

S U M M A R Y

Beginning with immigration inspectors who patrolled on horseback, border enforcement traditionally has focused on the Southwest border. The issue grew in prominence during the 1970s following the implementation of per-country limits on legal immigration and the earlier termination of the US-Mexican Bracero program. Border Patrol funding has grown more than 500 percent over the last two decades, as legislative and policy changes (including 1986 immigration reform and a new 1994 border control strategy of “prevention through deterrence”) specified concentrated and enhanced personnel and technological resources. During this time, immigration control and drug enforcement efforts at the border became intertwined, and military tactics and equipment were adapted for both efforts.

The scope of border enforcement efforts widened approaching the millennium to include the northern border, airports, and seaports. It expanded with unprecedented intensity and magnitude in the aftermath of 9/11, incorporating overseas consulates in efforts to push the border outward and promoting inter-agency and inter-governmental coordination to increase information-sharing and enhance homeland security. Nevertheless, questions remain about the effectiveness of border enforcement, as well as its consequences.

US Border Enforcement: From Horseback to High-Tech

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I. Introduction

Borders are a concrete representation of a nation's statehood, as each state seeks to control entries into its sovereign territory. Indeed, the ultimate responsibility of a government is to safeguard the security and well-being of its citizens. In the minds of the American public, the term “border enforcement” conjures images of Border Patrol agents in green uniforms, trying to prevent the entry of drugs, thugs, and illegal immigrants along a relatively uncontrolled, and at times chaotic, US-Mexico border. And for most of the 20th century, that was an accurate characterization, as enforcement resources were allocated in that manner.

Genuine border enforcement, however, consists of integrating the work, resource allocation, and information capacity of all ports of entry—including northern and southern land borders, airports, and seaports—as well as the territory between official ports of entry and US consulates abroad in an effort to protect the country. Though some components of this broader definition were in the minds of key policymakers by the mid-1990s, only in the last few years has this holistic approach to border enforcement become more widely accepted as a new paradigm for serious policy discussions in this arena.

This *Insight* provides an overview of border enforcement and how it has changed since the passage of the Immigration Reform and Control Act (IRCA) nearly two decades ago. During this period, border enforcement has variously sought to prevent the smuggling of alcohol and drugs, the flow of

illegal immigrants, criminal violence in the border region, and threats posed by terrorists. At the same time, border control has also evolved from a low-tech, one-agency exercise focused strictly on the Southwestern border itself, to a far more encompassing concept including multiple agencies, the extensive use of technology, and a broad geographic focus which not only includes the entire US border and coastline but also projects to transit states and countries of origin.

II. Historical Background

Seventy-five immigration inspectors on horseback first began enforcing immigration laws on the US-Mexico border in 1904, a border that was not even formalized until the 1848 Treaty of Guadalupe Hidalgo ended the Mexican-American war. An independent Border Patrol was first established by Congress as part of the restrictive Immigration Act of 1924, with 450 employees deployed along both US land borders in response to illegal entries and alien smuggling. By 1930, the Border Patrol's size had nearly doubled, and additional growth ensued during World War II based on national security concerns.¹

The mission of the Border Patrol, working between official inspection stations, was to exclude "illegal aliens," including Asian and European immigrants trying to circumvent newly established entry quotas through illegal entry along the US-Mexico border. Yet as prohibition went into effect, resources were diverted to stem the illicit flow of alcohol (particularly along the Canadian border). The 1933 repeal of Prohibition coincided with the Great Depression and reduced flows of unauthorized labor into the United States, decreasing the demand for border enforcement during this period.²

With a few exceptions,³ border enforcement failed to rise again to national prominence in policy debates until the late 1970s. In part, inattention reflected the fact that the majority of Mexico-US migration from 1942-1964 was legal under the Bracero Program, and most unauthorized migrants returned home seasonally.⁴ Furthermore, Mexicans were able to enter the United States without quantitative limits prior to the 1965 amendments to the Immigration and Nationality Act (implemented in 1968). And it was not until 1976 that the Congress extended the strict 20,000-per-country limit and preference system to countries in the Western Hemisphere, including Mexico.⁵

By the late 1970s, with the US economy in recession and the country facing an energy crisis, migration pressures mounted in Mexico due to the new numerical restrictions. Apprehensions and deportations increased dramatically from earlier in the decade to more than one million annually. Boatloads of Vietnamese refugees began arriving in 1976, and President Jimmy Carter introduced a plan in 1977 to address illegal immigration that included enhanced enforcement efforts at the US-Mexico border.⁶ By 1978, the Congress had appropriated funds for 2,580 Border Patrol staff, accounting for one-quarter of total Immigration and Naturalization Service (INS) staff at that time.⁷ Although a stalemated Congress failed to act on President Carter's plan, it did create the Select Commission on Immigration and Refugee Policy (SCIRP) in 1979 to study and make recommendations on illegal immigration and immigration reform.⁸ It was the recommendations of the Select Commission, created only a few years after imposition of the per-country limits and preference system on Mexico, that became the basis of policy debate and legislation throughout the 1980s.

In the interim, 125,000 Cuban refugees and tens of thousands of Haitians arrived on US shores, and apprehensions of unauthorized immigrants along the US-Mexico border continued to climb (see Table 1), further contributing to public perceptions that immigration was out of control. At the same time, President Reagan formalized and continued Richard Nixon's "War on Drugs," which peaked in intensity in February 1985 with the kidnapping and slaying of a US Drug Enforcement Administration (DEA) Special Agent in Mexico.⁹

III. IRCA and Its Aftermath: 1986-1992

After many years of debate, Congress passed the Immigration Reform and Control Act of 1986 (IRCA). The basic concepts of IRCA, as exemplified by the first three titles of the bill, were: "Control Illegal Immigration," "Legalization," and "Reform of Legal Immigration."¹⁰ They were based on the Select Commission's conclusions that:

- Lawful immigration served a positive benefit;
- Illegal immigration was a serious problem that needed to be addressed prior to any expansion of legal immigration;
- Legal admissions should continue to be based on family connections, employment, and humanitarian needs;
- Immigration policies should be non-discriminatory.

Thus, the Commission's proscribed approach was to "close the back door and open the front door."¹¹

IRCA's attempt to control and reduce illegal immigration focused on imposing sanctions on employers who hired unauthorized workers,

legalizing the existing unauthorized, and enforcement at the border.¹² The law also provided a significant infusion of resources to enhance the Border Patrol's existing approach to the detention and apprehension of illegal entrants.¹³ In particular, Section 111 of IRCA stated that an essential element of immigration control would be "an increase in the border patrol and other inspection and enforcement activities of the Immigration and Naturalization Service and of other appropriate Federal agencies in order to prevent and deter the illegal entry of aliens into the United States and the violation of the terms of their entry."¹⁴ Thus, the bill called for a 50 percent increase in Border Patrol personnel in Fiscal Years 1987 and 1988. The Border Patrol also was tasked with assisting in employer sanctions, employer education, and the apprehension and removal of criminal aliens.

At the time of IRCA's passage, Congressional appropriations had increased to fund nearly 3,700 Border Patrol staff, over 30 percent of total INS personnel. IRCA raised it to more than 5,500 in 1987 with appropriations for Border Patrol nearly double what they had been only five years earlier.¹⁵ Moreover, the Border Patrol received an influx of new equipment, including twenty-two helicopters for all nine sectors (up from a total of two helicopters in one sector) and hundreds of night-vision scopes, night vision goggles, and surveillance systems. Additional Border Patrol stations and checkpoints and new detention centers were also built.¹⁶

Border enforcement received a disproportionate percentage of the resulting financial resources: 57 percent (\$70.5 million) of the supplemental funds for IRCA's implementation in Fiscal Year 1987 targeted border enforcement, compared to 27 percent for sanc-

This increasing role of the Border Patrol in drug control resulted in qualitative changes in their equipment and approach, including use of military approaches and technology.

tions enforcement and 14 percent for alien removal.¹⁷ Overall, INS's enforcement budget grew substantially following IRCA, with enforcement staffing increasing between 1986 and 1990

by 40 percent and the budget by 90 percent (nearly 11,000 and \$700 million, respectively). The Border Patrol accounted for approximately 40 percent of the INS's total enforcement budget and staff at that time.¹⁸

A number of additional policy changes in 1986 highlighted a growing connection between border enforcement and counter-narcotics programs.

- President Reagan signed a National Security Decision Directive that described drug trafficking as a threat to national security and authorized military involvement in anti-drug activities.¹⁹
- The lead role in drug interdiction between ports of entry was given to the Border Patrol by the Southwest Border Drug Task Force (a role reinforced in 1991 by the Office of National Drug Control Policy - ONDCP). The Border Patrol's legal authorities were formally expanded in 1987 when deputized by the DEA and Customs to enforce laws against drug and contraband smuggling.²⁰
- The Anti-Drug Abuse Act, enacted only ten days before IRCA, enhanced INS's ability to deport aliens with drug convictions and provided additional funding to fulfill its role in drug interdictions.²¹ Congress also began requiring the State Department to certify countries' cooperation with the United States in drug control efforts.²²

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their equipment and approach, including use of military approaches and technology.

Connections between the military and the INS were reinforced by a newly established multi-agency federal task force called the Alien Border Control Committee, which met in September 1986 to develop a contingency plan to round-up and deport thousands of "alien terrorists and undesirables" and seal the border. INS was the lead agency but the military was tasked with a support role. Three years later, the military created Joint Task Force 6 (JTF-6) to coordinate its expanding support for the anti-drug efforts of border-region police agencies, including the Border Patrol. JTF-6 deployed air and ground troops along the border and would later play an important role in building many of the physical barriers erected for the purposes of immigration enforcement.²³

By 1989, the War on Drugs was an increasingly central feature of US foreign policy.²⁴ The second Anti-Drug Abuse Act was passed in 1988, requiring INS to deport certain aggravated felons following the completion of their sentences.²⁵ The focus on drug enforcement proved beneficial for INS's enforcement budget, as it received additional funding of equipment and personnel. In fact, this supplemental drug funding was the only discretionary funding INS received once IRCA-related budget increases declined.

Following IRCA's passage and the years of debate that had preceded it, anxieties regarding illegal immigration receded a bit. Illegal entries also declined temporarily as a result of IRCA's deterrent effect, with Border Patrol apprehensions in 1989 only 53 percent of the 1986 levels (see Table 1). At the same time, the Border Patrol's additional enforcement responsibilities (including employer sanc-

tions enforcement and removal of criminal aliens) contributed to a decline in “line-watch” hours.²⁶

The late 1980s was also a period of rapprochement between the United States and Mexico following conflicts earlier in the decade over drugs, migration, the Central American civil wars, and Mexican political institutions.²⁷ The United States and Mexico discussed expanded trade and economic integration and targeted a number of sectors for liberalization in the 1987 *Framework Understanding on Trade and Investment*. Presidents George H. W. Bush and Carlos Salinas de Gortari continued negotiations in 1989 under the auspices of the Uruguay Round of the General Agreement on Trade and Tariffs, until Salinas made a surprise announcement of a free trade agreement in March 1990. Improved trade relations culminated with the signing of the North American Free Trade Agreement (NAFTA) in 1992 and its implementation beginning in January 1994.²⁸

Many of the Select Commission’s other recommendations were addressed in the Immigration Act of 1990 (IMMACT). The Act focused on expanding legal immigration (iron-

ically at a time in which the US economy was in a downturn), but it also called for the addition of 1,000 Border Patrol agents and allowed funds from increased penalties to be allocated toward “the repair, maintenance, or construction on the United States border, in areas experiencing high levels of apprehensions of illegal aliens, of structures to deter illegal entry into the United States. Additionally, IMMACT authorized creation of the US Commission on Immigration Reform, with the mandate to examine and evaluate its impact.”²⁹

In 1991, the US Navy Seabees built a ten-foot-high wall of corrugated steel between San Diego and Tijuana using surplus military aircraft landing mats. The wall stretched for seven miles along the border in the Chula Vista sector (in 1993 it was expanded to fourteen miles, extending into the Pacific Ocean) and marked a momentous upgrade from the chain-link fences that had previously demarcated the border.³⁰ The stated aim of the fence was to reduce drug smuggling, but its location overlapped with the most heavily trafficked crossing point for illegal immigrants. It drew significant political attention in both countries, particularly given the increasing economic and political integration.³¹

Table I. Border Patrol Apprehensions 1980-2003

1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
759,420	825,290	819,919	1,105,670	1,138,566	1,262,435	1,692,544	1,158,030	969,214	891,147	1,103,353	1,132,933
1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
1,199,560	1,263,490	1,031,668	1,324,202	1,549,876	1,412,953	1,555,776	1,579,010	1,676,438	1,266,214	955,310	931,557

Sources: David Dixon and Julia Gelatt, “Immigration Enforcement Spending Since IRCA,” Background Paper Prepared for the Independent Task Force on Immigration and America’s Future, September 2005 and Timothy J. Dunn, *The Militarization of the U.S.-Mexico Border 1978-1992: Low-Intensity Conflict Doctrine Comes Home* (Austin: Center for Mexican American Studies, University of Texas at Austin, 1996), 182.

