, Washington, DC, January 2020).

a traveler or criminal intent on escaping detection is more easily able to do so on land. Travelers are not limited to a certain number of bags; trucks and railroad containers regularly cross carrying significant amounts of goods, not all of which can be inspected.

At the same time, U.S. land borders are vast and complicated. The Mexican and Canadian land borders span 6,000 miles. No matter the personnel, physical barriers, surveillance, or other security measures, this sheer size, as well as inconsistent geographical terrain and proximity to urban centers, vastly alters the security measures needed to provide a layered defense.

The nearly 2,000 miles of U.S.-Mexico border carry particular challenges. Officials have discovered more than 200 tunnels under it—some known as “supertunnels” include elevators, electric lights, ventilation ducts, and cleverly disguised entry and exit shafts and are used to smuggle narcotics and other illicit products.¹⁴⁷ Criminals and human smugglers have exploited sewer lines, launched unmanned aerial surveillance devices and balloons, and manned airplanes to cross the border without detection. Likewise, drug traffickers have relied on sea routes, which offer access to thousands of miles of shoreline, to bring narcotics and other illicit cargo into the United States.¹⁴⁸

The Weak Links

While the best opportunities for evading detection may appear to be *between* land ports of entry, criminals and other bad actors more often exploit the opportunities created by the sheer volume of people and goods transported *through* ports of entry. CBP statistics show that 81 percent of the 265,500 pounds of hard drugs caught at the U.S.-Mexico border from FY 2012 to FY 2016 were stopped by customs officers at ports of entry, rather than by Border Patrol agents between ports.¹⁴⁹

In fact, the most significant gains in enforcement have been in curtailing criminal activity between ports of entry. Border patrol staffing, technology, and infrastructure improvements, including fencing, have reached historic highs. Overall government spending since 9/11 on immigration enforcement has been unprecedented; it now totals more than is allocated for all other principal federal criminal law enforcement agencies *combined*.¹⁵⁰ In FY 2018, Congress appropriated \$24 billion to the principal immigration enforcement agencies, of which \$16.3 billion—more than two-thirds—went to CBP.¹⁵¹ Relying on sophisticated surveillance, including ground sensors and cameras, helicopters, and fencing, as well as aerostats, infrared technology, and radar,¹⁵² the agency has both significantly strengthened detection of unauthorized crossings and increased information to officials evaluating travelers at ports of entry.

147 See Amy B. Wang “Drug-Smuggling Tunnel to Mexico Found under Abandoned KFC in Arizona,” *Washington Post*, August 24, 2018; Monte Reel, “Underworld: How the Sinaloa Drug Cartel Digs its Tunnels,” *The New Yorker*, August 3, 2015.

148 Office of National Drug Control Policy, *National Southwest Border Counternarcotics Strategy* (Washington, DC: Executive Office of the President of the United States, 2016).

149 Curt Prendergast, “Most Hard Drugs Smuggled through Legal Border Crossings,” *Arizona Daily Star*, May 6, 2017.

150 Doris Meissner and Julia Gelatt, *Eight Key U.S. Immigration Policy Issues: State of Play and Unanswered Questions* (Washington, DC: Migration Policy Institute, 2019).

151 DHS, *FY 2020 Budget in Brief* (Washington, DC: DHS, 2019); U.S. Department of Justice, “Summary of Budget Authority by Appropriation” (budget document, U.S. Department of Justice, Washington, DC, 2019).

152 Ron Nixon, “On the Mexican Border, A Case for Technology over Concrete,” *New York Times*, June 20, 2017.

While the wall would provide one more layer of defense, in reality, any serious national security threat would hardly be mitigated by such a barrier. First, the data show that a bad actor would have greater success

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crossing at a port of entry—possibly secreted in a vehicle compartment or using false identification documents—than between ports of entry. Second, for the well-resourced bad actor, there are multiple ways to evade detection that go above, around, or below a wall, for example via a border tunnel or by sea. Third, traveling between ports of entry,

particularly through the rural deserts of the southwest, poses myriad additional risks to the would-be terrorist, from the very real dangers of death and dehydration, to the chance of encountering serious criminal gangs or narcotics traffickers, to the strong likelihood of being detected and arrested by the Border Patrol.

