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## Transforming Border Security: Prevention First

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# Transforming Border Security: Prevention First

Robert Bach

## Abstract

The events of September 11, 2001 caused the nation's leaders to accelerate existing border programs aimed at prevention. Traditionally, the "prevention" of border violations has involved interdiction (physically impeding any incursion while it is occurring), preemption (through routine screening to intercept illegal shipments, weapons, people, or other illicit cargo), and deterrence (where an action taken means a potential violator does not plan or even attempt an illegal entry). While effective in some cases, none of these strategies – together or separately – has evolved into a comprehensive, prevention-oriented approach to border security. The development of a prevention-led border strategy would involve at least four strategic shifts: aligning border security with global strategy; forging a new foreign policy; making progress on cooperation; and changing U.S. reactive approaches.

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Long before September 11, 2001 strategists recognized that prevention was a priority among concepts of national security. Military strategy had generally accepted “forward deployment” of assets and influence as core tactics to deter opponents from taking aggressive actions and quickly interrupting them once they began. Law enforcement strategy has developed more slowly in adopting a preventive approach. Still, at least by the late 1980s and throughout the 1990s, the presidential directives of both Republican and Democratic administrations had ordered law enforcement agencies to deploy resources abroad to intercept and disrupt threats as far from the U.S. border as feasible. Under those directives, the Federal Bureau of Investigation (FBI), the Drug Enforcement Agency (DEA), and the Immigration and Naturalization Service (INS), among other domestic law enforcement agencies, initiated overseas operations and deployments.

The events of 9/11 pushed prevention to new prominence in both military and civilian law enforcement strategies. Forward deployment became active preemption, including regime change, as military forces landed in Afghanistan and Iraq. Domestically, Congress rushed to create The USA PATRIOT Act, granting law enforcement authorities greater investigative powers to search and pre-empt a terrorist attack from within the United States.<sup>1</sup> The Bush Administration revised its national security and counterterrorism strategies explicitly to elevate prevention to the Nation’s first priority.<sup>2</sup>

Despite the significance that Congress and the president attached to the concept, however, prevention remains one of the least understood dimensions of the Nation’s new security strategy. Nowhere is this more evident than in the Nation’s efforts to transform its approach to border security. Within two months of 9/11, the president issued Homeland Security Presidential Directive #2 (HSPD-2) seeking to strengthen and shift border security strategies. The president returned to the topic of border security in at least three subsequent Presidential Directives. Yet, the role of prevention in border security strategies remains elusive.

The purpose of this article is to examine several of the primary border security reforms taken since 9/11 to understand and gauge progress toward making prevention the top priority. Not surprisingly, the violation of border controls that made the 9/11 attacks possible caused the nation’s leaders to accelerate existing border program reforms. The Presidential Directives served to a large extent to wrench current border projects that had stalled amidst the nation’s polarization over immigration policies from previous bureaucratic and political entanglements. Still, few of these rescued border initiatives satisfied the compelling requirements that making prevention a national priority demanded.

## **THE CHALLENGE**

Post-9/11 border security strategies suffer from a familiar policy tale. In recovering from a crisis, institutions try to correct mistakes that led to the earlier events, only to ignore the potential for future, somewhat different ones. With the exception of a few illustrative initiatives, recent border security policies have attempted to accelerate and fully implement programs designed before 9/11. Valuable in their own terms, when complete the projects may well help to solve problems with international travel, visa and

immigration policy, and crossborder commerce. The question is whether they address the new risks and threats of the post-9/11 age of terror.

Given the nature of the 9/11 attack, and the weaknesses of border security that it exploited, moving first to close the obvious gaps in border security was entirely understandable. These early steps, however, reinforced an earlier reactive orientation in border security policies and competed against proposals for more prevention-oriented reforms. For example, HSPD-2, released on October 29, 2001, aimed at changing immigration policies by creating a capacity to deny entry, detain, prosecute and deport aliens associated with or suspected of engaging in terrorist activity.<sup>3</sup>

Federal agencies responded to the Directive by accelerating efforts to track, investigate, and prohibit activities inside the United States. The Department of Justice set up the Foreign Terrorist Tracking Task Force. Border security agencies expanded their investigative participation in FBI-led Joint Terrorism Task Forces. The INS barred international students already studying in the United States from courses that involved sensitive material. The Presidential Directive also urged agencies to develop and use advanced technologies to locate and apprehend suspected terrorists, or supporters of terrorism, inside the United States, even if existing legal restrictions on the use and analysis of data had to be overcome.

