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### Publication Date

2017-10-18

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**The Center for Comparative Immigration Studies**  
University of California, San Diego

**National Security and Immigration  
in the United States after 9/11**

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Working Paper 157  
August 2007

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# National Security and Immigration in the United States after 9/11

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Paper prepared for presentation at CCIS Research Seminar, Center for Comparative Immigration Studies, UCSD, May 8, 2007. A prior draft was presented at the Annual Meeting of the International Studies Association, February 28—March 3, 2007, Chicago, IL

## **I. Introduction**

The terrorist attacks of September 11, 2001 had a profound effect on American National Security and immigration's relation to it. Prior to 2001, "securitizing" international migration was largely considered the discourse strategy of restrictionists and xenophobes. Now, however, it is widely accepted that international migration has significant implications for security. Of course, it can be argued that migration has long had security implications, and that immigration and border policies were strongly influenced by security interests (Rudolph, 2006). However, the events of 9/11 have raised the stakes considerably on what has long been a contentious issue—economically, socially, and politically.

The 9/11 Commission Report (National Commission on Terrorist Attacks, 2004) outlined the loopholes and cracks in the American system of migration and border control that the September 11 terrorists were able to exploit in order to carry out their mission (see also Flynn, 2004). All nineteen hijackers had visas to enter the United States. However, eight had passports that showed evidenced of fraudulent manipulations, and another five had "suspicious indicators." Some were known Al Qaeda operatives, yet somehow were either not included on government watch lists or managed to avoid apprehension if they were listed. More broadly, studies have shown that terrorists have not only exploited loopholes in the U.S. immigration and border control system, but have been able to use all available channels of entry in order to infiltrate the country (Camarota, 2002; Kephart, 2005). Without a doubt, migration has been increasingly recognized as a potential vector for the spread of global terrorism, and control over the entry of persons across the border represents the front line of defense in terms of

homeland security interests. But what effects did the 9/11 attacks have on U.S. immigration and border policy more generally?

This paper seeks to explain immigration and border policy development since September 11, 2001 through a national security framework (Rudolph, 2003; 2006).

## **II. Explaining Policy: The National Security Model**

I have argued elsewhere that, though the events of 9/11 may have put the issue of migration more squarely “on the security map”, particularly in the United States, that the security environment has had a significant influence on the timing and characteristics of immigration and border policies long before 2001 (Rudolph, 2003a; 2006). When considering security, however, it is important to recognize that this involves much more than traditional notions of geopolitics and military defense (Buzan, 1991; Buzan, Wæver and de Wilde, 1997; Rudolph 2003b). This includes thinking about security in both external and internal terms, as well as economic and societal dimensions (Rudolph, 2003a; 2006).

If we consider the external/internal logic first, it is reasonable to assume, consistent with realist thinking, that geopolitical security has held a dominant position and that material power is the necessary condition to maintain security (Morgenthau, 2005). In the premodern era of empires, military prowess was not only a tool of defense but of power acquisition. For numerous reasons, modern statecraft increasingly has turned to non-military means of acquiring power, particularly among advanced industrial countries, and “trading states” have increasingly replaced garrison states (Keohane, 19XX; Rosecrance, 1986). What that means in terms of grand strategy is that national

security is increasingly defined in terms of the interdependence that exists between its military and economic facets. What that means in terms of policy is that rational states are likely to respond to external (geopolitical) threats with policy that not only considers military mobilization, but also forwards 1) alliance building, and/or 2) maximization of economic production.

How would we expect that to affect immigration and border policymaking? In times marked by increased external threats, policy should strengthen alliances and provide a boost to *aggregate* economic production (even if such policies may have some negative implications at more local levels). I have referred to this elsewhere as the Threat Hypothesis (Rudolph, 2006). In terms of alliances, restricting the immigration of nationals from current or potential allies conveys a strongly negative symbolic message. Conversely, making the country more welcoming to nationals of allies affirms bonds and extends goodwill. Conforming policy to aggregate national economic interests is less clear, as it is influenced by the dominant economic ideas of the time. In other words, ideas about what types of policies produce higher gains relative to other options shifts across time. Among the western advanced industrial countries after WWII, the emergent conventional wisdom was based on the re-emergence of the classical economic views of Adam Smith and David Ricardo that emphasize openness to trade and factor flows. Thus, during the post-WWII period, we should expect policies to more open and more responsive to macroeconomic demand for labor.

What about times when external threats are low (or nonexistent)? One way to think about security's internal dimension is in terms of social cohesion. "National identity" is the term that best articulates the basis by which national societies find

commonality and a sense of belonging within the polity. It also identifies, through the institution of citizenship, whose interests the government is entrusted to forward. If “national identity” then represents the object of an internally-oriented security logic, does that mean that any change to its conception must be deemed threatening? To some social groups and to some individuals within social groups, this may in fact be the case.

However, it is not necessarily so. Ole Wæver (1993) introduced the concept of “societal security” to capture social apprehensions about changes to national identity while allowing for the possibility that societies may find some levels of change to be perfectly natural and/or desirable. He defines societal security as, “The sustainability, *within acceptable conditions for evolution*, of traditional patterns of language, culture, association, a religious and national identity and custom” (Wæver, 1993:23, *emphasis added*). Given this definition, we could surmise that internal security is not necessarily threatened when national identity undergoes change to due changing ideas or social demographics (through immigration). Rather, it is when 1) such changes take place faster than society is able to comfortably adjust to them, 2) change occurs to higher degrees than society is able to comfortably adjust to it, and/or 3) both of the above. In other words, societal insecurities may be manifest as racism or xenophobia, but may also manifest themselves by a discourse of a “loss of control”—in other words, when issues of sovereignty lie at the core of the debate (Rudolph, 2005).