Although perhaps the most visible, construction of this barrier was only one component of broader border upgrades during this time period, including additional helicopters and new technologies such as infrared radar equipment and a mobile surveillance system. INS received continued military support in construction and maintenance and installed powerful floodlights overlooking a popular Tijuana crossing point to deter criminal activity and attempts at illegal entry.³² By the end of 1992, the Border Patrol's funding had reached over \$325 million, and its staffing levels (just under 5,000) continued to represent over 40 percent of all INS staff.³³ As scholars have noted, the simultaneous growth in cross-border business and in border enforcement led to the paradox of "a barricaded border and a borderless economy."³⁴

IV. A New Border Control Strategy: 1993-2001

Concern about immigration in general, and illegal immigration in particular, reemerged as a national priority in the 1990s, beginning with the January 1993 shooting at CIA headquarters by a Pakistani who had entered the United States illegally and applied for political asylum. One month later came the bombing of an underground garage at the World Trade Center building, spearheaded by a Kuwaiti who had entered with a false Iraqi passport. In June, Sheikh Omar Abdel Rahman (the "Blind Sheikh"), who had been issued a visa to enter the United States despite his name being on a watch list of suspected terrorists, was arrested for his role in plots to blow up New York landmarks.

In June, a ship called the Golden Venture ran aground in the early morning hours near Queens, New York; many of its nearly 300

Chinese passengers drowned, and most of the survivors eventually were deported. In California, voters were considering California's Proposition 187 to deny social services, health care, and public education to illegal immigrants. Governor Pete Wilson embraced the proposition as part of his re-election campaign, and the measure passed easily in 1994. Also in 1993, but little noticed, a study commissioned by the ONDCP on increasing border security recommended that the Border Patrol focus on increasing the difficulty of illegal entry through additional barriers and surveillance equipment.³⁵

On September 19, 1993, newly arrived Border Patrol Sector Chief Silvestre Reyes initiated Operation Blockade along the El Paso/Ciudad Juarez border. El Paso was a location where local residents of Mexico and long-distance travelers entered the United States with relative ease. Border Patrol agents traditionally had spent their time apprehending and removing these illegal immigrants after they had entered, and they had often mistakenly harassed legal border residents, including substantial numbers of US citizens of Mexican descent.³⁶ The El Paso operation deviated from this enforcement strategy by deploying more than 400 of the sector's 650 agents to 24-7 duty along the border line.

Operation Hold the Line, as Blockade was later renamed, turned out to be the first step in what would become a major shift in Border Patrol and INS policy nationwide, and INS approved \$300 million to cover the expected overtime costs of this local initiative. The idea was to use a show of force along the Rio Grande to prevent illegal entries or intercept attempted entrants, rather than chasing them down after entry. Holes in fences were repaired and air support was made available

to agents. Operation Hold the Line had an immediate and visible impact on the El Paso community, as illegal entries and apprehensions declined dramatically and so did petty crime and charges of human rights violations by Border Patrol agents.³⁷

President Clinton responded to the growing anti-immigrant sentiment by announcing new initiatives against illegal immigration in July 1993. They included \$45 million to hire 600 more Border Patrol agents and acquire new high-tech equipment.³⁸ Attorney General Janet Reno visited the Southwest border the next month, and in February 1994, she and INS Commissioner Doris Meissner announced a multi-year strategy to curb illegal immigration. The centerpiece of the strategy was strengthening border control by focusing resources on the traditionally highest crossing corridors for illegal immigration into the United States. The strategy called for adding an additional 1,000 Border Patrol agents in the areas of greatest need and expanding use of infrared scopes, lighting, secondary fences, and upgraded sensors. Following the initial success of Hold the Line, the Border Patrol planned to deter entry by maximizing the use of physical barriers, increasing the time spent by agents on actual border control activities, and identifying the appropriate levels and mix of staffing and technology.³⁹

The policy shift was described in the Border Patrol's 1994 strategic plan, which became the basis of the Clinton Administration's Southwest border enforcement strategy and its plan for immigration control more generally. The strategy can be summarized by two concepts: "prevention through deterrence" and "targeted enforcement." These concepts are crucial to understanding border control during the 1990s and represent a significant break from previous policies.

Recognizing that sealing the border was unrealistic, the Border Patrol instead aimed to concentrate resources in major entry corridors (rather than sprinkling them evenly across the border), establish control, and then sustain the resource commitment to maintain control as enforcement efforts moved elsewhere across the border.⁴⁰ They hoped this approach would raise the risk of apprehension high enough to deter illegal entry or redirect traffic to areas that were harder to cross and more advantageous for enforcement efforts. It also would disrupt existing entry and smuggling routes and help restore confidence in the integrity of the border.

The plan included four phases, beginning with those sectors in urban areas that faced the greatest illegal activity: 1) Southern California and West Texas/New Mexico (prior to Operation Hold the Line nearly 40 percent of all apprehensions occurred in the San Diego sector, and 18 percent occurred near El Paso); 2) South Texas and Arizona; 3) the rest of the Southwest border; and 4) all other US borders, including the northern land border and all sea borders (Florida, Puerto Rico, and coastal waterways).⁴¹

Thus, INS began to replicate the El Paso model in various sectors along the border, starting with Operation Gatekeeper in San Diego in 1994 (extended by 1998 along all sixty-six miles of the sector) and Operation Safeguard in Nogales in 1995 (which received little funding until the late 1990s). Those were followed by Operation Rio Grande near McAllen and Laredo, Texas in August 1997.⁴² A Northern Border Strategy was not developed until 2000.⁴³

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These operations all shared common features, including the addition of hundreds of agents and motion-detection sensors in the selected sectors; construction of high-intensity, stadium-type lighting, new roads, and miles of steel fencing; and installation of an automated fingerprint system to identify criminal aliens and repeat crossers (IDENT).⁴⁴ IDENT was first unveiled in San Diego in late 1994, and in incremental steps, was deployed across the Southwest border for use on all migrants apprehended during illegal entries by 2001.⁴⁵ The program uses a camera and fingerprint scanner to capture right and left index prints, a picture, and basic biographical data on migrants apprehended at the border.⁴⁶ IDENT technology was based on the Navy's Deployable Mass Population Identification and Tracking System,⁴⁷ and it serves as the underlying architecture of the post 9/11 US-VISIT (United States Visitor and Immigrant Status Indicator Technology) tracking system.

Again, many of these technologies originated from the military, and the military continued to assist with construction, maintenance, and operation of equipment. In fact, part of the role of the border czar, appointed by the Attorney General as her Special Representative on Southwest Border Issues in October 1995, was to coordinate the work of all Justice Department agencies with the military, as well as with state and local law enforcement and Mexican officials.

In September 1994, the US Commission on Immigration Reform issued its first interim report to Congress, asserting that the United States needed to restore credibility to its immigration policy. As had been the case with the Select Commission, some of its recommendations became the basis of future legislative and policy changes. As part of the effort to

restore credibility, the Commission called for improved border management to meet the twin goals of preventing illegal entries while facilitating legal ones. In particular, the Commission endorsed the strategy used in Operation Hold the Line and recommended increased resources for prevention (including staff, technology, data systems and equipment), increased training for border officers, formation of a rapid response team, use of fences for the purposes of reducing border violence, and systematic evaluation of the effectiveness of new strategies through techniques other than apprehension rates. Furthermore, the Commission supported efforts to address human rights complaints, to coordinate efforts with the Mexican government, and to improve operations at legal ports of entry, including the automation of arrival and departure records to enhance exit controls and better determine overstay rates. The Commission also concluded that “border management alone will not deter unlawful immigration.”⁴⁸

By 1996, the INS described the objectives of its border control strategy as follows:

- To provide the Border Patrol and other INS enforcement divisions with the personnel, equipment and technology to deter, detect and apprehend illegal aliens;
- To regain control of major entry corridors along the border that for too long have been controlled by illegal immigrants and smugglers;
- To close off the routes most frequently used by smugglers and illegal aliens and to shift traffic to areas that are more remote and difficult to cross illegally, where INS has the tactical advantage;
- To tighten security and control illegal crossings through ports of entry; and

- To make our ports of entry work for regular commuters, trade, tourists and other legitimate traffic across our borders.⁴⁹

The agency understood that if they were successful with each phase, not only would illegal entry attempts shift to sectors that had not yet been addressed, but also traffic might shift to other modes of entry, including the use of fraudulent documents at legal ports of entry.⁵⁰ Thus, enhanced enforcement was not limited to Border Patrol agents between ports of entry; Congress authorized a doubling of inspectors at ports of entry between 1994 and 1997. The additional 800 INS inspectors in the southwest led to a total of 1,300 by March 1997. This enhanced effort sought to intercept the growing use of fraudulent documents at official ports of entry in response to tightened enforcement between the ports. For instance, interceptions of fraudulent documents in the San Diego district increased by 11 percent in 1994-1995, while false claims to US citizenship increased by 26 percent, with similar trends in El Paso.⁵¹

Similar support, however, was not initially extended to the State Department's role in border enforcement, resulting in insufficient staffing at overseas consulates, ineffective interagency data exchange, and a lack of necessary technological improvements. This contrast between a dramatically growing INS and a stagnant State Department budget in the 1990s (as shown in Figure 1) was particularly sharp given that both were funded through the same appropriations bill, and in many ways competed for the same limited funding.⁵²

Yet in a sign that consular work abroad was seen as an important component of border enforcement, INS and the State Department launched DataShare in the mid-1990s. Once fully deployed, the program electronically transferred a visa applicant's full file with

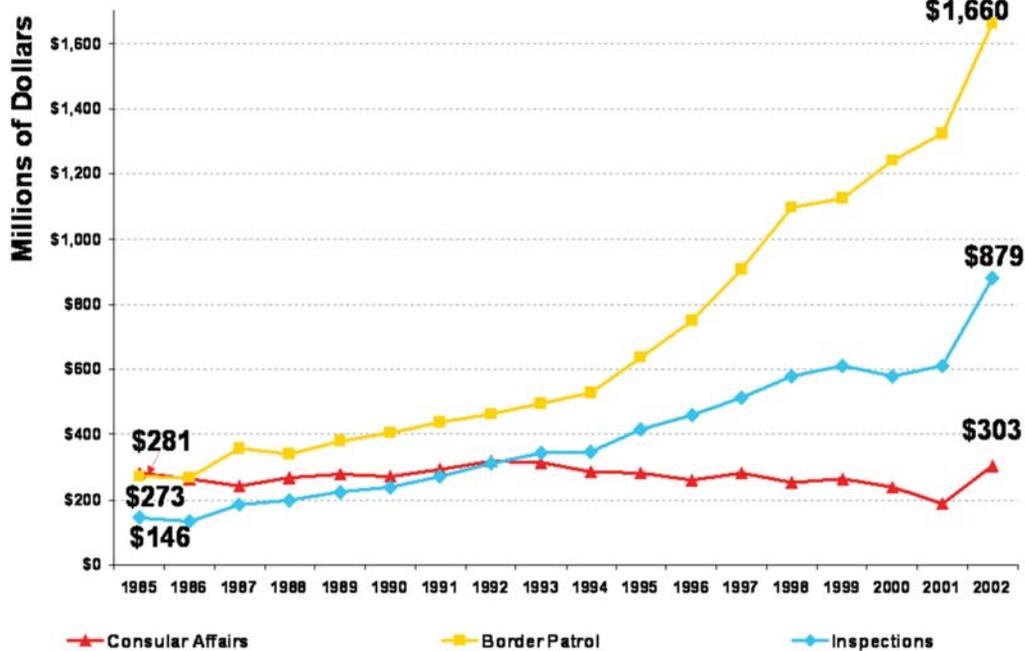
photo and fingerprints from consulates to ports of entry, allowing inspectors to compare the applicant with his or her application.⁵³ (Initially the program was only funded to cover immigrant visas. However, one of the first changes after 9/11 was to extend the program to non-immigrants.)

