

Defeating an Invisible Enemy: The Western Superpowers' Efforts to Combat Terrorism by Fighting Illegal Immigration¹

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¹ For the purposes of this article, "terrorism" refers only to those acts perpetrated against a country from inside its borders by those who are not citizens of that country. See USA Patriot Act of 2001, H.R. 3162, 107th Cong. 802 (1st Sess. 2001).

I. INTRODUCTION

On October 14, 2002, William Franklin was loading a shelf into the trunk of his car when a shattering sound rang out, which he initially took to be the sound of falling lumber smacking against the ground.² Blood splattered onto his face.³ William's wife, Linda Franklin, lay on the ground as her life spilled from her body through an exit wound forged by a bullet shot from Lee Malvo's rifle.⁴

A year earlier, border patrol in Bellingham, Washington, detained Malvo after local police, responding to an argument between individuals later identified as Malvo's mother and John Allen Muhammad, determined that he was an undocumented alien.⁵ Malvo had illegally entered the United States by using false documents to fly from San Juan, Puerto Rico, to Miami, Florida.⁶ Because of his illegal status, local police detained him and called border patrol.⁷ Nevertheless, after filling out a report on the incident,⁸ Immigration and Naturalization Service (INS) released Malvo and his mother from custody.⁹ This is just one of numerous examples of a breakdown in immigration control ultimately resulting in a cataclysmic act of terrorism.

While innumerable methods have been adopted to enforce immigration laws, each method fits into one of two categories. The first is external enforcement, wherein efforts are made to stop those seeking entry without inspection (EWI).¹⁰ In essence, this involves a tightening of border patrol systems, creating barriers to keep out those attempting to illegally circumvent legislatively controlled entry procedures. The second method is to internally patrol those who have already entered. This includes EWIs, as well as those who enter legally with temporary

² *Sniper Victim's Husband Describes Shooting*, CNN.COM, Jan. 15, 2003, at <http://www.cnn.com/2003/LAW/01/14/sproject.dcsniper.malvo.hearing/> (last visited Sept. 13, 2004).

³ *Malvo Hearing Follows Evidence Trail*, CBS NEWS, Jan. 15, 2003, at <http://www.cbsnews.com/stories/2003/01/15/national/main536684.shtml> (last visited Sept. 13, 2004).

⁴ *Id.*; See also *State of Maryland v. John Lee Malvo*, Case No. 000D00126259 (Oct. 25, 2002) (describing the individual charges and arrest warrant), available at <http://news.findlaw.com/cnn/docs/sniper/mdmalvo102502chrgs.pdf> (last visited Sept. 13, 2004).

⁵ U.S. DEPT OF JUSTICE, IMMIGRATION AND NATURALIZATION SERV., REPORT OF DEPORTABLE/INADMISSIBLE ALIENS, LEE MALVO, Dec. 19, 2001, available at <http://www.thesmokinggun.com/archive/jamuhammadI1.html> (last visited Sept. 13, 2004).

⁶ Stephen Braun & Mark Fineman, *Sniper Suspects Slipped Past Authorities Time and Again: Investigators Often Did Their Best, But the Duo's 18-Month Trek Reveals Law Enforcement Flaws*, L.A. TIMES, Nov. 30, 2002, available at <http://www.davesweb.cnchost.com/snipers.html> (last visited Sept. 13, 2004).

⁷ Michelle Malkin, *Who Let Lee Malvo Loose? What the INS Did Wrong*, NAT'L REV. ONLINE, Oct. 25, 2002, at <http://www.nationalreview.com/script/printpage.asp?ref/comment/commentmalkin102502.asp> (last visited Sept. 13, 2004).

⁸ U.S. DEPT OF JUSTICE, *supra* note 5.

⁹ Malkin, *supra* note 7.

¹⁰ David Simcox, *Ending Illegal Immigration, Make it Unprofitable*, (Mar. 1999), at http://www.npg.org/forum_series/ending_illegal_imm.htm (last visited Sept. 13, 2004).

visas. While many of the recent policies have been aimed at bolstering external controls,¹¹ the effort to reduce illegal immigration would be more effective if internal enforcement mechanisms became the primary focus. INS border patrol agents estimate that for every person caught at the border, three to five go undetected.¹² The current state of heightened terror alert makes such a result extremely risky.

Part II demonstrates that there is an inherent connection between terrorism and illegal immigration.¹³ Illegal immigration comes in two forms. As stated above, EWI refers to those who illegally enter a country by circumventing authorized border checkpoints.¹⁴ Under the second form, non-citizens enter legally with temporary visas, but subsequently violate the provisional terms, thus becoming illegal aliens.¹⁵ While the methods for impeding EWIs are fairly obvious, internal control systems are more complicated, and have been the subject of greater controversy due to what some consider an invasion of civil liberties.¹⁶ For example, the American Civil Liberties Union (ACLU) subjected recent immigration reforms aimed at deterring terrorism to such criticism, saying that they are “troublesome for civil liberties.”¹⁷ This stance ignores the danger of an enemy that is untiring in its effort to impose its ideals by force. Civil liberties are precious and must be preserved. Nevertheless, to meet this new threat of terrorism head on, flexibility is crucial. Under limited circumstances, certain civil liberties must temporarily give way to national security.

Since the identification of Muhammad and Malvo as the deadly beltway sniper duo, the general public has expressed concern about the U.S. immigration enforcement system, because it allowed Malvo to be in a position to commit acts of terrorism, in spite of the fact that INS had previously found his immigration

¹¹ Suzanne Gamboa, *Seven Million Illegal Immigrants Living in U.S., According to INS: Count Taken Before 2001 Attacks, But Calls for Tighter Borders Expected*, BOULDER DAILY CAMERA, Feb. 1, 2003, at A1 (reporting that since the September 11 attacks, heightened concern has led to talks of tighter border enforcement).

¹² Glynn Custred, *Ask Ranchers Along America's Border With Mexico What's Been Going on, and They'll Say, "Invasion!"*, AM. SPECTATOR, Oct. 2000, available at http://www.vdare.com/misc/custred_alien_crossings.htm (last visited Sept. 13, 2004).

¹³ “Illegal immigration” includes those who illegally enter a country, as well as those who enter legally, but subsequently violate the conditions of their temporary visas. See Immigration and Nationality Act of 1996, Pub. L. No. 104-32, 110 Stat. 1214 (Apr. 24, 1996).

¹⁴ Simcox, *supra* note 10.

¹⁵ *Id.*

¹⁶ GREGORY T. NOJEIM, AMERICAN CIVIL LIBERTIES UNION, THREATS TO CIVIL LIBERTIES POST-SEPTEMBER 11: SECRECY, EROSION OF PRIVACY, DANGER OF UNCHECKED GOVERNMENT (Dec. 14, 2001), at <http://www.aclu.org/NationalSecurity/NationalSecurity.cfm?ID'9857&c'24> (last visited Sept. 13, 2004).

¹⁷ AMERICAN CIVIL LIBERTIES UNION, ACLU COUNSEL TESTIFIES ON IMMIGRATION CONCERNS IN ANTI-TERRORISM LEGISLATION (Oct. 12, 2001) (comments by Timothy H. Edgar, Legislative Counsel with the American Civil Liberties Union's Washington National Office), at <http://www.aclu.org/news/NewsPrint.cfm?ID'9791&c'22> (last visited Sept. 13, 2004).

status to be illegal.¹⁸ If the INS had properly enforced immigration law by investigating and deporting Malvo, ten people would not have been executed at the hands of a terrorist.¹⁹ In response to public outrage over recent terrorist activity on U.S. soil, Congress enacted the Homeland Security Act of 2002 (Security Act), which subsumed the INS and created more potent enforcement agencies, including the Department of Homeland Security (DHS).²⁰

Part III presents the relevant history of immigration control in the United States as a model of the evolutionary nature of such controls. There are numerous factors legislators take into consideration when developing immigration law. Only recently has terrorism become one of the most prominent of such considerations. Elected officials tend to be responsive to voting majorities.²¹ A recent poll indicated that seventy percent of U.S. citizens feel that reducing illegal immigration is "very important."²² Apparently, this sentiment has not gone unnoticed by Congress, which is currently considering more than twenty bills dealing with homeland security and illegal immigration.²³

Part IV analyzes several current U.S. and European Union (EU) strategies providing for stricter policies against illegal immigration. European leaders have also felt the growing tension surrounding the uncertainty of maintaining national security.²⁴ President George W. Bush and several prominent European leaders have pointed out that the attack on September 11, 2001, was not just an attack on the United States, but also an attack on the ideologies of freedom and democracy.²⁵

Part V concludes that, while all of the methods used to reside in the United States illegally require remedial attention, the method that is most easily

¹⁸ John McCaslin, *Failing Again*, TOWNHALL.COM, Oct. 30, 2002, at <http://www.townhall.com/columnists/johnmccaslin/jm20021030.shtml> (last visited Sept. 13, 2004).

¹⁹ Jayson Blair, *Hearing Starts for Teenager in Virginia Sniper Case*, N.Y. TIMES, Jan. 15, 2003, at A13.

²⁰ Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (Nov. 25, 2002) [hereinafter Homeland Security Act].

²¹ Anthony Ciccone, *The Right to Vote is not a Duty*, 23 HAMLINE J. PUB. L. & POL'Y 325, 348 (2002) (noting that nonparticipation in elections can hurt legislative efficiency because legislators respond to voting majorities).

²² Immigration Opinion Poll, WORLDVIEWS.ORG, at <http://www.worldviews.org/detailreports/usreport/html/ch5s5.html> (last visited Sept. 13, 2004).

²³ FEDERATION FOR AMERICAN IMMIGRATION REFORM, POLICY AND LEGISLATION (2004), at <http://capwiz.com/fair/issues/bills/> (last visited Sept. 13, 2004).

²⁴ Org. for Sec. and Cooperation in Europe, *Decision on Combating Terrorism and the Bucharest Plan of Action for Combating Terrorism*, 9th Meeting of the Ministerial Counsel, Bucharest Ministerial Declaration II, (Dec. 3-4, 2001), available at <http://www.osce.org/docs/english/1990-1999/mcs/9buch01e.htm> (last visited Sept. 13, 2004).

