
The 9/11 Legacy for Immigration

◆

DAVID J. BIER

On September 11, 2001 (9/11), the U.S. House of Representatives had scheduled a vote on legislation to allow immigrants without legal status to adjust to legal permanent residence if a U.S. citizen family member or employer had filed a petition on their behalf (Andorra 2003, 7). The Senate had already passed it, and President George W. Bush had specifically asked for the change. On the other side of Capitol Hill, Senate staffers were planning for a hearing the very next day on another bipartisan bill known as the DREAM (Development, Relief, and Education for Alien Minors) Act, a path to citizenship for unauthorized immigrants who came to the United States as children (U.S. Senate Committee on the Judiciary 2011, with a quote stating the date of the original hearing).

Across the National Mall, the White House convened a morning meeting between its officials and representatives of the Mexican government who had stayed behind after President Vicente Fox met with President Bush the previous week (Alden [2009] 2014, 79). The two sides were negotiating a cross-border migration deal that would involve a large guest-worker program for Mexicans to legally travel north to fill jobs in agriculture and other low-skilled sectors.

These three simultaneous efforts to address important aspects of America's immigration system exploded moments after four hijacked airplanes were deliberately crashed that same morning. Congress postponed all activities. The White House U.S.-Mexico working group adjourned. The efforts would not recover. As emergency personnel sorted through the rubble in New York, Virginia, and Pennsylvania, U.S. customs officials quickly learned the identities of all nineteen hijackers. The three most important facts about the 9/11 hijackers turned out to be that they were not

David J. Bier is research fellow at the Cato Institute.

The Independent Review, v. 26, n. 2, Fall 2021, ISSN 1086-1653, Copyright © 2021, pp. 205-224.

Americans, that all had legally traveled to the United States, and that some had violated the terms of their visas (Eldridge et al. 2004, 6).

The immigration bureaucracy's response to the attacks made legal immigration and travel much more difficult and made even minimal violations of immigration law the highest priority for federal law enforcement. Although the better use of intelligence in immigration adjudications had some beneficial effects for security, most policies simply reduced immigration with no plausible security benefit. At first, the consequences were felt most strongly by legal visitors and travelers to the United States, but the enforcement surge ultimately targeted almost all immigrants.

As important as the changes made were those not made. Exemplified by the three simultaneous meetings on the day of the attack, the direction of U.S. legal-immigration policy was leaning strongly toward openness in 2001. Congress and the past several administrations intentionally wanted to make it easier to travel and immigrate legally. Two decades after the attacks, the restoration of this focus toward openness is still not complete, despite increasing evidence that the risk from terrorism is very small (Nowrasteh 2019) and that more immigration is not associated with greater risk of terrorism (Forrester et al. 2019).

Since 9/11, the United States has never experienced—or even been threatened by—a similar attack (Mueller 2020). Moreover, the vetting agencies following the attacks have almost never permitted the admission of immigrants or travelers who intended to come in order to commit any kind of terrorism offense—whether supporting terrorist groups abroad or planning an attack here (Bier 2018). Despite this fact, Congress has made no effort to permit more legal immigration to the United States. Instead, the heightened attention that terrorism has received since 9/11 has turned the exceedingly rare threat occurrences, which have produced no plots remotely similar to the 9/11 attacks, into reasons for further restricting legal immigration.¹

Legal immigration's "lost decade" after 9/11 appears to have permanently pushed immigrants away from the United States to other developed countries. Tourists have increasingly flown to more hospitable countries. Businesses have relocated their operations outside U.S. borders to take advantage of other countries' more open policies, and foreign direct investment to the United States has suffered. The economic and social disruptions from the restrictions and deportations are still being felt. The Trump administration's efforts to reenergize the post-9/11 anti-immigration agenda under the same guise of combatting terrorism reinforced these trends. From 2017 to 2019, the United States accounted for just 6 percent of the increase in the worldwide immigrant population—down from 52 percent from 1995 to 2000 (Bier 2021). Perhaps no event has ever had such a profound effect on America's immigration system.

1. Executive Order No. 13780 (2017), 82 Fed. Reg. 13209, at <https://www.dhs.gov/publication/executive-order-13780-protecting-nation-foreign-terrorist-entry-united-states-initial>.