Internal (societal) security dynamics are more likely to exert influence on political outcomes when external (i.e. geopolitical) threats decline. The rationale behind this is simple and draws on the work of sociologists like Lewis Coser (1956): External threats create common interests, and can contribute to a shared sense of common identity,

bolstering domestic societal cohesion and reducing societal insecurities. Samuel Huntington (2004) has drawn on these same insights to argue that the loss of the Soviet Union as an external enemy has increased domestic sensitivity to cultural difference in the United States and heightened anxiety about the demographic effects of immigration. Conversely, given this logic, the presence of a strong external threat/enemy would likely produce little pressure for cultural restrictivism in terms of immigration and border policy, since commonality of interest is reinforced and societal security as a state priority declines relative to geopolitical interests. I have referred to this elsewhere as the “Rally Hypothesis” (Rudolph, 2003a; 2006). What do these insights suggest in terms of policy outcomes? In times of lower relative external threats, we might have a higher probability of seeing societal insecurities becoming more significant, especially if migration flows are large and less culturally proximate than the receiving society. We can also anticipate that migration policy will likely become more closed and increasingly restrictive—attempting to slow the degree and pace of social demographic change in accordance with societal security interests.

When we examine post-WWII U.S. immigration and border control policies prior to 9/11 within this framework, it would seem that outcomes largely conform to those predicted by the security model (Table 1). For the early Cold War period, the severe external threat would lead us to expect policy that becomes relatively more open, supports economic needs, and supports foreign policy interests. At the same time, we should see declining emphasis on ethnic or cultural preference criteria. The policies strongly conform to these predictions. Migration played a key role in foreign policy, especially in light of the Truman Doctrine. Ad hoc admission of refugee flows fleeing



Communism after WWII, was an active policy tool that sought to: 1) weaken the Soviet Union by draining skilled manpower resources; and 2) weaken the legitimacy of Communism by showing that it was incapable of containing its own citizenry. In contrast, by showing its openness, the U.S. was able to convey evidence of its position as the defender of freedom. Though this was not manifest in official policy, National Security Council documents in the early 1950s specifically mentioned both aspects of refugee admissions as important elements of Cold War containment (Zolberg, 1995). Moreover, the executive branch was granted considerable latitude to conform refugee admissions to foreign policy interests. The 1952 McCarran-Walter Act gave the attorney general “parole power” to grant admissions if it was considered in the national interest. Regularization of these flows through acts of congress generally followed *ex post facto*. The McCarran-Walter Act bridged migration policy with foreign policy in other ways as well. Specifically, the Act reversed the existing ban on immigration from Asian countries—the so-called Asiatic-barred zone—because it was felt that such discrimination strained key alliance relationships in the region. Though the quota levels afforded were less than the Truman administration would have liked, their establishment must be considered a key first-step in moving away from ethnic preferences and forwarding foreign policy through migration policy. This move away from ethnic preferences was more substantial later on in the 1960s, after a 15-year period of high external threats relatively reduced societal insecurity—at least, defined in terms of ethnicity. The 1965 Immigration and Nationality Act officially reversed the National Origins quota system in place since 1924, and instead instigated a preference system based on family unification, economic needs, and foreign policy considerations.

**Table 1: External Threats and Migration Policy Development, 1945-2001**

Period	External Threat Level	Major Policy
Early Cold War	Severe	<i>Bracero</i> Program (1947) McCarran-Walter Act (1952) Ad Hoc Refugee Admissions 1965 INA
Détente	High	Per-Country Limits (1976) Interagency Task Force (1977) SCIRP (1978) IRCA (1986)
Post Cold War (1990-2001)	Low	IMMACT (1990) Gatekeeper (1993-1998) IIRAIRA (1996) American Competitiveness in the 21st Century Act (2000)

In terms of liberalization for economic needs, there is overlap with some of the actions discussed above. First, as reflected in Security Council memoranda, refugee admissions were in part considered a means of acquiring skilled manpower. In addition, the McCarran-Walter Act provided increased leverage for business to make use of foreign labor by providing exemption from prosecution for hiring undocumented workers—what was referred to as the “Texas proviso” (Tichenor, 2002). Moreover, the Bracero program opened the door to 4.6 million temporary workers from Mexico to work in agriculture, construction, and industry. This enabled domestic labor to better shift

toward manufacturing. Lastly, an economic preference quota was established in the 1965 INA for highly-skilled labor. In general, what we see is a relative liberalization occurring in the period, emphasizing economic and foreign policy aims and de-emphasizing societal security interests.

As we shift to the *Détente* period—loosely defined—the model predicts that societal security interests will gain in relative salience as external threats decline and the security lens turns increasingly inward. Given that the previous period liberalized policy, we might also expect that the effects such policies had on migration patterns will tend to exacerbate these societal security interests. Again, when we look at the empirical evidence from the period, most seems consistent with this prediction. In the wake of declining public support for immigration, both the executive and legislative branches established committees to discuss immigration—now commonly referred to as a “problem” in political discourse. These included the Interagency Task Force in 1977 and the Select Commission on Immigration and Refugee Policy in 1978. We also see more restrictive policy, focused largely on curbing migration from Mexico, which had increased markedly since 1965. Restrictions were directed at both “legal” and “illegal” flows, but the focus was on Mexican migration. First, the application of universal per country limits that were established in 1976 had the greatest impact on Mexican migration, even though it did not specify an overt intent to focus on this flow. However, because Mexico was subject only to the hemispheric limit of 120,000 prior to 1976 and generally consumed a large majority of this quota, subjecting Mexico to the 20,000 cap represented an acute restriction. Moreover, the Immigration Reform and Control Act enacted in 1986 continued this trend toward restricting Mexican migration. Though the

act provided an avenue for undocumented workers living in the country to regularize their status (and some 3 million took advantage of this opportunity), IRCA was a primarily a comprehensive attempt to crack-down on illegal immigration from Mexico. In addition to conforming largely to expected policy outcomes, it's important to recognize a gradual change in ideas regarding migration during this time. Specifically, the “problem” of immigration was defined largely in terms of Mexican migration and the southern border.