At this early date, perhaps the only forward-leaning prevention initiative involved the Directive's reference to developing "North American Complementary Immigration Policies." HSPD-2 called for immediate negotiations with Canada and Mexico "to assure maximum possible compatibility of immigration, customs, and visa policies." The goal was to establish a North American screening perimeter in which border agencies from all three countries would use comparable, if not the same, standards for inspecting individuals seeking to enter the region. Having secured the perimeter, subsequent action could facilitate movements across the two "internal" borders separating the United States from Mexico and Canada.

Although the direction was promising, the programmatic response was reserved and disappointing. Border agencies crafted a Smart Border Initiative, which essentially repackaged a list of incomplete immigration and customs projects started in the 1990s and reset accelerated schedules for deployment. The goal of most of the Initiatives' specific projects was to strengthen or "harden" the physical and virtual borders between the United States and its two neighbors. Little progress was made to standardize screening procedures among the three countries or even to begin to negotiate coordination of efforts.

Part of the problem in beginning to transform border security strategies was due to ambiguities in defining prevention. Prevention at the border called for tough choices about relationships with neighboring countries, which few were willing to take on in the absence of clearly defined goals and objectives. Before 9/11, prevention at the border typically meant interdiction – searching, locating, and physically stopping an effort to cross or to carry something across the border. Interdiction was the priority – physically impede any incursion while it was occurring. Within a broader scope of prevention, however, interdiction represented only one of several ways in which attacks or illegal behavior could be stopped.

Prevention, for instance, also refers to preemption – detecting and stopping an attack before it is attempted. In border security terms, active screening of information related to

travelers and cargo is a routine pre-emptive measure. For decades the U.S. Customs Service has employed cargo screening tactics as a way to intercept illegal shipments, weapons, people, or other illicit cargo within containers before they are shipped toward the United States.

Prevention at the border also refers to deterrence, although what is meant by deterrence has also been confusing. Generally speaking, in border security terms, deterrence means that because of an action taken, a potential violator did not plan or even attempt an illegal entry. Deterrence is by far the most valued form of prevention. Yet few agencies embrace it fully because of the inherent difficulty of defining and measuring deterrence in tactical and operational terms. The problem is not restricted to border agencies. Law enforcement personnel across the globe face similar challenges. They struggle to find a way to demonstrate the effectiveness of a deterrence approach when what appears to be required is to show that an illegal act did not occur because of a law enforcement agency's actions. Does the fear of arrest and detention, for instance, deter someone from deciding to leave their home, pay a smuggler, and attempt to cross the border illegally?

Border security strategies, before and after 9/11, have involved some measure of each of these three dimensions of prevention. Each has guided border security agencies toward different policy and operational outcomes. Together or separately, however, none has evolved into a comprehensive, prevention-oriented approach to border security. The discussion in the following sections highlights the limitations of each approach and identifies steps that could transform policies toward a more prevention-centric strategy.

### **Border Interdiction**

In the early 1990s, the U.S. Border Patrol revised its strategic plan to emphasize a new objective -- "prevention through deterrence."<sup>4</sup> The new plan changed the strategic focus from a traditional policing model in which the object was to maximize the number of arrests of people who had already crossed the border illegally. The new objective was to ensure that no one crossed the border in the first place, stopping them physically right at the border if need be, or inhibiting their attempts to cross by increasing the expectation among potential crossers that they would be caught immediately. The intent was clearly to move away from a reactive, responsive-oriented approach toward a more pro-active, prevention strategy.

The new strategic plan began to change border control tactics. The Border Patrol launched a series of highly-publicized border operations during the 1990s – Operation Hold-the-Line, Gatekeeper, Safeguard, etc. – which involved "forward deployment" of agents and equipment as close to the international boundary as feasible. Rather than waiting for crossers to enter the United States and then physically interdicting them, the Border Patrol placed officers in high visibility locations close to the border, deployed lights in otherwise darkened areas that formerly were places of illegal entry, and broadcasted publicly the intent to dismantle crossborder smuggling activities.

Although the difference between deterrence and interdiction was minimized by the short physical distance at the border between officers deployed close to the international line and the potential crosser in front of them, the changed tactics began to have visible impacts in the areas of high operational concentration. Border Patrol apprehensions ("arrests") declined, smuggling rings were visibly disrupted, community perceptions of

the safety of border neighborhoods improved, and local leaders increased their support of the security strategy. The prevention orientation also reduced public perceptions of the prevalence of social disorder and chaos along the border. In turn, improved security opened opportunities for greater cooperation among agencies across the border.

For instance, building upon the realities and perceptions of increased border security, the Border Patrol's parent agency, the INS, was able to expand legal immigration initiatives. It expanded and improved border infrastructure that expedited legal crossings and reduced the long lines of vehicles and pedestrians waiting at ports of entry for inspection. The INS was also able to strengthen cooperation with Mexican and Canadian officials on these positive commercial initiatives and gain assistance on additional anti-smuggling prevention measures.