²⁵ U.S. DEP'T OF JUSTICE, News Conference with German Interior Minister Otto Schily, Berlin, Germany, Att'y. Gen. Transcript. (Dec. 14, 2001), available at <http://www.usdoj.gov/ag/speeches/2001/1214newsconferencewithschilyberlin.htm> (last visited Sept. 13, 2004).

exploitable at this point is the violation of a temporary visa. This is evidenced by the sheer number of terrorists who have successfully used this method to carry out their acts of destruction. The expansiveness of the United States, coupled with the Privileges and Immunities Clause of the U.S. Constitution,²⁶ provide innumerable places for those who would commit terrorist acts to hide themselves from the searching eye of the DHS.²⁷ Immigration reform aimed at internal controls is the most crucial element in the effort to weed out those who pose a credible threat to national security.²⁸

II. CONNECTION BETWEEN TERRORISM AND ILLEGAL IMMIGRATION

Immediately following the attack on the World Trade Center in 2001, federal law enforcement agencies reacted by rounding up illegal aliens that were suspected of having ties to terrorism.²⁹ One of the very first steps taken by the Federal Bureau of Investigation (FBI) in evaluating the detainees was to determine their immigration status.³⁰ If the detainee was living in the United States illegally, he or she was arrested and held for further review by the FBI.³¹ If the FBI deemed the detainee to be of “no interest,”³² in reference to possible connections with terrorism, the detainee was released into the custody of the INS to assess the merits of deportation.³³ The fact that federal investigators instantly turned to illegal immigrants as the most effective way to identify possible links to terrorism is significant.

Clearly, most illegal immigrants have no connections with terrorism. However, evidence supports the proposition that there is a strong tie between the terrorist acts committed in the United States and the legal status of the perpetrators.³⁴ This tie necessitates a careful analysis of current immigration

²⁶ U.S. CONST. art. IV, cl. 2 (stating that citizens of any state who travel to another state are entitled to the same rights as citizens of that other state, which, by implication, provides free movement among the forty-eight continental states).

²⁷ Homeland Security Act, *supra* note 20.

²⁸ See generally U.S. DEPT OF JUSTICE, FISCAL YEAR 2000 PERFORMANCE REPORT AND FISCAL YEAR 2002 PERFORMANCE PLAN, STRATEGIC GOAL 4: FAIRLY AND EFFECTIVELY ADMINISTER THE IMMIGRATION AND NATURALIZATION LAWS OF THE UNITED STATES (2002) (discussing the various methods of internal enforcement of immigration laws); Mark Krikorian, *Immigration Inaction: Six Months Later, and Little Has Been Done*, NAT'L REV. ONLINE (Mar. 11, 2002), at <http://www.nationalreview.com/comment/comment-krikorian031102.shtml> (last visited Sept. 14, 2004).

²⁹ U.S. DEPT OF JUSTICE INTERNAL REPORT, OFFICE OF THE INSPECTOR GENERAL, THE SEPTEMBER 11 DETAINEES: A REVIEW OF THE TREATMENT OF ALIENS HELD ON IMMIGRATION CHARGES IN CONNECTION WITH THE INVESTIGATION OF THE SEPTEMBER 11 ATTACKS 10 (Apr. 2003), available at <http://www.justice.gov/oig/special/03-06/full.pdf> (last visited Sept. 13, 2004).

³⁰ *Id.* at 25.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 26.

³⁴ Krikorian, *supra* note 28.

policy. The overwhelming majority of violations by known terrorists were internal violations that occurred subsequent to legal entry with a temporary visa. INS commissioner, James Ziglar, disclosed information indicating that at least three of the September 11 terrorists were illegal aliens.³⁵ "All of them entered the country legally on a temporary visa, mostly B-1 business visas or B-2 tourist visas. One is known to have received an M-1 vocational training visa and two received F-1 student visas."³⁶ It is alarming to know that those who perpetrated the most destructive terrorist act on U.S. soil³⁷ were essentially welcomed guests. Indeed, the United States itself provided the resources and information necessary to carry it out.³⁸

Studies have shown that, over the past decade, most of the terrorists who were concurrently illegal aliens entered with valid visas, but subsequently violated the conditions of their temporary legal status.³⁹ Of the forty-eight foreign-born terrorists who committed acts of terrorism in the United States since 1993, evidence shows that twenty-two of them had violated immigration laws.⁴⁰ Twelve of the terrorists were simultaneously in violation of U.S. immigration laws while they engaged in terrorist activity.⁴¹ In fact, an illegal alien has participated in every major terrorist plot perpetrated against the United States by foreign terrorists since 1993.⁴² There is a valuable lesson to be learned here. When those who attempt to reside in the United States illegally come within the purview of the legal system, they should be taken into custody and carefully investigated. Again, while the vast majority of illegal aliens pose no threat to national security, the former INS's "catch and release" policy⁴³ is

³⁵ STEVEN A. CAMAROTA, CENTER FOR IMMIGRATION STUDIES, EIGHT MILLION ILLEGAL ALIENS IN 2000: CENSUS BUREAU FUNDING RAISES CONCERN OVER BORDER CONTROL IN LIGHT OF TERRORIST THREAT (Oct. 24, 2001), available at <http://www.cis.org/articles/2001/censusrelease1001.html> (last visited Sept. 13, 2004).

³⁶ FEDERATION FOR AMERICAN IMMIGRATION REFORM, IDENTITY AND IMMIGRATION STATUS OF 9/11 TERRORISTS, Aug. 2003, at <http://www.fairus.org/ImmigrationIssueCenters/ImmigrationIssueCenters.cfm?ID=1205&c=14> (last visited Sept. 13, 2004).

³⁷ John Berlau, *Nation: The Anthrax Scare, Is the FBI Following the Wrong Trail?*, INSIGHT MAG., vol. 8, issue 3, Jan. 28, 2002.

³⁸ Stephen Gidiere & Jason Forrester, *Balancing Homeland Security and Freedom of Information*, 16 NAT. RESOURCES & ENV'T 139, 139 (2002) (noting that the September 11 terrorists "availed themselves of the everyday freedoms that Americans take for granted," such as using the Internet to book airline tickets, reserving a rental car and obtaining hazardous materials, which "are now potential instruments of war").

³⁹ STEVEN A. CAMAROTA, CENTER FOR IMMIGRATION STUDIES, THE OPEN DOOR: HOW MILITANT ISLAMIC TERRORISTS ENTERED AND REMAINED IN THE UNITED STATES, 1993-2001, 5 (2002), at <http://www.cis.org/articles/2002/theopendoor.pdf> (last visited Sept. 13, 2004) (stating "The purpose of this study is to examine how foreign terrorists have entered and remained in the country in an effort to identify weaknesses in the system that can then lead to meaningful reforms.").

⁴⁰ *Id.* at 21.

⁴¹ *Id.* at 11.

⁴² *Id.*

⁴³ Wes Vernon, *How P.C. State Department and INS Abet Terrorists*, NEWSMAX.COM, Sept. 25, 2002,

analogous to playing Russian roulette with the lives of thousands of U.S. citizens.

Even though the September 11 attacks raised global awareness concerning the connection between terrorism and illegal immigration, the link existed long before 2001. The following examples of terrorism in the United States and Europe over the past decade illustrate the strong correlation.

Terrorist Mir Aimal Kansi shot and killed two CIA agents in 1993. Kansi legally entered the United States with a valid business visa.⁴⁴ However, Kansi overstayed the visa's term of one month.⁴⁵ He had been in violation of his visa for nearly one year when he murdered the agents.⁴⁶

"Six of the seven foreign-born terrorists involved in the first Trade Center bombing had violated immigration law at some point prior to taking part in the attack. The Abouhalima brothers, Ismoil, and Salameh had all overstayed visas at some point, and Ajaj and Yousef both had no legal right to be in the country."⁴⁷ In 1993, these terrorists rented a van, filled it with explosives, and detonated it in the parking garage of the World Trade Center, killing six, injuring more than one thousand, and causing several hundred million dollars worth of damage.⁴⁸

Eleven foreign-born terrorists were arrested while formulating a plot to destroy several New York landmarks and murder prominent political figures.⁴⁹ They had purchased the materials, constructed the bombs, and were actively seeking detonators when they were arrested.⁵⁰ Three of the terrorists had violated U.S. immigration laws after receiving valid tourist visas.⁵¹ Seven of the other eight perpetrators became legal residents by marrying women who were U.S. citizens.⁵²

Kamel Nourredine, an Islamic terrorist, was wanted by French officials for his suspected involvement in the bombing of a Paris metro station in July of 1995.⁵³ Moving freely among various European countries that were notoriously lenient on illegal immigration, Nourredine consummated another terrorist act

at <http://www.newsmax.com/archives/articles/2002/9/24/205216.shtml> (last visited Sept. 13, 2004).

⁴⁴ CAMAROTA, *supra* note 39, at 15-18.

⁴⁵ *Id.*

⁴⁶ Kansi had applied for political asylum, but his application had not been approved at that point. *Id.* at 18.

⁴⁷ *Id.* at 19.

⁴⁸ *United States v. Salameh*, 152 F.3d 88, 108 (2d Cir. 1998).

⁴⁹ Malcolm Gladwell, *N.Y. Bomb Plotters Sentenced to Long Terms; Sheik Gets Life*, WASH. POST, Jan. 18, 1996, at A3.

⁵⁰ *United States v. Rahman*, 189 F.3d 88, 123 (2d Cir. 1999).

⁵¹ CAMAROTA, *supra* note 39, at 11.

⁵² *Id.* at 27.

⁵³ AFP (Paris), *OM Levert Mogelijke Terrorist uit aan België*, NRC HANDELSBLAD, Oct. 25, 1996, at 2.

when he attacked two Belgian police officers with grenades.⁵⁴ In between these two attacks, Dutch officials had taken him into custody, but had not deported him.⁵⁵

In 1997, a Palestinian immigrant, Ghazi Ibrahim Abu Maizar, came within hours of detonating a bomb in a Brooklyn, New York, subway station.⁵⁶ Maizar's roommate, an Egyptian, discovered his plans with mere hours to spare and notified local police, who discovered two bombs in the apartment.⁵⁷ Maizar's friend, Lafi Khalil, was charged as a conspirator in the plot, but due to a lack of evidence, was only convicted of immigration fraud.⁵⁸ On three separate occasions, Maizar attempted to enter the United States illegally through Canada.⁵⁹ The third time, Canadian officials refused to take Maizar back, so the INS released him into the United States,⁶⁰ which nearly resulted in the loss of potentially countless innocent lives.

Three terrorists from Algeria plotted the "millennium" attack in December of 1999.⁶¹ One of the terrorists was caught with bombs in his car while trying to cross from Canada into the State of Washington.⁶² All three were living in the United States illegally at the time.⁶³

At least six of the nineteen September 11 terrorists violated U.S. immigration law.⁶⁴ All of the others had entered the United States legally with tourist, student, and business visas.⁶⁵ Two of the terrorists attended flight schools in the United States after their immigration status had become illegal.⁶⁶ Just months before the attacks, Mohammed Atta, whom investigators now consider the ringleader, was living in the United States illegally when he

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Azadeh Moaveni, *Could Suicide Bombing Happen Here?*, CNN.COM, Apr. 9, 2002, at <http://www.cnn.com/ALLPOLITICS/time/2002/04/15/bombings.html> (last visited Sept. 13, 2004).

