BACKGROUND PAPER

Immigration and National Security
September 28, 2001

> The Migration Policy Institute has prepared this paper as background information related to the current debate on the relationship between immigration and national security threats. Though not exhaustive, it is intended to supply useful information on US immigration and border regulation and, for comparative purposes, on similar controls in Europe.

IMMIGRATION AND NATIONAL SECURITY

In the wake of the terrorist attacks in New York and Washington on September 11, the US government and people are looking for every possible avenue to improve our security at home. Among the avenues being examined are immigration policy and border control. Given the extremely large numbers of people who enter and leave the United States each year, broad-brush immigration and border control measures will be extraordinarily costly and cumbersome, and run the risk of violating civil liberties. Their ability to reduce terrorist threats is unproven at best. Any such measures must pass an effectiveness test before we invest heavily in them.

The best instruments for combating terrorism are intelligence measures. Some of these can effectively be implemented in our immigration system, just as others will be implemented in our communications system or our banking system. Immigration itself is not the issue, although some immigration and border control measures can improve our ability to gather the intelligence needed to identify and obstruct terrorist plans.

The first step toward sensible security measures in immigration and border control is to understand the nature and the size of the traffic across our borders. The US government issued more than 7 million visas in the year 2000—7,141,636 to be exact. But this number is only a fraction of the number of people who enter the country. In fiscal year 1999, the last year for which data are available, some 31.4 million temporary admissions were recorded. These were tourists, business visitors, students, temporary workers, and such. They include visitors from the twenty-nine countries whose citizens do not need a visa for visits to the United States lasting less than 90 days (the Visa Waiver Program). And there are tens of millions more who cross into the United States legally from Mexico or Canada, some on a daily basis. Altogether, it is estimated that there are some 500 million entries and exits each year. (A single individual may account for several entries and exits.) Using immigration and border controls to stop terrorists is thus a needle-in-the-haystack approach to homeland security. The more effective route to greater security lies in the use of intelligence measures applied through immigration channels in ways that allow surveillance and law enforcement to target high-risk individuals and groups.

In this background paper, the Migration Policy Institute identifies immigration programs and procedures that lend themselves to better application of intelligence measures, and recommends changes that may increase security. We

are specifically concerned with those aspects related to entry (and to a lesser extent departure). This paper does not deal with internal control procedures. We also advise against some measures that have been proposed, which we believe to be both costly and ineffective. Finally, we examine practices in the European Union that may offer useful lessons to the United States.

THE VISA REGIME

Legal entry to the United States for one who is not a citizen or legal permanent resident requires authorization. Some visitors are authorized simply by the passport they carry. But for many, authorization comes in the form of a visa issued by a US consular authority. Consular staff are responsible for screening applicants for legal entry into the United States.

Any system is only as good as the information on which it is based. The US has a visa system that admits people for permanent or temporary periods along a vast array of entry categories (see Tables 1, 2, 3 and 5, Appendix). Before a visa application can even be considered by a US consular official at a US embassy, the applicant must have a valid passport issued by the authorities of his or her country. Passports are among the most secure documents a state can issue, but they are not fraud-proof. Although still relatively rare, stolen or fraudulently obtained (but otherwise "valid") passports and identity switches are among the most problematic issues faced by consular officials who attempt to screen would-be travelers. In order to address this concern, in addition to presenting supporting documentation such as job letters, bank statements, and family records to support their claim of identity, applicants for visitor and immigrant visas are required to attend a personal interview with a US consular officer prior to receiving a visa. Applicants for nonimmigrant visas must also prove that they are only planning to stay in the US for a finite period of time.

While reliable intelligence is at the very heart of the response to such problems, timeliness is equally of the essence. The Bureau of Intelligence and Research (I&R) is the Department of State's link to the US government's intelligence community and, in effect, the Consular Affairs (CA) Bureau's access point to the government's world of intelligence information (CA in fact contracts out that function to I&R). If intelligence is not shared with I&R in a timely fashion, the visa officer will not have the tools to deny a visa to an individual who should be excluded. Hence, the collection and timely sharing of relevant information is the first line of defense against the entry of excludable individuals into the United States.

The system relies also on several unique procedures to defend itself from security failures. For instance, since the 1993 bombing of the World Trade Center, visa officers are required personally to check each visa applicant against the Consular Lookout and Support System (CLASS) database, currently containing about 5.7 million records. Newly identified potential threats to US security are reviewed under the Visa Viper program, a system of domestic and international interagency committee coordination. The INS provides about 1.17 million lookout reports, with an additional 330,000 coming from the DEA, 20,000 coming from customs, and 500,000 provided by Consular Affairs (CA). Furthermore, applicants from certain countries and certain classes of applicants regardless of origin, must first be vetted through the State Department (I&R) for a security advisory opinion. In addition, other members of an embassy's country team—which typically includes a substantial representation of US intelligence agencies—are relied upon proactively by visa officers for information in detecting fraud and other problems in visa applications. (US embassy staffs collect all forms of intelligence information on a regular basis and send that information both to their respective agencies and to I&R.)

The student visa system operates somewhat differently. Individual institutions are authorized to grant visas to incoming and continuing foreign students. Prospective foreign students must present an I-20 form, obtained from the school that they will attend, a valid passport and a non-immigrant visa application form. Students may be requested to present further documentation, providing transcripts, financial statements, and standardized test scores. Student visas are valid for the duration of the applicant's *full time* student status. Once inside the country, it is often difficult to track students. The mammoth task of updating the status of thousands of foreign students to determine whether their current enrollment status is one that few university administrators would deign to undertake. Yet, following the events of September 11, foreign student advisors "suspended" their opposition to "tracking" foreign students through the still evolving Student and Exchange Visitor Information System (SEVIS). (Until 2003, SEVIS will remain an "operational prototype" and schools that participate in it will continue to do so voluntarily.)

