

## 16. RECREATING OUR BORDERS

In 2002, a Web site utilized by al Qaeda noted that “in 1996, 254 million persons, 75 million automobiles, and 3.5 million trucks entered America from Mexico. At the 38 official border crossings, only 5 percent of this huge total is inspected. . . . These are figures that really call for contemplation.”<sup>1</sup> Border security presents an especially vexing series of policy dilemmas, because while the permeability of our nation’s borders bolsters our economy and diversifies our society, it also places the country at risk.

The flow of people and goods across the northern and southern borders lies at the heart of the country’s prosperity.<sup>2</sup> Yet this flow has also served as a conduit for terrorists and their weapons. In 1997, the Palestinian Ghazi Ibrahim Abu Mezer was apprehended on three occasions crossing the Washington–British Columbia border. He was later discovered attempting to build a bomb in New York City. In 1999, Lucia Gaofalo was arrested for attempting to smuggle suspected terrorists into the United States from Quebec. Later that year, an alert Customs inspector in Port Angeles, Washington, caught Ahmed Ressam, the “millennium bomber,” trying to bring materials into the United States to blow up the Los Angeles Airport.

Despite these threats, in the decades preceding September 11, protecting America’s 6,000 miles of land borders was not perceived as a national security issue. After September 11, new attention was devoted to the inadequate infrastructure, insufficient staffing, stove-piped organizations, and Byzantine immigration process along those borders. But secure borders remain a long way off: Crossing points are congested and technologies to detect individuals and materials entering the country illegally are seriously outdated. Personnel shortages along the border, coupled with a lack of interagency intelligence sharing, has further undermined our ability to vigilantly police the border, and immigration databases are

currently unable to effectively keep track of individuals entering and leaving the country, much less locate and deport those who succeed in entering or overstaying illegally.

To be sure, cross-border trade is critical to the economic well-being of the United States, and the demands of this legitimate policy interest must be calibrated with any effort to secure the border. Total trade between the United States and Mexico has grown from just over \$100 billion in 1994, the first year of NAFTA, to over \$236 billion in 2003.<sup>3</sup> To the extent that the border can be strengthened without creating undue shipping delays and economic damage to border communities, these kinds of approaches should be pursued. But while the American economy relies on access to inexpensive labor and the unfettered movement of goods, economic dictates are not absolute, and a secure homeland—which starts with a secure border—is a precondition for economic prosperity, and a cornerstone of America's national interest.

In a recent poll conducted by Hart Research, U.S. voters echoed this point by rating security and protection of U.S. borders as their top homeland security concern.<sup>4</sup> On November 30, 2005, Secretary of Homeland Security Michael Chertoff announced a multi-year plan to address the border, the Secure Border Initiative (SBI). The plan fails to deal with the border in the context of the terrorist threat we face. The ad hoc redeployment of resources and the failure to start with a rigorous analysis of the scope of the border security problem are symptomatic of the Bush administration's remedial and piecemeal efforts to secure the nation's frontlines.

At the time of publication, President Bush announced a new strategy to secure the border as part of his immigration reform agenda. The administration's proposal calls for \$1.9 billion to fund both new surveillance technologies and a larger border patrol. Under this plan, up to six thousand National Guard troops would be deployed along the border as a stopgap until new border patrol personnel have been hired, trained, and assigned. The president's initiative, which emerged in the context of a gathering political storm over immigration, has met with strong resistance. Governors, including Arnold Schwarzenegger (R-CA), have criticized the plan as haphazard and incomplete. It provides little guidance to state capitals on the precise missions the National Guard troops would carry out; it also scants the problem of an increasingly vulnerable northern border. These shortcomings are to be expected when the impetus for action is political necessity, rather than strategic vision.

What is needed is not efforts to build fences, block immigrants, and deploy popular technologies, but a fundamental reassessment of where the problems of border security lie. The Bush administration has allowed itself to be completely distracted by the immigration debate. Although immigration and border security are related in a number of ways, the immigration debate should not be confused with efforts to secure our borders against the threat of terrorist infiltration. The paramount concern must be preventing terrorists from crossing our borders to do our nation harm. The first step toward achieving such a comprehensive border security strategy is the systematic reevaluation of border security. Here we divide the issue into four categories: personnel, technology and infrastructure, weapons of mass destruction, and illegal immigration. By assessing each of these categories in turn, and by considering the ramification of changes in policy, we will be better able to manage our borders.

