

Testimony

For the

National Commission on Terrorist Attacks Upon the United States

By

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Mr Chairman and Members of the Commission: Thank you for the opportunity to appear before you today. I will assist in any way that I can with the important work you are doing.

I have been asked to provide information about the context, priorities, and progress that characterized my tenure as Commissioner of the United States Immigration and Naturalization Service (INS) from 1993-2000. In addition, you have asked for my recommendations regarding future policy and actions.

Prior to becoming INS Commissioner, I had worked for 13 years in various positions in the Department of Justice (DOJ) during the Nixon, Ford, Carter and Reagan administrations providing staff advice to the Attorney General and other senior department officials on immigration matters. In addition, during the Reagan administration, I served as Acting Commissioner of INS for more than a year and as Executive Associate Commissioner, the number three position in the agency, for four years. So when I assumed the duties of Commissioner in the Clinton administration, I came to the assignment with some background in the policy and administrative challenges facing INS and a commitment to wide-ranging agency reform.

In 2003, INS was divided and restructured as part of the creation of the Department of Homeland Security (DHS.) Prior to that time, our nation's immigration laws gave responsibility for administering the nation's immigration system to the Secretary of State and the Attorney General. The Secretary of State, through the Bureau of Consular Affairs (CA), is responsible for immigration decisions abroad, and the Attorney General, through the INS, was responsible for immigration matters in the United States.

INS' principal functions included:

- admission of aliens seeking entry to the United States, including asylum and refugee applicants;
- control of United States borders to prevent illegal immigration and other violations of entry procedures;
- detention and removal of aliens not eligible to be in the country;
- investigation of violations of immigration law;
- adjudication of applications for immigration benefits, such as extensions of stay, sponsoring the immigration of relatives, work authorization, or adjustment to permanent residence (green card status); and
- naturalization of immigrants eligible for citizenship.

These are widely divergent areas of responsibility that suffered from a history of neglect by administrations and Congresses of both parties. During my time at INS, that began to change as serious attention was devoted to building the capabilities the agency needed to carry out its mission effectively. However, even with aggressive change and impressive progress in critical areas, serious weaknesses remained and persist today.

At the same time, even under the best immigration controls, most of the September 11 terrorists would still be admitted to the United States today. That is because they had no criminal records, no known terrorist connections, and had not been identified by intelligence methods for special scrutiny. The innovation al Qaeda introduced is “clean operatives” who can go through immigration controls undetected.

Immigration measures are an important tool in the war against terrorism, but they are not effective by themselves in identifying terrorists of this new type. The immigration system can only set up gateways and tracking systems that exclude terrorists about whom the United States already has information, and/or enable authorities to find “clean” operatives already in the country if new information is provided by intelligence agencies. The immigration and intelligence systems must work together for either to be effective.

To that end, the lead domestic security responses to terrorism should be strengthened intelligence and analysis, compatible information systems and information-sharing, and vigorous law enforcement and investigations. Improved immigration controls and enforcement are needed and can support good anti-terrorism enforcement, but they are not enough by themselves.

I. Overview

With more than 10 million immigrants, the 1990s rank as one of the two decades of highest immigration in American history. The century ended as it began, with record numbers of newcomers and the surrounding controversy, contradictions and ambivalence that lace through our history as a Nation of immigrants. These numbers represent millions of transactions daily with profound implications for people’s lives and futures that were handled by an agency that

suffered from chronic overwork, underfunding and outdated practices.

Early in 1993, three high-profile immigration crises occurred in close succession. They were the first bombing of the World Trade Center, multiple drownings when the Chinese smuggling ship the Golden Venture washed ashore on Long Island, and the shootings outside CIA headquarters in the nation's capital that killed government workers. All three involved people who had applied for political asylum in the United States, or were seeking to do so, and whose applications were stuck in growing backlogs that enabled them to be in the country for extended stays with authorization to work.

