



Detainees awaiting action at an INS facility in Baltimore. The holding cell has a toilet, a pay phone, and a television.

Coming to America

An already overburdened immigration system faces the new demands of a post-9/11 world

BY CHITRA RAGAVAN

The nation was faced with a new kind of terrorist assassin whose goal was no less audacious than toppling the republic itself. And the president responded with a bold call against immigrants with malignant intent. "They and those like them should be kept out of this country," the president said in his message to Congress. "And far-reaching provision should be made for the punishment of those who stay. . . . The American people are slow to wrath, but when their wrath is kindled it burns like a consuming flame."

President Theodore Roosevelt thundered those words a century ago in his first written message to Congress responding to the assassination of William McKinley by Leon Czolgosz, the son of Polish immigrants. But his sentiments resonate today.

U.S. immigration policy is under siege following the attacks on the World Trade Center and the Pentagon, amid fears that foreigners may strike again. President Bush has acted to abridge many freedoms for noncitizens taken into custody as a result of terrorist investigations. The government is asserting the right to detain individuals for a longer period of time, sometimes indefinitely, without charges; to record conversations between attorneys and clients; to conduct expanded wiretaps and other surveillance; and to expand the legal grounds for investigating alleged terrorist support and activities. And

so far, few Americans find fault with that.

The president is making immigration reform one of his top priorities, and it is highly likely that the ease with which immigrants—as well as visitors—enter and travel in this country could be substantially curtailed. And, notably, the Immigration and Naturalization Service, the arm of the Justice Department charged with overseeing immigration policy, will have its many failings laid bare as it fights to exist as a separate entity. "Will we ever be foolproof, terroristproof, in this country? I doubt that very seriously," says new INS Commissioner James Ziglar. "Can we do a lot more to detect it and stop it? Of course we can."

Naiveté. When the Capitol was evacuated on the morning of September 11, the House of Representatives was scheduled to consider a bill to make it far easier for some *illegal* immigrants to apply for green cards in the United States, rather than in their home countries. That notion of leniency now seems naive. The 19 hijackers who killed thousands of Americans by turning commercial jetliners into flying bombs skillfully exploited the open arms of the nation's immigration policy to tragic end.

Each of the men arrived here legally, though once here, three of them violated the terms of their visas. That they did so without attracting official attention has cast a harsh light on the INS. Perhaps more than any other government agency, its failings were starkly exposed in the aftermath of September 11. Now



GATEWAY: MIAMI. INS inspectors have 45 minutes to vet passengers arriving on international flights. An inspector conducts a passport review for an arriving non-American family (above). At right, an INS officer uses a magnifying lens to examine the visa stamp in a passport to ensure that it is legitimate. At left, an INS officer at an inspection station takes the fingerprints of a Cuban immigrant. The INS has discordant mandates, part welcome wagon, part police agency.



there are serious questions about whether the agency will survive in anything close to its current form. "The INS is so dysfunctional it's time to scrap it," says Rep. F. James Sensenbrenner, chairman of the House Judiciary Committee, which oversees the INS. "The INS does not enforce the law either for those aliens who don't belong here or those aliens who legally come here and want to obey that law," says the Wisconsin Republican.

The national attitude toward immigrants has most often been tempered by

the state of the economy. When the economy is soaring, a blind eye is often turned to the wave of workers who come here seeking a better life. "In general there's always a nativist sentiment in the United States. It's a question [as to] how virulent it might be, but it's always there," says Urban Institute demographer and immigration expert Jeffrey Passel. But after September 11, the nativist sentiment has begun to be viewed not so much as old-era paranoia as new-era prudence. INS border policies are now viewed not just as a

porous fence to keep out migrant workers from Mexico but as a tool to deter terrorists in visitor garb. An example is Mohamed Atta, a civil engineer who is believed to have been the ringleader of the September 11 attacks.

Poster child. Atta, 33, has become the poster child for everything that's wrong with the system because he entered the country not once but three times, despite violating the terms of his admission. He first arrived on June 3, 2000, at Newark International Airport on a Czech Airlines



SEEKING ASYLUM. Farhana, a single woman from Pakistan, has been detained since being caught entering the United States with false documents in September 2000. She sought asylum, saying she was threatened with “honor killing” by her family. An immigration judge denied her request because of the documents but ruled the INS should delay sending her back because of concerns for her safety.

flight from Prague—where, it is now known, he had met the day before with an Iraqi intelligence officer. His passport held a B-1/B-2 visa, the type issued with little scrutiny to business people or tourists. (In fact, 18 of the 19 hijackers entered the country using that type of visa.)

