

## Senate Committee on the Judiciary

### “The Border Security, Economic Opportunity , and Immigration Modernization Act, S.744”

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Hart Senate Office Building , Room 216

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#### Testimony of

**Janice L. Kephart**

former border counsel, 9/11 Commission

principal, 9/11 Security Solutions

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#### Introduction

Chairman Leahy, Ranking Member Grassley. Thank you for having me here today. I appreciate very much this committee's continued interest and effort in securing our borders and your willingness to hear from so many highly qualified experts today with whom I am honored to share testimony.

It is an honor to be before you as an alum of the committee that prepared me so well for my work as a counsel to the 9/11 Commission and my subsequent work on border and identity security. More specifically, my testimony is based on my work as a counsel on the 9/11 Commission "border security team," as an author of the 9/11 staff report, 9/11 and Terrorist Travel, and as the National Security Director at the Center for Immigration Studies for five years.

From the outset, let me make it clear that I, like many, consider the benefits and wealth of human potential that immigration brings to this country to be one of our greatest strengths as a nation. However, I also believe that we owe it to all Americans to maintain the integrity of our borders. I appreciate the S. 744's Congressional Findings, especially those that make clear that it is the federal government's responsibility to "maintain and secure our borders, and to keep our country safe and prosperous", "protect its borders and maintain its sovereignty", and a recognition that "illegal immigration... in some cases has become a threat to our national security." These tenets reflect and incorporate findings pertaining to abuse of our immigration system's historical

vulnerabilities, some of which were made clear by the 9/11 Commission, while others are reflected in more recent events, including the surge in illegal immigration we have seen across at least some key sections of the southwest border in recent months as well as the continued abuse of the legal immigration system by those with terrorist intentions.

To be clear, I was asked that my testimony cover the border security portion of S. 744, “The Border Security, Economic Opportunity, and Immigration Modernization Act”. The basis of my testimony rests on the basic finding of fact from my work on the 9/11 Commission, and subsequent work on terrorist travel, border and identity security: that border security is a matter of national security. From that vantage point, I thought most helpful to the Committee may be a review of the “triggers” that must occur before the “Secretary ... adjust the status of aliens who have been granted registered provisional immigrant status” set out in Section 3. My testimony therefore covers the “triggers” as follows:

Part One. Comprehensive Southern Border Strategy must be submitted to Congress and “substantially” deployed and operational

Part Two. E-Verify becomes mandatory

Part Three. An electronic, biographic exit system is in place

In addition, I’ve added in Part Four. Immigration Benefit Identity Verification as Vital to National Security Security.

## Part One. Comprehensive Southern Border Strategy

### A. Overview

The Comprehensive Southern Border Strategy called for in S. 744 has useful, albeit somewhat limited, elements. First, the concept of a mandate for a strategy for the southwest border is a good one. It is helpful. However, it is also incomplete as the Secretary of Homeland Security is not truly required to assure border security, just state the official Department opinion regarding what that strategy should be, whether that the strategy has been deployed and how well the metrics set out in S. 744 have been met. Also, there is another more nefarious problem with S. 744’s approach to border security: requiring only a strategy for the southwest border ignores the many loopholes that still exist in the legal system to enable entry and embedding of an illegal alien, such as the visa overstay or illegitimate asylum seeker.

The Border Strategy requires a new metric to measure border security, which the bill refers to as an “effectiveness rate”. The policy equation put forth in the bill to determine the required 90 percent “effectiveness rate” is defined as the annual number of illegal entries divided by “apprehensions and turnbacks” per sector. To be able to determine “apprehensions and turnbacks”, the strategy must deploy a means to create a 100 percent detection rate of these apprehensions and turnbacks. How that is to be done is undefined. The problem is this: if there is not 100 percent detection, then the 90 percent effectiveness rate set forth in the equation will be inaccurate, and the metric fails.

How would 100 percent detection rate best be achieved? The most fail-proof manner would be an interoperable common operating picture deployment by sector which enables Border Patrol agents to garner operational intelligence by geographic coordinates and type of activity on a 24/7 basis. How a 100 percent detection rate can be deployed otherwise that is both accurate and

reliable will be difficult with a combination of technologies that do not garner information in a standardized way.

Another issue with the 'effectiveness rate' is that it appears to be based wholly on human activity, and not necessarily on activity that affects public safety. Does the metric now mean that the Border Patrol, to maintain a sector's 'effectiveness rate' (assuming it can be achieved), will now prioritize only human and alien smuggling, and not drug cartel loads, weapons or other contraband which will not count towards the metric?

In terms of "high risk border sector" where 'effectiveness' must be maintained, this definition is questionable as well. While reallocating that term to sectors on an annual basis recognizes that smugglers shift their entry points based on law enforcement and other logistics issues, an annual determination is an extremely slow response to flows that can shift on a weekly basis. The failure to embed flexibility into a high risk border sector, or even requiring that a determination be made about whether a sector is high risk or not, may complicate and not support the Border Patrol mission, which is to secure the entire border.

The 'Southern Border Fencing Strategy' is a valuable requirement of S. 744. A fencing strategy with required deployment, with attending authorizations, would also have value as a standalone statute. However, S. 744 only calls for a strategy, nothing more. While a strategy is a good start, it is actually building one -- one that actually is built to keep individuals out -- that works to protect both the border and the environment. This is an issue which I have written about extensively.

The Southern Border Security Commission established in Section 4 of the bill is an invitation for failure. Immigration control is a federal responsibility which the states and local communities are enabled to support with laws that reflect federal law, or in conjunction with federal law enforcement. Creating a Commission five years down the road if the Border Strategy created in S. 744 fails is tantamount to, at minimum, a political gesture asking for the states to make recommendations and decisions which can not be operationalized without federal support. That is a waste of taxpayer money in an era of severe budget cuts as well as a political distraction from the federal government's ultimate accountability.

## B. S. 744's Southwest Border Strategy Metric in Light of the Surge of Illegal Crossings

Predator UAV: "We haven't been in that area for hours; we're being inundated where we're at."

Fixed-wing pilot: "This in Night Owl on air four. We're ten eight. We're en route about two zero mikes from Ajo. You guys got targets out there?"

Predator UAV: "Are you kidding me? We just broke the record."

Listen here [[http://www.secureborderintel.org/BorderBlotter/Omaha10\\_030113.wav](http://www.secureborderintel.org/BorderBlotter/Omaha10_030113.wav)] to Border Patrol pilot conversation March 1, 2013 at 7 PM

Whether the metric outlined in S. 744 is adequate to deal with the complications of border enforcement should be considered closely. The metric's relative simplicity focusing on apprehensions does not take into account these complications, and may have unintended consequences such as encouraging the Border Patrol to focus on the smuggling of people to the exclusion of drugs, weapons and other contraband.

It also remains unclear how many individuals S. 744 will legalize. Right now, the numbers could be substantially higher than the 11 million generally accepted as the illegal population currently residing in the United States, especially since S. 744 enables those previously deported to seek amnesty.

Recent data on illegal crossings suggests strongly that the numbers are substantially higher than the 11 million. Whether the American public, and Congress, is comfortable with an increasing number of illegal aliens who come here specifically, or in part, to benefit from S. 744 is an outstanding question. It would be inappropriate for S. 744 to be considered in a policy vacuum, rather than in the reality of the border as it stands today. Below is a snapshot of the southwest border today.