⁵⁷ *Id.*

⁵⁸ CAMAROTA, *supra* note 39, at 30.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Colin Nickerson, *Millennium Bombing Suspect at Guantánamo*, MIAMI HERALD, Jan. 11, 2004, available at <http://www.miami.com/mld/miamiherald/2004/01/11/news/world/7682201.htm> (last visited Sept. 13, 2004).

⁶² *Id.*

⁶³ CAMAROTA, *supra* note 39, at 34.

⁶⁴ *Americas: Hijackers Carried Fake Visas*, GUARDIAN (London), Jan. 27, 2004, at 18.

⁶⁵ Edward T. Pound, *The Easy Path to the United States for Three of the 9/11 Hijackers*, U.S. NEWS & WORLD REP., Dec. 12, 2001, available at <http://www.usnews.com/usnews/news/terror/articles/visa011212.htm> (last visited Sept. 13, 2004).

⁶⁶ George N. Lester, *Post 9/11 Changes in U.S. Immigration Law and Procedures*, 46 DEC BBJ 14, 14 (2002).

received a ticket in Florida for driving without a license.⁶⁷ He was not detained.⁶⁸ Once again, the system failed, with disastrous consequences.

On March 11, 2004, four Spanish commuter trains were bombed by terrorists, killing nearly 200 and wounding more than 1,800 people.⁶⁹ Spanish authorities believe that illegal immigrants from Morocco belonging to an Islamic terrorist organization perpetrated the attacks.⁷⁰ A number of the suspects held for questioning were carrying false documentation at the time.⁷¹

Internal controls to locate illegal immigrants are even more urgent today because terrorists over the past decade have provided other terrorist cells with evidence that their method of entry works. Indeed, legislation aimed at tracking temporary visa holders became a legislative priority in the United States after it was discovered that sixteen of the twenty September 11 attackers legally entered the United States under this guise.⁷²

Permissive illegal immigration policies are a danger to national security, because terrorists are most effective at advancing their cause when they perpetrate acts from within the borders of the target country, rather than attacking its embassies and other overseas interests.⁷³ Strong emotions are stirred when terrorism hits close to home. This is why terrorists have frequently violated immigration laws. They want to get close, and they want to remain undetected. The lesson to be learned from September 11 is that those who would destroy innocent life and otherwise create terror might already be living inside the country they intend to attack.

III. HISTORY OF ILLEGAL IMMIGRATION IN THE UNITED STATES

In examining the history of illegal immigration, it is important to note the cyclical nature of legislative controls. Past immigration controls tended to focus

⁶⁷ CAMAROTA, *supra* note 39, at 11.

⁶⁸ *Id.*

⁶⁹ Rhiannon Edward, *Six International Arrest Warrants for Madrid Suspects*, THE SCOTSMAN, Apr. 1, 2004, available at <http://news.scotsman.com/topics.cfm?tid'1094&id'370192004> (last visited Sept. 13, 2004).

⁷⁰ Peter Fray, *Madrid Inquiry Looks at Link to Morocco Bombs*, REUTERS, Mar. 18, 2004, at <http://www.smh.com.au/articles/2004/03/17/1079199293281.html?oneclick=true> (last visited Sept. 13, 2004).

⁷¹ *Id.*; Al Goodman, *Madrid Train Suspect Arrested*, CNN.COM, July 29, 2004, at <http://www.cnn.com/2004/WORLD/europe/07/29/madrid.arrest/index.html> (last visited Sept. 13, 2004).

⁷² Att'y Gen. John Ashcroft, Attorney General Prepared Remarks on the National Security Entry-Exit Registration System, (June 6, 2002), transcript available at <http://www.immigrationlinks.com/news/Ags%20remarks%20on%20Entry-Exit%20Registration%20System.pdf> (last visited Sept. 26, 2004).

⁷³ Bradley Cook, *America's Loss of Innocence: Terrorism Within Our Midst*, Panel: Putting the Attack on America in Perspective: Coping With Terrorism in an Open Society, available at <http://www.uvsc.edu/ethics/conftrans/cook.pdf> (last visited Sept. 13, 2004).

on economic considerations. To reiterate, the purpose of this article is not to advocate a blanket policy against all illegal immigration. Resources are much too limited, and the effects might create a number of negative consequences. Most illegal immigrants seek nothing more than employment and a better life.⁷⁴ They should not be lumped into the same category as potential terrorists. Nevertheless, such illegal aliens can be indistinguishable from those who are a danger. This is where flexibility enters. Stricter policies will negatively affect more of those who pose no threat to national security. Upon a weighing of interests, it becomes clear that the protection of innocent life against terrorism is a nobler cause than promoting the comfort of those who violate immigration law. Thus, an inspection of the history of illegal immigration illuminates the even greater need for tighter controls in the face of this present threat of terrorism.

At the beginning of this nation's history, the Alien and Sedition Acts of 1798 were the only instruments dealing with immigration.⁷⁵ Under these acts, non-U.S. citizens suspected of illegal activity could be expelled by executive order.⁷⁶ However, they were only exercised on two occasions by President John Adams to banish two Irish journalists.⁷⁷

In 1875, Congress enacted its first immigration law aimed at keeping out those who posed a potential danger to domestic security when it denied entry to anyone who was in the process of a criminal prosecution in his or her own country, as well as anyone entering for the purpose of prostitution.⁷⁸ The Immigration Act of March 3, 1891, broadened the exclusion list to include felons, public charges, and anyone with an infectious disease.⁷⁹ Immigration into the United States jumped during the first decade of the Twentieth Century by over five million more immigrants than those who had immigrated during the previous decade.⁸⁰ In response, Congress enacted the 1917 Immigration Act,⁸¹

⁷⁴ Press Release, The White House: Office of the Press Secretary, President Bush Proposes New Temporary Worker Program, (Jan. 7, 2004), available at <http://www.whitehouse.gov/news/releases/2004/01/20040107-3.html> (last visited Sept. 13, 2004) (comments by President George W. Bush noting the perils illegal immigrants face as they seek opportunities to support their families and attain the "American dream").

⁷⁵ See, e.g., Alien and Sedition Acts of 1798, available at <http://earlyamerica.com/earlyamerica/milestones/sedition/> (last visited Sept. 13, 2004).

⁷⁶ *Id.* § 1.

⁷⁷ SAMUEL E. MORISON, THE OXFORD HISTORY OF THE AMERICAN PEOPLE 353 (1965).

⁷⁸ Immigration Act of March 3, 1875, ch. 141, § 5, 18 Stat. 477 (1875) (repealed 1974), available at http://www.cetel.org/1875_page.html (last visited Sept. 13, 2004).

⁷⁹ Immigration Act of March 3, 1891, ch. 551, 26 Stat. 1084, available at <http://www.gaeleire.freeservers.com/custom4.html> (last visited Sept. 13, 2004).

⁸⁰ U.S. CITIZEN AND IMMIGRATION SERV., IMMIGRATION TO THE UNITED STATES: FISCAL YEARS 1820-2002, at <http://uscis.gov/graphics/shared/aboutus/statistics/IMM02yrbk/IMMExcel/table1.xls> (last visited Sept. 13, 2004) (showing that from "1891-1900", immigration rose from 3,687,564 to 8,795,386 as of "1901-1910").

⁸¹ Immigration Act of February 5, 1917, ch. 29, 39 Stat. 874 (repealed 1952), available at

which based many of its provisions on the congressionally commissioned Dillingham Report of 1907.⁸² This “national origins” quota system⁸³ was enacted in the 1920’s.⁸⁴

Due to these policies, immigration was reduced to little more than a trickle.⁸⁵ The United States began to perceive a need for a greater manual labor force, and looked to immigration as a means of stimulating the economy to meet the manufacturing and agricultural needs during World War II.⁸⁶ On August 4, 1942, Congress responded by arranging a program with Mexico called the Bracero Program,⁸⁷ which was designed to allow Mexican citizens to temporarily enter the United States to perform agricultural labor, then return to Mexico after their short-term contract period expired.⁸⁸ This revolving-door system encouraged illegal immigration, because the revolving door was treated more like a one-way door into the United States, with relatively few leaving after their contracts expired. An estimated 1,075,168 Mexicans entered the United States illegally in 1954 alone.⁸⁹

Congress passed the Immigration and Nationality Act of 1965⁹⁰ to replace the “national origins” system of the Immigration and Nationality Act of 1952 with a policy giving preference to the reunification of families and skilled workers.⁹¹

<http://www.spartacus.schoolnet.co.uk/USAE1917A.htm> (last visited Sept. 13, 2004).

⁸² Dillingham Comm. Rep., S. Doc. No. 758, 61st Cong., 3d Sess. (1911) (recommending, among other things, a minimum standard of literacy in English before allowing entry).

⁸³ *Id.* Under this system, limits were set on the number of immigrants who could come from certain geographic regions. Thus, because the Dillingham Report suggested that people from Northwestern Europe were more desirable than those from other parts of Europe, a larger ratio of immigrants from Northwestern European countries were permitted to enter the United States. *Id.*

⁸⁴ DANIEL T. TICHENOR, *DIVIDING LINES 2* (Princeton Univ. Press 2002).

⁸⁵ CENTER FOR IMMIGRATION STUDIES, *IMMIGRATION LEGISLATION HISTORY*, at <http://www.cis.org/topics/history.html> (last visited Sept. 13, 2004).

⁸⁶ CINDY HAHAMOVITCH, CENTER FOR IMMIGRATION STUDIES, *THE POLITICS OF LABOR SCARCITY: EXPEDIENCY AND THE BIRTH OF THE AGRICULTURAL "GUESTWORKERS" PROGRAM*, (Dec. 1999), at <http://www.cis.org/articles/1999/back1299.htm> (last visited Sept. 13, 2004).

⁸⁷ Andrew S. Kosegi, *The H-2A Program: How the Weight of Agricultural Employer Subsidies is Breaking the Backs of Domestic Migrant Farm Workers*, 35 *IND. L. REV.* 269, 271 (2001).

⁸⁸ *Id.* at 273.

