"Visa Overstays: Can We Bar the Terrorist Door?"

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Much of the discussion on the intersection of immigration and terrorism has focused on securing our porous land borders. And border enforcement is indeed an important tool in protecting our homeland. Gazi Ibrahim Abu Mezer, part of the Brooklyn subway bomb plot, for instance, was caught trying to sneak across the Canadian border, and because of a lack of detention space, he was paroled into the U.S. Abdel Hakim Tizegha, who took part in the Millennium Plot, had been a stowaway on a ship from Algeria, was denied asylum, moved to Canada, and later returned to the United States by sneaking across the Washington state border. Ahmed Ressam, also part of the Millennium Plot, was caught at the Canadian border trying to enter using a false Canadian passport.

Nor has the Canadian border been the only weak point. Mahmoud Kourani, described by the Justice Department as "a member, fighter, recruiter and fundraiser" for Hezbollah and brother of the terrorist group's chief of military security in southern Lebanon, snuck across the Mexican border in February 2001, after bribing a Mexican official in Beirut for a visa.

And given the pervasive corruption in Mexico, our southern border is likely to become an increasingly attractive means of entering the United States as other avenues are made more difficult.

But as important as border control is for security, it is not sufficient. It must be supplemented with a tightly run immigration system inside the country as well. This includes addressing problems like the lack of worksite enforcement, the staggering prevalence of fraud in the processing of immigration benefits, and the absurd visa lottery.

But perhaps most important is the issue of visa overstays. (Strictly speaking, it is not the visa itself, issued by the State Department, which expires and turns the foreign visitor into an illegal alien, but rather the length of stay granted the alien by the immigration inspector at the airport or land crossing.) Estimates are that as many as 40 percent of illegal aliens are overstayers, who entered the country legally but did not leave when their time ran out, representing perhaps 4 million or more people.

And, in fact, the majority of those terrorists who were illegal aliens when they committed their crimes were overstayers. Of the 12 al Qaeda operatives who were illegal aliens in the United States when they took part in terrorism between 1993 and 2001 (out of the 48 examined in the Center for Immigration Studies report, *The Open Door*), seven were visa overstayers. These include two conspirators in the first World Trade Center attack, Mohammed Salameh and Eyad Ismoil. Other terrorist overstayers were Lafi Khalil, who was involved in the New York subway bomb plot, and four of the 9/11 terrorists: Zacarias Moussaoui, Satam al Suqami, Nawaf al Hamzi, and Hani Hanjour.

In addition, Fadil Abdelghani, who took part in the plot to bomb New York landmarks, had overstayed a tourist visa in 1987. He obtained permanent residence in 1991 through a sham marriage to an American. The murderer of two CIA employees in 1993, Mir Aimal Kansi, overstayed a business visa and later applied for asylum.

Given the prevalence of overstays among terrorists in the United States, it's an important security goal to limit this phenomenon as much as possible. This can be done in two ways: keeping likely overstays from being issued visas in the first place, and detecting overstays once they do happen.

Section 214(b) of the Immigration and Nationality Act states that "every alien shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer . . . that he is entitled to nonimmigrant status." Individuals who appear likely to overstay their temporary visa are called "intending immigrants" – that is, they will try to settle permanently in

the United States. Consular officers are not to issue "nonimmigrant" (i.e., temporary) visas unless the applicant can demonstrate that he has a residence abroad to which he is likely to return (with some exceptions), that the visit to the United States will be temporary, and that the applicant has enough money to finance the visit and return trip. Officers are trained to look for evidence of strong ties to the applicant's home country, such as family, a good job, property, and other things that would increase the likelihood that an applicant will return, and to be skeptical of applicants who fit the profile of a probable overstayer. The criteria vary from country to country, but these individuals are generally young, unemployed or earning a low income, and unmarried. Section 214(b) is by far the most common reason for applications to be refused.

This is specifically relevant to terrorism because ordinary intending immigrants and terrorists often have similar characteristics – youth, no families of their own, no consistent career, no property or other deep attachments in their home countries. In other words, stricter standards for the issuance of visas to prevent ordinary overstays could be a powerful tool to reduce the terrorist threat as well.

Nor is this merely supposition. The visa applications of 15 of the 19 hijackers were examined by current and former consular officers and every one of the experts told Joel Mowbray of *National Review* magazine in 2002 that every one of the applications should have been denied for conventional reasons. Of the applications of two of the hijackers, Mowbray wrote:

> *Brothers Wail and Waleed al-Shehri applied together for travel visas on October 24, 2000. Wail claimed his occupation was "teater," while his brother wrote "student." Both listed the name and address of his respective employer or school as simply "South City." Each also declared a U.S. destination of "Wasantwn." But what should have further raised a consular officer's eyebrows is the fact that a student and his nominally employed brother were going to go on a four-to-six-month vacation, paid for by Wail's "teater" salary, which he presumably would be foregoing while in the United States. Even assuming very frugal accommodations, such a trip for two people would run north of $15,000, yet there is no indication that the consular officer even attempted to determine that Wail in fact had the*

financial means to fund the planned excursion. They appear to have received their
visas the same day they applied.