At the outset, therefore, border control, beginning with fixing a broken asylum system, became a high priority for the new administration. In addition, the change strategies and budget proposals I advocated envisioned fundamental reform of how INS discharged all of its core responsibilities with the goal of building capacity to handle growing workloads and complexity in immigration matters. In all cases, new technology was a centerpiece in this thinking.

During my tenure, the INS budget grew from approximately \$1.6 billion to more than \$4 billion. Personnel grew from about 18,000 to more than 32,000. With growth at that scale came enormous management demands, e.g. recruiting, hiring, training, space, equipment, construction, and key infrastructure projects. They ranged from creating a national records center that consolidated in one location and tracked use of more than 20 million alien files, to establishing a law enforcement support center that provides telephone access to criminal history information about aliens for state and local law enforcement anywhere in the country.

In addition to unprecedented growth and the agency's reform agenda, Congress enacted a series of sweeping new laws beginning in 1996 that placed ambitious new mandates on INS. The 1996 Act alone required writing more than 70 new regulations and training almost 20,000 staff. Some of the legislation's timetables proved unrealistic and were modified in subsequent enactments. All generated unplanned, sizeable workloads, often with insufficient attention to revenue and planning requirements for major new programs.

Humanitarian emergencies are an ever-present reality in immigration matters. Since 1993, INS responded to simultaneous Haitian and Cuban boatlift emergencies in summer 1994, the aftermath of Mexico's peso devaluation in 1995, successive Chinese boat emergencies, Hurricane Mitch in Central America in 1998 and the Kosovo refugee crisis in 1999. In each case, INS played lead operational and policy roles.

Other major efforts that took place during my tenure were a tripling of detention capacity and substantial increases in the removal of criminal aliens to their home countries. Also, applications for citizenship had climbed to record highs. In 1995, INS launched an ambitious citizenship backlog reduction program that foundered due to weaknesses in the procedures for handling FBI criminal history checks. The top-to-bottom reforms of the naturalization program that followed demanded significant leadership and workforce attention.

Overall, Congress supported the administration in providing increased resources for INS and promoting new strategies and technology. Still, the public mood was one of growing anti-immigrant sentiment and harsh public rhetoric about immigration issues flourished in Washington. The administration had basic policy disagreements with Congress over a number of key issues in immigration legislation. The relationship between INS and its Congressional oversight committees was often contentious. Especially in the latter years of the administration, the political environment made it increasingly difficult for INS and Congress to work together on shared goals.

Against this backdrop, I will focus my discussion on areas of most relevance to counter-terrorism.

II. Priorities

A. Asylum reform

With a backlog of nearly 500,000 cases and cumbersome procedures that invited abuse, INS developed and published new regulations in 1994 that changed the system in fundamental ways: work permits were no longer issued to applicants upon filing; asylum decisions were to be made within six months; cases were decided on a last in-first out basis; and substantial increases in resources, including state-of-the-art automation, were allocated.

By 1996, new filings decreased by 57% because the incentive to file frivolous applications had been removed, 80% of applications were decided within 60 days, and the caseload had stopped growing for the first time in a decade. Asylum reform was an important success that overcame a serious weakness in the immigration system that had been vulnerable to exploitation by those intent on breaking the law, including possible terrorists.

B. Border control

The broad goal that I set forth for INS was to prevent illegal immigration and facilitate legal immigration. Preventing illegal immigration incorporated all abuses of the immigration system, particularly the most serious which were alien smuggling, criminal conspiracies, drug trafficking, and terrorism. Border control was the agency's highest priority. Throughout my tenure, it commanded the most resources, attention, and innovation of all INS' work.

My definition of the nation's borders was comprehensive and oft-repeated, i.e. our land borders with Mexico and Canada, our ports of entry - air, land and sea, and our consulates around the world. We worked hard to strengthen controls and INS' effectiveness in all border-related activities, including cooperation and seamlessness of systems and technology with CA and the Customs Service (USCS), our partner agencies in border control responsibilities.