After the Cold War decreased external threats continue to be associated with rising societal insecurity in the 1990s. Given this, we should expect increasing degrees of closure and restrictionism, and a growing emphasis on ethno-cultural selection criteria. Overall, policy in the 1990s is consistent with the outcomes predicted by the security model. First, the 1990 Immigration Act, established a new set of “diversity visas” intended to “correct” unintended effects of the 1965 Act. In addition, we see a dramatic increase in efforts to control illegal immigration—beginning with Border Patrol programs like Operation Hold-the-Line in El Paso and Operation Gatekeeper in San Diego. Congressional action followed in 1996 with the Illegal Immigration Reform and Immigrant Responsibility Act. The Act restricted access to public entitlements to illegal immigrants, and provided a dramatic increase for funding border patrol operations.

Although policy is largely consistent with the hypotheses during the post-Cold War (but pre-9/11) period, there are also some unexpected outcomes as well. In addition to setting up diversity visas, the 1990 Act provided additional skills-based visas. It doubled employment-based immigration and included an annual quota of 65,000 H1-B visas for highly skilled workers. These levels were increased even more dramatically in

subsequent legislation in 1998 and 2000, when the number of H1-Bs was temporarily raised to 195,000. Why would a country that expresses increased societal insecurities and politicization of immigration support policies of openness? The answer, I believe, lies in changing ideas reflected in policymaker discourse. Over time it seems that policymakers became increasingly aware that the societal security aspects of migration were a purely political phenomenon—one driven by perceptions. Rightly or wrongly, the societal “problem” of migration was increasingly localized on one flow—Mexican migration. In *National Security and Immigration*, I describe policy in the 1990s as policymakers attempt to “finesse” societal security concerns by establishing largely symbolic policy—in the form of border control measures to the south. Visibility seems to play a key role in how severe societal insecurities are felt—and can vary depending on things like: a) cultural proximity; b) concentration (short time or in one place, like the border); c) settlement patterns; d) assimilation patterns (Rudolph, 2003a). Visibility also seems to play a key role in curbing insecurities as well. Even though the border control programs initiated in the 1990s did little to stop the flow of illegal immigration, it did serve to allay societal pressures for closure and reduce opposition to economic liberalization. So what we have in terms of a grand strategy in the 1990s was: 1) a heightened politicization that focused on societal security concerns; 2) an aggressive response by the state to the “source” of these insecurities—the porous southern border; and 3) a steady though much less publicized liberalization for highly skilled immigration to maintain the tremendous economic growth of the period. In terms of societal insecurities, policies can be explained largely by the predominance of an emerging attitude among policymakers of “out of sight, out of mind.”

### **III. The National Security Model and Policy after 9/11**

It has been said that “9/11 changed everything.” Although the Threat Hypothesis and Rally Hypothesis seem consistent with policy development in the United States during and after the Cold War, does this framework still provide a useful means of understanding policy outcomes? Both hypotheses predict that when threats are high that policy will become relatively more open, responsive to interests for increases in aggregate wealth and power, be increasingly used as a tool of foreign policy statecraft, and reduce emphases on ethnic selection preferences. At first blush, it would seem that policy doesn’t conform to the predicted outcomes of either hypothesis. Since 9/11, some of the most conspicuous policy developments have been largely restrictive. How do we explain this divergence from expected outcomes?

**Table 2: Security Logics and their Migration Policy Preferences**

<b>Security Dimension</b>	<b>Preference (&lt;9/11/2001)</b>	<b>Preference (after 9/11)</b>
<b>Military/Geopolitical</b>	Open	Closed
<b>Economic</b>	Open	Open
<b>Societal</b>	Closed	Closed

I argue that the national security model does, in fact, largely fit the empirical evidence post-9/11. The key here is to understand that the ideational variable(s) in play in the model are not static, but change according to circumstances and political learning.

Ideas shape the type of policy preferences that inform particular outcomes given changes in the security environment. In the early Cold War period, a (perhaps *the*) dominant idea shaping American grand strategy was that neoclassical economics were the best way to increase material (and subsequently, military) power in the face of a growing geopolitical threat. This aligned the policy preferences of the geopolitical and economic dimensions of security (Table 2). Combined with the relative de-emphasis on societal dimensions of security in a period of acute external threats, grand strategy was largely skewed toward more open policy until the emergence of the *détente* era in the 1970s. Since 9/11, however, a fundamental transformation has taken place in the way that security in America is considered. Homeland security emerged as the central issue of defense and the global “war on terror” largely supplanted geopolitical *realpolitik* as the primary security challenge facing the United States.

In terms of migration and border policy, the clear policy preference to respond to threats to homeland security is one of closure and restriction. Since human mobility serves as a vector for the spread of global terrorism and the proliferation of terrorist agents, the “safe” strategy is one that eliminates (or at least mitigates) such movement. In other words, states should be less willing to “risk migration.” What this does is link homeland security preferences with societal security preferences, both of which prefer increased closure (for different reasons), and offset economic interests for openness and labor market elasticity. Given this new security logic, movement towards more restrictive policy would conform to the security paradigm and be consistent with its predicted outcomes.

Numerous measures have been taken to respond to the terrorist threat to homeland security interests, including government restructuring, increasingly restrictive policy, and a slew of new programs and initiatives. Certainly the most dramatic response has been the complete reorganization of the federal government and the creation of the Department of Homeland Security (DHS) with a cabinet-level secretary. In this process of restructuring, the INS was separated into two new agencies, the U.S. Citizenship and Immigration Services (USCIS) and the Bureau of Immigration and Customs Enforcement (ICE). In addition, jurisdiction and oversight for these agencies was transferred from the Justice Department to the DHS. In essence, the dawn of the Bush administration's "global war on terror" placed migration and border control squarely in the security realm—one that now emphasized the homeland security dimension over more traditional geopolitical concerns (Forrest, 2006).

