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**Immigrants or Terrorists?
U.S. Immigration Policies and National Security
under the George W. Bush Administration
(2001-2009)**

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Resumen Ejecutivo

El mayor reto al que se enfrenta Estados Unidos, como consecuencia de los ataques terroristas del 11 de septiembre de 2001, es discernir el equilibrio que existe entre la interrupción de entrada de inmigrantes que representan una posible amenaza terrorista y la bienvenida a los inmigrantes que generan un incentivo legítimo para los Estados Unidos. El ex Presidente George W. Bush, creía que la inmigración ayudaba al éxito del país y por lo tanto, trabajó duro para mantener las fronteras abiertas.

Sin embargo, las numerosas leyes que se promulgaron durante su administración, se centraron en el fortalecimiento de la seguridad fronteriza a través de una política de *tolerancia cero*. Se gestionó la seguridad nacional a través de *una estrategia de prevención*, para combatir específicamente el terrorismo, pero en ese paquete también se incluyó al tráfico de drogas, la inmigración ilegal y el lavado de dinero. Como resultado de estas políticas, fueron los inmigrantes quienes se vieron más afectados, de hecho la inmigración mexicana ha disminuido drásticamente.

Durante los nueve primeros meses de su administración, el Presidente George W. Bush, se reunió con el Presidente Vicente Fox de México, con el fin de desarrollar un acuerdo binacional que beneficiara a ambos países y que fue en gran parte frustrada luego de los ataques del 11/9. Aun así, ambos Presidentes, a lo largo de los 8 años de la presidencia de Bush, intentaron avanzar en una posible solución para resolver los problemas comunes que compartían.

La relación que existe entre las leyes antiterroristas y de inmigración es innegable. Todos los proyectos de ley que fueron promulgados para castigar a los terroristas, resultaron a la vez, impactando negativamente en los inmigrantes. La razón detrás de la implementación de estos cambios drásticos es una de dos: 1) Los EE.UU. no había tenido una reforma migratoria en más de 35 años y 2) los secuestradores que fueron directamente responsables de los ataques del 9/11 se habían infiltrado en la sociedad americana, asistiendo a sus escuelas y trabajando con visas auténticas; algunas de las cuales eran válidas y otras habían expirado. De los 19 secuestradores, por lo menos 5 estaban ilegalmente en los EE.UU. Esto aumentó la preocupación por aquellos que cruzaban ilegalmente la frontera a través de Canadá y más aún, desde México.

Desde el post - 9/11 del 2001 hasta el final de su presidencia en 2008, el Presidente George W. Bush y el Congreso de EE.UU. aprobaron varias leyes nuevas y también modificaron varios proyectos más antiguos; tales como, el ley del Departamento de Seguridad Nacional de 2002, que tomó el control de Servicio de Inmigración y Naturalización y los departamentos de inmigración, y los dividió en tres secciones principales: EE.UU. Aduanas y Protección Fronteriza, EE.UU. de Inmigración y Aduanas, y de Estados Unidos de Ciudadanía y Servicios de Inmigración. El Presidente Bush hizo estos cambios debido a que los terroristas fueron capaces de entrar el país a través del sistema de inmigración sin ser notado. El servicio de Inmigración y Naturalización

se hizo responsable de muchas de las disfunciones y la comunicación entre agencias, en este punto le faltaba mucho.

El gobierno de Bush también puso en práctica diversos programas de identificación, actas antiterroristas y actas de seguridad fronteriza, por ejemplo el US PATRIOT ACT de 2001, La ley de Seguridad Fronteriza Mejorada y Reforma de Visa del 2002, de Protección Fronteriza, Antiterrorismo y Control de Inmigración Ilegal de 2005 y la Ley del Cerco Seguro de 2006.

Todas estas leyes comparten un vínculo común, que es la de proteger al país contra el terrorismo y otras amenazas a través de una aplicación más estricta de controles en las fronteras, regulaciones y procesos de visado más estrictos, programas de identificación, y más restricciones para cruzar la frontera y los puertos de entrada. Los inmigrantes, que deseaban entrar legalmente, ahora tenían que pasar por largas inspecciones, y procesos costosos para obtener las visas. Estos incluyen, en la mayoría de los casos, una entrevista personal.

Cualquier inmigrante ilegal, que decide tomar el peligroso viaje a través de la frontera, ahora también tiene que considerar la manera de pasar por encima el muro que divide a México y Estados Unidos. Los inmigrantes buscan ingresar al país, entran en los mismos procesos que los terroristas y narcotraficantes. Y, una vez en el país, están sujetos a todas las tácticas utilizadas por los funcionarios del gobierno de Estados Unidos, como la discriminación racial, para probar que no ilegales. Sin embargo, los contribuyentes de los Estados Unidos siguen sin conocer la peor parte de este sistema de inmigración contraproducente.

El Presidente actual, Barack Obama, ha sido incapaz de obtener la aprobación del Congreso para una reforma migratoria efectiva y por tanto, las leyes y políticas en vigor no han resuelto los temas en cuestión. El número de inmigrantes ilegales, terroristas y todas las demás amenazas que entran en el país han disminuido, sin embargo todavía hay de migración ilegal a los EE.UU., El 15 de abril de 2013, hubo un ataque en la maratón de Boston (Massachusetts) que fue caracterizado como terrorista. La conexión que se hace entre el terrorismo y la inmigración puede ser necesaria pero solo hasta que se obtiene el resultado de mantener a los terroristas afuera y dejar los entrar a los inmigrantes. Hasta que eso no ocurra, el sistema de inmigración de EE.UU. seguirá siendo definido como "quebrado".

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Executive Summary

The greatest challenge that faces the United States, as a consequence of the terrorist attacks of September 11, 2001, is to discern the balance that exists between stopping entry to immigrants who pose a possible terrorist threat, and welcoming the immigrants who maintain a legitimate incentive to the United States. Former President George W. Bush, believed that immigration made the country successful and therefore worked hard to keep the borders open to them; however, the numerous bills which were enacted during his administration, focus on strengthening border security through a *zero tolerance* policy, and national security through a *preventative strategy*, to combat specifically terrorism, but also drug trafficking, illegal immigration, and money laundering. In doing so, Mexican immigration has decreased dramatically, but they are also the immigrant group who are affected the most by these acts.

During the first nine months of his Administration, President George W. Bush, met with President Vicente Fox of Mexico, in order to develop a bi-national agreement that would benefit both countries, and that was largely overdue. Instead of putting these into effect, 9/11 deterred any efforts that were being made towards the War on Terror, and Mexico was left astray. Even so, both Presidents, throughout the 8 years of Bush's Presidency, still made attempts to move forward with a possible solution to solve the common apprehensions, which they shared.

The relationship that exists between the anti-terrorist laws, and immigration laws is undeniable. Every bill, which was enacted to punish a terrorist, negatively impacted U.S. immigrants. The reason behind the implementation of these drastic changes is one of two: 1) The U.S. had not had an immigration reform in over 35 years, and 2) the hijackers who were directly responsible for the 9/11 attacks had infiltrated American society, attending schools, and working with authentic entry visas; some of which were valid, and some of which had expired. Of the 19 hijackers, at least 5 of them were illegally in the U.S., which raised the concern for illegal border crossing through Canada, and more so Mexico.

From post – 9/11, 2001 up until the end of his presidency in 2008, President George W. Bush, and the U.S. Congress approved several new bills, and modified various older bills, in order to make the first attempts to protecting the country; such as, The Department of Homeland Security Act of 2002, which took control of all previous INS, and immigration departments and divided them into three principal sections: U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and U.S. Citizenship and Immigration Services. President Bush made these changes due to the fact that these terrorist threats were able to get through the immigration system without being noticed. INS was held responsible for many dysfunctions, and the inter-agency communication at this point lacked greatly.

The Bush administration also implemented various identification programs, anti-terrorist acts, and border security acts, for example *The US PATRIOT ACT of 2001*, *The Enhanced Border Security and Visa Entry Reform Act of 2002*, *The Border Protection, Antiterrorism and Illegal Immigration Control Act of 2005* and *The Secure Fence Act of 2006*. All of these laws share a common bond, which is to protect against terrorism and other threats through stricter border enforcement, stricter visa regulations and processes and identification programs, and a stricter border-crossing and port of entry environment.

Immigrants, who wish to enter legally, must now go through lengthy inspections, and expensive processes for visas, which include in most cases a personal interview. Any illegal immigrants, who decide to take the dangerous journey across the border, now have to consider how to climb over the wall, which divides Mexico and the United States. The immigrants who continue to enter the country, enter into the same processes as every terrorist, drug trafficker, and money launderer, and once in the country are subject to all the tactics used by the U.S. government officials, such as racial profiling, to prove they are not illegal immigrants; yet the U.S. taxpayers continue to bare the brunt for this counterproductive immigration system.

Current President, Barack Obama, has been unable to get approval from Congress for effective immigration reform and therefore, the laws and policies in place have yet to lead to any developments that would resolve the issues at hand. The number of illegal immigrants, terrorists and all other threats that enter the country have decreased, however there are still illegal's migrating to the U.S., and on April 15, 2013, there was a bombing at the Boston Marathon in Massachusetts which was deemed a terrorist attack. The connection that is made between terrorism and immigration is necessary, however until the balance between keeping terrorists out and letting immigrants in is obtained, the U.S. immigration system will continue to be referred to as 'broken'.

Introduction

In the 21st century, United States President, George W. Bush Jr. said that this century, in particular, would be, "the century of the Americas". However the attacks on the World Trade Center in New York City and the Pentagon in Washington D.C. on September 11, 2001 (9/11) changed the U.S national agenda. In turn, the principal interests of the United States evolved in a different direction, which both directly and indirectly affected Latin America and furthermore the U.S. Immigration laws and policies. In fact, the George W. Bush, Jr. administration had four new priorities on their national and international agendas, all of which pushed his immigration advances and plans aside. The new plan contained the following, 1) to strengthen U.S. security, 2) to promote democracy, 3) to combat corruption (also referred to as good governance), and 4) to stimulate economic development (Maihold, 2003). Priority 1 and 3 are participating factors in the United State's laws and policies for the War on Terror, and will be presented here along with their relationship to the control and regulations at the U.S. - Mexico border, and immigration policies.

Since September 11, 2001, the United States National Security, Border Security, as well as Anti-Terrorist laws have not only been in development, they have been strictly enforced, with growing limitations in the foreseeable future. It is understandable that the United States would look to protect and further prevent their country from experiencing another terrorist attack after the estimated 2,752 lives were taken on September 11, 2001 alone (CNN U.S., 2003). However, the U.S., as a result, is faced with the challenge, to discover the balance, which exists between maintaining the country's safety from all possible terrorist threats, and welcoming those who possess a justifiable reason to the United States.

The controversy over immigration in the United States begins with the understanding of the terms of reference used to identify immigrants. For example, U.S. law uses the terms, "alien", "immigrant", "illegal immigrant" and "nonimmigrant" to identify immigrants entering the United States. The four words refer to people born in another country, and who are not U.S. citizens. According to Johnson and Trujillo (2011:3), in their book *'Immigration Law and the US-Mexico Border: Si se puede?'*, they define the word 'aliens' as people who are outsiders to the national community. This word refers to people who are part of society but are not U.S. citizens. Even if these aliens have children born in the United States who are legally U.S. citizens, their parents remain 'aliens'. The word 'alien' also, nowadays, refers to legal or illegal immigrants.

In the book *The New Chosen People: Immigrants in the United States*, written by Jasso and Rosenzweig (1990), they explain that the technical definition of 'immigrant' under U.S. law is an 'alien' or person who is not a citizen or national of the United States, but retains the right to live permanently in the United States. Immigrants are usually also referred to as 'aliens with permanent residence' and have many benefits and rights. For example, they retain the right to vote or

participate in the country's public policy or public offices. With that said, the word 'immigrant', under U.S. Federal law, does not always refer to people who are migrating to a country. When it comes to visas, a U.S. immigrant visa means that someone with a fiancé, spouse or family is petitioning his/her family go to live permanently in the United States.

In contrast, a non-immigrant is a person who lives in the United States legally. Non-immigrant refers to the type of visa that person was given. A non-immigrant visa means that the person is living in the United States temporarily and for a specific purpose. Depending on which type of non-immigrant visa, determines the rights that person holds. Usually, these include tourist visas, student visas, and work visas.

Lately, the 'illegal immigrant', 'illegal alien', or 'deportable aliens', refers to people who are in the United States illegally or without permission. These people are born in other countries and do not maintain an explicit status within the United States. This group of people either entered the country illegally or entered with a visa, but it expired or is out of status. With that said, these people are living illegally in the United States and may pay quite severe consequences, if caught by law.

Another important clarification for this thesis is the difference between federal immigration laws and state immigration laws.

“Congress has complete authority over immigration. Presidential power does not extend beyond refugee policy, except for questions regarding aliens' constitutional rights. The courts have generally found the immigration issue as nonjusticiable (if a case is "nonjusticiable", a federal court cannot hear it)¹.”

Individual states have limited legislative authority regarding immigration, and 28 U.S.C. § 1251 provide the extent of state jurisdiction, which is as follows:

- a) The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.
- b) The Supreme Court shall have original but not exclusive jurisdiction of: (1) All actions or proceedings to which ambassadors, other public ministers, consuls, or vice consuls of foreign states are parties; (2) All controversies between the United States and a State; (3) All actions or proceedings by a State against the citizens of another State or against

¹ Cornell University Law School. (2013): Federal immigration law determines whether a person is an alien, the rights, duties, and obligations associated with being an alien in the United States, and how aliens gain residence or citizenship within the United States. It also provides the means by which certain aliens can become legally naturalized citizens with full rights of citizenship. Immigration law serves as a gatekeeper for the nation's border, determining who may enter, how long they may stay, and when they must leave.

aliens².

Each state within the U.S. retains the right to develop their own immigration laws for the citizens of that state only, as long as it is in correspondence with federal law. In this thesis the immigration laws and policies that will be reviewed are those of federal law and policies, as these are the laws that have been drastically affected due to 9/11, and they are also the laws that effect all immigrants, as opposed to state laws which only effect immigrants of that particular state.

After analyzing the various definitions of the terms previously mentioned, one of the most important terms is 'terrorist'. The FBI in the United States explains that there is no universal definition of terrorism, or what is a terrorist, however they clarify that in U.S. law it is defined as a person who is participating in,

"unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population or any segment thereof, in pursuance of political or social objectives" (28 CFR Section 0.85).

Terrorism law is divided into two categories: domestic and international. In this thesis some of the domestic terrorism laws will be analyzed. Domestic terrorism is defined as,

"the unlawful use or threatened use of force or violence by a group or individual based and operating entirely within the United States or Puerto Rico without foreign direction committed against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof in pursuance of political or social objectives," according to U.S. law.

Since the terrorist attacks of September 11, 2001, the U.S. did not appear to distinguish between the numerous groups of people wishing to enter the country, which are a threat, and which are not. In other words, they cannot tell the difference between a terrorist and an immigrant. Author Maihold of book, *The New Doctrine, Bush and Security in Latin America*, Author Alden of the book *The Closing of the American Border: Terrorism, Immigration, Security Since 9/11*, and Author Farnam of the book, *US Immigration Laws Under the Threat of Terrorism*, collectively agree that in an attempt to protect the country from terrorists, the U.S. has implemented a preventive strategy

² Alden, E. (2009).

that attempts to identify the danger before it happens. As a result, they have developed a "0" tolerance policy at the border, and several anti-terror laws were enacted, that directly affected the distribution of U.S. visas and regulations, thus affecting immigration processes.

"The goal of U.S. policy even after 9/11, was never to bar immigrants entirely or to turn back all those who wanted to travel to its shores...even in it's most isolationist period, between the two world wars, the United States never tried to seal off the country." (Alden 2009:59)

The objective of the U.S. borders and immigration policies has always been focused on separating the '*desirable from the undesirable*'. Their job has been to decide between newcomers who were seen as building the country and those who were a threat and could tear the United States apart. Still, since 9/11, the country has drastically, and violently changed from their open-door policies to closed-door, zero tolerance policies. According to Alden (2009), the dilemma continues to be,

"how to let in visitors, students, and immigrants the country wanted and needed while keeping out those who might harm it"...This is an "old problem...and it has never found a solution."

It has been said that under the Bush Jr. Administration from 2001 to 2009, they have implemented the previously mentioned, preventative strategy. Since this strategy attempts to identify any possible dangers or threats, before the nation is affected, it would have to be done from both the interior and exterior of the nation. For example, it would be done internally through Homeland Security or externally through international security agreements and treaties. However, if the U.S. continues to move in this direction, the country will gradually begin to eliminate it's borders altogether, between the internal and external area of the nation³.

Farnam (2005), among others, mentions that the relationship between U.S. migration policy and U.S. anti-terrorism laws has to do with American immigrants. While the United States had already experienced at least six attacks by foreign enemy terrorists before 9/11, this attack proved to be different because it occurred on U.S. soil, and was performed by immigrants with valid visas

³ Maihold, G. (2003).

or who once contained valid visas. Most of these immigrants, were studying in the U.S. with student visas and others found ways to infiltrate the system through legitimate U.S. organizations⁴.

Therefore, the distribution of visas has been more difficult, post-9/11 because new immigration systems were designed to identify terrorists, particularly because U.S. immigrant visas were legally granted to people who implemented the attacks of 9/11. As a result, the federal government under the administration of George W. Bush made many reforms. These reforms have sought to develop a detection process, and modify current systems, to make them fast and efficient. They have also strived to make their systems compatible to communicate efficiently with other countries.

Also during his administration, Bush Jr. had increased border security particularly focusing on the southwest border with Mexico. Despite various efforts to keep the borders open, the United States government could only come to an agreement regarding the security of the border through immigration laws and policies. The affects of which, resulted in increased monitoring for Mexican immigration, as was the plan with other countries that were known for terrorist activity, among other things.

The theoretical framework of this thesis is held primarily in debates and discussions presented by the authors mentioned, and in the sources and bibliography, all specializing in the subject. This thesis will show and analyze information regarding laws and policies gathered through a mixed methodology, which focuses principally on federal anti-terrorist and immigration laws and policies, and their changes and relationship with southwestern border security on the US - Mexico Border, post - 9/11. This information will be demonstrated by both primary and secondary sources. For example, it will demonstrate a focused yet comprehensive bibliography regarding each specific topic, written by authors and specialists within the field. Other resources used will be the relevant legislation and U.S. government documents available to the public in official sites. In addition, resources will include information provided by U.S. immigration law attorneys who specialize in cases within immigration law of the United States and Mexico.

Overall, when reading this thesis, it is important to note and understand that both U.S. immigration and the War on Terror are topics that have been widely debated prior and during the time of George W. Bush's Presidency, and continuous. When George W. Bush entered office, his focus was on developing an immigration reform and policy because at that point it had been at least 35 years since the last reform took place. His several meetings with Vicente Fox, the Mexican President at the time, as well as the slow but effective advancements regarding an immigration agreement, were thrown aside when 9/11 occurred (Rosenblum, 2011). Suddenly, and with good reason, terrorism became the forefront, and both immigration laws and immigrants became directly

⁴ Farnam, J. (2005).

and indirectly affected. Now the question mostly commonly asked by border agents, governmental organizations, etc., transformed from what does this immigrant have to offer my country and economy, to is this an immigrant or a terrorist threat?

Chapter 1: United States Homeland Security & It's Relationship to Anti-terrorist Laws Post 9/11

I. Introduction

On September 10, 2001, the United States was said to be not only the most open country, but also the most naïve country in the world. On September 11, 2001, only 9 months into George W. Bush's presidency, 19 hijackers flew commercial jets, full of passengers, into New York's World Trade Centers (WTC), and the U.S. Pentagon. Thousands died that day, and yet those who suffered greatly, aside from the victims' families, were immigrants to the United States, and immigration systems and U.S. policies¹.

Many of the hijackers had arrived on legal visas, but U.S. immigration and security systems did not allow for government agencies to be aware of what these immigrants had done once they crossed the border into U.S. soil. Five of the nineteen hijackers were residing in the United States illegally as their visas had expired, and a few others had crossed the understaffed Canadian and/or Mexican borders (Alden, 2009). At this point in the history of the United States immigration system, U.S. policy was focused on facilitating and promoting travel. The government believed it could bring economic, social and cultural benefits to the country, however, along with those possibilities, some immigrants have also brought drugs and terror to the United States.

For this reason, after 9/11, all immigrants became suspects, and even more so those who were traveling from countries that were known to harbor terrorist activity. The Department of Justice made it a priority to inspect all visas after 9/11 and initially this mostly affected Muslim or Arab descendant immigrants. Gradually, this specification began to grow larger until the Southern U.S. Border with Mexico became a priority. Before 9/11, nearly 25 million visitors were crossing borders through Mexico and Canada without any type of inquiry (Alden, 2009). That, as well as the fact that some of the illegal hijackers had entered through Mexico and Canada, raised concern for U.S. border control.

In this chapter we will be reviewing the events of 9/11, as well as how and why the developed anti-terrorist laws, and organizations dedicated to preventing terrorist attacks, changed the face of U.S. immigration policy. It will be demonstrated that George W. Bush's policies towards

¹ Alden, Edward. (2009).

terrorism were not meant to effect immigration laws and processes, however it was an undeniable consequence to the U.S. government's response to the attacks. This chapter will also show the beginning of how the differentiation between the lines of what is considered a terrorist and what is considered an immigrant, began to slowly *blur* as a an effect of the new *zero tolerance* policies developed as a result of 9/11.

II. Terrorism and Its Relationship to Immigration & the Mexican Border

You may contemplate why there is any kind of relationship between terrorism and immigration at all, because not all immigrants are terrorists. However, the terrorist threat, while imminent, is particularly related to immigrants. According to the 9-11 Commission Report,

“more than 500 million people annually cross U.S. borders at legal entry points, and nearly 300 million of them are non-citizens. Another 500,000 or more enter illegally without inspections across America’s thousands of miles of land borders, or those that remain in the country past the expiration of their permitted stay” ².

The Department of Homeland Security has estimated that nearly 30 percent of all the illegal immigrants within the U.S. is a result to over staying the expiration of their visa. This means that nearly three to four million illegal aliens overstayed their visas, and the number increases by approximately 150,000 each year. With that said, the weaknesses in the U.S. immigration system prior to 9/11 created a great opportunity for terrorists to infiltrate the U.S. systems. *“Terrorists know all about our contradictory immigration policies”*, says Congressman Hayworth (2006) in his published book, *Whatever It Takes: Illegal Immigration, Border Security, and the War on Terror*.

He further explains that in a helicopter tour of the Arizona – Mexico Border, an agent explained to him that many illegal immigrants avoid higher elevations. However, the border agent also said that there is terrorist threat because the Islamic trained terrorists would have no problem striking from higher elevations, as their training in most areas of Pakistan and Afghanistan occurs in mountainous terrains. This fact is the primary reason why terrorism and immigration are directly related, and even more so along the land borders. Hayworth continues his argument by stating that a terrorist was apprehended at the border because there was knowledge of al Qaeda trying to smuggle a nuclear bomb into the United States through Mexico. Further information also

² Hayworth, J.D. (2006).

demonstrates that terrorist organizations are intentionally using the Mexican border to infiltrate the U.S. In fact in 2004 Mexican border patrol arrested more than 650 suspected terrorists².

Of course these facts and information are not limited to just regular immigrants and immigrant smuggling terrorists. Unfortunately, it has also been recorded that border agents are found to be smugglers of illegal aliens, and that their job and identifications were fraudulent. This of course then raises the question, how can we prevent terrorists from entering through border control if there are fraudulent, corrupt officials, and a weak immigration system? The answer has varied, but the logical answer is by altering current immigration laws, policies, and organizations as well as primarily making sure border agents are who they say they are. The greatest weapon for terrorist is their travel documents, and the 9/11 attacks made this quite clear (Hayworth, 2006).

The 19 hijackers that participated in the 9/11 attacks changed the U.S. immigration system primarily because the majority of them were on valid visas, and the remaining few either entered illegally through land borders with Mexico and Canada, or overstayed their once valid visas. Alden also mentions that several individual state immigration laws had to be modified after the terrorist attacks because at least two of the actual hijackers were stopped by police officers for traffic violations a few days before 9/11 occurred. Had the U.S. immigration system been up to date technology in their communication systems, had other policies and laws been introduced prior to 9/11, those officials would have had access to the background checks that would have showed that these particular terrorists were wanted for overstaying their visas. This means they could have detained them, had the officials been informed. In that case, 9/11 would have been a different kind of memory for the entire world.

It is for this reason that the War on Terror directly influences and affects immigration laws and policies within the United States. In order to protect the homeland, agents must communicate and be aware of whom they are letting into the country, and illegal entry to the U.S. must be controlled. Therefore, the immigration laws and policies must be reformed in order to guarantee that no known terrorist is ever again given a visa. Unfortunately, immigration reform has not occurred in the United States for approximately 35 years, and instead, many of the laws and policies are changing in the anti-terrorist realm, indirectly affecting the U.S. immigration policy and its' immigrants.

III. History of U.S. Terrorism & Immigration Policies Pre & Post 9/11

In order to fully understand the purpose of the development of U.S. Homeland Security, Anti-terrorist Laws and their effect on the Mexican Border and U.S. immigration policies, we must briefly look at the events, which occurred before the terrorist attacks on 9/11. Prior to September 11, 2001 there were at least six organized attacks against the United States (Farnam, 2005). These attacks prompted the U.S. to begin the development of stricter immigration policies, and laws.

The first foreign terrorist attack on U.S. soil actually occurred in 1941 when Pearl Harbor (Hawaii) was bombed by Japan, prompting the United States to enter into World War II. In 1993, the first bombing attack on the World Trade Centers took place in New York City, was the initial motivation to better the U.S. immigration & National Security system. However, results never manifested. Then in 1996 a U.S. military site, the Khobar Towers barracks was bombed in Dhahran Saudi Arabia; followed by concurrent attacks in 1998 on U.S. Embassies in Kenya and Tanzania. The last attacks to occur before 9/11 were first a planned attack, which never physically transpired on the WTC, in 1999 in New York City, and lastly the U.S.S. Cole bombing in 2000. In fact between 1987 and 1997 the Crowe Commission stated that there were over 225 attacks on U.S. political installations (Farnam, 2005).

These attacks led to the development of the 1996 Anti-terrorism and Effective Death Penalty Act, which changed *“both statutory and judge-made habeas corpus law... most of its provisions apply to habeas corpus petitions in both capital and noncapital cases³”*, and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) ⁴. The IIRIRA is an example of U.S. immigration policy prior to 9/11, with further changes added, in order to modify the bill after the United States had been introduced to terrorism.

Approximately two years prior to 9/11 the Hart-Rudman Commission stated that soon the United States would suffer from an attack on the homeland from a terrorist organization if changes were not made.

“America will become increasingly vulnerable to hostile attack on our homeland, and our military superiority will not entirely protect us. Americans will likely die on American soil, possibly in larger numbers, stated the Commission” (Alden, 2009:34).

³ Farnam, Julie, (2005).

⁴ Kochan, A. A. (1997).

The United States failure to agree on a strategy or policy to combat illegal immigration and terrorism at that point in time, made the Hart-Rudman's prediction correct entirely. At this point, both legal and illegal immigration was over 400,000 people a year, and in 2000, for the first time in U.S. history, the August census in California alone showed "*racial minorities out numbered the state's white population*" (Alden, 2009:54). While immigration laws were introduced and put in place pre-9/11, it was not until post-9/11 that they were enforced with additional new organizations and developments, in order to resolve the Commissions worries and predictions regarding terrorism and the security of the country.

IV. George W. Bush & the 9/11 Counter-Terrorism Preventative Strategy

George W. Bush was harshly criticized and questioned with regards to his whereabouts on the day of September 11, 2001. The morning of 9/11 he was at Emma T. Booker Elementary School in Sarasota Florida, reading *The Pet Goat* as part of his education program. To many people it was obvious that even after being advised about the situation occurring in New York, that Bush's priority was to finish his planned day of reading and speeches in Florida (911 Research, 2010). However, once Bush's responsibilities in Florida were finished his focus was turned to Anti-terrorist law, finding Osama Bin Laden, and protecting the Homeland, all while not closing U.S. borders.

Many may find it surprising to know that even though 9/11 brought up a lot of unresolved political issues, Bush did not want to close borders and affect immigration law. He was still determined to keep up his relationship with Vicente Fox, the President of Mexico in 2001, in order to find a resolution. Bush came into his administration with the idea that both open trade and liberal immigration policies were vital to the United States economic growth and stability. After 9/11 he still held this belief, "*you've got to secure our borders against a terrorist threat. But you have to do it without shutting down the American economy*", he told to his Customs chief, Rob Bonner (Alden, 2009:).

