

6 Crisis Management and Response Post-September 11

6.1 The Intelligence Community

The main thing now is security, do you understand? We must be most careful above all with documents and identities, because without them . . . we're lost.

—al Qaeda operative

The attacks of 9/11 did what policy guidance and evidence had failed to do: it focused at least one intelligence agency, the CIA, on the critical need for terrorist travel information.

CIA's Directorate of Science and Technology set up a Passport Analysis Program. Its mission is to identify terrorists according to the documents they use. The program looks for individuals whose passports incorporate indicators of terrorist affiliation; develops automated detection tools that identify in near real-time the bearers of fraudulent foreign passports, and helps to verify the citizenship of individuals attempting to enter the United States.

Integration of the Passport Analysis Program's proven methods is languishing. No government component responsible for interdicting illegal travelers has incorporated the automated detection tools at the front end of its screening process where the tools would have the greatest utility for consular officers and immigration inspectors.

A second program was created in October 2001, when most of the CIA's Office of Transnational Issues (OTI) moved to the Office of Terrorism Analysis (OTA) of the Counterterrorism Center (CTC) to form a new Terrorist Transportation and Travel Branch. The unit was later renamed the Terrorist Mobility Branch.¹ Before its creation there was no programmatic effort at CTC—or anywhere else in government—that focused on broad trends and methodologies of terrorist travel.

The goal of the Terrorist Mobility Branch has been to identify key groups and individuals that facilitate terrorist travel, such as travel agencies, corrupt government officials, fraudulent document vendors, and document forgers, as well as patterns of document fraud and other travel tactics associated with al Qaeda and other terrorists.² In order to “operationalize” the intelligence produced by the Terrorist Mobility Branch, in the fall of 2002 a new branch was formed in the Directorate of Operations.³ Since January 2002, 17 facilitators have been disrupted in coordinated CTC-law enforcement efforts.⁴

Yet anecdotal evidence suggests that much of the analysis being generated by the Terrorist Mobility Branch is failing to reach critical audiences whom it would greatly benefit. An informal survey indicates that border inspectors at primary immigration stations at ports of entry do not receive it systematically because of classification and security issues.⁵ It is not hard to see why. There is no electronic dissemination system capable of sending highly classified reports to field units who need them. The clearances

of INS officers are insufficient to allow the transfer of important and relevant information to them. And some agencies are culturally opposed to sharing information.⁶

For its part, the FBI did not endeavor to analyze terrorist travel information and does not include such analysis as a terrorist disruption technique. Generally speaking, there is no systematic and centrally directed collection and analysis of suspect travel documents.

6.2 The Department of State

In the immediate aftermath of 9/11, the State Department responded to requests for information from the FBI and other law enforcement agencies investigating the 9/11 attacks.⁷ When it was discovered that two of the 9/11 hijackers were known to the CIA in 1999 but this information had not been passed to State for watchlisting purposes, Assistant Secretary for Consular Affairs Mary Ryan requested a meeting with CIA Director George Tenet at which she expressed her outrage over this failure to share information.⁸ Tenet promised Ryan there would be changes; shortly thereafter, CIA contributions to the TIPOFF watch list increased dramatically.⁹

Initially, the State Department did not begin to reevaluate its visa-issuing processes. Instead, investigations of visa-issuing policies and how they related to the 9/11 attacks were launched by the General Accounting Office (GAO), Congress in its oversight capacity, and the State Department Inspector General. Consular officers in the field became frustrated by the lack of direction on visa policy from Washington. Dissatisfaction ran especially high in Saudi Arabia, where 15 of the 19 hijackers had acquired their visas. Consular officials in Jeddah believed that it was “business as usual,” with the consulate continuing “to waive interviews for the vast majority of Saudi applicants.”¹⁰ They were chastised by the State Department for publicly stating this view.¹¹

The period from 9/11 to 2003 was spent responding to law enforcement needs regarding the 9/11 attacks, tightening up visa issuance procedures at the margins, and implementing a number of programs in cooperation with the Justice Department and other agencies. These included the 20-day hold and Condor name-check programs developed in the interagency process, the NSEERS (National Security Exit and Entry Registration System) program, and the relevant provisions of the USA PATRIOT Act, the Enhanced Border Security Act, and the Homeland Security Act, discussed in the next section.

Following 9/11, State also expanded its Terrorist Interdiction Program (TIP) to include 60 priority countries. This foreign assistance program is designed to enhance border security around the globe by providing state-of-the-art border control technology to specific nations.¹² The system has been installed in approximately ten countries.

By 2003, State’s approach for the future was coming into focus. It included making dramatic changes in visa processing, retooling consular work for counterterrorism, supporting the development of U.S. and international biometric border and travel document standards, and enhancing the security of the U.S. passport system.

State established the Vulnerability Assessment Unit to systematically review issued visas for patterns that might indicate malfeasance, and began checking the database of issued visas against any new terrorist watch list information.

On August 1, 2003, State issued new regulations that limited the waiver of personal appearances for nonimmigrant visa (NIV) applicants to only a few categories of exceptions, among whom were diplomats, children, and the elderly.¹³ This was a major change from the era before 9/11, when State policies encouraged consular managers to decrease the frequency of visa interviews in order to save resources. Beginning on October 17, 2003, State also lengthened its basic consular course, also known as ConGen, from 26 to 31 days, in order to add material on visa security, counterterrorism awareness, and interviewing techniques. The new training included a two-day course on ways to identify deception by applicants, a half-day program on counterterrorism at CIA headquarters, and a module on terrorist travel patterns. State also expanded intranet resources for consular officers to assist them in reading and verifying entry/exit cachets in Arabic or Persian script.¹⁴

On September 22, 2003, State began the worldwide deployment of biometric nonimmigrant visa (NIV) software that provided for the collection of fingerprints in the NIV application process.¹⁵ State is on schedule to have all visa-issuing posts collecting biometrics for all applicants by October 26, 2004, the statutory deadline. A few months later, on December 1, 2003, the TIPOFF terrorist watchlist, created by State in 1987, was transferred to the Terrorist Screening Center (TSC) for integration with other government watchlists. The TSC maintains watchlist information—including intelligence on foreign persons and information from FBI terrorism investigations into U.S. persons—from all sources, and through the National Crime Information Center (NCIC) it provides a link to state and local law enforcement.

State is working with countries eligible for the Visa Waiver Program and with the International Civil Aviation Authority to meet the requirement that those countries incorporate biometric identifiers in their passports by October 2004, as mandated by the Enhanced Border Security Act. State recently asked for an extension to November 30, 2006.

With the passage of the Homeland Security Act—which transferred the task of setting visa policy from State and to the Department of Homeland Security (DHS)—State entered into a memorandum of understanding with DHS formalizing the division of responsibility on visa policy. State now coordinates visa determinations with DHS's Immigration and Customs Enforcement officers in some overseas posts, including Saudi Arabia.

6.3 The Department of Justice

Immediately after September 11, Attorney General John Ashcroft developed an antiterrorism plan with two strategic goals: to develop intelligence to identify and

apprehend terrorists, and to undertake law enforcement operations to disrupt terrorist planning and operations.¹⁶ Thereafter, the Department of Justice, on its own and through the interagency process, created a number of programs that singled out for greater scrutiny aliens from predominantly Muslim or Arab countries, both those inside the United States and those outside the United States who were seeking visas.