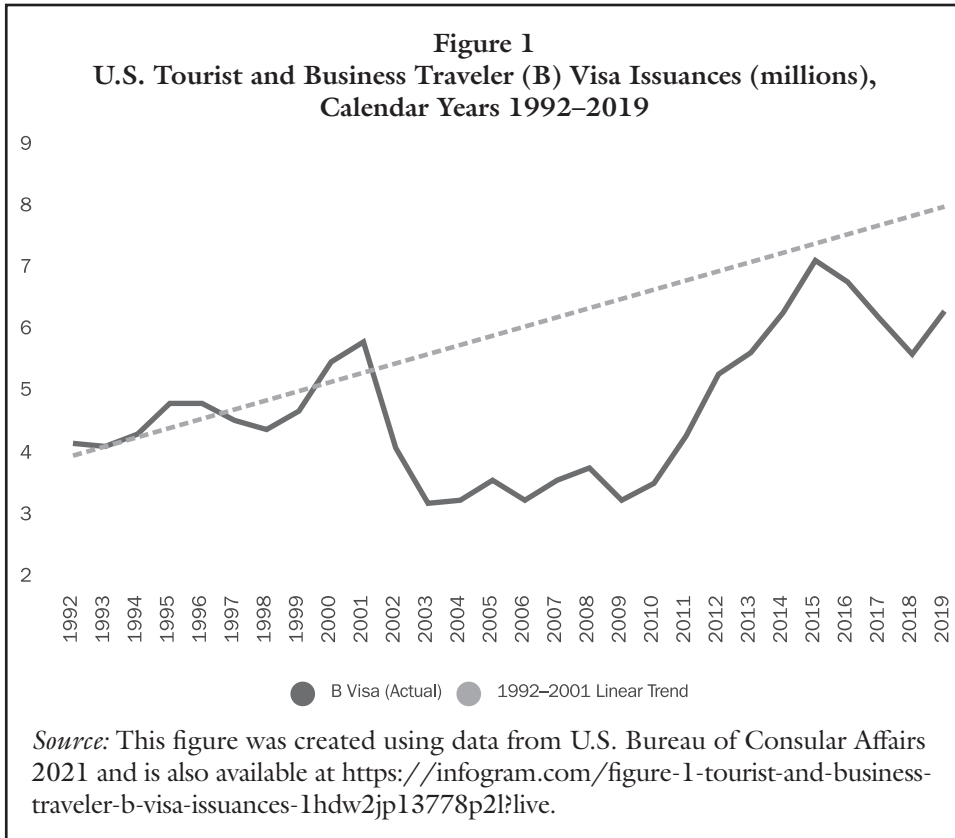
9/11's Effects on Legal Immigration

Former Customs and Border Protection commissioner Rob Bonner has recounted that on 9/11 the port inspectors in Canada and Mexico moved to closely examine and interview every single person crossing legally, which he estimated ballooned wait times to cross from ten minutes to more than twelve hours (*Los Angeles Business Journal* 2006). President George Bush came to him and told him, “You’ve got to secure our borders against a terrorist threat, Bonner. But you have to do it without shutting down the U.S. economy.” By focusing on efforts that sought to screen out terrorists rather than to reduce immigration generally, President Bush’s belief in a freer immigration system may have saved it from collapse, but his dual mandate would still produce an extremely painful decade for those seeking to come to the United States.

The State Department initially simply suspended visa issuances to all prime-age men from Muslim-majority countries for a month to review their applications. The 9/11 Commission’s staff report on terrorist travel found that these reviews “yielded no useful antiterrorist information and led to no visa denials” (Eldridge et al. 2004, 154). The plainly discriminatory policy was also an affront to the countries that the Bush administration wanted to solicit for help in combatting al Qaeda. The State Department replaced this policy with mandatory visa interviews and fingerprint collection of all visa applicants (Eldridge et al. 2004, 155).

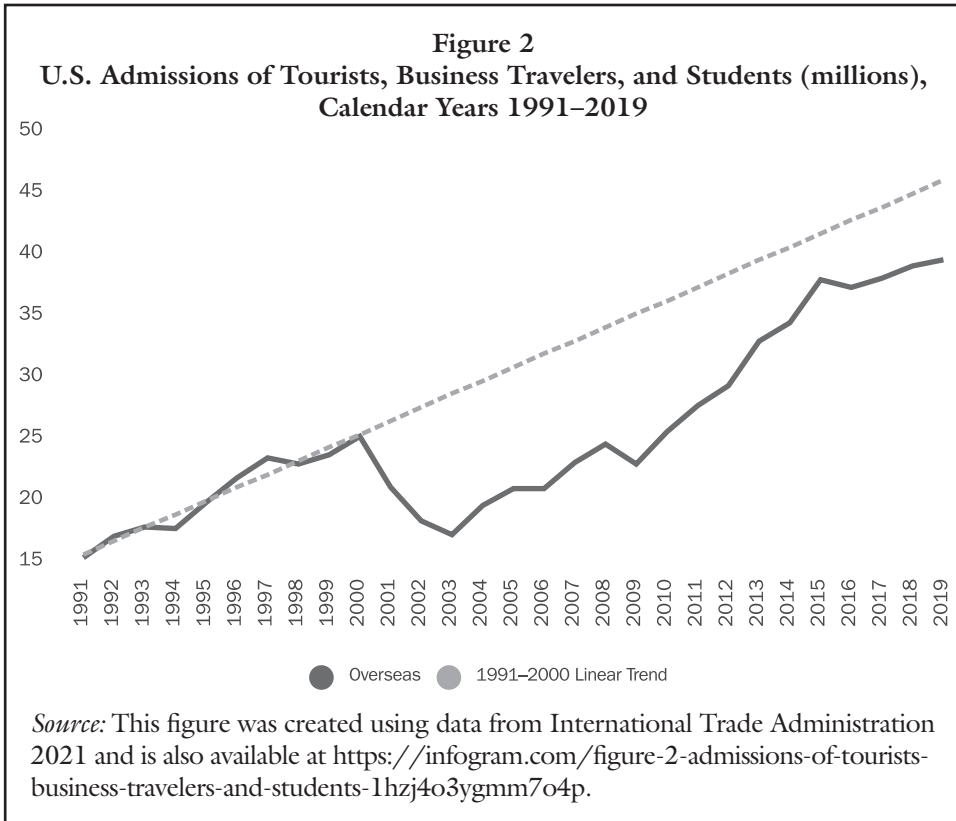
For prime-age men in most Muslim-majority countries, the FBI would still conduct an individualized background check on each applicant (Eldridge et al. 2005, 157). The State Department had previously conducted all the checks and would waive interviews if no concerns were raised. In addition, the government imposed new lengthy reviews for scientific researchers and students involved in certain fields deemed sensitive (U.S. Government Accountability Office [GAO] 2005c). For the first time, every visitor to the United States would have to be fingerprinted upon entry, previously a process associated primarily with criminal investigations (U.S. GAO 2005b).

These procedural changes caused the wait times for visas to skyrocket mainly because the State Department lacked the manpower to conduct interviews. State Department consular officers were also often given redacted criminal records from the FBI that did not include the necessary information to determine visa eligibility (U.S. GAO 2005a). Wait times to get a visa stretched for months and in some cases more than a year (Alden 2008). For time-sensitive projects or student visas, visa interviews were sometimes scheduled so late as to be pointless. For Arab countries in particular, the FBI lacked both the manpower and the desire to conduct hundreds of thousands of time-intensive background checks and so effectively denied visas without a formal decision. The FBI reviews failed to identify a single terrorist (Eldridge et al. 2004, 157). In addition, the visa interview requirement meant that people often had to take unnecessary trips to cities with U.S. consulates just to spend two minutes in a visa interview, which drove up the costs to visit the United States.