Initial policy developments with applications to migration and border control were primarily restrictive in nature. Primary legislation passed to address homeland security concerns includes the USA Patriot Act and the Enhanced Border Security and Visa Entry Reform Act (EBSVERA). The primary goals of these new laws and the new programs associated with them in terms of immigration and border control are 1) to facilitate screening of those seeking entry into the country, 2) to track their status once admitted, and 3) to verify their departure.

Among its provisions, the USA Patriot Act provides tools for law enforcement to facilitate intelligence gathering necessary to better screen visa applicants and others seeking entry into the country (Congressional Research Service, 2002). The Patriot Act dismantled the statutory "wall" between foreign intelligence and law enforcement



agencies by amending the Foreign Intelligence Surveillance Act (FISA), a move that was intended to facilitate interagency cooperation. Subsequently, the Foreign Intelligence Surveillance Court of Review endorsed the Justice Department's new Intelligence Sharing Procedures on November 18, 2002. In addition, procedures allow the Attorney General to approve emergency FISA surveillance and search warrants at his discretion. Between September 11, 2001 and March, 2003, more than 170 emergency FISA warrants were authorized by the Attorney General's office, three times the number authorized over the previous 23 years (Eggen and O'Harrow, 2003). The Act also expanded the definition of "terrorist activity" to include material support for terrorists and/or terrorist organizations as well as harboring known or suspected terrorists. This expanded definition of "terrorist activity" has directly affected immigration policy. This more expansive definition of "terrorist activity" is now used as grounds for inadmissibility for entry into the country.

Much of the new intelligence gathered has been added to existing anti-terrorism databases used to screen immigrants and visitors. For example, in the first year following 9/11 more than 7 million names from FBI records were added to the Consular Lookout Support System (CLASS), which is used by the State Department and DHS. This brought the number of name records included in the CLASS database to some 15 million. Unfortunately, 15 different anti-terrorism/law enforcement databases were in use at the time, managed by several agencies dealing with homeland security at different levels. In order to integrate the wealth of new intelligence information being gathered by intelligence and law enforcement agencies, a multi-agency Terrorist Threat Integration Center (TTIC) was established in 2003 to coordinate incoming intelligence information.

Subsequently, a Terrorist Screening Center (TSC) was established to consolidate existing security databases and to provide 24/7 operational support for security screening by authorized agencies. This has now been subsumed within the more expansive National Counterterrorism Center (NCTC) in Washington, DC.

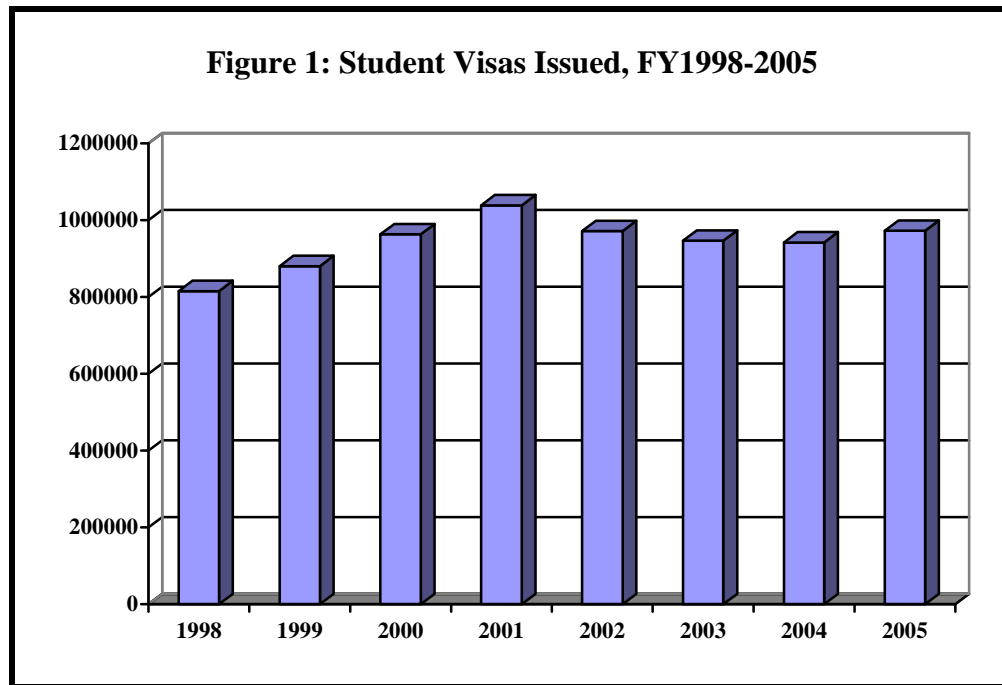
More stringent screening procedures for visa applicants have been applied that rely on these intelligence systems. Visas Mantis screening protocols have been in place since 1996, originally designed to stem the proliferation of expertise in knowledge relating to the creation of weapons of mass destruction, delivery systems, chemical and/or biological agents, and sensitive industries. Mantis procedures come in two forms: those that can be handled entirely by the consular office (“Eagle Mantis”) and those that can issue a visa only after clearance by the State Department (“Donkey Mantis”). Procedures have been tightened since 9/11 by requiring a Donkey Mantis clearance for applicants having passports or who are employed by states designated by the U.S. government as “sponsors of terrorism.”<sup>1</sup> In addition, a new Visa Condor protocol has been established that requires that all applicants from certain nationalities (known as “List of 26” countries) be checked against CIA and FBI databases of known and suspected terrorists (including, but not limited to, the list of “state sponsors of terrorism”).<sup>2</sup> In accordance with the protocol, men in these groups between the age of 16 and 45 have to wait up to 30 days for the Condor check before a visa can be issued. Critics of the new security measures suggest that the emphasis on counter terrorism has instigated a “just-say-no” mentality among bureaucrats that issue visas. This view would seem corroborated by the