These programs—in roughly chronological order—were the Interview Project, the 20-day hold, the Absconder Apprehension Initiative, Visas Condor, and NSEERS. In addition, beginning on September 11 throughout this period, the Justice Department directed its subcomponents, the FBI and the INS, in actions that led to the detention of 768 individuals, mostly Muslims and Arabs, considered by Justice to be of investigative interest following the September 11 attacks.¹⁷

The Interview Project

On November 9, 2001, the Attorney General announced that the Department of Justice would interview several thousand nonimmigrant aliens from countries with an al Qaeda terrorist presence about their knowledge of terrorist elements within the United States,¹⁸ an undertaking known as the Interview Project. Ashcroft described the purposes of the project as threefold: (1) the department wanted to have law enforcement presence in the community, (2) it wanted the agents “off their duffs,” and (3) it was hoping to get some investigative leads.¹⁹ The interviews were voluntary, although in some cases interviewees may have felt they had no choice but to participate. Between November 9 and February 26, 2002, law enforcement officers under the direction of U.S. Attorneys conducted 2,261 interviews; out FBI and INS database searches had identified 4,793 potential interviewees.²⁰

In March 2002, the Attorney General started a second phase of interviews of 3,189 nonimmigrant aliens from 26 countries—the same as the Condor countries (discussed below)—and from a broader age range than was represented in the first phase.²¹ Although data from all the interviews conducted were entered into a database maintained by the Justice Management Division, they were never analyzed by the Justice Department. We asked Justice to provide us with documents summarizing the origin, mission, and results of the Interview Project, including the “intelligence, counterterrorism, and law enforcement benefits which resulted from the program,” but we received no documents prepared after February 2002, shortly before the second phase began.²²

Justice asserts that the project met its two goals, intelligence gathering and disruption, a judgment based mostly on anecdotal reporting and speculation.²³ However, as the GAO pointed out, there has been no analysis of the value of the law enforcement leads it yielded, and law enforcement officials differed on whether the interview project helped build ties to the communities involved or created greater hostility within them. The GAO concluded that without such analysis, it was difficult to draw lessons from the project. We agree, and add that the system was never designed to allow its results to be analyzed. Under guidance provided to officers conducting interviews, any valuable counterterrorism leads from interviews in the field were to be forwarded directly to FBI

agents in the field for follow up.²⁴ Thus, the centralized database simply served the interests of management and oversight and aided little in assessing the program's benefit to counterterrorism.

Twenty-Day Hold

Effective November 14, 2001, the State Department—at the urging of Justice—issued a blanket 20-day hold before any visa could be issued to males 16 to 45 years old from 26 countries in the Middle East and North Africa, plus Bangladesh, Malaysia, and Indonesia. This program was discontinued on October 18, 2002. Records we have reviewed suggest it yielded no useful antiterrorist information and led to no visa denials.²⁵

The Absconder Apprehension Initiative (AAI)

Under U.S. immigration law, absconders are noncitizens who willfully fail to depart the United States after receiving a final order of deportation from an immigration judge. They may be prosecuted for a federal felony.²⁶ After September 11, INS Commissioner James Ziglar proposed that the names of 314,000 absconders be placed in the Wanted Persons file in the National Crime Information Center database accessible by state and local law enforcement.²⁷ To meet NCIC standards, every absconder entry had to be supported by a full set of fingerprints and a photograph so that the INS Law Enforcement Support Center (LESC) could electronically transmit those identifiers to the querying law enforcement official within ten minutes.²⁸ If the absconder's identity was confirmed, then the INS could place a federal detainer—requiring that the alien already in custody only be released into federal custody--or arrange for an INS agent to take the individual into custody and proceed with removal. Finding terrorists was not a focus of the program.²⁹ Attorney General Ashcroft liked the idea, and Commissioner Ziglar announced it on December 5, 2001.³⁰ Shortly thereafter, the initiative was recast as a counterterrorism program.³¹

Deputy Attorney General Larry Thompson on January 25, 2002, provided guidance for the newly renamed Absconder Apprehension Initiative (AAI). He explained that the object of the initiative was to deport the 314,000 alien fugitives in two phases. The first phase would focus on several thousand priority absconders “who come from countries in which there has been al Qaeda terrorist presence or activity . . . because some of them have information that could assist our campaign against terrorism.”³² The second phase would locate and deport the remaining absconders.³³ The Deputy Attorney General directed the FBI's Foreign Terrorist Tracking Task Force to remove any names that were subjects of active terrorist investigations.³⁴

At the INS, the National Security Unit (NSU) was tasked with the project.³⁵ The AAI effort was a massive undertaking for this small unit, which was the INS's primary counterterrorism unit.³⁶ The NSU developed a special project staff of its own agents and INS intelligence analysts from the Office of Intelligence, and it detailed agents from the INS field offices, as many as ten at a time, to develop the project.³⁷ For each absconder case in which a last known address could be found, the NSU created a work file and sent

it to a designated supervisory special agent in the INS field office located in that geographic area for follow-up. The administrative tasks associated with the AAI priority cases required that many field officers be assigned to the NSU headquarters unit, leaving fewer special agents available to investigate the AAI priority cases in the field.³⁸

Phase 1 of the AAI covered 5,932 cases.³⁹ In order to help immigration authorities locate these absconders, some of their records were entered into the National Crime Information Center database.⁴⁰ In addition, criminal record checks were conducted on all AAI cases.⁴¹ A total of 863 absconders had a criminal history, but in many cases the final disposition of these criminal cases was not recorded in the NCIC database. As a result, case agents had to obtain additional court documents to determine what action was appropriate in each of these cases.

NCIC hits resulting from routine record checks conducted by law enforcement agencies led to the location of 95 absconders.⁴² In these cases, the LESC placed a detainer on the alien and referred the case to the local Immigration and Customs Enforcement field office for follow-up.⁴³

A total of 191 absconders turned out to be U.S. legal permanent residents. Another 80 had been naturalized and were now U.S. citizens. Together, these groups accounted for 5 percent of priority absconders. Naturally, this statistic raises the question of how an alien absconder could be granted either legal residency or citizenship. The reasons for this error are many. Foremost is the problem of INS recordkeeping, which has always been unreliable. Individual immigration files are actually paper files. Each is created from an alien's name and is not linked to a biometric identifier, such as a photograph or a fingerprint. Thus one person could easily have multiple immigration files, enabling him or her to apply for various immigration benefits at the same time.⁴⁴ Aliens so inclined could use a variety of name variations or an alias to commit immigration fraud or to avoid deportation. In some cases, the final order of deportation had been issued years previously. Because of the overall poor state of INS recordkeeping, some aliens were able to return to the United States without being arrested on the deportation order at the port of entry.

Ultimately, 4,074 cases were closed.⁴⁵ The 1,858 remaining cases either were still under investigation or lacked a final report. The total number of absconder cases that were actually closed because the subject was determined to be *no longer an absconder* was 2,267, or approximately 38 percent of the original number.

AAI Phase 1

5,932	Total initial cases
2,267	Cases closed after investigation verified departure or immigration status
1,807	Cases closed after investigation, unable to locate or verify immigration status
704	Absconders located and removed from U.S. during Phase 1
1,858	Cases remain open
14	Cases referred to FBI for further investigation relating to possible terrorist links
0	Cases prosecuted or removed on terrorism grounds

By early 2003, 1,139 of the designated absconders had been apprehended, 704 had removed from the country, and 224 were in custody and awaiting removal. In addition, U.S. Attorneys had criminally prosecuted 45 individuals, 41 of whom for criminal immigration violations.⁴⁶ Although the INS had referred 14 cases to the FBI on the grounds of their possible links to terrorism, no absconders who were removed as part of phase 1 were deported under a terrorism statute or prosecuted for terrorism-related crimes.