For the decade from fiscal year 1992 to fiscal year 2001, the State Department had increased the issuance of tourist and business traveler visas from 4.3 million to nearly 6 million (U.S. Bureau of Consular Affairs 2021). After 9/11, the number nearly halved by 2003, falling by 2.6 million or 44 percent in two years. Certainly, concern about travel to the United States stemming from the terrorist attack played a role, but the wait times for visas and the increased costs to travel mattered a great deal as well. Denials also ratcheted up to previously unseen levels, with consular officers at least initially refusing 40 percent of all tourist and business traveler visa applicants in 2002, a rate that eventually declined to a low of 20 percent in 2012 (U.S. Bureau of Consular Affairs 2021).

Although the Bush administration eventually decreased the FBI's involvement in conducting individualized screenings, the reduced visa-issuance rate continued until the Obama administration made a concerted effort to speed processing and eliminate unnecessary obstacles to issuing visas. It hired hundreds of new consular officers and instituted the Visa Interview Waiver Program, which allowed the State Department to waive interviews for low-risk, repeat applicants (Embassy of the United States 2012). In 2012, President Barack Obama issued an executive order requiring the department to issue an average of 80 percent of visas within three



weeks.² The initiative was successful, and the visa-issuance rate nearly reached the pre-9/11 trend. The success was short-lived, however. In 2017, President Donald Trump rescinded the Obama-era reforms and terminated the Visa Interview Waiver Program.³

Even from just 2002 to 2016, the State Department issued more than 31 million fewer tourist and business traveler visas than it would have had the upward trend in issuances continued after 9/11. Extending the analysis to after President Trump reversed expedited visa processing, again in the name of security against terrorism, adds another 5.5 million missing issuances through 2019.

Because most temporary travelers can reenter multiple times, and because some categories of temporary travelers are exempt from visas, the total effect on travel from the invasive screening for foreign visitors was much greater. Figure 2 shows the number of entries by foreign students, tourists, and business travelers from overseas (i.e., not from Canada or Mexico) in each calendar year and the pre-9/11 trend

2. Executive Order No. 13597 (2012), 3 CFR 13597, at <https://obamawhitehouse.archives.gov/the-press-office/2012/01/19/executive-order-establishing-visa-and-foreign-visitor-processing-goals-a>.

3. Executive Order No. 13769 (2017), 82 Fed. Reg. 8977, at <https://qz.com/895149/trump-is-suspending-the-visa-interview-waiver-program/>.

(International Trade Administration 2020). Overall, these nonimmigrant entries fell by 8 million between 2000 and 2003—or 30 percent—and from 2001 to 2016 the United States saw 140 million fewer entries by foreign travelers than it would have had the trend begun in the 1990s prevailed (International Trade Administration 2021). Extending the analysis again through the Trump administration reveals 246 million fewer entries.

An econometric analysis by the U.S. Department of Homeland Security (DHS) in 2010 found that although visa-exempt travel recovered, the numbers of both travelers subject to the visa requirement and those exempt were lower than the pre-9/11 trend through 2006, and the numbers of travelers needing visas did not recover, leading the DHS to conclude that visa processing posed the main obstacle to a full recovery (Cornwell and Roberts 2010).

The visa disruptions have had lasting effects on tourism and business, especially in shifting business and travel to other countries. From 1998 to 2000, the United States saw its share of world tourists increase slightly (United Nations World Tourism Organization 2000), but by 2019 its share of tourists had fallen about a quarter (United Nations World Tourism Organization 2019). Although the U.S. share declined over several decades, the procedures for vetting undermined the progress the United States had made in the period immediately leading up to the attacks in 2001.

If the country had just maintained its pre-9/11 proportion of visitors, it would have seen nearly 29 million more visitors in 2019 alone. At the same time, the U.S. share of international students enrolled in U.S. universities fell by 19 percent from its peak in 2002, the last academic year before visas became much more difficult to obtain (UNESCO Institute for Statistics 2021). “International students say it’s not worth queuing up for two days outside the U.S. consulate in whatever country they are in to get a visa when they can go to the U.K. so much more easily,” Tim O’Brien, international development director at Nottingham Trent University in England, told the *New York Times* in 2004 (Dillon 2004). Although the queues eventually disappeared, the migration pattern was permanently shifted.

After 9/11, the tourism industry alone saw an initial annual decline in revenue of nearly \$51 billion (Blake and Sinclair 2003). A group of eight business associations estimated that delays from 2002 to 2004 for specifically business traveler visas were directly costing their businesses \$1.5 billion per month, mainly by requiring them to postpone projects or to relocate them outside of the United States (Santangelo Group 2004). A long list of companies altered their operations to evade new restrictions:

Boeing moved much of its pilot training outside the United States; Lockheed Martin, the aerospace and defense giant, began holding its board meetings in Paris; engineering companies like Fluor and Bechtel began moving more work offshore to London or other places in Europe that were easier for their foreign experts to reach