Therefore, stricter adherence to the expectations of the statute, a stronger prevailing attitude of skepticism among consular officers, and greater understanding of the need to invoke Section 214(b), the keystone of non-immigrant visa law, could be a highly effective tool against terrorism. With some four million overstayer illegal aliens, strict adherence to 214(b) could also have a significant impact on efforts to reduce illegal immigration.

Screening visa applicants for intending immigrants has security benefits because "intending terrorists" have similar characteristics. But if the terrorist gets in anyway, there's also a significant likelihood that he'll actually overstay, because of the time involved in organizing and preparing for any significant terrorist attack. And this is why detecting and removing overstays is important not merely for ordinary immigration control but also for security reasons.

The first task is to know whether a foreign visitor actually left before his length of stay expired. We have no real way of knowing this now, given the complete breakdown of the comically inadequate, paper-based system of tracking the departure of foreign visitors via the I-94 form. And without knowing which foreign visitors have left, we have no way of knowing who has remained illegally.

The potential for true departure tracking exists in US-VISIT, the new biometric screening system for foreign visitors, which the Department of Homeland Security began implementing in 2004. The system records the entry of foreign visitors, authenticates their identity, and screens them against security databases. It has been fully implemented at air and sea ports, but in only a very limited way at land ports. If the program is allowed to proceed as planned, the exit recording system will eventually require visitors to "check out" as they leave. By matching the recorded entries against the exits, DHS would be able to determine which visitors have overstayed their visas and become illegal aliens. In addition to providing ICE with enforcement leads as soon as an alien overstays, it is expected that the act of recording entries and exits,

together with increased enforcement activity and the imposition of penalties for visa violations, will help dampen the temptation to overstay.

US-VISIT is still a work in progress, with fewer than one-fourth of foreign visitors now screened and enrolled upon entry, and only a handful on exit (DHS is currently relying on a passenger manifest-based system and pilot exit programs in a few airports to record exits). Mexicans and Canadians are exempt from enrollment, leaving a significant gap in the screening activity. This policy is partly due to infrastructure limitations and partly due to the Bush administration's deference to constituencies who benefit from minimal screening policies, such as the travel industry, the immigration bar, and businesses dependent on cross-border trade. Funding for more port inspectors and infrastructure improvements, such as port re-design, would make it much easier to expand the number of visitors who are covered under US-VISIT, enhancing security, deterring illegal immigration, and facilitating legitimate travel and commerce.

If and when the exit-recording function of US-VISIT is ever fully implemented, then aliens identified as overstayers should be added to the FBI's National Crime Information Center (NCIC) database. In that way, if they are ever arrested for a crime or pulled over for a traffic stop, they could be held by local police and then turned over to DHS's Bureau of Immigration and Customs Enforcement (ICE). This could become a key component of interior enforcement. Although no hard figures exist, with perhaps 4 million visa overstayers living in the United States, there is no question that tens of thousands of them are arrested or pulled over in traffic stops each year. Traffic stops and arrests are a significant opportunity to apprehend those in the country illegally and we should take full advantage of it.

While adding visa overstays to the criminal database would help reduce illegal immigration, one may still wonder if it would ever be useful against terrorists. In fact, two of the 9/11 hijackers were pulled over in traffic stops in months preceding the attacks. In the spring of 2001, the plot's ringleader, Mohammed Atta, received a traffic ticket in Broward County, Fla., for driving without a license. He had, by this time, overstayed his visa on his previous visit to the United States between June 2000 and January 2001, though the INS at Miami International

Airport allowed him back into the country. Had a system of carefully tracking overstays and placement of names into the criminal database been in place, then we potentially could have averted the 9/11 attacks. Although he had not overstayed his visa, Ziad Samir Jarrah, who was on board United Airlines Flight 93 that crashed in Pennsylvania on 9/11, was issued a speeding ticket on September 9 in Maryland for driving 95 miles an hour in a 60-mile-per-hour zone. Thus, even the most sophisticated terrorists in American history seem to have run afoul of the law prior to carrying out their plans. Of course, for immigration authorities to quickly take custody of overstayers detained by police, they would need more detention space and more agents assigned to interior enforcement. By adding the names of visa overstays to the criminal database, ICE would in effect enlist the help of thousands of local law enforcement officers.

Of course, under current law, overstayers are committing only a civil violation of federal law, not a criminal offense. At the same time, those who enter without inspection by sneaking across the border are committing a federal crime (though since virtually all illegal aliens use fraudulent documents, they are committing a criminal offense regardless of their mode of entry, but that is another matter). Making illegal presence a criminal offense would facilitate cooperation with state and local authorities because, though there are a few who claim that local law enforcement doesn't have the authority to enforce federal civil violations, no one disputes local authority to enforce federal criminal law.

Any serious effort to foil terrorist attacks on the United States must have as a centerpiece the prevention and removal of overstays as part of a broader effort to restore credibility to our immigration-control system. The means to do this are available to us, but much work remains, both in policy changes and implementation of earlier policies. The only responsible course of action is to do all we can, quickly, to bar the door to future terrorist overstayers.

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Mr. Krikorian frequently testifies before Congress and has published articles in The Washington Post, The New York Times, Commentary, National Review, and elsewhere, and has appeared on 60 Minutes, Nightline, the NewsHour with Jim Lehrer, CNN, National Public Radio and on many other television and radio programs.

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