Finally, as a precaution, the visa system has certain built-in redundancies. The principal among these is that obtaining a visa authorizes only transport to a US port of entry, not necessarily entry. To come into the country, one must pass Immigration and Naturalization Service (INS) inspection. The INS inspector at a port of entry has the authority to deny an individual admission virtually irrespective of one's visa status. Although this authority is

abused at times, it gives US authorities an additional opportunity to stop an inadmissible person on the basis of information that the INS may have in its own lookout database. Other, less frequently used but nonetheless important system checks and balances include the authority to revoke a visa after it is issued (hence enabling the INS inspector to deny someone's admission automatically) and to remove an individual after s/he has been admitted. (The latter is obviously much more complicated than the former.)

Visa Categories

There are dozens of different visa categories for entry to the United States, which correspond to different purposes of admission, plus the Visa Waiver Pilot Program, which permits non-immigrant citizens of 29 countries to enter for business or pleasure for a period not exceeding 90 days.

1. Visa Numbers (See Tables 2 and 3, Appendix)

- **376,701 immigrant visas** for entry to the United States were issued at consulates in FY 1998.
- **30.1 million non-immigrant visas** were issued for entry to the US of tourists, businesspeople, temporary workers, and students in 1998. Of these, **28,696,911** were **temporary** visas for short-term tourist or business visits. **15,792,630** of those short-term visits were carried out under the **Visa Waiver Pilot Program**.
- **567,146** of the 30.1 million non-immigrant visas were granted to **students and their families**.
- **346,608** applicants for immigrant visas were **rejected** in 1998. The criteria for disqualification are various, but the most commonly cited was a failure to "comply with the Provisions of the Immigration and Nationality Act or Regulations Pursuant Thereto."[1]
- **1,557,510** non-immigrant applications in 1998 were also rejected, three-quarters of which were deemed ineligible due to a "failure to establish entitlement to non-immigrant status."
- Less than one-third of the rejected applicants in either category were able to overcome the disqualification and in fact receive a visa.

2. Non-Immigrant Visas From Countries That Are Not Members of the Visa Waiver Program

- Applicants for visitor visas are required to attend a personal interview with a US consular officer prior to receiving a visa. The documentation noted below must be presented at the time of the interview.
- Whether interviews actually take place or not in practice depends very much on the country in which the applicant is making the application and the applicant's country of citizenship.
- Applicants must overcome the presumption that "every visitor visa applicant is an intending immigrant." This means that the applicant must prove he is only planning to stay in the US for a limited period of time; that the purpose of the trip is as he claims; that the applicant has "binding ties" (generally business or family) abroad that will ensure he returns there after his visit; that he can provide optional but useful documentation to help prove the limited nature of a trip to the US, such as a letter of invitation, or proof that return is expected.
- An applicant who has a previously issued (expired) US visa may qualify for expedited visa processing.

3. Student Visas

There are four types of student visa for entry to the US:

- The **F-1 visa** is for academic students and students in language training programs.
- The **J visa** is for education and cultural exchange programs designated by the US Department of State, Exchange and Visitor Program, and Designation Staff.
- The **M-1** visa is for students in vocational or other nonacademic programs, other than language training.
- The **Q visa** is for international cultural exchange programs designated by the Immigration and Naturalization Service.

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[1] United States Department of State Bureau of Consular Affairs, *Report of the Visa Office*, 1998.

In all cases, visa processing is carried out at consulates, although for M-1 visas, status can be changed from another nonimmigrant status inside the US, so long as the training is to be carried out at an INS-approved school. In all cases, the student must be able to prove that he has sufficient funds to cover the expenses for the period of stay in the US, except under the Q visa, as holders of that visa will be paid by their employing sponsor.

4. Visa Waiver Program

- Entrants must be staying in the US for 90 days or less; have a valid passport from a country on the program list; be a national of the country that issued the passport; have been checked using an automated electronic database containing information about inadmissible aliens; have a return trip ticket to any foreign destination other than a territory bordering the US; present a I-94W form to the Immigration Inspector; not pose a safety threat to the US; and not have failed to comply with the conditions of any previous admissions under the visa waiver program.
- Under the visa waiver program, the entrant to the US simply fills out the form prior to arrival (e.g. in the aircraft).
- Under the Program, the US requires that the states participating will issue machine-readable passports before the program ends in 2007.

5. Screening of Visa Applicants Outside the US

In general, people entering the US have their admissibility examined, verified, and documents processed at one of the US's 300-plus ports of entry. However, the INS also has pre-clearance and pre-inspection facilities in Canada, Bermuda, the Bahamas, Aruba, and Ireland, where passengers are inspected prior to boarding flights to the United States rather than on arrival.

Pre-clearance is a procedure whereby the INS carries out immigration inspection of passengers and crewmembers in countries of departure; other federal agencies carry out customs and other required procedures, also in countries of departure.

In addition, the INS has three overseas District Offices that have jurisdiction over US immigration issues outside the United States. Overseas District Offices are located in Bangkok, Mexico City, and Rome. Each overseas District Office monitors the work of several Sub Offices. These offices are responsible for deterring alien smuggling rings and other illegal entry into the United States, supervising pre-inspection offices in several airports overseas, working with host country immigration and other law enforcement officials, and coordinating the adjudication of refugee status for individuals identified for possible refugee resettlement to the United States.