The transformations that were most visible and enjoyed the most political and public support

occurred along the Southwest border. But INS' efforts and agenda always encompassed the comprehensive view of our borders that I have stated. Indeed, early in my tenure we published research for the first time that showed that more than 40% of the illegal population in the country had arrived with visas and overstayed. This challenged the popular assumption that illegal immigration was simply an issue of lax Southwest border enforcement. It meant that addressing the problems of illegal immigration required much more than heightened Border Patrol efforts along the Southwest border. Ports of entry (POEs) had to be a key element of border protection.

In many ways, the task POEs face is the more difficult because inspectors handle more than 500 million lawful entries annually through over 200 designated crossing points. Nearly two-thirds are noncitizens, with 85% entering at land ports with Mexico and Canada, the vast majority of whom cross and return regularly, often daily.

These enormous volumes are vital to North America's interdependent economies. And the percentage of real or potential wrongdoers is very small. But the harm they can cause is enormous, as we have now seen.

Our approach to this needle-in-a-haystack dilemma was a vision of POEs where policies and systems would be implemented that managed the flows by segmenting populations, so that travel by the large, law-abiding majority could increasingly be certified in advance through biometric and other reliable techniques and then safely facilitated. In this way, valuable law enforcement resources, expertise, and attention could be devoted to more careful screening of high-risk or unknown travelers. Thus, control and facilitation of movement are not contradictory. Rather, they constitute two sides of the same coin.

Among the most meaningful changes that we implemented in POE operations are the following:

- **Inspector staffing increases.** Growth of the inspections workforce was substantial. At one stage, percentage increases of inspector personnel were greater than that of the Border Patrol;
- **Lookout system improvements.** The watchlist of inadmissible aliens is an indispensable tool for inspectors. My highest automation priority for POEs was improvements to that system which had been automated at most POEs in the early 90's. During the mid-90's, that automation was completed at all ports. Working with CA and Customs, lookout capabilities were continuously upgraded. Electronic passport readers were installed. Databases were expanded to include deportable aliens, visa refusals, criminal aliens, and other inadmissible groups that government agencies provided. The information of highest importance was names of suspected terrorists which were the prerogative of the intelligence community to provide. Such names are typically classified and are specially flagged in the database. Inspectors are carefully trained on how to handle circumstances when such a name-match occurs.
- **DataShare.** This joint INS/CA initiative allowed for electronically transferring the full file for immigrant and non-immigrant visa applications, including photos and

fingerprints, from consular offices abroad to POEs. Duplicative paperwork was eliminated, and inspectors could verify and cross-check information given to visa officers. Funding during the 1990's allowed for implementation of only the immigrant visa part of the initiative. After 9-11, one of the first visa procedure improvements made was to fund the transfer of the non-immigrant information.

- **INSPASS.** This facilitation program began in 1993 and was the first use of biometrics to admit people to the country. It uses hand geometry embedded in a card to inspect and admit frequent business travelers. Card holders have had a background check as part of the application process. No cases of fraud have been found during the compliance checks that are regularly conducted.
- **SENTRI.** Also a facilitation initiative, SENTRI is an electronic, dedicated commuter lane for vehicles at land border POEs introduced in 1995. The enrollment process includes a background check and vehicle passengers are screened against the lookout system automatically as they pass through the lane. In place at three Southwest locations during my tenure, a modified version has also since been installed at two Canadian border locations.
- **Advance Passenger Information (APIS).** This automated system analyzes air passenger manifests transmitted to INS from abroad once flights have boarded enroute to the United States. Checks are then made and completed before the plane lands. Inspectors can quickly clear travelers and readily identify those where follow-up is required. By 2000, 80% of airline passengers were being screened through APIS. Airline participation was voluntary. INS persuaded as many carriers to participate as possible, but could not require it of all.
- **Inspection time.** By statute, INS airport inspections are required within 45 minutes or less from debarkation. For over 99% of flights, INS met the 45-minute requirement.

