



Immigration Monthly

May 2006

- ❑ **Five Security Principles To Guide Immigration Reform by *Donald Kerwin***
- ❑ **The PERM Workshop
San Antonio, TX
June 21, 2006
8:30am-5pm**

Five Security Principles To Guide Immigration Reform By *Donald Kerwin*

Security has been the defining theme of U.S. immigration policy since September 11, 2001. This is appropriate, given the vulnerabilities exposed by the attacks. Our immigration regime has a crucial role to play in a coordinated counter-terror strategy. However, we need to be clear on what that role should be, and how we might achieve it.

Let me start with what we should expect – indeed demand – from our immigration system in terms of a security perspective. First, it should be able to conduct identity and security checks on those seeking to enter and to gain status, and to

stop those from entering who appear on watch lists or who otherwise meet behavior- and intelligence-based profiles. Counter-terror experts sharply distinguish between profiles based primarily on religion, nationality or race, and those based on behavior and evolving intelligence. The former are offensive, ineffective and self-defeating, while the latter are indispensable security tools. Second, it should be able to help locate visitors in the United States (as necessary) and assure that they abide by the terms of their visas. Third, it should be able to reduce illegal entries to a far more manageable level. Fourth, as the 9/11 Commission taught us, immigration officials are in a unique position to collect intelligence on terrorist travel methods. They should report and share this information in a systematic way. Fifth, our immigration system should win us support in immigrant communities and sending countries, rather than alienating these two key constituencies. Sixth, it should facilitate the admission of people who contribute to our security. Seventh, it should help to integrate and to promote the success of the record number of foreign-born in the country.

Since 9/11, a broad consensus has developed in support of these goals. However, they will never be met unless, in crafting immigration policies, we adhere to five key principles. First, “national security” should not be equated with the narrower concept of “defense” or protection from physical attack. National security also entails protecting “vital economic and political interests, the loss of which could threaten the fundamental values and vitality of the state.” This definition – from a standard military text book – implies that immigration measures that deny us access to the global economy, a key source of our economic strength, undermine our security. Visa

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policies, for example, that prevent the admission of foreign students, scientists, and engineers – who have been crucial to our economic and even military strength – weaken us. A strategy to prosecute and deport 7.2 million (undocumented) workers – 5 percent of the U.S. workforce – would also weaken us. In short, security has as much to do with letting the right people come and stay, as it does with keeping the wrong people out. This definition also implies that security strategies must honor our nation's core values. Our open-ended fight against terrorism requires long-term strategies, not measures that violate civil liberties and cannot ultimately be sustained in our constitutional democracy. Likewise, policies that would undermine ten percent of U.S. families by deporting their undocumented family members also offend our values.

Second, we must honestly assess risk and evaluate security-related measures. When considering an immigration measure, we need to ask, as a preliminary matter, whether it relates to a legitimate national security goal. For example, does it reduce the chance of terrorism, respect civil liberties, promote economic security or foster national unity? If so, what risk does the measure propose to address, is it likely to succeed, and how can this be assessed? These seem obvious questions, but consider exactly what risks have been posed by Haitian boat people, Somali indefinite detainees, Mariel Cubans, Canadian-bound asylum seekers, detained El Salvadoreans, and refugees/asylees who fought brutal dictatorships or paid extortion monies to anti-government groups. Yet the Administration has identified all of these populations as a threat to security. Finally, if a measure addresses a legitimate risk, we need to ask whether it will be worth the resources expended and the opportunities foregone. We cannot eliminate all risk. Nor do we possess unlimited resources. Would it be worth it, for example, to spend \$206 billion over five years in an attempt to deport 12 million persons, or could this money be put to a better use?

Third, our immigration policies should commend us to immigrant communities and sending countries. The United States has a generous immigration system in many ways. Yet too often it has been a source of fear and anger. At a minimum, we should be able to identify and run security checks on all non-

citizens. This will require strategies – like offering the undocumented legal status or the ability to secure drivers' licenses – that will bring them forward. By contrast, the post-9/11 arrests of hundreds of immigrants who had only the most attenuated connection to the terrorist investigation, as well as the call-in registration program, drove members of the targeted communities into hiding. Most recently, DHS refused to separate its immigration enforcement from its disaster relief responsibilities after Hurricane Katrina. Would it be too controversial to adopt a policy – for humanitarian reasons and for the general welfare – that we will not try to deport survivors of a devastating hurricane, or a biological weapons attack, or an avian flu epidemic? In fact, many immigrants will not come forward – not in an emergency, not in a public health crisis, not to report suspicious behavior, not to report crimes – if it might lead to their deportation. For this reason, it is irresponsible from a security perspective to try to prosecute and deport 12 million persons.

Similarly, because we need the active engagement of our foreign allies and immigrant communities in our anti-terror strategy, “hearts and minds” matter. For better or worse, issues like extraordinary rendition, Abu Ghraib, Guantánamo, the War in Iraq, our relief work in Pakistan, and police efforts to engage immigrant communities all matter. So do our immigration policies.

Fourth, comprehensive immigration reform should make us safer. The undocumented do not present a greater security threat than other immigrants or U.S. citizens. More than three-quarters come from Mexico and Latin America, nations not identified by DHS as al Qaeda strongholds. Furthermore, al Qaeda tries to use “clean operatives”; that is, persons not likely to come to the attention of law enforcement agencies for immigration or criminal reasons. A Nixon Center report on 212 suspected or convicted terrorists – while tough on the risks posed by illegal migration – found that the main “modes of [terrorist] infiltration” into North American and Western Europe have been legal. While terrorists have entered the United States from Canada through legal channels, they could also illegally cross the U.S.-Mexico border. What to do? Providing expanded legal avenues for entry will reduce illegal entries, and a path to legal status will bring the undocumented out of the shadows. In both instances, the government will be able to run

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identity and security checks on persons who would otherwise remain unknown to it. It will also be able to concentrate its enforcement resources to those who might present a danger.

Critics of meaningful immigration reform dislike the idea of "rewarding" those who have violated our immigration laws, and argue for restoration of the "rule of law." But this concept speaks mostly to the need for the government to be subordinate to the people. It argues for limitations on government power; it does not require the prosecution of every violation of every law on the book. And of course while anti-immigrant activists invoke the "rule of law," they also favor making more laws that will inevitably be violated, including laws that criminalize just being or helping an undocumented person. Yet paradoxically increased enforcement measures will not (by themselves) lead to a more regulated, legal, or secure immigration system. We know this from experience. While border control funding has quadrupled over the last 12 years, so has the undocumented population. And increased enforcement has led to the growth of organized smuggling rings that could, according to security experts, facilitate the entry of terrorists.

Fifth, our immigration system should play a role in integrating the foreign born. Particularly since passage of the 1996 Immigration Act, we cannot assume that today's immigrants will be able to become "Americans" in the way past immigrants have. As a result, we need an immigration system that does more than controls who can stay and who must leave. We need policies that promote the success of newcomers. Any doubts that immigrant integration implicates security have been dispelled by the recent riots in France, the slaying of Dutch film maker Theo Van Gogh, and the bombings in London.

Many of the post-9/11 immigration reforms were necessary, and many of those measures subsequently abandoned as ineffective were, at least, understandable at the time. However, as Congress considers immigration reform legislation, we need to reassess our approach to immigration and security. Either/or strategies undermine our security. We need a comprehensive pro-immigrant, pro-security approach.

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About the Author

Donald Kerwin is Executive Director, Catholic Legal Immigration Network, Inc. (CLINIC). This article was developed from a talk given at the Center for Migration Study's annual legal conference on March 13, 2006.

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