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<sup>1</sup> These are referred to as “T7” countries and include Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

<sup>2</sup> The List of 26 countries include Afghanistan, Algeria, Bahrain, Djibouti, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, Turkey, the United Arab Emirates, and Yemen.

statements of those directing policy and procedures in the area of visa issuance. Janice Jacobs, deputy asst secretary of state for visa services, remarked, “In the post-9/11 environment, we do not believe that the issues at stake allow us the luxury of erring on the side of expeditious processing” (*Migration News*, Jan. 2004). However, though the more stringent application of security cables certainly must be seen as a rise in the level of restriction, approval rates do not suggest that these have necessarily closed the door to migrants and travelers. The approval rate for visa applications in 2004 remained about the same as it was prior to 2001—75% (Bove-LaMonica 2006). The overall number of visas issued has declined, but this is attributed to a 35% drop in applications rather than because of increasingly restrictive security checks (*Migration News*, Apr. 2004).



Source: U.S. Department of Homeland Security, Office of Immigration Statistics

Several new programs have been established to track visitors to the United States in compliance with the directives set forth in the Patriot Act and EBSVERA. The use of American flight schools as a key component of the 9/11 plot brought the issue of monitoring foreign students to the fore. To address this situation, a new Student and Exchange Visitor Information System (SEVIS) was established in January 2003 that requires schools to provide completed electronic files to immigration offices and the State Department for all students studying at their institution. This, in addition to the Mantis and Condor security protocols, served to restrict student entry which had previously increased annually. Security checks complicated and significantly slowed down the visa process for students, acting as a disincentive to studying in the United States. Figure 1 shows the initial decline in the number of student visas issued following the events of 2001. Enrollment of students in U.S. institutions dropped 28% in 2004, the first such decline in 30 years (*Migration News*, Jan. 2005). Moreover, the number of educational institutions permitted to host foreign students declined sharply. Prior to 9/11, there were approximately 77,000 schools permitted to host foreign nationals. By 2004, this number declined to some 7,000 schools (*Migration News*, Jan. 2004).

In addition to tracking students, two systems have been developed to track non-student visitors to the country. The National Security Entry-Exit Registration System (NSEERS), established in 2002, required male foreign visitors from “politically sensitive areas” (primary Muslim and/or Arab states) over the age of 16 to register with the INS. More than 100,000 complied with the directive (Stock, 2006). In January 2004, a new visitor tracking system was implemented that is intended to eventually replace NSEERS. Under the new US-VISIT system, non-immigrant visitors to the United States must

submit fingerprints and a digital photo upon entry into the country and receive security clearance prior to admission (Koslowski, 2005; Ackleson 2006). US-VISIT represents a significant expansion of NSEERS, in that it does not limit its scope to travelers from specific places of origin. US-VISIT has been implemented in stages, a process as yet incomplete. Beginning at U.S. airports in early 2004, it was later expanded to include the 50 busiest land border entry points in December of 2004. Though initially exempt, nationals of visa waiver program countries were also required to submit fingerprints under the US-VISIT program in April 2004. The program is intended to monitor both entry and exit of foreign nationals, but at this juncture (early 2007) control over departures is yet to be implemented.

Although measures to screen and track migrants and visitors can be seen as a step toward increased restriction over movement, much of the emphasis has been placed on border security. Initially, increased border security responded to concerns along the northern border which was largely unguarded. The fact that known terrorists, such as Ahmed Ressam, have sought to enter the United States across the northern border made such moves rational from the standpoint of homeland security (Camarota, 2002; Kephart, 2005). In accordance with provisions contained in both the Patriot Act and EBSVERA, Border Patrol deployment along the U.S.-Canada border was tripled from 2001-2004, increasing from about 350 to about 1,000 agents. In addition, a comprehensive Integrated Surveillance Intelligence System (ISIS) was deployed at 55 sites along the northern border that includes seismic, magnetic, and infrared ground sensors and high-resolution infrared video cameras. This has also been complemented by increased cooperation between U.S. and Canadian personnel, including the creation of Integrated Border

Enforcement Teams and the Smart Borders Agreement (Koslowski, 2006; Rudolph, 2006). More generally, increased funds have been appropriated for the Border Patrol, funding a sharp increase in the number of border agents. The budget for the Border Patrol has increased from \$400 million in FY1994 to \$1.2 billion in FY2004, an increase of 300%. The total number of border patrol agents has increased from 4,200 in 1994 to 11,200 in 2004 (*Migration News*, Oct. 2005).