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INS also expanded its enforcement efforts abroad, opening 13 new offices in Europe, Africa, Asia, and Latin America in "Operation Global Reach." The idea was to work with law enforcement officials and transportation authorities in various countries to address the growing problems of smuggling and trafficking within source and transit countries. Between 1997 and 2001, with 40 overseas offices and 150 positions dedicated to these issues, INS trained over 45,000 officials and airline personnel in fraudulent document detection. During this effort, over 74,000 persons with fraudulent documents were intercepted as they attempted to transit through designated countries to the United States.⁵⁴

Another factor that may have contributed to a more expansive conceptualization of border enforcement was the significant portion of the unauthorized population that was thought to have entered the country legally but overstayed their visas (non-immigrant overstays) rather than individuals who had entered illegally between ports of entry (entry without inspection - EWI). INS estimated in 1994 that approximately 3.4 million unauthorized persons resided in the United States as of 1992. Of that figure, around half were visa overstayers and half EWIs. INS released new figures in 1997,

Figure I. Border Control Spending: FY 1985-2002



Source: David Dixon and Julia Gelatt, “Immigration Enforcement Spending Since IRCA,” Background Paper Prepared for the Independent Task Force on Immigration and America’s Future, September 2005.

estimating that of approximately five million unauthorized persons in the United States as of October 1996, 41 percent of them were overstayers, while 59 percent were EWIs.⁵⁵

In 1996, Congress passed three major pieces of legislation that had immigration implications. These included the Antiterrorism and Effective Death Penalty Act of 1996 in April, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 in August, and the Illegal Immigration Reform and Immigrant Responsibility Act in

September.⁵⁶ The last, referred to as IIRIRA, is particularly relevant for this discussion, as it ratified in statute what had already been occurring in the appropriations process and in operational and regulatory changes made during the previous two years. In so doing, IIRIRA signaled broad bipartisan support for aggressive border enforcement and planted the seeds for many future security efforts.⁵⁷ IIRIRA included multiple provisions dealing with border enforcement.

- It required the Border Patrol to “increase by not less than 1,000” the number of full-

time active-duty agents for each of the next five years and to deploy them proportional to the sectors with the highest levels of illegal crossings.

- It required the construction of additional physical barriers and roads in areas of high illegal entry, including second and third fences.
- Continuing the trend of adapting military technology and equipment for the purpose of immigration enforcement, it authorized the acquisition and use of *any* federal equipment available for transfer from *any* other federal government agency that could be of use for the “detection, interdiction, and reduction of illegal immigration.”
- It authorized funds to expand IDENT to illegal or criminal aliens nationwide and instituted bars on entry for those who had overstayed their visas.

Perhaps most familiar today were requirements for tracking entries and exits of students, in particular, and foreign-born visitors more generally. Both programs became the basis of post-9/11 initiatives. INS had proposed a new automated system for information on international students and exchange visitors in 1995 in response to FBI concerns about the activities of foreign students following the 1993 World Trade Center bombing. As part of IIRIRA, Congress mandated that such a system be fully operational by 2003 and be funded by fees collected from students. A pilot program began in the late 1990s (the Coordinated Interagency Partnership Regulating International Students-CIPRIS), but it was delayed for a variety of reasons, including disagreements between lawmakers and the higher education establishment over fee collection and technical problems in the system.⁵⁸

Section 110 of IIRIRA required development by September 1998 of an automated entry-exit tracking system that would identify visa overstays by recording departures of non-US citizens and matching them with entry records. The Section 110 provision provoked strong reactions from communities and businesses along the Canadian and Mexican borders that feared a negative impact on trade and a significant increase in border delays. Section 110 was modified by the Data Management and Improvement Act of 2000 (DMIA). The DMIA precluded the imposition of additional documentary requirements or collection of new data for the system, but it also set implementation deadlines starting in December 2003 for an entry-exit system based on existing data.⁵⁹

Defining border enforcement more broadly than before, IIRIRA also required enhanced document security (adding a biometric to border crossing cards), increased penalties against illegal entry and high speed flight from interior checkpoints, and imposed new penalties against alien smuggling and document fraud. Moreover, the bill authorized additional inspectors at ports of entry, pilot projects for special commuter lanes, pre-inspection posts in five foreign airports known to be departure points for large numbers of inadmissible travelers, and the training of airline personnel to detect fraudulent documents. These provisions likely reflected a greater understanding that some illegal entry attempts were being diverted to legitimate air or land ports of entry, as well as the importance of facilitating legitimate traffic.⁶⁰

Although IIRIRA required the Border Patrol to increase its strength by 1,000 agents per year, such rapid growth was unrealistic. A number of factors undermined the ability to meet the hiring targets set out by the Congress, includ-

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ing agency attrition, insufficient funds to hire new agents, a lack of facilities to support the sudden growth in agents, and a dangerously high proportion of new agents that could put migrants, local residents, and agents themselves at risk. In fact, the Attorney General

specified that new agents should not be deployed into the field until existing agents were able to gain additional experience. It was especially difficult to recruit, train, and retain a sufficient numbers of agents in the dynamic economy of the 1990s.⁶¹

By September 1998, the Border Patrol had grown to 8,000 (93 percent of whom were deployed on the Southern border), and the number of inspectors at land ports of entry had grown to 2,000 (75 percent of whom were located on the Southern border).⁶² After more than doubling in size since 1993, the Border Patrol had more agents carrying firearms than any other federal force.⁶³ As then-Commissioner Doris Meissner stated with regard to the Southwest border enforcement strategy, “...We have achieved more in the past five years than has been done in decades.” The pre-1993 status quo of insufficient personnel and equipment had been overcome by a strategic plan and “state-of-the-art force-multiplying equipment and technology” as the Border Patrol and INS shifted from a passive to a proactive, and resource-supported, strategy.⁶⁴ Nonetheless, a 1998 independent study commissioned by ONDCP estimated that in order to replicate the experience of Operation Hold the Line in

El Paso, the Border Patrol would need to double its size to more than 16,000 agents—a number which far exceeded existing administration targets.⁶⁵

In the mid-1990s, the United States also began to formalize discussions with both its neighboring countries on issues that directly or indirectly addressed border enforcement. For instance, the longstanding US-Mexican Binational Commission included a working group on Migration and Consular Affairs that led to agreements on consular protection and cooperation against border violence.⁶⁶ In 1997, Presidents Bill Clinton and Ernesto Zedillo issued a Joint Declaration on Migration and signed a declaration regarding a Joint Alliance Against Drugs. Similarly, the United States signed multiple agreements with the Canadian government during this timeframe that advanced cooperation on border enforcement, as well as facilitation of legitimate travel. These included the 1995 Shared Accord on Our Border that resulted from the summit between President Clinton and Prime Minister Jean Chrétien, the 1997 Border Vision, and the 1999 Canada-US Partnership. These cooperative agreements and deep relationships allowed all three governments to take many of the actions that they did in the aftermath of 9/11 and laid the foundation for additional cooperative agreements and shared visions for the future with regard to border enforcement.⁶⁷

In December 1999, a US Customs agent at a port of entry in Washington State apprehended Ahmed Ressay, an al-Qaeda operative carrying explosives who intended to bomb the Los Angeles airport. That incident increased attention to the US-Canadian border from an enforcement, security, and political perspective. Consistent with the fourth and final phase of the 1994 border control strategy, INS

announced its Northern Border Strategy in the fall of 2000. Its primary objective was to enhance the security of the shared border (i.e., protecting against terrorists as well as cross-border crime and illegal immigration) while “efficiently and effectively managing the flow of legitimate travelers and commerce.”

The strategy emphasized four elements: 1) the importance of cooperation and coordination within and between the governments; 2) intelligence; 3) effective technology development and deployment; and 4) innovative resource allocation and management. It also specified that it would not replicate the strategies from the southern border. Furthermore, the Northern Border Strategy planned to improve immigration enforcement beyond the border through identification and interdiction prior to arrival at the border.⁶⁸ In many ways, this strategy’s focus on intelligence, information, and coordinated intergovernmental efforts to push the border outward foreshadowed enforcement approaches that would gain in primacy following the attacks of 9/11.

By September 30, 2000, the Border Patrol had reached over 9,000 agents, with 93 percent of them deployed along the Southwest border, and an annual budget in excess of \$1 billion. The number of hours those agents spent on border enforcement activities also increased, as had the number of remote video surveillance systems. Moreover, the Southwest border included 76 miles of barrier fences, and the Border Patrol’s five-year plan called for additional technology along both the northern and southern borders.

V. September 11, 2001-Present

The terrorist attacks of September 11 raised political and public attention on border enforcement to unprecedented levels. Given

the modes of entry of the 9/11 hijackers,⁶⁹ the majority of policy changes that followed focused on temporary visitors to the United States who entered through legal means at official ports of entry such as airports, rather than by crossing the Southwest border. Post-9/11 reforms thus had a relatively modest impact on the day-to-day operations and responsibilities of the Border Patrol. Yet the attacks solidified the notion that immigration functions must be treated as a key aspect of national security, and that border enforcement should not be limited to physical land borders alone. Building on programs initiated in the 1990s, security gaps were addressed with new urgency through greater information-sharing; modifications to visa policies and procedures overseas, including expanded international cooperation; enhanced document security and documentary requirements; accelerated implementation of entry-exit and foreign student tracking programs; and institutional changes.

Information-sharing

Increased information-sharing was identified as a goal immediately after 9/11 with passage of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act in October 2001 (USA Patriot Act), and it was reinforced by the Enhanced Border Security and Visa Entry Reform Act (EBSVERA) of 2001 (signed into law in 2002) and the Intelligence Reform Act of 2004, which focused on enacting the recommendations of the 9/11 Commission.⁷⁰ The Patriot Act mandated full access by INS and State Department personnel to FBI criminal records extracts. Over seven million FBI criminal records were added to the State Department’s Consular Lookout and Support System database in 2002.⁷¹ EBSVERA required additional information-sharing

among law enforcement and intelligence agencies, INS, and the State Department to ensure that inspectors at ports of entry were given access to electronic versions of travelers' visa applications and also mandated that commercial vessels and aircraft electronically submit passenger arrival and departure manifests. Additionally, both the Intelligence Reform Act and EBVSERA took steps to link DHS, Justice Department and State Department data systems to improve visa, admissibility, and deportation determinations.