### 1. Overview of Illegal Border Crossings Since August 2012

At least over the central Arizona border, there has been a tremendous surge in the amount of illegal border crossing activity from August to December of last year. August is usually a relatively low number of crossings due to high heat creating dangerous conditions. However, when in late August 2012 the DHS Deferred Action program began accepting applications from illegal aliens that qualified under the provisions of the June 2012 memo, there was an uncanny corollary surge in illegal crossings. While it is impossible to know if the surge is related to the deferred action applications, the fact remains that the numbers surged every month from August through December 2012. There were 540 incidents in August while there were 2,668 incidents in November. The result was a 494 percent increase in activity during that time frame.

Date	TYPE of Incident			Drug Sub-Types **						Anecdotal	
	Total Incidents	Human *	Drug	Drug LD Vehicle <sup>1</sup>	Ultra & Aircraft <sup>2</sup>	Drug Packers <sup>3</sup>	Scout-LP/OP <sup>4</sup> Rip Crew	Drug Cache <sup>5</sup>	Unk <sup>6</sup>	Weapon Involved	Homicide Incidents
Prior	346	205	141	78	3	43	19	1	2	13	1
2012-Jun	72	46	26	14	0	10	1	2	2	1	0
2012-Jul	91	66	25	6	1	17	0	0	0	1	1
2012-Aug	540	436	104	24	2	65	5	8	2	7	0
2012-Sep	1194	1044	150	31	0	96	8	4	9	6	1
2012-Oct	2019	1853	166	30	3	101	10	10	15	14	2
2012-Nov	2668	2423	245	30	1	188	6	6	17	14	0
<b>TOTALS:</b>	<b>6930</b>	<b>6073</b>	<b>857</b>	<b>213</b>	<b>10</b>	<b>520</b>	<b>49</b>	<b>31</b>	<b>47</b>	<b>56</b>	<b>5</b>

The high numbers from last November are reflected in recent weeks as well, with groups over the same area ranging from 20-40 per day, and group size anywhere from one individual to ninety. Hidden cameras show pockets of areas where the drug cartels do near daily drops, but the Border Patrol is never seen in any of the footage.

This chart and data are derived from the non-governmental volunteer group [Secure Border Intelligence](#), who uses various official and unofficial sources, including hidden cameras, to compile a list of incidents along a portion of Arizona's border with Mexico. All data are verifiable, but confidential, given the sensitive nature of the work. A summary chart is below. All charts come with attending mapping pinpointing activity, showing where heavy traffic versus lower traffic is occurring across the year, and various points in time. Hidden camera and law enforcement audio is anecdotally available as well. Note those reported here are only the illegal

crossings which were either recorded or noted by federal, state or local law enforcement, or picked up by hidden camera. Other illegal crossings remain unknown.

## 2. Surge Analysis Details

From August 1 to September 23, 2012, more than 1,000 incidents occurred in 915 "hot spots" in a small area stretching from the central Arizona border to about 70 miles north to the Interstate 8 east-west highway, crossing north over the Tohono O'odham Indian Reservation to the Barry Goldwater Firing Range and into the Sonoran Desert National Monument. There have been 3,275 incidents from August 1 to October 19. In contrast, just 509 incidents were logged from January through July.

"Incidents" are defined as groups of individuals involved in illegal activity, such as those on foot being smuggled by coyotes, drug packers on foot, drug [vehicles](#) operating in tandem, ultralight planes dropping drugs to a group of waiting vehicles, or even a pack of lookout scouts crossing in preparation for another series of drug loads in the near future. Incidents can range in size from a handful to as many as 90 individuals at once. One incident in late October included 200 individuals amassing just south of the border and then dispersing into smaller groups to cross.

Recall the issues that arose when Agent Nicholas Ivie died in October 2012 immediately after being shot in the head by a fellow agent due to confusion surrounding a group of individuals who had set off a sensor about six miles east of Bisbee, Ariz. With bounties on Border Patrol agents and a surge in numbers, it is almost predictable that agents operating in such a tense atmosphere could make such a tragic and fatal mistake.

There are other issues as well. At least in late 2012, the Border Patrol was not apprehending in the traditionally heavily trafficked area of Casa Grande and Gila Bend about 80 miles north of the border at east-west corridor I-8. However, law enforcement continued to track as many as seven groups at a time in this area via air support. Primarily working this corridor on the ground to fill in the gap left by the Border Patrol is the "West Desert Task Force". The Bureau of Land Management leads often, and operations include representatives from the High Intensity Drug Trafficking Area force, the Arizona Department of Public Safety, and Pinal and Maricopa County sheriff's offices. Most often these operations occur at night. When operating, the task force often is picking up two incidents per day just between Gila Bend and Casa Grande. This could mean there are actually up to six incidents a night, if the conventional estimate is correct that law enforcement detects just one-third of actual activity in the vicinity of the border.

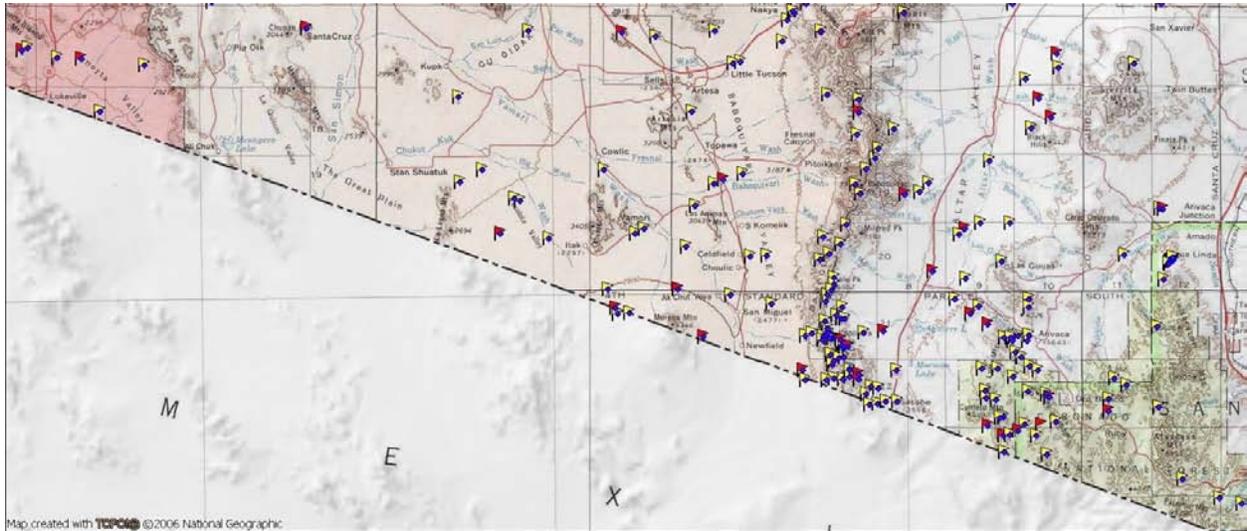
Observation 1. The number of incidents that grew late last year made clear the level of border insecurity existed in the area. According to Secure Border Intelligence data, 73 percent of the 1,881 incidents occurred in the 54 days between August 1 and September 23. In August, the month began with a low of seven incidents on August 5. By August 31, there were 33.