## PERSONNEL

When the Department of Homeland Security was created, the traditional roles played by agriculture inspectors in the Department of Agriculture, Customs agents and inspectors in the Treasury Department, Border Patrol agents, immigration inspectors, and interior enforcement agents from the Department of Justice were all shifted into the Department of Homeland Security in an effort to streamline border security efforts. The new agencies that emerged were to follow a simple formula: Customs and Border Protection (CBP)—to include Border Patrol—were to maintain the day-to-day operations of the border, managing security and all inspections. Immigration and Customs Enforcement (ICE) was to serve as the chief investigative unit of the new department and track down major cases that had managed to slip through the cracks. Customs and Immigration Services would take over the major paperwork efforts of processing visa requests and payment of tariffs. Almost immediately after the plan was announced, problems arose.

The bureaucratic reshuffling did not go smoothly. Immigration and Customs Enforcement originally stood for “Investigations and Criminal Enforcement,” but the FBI fought and won a turf battle over use of the

word “investigations.” In the meantime, Detention and Removal Operations (DRO), which are responsible for illegal aliens inside the United States, was shifted to the new department, while the immigration judges who determine the fate of these individuals were left in the Department of Justice.<sup>5</sup> Up and down the border, all agencies reported personnel shortages. ICE and DRO were faced with significant budget shortfalls that resulted in hiring freezes.<sup>6</sup> The traditional missions of various agencies took a backseat to the new priority of locating terrorists and preventing attacks on the homeland. Yet new money and training for this formidable task were elusive and remain so today. To cut costs, the new department set performance and capability standards for the new organizations to the lowest common denominator of legacy agencies. When Immigration and Naturalization Services (INS) and Customs were combined, for instance, the INS requirement that agents speak Spanish was dropped because Customs agents were not required to have language skills. Directives like this from Washington abounded but in many cases undermined the clear strategy heralded by the new department’s press releases. When Congress inserted into the Patriot Act a requirement for more agents along the northern border, for example, the Office of Homeland Security moved agents from the southern border, thereby increasing the vulnerability in the south, and undermining the intentions of Congress.<sup>7</sup> The failure to develop an integrated strategy in the wake of September 11 is perhaps best illustrated by the continued lack of a nationwide threat and vulnerability assessment as ordered by the Homeland Security Act of 2002.

Some incremental progress has been made in augmenting the numbers of border security personnel: In the 2006 Homeland Security Appropriations Bill, funding was provided for an additional 1,000 Border Patrol agents. With these new hires, Border Patrol will increase by nearly 3,000 agents since September 11. Increased funding will allow ICE to add roughly 250 new criminal investigators, 400 new immigration enforcement agents, and 100 new deportation officers—the first additions since the department was created.<sup>8</sup> But there is no way to determine whether these numbers are sufficient. More individuals are being added to accomplish a task that is still unclear. In 2004, Congress appropriated funding to do a comprehensive assessment of personnel requirements on the northern and southern borders to determine how many people are needed to manage the flow of traffic and enforce border areas between ports of entry. This assessment has yet to be completed, leaving the Strategic Border Initiative shortsighted.

To protect the border, a comprehensive border personnel assessment must be completed to identify how many individuals will be needed to monitor the entire U.S. border, twenty-four hours a day, seven days a week. The resulting strategy must include a clear command and control structure to ensure proper intelligence sharing among all agencies. It must also supply border crossings, DRO facilities, and border communities with the immigration and customs specialists needed to ensure adequate screening of all individuals and products entering the country without hindering the flow of traffic.