INS overseas offices are located in **Austria, China, Cuba, Denmark, Dominican Republic, Ecuador, El Salvador, England, Germany, Ghana, Greece, Guatemala, Honduras, India, Italy, Jamaica, Kenya, Korea, Mexico, Haiti, Pakistan, Panama, the Philippines, Peru, Hong Kong, Mexico, Russia, Singapore, South Africa, Spain, Thailand, and Viet Nam**.

The INS sees a distinct advantage to pre-clearance/pre-inspection: namely, inadmissible aliens are prevented from arriving in the United States, thus saving the costs associated with hearings, detention, and removals. (This is similar to the system of airline liaison officers employed by many EU Member States as well as Australia's Electronic Travel Authority).

Australia's Electronic Travel Authority (ETA)

Australia has established a unique system of checks for visitors arriving by air. The system, referred to as the Electronic Travel Authority (ETA), is deceptively simple. Tourists purchasing tickets to Australia provide passport information directly to the ticket agent, who then enters the information for electronic comparison with a database compiled by the Australian Department of Immigration and Multicultural Affairs. If no warning is detected, the electronic travel authorization is issued and stored electronically in the airline or travel reservation system. As a result, the traveler need not carry a visa document. The ETA program is available only for tourists from 32 countries in North America, Europe, and Asia, perceived to be at low-risk for overstaying their visas. In minutes, if a passenger is rated as visa eligible, both his ticket and his visa are issued, without the traveler ever having to set foot in a consulate. The ETA system now accounts for 85 percent of all tourist and short-term business visas issued

by Australia worldwide. For tourists from non-eligible countries or for ineligible citizens from participant countries, a lengthy in-person visa application must be made at the Australian consular office.

The ETA system, while efficient and permitting use of the intelligence resources available, remains dependent on the information that is available. The input of passport information (number, date of issuance, etc.) into a computer terminal at a travel agency in any country around the world, and matching with data known to Australia, depends on the security of the computer transmission system, confidence in the unknown travel agent, and confidence that the data are complete and up to date.

CONTROLLING US BORDERS

Most current efforts to guard international borders are variants of the model typified by the US attempt to control its southern border. To do so, the US has relied on a continuously expanding network of physical obstacles (fences) and on greater electronic surveillance, as well as an equally enormous increase in the presence of agents using sophisticated and expensive equipment. Minus the physical barriers, these are also the tools used by the European Union to attempt to better control its eastern and southern flanks.

There are two questions that we must ask as we seek means of enhancing our security. First, has this US/European model proved effective in its principal aim of controlling illegal migration? And second, is this model, properly enhanced, likely to be up to the task at hand, namely, protecting us from a would-be terrorist?

The consensus answer to the first question is a pronounced "no." However, one can imagine a set of circumstances under which a combination of additional border controls, dramatic job losses across the entire labor market in the US that reduce employment opportunities for illegal immigrants, a concerted and coordinated effort at interior enforcement, **and Mexican cooperation** might indeed produce a result measurably, even radically, different from the status quo.

The answer to the second question is even more complicated than that to the first. On the basis of its research along various international borders, MPI has concluded that the forms of border controls described above are **far less likely to catch a determined terrorist than they are to control illegal immigration.** Many of the factors that act as deterrents to poor and generally unsophisticated illegal immigrants (such as crossing over particularly inhospitable terrain and the absence of an adequate support network to protect them in that terrain), are easily within the reach and resources of terrorists and other organized criminal networks. And in borders which have not undergone the defensive metamorphosis of our southern border, such as the US-Canada border (which is two-and-a-half times as long as the US-Mexico one), the cost of fortification would be both massive and have enormously adverse economic implications for both countries—while not offering appreciably greater security in the course of a "war" against sophisticated, well-trained, well-funded terrorists.

What, then, might be the alternatives? As with the other set of issues examined in this document, our recommendations lean decidedly toward far greater investments in human and electronic intelligence and, in this instance, toward far greater **intelligence cooperation across the North American region.**

THE ASYLUM SYSTEM

The US government offers its protection to some people who have a well-founded fear of persecution in their home countries. People who find their way to the United States and seek refugee protection may apply for asylum at a port of entry or file an application with the INS within one year of their arrival. In fiscal year 2000, 49,462 asylum cases were filed or reopened. A case may represent more than one individual; in 1999 the average was 1.34 individuals per case. If the same formula is used for the year 2000, over 66,000 individuals sought asylum that year. Of the cases decided, 38 percent were approved in 1999 and 52 percent in 2000.

Asylum Procedures

The information sources available to asylum adjudicators when processing asylum claims include the individual asylum application, interviews, and a country-of-origin database. Country information is supplied by the Resource Information Center (RIC), which compiles information from a variety of sources, including but not limited to the UN High Commissioner for Refugees (UNCHR) and nongovernmental organizations. The RIC also responds to

particular queries from asylum adjudication officials. Information supplied by the RIC does not necessarily coincide with US government opinion, nor does it reflect US foreign policy concerns.

In addition, asylum applicants may be screened through the FBI's Joint Terrorism Task Force, in which the INS and other federal law enforcement agencies participate. The Task Force has 18 offices in major cities around the world, with the aim of investigating and prosecuting terrorist organizations and their members.

During the asylum interviews themselves, applicants are asked many questions relating to present and past group affiliations and activities. The interviews rely not only on the honesty of the individual being interviewed but the skill and experience of the interviewer. The goal of the interview is to "verify the applicant's identity and determine basic biographical information." Questions addressed during the interview include:

- Nationality at birth and present nationality;
- Race, tribe, or ethnic group;
- Religion;
- Reason why the applicant is seeking asylum;
- What organizations or groups the applicant has been a member of or associated with;
- Whether or not the applicant has been threatened or mistreated by his government or by groups that the government is unwilling to control;
- Whether the applicant has ever been arrested, detained, or interrogated by any government agencies;
- In what other countries, if any, the applicant stayed before coming to the US;
- Whether the applicant has ever applied for or been granted refugee or asylee status in any other country;
- Whether the applicant has ever caused harm or mistreated others as a result of affiliation with a particular group or organization.