Visa issuance and extending borders outward

All three laws also took steps to bring visa issuance by overseas consulates more firmly into an integrated national security framework and to project enforcement beyond the US border. While the basic legislative framework of the visa process has not changed substantially, the administrative elements have undergone significant change, including oversight by DHS of visa policy. Denials of petitions for particular visa categories are more frequent, as are delays in administrative appeals. The Patriot Act required a review of the consular process to prevent applicants from applying at multiple consular posts, a practice known as "visa shopping." EBVSERA mandated improved training for consular officers as well as creation of terrorist lookout committees at embassies. It also allocated an increase in 150 consular officers per year from FY 2006-2009, a significant change in light of the flatlined resource levels of the past decade.⁷² Actual growth has been less robust.⁷³ Furthermore, as the Visa Waiver Program was identified as a serious vulnerability following 9/11, EBVSERA required more frequent evaluation of visa waiver countries (Argentina and Uruguay were removed from the program in 2002 and 2003, respectively). In addition, two

programs that allowed foreign-born passengers to transit the United States en route to their final destination in another country without a US visa were suspended in August 2003.⁷⁴

Similarly, the Intelligence Reform Act took additional steps in this direction by reducing the authority of consular officers to waive in-person interviews (the State Department's "Visas Express" program in Saudi Arabia ended in July 2002), expanding grounds of inadmissibility and deportability, and limiting the use of foreign nationals for visa screening. The legislation also reduced the ability to waive the passport requirement for entry other than for US citizens, including elimination of the Western Hemisphere exemption by 2008. Furthermore, the US-VISIT program mentioned earlier, which was announced in 2003 but had evolved from the entry-exit requirements of the 1996 legislation, requires travelers holding visas, and now travelers entering under the visa waiver program as well, to submit biometric data, including digital photographs and fingerprints, upon entering at ports of entry. The previous version of tracking involved paper I-94 forms that were supposed to be stamped upon entry, collected by the airline upon departure, then sent by INS to a contractor for manual data entry.

Efforts to externalize migration enforcement in this way have increasingly relied on international cooperation, especially with the countries in North America. Examples of such cooperation have been the Smart Border Accords, signed first with the Canadians in December 2001 and with the Mexicans in March 2002. These agreements, which built on previous initiatives and goodwill, demonstrated a new understanding by the United States that its security could best be achieved through cooperative, rather than unilateral

approaches. The action items in the 30- and 22-point agreements focused on joint intelligence and law enforcement teams, joint training and anti-smuggling efforts, additional officers overseas, advance passenger information, compatible databases, coordinated visa policies, common biometric identifiers, and pre-clearance away from the border, among other items.⁷⁵

Another cooperative effort is the Immigration Security Initiative (ISI), which builds on Operation Global Reach discussed earlier. CBP will station officers in selected international airports abroad and train foreign airline and law enforcement personnel to inspect passengers and their documents prior to boarding flights to the United States. Though CBP officers will serve in an advisory role (because they do not possess legal authority in the host countries), the program is another example of the new layered approach to security, with the first line of defense overseas and the port of entry becoming the last, rather than the only, opportunity to prevent an undesirable entrant.⁷⁶ The Intelligence Reform bill specified that the program be operational in fifty airports by December 2006, budgeting \$105 million over a three-year period.

Looking farther ahead, EBSVERA also authorized joint US-Canadian alternative inspection programs and a study of the feasibility of a North American National Security Program. Such a program would consider, among other elements, expansion of the pre-clearance and pre-inspection programs to include foreign nationals traveling to Canada and Mexico, as well as training and funding for Canadian and Mexican inspectors. The notion of broader cooperation was not limited to North America, either. EBSVERA authorized a study on approaches for encouraging

visa waiver countries, along with Canada and Mexico, to develop an intergovernmental electronic data system that would provide real-time access to law enforcement or intelligence information that could be useful in determining visa eligibility or admissibility at a port of entry. The Intelligence Reform Act also promoted international cooperative efforts to train consular officers and border inspectors to detect and disrupt terrorist travel and called for expanded pre-departure screening and pre-inspection.

Document security

A third focus has been steps to enhance document security and documentary requirements. Beginning in November 2001, a twenty-day waiting period was imposed for males ages 16 to 45 from specified Asian and Middle Eastern countries. This was replaced by the 2002 Security Advisory Opinion process, which screened applicants from twenty-six countries of “security interest” and the 2002 requirement for male visa applicants ages 16 to 45 to submit a Supplemental Nonimmigrant Visa Application form with additional required background information.⁷⁷ The Patriot Act and EBSVERA both mandated the inclusion of biometric technology and tamper-resistant, machine-readable documents in entry-exit documents, and the Patriot Act moved up the deadline for machine-readable passports by visa-waiver countries. All 207 consular posts have been implementing biometric visas since October 2004, and the State Department is now working on e-passports for US citizens that include biometric information on an encoded chip.⁷⁸ EBSVERA also required retention of non-immigrant visa applications for seven years and better tracking of blank passport theft. Moreover, the Intelligence Reform Act limited the number of documents that can prove one’s identity, set minimum

standards for identity documents, and mandated international cooperation and training of US enforcement agents to track and curtail terrorist travel through the use of fraudulently obtained documents. The Real ID Act superseded some of the identity requirements found in the Intelligence Reform Act; additional steps to enhance document security are under consideration during the 109th Congress.⁷⁹

Tracking non-immigrants

Programs already in place to track non-immigrants' entries and exits as well as foreign students within the United States have been accelerated since the 9/11 attacks. The Patriot Act required full implementation by 2003 of the foreign student monitoring system described in the 1996 law (now referred to as SEVIS – the Student and Exchange Visitor Information System), and expanded the program to include air flight, language training, and vocational schools. EBSVERA imposed additional requirements for tracking foreign students and participating educational institutions, and the Intelligence Reform Act required accelerated implementation of the automated entry-exit system.

Attorney General John Ashcroft announced a new Special Registration program in November 2002, requiring all male individuals ages 16 and over from twenty-five targeted countries who were already physically present in the United States to:

- register at designated immigration offices;
- meet individually with immigration officers;
- submit fingerprints and digital photographs;
- re-register on an annual basis; and
- complete a departure check.⁸⁰

This program was one component of the National Security Entry-Exit Registration

Program (NSEERS), which also included Port-of-Entry registration requirements as of September 2002 for nationals posing an elevated security concern and from selected countries.⁸¹

In April 2003, the White House announced plans to fold the tracking programs such as NSEERS and SEVIS into the new US-VISIT program, whose first stage went into effect in January 2004, primarily at airports. More than 38 million foreign-born travelers have been processed through US-VISIT through September 2005, and admission has been denied to over 850 criminals or immigration violators.⁸²

Under US-VISIT, US consulates abroad and port of entry inspectors collect biometric data from foreign nationals seeking entry to the United States and check data against terrorist watch lists prior to issuing visas or granting entry. DHS views entry tracking within US-VISIT as a step toward a more ambitious goal of tracking foreign nationals' "interactions with US officials before they enter, when they enter, while they are in the United States, and when they exit."⁸³ Nonetheless, available biometric technology and databases have thus far limited the scope of US-VISIT, and the tracking of exits is only in the pilot stage. A number of political, economic, and technological barriers, including the limited number of crossers actually subject to the program and weaknesses of underlying databases, call into question when and whether such a program could ever be fully implemented or truly achieve its stated goals.⁸⁴

Restructuring

Institutional changes have been among the most visible shifts since 9/11, including the creation of a major new actor on border

enforcement issues. INS was abolished in March 2003, and its functions were transferred into the newly created Department of Homeland Security (DHS), in a merger of some 180,000 employees from twenty-two different agencies.⁸⁵ Border Patrol agents and port of entry inspectors from Customs, INS, and the Agriculture Department's Animal and Plant Health Inspection Service fell within the purview of the new Bureau of Customs and Border Protection (CBP). The other two components of DHS with legacy INS responsibilities are the Bureau of Immigration and Customs Enforcement (ICE) and US Citizenship and Immigration Services (USCIS).

CBP's priority mission is "preventing terrorists and terrorist weapons, including weapons of mass destruction, from entering the United States," but CBP is also responsible for the missions of its legacy agencies, including "stemming the tide of illegal drugs and illegal aliens, securing and facilitating legitimate global trade and travel, and protecting our food supply and agriculture industry from pests and disease."⁸⁶ Until earlier this year, the primary mission of the Border Patrol remained unchanged,⁸⁷ but a new strategy statement issued in March 2005 formally prioritizes preventing terrorists and terrorist weapons from entering the United States, while also reaffirming the agency's traditional mission of preventing the entry of "illegal aliens, smugglers, narcotics, and other contraband."⁸⁸

The new strategy specifies a goal of establishing and maintaining 'operational control' of the border, particularly the northern and southern borders, recognizing that failure to do so poses a security threat. The Border Patrol defines 'operational control' as "the ability to detect, respond, and interdict border

penetrations in areas deemed as high priority for threat potential or other national security objectives." The strategy does not specify a timeline and acknowledges that it is difficult to measure success. The Border Patrol aims to achieve its objectives through a combination of personnel, technology, equipment and infrastructure, enhanced mobility, deployment, intelligence efforts, partnership with other federal and local law enforcement agencies, and an improved command structure. Its main objectives are to:

- Establish substantial probability of apprehending terrorists and their weapons as they attempt to enter illegally between the ports of entry;
- Deter illegal entries through improved enforcement;
- Detect, apprehend and deter smugglers of humans, drugs and other contraband;
- Leverage "smart border" technology to multiply the effect of enforcement personnel; and
- Reduce crime in border communities to improve the quality of life and economic vitality of targeted areas.⁸⁹

The framework for many of the changes was the July 2002 National Homeland Security Strategy, which included border and transportation security as one of six critical mission areas in securing America from terrorist attacks. Indeed, the strategy acknowledged that it was time for the United States "to rethink and renovate fundamentally its systems for border and transportation security." It also stated the need to both promote legitimate flows of goods and people and prevent terrorists from using such systems.

Within the initiatives related to ensuring accountability in border and transportation

Yet even as the September 11 attacks provided the high-level political support necessary to advance a broader understanding of border enforcement, it has also been characterized by a reflexive tendency to do “more of the same.”

security and creating ‘smart borders’ was discussion of a layered management system. Such a system would include enhanced intelligence, national coordination and international cooperation; increased advance information and use of risk-management tools; screening and verification of identities prior to reaching US borders; improved travel documents; use of non-intrusive technologies; and a focus on ensuring visitor compliance with the terms of their entry, including by tracking entries and exits.⁹⁰

Yet even as the September 11 attacks provided the high-level political support necessary to advance a broader understanding of border enforcement, it has also been characterized by a reflexive tendency to do “more of the same.”

Even greater financial, personnel, and technological resources have been directed toward the border, now including the Northern border, as well. For instance, the Patriot Act authorized additional funds to triple the Border Patrol, INS and Customs personnel along the

US-Canadian border and for related technology and equipment. EBSVERA directed the Attorney General to increase inspectors and investigators by at least 200 per year from FY 2003 through 2006, upgraded the pay grade of journeyman inspectors and Border Patrol agents, and designated funds for technology improvements and expansion. Most recently, the Intelligence Reform Act specified an annual increase of at least 2,000 full-time Border Patrol agents from FY 2006 through 2010, an increase of at least 800 full-time immigration and customs enforcement investigators annually during the same time period, and an increase in detention space and expedited removal (the Patriot Act had already expanded detention and deportation authority, created new grounds of inadmissibility, and limited judicial review). Furthermore, it authorized a pilot program of advanced technology and a plan for border surveillance by remotely piloted aircraft. By the end of 2002, as shown in Table 2, Border Patrol staffing had climbed to over 11,000 and there were over 6,000 immigration inspectors. The ranks of inspectors at ports of entry were soon supplemented by the 10,000 former customs and 1,500 former agriculture inspectors who were also merged into DHS.⁹¹

Table 2. Border Patrol and Inspections Staffing: 1986-2002

Full Time Equivalents (FTEs)	1986	1988	1990	1992	1994	1996	1998	2000	2002
Border Patrol	3,638	3,976	4,561	4,726	5,026	6,386	8,405	10,466	11,663
Inspections	3,703	4,056	4,233	5,014	5,173	6,380

Source: David Dixon and Julia Gelatt, “Immigration Enforcement Spending Since IRCA,” Background Paper Prepared for the Independent Task Force on Immigration and America’s Future, September 2005.