These prevention measures, however, stimulated criticism and opposition from diverse stakeholders. One of the lessons learned from the general law enforcement community when it has tried to implement similar prevention measures is that opposition comes initially from those who believe the strategy is too weak as well as from those who perceive it to be too intrusive in community affairs.<sup>5</sup> Hard-line opponents resist the concept that a decline in arrests can be a good outcome. In contrast, some community activists believe that the Border Patrol has no business enforcing immigration laws anywhere except along the physical line of the border.

The public controversy about the border strategy became part of a general criticism of the performance of the INS and other border security agencies. By 2000, the pace and effectiveness of the new Border Patrol strategy had slowed, having reached only the urban areas of El Paso, San Diego, Brownsville, and Nogales. Although the new strategy was still in force, the execution of the strategy waned. Previously disrupted smuggling rings retrenched in new areas along the border, cooperation with Mexico declined, and public support quieted. Even before 9/11, long lines returned at the ports of entry and arrests of illegal crossers between the ports of entry increased as border agencies returned to old tactical habits.

After 9/11, the Department of Homeland Security (DHS) faced the daunting task of reinvigorating the border strategy on both the Mexican and Canadian borders. Under mounting public pressures, the new Agency launched initiatives in Arizona to counter the weakest spot along the border – the area where execution of the earlier strategy had stalled. These new efforts, however, have not been successful in reducing the illegal flow or changing its composition and character. Part of the reason is that the Border Patrol and its new parent, Customs and Border Protection, have concentrated on interdiction rather than prevention. New performance incentives have reinforced the value of tactics that increase, not decrease, the number of arrests. The agencies' attention has also returned to efforts to track, locate, and detain illegal immigrants, and to maximizing the physical removal of unauthorized crossers after they have been prosecuted.

Reports of Al Qaeda's interests in smuggling terrorists or weapons across the Southwest border have only very recently begun to challenge the inherent limits of these latest border control strategies. An enforcement posture focused on intercepting smuggled persons after they have reached U.S. soil, and often after they have made it to an interior urban area, offers little protection and reassurance. Rather, it reinforces public perceptions that the border is "out of control" more generally.

A prevention-first strategy, especially for the Southwest border, should include a dramatic reinvigoration of the full, comprehensive approach to the border initiated with the 1994 Border Patrol Strategic Plan. Further improvement in the capacities of the Border Patrol is necessary, and they may come with the new American Shield Initiative (ASI) already embraced by Congress in the 2006 budget. Yet ASI or other operations will simply not suffice if they remain rooted in an approach preoccupied with interdiction, detention and removal rather than deterrence and prevention in general. A comprehensive plan requires renewed cooperation with Mexican officials on prevention, aggressive bilateral attacks on smuggling rings on both sides of the border, and a new spirit of engagement in promoting the economic well-being of residents all along the border.

### **Border Screening**

Border security strategies rooted in “prevention through preemption” primarily involve the use of information screening techniques. The purpose of screening is to identify and stop those who are in the act of committing a border-related violation before they have a chance to start. Federal border security agencies have long conducted screening of cargo and people approaching the United States through sea and air. These efforts expanded dramatically during the 1990s and were extended to travel and transportation routes that approached the border by land. In the early 1990s, for instance, the U.S. Customs Service and the INS merged separate screening initiatives into a single, advanced passenger information system to obtain and review information on travelers before they landed in the United States. The database and the core technology created for this system still serves border agencies today.

Though the infrastructure may be outdated, the concept of advanced passenger or cargo information remains sound. Such initiatives clearly serve to forwardly deploy the analytical capacities of border agencies. The more information on cargo and people destined for the United States that is received and analyzed before departure from the country of origin, the more effective and efficient processing of the decision to admit or not can occur. These advanced information systems also help to increase U.S. security influence abroad by framing international agreements that foster cooperation to enforce common standards for travel documents and cargo manifests.

During the 1990s, U.S. border agencies also began to collect biometric information on border crossers. Initially, the initiative involved fingerprinting apprehended illegal border crossers through a system known as IDENT. The system provided a two-fingerprint identity check the INS used to identify criminals among apprehended illegal migrants. In 1996, Congress also required the INS to begin to develop an Entry-Exit system that could match the identity of a person when he entered and left the United States. Both systems would substantially increase the ability of border security agencies to track international travelers and intercept anyone of special interest. Before 9/11, these systems had merged to form the backbone of the US-VISIT program, a widely proclaimed border inspection system that compares the fingerprints of international travelers upon entry to the United States with the same biometric taken upon their departure.