⁸⁹ This is analogous to President Bush’s proposal for a temporary worker program, which would include new workers, as well as illegal immigrants. The plan is intended to thwart unlawful activity by those currently residing in the United States illegally. However, just like the Bracero Program, this could lead to an increase in illegal immigration, and provide yet another source of potential exploitation for terrorists. MAIA JACHIMOWICZ, *MIGRATION POLICY INSTITUTE, BUSH PROPOSED NEW TEMPORARY WORKER PROGRAM* (Feb 1, 2004), available at <http://www.migrationinformation.org/Usfocus/display.cfm?ID'202&mpi> (last visited Sept. 13, 2004).

⁹⁰ Immigration and Nationality Act Amendments of 1965, Pub. L. No. 89-236, 79 Stat. 911 (1965).

⁹¹ U.S. DEP’T OF HOMELAND SEC., *IMMIGRATION AND NATIONALITY ACT AMENDMENTS OF OCTOBER 3, 1965*, at <http://uscis.gov/graphics/shared/aboutus/statistics/LegisHist/526.htm> (last visited Sept. 13, 2004).

Because of the permissive immigration laws of the previous two decades, immigration levels escalated to a record 4.5 million people between 1970 and 1980.⁹² Once again, immigration policies came under public scrutiny. In 1978, Congress responded by creating the Select Commission on Immigration and Refugee Policy (Select Commission) to research and investigate current immigration trends and legislation, and to make recommendations on how to develop more effective immigration laws.⁹³ Based on the data it gathered, the Select Commission recommended a comprehensive reform of current immigration policy to address current trends.⁹⁴

Citing the Select Commission's recommendations, Congress turned its attention to illegal immigration,⁹⁵ enacting the Immigration Reform and Control Act (IRCA) of 1986.⁹⁶ The IRCA developed several policies that reduced the benefits received by immigrants who entered the United States illegally.⁹⁷

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996 was aimed at enforcing tighter controls over both illegal and legal immigrants.⁹⁸ Nevertheless, the main thrust of the IIRAIRA was to develop more stringent penalties against illegal immigration violators by limiting the factors to be considered in a cancellation of removal proceeding,⁹⁹ and by limiting the ability of the Attorney General to dismiss removal proceedings to a maximum of 4,000 a year.¹⁰⁰ The IIRAIRA also hastened the deportation process by curtailing the appeal system "that was used by immigration lawyers to keep their clients in the United States until they found a sympathetic judge who would grant suspension of deportation."¹⁰¹ Additionally, those who violated immigration laws were barred from legal entry into the

⁹² STEVEN A. CAMAROTA, CENTER FOR IMMIGRATION STUDIES, IMMIGRANTS IN THE UNITED STATES 2000: A SNAPSHOT OF AMERICA'S FOREIGN-BORN POPULATION (Jan. 2001), at <http://www.cis.org/articles/2001/back101.html> (last visited Sept. 13, 2004).

⁹³ Immigration and Nationality Act Amendment of October 5, 1978, Pub. L. No. 95-412, § 4, 92 Stat. 907, 907-09 (1978).

⁹⁴ David M. Turoff, Note, *Illegal Aliens: Can Monetary Damages be Recovered from Countries of Origin Under an Exception to the Foreign Sovereign Immunities Act?*, 28 BROOK. J. INT'L L. 179, 183 (2002).

⁹⁵ FEDERATION FOR AMERICAN IMMIGRATION REFORM, U.S. IMMIGRATION HISTORY: HISTORICAL IMMIGRANT ADMISSION DATA: 1828 TO 1998, at <http://www.fairus.org/Research/Research.cfm?ID'1820&c'2&insearch'history> (last visited Sept. 13, 2004) [hereinafter FEDERATION].

⁹⁶ Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (Nov. 6, 1986) [hereinafter IRCA].

⁹⁷ FEDERATION, *supra* note 95. Among the many reforms, the IRCA made it a crime to employ illegal aliens. Under civil penalty, someone who employed illegal immigrants could be fined thousands of dollars for each immigrant illegally employed, or face a criminal penalty of prison time. *Id.*

⁹⁸ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (Sept. 30, 1996) [hereinafter IIRAIRA].

⁹⁹ *Id.* § 203(1).

¹⁰⁰ 8 U.S.C. § 1229(b) (2004) (amending § 240A of the IRCA).

¹⁰¹ FEDERATION, *supra* note 95.

United States for up to twenty years, depending upon the seriousness of the offense.¹⁰²

Contemporaneously, Congress began to take aim at terrorism. It increased the budget amount to be spent on preventing known terrorists from accessing the immigration process in order to enter and operate in the United States.¹⁰³ Because of the connection between illegal immigration and terrorism, in conjunction with the impact of recent terrorist attacks against the United States, Congress has become more fervent in its effort to strengthen immigration controls.¹⁰⁴

Nevertheless, according to homeland security experts, illegal immigration levels are still astronomical.¹⁰⁵ In 2002, the United States Census Bureau estimated that between eight and nine million illegal immigrants were residing in the United States.¹⁰⁶ The Census Bureau also estimated that an additional 500,000 illegal immigrants enter the United States annually.¹⁰⁷ Based upon the heightened threat of terrorism and the connection to illegal immigration, the United States and Europe have engaged in the development of stricter immigration policies, which are discussed at length in the following section.

IV. CURRENT WESTERN POLICIES AGAINST ILLEGAL IMMIGRATION

In the face of heightened threats of terrorism, the United States and the EU recognize the importance of enacting policies that address this threat.¹⁰⁸ President George W. Bush has characterized these recent acts of terrorism as acts of war.¹⁰⁹ The Bush Administration also recognizes that, "the war on terror is a different kind of war."¹¹⁰ Unlike the common conception of a declaration of

¹⁰² HIRAIRA, *supra* note 98.

¹⁰³ *Id.* at Title I (Department of Justice General Administration Salaries and Expenses).

¹⁰⁴ *Homeland Defense, Hearing Before the Senate Judiciary Committee* (Sep. 25, 2001) (statement of Sen. Leahy, Chairman, Senate Judiciary Committee), available at <http://leahy.senate.gov/press/200109/010925a.html> (last visited Sept. 13, 2004).

¹⁰⁵ THE WHITE HOUSE, REFORM THE IMMIGRATION SYSTEM, at <http://www.whitehouse.gov/news/usbudget/blueprint/bud14.html> (last visited Sept. 13, 2004).

¹⁰⁶ U.S. CENSUS BUREAU, CURRENT POPULATION SURVEY (Mar. 2002) [hereinafter CENSUS BUREAU].

¹⁰⁷ *Id.*

¹⁰⁸ President George W. Bush, Remarks at Sedgefield Community College, United Kingdom (Nov. 24, 2003), available at <http://www.whitehouse.gov/news/releases/2003/11/print/20031121-4.html> (last visited Sept. 13, 2004) (President George W. Bush and British Prime Minister Tony Blair discussing the importance of global anti-terrorism policy and international cooperation in the face of heightened threats of terrorism).

¹⁰⁹ President George W. Bush, Remarks at a Bush-Cheney Luncheon in New Orleans (Jan. 15, 2004), available at <http://www.whitehouse.gov/news/releases/2004/01/print/20040115-4.html> (last visited Sept. 13, 2004) (speaking at the National D-Day Museum in New Orleans, President Bush said, "Terrorists declared war on the United States of America, and war is what they got.").

¹¹⁰ President George W. Bush, Address to the Nation on the Capture of Saddam Hussein (Dec. 14, 2003), available at <http://www.whitehouse.gov/news/releases/2003/12/20031214-3.html> (last visited

war, the acts of terrorism perpetrated against the United States and the EU over the past decade were not carried out under the explicit authority of a particular country's government. Thus, because modern terrorists do not fight as a typical body of armed forces with long-range capabilities, governments at risk of terrorism must strengthen their borders and internal immigration controls to combat this "new threat"¹¹¹ of war.

Consequently, both the United States and the EU have recently developed legislation aimed at stricter controls on illegal immigration.¹¹² Even though the September 11 attack took place on U.S. soil, European legislators have also felt pressure to secure their borders due to "the worrying developments in the situation in the Middle East."¹¹³ The development of policies aimed at fighting terrorism has been a prominent topic at recent councils of the Commission of the European Communities.¹¹⁴ Due to the recent bombings in Spain and the Chechen siege at a Russian school earlier this year, this topic should become even more prominent at future councils.

An examination of a recent European Council regulation reveals that it also recognizes the connection between ineffective immigration controls and terrorism.¹¹⁵ Citizens of certain developing countries listed in the regulation are held to stricter entry procedures.¹¹⁶ These entry regulations are customizable by each member state to fit its particular needs.¹¹⁷ Romano Prodi, President of the European Commission at the time,¹¹⁸ sought to give his successor greater power

Sept. 26, 2004).

¹¹¹ President George W. Bush, Remarks at the American Legion National Convention in St. Louis, Missouri (Aug. 26, 2003) (President Bush describing terrorism as a "new threat" to national security to "free nations"), available at <http://www.state.gov/p/nea/rls/rm/23551.htm> (last visited Sept. 26, 2004).

¹¹² Press release, Americans and Europeans Agree Terrorism is Top Threat, Survey Says (Sep. 4, 2002), available at <http://www.useu.be/Terrorism/EURresponse/sept0402useuropeterrorismthreatsurvey.html> (last visited Sept. 13, 2004) (indicating that a majority of U.S. and EU citizens believe immigration reform should aim to reduce the numbers of immigrants from Arab or Muslim countries).

¹¹³ Agence Europe, *Antonione and Prodi Mention Stakes at Play in Summit on Growth and Immigration Management*, European Council (Oct. 10, 2003).

¹¹⁴ COMM'N OF THE EUROPEAN COMMUNITIES, COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT TOWARDS INTEGRATED MANAGEMENT OF THE EXTERNAL BORDERS OF THE MEMBER STATES OF THE EUROPEAN UNION (2002), available at http://europa.eu.int/eur-lex/en/com/cnc/2002/com2002_0233en01.pdf (last visited Sept. 13, 2004); COMM'N OF THE EUROPEAN COMMUNITIES, PROPOSAL FOR A COUNCIL FRAMEWORK DECISION ON COMBATING TERRORISM (2001), available at http://europa.eu.int/comm/external_relations/cfsp/doc/com_01_521.pdf (last visited Sept. 13, 2004).

¹¹⁵ Council Regulation (EC) 539/2001 of March 15, 2001, 2001 O.J. (L 81) 1.

¹¹⁶ *Id.* § 5.