Bush's desires aside, the United States needed a change and a plan in order to assure that another terrorist attack of this severity did not occur. Instead of continuing with a liberal immigration policy and agreement with Mexico as Bush had initially intended, many reforms, acts, and/or bills, anti-terrorist laws and organizations had to be created as well as the updating of numerous technological systems and security systems and all had to be introduced and passed in Congress.

i. U.S. Department of Homeland Security (DHS)

The attacks of September 11, 2001 led to much debate regarding the efficiency and effectiveness of the Immigration and Customs Systems (INS) as well as all other immigration related technological systems and databases. One of the greatest inefficiencies within the INS was their lack of communication and outdated technology; an area of great importance because it largely determines the future of immigration in the United States, as inter-agency communication is necessary in order to protect the U.S. on a national level, as well as a global level. Pre- 9/11 the INS was in charge of everything regarding immigration, visa distribution, detainment, and deportation. All the duties of which were divided into three principle departments of the newly developed Homeland Security (DHS) (Farnam, 2005).

The first introduction to Homeland Security occurred on March 21, 2001, before 9/11 when Representative Mac Thornberry from Texas, presented the idea to establish the National Homeland Security Agency (H.R. 1158) with the hope of implementing an effective government reform. Then on September 21, 2001, only a few days after the attacks on the WTO's, Senator Lindsey Graham, from South Carolina, introduced the idea of establishing the National Office for Combating Terrorism (S. 1449). From that point on many bills and acts were proposed to congress in order to increase enforcement and protection against terrorism.

With that same purpose in mind, on November 25, 2002, President George W. Bush signed the Homeland Security Act of 2002 (P.L. 107-296). The U.S. Congress completed the proposal by establishing the Department of Homeland Security on November 22, 2002, only three days after the bill was passed by the House of Representatives (H.R. 5005) and the Senate, on November 19, 2002⁵. This brought some of all of the 22 federal agencies into a new Cabinet agency called the Department of Homeland Security⁶.

In January 2003, along with many other federal organizations, Homeland Security was officially developed and took control of many immigration and border control departments such as, the U.S. Customs Service (Treasury) Department, the Immigration and Naturalization Service (Justice), the Federal Protective Service (Federal Law Enforcement), the Animal and Plant Health Inspection Service (Agriculture), the Federal Law Enforcement Training Center (Treasury), etc. You can find a chart in Annex I, which demonstrates the internal organization of the Department of Homeland Security and the federal departments of which it controls as of March 2003.

5 Gressle, S. S. (2003).

6 Rosenblum, M. R. (2011).

ii. Homeland Security & Its Immigration Departments

When discussing the importance of the Department of Homeland Security (DHS) and its relationship to immigration laws and border security on the U.S. southwestern border with Mexico, we are able to see that DHS has an entire area dedicated to counterterrorism, and another specifically for Immigration and Border control. The counterterrorism sector of DHS focuses on aviation security, chemical security, fraud, law enforcement, nuclear security, etc. with related areas to border security and immigration. The border security focus of DHS

“prevents and investigates illegal movements across our borders, including the smuggling of people, drugs, cash, and weapons. The Department is working to strengthen security on the southwest border to disrupt the drug, cash and weapon smuggling that fuels cartel violence in Mexico by adding manpower and technology to the southwest border”

⁷.

Then, in regards to immigration policies, DHS provides services associated with immigration, for example, naturalization and work authorization, inspections investigations, and enforcement duties. The department is also responsible for enforcing federal immigration laws, and custom and air security laws (Department of Homeland Security, 2012).

Homeland Security was divided into three official departments within the Immigration Justice realm, in order to make the United States immigration service's function more efficiently (Farnam, 2005). These departments, in the Citizen and Immigration services department of DHS, are U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and U.S. Citizenship and Immigration Services. Each of these departments has a different purpose and a varying list of responsibilities which all focus on the admission of immigrants, and the negation and arrest of terrorists.

The U.S. Customs and Border Protection (CBP) is one of Homeland Security's,

“largest and most complex components, with the principal mission of keeping terrorists and their weapons out of the U.S. It also has the responsibility of securing the border and facilitating lawful international trade and travel while enforcing hundreds of U.S. laws and regulations, including immigration and drug laws” (Department of Homeland Security, 2012).

⁷ Department of Homeland Security. (2013)

The CBP sector also developed the Customs-Trade Partnership Against Terrorism (C-TPAT) of 2001, and the Container Security Initiative (CSI) of 2002, both of which relate to trading international goods, border security, and protection against terrorism, directly impacting and influencing immigration policy as stricter enforcement is placed on the border in order to assure its security.

The officials of CBP are the biggest of all the law enforcement agencies within the nation. Their principal objective is to protect the United States from Terrorism, and still allow entry to genuine travelers and businesses (Department of Homeland Security, (2012). In fact Acting Commissioner David V. Aguilar says himself,

“our work is of critical importance. We must be constantly vigilant toward the security of our borders and the enforcement of trade laws, yet we must accomplish these tasks without stifling the flow of legitimate trade and travel that is so critical to our nation’s economy” (Department of Homeland Security, 2012).

Since 1992 the U.S. Border control nationwide has gradually been growing with custom security agents, however in the Fiscal Year of 2001, under the Bush Jr. Administration, from October 1 to September 30 at least 9,821 agents were employed, 9,471 of which were on the Southwestern Border with Mexico. By 2008 the number of Border Patrol agents on the Southwestern Border had risen to 15,442, and growing; today this number is over 18,000, as demonstrated in the charts in Annex II (Department of Homeland Security, 2012).

The second department within the Justice area of Homeland Security is U.S. Immigration and Customs Enforcement (ICE). This section of Homeland Security is the primary analytical sector and the second largest investigative agency within the federal government. In 2003, after Homeland Security had been established, this area of the department was developed through a merger of the *“investigative and interior enforcement elements of the U.S. Customs Service and the Immigration and Naturalization Service, and currently has more than 20,000 employees in offices in all 50 states and 47 foreign countries”*⁸.

Their mission includes promoting national security and public safety by the civil enforcement of federal laws against criminal acts through border control, customs, trade, and immigration. The number one goal listed on their strategic plan is to *“prevent terrorism and enhance security”*(Immigration and Customs Enforcement, 2012). In most cases, this department is generally responsible for the investigation and detainment of immigrants who have broken U.S. laws, and are

⁸ Immigration and Customs Enforcement. (2012).

meant to enforce, and support the CBP section through areas which are not just focused on the border but also, within other countries.

The third is branch of the Department of Homeland Security is U.S. Citizenship and Immigration Services (USCIS). This sector of U.S. Homeland Security supervises all lawful immigration to the United States. They assure to,

“secure America’s promise as a nation of immigrants by providing accurate and useful information to our customers, granting immigration and citizenship benefits, promoting an awareness and understanding of citizenship, and ensuring the integrity of our immigration system”⁹.

This sector has 18,000 government employees working within 250 offices located around the globe. Their goals include increase

“strengthening the security and integrity of the immigration system, providing effective customer-oriented immigration benefit and information services, supporting immigrants’ integration and participation in American civic culture, promoting flexible and sound immigration policies and programs, strengthening the infrastructure supporting the USCIS mission, and operating as a high performance organization that promotes a highly talented workforce and a dynamic work culture” (U.S. Citizenship and Immigration Services, 2009)

However, despite the efforts being made by all three of these sectors to secure the U.S. border through a preventative strategic plan, there is still no guarantee that its strict policies have prohibited terrorists from entering the country (Farnam, 2005).

Each of these sectors of Homeland Security strives to follow the preventative strategy that the United States has been following since the terrorist attacks in 2001, developed under the Bush Jr. administration. We can assume that terrorists will continue to attempt to enter the U.S., if they haven’t already, as well as plan attacks; it should also be noted that both immigrants and American citizens pose as threats of terrorism, as foreign immigrants have not committed every attack in U.S. history. However, in order to, *“manage that risk, the DHS subjects a broad spectrum of noncitizens to harsh immigration consequences that are often only indirectly related to terrorist conduct”¹⁰.*

⁹ U.S. Citizenship and Immigration Services. (2009 12-09).

¹⁰ Miller, Teresa. (2005): 81-123.

Essentially, the United States government has put in place a department of which its sole purpose is to keep the homeland safe, no matter the cost.

iii. U.S. Terrorism ID Systems: APIS, IBIS, NAILS, PNR & the APIS Final Rule

It is said that within two hours of the 9/11 terrorist attacks all 19 hijackers were clearly identified using the Customs technology systems (Alden, 2009). The reason is due to a program called APIS, the Advanced Passenger Information System, which was originally introduced in 1988. APIS was supposed to help against drug trafficking into the U.S., however on 9/11 customs agents found a new use as they had been collecting data on passengers for over 10 years at this point.

The benefits of this system was having international airlines voluntarily provide immediate information regarding each of their passengers; nationality, name, birth date, passport numbers, etc. The airlines had also agreed to give access to reservation information; how, when, and where the passenger made the reservation, and who paid for the tickets. This data was available to customs agents as soon as the plane had taken off from its starting point. By the year 2000, the United States had 67 airlines that were voluntarily sharing this information (Alden, 2009). For those who didn't voluntarily participate in the exchanging of information, their passengers were delayed for hours, sometimes up to 8 hours, undergoing background and biographical checks upon entry to the U.S. Those who were participating in APIS were much happier, and going through the entry process much faster.

APIS requirements were initially introduced as part of the Aviation and Transportation Security Act (ATSA) of 2001, and the Enhanced Border Security and Visa Reform Act of 2002. The 9/11 Commission convinced Congress through their set of recommendations to force the Department of Homeland Security (DHS) to receive advanced information on international passengers traveling by air and sea, prior to their departure, as part of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) (Customs Border Protection, 2005).

Other systems, which were in use included, IBIS: Interagency Border Inspection System, NAILS: National Automated Immigration Lookout System and PNR: Passenger Name Record. All of which were up and running by the time of 9/11 but had a failure in the communication aspect with the CIA, and therefore didn't identify the hijackers upon entry into the United States. However these systems along with APIS are how the U.S. customs officials were able to identify the 19 hijackers within two hours after 9/11 occurred (Alden, 2009).

On April 7, 2005, the APIS Final Rule (AFR), 70 Federal Regulation 17820, started to, “

(Alden, 2009): Norman Neureiter, former Science & Technology adviser to Collen Powell, so boldly expressed, “We’ve built a huge 186,000 person bureaucracy. And what is its job? Homeland Security. It’s not a projection of freedom; it’s not the Statue of Liberty. It’s not all those things which were written – ‘Give us your huddled masses, give us your poor, your starving.’ No. It’s to build a wall around America to keep us safe from anything – disease, nuclear, radioactive, or humans – that might cross our borders. And every day they need to go to work and do something”

*require electronic passenger manifest submissions from all commercial air and sea carriers*¹¹. The system requires specific documentation for travelers entering or leaving the United States by air. The documentation is dependent on the traveler's home country, and where they have been traveling to, such as between the U.S. and a country within the Western Hemisphere (Customs Border Protection, 2005). For example, in the case of Mexican citizens who seek admission to the U.S., they must show a valid unexpired passport from their country of citizenship, along with the valid unexpired visa, which was distributed to the immigrant by the U.S. embassy, or consulate where they were approved for the interview part of their visa petition.

Mexico is not a member of the visa waiver program and therefore must provide these valid unexpired documents as well as go through an entire petition process, and interview process in order to be considered for entry into the U.S. In the end, U.S. customs officials have the final say on whether an immigrant or nonimmigrant are able to enter into the country or not; this is with all nationalities, and they can still be denied even though the U.S. embassy or consulate administered them a visa. Mexicans also have the option of presenting a Form DSP-150, B-1/B-2 Visa and Border Crossing Card (BCC) for admission when traveling as temporary visitors from an adjacent territory. *"The AFR requires applicable travel document data for citizens of Mexico to be included within applicable electronic arrival and departure manifest submissions"* (Customs Border Protection, 2005).

iv. NSEERS: The National Security Entry-Exit Registration System

A year after 9/11, on September 11, 2002, the U.S. Justice Department enforced the NSEERS Registration Program. This program required all men between the ages of 16 and 45, from Muslim countries to be fingerprinted and photographed upon entry to the United States. These same men were then required to return for the same process 30 days after their entry and then yet again after a year from their entry into the U.S. In December that same year, those who were already residing in the U.S. needed to participate in the program, and anyone who was illegally in the country would be detained and deported. For those who failed to register, the consequences were high, as disobedience would lead them to prison (Alden, 2009).

"The National Security Entry-Exit Registration System allowed the government to systematically target Arabs, Middle Easterners, Muslims, and South Asians from designated countries for enhanced scrutiny. The most controversial piece of NSEERS required nonimmigrant males who were 16 years of age and older from 25 specific countries to register at

¹¹ Customs Border Protection. (2005).

*local immigration offices for fingerprinting, photographs, and lengthy, invasive interrogations*¹².

As we have seen, 'nonimmigrant's' are defined to be foreigners who are temporarily seeking admission into the U.S. for work, study, or tourist purposes. Of the 25 countries on the list, North Korea is the only one, who is not predominantly Muslim. The consequences of this program were violations of human rights and immigrant rights, racial profiling, and was ultimately found to be a, "counterproductive response to September 11th, which has not resulted in a single known terrorism-related conviction" (Rights Working Group: Penn State Law, 2012:4).

NSEERS was meant to be a productive counterterrorism program, however the United States government quickly found that it was not as effective as originally intended. The programs biggest failure was its attempt to enforce policies which,

"relied on discriminatory profiling of individuals from countries with predominantly Muslim populations and were based on the false assumption that people of a particular religion or nationality have a greater propensity for committing terrorism-related crimes" (Rights Working Group: Penn State Law, 2012:4).

Instead of catching terrorists, *over 80,000 men underwent call-in registration and thousands were subjected to interrogations and detention, wasting taxpayer dollars...*(Rights Working Group: Penn State Law, 2012:4).

In April 2011, the NSEERS program was suspended for suspecting misuse of data, and lack of transparency within the agency. It failed as a counterterrorist tool, and was actually found to not have a single connection to terrorist threats via any of their detainees.

v. Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004

In September 2004, Senator Susan Collins (R-ME) presented the IRTPA to Congress.

"The Intelligence Community's (IC) failure to prevent the 9/11 terrorist attacks and inaccuracies in the 2002 National Intelligence Estimate (NIE) on Iraq's weapons of mass destruction program resulted in

¹² Rights Working Group: Penn State Law. (2012):"DHS has estimated that the program cost American taxpayers more than \$10 million annually, and the OIG (Office of Inspector General) found that leaving the regulatory structure of the program intact provides no discernable public benefit. The OIG recommended fully terminating NSEERS and stated that there is 'no longer a value to the program'"

*widespread calls for reform. In late 2004, Congress passed intelligence reform legislation that led to the most significant reorganization of the IC in decades*¹³.

The Intelligence Reform and Terrorism Prevention Act of 2004 was this dramatic change (See Annex III). President Bush supported this legislation to its fullest, and wanted to include protection for Pentagon authorities along with the act (Peritz & Rosenbach, 2009).

Section V title Border Protection, Immigration, and Visa Matters of the act is the most relevant to this thesis and demonstrates the increase in security with regards to immigration as an attempt to follow through with the Bush administration's new preventative strategy as well as the developed *zero tolerance* policy at U.S. borders . The act also includes various provisions concerning terrorism and terrorist activity, as well as programs and security in order to help prevent terrorist entry to the U.S. (Titles VI through VIII). Many of the immigration requirements presented in this act such as the new visa requirements, visa interview requirements, visa application requirements, etc. mentioned in subtitle C show how as a result of terrorism, immigration policy has been altered and is continuing to raise its level of security.

The IRTPA included many areas of reform such as organizational and leadership reforms (Peritz & Rosenbach, 2009). This included in Sec. 1011 amending *"the National Security Act of 1947 to establish a Director of National Intelligence (Director), to be appointed by the President with the advice and consent of the Senate"*.¹⁴ The Director must have expertise in national security and is prohibited to be part of the Executive Office of the President or serve as the leader of any other IC or CIA (Central Intelligence Agency) element. This area became the sector that intended to put in place policy and priorities, encourage collaboration, and influence the total aptitude of the IC to work for the nation (108th Congress, 2004).

This act also developed the National Counterterrorism Center (NCTC) and the National Counter Proliferation Center (NCPC). The NCTC is responsible for coordinating and integrating analyses of terrorist threats both domestic and international. Meanwhile, the NCPC is responsible for directing strategic plans regarding intelligence support monitors and to impede the increase of nuclear weapons and associated technologies worldwide (Peritz & Rosenbach, 2009).

Information Sharing, for which a Council was established by the IRTPA, is another important factor in this bill. Since the reason for not identifying the foreign non-immigrant terrorists of 9/11 was due to lack of communication and outdated laws and technology, sharing information is important, especially for interagency communication. One of the developments in this area was the

¹³ Peritz, Aki J., and Rosenbach, Eric. (2009).

¹⁴ 108th Congress. (2004 7-Dec.)

Information Sharing Environment (ISE), which is essentially a partnership that is held linking all ranks in the U.S. government; law enforcement, private sectors, and foreign allies. This sector of information sharing allows for communication between foreign and domestic intelligence agencies and provides a quicker way to share terrorist threat information (Peritz & Rosenbach, 2009).

The idea behind ISE is to use and integrate new ideas with the old, instead of completely renovating the sharing information sector of the U.S. government. Sharing information plays a huge role in systems such as APIS, and is largely involved in the immigration process. However in this area the focus is on sharing information regarding solely terrorist threats and participants. APIS, on the other hand, must share all biographical information of their passengers who are entering and leaving the U.S.

Another area of Information Sharing mentioned within this act is Collaborative Technology Tools. ODNI (Office of the Director of National Intelligence) has worked hard to develop online systems and applications in order to improve how, and how quickly the information is shared. This includes:

“the use of classified encyclopedia-style webpages that any person with a clearance can modify (termed ‘Intellipedia’), social networking sites like A-Space, and searchable databases such as the IC’s Library of National Intelligence, capitalize on today’s technology to encourage greater community collaboration and virtual integration” (Peritz & Rosenbach, 2009).

vi. The Border Protection, Antiterrorism and Illegal Immigration Control Act of 2005

In December of 2005, the US House of Representatives passed the new immigration bill (H.R. 4437), the *Border Protection, Antiterrorism and Illegal Immigration Control Act of 2005*, with 239 to 182 votes¹⁵. The purpose of this act was initiated from the growing necessity to establish a quick fix to the augmented numbers of immigration, mostly illegal, entering the U.S. via the Mexican Border. It was also developed with the hope of minimizing the threat of drug trade, terrorism, and narco-terrorism.

“It would erect a fence along one-third of the total length of the border

¹⁵ Thomas Library of Congress, (2005): This bill includes thirteen of the following areas regarding the new preventative strategy of the U.S. federal government; these areas are of the utmost importance and are the main focus and purpose of this bill. They are: 1) Securing United States Borders, 2) Combating Alien Smuggling and Illegal Entry and Presence, 3) Border Security Cooperation and Enforcement, 4) Detention and Removal, 5) Effective Organization of Border Security Organizations, 6) Terrorist and Criminal Aliens, 7) Employment Eligibility Verification, 8) Immigration Litigation Abuse Reduction, 9) Prescreening of Air Passengers, 10) Fencing and Other Border Security Improvements, 11) Security and Fairness Enhancement, 12) Oath of Renunciation and Allegiance, and 13) Elimination of Corruption and Prevention of Acquisition of Immigration Benefits Through Fraud.

*with Mexico... and included a provision requiring the construction of security fencing along portions of the southern border that have high rates of illegal border crossing*¹⁶.

The bill was sponsored by sponsored by Judiciary Chairman James Sensenbrenner (R-WI) and Homeland Security Chairman Peter King (R-NY) with the hopes of further enforcing immigration law, border security as well as worksite enforcement and employer verification. The purpose of the bill is

*“to address illegal immigration by strengthening interior enforcement of immigration laws and enacting additional border security measures. Provisions to establish a guest worker program are not included in this legislation”*¹⁷.

For example, Title I of this bill discusses securing the United States Border. Sections 101-121 describes the responsibilities of the Secretary of Homeland Security, which include implementing plans, maintaining two-way communication between departments, developing reports, enhancing technological systems, etc. as well as giving permission for the Secretary to take “all appropriate actions to maintain operational control over the U.S. international land and maritime borders” (Library of Congress, 2005). Section 122 Amends the INA to prohibit the Secretary, Attorney General and the courts from: “1) *granting or ordering the granting of adjustment of status of an alien to that of an alien lawfully admitted for permanent residence; (2) granting or ordering the granting of any other status, relief, protection from removal, or other benefit under the immigration laws; or (3) issuing any related documentation*”, unless they’ve gone through to proper background and security checks, or have been investigated for security fraud (Library of Congress, 2005).

In Title III, Border Security Cooperation and Enforcement, the bill demands the Secretary of Homeland Security to Establish a Border Security Advisory Committee, a university-based center for Excellence for Border Security, as well as to carry out a national border security exercise. The Secretary must also determine any possible vulnerability at the land borders, and place extra security as necessary to prevent the threats. Part of their responsibilities also includes the development of a strategic plan, which would increase the Department of Defense’s surveillance capabilities (Library of Congress, 2005).

Title V refers to Effective Organization of Border Security Organizations. This title contains 3 sections 501-503, and discusses that responsibility that must be taken by DHS border security, of which it commands that the *“Homeland Security Act of 2002 to establish in DHS, an Office of Air*

¹⁶ Pike, John. (2000-2012).

¹⁷ NCSL: National Conference of State Legislature. (2005).

and Marine Operations: (1) whose primary mission shall be to prevent the U.S. entry of terrorists, unlawful aliens, instruments of terrorism, narcotics, and other contraband; and (2) whose secondary mission shall be to assist other agencies with such protective functions” (Library of Congress, 2005).

Title VI of the bill refer to the areas of *Terrorist & Criminal Aliens*, as this chapter focuses on how the Bush administration's approach to immigration reform changed to a preventive strategy against terrorism after the attacks of September 11, 2001. While this section may provide some solutions to resolving the terrorist threat and punishing terrorists or criminals, it makes no guarantees, and further creates a focus on the *zero tolerance* and preventative strategy that had risen within the United States' government.

Title X calls for Fencing and Other Border Security Improvements. This section commands for two layers of reinforced fencing, additional barriers, roads, lighting, cameras, and sensors in five specified areas along the U.S. – Mexico Border. In fact, Section 1004 of Title X reads,

“Expresses the sense of Congress that the Secretary shall take all necessary steps to secure the Southwest international border for the purpose of saving lives, stopping illegal drug trafficking, and halting the flow of illegal entrants into the United States” (Library of Congress, 2005).

In this bill we are clearly able see the relationship between immigration, terrorism and border security, specifically at the Mexican border (See Annex IV for full summary of bill). The bill also discusses Detention and Removal of immigrants, alien smuggling and illegal entry, employment eligibility verification, Immigration Litigation Abuse Reductions, the prescreening of air passengers, security and fairness enhancements, and the elimination of corruption and prevention of acquisition of immigration benefits through fraud (Library of Congress, 2005).

V. Preliminary Conclusion

“We are not attempting to build a ‘Fortress America’ with militarized borders creating barriers between our homeland, our neighbors, and our international partners”, states George W. Bush (Alden, 2009:138).

However, has that been the actual result of all of the laws, bills, and acts that have been put in place since 9/11? Almost every law introduced regarding antiterrorism, and protection against terrorism has resulted in some sort of immigration law modification. As a result immigration and immigrants are the ones who pay a high price, but the consequences may be even larger for

'homeland'.

Immigrants and terrorists are different by definition, but no one can deny that any immigrant entering the country is considered a possible undercover terrorist. Augmenting U.S. national security through various means in order to protect the United States from a possible attack or threat is not only reasonable, but also understandable. However, at the same time, U.S. immigration policy developers must remember that not all immigrants are terrorists. Changing the system to protect against terrorists has also resulted in altering the immigration system, which creates the possibility of vital and important immigrants who have something to offer 'the land of the free and home of the brave', the possibility of being shut down and locked out.

On January 25, 2002, the White House released an Action Plan, which addressed how they could begin Creating a Secure and Smart Border.

"The United States requires a border management system that keeps pace with expanding trade while protecting the United States and its territories from threats of terrorist attacks, illegal immigrants, illegal drugs, and other contraband...The use of advanced technology to track the movement of cargo and entry and exit of individuals is essential to the task of managing the movement of hundreds of millions of individuals, conveyances and vehicles" (Alden, 2009:139).

After September 11, 2001 that is exactly what George W. Bush attempted to implement into the U.S. system.

The impact that 9/11 has had on U.S. immigration law is undeniable. We observed that it was not Bush's initial plan to develop a *zero tolerance* policy at U.S. borders, but that the enforcement and implementation of a preventative strategy have resulted in a near closing of the borders. In this chapter we have seen how the response to terrorism has directly affected immigration. It is difficult, but not impossible for terrorists to infiltrate the U.S. system, but unfortunately the laws also made it challenging for immigrants to legally enter into the U.S. In the chapters to come, we will observe the direct relationship between 9/11 under Bush Jr.'s administration and how it affected immigration laws, specifically regarding visas, and lastly the Southwestern border with Mexico.

Chapter 2: United States Immigration Law & Policies

I. Introduction

On January 20, 2001, George W. Bush became the 43rd president of the United States. During his campaign, George W. Bush promised to speed up the immigration process for family and employee visas, and introduce reforms that were needed badly, as changes to the United States immigration system had not occurred for 35 years (Rosenblum, 2011). Within the first few months of his administration, President Bush wanted to be remembered by America for changing the face of the immigration system in the United States. The Republican Bush administration promoted immigration with the firm belief that immigration betters the U.S. as a whole, economically, socially and culturally (Alden, 2009).

Bush stated in his speech at the symposium at the George W. Bush Presidential Center, hosted on *Immigration and Economic Growth*, that immigrants “*come with new skills and new ideas, America’s a nation of immigrants; immigrants have helped build the country that we’ve become. Not only do immigrants help build the economy, they invigorate our souls*”. For example, in the case of Mexico, statistics have shown that Mexicans make up more of the U.S. labor force, than any other foreign country in the world. “*They help keep down inflation, by providing the U.S. Economy with the labor supply needed. Furthermore, Mexican migrants buy goods, pay for services and also pay taxes*”¹.

When President Bush Jr. began his office, immigration was at the top of the bilateral agenda (Carral, 2003). Growing up in Texas, and beginning his political career in that state, he grew up around the Latin American communities, and shortly became an advocate who frequently reached out to the Hispanic communities (Alden, 2009). Approximately one month before George W. Bush was sworn into office, Vicente Fox, former Mexican President and former Governor of a Border state in Mexico, was also sworn into office for the PAN party. During Fox’s campaign he promised that the priority of 2001 would be on bettering the US – Mexico relationship through bilateral efforts (Rosenblum, 2011). Therefore, with Bush’s belief that “*immigrants are vital to the economy...both the Mexican and the U.S. governments gave migration the priority it deserves in the bilateral agenda*”², and Vicente Fox’s determination to better the relationship between the two countries, 2001 was set to be the year that resolved to agree on an immigration reform.

Due to their similar intentions and promises, George W. Bush and Vicente Fox met 5 times during the first 9 months of Bush’s Presidency. Also, within the first few months of his presidency, Bush developed various agreements with Fox that both countries could benefit from regarding

1 Miller, T. (2005).

2 Carral, M. (2003).

immigration. Both presidents signed various declarations, indicating that an immigration agreement would be possible in 2001. However, later that year, on September 11, 2001, the United States motives changed, and George W. Bush's promise to speed up the immigration process and work with Vicente Fox, was altered drastically.

In this chapter we will be reviewing the immigration law changes that occurred after 9/11. The statistics on a decreased immigration entry to the U.S., and on an increased number of organizations that focus on anti-terrorism, are just a few of the examples which demonstrate the Bush administration's change of focus. The transformation from an open border country to a closed border country, and from providing immigrants and non-immigrants with visas, to interviewing for possible terrorist threats, in the name of protecting the United States is important, however it also limits the country greatly.

II. Brief History

According to the USCIS History Office & Library,

“Americans encouraged relatively free and open immigration during the 18th and early 19th centuries, and rarely questioned that policy until the late 1800s. After certain states passed immigration laws following the Civil War, the Supreme Court in 1875 declared regulation of immigration a federal responsibility. Thus, as the number of immigrants rose in the 1880s and economic conditions in some areas worsened, Congress began to pass immigration legislation.”³

For example, enforcement of the Chinese Exclusion Act of 1882 and Alien Contract Labor laws of 1885 and 1887 were all designed to prohibit specific laborers from entering the U.S. The general Immigration Act of 1882 taxed fifty cents on every immigrant and blocked the entry of *idiots, lunatics, convicts*, and persons who they considered a high risk, to befit a public charge (USCIS: History Office & Library, 2013).

These national immigration laws led to the development of one very important bill. Before we are able to understand all the changes within the U.S. immigration system after the 9/11 attacks, as well as the immigration laws, we must review one of the very first, and most influential bills of all the immigration acts, the Immigration & Nationality Act (INA).

