Defeating an Invisible Enemy: The Western Superpowers’ Efforts to Combat Terrorism by Fighting Illegal Immigration

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I. INTRODUCTION ........................................................................................................................................... 282

II. CONNECTION BETWEEN TERRORISM AND ILLEGAL IMMIGRATION .................................................. 285

III. HISTORY OF ILLEGAL IMMIGRATION IN THE UNITED STATES ..................................................... 289

IV. CURRENT WESTERN POLICIES AGAINST ILLEGAL IMMIGRATION ...................................................... 293
   A. Balancing Considerations ......................................................................................................................... 295
   B. Illegal Immigration in Europe ................................................................................................................. 296
   C. Recent European Policy Against Illegal Immigration ............................................................................. 297
      1. Europol ................................................................................................................................................. 298
      2. The Oisin II Programme ....................................................................................................................... 298
   D. Recent U.S. Policy Against Illegal Immigration ...................................................................................... 299
      1. External Controls .................................................................................................................................. 300
         a. Border Control .................................................................................................................................. 301
      2. Internal Controls ................................................................................................................................... 302
         a. Entry-Exit System ............................................................................................................................... 302
         b. The Clear Law Enforcement for Criminal Alien Removal Act ......................................................... 305
         c. State Non-Cooperation ....................................................................................................................... 307

V. CONCLUSION .................................................................................................................................................. 308

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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).
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. Blood splattered onto his face. 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.

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. Malvo had illegally entered the United States by using false documents to fly from San Juan, Puerto Rico, to Miami, Florida. Because of his illegal status, local police detained him and called border patrol. Nevertheless, after filling out a report on the incident, Immigration and Naturalization Service (INS) released Malvo and his mother from custody. 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). 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 EWI, as well as those who enter legally with temporary


8 U.S. DEP’T OF JUSTICE, supra note 5.

9 Malkin, supra note 7.

DEFEATING AN INVISIBLE ENEMY

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).


\(^{13}\) "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.


status to be illegal.\textsuperscript{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.\textsuperscript{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).\textsuperscript{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.\textsuperscript{21} A recent poll indicated that seventy percent of U.S. citizens feel that reducing illegal immigration is "very important."\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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


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


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

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\(^{26}\) 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.


\(^{30}\) 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


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").


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,
DEFEATING AN INVISIBLE ENEMY

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. However, Kansi over Stayed the visa's term of one month. He had been in violation of his visa for nearly one year when he murdered the agents.

"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." 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.

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


Camarota, supra note 39, at 15-18.

Id.

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

Id. at 19.


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

Camarota, supra note 39, at 11.

Id. at 27.

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

In 1997, a Palestinian immigrant, Ghazi Ibrahim Abu Maizar, came within hours of detonating a bomb in a Brooklyn, New York, subway station.\textsuperscript{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.\textsuperscript{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.\textsuperscript{58} On three separate occasions, Maizar attempted to enter the United States illegally through Canada.\textsuperscript{59} The third time, Canadian officials refused to take Maizar back, so the INS released him into the United States,\textsuperscript{60} which nearly resulted in the loss of potentially countless innocent lives.

Three terrorists from Algeria plotted the "millennium" attack in December of 1999.\textsuperscript{61} One of the terrorists was caught with bombs in his car while trying to cross from Canada into the State of Washington.\textsuperscript{62} All three were living in the United States illegally at the time.\textsuperscript{63}

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

\textsuperscript{54} Id.
\textsuperscript{55} Id.
\textsuperscript{57} Id.
\textsuperscript{58} CAMAROTA, \textit{supra} note 39, at 30.
\textsuperscript{59} Id.
\textsuperscript{60} Id.
\textsuperscript{62} Id.
\textsuperscript{63} CAMAROTA, \textit{supra} note 39, at 34.
\textsuperscript{64} Americas: Hijackers Carried Fake Visas, GUARDIAN (London), Jan. 27, 2004, at 18.
received a ticket in Florida for driving without a license. He was not 
detained. 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. Spanish 
authorities believe that illegal immigrants from Morocco belonging to an Islamic 
terrorist organization perpetrated the attacks. A number of the suspects held 
for questioning were carrying false documentation at the time.