These improvements have been significant, strengthening border control and facilitation alike. But they all address elements of admitting people to the country. There have never been systematic departure controls from the country. Without them, INS' knowledge of who and how many people departed as required and who and how many did not has been incomplete.

Congress addressed this weakness in its 1996 legislation by mandating the creation of an automated entry-exit system. Known as section 110, the system was to be in place by October, 1998. INS designed, tested, and implemented the front-end of such a system (the automated I-94) for airport travelers within the required time period. Its weakness was that it relied on airline cooperation (by incorporating boarding card processes into the system) which was voluntary. Many airlines were unwilling to participate. Legislation to make it universal was under consideration.

Nonetheless, the major entry-exit system stumbling block was the land borders. In 1998, INS tested available technologies for land border entry-exit in a simulation but was unable to recommend an approach that did not delay cross-border traffic. Widespread opposition to an entry-exit system from border communities, Canada and Mexico, cross-border commerce business representatives, and many others, including the administration, then led Congress to

delay implementation until 2001 and again until late 2004. Today, the land border problem remains unresolved. The system that is currently envisioned for land borders will record entry and exit data of nationals only from countries other than Mexico and Canada.

C. Technology

Next to border control, modernization of all aspects of the agency's work through automation and technology was my highest priority. During the early years, we requested and were given substantial resources for technology projects. Technology infusions and new systems were rapidly acquired and installed. In 1993, less than 20% of employees had access to automation. When I left, more than 95% had a terminal at their work station, used cc mail, had access to intra and internet data, and relied on automated information from INS systems to carry out their tasks.

In addition to the systems I have already described, several other important technology projects have a bearing on counterterrorism. They include:

- **IDENT.** This system was created in 1994 for the Southwest border enforcement program. It is INS' automated biometric identification system that contains the photos and two index-finger fingerprints of individuals. It was designed primarily to flag criminals and repeat crossers among those entering the country illegally. However, the technology proved to be reliable and efficient for many other INS needs where identity must be verified. It became the cornerstone of efforts to incorporate biometrics for both enforcement and benefit-granting work. Today, it is the technology upon which the new US-VISIT program is built.
- **New "green card" and laser visa.** In 1998, INS introduced a new "green card," the identification document for lawful permanent residents that is evidence of their authorization to live and work in the United States. The new card incorporated many new security features, including biometrics, and state-of-the-art production techniques. Through INS/CA cooperation, the same technology was used to produce the laser visa, a new document issued by CA to Mexican nationals. The laser visa combined the visitor visa and the border crossing card required for Mexican citizens to travel to United States border communities for short periods. The cards are machine-readable. Once readers -- for which we were unable to win funding -- are installed, border facilitation and enforcement will both be significantly strengthened. Such cross-agency cooperation is difficult and uncommon. It is an example of ways we worked to achieve seamlessness in border control. More broadly, the new cards are also part of a longer term effort to reduce and consolidate the number of immigration documents INS had issued in the past, thus reducing the potential for their misuse and counterfeiting.
- **Foreign student tracking.** INS' system for international student and exchange visitor information was built in the 1980s. It was inadequate and unreliable. In response to FBI concerns about the activities of foreign students in the United States, INS proposed a new system in 1995. Working with the education community to collect and maintain data, it was to be fully automated and capture comprehensive information about foreign students.

In 1996, Congress mandated such a system, stipulating that the funding for it should come from a new fee to be collected from students by the schools. The new system was to be operational by January 2002 and fully implemented by January 2003. INS allocated \$10 million from other automation projects to design and field a pilot (CIPRIS) of the system at 22 schools in 1997-98 and was on track to meet the statutory mandate.. But disagreements within the education community and Congress over fee-collection and the rationale for the system, along with project management and technical problems with expanding the pilot plagued the effort. Ultimately, Congress changed the legislation, so that the fee would be collected by INS. After 9-11, full implementation was put on a fast track and the system, now known as SEVIS is in place for the current academic year and has become part of US-VISIT.