On September 1, there were 38 incidents. By September 29, the month peaked with 62 incidents in one day. On September 30, there were another 38. On October 1, there were 43 incidents.

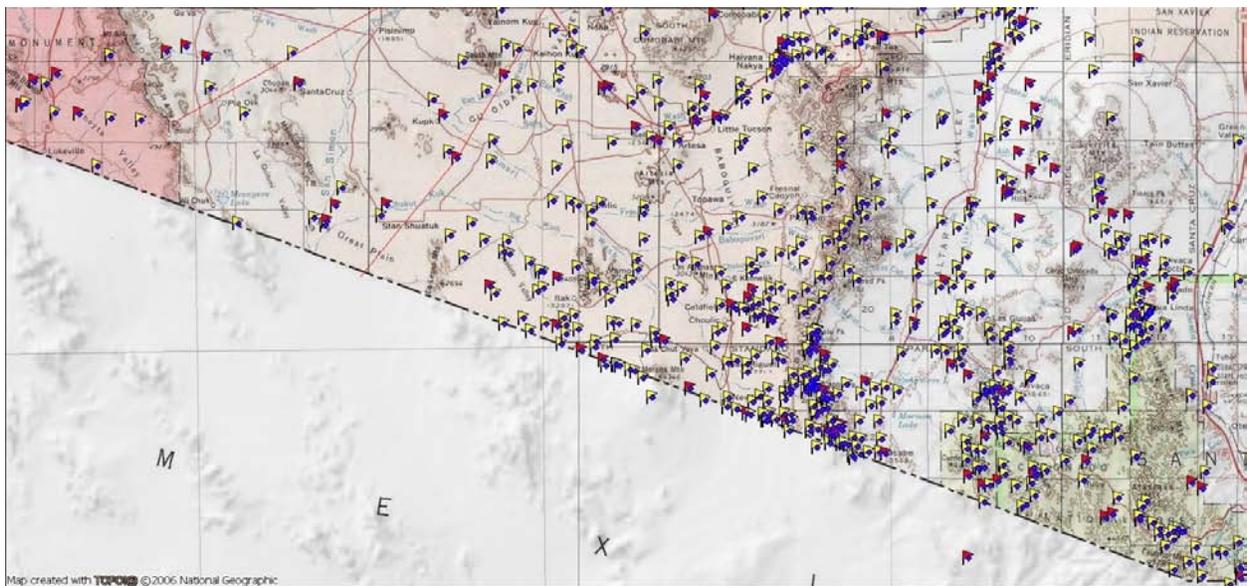
By October 18, the per-day incidents had jumped to 83.

Following are two maps of the Arizona border south of Tucson. The first is from the beginning of the year through July 29, the second through October 22. While the amount of activity the Border Patrol estimates that it intercepts varies, a conservative statistic puts detection at about one-third of actual illegal crossings; applying the same rule of thumb would suggest these maps are missing some two-thirds of total incidents.

January 1, 2012- July 29, 2012. Red flags are drugs, yellow are human smuggling. Blue dots are actual locations determined via map coordinates.



January 1, 2012 – October 22, 2012. Red flags are drugs, yellow are human smuggling. Blue dots are actual locations determined via map coordinates.



Observation 2. The size of each incident was growing. One incident in October involved about 200 illegal aliens massed on the Mexican side of the border who then spread out to cross the

border in smaller groupings. The area is south of the Baboquivari Mountains — a favorite of coyotes — and is administered by the Bureau of Land Management. It is located about 80 miles southwest of Tucson and just east of the Tohono O'odham Indian Reservation. These mountains are the Tohono O'odham's holiest location. Recently the area had 100 illegal aliens in five groups of 20 staging to cross the border.

These peaks have seen the largest groups crossing in this area, with a group of 91 in Vamori Wash, just west of these mountains and seven miles north of the border, and two groups of 70 each in the mountains. About 90 people across the three incidents were apprehended and the remaining 141 were not stopped, representing the average of Border Patrol apprehensions.

The incidents have grown so much in both size and number that those tracking them can no longer keep up with counting individuals in a group as they struggle just to keep up with incident numbers. It seems that traditional coyote and cartel concerns about being noticed and stopped due to larger group sizes may be receding.

Observation 3. Drug activity is unabated. Not a single day has passed between August and December without a drug incident, with as many as 11 in one day. A drug incident is defined as a group involving some combination of multiple drug vehicles, packers, scouts, drug bales, and weapons. Most days included one to three load vehicles. Only six days did not include drug packers. Drug pack horses are also being used, a new tactic for drug runners.

Oddly, only 16 scouts were found, but 20 drug-related arrests included weapons.

A typical drug apprehension goes like this: On October 9 at 1 p.m., 16 miles east of Gila Bend and three miles south of Interstate 8, air support was requested for multiple subjects in custody along with three vehicles filled with 30 bundles of about 648 pounds of marijuana with an estimated street value of \$972,766.90.

Observation 4. Violence continues. From August to December there were four homicides of illegal aliens. From January to August there had been just one.

Observation 5. Use of ultralight planes to carry drug loads is on the rise. In one incident on October 20, the plane flew 73 miles into U.S. airspace before dropping 10 bales of marijuana. These pilots are crafty, often zig-zagging along the border to test whether they are being followed or possibly about to be intercepted before proceeding across to drop their drug loads.

In this case there were three smugglers on the ground and one load vehicle. All three were apprehended.

Law enforcement does not track these incidents back across the border and does not try to stop airspace incursions or attempt to confiscate the ultralight planes; it only seeks out the drugs and runners left on the ground. The October 20 incident unfolded over two hours, as the ultralight entered U.S. airspace, followed a path that allowed it to fly close to the ground, circled until it found the load truck, dropped the load, and returned to Mexico unharmed without ever having been challenged.

The next night another ultralight incursion occurred, but there was no law enforcement activity to track its purpose or stop it.

Observation 6. "The word amnesty possesses remarkable power on the Mexican side of the line. It has the same effect as a starter's pistol." — Leo Banks, reporter, [The Tucson Weekly/a>](#).

The president began implementing his [deferred action amnesty program](#) in August. Illegal aliens were offered driver's licenses in California in September. Other states followed suit. Amnesty plus driver's licenses seemed to create a magnet for an illegal population that seeks both legality and the ID that embodies legality in most places in America — the driver's license — so they can get a job and live in the United States comfortably. Despite the border violence, abuse, extortion by smugglers, and the high cost of coyotes, plus "border bandits" and "rip crews" within U.S. borders and cartel-controlled corridors, Mexicans and other foreign nationals may well see the value in risking the violence and potential death for the chance at a job and amnesty being offered north of the border.

### 3. Texas

In a recent series of stories from FOX News reporter William LaJeunesse, Border Patrol sources told LaJeunesse that the newest illegal immigrants have nothing to fear from being caught. "With the knowledge of immigration reform, you will -- and are -- seeing a huge flow of illegals hitting the Southern border looking to stay caught," a Border Patrol source told Fox News. Another said, "Central Americans and South Americans are flooding the system asking for hearings knowing immigration reform/amnesty is coming." Moreover, the source told Fox News that with the freeing of thousands of non-criminal illegal aliens from detention facilities while awaiting removal or deportation hearings, that law enforcement calls the "notice to appear" a sarcastic "notice to disappear."