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.

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. 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).
70 Peter Fray, Madrid Inquiry Looks at Link to Morocco Bombs, REUTERS, Mar. 18, 2004, at 
2004).
71 Id.; Al Goodman, Madrid Train Suspect Arrested, CNN.COM, July 29, 2004, at 
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-
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 
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. 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. Under these acts, non-U.S. citizens suspected of illegal activity could be expelled by executive order. However, they were only exercised on two occasions by President John Adams to banish two Irish journalists.

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. The Immigration Act of March 3, 1891, broadened the exclusion list to include felons, public charges, and anyone with an infectious disease. 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. In response, Congress enacted the 1917 Immigration Act.

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76 Id. § 1.


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


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.
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).
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.\textsuperscript{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.\textsuperscript{93} Based on the data it gathered, the Select Commission recommended a comprehensive reform of current immigration policy to address current trends.\textsuperscript{94}

Citing the Select Commission's recommendations, Congress turned its attention to illegal immigration,\textsuperscript{95} enacting the Immigration Reform and Control Act (IRCA) of 1986.\textsuperscript{96} The IRCA developed several policies that reduced the benefits received by immigrants who entered the United States illegally.\textsuperscript{97}

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996 was aimed at enforcing tighter controls over both illegal and legal immigrants.\textsuperscript{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,\textsuperscript{99} and by limiting the ability of the Attorney General to dismiss removal proceedings to a maximum of 4,000 a year.\textsuperscript{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."\textsuperscript{101} Additionally, those who violated immigration laws were barred from legal entry into the


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

\textsuperscript{97} Id. § 203(1).

\textsuperscript{98} Federal Register, supra note 96.

\textsuperscript{99} Id. § 1229(b) (2004) (amending § 240A of the IRCA).

\textsuperscript{100} 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 IIRIRA, supra note 98.
103 Id. at Title I (Department of Justice General Administration Salaries and Expenses).
106 U.S. CENSUS BUREAU, CURRENT POPULATION SURVEY (Mar. 2002) [hereinafter CENSUS BUREAU].
107 Id.
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" of war.

Consequently, both the United States and the EU have recently developed legislation aimed at stricter controls on illegal immigration.\footnote{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"), \url{http://www.state.gov/p/nea/rls/rm/23551.htm} (last visited Sept. 26, 2004).} 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."\footnote{Press release, Americans and Europeans Agree Terrorism is Top Threat, Survey Says (Sep. 4, 2002), \url{http://www.useu.be/Terrorism/EUResponse/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).} The development of policies aimed at fighting terrorism has been a prominent topic at recent councils of the Commission of the European Communities.\footnote{Agence Europe, Antonione and Prodi Mention Stakes at Play in Summit on Growth and Immigration Management, European Council (Oct. 10, 2003).} 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.\footnote{Council Regulation (EC) 539/2001 of March 15, 2001, 2001 O.J. (L 81) 1.} Citizens of certain developing countries listed in the regulation are held to stricter entry procedures.\footnote{\textit{Id.} \S 5.} These entry regulations are customizable by each member state to fit its particular needs.\footnote{\textit{Id.}} Romano Prodi, President of the European Commission at the time,\footnote{\textit{The World Bank and the European Union, The Presidency of the Council of the European Union} (2003), available at \url{http://wbln0018.worldbank.org/eurvp/web.nsf/Pages/Brussels++EU+Institutions++Presidency} (last visited Sept. 13, 2004).} sought to give his successor greater power
over foreign policies, because he felt that implementing coordinated immigration policies would be essential in "[tackling] illegal immigration, crime and terrorism."  

Recent Councils of the European Union (Council) encapsulate these phenomena under the same policy reform efforts, thus demonstrating that European legislators have identified the connection.

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. An overly stringent policy could create unfavorable relationships in the international community. Such isolationism could severely impair foreign trade and other economic benefits. In the United States, foreign investors own over $8.5 trillion worth of U.S. assets. Discouraging foreign

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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).