All asylum seekers are required as part of the asylum application process to submit fingerprint cards to the INS; additional fingerprints are taken at several stages of the process to continue to confirm identity. (The INS submits nearly 2 million fingerprint cards per year to the FBI to be checked against the Criminal Justice Information Services Division (CJIS) criminal history database in order to determine whether an applicant has a criminal history in the US.) One year after asylum is granted, an asylee may apply for permanent residence; if he does so, his files are checked with both the FBI and the CIA. If an asylee applies for citizenship when he becomes eligible, he undergoes an additional FBI check.

Special procedures may be used in emergency situations in which large groups of people claiming asylum or refugee status are in immediate danger and must be evacuated from the region before the full asylum application process can be completed. This has been necessary twice in recent years: first, in 1996, when government forces overran the Kurdish areas of northern Iraq and people associated with US organizations had to be evacuated. The second instance occurred in 1999, when Macedonia threatened to close its borders to refugees from Kosovo, and agreed to reopen them only if Kosovar refugees were removed from its territory.

- In the first instance, the asylum-seekers were moved to Guam, where INS and FBI officials were able to interview and process each applicant. Of the roughly 6,500 evacuees, 25 were determined by the FBI to be potential "threats to national security." These individuals were then sent to the US for formal exclusion proceedings.
- On the second occasion, a disused military base in Fort Dix, New Jersey was turned into a processing center for refugees who eventually proceeded to resettlement sites around the United States.

The US asylum system underwent major reforms in 1995 and 1996. Perhaps most importantly, substantial new resources were invested in staffing and training a dedicated Asylum Corps and providing its members with better information. Prior to the reforms, the back-log of asylum cases had reached 425,000 cases. Post-reform, about 80 percent of cases are decided within 60 days; prior to reform, asylum applicants often remained in the country for years awaiting a decision. Before 1996, applicants were allowed to apply for work authorization 30 days after filing for asylum; since then, application is only permitted if the case has not been adjudicated within 150 days—a measure intended to deter frivolous claims that are filed only to obtain permission to work.

Background checks on asylum seekers are more thorough than those on most other immigrants or visitors. Moreover, if asylum seekers are detected trying to enter the United States without proper documentation, they are routinely detained until their identity can be determined and they are judged unlikely to abscond, or their case is decided. Since the 1995-96 reforms, the number of people applying for asylum in the United States has declined

dramatically, from 154,464 in 1995 to 49,462 in 2000. At the same time, asylum claim approvals increased, from 15 percent in 1993, to 38 percent in 1999. Many observers see in these figures evidence that reform of the asylum system has discouraged those without sound claims from using the asylum system to remain in the country.

LEARNING FROM OTHERS: THE EUROPEAN EXPERIENCE

The 15 European Union Member States have made efforts to develop data systems and to share immigration, asylum, and crime related information with one key point in mind: that the total territory of the 15 Member States is in the process of becoming a single territorial entity for the purposes of the movement of people (as well as capital and goods), while the Member States each maintain their distinct culture, governmental and institutional processes, and national interests.

The gradual development of common rules and regulations on immigration and asylum; establishment of shared databases; cooperation in tracing cross-border criminal activity; and arrangements for extradition are all advancing on paper. However, there is no common implementation of those rules. Immigration and asylum policies are still developed and implemented at the national level, albeit (in principle) in line with European Union-level guidelines. Their implementation will however remain at the national level, because the principles of subsidiarity and proportionality (meaning that policies are developed and implemented at the most appropriate level for the subject matter involved) indicate that that is the most effective level for immigration and asylum controls and adjudications to be carried out. Police forces cooperate more and more, particularly on major criminal issues such as drug trafficking networks, and on issues that are seen as not only common but also mutual problems, such as football hooliganism. However, there is no European level police force of any sort.

Chronology

The European Union has been working since the 1980s to increase cooperation in fields that include immigration, asylum, and policing. This cooperation began in two settings, the then **European Community** and the **Schengen** group of states. The desire grew out of the Single European Act (1985), which set targets for eliminating effective borders between the signatory states. Effectively, the territories of all the Member States combined would become the realm of internal security issues, and they would have a common, external frontier.

In the European Community two groups were created—the **TREVI group**, in which ministers of justice and interior discussed issues of police cooperation including terrorism; and the **A*d hoc* Group on Asylum and Immigration**, where the same ministers met informally to discuss the harmonization of asylum and immigration policies. These two groups were the forerunners of the **Justice and Home Affairs Council** and all institutional mechanisms created to deal with these policy areas.

The Schengen group of states, which has grown from five to thirteen of the EU member states—and since 2001 also includes agreements with non-EU members Iceland and Norway—originated in a desire by some but not all EU states to effect deeper cooperation on a range of justice and internal security issues, including police cooperation, asylum and immigration measures, and external border controls. In 1985 Belgium, France, Germany, Luxembourg, and the Netherlands signed the Schengen Agreement. In 1990, the implementing convention was signed, establishing the **Schengen Information System.** In 1995, the implementing convention entered into force, the internal borders between the signatory states were abolished and 'Schengenland' was born. Despite this, airline staff often still request identification to travel between countries, and passport controls are carried out on many train routes between continental EU Member States, but not on road borders.