Thus, even though extensive investigative resources were committed to the effort, only 38 percent of the priority absconders could be located or their immigration status verified. The immigration records system was so poor that approximately 5 percent of the absconders had, in fact, become legal residents or naturalized citizens of the United States. The INS's difficulty in locating absconders is consistent with the difficulty generally faced by immigration authorities attempting to locate aliens inside our country, whether they came in legally through a port of entry or illegally across an unguarded border. It is very difficult to find alien absconders without extraordinary effort or pure luck.

The Commission believes the remaining absconders who were not apprehended in the first phase of the program no longer receive special attention from immigration enforcement personnel. Indeed, DHS has absorbed phase 2 of the AAI into its current fugitive operations unit.

The Visas Condor Program

The Visas Condor Program was initiated on January 26, 2002. It mandated additional security screening by the FBI and other agencies for certain visa applicants from 26 predominantly Muslim countries. However, neither the FBI nor the CIA was able to process these visa applicants in a timely fashion, because their other responsibilities burgeoned after the September 11 attacks. In July 2002, the FBI acknowledged it could not meet the agreed-on 30-day target for name checks, and on July 20, 2002, the State Department agreed to place these visa applicants on indefinite hold until the FBI responded. In September 2002, the CIA withdrew from the program because it had uncovered no significant information from these visa applicants. The CIA was already

placing all important information into the TIPOFF terrorist watchlist, used by the State Department to screen these same visa applicants when they submitted their applications. On October 2, 2003, the Condor criteria were changed and more narrowly focused.⁴⁷ As of April 2004, approximately 130,000 Condor name checks had been completed.⁴⁸ No individual subject to a Visas Condor name check has had his or her visa application turned down on grounds of being a terrorist.

NSEERS

In May 2002, the Attorney General directed the INS to develop an entry-exit registration system at selected ports of entry, and on September 11, 2002, the INS implemented the National Security Exit and Entry Registration System.⁴⁹ The program had a number of components. It mandated the photographing, fingerprinting, and interviewing of certain individuals from certain predominantly Arab and Muslim countries upon their arrival in the United States, and required the same kind of registration for such individuals already inside the United States. It also mandated that these individuals be reinterviewed 30 days after their entry to the United States, that they notify the INS if they changed their address, that they present themselves for an annual interview if they remained inside the United States, and that they have an interview when they departed the United States. Finally, the program provided for enforcement measures against those who were found to be in violation of immigration or other laws when they sought to register or who violated program rules by, for example, failing to register at all.⁵⁰

NSEERS was imposed in phases. Beginning on September 11, 2002, inspectors of the INS (now Customs and Border Protection, or CBP) were required to register nonimmigrant aliens applying for admission to the United States who were citizens or nationals of the state sponsors of terrorism: Iran, Iraq, Sudan, Libya, and Syria.⁵¹

Beginning October 1, 2002, when all ports of entry were to have the new alien registration database and equipment installed,⁵² inspectors were also required to register nonimmigrant males between the ages of 16 and 45 years of age who were citizens of Pakistan, Saudi Arabia, and Yemen.⁵³ A discretionary component allowed State Department consular officials and INS inspectors to order the registration of aliens from any country if they determined such action to be in the interests of national security.⁵⁴

The registration at ports of entry worked as follows. All aliens applying for admission to the United States were screened against the Interagency Border Inspection System (IBIS) by inspectors at ports of entry. If an alien applying for entry was identified in IBIS as being subject to NSEERS registration, the alien was referred to secondary inspection for enrollment in NSEERS. In the secondary inspection area, the registrant was placed under oath and asked predefined questions that covered, among other things, biography, employment, school, intended address in the United States, points of contact, and credit card information.⁵⁵ The registrant's photograph and two index fingerprints were captured digitally. The applicant's biometric and textual data were then stored in a database administered by the Bureau of Immigration and Customs Enforcement (ICE).⁵⁶

The biometric data were checked against four databases containing information on convicted aggravated felons, known or suspected terrorists, people wanted on criminal warrants, and criminal alien recidivists.⁵⁷ If there was a hit from one of these database checks, or if another immigration law violation was uncovered as part of the routine border screening, the person could be denied entry. If there was no derogatory information discovered, then the alien was enrolled in NSEERS and admitted to the United States.⁵⁸

As of May 2, 2004, there had been 352,385 NSEERS registrations at ports of entry involving 141,168 individuals,⁵⁹ and 1,352 enforcement actions taken at ports of entry.⁶⁰ These actions often involved denial of entry, because, for example, the alien had failed to comply with NSEERS requirements when previously in the United States. Some denials related to more serious conduct involved such violations of criminal law as document fraud, espionage, crimes involving moral turpitude, and willful misrepresentations of fact.⁶¹

Once admitted into the United States, NSEERS registrants were required to report to an INS/DHS field office for a 30-day interview between the 30th and 40th day of their admission and within 10 days of the one-year anniversary of that admission. As of May 2, 2004, a total of 30,490 30-day and 172 annual interviews had been conducted.⁶² DHS has estimated that 400 to 2,000 individuals were referred to ICE for investigation following the 30-day interview.⁶³

Registrants also were directed to report to designated ports of departure for an interview on the date they left the United States.⁶⁴ As of May 22, 2003, there had been 34,439 departure interviews.⁶⁵ However, the departure interviews were conducted at an immigration office and not at the airport terminal, so it is “quite possible that a registrant could be given a departure interview by CBP, and then fail[] to depart.”⁶⁶ Significant changes in the infrastructure of airports would be required for NSEERS exit procedures to occur at the actual point of departure.⁶⁷

NSEERS domestic call-in registration began on November 15, 2002, and ended on April 25, 2003. Four call-in notices were announced through publication in the *Federal Register* setting forth the countries and conditions under which certain nonimmigrants were required to register. Male citizens or nationals 16 years of age or older from Iran, Iraq, Libya, Sudan, Syria, Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, the United Arab Emirates, Yemen, Pakistan, Saudi Arabia, Bangladesh, Egypt, Indonesia, Jordan, and Kuwait who were admitted as nonimmigrants on or before September 30, 2002, were directed to register in NSEERS at their local immigration offices.⁶⁸ The registration process was the same as that at the ports of entry, described above. As of May 2, 2004, a total of 83,909 individuals were registered pursuant to call-in registration.⁶⁹ If the domestic registrant was not in violation of any law and there was no hit in any of the four databases, he was told to report for an annual interview, but not for a 30-day interview.⁷⁰

A significant number of domestic registrants were in violation of some law. According to DHS records, about 13,000 call-in registrants, or 16 percent, were found to be in violation of immigration laws when they appeared; they were registered, arrested, and processed for removal from the United States.⁷¹ The call-in registration process had considerable problems, caused by a flood of applicants in the last week of the call-in period, the failure to provide sufficient computer terminals to quickly handle the processing, and the INS's lack of preparation for handling the approximately 13,000 individuals who were arrested.⁷²