LaJeunesse also reported that Fox News received emails that show Texas Border Patrol is feeling the heat from the surge in illegal crossings as well. Border Patrol officials in Texas feel overwhelmed by the sudden influx from Mexico. "Not sure if you saw our last detention report, but we have approximately 700 [illegal immigrants] ready to go and another 1,000 unprocessed," read one. "We have been at emergency levels for a while and we are now entering critical mass."

## Part Two. S. 744 Requirement for a Mandatory E-Verify is a Good Idea, Minus the Revisions

It has taken more than 20 years, but E-Verify is finally in a form that is helpful to those employers who choose to use it. E-Verify's on the Web, with straightforward access. Error rates are low. The human-resource personnel who use it attest that it is easy to use, cheap and helps straighten out hiring issues up front, before cost and disruption become a grave concern. Labor statistics from last year showed about 1 in 8 new hires nationwide checked through the system. E-Verify has clear momentum.

E-Verify replaced a paper-based system that employers incessantly complained about for good reason. Even after Sept. 11, 2001, employers were in a no-win situation with the federal government; they faced an immigration law rightly forbidding the hiring of illegal workers but

had to rely on a paper-based system which could not verify the identities or documents of new hires. Then, with the creation of E-Verify in 2004, the main burden for determining work authorization shifted to the government in a meaningful way, modernizing what was known as the Basic Pilot Program.

E-Verify taps into the [Social Security](#) Administration (SSA) database for verification and, for foreign workers, checks with U.S. Citizenship and Immigration Services (USCIS). Photos are available for those presenting immigration cards as their IDs, and this is to be expanded to include passport photos and, hopefully, driver's license photos as well.

Kinks in the system are continually being fixed at a remarkable pace; 94 percent of hires are now verified instantly, with a mere one percent requiring further action - and most of these are new citizens who have not had their Social Security information updated. The rest are rejected as not authorized to work. Chilling - and perhaps good proof that E-Verify is doing its job - is that the numbers rejected by E-Verify as not authorized to work closely parallels the estimated percentage of illegal aliens in the work force, about 5 percent.

While S. 744's interest in making a mandatory E-Verify a centerpiece of assuring a legal workforce is noteworthy, unfortunately what is most important about S. 744 is that it renders E-Verify initially unhelpful, as most individuals will attain authorization. Nor does a mandatory E-Verify appear to require DHS to act on those who fail authorization. S. 744 calls for no less than 5,000 USCIS and Immigration and Customs Enforcement (ICE) employees to handle E-Verify. Nowhere does the law (current or S.744) require that an alien with a final nonconfirmation be turned over to ICE to be put into removal proceedings. There are no consequences for illegal aliens who fail E-Verify. Making E-Verify mandatory without consequences does not assure adherence to immigration law.

Moreover, E-Verify's construct adds not one, not two, but three levels of review of a nonconfirmation in E-Verify, culminating in the alien receiving four opportunities for authorization. The practical result is that this appellate process for the alien creates an extremely difficult atmosphere for an employer to terminate an employee, even when clearly the grounds for authorization is likely nonexistent.

To make matters more confounding, S. 744 adds unlawful employment practice to the lengthy list of U visa grounds to apply for a visa. This means that an alien that fails E-Verify confirmation despite repeated, and possibly frivolous, time-consuming and costly appeals, can claim harm from the E-Verify process and get a U visa.

S. 744's straightforward requirement for a mandatory E-Verify is sufficient. Adding appellate processes to an already well-developed confirmation / nonconfirmation process is not helpful and should be deleted. Also unhelpful is the ability of a nonconfirmed alien to obtain a U visa by claiming the E-Verify program caused harm.

### Part Three. S. 744 Unnecessarily Requires an (Insufficient) Exit System

On August 23, 2001, the CIA provided biographical identification information about two of the hijackers to border and law enforcement authorities. The CIA and FBI considered the case

important, but there was no way of knowing whether either hijacker was still in the country, because a border exit system Congress authorized in 1996 was never implemented.

#### 9/11 and Terrorist Travel monograph (August 2004)

This nation most certainly needs to fulfill the mandate to complete a comprehensive exit system that includes air, land and sea ports of entry. However, S. 744's exit component fails to include the largest volume of crossings, that of the land border ports of entry. In addition, the exit component of S. 744 is unnecessary for two reasons: (1) six prior inconsistent exit laws have already complicated the exit requirement enough; and (2) just a few weeks ago congressional appropriators used their purse strings to realign exit implementation to Customs and Border Protection.

#### A. National Security Component of Exit; Why We Need It

In September 2011, on 9/11's ten year anniversary, 9/11 Commission Chairman Tom Kean and Vice-Chairman Lee Hamilton, who together led the bipartisan commission forward politically and substantively in a manner that has changed the way we look at national [security](#), released their "[Tenth Anniversary Report Card: The Status of the 9/11 Commission Recommendations](#)." The report highlights the top nine areas the Commissioners believe require the most work. They term these "Nine Major Unfinished 9/11 Commission Recommendations."

Discussing the "evolving terrorist threat to the U.S.", the commissioners refer to the breadth of al Qaeda affiliates that have multiplied in diversity since 9/11: "In assessing terrorist threats to the American homeland, senior U.S. counterterrorism officials now call attention to al Qaeda's strategy of 'diversification' – attacks mounted by a wide variety of perpetrators of different national and ethnic backgrounds that cannot easily be 'profiled' as threats." Such could be the description of the Boston Marathon terrorist attack perpetrated by two Chechen refugee brothers brought to the United States as children.

Yet despite the diversification of the terrorist threat and the huge volume of border crossings, this nation still lacks a comprehensive exit system.

Not having an exit system in place led the 9/11 commissioners to conclude that our border system must include data about who is leaving and when, with the following recommendation: "The Department of [Homeland Security](#), properly supported by the Congress, should complete, as quickly as possible, a biometric entry-exit screening system. As important as it is to know when foreign nationals arrive, it is also important to know when they leave. Full deployment of the biometric exit ... should be a high priority. Such a capability would have assisted law enforcement and intelligence officials in August and September 2001 in conducting a search for two of the 9/11 hijackers that were in the U.S. on expired visas."

Our more recent experience with terrorist threats and attempts reiterates the commissioners point. In the wake of the Christmas Plot and the near-getaway by would-be Times Square bomber Faisal Shahzad (who had already boarded a flight leaving the United States when he was arrested), we are once again reminded that border [security](#) is an essential element of national security, and exit control is part of that rubric.

## B. S. 744 Confuses Multiple Laws Already on the Books Requiring Exit, While Eliminating the Current Land Border Requirement

Other nations, like Australia, have made a biographic exit part of their immigration controls for years. Yet issues of money, politics, and practicalities of infrastructure have haunted this issue for the last 17 years in this country. Various laws requiring exit control have sat on the books since 1996. There have been discussions, policy platforms, even pilot programs, but to this day, we do not have a full-fledged exit program covering air, sea and land ports of entry.