In October 1993, when the **Maastricht Treaty on European Union** came into effect, the Member States started formal inter-governmental cooperation on immigration and asylum issues, police cooperation, and other Justice and Home Affairs matters. In May 1999, when the **Treaty of Amsterdam** came into force, the body of Schengen agreements became part of the EU framework, with the UK and Ireland opting out fully. (Being part of the European Union structure means that the agreements and decisions reached under Schengen attain a formal, legal character, the application of which can be legally tested.) Also in May 1999, immigration and asylum issues became Community business, meaning the discussions moved out of the purely inter-governmental sphere, and rule-making became a matter for the European Union as a whole, involving the European Commission.

Borders

Borders between the Schengen states can be re-instated for national security reasons. They were reinstated, for example, when the European Cup (soccer championship) was held in Belgium and the Netherlands in 2000, and during the Gothenburg summit and associated demonstrations in 2001. Also, France has reinstated its controls for arrivals from the Netherlands, out of dissatisfaction with the Dutch drug policy. Common rules regarding visas were adopted among the Schengen to allow free movement of persons between member states. Despite this, immigration checks regularly take place during journeys between Schengen states, in the form of, for example, passport checks while trains are in motion for an hour or so on either side of a border. Stops at road checkpoints, however, have become very rare and passports are not often formally checked.

Data-Sharing

1. Schengen Information System (SIS)

- The **SIS**, regarded as the cornerstone of Schengenland, is a computer database that can be accessed by all Member States with the aim of furthering police cooperation. It lists individuals who have been involved in cross-border crime, and stolen or missing goods. The UK and Ireland have also sought access to the SIS.
- Member States supply the system with information through national networks (N-SIS) which are connected to a central system (C-SIS) and supplemented by the SIRENE network (Supplementary Information Request at the National Entry), made up of representatives from the national and local police, customs, and the judiciary. The SIRENE contract was set to end on August 23, 2001, and due to be replaced by a new communication system called SISNET, which will become the European Information System and contain data on immigration also.
- The Schengen system provides for the collection of data related to immigration irregularities. However, since the entry into force of the **Dublin Convention** in September 1997, the Schengen system has formally had no role in the collection of data or movement of asylum seekers.

2. Visa Regime

- Both Schengen and the EU are involved in the European visa regime.
- Schengen put in place international instructions on the extension of a visa, which have been adopted by each state and thereby gained a national character. The countries involved have agreed to pursue a common visa policy, meaning they (theoretically at least) use the same conditions in assessing whether a visa should be issued or not, bearing each other's interests in mind during the procedures.
- Where a visa traditionally was necessary only for entry to the state which issued it, under the Schengen system, it has become essential for free movement among a number of states after entry via the borders of one of those states.
- The EU has drawn up a uniform visa, and a list of third countries whose nationals require a visa in order to enter the EU territory as a whole. Various sorts of visas can be given—for transit, onward travel, travel and temporary residence, and each of these for single or multiple entries.

3. Fingerprinting: Dublin/Eurodac

- The drafting of the **Dublin Convention** was completed in 1990 but the treaty did not enter into force until September 1997. The Convention determines which of the signatory states (all EU Member States) is responsible for assessing a given asylum claim. A study by the European Commission, published in June 2001, showed that transfers of individuals seeking asylum take place in only 0.4 percent of all cases. Claims are made in a significant number of cases; however, the Member States seem not to follow through on transfers even when another state has accepted responsibility. This lack of follow through might be due to the "friendship" between the states involved, but might also have financial and/or humanitarian motives.
- The **Eurodac** system, established December 11, 2000, aims to establish a centralized computerized database of the fingerprints of asylum applicants and certain other non-EU nationals collected by Member States and provide electronic transmission between the Member States and the central system. The system will theoretically allow states to establish the identity of asylum applicants and persons apprehended while illegally crossing borders into EU territory, so that each Member State has information about the individual's route and previous presence within national territory.
- The fingerprints of all asylum applicants above the age of 14 will be collected, as will that of all irregular entrants aged 14 or older, who are not turned back.

- Data collected in Eurodac will be stored for 10 years, but data relating to individuals admitted and recognized as refugees will be blocked by the Member State concerned. Data pertaining to individuals who gain citizenship in a Member State is also to be erased.
- While only Member States can carry out the input and blockage of data, the Central Unit, where the data are stored, is based in the European Commission.

4. Europol

- The establishment of Europol was agreed to in the Maastricht Treaty on European Union (1992). On January 3, 1994, it started limited operations focused on the fight against drugs, from its headquarters in the Hague (Netherlands). On July 1, 1999, the full activities of Europol commenced.
- The mandate of Europol is to support law enforcement activity regarding immigration networks; trafficking in human beings; and terrorism in situations in which an organized criminal structure and two or more Member States are involved.
- Europol carries out its mandate by:
  o Facilitating the exchange of information between Europol liaison officers (ELOs). ELOs are representatives of national law enforcement agencies, including police, customs, gendarmerie, and immigration services. Fourty-four of Europol's 242 staff members are ELOs;
  o Providing operational analysis;
  o Generating strategic reports and crime analysis on the basis of intelligence from Member States, generated by Europol or gathered from other sources;
  o Providing technical support under the supervision of the Member State(s) concerned.
- Europol is developing a computerized system (The Europol Computer Systems) which will allow the input of, access to, and analysis of data. Strict human rights, data protection controls, supervision, and security measures are laid out in the Europol Convention. The analysis and index components of the system are in place, while the information system is under development and planned to be operational by 2002.

CIVIL LIBERTIES/DATA PROTECTION

In general in the EU, personal data may be processed only:
- If such processing is necessary for the performance of a task which is in the public interest and carried out on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis of that Treaty;
- Where the Community institution or other body to which data are disclosed is legitimately exercising its duties;
- When processing is necessary for compliance with a legal obligation;
- When processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- And if the data subject has unambiguously given his or her consent, or processing is necessary in order to protect the vital interests of the data subject.