Even in 2005, there is both a reluctance to halt the traditional response of personnel and barrier enhancements along the border line and a competing desire to undertake a broader approach to border enforcement. For instance, following the California and Texas operations, the government has responded to the increased number of illegal entries (and associated rise in criminal violence and deaths) in Arizona with the Arizona Border Control Initiative. The initiative, which has taken place over the last two years, involves the deployment of hundreds of additional Border Patrol agents and a doubling of air support.⁹² Fifty-two percent of the 1.1 million apprehensions last year occurred in Arizona.⁹³ More generally, the Border Patrol has launched another hiring campaign, as the Border Patrol Chief has stated the agency is overwhelmed and needs to gain control of the border and stop illegal immigration.⁹⁴

Yet DHS Secretary Michael Chertoff (like his predecessor Secretary Tom Ridge) understands that a border-wide approach is necessary to address enforcement challenges. Indeed, Secretary Chertoff announced plans for a new DHS policy office in July which would “develop a comprehensive strategy for improving the nation’s border security and addressing illegal immigration.”⁹⁵ Echoing similar themes after August declarations of states of emergency by the Governors of Arizona and New Mexico, Secretary Chertoff acknowledged a need to strengthen border control efforts, but he also asserted that, “A strategy that simply hires a lot of border patrol agents and puts them on the line is not an effective strategy.”⁹⁶

VI. Conclusion

The story of border enforcement is one that begins in a very low-tech and low-profile man-

ner and becomes very high-tech with high-profile initiatives and attention.⁹⁷ From an immigration perspective, it is a story that heated up in the late 1970s following imposition of numerical restrictions and the earlier termination of the Bracero program. It first received significant, but short-term attention and resources, in the mid-1980s as part of three-pronged immigration reform legislation and because of increasing overlaps with drug enforcement efforts at the border. Sustained financial, personnel, and technological resources began to match the rhetoric of getting serious against illegal immigration flows only in 1994, with issuance of a new four-phase border control strategy. While the focus was primarily on the land border in the Southwestern United States through most of the 1990s, the scope of border enforcement steadily widened to include legal ports of entry and the northern border during this time. Such efforts increased approaching the millennium—even before 9/11—and grew with unprecedented intensity and magnitude following the terrorist attacks of September 11, incorporating consulates overseas as well.

One also sees in this story a noticeable shift in border enforcement from a single agency and unilateral approach to a more coordinated inter-agency and inter-governmental approach, as well as greater reliance upon equipment, technology, and support originally developed for military use. In addition, many of the post-9/11 changes are based on the acceleration or expansion of earlier initiatives, some from the multitude of changes around 1996 but some even earlier, including biometric technologies to capture fingerprints and increased use of technology more generally.

This historical review indicates that border enforcement generally has reflected the political priorities, legislative changes, and context

of the broader economic and political environment. The Border Patrol—and border enforcement—has adapted to the threat of the period, be it countering the smuggling of alcohol or drugs, the flow of unauthorized immigrants, criminal violence, or the threat posed by terrorists. Indeed, Border Patrol agents supported law enforcement efforts in New Orleans in the aftermath of Hurricane Katrina.⁹⁸ Perhaps for these reasons, the Border Patrol has fared better than many other agencies from a resource perspective. Indeed, with the border consistently portrayed as a security vulnerability,⁹⁹ turning to law enforcement agencies and military measures has been quite predictable.

This tendency to target ever more resources (staffing, funding, and technology) toward the traditional approach to border enforcement at times conflicts with a counter-trend – the ongoing efforts, usually originating within executive branch enforcement agencies, to adopt more expansive approaches to border enforcement that incorporate international cooperation and integrate border enforcement more completely into a broader policy framework. Yet to the extent that these broader notions of border enforcement imply a shift of resources away from the border area, they are met by significant political barriers. Border enforcement may be the *only* component of immigration policy that consistently garners a broad political consensus, which explains the tendency to continue directing additional resources toward these traditional approaches regardless of outcomes. As a result, economic disparities and other fundamental factors underlying illegal migration, drug smuggling, and the threat of terrorism have often been overlooked in favor of an overwhelming focus on border-area interdiction of illegal immigrants and drugs, which, in the final analysis, are the symptoms, not the causes, of deeper problems.

In addition, Congress’s sometimes single-minded focus on the border has not always taken account of the capacity of enforcement agencies to enact new policies, and the implementation of new enforcement laws has therefore at times been incomplete. Examples include the failure to hire 150 new consular agents in the years after EBSVERA passage and the Border Patrol’s current inability to meet the 2,000 per year hiring goals established by the 2004 Intelligence Reform Act due to inadequate budgetary appropriations for this purpose. At other times, Congress seems to make unrealistic technological assumptions, as appears to be the case with the US-VISIT program.

A reading of the history of border enforcement raises a number of policy questions. Primary among them is the question of whether border enforcement has been effective. The answer depends on how one understands its purpose. If the desired policy outcome was simply reducing unauthorized migration to the United States, then a significant body of scholarly work concludes that border control has not been successful.¹⁰⁰ Despite over 500 percent growth in the Border Patrol’s budget and over 200 percent growth in its personnel in the two decades since IRCA’s passage, (see Figure 2) an estimated 10.3 million unauthorized persons now live in the United States, with annual inflows averaging well over half a million and perhaps as high as 600,000-700,000 per year.¹⁰¹

If the goal of border control has been deterrence, however (or, “prevention through deterrence” as specified in the 1994 strategy), it is impossible to evaluate the extent to which the enhancements of the last decade have, in fact, deterred some migrants, or whether the flow of unauthorized immigrants is lower than it otherwise might have been. One of the primary

problems is the lack of metrics to measure such deterrence. In a report issued just one month prior to the 9/11 attacks, the General Accounting Office (now the Government Accountability Office - GAO) wrote that “the extent to which INS’s border control efforts may have affected overall illegal entry along the Southwest border remains unclear.”^{71,102}

However, the rising number of deaths at the border (460 in Fiscal Year 2005), along with increasing smuggling fees, greater reliance on smugglers by illegal immigrants, and continued high levels of apprehensions may demon-

strate that deterrence is not working to the extent the Border Patrol and INS had hoped for when embarking upon their new strategy.¹⁰³ In fact, with the increase in Border Patrol agents, the cost per apprehension actually seems to have increased and the probability of apprehension has declined.¹⁰⁴

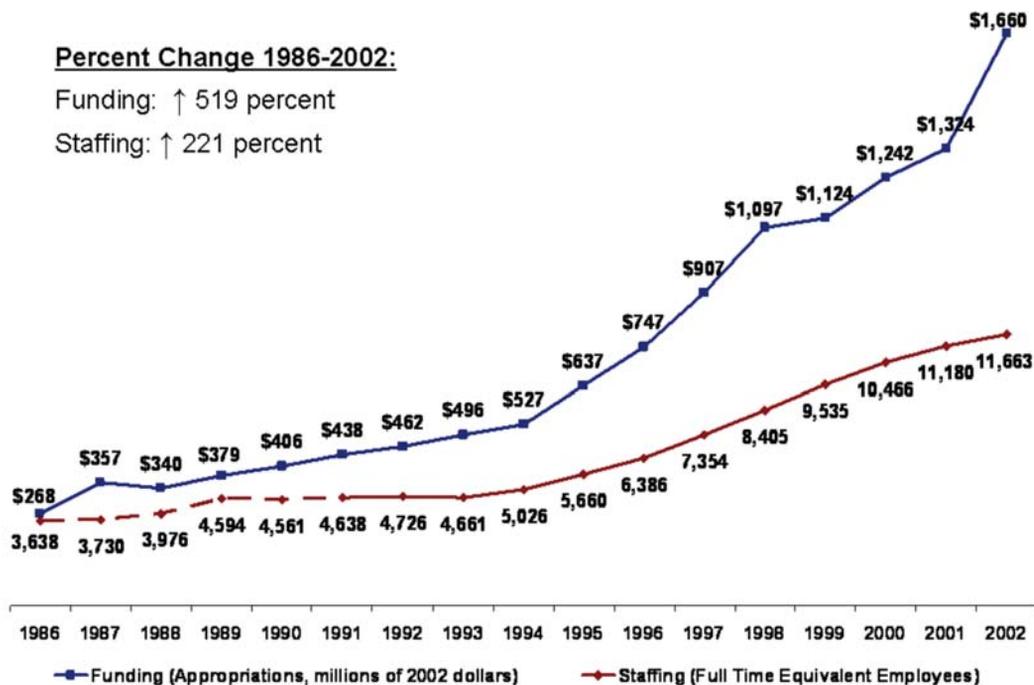
If, on the other hand, one measures the success of border enforcement based on the degree of operational control (as was specified in the 2005 Border Patrol strategy), then one could argue that there has been some success,

Figure 2. Border Patrol Funding and Staffing: 1986-2002

Percent Change 1986-2002:

Funding: ↑ 519 percent

Staffing: ↑ 221 percent



Source: David Dixon and Julia Gelatt, “Immigration Enforcement Spending Since IRCA,” Background Paper Prepared for the Independent Task Force on Immigration and America’s Future, September 2005.

as crossing patterns and apprehensions have shifted away from the urban areas near San Diego and El Paso into more remote terrain.¹⁰⁵ Retrospective critiques have described this accomplishment as the creation of an illusion of control, as the visible flows and chaos have simply been driven underground, or at least away from highly populated areas.¹⁰⁶ Indeed, the US border control strategy has been characterized as a politically successful policy failure, meaning that an image of border control was created despite continued flows of unauthorized immigrants into the United States.¹⁰⁷ The bottom line is that, “Instead of thwarting illegal border crossings, the Southwestern border has simply become an expensive obstacle course that hundreds of thousands of migrants successfully overcome each year...”¹⁰⁸

Among the most unfortunate and visible consequences of the disruption of traditional routes has been the number of deaths at the border. In June 1998, INS, working with Mexican officials, implemented the Border Safety Initiative (BSI), to reduce injuries and prevent deaths along the southwest border. BSI involves preventive efforts, such as educating potential migrants of the dangers of illegally crossing the border, as well as search and rescue, identification, and tracking and recording of deaths and rescues.¹⁰⁹ Until the BSI, deaths at the border were not counted; even now, the numbers include only those bodies that are found and identified. Estimates are that the number of known deaths climbed from roughly ten per year during the 1980s to well over 300 per year during the late-1990s, and in 2005 reached 460. Unauthorized entry has always been dangerous, but research indicates that the policy shift to prevention and deterrence has changed the leading causes of death from auto-pedestrian accidents, drowning, and

motor vehicle accidents to deaths from exposure to heat, cold, and dehydration, as migrants increasingly have turned to using smugglers and crossing through the desert.¹¹⁰ The growing number of deaths and increasing visibility of this issue has produced protests by churches and other community groups as well as efforts by private citizens to protect the well-being of unauthorized immigrants.

Ironically, border enforcement efforts may have actually contributed to the significant growth in the unauthorized population resident in the United States by inadvertently encouraging the permanent settlement and family reunification of immigrants who arrived illegally. Those who succeeded in illegal entry have become increasingly reluctant to risk their lives and savings to re-enter, reducing circularity.¹¹¹ Thus, the barriers may be fencing more unauthorized immigrants into the country than keeping them out. As one scholar concluded, “Even as the escalating border control campaign has generated some perverse and counterproductive consequences and has failed to significantly deter illegal immigration, it has been strikingly successful in terms of constructing the appearance of a more secure and orderly border.”¹¹²

A second policy question is how the United States defines border control overall. Is it about security? Safety? Regulation of labor flows? Enforcement of immigration, customs, and drug laws? Do policymakers proactively choose enforcement targets, or merely respond to shifting winds beyond their control? It is critically important that political leaders spell out and think through the differences between border security (protection against terrorists), border safety (protection against criminals, violence, smuggling, etc.), and border control (protection against illegal entry of people and goods), and then determine the strategies and

resources that are appropriate. A broad-brush approach may not be able to achieve all three effectively or efficiently (though it may do so symbolically).

