



BACKGROUND

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Immigration and National Security

The Enhanced Border Security and Visa Entry Reform Act

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The *Enhanced Border Security and Visa Entry Reform Act* (S. 1749, commonly called the Border Security Act) would plug the gaps in our immigration system that foreign terrorists have exploited. The legislation builds on steps recently taken by the Bush Administration and new law enforcement tools provided by Congress. It is meant to address weaknesses in our immigration and visa processes that allowed the U.S. government to legally admit the September 11th terrorists. The Border Security Act addresses these problems by:

- Getting intelligence about potential terrorists into the hands of the nation's gatekeepers in real time;
- Creating layers of security with multiple opportunities to stop someone intent on doing us harm;
- Eliminating opportunities for terrorists to hide behind fraudulent travel documents; and
- Determining how our government might best work with the governments of Canada and Mexico to 1) deter terrorists from arriving in North America in the first place, and 2) manage our common land borders in a way that deters the passage of dangerous people and cargo while facilitating the lawful and orderly passage of commerce and people that benefit our country.

This backgrounder examines the weaknesses in our immigration and visa approval systems that have come to light in the wake of September 11th, and how the Border Security Act proposes to address those weaknesses.

I. Collecting and Sharing Information About Foreign Terrorists

Background: The Immigration and Naturalization Service (INS) and the State Department, together with the Customs Service, are this country's *gatekeeper agencies*—that is, they make decisions about the entry of people and goods at our land borders and airports. In order to make the right decisions, these agencies rely on our *intelligence gathering agencies*—the Central Intelligence Agency (CIA) and the Federal Bureau of Investigation (FBI) most prominent among them. It is the responsibility of the intelligence agencies to collect information about foreigners who might be plotting terrorist acts against the U.S. These agencies are also responsible for passing this information on to the gatekeepers. If the gatekeepers do not receive this information, then the State Department, in reviewing a visa application has no reason to deny the application. Once the individual arrives in the U.S., there is no reason for immigration inspectors to deny that person (who now has a visa) admission to the U.S.

Issue: Before September 11th, intelligence-gathering agencies were sometimes reluctant to share information they had collected about potentially dangerous individuals with the INS and the State Department. Even when information was available, it sometimes could not be used by these gatekeeper agencies, in part because those agencies did not have adequate technology to access the information

quickly. To keep out terrorists, the intelligence agencies must communicate the latest information available about foreign terrorists. The INS and the State Department must have the best available technology and training so that they can quickly access any information that might be available about the people who appear before them, or about people that they should be on the watch for.

What the Border Security Act Does: The Border Security Act provides additional tools and resources for government information about potential terrorists to be shared among agencies. It requires the government to look at the intelligence needs of the INS and the State Department. Once those needs are determined, the government is required to develop and implement a plan for the intelligence gathering agencies to meet those needs. The Border Security Act authorizes funds so that the gatekeeper agencies can use the information collected by intelligence agencies by upgrading the technology of those agencies, training their personnel, and increasing their staff. The Act also requires a study of the feasibility of developing an interoperable database with Canada, Mexico, and countries participating in the Visa Waiver Program so that information collected by those countries may be made available in real time to our gatekeeper agencies.

II. Creating Layers of Security, with Multiple Opportunities to Stop Someone

Issue: When visitors arrive by the plane loads from foreign airports, there is a lot of pressure on immigration inspectors to quickly move people through the inspection lines. Not all travelers have been examined before this point. Visitors from certain (mostly European) countries do not have to obtain visas to visit the U.S. for short periods of time. To reduce the chance that a terrorist might slip into the country because of an oversight made during the immigration inspection, multiple opportunities are needed to examine travelers from abroad.