These programs and other technology efforts – from tracing crossing patterns at the border to automated transmission of fingerprint checks between INS and the FBI – represented major improvements that INS badly needed to be effective.

But by the late 1990s, operating costs of INS systems by a much larger workforce all but eliminated spending for new systems development. Appropriations for them did not keep pace. This represented a longer term vulnerability because other important mission support systems, e.g. the non-immigrant information system, needed to be replaced. Numerous candidates for new-generation systems that could yield significant continuing improvements had to be kept on hold.

Nevertheless, databases do not catch terrorists. For example, had comprehensive student tracking information been in place before 9-11, it is still highly unlikely that the terrorist with a student visa who did not appear for classes would have been arrested by INS. That is because it would take far greater numbers of officers than INS has ever had to actually take custody of those who have overstayed or violated the terms of their visas.

What good information systems can do is give a comprehensive picture of an individual's compliance with immigration requirements, travel to and from the country, applications for changes in status, and other information from which to validate proper or suspect behavior. Such information is important when issuing visas, admitting people to the country, deciding applications for immigration benefits, and following investigative leads. Any of these actions can contribute to thwarting terrorism. Such information can also yield important insights into trends and patterns of possible criminal or terrorist activities.

D. Other actions

A series of other changes were implemented during my tenure that strengthened INS' role in the government's counterterrorism efforts:

- **Joint Terrorism Task Forces (JTTF).** With FBI in the lead, JTTFs are multi-agency entities that the Department of Justice established in key locations throughout the country

after the first World Trade Center bombing. They include representatives of many federal, state and local law enforcement agencies. INS has always been a participant with full-time personnel assigned to the task forces. With my support, that participation grew. The interim report of the Senate Intelligence committee's Joint Inquiry describes INS as often the "most highly lauded member" because it facilitates use of immigration law violations to disrupt and obtain information from terrorist suspects.

- **National Security Unit (NSU).** In the aftermath of the first World Trade Center bombing, INS established a separate office, the NSU, to coordinate counterterrorism work within INS and to formalize liaison between INS and the intelligence community. NSU activities include proper handling of sensitive watchlist information, oversight of investigative leads, and use of classified information for removal proceedings. In addition, INS established permanent details of investigators to FBI and CIA headquarters terrorism centers to build interagency communication, cooperation, and coordination.
- **Forensic Documents Laboratory (FDL).** This crime laboratory is unique in being dedicated solely to forensic examination of travel, visa, and other identity documents. Its capabilities provide crucial support for counterterrorism. The FDL has extensive liaison and cooperative arrangements with document-issuing authorities of foreign governments. It provides a wide variety of forensic and intelligence services that support INS enforcement against document fraud. It also provides support to intelligence and law enforcement agencies by analysing documents and providing training for detection of fraudulent documents. I strongly supported expansion of FDL staffing, facilities, and initiatives.
- **Operation Global Reach.** In 1997, INS opened 13 new offices abroad by reallocating funds from other programs. Their purpose was to work with law enforcement officials in other countries to interdict smuggling syndicates, reduce migrant trafficking in source and transit countries, and train carrier personnel and airport authorities in high-risk locations. These prevention techniques are cost-effective ways to stop wrongdoers from getting to the United States.
- **Interior enforcement.** The initiatives I have summarized above were part of a broader reorientation I fostered in INS' interior enforcement.. INS had approximately 2000 investigators whose responsibilities included, among others, workplace enforcement, immigration benefit fraud, document fraud, visa overstays, foreign student compliance, alien smuggling, other criminal activities including terrorism, state and local law enforcement liaison, and participation in joint task forces. The numbers of investigators were not nearly enough to have any real impact or deterrence capability unless resources were focused and priorities sharply delineated. Moreover, political consensus in Congress and the public on interior enforcement was lacking (compared with border controls.) It was one of the few areas of INS work that got scant new resources as the agency grew, despite INS' requests. So, we adopted a strategy to focus limited resources on the most egregious violations of immigration law. These were primarily criminal matters, including alien smuggling, document fraud, and terrorism.
- **Mexico and Canada.** In addition to strengthening INS' presence overseas, I worked hard to advance international coordination with Mexico and Canada. With each country we