³ USCIS: History Office & Library. (2013).

i. Immigration & Nationality Act (INA)

In 1952 the Immigration and Nationality Act (INA), originally called the McCarran-Walter Act, was introduced and enforced (See Annex V). Principally the act holds the original quota system that was introduced into U.S. immigration law in 1924 as part of the Immigration Act. It also provided a reporting system in which all aliens were required to report their address to the INS each year, and it developed an index of aliens within the U.S., which was to be used by security and law enforcement agencies. This act also contained a selection system which was used to find and give authorization to immigrants who had a special skill set that was much needed in the U.S., or immigrants who had family legally residing in the United States. This law has been modified on various occasions in order to meet the U.S. immigration needs at the moment.⁴

After various modifications, in 1965 a few other major changes were made to the newly revised Immigration and Nationality Act, also named the Hart-Cellar Act. This bill eliminated the quota system and substituted it with what was referred to as “a *preference system*”. This meant that immigrants were given authorization based on their skills and family relationship tie in the U.S., similar to the previous *selection system*. At this point the U.S. numerical limit put on visas was set at 170,000 annually, with the exception of immediate relatives of U.S. citizens, or “special immigrants”, such as former citizens, ministers, or employees of the U.S. government abroad. It also introduced a precondition that an alien worker could not replace a worker in the United States, and therefore could not negatively affect any wages or working conditions to U.S. employees within the same field.

Before the attacks of 9/11, the standard model for controlling and managing U.S. immigration policy was the Immigration and Nationality Act. There are constant modifications to this bill as well as many new acts, which are created in accordance with the INA. The INA is a public law in itself, and has truly influenced the entire U.S. immigration law and policy system. It is undeniable that this law plays a major role in U.S. immigration policy and continued to do so post 9/11. For example, today this bill also provides information and guidelines for consular officers who are giving interviews and distributing visas regarding which visa, and waiver applicants are ineligible to receive authorization in Sections 212 a-l and Section 221 g. of the INA (The U.S. Department of State, 2013).

“The Immigration and Nationality Act (INA) establishes the types of visas available for travel to the United States and what conditions must be met before an applicant can be issued a particular type of visa. The

⁴ USCIS: U.S. Customs Immigration and Services. (2013): “The Act has been amended many times over the years, but is still the basic body of immigration law.”

*situations, which make a visa applicant ineligible for a visa, called visa ineligibilities, are found in the INA, and other immigration laws. The INA also contains provisions for certain ineligible applicants to apply for waivers of their ineligibility.”*⁵

Before its termination, section 245 (i) of the Immigration and Nationality Act (INA), a person who overstayed his/her non-immigration visa or entered the United States without inspection by an immigrant officer paid a \$1000 fine and was then able to apply for an adjustment of their status. As a concession, Congress passed what is referred to as the LIFE Act or Legal Immigration Family Equity Act, which gave permission for people out of status the ability to apply for a green card if they filed an alien petition prior to April 30, 2001, and had been in the United States as of December 20, 2000. Prior to 9/11, there was talk of reinstating the initial law 245(i) of the INA, and President Bush Jr., had even discussed the possibility of an existing amnesty agreement for Mexicans. Unfortunately, since foreigners committed the September 11, 2001 attacks, all immigration reforms were pushed aside (Gania, 2006).

Before George W. Bush was voted into office the INA existed, as well as the INS. After 9/11, the INS was broken up into new departments, and Bush Jr. had signed off on the Homeland Security Act of 2002. In 2003 INS became CBP, ICE and USCIS, and the INA began to modify gradually, along with many other immigration bills, over the next seven years, to date.

ii. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996

Like the INA, many immigration laws and policies, including the U.S. PATRIOT Act, have been influenced and developed by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996. In an effort made by Congress to fortify and modernize U.S. immigration laws the IIRIRA of 1996 was created. Signed by President Clinton on September 30, 1996 at the 104th Congress, the IIRIRA was designed to enhance border control through the enforcement of criminal penalties such as, racketeering, alien smuggling, and fraudulent immigration documentation, while also increasing the number of internal law enforcement agents and agencies who monitor visa applications and visa abusers. The act also includes guidelines for employers and employees, including sanctions for employers who fail to follow the stated policy and limitations, as well as guidelines regarding government aid to aliens⁶.

What is most interesting is that while, the 1993 WTC terrorist attack had influenced other

⁵ The U.S. Department of State. (2013).

⁶ USCIS: Cornell University Law School. (2010, Aug): The IIRIRA consists of 6 titles: 1) Improvements to Border Control, Facilitation of Legal Entry and Interior Enforcement; 2) Enhanced Enforcement and Penalties Against Alien Smuggling, Document Fraud; 3) Inspection, Apprehension, Detention, Adjudication, And Removal Of Inadmissible And Deportable Aliens; 4) Enforcement of Restrictions Against Employment; 5) Restrictions On Benefits For Aliens; and 6) Miscellaneous Provisions.

U.S. bills and reforms, it had not affected immigration, as much as the 9/11 attacks. The IIRIRA did not mention terrorism in particular. It solely addressed immigration laws and policies, along with provisions regarding border control, legal immigration, criminal aliens, unauthorized workers, refugees, parole, asylum, and student immigrants, green card lottery, mail order brides, the visa waiver program, alien smuggling, documentation fraud, exclusion and deportation, physician provisions, female genital mutilation, and consular processing provisions, as well as litigation limitations and so on (Siskind & Susser Immigration Lawyers, 2012). Not one section of this immigration act touches on terrorism as of the year 1996. This then raises the question as to what is the difference between a criminal act such as fraud, or illegal employment, and terrorism? A terrorist will die for their cause if necessary, as the acts on 9/11 have clearly demonstrated, and while in 1996 the IIRIRA did not mention terrorism, in 2006, under new criminal alien laws, there were additions made to the bill⁷. That being said, do terrorists automatically fall into a criminal category and receive the same punishment?

The IIRIRA states that immigrant terrorists who commit terrorism in the U.S. should be punished through deportation, and there is also mention of fines, and jail sentences. Another provision made later in 2006, Section 287 g of the IIRIRA was implemented in the states of California, Arizona, Alabama, Florida, and North Carolina. This provision refers to a program, which allows the U.S. Attorney General to designate offers to perform immigration law enforcement functions. According to date given by the ICE, officers wedged immigration allegations on over 81,000 illegal and criminal aliens from January 2006 to November 2008⁸.

The changes that were made to the IIRIRA, as well as other immigration policies after 9/11 are obvious. These changes are an example of the steps the United States government gradually took from welcoming immigrants and developing strong international relationships with foreign states, to a preventative strategy. Again it is understandable why the focus of the U.S. changed to national security, however one must consider the possibility that it is not the most plausible strategy, especially when the United States is consistently attempting to better its foreign relationships.

7 David Goldstein, of Boston University, states that, "the terrorist is often well trained and state-supported. He or she has a specific goal in mind, often more symbolic than opportunistic. On the other hand, it is a fair statement that the "ordinary" criminal is one who seeks opportunistic targets, has little backing, is selfish, lacks discipline and may be deterred relatively easily"

8 Vaughan, J., Edwards J. R. Jr. (2009): Section 245 (c) (6) of the IIRIRA reads: Under the IIRIRA, Congress amended section 245(c)(6) of the Act by changing the reference to section 241(a)(4)(B) to section 237(a)(4)(B) of the Act. Section 237(a)(4)(B) of the Act renders any alien who has engaged, is engaged, or at any time after admission engages in any terrorist activity, as defined in section 212(a)(3)(B)(iii) of the Act, "deportable." Under section 245(c)(6), persons who are deportable under section 237(a)(4)(B) of the Act are ineligible to adjust status under section 245(a) of the Act. This second interim regulation reflects the position of the Service that any person who is deportable under section 237(a)(4)(B) of the Act is also ineligible to adjust status under section 245(i) of the Act .

III. Immigration Policies of Vicente Fox, George W. Bush & 9/11

The relationship between Mexican President, Vicente Fox and United States President, George W. Bush grew steadily and strongly throughout the first few months of their elections into office. Aside from his childhood experiences with immigrants, specifically Hispanic immigrants, George Bush's interest in immigration was spurred from the influence of Vicente Fox. The five meetings that had occurred between the two Presidents in 2001, had increasingly bettered the relationship between the two countries so much that analysts said it was an "*absolutely historic transition from a hostile relationship to a cooperative relationship*", and they believed these advancements would create a sort of merger at the U.S. - Mexico border (Rosenblum, 2011:3).

Both Fox and Bush agreed to create a task force who would meet and create plans and developments that would better both countries in regards to immigration law and policy. "*The impaneling of a blur ribbon bi-national task force on Mexico - U.S. migration*" was run by Thomas F. McLarty, President Clinton's first chief of staff, and later Catholic Bishop, Nicholas DiMarzio, and Andres Rozental, a former Mexican undersecretary of foreign affairs and senior diplomat (Rosenblum, 2011:3).

The Carnegie Endowment for International Peace and the Autonomous Technological Institute of Mexico were its conveners. In February 2001 the task force released a report, *Mexico-US Migration: A Shared Responsibility*. After the first meeting occurred between the two presidents, the task force presented them with a bilateral negotiating agenda that became the starting point for their conversation on migration (Rosenblum, 2011).

Later the two Presidents developed an additional Working Group on Migration, which was directed by the Secretary of State and the Attorney General of the U.S. and the Mexican ministers of foreign relations and the interior. This group was working on a comprehensive bilateral migration agreement, which included legalization, border enforcement, and a new temporary visa program. As a result, in May 2001 both countries released information stating that there would be "*a pair of border initiatives to discourage illegal migration through high-risk areas and to cooperate on humanitarian search and rescue operations*" (Rosenblum, 2011:3).

At that point the Bush administration was speaking about a "*grand bargain*", which would legalize the majority of illegal Mexican immigrants in the United States by substantiation through a "*bilateral guest worker program*", and at the same time Fox would have to agree to increase Mexican border security (Rosenblum, 2011:3).

In September 2001, when Vicente Fox was visiting the White House in Washington D.C., he suggested that Bush move forward with the negotiations of their previously discussed proposal, along with the possibility of promoting U.S. foreign investment in Mexico as a solution to reducing emigration levels. On September 6, 2001, Fox's persistence led to both the Presidents collectively

supporting the framework of a migration agreement, which was supposed to be finished and enforced at the end of the year. The incidents on September 11, 2001 pushed all discussions and agreements regarding the U.S. – Mexico immigration policy down the list of priorities, and since then the forefront became focused on Terrorism (Rosenblum, 2011).

The question still remains unanswered as to why 9/11 was the incident that changed the entire U.S. national security and U.S. immigration system when it was the 7th attack against the U.S. by foreign terrorists. There is some debate as to whether or not it is related to the fact that the terrorists involved in 9/11 had legally entered the United States, had legal visas, and many of them were able to infiltrate the U.S. through what appeared to be legitimate organizations (Farnam, 2005).

Many of the terrorists and terrorist organizations responsible for the planned attacks were in fact immigrants who were on student visas or attempting to infiltrate the U.S. system through Universities in the United States. One example of this type of infiltration includes the organization, World and Islamic Studies Enterprise (WISE), which was developed with collaboration of the University of South Florida (USF). The director of this organization Beshir Musa Nafi, commonly referred to as Ahmed Sadiq, was deported in 1996 when the U.S. government found out that he held an authority position for the Palestinian Islamic Jihad (PIJ). Sadiq is one of many who legally resided in the United States, and participated in the planning of a terrorist attack against the United States. Thus, it is understandable as to why the U.S. would make changes not only to their national security, but also to their immigration laws (Farnam, 2005).

This change and reform was more than necessary as the INS and outdated technological systems were easily identified as being the primary problem in correctly identifying who was a threat, and who was not.

“The system prior to 9/11 lacked up – to – date information, as information sharing was hindered by lack of communication between governments and agencies”⁹.

Another issue was the use of microfiche film within the U.S. immigration system, as it was time consuming and inefficient. In fact, it has been admitted by the system administrators that many of the customs agents were unprepared for this slow system and that on various occasions they didn't even look through the database because of how long it took to find the immigrant's information and background. These systems were part of the reforms, which occurred under the Bush Jr. Administration post 9/11, as the need for a new, more advanced technology was, at this point, a must (Farnam, 2005).

⁹ Farnam, Julie. (2005).

After 9/11, under the direction of George W. Bush, the concept of narco-terrorism developed. Narco-Terrorism is the connection between the war against drugs and the war against terrorism, and is a term widely used to imply that the prevention of both drug trade and terrorism can be fought at the same time using the same policies (Bjornehed, 2004). The correlation between these two wars largely affected both public opinion and security policies regarding the U.S. – Mexico border. Immigration reform was now motivated not only as a result of terrorism, but also as a result of the increased drug trade and drug organizations within the Mexican Border States. Therefore, Narco-terrorism brought border security to a whole new level, introducing even more stringent immigration policies that have continued to negatively affect Latin American immigrants, particularly Mexicans. This makes immigration advocates question whether the development of these antiterrorist laws and reforms that took place in the name of the National Security, and as a result from the September 11, 2001 attacks, are truly worth the indirect consequences they cause.

i. Immigration Laws & the War on Terror

In the first 9 months of the year 2001 preceding the 9/11 attacks, Congress considered revising and enforcing the Immigration and Nationality Act (INA), the Development, Relief, and Education for Alien Minors (DREAM) Act, and the Agricultural Job Opportunities, Benefits and Security Act (AgJOBS). In his campaign, George W. Bush supported all of the reforms stating that, *“immigration is not a problem to be solved; it is the sign of a successful nation”*. (Rosenblum, 2011:2-3)

These immigration proposals were quickly thrown aside after the 9/11 attacks in New York City. Within 20 minutes of the attacks, the government had identified all 19 hijackers, the majority of which were given visas because of the out dated technology and lack of inter-agency communication. Of the hijackers that were residing in the U.S., only five of them were illegally remaining in the United States due to expired visas (Alden, 2009). Post 9/11, the United States Department of Justice had declared its new focus to be on inspection of visa applications back in Washington D.C., on national security grounds; and hence, U.S. immigration reforms became more focused on immigrants posing as a possible terrorist threat.

In an attempt to protect and prevent further terrorist attacks, the Bush Jr. administration made various modifications to their Federal Immigration Laws, and Antiterrorist laws. The relationship between the two is undeniable because the U.S. immigration laws and policies are directly affected when U.S. antiterrorist laws are enforced.

“The government’s use of immigration law as a tool in the War on terror is managerial...” and to a degree, absolutely necessary (Miller, 2005:101). This is done through a wide variety of strategic systems, which include statistical predictions of risk to terrorism, stricter enforcement of immigration policies, and non-traditional methods, such as racial profiling of immigrants by

identifying their ethnicity and religion to determine their level of risk as a terrorist. As a result, the main ethnic groups who are targeted are not only Muslims, and Middle Eastern men and women both foreign born and U.S. citizens, but other immigrants, “*particularly Mexican immigrants with brown skin and dark hair*” (Miller, 2005:102).

One of the principle, and first Anti-Terrorism Laws put into place was the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism also referred to as the US PATRIOT Act of 2001. President George W. Bush signed the act on October 26, 2001.

*“Patterned after a proposal developed by the Department of Justice, this new law (Public Law No. 107-56; H.R.3162) focused mainly on reinforcing the arsenal of tools available to the Central Intelligence Agency, the Federal Bureau of Investigation, and federal prosecutors for identifying and disabling terrorist networks operating both within and outside the United States.”*¹⁰

It incorporates provisions of two earlier anti-terrorism bills known as the Uniting and Strengthening America Act (H.R. 2975; S. 1510) as well as the Financial Anti-Terrorism Act of 2001 (H.R. 3004) (Library of Congress Thomas, 2001).

IV. The US PATRIOT Act

It is clear that U.S. immigration policy and organizations such as the Immigration and Naturalization Services (INS) and its agents were responsible for permitting entry to the terrorists who participated in the 9/11 terrorist attacks, yet they were not held accountable. The US PATRIOT Act enacted in 2001 post-9/11, however, does not primarily focus on a resolution to the immigration systems; in fact there are only two principle areas of the act, which involve immigration (See Annex VI). According to author Rosemary Jenks from Center for Immigration Studies,

“the immigration provisions included in this law reflect two persistent – and increasingly problematic perceptions... first, that the Immigration and Naturalization Service’s primary function is the admission of aliens into the United States, rather than the enforcement of the laws regulating such admissions; and second, that immigration policy is a political quagmire better left untouched,” (Jenks, 2001:1).

¹⁰ Jenks, R. (2001).

The U.S. PATRIOT Act immigration requirements have been enforced to ensure a more effective system in the identification, and prosecution of aliens with terrorist links (Jenks, 2001). This new and improved law demonstrates the evolution in immigration policy reform. Furthermore these changes, which secure the United States borders, are an important factor in the War on Terror while attempting to protect the American people from potential terrorist attacks. Many of the border control modifications mentioned in this act do not directly affect the southern border with Mexico, however; this bill directly mentions and affects the overall immigration policy with the hope of protecting against terrorism.

V. The United States Visa

The U.S. Department of State defines visas as a document, which allows for a foreign citizen to travel to the U.S. port-of entry, and ask for authorization of the U.S. immigration inspector to enter into the United States (U.S. Department of State, 2013).

“A citizen of a foreign country who seeks to enter the United States (U.S.) generally must first obtain a U.S. visa, which is placed in the traveler’s passport, a travel document issued by the traveler’s country of citizenship.”¹¹

With that said, among the U.S. government responses to protect the homeland after the 9/11 attacks, the adjudication of visas has been a major focus. Still, the U.S. visa process has been modified on various occasions to include additional security features; a digitized photograph and visas have been machine-readable since the mid-1990s.

“Visas have come to be understood as the first line of defense in a “layered approach” to homeland security, the systems that support them, in addition to the processes themselves, and have become subject to the heaviest scrutiny in the post-September 11 era—and are among the mechanisms that have changed the most.”¹²

¹¹ U.S. Department of State. (2013).

¹² Yale-Loehr, S., Papademetriou, D. G., & Cooper, B. (2005).

The visa procedure can be described as,

“an effort to manage and facilitate the flow of persons wishing to travel to the United States by efficiently screening for their admissibility against the many criteria found in the Immigration and Nationality Act (INA), while also considering other policy priorities, most notably national security concerns” (Yale-Loehr, Papademetriou, & Cooper, 2005:3-4).

By the year 2006, nearly five years after September 11, 2001, there were at least 7 categories of U.S. immigration status that a person could have; the first being a United States Citizen (USC), which is a person who was naturalized, born in the U.S. or born to a U.S. citizen parent abroad. After that the following six categories are (Gania, 2006):

- Lawful Permanent Resident (LPR), usually a green card holder who is eligible to apply for citizenship.
- Asylee/Refugee, which is a person who has been granted asylum in the U.S. or entered the U.S. as a refugee, but does not hold permanent residency.
- Nonimmigrant, who is a person that has come to the United States temporarily for work, tourism, study, or investment purposes.
- Temporary Protected Status (TPS), which is a person that has received a citizenship status from a country that the U.S. Congress has deemed protected due to armed conflict, natural disaster, or other extraordinary circumstances. They could possibly receive permanent residency as well.
- Out of Status, is a person who originally had a visa and entered the country legally through a nonimmigrant visa, however their visa has expired.
- Undocumented alien, which is a person that has entered the United States without inspection, for example, crossing the Mexican or Canadian border without going through a U.S. port-of entry or fraudulent passport holders.

After September 11, 2001, the nation began the *zero tolerance* policy, which overtook and changed nearly every area of the U.S. visa distribution, evaluation and acceptance process. While the U.S. Department of State, believes that, *“international visitors add greatly to our nation’s cultural, education and economic life”*, and they continue to welcome *“visitors to the United States, with secure borders and open doors”*, the process is only easy for the countries that are not considered a threat. According to the Department of State,

“Most Canadian citizens and many citizens from Visa Waiver Program countries can come to the United States (U.S.) without a visa if they meet certain requirements. All Visa Waiver Program (VWP) travelers must present a machine-readable passport at the U.S. port of entry to enter the U.S. without a visa; otherwise a U.S. visa is required” (The U.S. Department of State, 2013)

There are approximately 37 countries that are on the VWP list:

Andorra	Hungary	New Zealand
Australia	Iceland	Norway
Austria	Ireland	Portugal
Belgium	Italy	San Marino
Brunei	Japan	Singapore
Czech Republic	Latvia	Slovakia
Denmark	Liechtenstein	Slovenia
Estonia	Lithuania	South Korea
Finland	Luxembourg	Spain
France	Malta	Sweden
Germany	Monaco	Switzerland
Greece	The Netherlands	Taiwan
		United Kingdom

If a person is coming into the United States because of study, for college credit, employment, work as foreign press, radio, film, journalists, or other information media, or if a person is looking to have permanent residence in the U.S., they will need the corresponding visa, and therefore need to go through the same process as the residents of other countries that are not part of the VWP (The U.S. Department of State, 2013).

All applicants that desire a U.S. visa are required to complete a visa application, have a passport, and pay a nonrefundable fee, while also providing required documents depending on the type of visa, and have a photograph on file with a consular officer. Over 24 different visa categories exist, each with a number of different levels, depending on each individual's case (See annex VII for a complete list of visa categories). Those who are not applying for an immigrant (Permanent Resident) visa are applying for a nonimmigrant (temporary) visa and therefore must prove to the consular officers that they do not anticipate living enduringly in the United States.

Visas are expensive, whether you are coming on a tourist visa, work visa, or family based visa, and the previously mentioned nonrefundable fee varies in cost depending on the type of visa. For example, the recently approved K-1 Fiancé visa costs \$340.00 USD, just to get to the first

approval, and then approximately another \$200.00 USD for a consular interview and biometrics. If you are approved, you have 90 days to get married and within those 90 days you must apply for a work authorization, as well as an adjustment of status to a Legal Permanent Resident, which costs \$1070.00 USD. There still remains various other steps before one can even apply for citizenship, which means there is still money to be spent (See Annex VIII for list of prices).

“Since 1995 consular officers have also been required to perform a mandatory name check using the Consular Lookout and Automated Support System (CLASS), a name-based watch list system that draws from a number of government data sources. If CLASS reveals an applicant’s potential ineligibility, the officer must request a security advisory opinion (SAO) before approving the case. Before September 11, consular officers were also supposed to interview visa applicants, but the requirement for certain applicants could be waived at the officer’s discretion” (Yale-Loehr, Papademetriou, & Cooper, 2005:11-12).

If an applicant was approved for a U.S. visa, the consular officer will then hold their passport, which will then be mailed to the applicant with a visa placed inside their passport in the form of a secure paper foil. All consular officers must consider health, criminal, and security related grounds, as stated Section 212 (a)(1-3) and Section 202 (a)(4-10) of the INA, which can include documentation requirements, citizenship eligibilities, immigration violators, etc., when approving visas or reviewing a petition.

Applicants who are considered to be inadmissible due to a conviction of a crime must apply for a waiver of inadmissibility for their status to be resolved. While more than fifty grounds for denial are recognized, the most frequent reason for denying a nonimmigrant visa application— both before September 11, 2001 and today —is the person’s failure to satisfy the consular officer doubt that he or she has no intention of staying permanently in the United States.

Of the five September 11 terrorists who failed to obtain a visa at any point, none was denied because he was a potential terrorist; rather, each was believed to be a risk as a permanent immigrant or because documents to support the visa application were missing. Upon arrival at a US border, all persons undergo a screening at the port of entry to determine the identity, purpose, and duration of their visits and the validity of their visas. As with visa application denials at US consulates, the inspectors must determine whether the person is allowed to enter under a number of US laws, including the INA.

Before the creation of the Department of Homeland Security, immigration officials, who

reported to the Immigration and Naturalization Service (INS) in the Department of Justice, performed this primary inspection at airports. US Customs officials, who reported to the Department of the Treasury, performed their inspections separately. At land ports of entry, immigration officials split primary inspection responsibilities with US Customs officials; both were trained to determine the need for a more thorough inspection in either area of responsibility. At primary inspection before the September 11 attacks, inspectors also checked the National Automated Immigration Lookout System (NAILS) database, a system that did not contain all the entries from the State Department's CLASS system. Land border inspections were always much "looser" than what is described here.

Some of the changes that occurred to U.S. visa policy after 9/11 are the following:

- People who live outside of Canada, Western Europe, Japan, and other VWP countries are now required to attend a personal interview with a U.S. Embassy official, generally in their country of origin, in order to be approved for a visa and furthermore to receive one. According to author Edward Alden, the U.S. Department of State was more lenient prior to 9/11 as the original assumption was that visitors did not pose as a threat. Their focus was turned to only interviewing those who were identified to be a risk. Since the authorization was given out to the hijackers upon their initial entry into the U.S., the top consular of the U.S. Department of State was fired; and in 2004, Congress changed the law requiring all applicants to appear in person for a Biometrics, Fingerprinting appointment, and their interview, which depending on the country can take anywhere between 1-5 months to schedule (Alden, 2009). The U.S. Department of State also mentions that immigrants of ages 13 and younger or 80 and older are not generally required to participate in an interview. Ages 14 through 79 are required for interviews, however there are some exceptions for renewal cases.
- Another change that occurred has to do with young males who are coming from Muslim countries. Even if the applicant is not a Muslim, he must be interviewed, fingerprinted, and photographed as well as fill out lengthy paperwork, including mandatory information on family, personal bank accounts, and any existing connections to the United States. Although it is no longer a condition, between September 2002 and January 2004, these same young males who came from Muslim countries, such as Afghanistan, Iraq, Sudan, etc., were required to re-register thirty days after they entered into the country. Upon a second entry, the applicant will undergo a secondary screening despite the type of visa they may have. In addition, the applicant may need to "check out" when leaving the country, or they could be suspended from entering the U.S. for up to five years (Alden, 2009).

- Whether on a VWP permit, which allows for a 90 entry without a visa, or via an actual immigrant or non-immigrant visa, anyone who is caught overstaying the permitted time allotted, by even a day, the consequences will be harsh. It has been recorded that U.S. visitors who have overstayed their visa even by only 10 days, and had gone to customs to renew their visas, were instead handcuffed and taken to prison, where they can remain for up to a month or more. Once their case has been settled, they are either deported, in which case they can be barred from the U.S. for up to ten years or they can be released and given the option to return to their country voluntarily, which suggests that they may return to the U.S. in the future (Alden, 2009).
- When crossing a land border into the U.S., either from Mexico or Canada for the purpose of work or tourism, the delays will be longer. Both Mexican and Canadian Border Agents have mentioned that after 9/11 problems largely increased at the border. These complications slowly dissolved in 2005 and 2006, and then reemerged in 2007 despite the decreasing level of traffic flows. The delays grew due to the changes in requirements that occurred after 9/11, which included reviewing passports with a nonimmigrant visa, or a laser visa border-crossing card (Alden, 2009). While this appears to be a logical requirement, before 9/11 passports were not always a requirement to cross into the U.S. if the immigrants from both countries had work authorizations or accepted identification cards from their home country.

“Prior to September 11, 2001, over half of the border crossings between the United States and Canada were left unguarded at night, with only rubber cones separating the two countries. Since then, that 4,000 mile “point of pride,” as Toronto’s Globe and Mail once dubbed it, has increasingly been replaced by a US homeland security lockdown”¹³.

- Immigrants who are living in the United States on a temporary visa are allowed to apply for their green card and then citizenship. However, the required security background checks can last several years instead of several months, depending on the time of application and the temporary visa the immigrant currently maintains. There have been cases known to take up to two years before the applicant

¹³ Miller, Todd. (2013).

received their green card (Alden, 2009).

In a travel industry survey taken in 2006, we can see that according to travelers, the United States is one of the most unwelcoming countries in the world by a 2-1 margin over the Middle East, which is considered the worst area to visit in the world. At least two-thirds of these travelers feared that they might be detained or simply denied entry at the border. Statistics show that the distribution of visas decreased from 7.5 million to less than 5 million between 2001 and 2003. In 2003, the number of travelers entering the U.S. dropped to less than 10 million than in the year prior to 9/11; and in 2007, the numbers of visitors to the U.S. was still 2 million less than the pre-9/11 years. After September 11, 2001, U.S. universities foreign enrollment dropped, as well as foreign investments, and visas began to delay from months to years making the United States overall unattractive for foreigners to invest their time, money, businesses and energy (Alden, 2009).

Secretary of State Colin Powell defined the goals of the US visa program as “*Secure Borders, Open Doors*”. The changes that had been enforced within the visa process after 9/11 have essentially dissolved the visa function, which now requires the management of immigration flows to be done with an “open mind”, when denying access to persons that might wish harm against the United States. The visa is what permits foreigners to travel to the US border and request entry into the United States. All who have obtained a visa or visitors from VWP countries are not assured admission to the U.S., the border agents at the port-of entries then have the power, and the responsibility to permit or deny entry without any refunds (Yale-Loehr, Papademetriou, & Cooper, 2005).