Atta knew how to circumvent the immigration system. Under the terms of his admission, he was allowed to stay only until Dec. 2, 2000, but he didn't depart from Miami until a month later. The trick was that long before December 2 he asked the INS to switch his status from visitor to student, saying he intended to take flying lessons. Because he had properly filed for a status change, his overstay was not considered illegal, and he was eligible to re-enter the country when he returned to Miami a week later. Suspicious, immigration officials questioned him for an hour. But they decided to admit him although he hadn't yet gotten his student visa. It was a judgment call.

By some accounts Atta was again in

Prague last April to meet an Iraqi intelligence officer. But government records do not show a departure until July 7, from Miami. He returned 12 days later, through Atlanta, using a visitor's visa good through November. That gave Atta more than enough time for his task.

Another of the 19 terrorists, Hani Hanjour, 29, entered the United States in December 2000 on an F-1 student visa. But he never attended the school he was admitted to in Oakland, Calif., to study English. The school did not notify authorities and, once in the country, Hanjour melted into obscurity, just another visa overstay, like Nawaf Alhazmi and Satam Al Suqami, who overstayed their B-1/B-2 visas. The hijackers, mostly men in their mid-20s, all from Middle Eastern or Islamic countries, for the most part were careful to travel using valid passports and visas.

INS officials point to the State Department's responsibility for issuing the 19 visas in the first place. Fifteen visas were

granted in Saudi Arabia, an easy pit stop for United States-bound travelers because of loose visa-granting procedures. Three of the 15 hijackers even bypassed the consulates and got their visas through travel agencies in Saudi Arabia using a U.S. program known as Visa Express.

Early scrutiny. In fact, say INS defenders, the most important gatekeeping begins with the visa-granting process. Case in point: Several months before the attacks, two alleged members of Atta's Germany-based terrorist cell were denied U.S. visas at several U.S. consulates. One man, Ramzi Binalshibh, was turned down four times; the other man, Zakaria Essabar, was turned down twice. Both allegedly ended up playing supporting roles in the hijacking plot from their base in Germany.

Many visitors to the United States, though, are exempted from such initial scrutiny. Seventeen million citizens from 29 “visa waiver countries”—predominantly Japan, England, Germany, and France—were able to enter last year mere-

ly by showing their passports, a courtesy intended to facilitate tourism. That loophole was exploited by flight school suspect Zacarias Moussaoui, a French national of Moroccan descent. More recently, alleged shoe bomber Richard Reid exploited a program called Transit Without Visa that allows certain nonimmigrants to pass through the United States to another country without paperwork.

The INS says that neither man was on a terror watch list and that neither would have aroused suspicion. But two reports issued last month by the Justice Department's inspector general criticized the INS's enforcement of these programs. The reports said that even after September 11, immigration inspectors failed to consistently check passports of visa-waiver visitors against terrorist watch lists. And they said the agency has failed to enforce airlines supervision of TWOV passengers and still cannot verify that such passengers leave for their final destinations.

Because Atta and the other hijackers had valid entry visas, there was no reason to deny them admission, says INS spokesman Russ Bergeron. "They studied the system; they exploited the system," Bergeron says. "The INS had no knowledge that any of the men were terrorists or had terrorist connections." In fact, two of the men slipped into the country just weeks before the INS, at the request of the CIA and the FBI, entered their names on its lookout system. By that time, it was too late.

Since September 11, the INS has admitted it has no idea how many foreign students, like Hanjour, have overstayed or violated their visas—this despite a 1996 law requiring it to establish a tracking system for an estimated 550,000 student-visa holders. The INS plans to begin phasing in a system this year, though there still won't be enough enforcement agents to follow up on all the identified visa violators: Fewer than 2,000 agents are charged with the INS's entire "interior enforcement" operations, including investigating millions of visa overstays.

So now the INS is facing a lot of "what ifs" from critics and lawmakers. What if the INS had acted differently? "If you put it all together," says a former official at INS, "maybe September 11 might have been very different. It might not have been on the same scale. There might have been two planes instead of four. The other World

STEVEN RUBIN



TEARS, THEN JOY. After getting bad news last June (above), Hua Zhen Chen was freed from detention in October and granted asylum last month. A 28-year-old housewife, she said she fled from China's Fujian Province after authorities forced her to have an abortion rather than a second child.