After 9/11, Congress and the Administration embraced US-VISIT as the primary innovation to create a border security screen against terrorism. Although the system was

not designed for that mission, Congress and DHS accelerated its deployment from airports to land ports-of-entry. In 2004, the 9/11 Commission's recommendations reinforced support for the program.<sup>6</sup> The Commission noted that US-VISIT helped to establish a sequence of "checkpoints" through which potential terrorists and terrorist supporters would have to pass on their way to and from the United States.

Without further review of the potential value of US-VISIT for this new anti-terrorism mission, the Administration fully embraced the Commission's recommendations. It issued another Presidential Directive, HSPD-11, that pushed DHS to demonstrate a resolve to fulfill the Commission's proposals by creating a comprehensive anti-terrorist screen.<sup>7</sup> Building on HSPD-6, which had already called for creation of and use of screening information, HSPD-11 called for development of a plan to build comprehensive, coordinated procedures to detect, identify, track, and interdict people, cargo, conveyances, and other entities and objects that posed a threat to homeland security.

Some of the proposals for the collection and use of screening information have sparked considerable public controversy, and support for screening efforts may have begun to dwindle significantly. Recently, both Senate and House Appropriations Subcommittees have deleted funding in the 2006 Budget for DHS' planned Office of Screening Coordination and Operations. The Office was designed specifically to manage information collection, coordination, screening, and risk assessment activities.

One reason for this decline in support is that border agencies have failed to convince Congressional and public stakeholders that these systems and activities are effective. Proponents inside the government often do not understand the limits and purposes of the advanced screening techniques and have oversold their promised effectiveness. Critics of information-based screening systems have also generally misrepresented their expected value in two ways. First, critics and proponents alike have concentrated on the value of these systems for border interdiction and overstated the expectation that they can target specific terrorists. Screening systems, such as US-VISIT, actually have a very low chance of detecting a specific target, partly because the number of terrorists is so small, compared to the entire population of international travelers or domestic air passengers, and partly because they are not built to make precise determinations of individual behavior. If a screening system as analytically immature as US-VISIT actually could identify specific terrorists with effectiveness, the nation would be in much less danger than most observers believe.

Second, critics in particular have misunderstood the more valuable preemptive and deterrent role of screening systems such as US-VISIT.<sup>8</sup> The typical, overused criticism of border screening systems is that they merely produce a "bubble effect" along the perimeter of the United States. Enforcement in one area, critics argue, simply displaces the problem, creating greater pressure in another location. The "border as balloon" metaphor may have been useful in a security situation where the threat was a homogeneous, relatively constant pressure. Today, however, the threats facing the border are highly differentiated, disconnected, and fragmented. They are often well-informed by organized, intelligent groups that have a capacity to strike or smuggle, but only in particular places against specific targets. Border security is now much more an intelligent environment demanding advanced risk assessment tools and strategic

operations than traditional encounters of mass force pressuring an outnumbered interdiction force.

The value of US-VISIT and other screening systems is not so much as a targeting tool or a broad physical screen against a large number of intruders as it is a source of information for effective analytical and intelligence work. Its primary value is to help assess and prepare the environment to give U.S. security agencies a much greater ability to preempt and deter potential aggression.<sup>9</sup> The biometric requirements for the system, for instance, aid U.S. consular officers abroad in their efforts to establish the identity and perform background clearance checks for visa applicants while they remain abroad. The recently reported drop in visa applications in some countries of concern apparently reflects, at least in part, fraudulent applicants abandoning their intended course of action.

DHS' Cargo Security Initiative (CSI) is another example of a screening system that can be used in limited fashion as a targeting tool or more expansively as part of a comprehensive prevention strategy.<sup>10</sup> The U.S. Customs Service began in the 1980s and 1990s to inspect cargo at the point of origin to intercept items of concern before they reached the United States. The expansion of this initiative to its current form forwardly deploys U.S. agents and influence abroad both to inspect cargo as it is loaded on ships and to collect and analyze information on the cargo at each point in the global transportation supply chain.

The compression of time and processing requirements along the U.S. northern and southern borders, of course, makes it difficult for information-based screening to be much more than an interdiction tool. The result is that the demand for timely inspection and facilitated movement across borders puts extreme pressure on efforts to stop each truck, car or person for inspection. Security, in this sense, interferes with crossborder commercial interests even when information collection and screening is intended as a prevention measure. The pressure is then to build more infrastructure, increase the number of inspectors, and use more intrusive technology to accelerate inspection.

Even in these situations, however, alternate, effective screening can be designed more as deterrence and preemption than interdiction at the physical point of border crossing. Pilot programs show that trucks and people can be inspected well before they reach the land port-of-entry. Technology can help provide credentials for pre-clearance, and expanded cooperation with neighboring countries can allow much of this pre-border crossing preparation to occur long before the issue becomes interdiction at the border. Yet faced with the perception that the border is out of control and screening systems are ineffective in targeting, the current policy response is to push for more interdiction capacity, requiring ever increasing personnel to physically close the border.