¹¹⁷ *Id.*

¹¹⁸ THE WORLD BANK AND THE EUROPEAN UNION, THE PRESIDENCY OF THE COUNCIL OF THE EUROPEAN UNION (2003), at <http://wbln0018.worldbank.org/eurvp/web.nsf/Pages/Brussels+-+EU+Institutions+-+Presidency> (last visited Sept. 13, 2004).

over foreign policies, because he felt that implementing coordinated immigration policies would be essential in “[tackling] illegal immigration, crime and terrorism.”¹¹⁹ Recent Councils of the European Union (Council) encapsulate these phenomena under the same policy reform efforts,¹²⁰ thus demonstrating that European legislators have identified the connection.¹²¹

A. *Balancing Considerations*

Although the United States and the EU have developed policies that are tougher on illegal immigration, they also recognize the precarious balance that must be struck between being too permissive with immigration, because of its effect on illegal immigration and terrorism, and being too strict on immigration as a whole.¹²² An overly stringent policy could create unfavorable relationships in the international community.¹²³ Such isolationism could severely impair foreign trade¹²⁴ and other economic benefits.¹²⁵ In the United States, foreign investors own over \$8.5 trillion worth of U.S. assets.¹²⁶ Discouraging foreign

¹¹⁹ See Rory Watson, *Prodi Tells EU to Give His Successor Sweeping Powers*, FIN. TIMES, May 23, 2002 (illustrating the EC's recognition of a tight connection between illegal immigration and terrorism).

¹²⁰ European Council, Justice and Home Affairs, 2574th Council Meeting, at 16, (Mar. 30, 2004), available at http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/jha/79760.pdf (last visited Sept. 13, 2004). The Council of the European Union is the organization that develops policies governing the relationships among the various EU Member States. See generally Council of the European Union Official Website, *Conclusions of the Council*, Dec. 12, 2003, at <http://ue.eu.int/en/Info/eurocouncil/index.htm> (last visited Sept. 13, 2004).

¹²¹ COMMISSION OF THE EUROPEAN COMMUNITIES, COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT: BIENNIAL UPDATE OF THE SCOREBOARD TO REVIEW PROGRESS ON THE CREATION OF AN AREA OF “FREEDOM, SECURITY AND JUSTICE” IN THE EUROPEAN UNION, COM (02) 261 final at 4-10.

¹²² SEVILLE EUROPEAN COUNCIL, PRESIDENCY CONCLUSIONS, June 21-22, 2002, at 10-11, available at http://europa.eu.int/spain/temas/2002/sevilla/documentos/conclusiones_en.pdf (last visited Sept. 13, 2004).

¹²³ BRIGITTE GRANVILLE, GLOBAL POLICY FORUM, STRANGERS IN THE LAND? (2003), available at <http://www.globalpolicy.org/globaliz/econ/2003/0203strangers.htm> (last visited Sept. 13, 2004).

¹²⁴ *Id.*

¹²⁵ Actually, the National Regional Council's October 1996 *Huddle Study Program* found that immigration cost the United States approximately sixty-five billion dollars (almost twenty-five billion of which is attributable to illegal immigration). The study considered, among other things, costs associated with education, health benefits (such as Medicare A and B and Medicaid), English as a Second Language programs, food stamps, supplemental security income (SSI), federal housing programs, social security, tax credits, criminal justice, and corrections. The total cost was then reduced by the amount of taxes paid by immigrants. The study estimated that by the end of 2002, annual costs would be sixty-six billion. DONALD L. HUDDLE, THE NET NATIONAL COSTS OF IMMIGRATION: FISCAL EFFECTS OF WELFARE RESTORATIONS TO LEGAL IMMIGRANTS, RICE UNIVERSITY (1997).

¹²⁶ DANIEL T. GRISWOLD, CENTER FOR TRADE POLICY STUDIES, AMERICA'S RECORD TRADE DEFICIT: A SYMBOL OF STRENGTH 11 (Feb. 21, 2001) (executive summary), available at <http://www.freetrade.org/pubs/pas/tpa-012.pdf> (last visited Sept. 13, 2004).

investors from spending money could undercut economic growth.¹²⁷ Because the majority of voters consider the economy to be the most important issue,¹²⁸ legislators are forced to find the optimum point at which national security and foreign economic contributions balance. Additionally, economic clout is the engine behind diplomatic foreign relations and international cooperation.¹²⁹ Damage to foreign relations could increase the threat of terrorism because the help provided by the international community has been a key to detecting known terrorists.

B. Illegal Immigration in Europe

Estimates indicate that approximately 500,000 citizens of non-member countries illegally enter the EU every year.¹³⁰ Of these, it is believed that nearly half of such illegal immigrants' entries are facilitated by organized crime groups.¹³¹ Illegal immigrants tend to assimilate into such groups very easily, because they come from countries of similar geographic locations and speak the same language.¹³² For example, a Triad is the common term used to describe Chinese organized crime groups.¹³³ Triads believe that by organizing themselves into communities, they can maintain their ideologies and more easily advance their social status.¹³⁴ Thus, it is clear why illegal immigrants of Chinese descent would be attracted to such communities.

Historically, EU legislation has not provided much of a deterrent against illegal immigration because "various Member States do not consider it a high crime priority."¹³⁵ The Schengen Treaty stipulated that citizens of an EU member state could freely move among the other member states.¹³⁶ Thus, permissive immigration policies by one member state could adversely affect the others. Terrorists, who have proven to be particularly adept at locating weaknesses in immigration enforcement, would potentially identify such states

¹²⁷ *Id.*

¹²⁸ CNN/USA TODAY, GALLUP POLL (2004), available at <http://www.pollingreport.com/prioriti.htm> (last visited Sept. 13, 2004).

¹²⁹ Michael P. Molloy, *Reconciling Political Sanctions With Globalization and Free Trade*, 4 CHI. J. INT'L L. 371, 371-73 (2003).

¹³⁰ W. BRUGGEMAN, EUROPOL, ILLEGAL IMMIGRATION AND TRAFFICKING IN HUMAN BEINGS SEEN AS A SECURITY PROBLEM FOR EUROPE (2002), at <http://www.belgium.iom.int/STOPconference/conference%20Ppapers/20%20Bruggeman%20Brussels%20IOM.19.09.02.pdf> (last visited Sept. 13, 2004).

¹³¹ *Id.*

¹³² *Id.*

¹³³ Jennifer Sands, *Europe in the Age of Globalization: A Hotbed of Transnational Organized Crime?*, UNIVERSITY OF LEEDS, Sept. 30, 2002.

¹³⁴ *Id.*

¹³⁵ *Id.* at 8.

¹³⁶ EUROPEAN CONVENTION, 2000 O.J. (L 239) (1990).

and enter illegally without much fear of recourse. Notably, France is insisting on tighter border regulation and visa control throughout the EU, but Spain has been resistant to increased restraints on individual state discretion relating to such matters.¹³⁷

Because of this, the Council has sought to implement EU-wide immigration laws, which every member state would be compelled to enforce.¹³⁸ The Council pointed out that “the fact that only six Member States have legal instruments covering terrorism [shows that] the present proposal for a Framework Decision . . . is clearly necessary.”¹³⁹ For this reason, the Council enacted policies to thwart crimes that are “committed or likely committed in the course of terrorist activities. . . .”¹⁴⁰ These policies are partially aimed at deterring illegal immigration.¹⁴¹ Thus, the EU understands the danger of the position some member states have taken against enacting and enforcing tight immigration controls.

Southern European countries, such as Italy, Spain, and France, have faced serious problems with illegal immigration.¹⁴² In effect, these countries magnified the problem by adopting lenient policies towards those living within their borders illegally.¹⁴³ Such leniency makes the risk of illegal entry worth the risk of getting caught and facing the relatively painless consequences, if there are any consequences at all.¹⁴⁴

C. Recent European Policy Against Illegal Immigration

Not only have EU immigration policies addressed the link between terrorism and illegal immigration,¹⁴⁵ but they have also begun to focus on internal enforcement mechanisms as a fundamental part of effective reform. The European Council recognizes that, in addition to varying member state laws, the most foreboding problems facing internal enforcement of immigration laws are a lack of human resources and ineffective information-sharing programs.¹⁴⁶ One of the primary methods used by the EU to remedy these difficulties is the

¹³⁷ Melinda McGehee, *Using Immigration as a Protectionist Mechanism While Promoting Free Trade*, 8 L. & BUS. REV. AM. 667, 682 (2002).

¹³⁸ COMM'N, PROPOSAL FOR A COUNCIL FRAMEWORK DECISION ON COMBATING TERRORISM, Brussels, 2001 O.J. (C 332/E).

¹³⁹ *Id.* at 7.

¹⁴⁰ Council Decision, 1995 O.J. (C 316) 1 [hereinafter Council Decision 1].

¹⁴¹ *Id.*

¹⁴² *Id.* at 2.

¹⁴³ *Id.* at 14.

¹⁴⁴ EMILIO REYNERI, ILLEGAL IMMIGRATION AND THE UNDERGROUND ECONOMY 14 (NATIONAL EUROPE CENTRE Paper No. 68, 2003).

¹⁴⁵ Bruggeman, *supra* note 130, at 1.

¹⁴⁶ TREATY ON THE EUROPEAN UNION, art. 29.

development of programs that require closer cooperation among various law enforcement agencies.¹⁴⁷

1. Europol

The 1992 Maastricht Treaty on the European Union led the EU to establish a law enforcement system that would act as a center for criminal intelligence, and would allow Europol agents to work with local law enforcement agencies within each member state.¹⁴⁸ A powerful tool used by Europol agents is a computer system that provides information-sharing capabilities to all fifteen EU member states.¹⁴⁹ Europol promotes internal enforcement by targeting criminal organizations, such as illegal immigration networks and terrorist cells.¹⁵⁰

The Europol system recognizes the problem of those who enter the EU legally with temporary visas, but remain after the visa has expired.¹⁵¹ This is analogous to the visa problem in the United States. By understanding that illegal immigration is an ongoing and evolving problem, Europol has identified areas that need to be addressed at the EU level by developing additional policies to oppose criminal organizations more effectively.¹⁵²

2. The Oisin II Programme

In 2001, the EU further developed its ability to fight illegal immigration by establishing the Oisin II Programme (Oisin II). The objective of Oisin II is to “[provide] citizens with a high level of protection in an area of freedom, security and justice [and] is intended to encourage cooperation between the Member States’ law enforcement authorities.”¹⁵³ Oisin II’s mission is similar to the United States’ Homeland Security Act. Such a program could be equally effective in the United States because each of the fifty states maintains several levels of local law enforcement.

Oisin II will standardize the training of its agents from all EU member states.¹⁵⁴ Through this system, the EU feels it can better secure the borders

¹⁴⁷ Council Decision, 2001 O.J. (L 186/4) § 2 (establishing a second phase of the program of incentives, exchanges, training and cooperation for law enforcement authorities (Oisin II) [hereinafter Council Decision 2]).