In the post-9/11 era, the issue of national security and biometrics dominated border security discussion and policy. The issue has never failed to engage Congress. Even before 9/11, in 2000, two separate laws were passed, one that set up exit and the other that tied it to the Visa Waiver Program. In 2001, the USA Patriot Act chimed in again, demanding exit. In 2002, the Border Security Enhancement law again required exit, and in 2004, the intelligence reform act emanating from 9/11 Commission recommendations included it again. Beginning in 2004, and until 2007, pilot programs for exit were undertaken at the demand of Congress. The technology worked, but compliance rates were low since the kiosks were not manned by government and not clearly mandatory.

Then in 2007, the 9/11 Commission Recommendations Act reiterated the need for exit and required exit apply to all foreign nationals entering under the Visa-Waiver Program, adding in a biometric component. The basic idea behind a biometric exit requirement was to reassert the 9/11 Commission recommendation that the federal government assure that people are who they say they are in real time, and that no derogatory information be linked to them to prevent departure.

Data gathered – depending in part on whether the data was gathered and vetted in real time – would provide overstay data and watchlists hits. Overstays would give CBP and the State Department better data to determine who gets to visit the US again, and ICE better information about who returned or illegally overstayed. Exit data may even give Joint Terrorism Task Forces the ability to curtail terrorist absconders who sought to slip out of the US unnoticed based on verified watchlist hits – akin to what we saw with the Times Square bomber – or those of us on the 9/11 Commission staff hoped. US-VISIT, the DHS program that takes 10 fingerprints and a digital photo of foreign nationals when they enter the country, seemed the perfect fit to do a biometric exit.

Then in 2008, DHS put out a proposed rulemaking for the “Collection of Alien Biometric Data Upon Exit From the United States at Air and Sea Ports of Departure,” but it put the onus on airlines to collect biometric data anywhere in the international departure process, with no money. The airlines balked. A viable exit system was far from implementation.

In 2009, congressional appropriators, clearly frustrated by the lack of progress in implementing exit, required two airport pilot programs before appropriating further monies for exit. In the [June 2009 pilot](#) programs conducted by US-VISIT at Detroit and Atlanta international airports, one tested TSA checkpoints, the other required CBP to screen departures on the jetway. Airlines refused to participate in the pilot programs, reiterating the emerging agreement that exit, like entry, is primarily a government function. Both programs successfully used border inspection

personnel to take biometric exit data, at the jetways (in Detroit) and TSA checkpoints (in Atlanta).

Both went very well, with no increase in processing time that amounted to missed flights, or even flow time or longer lines. Those processed complied. Overstays and considerable watchlists hits were found, proving that a biometric exit fulfilled both immigration and security functions simultaneously. Moreover, the technology worked. Overall, the Air Exit pilots confirmed the ability to biometrically record the exit of those aliens subject to US-VISIT departing by air.

In October 2009, the appropriations committees received the evaluation report from US-VISIT as required by law. However, Secretary Napolitano decided not to pursue exit, as she testified before this committee stating her conclusions as to why.

### C. Appropriators Just Shifted the Exit Requirement to CBP Changing the Implementation Dynamic -- It May Well Work

From its inception, US-VISIT was involved with the statutory requirement for exit because of the legal requirement that the program be biometric. Being the only true biometric and immigration shop, US-VISIT was saddled with conducting exit pilots and rendering massive reports that President Obama's DHS never allowed to see the light of day. Meanwhile, CBP, which would be ultimately responsible for full implementation of exit as they are now at entry, was included in pilots and contributed input, but never had final say, control, or accountability for getting the job done.

However, Congressional appropriators, in just the past few weeks, took the issue off the table and in one set-aside paragraph, made clear that CBP is fully in control and accountable for getting the exit done.

The appropriators also finally broke down the various legal requirements pertaining to exit into a viable, practical, phased approach that was desperately needed, adding clarity to convoluted exit-tracking requirements listed in a handful of different laws. CBP has clear marching orders: the agency must produce an enhanced biographic exit-tracking plan first, and quickly, with a later phase-in of a biometric exit plan.

One more potential benefit of the new shift of overstay analysis to ICE (done at the same time by the appropriators) and exit implementation to CBP: this change may cause the necessary friction to actually make exit happen. ICE now relies on many forms of exit data, but getting the same data in the same manner with the same standardized sets of information consistently from CBP would make their job more accurate and efficient. As CBP uses exit data to determine admissions and State to issue visas, mutual agency symbiosis may create the atmosphere to finally get exit done, and should be given a chance to succeed.

### Part Four. Immigration Benefit Identity Verification as Vital to National Security

*OH GOD, you who open all doors, please open all doors for me, open all venues for me, open all avenues for me.*

- Mohammed Atta, operational lead for 9/11 terrorist attack

The overarching border security problem with S. 744 is not as much with the Comprehensive Southwest Border Strategy as with the legalization side of the legislation. The failure is simple and pervasive: there is no way to assure most applicants are who they say they are, and have no derogatory information attached to their identity that would make them a national security or public safety threat. Why? Because most of these individuals have no verifiable identity information or authenticatable identity documents. This includes those watchlisted, since the current US watchlist exists with no requirement for the attending biometrics. Thus, if a terrorist or criminal changes their name, and has no immigration or criminal background, that individual will likely be able to enroll in S. 744's legalization program.

#### A. 98 Percent Watchlisted are Foreign-Born

To place in perspective the national security aspect of creating integrity in immigration benefits adjudications, it is important to note that 98 percent of those watchlisted are foreign-born. That means that there is a significant terrorist population that could seek to change their identity and apply for immigration benefits under S. 744.

More specifically, in 2010, the FBI's Terrorist Screening Center confirmed the identity of 4,876 alleged terrorists who had encounters — usually for reasons unrelated to terrorism — with law enforcement. Today, more than 98 percent of those individuals on the federal government's sole Terrorist Watchlist are associated with international terrorism (foreign nationals or Americans attacking Americans based on international extremist ideologies).

Senior FBI sources put the number of current terrorists residing in the U.S. conservatively at 20,000 to 30,000 of the approximate 550,000 individuals listed on the FBI's official terror watchlist. 10,000 to 20,000 of those in the United States are foreign-born. For the full CIS Memorandum detailing the fact that 98 percent of the terrorist watchlist, see "[Administrative Amnesty and the Thousands of Watchlisted Terrorists Residing in the United States](#)".

The bottom line is that S. 744 needs to take into consideration that the 10,000 to 20,000 terrorists that law enforcement is well aware of may change their identity and seek legalization. Without thorough vetting, there remains the possibility that at least some of these individuals (those listed without attending biometrics) could be legalized under S. 744.

#### B. Identity Vetting Critical to Preventing Fraud Used by Terrorists and Others

The processing and vetting provided in the legalization of an unknown illegal population is critical to assure an individual is who they say they are, and does not pose a public safety or national security threat to the United States. Thankfully, S. 744 does provide that no application for provisional status be approved until “national security and law enforcement clearances” have been completed.

However, if an individual has never encountered the U.S. criminal system, we will not know their criminal past. If an individual has never encountered our immigration system nor our criminal system, there will be no biometrics to vet those individuals' identities.

Further, there is no way for the immigration system under this type of legalization to verify birth certificates, passports, or other core identifying information since these individuals' origins lay

outside the United States. Thus, the immigration system will not be able to adequately determine if an individual applying for legalization is who they say they are, or has used the legalization process to create an entirely new identity which hides a personal history that makes clear the individual is a serious public safety or terrorist threat.