Moreover, it is not clear who is really in charge of setting the priorities; at times it appears to be the Border Patrol itself but at other times it has been its parent agency (the Justice Department or DHS), the White House, and the Congress. This too is an issue that begs for clarification, particularly as immigration policy responsibilities are now disbursed among CBP, ICE, and USCIS, and there has been no focal point for developing or coordinating immigration policy within DHS or with other agencies with immigration-related responsibilities, such as the Justice Department and State Department.

This relates to a third set of questions - how does border enforcement fit within a broader set of policy goals? If border enforcement is one component of controlling illegal immigration, what are the other parts? Will there ever be a level of agents and barriers that is deemed sufficient, or will a call for 'more' be a constant refrain? And if border enforcement is one part of homeland security, then

does what we are doing make sense? How does it fit in with the increasing multilateral information-sharing and cooperation, as well as the overseas consular work? As mentioned earlier, the Commission on Immigration Reform concluded that border management alone would be insufficient. Recently, Secretary Chertoff seemed to echo this view, proclaiming that, "We have decided to stand back and take a look at how we address the problem and solve it once and for all."¹¹³

It is critically important that political leaders spell out and think through the differences between border security (protection against terrorists), border safety (protection against criminals, violence, smuggling, etc.), and border control (protection against illegal entry of people and goods), and then determine the strategies and resources that are appropriate.

Intrinsically, the nature of borders means people will try to violate them. Terrorists and others will always probe vulnerabilities to take advantage of or circumvent weak points. Thus, regardless of other events and policy decisions, border enforcement issues need to be grappled with, as they are likely to remain a front-burner issue for the foreseeable future.

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APPENDIX A: SELECTED TIMELINE OF EVENTS THAT RELATE TO BORDER ENFORCEMENT

- 1848:** The **Treaty of Guadalupe Hidalgo** formalizes the US-Mexico border after the Mexican-American War
- 1924:** The **Immigration Act of 1924** establishes the Border Patrol and a national-origins quota system (the Western Hemisphere was exempted)
- 1942:** Start of the **Bracero Program** with Mexico to address US labor shortages after World War II; ends in 1964
- 1965:** The **Immigration Act of 1965** ends the national-origins quota system, shifting emphasis toward family reunification, skills, and professions; Western Hemisphere immigration is limited to 120,000 per year (effective in 1968)
- 1975:** The end of the Vietnam War leads to hundreds of thousands of Vietnamese refugees being resettled in the United States after fleeing by boat; President Richard Nixon begins using the term “War on Drugs”
- 1979:** Congress establishes the **Select Commission on Immigration and Refugee Policy (SCIRP)**; its final report is issued in 1981
- 1980:** Approximately 125,000 Cubans arrive in the United States in the Mariel Boatlift; President Jimmy Carter loses re-election
- 1982:** Downward spiraling oil prices contribute to the economic crisis in Mexico as President Miguel de la Madrid Hurtado begins his term
- 1986:** The **Immigration Reform and Control Act** makes it illegal to knowingly hiring unauthorized workers, establishes a legalization program, and increases funding for INS, especially Border Patrol; Congress begins requiring that the Department of State certify countries’ cooperation in drug control efforts; President Ronald Reagan authorizes military involvement in anti-drug activities in a **National Security Decision Directive**; the **Border Patrol** is given the lead role in drug interdiction at the border
- 1990:** The United States, Mexico, and Canada begin negotiations for the **North American Free Trade Agreement (NAFTA)**; the **Immigration Act of 1990** expands legal immigration, including a new visa lottery program, and creates the **Commission on Immigration Reform**, requiring an interim report in 1994 and final report in 1997
- 1992:** President George H.W. Bush, President Carlos Salinas de Gortari, and Prime Minister Brian Mulroney of Canada sign **NAFTA** on December 17, 1992 (NAFTA is approved by Congress in 1993); President Bush issues an Executive Order directing the Coast Guard to interdict and return migrants
- 1993:** Shooting at CIA Headquarters, first World Trade Center bombing, and the Golden Venture runs ashore; Border Patrol implements **Operation Blockade/Hold the Line** along the El Paso/Ciudad Juarez border
- 1994:** NAFTA comes into effect on January 1, 1994; subsequent Mexican peso crisis at the onset of the inauguration of Ernesto Zedillo Ponce de León; **Proposition 187** passes in California, in an attempt to deny unauthorized immigrants social services, medical care and public education; **INS** announces a new, multi-year, Southwest border control strategy

- 1994: An exodus of 38,000 Cubans and 25,000 Haitians are intercepted at sea and returned by the US Coast Guard; first use of safe haven policy at Guantanamo Bay to achieve deterrence and provide safety to migrants fleeing their countries
- 1995: President Bill Clinton and Canadian Prime Minister Jean Chrétien sign the **Shared Accord on Our Border**
- 1996: Three laws are signed that affect immigration policy: the **Antiterrorism and Effective Death Penalty Act (AEDPA)**, the **Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)** (commonly referred to as the Welfare Reform Bill), and the **Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)**
- 1997: President Clinton announces a **Border Vision Initiative** with the Canadians, and he and President Zedillo sign a **Joint Declaration on Migration** and a **Joint Alliance Against Drugs**
- 1999: President Clinton and Prime Minister Chrétien launch the **Canada-US Partnership Forum** to improve border management; arrest of Millennium bomber entering the United States in Washington from Canada
- 2000: Vicente Fox becomes the President of Mexico and announces Mexico's desire to work with the United States on immigration policy; INS issues a Northern Border Strategy
- 2001: On September 11, terrorists attack the World Trade Center and the Pentagon; President George W. Bush signs the **US PATRIOT Act** on October 26 and the **Aviation and Transportation Security Act** on November 19; he also signs the **United States-Canada Smart Border Declaration** in December and in March 2002, the **United States-Mexico Border Partnership Agreement**; Attorney General John Ashcroft announces "voluntary" interviews with men ages 18 to 33 from specific countries
- 2002: Attorney General Ashcroft announces a series of immigration enforcement initiatives, including the **National Security Entry-Exit Registration System (NSEERS)** and the **Student and Exchange Visitor System (SEVIS)**; Congress enacts the **Homeland Security Act** and the **Enhanced Border Security and Visa Entry Reform Act**; changes in visa policy include new security forms and background checks, review of the visa waiver program, limits on waivers of interviews, and Department of Homeland Security (DHS) authority over visa policy
- 2003: The **Department of Homeland Security (DHS)** becomes operational in January, incorporating parts of twenty-two agencies, including INS, which is abolished; immigration functions within DHS are divided among **Customs and Border Protection (CBP)**, **Immigration and Customs Enforcement (ICE)**, and **Citizenship and Immigration Services (CIS)**; President Bush announces plans for the **Terrorist Threat Integration Center** to assess information from the Central Intelligence Agency, Department of Justice, Pentagon, and DHS; Homeland Security Secretary Tom Ridge announces the **US Visitor and Immigrant Status Indicator Technology System (US-VISIT)** which subsumes NSEERS and SEVIS;

DHS suspends Transit Without Visa and International to International Transit programs; DHS consolidates its immigration, customs, and agriculture inspectors in “One Face at the Border;” publication of DHS and Department of State Memorandum of Understanding regarding division of responsibilities in visa issuance and policy

- 2004: President Bush calls for a new temporary worker program; the **National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission)**, created in late 2002, issues its final report, which becomes a nationwide bestseller; President Bush signs into law the **Intelligence**

Reform and Terrorism Prevention Act incorporating many of the 9/11 Commission’s recommendations.

- 2005: DHS announces that all Visa Waiver countries must provide passports with digital pictures by October 2005 and e-passports by October 2006; Senators McCain and Kennedy and Senators Cornyn and Kyl introduce legislation for comprehensive immigration reform; the Department of State announces the Western Hemisphere Travel Initiative; the governors of New Mexico and Arizona each declare a state of emergency in their counties along the border

ENDNOTES

1 Demetrios G. Papademetriou, T. Alexander Aleinikoff, and Deborah Waller Meyers, *Reorganizing the US Immigration Function: Toward a New Framework for Accountability* (Washington, DC: Carnegie Endowment for International Peace, 1998), 11. The Border Patrol is responsible for the 6,000 miles of Mexican and Canadian international land borders and 2,000 miles of Florida and Puerto Rico’s coastal waters. US Customs and Border Protection, *U.S. Border Patrol Overview*, February 21, 2003, http://www.cbp.gov/xp/cgov/border_security/border_patrol/overview.xml.

2 Timothy J. Dunn, *The Militarization of the U.S.-Mexico Border 1978-1992: Low-Intensity Conflict Doctrine Comes Home* (Austin: Center for Mexican American Studies, University of Texas at Austin, 1996), 12.

3 The Bracero Program became controversial for a variety of reasons, and opposition to it culminated in 1954-1955 when the INS, led by a recently retired Army Lieutenant General, deported over one million Mexicans (some of whom were present legally) in a series of raids referred to as Operation Wetback. See Virginia Yans-McLaughlin, *Immigration Reconsidered: History, Sociology, and Politics* (Oxford: Oxford University Press, 1990), 319; Marc R. Rosenblum, “The Intermestic Politics of Immigration Policy: Lessons from the Bracero Program,” *Political Power and Social Theory* 16 (2005), 152-154. The border also became a priority for a short time during the 1960s as the United States began incorporating border interdictions into counter-marijuana efforts. In 1969 thousands of extra Border Patrol, Customs, and Immigration agents collaborated on Operation Intercept, which slowed traffic to a crawl by inspecting all Mexico-US border crossers for almost a month.

4 Daniel J. Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton: Princeton University Press, 2002), 210.

5 Yans-McLaughlin, *Immigration Reconsidered* (see n. 3), 320-322.

6 Tichenor, *Dividing Lines* (see n. 4), 224, 234-238.

7 Dunn, *Militarization of the Border* (see n. 2), 180.

8 Tichenor, *Dividing Lines* (see n. 4), 239.

9 Marc R. Rosenblum, *The Transnational Politics of U.S. Immigration Policy* (San Diego: Center for Comparative Immigration Studies, University of California at San Diego, 2004), 55-56.

10 Public Law 603, 99th Cong., 2nd sess., November 6, 1986, *Immigration Reform and Control Act of 1986*, <http://uscis.gov/lpBin/lpext.dll/inserts/publaw/publaw-180?f=templates&fn=document-frame.htm#publaw-p199603>.

11 Tichenor, *Dividing Lines* (see n. 4), 250-252.

12 IRCA also created a program to ensure continued access to agricultural workers and included some anti-discrimination provisions, though broader access to temporary workers and an effective system for verifying employee eligibility were the victims of negotiations.

13 These funds also allowed the Border Patrol to deal with some of the consequences of the new policies, including the proliferation of fraudulent documents.

14 *Immigration Reform and Control Act* (see n. 10), section 111.

15 Dunn, *Militarization of the Border* (see n. 2), 180.

16 *Ibid.*, 43-45.

17 Jason Juffras, *Impact of the Immigration Reform and Control Act on the Immigration and Naturalization Service* (Santa Monica: The Rand Corporation and the Urban Institute Press, 1991), 31.

18 *Ibid.*, 38-40.

19 Dunn, *Militarization of the Border* (see n. 2), 25.

20 *Ibid.*, 53, 80, 113.

21 Juffras, *Impact of Immigration Reform* (see n. 17), 34.

22 K. Larry Storrs, *Mexico’s Counter-Narcotics Efforts Under Zedillo, December 1994 to March 1998* (Washington, DC: Congressional Research Service, March 4, 1998). See also Peter Andreas, *Border Games: Policing the U.S.-Mexico Divide* (Ithaca: Cornell University Press, 2000), 51-53, 69. Andreas argues that the certification process led to reliance on measures of cooperation that were largely meaningless, such as high-profile initiatives (regardless of actual results), or numbers of arrests or seizures (higher numbers might have meant greater traffic, rather than greater proficiency in

interception). Such symbolically appealing measurements or results seem to have found their way into immigration enforcement as well. Andreas further attributes the growing prominence of drug smuggling along the US-Mexico border in the mid-1980s to successful US efforts against Colombian drug traffickers in the early 1980s who shifted their supply routes to the US-Mexico land border, sometimes in conjunction with Mexican traffickers.