VI. Enhanced Border Security and Visa Entry Reform Act (EBSVERA) (2002)

The Enhanced Border Security and Visa Entry Reform Act (EBSVERA) of 2002 is the third major law to be signed and enforced in May 2002, as a result of the attacks of September 11, 2001. EBSVERA calls for an additional 3,000 immigration agents and investigators, and forces universities to keep better track of foreign students, while also increasing the level of inspection of visa applications from countries believed to subsidize terrorism. EBSVERA goes along with an October 2001 law, which allowed law enforcement agencies a new level of authority to “*conduct surveillance, detain suspects and attack money laundering.*”¹⁴

EBSVERA obliges that during the U.S. visa process, consular officers supply electronic versions of visa files to INS, as well as to immigration inspectors at all ports of entry in the United States. It also orders that “*machine-readable, tamper-resistant entrance and exit documents*” were

¹⁴ University of California, Davis. (2002, June).

put into use as of October of 2004, with both photographs and fingerprints of the document holder. Additionally all commercial vessels and flights whose itinerary leads to the United States must make available to immigration officials comprehensive data about all passengers on board¹⁵.

After the requirement for machine-readable documents was initiated in October 2004, the State Department executed a biometric visa (biovisa) program on December 30, 2004, which calls for the compliance in providing two index fingerprints, over the course of 2004. All diplomats, NATO visas and anyone under the age of 14 years old or over 80 years old are not required to go through a fingerprint scan. There is a special provision made particularly for Mexicans, which requires all who are ages 7 and older to go through a fingerprint scan.

Less than a year later, on July 13, 2005, the Department of Homeland Security revealed that a new one-time requirement, which would include a ten-fingerprint capture for enrollment in the United States Visitor and Immigration Status Indicator Technology (US-VISIT), to be initiated. In addition, the State Department since 2003 had been piloting a facial recognition program, which is said to be an extension of a secondary biometric check to all visa applicants in late 2005. On October 26, 2005 all VWP countries were given an extension, and were expected to provide biometric passports. Therefore, from that date forward, all VWP countries that produce machine-readable passports with digital photographs needed to meet the new requirement, as well as supply passports with an incorporated circuit chip and digital fingerprints by 2006 (Yale-Loehr, Papademetriou, & Cooper, 2005).

Since the initial enforcement of EBSERVA, practically all U.S. ambassadors from specific countries have had their visa policies modified to meet the requirements of the Department of State. All nationals from terrorist sponsored countries under EBSVERA need to prove that they are not a threat to the United States when going through the visa process (Yale-Loehr, Papademetriou, & Cooper, 2005).

“Before 9/11, Border Patrol agents on the southern border used to joke that they went north to go fishing. After 9/11, the Border Patrol’s number one mission became stopping terrorists and weapons of mass destruction from coming into the country between the ports of entry ”
(Miller, 2013).

¹⁵ Yale-Loehr, Papademetriou, & Cooper. (2005): „All 207 consular posts have participated fully in the biovisa program since October 26, 2004”

VII. The Real ID Act (2005)

The Real ID Act, passed by the 109th Congress and enacted into law on May 11, 2005, was said to create problems for aliens who did not have a valid status. Three years after the enactment on May 2008, anyone living within the U.S. would need a federal approved ID card in order to travel by plane, open a bank account, collect social security payments, or take advantage of nearly any government service. At the same time, only a person who can demonstrate proof of a valid immigrant or nonimmigrant status can obtain drivers' licenses and Social Security numbers.

"In short, aliens without valid status will have difficulty functioning in society. It is the hope that the hardship suffered by millions of aliens will give rise to ameliorative legislation" (Grania, 2006:13).

The principal reason that the REAL ID Act of 2005 was introduced and enacted into government was because the

"9/11 Commission findings that 18 of 19 of the 9/11 hijackers had acquired a total of 28 driver's licenses and state-issued IDs in five states, and called on the federal government to "set standards for the issuance of sources of identification, such as driver's licenses. ¹⁶"

The Department of Homeland Security stated that,

"the 9/11 Commission recommended that the U.S. improve its system for issuing identification documents, urging the federal government to set standards for the issuance of sources of identification. In 2005, Congress passed a law implementing the Commission's recommendations – a law that included several provisions of the Drivers' License Compact, a voluntary state standard endorsed by more than 45 states." (Kaphart, 2013)

The only non-citizens who are eligible for a REAL ID-compliant license are people who¹⁷:

- are lawfully declared entry for permanent or temporary residence;
- have conditional permanent resident status, or an asylee or refugee status;

¹⁶ Kephart, Janice. (2013).

¹⁷ National Immigration Law Center. (2008).

- have a valid, unexpired non-immigrant visa or nonimmigrant visa status;
- have a pending asylum application;
- have a pending or approved application for temporary protected status (TPS);
- have deferred action status; or
- have a pending application for adjustment of status to lawful permanent residence (LPR).

Thus, any of the following immigrants or non-immigrants are not eligible for a REAL ID (National Immigration Law Center, 2008):

- people who are established as withholding of removal or withholding of deportation;
- people paroled into the U.S.;
- applicants for nonimmigrant visas (including victims of trafficking or other crimes);
- Cuban/Haitian entrants (the subcategory of those paroled into the U.S., at least until they have been in the U.S. for one year and can apply for adjustment);
- battered spouses and their children or visa-versa, (unless and until they can apply for adjustment of status or have been granted delayed action);
- people with Family Unity status;
- people with approved deferred enforced departure (DED) status;
- applicants for deferment of deportation or annulment of removal;
- people under an order of supervision.

If a person has is an LPR, asylee, and/or refugee, then they are eligible for the same kind of REAL ID–compliant license as citizens. However if a noncitizen has a nonimmigrant status, asylum applicant, TPS, deferred action, and/or one of the adjustment applicant categories they can only receive a temporary license. The temporary license is valid only for the period of time that the applicant is authorized to remain in the U.S. or for one year if there is no definite end to the authorized stay. The license is required to state “temporary” and state the expiration date (National Immigration Law Center, 2008).

The Real ID act contains six titles of which demonstrate the primary focus of its development. According to a summary written in a CRS Report for Congress by three legislative attorneys, Garcia, Mikyung Lee, & Tatelman (2005), the REAL ID Act addresses the following areas, which directly effects the immigration¹⁸:

18 Garcia, M. J., Lee, M. M., & Tatelman, T. (2005). The Library of Congress: REAL ID Act Titles: I.) Preventing Terrorists from Obtaining Asylum or Relief from Removal, II.) Waiver of Laws to Facilitate Barriers at Border, III.) Judicial Review of Orders of Removal, IV.) Inadmissibility and Deportability

- Discusses the modifications regarding asylum and withholding of removal;
- Demonstrates the limits given to judicial reviews about immigration decisions.
- Gives additional waiver authority over laws that could possibly hinder the construction of barriers and roads along land borders, including a 14-mile wide fence near San Diego.
- Extends the range of terror-related activity, which would make aliens inadmissible or deportable, or even ineligible for specific types of removal.
- Makes it mandatory that states enforce the minimum standards according to federal law in order for drivers' licenses and personal identification cards issued to be accepted.
- Requires the Secretary of Homeland Security to go through the correct aviation security-screening database and the correct background information of anyone who was convicted of holding a fraudulent drivers' license in order to board an airplane.
- Commands that the Secretary of Homeland Security study and plan ways to better U.S. security and advance inter-agency communications and information sharing, while also establishing and conducting an efficient ground surveillance plan.

As we can see, the United States Government has introduced a logical solution to what it believes is a comprehensive plan to resolve the problems regarding fraudulent documentation, as well as the need for the development of barriers and screenings, in order to truly stop the possibility of a terrorist threat and/or undocumented immigrants from infiltrating the United States.

"As long as proof of lawful presence in the United States is not required of drivers license or non-driver ID applicants, anyone can take advantage of those vulnerabilities. In addition to terrorists, criminals of all kinds — identity thieves, counterfeiters, deadbeat dads, even underage teens seeking IDs to drink and drive — also use multiple IDs to hide their true identity from the law. . .With REAL ID, drivers license identity theft will be much more difficult because more secure IDs will verify ID information before a DL/ID is issued and because the cards themselves will become more tamper-resistant and make it easier for law enforcement to determine fakes." (Kephart, 2013)

Due to Terrorist and Terrorist-Related Activities, V.) Improved Security for Drivers' Licenses and Personal Identification Cards, VI.) Improving Border Infrastructure and Technology Integration Vulnerability and Threat Assessment Relating to Border Infrastructure Weaknesses.

VIII. DREAM Act

On May 21, 2001 Reps, Lucille Roybal-Allard (D-CA), Christopher Cannon (R-UT), and Howard Berman (D-CA) presented the United States House of Representatives with the Student Adjustment Act of 2001. At the same time Sen. Orrin Hatch (R-UT) introduced the Development, Relief and Education for Alien Minors (DREAM) Act on August 1, 2001. The DREAM Act was never voted on in 2001 and was later modified and re-introduced to the U.S. Senate again in November 2005, but was still not enacted.

In 2006, the New America Dream Act was brought to the House of Representatives, of which the Senate came to a bipartisan negotiation on a comprehensive immigration reform (S. 2611), but it was never voted in. Throughout the entire Bush Jr. Administration this bill was never approved. Then during the Obama administration in March 2009, Dick Durbin (D-IL) and Richard Lugar (R-IN) presented the DREAM Act (S. 720) to the Senate, and again Howard Berman (D-CA), Lincoln Diaz-Balart (R-FL), and Lucille Roybal-Allard (D-CA) presented the American Dream Act to the House of Representatives (Perez, 2009). At this point in time, an agreement still could not be reached between the Senate and the House of Representatives, further postponing the bill's enactment.

The DREAM Act gave a 6-year conditional legal status to undocumented youth who meet several criteria:

- Entry into the U.S. before age 16;
- Continuous presence in the U.S. for 5 years prior to the bills enactment;
- Receipt of a high school diploma or its equivalent (GED);
- Demonstration of good moral character

Unauthorized aliens are legally allowed to receive free public education up until high school; however, college education is a different situation. According to the DREAM Act, all those who qualified are given work authorization in the United States, and allowed to attend school, or join the U.S. military. If the undocumented aliens either graduate from a two-year college, complete two of the four years of a university degree, or serve at least two years in the U.S. military, they will be allowed to adjust their status from conditional to a LPR. If none of these conditions are met after the 6-year condition, the conditional status will lapse (Perez, 2009).

Initially, the main reason for such controversy regarding this bill was due to concerns over whether undocumented youth were to be legalized via LPR, as it could take away possible educational opportunities or financial aid for US born students who wanted to pursue a college education. However according to the experiences from the states of California, Illinois, Kansas, Nebraska, New Mexico, New York, Oklahoma, Texas, Utah, and Washington, home to

approximately half the nation's undocumented immigrants, this was not the case (Perez, 2009). According to the U.S. Census 2000, and supplementary research of the Pew Hispanic Center, approximately 65,000 undocumented immigrants who have lived in the U.S. for up to five years, graduated from high school each year (Bruno, 2010). In addition there were anywhere between 7,000 to 13,000 unauthorized aliens enrolled in public, community colleges, and universities in the U.S. (ibid). Still, adversaries sometimes referred to the Dream Act as the *Scheme Act*, since it was considered to be the first step toward legalizing teenagers, which would then lead to legalizing their "lawbreaker parents" (Morman, 2009).

According to the white house there are various benefits from the DREAM Act stating that it is "good for our economy, good for our security and good for our nation". Some of the benefits that would occur include contributions to the U.S. military; increases in the United State's competitive edge within the global economy; it will have numerous economic benefits; and it would allow border control and immigration agents to focus on only those who pose a threat (The White House, 2013).

"The Dream Act requires responsibility and accountability of young people who apply to adjust their status under the DREAM Act, creating a lengthy and rigorous process" (The White House, 2013).

The white house also states that all concerns regarding the flow of migration to the U.S. are unnecessary¹⁹. From the DREAM Act's initial introduction during the George W. Bush Administration to June 2012, there had been no progression by the U.S. Congress to approve the bill. Then, in June of that year President Barack Obama decided to take it upon himself to pass his own version of the DREAM Act. The modifications and requirements to the new bill were that in order to be

*"eligible, applicants have to be between 15 and 30 years old, live in the U.S. for five years, and maintain continuous U.S. residency. People who have one felony, one serious misdemeanor, or three minor misdemeanors will be ineligible to apply"*²⁰.

This new bill would affect 800,000 people, and would not grant citizenship (Amira, 2012). However, it does grant the undocumented aliens who know and love the United States as their home, an

19 The White House. (2013): "The DREAM Act only applies to young people already in the United States who were brought here as children, it would not apply to anyone arriving later, so it cannot act as a "magnet" encouraging others to come. Furthermore, DREAM Act applicants would not be able to petition for any family member until fulfilling lengthy and rigorous requirements outlined above, and even then, they would have to wait years before being able to successfully petition for parents or siblings".

20 Amira, Dan. (2012).

opportunity to pursue a brighter future without the fear of being caught and deported, holding them back.

VIII. Preliminary Conclusion

The United States immigration system changed during the George W. Bush Jr. administration. Throughout Bush's 8 years of presidency, despite his relentless efforts to improve the immigration system and develop an agreement with Vicente Fox, 9/11 still remained in the forefront, with the War on Terror as the number one objective. From 2001 to 2008 numerous bills were entered into congress and enacted into the U.S. immigration policy, laws, and the overall governmental system.

Travel to the United States became somewhat harder, and numbers gradually decreased as visa requirements became more rigorous, and border and consular agents multiplied in numbers and enforced harsh regulations, screenings and background checks, in order to determine the future of each and every immigrant who crossed into the country. As North Dakota's Senator Byron Dorgan put it in 2001 when he held up an orange cone at the northern border, *"this is America's security at our border crossing... America can't effectively combat terrorism if it doesn't control its borders"* (Miller, 2013).

From the year 2001 to 2008 there were approximately 20 key immigration laws and policies that were introduced. While not all of them were voted into Congress or enacted into government, we must consider that from 1986 to 2001, over a 15-year period prior to 9/11, only 17 were introduced (Migration Policy Institute, 2013). This does not take into account the Immigration laws and policies that were enacted from 2009 to date. There is no doubt that the principal idea behind every immigration law and/or policy that have been introduced since the attacks of 9/11, has been about keeping threats out, no matter what the cost might be or how many immigrants, documented or undocumented, might be affected.

"Congress – and a political process that sporadically lashes out at immigrants – has "plenary power" over immigration. The president has great discretion to enforce the immigration laws. Ultimately, this dynamic has negatively affected immigrants by contributing to the passage by Congress of punitive laws directed at them, enforced by the president, and unchecked by the judiciary." (Johnson & Trujillo, 2011:1)

Since the United States strives to be the best, they must have the best. However, has the U.S. immigration system stopped to think that the best may be a brilliant yet poor immigrant who does not meet all of the eligibilities for a work visa? Despite all these systems and bills that are

consistently being modified, enacted, and introduced, some working better than others, the United States has managed to take the *zero tolerance* policy to a whole new level.

How can we be a country that accepts everyone, *except terrorists*, a country that gives the freedoms and opportunities to everyone, *except terrorists*, and still believe that we are letting everyone, *except terrorists*, cross our borders? Fortunately, the United States is always growing and thriving, however, these qualities may come with threats to the country. The U.S. should always act in a way to protect itself, but it must refrain from protecting itself against the immigrants that could benefit our country.

Mexico is a neighboring country as is Canada, yet Mexico does not reap any of the same benefits as the Canadians. Be it due to a large impoverished population, a contemptible democracy, a somewhat stable but meager economy, or the drug cartels, the Mexican border is treated as a terrorist threat. Controls have increased substantially, and continue to be implemented yet Mexicans and Hispanics in general, while presumed to be the largest ethnic immigration group, are not the only undocumented immigrants, and are certainly not the largest ethnic group in the U.S. anymore. In fact, the Pew Research Center announced that in their study to determine the largest racial ethnicity in June 2012 that,

“Asians have surpassed Hispanics as the largest wave of new immigrants to the United States, pushing the population of Asian descent to a record 18.2 million and helping to make Asians the fastest-growing racial group in the country... About 430,000 Asians — or 36 percent of all new immigrants, legal and illegal — moved to the United States in 2010, compared with 370,000 Hispanics, or 31 percent of all new arrivals, the study said. Just three years earlier, the ratio was reversed: about 390,000 Asians immigrated in 2007, compared with 540,000 Hispanics.” (Pew Research Center, 2012)

The United States always was and will continue to be a nation of immigrants. That fact must be protected and embraced just as much as the laws that have been implemented to protect against possible threats. Whether Hispanic, European, Asian, Russian, etc. all ethnicities live in the United States, legally and illegally. The resolution should be focused on how to change our system to resolve illegal immigration without making US entry impossible. The harder the entry or renewal system is, the more we can expect a growth in undocumented immigrants.

The sole objective of some of these laws is to make life more difficult for the immigrants already here. Can we not assume that many of the undocumented and documented immigrants that have taken the high risk of illegally working or even migrating to the United States as a sign that

where they were residing before was worse? As human beings, we naturally strive to live, as we desire, to live better than our parents, or give our children a better life than we had. Therefore, are we as a country naïve enough to believe that with all of the promises the U.S. makes, that immigrants will stop coming and stop trying to better their lives? The bottom line is that these bills, laws, policies, and visas that exist, along with all of their regulations and requirements, are absolutely necessary if the United States is going to protect itself against any possible terrorist threats. The United States cannot save, nor can it help every immigrant who crosses its borders, but the country should allow for the option to exist. To this day, the United States has not found the symbiosis that subsists between protecting the homeland and embracing the immigrant population. Instead, there have been more laws, more policies, more debates, more political turmoil, more border control, and less resolution and results.

Chapter 3: The Border Wall of Mexico: Control at the Mexican Border

I. Introduction

There is no denying that immigration has been one of the major issues that the United States has had to address, especially since the attacks of September 11, 2001. However, since the beginning of the American Immigration system, prior to 9/11, there has been continual controversy regarding control over who enters and exits the United States. For instance, before 1952, immigration law expelled *nonwhite immigrants* from any status change that included naturalization in order to become U.S. citizens. From quota systems, to exclusion acts, to direct, authorized use of racial profiling, the U.S. has always tried to allow entry into the country or society to only the immigrants they found useful and of a certain skill set; while controlling, banning, deporting, and denying entry to those who do not meet the criteria.

One area of immigration that has brought political parties and Americans into a constant upheaval under the George W. Bush administration is the undocumented aliens who cross over the US - Mexican border into the United States. Some relate the fact that there are a large number of undocumented Latin American immigrants to the,

“few legal avenues for low- and moderately skilled workers to migrate lawfully from Mexico to the United States. Consequently, undocumented migrants violate the law to work... Moreover, US immigration laws and their enforcement have disparate impacts based on race and nationality, in no small part because of the high demand for migration to the United

States by many low – and moderately skilled workers from the developing world.”¹

The negative perception that U.S. society, and the U.S. government, has created with Mexico and its undocumented and documented immigrants have made it as though instead of the nearly three thousand-mile border between the two countries, there is an entire ocean. For example, the immigration laws and requirements that apply to foreign countries that do not participate as member of a VWP, have generally the same rules as those who are citizens from Mexico.

In other words, with Mexico as a neighboring country to the U.S., and the long repetitive history with emigration to the U.S. through worker programs, etc., Mexican citizens should not have to go through an entire legal process like those of “*Iceland*”. Yet that is not the case at all. In fact, even today, Mexican immigrants are one the least favored immigrants in the U.S. right along with *Muslims*, and *Arabs* (Johnson & Trujillo, 2011).

From drug cartels, to illegal migration to the United States, to illegal employment of undocumented immigrants in the U.S., to terrorism and the possible terrorist links in Mexico, the United States has more than enough reasons to add extra security to the borders. As we have seen before, it is undeniable that the homeland should be protected against as many threats as possible. Therefore, in this chapter we will be reviewing the actions that took place under the George W. Bush administration regarding the US – Mexico border, as precautions to protect against terrorism and illegal Mexican migration.

II. Mexicans in the United States

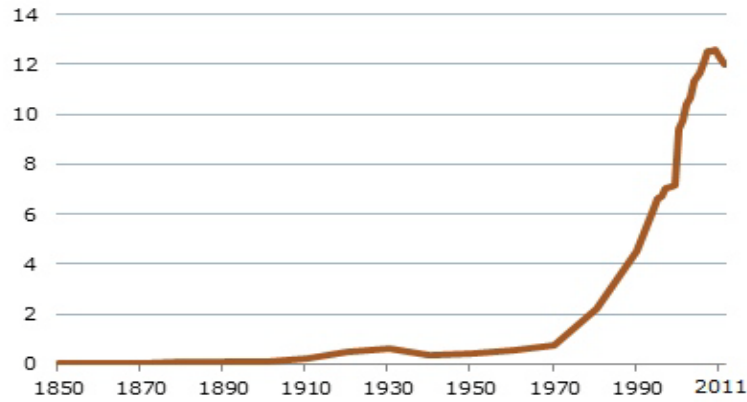
There is no way of knowing exactly how many Mexican immigrants are residing in the United States. However, it is estimated that more than two-thirds of the Latino population lives in eight of the 50 U.S. states. California holds an estimated 24% of Latino immigrants, Texas 14%, Florida 9%, New York 7%, Arizona 5%, Illinois 4%, New Jersey 4%, and North Carolina 3%. According to Figure 1, from the early 1850's to the year 2011 the Mexican born population has increased dramatically². However, we must ask if this is proof enough to show that large numbers of Mexicans also continued to migrate to the United States during this time period?

1 Johnson, K. R., & Trujillo, B. (2011): "The laws fail to consider the special relationship forged over centuries between the United States and Mexico, including the long history of migration from Mexico to the United States, which has often been expressly or tacitly encouraged by the US government and employers."

2 Passel, J. S., Cohn, D., & Gonzalez-Barrera, A. (2012, April 23): The largest wave of immigration in the history from a single country to the United States has come to a standstill. After four decades that brought 12 million current immigrants – most of whom came illegally- the net migration flow from Mexico to the United States has stopped and may have reversed...

The reasons for the decreasing levels of migration from Mexico to the United States are a feeble job market, increased level of border enforcement and deportations, as well as the

Mexican-Born Population in the U.S., 1850-2011
(in millions)

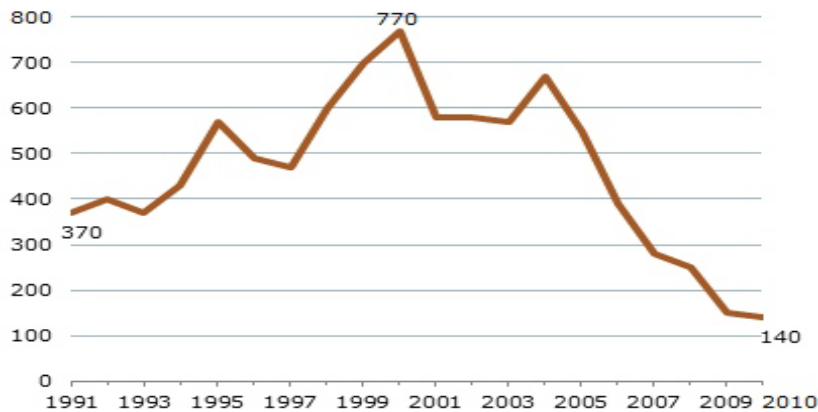


Source: 1850-1930, 1960-1980: Gibson and Jung (2006); 1940-1950, U.S. Census Bureau (1975), Series C228-295, white foreign-born; 1990-2011: Pew Hispanic Center estimates from augmented March Current Population Surveys and Decennial Censuses adjusted for undercount

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Figure 1 Mexican- Born Population in the U.S., 1850-2011

Annual Immigration from Mexico to the U.S.: 1991-2010
(in thousands)



Source: Pew Hispanic Center estimates compiled from various sources; see Methodology

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Figure 2 Immigration from Mexico to U.S. 1991-2010

augmented level of danger and high risk of death linked with illegal border crossing. Still the historical migratory relationships between the U.S. and Mexico has always existed, and at a heightened level. When we observe the annual immigration levels from Mexican immigrants to the United States, such as in Figure 2, we are able to see a large increase between 1991 and 2001. Then in 2001 to 2010, during the entire Bush Jr. Administration, the level of Mexican immigration drops drastically (Passel, Cohn & Gonzalez-Barrera, 2012).

There is no coincidence that the level of Mexican immigration dropped starting in 2001, the year that the traumatic events of 9/11 happened. We can see however that there was a brief period between 2003 and 2005 where Mexican immigration began to increase again. This did not last long as by the year 2006, the year that border enforcement really began to prevail, the levels had dropped again and continue to do so.

One of the principal changes that occurred during the Bush Jr. Administration, after 9/11, was the increasing of border control on the Southern Border with Mexico. This change was not made in vain as the number of illegal immigrants attempting to cross the border has dropped from 1 million in 2005 to 286,000 as of 2011 (Passel, Cohn & Gonzalez-Barrera, 2012). We must review the history of migration from Mexico to the U.S. in order to truly understand how this one change has truly altered the entire immigration pattern.

III. U.S. - Mexican History

The United States and Mexico have had a long history in their relationship as neighboring countries. From wars, to migration, to even economic surpluses and downfalls, all that these countries experienced over the last 200 years affected its' neighbor. Together and separately, both countries have worked to create functional governmental, economic, and immigration systems, while also defining the lines of where the US – Mexico border is. What is considered Mexico today was much larger in the 1820's, and the United States, much smaller. Still, the existing relationship between the two countries is undeniable, and has evolved into what could be a beneficial neighboring friendship, should both countries choose to see it that way.

i. US – Mexico A History of Migration

In the early 1900's the Mexican economy fell into a large decline. This economic downfall caused a large increase in emigration from Mexico to the United States. After the Mexican Revolution in 1910, Mexican immigrants continued to cross into the U.S. in large numbers. This caused the United States to place restrictions on the immigrants who were requesting permission to enter the country. For example, in 1917 immigrants were only granted authorization to enter the U.S. if they were able to read and write in at least one language (Johnson & Trujillo, 2011).

Further along in history, during WWI, many Mexican immigrants traveled to the U.S. for the purpose of finding work. *“By the 1920s, approximately 10 percent of all immigration to the United States was from Mexico”* (Johnson & Trujillo, 2011:34). As a result, U.S. border control was created in 1924 so that the U.S. government could better monitor the number of immigrants who wished to enter the United States.

Shortly after, in 1929, the Great Depression occurred and immigration flows began to decrease. Mexicans were always accepted because of the inexpensive labor; however, with the gradual decline in U.S. jobs, Mexicans quickly evolved into a viable threat to American workers. Therefore, in order to further manage the number of entering immigrants, the U.S. government increased their enforcement, and introduced harsher *“literacy requirements, and public charge provisions”* (Johnson & Trujillo, 2011:34).

Another dramatic provision that directly affected only Mexicans, or those of Mexican descendants, occurred in the 1930's. Legal U.S. immigrants and even U.S. citizens with Mexican ancestry were forced to return to Mexico as part of a *“voluntary repatriation program”*. This was another attempt for the U.S. government to control Mexican immigration to the U.S. through indirectly deporting all Mexicans, or Mexican-Americans, and making them believe it was for the reunification of their family (Johnson & Trujillo, 2011).

WWII brought another increased level of emigration from Mexico to the United States. Demand for labor was high, and Mexican workers were brought into the U.S. to fill the jobs that were vacated due to lack of U.S. laborers because of the war. The United States government did this by implementing a Bracero Program. In 1942, this Bracero Program gave temporary visas and authorized entry to nearly 4 million Mexicans.

Originally the contract that came with the Bracero Program required the Mexican workers to return to Mexico after their allotted time expired. Unfortunately this system did not work as effectively as planned. First, the demand for migrant workers on the U.S. farms was so high because of the inexpensive labor that many of the workers became accustomed to living in the U.S.; second, the once legal non-immigrants would remain in the U.S. illegally, instead of returning to their home country due to lack of finances, among other reasons ³.

In 1954 a program referred to as, “Operation Wetback” was enacted. The efforts of this program arose from the beliefs that

“Mexican workers depressed American wages, displaced US citizen workers, and endangered workers by accepting substandard labor

³ Johnson, K. R., & Trujillo, B. (2011).: Unfortunately, money withheld from the braceros' pay to facilitate their return to Mexico was “misplaced”, and many braceros never received the cash.

conditions... by the 1950's, opposition had grown to both the Bracero Program and Mexican migration generally.” (Johnson & Trujillo, 2011: 35)

In an attempt to deport all illegal aliens, INS performed raids on various farms all over the country. At the same time, the number of authorized workers allowed to enter the U.S. via the Bracero Program was doubled to approximately 400,000. The raids resulted in nearly 1 million apprehended illegal immigrants, a number that had never been reached in U.S. history. Eventually, the Bracero Program was discontinued in 1964, however this did not stop the Mexican migration to the U.S. (Johnson & Trujillo, 2011).