The USCIS is in a constant struggle with fraud based on counterfeit or stolen identities. According to the Federal Trade Commission, identity theft itself cost taxpayers \$1.52 billion in 2011. S. 744 does not make clear how the vetting process assures against identity theft and fraud. S. 744 does not assure against the national security risk posed by terrorists, or members of drug cartels, seeking to game the system. At base, S. 744 does not verify that individuals are who they say they are, a key fundamental concept to achieving border security that the 9/11 Commission put forth in its Final Report recommendations.

This next section reviews in detail these abuses from 1990-2005, and a later evaluation I conducted on terrorist attempts/attacks from 2009-2013.

### C. Terrorist Abuse of Immigration Loopholes and Amnesties

In light of the Boston Marathon terrorist attack, we are reminded once more that border security is essential to national security, a concept which is reignited with every terrorist attempt by a foreign born individual in the United States since 9/11. S. 744 reminds us of past amnesty laws, and their abuse by terrorists. In fact, the 1986 amnesty program was fraudulently used five times in attempts to establish residency. One terrorist, Mir Aimal Kansi, sought amnesty under the 1986 law for illegal entrants. Four others, three convicted for their roles in the 1993 World Trade Center bombing and one in the 1993 Landmarks case, sought amnesty under the Special Agricultural Workers Program. Three who sought amnesty under this program attained it.

Many successfully obtain other immigration benefits while here. These facts I noted in my 2005 report [Immigration and Terrorism: Moving Beyond the 9/11 Staff report on Terrorist Travel](#).

This report covered the immigration histories of 94 terrorists who operated in the United States between the early 1990s and 2004, including six of the September 11th hijackers. Other than the hijackers, almost all of these individuals were indicted or convicted for their crimes.

My work on the 9/11 Commission made it clear that terrorists need travel documents for movement at some point during their journey here as much as they need weapons for operations. Once within U.S. borders, terrorists seek to stay. Or, some are radicalized once here. Doing so with the appearance of legality helps ensure long-term operational stability. Terrorist travel handlers overseas are well of this fact, and seek out those with legal status in the United States. At the 9/11 Commission we called this practice embedding.

The 2005 report findings show widespread terrorist violations of immigration laws. The terrorist events of the last decade highlights the danger of our lax immigration system, not just in terms of who is allowed in, but also how terrorists, once in the country, used weaknesses in the system to remain here. The 2005's report makes clear that strict enforcement of immigration law -- at American consulates overseas, at ports of entry, and within the United States -- must be an integral part of our efforts to prevent future attacks on U.S. soil. Unfortunately, these findings remain relevant today.

The 2005 report's findings included:

- Of the 94 foreign-born terrorists who operated in the United States, the [study](#) found that about two-thirds (59) committed immigration fraud prior to or in conjunction with taking part in terrorist activity.
- Of the 59 terrorists who violated the law, many committed multiple immigration violations -- 79 instances in all.
- In 47 instances, immigration benefits sought or acquired prior to 9/11 enabled the terrorists to stay in the United States after 9/11 and continue their terrorist activities. In at least two instances, terrorists were still able to acquire immigration benefits after 9/11.
- Temporary visas were a common means of entering; 18 terrorists had student visas and another four had applications approved to study in the United States. At least 17 terrorists used a [visitor visa](#) -- either tourist (B2) or business (B1).
- There were 11 instances of passport fraud and 10 instances of visa fraud; in total 34 individuals were charged with making false statements to an immigration official.
- In at least 13 instances, terrorists overstayed their temporary visas.
- In 17 instances, terrorists claimed to lack proper travel documents and applied for asylum, often at a port of entry.
- Fraud was used not only to gain entry into the United States, but also to remain, or "embed," in the country.
- Seven terrorists were indicted for acquiring or using various forms of fake identification, including driver's licenses, birth certificates, [Social Security](#) cards, and immigration arrival records.
- Once in the United States, 16 of 23 terrorists became legal permanent residents, often by marrying an American. There were at least nine sham marriages.
- In total, 20 of 21 foreign terrorists became naturalized U.S. citizens.

#### D. Foreign-Born Individuals Remain a Significant Terrorist Threat

There has been much emphasis in the past few years on a "homegrown" threat. Often the focus is on radicalized native born Americans. However, the Boston Marathon attacks remind us once more that "homegrown" can still mean foreign-born, with often those foreign-born having received significant immigration benefits.

In taking a close look at the most significant terrorist events within the United States since 2009, the immigration violations and abuse of immigration benefits is remarkably similar. Most incidents in the past five years were committed by foreign-born individuals, not Americans. In fact, four of the 13 most notorious terrorism [arrests](#) since 2009 involved naturalized U.S.

citizens. Five cases involved native-born U.S. citizens, while eight involved foreign nationals (it appears the Boston Marathon bombing included two foreign-born brothers), all of whom had received multiple U.S. immigration benefits. What follows is not a comprehensive list, but it does reflect the most significant U.S.-based terrorist incidents since 2009.

### Illegal Overstays

February 2012: Amine el-Khalifi, a 29-year-old Moroccan man arrested for an attempted suicide bombing two blocks from the Capitol building while exiting the parking garage at the Labor Department. He thought he had a suicide bomb vest and an automatic weapon. He had been living in the United States since he was 16 as an illegal immigrant, having overstayed his tourist visa by 13 years.

September 2009: Hosam Smadi, a 19-year Jordanian illegal overstay by a year, attempted to detonate what he thought was a car bomb to destroy a 1.2 million-square-foot, 60-story Dallas office building.

### Multi-Entry Visa

December 2009: Umar Farouq Abdulmutallab, a Nigerian with a multi-entry visa to the United States and prior travel into the country for a religious conference, detonated a malfunctioning explosive on board an [international flight](#) about to land in Detroit on Christmas Day.

### Legal Permanent Residents

April 2013: Tamerlan Tsarnaev, 26, the alleged bomber of the Boston Marathon who was killed during a manhunt during the early morning hours of April 19, and his brother Dzhokhar Tsarnaev (see below), are believed to have used two homemade bombs that killed three and injured about 175 individuals aged five to 78. Both had come to the United States 10 years ago from Chechnya as refugees. Tamerlan was reportedly a legal permanent resident. U.S. law requires asylum and refugee applicants to [apply](#) for legal permanent residence within one year of arrival.

September 2009: Najibullah Zazi, an Afghan legal permanent resident residing in the United States since 1999, conspired to conduct suicide bombings (with others) on four rush-hour New York City subway lines on or near the 9/11 anniversary. The conspiracy had operational support from Al Qaeda abroad and explosives materials were stockpiled.

### U.S. Citizens (Naturalized)

April 2013: Dzhokhar Tsarnaev, 19, reportedly a naturalized citizen at 18 who conspired with his brother, Tamerlan Tsarnaev (see above), to bomb the Boston Marathon.

November 2010: Mohamed Osman Mohamud, a 19-year-old Somali-born U.S. citizen, attempted to detonate what he thought was a car bomb during a Christmas tree lighting ceremony in Portland, Ore. He had told undercover agents he had dreamed since he was 15 of a "spectacular fireworks show" where he hoped all would be dead or wounded.