Estimates of the number of NSEERS violators—individuals who failed to register initially, failed to show up for the 30-day or annual interview, or failed to register their departure through a designated port of departure—vary, in part because the database used to produce this information has been error-prone and unreliable.⁷³ As of May 22, 2003, the Department of Homeland Security put the figure at 12,670 “potential NSEERS violators.”⁷⁴ By May 2, 2004, DHS reported it had begun 1,883 investigations: 132 NSEERS violators were arrested, 372 were determined to have left the country, and 457 were found to be in compliance with NSEERS regulations.⁷⁵

There was significant opposition to the NSEERS program from some U.S. government officials, who feared the program would offend countries that were U.S. allies in the global war on terror.⁷⁶ State personnel we interviewed said that NSEERS did harm our relations with foreign countries whose citizens were subject to its registration requirements. FBI Director Mueller said it came at a cost.⁷⁷ Documents we reviewed, including correspondence from foreign countries' representatives, indicate that some foreign governments were strongly opposed to having their nationals subject to NSEERS registration.⁷⁸

On March 31, 2003, apparently in response to these concerns, the White House sent out a “global message” on NSEERS from the Homeland Security Council to the executive secretaries of State, Justice, Homeland Security, the National Security Council, the Office of Management and Budget, the White House Domestic Policy Council, the Office of the Vice President, and the President's Chief of Staff. The purpose of this message was “to explain responsibilities and ramifications of NSEERS to foreign governments” and avoid misunderstandings with foreign partners.⁷⁹

As of May 5, 2004, individuals from 170 countries had been registered in NSEERS.⁸⁰ The country with the largest number of NSEERS registrants—38,000—was Indonesia, followed by Pakistan with 29,000, and Iran with 15,000.⁸¹

According to the Department of Homeland Security, the US VISIT (Visitor and Information Status Indication Technology) program—which captures the fingerprints and photographs of nonimmigrant visa holders upon entry and exit—“will ultimately subsume the functions of the NSEERS program.”⁸²

DHS asserts that 11 persons out of approximately 140,000 registrants have been shown to have a connection to terrorism.⁸³ Of these, six were NSEERS call-in registrants, though it is not clear from information we have received whether the registration process led to

their arrest; two were denied entry at the port of entry following a hit in the TIPOFF watchlist, and thus their identifications were not attributable, in other words, to the NSEERS program; one failed to appear for a call-in registration and was encountered and arrested in the field on grounds that are not clear to us; one was arrested, and we have no information whether he was required to participate in the NSEERS program; and one is currently “at large.”⁸⁴

The counterterrorism benefits from the NSEERS program are unclear. The Department of Homeland Security asserts that arresting and processing for removal the approximately 12,000 individuals “who appeared for call-in registration and were found to be illegally in the U.S.” had a *deterrent effect* because it “signaled a clear message to those ‘sleeper’ terrorists embedded in U.S. communities, that U.S. immigration law would be enforced.”⁸⁵ DHS also claims that NSEERS had a *disruptive effect* because it “forc[ed] would be terrorists to comply with the terms and conditions of their admission to the United States or run the risk of being removed from the United States. This additional pressure may make the job of carrying out a terrorist mission much more difficult, therefore disrupting the mission.”⁸⁶ But one witness who testified before the Commission maintained that the call-in registration component of NSEERS may have diminished the willingness of immigrant communities to supply the government with intelligence.⁸⁷

It is difficult to gauge the counterterrorism benefit from these programs because information on how they have affected terrorists is not always easy to come by. Our analysis of the 9/11 plot and the actions taken by the hijackers while inside the United States suggests that the conspirators worked diligently to manipulate the U.S. immigration system to enable them to remain inside the United States long enough to commit the attack. They appear to have been aware of U.S. immigration laws and regulations, and to have structured their travel and entries to the United States with those constraints in mind. As we have noted, the enforcement of immigration laws might have disrupted the plot if it had led, for example, to the removal of Mohamed Atta from the United States when he attempted to enter in January 2001 with the wrong visa. Likewise, the lack of an entry-exit system hampered the efforts of intelligence and law enforcement officials to locate Nawaf al Hazmi when he was finally placed on the watchlist in August 2001. Thus, the proposition that these programs had the potential to disrupt and perhaps to deter terrorist plots forming inside the United States after 9/11 certainly has some support. Ultimately, it is difficult to measure the success of operations whose goals included deterrence. However, our research demonstrates that terrorists often need to break laws in order to successfully complete their operations, undertaken in the United States and elsewhere. They routinely commit immigration and document fraud, and often sustain their operations with petty crime. The routine enforcement of laws, including those not specifically related to terrorism, can therefore raise obstacles for and in some cases have a deterrent effect on individuals intending to commit terrorist attacks.

Perhaps significantly, a senior al Qaeda detainee has stated that after the 9/11 attacks, U.S. government efforts to more closely monitor the American homeland through such actions as, as he termed it, reviewing Muslims’ immigration files and deporting nonpermanent residents made al Qaeda operations more difficult.⁸⁸ The detainee cited

problems in obtaining tourist visas without interviews and instances in which visa applications were turned down even when the visa documents and passport documentation were complete.⁸⁹ If this detainee's account is credible, these programs may have had some deterrent effect on al Qaeda planning and operations in the United States and may have required terrorists to consider other tactics for entering and remaining inside the United States or to attack elsewhere.

6.4 Response at the Borders, September 11–20, 2001

In the days immediately following the attacks, the immigration and customs services undertook a number of measures, independently and in cooperation with one another and other agencies in the government, to better secure America's borders. The counterterrorism role so long ignored was finally getting the attention it deserved, although these measures taxed the limited human resources and technology then in place on U.S. borders.

“Level One” Border Security Measures

At about 10:00 on the morning of the attack, the new INS commissioner, Jim Ziglar, received a call from the acting commissioner of the Customs Service, Chuck Winwood.⁹⁰ He recommended that the two services implement their most stringent “Level One” inspections of travelers and goods seeking admission into the United States at land, sea, and air ports of entry.⁹¹ No one knew if a second wave of attacks was coming. Ziglar agreed, and an order was issued throughout both the Customs and INS system.⁹²

In addition, both INS and Customs immediately activated their command and control centers to monitor and provide directives for border operations. For both services, these centers collected the incoming information that by the evening of September 11 helped identify most of the hijackers and retrieve their arrival/departure records,⁹³ information that was immediately provided to the FBI. As the week wore on, the centers also processed information concerning security and trade at the borders, lists of visitors who were not permitted to leave the United States, and the arrests of possible terrorists who had immigration violations, and they helped review international airline passenger manifests for arriving travelers.⁹⁴

Airport Inspections. On the morning of September 11, airports across the country initially were preoccupied with devising ways to clear out passengers from airport terminals, while the FAA diverted incoming international flights to Canada and Mexico. As a no-fly ban was put into effect, some airport immigration inspectors were temporarily reassigned to help with the mounting traveler backups at the land borders. On the following day, airport immigration inspectors, many of whom were still conducting security at their assigned airports, were given permission to carry a firearm.⁹⁵

By the time the flight ban was lifted on September 13, the INS had deployed 318 Border Patrol agents to nine airports—about as many agents as were working the entire northern

border.⁹⁶ The INS had suggested this deployment to the Attorney General, and Ashcroft had relayed the request to President Bush, who approved it.⁹⁷

On September 13, both airspace and airports reopened under tight security. However, “Level One” procedures did not affect admission procedures or wait times at airports as dramatically as they had those at land borders, which technically never shut down. The difference between the two was that airports always had processed all international travelers, whereas land ports of entry scrutinized travelers and vehicles randomly. The heightened threat alert placed a tremendous strain on their human and technological resources.