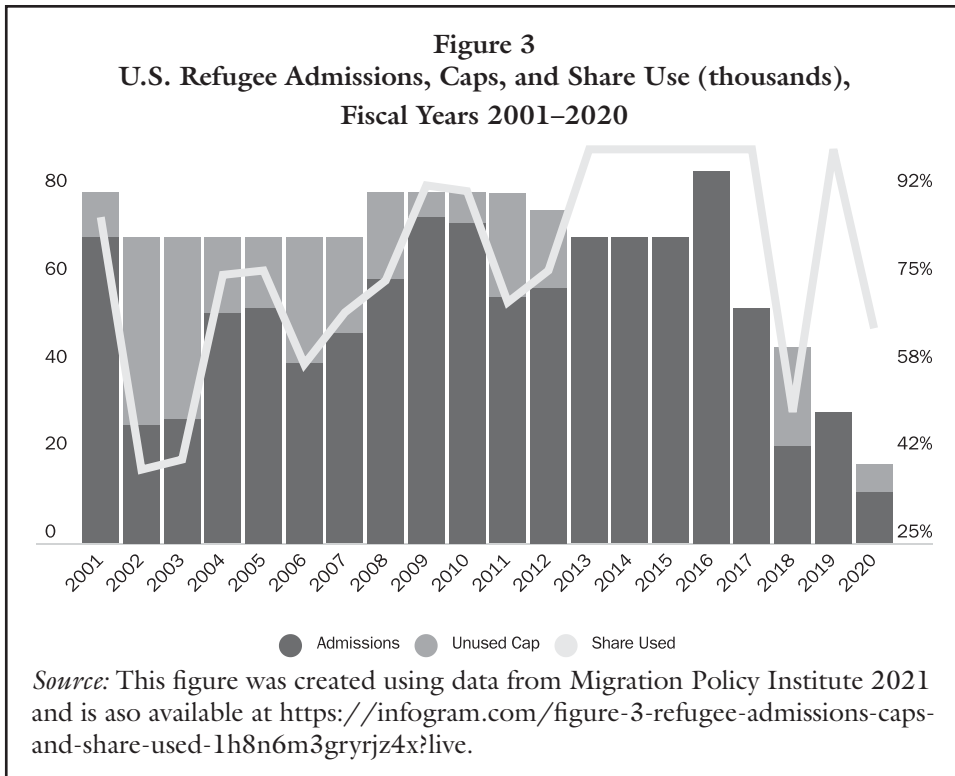
and did not demand running the gauntlet of U.S. screening and other security measures. “A lot of the clients we have were educated in the West, speak English fluently, and just have a real resentment that they get that sort of treatment,” said David Marventano, a senior vice president for government affairs in Fluor’s Washington office. (Alden [2009] 2014, 214)

In the three years after 9/11, foreign direct investment to the United States fell by half, and the Commerce Department attributed a portion of the decline to the fact that business executives could not easily obtain visas to travel to the United States to oversee or review potential projects. The department wrote in 2007, “[T]he presence or perception of delays in obtaining the necessary visas can give an international investor the impression that it may be difficult to finalize or oversee an investment in the United States” (U.S. Department of Commerce 2007, 3). In the twenty years since 9/11, the United States has never regained its pre-9/11 high for its share of world foreign direct investment inflows (United Nations Conference on Trade and Development 2021).

Permanent legal immigration was less severely affected than travel through temporary visas, largely because permanent immigration already took so long and was so expensive. The main victims of the new scrutiny for permanent immigrants were refugees entering through the U.S. Refugee Admissions Program, despite the fact that refugees did not participate in the 9/11 attacks and no refugee entering under that program had at that time or since carried out a deadly terrorist attack in the United States (Nowrasteh 2019, 23). President Bush placed about a two-month moratorium on new refugee admissions immediately after 9/11 (U.S. Committee for Refugees and Immigrants 2001). When the moratorium was lifted, the FBI’s new security-check requirements made it impossible to process even half the number of those admitted in 2001 (Dewey 2003). In absolute terms, admissions fell 61 percent, despite the president requesting that the same number of refugees be admitted as before 9/11. In 2002 and 2003, 60 percent of the refugee cap (which is set by the president annually) went unfilled (Migration Policy Institute 2021).

Refugee admissions recovered somewhat, but, overall, the Bush administration’s new vetting requirements wasted 200,000 refugee slots in eight years (figure 3). President Obama restored the program to its pre-9/11 levels and generally ensured the cap was filled, but President Trump, after promoting fears of a terrorist refugee invasion, suspended the program in 2017, lowered the caps, and then instituted new screening requirements that slowed processing to a crawl again. Trump’s refugee-program suspension began with an executive order banning immigrants from several Muslim-majority countries,⁴ which he had defended during his campaign in part by claiming

4. Executive Order No. 13769 (2017), at <https://www.dhs.gov/publication/executive-orders-13769-and-13780>.



erroneously that thousands of Muslims in the United States were cheering in the streets after 9/11 (Bier 2017a).

9/11's Effects on Violators of Immigration Law

The fact that several hijackers had broken immigration laws provided an opportunity for the subset of officials within the Bush administration who wanted to crack down on violators of immigration law (Eldridge et al. 2004, 6). Largely as a result, immigration-enforcement spending ballooned. By 2013, a majority of all federal law enforcement spending was designated to immigration (along with customs or trade) enforcement of various kinds (Meissner et al. 2013). At first, the primary targets were like several of the 9/11 hijackers, people who had entered on valid visas but had overstayed or had other issues. The campaign began with the National Security Entry-Exit Registration System (NSEERS), which required men ages sixteen to forty-five with temporary visas from twenty-five countries—all but one of which were majority Muslim—to register.⁵

5. Removing Designated Countries from the National Security Entry-Exit Registration System (NSEERS) (2011), 76 Fed Reg. 23830, at <https://www.federalregister.gov/documents/2011/04/28/2011-10305/removing-designated-countries-from-the-national-security-entry-exit-registration-system-nseers>. The countries were Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen.

The poorly worded NSEERS rule meant that many lawyers could not properly advise about who exactly needed to register, and many people never learned of the registration rules until after the deadline passed (American Immigration Law Foundation 2004, 5). Failure to register in time was a crime and prioritized the person for removal, and the registration process itself was used to identify infractions, such as overstaying the period of admission, working while on a student or tourist visa, or other procedural violations. Nearly 17 percent of the almost 94,000 voluntary registrants were sent into removal proceedings (American Immigration Law Foundation 2004, 6). The NSEERS rule failed to result in a single terrorism conviction (Constitution Project 2008).