October 2010: Farooque Ahmed, a Pakistani-born immigrant who grew up on Staten Island and became a U.S. citizen at 17, conspired to bomb four Metro subway stations near the Pentagon in Virginia — Arlington Cemetery, Pentagon City Mall, Crystal City, and Court House — and a Washington, DC, [hotel](#). Ahmed had conducted extensive surveillance and drawn up plans.

May 2010: Faisal Shahzad, a Pakistani-born U.S. citizen, detonated a "vehicle-borne explosive device" that malfunctioned in Times Square. He came to the United States in 1997 (likely on a tourist visa), but did not acquire a [student](#) F-1 visa until 1998. In 2002, he acquired an H-1B worker visa. In 2004, in an arranged marriage in Pakistan, he wed a U.S. citizen of Pakistani descent. In 2006, he became a legal permanent resident and in April 2009, just before the terrorist attempt, he acquired citizenship. His American passport enabled him to attempt to flee the country in May without concern of jeopardizing his legal status or calling attention to himself while his naturalization application was still pending.

#### U.S. Citizens (Native-Born)

December 2010: Antonio Martinez, an Islamic convert, attempted to detonate what he thought was a car bomb in front of a military recruiting center near Baltimore, Md.

November 2009: Nidal Malik Hasan, born to Jordanian immigrants of Palestinian descent, killed 13 soldiers and wounded 43 others in a shooting spree at Fort Hood, Texas.

October 2009: David Coleman Headley, of Pakistani descent, was arrested as a surveillance accomplice for the 2008 Mumbai (Bombay) terrorist attacks that killed over 160 people.

September 2009: Michael Finton, an Islamic convert, attempted to detonate what he thought was a car bomb in front of a federal government building in Springfield, Ill.

June 2009: Carlos Bledsoe, an Islamic convert, killed one soldier and wounded another at a military recruiting station in Little Rock, Ark.

#### E. A Note on Naturalization

As S. 744 seeks to legalize a large swath of the illegal population that eventually will be able to garner legal residency, and about which many of whom the immigration system knows little or nothing, it is important to note that perhaps the most current and graphic example we may have of a failure to properly vet an individual may be that of Dzhokhar Tsarnaev, the 19 year old just taken into custody in the Boston Marathon bombing.

What requires emphasis is the ease with which terrorists have moved through the U.S. border system and obtained significant immigration benefits such as naturalization. The Boston Marathon is yet another example of how the security gaps that existed in 2001, in many instances, exist today. The younger Tsarnaev brother just received his naturalization a few months ago, on September 11, 2012. Tsarnaev's older brother was a legal permanent resident known to the FBI for his terrorist sympathies. Both had come to the United States as children, aged 8 and 16, with families as refugees seeking asylum. At that point, the asylum system would not be aware of terrorist leanings. Perhaps there were none to be found.

However, ten years later at the age of 18, was there no way of learning of Tsarneav's terrorist intentions that may have been brewing before naturalization was granted? Would the fact that his brother had known terrorist ties and was interviewed by the FBI require a closer look by adjudicators of Tsarneav's naturalization application? Not likely. Immigration adjudications remain deeply stovepiped, a complicated problem where privacy issues and national security interests collide, sometimes to the detriment of national security. These issues remain unresolved today.

#### F. A Note on Political Asylum

The Boston Marathon terrorist attack bears in mind the special instances where political asylum enabled terrorists to legally embed while awaiting determination of their application, and work within 150 days. While the Tsarneav brothers responsible for the Boston attacks came as children of a family seeking asylum and thus it is not likely they would have sufficient intent to abuse the asylum system, the issue of asylum processing raises an important point in regard to those terrorists or terrorist affiliates who do embed in the United States by using the asylum system.

While asylum processing may have been tweaked over the past few years, such processing has not been tweaked enough to deny and deport individuals with known terrorist affiliations. Take for example the case of a Syrian that law enforcement knew well had ties to at least five 9/11 hijackers who remains in north Jersey and is now virtually immune from deportation. While 400,000 people wait for U.S. citizenship, Daoud Chehazeh has received political asylum for a third time after a series of bureaucratic screw ups. According to news reports, it is well known in the law enforcement community that Chehazeh facilitated the moves and protection of the 9/11 hijackers, including obtaining housing in Virginia for a few of them. Chehazeh had come from Saudi Arabia in 2000. He had no real job, and was closely associated with Anwar al-Awlaki-- who the President ordered killed with a drone in Yemen in September 2011. Because of national security requirements, the immigration judge was unaware of Chehazeh's terrorist past and helped him fill out immigration applications. Secretary of Homeland Security, Janet Napolitano, when asked whether she would intervene to reopen the case and seek deportation, described the Chehazeh case as closed with "clarity and finality". These are the unfortunate mistakes that can take place with asylum claims where there is a national security concern.

S. 744 provides that aliens who file frivolous applications of asylum are still eligible for provisional status, completely overturning current immigration law that specifically states that aliens who knowingly make a frivolous application are permanently ineligible for any benefits under the Immigration and Naturalization Act. Someone like Chehazeh, who could have been deported, could use this S. 744 provision even if he lost out on asylum. Asylum applications are already extremely difficult for courts to make fair determinations due to the long standing abuse by those gaming the system to stay in the United States. Enabling frivolous filings to still obtain provisional status usurps the difficult and delicate process of asylum by rendering the claim almost unnecessary.

S. 744 will also enable the President to classify not just individuals, but an entire community or group as refugees humanitarian reasons or if in the national interest, including tourism. The bill's language is unclear as to whether these individuals are required to be vetted through the

same scrutiny as regular asylum and refugee applicants. He can designate a whole group for humanitarian reasons or if in the national interest. While this provision may seem to be relatively innocuous, they are not. Under the rubric of 9/11 Commission border recommendations which have held their value with time, each applicant -- fairly and equally -- should be scrutinized for risk in a manner that enables, in the balance of equities, for national security to remain a high priority.

A few years ago, there were about 50,000 to 75,000 asylum cases are filed annually. In May 2005, Congress passed The REAL ID Act. It includes provisions dealing with key aspects of U.S. asylum law. The law narrowly reforms our asylum procedures to better ensure that all courts better scrutinize asylum claims so that legitimate claims survive and fraudulent claims get thrown out. In 9/11 and Terrorist Travel, we discussed in some depth that terrorists like 1993 World Trade Center mastermind Ramzi Yousef (whose uncle is KSM) used political asylum claims effectively to get in and stay in the United States. Even with the revision of the law, immigration personnel who deal with asylum applicants must remain cognizant that those who claim political persecution in a country that the United States considers a high national security risk should receive extra scrutiny.

There are a few reasons why these claims are an excellent choice for terrorists. First, the claim itself keeps the applicant from a potential automatic removal or detention. Second, if an applicant for asylum (whether at a port of entry, a hard border, or in a court room) does not appear to pose a threat to public safety, the lack of detention space usually means the applicant is free to move about the United States. Third, often the only information available to a judge is the word of the applicant without corroborating evidence, so fraudulent claims are easily made by those motivated to make them. For all of these reasons, political asylum claims usually permit terrorists to do what they seek: buy time to live here freely.

On June 14, 2004, Nuradin Abdi was indicted in Columbus, Ohio, on four counts, including conspiracy to provide material support to al Qaeda. In 1999, Abdi had applied for and received asylum. Abdi was allegedly involved in a plot with the admitted al Qaeda member Iyman Faristo blow up a Columbus shopping mall. In addition, Abdi allegedly received bomb-making instructions from a co-conspirator and had intended to travel to Ethiopia to receive training in guns, guerrilla warfare, and bombs at a military-style training camp. Federal investigators believe that the plot may have involved as many as five people. The three other men, unnamed, were truck drivers with Faris.