developed new levels of trust and blueprints for cooperation that recognized migration as an issue of shared concern and responsibility in the bilateral relationship. We built a bulwark of joint initiatives that enabled our governments to manage migration problems better and build confidence, experience and expertise between counterpart agencies. After 9-11, those practices and agreements served as the templates for what are now called the smart border accords.

- **Restructuring.** INS' proposal to the Congress in 1998 for dividing and restructuring the agency called for the inspections function, i.e. POE work, to be treated as a law enforcement function with inspections personnel trained, classified, and compensated accordingly.

(Inspectors are general civil service personnel.) Albeit more costly, this was consistent with the broad, long-term concepts I have outlined in which legitimate traffic would increasingly be pre-certified for facilitation and inspectors would require greater expertise, concentrating on travelers who are high risk or unknown and could present threats to the nation. I believed that among the practical implications would be better cooperation and trust with the intelligence community which, despite best efforts, was reluctant to systematically share sensitive information with INS and other front-line agencies. Moreover, information-sharing firewalls explicitly prohibited providing certain types of information to non-law enforcement entities. The restructuring would also have provided INS with a Chief Information Officer (CIO) to give stronger management to the automation and technology portfolio and with tightened chains of command to address pressing needs that were inevitable byproducts of the growth, workloads, and new mandates INS experienced in the 1990s. Congress failed to approve the proposal. The subsequent division of INS into new bureaus of DHS places inspections in a new border agency with the Border Patrol, which is law enforcement, but also does not classify immigration work at the POEs as law enforcement.

III. Conclusion

By the time I left in 2000, INS had become a dramatically larger, significantly better, more competent and professional agency than it was when I arrived in 1993. INS staff are dedicated, capable, and resourceful. We worked hard together to strengthen the agency in the areas of its most critical responsibilities. Many of the changes we made were transformational. All constituted critical building blocks for properly managing the immigration system in the years ahead as we experience anew America's evolution as a Nation of Immigrants.

INS operates in an environment of global forces that represent some of the most powerful trends afoot in the world today. So it should not be surprising that even with all we accomplished, we also made mistakes, and more should have been done.

But it is my strong conviction that on the issues of counterterrorism, the agency's focus and record were where they should have been. We understood that our role was to have the systems and structures in place to prevent wrongdoers from getting into the country. We did that by

pressing hard for strong, comprehensive border controls, modern information systems, and interagency and international coordination. The measures we took, and the systems we put into place would have identified the 9-11 terrorists had INS known who to be looking for. Moreover, the major technology and systemic improvements that have been made since 9-11 have been to fund and give higher priority to initiatives and technology we developed.

Finally, I think it is important to recognize that through most of our history, immigration has been an area of public policy especially given to wild swings. The past ten years are no exception. In times of prosperity, the United States has overlooked or openly encouraged immigration, authorized or otherwise. In times of hardship, immigrants become scapegoats for deeper weaknesses in policy or society. With each swing of the pendulum, prevailing administrative practices are seen as either too strict or too lax. The political consensus and public support needed to steadily, continuously balance enforcement to deter immigration threats with policies to capitalize on its benefits have been very difficult to achieve. An important immigration policy consequence of the searing experience of 9-11 would be to strengthen the immigration system both to help fight terrorism and to strike a sensible balance between effective control and openness to the world outside.