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).

investors from spending money could undercut economic growth. Because the majority of voters consider the economy to be the most important issue, 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. 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. Of these, it is believed that nearly half of such illegal immigrants' entries are facilitated by organized crime groups. Illegal immigrants tend to assimilate into such groups very easily, because they come from countries of similar geographic locations and speak the same language. For example, a Triad is the common term used to describe Chinese organized crime groups. Triads believe that by organizing themselves into communities, they can maintain their ideologies and more easily advance their social status. 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." The Schengen Treaty stipulated that citizens of an EU member state could freely move among the other member states. 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.
131 Id.
132 Id.
133 Id.
135 Id. at 8.
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.\textsuperscript{137}

Because of this, the Council has sought to implement EU-wide immigration
laws, which every member state would be compelled to enforce.\textsuperscript{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."\textsuperscript{139} For this reason, the Council enacted policies to thwart
crimes that are "committed or likely committed in the course of terrorist
activities . . . ."\textsuperscript{140} These policies are partially aimed at deterring illegal
immigration.\textsuperscript{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.\textsuperscript{142} In effect, these countries magnified
the problem by adopting lenient policies towards those living within their
borders illegally.\textsuperscript{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.\textsuperscript{144}

\textbf{C. Recent European Policy Against Illegal Immigration}

Not only have EU immigration policies addressed the link between terrorism
and illegal immigration,\textsuperscript{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.\textsuperscript{146} One of
the primary methods used by the EU to remedy these difficulties is the

\begin{footnotesize}
\begin{enumerate}
\item Melinda McGehee, \textit{Using Immigration as a Protectionist Mechanism While Promoting Free Trade},
\item Comm'n, \textit{Proposal for a Council Framework Decision on Combating Terrorism}, Brussels,
2001 O.J. (C 332/E).
\item \textit{Id.} at 7.
\item \textit{Id.} at 2.
\item \textit{Id.} at 14.
\item Emilio Reyneri, \textit{Illegal Immigration and the Underground Economy} 14 (National Europe
Centre Paper No. 68, 2003).
\item Bruggeman, supra note 130, at 1.
\item \textit{Treaty on the European Union}, art. 29.
\end{enumerate}
\end{footnotesize}
development of programs that require closer cooperation among various law enforcement agencies.\textsuperscript{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.\textsuperscript{148} A powerful tool used by Europol agents is a computer system that provides information-sharing capabilities to all fifteen EU member states.\textsuperscript{149} Europol promotes internal enforcement by targeting criminal organizations, such as illegal immigration networks and terrorist cells.\textsuperscript{150}

The Europol system recognizes the problem of those who enter the EU legally with temporary visas, but remain after the visa has expired.\textsuperscript{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.\textsuperscript{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."\textsuperscript{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.\textsuperscript{154} Through this system, the EU feels it can better secure the borders

\textsuperscript{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].


\textsuperscript{149} Id.

\textsuperscript{150} Id.

\textsuperscript{151} Id.

\textsuperscript{152} Id.

\textsuperscript{153} Council Decision 2, supra note 147, art. 2, § 1.

\textsuperscript{154} Id. art. 4.
exploited by illegal immigrants. Preventing terrorism is among the priorities of Oisin II. It empowers local law enforcement agencies with the authority to enforce EU laws. Thus, when local law enforcement agents encounter illegal immigrants or suspected terrorists, they will be able to respond, thus expediting removal procedures and ensuring the likelihood of stricter enforcement. To meet Oisin 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. 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) 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." 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.

As discussed earlier, illegal immigration is a two-headed phenomenon, namely, EWI and visa violation. 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. An analysis of recent legislation shows that efforts are being made on both fronts.

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

158 Id.

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


162 Id. § 237(a)(1)(B).

163 Id. § 237(a).

164 Simcox, supra note 10.

165 Id.
The Homeland Security Act of 2002\(^{166}\) (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.


\(^{169}\) Id.

\(^{170}\) Id.


\(^{172}\) Homeland Security Act, supra note 20, § 430(c).

\(^{173}\) Id. § 441.