The H-2A visa was introduced during WWII as a way for laborers to legally enter the United States for the purpose of work. This temporary visa only allowed the authorized alien to enter the U.S. and work for a specific allotted amount of time. Then in 1963, immigration regulations augmented again. There were only 120,000 immigrants given permission to enter the country each year from the West Hemisphere. This given number included Mexican immigrants, all of Latin American immigrants, Caribbean immigrants, as well as refugees from Cuba. As a result a lawsuit was charged against the INS for allowing such restrictions. This resulted in the plaintiffs' favor, which allowed 144,946 Mexican immigrants to come in annually, in addition to the previous requirement from 1977 to 1981 (Johnson & Trujillo, 2011).

The 1970's led to another large growth in Mexican immigration to the United States. In 1976, in order for a U.S. citizen to petition for a family member to become a legal permanent resident they had to be age 21. Shortly after that provision was put in place another requirement was introduced by the U.S. government, which involved a per-country visa limit on all countries in the Western Hemisphere, again including Mexico. By 1980 the United States government had introduced a new immigration law, which only allowed the entry of 270,000 visas to be given worldwide. Naturally, since the largest number of immigrants entering the country at the time was Mexican, they were also the most affected by these new provisions (Johnson & Trujillo, 2011).

In the late 1980's and 1990's illegal Mexican immigration began to rise, while the estimates for legal Mexican immigration showed no real growth in numbers. As a response, the U.S. government attempted to implement a guest worker program.

“The guests being undocumented immigrants...although efforts were made to increase border enforcement...these security measures did not deter illegal immigration but instead simply pushed would-be illegal Mexican migrants away from large cities and into more rugged but

largely unpatrolled terrain along the border.” (Johnson & Trujillo, 2011:37)

In 1986, the Immigration Reform and Control Act (IRCA) of 1986 gave nearly 1 million Mexican workers amnesty. At this point, the H2-A visa was still not efficiently allowing entry to enough legal immigrants in order to meet the demand for migrant labor. Immigrants who did not qualify for a H2-A visa continued to find other ways into the U.S. for the purpose of finding work (Johnson & Trujillo, 2011).

As mentioned in previous chapters, the IIRIRA was enacted in 1996. Essentially this legislation would affect Mexican migration in that it involved increased immigration law enforcement, and work site investigations, as well as increased detentions. The law also calls for permission to accelerate *exclusions and deportations*, while also prohibiting many public benefits for undocumented aliens (Johnson & Trujillo, 2011).

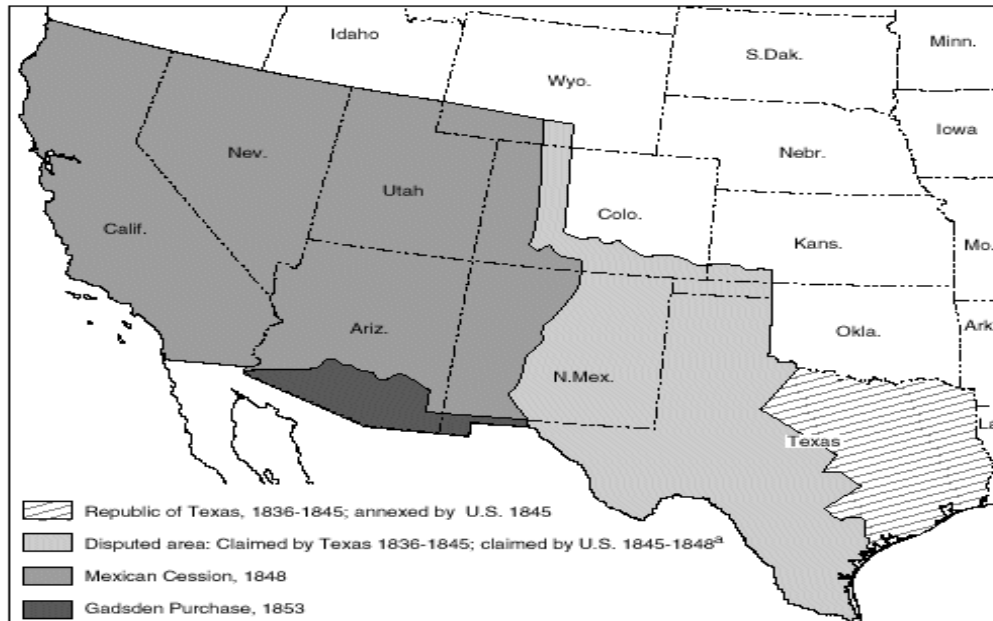
Later, after September 11, 2001, the George W. Bush Jr. Administration called for various security-related immigration procedures. As mentioned in previous chapters, immigrants, especially Mexicans, would be required to go through a long, thorough visa process in order to receive permission to request entry into the United States. These provisions would then include high levels of Border Security, and lengthy inspections at the ports of entry.

ii. The Defining of Their Borders

In 1821 Mexico gained its independence from Spain. Geographically, the territory of Mexico included the parts of the United States known today as California, Nevada, Utah, Arizona, New Mexico, Colorado, Wyoming, Oklahoma, Kansas and Texas. At this point, Mexico had already begun to implement some form of border control, as well immigration policy such as the Immigration Act of 1824, which allowed foreign migration to their northern territories (Johnson & Trujillo, 2011).

Later, in the year 1835, the people of Texas had declared independence from Mexico. Many of the people residing in this territory were American settlers, and fought in the famous war known as The Battle of the Alamo. While Texas had won its independence, a new dispute began as Mexico and the settlers of Texas disagreed on the territorial boundaries that belonged to each party. Texas had become part of the Union by U.S. President James K. Polk's permission in 1844.

Even so, the consistent battle between the two geographic areas led into the US-Mexican War in 1846. Figure 3 shows the US – Mexico border as of the 1800's prior to the Mexican – American War, as well the disputed territory. The war between the US and Mexico lasted until 1848, which resulted in Mexico's loss of territory, the resolution of Texas territory, and the Treaty of Guadalupe Hidalgo. This treaty was meant to clarify that any Mexican who wished to reside in the newly American states needed to receive U.S citizenship in order to benefit from all the rights and liberties the country had to offer; if they did not wish to become U.S. citizens, they were asked to



^aWhen Texas was officially recognized as a state in 1845, it included the light-gray area, which was also claimed by México. The Treaty of Guadalupe Hidalgo resolved this dispute, with Texas claiming the disputed land. In 1850, Texas transferred part of this land to the federal government, which became the eastern portion of the territory of New Mexico.

Figure 3 US - Mexico Border in the 1800's (Gwaltney 2008-2009)

'voluntarily' migrate south into Mexican territory. Still, the United States' conquest to take over land did not end there (Johnson & Trujillo, 2011).

In 1853, the U.S. initiated what was called the Gadsden Purchase for the areas of Arizona and New Mexico in order to build a railroad through the Southern part of the country. By the year 1853, the United States had acquired almost two-thirds of Mexican territory (Johnson & Trujillo, 2011). As a result, from 1853 to 2013, the US – Mexico border, a little under 2,000 miles long (3,145 km), now starts from the west coasts of the US and Mexico, at San Diego, California and Tijuana, Baja California, Mexico. It then runs through to Matamoros, Tamaulipas, all the way to the Gulf of Mexico at Brownsville, Texas. From West to east, there are approximately 30 towns, 15 from each country at the border. Each of these are border crossing areas, where immigrants from both countries can pass through the ports of entry on foot or in a vehicle provided they have the required documentation.

IV. The Border Wall

In 2001, the Bush Jr. Administration began modifying, and enacting as many laws and provision as possible in order to protect the United States against idle, and possible future threats. During this administration the term '*Narco-Terrorism*' was introduced. Narco-Terrorism is deemed as the, "*merger of the war on drugs and the war on terror*"⁴. The relationship between the two is vast, but mainly the idea comes from the fact that drug trafficking and terrorism are interconnected. Drug trade is a way for designated drug terrorist organizations to fund their organizations. Therefore, the narco-terrorism concept is derived from the idea that both antidrug and antiterrorist policies can be utilized together in order to subdue both threats (Bjornehed, 2004).

"A link exists between the narcotics trade and terrorist organizations, as implied in the term narco-terrorism, has been known to exist for decades, yet the international focus on terrorism since 11 September 2001, has also increased the attention given to the phenomenon of narco-terrorism". (Bjornehed, 2004:1)

This directly switches the focus from the Middle East to Latin America, or at least has moved both areas of the globe to a primary focus for the United States. Between 2001-2009, due to increased "narco-terrorism" activity within the border states of Mexico, the U.S. – Mexico Border has been under heavy surveillance, and as a result federal U.S. immigration laws have been modified and developed for preventative reasons. For example, the introduction and approval of bills such as the Border Protection, Antiterrorism and Illegal Immigration Control Act of 2005 mentioned in Chapter 1, and the Secure Fence Act of 2006. Both of which, changed the face of immigration at the US – Mexico Border. These bills are meant to not only decrease illegal immigration activity, but also are largely maintained for narco-terrorism preventative purposes.

i. The Secure Fence Act of 2006 & the Comprehensive Immigration Reform of 2006

As part of a Comprehensive Immigration Reform (CIR), George W. Bush signed the Secure Fence Act of 2006 on October 26, 2006 (See Annex VIII). It was established with the purpose to control U.S. borders, "*by making wise use of physical barriers and deploying 21st century technology, it helped our border patrol agents do their job and make our border more secure*"⁵.

This bill sanctioned the establishment of hundreds of miles, specifically 700 miles of the 1,933-mile long Southern US border with Mexico, of additional fencing along the United State's

⁴ Bjornehed, E. (2004).

⁵ Pike, J. (2000-2012).

Southern Border. It also allowed for increased numbers of vehicle barriers, checkpoints, and lighting in order to prevent illegal immigration, while also permitting DHS to increase the use of their surveillance technology, and unmanned aerial vehicles in order to further enforce the U.S. infrastructure at the border.

Some attribute the idea of the construction of the '*great wall*' to the fact the in San Diego, California in the 1990s Border Patrol started putting up barriers. These barriers were placed along the border just south of the city. Shortly after, the IIRIRA was enacted in 1996, and as mentioned previously, commanded the assembly of triple-layered "*reinforced fencing*" from the Pacific coast, and reaching 14 miles inland. These barriers were made of concrete and steel walls, with lights, camera, and sensors.

Figure 4 on the following page, is a brief demonstration of the result of the placement of the fence placed at the Mexican border. The U.S. Department of Homeland Security is looking to place the double fences at strategic locations throughout the border in order to block entry to illegal immigrants in the most common crossing areas. They will do this through steel post barriers called bollards, as well as steel mesh fencing, and concrete beams. As of 2008, 171 miles of the fence had been constructed of the 370 miles originally planned out; 142 miles of the planned 300 miles of bollard steel posts had been built as well (Archibold & Preston, 2008).



Figure 4 The Border Wall (Department of Homeland Security, 2013)

In 2001, the number of US Border Patrol agents on the northern border with Canada was approximately 340, which then rose to 1,008 in 2005, and 2,263 in 2010.

*"That's still small compared to the almost 19,000 on the southern border, but significant once you add in the "force multipliers", since Border Patrol works ever more closely with local police and other agencies"*⁶.

6 Miller, Todd. (2013).

According to DHS showed in Annex II, the number of Border Patrol agents employed by 2009 was 20,119. In 2001, that number was at 9,821 agents total. By 2011, over 18,000 of those agents are on the ground at the Southern Border with Mexico (Homeland Security, 2011).

The Comprehensive Immigration Reform of 2006 under the Bush Jr. administration began with securing the border. This fact led to doubling funds for border security from \$4.6 billion in 2001 to \$10.4 billion in 2006 and an augmentation of Border Patrol agents from 9,000 to over 12,000, with annual increases. It also called for the assignment of National Guard members to Border Patrol duty. Bush Jr. also assured the upgrading of technology at U.S. borders as well as additional infrastructure, such as extra fencing and vehicle barriers, and new beds in detention centers, all of which are to help run the southern borders more effectively and efficiently. As far as its effectiveness, under his administration, Bush Jr.'s CIR arrested and deported over 6 million illegal immigrants entering the United States⁷.

In order to develop a truly efficient CIR: 1) immigration laws must be enforced within the United States, 2) pressure on our border should be minimized through developing laws which allow foreign workers to enter the U.S. on a temporary basis, 3) the United States should accept the fact that many illegal immigrants are already in the country, and 4) the U.S. should respect the ethnic diversity which lies within the American history (Pike, 2000-2012).

The United States government has allotted more funds for use by the Homeland Security agencies directly accountable for border security, than on any other federal law enforcement agency. In fact since September 11, 2001 over \$100 billion USD has gone into United States Border Security.

"The \$18 billion allocated to Customs and Border Protection and Immigration and Customs Enforcement significantly exceeds the \$14.4 billion that makes up the combined budgets of the FBI, the Drug Enforcement Administration, the Secret Service, the US Marshal Service and the Bureau of Alcohol, Tobacco, Firearms and Explosive (Miller, 2013).

The debate regarding the 'Great Wall of Mexico' is still a topic of discussion today. They have yet to determine whether the wall has been truly beneficial. Chief David V. Aguilar, of U.S. Border Patrol feels that the decline in Mexican migrant levels to the U.S. in 2007 is due to the fact

⁷ Pike, J. (2000-2012): John Pike, a chief specialist on defense, space and intelligence policy, and the Director of GlobalSecurity.org, states that, "This act was one part of our effort to reform our immigration system, and we have more work to do."

that the acts and laws implemented to heighten border security are working. The Secretary of Homeland Security in 2008, Michael Chertoff, states,

"I don't believe the fence is a cure-all...nor do I believe it is a waste. Yes, you can get over it; yes, you can get under it. But it is a useful tool that makes it more difficult for people to cross. It is one of a number of tools we have, and you've got to use all of the tools."⁸

Still, many scholars feel that if the 'border wall' was as effective as both Aguilar and Chertoff claim, then the estimated 2,000 immigrants who still cross into the U.S. everyday, would not be able to. Some feel the building of this wall is not going to fix anything because people will cross legally and illegally, whether the wall is built or not (Archibald, & Preston, 2008).

As one can surmise, the CIR of 2006 & the Secure Fence Act of 2006 would not be the last attempts made to secure the U.S. southern border. A year later, the CIR of 2007 was proposed, which would further intensify the level of border control. To date, the U.S. congress continues to see various policies, all of which are presumed to provide some resolution to the illegal border crossing done by Mexicans and Latin Americans.

ii. The Comprehensive Immigration Reform of 2007 Under the Bush Jr. Administration

To perform as a compliment to the two previously mentioned bills, the Comprehensive Immigration Reform of 2007 (S.1384), was considered which obliged the assembly of approximately \$2.2 billion USD worth of fence barriers along the Southern Border with Mexico. It was introduced on May 9, 2007 and pushed for approval by the Senate on June 28, 2007 (Pike, 2000-2012).

It would authorize, Homeland Security to install at five areas of the Southern Border, physical barriers, roads, lighting, surveillance cameras, sensors and 2 layers of reinforced fencing. The areas ranged from 10 miles west and east of the Tecate, California port of entry; 10 miles west of the Calexico, California port of entry to 5 miles east of the Douglas, Arizona port of entry; 5 miles west of the Columbus, New Mexico, port of entry to 10 miles east of El Paso, Texas; extending from 5 miles northwest of the Del Rio, Texas, port of entry to 5 miles southeast of the Eagle Pass, Texas, port of entry; and reaching to 15 miles northwest of the Laredo, Texas, port of entry to the Brownsville, Texas, port of entry (Pike, 2000-2012).

There was much debate about whether these fences would prove to keep out illegal immigrants, drug traffickers, or terrorists, as the idea proved to be similar to the fences along the Spanish - Moroccan and Chinese – Hong Kong Borders, and these fences did not have positive

⁸ Archibald, R. C., & Preston, J. (2008, May 21).

results. In order to eliminate some doubts, the Senate approved S.2611 amendment on 17 May 2006, which required the construction of, “370 miles of triple-layered fencing and 500 miles of vehicle barriers along the southern border” (Pike, 2000-2012).

It also obliged the Department of Homeland Security’s Secretary to restore all worn-out, weakening, or damaged principal fencing in the Tucson Sector, Douglas, Nogales, Naco, and Lukeville, Arizona with either double or even triple layered fencing along the international border between the United States and Mexico. This double or triple layered fencing extended no less than 2 miles outside of urban areas, with the exception of the west of Naco, Arizona, where it will reach a distance of 10 miles (Pike, 2000-2012).

Furthermore, this reform also assured the development of 150 miles of vehicle barriers and all-weather roads in the Tucson Sector along the southern US – Mexico border in areas recognized for illegal cross-border traffic. It was also mandatory that the Secretary of DHS replaced all worn-out, weakening, or damaged principal fencing within the Yuma Sector, in Yuma, Somerton, and San Luis, Arizona with double or triple layered fencing along the border linking the United States and Mexico. This meant that this double or triple layered fencing would then reach no less than 2 miles away from urban areas in the Yuma Sector, and that there would be no less than 50 miles of vehicle barriers and all-weather roads in the Yuma Sector along the US – Mexico Border in areas known as transit points for illegal cross-border traffic (Pike, 2000-2012).

All of these developments meant that the DHS Secretary was obliged to create no less than 370 miles of triple-layered fencing in San Diego, Tucson and Yuma Sectors and at least 500 miles of strategically placed vehicle barriers in other areas at the southwestern US Border with Mexico (Pike, 2000-2012). The time frame given to the Secretary to finish this task was no more than 2 years after the ratification of this bill. A year later, the Secretary was required to write up and submit a progress report, regarding the construction of all of these roads, fences, and barriers to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives. This reform however was not approved and therefore never enforced to further protect the southern border with Mexico against plausible threats.

V. Border Patrol

Since 1924 the United States Border Patrol has not only existed, but continues to grow in numbers and strength. It is the reason for apprehension, detentions and deportations of illegal or law breaking immigrants. Border Patrol is defined as the “*the mobil uniformed law enforcement arm of the Department of Homeland Security.*” It was officially created by the U.S. congress as a response to control illegal immigration. They describe their mission as a unit as “*preventing terrorists and terrorists weapons, including weapons of mass destruction, from entering the United States.*” (U.S. Border Patrol, 2013)

Their mission also involves the detection and prevention of illegal border crossing, and illegal human trafficking. Border control has agents that remain along the almost 6,000 miles of the southern border with Mexico, and the northern border with Canada, and the 2,000 miles of the southern coast that surrounds the peninsula of Florida and Puerto Rico. All of the agents at each entry point are required to go through extensive training programs that last up to 19 weeks (U.S. Border Patrol, 2013) .

In order to prevent illegal immigration, among other deemed threats, the U.S. border patrol contains traffic checkpoints, transportations checks, Marine patrol, and horse and bike patrol.

*“Traffic checks are conducted on major highways leading away from the border to (1) detect and apprehend illegal aliens attempting to travel further into the interior of the United States after evading detection at the border and (2) to detect illegal narcotics.”*⁹

In total the United States has 329 official ports of entry. There are 52 points of entry at the US-Mexico border, 8 of which are railways, 43 roadways, 24 bridges, 2 dams, 17 roads, and 1 ferry; CBP only refers to 26 of these entry points as official ‘master’ ports.¹⁰ (See Annex X for a complete atlas of the land ports at the US-Mexico border). All CBP and border patrol agents placed at these entry points uses a specific process of elimination to determine which immigrants entering the country may pose as a threat on many occasions is considered racial profiling. *“Immigration and Customs Enforcement (ICE) officers often rely on a person’s “Hispanic appearance” as an important factor in making a stop.”* (Johnson & Trujillo, 2011:178) This suggests that a Border Patrol agent may in fact consider the race of the person entering the country as a reason to inspect them before anything else.

However, this sort of racial profiling is said to harm the Latino community in the United States. Scholars say that it enforces their *“perceived second class status”* in the U.S. as well as exposes the entire Latino community to harsh conditions that a typical *“Anglo”* or *‘Caucasian’*, would never experience. Unfortunately, for the Latino in the U.S., Border Patrol and the U.S. government has resorted to racial profiling as part of the process because they believe it is the most effective way to stop illegal immigrants or possible threats (Johnson & Trujillo, 2011).

9 U.S. Border Patrol. (2013). : Bige Bend Sector (Texas), Del Rio Sector (Texas, El Centro Sector (California), El Paso Sector (Texas), Laredo Sector (Texas), Rio Grande Valley Sector (Texas), San Diego Sector (California), Tucson Sector (Arizona), Yuma Sector (Arizona).

10 U.S. Border Patrol. (2013): U.S. Port of entries are: Arizona: Douglas, Lukeville, Naco, Pheonix, San Luis, Sasabe, and Tucson; Texas: Amarillo, Austin, Brownsville/Los Indios, Corpus Christi, Dallas/Ft.Worth, Del Rio/Amistad Dam, El Paso, Fabens, Freeport, Hidalgo/Pharr/Anzalduas, Laredo, Lubbock, Port Arthur-Beaumont,Port Lavaca-Point Comfort, Progreso/Donna, Rio Grande City/Los Ebanos, Roma/Falcon Dam, Sabine, San Antonio; California: Andrade – Class A, Calexico East & West- Class A, Eureka, Fresno, Port Hueneme, Otay Mesa, Palm Springs, Sacramento, San Diego, San Fransisco, San Ysidro- Class A, Tecate – Class A

VI. U.S. Immigration: The Mexican Perspective

Since 9/11, Mexico has implemented the concept of “*Comprehensive Security*” along with economic and social elements into their government strategy to combat terrorism. In fact, Mexico, along with Canada and the United States, had attended a hemispheric conference in 2003, which discussed the concept of “multidimensional security”. Despite the U.S’ strong attempt to centralize the principal concerns on terrorism and drug trafficking, this new “multidimensional” approach would focus on attempting to stray from military defense to protect against foreign threats, and would direct their priorities to fighting “terrorism, drug trafficking, money laundering, and organized crime...extreme poverty, spread of diseases such as HIV-AIDS, and environmental threats.” (Artola, 2011:194).

Vicente Fox promised that,

“Mexico is taking determined action against drug trafficking; that drug trafficking is an international phenomenon which requires shared responsibility for attacking supply, as well as demand; and that the two countries have built a solid relationship that requires continued cooperation.” (Storrs, 2005:11)

In 2002, the United States and Mexico found themselves in need of a bi-national approach to benefit the national security of both countries. They developed and agreed upon the idea of *The Border Partnership* or “smart borders”, which referred to sharing their technology, and combining it with strengthened border security and infrastructure, while still maintaining border crossing accessibility (Artola, 2011). At the same time Bush and Vicente also discussed the possibility of a Partnership for Prosperity (P4P) Action Plan, which would focus on fixing poverty ridden areas in Mexico, through the use of programs such as Peace Corps, as well as the Overseas Private Investment Corporation (OPIC) (Storrs, 2005).

In February 2004, the Secretary of the U.S. Department of Homeland Security, Tom Ridge, and Mexican Government Secretary, Santiago Creel signed the U.S. – Mexico Action plan for Cooperation and Border Safety. Mexico and the U.S. also signed a memorandum of Understanding on the Safe, Orderly, dignified, and Humane Repatriation of Mexican Nations as well developed six Secure Electronic Network for Traveler’s Rapid Inspection (SENTRI) lanes at the Border. This included opening pre-screened lanes for low-risk travelers, as well as five new Free and Secure Trade (FAST) lanes for pre-cleared cargo (Storrs, 2005).

In March that year, Vicente Fox had arranged an agreement with President Bush Jr., which stated that Mexicans who held valid border-crossing cards would be exempt from participating in US-VISIT. In November 2004, Collin Powell attended the Bi-national Commission meeting, and promised,

“that immigration reform to regularize the status of Mexican workers in the United States would be a high priority during President Bush’s second term. At the same time, he noted the conclusion of educational agreements that would advance Mexican competitiveness, housing agreements to strengthen the local mortgage market, agricultural agreements to advance cooperation on rural development programs, and environmental agreements to promote environmental conservation.”

(Storrs, 2005:10)

When George W. Bush enacted new immigration and anti-terrorist laws the largest immigrant group affected was Mexicans (Johnson & Trujillo, 2011). At least 60% of all unauthorized immigrants in the United States come from Mexico, which in 2009 were approximately 6.7 million people; in 2009 there was a recorded 4.7 million Mexican LPRs in the U.S. (Rosenblum & Brick, 2011).

The majority of the Mexicans that migrate to the United States are looking for one of two things; 1) to be reunited with their families or 2) for employment opportunities. Since the avenues for low-skill level immigrants coming from Mexico are few, many immigrants will cross the border illegally. While in the U.S. these immigrants are easily exploited and are deeply affected by the repercussions of being apprehended and then deported back to Mexico (Johnson & Trujillo, 2011).

Despite the increased levels of border inspections and controls, the immigrants are still entering the U.S. and the Mexican economy is suffering greatly. On an annual basis, *“billions of dollars in remittances from Mexican workers in the U.S. flow back to Mexico”* (John & Trujillo, 2011:21). In 2007, this number was an estimated \$25 billion USD, and the Mexicans have used this money to send to their ‘pueblos’, or hometowns, where the money is invested in their families and local infrastructure. This of course is of great benefit to Mexico as these migrants raise money to build roads, bridges, and other structures while also reducing the fiscal (Johnson & Trujillo, 2011). However, since the U.S. has strengthened their immigration regulations, and more Mexican are remaining in the U.S. and petitioning for their families, the Mexican economy begins to suffer as less money is being returned to Mexico.

As far as the Mexican politicians are concerned, there is little the government can do to control the high level of emigration that has occurred throughout Mexican immigration history. The

Mexican government is well aware of the number Mexicans who emigrate to the U.S. annually, and is also apprehensive about the dangerous border crossing conditions as well as the treatment that the Mexican citizens may receive in the U.S. as a result of strict border control (Johnson & Trujillo, 2011).

The Mexican government had even filed several complaints with the U.S. regarding racial profiling and Border Patrol's horrendous treatment toward Mexican citizens, stating that there is a possible violation of the immigrant's rights. "The Mexican government remains committed to ensuring that migration into the United States is legal, safe, orderly and respectful of the fundamental rights of people" (Storrs, 2005:10)

VII. Preliminary Conclusions

The History of the United States, started with immigration, and the country thrived on incoming migrant and laborer immigrants. Initially, the U.S. embraced migrant workers from Mexico, but the conflict between those of favored Mexican migration and those who did not, was still very largely split. Furthermore, with the attacks of 9/11, and the heightened threats of terrorist organizations, drug trade and continued illegal immigration, the U.S. had taken a *preventative strategy, zero tolerance* policy. Despite any efforts originally made by George W. Bush during his administration to ease tensions at the border with Mexico, the tensions only increased. The US – Mexico border had become a hostile environment, with no resolution, and no concept of balancing the entry of immigrants with the entry of threats.

While the development of an efficient Border Control system is necessary, once again the United States has gone to the full extreme. If the wall is going to exist then shouldn't the visa process be made accessible to low skill level immigrants who do not currently qualify for H2-A visas or general work visas? The existence of the heightened Border Security stems from 9/11, but it is also deeply rooted at the fact the illegal Mexican and Latin American immigrants continue to cross the U.S. border and reside in the U.S. illegally. Therefore, is a valid resolution not one that promotes work visas, guest worker programs, bracero programs, etc.?

When NAFTA was enacted in 1994, the U.S. business market had opened factories in Mexico and at the U.S. Border, which allowed for Mexican citizens to work at U.S., and Canadian companies. Prior to NAFTA, the Mexican unemployment level was nearly 10% higher than before its' implementation¹¹. Part of the original plan of NAFTA, as promised by the Mexican government, was to decrease the levels of emigration from Mexico to the United States, which for a period of time proved effective. Still, Mexico did not keep its' promise, and the U.S. suddenly pulled many of

¹¹ Public Citizen. (2008).

it's factories out of Mexico and into China due to cost effective outsourcing; this quickly resulted in the decline of the Mexican job market began to decline.

Even before its initial change of outsourcing locations, NAFTA was causing problems for migrant workers in Mexico, which gradually led to more migration instead of less. Since then, illegal immigration began to fluctuate, and today there are constant debates on how to keep illegal aliens from entering the United States. Unfortunately, as mentioned in previous sections, these worker programs were enacted and planned in good faith; NAFTA was implemented with the hopes of benefiting the U.S., Mexico and Canada economically as well as socially and politically. The U.S. government would have had to assume that the systems would not be abused in order for them to be 100% effective. However, since this was not the case, should the Mexican government not be held responsible for the political and government downfall of their systems, and how it effects its' own people?

The United States has done everything; except for outright closing the border, which is consistently in debate; yet there appears to be no progresses recorded except for lower migrant levels, and higher apprehension levels. The fact is people still cross the border daily; immigrants are still coming illegally, and since 9/11 other terrorist acts continued to take place and hurt American citizens. The U.S. immigration system needs to be altered, and it needs to be done in such a way that the people, who are willing to work and offer opportunity and growth to the U.S. economy, should have an accessible way to do so. Without the accessibility and a well-defined plan, and with the high demand for low-level skilled workers, the current problem will continue to exacerbate.