At the same time, the Bush administration created the Absconder Apprehension Initiative to track down immigrants—again from Muslim-majority countries—who had been ordered to be removed from the country for violating their status when it could not be confirmed that they had done so (Lapp 2005). Again, like other efforts that started with a narrow discriminatory goal, the administration addressed the discrimination by expanding the focus to all immigrants. The program evolved into the Fugitive Operations Program to track down supposedly serious criminals whom it could remove from the country. Once again, this program failed to identify terrorists. Indeed, in nearly three-quarters of the arrests, the arrested immigrants had no criminal conviction of any kind, including for immigration crimes (Wishnie, Mendelson, and Strom 2009, 2).

The zeal to track every violation of the law quickly spiraled beyond the initiative's original mandate. The most important change was a requirement in the Intelligence Reform and Terrorism Prevention Act of 2004 that all data systems that “contain information on aliens” be integrated.⁶ As part of this integration effort, DHS created “Secure Communities,” which rerouted to DHS those fingerprint checks sent to the FBI by local police to identify potential criminal warrants so that they could be checked against DHS databases for potential immigration violations. Even if nothing demonstrated that the person was in the country illegally, DHS would still often issue a “detainer” requesting that the local police hold the person until DHS could investigate and come to arrest him or her (National Immigration Law Center et al. 2012). Secure Communities premiered in 2008 and expanded rapidly to nearly every jurisdiction. Only a minority of those arrested under the program had serious criminal convictions—more than a quarter had no criminal conviction of any kind, including for immigration crimes (American Immigration Council 2011).

To hold all the people that Secure Communities and the Fugitive Operations Program were feeding into the system, Immigration and Customs Enforcement (ICE) rapidly expanded its use of civil detention facilities, effectively a parallel prison

6. Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-90, 118 Stat. 3638, at <https://www.congress.gov/108/plaws/publ90/PLAW-108publ90.pdf>.

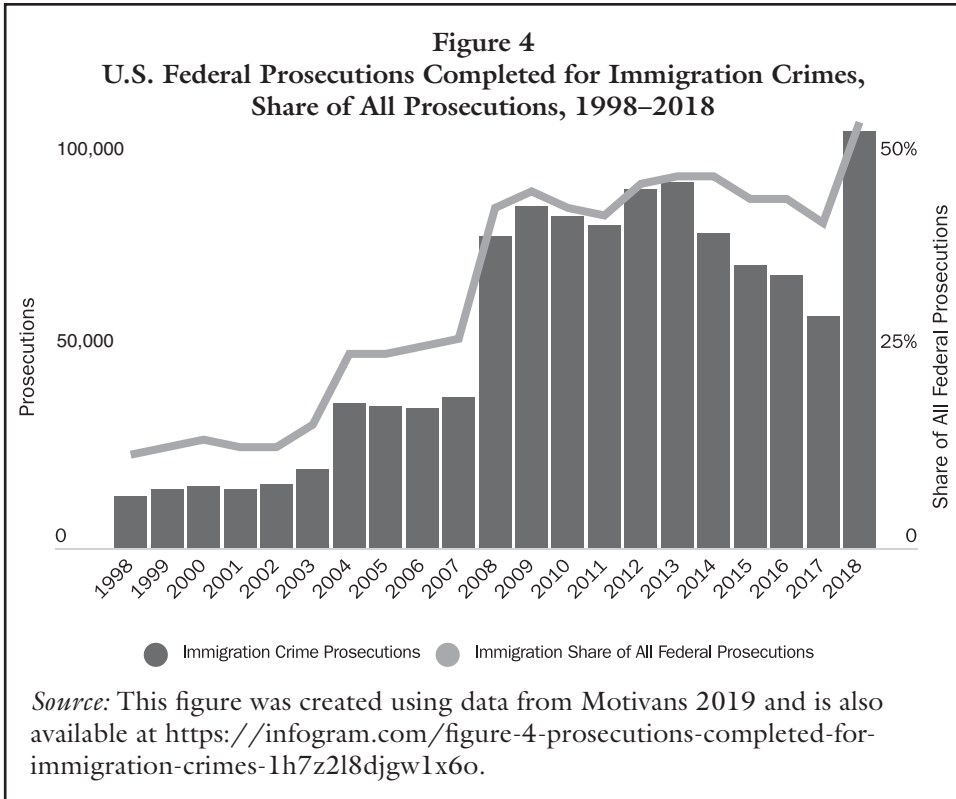
system for immigrants awaiting removal. Secure Communities launched an unprecedented wave of deportations that abated only in the second half of the Obama administration, when local police stopped complying with detainers and refused to run record checks on many lower-level offenders (Nowrasteh 2021). The Obama administration fed into this trend by stopping the use of Secure Communities for most minor offenses in late 2014 (White House Office of the Press Secretary 2014), but even after the Trump administration restarted the system, removals never rebounded to even the pre-Secure Communities level because many local governments refused to cooperate (Nowrasteh and Forrester 2018). Nonetheless, ICE continued to book record numbers of detainees, many of whom came from apprehensions by Border Patrol (Reyes 2015).

Initially, this enforcement effort was putatively based on the misguided premise that had it existed in 2001, it could have stopped the attacks. In reconstructing any event, it is possible to imagine hundreds of points where intervention might have occurred to stop it. Yet the 9/11 Commission's staff report emphasized that the hijackers were "aware of U.S. immigration laws and regulations" and "structured their travel and entries to the United States with those constraints in mind" (Eldridge et al. 2004, 60). This implies that even if the enforcement of those regulations had changed, the terrorists would have altered their practices accordingly by, for instance, more scrupulously maintaining the conditions of their tourist or student statuses. With twenty years of experience under the new enforcement regime, DHS's new practices have not uncovered plans for any similar attack.