What the Border Security Act Does: The Border Security Act creates layers of security by providing multiple opportunities for our government to turn away or apprehend potentially dangerous travelers. First, non-immigrant visa applicants from countries designated as state sponsors of terrorism will receive extra scrutiny before any visa is issued to them. Second, the Act will require that all consular officers receive extra training in screening for security threats. Third, the Act will require the government to determine the feasibility of *pre-clearing* foreign passengers (a procedure enabling foreign travelers to submit voluntarily to screening in advance of their departure for admissibility to the U.S.). The feasibility of expanding *pre-inspection* is also to be determined. (In this procedure, U.S. immigration officers are stationed at *foreign* airports and travelers are inspected by U.S. officers *before departure*.) Fourth, the Act will require all airlines to transmit to U.S. authorities the names and other information about passengers and crew of all flights heading to the U.S. prior to their arrival. Passenger names can then be checked against a list of names of persons who should be denied entry. That way, officials will have yet another chance to intercept anyone who should be denied entry to the U.S. as soon as they get off the plane. The Act will also require airlines to provide departure manifests on passengers and crew before they depart the U.S. Fifth, the Border Security Act will remove a requirement in current law that passengers on flights arriving in the U.S. be cleared through the immigration inspection process within 45 minutes.

These provisions in the bill will provide *additional* opportunities for scrutinizing visitors from what takes place now—namely, that each arriving visitor is, and will continue to be, inspected by an immigration officer upon arrival in the U.S.

III. Establishing the Identity of Foreigners Traveling to the U.S.

Issue: We must have systems in place so that terrorists cannot avoid detection by traveling under false identities. Travel documents (passports and visas) with regular photographs can be manipulated (by

replacing the photo, for example), enabling terrorists and criminals to travel with false identities. The U.S. and other governments have been in various stages of making travel documents more secure. To thwart anyone from falsifying a travel document, or from using someone else's stolen document, governments will have to issue travel documents with digital information containing a unique biometric identifier (a fingerprint or photograph, for example). The digitized information, read by machines, will have to match the printed information appearing on the document, and the biometric identifier encoded on the document would have to match the trait of the person seeking entry (for example, a thumb print). These "secure" travel documents will enable us to verify that a person entering the country is the same person who was issued the passport and the visa to travel here.

What the Border Security Act Does: The Border Security Act strengthens recently-passed laws that provide for secure identification documents. It sets a deadline for the State Department to issue machine-readable visas with biometric identifiers. The same deadline, October 26, 2003, is set for the Justice Department to deploy machines to read these documents. Countries participating in the Visa Waiver Program must, by that same deadline, have a program in place to issue machine-readable passports with biometric identifiers to their citizens. Once these systems are in place, it will be possible for immigration inspectors at ports of entry to compare the surface information on a travel document with the digitized codes on that document, and to know that the person standing before them is the same person who was issued the travel document. For example, a passport contains a photograph, and the digitized information on the passport might also contain a photograph that will appear on the machine of the inspector. If the physical photo and the digitized photo do not match, the person can be denied entry or apprehended. Similarly, if a fingerprint or set of fingerprints are used as an identifier, the digitized fingerprint on the travel document will have to match the fingerprint of the traveler as it is scanned at an immigration inspection station.

IV. North American Perimeter Security

Issue: The length of our borders with Mexico and Canada, and the sheer volume of traffic crossing those borders, make them difficult to monitor with the kind of accuracy needed to stop the very few people who come to do us harm. Airports present a much more controlled environment. Every traveler arriving at an airport must pass through an inspection station. Enlisting the cooperation of our neighbors in controlling who enters the North American continent would allow us to push back our perimeter of security.

What the Border Security Act Does: The Border Security Act requires the government to study the feasibility of cooperating with the governments of Mexico and Canada so that those governments synchronize with ours the process by which foreigners coming to the North American continent are screened. One option the Act would have the government explore is the possibility of pre-clearing and pre-inspecting (described above) travelers flying to Mexico and Canada, as well as the U.S. Any scheme of cooperative screening will have to include a plan to ensure that asylum seekers and refugees attempting to reach our shores have some meaningful access to protection. Furthermore, while the three countries might ultimately synchronize their criteria for who is allowed on to the North American continent, none should be required to lower their protections for refugees.