Conclusion

Throughout the last two US presidential administrations, which total approximately 13 years, the world has heard the same statement, "*the U.S. immigration system is broken*". When George W. Bush was elected into office as the new Republican President of the United States, big changes were expected to occur within U.S. immigration policy. It had been at least 35 years since the last immigration reform, and Bush Jr. saw immigration as an economic advantage for the United States. Bush developed and supported temporary work visa programs, and saw the growing Hispanic population as a potential swing vote. In fact, in a 9-month period, Bush Jr. was recorded as meeting with the Mexican President, Vicente Fox at least 5 times, and the main topic of discussion was U.S. – Mexican immigration¹.

However, the determined Bush Jr. had to make a change in his immigration plans after the attacks of September 11, 2001. His focus went from economic benefit to national security, and

¹ Rosenblum, M. R. (2011).

instead of opening the Mexican border, he worked toward gradually closing it. Post - 9/11 a number of bills and reforms were passed by Congress in order to follow the newly developed preventative strategy of which the U.S. was beginning to follow. These bills protected against terrorism, drug trafficking, illegal immigrants, and facilitated data collection and inter-agency sharing. It expanded the U.S. government's power to arrest and deport immigrants.

In spring of the year 2006, thousands of people marched in the streets into cities all over the country, protesting against the *draconian immigration legislation* that was passed by the House of Representatives. Their demand was for justice for the undocumented immigrant population within the United States. The only justice given to these undocumented immigrants was a longer fence at the US – Mexican Border. For the last two hundred years, immigration has been one of the principal issues on the American political agenda in times of crisis. Immigration is without a doubt a concern that needs to be addressed and resolved. While there seems to be no real agreements on the best way to solve the *broken* U.S. immigration system, all political parties do agree that something needs to change².

Still, despite George W. Bush's efforts to protect the country, the issue on immigration policy and reform continued to escalate until President Barack Obama was elected into office. Both President Bush and President Obama support Comprehensive Immigration Reform, but neither one has been able to get any of the legislations to be approved by Congress for enactment. There is constant discussion of the newly presented DREAM Act, under the Obama administration. However, this proposal was defeated on a procedural vote in the Senate. President Obama forcibly approved a version of the DREAM Act in June 2012, after years of debate without progress.

Surveys and polls have shown that the American people prefer,

“tough enforcement and “earned legalization” — the core components of CIR — in addressing the unauthorized immigrant population. Meanwhile, powerful interest groups tied to both political parties have pushed for legalization and new temporary visa programs”³.

Yet even with the public's support, there has been no approved CIR's.

With the focus consistently being on antiterrorist laws, and narco-terrorism, the United States is not effectively or directly dealing with the immigration issue. Yet each anti-terrorist, anti-drug, and anti-illegal immigration bill that is approved by Congress directly affects U.S. immigration policy. In other words, instead of approving a CIR, they are creating more and more Border Security Acts on the grounds that the U.S. must protect against any and all possible threats, developing a

² Johnson, Kevin R. and Bernard Trujillo. (2011).

³ Rosenblum, M. R. (2011).

“zero” tolerance nation.

“Current border control programs that attempt to deal simultaneously with protection against terrorists, apprehension of criminals, and the illegal entry of people and goods using a single approach may not be effective or efficient.”⁴

In fact, some will go as far as stating that the U.S. has completely blurred the line which exists between immigration, crime control and terrorism (Miller, 2005). There is no doubt however that the U.S. Federal government is attempting to use one type of policy to overcome all threats. Unfortunately, this is not the solution to determining the balance between permitting entry to immigrants who do not pose a threat, and denying U.S. visas to those who do.

In his 8 years of Office, President George W. Bush, managed to enact the US PATRIOT Act in 2001, EBSVERA, The Homeland Security Act, and NSEERS in 2002, SEVIS in 2003, IRITPA in 2004, The REAL ID Act in 2005, The Border Protection, Antiterrorism and Illegal Immigration Control Act of 2005, CIR of 2006 and the Secure Border Act of 2006. All of these acts refer to protection, defense, prevention, and elimination of illegal immigrants, drug cartels, and terrorist threats. Today, Obama still focuses on fighting the War on Terror and has introduced various bills that focus more on helping the illegal immigrants currently in the U.S. and immigration policies, than solely on terrorism itself.

As mentioned in Chapter two, in 2012 Obama approved a law that would free immigrants between the ages of 15 and 30 years old from the fear of deportation. This law affected nearly 800,000 immigrants. In order to be eligible they must be within the previously mentioned age group, as well as having lived in the United States for a minimum of 5 years with consistent residency. Any immigrants who have one felony, a serious misdemeanor, or three minor misdemeanors are not eligible to apply for this amnesty.

“The President’s plan builds a smart, effective immigration system that continues efforts to secure our borders and cracks down on employers who hire undocumented immigrants. It’s a plan that requires anyone who’s undocumented to get right with the law by paying their taxes and a penalty, learning English, and undergoing background checks before they can be eligible to earn citizenship. It requires every business and

⁴ Margerum, B. (n.d.).

*every worker to play by the same set of rules*⁵.

Obama's stance is to encourage the undocumented immigrants to become legal and play by the same rules as the rest of the law-abiding immigrants and citizens. However, he still maintains heightened levels of Border Control.

Since September 11, 2001, Border Patrol increased its number of agents by 700%. This includes approximately 3,800 agents along the Northern Border, and 21,000 agents in total. Obama, like Bush Jr., believes in increasing the level of surveillance at the borders, combating transnational crime and terrorism, and strengthening border security and its' infrastructure (The White House, 2013).

Obama has worked hard to continue the decreasing numbers in illegal migration to the U.S., while also lowering the number of apprehensions; statistics show that apprehensions have lessened by 53%, which can only mean that less immigrants are illegally entering the country. His administration is working hard to bring safety to all border cities, as drug cartel activity has increased in Mexico. However, the FBI index shows that crime has actually decreased within the border cities, as Obama had hoped for (The White House, 2013).

The Obama administration via the Twenty First Century Border Initiative has convened with the Mexican Government in order to develop improvements that will help coordinate a bi-national infrastructure. The hope is to produce effective border crossing methods for workers and commerce while also fighting against common threats. They also wish to develop a plan that will prevent the growth of criminal flows and increase public safety (The White House, 2013).

Overall President Obama supports immigration. He is doing all in his power to develop an immigration reform that can benefit the U.S. without harming it, even though the U.S. Congress cannot seem to arrive at an agreement. He has a strong belief in that immigrants add growth to our economy, for example, by developing a stronger GDP. His administration feels that immigration means foreign business, which means the creation of jobs, as well as specialist immigrants who can add to our knowledge and economy through education, research and developments.

The George W. Bush administration fought to protect our country through extreme implementation of acts and bills, which protect the homeland against all threats. Today in the Obama administration, those goals are still in place, with less emphasis on closing the borders, and more emphasis on trying to fix the system so the borders will not need to be closed. At the same time it is said that Obama has deported more immigrants than George W. Bush ever did. President

⁵ The White House. (2013): "We strengthened security at the borders so that we could finally stem the tide of illegal immigrants. We put more boots on the ground on the southern border than at any time in our history. And today, illegal crossings are down nearly 80 percent from their peak in 2000." - President Obama, January 29, 2013..."The lesson of these 236 years is clear – immigration makes America stronger. Immigration makes us more prosperous. And immigration positions America to lead in the 21st century." -President Obama, July 4, 2012

Obama has deported an estimated 1.4 million immigrants since the start of his administration to 2012. Statistics from DHS show that Obama has deported 1.5 more immigrants on a monthly basis, than President Bush did during his entire administration⁶.

There is no perfect solution to finding the boundary between deserving immigrants and possible terrorist threats, but the U.S. government is consistently attempting to do so. The '*O*' *tolerance policy* and *preventative strategies* that have been put in place have decreased the number of illegal immigrants, but the immigrants are still coming, and the terrorist attacks, although somewhat thwarted, are still happening; such as the case of the Boston Marathon Bombing that occurred on April 15, 2013.

Illegal immigration brings a lot of concern to the American people; these worries include, but are not limited to lack of funding for federal programs, paying for illegal immigrants through taxes, illegal immigrants illegally working and 'stealing' American jobs, and violation of human rights through racial profiling. The solution to an immigration reform that could possibly ease these concerns lies in changing the perspective of the American people and US government; effectively monitoring the border, rather than closing the border; increasing inter-agency communication on possible or existing threats rather than racial profiling; uniting Americans with a common goal rather than dividing a country with bi-partisan politics. This would require examining past mistakes made within immigration reform and policy, and making changes that would allow legal accessibility for low-skilled Mexican immigrants to enter the country.

Unfortunately the Mexican economic deficiencies fuel the power and control that the drug cartels maintain over the country. The Mexican government must be held accountable for what is obviously a dysfunction within their economic and governmental systems and infrastructure. However, the United States' response to these unsettling failures within this foreign system should be to develop solutions for economic growth and progress in both countries rather than suppress those legitimately searching for better opportunities.

In the end, When the United States welcomes in a foreign student, there is often times, no way of knowing if that student will become a viable engineer that will better the nation or a warped mind that will target and threaten the nation. Human nature dictates that we maintain a certain lack of perfection and we are bound to make mistakes. Therefore, trying to control humanity is a massive unpredictable feat. All the U.S. can hope to control are the politics within their legal system that will protect and grow their nation, understanding that immigrants, legal or illegal are part of that system. President Obama said it best,

⁶ Khimm, S. (2012, Aug 7).

“Our journey is not complete until we find a better way to welcome the striving, hopeful immigrants who still see America as a land of opportunity; until bright young students and engineers are enlisted in our workforce rather than expelled from our country.”

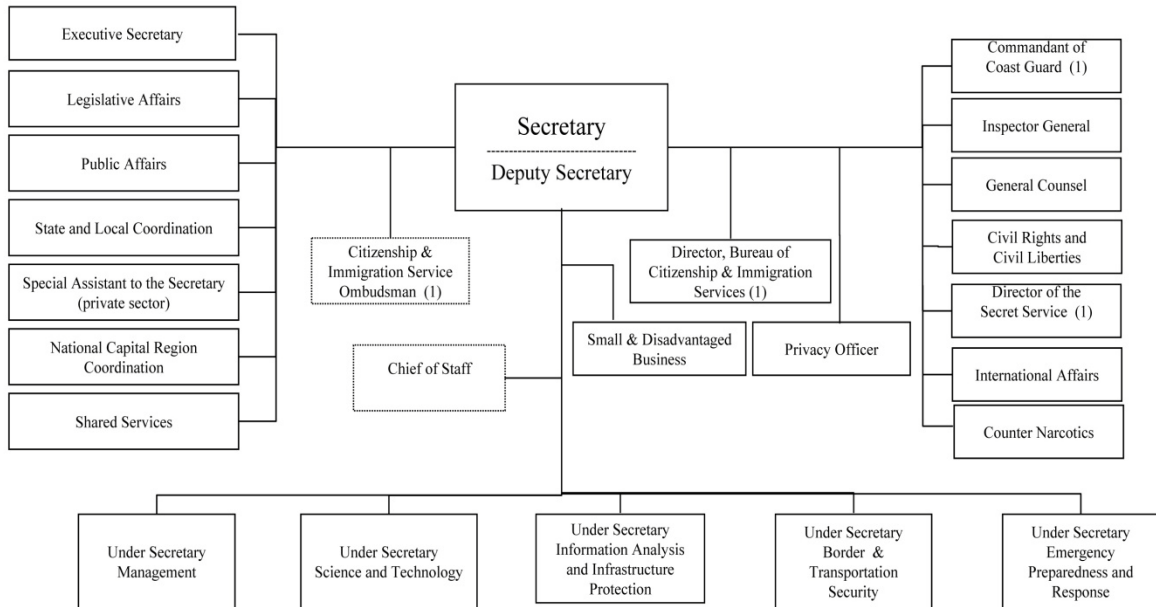
- President Barack Obama, January 21, 2013

The link between immigration and terrorism is a necessary one. However, the balance between keeping terrorists out and letting immigrants in is key and until that balance is obtained the US immigration system will continue to remain *'a broken one'*.

Annex I: Department of Homeland Security

Department of Homeland Security

Original Organization Chart, March 2003



Homeland Security

Note (1): Effective March 1st, 2003

For current information please visit www.dhs.gov/xabout

Annex II: United States Border Patrol

United States Border Patrol

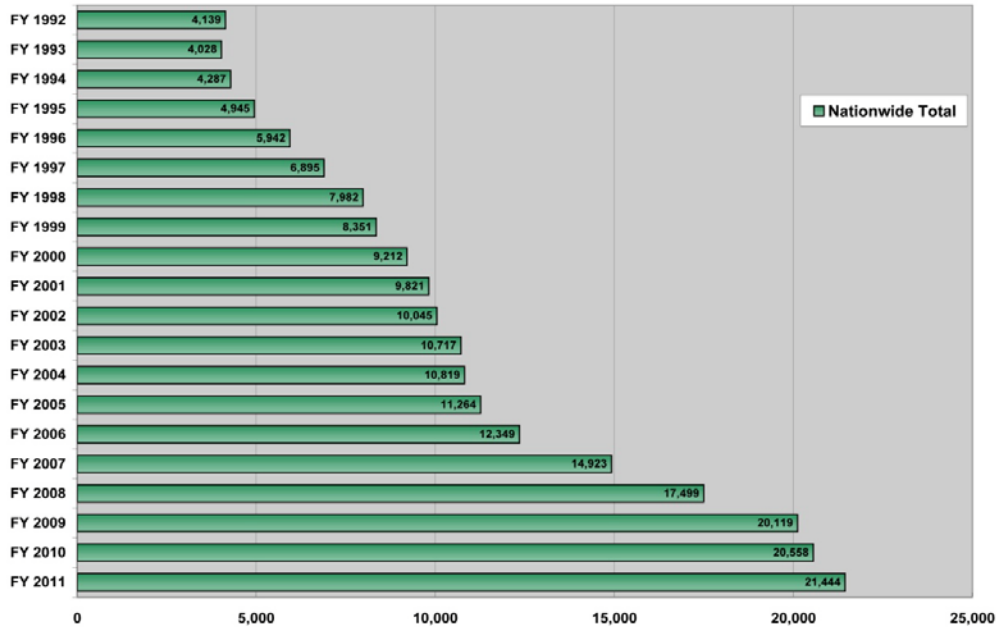
Border Patrol Agent Staffing By Fiscal Year (Oct. 1st through Sept. 30th)

	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Coastal Border Sectors																				
Livermore *	55	52	51	47	38	23	26	22	17	12	11	7	5	-	-	-	-	-	-	-
Miami	58	58	55	51	52	48	56	53	56	58	61	65	80	78	81	81	86	91	96	94
New Orleans	41	41	38	34	41	40	40	43	41	41	43	44	41	46	41	52	58	65	78	70
Ramey	33	32	26	21	24	35	39	34	36	37	28	36	34	36	31	39	65	67	72	68
Northern Border Sectors																				
Blaine	39	45	43	49	45	38	38	48	45	48	81	89	127	129	121	133	182	241	327	331
Buffalo	33	33	31	30	32	33	35	35	35	37	60	73	110	121	112	166	204	289	320	311
Detroit	29	31	31	29	28	27	28	35	35	38	64	80	128	130	117	157	185	318	430	409
Grand Forks	28	30	30	28	31	28	28	28	25	32	45	53	118	109	98	116	131	169	213	213
Havre	32	30	30	29	28	25	25	25	29	31	42	52	109	100	93	103	119	156	221	213
Houlton	35	34	35	31	30	26	29	31	29	33	47	47	120	118	104	113	137	190	203	201
Spokane	35	36	36	32	32	32	36	35	34	39	63	78	120	120	119	132	186	232	255	257
Swanton	68	71	70	68	66	58	70	74	74	82	90	97	147	161	155	178	219	292	294	302
Southwest Border Sectors																				
Big Bend <i>(formerly Marfa)</i>	108	134	128	133	134	135	164	144	196	194	253	230	239	220	246	336	421	682	672	667
Del Rio	317	297	299	399	406	471	589	639	758	893	972	950	933	907	935	1,138	1,427	1,682	1,650	1,626
El Centro	217	198	194	190	189	249	383	423	502	589	683	755	734	684	713	894	1,080	1,187	1,181	1,164
El Paso	627	608	643	746	841	918	972	957	1,036	1,086	1,122	1,188	1,094	1,330	1,741	2,251	2,506	2,712	2,752	2,738
Laredo	384	353	337	421	415	451	628	685	806	921	969	1,025	981	937	926	1,206	1,636	1,863	1,858	1,871
Rio Grande Valley <i>(formerly McAllen)</i>	418	393	392	474	507	760	1,107	1,166	1,368	1,451	1,484	1,524	1,439	1,380	1,431	1,822	2,063	2,422	2,441	2,504
San Diego	1,009	992	1,290	1,433	1,965	2,281	2,274	2,136	2,053	2,004	1,807	1,972	1,651	1,562	1,671	2,019	2,328	2,570	2,594	2,669
Tucson	300	287	282	407	702	875	1,013	1,328	1,548	1,686	1,626	1,838	2,104	2,324	2,595	2,806	3,049	3,318	3,353	4,239
Yuma	195	182	182	185	174	175	227	228	313	323	323	358	331	547	774	825	932	972	987	969

* Livermore Sector closed after FY 2004

United States Border Patrol

Border Patrol Agent Staffing by Fiscal Year (Oct. 1st through Sept. 30th)



United States Border Patrol

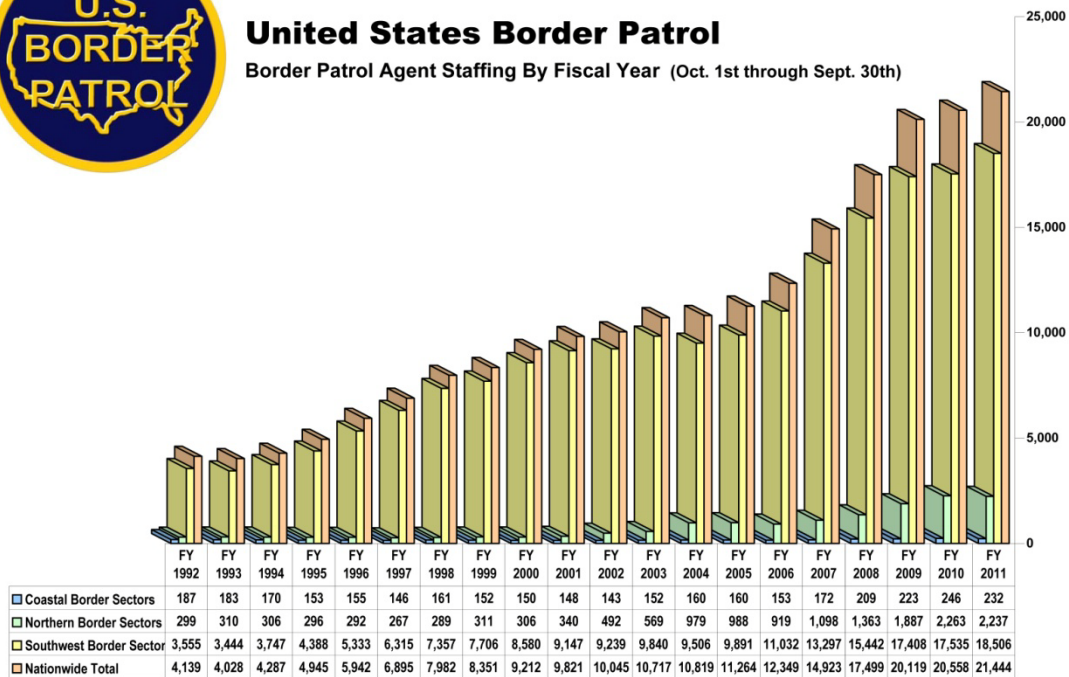
Border Patrol Agent Staffing By Fiscal Year (Oct. 1st through Sept. 30th)

Fiscal Year	Coastal Border Sectors	Northern Border Sectors	Southwest Border Sectors	Nationwide Total
FY 1992	187	299	3,555	4,139
FY 1993	183	310	3,444	4,028
FY 1994	170	306	3,747	4,287
FY 1995	153	296	4,388	4,945
FY 1996	155	292	5,333	5,942
FY 1997	146	267	6,315	6,895
FY 1998	161	289	7,357	7,982
FY 1999	152	311	7,706	8,351
FY 2000	150	306	8,580	9,212
FY 2001	148	340	9,147	9,821
FY 2002	143	492	9,239	10,045
FY 2003	152	569	9,840	10,717
FY 2004	160	979	9,506	10,819
FY 2005	160	988	9,891	11,264
FY 2006	153	919	11,032	12,349
FY 2007	172	1,098	13,297	14,923
FY 2008	209	1,363	15,442	17,499
FY 2009	223	1,887	17,408	20,119
FY 2010	246	2,263	17,535	20,558
FY 2011	232	2,237	18,506	21,444



United States Border Patrol

Border Patrol Agent Staffing By Fiscal Year (Oct. 1st through Sept. 30th)



Coastal Border Sectors include: Livermore (closed after FY 2004), Miami, New Orleans, and Ramey, Puerto Rico.

Northern Border Sectors include: Blaine, Buffalo, Detroit, Grand Forks, Havre, Houlton, Spokane and Swanton.

Southwest Border Sectors include: Big Bend (Marfa), Del Rio, El Centro, El Paso, Laredo, Rio Grande Valley (McAllen), San Diego, Tucson, Yuma, and as of FY 2010 the Special Operations Group.

Nationwide Total Includes: All Sectors, Office of Border Patrol (HQ), and from FY 2004 through FY 2009, the Special Operations Group.

Annex III: IRTPA

The following are the main topics addressed in the IRTPA (Pub. L. 108-458):

Title I – Reform of the Intelligence Community

Title II – Federal Bureau of Investigation

Title III – Security Clearances

Title IV – Transportation Security

Title V – Border Protection, Immigration, and Visa Matters

Title VI – Terrorism Prevention

Title VII – Implementation of 9/11 Commission Recommendations

Title VIII – Other Matters, including a requirement that the Department of Homeland Security ensure that the civil rights and civil liberties of persons are not diminished by efforts, activities, and programs aimed at securing the homeland.

The most relevant of all the titles to our case is title V as it directly relates with immigration policy and reform as a result of the 9/11 terrorist attacks. Title V: Border Protection, Immigration, and Visa Matters, include 5 subtitles all of which focus on strengthening border security and visa and immigration requirements. The following are the subtitles previously mentioned in Title V of the IRTPA and the section numbers most relevant to this thesis (108th Congress, 2004):

Subtitle A: Advanced Technology Northern Border Security Pilot Program - (Sec. 5101) Authorizes the Secretary of Homeland Security to carry out a pilot program to test advanced technologies to improve border security between ports of entry (POEs) along the northern border of the United States. (Sec. 5102) Specifies the required features of such program. Requires coordination of such program among United States, State and local, and Canadian law enforcement and border security agencies. (Sec. 5104) Requires the Secretary to report on the pilot program.

Subtitle B: Border and Immigration Enforcement - (Sec. 5201) Requires the Secretary to submit to the President and appropriate congressional committees a comprehensive plan for the systematic surveillance of the southwest border of the United States by remotely piloted aircraft. (Sec. 5202 & 5203) Requires the Secretary to increase: (1) the number of full-time Border Patrol agents by not less than 2,000 per fiscal year from FY 2006 through 2010; and (2) the number of full-time immigration and customs enforcement investigators by not less than 800 per fiscal year for the same period. (Sec. 5204) Directs the Secretary to increase by not less than 8,000 in each of FY 2006 through 2010 the number of beds available for immigration detention and removal operations of DHS. Requires the Secretary to give priority for the use of these additional beds to the detention of individuals charged with removability or inadmissibility on security and related grounds.

Subtitle C: Visa Requirements - (Sec. 5301) Amends the Immigration and Nationality Act to require aliens age 14 through 79 who are applying for nonimmigrant visas to submit to in-person interviews with consular officers unless such interview is waived in specified circumstances. Mandates in-person interviews for all aliens who: (1) are not nationals of the country in which they are applying for a visa; (2) were previously refused a visa; (3) are listed in the Consular Lookout and Support System; (4) are nationals of countries officially designated as state sponsors of terrorism; (5) are prohibited from obtaining a visa until a security advisory opinion or other Department of State clearance is issued; or (6) are identified as members of a high-risk group identified by the Secretary of State. (Sec. 5304) Precludes judicial review of visa revocations or revocations of other travel documents by consular officers or the Secretary of State. Adds to the list of deportable aliens those non-immigrants whose visas or other documentation authorizing admission were revoked (making such aliens immediately deportable).

Subtitle D: Immigration Reform - (Sec. 5401) Provides enhanced criminal penalties for unlawfully bringing in and harboring aliens in cases where: (1) the offense is part of an ongoing commercial organization or enterprise; (2) aliens were transported in groups of ten or more; (3) aliens were transported in a manner that endangered their lives; or (4) the aliens presented a life-threatening health risk to the people of the United States. Requires the Secretary to implement an outreach program to educate the public in the United States and abroad about the penalties for unlawfully bringing in and harboring aliens. (Sec. 5402) Renders deportable any alien who has received military-type training from or on behalf of a terrorist organization. (Sec. 5403) Requires the Comptroller General to study and report on the extent to which weaknesses in the asylum system and the withholding of removal system have been or could be exploited by aliens with terrorist ties. Gives the Comptroller General access, for purposes of such study, to the applications and administrative and judicial records of alien applicants for asylum and withholding of removal.

Subtitle E: Treatment of Aliens Who Commit Acts of Torture, Extrajudicial Killings, or Other Atrocities Abroad - (Sec. 5501) Renders inadmissible and deportable those aliens who: (1) order, incite, assist, or otherwise participate in conduct outside the United States that would, if committed in the United States or by a U.S. national, be genocide; and (2) commit, order, incite, assist, or participate in acts of torture or extrajudicial killing as defined by U.S. law. Makes these amendments applicable to offenses committed before, on, or after the enactment of this Act. (Sec. 5502) Designates as inadmissible and deportable foreign government officials who have at any time committed particularly severe violations of religious freedom. (Sec. 5503) Provides for a waiver of inadmissibility premised on torture or extrajudicial killing for aliens seeking temporary admission as non-immigrants, in the Attorney General's discretion. Precludes waivers for such aliens who have engaged in Nazi persecution or genocide. (Sec. 5504) prohibits a finding of good moral character (necessary for naturalization) for aliens who: (1) participated in Nazi persecution, genocide, torture,

or extrajudicial killing; or (2) were responsible for particularly severe violations of religious freedom while serving as foreign government officials. (Sec. 5505) Directs the Attorney General to: (1) establish within the Criminal Division of the Department of Justice an Office of Special Investigations to investigate and, where appropriate, take action to denaturalize any alien who participated in Nazi persecution, genocide, torture, or extrajudicial killing; (2) consult the Secretary in making determinations concerning the criminal prosecution or extradition of such aliens. (Sec. 5506) Requires the Attorney General to submit a report on implementation of this subtitle.