## TECHNOLOGY AND INFRASTRUCTURE

In addition to personnel, new technologies and a functional, dynamic infrastructure will be enormously important in securing our borders. To date, various technologies have been employed along our borders to detect and keep track of materials and individuals in transit, but these measures have been implemented in an ad hoc, inconsistent manner, and many of the technologies currently in use appear ill-suited to the task at hand. At busy border crossings, radiographic machines are used to screen only a fraction of vehicles for smuggled drugs or hidden people. Multiple database technologies are used to identify individuals who legally and illegally cross the border. Between ports of entry, multiple technologies are employed. Border Patrol uses cameras and sensors and acts on information gathered from tethered balloons and unmanned aerial vehicles (UAVs) maintained by the Department of Defense. Quarter-century-old sensors typically used to monitor seismic activity have been utilized to detect individuals attempting to cross the border. Sensors are activated when individuals step on them, but are also triggered by animals and blowing brush. This results in so many false alarms that the sensors are routinely ignored by short-staffed Border Patrol offices. In just one sector along the southern border, more than 30,000 hits were reported in just one month. Cameras are also used, but staffing shortages have reduced their effectiveness, with one agent often responsible for the activity logs and response deployment for over twenty-six cameras.<sup>9</sup>

Tethered radar balloons are deployed along the southern border to detect low-flying air traffic. The balloons have impressive results for

smuggler interception, but cost almost \$2 million to purchase and more than \$3 million to maintain annually. The tethered balloons are operated and maintained by the Department of Defense and are available to DHS only when the Department of Defense does not need them. When they are available, the balloons often fail in bad weather. Despite these shortcomings, the balloons are considered among the best capabilities being employed to protect our borders.

In 2003, DHS announced the creation of the Arizona Border Control Initiative and began actively employing Defense UAVs to detect individuals attempting to cross the Arizona desert. No significant study has been completed by the administration to determine the efficacy of UAVs in preventing illegal immigrants or shipments from entering the country, yet in fiscal year 2006, the Bush administration will spend an additional \$10 million on the technology.

As these cases indicate, the deployment of various technologies to monitor the border since September 11 has been inconsistent, and large investments are being made without first assessing the comparative advantages of various devices. Hundreds of miles go unpatrolled every day, despite the fact that technology exists to monitor the entire border. In SBI, Secretary Chertoff has committed to creating an integrated border security system “including more Unmanned Aerial Vehicles (UAVs), aerial assets, Remote Video Surveillance camera systems, and sensors” to be deployed beginning in 2007. However, the department has not come up with a comprehensive research and development (R&D) program to inform this step, despite recommendations to do so from independent investigators.<sup>10</sup> In the past, technologies intended for other purposes have been employed on the border and have met with mixed results. Before dedicating scarce dollars to buying existing technologies, it is imperative that research and assessments be conducted to ensure that the men and women on the frontlines of our nation’s security are as well equipped as the men and women this country sends into combat. Specifically, equipment purchased for monitoring the border should not be bought “off the shelf” and modified. Rather, a set of standards and requirements should be developed that will inform the production of new equipment to meet the needs of border enforcement. In addition, these systems—currently stove-piped within old agencies, and often confined to a specific geographic area—should be combined into a nationwide system to allow for integrated and constant monitoring.

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## WEAPONS OF MASS DESTRUCTION

To a smuggler of nuclear weapons, the miles of unpatrolled border and congested ports-of-entry provide countless opportunities. The vital task of preventing a nuclear attack from within the United States currently falls to equipment which is insufficient and to border personnel who are overextended and, in many cases, who are not trained to detect nuclear material in transit. Again, our national efforts to address this problem suffer from a decentralized approach, with inadequate or nonexistent interagency coordination, a resulting duplication of efforts, widespread use of inappropriate technologies that have been retooled for the task at hand, rather than designed for it, and the conspicuous absence of any overall government plan to confront the problem.<sup>11</sup>

At ports of entry, CBP officers use portable radiation detectors (PRDs) and radiation portal monitors to screen trucks and trains for weapons of mass destruction. Hand-held devices are also used to screen some but not all vehicles. The employment of this equipment is determined by how many individuals are on a shift at a given time, who is trained to use the equipment, and whether the equipment is working. At the same time, CBP inspectors are looking for drugs, smuggled individuals, and other contraband, all while trying to ensure that the flow of traffic is not impeded, and often with a language barrier and no intelligence to direct efforts.