Up through 2005, there were 16 other instances of political asylum being used to either prevent removal or deportation are as follows:

\* Kamran Sheikh Akhtar was detained in Charlotte, North Carolina while videotaping buildings there in July 2004. He entered the United States illegally through Mexico in December 1991 and claimed political asylum in 1992. Five years later, in 1997, the asylum request was denied. A month later, he sought to resist removal by filing for residency based on marriage to an American. In March 1998, he is found by an immigration judge to be removable and is given voluntary departure, but a month later the marriage petition secures a permanent residency.[218](#)

\* Abdul Halim Hassan Al-Ashqar came to the United States on a student visa in 1989. He had received a scholarship through the U.S. government from the Thomas Jefferson Center "in order to complete my higher education in Business Administration" at the University of Mississippi. He was able to do so despite the fact that he had co-founded a university on the West Bank with Abu Marzook (eventually deported for his role as U.S. leader of Hamas) and Hamas founder Sheikh Ahmed Yassin. He had run public relations at that university for eight years prior to coming to the United States. Once in the United States, Al-Ashqar overstayed his visa and continued working for Hamas in a variety of functions. He was imprisoned for refusing to testify about Abu Marzook during a grand jury investigation. Al-Ashqar was then placed in deportation hearings himself, but claimed political asylum. The asylum claim was denied, but he fought that denial for six years in U.S. courts. In 2004, he agreed to voluntarily depart, but was instead indicted on RICO charges for running Hamas in the United States with Marzook. In January 2005 announced he was an independent candidate for president of the Palestinian Authority.

\* Hesham Hedayet, who killed airline personnel at LAX on July 4, 2002, filed for political asylum in 1992 but ended up acquiring legal status through a diversity immigration lottery.

\* Rabih Haddad, a Lebanese citizen and a co-founder and chairman of the Global Relief Foundation (GRF), was arrested on December 14, 2001, the same day that its offices were raided. GRF's assets were frozen by the U.S. Treasury Department on December 14, 2001, for financially supporting al Qaeda. Also on December 14, 2001, the government detained Haddad on a visa violation. Haddad was originally admitted to the United States in 1998 with the status of a non-immigrant visitor. His visa expired on August 31, 1999. Haddad was ordered deported. Despite a series of appeals and the filing of an application for asylum and withholding of removal, in November 2002 an Immigration Judge concluded that he presented "a substantial risk to the national security of the United States." Haddad appealed again and was denied again, and on July 14, 2003, Haddad was deported to Lebanon. After his deportation, the Department of Immigration and Customs Enforcement (ICE) issued a press release that reiterated GRF's ties to Wadi El-Hage and stated again that GRF was a Specially Designated Global Terrorist.

\* At least three people closely associated with the September 11 hijackers claimed political asylum, one that helped them obtain Virginia identification cards, and two other "friends."

\* Malek Mohamed Seif, a friend of 9/11 hijacker Hanjour filed a false application for asylum and was indicted for social security, mail, and immigration fraud.

\* Eyad Mohammed Mohammed Mustafa helped 9/11 hijackers (unknowingly) to obtain VA ID cards. He made a false claim of asylum during deportation in October 2002. The application was denied and he was deported to Jordan.

\* Mohdar Abdullah was a friend of two 9/11 hijackers. He claimed political asylum defensively in 2000 after overstaying his visitor's length of stay by a year and a half. He was charged with fraud in November 2001 and was deported to Yemen in May 2004. Yemen.

\* Abdel Hakim Tizegha, an associate of the LAX Millennium plotters, claimed political asylum based on persecution by Muslim fundamentalists. He said he entered at Boston as a stowaway on

an Algerian gas tanker. Hearings were rescheduled five times. The claim was denied two years later, and then appealed. Nine months later his location was unknown.

\* Abu Mezer, responsible for the New York City subway plot in August 1997, was arrested in Washington state in January 1997 after his third attempt to illegally enter the United States. The next month, he applied for political asylum, denying an affiliation with Hamas. In July, he did not show up for his hearing. Instead, he called his attorney and stated he had married a U.S. citizen and was living in Canada. On Aug. 1, 1997, he was arrested in New York City based on an informant's tip.

\* Muin Mohammad (aka Muin Shabib, Kamel Mohammad Shabib, and Abu Muhammad) is one of the original founders of AAEF and is listed on the group's 1993 IRS Form 990 as the secretary of the AAEF Executive Committee. According to an FBI Action Memorandum, Muin Kamel Mohammed Shabib attended the October 1993 Hamas conference in Philadelphia along with Abdelhaleem Al-Ashqar and others. Documents submitted by the Department of Justice in *HLFRD v. John Ashcroft* show that Shabib was identified by the government of Israel as a senior Hamas operative formerly in charge of Hamas' Central Section (Ramallah-Jerusalem) in the West Bank.

On March 16, 1994, the FBI in Falls Church, Va., at the home of Yasser Bushnaq, interviewed Shabib. During the interview, Shabib admitted supporting Hamas financially and politically. Shabib was interviewed under the pretext of gaining information relating to his immigration status (he had applied for political asylum in December 1993).

\* Faraj Hassan was arrested and charged with naturalization fraud in June 2004 after being granted refugee status from Syria in 1993. He worked for the Benevolence International Foundation that was considered a strong source of funding for Al Qaeda.

\* Three terrorists involved in the Feb. 26, 1993, World Trade Center bombing, Ramzi Yousef, Sheik Omar Abdel Rahman, and Biblal Alkaisi, all sought political asylum. Yousef, mastermind of the bombing, was initially arrested with fraudulent travel documents upon entry at JFK International Airport in August 1992. Yousef claimed political asylum and was released pending a hearing. Alkaisi, also a key witness in the Meir Kahane murder, filed for both "temporary protected status" using a fake birth certificate and fake immigration entry record in August 1991, and for political asylum in May 1992 falsely claiming a prior illegal entry. Sheik Rahman, who issued the fatwa for Anwar Sadat's assassination and was also convicted for his role as the spiritual leader of the 1995 conspiracy to bomb New York City landmarks, had a long history of immigration violations and fraud, including a March 1992 political asylum claim to prevent his pending deportation.

\* Mir Aimal Kansi, who killed two people outside CIA headquarters on Jan. 25, 1993, became an illegal overstay in February 1991. In February 1992, he simultaneously sought both political asylum and amnesty under a 1986 law. While the applications were pending, he was able to obtain a Virginia driver license and work as a courier.

\* Ibrahim Parlak of the Kurdistan Worker's Party applied for political asylum upon his arrival to the United States in 1991. In 1992, he was granted asylum and LPR status the following year. In

October 2004, he was charged with inciting terrorism and providing material support for terrorist activities. He was also charged with lying on his INS applications for failing to disclose his membership in the Kurdistan Worker's Party along with his prior aggravated felon record from Turkey.

Unfortunately, as made clear by the multiple appeals and despite law enforcement involvement in the 2013 asylum case of Daoud Chehazeh, these 2005 findings of fact are still relevant today.