The post-9/11 enforcement regime gradually moved from the interior outward to the borders. Representative James Sensenbrenner (R-Wisc.) simply asserted that it was "more and more evident that the next round of terrorists would not get their passports stamped ... when it was so easy to enter the country illegally" (qtd. in Alden [2009] 2014, 270). Before 9/11, however, no such terrorist had ever committed an attack by crossing U.S. borders illegally, and none has since then (Nowrasteh 2019, 1). Nonetheless, the Border Patrol more than doubled its force and started referring ever more immigrants to the Department of Justice for criminal prosecution for crossing illegally (U.S. Border Patrol 2020).

The share of federal criminal prosecutions for immigration crimes increased from 13 percent to 44 percent from 2001 to 2008 (figure 4), eventually hitting 55 percent in 2018 (Motivans 2019). It also implemented the "expedited removal" process along the southwestern border in 2004, which allowed agents to immediately remove border crossers without a hearing because doing so would "enhance national security."⁷ Previously, immigrants could choose to be let back into Mexico or released into the United States pending a removal hearing. Under this new pro-

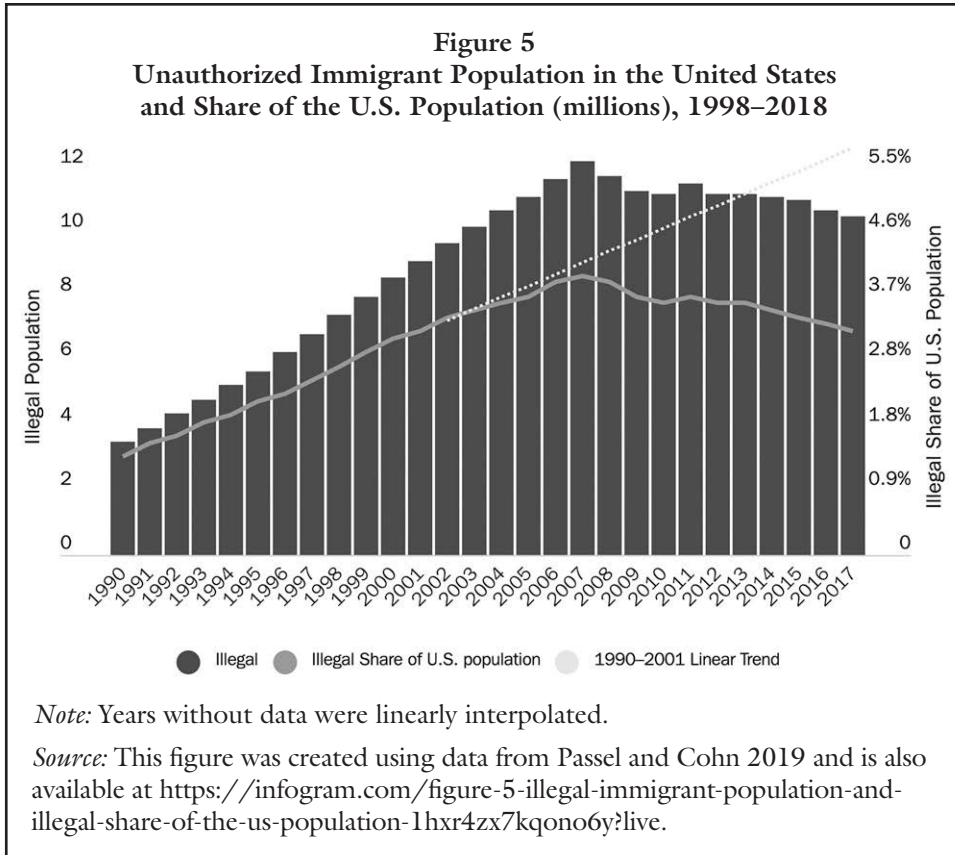
7. Designating Aliens for Expedited Removal (2004), 69 Fed. Reg. 48877, at <https://www.federalregister.gov/documents/2004/08/11/04-18469/designating-aliens-for-expedited-removal>.



cess, border crossers were immediately deported unless they had a credible fear of persecution in their home countries and could apply for asylum.

All the enforcement eventually played a role in the declining numbers and share of the U.S. population in the country illegally. From 1990 to 2001, the estimated population of illegal immigrants increased by about 5.6 million, and from 2001 to 2007 it increased another roughly 3.1 million, but by 2017, following the recession and the increased deportations, the undocumented population had declined by 1.7 million (Passel and Cohn 2019). If the pre-9/11 trend had continued, the estimated share of illegal immigrants in the U.S. population would have been almost double what it actually was in 2017 (3.2 percent), or an additional nearly 9 million immigrants (figure 5).

Some of this difference came from deportations. ICE deported about 2.5 million immigrants from the interior of the United States after 9/11 (Nowrasteh 2021). Many immigrants also followed deported relatives back to their home countries (Gonzalez-Barrera 2015, 14). But other measures played a role as well, including the expansion in seasonal guest-worker programs—one of the few bright spots for post-9/11 immigration policy—that permitted more legal circular migration (Nowrasteh and Forrester 2019).



9/11's Effects on Immigration Reform

In October 2000, Congress passed the American Competitiveness in the 21st Century Act, which tripled the cap on H-1B visas for high-skilled professionals until 2003, raising it to 195,000.⁸ It also critically allowed H-1B workers to maintain their status for as long as it was necessary for them to receive permanent residence, which—by 2019—ended up taking more than a decade for most Indian workers, and it exempted some researchers and professors from the caps. In December that same year, Congress passed the Legal Immigration Family Equity (LIFE) Act, which gave immigrants without legal status four months to obtain a U.S. sponsor, either immediate family or employer, to petition for them to receive permanent residence.⁹ Among other important pro-immigrant changes, Congress

8. American Competitiveness in the 21st Century Act of 2000, Pub. L. 106-313, 114 Stat. 1251, at <https://www.govinfo.gov/content/pkg/PLAW-106publ313/pdf/PLAW-106publ313.pdf>.

9. Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, Title XI, 114 Stat. 2762, at <https://www.govinfo.gov/content/pkg/PLAW-106publ553/html/PLAW-106publ553.htm>.

also introduced a new “V visa” to reunite spouses or minor children with their legal permanent-resident parents or spouses who could not do so because of the caps on legal immigration.