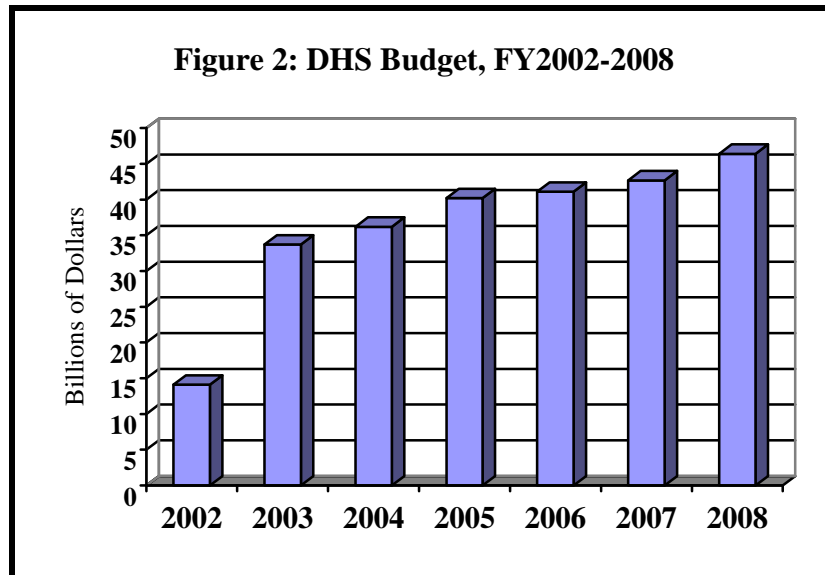
The emphasis on border control escalated in 2005 when Secretary of Homeland Security, Michael Chertoff, announced the Secure Border Initiative (SBI). SBI outlined a series of objectives to secure the borders and better regulate migration. The SBI calls for more agents to patrol the borders, secure ports of entry and enforce immigration laws. The Homeland Security Appropriations bill was signed by the president providing for an 11% increase in funding for U.S. Customs and Border Protection (CBP) and a 9% increase for Immigration and Customs Enforcement (ICE). These funds were earmarked to add 1,000 new border patrol agents. SBI also called for expanded detention and removal capabilities. New detention centers have been added, bringing the number of immigrants detained in such centers up from 19,718 each day in 2005 to 26,500 per day in 2006 (Moreno, 2007: A:3). The new detention facilities are intended to end the practice of “catch and release,” whereby undocumented immigrants (not of Mexican origin) were processed and released pending the judicial review of their case. The Secure Border Initiative also called for increased investment in infrastructure improvements at the border and greatly increased interior enforcement. Lastly, SBI provided for a comprehensive and systemic upgrading of the technology used in controlling the border, including increased manned aerial assets, expanded use of unmanned aerial vehicles

(UAVs), and next-generation detection technology. Part of this effort came in the form of SBInet, a high-tech “virtual fence” intended to supplement physical barriers along the border. In 2006, Boeing was awarded a 3-year, \$2.5 billion contract to install 1,800 sensor towers to detect illegal entry into the United States, beginning with a pilot program deployed on a 28-mile section of the border near Tucson, Arizona. Taken together, these programs of the Secure Border Initiative were intended to achieve “operational control” of both the northern and southern borders within five years.

The Secure Border Initiative highlights the centrality of migration and border control to the issue of homeland security. Though homeland security interests did not necessarily dominate social and political discourse in the United States as time passed, it did seem to dominate policy outcomes. As the shock of 9/11 became less acute over time, social and political discourse entertained the notion of comprehensive immigration reform. Indeed, this has long been a priority for the Bush administration, who originally sought to establish a migration accord with Mexico prior to 9/11. On January 7, 2004, the president once again put the issue on the agenda, proposing “Fair and Secure Immigration Reform” that would better match “willing foreign workers with willing U.S. employers when no American can be found to fill those jobs” (*Migration News*, April 2004). New immigration reform packages that included guest workers programs and amnesty (or “earned legalization”) for undocumented immigrants were offered in both the House and the Senate in 2005 and debated in 2006. At the same time, hundreds of thousands of immigrant advocates took to the streets in huge public demonstrations in major U.S. cities. The stage seemed to be set for comprehensive change, one that would

integrate homeland security interests while also forwarding economic and liberal-societal interests as well.

However, in the process of deliberation, only increased border enforcement found consensus in Congress. In 2005, the Real ID Act was passed that increased restrictionism by 1) providing approval for the construction of fencing along a 14-mile section of the southern border that was deemed environmentally sensitive; 2) prohibiting federal agencies from accepting drivers' licenses as identification from states that issue them to undocumented immigrants; and 3) tightening asylum processing by giving more latitude to judges to deny asylum applications. This was followed in 2006, when Congress passed the Secure Fence Act in September. The Act called for the construction of an additional 700 miles of 15-foot high double-layered fencing along the U.S.-Mexico border. The Act appropriated \$1.2 billion to complete the fence.



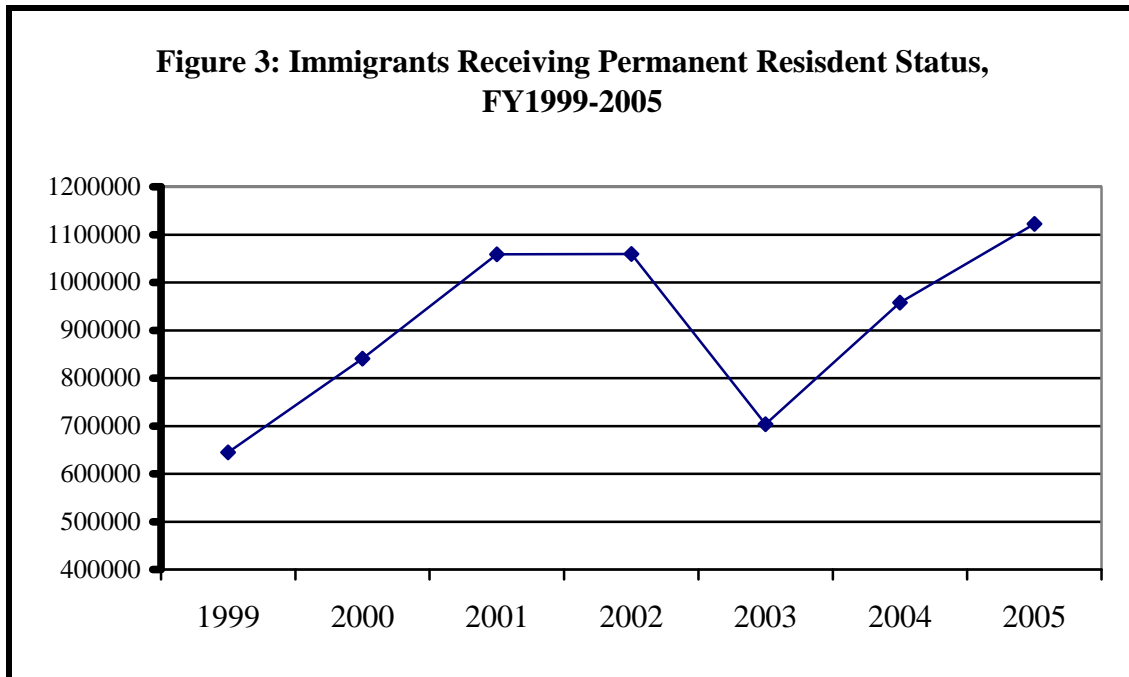
Source: U.S. Department of Homeland Security



