



Immigration and American Values are Synonyms
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From the tens of thousands of immigrants currently enlisted in our armed services, to the corporations founded by immigrants' entrepreneurial spirit, to the tireless immigrant workers toiling to pick our nation's food, immigrants and immigration are the bedrock of our nation's security and prosperity.

However, our system of immigration laws has deteriorated to a point where our security and prosperity are gravely threatened.

In November 2009, Secretary of Homeland Security Janet Napolitano said, "The immigrant story is part of what it means to be an American—but failing to fix a broken system that undermines our shared values of lawfulness and fairness is not."¹ Napolitano went on to state that in order for her to fulfill her oath to secure the nation, "DHS needs immigration reform."² This clarion call for Congressional action to fix our immigration system has never been more important.

Secretary Napolitano's three-pronged approach to reform includes: commitment to serious and effective enforcement, improved legal flows for families and workers, and a firm but fair way to deal with those who are already here.³ She has promised that the Obama Administration will pursue immigration reforms true to an American identity as "both a nation of immigrants and a nation of laws."⁴ We support this pursuit. For our nation to remain secure and strong in the 21st century, we need a 21st century immigration system that balances security, accountability, and human rights.

Ineffective, patchwork immigration policies in the absence of real reform have left us with an immigration system that neither supports immigration nor keeps us safe. Immigration enforcement has become entwined and confused with national security, especially since the terrorist attacks of September 11, 2001. "Security-first" immigration restrictions and immigration enforcement policies have grown unfocused, overly harsh, and misdirected.

Today, national security concerns dominate headlines in the aftermath of the failed Christmas Day bombing attempt in Detroit. In response, our nation's leaders are

¹ "Prepared remarks by Secretary Napolitano on Immigration Reform at the Center for American Progress", Nov. 13, 2009, available at http://www.dhs.gov/ynews/speeches/sp_1258123461050.shtm

² Remarks at Center for American Progress, id.

³ Remarks at Center for American Progress, id.

⁴ Remarks at Center for American Progress, id.

tempted anew by overly broad, ineffective policies that seek to bolster security through racial profiling. These security policies have proven to be ineffective at identifying and deterring those who wish to terrorize and kill and succeed mostly in generating resentment and alienating immigrant communities. Instead we should work to collect key intelligence and get it into the right hands so we can prevent threats to the nation's security. A newly realigned U.S. Citizenship and Immigration Services (USCIS) brings us one step closer to that goal.

Intelligence, not profiling, will make us safer

Shortly after the attempted Christmas Day bombing plot, the Obama Administration announced a form of country-specific airport profiling that targets passengers who travel from, through, or hold passports from 14 countries (13 of which are majority Muslim, and Cuba). These types of profiling programs are not new and they're not effective. According to national security experts, and our own recent history, creating a terrorist profile only pushes terrorists to use methods that do not fit the profile.

After September 11, the Bush Administration launched an immigration program called the National Security Entry-Exit Registration System (NSEERS) that required more than 80,000 male, non-U.S. citizens from twenty-four Arab and Muslim countries and North Korea to be fingerprinted, photographed and interviewed under oath.

Administration officials eventually acknowledged they were ill-prepared to carry out the program.⁵ The 9/11 Commission found no evidence that any of the immigration actions undertaken following the terrorist attacks had indentified any terrorists⁶ and no registrants have been convicted of a terrorist crime.⁷

There are lessons we can learn from national profiling programs. Arabs and Muslims lost their fundamental right to be treated equally by the United States Government, and the nation made no progress towards combating terrorism. Further, entire immigrant communities were alienated by enforcement programs driven by national origin. The trust law enforcement agencies had cultivated with immigrant communities vanished only to be replaced by suspicion and anxiety.

Another lesson for us is that while proposals to "secure the border" are often justified on national security grounds, they do little to protect us from today's threats. The massive amount of resources we have placed on the Southern border to keep out Mexican workers did not prevent a terrorist with a bomb from boarding an airplane in Amsterdam.

⁵ "ADC Launches 'End the Shame of NSEERS' Ad Campaign," American-Arab Anti-Discrimination Committee, available at <http://www.adc.org/index.php?id=3078>

⁶ "Threats and Responses in 2001: Staff Statement No. 10.", National Commission on Terrorist Attacks Upon the United States, April 15, 2004, available at http://govinfo.library.unt.edu/911/staff_statements/staff_statement_10.pdf

⁷ "The Use and Abuse of Immigration Authority as a Counterterrorism Tool: Constitutional and Policy Considerations," The Constitution Project, 2008, available at http://www.constitutionproject.org/pdf/Immigration_Authority_As_A_Counterterrorism_Tool.pdf

Furthermore, the alleged terrorist did not fit into a geographic profile of Muslims from the Middle East. The terrorist was Nigerian. Of course, now, the Administration has added Nigeria to the list of countries associated with heightened airport security, but if the next bomber is from Guinea, profiling for Nigerians will not work.