CBP has issued over 9,400 PRDs to agents and inspectors at a cost of nearly \$1,200 each.<sup>12</sup> These are small, pager-like devices worn by individual inspectors to detect radiation. They are not intended to be detection devices for containers or vehicles, because they have to be in close proximity to the nuclear or radiological source in order to detect it. Despite this, CBP continues to deploy the devices. The Government Accountability Office (GAO) expressed concern that “DHS has not yet deployed the best available technologies for detecting radiological and nuclear materials at U.S. border crossings and ports of entry. Specifically, we have found that CBP’s primary radiation detection equipment—radiation pagers—have certain limitations and may be inappropriate for the task.”<sup>13</sup>

More than 470 radiation portal monitors have been deployed throughout the United States.<sup>14</sup> This equipment allows a vehicle to be driven through and reviewed for radiological material. Although the

equipment is in the field, government investigators have found that the way the equipment is used has reduced its effectiveness: Sensitivity is often reduced to eliminate alarms and trucks are run through the monitors too quickly to produce accurate readings.<sup>15</sup>

On April 13, 2005, the president issued National Security Presidential Directive 43 (NSPD-43/HSPD-14) to create the Domestic Nuclear Detection Office (DNDO) to be housed in the Department of Homeland Security. Despite expressing doubts in the mission and effectiveness of this office, Congress allotted nearly \$200 million for the development of a system to detect and report terrorist attempts to transport or use radiological or nuclear materials.<sup>16</sup> Despite efforts at integrating multiple agencies in this process, DNDO lacks the organizational power within the DHS to compel agencies to act according to its recommendations. Currently, the Department of Defense is testing radiation monitors for deployment on U.S. military bases. It is unclear to what degree their findings have been shared or implemented by other agencies, and how DNDO will remedy such problems.<sup>17</sup>

If it is to be effective, the president should strengthen DNDO and compel all U.S. agencies involved in the detection and prevention of nuclear materials to operate under its authority. DNDO should have budget authority over activities of all national labs for research and development on emerging technologies and establish requirements, rather than recommendations, for deployment of technologies.

## IMMIGRATION

In recent years, the immigration system has received the attention of the Bush administration and Congress, in terms of both the nation's security and its economic dependence on immigrant labor. These questions are critical, and given the political nature of the issue, will be revisited numerous times in the future. While the immigration debate is perhaps as old as the country itself, the fact that several of the September 11 hijackers were present in the country on lapsed visas has added a new urgency and a new dimension to that debate, and traditional questions about whom we admit to this country must be reevaluated in light of the threat of foreign terrorists operating within our borders.

When the late Congresswoman Barbara Jordan (D-TX) chaired the bipartisan Commission on Immigration Reform in 1994, she noted in her first report to Congress that immigration and border policy can be measured by a simple yardstick:

- ◆ people who should get in, do get in;
- ◆ people who should not get in, are kept out; and
- ◆ people who are judged deportable, are required to leave.<sup>18</sup>

These criteria are in tension with one another—regulations that promote one may end up undermining another—but using Johnson’s yardstick, the current system is failing overall and in each individual area.

In the first case, academic institutions, scientific organizations, and U.S. businesses report continued difficulties in obtaining visas for students and professionals.<sup>19</sup> The problem is that academic institutions and businesses have the least incentive to assist the government in monitoring compliance to immigration laws. To mitigate this problem, every U.S. institution interested in sponsoring a visa or in employing a foreign national must have at least one individual per every one hundred foreign nationals certified in understanding immigration processes. By mandating training, organizations will be able to be held accountable for failing to comply with immigration law.

To complicate this problem, while people who should be able to enter the country are often excluded, people who should be excluded are often able to enter. The United States Visitor and Immigrant Status Indicator Technology (US-VISIT) is the system being implemented at airports, seaports, and land borders to comply with statutory mandates to track the arrival and departure of foreign visitors. Since its development, it has been plagued with difficulties from database management to international distrust. At this point, the administration has met requirements for tracking individuals who enter the United States, ensuring that every person who enters the country is tracked—with the exception of individuals presenting Canadian or Mexican documentation. But in light of the fact that most people entering the country via a land border do have Canadian or Mexican documentation, this means that only 22 percent of all border crossings into the United States are tracked through the system.<sup>20</sup> The exit component of the program is virtually nonexistent: No system is in place to inform law enforcement of individuals who failed

to leave by the designated time. The biggest challenge of US-VISIT, however, is the sheer volume of individuals passing through the system. To properly implement US-VISIT, a significant investment in infrastructure must take place. Staffing and equipment to track individuals leaving the country are needed. Databases must be fully functional and provide real-time actionable intelligence. One of the failures that enabled the September 11 hijackers to carry out their deadly attacks was the fact that they were able to overstay their visas. In the current configuration of US-VISIT, this systemic vulnerability endures.