Land borders. Given the tremendous volume of people and commerce that cross U.S. land borders every day, a shift from random to comprehensive and thorough immigration and customs inspections caused an urgent problem. Land borders process about four times as many travelers as airports, and have about three times as many immigrant entries.⁹⁸ In addition, the United States and Canada have the largest trading relationship in the world, worth hundreds of billions of dollars per year.⁹⁹

Under Level One, nearly every commercial or passenger vehicle was to be thoroughly checked—under the car, under the hood, in trunks, and in glove compartments. People also were checked more carefully. Dedicated cross-border commuter programs and remote inspection reporting systems were suspended.¹⁰⁰ Ambassador Bridge in Detroit saw its normal 20-minute wait grind to a 12-hour crawl on September 12. The bridge normally handles 6,000 trucks per day, and 25 percent of the total trade from Canada. Commercial traffic was paralyzed. Automobile plants in Detroit dependent on just-in-time deliveries shut down.¹⁰¹ The Customs and INS commissioners were inundated with phone calls from distressed business leaders whose financial lifeblood was free interchange with trading partners on the other side of the border.¹⁰² All this occurred despite inspectors working 12 to 16 hours a day, sometimes seven days a week.¹⁰³

With the pressure building on the borders and repercussions being felt in the private sector, it became critical to border authorities to minimize wait times with Level One procedures in place. Additional primary inspection lanes were opened where the infrastructure of the port permitted. While in line, arriving cargo vehicles were prescreened by roving inspectors, nonintrusive technologies, and canine enforcement teams.¹⁰⁴ In full cooperation with each other, the INS and Customs, along with additional support from airport inspectors temporarily reassigned to help at the land borders, the National Guard, the Canadian Customs and Revenue Agency, local law enforcement, and the private sector, reduced wait times almost to pre-September 11 norms by September 17, although the heightened alert was never lifted.¹⁰⁵

Support to the FBI. On the afternoon of September 11, Jim Ziglar participated in a meeting called by the Attorney General and attended by Deputy Attorney General Thompson and the new FBI director, Robert Mueller, among others. Its purpose was to discuss the Justice Department’s strategy to prevent a second wave of attacks while investigating the September 11 attack itself. Ziglar was told that the FBI was in charge of

the investigation and that the INS was expected to support them. Ziglar quickly reassigned 1,000—or nearly half—of his special agents to the FBI, which dramatically diminished the ability of the INS to exercise its immigration enforcement mission. This meeting also laid the foundation for the Attorney General’s subsequent use of INS immigration authority as a tool in the war on terror.¹⁰⁶

Transit without Visa Suspended. Within days of September 11, the INS and Customs suspended “in-transit” processing for air passengers.¹⁰⁷ Traditionally, in-transit processing allowed passengers whose final destination was in the United States to enter the country and catch a connecting flight to that destination before undergoing immigration and customs inspections. The suspension of the program required all flights from abroad to be inspected at their first arriving port of entry.¹⁰⁸ The same procedures were to apply at technical stops for refueling.¹⁰⁹ All passengers and crew had to exit the aircraft with all carry-on baggage and then be escorted by airline personnel to the INS, Customs, and the Animal and Plant Health Inspection Service for full inspection.¹¹⁰

Defense Department Assistance. On September 12, Customs leadership placed a call to Michigan Governor John Engler requesting the help of Michigan’s National Guard at land ports of entry.¹¹¹ During this time, the President also asked state governors to provide extra security at airports with National Guard personnel. As a result, 7,000 National Guard members were activated to supplement security at 421 airports.¹¹² Six months later, the INS and Department of Defense signed an agreement lending National Guard personnel for six months for specific duties at land borders.¹¹³

6.5 The Department of Homeland Security

September 11 brought border security to the forefront of the President’s counterterrorism agenda. One result was to sweep the Immigration and Naturalization Service and U.S. Customs into the Department of Homeland Security, where they were reconfigured in a manner that hinted of past debates about restructuring the INS into its immigration services and immigration enforcement functions. Approximately 60,000 employees working at U.S. borders, interior enforcement, and immigration benefit services were divided into separate agencies for the purpose of “minimizing duplication of efforts, improving coordination, and combining functions that are currently fragmented and inefficient.”¹¹⁴ In addition, about 40,000 Coast Guard officials, who interdict about 5,000 illegal aliens at sea per year, were also moved into DHS. While the President initially sought to pull the State Department’s Consular Affairs visa issuance function into DHS, in the end DHS was given responsibility only for determining visa issuance policy.¹¹⁵

In his message of support to Congress in 2002, the President articulated a strategic purpose for the Department’s Border and Transportation Directorate, which has responsibility for immigration: “Terrorism is a global threat and we must improve our border security to help keep out those who mean to do us harm. We closely monitor who is coming into and out of our country to help prevent foreign terrorists from entering our country and bringing instruments of terror. At the

same time, we must expedite the legal flow of people and goods on which our economy depends.”¹¹⁶

The directorate is working hard to develop policies and programs that will create the foundations of the vigorous information network necessary to prevent terrorist entry. For example, DHS is attempting to incorporate new elements of enforcement into overseas operations at consulates and in airports with U.S.-bound air carriers. The first phase of the new border screening and entry-exit system, USVISIT, although based on an antiquated technology platform, is working now to capture a photograph and two fingerprints from travelers originating in countries where visas are issued, and it has had some success in catching fraud. Verification systems such as the Student and Exchange Visitor Information System (SEVIS) and the lost and stolen passport database housed by Interpol are now available to inspectors who refer travelers to a secondary inspection; to be truly helpful, these systems must be integrated into USVISIT in the primary lines. And the National Targeting Center, assisted by the new Terrorist Screening Center, provides information support to inspectors at ports of entry so that they can make more informed decisions about potential terrorists and harmful cargo attempting to enter the United States.

. . .

But while the rhetoric continues to focus on the critical mission of preventing terrorist entry, virtually no attention is being given to the most recent information available about terrorist travel and to the mission, at least equally important, of preventing terrorists who get in from staying in. All elements of terrorist border activity—travel facilitation, border inspections, compliance issues, and immigration benefits—are part of a continuum of terrorist planning and activity on both sides of the U.S. border, requiring a coordinated response within the national counterterrorism strategy. This has yet to be fully recognized and implemented.

The merging of immigration and customs border functions within the Department of Homeland Security, together with the initial construction of a biometric entry-exit system at the airports, has addressed some of the glaring deficiencies highlighted by the September 11 attacks. However, border inspectors today still do not have basic intelligence and operational training to aid them in detecting and preventing terrorist entry, or adequate access to databases important to determining admissibility, or even viable options to prevent documents known to be fraudulent from being returned to travelers denied entry into the United States. There is no programmatic effort to focus on terrorist travel facilitators, and special agents lack the resources and authority to pursue visitors for immigration violations associated with terrorist activity. Similarly, immigration benefits adjudicators do not have effective and efficient tools to conduct background security checks on applicants. Each immigration encounter with an alien should be treated as both an opportunity and an obligation to verify the individual’s identity and legitimate purpose in seeking to enter or to stay in the United States. Yet border officials still do not have access at every contact, whether overseas or within the United States, to a visitor’s full U.S. travel and immigration history

Finally, immigration law remains immensely complex. This unnecessary complexity affects inspectors, special agents, prosecutors, and immigration benefit adjudicators alike who struggle to interpret and implement it every day.