The national security threats we face will not be deterred by enacting more immigration laws that broadly target whole groups of people. Our current immigration laws provide the tools we need—if we use them effectively and if we have the necessary intelligence—to stop those who are trying to come here to do us harm. The Director of USCIS, Alejandro Mayorkas, announced this month a realignment of the agency that elevates existing fraud prevention and national security efforts to a Directorate-level priority. The primary mission of the newly-created Fraud Detection and National Security Directorate is to “detect, deter, and combat immigration benefit fraud and to strengthen USCIS’ efforts aimed at ensuring benefits are not granted” to persons who should not obtain them.

In the case of the Christmas Day bomber, the government had viable intelligence but the information did not get to the persons who might have prevented him from getting on the plane. Fraud detection and national security initiatives at USCIS, along with increased interagency communications and intelligence sharing, may prevent close calls like this in the future.

Looking for terrorists in all the wrong places

The blurring of national security and immigration can produce perverse results. Nowhere is this more obvious than when overly-broad definitions of “terrorism” are applied in certain immigration contexts. Expansions of definitions in immigration law relating to “terrorism” and loose interpretations of longstanding immigration laws relating to “terrorist activity” have impacted our ability to provide refuge for asylum seekers and refugees in the United States. Over 18,000 refugees and asylum seekers have been directly affected by our immigration law’s terrorism bars.⁸

When applied in the refugee/asylum context, the simplistic ideas about what constitutes terrorist activity turns out more complex. For example, in 2008, an Afghan refugee was turned down for lawful permanent resident status because he truthfully testified in his asylum interview that he belonged to a political faction fighting the Taliban in Afghanistan. A refugee from Iraq was also denied permanent resident status in 2008 because he fought against the Saddam Hussein regime, which meets the definition of engaging in “terrorist activity.” Victims of terror—those who paid a ransom to free a loved one—are also trapped by this absurdity.

⁸ See “Denial and Delay: The Impact of the Immigration Law’s “Terrorism Bars” on Asylum Seekers and Refugees in the United States”, Human Rights First, Nov. 2009, available at <http://www.humanrightsfirst.info/pdf/RPP-DenialandDelay-FULL-111009-web.pdf>

This bizarre result is due to classifying as a “terrorist” any person who voluntarily helped any group that used armed force. Those impacted by our overly-broad interpretation of terrorism-related bars to immigration include thousands of people who were granted asylum or refugee status by the United States years ago, but now find their applications for permanent residence or family reunification frozen on account of terrorism-related issues.

Denying immigration benefits to refugees who fought alongside the U.S. against dictatorial regimes or actual terrorists tells the world not to trust Americans; certainly do not trust our immigration system. Our security resources should be redirected to prevent actual terrorists from entering our country. Loyal allies and refugees pose no threat to our national security, it is our crumbling immigration system itself that creates the danger.

Border enforcement: National security or national boondoggle?

For all stakeholders, the U.S.-Mexico border has come to represent the shortcomings of our immigration system. Our Southwest border is a financial, political and emotional flashpoint that roils our nation’s immigration debate.

Over the past two decades, immigration policies have focused on “securing” the southern border, seemingly at all costs. Since 1992, the annual budget of the U.S. Border Patrol has increased by 714%, and the number of Border Patrol agents stationed along the southwest border has grown by 390%. DHS Customs and Border Protection received over \$8 billion in the DHS FY2010 Appropriations Bill,⁹ and employed a total of 57,519 agents by the end of FY2009.¹⁰

What have we gained for our investment in border security? Smugglers have become more sophisticated to evade detection, and more violent as the stakes have increased. Border residents experience lengthy delays at ports of entry that result in lost working hours and wages. Fencing projects that cost \$7.5 million per mile have failed to stop unauthorized immigration flows. There have been immeasurable lost opportunities in social and economic development.