Eurodac stipulates that there be:

- No unauthorized access to data;
- A guarantee that the name of the person who inputted the data, the place and date of input can all be traced;
- There is no transfer to third countries of the data collected in Eurodac;
- The individual has the right of access to, and right to rectify, data collected concerning them.

It is unlikely that states will effectively comply with Eurodac fingerprinting, because fingerprinting asylum seekers or irregular immigrants would mean that the individual concerned would become the state's responsibility, and be transferred back from the state in which their presence became known.

OTHER ARRANGEMENTS

Airline Liaison Officers

- Several European Union states employ airline liaison officers (ALOs) stationed at airports in cities from which a number of (irregular) migrants are expected to arrive. ALOs carry out pre-boarding checks of passengers and try to prevent irregular immigration to the EU before it happens, and particularly to target human trafficking and smuggling.
- The Member States cooperate in various ways, either by sharing officers, or rotating them on a regular basis.
- ALOs are recruited generally from the management levels of the Member States' respective immigration services.
- The number of such officers in increasing rapidly: the UK, for example, had five ALOs in 1998, and in May 1999 had 11 officers. The five already in place in 1998 were based in Ghana, Kenya, India, Sri Lanka, and Bangladesh, all operating out of the British High Commissions in these Commonwealth countries.
- Concerns have been raised about ALOs preventing people with valid asylum claims from boarding planes. Also, when children and women who are victims of trafficking are prevented from boarding aircraft, there are concerns that those people will be victimized again for the failure to carry out the emigration element in the process of exploitation.

Privatization of Security/Immigration Controls

- At European airports, passport controls on exit are usually carried out first by the airline at the check-in desk (often also on Schengen area flights) and secondly, and more formally, by immigration service officers at passport control desks. For inbound passengers, the controls are carried out by the airline, potentially by an Airline Liaison Officer, and when the country of departure has such a system, also by officials of that state.
- Passport controls by airline staff are seen by many as being an illegitimate privatization of security responsibilities, but are a logical response by private companies to the imposition of carrier sanctions. Under carrier sanction regulations, airlines and ferry companies in the EU Member States can be fined $1,500 per passenger who is found to have arrived without the correct documentation aboard their vessel. In some cases, fines have been waived in return for cooperation in carrying out post-arrival but pre-entry checks for certain 'suspect' flights. (This has been the case with KLM in the Netherlands. KLM has also agreed to photocopy passports and visas prior to departure, the copies to be turned over to immigration authorities on arrival in the Netherlands for comparison with the documentation provided by the passenger, or to demonstrate that documentation was presented in cases where it is destroyed by the passenger en route.)

Distinguishing Between Asylum Seekers and Irregular Immigrants in Europe

The greatest concern in Europe is one that results in a vicious circle for policy makers and advocates alike. The regulations that Member States have created, and which are outlined above, aim at preventing irregular immigration, but in fact often prevent asylum seekers from gaining access to procedures that could lead to their protection as refugees. Even though there are apparent attempts at making distinct regulations for asylum seekers and for irregular migrants, the fact that the Dublin-linked Eurodac is used for both is a clear manifestation of the way in which EU immigration policy is essentially carried out through its asylum policy; however, the system may be evolving to restrict asylum in favor of the immigration of workers with the 'right' skills.

LESSONS FROM EUROPE

The process of removing internal frontiers has been the engine of progress in regional cooperation on asylum, immigration, and related data collection issues in Europe. Many of the measures are being gradually extended to prospective new Member States in Eastern and Central Europe.

The new measures in the European Union, including all those mentioned above, have frequently been criticized as violating human rights, discriminatory, and in particular, as seeking to prevent people from seeking asylum. The political rhetoric surrounding the measures has included the limitation of asylum seeker numbers as a major aim. However, the measures do not need to be preventive of the right to seek asylum if those elements that provide information and intelligence support are extracted from them and the focus is on criminal activity (seeking asylum is of course not a crime).

As the internal frontiers have been abolished in the EU, legally resident third country nationals are being granted rights to freedom of movement and security of residence in line with those of citizens of the EU Member States, although progress on this issue has been slower than many might wish. The EU has demonstrated that when states' over-riding interest in cooperation is in fact the pursuit of their national interest then cooperation is possible, but is also a laborious process of negotiation and mutual respect.

In the European context, the ability to compromise has sometimes meant bargaining across policy areas (e.g. one state accepts more refugees from a major crisis in return for an increase in subsidies to its farmers). Such cross-issue compromises may only be possible in a situation of regional integration, rather than one of mutual interest in a single issue area.

If the United States sees collection of information and the sharing of data with other states as being in its national interest, and if other states see similar data collection and sharing as being in their own national interest too, then such collaboration may be possible. However, no single state will be able to set the rules. Compromise will be necessary. In part, the need to compromise is based on the varying traditions relating to privacy rights, civil liberties, and non-discrimination.

In terms of the information available, greater cooperation on data sharing and intelligence issues between the EU and the US might be possible in certain instances. For example, such cooperation could probably only occur via a centralized system that authorized agents in the EU to receive information requests from the US. Such agents would follow up on the requests (in terms of taking any action against the individuals under investigation) pending any extradition proceedings or other appropriate measures. Due to data protection regulations, however, the EU is unlikely to pool information with US authorities, and especially unlikely to pool immigration information, at least under the existing regulations, which stipulate that there is no access for third states or any unauthorized parties.