The biometric technology (fingerprint and photographic identification) included in US-VISIT and other systems is not a panacea for the border security problem. Law enforcement efforts must be in place to remove individuals caught entering the United States illegally. Detention and Removal Operations are tasked with providing custody management to support the removal of illegal immigrants through the immigration courts and to enforce their departure from the United States. To fulfill this mission, the DRO facilities feed, house, and provide medical attention to the detainees until their hearings before election judges. Historically, the DRO has been severely underfunded. More than 1.2 million illegal immigrants were apprehended in fiscal year 2005.<sup>21</sup> The DRO, however, is capable of detaining only 200,000 illegal immigrants a year, and is funded to maintain only 19,444 beds annually. Through overcrowding of detention centers and cutting funds from equipment budgets, DRO has managed to add an additional 2,000 beds annually to that number. As a result, the DRO releases non-criminal aliens into the United States on their own recognizance and schedules them for deportation hearings—a practice known as “catch and release.” Eighty to 90 percent of these individuals never appear in court and are left to work and live in the United States.<sup>22</sup>

In the Strategic Border Initiative, the Bush administration has made clear that it understands the danger of this practice, but to date the administration has done little to provide the funding to solve it. The administration has pledged to completely eliminate the practice, pledging to develop the capability to return every single illegal entrant amenable to removal—no exceptions. The goal is to achieve significant progress on this capability in less than a year. This will be achieved through greater efficiencies in the removal process, cooperation with foreign governments, increasing detention capacity, and expanding expedited removal.<sup>23</sup>

Despite this commitment, the Homeland Security Appropriations Bill contained funds that will enable DRO to pay for the additional 2,000 beds it currently provides only by cutting into other appropriations, and will not allow DHS to further expand detention capacity. Even with this increased funding, DRO will not keep pace with the increased number of individuals being captured along the U.S. border. In Brownsville, Texas, the Border Patrol reported that out of the 14,000 non-Mexicans apprehended through May of fiscal year 2004, 9,500 were released into the United States due to lack of DRO capacity. Furthermore, while the Bush administration claims that cooperation for deportation with foreign countries will allow for an expedited process, some nations refuse to accept individuals who have made it to American shores, including Vietnam, China, Iraq, Iran, Nigeria, and Eritrea.

The immigration challenge will not be met unless the basic tracking and deportation processes are in place. For the purposes of homeland security, the ability of individuals to work in the United States is less important than the necessity that exists for U.S. officials to know the true identities of every individual entering, residing, or leaving the country. To ensure legitimate travelers are allowed to enter, the Bush administration must complete the exit portion of US-VISIT and ensure all databases are interoperable, so visitors can be tracked regardless of how or where they attempt to enter the United States. For those who are caught entering illegally, steps must be taken to ensure they are returned to their countries and not released into the United States. To meet this need, an assessment of the needs of all of the agencies involved in the detention and removal operation—including immigration judges, prosecutors, and detention guards—must be taken. In addition to efforts to look for creative ways to monitor individuals awaiting deportation, the United States must make it clear to foreign governments that refusing to accept the return of their citizens who illegally attempted to enter the United States will have meaningful consequences.

## **INVESTMENT WITHOUT VISION**

While the Bush administration has taken steps to increase border security, these efforts have been ad hoc; they do not reflect any serious, integrated vision of the full scope of the border security issue, and as such their impact has been minimal. One critical lesson of the past several

years is that appropriations—while desperately needed—are not enough. Until a comprehensive review of threats and vulnerabilities is undertaken, even the recent \$2 billion in proposed spending by the administration will fail to provide any measurable amount of security.