¹ Timothy S., Chief of the Terrorist Mobility Branch, interview (Oct. 30, 2003).

² Examples of finished intelligence produced by the Terrorist Mobility Branch include: *A Reference Guide for Terrorist Passports*, CIA, Directorate of Intelligence, Oct. 21, 2002; *Clandestine Travel Facilitators: Key Enablers of Terrorism*, CIA Directorate of Intelligence, Dec. 31, 2002; and *Analysis of Passports*, CIA, Directorate of Intelligence, Jan. 2004.

³ Timothy S. interview (Oct. 30, 2003).

⁴ Ibid.

⁵ Ibid.

⁶ For example, CIA Director George Tenet wrote to Dale Watson, the Assistant Director of the FBI's Counterterrorism Division, on Nov. 15, 2001 requesting FBI assistance in obtaining the passports and supporting documents of the 9/11 hijackers that were under FBI control for the purpose of developing actionable intelligence. There was no response to this request.

⁷ DOS designated Regional Security Officers employed by State's Bureau of Diplomatic Security to be the liaison at foreign posts with the FBI in the collection of evidence. Through this process, the FBI collected from State the visa applications of the September 11 hijackers once their identities were established.

⁸ Mary Ryan interview (Sept. 29, Oct. 3, Oct. 9, 2003).

⁹ Ibid.

¹⁰ DOS cable, "Muslims Need Not Apply: Fear and Rumors Lead Hejazis to Cancel U.S. Travel," Oct. 3, 2001.

¹¹ Investigators from the State Office of Inspector General who visited Saudi Arabia in 2002 described "a feeling of lack of support, almost betrayal by CA and the Department" among consular personnel in Jeddah. DOS OIG record, "Findings in Jeddah," undated.

¹² Included in the border security equipment provided to each host nation are passport readers, cameras, a flatbed scanner and fingerprint reader. The United States government pays for installment and maintenance.

¹³ DOS document, "Follow-up to A/S Harty's Meeting on 11/21, 9/11 Commission," Dec. 31, 2003.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ DOJ document, Memorandum for the Attorney General, Final Report on Interview Project, Feb. 26, 2002.

¹⁷ We addressed the matter of the "special interest" detainees in the Final Commission Report, and so do not do so here.

¹⁸ DOJ document, Memorandum for the Attorney General, Final Report on Interview Project, Feb. 26, 2002.

¹⁹ John Ashcroft interview (Dec. 17, 2003).

²⁰ DOJ document, Memorandum for the Attorney General, Final Report on Interview Project, Feb. 26, 2002, fn 2. 681 had left the United States; 1,097 of the individuals in the country could not be located; 785 were determined to have moved, complicating the effort to locate and interview them. Fewer than 20 were arrested in connection with the interviews, most charged with immigration violations. Three individuals were arrested on criminal charges, none related to terrorism. At least 10 individuals refused to be interviewed.

²¹ GAO report, Justice Department's Project to Interview Aliens after September 11, 2001, GAO-03-459, April 2003. In March 2003, when the Interview Project was the subject of a GAO investigation and report, law enforcement officers had interviewed 3,216 aliens, or about 42 percent of the 7,602 non-duplicate names on the original interview list. Because of uncertainty with the identity, address, and entry-exit information regarding the 7,602 potential interview subjects, it was not possible to state with certainty how many of the names represented unique individuals, and how many of those individuals were in the United States and, therefore, eligible to be interviewed.

²² Commission document, Department of Justice Document Request Number 9, Question 12 (Oct. 20, 2003).

²³ In addition, DOJ asserts that it strengthened the bonds between federal, state and local law enforcement and improved relations between the law enforcement officers and the Muslim communities involved.

²⁴ Ken Wainstain interview (May 5, 2004).

²⁵ DOS document, "Follow-up to A/S Harty's Meeting on 11/21, 9/11 Commission," Dec. 31, 2003.

²⁶ 8 USC § 1253 (failure to depart, imprisonment up to four years, 10 years if a criminal); 8 USC § 1324d (failure to depart, civil fine of \$500 a day); 8 USC § 1326 (reentry after deportation, imprisonment from two to 20 years).

²⁷ James Ziglar interview (Nov. 24, 2003).

²⁸ FBI document, National Crime Information Center (NCIC) 2000 Operating Manual Section 5.6, "Operator's Lesson Plan," Jan. 2004.

²⁹ James Ziglar interview (Nov. 13, 2003). The directive from the Attorney General did not define what was meant by "from countries . . ." Under the immigration law, this could apply to citizens of a country or persons who were born in one of these countries.

³⁰ Ibid.

³¹ Ibid.

³² DAG Thompson said that the first group to be investigated would be "a group of fewer than a thousand, many of whom appear to be convicted felons." These "special interest countries" were Afghanistan, Algeria, Bahrain, Bangladesh, Djibouti, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kazakhstan, Kuwait, Lebanon, Libya, Malaysia, Morocco, Oman, Pakistan, Philippines, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tajikistan, Thailand, Tunisia, Turkey, Turkmenistan, United Arab Emirates, Uzbekistan, Yemen, Territories of Gaza and the West bank. DHS document, Closing Report for AAI Project when it was transferred from Investigations, National Security Unit to Detention and Removal Office prepared by Immigration and Customs Enforcement, July 10, 2003.

³³ DOJ document, Memorandum from the Deputy Attorney General to Commissioner, Immigration and Naturalization Service, Director Federal Bureau of Investigation, Director, U.S. Marshals Service, U.S. Attorneys, Subject: Guidance for Absconder Apprehension Initiative, Jan. 25, 2002.

³⁴ The Commission believes that the FTTTF did remove some subjects from the list; we have not yet learned how many and whether these subjects remained of interest to the FBI on terrorism grounds. Lou Nardi interview (Oct. 20, 2003).

³⁵ Ibid. See also, Testimony of Joe Green, INS Assistant Commissioner for Investigations before the House Judiciary Subcommittee on Immigration, June 19, 2002.

³⁶ To meet the terrorist-related reporting requirements imposed by the Department of Justice, the NSU developed special reporting requirements to ensure that all encounters with designated absconders were treated as a "significant incident" and therefore reported within 24 hours. In the usual course of immigration enforcement activity, significant incidents are those that involve death or injury of an officer, significant public and media interest, or an unusual event, such as the apprehension of large numbers of smuggled aliens.

³⁷ James Ziglar interview (Nov. 13, 2003). These additional officers organized leads, made copies of the documents in the file, created working files, and kept track of the case assignment.

³⁸ Lou Nardi interview (Oct. 20, 2003).

³⁹ DHS document, Closing Report for AAI Project when it was transferred from Investigations, National Security Unit to Detention and Removal Office prepared by Immigration and Customs Enforcement, July 10, 2003.

⁴⁰ Not all records were entered into the NCIC because immigration files do not always provide the documents required by NCIC to support entry into the system. For example, INS files frequently do not have fingerprints, photographs or final deportation orders.

⁴¹ A continuing problem is the failure to have a compatible fingerprint system between the FBI and immigration. The FBI standard uses 10 fingerprints, as does the criminal database used by state and local law enforcement, NCIC. Immigration, however, continues to use the two index finger prints that can be matched in their watchlist database. In other words, if a terrorist enters the country and is fingerprinted on entry, as the U.S. VISIT system now requires of some travelers, these fingerprints cannot be checked against the databases used by the FBI or state and local law enforcement. The joining of the two systems has been under development for many years but is behind schedule. DOJ OIG, "IDENT/IAFIS: The Batres Case and the Status of the Integration Project," Mar. 2004.