Annex IV: Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005

Below is the Library of Congress's summary on the titles and sections of the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005:

Title I - Securing United States Borders

(Sec. 101) - Directs the Secretary of Homeland Security (Secretary) to take all appropriate actions to maintain operational control over the U.S. international land and maritime borders, including: (1) systematic surveillance using unmanned aerial vehicles (UAVs), ground-based sensors, satellites, radar coverage, and cameras; (2) physical infrastructure enhancements to prevent unlawful U.S. entry and facilitate United States Customs and Border Protection border access; (3) hiring and training additional Border Patrol agents; and (4) increasing deployment of United States Customs and Border Protection personnel to border areas with high levels of unlawful entry. Requires the Secretary to annually report to Congress respecting border control progress. (Sec. 102) - Directs the Secretary to report to the appropriate congressional committees respecting: (1) a comprehensive border surveillance plan; and (2) a National Strategy for Border Security to achieve operational control over all U.S. borders and ports of entry. (Sec. 103) - Directs the Secretary to report to the appropriate congressional committees respecting implementation of the cross-border security agreements signed by the United States with Mexico and Canada. (Sec. 104) - Directs the Secretary to: (1) enhance connectivity between the Automated Biometric Identification System (IDENT) and the Automated Fingerprint Identification System (IAFIS) fingerprint databases; and (2) collect all fingerprints from each alien required to provide fingerprints during the alien's initial enrollment in the integrated entry and exit data system. (Sec. 105) - Directs the Secretary to report to Congress respecting the "One Face at the Border" inspection initiative at U.S. ports of entry. (Sec. 106) - Directs the Secretary to implement a plan to ensure clear and secure two-way communication capabilities: (1) among all Border Patrol agents conducting operations between ports of entry; (2) between Border Patrol agents and their respective Border Patrol stations; (3) between Border Patrol agents and residents in remote areas along the international land border who do not have mobile communications; and (4) between all appropriate Department of Homeland Security (DHS) border security agencies and state, local, and tribal law enforcement agencies. (Sec. 107) - Directs the Secretary, subject to appropriations, to increase full-time port of entry inspectors by at least 250 for each of FY2007-FY2010. Authorizes appropriations for related training and support. (Sec. 108) - Directs the Secretary, subject to appropriations, to increase border and port canine detection teams by at least 25% for each of FY2007-FY2011. (Sec. 109) - Directs: (1) the Inspector General of DHS to review the compliance of each Secure Border Initiative

contract above \$20 million with applicable cost requirements, performance objectives, program milestones, inclusion of small, minority, and women-owned businesses, and timelines; and (2) the Secretary to report to the appropriate congressional committees respecting each review. Authorizes additional FY2007-FY2009 appropriations for the Inspector General. (Sec. 110) - Directs the Comptroller General of the United States to review DHS Border Patrol agent training. (Sec. 111) - Directs the Secretary to report to the appropriate congressional committees respecting the National Capital Region (NCR) airspace security mission's impact on border security, including: (1) resources and resource sources devoted or planned to be devoted to NCR airspace security; and (2) an assessment of such resources' impact upon traditional border missions. (Sec. 112) - Directs the Secretary to reimburse (up to prior-to-damage value) property owners for costs associated with repairing damages to the property owners' private infrastructure constructed on a U.S. government right-of-way delineating the international land border when such damages are: (1) the result of unlawful entry of aliens; and (2) confirmed by the appropriate DHS personnel and submitted to the Secretary. Directs the Secretary to report to the Committee on Homeland Security of the House of Representatives every six months until appropriated amounts are expended. Authorizes appropriations. (Sec. 113) - Directs the Secretary to establish at least one Border Patrol unit for the U.S. Virgin Islands by September 30, 2006. (Sec. 114) - Directs the Secretary to report to the Committee on Homeland Security respecting DHS progress in tracking Central American gangs across the U.S.-Mexico border. (Sec. 115) - Directs the Secretary to annually compile data on the following categories of information: (1) the number of unauthorized aliens who require medical care taken into custody by Border Patrol officials; (2) the number of unauthorized aliens with serious injuries or medical conditions Border Patrol officials refer to local hospitals or other health facilities; (3) the number of unauthorized aliens with serious injuries or medical conditions who arrive at U.S. ports of entry and subsequently are admitted into the United States for emergency medical care; and (4) the number of unauthorized aliens described in clauses (2) and (3) who subsequently are taken into DHS custody. (Sec. 116) - Directs the Secretary to: (1) deploy radiation detection portal monitors at all U.S. ports of entry and facilities within one year of enactment of this Act; and (2) report to the Committee on Homeland Security and the Committee on Homeland Security and Governmental Affairs of the Senate. Authorizes FY2006-FY2007 appropriations. (Sec. 117) - Directs the Secretary, in implementing the Secure Border Initiative, to conduct outreach with the private sector and other appropriate entities to improve cost-effectiveness, systems integration, and financial accountability. (Sec. 118) - Expresses the sense of Congress that the President, the Attorney General, the Secretary of State, the Secretary, and other Department Secretaries should use every tool available to them to enforce U.S. immigration laws. (Sec. 119) - Requires that Border Patrol uniforms be manufactured in the United States from substantially all U.S. components. (Sec. 120) - Directs the Secretary to submit to the appropriate congressional committees a timeline for:

(1) equipping all land border ports of entry with the US-VISIT system; (2) deploying at all land border ports of entry the exit component of the US-VISIT system; and (3) making interoperable all DHS immigration screening systems. (Sec. 121) - Extends authority for the relocation expenses test program from seven years to 12 years. (Sec. 122) - Amends the Immigration and Nationality Act (INA) to prohibit the Secretary, the Attorney General, and the courts, until completion of specified background and security checks or until any alleged immigration-related fraud has been investigated, from: (1) granting or ordering the granting of adjustment of status of an alien to that of an alien lawfully admitted for permanent residence; (2) granting or ordering the granting of any other status, relief, protection from removal, or other benefit under the immigration laws; or (3) issuing any related documentation.

Title II - Combating Alien Smuggling and Illegal Entry and Presence

(Sec. 201) - Amends INA to revise the definition of "aggravated felony" to include all smuggling offenses, and illegal entry and reentry crimes where the sentence is a year or more. (Sec. 202) - Revises alien smuggling and related offense provisions to: (1) provide mandatory minimum sentences for smuggling convictions; (2) revise criminal offense and criminal penalty provisions; (3) expand seizure and forfeiture authority; and (4) provide extraterritorial jurisdiction over such offenses. (Sec. 203) - Makes illegal U.S. presence a crime. Increases prison penalties for first-time improper U.S. entry. Expands: (1) penalties for marriage and immigration-related entrepreneurship fraud; and (2) criminal penalties imposed upon aliens who illegally enter the United States or who are present illegally following convictions of certain crimes. (Sec. 204) - Provides mandatory minimum sentences, with a specified affirmative defense exception, for aliens convicted of reentry after removal. (Sec. 205) - Subjects an individual who knowingly aids or conspires to allow, procure, or permit a removed alien to reenter the United States to criminal penalty, the same imprisonment term as applies to the alien so aided, or both. (Sec. 206) - Includes among smuggling crimes the carrying or use of a firearm during such activity. (Sec. 207) - States that: (1) the provision barring entry to aliens who have made false claims to U.S. citizenship also applies to aliens who have made false claims to U.S. nationality; and (2) the Secretary shall have access to any information kept by any federal agency regarding persons seeking immigration benefits or privileges. (Sec. 208) - Revises voluntary departure provisions to: (1) reduce the maximum period of voluntary departure that can be granted before the conclusion of removal proceedings from 120 to 60 days, and reduce such period from 60 to 45 days after the conclusion of removal proceedings; (2) require (currently, authorizes that such bond be provided) an alien receiving voluntary departure prior to conclusion of removal proceedings to post a bond or show that a bond would create a financial hardship or is unnecessary to guarantee departure; (3) require as part of a voluntary departure agreement that the alien waive all rights to any further motion, appeal, application, petition, or petition for review

relating to removal or relief or protection from removal; (4) provide that a subsequent appeal would invalidate the voluntary departure grant, as would the alien's failure to depart; (5) provide that failure to depart in violation of such an agreement would subject the alien to a \$3,000 fine, make the alien ineligible for various immigration benefits for ten years after departure, and prohibit the reopening of removal proceedings, except to apply for withholding of removal or restriction on removal to a country where the alien's life or freedom would be threatened or to seek protection against torture; (6) authorize the Secretary to reduce the period of inadmissibility for certain aliens previously removed or unlawfully present; and (7) preclude courts from reinstating, enjoining, delaying, or tolling the period of voluntary departure. (Sec. 209) - Makes aliens ordered removed from the United States who fail to depart ineligible for discretionary relief from removal pursuant to a motion to reopen during the time they remain in the United States and for a period of ten years after their departure, with the exception of motions to reopen to seek withholding of removal to a country where the alien's life or freedom would be threatened or to seek protection against torture. Subjects aliens who improperly enter the United States after voluntarily departing to improper entry fine and/or imprisonment provisions. (Sec. 210) - Directs the Secretary to establish a Fraudulent Documents Center (Forensic Document Laboratory) to: (1) collect information on fraudulent documents intended for U.S. use from federal, state, and local law enforcement agencies, and foreign governments; (2) maintain a database of such information for ongoing distribution to law enforcement agencies. (Sec. 211) - Amends federal criminal law to include distribution of fraudulent immigrant documents among the offenses subject to document fraud and misuse fine and/or penalty provisions. (Sec. 212) - Amends INA to make a motion to reopen or reconsider a removal decision discretionary with the Attorney General. Sets forth a special rule for alternative country removal. (Sec. 213) - Amends federal criminal law to revise provisions respecting passports, visa, and immigration fraud. Makes it a crime subject to fine and/or imprisonment to knowingly defraud a person in an immigration matter, including falsely claiming to be a lawyer. Provides for: (1) increased penalties for terrorism-related offenses; (2) seizure and forfeiture; and (3) additional jurisdiction and venue. (Sec. 214) - Establishes a rebuttable presumption that an alien should be detained if such person: (1) has no lawful U.S. immigration status; (2) is subject to a final order of removal; or (3) has committed a specified felony under INA or federal criminal law. (Sec. 215) - Establishes a ten-year statute of limitations for immigration, naturalization, and peonage offenses. (Sec. 216) - Amends INA to make certain passport and document fraud conforming amendments. (Sec. 217) - Makes certain passport and immigration violations under federal criminal law grounds for inadmissibility and deportation. (Sec. 219) - Requires the Director of United States Citizenship and Immigration Services (USCIS) to undertake maximum efforts to reduce processing and adjudicative backlogs. Authorizes the Director to implement a backlog reduction and prevention pilot program, which may include initiatives such as increasing and transferring personnel,

streamlining paperwork processes, and increasing information technology and service centers. (Sec. 220) - Affirms state law enforcement authority to assist (including transfer to federal custody) the federal government in enforcing U.S. immigration laws during the normal course of law enforcement duties. States that such provision may not be construed to require state or local law enforcement personnel to: (1) report the identity of a victim of, or a witness to, a criminal offense to the Secretary for immigration enforcement purposes; or (2) arrest such victim or witness for an immigration violation. (Sec. 221) - Directs the Secretary, with respect to state and local law enforcement personnel, to: (1) establish and make available an immigration training manual and pocket guide; and (2) provide immigration training flexibility, including onsite and computer training. (Sec. 222) - Directs the Secretary to make grants for equipment, technology, and facilities to states and local subdivisions that are authorized to, and assist in, immigration enforcement. Authorizes appropriations. Requires a Government Accountability Office (GAO) audit of fund use within three years after enactment of this Act. (Sec. 223) - Continues the institutional removal program (IRP) and authorizes its expansion to all states. Requires states receiving IRP funds to: (1) cooperate with IRP officials; and (2) identify criminal aliens in prison populations and convey the information to such officials. States that: (1) technology such as video conferencing shall be used to make IRP available in remote locations; and (2) mobile access to federal alien databases and live scan technology shall be used to make these resources available to state and local law enforcement agencies in remote locations. Authorizes state or local law enforcement personnel to: (1) hold a removable illegal alien for up to 14 days after state prison sentence completion in order to transfer the alien to federal custody; or (2) issue a detainer that would allow aliens who have served a state prison sentence to be held until U.S. Immigration and Customs Enforcement personnel take the alien into custody. Authorizes FY2007-FY2011 appropriations. (Sec. 224) - Authorizes appropriations for the state criminal assistance program (SCAAP). (Sec. 225) - Bars, two years after enactment of this Act, states or local subdivisions that prohibit local law enforcement officials from assisting or cooperating with federal immigration law enforcement personnel from receiving SCAAP assistance. Reallocates funds to cooperating states.

Title III - Border Security Cooperation and Enforcement

(Sec. 301) - Directs the Secretary and the Secretary of Defense to: (1) develop a joint strategic plan to increase Department of Defense (DOD) surveillance equipment use, including UAVs, at or near U.S. international land and maritime borders; and (2) report to the appropriate congressional committees. States that nothing in this section amends the prohibition on posse comitatus use of the Army or the Air Force. (Sec. 302) - Directs the Secretary to: (1) assess border security vulnerabilities on Department of the Interior land directly adjacent to the U.S. land border; and (2) provide additional border security assistance as necessary. (Sec. 303) - Directs the Secretary to

design and carry out a national border security exercise for the purposes of: (1) involving officials from federal, state, territorial, local, tribal, and international governments and private sector representatives; (2) testing and evaluating U.S. capacity to detect and disrupt border threats; and (3) testing and evaluating information sharing capability among federal, state, territorial, local, tribal, and international governments. (Sec. 304) - Directs the Secretary to establish the Border Security Advisory Committee. (Sec. 305) - Authorizes the Secretary to permit a state, local government, or Indian tribe to use federal funds received under the State Homeland Security Grant Program, the Urban Area Security Initiative, or the Law Enforcement Terrorism Prevention Program for border security activities usually performed by a federal agency but which, pursuant to an agreement, are being performed by state, local, or tribal government. (Sec. 306) - Directs the Secretary to establish a university-based Center for Excellence for Border Security, which shall address the most significant threats, vulnerabilities, and consequences posed by U.S. borders and border control systems. (Sec. 307) - Expresses the sense of Congress that in developing the National Strategy for Border Security DHS should include recommendations from sovereign Indian Nations, consider whether a Tribal Smart Border working group is necessary, and ensure that border security agencies work cooperatively on issues involving tribal lands. (Sec. 308) - Amends the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to direct the Attorney General to prohibit Department of Justice law enforcement assistance to a person, or federal, state, or local agency or entity that prohibits or restricts citizenship- or immigration status-related communication with DHS. (Sec. 309) - Directs the Secretary and the Director of National Intelligence to: (1) jointly establish a pilot program (two-year minimum) along the southwest border centered on Cochise County, Arizona, to improve the coordination and management of intelligence and homeland security information provided to or utilized by DHS relating to the southwest border; and (2) report to Congress within one year of the program's establishment. Authorizes appropriations.

Title IV - Detention and Removal

(Sec. 401) - Requires mandatory detention of an alien apprehended illegally seeking to enter the United States at a U.S. port of entry or land or maritime border as of October 1, 2006, unless such alien is: (1) paroled into the United States for humanitarian or public benefit reasons; or (2) is permitted to withdraw an application for admission and immediately departs from the United States. Provides that during the period 60 days after enactment of this Act and prior to October 1, 2006, an apprehended alien may be released with notice to appear only if: (1) the Secretary determines that the alien is not a national security risk; and (2) the alien provides a bond of not less than \$5,000. Exempts from mandatory detention an alien who is a native or citizen of a Western Hemisphere country with whose government the United States does not have full diplomatic relations (currently,

Cuba). States that nothing in such provision shall be construed as limiting: (1) an alien's right to apply for asylum or for relief or deferral of removal based on a fear of persecution; and (2) the Secretary's authority to determine whether an alien claiming asylum shall be detained or released after a finding of a credible fear of persecution. (Sec. 402) - Directs the Secretary, subject to appropriations, to fully utilize: (1) all detention space owned or contracted by DHS; and (2) all other options to cost effectively increase detention capacity including temporary facilities, state and local detention facilities, and secure detention alternatives. (Sec. 403) - Authorizes the Secretary to enter into contracts with qualifying private companies to transport aliens from United States Customs and Border Protection custody to detention facilities. (Sec. 404) - Amends INA to authorize the Secretary to deny admission to the nationals of a country that refuses or delays acceptance of its nationals ordered removed from the United States. (Sec. 405) - Directs the Secretary to annually report to the Secretary of State and Congress respecting DHS repatriation costs, including details relating to cost per country and recommendations for more cost effective repatriations. (Sec. 406) - Directs the Secretary to review Border Patrol agent and port of entry inspector asylum training. (Sec. 407) - Amends INA to require that the Secretary place an alien (other than from Mexico or Canada) who has not been admitted or paroled into expedited removal if apprehended within 100 miles of the border and within 14 days of unauthorized entry. Includes in the exception from expedited removal an alien who is a native or citizen of a Western Hemisphere country with whose government the United States does not have full diplomatic relations (currently, Cuba) who arrives by aircraft at a port of entry or who is present in the United States and arrived in any manner at or between a port of entry (currently, limited to port of entry arrival by aircraft). (Sec. 408) - Requires a GAO report to Congress respecting immigration-detainee deaths in DHS custody. (Sec. 409) - Directs the Secretary to report to Congress respecting: (1) the number of undocumented aliens from noncontiguous countries who are apprehended at or between ports of entry; (2) the number of such aliens who have been deported since the date of enactment of this Act; and (3) the number of such aliens from countries identified as sponsors of terrorism. Expresses the sense of Congress that the Secretary should develop a strategy for entering into appropriate security screening watch lists the appropriate background information of undocumented aliens from countries sponsoring terrorism. (Sec. 410) - Provides for listing of immigration violators in the National Crime Information Center Database.

Title V - Effective Organization of Border Security Organizations

(Sec. 501) - Directs the Secretary to take specified actions to ensure coordination of DHS border security efforts. (Sec. 502)- Amends the Homeland Security Act of 2002 to establish in DHS an Office of Air and Marine Operations: (1) whose primary mission shall be to prevent the U.S. entry of terrorists, unlawful aliens, instruments of terrorism, narcotics, and other contraband; and (2) whose

secondary mission shall be to assist other agencies with such protective functions. Directs the Office to operate and maintain the Air and Marine Operations Center in Riverside, California, or other designated facility. (Sec. 503) – Directs the Secretary to transfer to United States Immigration and Customs Enforcement all functions of the Customs Patrol Officers unit operating on the Tohono O’odham Indian reservation (the “Shadow Wolves” unit). Authorizes the Secretary to establish within United States Immigration and Customs Enforcement additional Customs Patrol units to operate on Indian lands.

Title VI: Terrorist and Criminal Aliens

(Sec. 601) – Prohibits an alien deportable on grounds of terrorism from being granted withholding of removal. Expands specified terrorism-related grounds for refusal of amnesty. Makes such amendments retroactive to all aliens in removal, deportation, or exclusion proceedings and to all applications pending on or filed after the date of enactment of this Act. (Sec. 602) – Permits indefinite detention of specified dangerous aliens under orders of removal who cannot be removed, subject to review every six months. States that habeas corpus review of such provisions shall be available only in the U.S. District Court for the District of Columbia after exhaustion of administrative remedies. (Sec. 603) – Increases penalties and sets mandatory minimum sentences for an alien who fails to depart when ordered removed, hampers removal, or fails to present himself or herself for removal. (Sec. 604) – Makes ineligible for admission, and bars from seeking waiver of inadmissibility, an alien who has: (1) been convicted of misuse of Social Security numbers and cards, or identification document-related fraud; (2) been convicted of an aggravated felony; (3) procured citizenship unlawfully; or (4) been convicted of a crime of domestic violence, stalking, child abuse, child neglect, or child abandonment, or has violated a protective order. (Sec. 605) – Makes an asylee or refugee convicted of an aggravated felony ineligible for permanent resident status adjustment. Applies such provision retroactively. (Sec. 606) – Makes an alien deportable who is unlawfully present in the United States and who: (1) commits and is convicted of driving while intoxicated, driving under the influence, or similar violation of state law (DWI); or (2) commits an offense by refusing in violation of state law to submit to a Breathalyzer or similar test. Requires detention of a deportable illegal alien apprehended for driving while intoxicated, driving under the influence or similar violation of state law, or for refusing to submit to a Breathalyzer or similar test if the apprehending state or local officer is covered by an immigration agreement (INA sec. 287). Provides procedures for verifying the status of an alien in cases of apprehension for such an intoxication offense, taking the alien into custody, and notifying the Secretary. Requires state motor vehicle administrators to share with the Secretary and other states information about aliens’ DWI convictions or refusals to submit to a Breathalyzer test. (Sec. 607) – Authorizes any local sheriff or a coalition of sheriffs in designated counties (a county any part of which is within 25 miles of the U.S.

southern border) to transfer detained illegal aliens to federal custody. Provides for establishment in the Treasury of the Designated County Law Enforcement Account, whose funds may be used for transport reimbursement, training and equipment, personnel costs, and detention facility construction and operation. (Sec. 608) – Amends INA to make an alien inadmissible for U.S. entry if: (1) such alien has been deported for criminal street gang participation; or (2) the consular officer or the Secretary knows or has reasonable grounds to believe that such alien is a member of a criminal street gang seeking U.S. entry in furtherance of gang-related crimes or activities, or is a member of a designated criminal street gang. Defines: (1) criminal street gang; and (2) gang crime. Makes an alien deportable who: (1) is a street gang member convicted of committing or attempting to commit a gang crime; or (2) is determined by the Secretary to be a member of a designated criminal street gang. Authorizes the Attorney General to designate a group or association as a criminal street gang. Requires the Attorney General to provide specified congressional leaders with prior notice of, and the factual basis for, such designation. Provides for revocation of such designation by: (1) an Act of Congress; (2) the Attorney General's review based upon changed circumstances or national security; or (3) judicial appeal or petition to the Attorney General by a gang or association so designated. Requires mandatory detention of aliens subject to removal based upon criminal street gang membership. Makes such aliens ineligible for asylum and protection from removal to certain countries. (Sec. 609) – Bars an alien: (1) removable on terrorist grounds from becoming naturalized; and (2) from being naturalized while in removal or denaturalization proceedings. Requires that conditional permanent residents have the conditions on their residence removed before they can be naturalized. Revises provisions respecting district court review of denied naturalization applications. (Sec. 610) – Authorizes the Secretary to use expedited removal proceedings with respect to an alien inadmissible on criminal grounds who: (1) has not been admitted or paroled; (2) has not been found to have a credible fear of persecution; and (3) is not eligible for a waiver of inadmissibility or relief from removal. Reduces from 14 days to seven days the prohibition on executing such a removal order with respect to a nonpermanent resident alien seeking judicial review. (Sec. 611) – Makes certain terrorist removal provisions under the REAL ID Act of 2005 applicable to such aliens in removal, deportation, and exclusion cases, regardless of when those cases were initiated. (Currently, such provisions refer only to removal procedures.) (Sec. 612) – Amends the definition of “good moral character” to: (1) exclude any alien inadmissible for terrorism and security-related reasons; (2) provide that the aggravated felony bar to good moral character applies regardless of when the crime was classified as an aggravated felony; and (3) provide the Secretary and the Attorney General with discretionary authority to find an alien not to be of good moral character. (Sec. 613) – Makes sexual abuse of a minor an aggravated felony for immigration purposes whether or not the minority of the victim is established by evidence contained in or extrinsic to the record of conviction. Provides that: (1) any reversal, vacatur,

expungement, or modification to a conviction or conviction record that was granted to ameliorate the consequences of the conviction, or was granted for rehabilitative purposes, or for failure to advise the alien of the immigration consequences of the guilty plea will have no effect on the original conviction's immigration consequences; and (2) the alien would have the burden of demonstrating that the reversal, vacatur, expungement, or modification was not granted for such purposes. Applies such provisions retroactively. (Sec. 614) – Makes an alien removable for: (1) unlawful procurement of (or attempt to procure) citizenship; and (2) conviction of offenses respecting misuse of Social Security numbers and cards and identification document fraud. Applies such provisions retroactively. (Sec. 615) – Declares that Congress condemns rapes by smugglers along the U.S. land border and urges the government of Mexico to work in coordination with U.S. Customs and Border Protection to take immediate preventive action. (Sec. 616) – Directs the Attorney General to annually report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate respecting the status of criminal alien prosecutions, including prosecutions of human smugglers. (Sec. 617) – Requires: (1) the office of the U.S. Attorney that is prosecuting a criminal case in federal court to determine whether each defendant is lawfully present in the United States within 30 days of filing the initial case pleadings, and report such information to the court; (2) courts to make provisions for such reporting; and (3) such information to be included in the Director of the Administrative Office of the United States Courts' annual report to Congress. Authorizes FY2007-FY2012 appropriations. (Sec. 618) – Amends federal criminal law to increase specified criminal penalties for document fraud. Enhances criminal penalties for an illegal alien who: (1) is convicted of a crime of violence or drug trafficking; and (2) was previously ordered removed and commits a crime of violence or a drug trafficking offense. (Sec. 619) – Includes human trafficking and alien smuggling under the federal money laundering statute.

Title VII – Employment Eligibility Verification

(Sec. 701) - Amends INA to direct the Secretary to establish and maintain a telephone- or electronic media-based employment eligibility verification system. Requires such system to: (1) provide verification or tentative non-verification of an individual's identity and employment eligibility within three days of an inquiry; and (2) provide, in the case of tentative non-verification, a secondary process for final verification or non-verification within ten days. Provides that: (1) the Commissioner of Social Security shall develop a process for comparing names and social security numbers against appropriate databases to ensure timely and accurate responses to employer inquiries; and (2) the Secretary shall develop a process for comparing names and alien identification or authorization numbers, and shall investigate multiple uses of the same social security number that suggest fraud. Limits federal use of the verification system, and states that such provision does not

authorize issuance of a national identity card. Limits verification system-related individual relief to procedures under the Federal Tort Claims Act. Prohibits class actions. Immunizes from civil or criminal liability a person or entity who takes action in good faith reliance on verification system information. Repeals provisions respecting evaluation of and changes to the current employment verification system. (Sec. 702) - Sets forth employer verification requirements with respect to an affirmative defense to liability for employment of unauthorized workers, including revision of attestation and retention of verification form provisions. (Sec. 703) - Expands the employment eligibility verification system to include: (1) previously hired individuals; and (2) recruitment and referral. Provides for: (1) voluntary employer verification utilizing such system two years after enactment of this Act for previously hired individuals; (2) mandatory employer verification three years after enactment of this Act by federal, state, and local governments, and the military for employees not verified under such system working at federal, state or local government buildings, military bases, nuclear energy sites, weapons sites, airports, or critical infrastructure sites; and (3) mandatory employer verification six years after enactment of this Act for all employees not previously verified under such system. (Sec. 704) - Amends the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to make employer participation in the basic pilot program mandatory two years after enactment of this Act. (Sec. 705) -Amends INA to apply employment eligibility verification requirements to labor service agencies (whether or not they receive remuneration). (Sec. 706) - Increases civil penalties for: (1) hiring, recruiting, and referral violations for employers who are first-time violators or subject to cease and desist order(s); and (2) paperwork violations.

Provides for: (1) penalty reductions based on the number of full-time equivalent employees (applicable to employers of fewer than 251 employees); (2) penalty exemption for good-faith, first-time violations; and (3) contractor immunity for subcontractor violations (unless the contractor knew of such employment violations). Increases criminal penalties for pattern or practice employment violations. (Sec. 707) -

Directs the Commissioner of Social Security to report to Congress respecting: (1) making social security cards with an encrypted, machine-readable electronic identification strip and a digital photograph; (2) creating a unified DHS database containing Social Security Administration (SSA) and DHS data specifying work authorization of all individuals; and (3) requiring all employers to verify employment eligibility using the new social security cards through a phone, electronic card-reading, or other mechanism. (Sec. 708) - Amends INA to preclude states from requiring business entities to: (1) provide, build, fund, or maintain a shelter, structure, or designated area for use by day laborers at or near their places of business; or (2) take other steps to facilitate the employment of day laborers by others. (Sec. 709) - States that the amendments contained in this title shall take effect on the date of enactment of this Act, except that the requirements of persons and entities to

comply with the employment eligibility verification process shall take effect two years after such date of enactment. (Sec. 710) - Authorizes and limits the Commissioner of Social Security to carry out verification responsibilities under this title. Prohibits funds from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund from being used to carry out such responsibilities. (Sec. 711) - Directs the Secretary to report to Congress respecting the employment eligibility verification system.

Title VIII – Immigration Litigation Abuse Reduction

(Sec. 801) - Amends INA to authorize the Board of Immigration Appeals to make an order of removal final (without remand to an immigration judge). (Sec. 802) - Prohibits judicial review of visa revocations after the visa holder has entered the United States.

(Sec. 803) - Authorizes reinstatement of a prior removal order against an alien illegally reentering the United States. States that such reinstatement shall not require proceedings before an immigration judge. Limits: (1) judicial review of reinstatement to the U.S. Court of Appeals for the District of Columbia Circuit; and (2) the scope of such review. (Sec. 804) - Requires an alien applying for withholding of removal to establish that his or her life or freedom would be threatened in the country of return, and that race, religion, nationality, or political or social group would be at least one central factor in such threat. Applies such provision retroactively to the enactment date of the REAL ID Act of 2005. (Sec. 805) - Subjects removal appeals to an initial certification of reviewability process by a single court of appeals judge, which, upon issuance of such certificate (that the alien has made a substantial showing that the review is likely to be granted) shall be referred to an appeals panel. Prohibits judicial review of a decision not to issue such certificate. (Sec.) 806 - Requires all nonimmigrant applicants to waive any right to: (1) review or appeal a determination of inadmissibility at port of entry; or (2) contest, other than through asylum, any action for removal. (Sec. 807) - Prohibits judicial review of removal orders for certain criminal aliens as well as review of discretionary decisions by the Attorney General and the Secretary. (Sec. 808) - Prohibits courts from awarding fees or other expenses to an alien based upon the alien's status as a prevailing party in any removal proceedings unless the Attorney General's determination that the alien was removable was not substantially justified.

Title IX – Prescreening of Air Passengers

(Sec. 901) - Directs the Secretary to: (1) initiate a pilot program of at least 90 days at no fewer than two foreign airports to evaluate the use of automated systems for the prescreening of passengers and flight crews on U.S.-bound foreign air carriers; and (2) submit a program report to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

Title X – Fencing and Other Border Security Improvements

(Sec. 1002) - Amends the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to direct the Secretary to construct at least two layers of reinforced fencing, additional physical barriers, roads, lighting, cameras and sensors in five specified zones along the U.S.-Mexico border. (Sec. 1003) - Directs the Secretary to conduct a study and report to Congress respecting the necessity and feasibility of constructing a barrier system along the northern U.S. land and maritime border. (Sec. 1004) - Expresses the sense of Congress that the Secretary shall take all necessary steps to secure the Southwest international border for the purpose of saving lives, stopping illegal drug trafficking, and halting the flow of illegal entrants into the United States.