A case in point is the administration's much lauded Arizona Border Control (ABC) Initiative. Created in 2004 to patrol the most vulnerable part of the U.S. border, the ABC Initiative borrowed UAVs from the Department of Defense and redeployed agents from other overburdened sectors to catch illegal immigrants and smugglers. The project yielded thousands of arrests and seizures. However, it also caused significant problems for other border areas. By stemming the flow of traffic in one area of the border, traffic increased elsewhere, causing governors to declare a state of emergency while neighboring border agents and state law enforcement officials complained about a lack of attention from the Department of Homeland Security.<sup>24</sup> To compensate for failures of the federal government to solve this problem, the state of New Mexico was forced to spend almost \$2 million in state revenue to secure border communities. Volunteer militia groups assembled to try to stem the flow of illegal immigrants. Deaths increased by more than 25 percent and violence was rampant.<sup>25</sup> This was the result of a \$10 million investment intended to allow the government to take "operational control of the border."<sup>26</sup> The clear lesson of this debacle is that investment in the absence of strategy or analysis will leave us worse off than if we had not acted at all.

## CONCLUSION

Bush administration policies have failed to secure America's porous border. To accomplish this task, the United States needed a comprehensive border security strategy. Secretary of Homeland Security Michael Chertoff's plan provides no baseline for progress, because no assessment of what is needed has been conducted on any of the major areas of concern. Strategies being introduced by the Department of Homeland Security will continue to be tactical and ad hoc if comprehensive reviews of staffing requirements, immigration priorities, and technologies are not completed.

National security now depends on our ability to prevent terrorists from crossing the border. It depends on the well-being of the communities

and individuals who live and work along the border, where the concept of “two countries—one community” has been the central pillar of the good relations between the United States and our neighbors to the north and south. Those who serve our nation on our borders deserve nothing less than a well-researched and reasoned plan backed with adequate funding. No longer can we ignore the needs of our border regions. Our terrorist enemies will not wait, and neither can we.

## RECOMMENDATIONS

Even in the absence of a comprehensive assessment, several imperatives are clear:

**16.1. SECURITY FROM THE THREAT OF TERRORISM SHOULD BE THE PRIMARY FOCUS OF U.S. BORDER EFFORTS.** Strong physical barriers on the border with Mexico are essential. Approximately 150,000 “OTMs,” or other-than-Mexican illegal immigrants, crossed this border in 2005, and are able to blend into American society and pose a serious security threat once inside our borders.

**16.2. UTILIZING TECHNOLOGY AND PERSONNEL, THE ENTIRE U.S. NORTHERN AND SOUTHERN BORDER MUST BE CONTINUALLY MONITORED.** Capability must be developed to respond to the detection of illegal crossings.

**16.3. ELIMINATE “WHACK-A-MOLE” RESPONSES, SUCH AS THE ARIZONA BORDER CONTROL INITIATIVE, THAT SIMPLY RELOCATE MAJOR CROSSING POINTS WITHOUT REDUCING OVERALL FLOW.** The practice of redeployment to targeted areas should be ended and focus placed instead on augmenting capabilities.

**16.4. U.S. VISA AND ASYLUM PROCESSES MUST BE MADE TO CONFORM WITH THE MEXICAN AND CANADIAN SYSTEMS, SO THAT, EXCEPT IN RARE CASES, ALL THREE COUNTRIES AGREE ON WHO IS ADMITTED.**

**16.5. DEVELOPMENT AND DEPLOYMENT OF COUNTERFEIT-PROOF VISITOR IDENTIFICATION FOR GUEST WORKERS AND PERMANENT ALIENS.**

**16.6. WORKPLACE ENFORCEMENT OF IMMIGRATION RULES MUST BE DONE ON A CONTINUAL BASIS.** Sponsoring institutions must have personnel certified in understanding the immigration process and documentation.

**16.7. DETECTION OF RADIOACTIVE SOURCES MUST BE PRIORITIZED AND INEFFECTIVE PERSONAL RADIATION DETECTORS SHOULD BE REPLACED BY RADIATION PORTAL MONITORS AND X-RAY SYSTEMS.**



Some of these measures are as controversial as they are necessary. To the degree that a guest worker program or amnesty initiative might take some of the sting out of these proposals, the administration and Congress ought to consider them seriously.