The election of George W. Bush on a strongly pro-immigration message seemed certain to continue progress. In August 2001, Senator Orrin Hatch (R-Utah) introduced the DREAM Act with a bipartisan set of cosponsors,¹⁰ and the Senate Judiciary Committee scheduled a hearing for September 12, 2001 (as noted in U.S. Senate Committee on the Judiciary 2011). After the Immigration and Naturalization Service badly botched the LIFE Act by failing to publish regulations allowing unauthorized immigrants with potential sponsors to file their petitions until just a month before the congressional deadline, causing most applicants to miss out, the House passed a bill in May 2001 on an overwhelming vote of 336 to 43 to extend the deadline, and the Senate amended the bill to allow immigrants to qualify even if they obtained sponsors after the original deadline and passed it on September 6.¹¹ The House scheduled a vote for September 11, with passage nearly guaranteed (Andorra 2003, 7).

After 9/11, however, immigration-reform talks in Congress floundered, and the U.S.-Mexico guest-worker initiative disappeared. The temporary H-1B increase was never fully restored, causing many businesses to offshore their operations to other countries (Glennon 2020). In his second term, President Bush still pushed Congress to pass a broad overhaul that included more legal immigration and the chance for current unauthorized immigrants to apply for U.S. citizenship (Bush 2006). But Republican leaders in the House rejected his proposal, instead passing the Border Protection, Anti-terrorism, and Illegal Immigration Control Act, which would have made it a felony to violate immigration law in almost any way or to help illegal immigrants already in the country to stay here.¹² As the bill’s title suggests, a huge amount of the debate focused on foreign terrorists. Representative Virginia Foxx (R-N.C.) summed up the proponents’ position succinctly: “I am certainly not saying that all of those who have come through our borders illegally are criminals or terrorists, but the possibility of letting in just one who is could cost many American lives and wreak havoc on our way of life” (Foxx 2005).

Although terrorism drifted from the focus of the political debate under President Obama, it reemerged to the forefront of the immigration debate in 2015. Following a terrorist attack in Paris, then presidential candidate Donald Trump proposed a ban on Muslims entering the country (Diamond 2015). He fiercely criticized

10. DREAM Act of 2001, S.1291, 107th Cong., at <https://www.congress.gov/bill/107th-congress/senate-bill/1291>.

11. Section 245(i) Extension Act of 2001, H.R. 1885, 107th Cong., at <https://www.congress.gov/bill/107th-congress/house-bill/1885>.

12. Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, H.R.4437, 109th Cong., at <https://www.congress.gov/bill/109th-congress/house-bill/4437>.

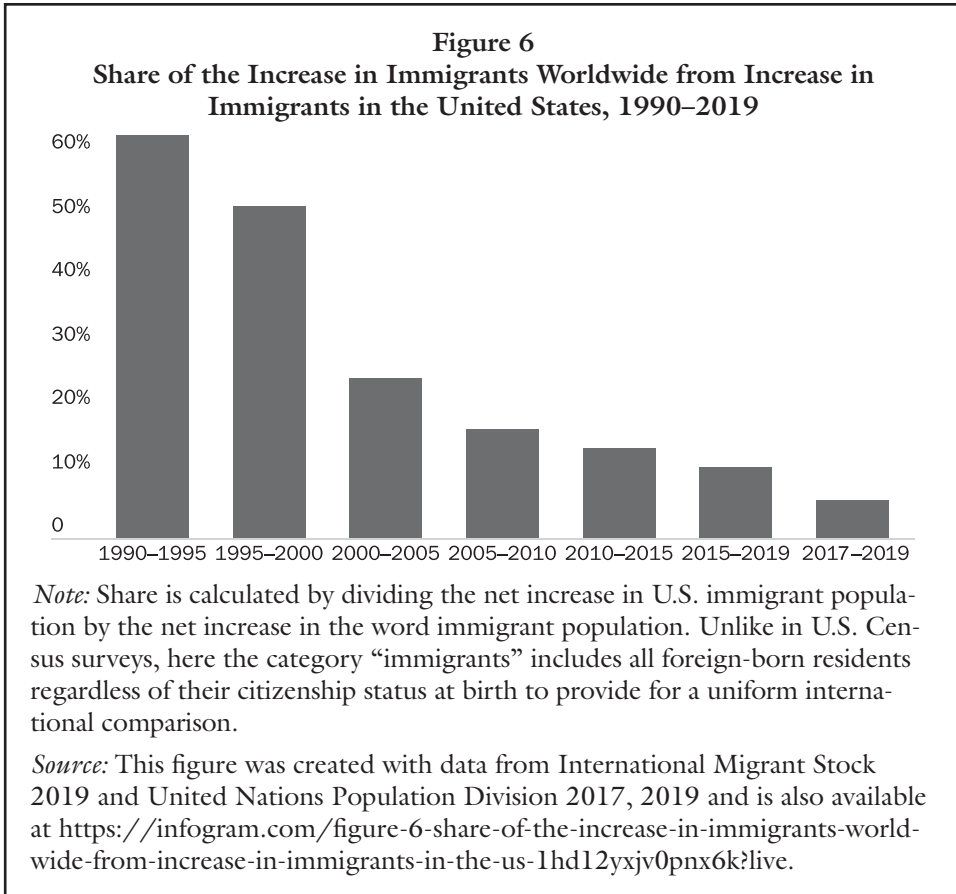
the Obama administration's decision to accept refugees from Syria, arguing they were a "Trojan horse" to undermine America (Tanfani 2016). No single proposal from any candidate received more media coverage than the Muslim ban. Over time, in Trump's words, the plan "morphed into" the concept of banning certain nationalities from Muslim-majority countries and "extreme vetting" (Bier 2017a).