The additional resources on the border have not achieved their objective because policies have not been coordinated with immigration reform. When legal avenues to enter the country are choked off due to an out-dated immigration system, border enforcement becomes overwhelmed and ineffective. Enforcement-obsessed policies drain resources, weaken security, and degrade border communities.¹¹

⁹ Department of Homeland Security Appropriations Act, 2010, Pub. L. 111-83, Oct. 28, 2009.

¹⁰ “Securing America’s Borders: CBP Fiscal Year 2009 in Review Fact Sheet,” DHS U.S. Customs and Border Protection, November 24, 2009, available at

http://www.cbp.gov/xp/cgov/newsroom/news_releases/archives/2009_news_releases/nov_09/11242009_5.xml

¹¹ “Effective Border policy: Security, Responsibility and Human Rights at the U.S.-Mexico Border,” U.S.-Mexico Border and Immigration Task Force, November 2008, available at

<http://bnhr.org/pdf/BorderPolicy%20Report2008.pdf>

Not only have our efforts at border control been ineffective, but it is important to realize that the policies that have been pursued on the Southwest border have severely skewed the nation's criminal justice system *away* from fighting crime.

Department of Justice statistics show that during the Bush Administration, the annual count of criminal prosecutions for immigration offenses (mainly related to illegal entry) more than quadrupled. Between 2003 and 2008, federal white-collar crime prosecutions, weapons prosecutions, organized crime prosecutions, public corruption prosecutions, and drug prosecutions all declined by double digit percentages.¹²

Unfortunately, this trend continued during the first year of the Obama Administration.

In the first nine months of fiscal year 2009, the government prosecuted nearly 70,000 immigration-based crimes. That puts the government on pace for a 14% increase in immigration prosecutions over the previous year.¹³ During just the single month of April 2009, criminal immigration cases made up the majority of new federal criminal prosecutions nationwide.¹⁴ All but a small fraction of these prosecutions were for crimes related to entering the country without permission.

The data proves our federal prosecutorial resources are being drained by our nation's broken immigration system. Our Department of Justice should be prosecuting and incarcerating drug dealers, organized crime and gun runners. Instead, we are criminalizing landscapers, strawberry pickers, and home cleaners.

We cannot prosecute our way out of our broken immigration system, just as we cannot build a wall between ourselves and the rest of the world. A smart, balanced approach to fixing our nation's immigration system is needed now more than ever.

Congress must act.

Conclusion

As the dust settles from the recent special election drama, we anticipate immigration reform will come back onto the radar screen in the coming weeks. Over the course of this debate we will likely see legislative proposals made in the name of national security that ignore the lessons of the past decade. Many of these legislative proposals are not about our national security. They are about advancing the careers of politicians.

¹² Solomon Moore, "Push on Immigration Crimes Is Said to Shift Focus," *NYTimes*, Jan. 11, 2009; Transactional Records Access Clearinghouse, Syracuse University, Jan. 12, 2009, summary available at <http://trac.syr.edu/tracreports/crim/201/>

¹³ Transactional Records Access Clearinghouse, Immigration Prosecutions at Record Levels in 2009, available at <http://trac.syr.edu/immigration/reports/218/>

¹⁴ Over 40,000 of the 67,994 immigration related prosecutions reported in the first nine months of FY 2009 were for the misdemeanor or illegal entry, and another 22,000 were for reentry of a deported alien. Only 5,500 prosecutions involved more serious offenses. Transactional Records Access Clearinghouse, Immigration Prosecutions at Record Levels in 2009, available at <http://trac.syr.edu/immigration/reports/218/>

In an increasingly polarized political environment, forging a comprehensive solution to our immigration system will be challenging, but it's not impossible.

Immigration reform always was—and always will be—an issue that needs bipartisan leadership. From Reagan in 1986 to Bush, McCain, and Kennedy in recent years, leaders from both parties have tried to fix the immigration system.

We need a reform of the immigration system that will accomplish a number of things. First, focus our resources on preventing terrorism. This is about having good intelligence and making sure it is shared with the right people. Second, instead of spending the bulk of our security resources trying to prevent immigrants from crossing the border to work, we should ensure that there are enough opportunities to immigrate legally to join family members or employers in the U.S. Third, we need to encourage the 12 million people who are now living in the shadows without official status to register with the government and go through a background check, get permission to work, and take the first steps to becoming citizens.

Immigration enforcement policies that are divorced from broader reforms to our antiquated immigration system will always fail to make much of a contribution to our national security. We can't enforce a reality that existed 20 years ago. With these reforms, our enforcement resources can be effectively focused on the bomber, not the busboy. This will enhance our national security.