The cost of supporting such homeland security-oriented programs clearly puts homeland security policy preferences at odds with the economic security interests necessary to fund such policies. Figure 2 shows the consistent rise in the operating budget for the Department of Homeland Security since its inception, rising from \$14.1 billion in fiscal year 2002 to \$46.4 billion in fiscal year 2008. When you add in the cost of its foreign policy components, including U.S. military interventions in Iraq and Afghanistan, this global war on terror comes with a considerable price tag. In the pre-9/11 era, geopolitical pressures for economic wealth to support defense skewed policy preferences toward more openness. A similar pressure is exerted in the post-9/11 period. What's different now is that policy preferences are no longer congruent between defense (homeland security) and economic security. How is this tension reconciled politically? The answer lies in recognizing that migration policy is far more nuanced than the terms "open" or "closed" allow. Traditionally, immigration policy has been thought of largely in these terms—of state regulation using policy as a sort of valve that either lets in more immigrants or reduces their number. Because responding to homeland security interests with this type of absolute closure is contrary to national economic interests, policies of restrictionism are based more on adding levels of screening and selection rather than altering overall volume.<sup>3</sup> The types of policies outlined above forward two primary agendas: 1) redirect undocumented flows through proper channels, and 2) increase screening and tracking capabilities to reduce the risk of terrorist infiltration.

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<sup>3</sup> I have argued elsewhere that such "finessing" of contrasting interests marked U.S. policy prior to 9/11. However, rather than making policy more "closed" via added screening mechanisms, the state used largely symbolic border enforcement policies and programs to appease political pressures to respond to societal insecurities. See (Rudolph, 2006; also Andreas, 1999; Cornelius, 1998).



Source: Department of Homeland Security, Office of Immigration Statistics

Levels of permanent immigration have actually increased since 9/11. Figure 3 shows that levels of immigrants receiving permanent residence status remained stable in the year following 9/11. The number declined in 2003, but that was largely the result of the economic downturn rather than changes in policy. As the economy rebounded in 2004-2005, levels of permanent immigration again rose sharply and surpassed the pre-9/11 levels in 2005. There have also been increases in the number of business-oriented, skills-based migrants permitted to enter the country. Though a sunset provision of the American Competitiveness in the 21<sup>st</sup> Century Act of 2000 returned H1-B visa quotas to their previous limit of 65,000 in October 2003, subsequent Congressional actions have moved to increase limits. In 2004, the Visa Reform Act exempted up to 20,000 foreign

workers holding master's degrees or higher from the 65,000 cap. Moreover, skilled workers employed at institutions of higher education, nonprofit research organizations, and government research organizations were also exempt from the quota limits. In addition, in 2004 a new H1-B1 visa became available to nationals from Chile (1,400) and Singapore (5,400) who held a BA degree (or more) as part of trade agreements with those countries (*Migration News*, Jan. 2004). L-1 visas for management and other highly-skilled workers of multinational corporations have remained free of specific quota limitations, allowing economic labor market forces to direct levels of inflows.

At the same time policies were in place to ensure business had access to needed supplies of labor, the immigration bureaucracy contributed to the business-friendly environment. Amid the tightening restrictions outlined above, immigration control agencies refrained from unnecessarily "harassing" domestic employers of immigrant workers. Employer sanctions laws, on the books since the 1986 Immigration Reform and Control Act, have a long history of benign neglect (Fix and Hill, 1990). This practice of non-interference seems to have become even stronger after 9/11, even though political discourse projected a new "get tough" stance. The number of employers fined for hiring undocumented immigrants declined from 944 to 124 from 1993-2003. In addition, the number of workers apprehended by immigration authorities at work places fell from 7,630 to 445 during the same period (Gorman, 2005). Yet, increasing worksite enforcement is one of the stated goals of the Secure Border Initiative. Again, however, we see security practices crafted to reduce negative impact on business. Rather than an across-the-board crackdown on employers of undocumented workers, Immigration and Customs Enforcement agents have focused on checking employment records at critical

infrastructure workplaces. These include airports, nuclear facilities, refineries, and seaports (*Migration News*, July 2005).

What we see in terms of policy in the United States in an effort to bridge economic and homeland security interests by increasing regulatory control over flows—not just stemming flows generally. It represents an unprecedented expectation on the immigration control bureaucracy. While the empirical evidence since 9/11 does lend some support for the security paradigm, the new conditions are clearly more complex than they were before 2001. Consistent with the predictions of the Threat Hypothesis, increased levels of threat have pressed the state to act on its defense (now defined as homeland security) and economic security interests. Because the policy preferences of these facets present contradicting logics (one pressing for more openness, the other for closure), the state is left with two choices: 1) preference one over the other, or 2) attempt to bridge the gap by increasing screening and tracking abilities while maintaining a generally liberal posture vis-à-vis migration. Clearly, the U.S. government has attempted to build grand strategy along the latter lines.

#### **IV. Conclusion**

The increasingly complex politics of immigration and border policy raise additional questions. Though the evidence does largely seem supportive of the Threat Hypothesis, support for the Rally Hypothesis is less clear. The Rally Hypothesis predicts that high levels of external threat will produce common interests and an emphasis on shared identity that would make society less insecure about demographic changes associated with international migration. The mobilization of mass pro-immigrant demonstrations in

spring 2006 might be some evidence of a rally effect. However, poll data are much less conclusive. A *Washington Post* poll taken in January 2005 found that 61% of respondents supported access to legalization for undocumented workers now living in the United States, suggesting some receptiveness to liberalization of what has long been a politically contentious issue. However, a *Wall Street Journal-NBC* poll taken in December 2005 found that 57% of respondents felt that the U.S. was “too open” to immigration. Hence, there is no clear empirical support for the rally hypothesis.