Trade Center tower might still be standing."

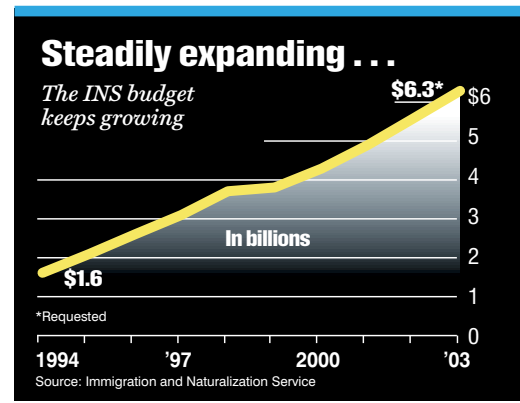
Criticism of the INS is not new. A vast and overburdened agency, the INS has long been a political scapegoat, alternately ignored, maligned, or berated. But after the attacks, lawmakers and Attorney General John Ashcroft declared that the INS is irreparably broken and must be revamped.

Split personality. Part of the problem has been that the agency has vastly discordant mandates, part welcome wagon and part police agency. And the numbers are staggering: Of the 530 million annual inspections conducted by the INS, 300 million involve noncitizens, including tens of millions of tourists. Reflecting tourism industry pressure, INS inspectors by law have to vet passengers on international flights within 45 minutes of arrival. Hasty processing creates an atmosphere ripe for failures.

The agency processes more than 6 million green card and citizen applications, 100,000 refugee admissions, and 65,000 asylum applications every year. Put simply, the agency manages the largest and most complex system of legal immigration in the world and at the same time conducts enforcement operations that result in more arrests than any other law enforcement agency in the world. Each year, the agency chalks up 50,000 criminal investigations,

more than a million arrests, 300,000 court cases, and 175,000 deportations—deporting 1,200 criminals a week.

But these breathtakingly complex tasks are managed with aging computer systems that don't talk to one another or to other agencies' computers. And in the past, there has been little intelligence-sharing with the FBI or CIA. The INS, with a staff of 35,000 employees, is still largely a paper-based agency—for instance, accepting paper visitor entry cards that may get entered into databases only weeks later, if they aren't lost. What's more, the agency says it is impossible to even try tracking the hundreds of millions of departures,



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PAROLED. Cuban-born Reinaldo Aguiar Salas, being photographed before his release from detention. The INS sought to deport him after he served six months in jail for a crime, but there isn't a repatriation agreement with Cuba. Officials concluded he would not pose a risk if freed on parole.

leaving the government without information needed to go after the millions who overstay their visas.

Contrary to the stereotype that depicts the nation's more than 8 million undocumented residents as illegal aliens from Mexico, some 40 percent of illegal residents are visa overstays from other countries. A Census Bureau report last month estimated that 115,000 Middle Easterners live illegally in the United States. "The perception of illegal immigration as being brown-skinned people coming over the southern border has led to all the money going to enforcing that border and beefing up the Border Patrol," says the former

INS official. Even so, the INS also has all but given up trying to find the more than 5 million undocumented Mexicans.

Many of the INS's shortcomings have been long known—and neglected. "The true issue," says Bergeron, "is that we have consciously decided to function as an open society, which presumes that people who come here do so for good and honest reasons." How to preserve that ethos but prevent terrorists from exploiting it is going to be the challenge for the Bush administration and Congress. The president has expressed his commitment to keeping the golden gates open, within limits. In ordering a tightening of all visa issuances, Bush said in October, "We welcome legal immigrants, and we welcome people coming to America." But, he added, "we don't welcome people who come to hurt the American people."

Bush is asking Congress to raise the agency's budget by 23 percent next year, to more than \$6.3 billion. Despite the hijackers' success at entering the country legally and despite FBI warnings of potential "sleeper" terrorists in the country, the lion's share of the proposed increase would in fact go to enforcing border security—more than doubling the Border Patrol agents on the northern border, creating an entry-exit system to track travelers, hiring nearly 1,200 immigration in-

spectors, and restructuring the INS. Less than \$20 million would be targeted at the potential threats posed by the millions of illegal residents already in the country.