⁴² The Law Enforcement Support Center (LESC) confirmed all NCIC hits on immigration absconders in the NCIC Immigration Violators File. Not all law enforcement agencies arrest immigration absconders even after they have received a “hit” from NCIC. Some agencies believe that they cannot legally arrest or detain an alien unless a criminal arrest warrant has been issued.

⁴³ Craig E. Ferrell, International Association of Chiefs of Police, “The War on Terror’s ‘Absconder Initiative,’” found at www.theiacp.org/documents, stating, “The NCIC database has always been used to aid law enforcement officers in identifying persons wanted criminally. The FBI and the Department of Justice should take steps to immediately remove those individuals from the database who only have civil absconder warrants.”

⁴⁴ Some multiple immigration files were created when the alien applied for immigration benefits and the original immigration file was not located or known, resulting in the alien having more than one file. One permanent file may be on the *enforcement side* of INS and another “A” file on the *service side* of INS. With over a million aliens arrested each year and over a million aliens applying for benefits in most years, the INS was overwhelmed. As discussed earlier, Sheikh Omar Ali Abdel Rahman who was convicted of terrorism, had two immigration files at the same time. He did this by changing his name slightly and filing for immigration benefits at New York City and Newark, New Jersey. See also, GAO Report I-2003-004, “The Immigration and Naturalization Service’s Removal of Aliens Issued Final Orders,” Feb. 2003.

⁴⁵ BREAKDOWN OF 4,074 AAI CLOSED CASES

Administrative closing	55
Asylee/Refugee	14
Board of Immigration Appeals	42
Convention Against Torture	3
Deceased	24
Duplicate	12
Identified as Females ⁴⁵	55
In State or Federal Custody	45
In Legal Non-Immigrant Status	11
LIFE Act Applicant	8
Legal Permanent Resident	191
Motion to Reopen Deportation Hearing	64
No Final Deportation Order	99
Under Order of Supervision	72
Other ⁴⁵	56
Pending Application for Immigration Benefits	47
Prior Removal	99
Refused Entry	7
Released on Bond	122
Removed from the U.S.	704
Released on Order of Recognizance	25
Self-deported ⁴⁵	390
Stay of Deportation or Removal ⁴⁵	10
Temporary Protected Status (TPS) ⁴⁵	18
Unable to Locate or Leads Exhausted	1807
United States Citizen	80
Waiver Approved	5
Withholding	9
Total	4,074

⁴⁶ Testimony of Mike Dougherty, Director of Operations, Bureau of Immigration and Customs Enforcement (ICE), Department of Homeland Security, before the House Judiciary Subcommittee on Immigration, May 8, 2003. A total of 41 were charged with criminal immigration violations.

⁴⁷ DOS document, “Follow-up to A/S Harty’s Meeting on 11/21, 9/11 Commission,” Dec. 31, 2003.

⁴⁸ DOS document, Letter from Karl Hoffman to Daniel Marcus, Apr.5, 2004.

⁴⁹ DHS document, “National Security Entry-Exit Registration System: Program Overview and Analysis of Effectiveness as a Law Enforcement Tool,” Prepared by Bureau of Immigration and Customs Enforcement,

NSEERS Project Coordinator, May 22, 2003. The Attorney General's authority to mandate this program is spelled out in 8 CFR 2§ 64.1.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² A total of 750 NSEERS terminals were deployed to 270 legacy INS offices nationwide and 4,633 INS personnel were trained in NSEERS. DHS document, "National Security Entry-Exit Registration System: Program Overview and Analysis of Effectiveness as a Law Enforcement Tool," Prepared by Bureau of Immigration and Customs Enforcement, NSEERS Project Coordinator, May 22, 2003.

⁵³ DOJ document, Memo from Johnny Williams, Executive Associate Commissioner of Field Operations to the field, "Summary of NSEERS," Sept. 9, 2002.

⁵⁴ DHS document, "National Security Entry-Exit Registration System: Program Overview and Analysis of Effectiveness as a Law Enforcement Tool," Prepared by Bureau of Immigration and Customs Enforcement, NSEERS Project Coordinator, May 22, 2003. For example, if the nonimmigrant made unexplained trips to Afghanistan or the nonimmigrant met characteristics established by current intelligence updates and advisories. Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ After the initial registration, usually within two weeks of the registration, NSEERS registration information also was checked against databases of derogatory information—the TIPOFF terrorist watch list and the FBI's Violent Gang Terrorist Organization Files (VGTOF)—by the FBI's Foreign Terrorist Tracking Task Force (FTTTF). Any potential matches to records were sent to the INS National Security Unit (NSU) for investigation. DHS document, "National Security Entry-Exit Registration System: Program Overview and Analysis of Effectiveness as a Law Enforcement Tool," Prepared by Bureau of Immigration and Customs Enforcement, NSEERS Project Coordinator, May 22, 2003.

⁵⁸ Ibid.

⁵⁹ A person is subject to NSEERS registration each time they enter.

⁶⁰ DHS document, "Compliance Enforcement Summary," May 4, 2004, NSEERS Statistics.

⁶¹ DOJ document, "NSEERS Statistics September 11, 2002 through January 29, 2003," undated.

⁶² DHS document, "Compliance Enforcement Summary," May 4, 2004.

⁶³ DHS document, "National Security Entry-Exit Registration System: Program Overview and Analysis of Effectiveness as a Law Enforcement Tool," Prepared by Bureau of Immigration and Customs Enforcement, NSEERS Project Coordinator, May 22, 2003.

⁶⁴ Ibid. INS officers were permitted to grant NSEERS waivers for aliens who crossed the border frequently and for aliens who sought to depart from an undesignated port. Memo from Johnny Williams, Executive Associate Commissioner for Field Operations to the field, "Guidance for Special Registration, or NSEERS Waivers," Sept. 30, 2002.

⁶⁵ Ibid. We did not receive data for departure interviews conducted as of May 4, 2004.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ DHS document, "Compliance Enforcement Summary," May 4, 2004.

⁷⁰ DHS document, "National Security Entry-Exit Registration System: Program Overview and Analysis of Effectiveness as a Law Enforcement Tool," Prepared by Bureau of Immigration and Customs Enforcement, NSEERS Project Coordinator, May 22, 2003.

⁷¹ The precise number of NSEERS domestic registrants who were arrested and processed for removal is unclear. One document, the "National Security Entry-Exit Registration System: Program Overview and Analysis of Effectiveness as a Law Enforcement Tool," Prepared by Bureau of Immigration and Customs Enforcement, NSEERS Project Coordinator, May 22, 2003, states variously that "over 13,000" call-in registrants were arrested and that "10,000 to 12,000 individuals who appeared for call-in registration and were found to be illegally in the U.S. were arrested." In other words, the document appears to not take a consistent position, let alone attempt to precisely quantify the number arrested. A May 2, 2004 summary of NSEERS statistics lists the number of Notices to Appear issued as 10,037. DHS document, "Compliance Enforcement Summary," May 4, 2004. It is not clear to us how this number could be lower than the 13,000 figure contained in the May 22, 2003, summary since the Notice to Appear is the standard form used to begin an immigration removal proceeding.

⁷² DHS document, “National Security Entry-Exit Registration System: Program Overview and Analysis of Effectiveness as a Law Enforcement Tool,” Prepared by Bureau of Immigration and Customs Enforcement, NSEERS Project Coordinator, May 22, 2003.