Further Strengthening Border Enforcement and Security: The Special Importance of Mexico and the Hemisphere

The principle of building in as much advance notice as possible of the travel of foreign nationals who may pose national security threats has been widely and successfully developed by DHS since 9/11. While most extensively used in air travel, it is being applied at land borders, too. This is increasingly possible with improvements in the capacity of the Mexican government. In 2014, the single most important factor in slowing the arrival of Central American migrants at the U.S. southwest border was the engagement of Mexico in managing its own southern border. Once Mexico enhanced its border management—often with guidance from U.S. border patrol and immigration agents and paid for by the State Department—the total number of migrants dropped by more than 14,000 in just one month in the Rio Grande Valley alone. A similar experience unfolded in 2019, amid a new spike in flows from Central America.¹⁵³

It's not just Mexico—Panama, Costa Rica, and other countries in the region have become valuable partners in managing migration and identifying national security risks along the way to the U.S. southwest border.¹⁵⁴ Strengthening the ability of countries in the Western Hemisphere to manage their aviation security, to identify who is traveling into their countries and whether they have a past record suggesting terrorist activity, is one of the most significant ways to mitigate the threat to the United States through land borders. As a matter of national security, it is much more effective for a country such as Ecuador to identify a migrant in the U.S. terrorist screening database and stop that person at the Quito airport, than for a CBP official to try to locate that person crossing the vastness of U.S. land and sea borders.

Similarly, because CBP officials at land borders cannot benefit from the same kind of powerful analysis and resources provided by the NTC at airports, the answer is to build an early warning and information-sharing system with bordering countries. To do so requires forging partnerships with governments in the Western Hemisphere and continuing to invest in the region.

¹⁵³ Capps et al., *From Control to Crisis*.

¹⁵⁴ Caitlyn Yates, "As More Migrants from Africa and Asia Arrive in Latin America, Governments Seek Orderly and Controlled Pathways," *Migration Information Source*, October 22, 2019.

As Congress has with other foreign assistance, U.S. investment should be paired with meaningful and measurable outcomes to demonstrate that foreign partners have the ability to use the information and enhanced security to the benefit of the wider region. The United States should enhance its existing cooperation and information sharing—including name and fingerprint queries—to deny terrorists and transnational criminal actors the ability to use any country as a transit point to reach U.S. soil.

Given the proven ability of bad actors to breach a wall, investments in partnerships with other countries in the hemisphere and in their technical capacities will have a more long-term and more meaningful impact; as such, they are a much better value for money. Smart and targeted investments in these countries are an investment in U.S. border security.

6 Conclusion

There remains meaningful work to be done to deploy immigration and border controls more effectively to counter threats to national security. From defining mission space, to effectively sharing information and integrating priorities, to transitioning to electronic-based systems, there is no shortage of measures that would improve U.S. homeland and national security capabilities against a range of known and emerging threats, such as pandemics and cyber-security breaches.

Unfortunately, there is also evidence that much-needed resources, political will, and capability are increasingly being siphoned away from addressing meaningful threats to national security and focused on the extremely low threat posed by people seeking asylum, economic advancement, family reunification, or otherwise traveling to the United States. Furthermore, relationships with foreign partners, vital to creating the most meaningful protections to the United States, are being strained. As a result, the U.S. government risks losing the information and intelligence sharing vital to pushing the borders out.

The U.S. government has made important progress in the nearly 20 years since 9/11 in shoring up gaps in its defenses at the nexus of immigration processes and national security. However, continuing on the path of misrepresenting migration-management imperatives as against true security threats risks undermining U.S. homeland security and leaving the country less able to counter the real national security challenges of the 21st century.

Misrepresenting migration-management imperatives as against true security threats risks undermining U.S. homeland security.

About the Author



AMY POPE

Amy Pope, former Deputy Homeland Security Advisor to President Obama, has extensive experience managing high-profile, diverse challenges at the highest levels of U.S. government. Among them, countering violent extremism, managing migration along the southwest border, promoting refugee resettlement, and leading the comprehensive efforts to combat Zika, Ebola, and other public health threats. She is a Partner at Schillings, where she helps clients identify vulnerabilities and build systems to proactively respond to issues and crises.

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