V. Tracking Foreigners in the U.S.

Background: It may be that our government finds out that someone is a terrorist *after* he has been admitted into the country. In that case, it would be helpful for authorities to have access to certain information about his status. To this end, the *Enhanced Border Security and Visa Entry Reform Act* contains a set of provisions that have to do with monitoring those we let into the country. It is important to keep in mind, however, that such tracking systems will have limited value in preventing terrorism. First, persons

monitored by such tracking systems have already been admitted to the U.S. Second, the information these systems provide is limited. For example, they might tell the government that a person has violated the terms of a visa by remaining in the U.S. past the time his visa allows, but it will not tell the government where that person is, nor can it make a distinction between a person who is intending to commit an act of terrorism and a person who has been delayed in departing the U.S. because of an illness. Third, tracking systems such as the ones that have been proposed will not flag someone as dangerous if they are observing the terms of their visa. For example, a person who has not been identified by intelligence agencies as a terrorist will not be noticed by these tracking systems if he is here on a tourist visa and has not overstayed his visa. Fourth, the sheer volume of information to collect and store will present a tremendous task for the agency charged with analyzing the information. Each year, 500 million people cross our borders or pass through our airports. Matching entry and exit data for all of those people, and acting on data that does not match, will be a daunting task.

A. TRACKING FOREIGN STUDENTS

Issue: Some of the terrorists who struck on September 11th were foreign students who violated the terms of their visas. The INS employs a paper-based system to keep tabs on foreign students, a system that, because information is entered into a database so late (often after the course of study has been completed) it is worthless for monitoring student compliance with the terms of their visas. Furthermore, the system is plagued by a lack of communication among the State Department, which issues the student a visa but does not report that fact to the school; the INS, which admits the student but does not pass that information on to the school or the State Department; and the school, which enrolls the student but does not report to the INS and State Department when the student fails to enroll. Recently enacted laws have called for the implementation of an electronic database to track foreign students. However, for various reasons, such a system has not yet been implemented on a large scale.

What the Border Security Act Does: The bill closes gaps in a system to monitor foreign students that has been established by recent laws. Once funded and implemented, this system will enable the government to track whether foreign students who have obtained visas to study at U.S. schools actually enroll in the course of study they have been accepted in, and whether they are otherwise complying with the terms of their visas.

Until this system is fully implemented, the Border Security Act requires increased communication among the State Department, the INS, and the schools. The State Department will be prohibited from issuing a visa unless it receives evidence of acceptance from an approved U.S. institution. The State Department must notify the INS that a visa has been issued. When the student arrives, the INS must tell the school that the student has been admitted. If the student fails to enroll, the school must notify the INS.

The bill also requires the periodic review of schools authorized to admit foreign students, to ensure that these schools are properly complying with recordkeeping and reporting requirements.

B. AN ENTRY AND EXIT SYSTEM

Issue: Every individual who comes into a U.S. airport must be inspected by an immigration officer, where the entry is recorded. Airlines collect information on exiting passengers, but not all pass the information on to the government. There are plans for collecting information from persons arriving and departing through land border points of entry, but to date arrival and departure data is not systematically matched. The government has no way of knowing whether persons who are issued visas or who are otherwise admitted for set temporary periods of time actually depart within the terms of their admittance.

What the Border Security Act Does: The Border Security Act would make some adjustments in a system mandated by recent legislation that would require keeping a record of all foreign nationals who enter and leave the U.S. The ability to match entries into and exits from the U.S. will alert the government to those who stay in the U.S. beyond the term of their visa.

VI. Conclusion

Since September 11th, there have been a range of proposals introduced in Congress that purport to address our need to keep the U.S. secure from foreign terrorists. Many of these proposals use the rhetoric of security and anti-terrorism, but are aimed at restricting the flow of the overwhelming majority of law-abiding travelers, immigrants seeking a better life, and refugees fleeing persecution. These proposals would do little, if anything, to protect us from terrorism. They might, instead, cripple our economy and make us a weaker nation.

The *Enhanced Border Security and Visa Entry Reform Act*, on the other hand, addresses the failures which allowed the U.S. government to legally admit the terrorists who struck on September 11th. The Act attempts to supply all the tools not already provided by law that will be needed by federal officials responsible for determining whether a prospective foreign visitor should be admitted to the U.S. It is meant to keep our focus on isolating terrorists and potential terrorists, while ensuring that the entry process for those we do want to admit does not become an unmanageable ordeal. In other words, the Border Security Act aims to isolate terrorism, not America.