¹⁴⁸ Europol Official Website, Fact Sheet on Europol, at <http://www.europol.eu.int.index.asp?page=facts> (last visited Sept. 13, 2004).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ Council Decision 2, *supra* note 147, art. 2, § 1.

¹⁵⁴ *Id.* art. 4.

exploited by illegal immigrants.¹⁵⁵ Preventing terrorism is among the priorities of Oisín II.¹⁵⁶ It empowers local law enforcement agencies with the authority to enforce EU laws.¹⁵⁷ Thus, when local law enforcement agents encounter illegal immigrants or suspected terrorists, they will be able to respond,¹⁵⁸ thus expediting removal procedures and ensuring the likelihood of stricter enforcement.¹⁵⁹ To meet Oisín II's goals, the EU understands that a common program for the exchange and training of, and cooperation between, law enforcement authorities is a key to protecting the security of the citizens of its member states.¹⁶⁰ Once again, Europe has addressed terrorism by focusing on policies that address the problem through internal enforcement of immigration law.

D. Recent U.S. Policy Against Illegal Immigration

First, it is important to point out that illegal immigration is a civil crime in the United States. The Immigration and Nationality Act of 1996 (INA)¹⁶¹ provides that, "[a]ny alien who is present in the United States in violation of this Act or any other law of the United States is deportable."¹⁶² The INA further specifies that EWIs, as well as those who entered with legal documentation, but subsequently violated the terms upon which they were permitted to enter, are in violation of the INA and are deportable as illegal immigrants.¹⁶³

As discussed earlier, illegal immigration is a two-headed phenomenon, namely, EWI and visa violation.¹⁶⁴ Logically, enforcement policies reflect the dual nature of illegal immigration: (1) External controls deter EWI, and (2) internal controls lead to the detention and removal of visa violators.¹⁶⁵ An analysis of recent legislation shows that efforts are being made on both fronts.

¹⁵⁵ STATEWATCH NEWS ONLINE, EU PRESIDENCY CONCLUSIONS AT THE SEVILLE EUROPEAN COUNCIL 21/22 JUNE, at <http://www.statewatch.org/news/2002/jun/seville.pdf> (last visited Sept. 26, 2004) (confirming the importance of having Italy's leadership involved in the border control program).

¹⁵⁶ Oisín II Bi-Annual Work Programme for 2001-2002, 2001 O.J. (C 206) at 6.

¹⁵⁷ Council Decision 2, *supra* note 147, art. 2, §§ 1, 2.

¹⁵⁸ *Id.*

¹⁵⁹ STATEWATCH NEWS ONLINE, *supra* note 155, para. 26-28.

¹⁶⁰ COUNCIL OF THE EUROPEAN UNION, SEVILLE EUROPEAN COUNCIL 21 AND 22 JUNE 2002, PRESIDENCY CONCLUSIONS, Oct. 24, 2002, available at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/72638.pdf (last visited Oct. 12, 2004).

¹⁶¹ 8 U.S.C. 1227 § 237(a)(1)(B).

¹⁶² *Id.* § 237(a)(1)(B).

¹⁶³ *Id.* § 237(a).

¹⁶⁴ Simcox, *supra* note 10.

¹⁶⁵ *Id.*

The Homeland Security Act of 2002¹⁶⁶ (Security Act) created the Department of Homeland Security (DHS). One of the DHS's divisions is the Border and Transportation Security Directorate (BTS).¹⁶⁷ The BTS's responsibilities include, "securing our nation's borders, carrying out our immigration enforcement functions [including] detention and removal, intelligence, investigations, inspections, and border patrol), and administering related policies."¹⁶⁸ One of the main branches of the BTS is the U.S. Immigration and Customs Enforcement (ICE) agency,¹⁶⁹ which now carries out the duties formerly entrusted to its predecessor, the INS. ICE's main function is to investigate matters affecting domestic security, such as illegal immigration and terrorism.¹⁷⁰

The creation of these agencies is a giant step in the right direction, because it indicates that not only does the government recognize the impotence of the former immigration system,¹⁷¹ but it also puts due emphasis on combating illegal immigration on both fronts. Additionally, U.S. legislators have identified potential connections between terrorism and illegal immigration. The evidence of this can be seen through the responsibilities of the BTS, which include ensuring "the preparedness of the United States for acts of terrorism"¹⁷² and continuing the programs formerly carried out by the INS, such as: border patrol, detention and removal, intelligence gathering, investigations, and inspections.¹⁷³

1. External Controls

Annually, border patrols apprehend more than one million aliens trying to enter the United States illegally.¹⁷⁴ Congress has cited its historically slow reaction to tightening borders as a key shortcoming that led to the proliferation of organized illegal immigration cells specializing in illegal entry.¹⁷⁵ As illicit

¹⁶⁶ Homeland Security Act, *supra* note 20.

¹⁶⁷ NAT'L IMMIGRATION FORUM, BACKGROUNDER: IMMIGRATION UNDER THE DEPARTMENT OF HOMELAND SECURITY (Aug. 2003), at www.immigrationforum.org/documents/TheDebate/NationalSecurity/DHSBackgrounder.pdf (last visited Sept. 26, 2004).

¹⁶⁸ U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, OFFICIAL WEBSITE, at <http://www.ice.gov/graphics/about/organization/index.htm> (last visited Sept. 26, 2004).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ JON FREMONT, CATHOLIC LEGAL IMMIGRATION NETWORK, OVERVIEW OF THE DEPARTMENT OF HOMELAND SECURITY, at <http://www.cliniclegal.org/Advocacy/homelandsecuritynewsletter.doc> (last visited Sept. 13, 2004).

¹⁷² Homeland Security Act, *supra* note 20, § 430(c).

¹⁷³ *Id.* § 441.

¹⁷⁴ FED'N FOR AM. IMMIGRATION REFORM, BORDER PATROL OPERATIONS, at <http://www.fairus.org/ImmigrationIssueCenters/ImmigrationIssueCenters.cfm?ID'1187&c'13> (last visited Sept. 26, 2004).

¹⁷⁵ *Preventing the Entry of Terrorists into the United States: Hearing Before the Subcomm. on International Terrorism, Nonproliferation and Human Rights of the House Comm. on International Relations*, 108th Cong. 38-43 (2d. Sess. 2004) (statement of Peter K. Nunez, Board of Directors

drugs were increasingly smuggled into the United States, a lack of manpower and resources magnified the problem.¹⁷⁶ Perceiving this weakness in border enforcement, illegal immigrants began to flow more steadily into the United States¹⁷⁷

a. Border Control

The United States shares borders with Canada and Mexico. Both of these borders have been heavily exploited by illegal immigrants.¹⁷⁸ The North America Free Trade Agreement (NAFTA)¹⁷⁹ created a serious complication to border control efficiency for the United States.¹⁸⁰ As part of NAFTA's goal to increase economic efficiency, it created a scenario wherein citizens from the three countries would be able to seek work among each other's labor force more freely.¹⁸¹ However, the United States restricted the number of Mexican visas to 5,500 per year, while placing no such restriction on Canadian visas.¹⁸² This led to an increase in illegal immigration from Mexico.¹⁸³ In response, the United States placed 7,700 border patrol agents along its southern border, while only 300 were charged with watching the U.S.-Canada border.¹⁸⁴

This disparity in border control priority made the U.S.-Canada border more accessible to terrorists.¹⁸⁵ "Canada's generous political asylum laws, a shortage of law enforcement resources and difficulties tracking aliens who enter the country and then disappear, have made Canada a haven for terrorists."¹⁸⁶ Thus, overcompensation in the South has left vulnerabilities in the North. Terrorists have proven to be adept at uncovering such weaknesses. Illegal immigration

Chairman, Center for Immigration Studies), available at http://www.house.gov/international_relations/108/91797.pdf (last visited Oct. 12, 2004).

¹⁷⁶ *Id.* at 41

¹⁷⁷ *Id.*

¹⁷⁸ Darlene C. Goring, *In Service to America: Naturalization of Undocumented Alien Veterans*, 31 SETON HALL L. REV. 400, 403 (2000).

¹⁷⁹ *North American Free Trade Agreement: Canada-Mexico-United States*, (Dec. 8, 1992) (reprinted in 32 I.L.M. 289 (1993)) [hereinafter NAFTA].

¹⁸⁰ *International Relations Western Hemisphere South American Trade Issue: 1995, House Comm. on Int'l Relations*, 105th Cong. (1st Sess. 1995) (testimony of Marcy Kaptur noting that NAFTA relations did not help Mexico during its peso crisis that began at the end of 1994, which led to an increase in illegal immigration) [hereinafter Kaptur].

¹⁸¹ NAFTA, *supra* note 179, at 297.

¹⁸² Catherine E. Halliday, *Inheriting the Storied Pomp of Ancient Lands: An Analysis of the Application of Federal Immigration Law on the United States' Northern and Southern Borders*, 36 VAL. U. L. REV. 181, 201 (2001).

¹⁸³ Kaptur, *supra* note 180.

¹⁸⁴ Halliday, *supra* note 182, at 211.

¹⁸⁵ As noted previously, the "millennium bomber," several of the September 11 terrorists, and Lee Malvo all entered the United States illegally through Canada.

¹⁸⁶ James V. Grimaldi, *Losing Track of Illegal Immigrants*, WASH. POST., Oct. 7, 2001, at A1.

enforcement mechanisms should be careful to allot resources in the most efficient way, which brings up the next problem with the heavy concentration of immigration controls on the U.S.-Mexico border. It is monopolizing the precious few available resources in order to deter illegal immigration as a whole. These resources should first be utilized to fight illegal immigration with the purpose of promoting national security. This effort should not be made on the border of Mexico. Rather, it should take place in those areas that terrorists have been exploiting. While several known terrorists have entered the United States illegally through Canada, many more have violated U.S. immigration laws after entering with legal visas.¹⁸⁷ This is because, until relatively recently, legislators had not recognized the essential need for internal enforcement mechanisms to reduce the swelling corpus of illegal aliens, among which terrorists had been able to go undetected.