23 Dunn, *Militarization of the Border* (see n. 2), 54-55, 153-154. The Alien Border Control Committee was tasked with implementing recommendations by Vice President Bush's Task Force on Terrorism. In a foreshadowing of post-9/11 policy responses, one proposed plan involved excluding, apprehending, and deporting members of particular nationalities, limiting entry and exit more generally, and detaining all apprehended aliens, while resisting efforts to set bail and excluding the public from hearings on national security grounds.

24 Dunn notes that part of the justification for the 1989 invasion of Panama was Manuel Noriega's drug trafficking ties [*Militarization of the Border*, (see n. 2), 65], and Juffras references a September 1989 Gallup poll in which drugs were the top concern for 63 percent of Americans [*Impact of Immigration Reform* (see n. 17), 53].

25 Public Law 690, 100th Cong., 2nd sess., November 18, 1988, *Anti-Drug Abuse Act of 1988*, <http://thomas.loc.gov/cgi-bin/bdquery/z?d100:HR05210>.

26 Juffras, *Impact of Immigration Reform* (see n. 17), 35-36, 43.

27 Rosenblum, *Transnational Politics* (see n. 9).

28 Maxwell A. Cameron, *NAFTA: How the Deal Was Done* (Ithaca: Cornell University Press, 2000), 59-60.

29 Public Law 649, 101st Cong., 2nd sess., November 29, 1990, *Immigration Act of 1990*, sections 141 and 541-542, <http://uscis.gov/lpBin/lpext.dll/inserts/publaw/publaw-2758?f=templates&fn=document-frame.htm#publaw-pl10164>. Many of these positions were not filled due to funding limitations. This Commission issued its first interim report in 1994 and its final report in 1997. They can be found at <http://www.utexas.edu/lbj/uscir>.

30 Dunn, *Militarization of the Border* (see n. 2), 66.

31 Cameron, *NAFTA: How the Deal Was Done* (see n. 28).

32 Dunn, *Militarization of the Border* (see n. 2), 66-69.

33 *Ibid.*, 181.

34 Peter Andreas, "The Escalation of U.S. Immigration Control in the Post-NAFTA Era," *Political Science Quarterly* 113, no. 4 (Winter 1998-1999): 591-615.

35 The study was completed by a military research laboratory. Wayne A. Cornelius, "Death at the Border: Efficacy and Unintended Consequences of US Immigration Control Policy," *Population and Development Review* 27, no. 4 (December 2001): 661-685.

36 David Spener, "The Logic and Contradictions of Intensified Border Enforcement in Texas," *The Wall Around the West: State Borders and Immigration Controls in North America and Europe*, ed. Peter Andreas and Timothy Snyder (Lanham: Rowman & Littlefield Publishers, Inc., 2000), 118.

37 Frank D. Bean, et. al, *Illegal Mexican Migration and the United States/Mexico Border: The Effects of Operation Hold the Line on El Paso/Juarez* (Austin: Population Research Center, 1994).

38 US Commission on Immigration Reform, "Border Enforcement," December 1993 Briefing Paper in the Appendix, *Curbing Unlawful Migration* (Washington, DC: US Commission on Immigration Reform, 1997), 300-323. This was a measure initially proposed by Representative Duncan Hunter (R-CA) that President Clinton adopted.

39 The strategy also emphasized removing criminal aliens, reforming the asylum process, improving employer sanctions enforcement, and promoting naturalization. General Accounting Office, *Illegal Immigration: Southwest Border Strategy Results Inconclusive: More Evaluation Needed*, GAO/GGD-98-21 (December 1997), 11-12, <http://www.gao.gov/archive/1998/gg98021.pdf>. See also US Department of Justice, *INS' Southwest Border Strategy*, INS Fact Sheet, May 1, 1999, <http://uscis.gov/graphics/publicaffairs/factsheets/bpops.htm>.

40 US Border Patrol, *Border Patrol Strategic Plan 1994 and Beyond: National Strategy*, July 1994, author copy.

41 *Ibid.*, 9-12. See also US Department of Justice, *The Immigration and Naturalization Service: Building a Comprehensive Southwest Border Enforcement Strategy*, INS Background, March 1996, author copy.

42 Cornelius, "Death at the Border" (see n. 35), 662-663.

43 Immigration and Naturalization Service, *Northern Border Strategy*, September 27, 2000, author copy.

44 Cornelius, "Death at the Border" (see n. 35), 663.

45 Congress first provided funding to the INS in 1989 to collect fingerprints of those immigrants repeatedly apprehended at the border, and in 1992 the INS designed a pilot automated fingerprint identification system that underwent limited testing. It was then used to identify repeat crossers apprehended as part of San Diego's Operation Gatekeeper and also to process Cubans and Haitians interdicted at sea in 1994. Finally, the Violent Crime Control and Law Enforcement Act of 1994 appropriated additional funds for deployment of INS's biometric database system, which became IDENT, and its use was expanded. See US Department of Justice, *History of IDENT*, <http://www.usdoj.gov/oig/special/0003/resena2.htm>.

46 General Accounting Office, *INS's Southwest Border Strategy: Resource and Impact Issues Remain After Seven Years*, GAO-01-842 (August 2001), 6, <http://www.gao.gov/new.items/d01842.pdf>.

47 Peter Andreas, *Border Games* (see n. 22), 91.

48 US Commission on Immigration Reform, *U.S. Immigration Policy: Restoring Credibility* (Washington, DC: Government Printing Office, 1994), 5-7, 10-11, 15-19, 36. The Executive Summary can be found at <http://www.utexas.edu/lbj/uscir/exesum94.pdf>. The other components the Commission believed necessary to curb illegal immigration included: more effective deterrence of unauthorized employment, a consistent benefits eligibility policy, mechanisms to address emergencies, an enhanced removal capacity, reliable data, and cooperative efforts with source countries.

49 US Department of Justice, *Building a Comprehensive Southwest Border Enforcement Strategy* (see n. 41), 1-2.

50 US Border Patrol, *Border Patrol Strategic Plan 1994 and Beyond*, (see n. 40), 9-10.

51 General Accounting Office, *Strategy Results Inconclusive* (see n. 39), 24, 40.

52 It was not until the FY 1998 budget that the Department of State was authorized to retain all of its consular and passport fees, which then allowed for many technological and security enhancements. (The INS had received similar authority a decade earlier.) Mary Ryan, Testimony before the House Committee of the Judiciary, Subcommittee on Immigration and Claims, *Visa Fraud and Immigration Benefits Application Fraud*, 105th Cong., 1st sess., May 20, 1997, http://commdocs.house.gov/committees/judiciary/hju44195.000/hju44195_0.HTM.

53 Doris Meissner, Testimony before the National Commission on Terrorist Attacks Upon the United States, *Borders, Transportation, and Managing Risk*, January 26, 2004, http://www.9-11commission.gov/hearings/hearing7/witness_meissner.htm. Nevertheless, systemic weaknesses remained, as most information regarding visa refusals was not entered into databases, and INS information on exclusions, apprehension, and deportations was not available to consular officers. Lamar Smith, Opening Statement before the House Committee of the Judiciary, Subcommittee on Immigration and Claims, *Visa Fraud and Immigration Benefits Application Fraud*, 105th Cong., 1st sess., May 20, 1997, http://commdocs.house.gov/committees/judiciary/hju44195.000/hju44195_0.HTM.

54 US Department of Justice, *INS 'Global Reach' Initiative Counters Rise of International Migrant Smuggling*, INS Fact Sheet, June 27, 2001, <http://uscis.gov/graphics/publicaffairs/factsheets/globalreach.htm>.

55 The figures were based on an extensive analysis, in conjunction with Census Bureau and other researchers, of the size, origin, and state of residence of the resident unauthorized population. The higher percentage of overstayers from the 1994 estimate likely reflected the fact that a greater percentage of unauthorized persons who legalized through IRCA were EWIs rather than overstayers, leaving overstayers as a greater percentage of the outstanding unauthorized population at the time of the 1994 estimate. See Doris Meissner, Testimony before the Senate Committee on the Judiciary, Subcommittee on Immigration and Refugee Affairs, *Immigration Reform*, 103rd Cong., 2nd sess., June 15, 1994, Federal News Service, and Robert Warren, "Estimates of the Unauthorized Immigrant Population Residing in the United States, by Country of Origin and State of Residence: October 1992," April 20, 1994, author copy. See also US Department of Justice, Immigration and Naturalization Service, *INS Releases Updated Estimates of U.S. Illegal Population*, Press Release, February 7, 1997, <http://uscis.gov/graphics/publicaffairs/newsrels/illegal.htm>.

56 AEDPA added the ability to exclude and expedite the removal of aliens not yet inspected and admitted. It also established a new court to try alien terrorist/deportation cases that may include classified evidence. See Public Law 132, 104th Cong., 2nd sess. (April 24, 1996), *Antiterrorism and Effective Death Penalty Act of 1996*, <http://uscis.gov/lpBin/lpext.dll/inserts/publaw/publaw-8763?f=templates&fn=document-frame.htm#publaw-pl104132>, sections 301-303. PRWORA barred unauthorized immigrants from receiving any welfare benefits and restricted welfare benefits for legal immigrants only to those who had been legal residents for at least five years. See Public Law 193, 104th Cong., 2nd sess. (August 22, 1996), *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, <http://wdr.doleta.gov/readroom/legislation/pdf/104-193.pdf>.

57 Public Law 208, 104th Cong., 2nd sess. (September 30, 1996), *Illegal Immigration Reform and Immigrant Responsibility Act*, <http://uscis.gov/lpBin/lpext.dll/inserts/publaw/publaw-11113?f=templates&fn=document-frame.htm#publaw-pl104208>. Some of the recommendations in IIRIRA were based on ideas from reports of the US Commission on Immigration Reform.

58 Doris Meissner, Statement before the National Commission on Terrorist Attacks (see n. 53).

59 Public Law 215, 106th Cong., 2nd sess. (June 15, 2000), *Data Management Improvement Act of 2000*, <http://uscis.gov/lpBin/lpext.dll/inserts/publaw/publaw-21855?f=templates&fn=document-frame.htm#publaw-pl106215>, section 2. Implementation was to be phased, with the system in place at all air and seaports by December 2003, the fifty busiest land ports by December 2004, and all ports of entry by December 2005.

60 This understanding was reflected in Congressional testimony by the INS Commissioner a few years later; see Doris Meissner, Testimony before the Senate Committee of the Judiciary, Subcommittee on Immigration and Claims, *INS Reform and Border Security Act of 1999*, 106th Congress, 1st sess., September 23, 1999, Federal News Service.

61 General Accounting Office, *Illegal Immigration: Status of Southwest Border Strategy Implementation*, GAO/GGD-99-44 (May 1999), 9-10, <http://www.gao.gov/archive/1999/gg99044.pdf>. See also David Spener, "Logic and Contradictions," (see n. 36), 124-125.

62 General Accounting Office, *Illegal Immigration* (see n. 61), 4.

63 Peter Andreas, *Border Games* (see n. 22), 90.

64 Doris Meissner, Testimony, *INS Reform* (see n. 60).

65 General Accounting Office, *Illegal Immigration* (see n. 61).

66 Rosenblum, *Transnational Politics* (see n. 29), 82-83. See Mexico-US Binational Migration Study Report, 1997, <http://www.utexas.edu/lbj/uscir/binational.html>.

67 Deborah Waller Meyers, "Does 'Smarter' Lead to Safer? An Assessment of the US Border Accords with Canada and Mexico," *International Migration* 41, no. 4 (December 2003): 5-35.

68 INS, *Northern Border Strategy* (see n. 43).

69 For detailed information on the hijackers' modes of entry, see report of the National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* (New York City: W.W. Norton and Company, 2004), <http://www.9-11commission.gov/report/index.htm>.