If public opinion seems somewhat mixed concerning immigration in general, it is much more homogeneous in terms of attitudes towards illegal immigration. The post-9/11 threat environment clearly had a negative impact on people’s concerns about illegal immigration. A Fox News poll from May 2005 found that 91% of respondents considered illegal immigration to be a “serious” problem.<sup>4</sup> Likewise, a California Field poll found 73% of respondents were “concerned” about illegal immigration, including 43% who responded that they were “very concerned.”<sup>5</sup> The emphasis on illegal immigration in public opinion raises one of the more puzzling questions of policy development since 9/11: If illegal immigration is a potential conduit for terrorist aliens and border security is necessary to thwart this threat, why has U.S. policy focused disproportionately on the southern border? This question is even more perplexing given the fact that the only publicly-known foreign terrorists that used clandestine border crossing as a means of entry into the United States came from the north, not the south (Camarota, 2002; Kephart, 2005).

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<sup>4</sup> 63% of respondents reported it to be a “very serious” problem, while another 28% said it was “somewhat serious.” Poll available online at: <[http://www.foxnews.com/projects/pdf/050305\\_poll.pdf](http://www.foxnews.com/projects/pdf/050305_poll.pdf)>.

<sup>5</sup> Available online at: <<http://www.field.com/fieldpollonline/>>. See also *Migration News*, April 2006.

There are a few possible explanations. The first is that the government knows something that the rest of us don't. In testimony before Congress on February 16, 2005, top government officials suggested that there was evidence that al-Qaeda was considering using the southern border to gain entry into the United States. Admiral James Loy, deputy secretary for homeland security, testified that new intelligence "strongly suggests" that terrorists are considering this mode of entry and that "several Al Qaeda leaders believe operatives can pay their way into the country through Mexico and also believe illegal entry is more advantageous than legal entry for operational security reasons" (Cited in Jehl, 2005). Since providing such testimony, however, there have been no reports of al Qaeda operatives apprehended attempting to cross the U.S.-Mexico border, nor have there been further reports of intelligence corroborating such concerns.

A second possibility is that U.S. policymakers are reluctant to establish a more stringent border regime with Canada because they are reluctant to initiate policy that may hamper U.S.-Canada relations. In the same way that national-origins quota restrictions and the Asiatic barred zone strained U.S. alliance relationships in Asia following WWII, reinforcing the northern border would likely cause irreparable damage to U.S.-Canada relations. One might add that, as America's second largest trading partner, that the U.S. should hold equal restraint in its dealings with Mexico. However, the two situations are fundamentally different, as border enforcement is nothing new to the south. To the north, however, increased fortification would be a definitive foreign policy transition for the United States—one that would have significant implications for U.S. alliances.

A third possibility involves the way we think about threats post-9/11. Perhaps similar to the "red scare" of the 1950s, the current threat of global terrorism presents us

with a shadow-like nemesis—one not easily identified. Potential terrorists can be anyone and have no pre-determined source of origin or physical appearance. The case of the American-turned-Muslim radical John Walker Lindh, who was captured fighting with the Taliban in Afghanistan, suggests that terrorist organizations can recruit anyone from anywhere to join their cause. Because the source of the threat is imprecise, it is likely that public opinion turns to “old enemies” to give shape to the new threat. If clandestine border crossing represents the potential means of terrorist infiltration, then perhaps the general public and policy makers alike have turned to prior conceptions of the source of this threat—border crossers from Mexico. Indeed, there is reason for such long-held views, as Mexicans represent 50% of the undocumented migrants apprehended by U.S. border authorities. Thus, the preoccupation with the southern border can be likened to a roundup of the “usual suspects” in the initial stages of a criminal investigation. Certainly, public opinion polls seem to support this view. In the December 2005 *Wall Street Journal* poll that showed 57% of respondents felt the U.S. was “too open” to immigration, 78% of those polled said that they favored “tightening” the border with Mexico. Two-thirds of respondents in the May 2005 Fox News poll supported putting U.S. troops on the southern border.

Lastly, the preoccupation with illegal immigration from Mexico may also reflect a fundamental transformation in the way that security is considered post-9/11—at least in terms of homeland security. Global terrorism is fundamentally different than the traditional security threat—another state. Instead, it blurs the line between “security” and “policing,” and subsequently, notions of “lawbreaking” may be emerging in the homeland security discourse. Certainly, negative public attitudes about illegal

immigration find common ground between political Right and Left when the issue of “legal channels” is raised. In Congressional debates about immigration reform in 2005-2006, a common theme that linked conservative and liberal was that migration must be orderly, secure, and respect the law and sovereignty of the receiving country. In this sense, this new preoccupation with “lawbreaking” may work together with the “usual suspects” rationale outlined above—as Mexico and the southern border represents the public stereotype of the “illegal immigrant.” This is nothing new. Even before 9/11, policy discourse in the 1990s emphasized the need to control flows across the border, even though it was widely known that some 40-50% of illegal immigrants did not cross the border clandestinely. Nor were they all of Mexican origin. Instead, these “out of status” migrants (aka “visa overstayers”) simply entered through regular channels and then violated the terms of their visa.

The events of September 11, 2001, complicated our notions of security. Moreover, they have had a profound effect on the complexity of crafting policy that is able to respond to security’s various facets without creating new vulnerabilities. To achieve this end, U.S. policy makers have put the burden on the border control bureaucracy to establish a level of control to date unprecedented. At this point, this process remains very much a work in progress.



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