2. Internal Controls

The INS was formerly charged with the duty of internal enforcement of immigration laws.¹⁸⁸ One of the main tools developed by the DHS in assuming this duty is the USA PATRIOT Act (Patriot Act).¹⁸⁹ The short title of the Patriot Act illuminates the purpose behind its enactment: "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism."¹⁹⁰ Among the various approaches taken by the Patriot Act to obstruct terrorism is the imposition of tighter controls on immigration laws concerning those who violate the terms of their visas.¹⁹¹ One of the biggest obstacles to effective internal enforcement has been the lack of manpower.¹⁹²

a. Entry-Exit System

To compensate for a deficiency in manpower, the DHS has relied heavily on information sharing and other technological programs. The prime example is the Patriot Act's implementation of an "integrated entry and exit data system for airports, seaports, and land border ports of entry" aimed at identifying and detaining "individuals who pose a threat to the national security of the United States."¹⁹³ This entry-exit system will be used to track those who enter the United States with temporary visas for the purpose of identifying those who are

¹⁸⁷ CAMAROTA, *supra* note 39, at 38-39 (indicating that six of the September 11 terrorists violated the terms of their temporary visas).

¹⁸⁸ Homeland Security Act, *supra* note 20, § 402(3).

¹⁸⁹ USA Patriot Act of 2001, HR 3162, 107th Congress, 1st Session (Oct. 24, 2001) [hereinafter Patriot Act].

¹⁹⁰ *Id.* § 1.

¹⁹¹ *Id.* at Title IV.

¹⁹² FED'N FOR AM. IMMIGRATION REFORM, IMMIGRATION REFORMS TO COMBAT TERRORISM, at <http://www.fairus.org/news/NewsPrint.cfm?ID'1197&c'14> (last visited Sept. 13, 2004).

¹⁹³ Patriot Act, *supra* note 189, § 414.

affiliated with terrorist organizations.¹⁹⁴ In fact, the Patriot Act has developed an information system specifically designed to track recipients of temporary visas.¹⁹⁵ It completely bars the issuance of visas to nationals of countries that sponsor terrorism, unless the DHS determines ahead of time that the alien does not pose a threat to national security.¹⁹⁶

In 2005, the U.S. Visitor and Immigrant Status Indication Technology (U.S.-VISIT) system will replace the current National Security Entry-Exit Registration System.¹⁹⁷ The U.S.-VISIT system will create an electronically monitored check-in/check-out program for foreign visitors, and will require at least two biometric identifiers, which could include things such as fingerprints, eye color, or facial patterns.¹⁹⁸ This will undermine the use of false documentation, which, as discussed previously, has been a tool used in numerous terrorist plots.

To understand the utility of an entry-exit system, it is important to note that the United States General Accounting Office estimated that over seven million foreign visitors overstayed their visas in 2001.¹⁹⁹ Clearly, it would not be much of a challenge for terrorists to disappear among such a vast body of visa violators. This is precisely why the U.S.-VISIT system is so crucial. It will be linked to other intelligence databases, enabling it to sift through a plethora of relevant data to identify those who pose the biggest risk to national security.²⁰⁰ This would allow investigators to narrow their focus by more closely tracking those deemed to be possible terrorist threats.

At first glance, the U.S.-VISIT system may appear invasive. However, it is interesting to note that a recent poll of Canadians showed that more than seventy percent felt that the United States has the right to track all foreign visitors, including its neighbors from the North.²⁰¹ The global community is awakening to the real danger posed by terrorism, and understands that added inconveniences are an inevitable result. It is also important to note that the

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* § 416.

¹⁹⁶ *Id.* § 414.

¹⁹⁷ U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, CHANGES TO NATIONAL SECURITY ENTRY/EXIT REGISTRATION SYSTEM (Dec. 1, 2003), at <http://www.ice.gov/graphics/news/factsheets/nseersFS120103.htm> (last visited Sept. 13, 2004).

¹⁹⁸ *Id.*

¹⁹⁹ *Homeland Security: Overstay Tracking is a Key Component of a Layered Defense, Hearing Before the Subcomm. On Immigration, Border Security, and Claims, Comm. On the Judiciary, House of Representatives*, 108th Cong. (2003) (statements of Nancy R. Kingsbury, Managing Director, Applied Research and Methods), available at <http://www.house.gov/judiciary/kingsbury101603.pdf> (last visited Sept. 13, 2004).

²⁰⁰ *Id.* at 13. Although the factors that will be evaluated have not yet been disclosed, things such as national origin and criminal history would probably be included.

²⁰¹ Poll Data, (Apr. 2003), available at http://www.freedomsite.org/pipermail/fs_announce/2003/001099.html (last visited Sept. 13, 2004).

U.S.-VISIT system is designed to track new visitors, rather than requiring all current immigrants to line up at registration sites.²⁰²

Attorney General John Ashcroft described the current entry-exit process, which will likely be the pattern used by the U.S.-VISIT program, as a three-step system.²⁰³ The initial step is to register foreign visitors by fingerprinting and photographing, which will enable the identification of known terrorists who are already in the database, making it more difficult to enter with forged documents.²⁰⁴ The next step is intended to address the problem of visa violation by requiring the periodic registration of those who plan to stay in the United States for thirty days or more.²⁰⁵ Finally, under the "exit" step, the registration system will identify those who have overstayed their visas.²⁰⁶ While this technological support is enormously valuable, data systems cannot apprehend, detain, or deport. The duties of enforcement require physical bodies.

The establishment of IIRAIRA in 1996 provided local law enforcement agencies with the power to enforce federal immigration laws.²⁰⁷ Because there are only 2,000 federal agents authorized to investigate and enforce immigration laws throughout the expansive territory of the United States,²⁰⁸ dealing with an estimated eight to nine million illegal immigrants already living within U.S. borders, along with another estimated 500,000 entering each year,²⁰⁹ is overwhelming for such a comparatively minuscule body of law enforcement. Consequently, effective legislation intended to defeat illegal immigration should include a system of cooperation among local and federal law enforcement agencies.²¹⁰ As previously mentioned, when Lee Malvo was discovered by local police, he was turned over to the INS.²¹¹ Not having the resources necessary to investigate all detainees, the INS let Malvo go.²¹² The horrifying consequences of

²⁰² U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *supra* note 197.

²⁰³ Att'y Gen. John Ashcroft, Prepared Remarks on the National Security Entry-Exit Registration System (June 6, 2002), at 20, (transcript available at <http://usdoj.gov/ag/speeches/2002/060502agpreparedremarks.htm>) (last visited Sept. 13, 2004).

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ IIRAIRA, *supra* note 98.

²⁰⁸ *The Role of State and Local Law Enforcement in Immigration*, Congressional Panel Discussion (June 26, 2003) (statement of Sen. Jeff Sessions), available at <http://www.cis.org/articles/2003/enforcementpanel62603.html> (last visited Sept. 13, 2004) [hereinafter Sessions].

²⁰⁹ CENSUS BUREAU, *supra* note 106.

²¹⁰ *Officers Need Backup: The Role of State and Local Police in Immigration Law Enforcement: Hearing on H.R. 2671 Before the House Judiciary Subcomm. On Immigration, Border Security, and Claims*, 108th Cong. 7 (2003) (statement of James R. Edwards, Adjunct Fellow, Hudson Institute) [hereinafter Edwards, Jr.].

²¹¹ Braun & Fineman, *supra* note 6.

²¹² Mary P. Flaherty & Scott Higham, *John Lee Malvo; Smuggled Into This Country, a Transient Life in Shelters*, WASH. POST, Oct. 25, 2002, at A1.

this mistake could have been averted if the INS had relied on the help of local law enforcement manpower. Currently, “nearly 700,000 state and local police officers patrol our nation’s communities.”²¹³ Such a system of cooperation would not only reinforce the interior enforcement component, it would also create a net wide enough and tight enough to really make a difference.

b. The Clear Law Enforcement for Criminal Alien Removal Act ²¹⁴

The Clear Law Enforcement for Criminal Alien Removal Act of 2003 (CLEAR Act) proposes to enhance the enforcement of immigration laws by promoting a cooperative effort among federal, state, and local law enforcement agencies.²¹⁵ This would create a system of mutual reliance, rather than one of friction.

The Bill is sponsored by Representative Charles W. Norwood (R-GA).²¹⁶ Congressman Norwood underlined the importance of the CLEAR Act by pointing out the need to apprehend the “400,000 illegal aliens that are out there with deportation orders . . . the 80,000 that are criminals . . . the 4000 that come from countries friendly to al Qaeda . . . [and] the 10,000 or so that are needed for questioning by our national security agencies, at a time when we are concerned about terrorists.”²¹⁷ Accounting for the sheer volume of those who pose a potential risk to national security due to their country’s affiliation with terrorism, let alone the millions of illegal aliens whose origins are currently unknown, presents a daunting task. Again, most aliens are not a danger. Nevertheless, in this case, anonymity can have disastrous consequences.

Detention of those living inside the United States illegally is the key. The Department of Justice Inspector General estimated that, of those illegal immigrants against whom orders to leave the country are issued, ninety-four percent of those who are actually detained are removed.²¹⁸ Alternatively, only eleven percent of those who are not detained, but rather are released from custody, are eventually removed.²¹⁹ This is a significant difference that confirms the importance of having more law enforcement agents equipped with the resources necessary to detain illegal immigrants. Detention provides the opportunity for federal agents to examine the potential threat of each detainee.

²¹³ *Id.*

²¹⁴ The Clear Law Enforcement for Criminal Alien Removal Act of 2003, H.R. 2671, 108th Cong., 1st Sess., U.S. House of Representatives, (introduced to the house on July 9, 2003) [hereinafter CLEAR Act].

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ 149th Cong. Rec. H 6586 (July 10, 2003) (Statement of Charles W. Norwood).

²¹⁸ Memorandum from Glenn A. Fine, Inspector General, U.S. Department of Justice, to Michael J. Garcia, Acting Commissioner, Immigration and Naturalization Service (Feb. 2003), available at <http://www.usdoj.gov/oig/inspection/INS/03-04/letter.htm> (last visited Sept. 13, 2004).

²¹⁹ *Id.*

Additionally, it sends a message to terrorists that the government is looking for them, which would act to restrict their maneuverability. Detention and removal reduce the overall size of the pool in which prospective terrorists can hide and disappear.

Under the CLEAR Act, state and local police would be authorized to “investigate, apprehend, detain, or remove aliens in the United States.”²²⁰ This would include the ability to keep such aliens in state and local detention facilities, and the permission to transport them across state lines.²²¹ The utility of such a system is magnified by an inspection of the failures of past detention and removal procedures. “[E]very day, state and local police officers going about their normal duties encounter immigration violators.”²²² Yet an overwhelming majority of the time, when local police contact federal authorities, “[t]he policeman is told that no federal agent is coming to get the illegal or criminal alien, so let him go.”²²³ Thus, when U.S. Attorney General John Ashcroft requested the help of state and local authorities to enforce the policies supporting homeland security after September 11, many of these agencies responded with skepticism.²²⁴ For example, Billings, Montana Police Chief Ron Tussing voiced the opinion of many when he responded by saying, “[w]e’d call them (INS) up and they’d say let them go, we’re too busy.”²²⁵ INS spokeswoman, Luisa Aquino, responded to such criticism by saying, “[w]e are tasked with so many issues . . . we can’t respond to every call.”²²⁶ Consequently, state and local officers who encounter illegal immigrants in the normal course of their duties have little incentive to detain them.²²⁷ When they are not detained, federal authorities cannot examine and remove potential threats. This, along with the message that residing in the United States illegally is relatively harmless, which is portrayed by lax enforcement policies, produces potentially dangerous consequences for domestic security.