Congress must look at a host of immigration reform proposals this year. These include a 30-day background check waiting period for U.S. visa applications and tamperproof visas containing biometrics data such as thumbprints and facial recognition codes. A bill introduced by Sens. Edward Kennedy and Sam Brownback would require all international airlines to submit in advance passenger lists for flights headed to the United States. The bill also would require the INS to implement an automated entry-exit system at border crossings and an Internet-based foreign-student tracking system. Other more radical proposals, including one by Democratic Sen. Dianne Feinstein to impose a moratorium on new foreign students for a period of time, were shouted down by lobbyists for universities, the most vociferous being in her

home state of California.

Not only will immigration policies be changed, but the bureaucracy of the INS may also be overhauled. Sensenbrenner has proposed legislation to eliminate the INS and fold its duties into the Justice Department as two separate divisions: one for enforcement, the other for services. Ashcroft has a similar proposal that would keep the INS umbrella but split the enforcement and service mandates. Reform proposals have often been hindered or derailed in the past, though now the momentum for change is powerful.

Balky Congress. Congress is entitled to some of the blame for lack of reforms. In 1996, after the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, Congress passed a tough antiterrorism law aimed at punishing foreign terrorists (though, in that case, the perpetrator was a decorated American war veteran, Timothy McVeigh). But lawmakers subsequently balked at enforcing key aspects of the law. For example, one of the provisions required the INS to create that same automated, visa-based entry-exit system that Kennedy and Brownback—and President Bush—are now seeking. But lawmakers voted twice to delay implementing the plan, to appease the tourism industry.

The foreign-student tracking system, an-

... and much to do

A look at the INS's annual caseload

Entry interviews	530 million
Green cards, citizenships processed	6 million
Refugee admissions	100,000
Asylum applications	65,000
Court cases	300,000
Deportations	175,000
Criminal investigations	50,000



A FAMILY DIVIDED. Thirteen-year-old Samer tries to draw attention to a sale sign outside his home in North Carolina. His father, a Lebanese national on probation after serving a prison term on a felony conviction, was picked up shortly after 9/11 and deported to Lebanon in December. Samer's American-born mother is planning to join her husband in Lebanon with their two children.

other provision in the 1996 law, wasn't implemented, derailed by Congress at the behest of universities. Congress also had voted to beef up state driver's license application requirements. But the states didn't like the feds telling them what to do, and so Congress repealed the provision. Many of the September 11 hijackers tapped into driver's license fraud rings in Virginia, Florida, and New Jersey and eventually used those picture IDs to board their final flights.

Delicate dance. For Congress, the most intractable political problem has been the border issue. As many as 4 million undocumented workers, mainly Hispanic, have entered the United States to work on farms, in chicken processing plants, in restaurants, and in hotels, all with the unspoken nod of the U.S. government. Politicians, both Republicans and Democrats, have long done a delicate dance, trying to win and keep key Hispanic swing votes while at the same time assuaging the anti-immigrant constituency. Hispanics, many of them born elsewhere, now make up

more than 12 percent of the U.S. population, numbering 35 million people in the 2000 census.

That is the political backdrop for the proposal floated by President Bush last August, just ahead of a visit by Mexican President Vicente Fox: to legalize many of these undocumented immigrants. Bush and Fox also wanted to create a guest worker program and to improve conditions for immigrants. The proposal thrilled Hispanic Americans, labor unions, and business, but it was anathema to anti-immigration groups and to many Republican politicians. And polls showed that the American public was overwhelmingly against such legalization, so much so that Bush began backsliding. Two weeks later, those ideas collapsed along with the flaming debris of the World Trade Center. Now Bush will renew those talks in Mexico in March. But, says the INS's Ziglar, "the context of the talks has changed." Any temporary-worker program would now be tied to Mexican help with

crime- and terrorism-related intelligence.

Bush will hear vocal opposition from increasingly assertive anti-immigrant voices. "America has to wake up and realize that after September 11, the old days of free trade, open borders, globalization, and ollie-ollie-in-free immigration are over," says former presidential aspirant Pat Buchanan. "Clearly," says Buchanan, "border control is an integral element of homeland defense."

Unquestionably, September 11 has left deep and painful scars on a nation that has so willingly provided opportunity, safety, and hope for so many from abroad—and unintentionally opened the door for a few with terrorist intent. Now the welcoming spirit of the Statue of Liberty in New York Harbor must contend with the fears and doubts and dangers symbolized by that other New York landmark, ground zero. |

*With Douglas Pasternak
and Edward T. Pound*