### **Interior Enforcement as Deterrence**

A third strategic focus of border security involves an effort to achieve deterrence by making enforcement actions inside the United States a decisive disincentive to those who wish to cross the border without authority. The USA PATRIOT Act, for instance, provides new authorities to use immigration violations to help in its pre-emptive investigations of terrorism support networks and financial ties. The objective is to eliminate the ways in which immigration can foster and provide safe haven to potential terrorists.

In practice, however, the USA PATRIOT Act has further complicated the already hopelessly entangled relationships between counterterrorism actions and immigration enforcement. According to public reports, most terrorist investigations in the United States have not resulted in terrorist-related convictions, but ended with the use of immigration authorities to remove a person from the country.<sup>11</sup> Unquestionably, the capacity to remove a terrorist supporter from the United States is a valuable tool to say the least. Yet the public appearance and understanding of these cases is that federal authorities are using the extraordinary powers granted under the PATRIOT Act primarily to achieve immigration enforcement.

This entanglement of anti-terrorism and border control strategies is counterproductive because it undermines the preemptive focus of PATRIOT Act investigations. FBI Director Robert Mueller recognized the potential problem and went out of his way to reach out to immigrant communities to reassure them of the distinction between these security objectives. Yet the problem persists, primarily because domestic immigration enforcement – as traditionally conducted – focuses more on arrest and punishment than on creating a prevention-oriented deterrence strategy. Immigrant communities, rather than serve as sources of good information about potential activities, close up in fear of immigration authorities.

The contentious character of the enforcement of immigration laws in the interior of the United States results primarily from intrusion into local communities. In 2004, for instance, the Border Patrol led a series of raids in a local California community that sparked national controversy. While the operations were legal, the community reaction was so contentious, and the operations so ineffective, that DHS officials apologized publicly for the action and committed to a future policy of restraint.<sup>12</sup>

The controversy over how interior enforcement fits into border security strategy is long-standing. For much of the 1990s, Congress and the Administration debated competing approaches to interior enforcement that, for the most part, contrasted reactive with prevention-oriented strategies. A reactive approach focused primarily on three principles. First, enforcement at the workplace, often in the form of raids, would deter employers from hiring undocumented workers who, in turn, without jobs, would leave the community and return home. Second, borrowing from more general theories of law enforcement, significant penalties, including detention and substantial sentences, would convince migrants to return and stay home. Third, large programs of removal, and a high expectation or certainty of deportation, would eliminate the incentive to try to find work in the United States. Immigration enforcement, in this sense, should conform to tough law enforcement policies, such as California's Three Strikes law. Arrest, detention and removal would create a deterrent to future illegal migration.

In each area, however, interior enforcement comes up short of its goals. Arrests at worksites rarely leave migrants without other work options and many displaced workers return to the same employer. The number of interior arrests continues to climb, but so too does the number of illegal migrants. As both increase, the cost of detention and removal skyrockets. Removal and deportation also fail. The recidivism rate among deported migrants is reportedly very high. Stories from law enforcement officials tell of migrants who are removed from a workplace and deported, only to be seen two days later back to work at the same job.

Even illegal migrants who commit a crime while in the United States, and are imprisoned and subsequently deported, return to the same community in a relatively short period. In one study, over half of illegal migrant felons incarcerated in a California city's jail returned to the same city within two years after deportation – and were rearrested for a newly-committed offense.<sup>13</sup> With such rampant recidivism, traditional tactics do not affect the underlying problem but rather displace valuable resources from other strategies that may be more effective.

The alternative prevention strategy developed in the 1990s was inspired by community-policing innovations. Its primary goal was to deter illegal activities throughout a community, starting with those areas in which local communities and INS could cooperate, including local crimes, social disorder, and delinquency. As cooperation increased, the focus could turn to problems related to drug smuggling, human trafficking, labor abuse and fraud. Operations were also designed to protect victims of crime regardless of their status as local residents or newcomers.

The alternative strategy also concentrated on anti-smuggling operations, especially on U.S. residents complicit in organizing and assisting people to cross the border illegally. With these initiatives, domestic immigration enforcement was on the path parallel with investigations of organized crime. The objective was to hold accountable those who were responsible for the financial and employment connections that assisted migrants. Early investigations, using the wiretap authority granted INS by the 1996 law, demonstrated that fairly large employers in Georgia, Texas and the Midwest were directly involved in conspiracies to smuggle people across the Southwest border.

The alternative domestic strategy also aimed to transform the incentives and conditions of local labor markets in the United States that sustain a silent, yet profound, corruption of the U.S. political economy.<sup>14</sup> As deterrence, rather than a punishment-oriented strategy, the operational focus was on changing the conditions that existed before employers were charged and workers were arrested and deported. Employers were given tools to improve their level of compliance with existing laws, including an innovative information system that allowed them to check the legal status of newly-hired workers.