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

\[a. \text{Border Control}\]

The United States shares borders with Canada and Mexico. Both of these borders have been heavily exploited by illegal immigrants. The North America Free Trade Agreement (NAFTA) created a serious complication to border control efficiency for the United States. 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. However, the United States restricted the number of Mexican visas to 5,500 per year, while placing no such restriction on Canadian visas. This led to an increase in illegal immigration from Mexico. 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.

This disparity in border control priority made the U.S.-Canada border more accessible to terrorists. "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." Thus, overcompensation in the South has left vulnerabilities in the North. Terrorists have proven to be adept at uncovering such weaknesses. Illegal immigration


176 Id. at 41

177 Id.


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.


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.

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. 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. One of the main tools developed by the DHS in assuming this duty is the USA PATRIOT Act (Patriot Act). 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." 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. One of the biggest obstacles to effective internal enforcement has been the lack of manpower.

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." 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).
190 Id. § 1.
191 Id. at Title IV.
193 Patriot Act, supra note 189, § 414.
DEFEATING AN INVISIBLE ENEMY

affiliated with terrorist organizations.\textsuperscript{194} In fact, the Patriot Act has developed an information system specifically designed to track recipients of temporary visas.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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

\textsuperscript{194} Id.
\textsuperscript{195} Id. § 416.
\textsuperscript{196} Id. § 414.
\textsuperscript{198} Id.
\textsuperscript{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.
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.
204 Id.
205 Id.
206 Id.
207 IIRAIRA, supra note 98.
209 CENSUS BUREAU, supra note 106.
211 Braun & Fineman, supra note 6.
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."\textsuperscript{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.

\textit{b. The Clear Law Enforcement for Criminal Alien Removal Act} \textsuperscript{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.\textsuperscript{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).\textsuperscript{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."\textsuperscript{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.\textsuperscript{218} Alternatively, only eleven percent of those who are not detained, but rather are released from custody, are eventually removed.\textsuperscript{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.

\begin{thebibliography}{9}
\bibitem{213} Id.
\bibitem{215} Id.
\bibitem{216} Id.
\bibitem{219} Id.
\end{thebibliography}
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." This would include the ability to keep such aliens in state and local detention facilities, and the permission to transport them across state lines. The utility of such a system is magnified by an inspection of the failures of past detention and removal procedures. "Every day, state and local police officers going about their normal duties encounter immigration violators." Yet an overwhelming majority of the time, when local police contact federal authorities, "the policeman is told that no federal agent is coming to get the illegal or criminal alien, so let him go." 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. For example, Billings, Montana Police Chief Ron Tussing voiced the opinion of many when he responded by saying, "we'd call them (INS) up and they'd say let them go, we're too busy." INS spokeswoman, Luisa Aquino, responded to such criticism by saying, "we are tasked with so many issues ... we can't respond to every call." Consequently, state and local officers who encounter illegal immigrants in the normal course of their duties have little incentive to detain them. 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." Terrorists have exploited almost every form of illegal immigration. They are continually active in seeking additional methods of

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220 CLEAR Act, supra note 214, § 101.
221 Id.
222 Edwards, Jr., supra note 210.
223 Id. at 2.
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. 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 to 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."

Several major cities, including Houston, Texas, Chicago, Illinois, and Los Angeles, California, have enacted "safe haven" policies that provide protection for illegal immigrants. This usually entails a "don't ask, don't tell" policy for local police officers who encounter illegal immigrants. Other cities have adopted stronger policies, instructing local agencies to be deliberately uncooperative with the federal government by ignoring evidence of illegal alien status. "At least 165 communities around the country have gone public with their condemnation of the USA Patriot Act," 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. Therefore, these cities incidentally provide safe havens and maneuverability for terrorists. Just like illegal aliens, terrorists hope to go

230 Sessions, supra note 208.
232 Id.
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. This would provide illegal immigrants with access to the most widely used form of identification in the United States. 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. 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." 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.

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

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236 Rich Ehisen, 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. On the other hand, the same studies showed that an estimated 560,000 illegal immigrants left the United States during the same year. 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. 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


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 Dept 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).


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.