One area in which greater cooperation could be sought is in the issuance of visas to individuals who are applying via their embassy within a given EU state (and vice versa). If the individual already has a visa or immigration/asylum status in a third country, part of the background checks might legitimately be to ask questions about any suspicious activities which have drawn the attention of law enforcement authorities. Questions must be raised about whether such background information can lead to exclusion without appeals, unless there is an existing criminal case and/or conviction. Such sharing of basic background information will never ensure that the net is fully closed, however.

RECOMMENDATIONS

The horrific events of September 11 have shaken the confidence of many Americans in an institution that has served our nation well since its founding. The fact that the terrorists were foreigners has raised questions about whether we are managing our borders and our immigration system effectively. Many of these questions are legitimate, and our government will be required to take steps to address them.

However, before policy choices are made among the many ideas now being discussed, we must understand the operation of the current immigration system. Only then can we make intelligent decisions about the areas of the system that need strengthening and will serve our long-term interests. This requires that we should be deliberate about our choices. We should opt for courses of action that increase our security appreciably and measurably while meeting criteria of practicality and effectiveness. We should also be mindful of another requirement: that the course we take does not alter in fundamental ways who we are as a nation—our commitment to freedom and individual rights that makes us unique among nations.

Beyond this overarching imperative, some specific recommendations follow:

- Work closely with foreign governments to enhance the **security of the passport issuance** process. As a general rule, so-called feeder-document fraud is less of a problem in most countries than it is in the US, because of national registration requirements and generally much tighter internal controls. Many of the states of particular concern to us at this time are in fact among those that control their citizens—and foreign entrants—most tightly.

- A concerted effort toward issuing only **machine-readable passports** will go a long way toward minimizing passport falsification and fraud. Governments currently on the US visa-waiver program are required to issue machine-readable passports by October 1, 2007.

- **Technology** must be relied upon much more systematically and heavily than is now the case. Two areas of investment in technology require immediate attention. The first is decidedly "low-tech" in that it can be implemented with existing technology. It involves enabling INS inspectors at every port of entry to "read" a passport picture electronically and check it against the "lookout list" database—which should include pictures of those of particular concern to the government. The second requires reliance on more advanced technology. Specifically, digitalized three-dimensional facial recognition technology can be used to identify visa applicants who may be on a "lookout list" and/or those who might switch identities after a visa has been issued and attempt to enter the US at a port of entry.

- **Visa security** makes extraordinary demands on intelligence gathering, visa issuing, and border inspection agencies. This implies the need for the following: (a) better intelligence; (b) <u>far</u> greater coordination among intelligence-gathering agencies and the timely sharing of such information; (c) more and better use of technology; (d) on-going system integrity checks; (e) additional resources for personnel, technology, and related matters.

- The INS and the Visa Office should explore development of a **shared database** for all decisions regarding visa applicants and petitioners for an immigration benefit. At a minimum, this will be an important efficiency measure; perhaps more importantly, it may allow either agency to detect fraud and other unusual or suspicious patterns that may be useful in the fight against terrorism. This database should be closely coordinated with those of the FBI and CIA, as appropriate. The efficiencies and possible security gains from such an initiative, however, must be measured against the immensity of the task and the potential civil liberties implications of matching of databases. Not the least of these concerns is that the INS database also includes extensive information on petitioners, who are overwhelmingly U.S. citizens and U.S. entities (in the case of employer petitions.

- The US must enlist the active cooperation of Mexico and Canada in a coordinated effort against terrorists and other undesirable elements and practices. This effort must begin by rethinking how each party conducts its business in areas that may affect adversely the security (and economic) interests of its North American partners.

- The three NAFTA partners must begin to explore systematically the concept of **perimeter "defense."** Accordingly, each country must begin to evaluate how its various systems, and their delivery, can protect the North American space from security challenges from outside the NAFTA space while facilitating

further the intra-NAFTA movement of goods and persons. Additional reliance on available technology will allow all three countries to make gains in both policy fronts.

- Formal and informal cooperation between the US and Mexico should begin to emulate the models developed between the US and Canada. **Cooperation between Canada and the US, in turn, should become organic.** Specifically, the US and Canada should start discussions about "harmonizing" (rather than "standardizing") their visa regimes and otherwise becoming more sensitive to one another's security concerns when issuing visas. Over time, a better understanding of and even coordination of asylum policies should also be put on the table. Finally, discussions should start in earnest about sharing look-out lists, developing joint inspection regimes and facilities, and cross-training of intelligence and other enforcement personnel.

- As part of a gradual and careful exploration of risk-management approaches to border controls, the three NAFTA governments should encourage frequent travelers to sign up for **pre-clearance programs** (known as INSPASS at airports and CANPASS or dedicated commuter lanes at land borders). Such programs allow the government to focus resources on unknown travelers while facilitating travel for those willing to provide advance information, submit to background checks, and pay a small fee in exchange for ease of travel.

- Considering the need for much better information about who comes into and who leaves (or does not leave) our country, we recommend exploratory funding for a pilot program of **enhanced recording of entries and exits at airports** for all travelers who are neither US citizens nor legal permanent residents of the United States. We also recommend proceeding, if cautiously, with the next stage in the gradual implementation of the student and exchange visitor information system (SEVIS) that is now in the "operational prototype" stage. **In both instances, however, we also recommend that the INS show how the availability of more robust data systems in these areas, and the costs associated with their full implementation, will enhance in measurable ways the security interests of the United States without damaging privacy and other civil liberties priorities.**

- Finally, the 1995 reforms of the asylum system give some indication of the kind of reform that might be considered for visa processing: a specialized and well-trained staff along the lines of the Asylum Corps; additional resources; and enhanced and more timely access to information. Currently, visa processing is assigned to the most junior foreign service personnel. There is little opportunity to build a cadre of knowledgeable and experienced officers skilled in the job of screening for security threats.