Like similar prevention measures taken in border communities, these innovations generated opposition from both sides of the political spectrum. As the history of community policing forewarned, community activists objected to an approach that tried to improve the relationships between local residents and immigration officials. Law enforcement critics, in contrast, objected to actions that did not obligate INS officers to arrest and deport individual migrants. Prevention steps appeared “too soft.”

In the years following 9/11, DHS dropped a community-oriented approach to interior enforcement and tilted entirely toward an arrest-and-deport strategy. Reportedly, Bureau of Immigration and Customs Enforcement (ICE) leadership rejected the preventive approach, calling it “social work.” In staff meetings, ICE leaders pressed agents to focus on high-profile prosecutions and convictions of other crimes. Apparently, even though protection against terrorism was quickly embraced as the top priority, prevention of terrorism did not include efforts to deter illegal immigration.

DHS now has the challenge of reengaging in preventive strategies toward border enforcement. Public pressure is mounting over both the perceived weaknesses of current operations and their high costs. So far, DHS appears to be continuing down the path of

ever-expanding detention and removal priorities. No evidence exists, however, that this time the path will lead to more effective outcomes.

The Administration has also proposed another familiar mitigation strategy related to illegal workers. Current proposals call for a new guestworker program designed to solve the workplace enforcement challenge by legalizing workers employed in certain industries. Very little in the proposal, however, seeks to change the circumstances that attracted employers to hire illegal workers in the first place, increase compliance with regulations, or create alternatives for employers or legally resident workers to reduce the demand for these workers. In the past, contract labor markets have given way, with time, to renewed illegal immigration. Without changing the underlying conditions, current proposals may not prevent a recurrence of existing problems.

## **STEPS TOWARD PREVENTION**

In each area of border security strategy discussed above, program development since 9/11 has consistently pulled interdiction back on the stage as the top priority, often by replacing prevention-oriented approaches. DHS has moved back to reaction, mitigation, and recovery. Undoubtedly, transformation to a new, different set of priorities would be difficult and organizationally wrenching at a time when there are numerous issues competing for leadership attention. Still, the nation is not trying to solve border security problems of the past. It is trying hard to improve border security to help prevent the next attacks.

The value of prevention as the nation's first priority is not limited, of course, to an interest in border security. Rather, transformation of a border security strategy must be aligned with and live up to broader and more comprehensive principles of the nation's foreign and domestic policies. Prevention deserves its place as the nation's top priority because it encompasses both the necessity to achieve security and an ambition to improve the human condition throughout the global community. Ultimately, prevention is dependent on human freedom and, as Nobel Prize economist Amarty Sen reminds us, the existence of viable choices to achieve basic human security.

During the Cold War, containment strategy offered the world a set of these choices. Alliance with the free world brought participation in world trade, foreign aid, and open cultural expression. Opposition induced blockades and boycotts. Individuals throughout the world also understood that if they resisted Soviet-backed repression they would be encouraged and welcomed in the West. U.S. strategy aimed not only to stop opponents from aggression, but also consistently to encourage nations, groups, and individuals to opt for the path of freedom.

Understandably, since September 11, 2001, strategists have focused much more on suppression of actions than on expansion of choices. Yet, the success of the nation's security strategy will require taking action to create viable alternatives to the current conditions that give rise to terrorism, illegal immigration and other illicit efforts to defeat U.S. border controls. It will require a transformation of the nation's security plans and will not be achieved simply by solving challenges that face border inspectors and patrol officers.

Positive steps toward transformation call for a bold, bipartisan approach. The current Administration's democracy initiative, for example, aims to expand choices in parts of

the world that for decades have enjoyed few. Regardless of how far that initiative still must go, the objective to expand human freedom is sound. Steps toward transformation also embody the earlier priorities of former Democratic administrations that focused on adherence to fundamental human rights as requirements of participation with the United States in global initiatives.

In that spirit, moving toward a prevention strategy of border security will require new policies toward our neighbors, Mexico and Canada, and toward other migrant-sending countries. It will require new forms of cooperation, many of which have been resisted until now or not yet even imagined. Sending countries, for instance, will need to accept greater responsibility for the conditions of their citizens in migrant-origin communities.