Title XI - Security and Fairness Enhancement

Security and Fairness Enhancement for America Act of 2005 or the SAFE for America Act – (Sec. 1102) - Amends INA to eliminate the diversity immigrant program.

Title XII – Oath of Renunciation and Allegiance

(Sec. 1201) - Directs the Secretary, in cooperation with the Secretary of State, to notify foreign embassies when one of their nationals naturalizes and takes the oath of allegiance to the United States. Codifies the current oath of renunciation and allegiance.

Title XIII - Elimination of Corruption and Prevention of Acquisition of Immigration Benefits Through Fraud

Taking Action to Keep Employees Accountable in Immigration Matters Act of 2005 or the TAKE AIM Act of 2005 – (Sec. 1303) - States that the Director of the Office of Security and Investigations (OSI) shall report directly to the Director of USCIS. (Sec. 1304) - Sets forth the powers of the Director of OSI, including sole authority to receive, process, dispose of administratively, and investigate criminal or noncriminal INA or federal criminal code violations that are alleged to have been committed by any USCIS officer, agent, employee, or contract worker, and that are referred to USCIS by the Inspector General of DHS. (Sec. 1305) - Authorizes OSI to: (1) conduct fraud detection operations, including data mining and analysis; (2) investigate criminal or noncriminal allegations of INA or federal criminal code violations that Immigration and Enforcement (ICE) declines to investigate; (3) turn over to a U.S. Attorney for prosecution evidence that tends to establish such violations; and (4) engage in information sharing, partnerships, and other collaborative efforts with federal, state or local law enforcement entities, foreign partners, or intelligence entities. (Sec. 1306) - Requires the Director of OSI, subject to security fee availability, to: (1) increase in each of FY2007-FY2010 the number of criminal investigators, investigations and

compliance officers; and intelligence research specialists (along with support personnel and equipment); and (2) assign at least one-third of such personnel to internal affairs investigations. (Sec. 1307) - Requires the Director of OSI to annually report to Congress. (Sec. 1308) - Amends INA to prohibit the granting of adjustment of status or any other immigration benefit, status or protection until any suspected or alleged fraud relating to the benefit application has been investigated. (Sec. 1309) - Directs the Secretary to eliminate the Fraud Detection and National Security Office of USCIS and transfer all authority to OSI.

(Sec. 1310) - Directs the Secretary to charge each alien who files an application for adjustment of status, extension of stay, or a visa a new \$10 security fee which OSI shall use to investigate allegations of internal corruption and benefits fraud. Makes any such fees in excess of the OSI operating budget available to ICE for immigration benefit fraud investigations.

Annex V: INA

Here we see a short overview of the principal objectives of the INA. You may find further content on each title, and Act via the USCIS website at: <http://www.uscis.gov/laws/act>. Today this Act contains 5 titles, each of which contains chapters and sections:

Title I: contains Acts (Sections) 101-106 and provides important definitions as well as the powers and duties of the Attorney General of the U.S., the Commissioner of Immigration and Naturalization, including performing as a liaison with internal security officers and agencies. It also provides information about non-immigrants and employment authorization for battered spouses of non-immigrants.

Title II: Immigration has 9 chapters, all of which are also separated into Acts (sections).

Chapter 1: Selection System, Acts (sections) 201-210A;

Chapter 2: Qualifications for Admission of Aliens; Travel Control of Citizens and Aliens, acts (sections) 211-219;

Chapter 3: Issuance of Entry Documents, acts 221-224;

Chapter 4: Inspection, Apprehension, Examination, Exclusion and Removal, acts 231-244;

Chapter 5: Adjustment of Status, sections 245-250;

Chapter 6: Special Provision Relating to Alien Crewmen, acts 251-258;

Chapter 7: Registration of Aliens, acts 261-266;

Chapter 8: General Penalty Provision, sections 271-280;

Chapter 9: Miscellaneous, acts 281-295.

Title III:

Chapter 1: Nationality at Birth and by Collective Naturalization, acts 301-309; Chapter 2: Nationality through Naturalization, acts 310-348;

Chapter 3: Loss of Nationality, acts 349-357;

Chapter 4: Miscellaneous, acts 358-361.

Title IV:

Chapter 1: Miscellaneous, acts 401-407;

Chapter 2: Refugee Assistance, acts 411-414.

Title V: acts 501-507.

Annex VI: The U.S. PATRIOT Act

Beginning with I. Enhancing Domestic Security Against Terrorism, II. Enhanced Surveillance Procedure, III. International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, IV. Protecting the Border, (this section is the most relevant to immigration law and policymaking), V. Removing Obstacles to Investing Terrorism, VI. Providing for Victims of Terrorism, Public Safety Officers, and Their Families, VII. Increased Information Sharing for Critical Infrastructure Protection, VIII. Strengthening the Criminal Laws Against Terrorism, IX. Improved Intelligence, and X. Miscellaneous.

Our focus will be on Title IV. Protecting the Border, as this area contains the majority of the immigration provisions noted within the U.S. PATRIOT Act. This section includes three subtitles:

Subtitle A: Protecting the Northern Border, section 402 permits the tripling of Patrol Personnel, Customs Personnel, and Immigration inspectors along the Northern Border, including \$50 million for each area of Customs and INS in order to update their technology to monitor the immigrants more effectively on the Northern Border. Section 403, gives permission for the INS and State Department personnel to have access to the FBI's NCIC-III and Wanted Persons Files, as well as require them to provide periodic extract updates for the sole purpose of checking criminal records. Section 404 dissolves all preexisting limitations on "overtime pay for INS personnel". Section 405 requires the Attorney General to provide Congress with information regarding the possibility of expanding the FBI's Integrated Automated Fingerprint Identification System (IAFIS) to include visa applicants who are wanted for a criminal charge or investigation in order to be able to deny them entry/exit to the U.S. or a U.S. visa.¹

Subtitle B: Enhancing Immigration Provisions;

"amends the Immigration and Nationality Act to broaden the scope of aliens ineligible for admission or deportable due to terrorist activities to include an alien who: (1) is a representative of a political, social, or similar group whose political endorsement of terrorist acts undermines U.S. antiterrorist efforts; (2) has used a position of prominence to endorse terrorist activity, or to persuade others to support such activity in a way that undermines U.S. antiterrorist efforts (or the child or spouse of such an alien under specified circumstances); or (3) has been associated with a terrorist organization and intends to engage in threatening activities while in the United States," (Library of Congress, 2001).

¹ Jenks, R. (2001).

Sections 411 - 418 include various provisions and procedures regarding the detainment and deportation of immigrants that are found guilty of one of the three previously mentioned activities. It also gives authority and permission, section 413, to the Secretary of State, on a reciprocal basis, to share criminal and terrorist related visa lookout information with foreign governments.

Subtitle C: Preservation of Immigration Benefits for Victims of Terrorism, sections 421 – 427;

*“authorizes the Attorney General to provide permanent resident status through the special immigrant program to an alien (and spouse, child, or grandparent under specified circumstances) who was the beneficiary of a petition filed on or before September 11, 2001, to grant the alien permanent residence as an employer-sponsored immigrant or of an application for labor certification if the petition or application was rendered null because of the disability of the beneficiary or loss of employment due to physical damage to, or destruction of, the business of the petitioner or applicant as a direct result of the terrorist attacks on September 11, 2001 (September attacks), or because of the death of the petitioner or applicant as a direct result of such attacks,”*².

Section 422 *“states that an alien who was legally in a nonimmigrant status and was disabled as a direct result of the September attacks may remain in the United States until his or her normal status termination date or September, 11, 2002. Includes in such extension the spouse or child of such an alien or of an alien who was killed in such attacks. Authorizes employment during such period. Extends specified immigration-related deadlines and other filing requirements for an alien (and spouse and child) who was directly prevented from meeting such requirements as a result of the September attacks respecting: (1) nonimmigrant status and status revision; (2) diversity immigrants; (3) immigrant visas; (4) parolees; and (5) voluntary departure,”* (Library of Congress, 2001).

Section 423 waives, under specified circumstances, the requirement that an alien spouse (and child) of a U.S. citizen must have been married for at least two years prior to such citizen's death in order to maintain immediate relative status if such citizen died as a direct result of the September attacks. Provides for: (1) continued family-sponsored immigrant eligibility for the spouse, child, or unmarried son or daughter of a permanent resident who died as a direct result of such attacks; and (2) continued eligibility for adjustment of status for the spouse and child of an employment-based immigrant who died similarly. Section 424, amends the Immigration and Nationality Act to extend the visa categorization of "child"

² Library of Congress Thomas. (2001, Oct).

for aliens with petitions filed on or before September 11, 2001, for aliens whose 21st birthday is in September 2001 (90 days), or after September 2001 (45 days). Section 425 authorizes the Attorney General to provide temporary administrative relief to an alien who, as of September 10, 2001, was lawfully in the United States and was the spouse, parent, or child of an individual who died or was disabled as a direct result of the September attacks. Section 426, directs the Attorney General to establish evidentiary guidelines for death, disability, and loss of employment or destruction of business in connection with the provisions of this subtitle. Section 427, prohibits benefits to terrorists or their family members (Library of Congress, 2001).

Annex VII: Visa Categories

The following is a list of Visa Category Types, as well as requirements for each one, provided by the U.S. Department of State.

Purpose of Travel to U.S. and Nonimmigrant Visas	Visa Type	Required: Before Applying for Visa*
Athletes, amateur & professional (compete for prize money only)	B-1	(NA)
Au pairs (exchange visitor)	---J---	SEVIS
Australian professional specialty	E-3	DOL
Border Crossing Card: Mexico	BCC	(NA)
Business visitors	B-1	(NA)
Crewmembers	---D---	(NA)
Diplomats and foreign government officials	---A---	(NA)
Domestic employees or nanny -must be accompanying a foreign national employer	B-1	(NA)
Employees of a designated international organization, and NATO	G1-G5, NATO	(NA)
Exchange visitors	---J---	SEVIS
Foreign military personnel stationed in the U.S.	A-2 NATO1-6	(NA)
Foreign nationals with extraordinary ability in Sciences, Arts, Education, Business or Athletics	---O---	USCIS
Free Trade Agreement (FTA) Professionals: Chile, Singapore	H-1B1 - Chile H-1B1 - Singapore	DOL
International cultural exchange visitors	Q	USCIS
Intra-company transferees	---L---	USCIS
Medical treatment, visitors for	B-2	(NA)

Media, journalists	---I---	(NA)
NAFTA professional workers: Mexico, Canada	TN/TD	(NA)
Performing athletes, artists, entertainers	---P---	USCIS
Physician	J , H-1B	SEVIS
Professor, scholar, teacher (exchange visitor)	---J---	SEVIS
Religious workers	---R---	USCIS
Specialty occupations in fields requiring highly specialized knowledge	H-1B	DOL then USCIS
Students: academic, vocational	F, M	SEVIS
Temporary agricultural workers	H-2A	DOL then USCIS
Temporary workers performing other services or labor of a temporary or seasonal nature.	H-2B	DOL then USCIS
Tourism, vacation, pleasure visitors	B-2	(NA)
Training in a program not primarily for employment	H-3	USCIS
Treaty traders/treaty investors	---E---	(NA)
Transiting the United States	---C---	(NA)
Victims of Criminal Activity	U	USCIS
Victims of Human Trafficking	---T---	USCIS
Visa Renewals - Available in the U.S.		(NA)

Acronyms:

DOL = The U.S. employer must obtain foreign labor certification from the U.S. Department of Labor, prior to filing a petition with USCIS.

USCIS = DHS, U.S. Citizenship and Immigration Services (USCIS) approval of a petition or application (The required petition or application depends on the visa category you plan to apply for.)

SEVIS = Program approval entered in the Student and Exchange Visitor Information System (SEVIS)

(NA) = Not Applicable - Means that additional approval by other government agencies is not

required prior to applying for a visa at the U.S. Embassy abroad.

Notes:

- Canadian NAFTA Professional workers- Visa not required, apply to CBP at border port-of-entry.
- K visas are for the purpose of marrying a U.S. citizen and immigrating or joining a U.S. citizen spouse in the United States while awaiting USCIS approval of Form I-130 for immigrant status. Visit the immigrant visa section of this website for K-1 and K-3 visa information.

Annex VIII: U.S. Visa Fees

The following are the fees in USD that are requirement for both immigrant and nonimmigrant visas. All fees are nonrefundable. Information provided by the U.S. Department of State.

Nonimmigrant visa: Non-petition-based nonimmigrant visa (except E): \$160.00

Includes the following visa categories:

B	Visitor Visa: Business, Tourism, Medical treatment
C-1	Transiting the U.S.
D	Crewmembers - Airline, Ship
F	Student, Academic
I	Media and Journalists
J	Exchange Visitors
M	Students, Vocational
TN/TD	NAFTA Professionals
T	Victim of Trafficking in Persons
U	Victim of Criminal Activity

Nonimmigrant Visa: Petition based visa categories: \$190.00

Includes the following visa categories:

H	Temporary Workers/Employment or Trainees
L	Intracompany Transferees
O	Persons with Extraordinary Ability
P	Athletes. Artists & Entertainers
Q	International Cultural Exchange
R	Religious Worker

Other nonimmigrant visas:

E - Treaty Trader/Investor, Australian Professional Specialty category visa: \$270.00

K – Fiancé(e) or Spouse of U.S. citizen category visa: \$240.00

Border crossing card fees

-Border crossing card - age 15 and over (Valid 10 years): \$160.00

-Border crossing card - under age 15; for Mexican citizens if parent or guardian has or is applying for a border crossing card (valid 10 years or until the applicant reaches age 15, whichever is

sooner): \$15.00

Other Fees

- L visa fraud prevention and detection fee - for visa applicant included in L blanket petition (principal applicant only): \$500.00
- Border Security Act fee – for visa applicant included in L blanket petition, where petition indicates subject to fee (principal applicant only): \$2,250.00

A nonimmigrant visa application-processing fee is not required for the following:

- Applicants for A, G, C-2, C-3, NATO, and diplomatic visas (defined in 22 CFR 41.26):
- Applicants for J visas participating in official U.S. Government-sponsored educational and cultural exchanges
- Replacement of machine-readable visa when the original visa was not properly affixed or needs to be reissued through no fault of the applicant
- Applicants exempted by international agreement as determined by Visa Services, including members and staff of an observer mission to United Nations Headquarters recognized by the UN General Assembly, and their immediate families
- Applicants travelling to provide charitable services as determined by Visa Services
- U.S. Government employees travelling on official business
- A parent, sibling, spouse or child of a U.S. Government employee killed in the line of duty who is traveling to attend the employee's funeral and/or burial; or a parent, sibling, spouse, son or daughter of a U.S. Government employee critically injured in the line of duty for visitation during emergency treatment and convalescence

Nonimmigrant visa issuance fee is not required for the following:

- An official representative of a foreign government or an international or regional organization of which the U.S. is a member; members and staff of an observer mission to United Nations Headquarters recognized by the UN General Assembly; and applicants for diplomatic visas as defined under item 22(a); and their immediate families
- An applicant transiting to and from the United Nations Headquarters
- An applicant participating in a U.S. Government sponsored program which may include applicant's dependent spouse and children
- An applicant travelling to provide charitable services as determined by Visa Services
- Other - When a Visa is Not Required - Visa Waiver Program

Filing an Immigrant Visa Petition (Fees subject to change.)

Immigrant petition for relative (I-130)	\$420
Orphan (intercountry adoption) immediate relative petition (I-600, I-800)	\$720

Immigrant Visa Application Processing Fees

Immediate relative and family preference applications (processed on the basis of an approved I-130, I-600 or I-800 petition)	\$230
Employment-based applications (processed on the basis of an approved I-140 or I-526 petition)	\$405
Other immigrant visa applications (including approved I-360 self-petitioners, special immigrant visa applicants, and all others, except DV program selectees)	\$220
Certain Iraqi and Afghan special immigrant visa applications	NO FEE

Other Fees

Diversity Visa Lottery fee (per person applying as a DV program selectee for a DV category immigrant visa)	\$330
Affidavit of Support Review (only when reviewed domestically)	\$88

Special Visa Services

Description of Service and Fee Amount (All fees = \$ in US currency)

Application for Determining Returning Resident Status, Form DS-117	\$275
Transportation letter for Legal Permanent Residents of the United States	NO FEE
Application for Waiver of two-year residency requirement, J Waiver, Form DS-3035	\$215
Application for Waiver of visa ineligibility, Form I-601 (Collected for USCIS and subject to change)	\$585
Refugee or significant public benefit parole case processing	NO FEE

Note: These fee charts are based on the Code of Federal Regulations - Title 22, Part 22, Sections 22.1 through 22.7.)

Annex VIII: The Secure Fence Act of 2006

109th Congress Public Law 367: From the U.S. Government Printing Office
Public Law 109-367

To establish operational control over the international land and maritime borders of the United States. <<NOTE: Oct. 26, 2006 - [H.R. 6061]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress <<NOTE: Secure Fence Act of 2006.>> assembled, SECTION 1. <<NOTE: 8 USC 1101 note.>> SHORT TITLE.

This Act may be cited as the ``Secure Fence Act of 2006''. SEC. 2. <<NOTE: 8 USC 1701 note.>> ACHIEVING OPERATIONAL CONTROL ON THE BORDER.

(a) <<NOTE: Deadline.>> In General.--Not later than 18 months after the date of the enactment of this Act, the Secretary of Homeland Security shall take all actions the Secretary determines necessary and appropriate to achieve and maintain operational control over the entire international land and maritime borders of the United States, to include the following—

- (1) systematic surveillance of the international land and maritime borders of the United States through more effective use of personnel and technology, such as unmanned aerial vehicles, ground-based sensors, satellites, radar coverage, and cameras; and
- (2) physical infrastructure enhancements to prevent unlawful entry by aliens into the United States and facilitate access to the international land and maritime borders by United States Customs and Border Protection, such as additional checkpoints, all weather access roads, and vehicle barriers.

(b) Operational Control Defined.--In this section, the term ``operational control" means the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.

(c) Report.--Not later than one year after the date of the enactment

of this Act and annually thereafter, the Secretary shall submit to Congress a report on the progress made toward achieving and maintaining operational control over the entire international land and maritime borders of the United States in accordance with this section.

SEC. 3. CONSTRUCTION OF FENCING AND SECURITY IMPROVEMENTS IN BORDER AREA FROM PACIFIC OCEAN TO GULF OF MEXICO.

Section 102(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208; 8 U.S.C. 1103 note) is amended--

(1) in the subsection heading by striking ``Near San Diego, California"; and

(2) by amending paragraph (1) to read as follows:

--(1) Security features.--

--(A) Reinforced fencing.--In carrying out subsection (a), the Secretary of Homeland Security shall provide for least 2 layers of reinforced fencing, the installation of additional physical barriers, roads, lighting, cameras, and sensors--

(i) extending from 10 miles west of the Tecate, California, port of entry to 10 miles east of the Tecate, California, port of entry;

(ii) extending from 10 miles west of the Calexico, California, port of entry to 5 miles east of the Douglas, Arizona, port of entry;

(iii) extending from 5 miles west of the Columbus, New Mexico, port of entry to 10 miles east of El Paso, Texas;

(iv) extending from 5 miles northwest of the Del Rio, Texas, port of entry to 5 miles southeast of the Eagle Pass, Texas, port of entry; and

(v) extending 15 miles northwest of the Laredo, Texas, port of entry to the Brownsville, Texas, port of entry.

--(B) Priority areas.--

With respect to the border described--

(i) in subparagraph (A)(ii), the Secretary shall ensure that an interlocking surveillance camera system is installed along such area by May 30, 2007, and that fence construction is completed by May 30, 2008; and

(ii) in subparagraph (A)(v), the Secretary shall ensure that fence construction from 15 miles northwest of the Laredo, Texas, port of entry to 15 southeast of the Laredo, Texas, port of entry is completed by December 31, 2008.

--(C) Exception.--If the topography of a specific area has an elevation grade that exceeds 10

percent, the Secretary may use other means to secure such area, including the use of surveillance and barrier tools."

SEC. 4. NORTHERN BORDER STUDY.

(a) In General.--The Secretary of Homeland Security shall conduct a study on the feasibility of a state-of-the-art infrastructure security system along the northern international land and maritime border of the United States and shall include in the study--

- (1) the necessity of implementing such a system;
- (2) the feasibility of implementing such a system; and
- (3) the economic impact implementing such a system will have along the northern border.

(b) Report.--Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report that contains the results of the study conducted under subsection (a).

SEC. 5. EVALUATION AND REPORT RELATING TO CUSTOMS AUTHORITY TO STOP CERTAIN FLEEING VEHICLES.

(a) Evaluation.--Not later than 30 days after the date of the enactment of this Act, the Secretary of Homeland Security shall--

- (1) evaluate the authority of personnel of United States Customs and Border Protection to stop vehicles that enter the United States illegally and refuse to stop when ordered to do so by such personnel, compare such Customs authority with the authority of the Coast Guard to stop vessels under section 637 of title 14, United States Code, and make an assessment as to whether such Customs authority should be expanded;
- (2) review the equipment and technology available to United States Customs and Border Protection personnel to stop vehicles described in paragraph (1) and make an assessment as to whether

or not better equipment or technology is available or should be developed; and

(3) evaluate the training provided to United States Customs and Border Protection personnel to stop vehicles described in paragraph (1).

(b) Report.--Not later than 60 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report that contains the results of the evaluation conducted under subsection (a).

Approved October 26, 2006.

LEGISLATIVE HISTORY--H.R. 6061:

CONGRESSIONAL RECORD, Vol. 152 (2006):

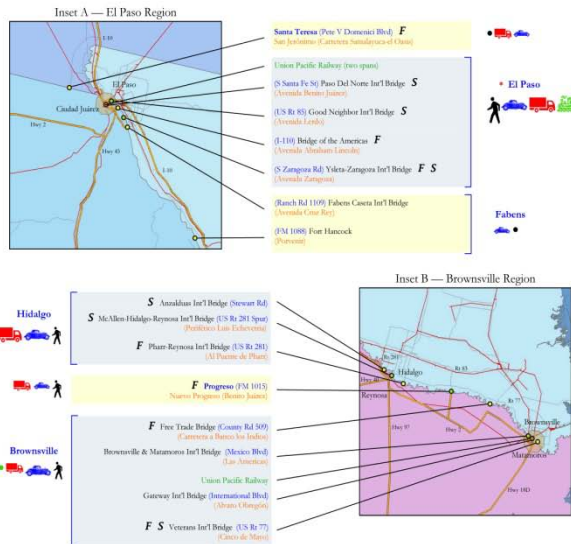
Sept. 14, considered and passed House.

Sept. 21, 25, 26, 28, 29, considered and passed Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 42 (2006):

Oct. 26, Presidential remarks.

Annex X: Land Ports at the US-Mexico Border



* Austin Rose is a graduate student in the geography program at WWU's Huxley College of the Environment. David Davidson is Associate Director of the BPRI.

Resources Describing Land Ports-of-Entry

USCBP website providing information about each POE:
<http://www.cbp.gov/sp/cgo/toolbox/contacts/ports/>

U.S. Bureau of Transportation Statistics — Transborder Surface Freight Database, containing time series trade data at the POE level (with reference to USCBP's 26 master POE names):
<http://www.bts.gov/transborder/>

U.S. Bureau of Transportation Statistics — Time series record of cross-border traffic volume at the POE level, based on USCBP data (with reference to USCBP's 26 master POE names):
<http://www.transtats.bts.gov/BorderCrossing.aspx>

BORDER POLICY BRIEF | Fall 2010

Atlas of the Land Entry Ports on the U.S. – Mexico Border

Volume 5, No. 4 Fall 2010 by Austin Rose & David Davidson* Web Address: www.wvu.edu/bpri

Connectivity of Abutting Jurisdictions: # of Crossings & Share of Overall Car Traffic

American jurisdiction	# of auto crossings	% of cross-border car traffic	Mexican jurisdiction
CA	7	37.8	BCN
AZ	7	10.5	SON
NM	3	1.1	CHH
	7	16.7	
TX	4	6.2	COAH
	1	*	NL
	15	27.7	TAMP
	44	100.0	

* Stand alone data unavailable for the TX/NL crossing — data handled with neighboring POE.

This atlas shows the names and locations of all legal land crossing points along the U.S. – Mexico border. Each depicted point is one at which a vehicle can travel by road (or railroad) from U.S. to Mexican soil. There are 52 in all, of which 8 are rail lines, 43 are roadways (24 bridges, 2 dams, and 17 roads), and 1 is a ferry. For record-keeping purposes, USCBP groups the 52 crossings into 26 ports-of-entry (POEs), with data from a set of neighboring crossings aggregated under the name of a "master" POE.

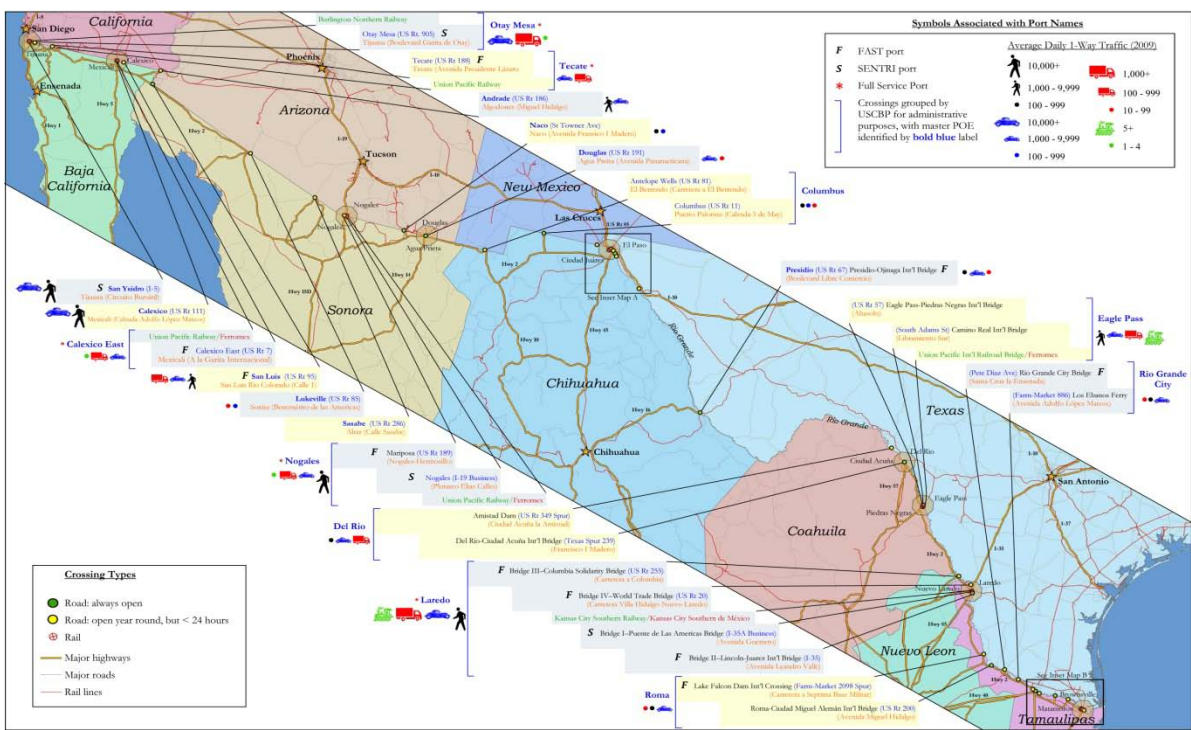
Aside from showing the locations and names of crossings, the atlas presents information about traffic activity. Symbols adjacent to each POE's label indicate what volume of daily one-way traffic (pedestrians, cars, trucks, and trains separately) passes through the POE, based upon USCBP data for the year 2009.

This atlas is a companion to the Canadian border atlas we published in early 2010 (*Border Policy Brief* Vol. 5, No. 1, retrievable at www.wvu.edu/bpri), and the tables on this page correspond to ones in the Canadian atlas. A methodological difference hinders direct comparability of the bottom table, but one fact is nevertheless evident: lightly-used crossings are relatively rare along the Mexican border (e.g., while there are 50 crossings on the Canadian border that handle fewer than 100 cars per day, just 1 such POE exists on the Mexican border). In general, automobile traffic volumes at the Mexican border are over twice as great as those at the Canadian, and pedestrian traffic at the Canadian border is insignificant in relation to that found at the Mexican border.

1. For the Canadian atlas, traffic data was available for individual crossings, whereas this atlas uses data aggregated at the level of USCBP's 26 master POEs.

Distribution of Traffic Volume across POEs

POE categories (range of daily traffic flows)	Trucks				Cars				Pedestrians			
	1,000 +	100 - 999	10 - 99	0 - 9	10,000 +	1,000 - 9,999	100 - 999	0 - 99	10,000 +	1,000 - 9,999	100 - 999	0 - 99
# of POEs in category	4	9	5	8	7	14	3	1	5	9	9	3
Avg. per POE per day	2,144	330	41	1	19,559	3,792	846	77	14,169	4,395	299	32
Share of total traffic handled by category	73%	25%	2%	0%	71%	28%	1%	0%	63%	35%	2%	0%



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