TABLE 1

Nonimmigrants Admitted Under the Visa Waiver Pilot Program by Country of Citizenship: Fiscal Years 1998[2]

Number of Entries

	For Pleasure	For Business
All countries	14,372,792	2,145,967
Latin America		
Argentina	329,470	23,770
Uruguay	3,607	195
Asia and the Pacific		
Japan	4,433,751	306,346
Singapore	3,931	1,705
New Zealand	128,791	22,565
Australia	360,454	90,704
Brunei	506	160
Europe		
Andorra	624	62
Austria	167,477	28,358
Belgium	172,229	51,732
Denmark	106,107	36,078
Finland	60,946	27,962
France	939,018	202,316
Germany	1,675,984	296,205
Iceland	20,902	3,111
Ireland	258,104	34,521
Italy	608,704	114,445
Liechtenstein	1,228	166
Luxembourg	11,404	1,413
Monaco	636	35
The Netherlands	456,855	123,068
Norway	104,288	30,822
Portugal	6,468	650
San Marino	470	52
Slovenia	11,924	3,014
Spain	323,211	48,366
Sweden	222,171	78,178
Switzerland	270,416	43,308
United Kingdom	3,522,797	565,253

North America
Canada - Businesspeople and vacationers do not require visas for stays of up to 90 days.
Mexico - With border crossing cards, Mexicans are limited to staying no more than 72 hours in the 5 border states with Mexico.

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[2] Source: *1999 Statistical Yearbook of the Immigration and Naturalization Service.*

TABLE 2

Visa Issuance:
Fiscal Year 1998

Total number of immigrant visas issued in consulates abroad: 376,701
Of that, the total numbers issued by region are as follows:

- Asia (including the Middle East): 152,801
- North America: 120,000
- Europe: 49,478

Total number of nonimmigrant entries: 30.1 million
Major categories include:

- Tourists and businesspeople (28,696,911 admissions)
- Temporary workers
- Students, vocational students, and students' families (567,146 admissions)

By Region: Immigrant and Non-Immigrant Visas

Asia:
- Non-immigrant visas: 2,047,626 (75,000 of these were from India, mainland China, or the Phillipines)
- Immigrant visas: 152, 801

Middle East:
- Fewer than 20,000 total (1,072 from Iraq, 617 from Afghanistan, 211 from the UAE, and 168 from Saudi Arabia)

TABLE 3

Preliminary 2000 Visa Information from the Visa Office

All Classes	7,141,636
Temporary Visitors	3,567,578
For business (B1)	75,919
For pleasure (B2)	509, 031
Border crossings (mainly from Mexico)	1,510,135
Students	
Academic students (F1)	308,944
Vocational students (M1)	6,465
Temporary workers and trainees (H)	289,959
Exchange visitors (J)	273,959

TABLE 4

US Asylum Statistics, 1994-present

Year	Cases Filed	Cases Approved
1994	146,468	8,131
1995	154,464	12,454
1996	128,190	13,532
1997	91,381	10,509
1998	57,786	10,364
1999	42,530	13,510
2000	49,462	16,810
2001 (to date)	54,992	17,315

TABLE 5

Nonimmigrant (Temporary) Entries
Non-immigrants Admitted by Selected Class of Admission: 1999

	Total
A - Foreign government officials [3]	133,005
B1 - Temporary visitors for business [2]	4,592,540
B2 - Temporary visitors for pleasure [2]	24,104,371
C, D - Transit aliens [4]	385,768
E - Treaty traders and investors [3]	151,353
F1 - Students	567,146
F2 - Spouses and children of students	36,641
G - International representatives [3]	91,829
H1, H2, H3 - Temporary workers and trainees	457,346
H4 - Spouses and children of temporary workers and trainees [5]	109,681
I - Representatives of foreign information media[3]	31,917
J1 - Exchange visitors	275,519
J2 - Spouses and children of exchange visitors	43,841
K1 - Fiances(ees) of U.S.citizens [7]	18,208
L1 - Intra-company transferees	234,443
L2 - Spouses and children of intra-company transferees	111,891
NATO - NATO officials [3]	12,992
O1 - Workers with extraordinary ability or acheivement	15,946
O2 - Workers accompanying and assisting in performance of O1 workers	3,248
P1 - Internationally recognized artists and entertainers	36,228
P2 - Artists or entertainers in reciprocal exchange programs	3,772
P3 - Artists or entertainers in culturally unique programs	8,471
Q1 - Workers in international cultural exchange programs	2,485
R1 - Workers in religious occupations	12,687
TN - North American Free-Trade Agreement workers[3]	87,441
All Classes [1,2]	31,446,054

Source: 1999 Statistical Yearbook of the Immigration and Naturalization Service, Tables 36 & 37.

[1] Excludes the following classes of admission processed in the Nonimmigrant Information System: for all countries -- 133,504 parolees; 17,653 withdrawals and stowaways; and 66,966 refugees.
[2] Includes admissions under the Visa Waiver Pilot program.
[3] Includes spouses and unmarried minor (or dependent) children.
[4] Includes foreign government officials and their spouses and unmarried (or dependent) children in transit.
[5] Includes workers (and their spouses and children) under the North American Free-Trade Agreement (shown separately).
[6] Includes People's Republic of China and Taiwan. A total or 609,234 nonimmigrant visas were issued to these two countries in fiscal year 1996: 379,355 to Taiwan and 229,879 to People's Republic of China (SOURCE: U.S. Department of State, Bureau of Consular Affairs, Visa Office.)
[7] Includes minor children of fiance(ees).