Unfortunately, current understanding of crossborder and transnational movements is rooted in a philosophy and perspective that denies freedom and choice as essential strategic goals. Many social scientists, policymakers and advocates, for example, believe that the current forms of migration and border problems in general are inevitable conditions. Some social scientists, for instance, mistake progressive ideas about the severe constraints on opportunity from unequal labor market structures with historical determinism and lack of human accountability.<sup>15</sup> The Mexican Government routinely asserts that its current mismatch between job and population growth rates will “inevitably” cause emigration. Advocates in the United States, such as the Essential Worker Coalition, argue that particular groups of workers are necessary for certain segments of the economy. Inevitability and necessity, however, defy freedom. Prevention needs to be understood more fully in terms of a capacity to create options that outweigh the seemingly “inevitable” patterns and limitations of current circumstances. Without options, border strategy shrinks to debates on management tactics, arguments over interdiction and ever-escalating levels of punishment.

Among a wide range of next steps, transformation toward a prevention-led border strategy would involve at least the following four strategic shifts.

**1. Aligning Border Security with Global Strategy:** Transformation toward prevention requires a much more forward-leaning foreign policy toward countries of emigration. For many migrant-sending countries, this will involve a radical shift of orientation. U.S. immigration policy remains largely a Cold-War artifact. As mentioned previously, in the days of Cold War rivalries between East and West, the benefit of an alliance involved easier access to the U.S. market, regardless of the means, mechanisms or conditions. The Mexican Government, for example, continues to operate within this framework. It currently expects that its “special relationship” with the United States should lead to an exceptional migration agreement as part of its overall alliance with its neighbor.

In the 21<sup>st</sup> century, however, alliances involve non-state actors at sub-national levels as much as if not more than homogeneous state-to-state interests. Opposition is differentiated, decentralized, and asymmetric. As with commercial trade agreements, policies toward migration should increasingly reflect more than volume and ease of movement. They must include agreement on the standards of what crosses, who certifies and takes responsibility for its legality, and how to ensure compliance. Unlike in the days of the Cold War rivalry, sending governments must be willing and supportive of efforts to create viable options to illegal entry into a friendly neighboring country.

**2. Forging a New Foreign Policy:** Border security requires a realignment of policies with the nation's neighbors, especially Mexico. For decades, the Mexican Government has insisted that it has little responsibility for the enormous and sustained movement of its citizens across U.S. borders without U.S. authorization. It has rested that perspective on an interpretation of a Constitution written almost a hundred years ago during an authoritarian moment when security and freedom in Mexico required the ability to escape tyranny. Today, Mexico is capable of creating options and taking responsibility for its citizens. Yet the government refuses to take even minimally effective public safety action to prevent its citizens from endangering themselves and families by accepting smuggling arrangements.

For its part, U.S. policy no longer needs to rely on slowly nurturing democratic reforms in Mexico to ensure stability. Mexico is now moving forcibly toward democracy and it is time to for the United States to forge a more forward-leaning partnership with reform elements in Mexico. The North American Partnership of 2005 could become a good initial step in these reforms if its implementation is prevention-oriented, and not just a framework to maintain the status quo.<sup>16</sup> At present, publicly-announced programs within the Partnership remain limited to familiar efforts to build a common screening perimeter and to coordinate emergency responses.

**3. Making Progress on Cooperation:** One of the challenges to achieving a prevention-oriented border strategy is the persistent inability to make cooperation work. Transformation of border security is a large, comprehensive task not to be reduced to improvement in single systems, deployment of greater resources, modernization of technology, or even new policies designed to change the volume and characteristics of migrants and travelers in general. A goal of creating "One face at the border," for example, is a solution to the management problems of the last fifty years. What is needed is a strategy for conducting border security in the 21<sup>st</sup> century.

A prevention strategy would include a network of allied, multinational customs and migration officers working together to enforce minimum standards at critical points of international travel. The Cargo Security Initiative described previously is a constructive step in that direction. It will benefit both the United States and the entire world trading system. Immigration officials could also deploy overseas, although there has been much more opposition to that move. In the late 1990s, however, five countries joined in a pilot program to test the value of such forwardly-deployed coordination. Officials from each of five countries were placed overseas working alongside officers in the sending and transit countries. The results showed that in just a few weeks of coordinated action, officers were able to prevent more people with false documents and identities from boarding planes for the United States than inspectors working only from their traditional position in U.S. ports of entry were able to detect in a three-month period.

Despite declarations of the need for shared responsibility for migration and border matters, the realities are that implementation of prevention measures strains governments' commitments. Even after the urgency of 9/11, coordination and joint decision-making on border security measures remain difficult. The United States and Canada, for example, are struggling to achieve even a limited agreement on coordinating with each other on decisions related to visa waivers for the new member countries of NATO.

**4. Changing U.S. Reactive Approaches:** The myth of workplace enforcement as a deterrent to illegal immigration highlights the way in which current strategies have a corrupting influence on U.S. domestic policy in general and labor policy in particular. An effective strategic choice should not be between “essential” and “non-essential” workers, as the reform debate in the United States currently poses the issue. A prevention priority must involve active pursuit of a range of alternatives for employers and workers alike, creating more opportunities and more options.