The CLEAR Act is intended to reverse these trends that have sent a “clear signal to the at least 8 million illegal aliens already in this country, as well as to the untold millions of would-be illegal aliens, that breaking our law is of no consequence.”²²⁸ Terrorists have exploited almost every form of illegal immigration. They are continually active in seeking additional methods of

²²⁰ CLEAR Act, *supra* note 214, § 101.

²²¹ *Id.*

²²² Edwards, Jr., *supra* note 210.

²²³ *Id.* at 2.

²²⁴ JAMES R. EDWARDS, JR., CENTER FOR IMMIGRATION STUD., OFFICERS NEED BACKUP: THE ROLE OF STATE AND LOCAL POLICE IN IMMIGRATION LAW ENFORCEMENT (Apr. 2003), at <http://www.cis.org/articles/2003/back703.html> (last visited Sept. 13, 2004).

²²⁵ *Id.*

²²⁶ Edward Hegstrom, *Mix-up Over 8 Immigrants to be Probed*, HOUS. CHRON., Jan. 9, 2003, at A19.

²²⁷ JAMES R. EDWARDS, JR., *supra* note 224 at 4.

²²⁸ Edwards, Jr., *supra* note 210.

carrying out acts of terrorism on U.S. soil.²²⁹ Thus, the legislative net used to catch such terrorists must be cast widely and heavily, with few loopholes. A law such as the CLEAR Act would provide the manpower and information-sharing capabilities necessary to shore up the long-standing weakness of interior enforcement. It would also produce a deterrent effect, because potential terrorists would not only have to enter the United States, but would also be faced with the difficulty of remaining undetected.

c. State Non-Cooperation

The United States faces a problem similar to one recognized by the EU, namely, the dilemma of state non-cooperation with the enforcement of federal immigration laws. Recently, a number of state policies have undercut the effectiveness of the federal government's effort fight terrorism. Such policies undermine stability during a time when our leaders "have emphasized in the war on terror we have got to employ and coordinate with and utilize the tremendous resources of state and local law enforcement."²³⁰

Several major cities, including Houston, Texas, Chicago, Illinois, and Los Angeles, California, have enacted "safe haven" policies that provide protection for illegal immigrants.²³¹ This usually entails a "don't ask, don't tell" policy for local police officers who encounter illegal immigrants.²³² Other cities have adopted stronger policies, instructing local agencies to be deliberately uncooperative with the federal government by ignoring evidence of illegal alien status.²³³ "At least 165 communities around the country have gone public with their condemnation of the USA Patriot Act,"²³⁴ which the federal government enacted to promote unity among federal and local law enforcement authorities. This is a danger because fraudulent identification documents are readily available to those who make it into the United States, giving them the ability to move freely.²³⁵ Therefore, these cities incidentally provide safe havens and maneuverability for terrorists. Just like illegal aliens, terrorists hope to go

²²⁹ Robert S. Mueller, III, FBI Director, Remarks at the National Organization of Black Law Enforcement Executives (NOBLE) 26th Annual Training Conference and Exhibition (July 22, 2002), available at <http://www.fbi.gov/pressrel/speeches/noble.htm> (last visited Sept. 13, 2004).

²³⁰ Sessions, *supra* note 208.

²³¹ HEATHER MACDONALD, CENTER FOR IMMIGRATION STUDIES, CRIME & THE ILLEGAL ALIEN: THE FALLOUT FROM CRIPPLED IMMIGRATION ENFORCEMENT 2-3 (June 2004), available at <http://www.cis.org/articles/2004/back704.pdf> (last visited Sept. 13, 2004).

²³² *Id.*

²³³ FED'N FOR AM. IMMIGRATION REFORM, STATE OF INSECURITY: HOW STATE AND LOCAL IMMIGRATION POLICIES ARE UNDERMINING HOMELAND SECURITY, at <http://www.fairus.org/Research/Research.cfm?ID'1626&c'55&insearch'state> (last visited Sept. 26, 2004).

²³⁴ John Dougherty, *Coming to America: Local Governments Harboring Illegals?*, WORLD NET DAILY, Aug. 28, 2003, at http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID'34312 (last visited Sept. 13, 2004).

²³⁵ *Id.*

undetected by law enforcement. These local governments are providing the means for them to do just that.

Several states have also engaged in efforts to provide illegal immigrants with valid driver's licenses.²³⁶ This would provide illegal immigrants with access to the most widely used form of identification in the United States.²³⁷ Alaska, Connecticut, Idaho, Louisiana, Montana, Nevada, New Mexico, North Carolina, Ohio, Rhode Island, Tennessee, Utah, Washington, and West Virginia currently allow illegal immigrants to obtain driver's licenses.²³⁸ This creates a serious risk, because "[a]ll 19 of the 9/11 terrorists possessed one or more of state driver's licenses, which they used to blend in, rent apartments, open bank accounts, and, ultimately, to board the airplanes they intended to crash."²³⁹ States with individual agendas have created a valuable tool for terrorists living illegally in the United States. Nearly any potential target becomes readily accessible through interstate highways. Permissive policies by even one state render the entire country vulnerable.

The current relationship between the federal government and some state and local governments is a matter for concern, especially considering the current threat of terrorism. This environment of safe harbor and free mobility has already been exploited by terrorists, and will continue to be as long as certain localities refuse to cooperate. This highlights another valuable component of a law like the CLEAR Act, wherein a system of financial incentives is created to encourage states to use their own resources to enforce federal immigration laws.²⁴⁰

As previously discussed, the EU has taken steps to unify member states' enforcement of immigration laws, because it recognizes the numbers game. With steady flows of illegal immigrants entering an expansive territory, a large number of law enforcement agents are needed to stop up the sieve.

V. CONCLUSION

Ineffective immigration laws and lax enforcement policies foster dangerous and credible threats to national security. Eliminating terrorist exploitation of loose immigration control, however, is not an insurmountable task. The influx of illegal immigrants is escalating. Based on data gathered by the U.S. Census Bureau, the U.S. Department of Justice (DOJ) estimated that 830,000 illegal

²³⁶ Rich Ehsen, *States, Terrorism and the Evolving Driver's License*, STATE NET CAPITOL JOURNAL, Sept. 15, 2003 (noting that Texas, Maryland, Mississippi, Arizona, Georgia, and California are among the states who have recently considered such policies).

²³⁷ *Id.*

²³⁸ FED'N, STATE OF INSECURITY: HOW STATE AND LOCAL IMMIGRATION POLICIES ARE UNDERMINING HOMELAND SECURITY, *supra* note 233.

²³⁹ *Id.*

²⁴⁰ *Id.*; CLEAR Act, *supra* note 214, § 106.

immigrants arrived in the United States in 2000.²⁴¹ On the other hand, the same studies showed that an estimated 560,000 illegal immigrants left²⁴² the United States during the same year.²⁴³ The DOJ estimates that, based on the recent emphasis to enact policies aimed at reducing illegal immigration, the number of those leaving the United States will eventually surpass those entering.²⁴⁴ This illustrates an important principle. Effective legislation and enforcement can reduce illegal immigration levels, which could ultimately dismantle the system of access used by terrorist enemies of the United States over the past decade. This does not mean that the United States must seal its borders and engage in massive manhunts for suspected illegal immigrants. Nevertheless, policies focusing on the detention and removal of illegal aliens deemed to be a threat to national security should be a priority.

The recent efforts to implement tighter controls at borders and ports of entry should reduce the number of illegal immigrants entering the United States annually. This, along with a tracking system that identifies visa violators, would increase the rate at which those leaving illegal-immigrant status whittles away at the overall number of aliens living in the United States illegally. In turn, this translates into a smaller pool from which government officials must flush out terrorists who, to that point, had successfully circumvented U.S. immigration controls.

As discussed previously, the lack of human resources and funding are clearly to blame for past enforcement breakdowns. The CLEAR Act, or a similar law, would complement the U.S.-VISIT system by providing a structure able to overcome such obstacles by putting law enforcement agents in positions to more efficiently detain suspected terrorists, thus enhancing the ability to stop them before they carry out their acts of hatred.

In the face of increased threats of terrorism, the importance of enacting stricter legislation to reduce illegal immigration is even more poignant. When a foreign visitor circumvents the proper naturalization process, government officials cannot assess that individual's potential threat to national security. A disconcerting proportion of those who have committed acts of terrorism in the

²⁴¹ U.S. DEP'T OF JUSTICE, FY 2001 PERFORMANCE REPORT: STRATEGIC GOAL FIVE: FAIRLY AND EFFECTIVELY ADMINISTER THE IMMIGRATION AND NATURALIZATION LAWS OF THE UNITED STATES, at 124 (2001), available at <http://www.usdoj.gov/ag/annualreports/pr2001/pdf/Section05.pdf> (last visited Sept. 13, 2004).

²⁴² The INS made a similar estimate several years ago. It determined that 400,000 illegal immigrants left the illegal alien population. "Left" includes those who voluntarily departed the country, were deported, died, or successfully became naturalized U.S. citizens. *Securing the Homeland Through Immigration Law Enforcement, Hearing on the Dep't of Homeland Security Transition: Bureau of Immigration and Customs Enforcement Before the House Subcomm. on Immigration, Border Security, and Claims of the House Comm. on the Judiciary*, CENTER FOR IMMIGRATION STUDIES, at concl. (Apr. 10, 2003) (statement of Mark Krikorian, Executive Director of the Center for Immigration Studies).

²⁴³ U.S. DEP'T OF JUSTICE, *supra* note 241, at 124.

²⁴⁴ *Id.*

United States were residing in the United States illegally. Containing illegal immigration will impede the use of one of the main tools exploited by terrorists in recent years. Tighter internal enforcement mechanisms constitute the most promising method, because terrorist plots take time to plan and carry out. A visa tracking system, coupled with state cooperation, would provide federal agents with more opportunities to examine and remove potential threats.

Indeed, when a ship runs aground and begins to take on water, the immediate reaction is to engage all resources in an effort to shore up the external breach. Nevertheless, at some point, the need to bilge the dangerous levels that have collected inside the ship becomes more pressing.