⁷³ Ibid. “The discrepancy between the high number of NSEERS violators and the relatively low number of target folders is due to data integrity issues. . . . Since the release of version 5.4, FIELD OPS has seen a dramatic decrease in the numbers of possible NSEERS violators being reported in error.”

⁷⁴ Ibid.

⁷⁵ DHS document, “Compliance Enforcement Summary,” May 4, 2004.

⁷⁶ James Ziglar interview (Nov. 13, 2003).

⁷⁷ Robert Mueller interview (Jan. 13, 2004).

⁷⁸ For example, on September 27, 2002, the Canadians wrote Secretary of State Powell expressing “considerable disappointment” that NSEERS applies to Canadians born outside Canada. Letter to Secretary of State Colin Powell from Canadian Foreign Affairs Minister Bill Graham, Sept. 27, 2002; in 2003, representatives of the affected countries began having meetings with the Attorney General and Homeland Security Secretary Ridge. Ambassadors from Pakistan and Indonesia expressed concern to the White House and the Secretaries of State and Defense about the detentions and removals of their nationals from the United States. The ambassador of Pakistan said that inclusion in NSEERS had the “potential to weaken the government and President Musharraf.” DOJ record, “Aide Memoire,” Jan. 29, 2002; Pakistan’s foreign minister met with the Attorney General, the Secretaries of State and Defense, and the National Security Advisor. DOJ record, “Meeting Between the Attorney General and Milan Khurshid Mahmoud Kasuri, Foreign Minister of Pakistan,” Jan. 28, 2003; In a Department of State cable of January 3, 2004, the American Ambassador in Islamabad concluded a seething description of NSEERS, stating, “To a large extent, the U.S. cannot win here on NSEERS, regardless of the facts (35 percent of Pakistanis in the US are out of status.) There are few things that Benazir Bhutto and President Musharraf agree on, but NSEERS is one of them.” DOS cable, “Sharp Pakistani Criticism of NSEERS,” Jan. 3, 2003.

⁷⁹ White House memo, “National Security Entry Exit Registration System (NSEERS) Global Message,” Mar. 31, 2003.

⁸⁰ DHS document, “Compliance Enforcement Summary,” May 4, 2004, NSEERS Statistics, Country or Citizenship and Birth Records.

⁸¹ Ibid.

⁸² DHS document, “National Security Entry-Exit Registration System: Program Overview and Analysis of Effectiveness as a Law Enforcement Tool,” Prepared by Bureau of Immigration and Customs Enforcement, NSEERS Project Coordinator, May 22, 2003.

⁸³ DOJ document, NSEERS Violator List, Analysis Target Folder List given to HQINV, Dec. 17, 2002.

⁸⁴ DHS document, “National Security Entry-Exit Registration System: Program Overview and Analysis of Effectiveness as a Law Enforcement Tool,” Prepared by Bureau of Immigration and Customs Enforcement, NSEERS Project Coordinator, May 22, 2003.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Prepared testimony of David Martin before the National Commission on Terrorist Attacks Upon the United States hearing, Dec. 8, 2003.

⁸⁸ Intelligence report, interrogation of KSM, May 10, 2003.

⁸⁹ Ibid.

⁹⁰ Ziglar was sworn into office on Aug. 6, 2001. He would remain Commissioner until Dec. 2002, until the announcement of the abolition of the INS and the recreation of immigration functions in the Department of Homeland Security. James Ziglar interview (Nov. 14, 2003). Chuck Winwood was stranded in Canada on September 11. The person acting in his place that day was John Varrone, the head of investigations, who also told the Commission he spoke to Ziglar that morning regarding the tightened security measures. John Varrone interview (April 29, 2004).

⁹¹ Both Ziglar and Robert Bonner, who was sworn in as Customs Commissioner within days of 9/11, used this phrase to describe the highest level of inspection guidelines provided at the borders, see James Ziglar interview (Nov. 14, 2003), and Robert Bonner interview (Dec. 18, 2003).

⁹² James Ziglar interview (Nov. 14, 2003); John Varrone interview (April 29, 2004).

⁹³ The initial identity of the hijackers was completed within about 24 hours of the attack by both Customs and INS. Determining the immigration histories of the hijackers, without biometric identifiers

accompanying their files or the ability to share data between INS facilities or databases, would take months. See drafts of INS record, Texas Service Center Enforcement Operations Division 9/11 Terrorist Review, Sept. 2001-June 2002.

⁹⁴ James Ziglar testimony, Jan. 26, 2004; and James Ziglar interview (Nov. 14, 2003).

⁹⁵ INS Memo, Michael Pearson, Executive Associate Commissioner for Field Operations, to Regional Directors, "Authority to Carry a Firearm Performing Inspections at Air Ports of Entry," Sept. 12, 2001.

⁹⁶ INS power point record, "INS Request for Military Support," autumn 2001. The Border Patrol soon thereafter requested 480 military personnel to help shore up the porous northern border.

⁹⁷ James Ziglar testimony, Jan. 26, 2004.

⁹⁸ INS Statistics, PAS G-22.1, 2000.

⁹⁹ U.S. Bureau of Transportation Statistics (online at www.bts.gov).

¹⁰⁰ Customs memo, Director of Field Operations to Executive Director of Trade Programs, re "Blocking Property and Prohibiting Transactions with Persons who Commit, or Support, Terrorism," Sept. 28, 2001.

¹⁰¹ Robert C. Bonner testimony, Jan. 26, 2004.

¹⁰² James W. Ziglar interview (Nov. 14, 2003); and Robert Bonner interview (Dec. 18, 2003).

¹⁰³ Robert C. Bonner testimony, Jan. 26, 2004.

¹⁰⁴ Customs memo, Director of Field Operations to Executive Director of Trade Programs, re "Blocking Property and Prohibiting Transactions with Persons who Commit, or Support, Terrorism," Sept. 28, 2001.

¹⁰⁵ Robert C. Bonner testimony, Jan. 26, 2004.

¹⁰⁶ Ibid.

¹⁰⁷ INS Memo, Michael Pearson to Regional Directors, "Progressive and In-transit Clearance," Sept. 18, 2001 with addendum "Emergency Guidance re: TWOV and unable to depart due to FAA grounding," Sept. 11, 2001.

¹⁰⁸ Customs memo, Executive Director of Passenger Programs, Field Operations, to all Directors of Field Operations, "Suspension of Progressive and In-transit Processing," Sept. 12, 2001.

¹⁰⁹ Customs memo, Director of Field Operations to Executive Director of Trade Programs, re "Blocking Property and Prohibiting Transactions with Persons who Commit, or Support, Terrorism," Sept. 28, 2001.

¹¹⁰ Customs memo, Executive Director of Passenger Programs, Field Operations to all Directors of Field Operations, "Clarification of Suspension of Progressive and In-transit Processing," Sept. 17, 2001.

¹¹¹ Robert C. Bonner testimony, Jan. 26, 2004.

¹¹² Peter F. Verga testimony, Jan. 26, 2004.

¹¹³ INS Memo, Michael Pearson to Regional Directors, "Guidance on Department of Defense title 10 (Anti-Terrorism) Support," Mar. 8, 2002.

¹¹⁴ *Message to the Congress of the United States re the Department of Homeland Security*, George W. Bush, June 18, 2002.

¹¹⁵ This change was mandated by section 428 of the Homeland Security Act.

¹¹⁶ Ibid.