The difficulties in making these four initial strategic shifts underscore a deep-seated barrier to effective, prevention-oriented border strategies. Prevention requires trust, both between agencies that must share information, leads, and enforcement action, and more fundamentally among the public in each country that must perceive and accept legitimate and effective actions on both sides of the border. Even the three members of The North American Partnership lack the degree of social trust required to forge new, prevention-oriented cooperative strategies.

## CONCLUSION

The 9/11 Commission faulted U.S. leaders for a failure of imagination in preventing the terrorist attacks. Unfortunately, in the realm of border security strategy, little evidence exists that federal leaders have reached beyond their commitment to hard work and accelerated implementation of long-standing initiatives and policies. Perhaps the Commission was wrong, and what is needed is only enhanced performance and more resources. Yet, the persistent call for a new prevention priority should challenge leaders to go beyond implementing border security programs correctly. The question is whether they are pursuing the correct programs.

Prevention, in the sense used throughout this article, is a concept that gives priority to imagination. It requires creation of alternatives to both existing conditions and widely-accepted perspectives. It also demands answers to the hardest questions. What would it take for a certain behavior not to occur? What would it take to give potential terrorists, and fraudulent travelers, viable alternatives? In this age of terror, the answers are consequential.

<sup>1</sup> *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001* (USA PATRIOT), Public Law 107-56, (October 26, 2001), section 414.

<sup>2</sup> *The National Security Strategy of the United States of America* (Washington, D.C.: U.S. Government Printing Office, September 2002).

<sup>3</sup> Office of the Press Secretary, “Homeland Security Presidential Directive/HSPD-2,” (The White House, October 29, 2001).

<sup>4</sup> U.S. Immigration and Naturalization Service, *Border Patrol Strategic Plan: 1994 and Beyond* (Washington, D.C., July 1994).

<sup>5</sup> On the question of popular legitimacy for enforcement actions, see Mark H. Moore, “The Legitimation of Criminal Justice Policies and Practices” in *Perspectives on Crime and Justice: 1996-1997 Lecture Series* (Washington, D.C.: National Institute of Justice, Volume 1, November 1997), 47-63.

<sup>6</sup> The 9/11 Commission Report, *Final Report of the National Commission on Terrorist*

*Attacks Upon the United States* (New York: W.W. Norton 2004).

<sup>7</sup> Office of the Press Secretary, "Homeland Security Presidential Directive/HSPD-11," (The White House, August 27, 2004).

<sup>8</sup> Rey Koslowski, *Real Changes for Virtual Borders: The Implementation of US-Visit* (Washington, D.C.: Migration Policy Institute, 2005).

<sup>9</sup> *Enhanced Border Security and Visa Entry Reform Act of 2002*, Public Law 107-173, section 302 (May 14, 2002). *The Intelligence Reform and Terrorism Prevention Act of 2004*, House Report 108-796, Section 7208.

<sup>10</sup> See Stephen E. Flynn, "America the Vulnerable," *Foreign Affairs* 81, No. 1 (Jan./Feb. 2002), 60-74.

<sup>11</sup> See Mary Beth Sheridan, "Immigration Law as Anti-Terrorism Tool," *The Washington Post*, Monday, June 13, 2005, Page A01.

<sup>12</sup> See, for example, Elena Shore, "Immigration Raids in California Test Spanish-Language Media," Pacific News Service, June 17, 2004, [www.IMDiversity.com](http://www.IMDiversity.com).

<sup>13</sup> Immigration and Naturalization Service, "Internal Briefing," Office of Policy and Planning, 1999, author's notes.

<sup>14</sup> R.L. Bach, "Western Hemispheric Integration and Migration in an Age of Terror," forthcoming in Kristof Tamas and Joakim Palme (eds.), *Globalizing Migration Regimes: New Challenges to Transnational Cooperation* (Aldershot: Ashgate, 2005).

<sup>15</sup> R. L. Bach, "An Essay on Migration and Possibility: Commentary on the Human Development Report 2004," presented at a joint seminar of the United Nations Development Program and *Foreign Policy Magazine*, held at the Carnegie Endowment for International Peace, June 22, 2004. Also, see R.L. Bach in "Global Mobility, Inequality and Security," Chapter 4 in *Human Insecurity in a Global World*, Lincoln Chen, Sakiko Fukuda-Parr and Ellen Seidensticker, eds. (Harvard University Press, 2003), 65-85; also published in *Journal of Human Development*, 4, No. 2 ( July 2003).

<sup>16</sup> The White House Office of the Press Secretary, "Security and Prosperity Partnership of North America Security Agenda," Washington, D.C., March 23, 2005.