70 Public Law 56, 107th Cong., 1st sess. (October 26, 2001), *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act*, <http://uscis.gov/lpBin/lpext.dll/inserts/publaw/publaw-24344?f=templates&fn=document-frame.htm#publaw-pl10756>, sections 403, 416-418; Public Law 173, 107th Cong., 2nd sess. (May 14, 2002), *Enhanced Border Security and Visa Entry Reform Act of 2002*, <http://uscis.gov/lpBin/lpext.dll/inserts/publaw/publaw-25085?f=templates&fn=document-frame.htm#publaw-pl107173>; and Public Law 458, 108th Cong., 2nd sess. (December 17, 2004), *The Intelligence Reform and Terrorism Prevent Act of 2004*, <http://uscis.gov/lpBin/lpext.dll/inserts/publaw/publaw-28841?f=templates&fn=document-frame.htm#publaw-pl108458>.

71 Stephen Yale-Loehr, Demetrios G. Papademetriou, and Betsy Cooper, *Secure Borders, Open Doors: Visa Procedures in the Post-September 11 Era* (Washington, DC: Migration Policy Institute, 2005), 20.

72 Appropriations for consular affairs in 1985 totaled \$281 million but declined over the next five years before rebounding in 1992 to \$319 million. Funding then declined again for the next decade (down to \$189 million in 2001), before increasing to \$303 million in 2002 as part of the response to the 9/11 terrorist attacks. See Figure 1.

73 Yale-Loehr, Papademetriou, and Cooper, *Secure Borders, Open Doors* (see n. 71), 61-62.

74 *Ibid.*, 16-19.

75 Meyers, "Does 'Smarter' Lead to Safer?" (see n. 67).

76 Leslie Woolf, "Immigration Security Initiative: New Layer in Homeland Security Defense," *Customs and Border Protection Today* 2, no. 5 (May 2004), <http://www.cbp.gov/xp/CustomsToday/2004/May/isi.xml>. Similar initiatives already have occurred with regard to cargo, such as the Container Security Initiative and the Customs-Trade Partnership Against Terrorism that for instance, pre-screen cargo and containers prior to their departure for the United States and use intelligence and non-intrusive technologies to determine those that might pose risks.

77 Yale-Loehr, Papademetriou, and Cooper, *Secure Borders, Open Doors* (see n. 71), 16, 20.

78 *Ibid.*, 20. See also Alfred Borcover, "Electronic passports headed your way," *The Chicago Tribune*, September 11, 2005.

79 The Real ID Act was passed as part of an Emergency Supplemental Appropriation bill. See Public Law 13, 109th Cong., 1st sess. (May 11, 2005), *Real ID Act of 2005*, <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:H.R.1268>.

80 Call-in registration ended in April 2003. The requirement for individuals to re-register at specified intervals was suspended in December 2003. As of September 30, 2003, more than 177,000 individuals had been registered in NSEERS, of whom 2,870 were detained and 143 were criminals. US Department of Homeland Security Immigration and Customs Enforcement, "Fact Sheet: Changes to National Security Entry/Exit Registration System (NSEERS)," December 1, 2003, <http://www.ice.gov/graphics/news/factsheets/nseersFS120103.htm>.

81 Maia Jachimowicz and Ramah McKay, "'Special Registration' Program," *Migration Information Source: US in Focus*, April 1, 2003, <http://www.migrationinformation.org/USFocus/display.cfm?ID=116>.

82 US Department of Homeland Security, "US-VISIT Begins Deployment of Biometric Entry Procedures to Additional Land Border Ports of Entry with Canada and Mexico," Press Release, September 26, 2005, <http://www.dhs.gov/dhspublic/display?content=4858>.

83 Rey Koslowski, *Real Challenges for Virtual Borders: The Implementation of US-VISIT* (Washington, DC: Migration Policy Institute, 2005), 2.

84 *Ibid.* For additional information, see US Department of Homeland Security, *US-VISIT Fact Sheet*, August 11, 2005, http://www.dhs.gov/dhspublic/interapp/press_release/press_release_0710.xml.

85 DHS was created through the Homeland Security Act of 2002 (Public Law 107-296) and became effective January 1, 2003. See Public Law 26042?f=templates&fn=document-frame.htm#publaw-pl107296, section 101. In addition to the INS, other agencies with a role in immigration enforcement were transferred to DHS, including the Customs Service and the Coast Guard. The Customs Service's historical role in immigration enforcement had been as a partner to the Border Patrol in border interdiction and anti-smuggling efforts, and former Customs employees ended up both in CBP as well as in ICE (Immigration and Customs Enforcement). The Coast Guard has been and remains the primary maritime law enforcement agency within the United States, dating back to enforcement of provisions restricting the slave trade in the late 18th and early 19th century. The Coast Guard is specifically tasked with enforcing immigration law at sea and is also the lead federal agency for drug interdiction at sea. The Coast Guard's enforcement at sea efforts were particularly prominent during the 1980-81 Mariel Boatlift and during 1994-95, when the Coast Guard played the lead role in interdicting Cubans and Haitians bound for the United States. See US Coast Guard Office of Law Enforcement, *Alien Migrant Interdiction*, Overview, <http://www.uscg.mil/hq/g-o/g-opl/AMIO/AMIO.htm>.

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87 US Customs and Border Protection, *U.S. Border Patrol Overview* (see n. 1). See also Peter Andreas, "The Escalation of U.S. Immigration Control" (see n. 34).

88 Chris Strohm, "Border agency nearly 'overwhelmed,' chief says," *GovExec.com*, April 5, 2005, <http://www.govexec.com/dailyfed/0405/040505c1.htm>.

89 US Border Patrol, *National Border Patrol Strategy*, March 28, 2005,

http://www.customs.gov/linkhandler/cgov/border_security/border_patrol/national_bp_strategy.ctt/national_bp_strategy.pdf.

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91 See also Deborah Waller Meyers, *One Face at the Border: Behind the Slogan* (Washington, DC: Migration Policy Institute, 2005), 12.

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93 Billy House, "Border agents to get help from unmanned aircraft," *The Arizona Republic*, August 31, 2005, <http://www.azcentral.com/arizonarepublic/local/articles/0831UAV-contract.html>.

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95 Chris Strohm, "New DHS Policy Shop Will Tackle Border Security, Illegal Immigration," *GovExec.com*, July 25, 2005,

<http://www.govexec.com/dailyfed/0705/072505c1.htm>.

96 *The Washington Post*, "Border Emergency," Editorial, *The Washington Post*, August 26, 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/08/25/AR2005082501571.html> and Ralph Blumenthal, "Citing Border Violence, 2 States Declare a Crisis," *The New York Times*, August 17, 2005,

<http://query.nytimes.com/gst/abstract.html?res=F30613FE385A0C748DDDA10894DD404482&n=Top%252fNews%252fInternational%252fCountry%2520and%2520Territories%252fMexico>.

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98 US Customs and Border Protection, *CBP Continues Support of Katrina Recovery Effort*, Press Release, September 5, 2005, http://www.cbp.gov/xp/cgov/newsroom/press_releases/09062005_2.xml.

99 Dunn, *Militarization of the Border* (see n. 2), 2-3.

100 Cornelius, "Death at the Border," (see n. 35), 661-685; Andreas, "Escalation of U.S. Immigration Control," (see n. 34), 589, 606; and Belinda Reyes, Hans P. Johnson, and Richard Van Swearingen, *Holding the Line? The Effect of Recent Border Build-Up on Unauthorized Immigration*, Public Policy Institute of California, 2002, <http://www.ppic.org/main/publication.asp?i=158>.

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102 General Accounting Office, *INS' Southwest Border Strategy* (see n. 46), 2, 5, 8, 10.

103 Karl Eschbach et. al., "Death at the Border," *International Migration Review*, 33 no. 2 (summer 1999): 430-454 and Reyes, Johnson, and Van Swearingen, *Holding the Line?* (see n. 101), xii. See also Leslie Berenstein, "Posters on fence tell of 3,600 found dead in 11 years," *San Diego Union-Tribune*, October 1, 2005.

104 Douglas S. Massey, "Backfire at the Border: Why Enforcement without Legalization Cannot Stop Illegal Immigration," Center for Trade Policy Studies, CATO Institute, June 2005.

105 See US Department of Justice, "INS' Southwest Border Strategy" (see n. 39); Bean, et. al., *Illegal Mexican Migration* (see n. 37).

106 Douglas S. Massey, "Backfire at the Border" (see n. 104); Andreas, *Border Games* (see n. 22), 142-144; and, *The Washington Post*, "Border Emergency" (see n. 96).

107 Andreas, *Border Games* (see n. 22). See also Peter Andreas and Thomas J. Biersteker, eds. *The Rebordering of North America: Integration and Exclusion in a New Security Context* (New York: Routledge, 2003).

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112 Andreas, "Escalation of U.S. Immigration Control" (see n. 34), 593.

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James W. Ziglar, former Commissioner, United States Immigration and Naturalization Service (INS)

Ex Officio

Thor Arne Aass, Director General, Department of Migration, Ministry of Local Government and Regional Development, Norway

Malcolm Brown, Assistant Deputy Minister, Strategic Policy and Communications, Citizenship and Immigration Canada

Jean Louis De Brower, Director, Immigration and Asylum, European Commission Directorate General for Justice, Freedom and Security

Jeff Gorsky, Office of Legislation, Regulations and Advisory Assistance, US Department of State

Geronimo Gutierrez, Undersecretary for North America, Ministry of Foreign Affairs, Mexico

Representatives of the Department of Homeland Security, Department of Labor, and the Domestic Policy Council of the White House

About the Author



Deborah Waller Meyers

Deborah Waller Meyers is a Senior Policy Analyst at the Migration Policy Institute, where she also directs MPI's internship program. Her most recent work has focused on US immigration reform, North American migration and border management, and post-9/11 immigration and border control institutional and policy changes. Prior to helping launch MPI, Ms. Meyers was an Associate in the International Migration Policy Program at the Carnegie Endowment for International Peace. She also served as a Policy Analyst at the US Commission on Immigration Reform (the Jordan Commission) and as a Project Associate for the US-Mexico Binational Study on Migration. In addition, Ms. Meyers has done consulting work with the Chicago Council on Foreign Relations, the Inter-American Dialog, and RAND, and she has nearly thirty publications to her credit. Ms. Meyers earned her MA from the Elliot School of International Affairs at the George Washington University and her BA from Brandeis University (Phi Beta Kappa).

The Migration Policy Institute (MPI) is an independent, non-partisan, non-profit think tank dedicated to the study of the movement of people worldwide. The institute provides analysis, development, and evaluation of migration and refugee policies at the local, national, and international levels. It aims to meet the rising demand for pragmatic responses to the challenges and opportunities that migration presents in an ever more integrated world. MPI produces the Migration Information Source website, at www.migrationinformation.org.

This report was commissioned as part of MPI's Independent Task Force on Immigration and America's Future. The task force is a bipartisan panel of prominent leaders from key sectors concerned with immigration, which aims to generate sound information and workable policy ideas.

The task force's work focuses on four major policy challenges:

- The growing unauthorized immigrant population
- Immigration enforcement and security requirements
- Labor markets and the legal immigration system
- Integrating immigrants into American society

The panel's series of reports and policy briefs will lead to a comprehensive set of recommendations in 2006.

Former Senator Spencer Abraham (R-MI) and former Congressman Lee Hamilton (D-IN) serve as co-chairs, and the task force's work is directed by MPI Senior Fellow Doris Meissner, the former Commissioner of the Immigration and Naturalization Service.

The approximately 25 task force members include high-ranking members of Congress who are involved in shaping legislation; leaders from key business, labor and immigrant groups; and public policy and immigration experts. MPI, a nonpartisan think tank dedicated to the analysis of the movement of people worldwide, is partnering with Manhattan Institute and the Woodrow Wilson International Center for Scholars for this project.

For more information on the Independent Task Force on Immigration and America's Future, please visit:

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