"Extreme vetting" largely repackaged many of the antiterrorism policies that both the Bush and Obama administrations had rescinded. The Muslim ban took Bush's visa-processing suspension for Muslim-majority countries for a month after the attacks (a suspension that the 9/11 Commission's staff found had not identified any terrorists), applied it to a select group of countries, and maintained it throughout his term. President Trump suspended the refugee program to study its vetting process and then restarted it with a much lower cap and even longer reviews—which were already taking up to two years (Rose 2017). "Extreme vetting" also meant reimposing visa interviews on all applicants, requiring interviews of applicants already in the United States, referring more applicants for visa security reviews, and lengthening the number and complexity of questions on immigration forms (Bier 2017b; Chishti and Bolter 2019). President Trump often explicitly tied these proposals to the 9/11 threat.

When asylum seekers almost entirely from Central America began showing up in larger numbers in 2018, Trump officials again raised the specter of terrorists sneaking in behind them (Hosenball and Landay 2018), though no U.S. terrorist attack had ever followed that pattern (Nowrasteh 2019, 1). The administration promptly issued regulations that prohibited asylum to those transiting through Mexico, declaring that the prohibition would benefit national security.¹³ President Trump's legislative agenda also followed his concerns about terrorism, demanding that in exchange for passing a narrow version of the DREAM Act, Democrats had to agree to eliminate most permanent legal-immigration categories. These proposals never made it out of either house, but they virtually guaranteed that expansive legal-immigration reform legislation would not obtain the necessary bipartisan votes to pass in the Senate, even under the Biden administration.

The legacy of 9/11 is not only about the actions that Congress and the administrations took to restrict immigration but also about the actions that were never taken. The evolution from specific measures to catch terrorists to general nativism after 9/11 made reforms vastly more difficult than they would otherwise be. The combination of the two has caused the standing of the United States as a premier haven for immigrants in the world to slip. While other nations accepted more immigrants, the United States turned more away. From 1990 to 1995, the increase in the U.S. immigrant population accounted for 63 percent of the increase in the immigrant stock worldwide (Bier 2021). From 1995 to 2000, the U.S. share fell to 52 percent—solely because the rest of the world's immigrant population grew faster

13. Asylum Eligibility and Procedural Modifications (2019), 84 Fed. Reg. 33829, at <https://www.federalregister.gov/documents/2019/07/16/2019-15246/asylum-eligibility-and-procedural-modifications>.



than America’s; from 2000 to 2005 the U.S. share fell to 25 percent; and from 2017 to 2019, it fell to just 6 percent (figure 6).

Conclusion

Terrorism poses a threat to the lives of Americans, but the policy reaction has far outstripped the possible harms. From 1975 to 2017, the chance of a person dying in a terrorist attack on U.S. soil committed by a foreigner was just 1 in 3.8 million per year (Nowrasteh 2019, 1). Foreign terrorists have been responsible for less than one-fourth of a percent of all murders in the United States during that time. The years since 9/11 have seen the rate decline much further, and even the potential risk of another 9/11-style attack has greatly diminished through simple actions that have no relationship to immigration at all, such as reinforcing airport cockpit doors.¹⁴

14. Security Considerations on the Flightdeck of Transport Category Airplanes (2005), 70 Fed. Reg. 21561, at <https://www.federalregister.gov/documents/2005/04/26/05-8259/security-considerations-on-the-flight-deck-of-transport-category-airplanes>.

Nonetheless, 9/11 served as a critical turning point in immigration law and policy in the twenty-first century. Though the COVID-19 pandemic may soon overtake 9/11, possibly no other single event has done more to drive the political and legal-immigration reform debate in the United States. Since 9/11, the U.S. shares of immigrants, tourists, and international students have seen significant declines, and substantial portions of these declines trace directly to policy actions taken in response to the threat of terrorism. The attacks upended progress toward a more open legal system and continue to impede improvements.

References

- Alden, Edward. 2008. The Closing of the American Border. *Globalist*, September 24. At <https://www.theglobalist.com/the-closing-of-the-american-border/>.
- . [2009] 2014. *The Closing of the American Border*. New York: HarperCollins.
- American Immigration Council. 2011. Secure Communities: A Fact Sheet. At <https://www.americanimmigrationcouncil.org/research/secure-communities-fact-sheet>.
- American Immigration Law Foundation. 2004. *Targets of Suspicion: The Impact of Post-9/11 Policies on Muslims, Arabs, and South Asians in the United States*. Immigration Policy in Focus 3.2. Washington, D.C.: American Immigration Council. At <https://www.americanimmigrationcouncil.org/sites/default/files/research/Targets%20of%20Suspicion.pdf>.
- Andorra, Bruno. 2003. *Immigration: Adjustment to Permanent Resident Status under Section 245(i)*. RL31373. Washington, D.C.: Congressional Research Service. At https://www.everycrsreport.com/files/20030115_RL31373_01a333c9d60f222827989ae6a1d8aae403799dcb.pdf.
- Bier, David J. 2017a. A Dozen Times Trump Equated His Travel Ban with a Muslim Ban. Cato Institute, August 14. At <https://www.cato.org/blog/dozen-times-trump-equated-travel-ban-muslim-ban>.
- . 2017b. The Trump Administration's Stealth Attack on Legal Immigration. *Washington Post*, August 28. At https://www.washingtonpost.com/opinions/the-trump-administrations-stealth-attack-on-legal-immigration/2017/08/28/afbf1912-8c04-11e7-8df5-c2e-5cf46c1e2_story.html.
- . 2018. *Extreme Vetting of Immigrants: Estimating Terrorism Vetting Failures*. Policy Analysis no. 838. Washington, D.C.: Cato Institute.
- . 2021. U.S. Accounts for 6% of Global Immigrant Population Growth, Down from 63% in 1995. Cato Institute, March 9. At <https://www.cato.org/blog/us-accounts-6-global-immigrant-population-growth-down-63-1995>.
- Blake, Adam, and M. Thea Sinclair. 2003. Tourism Crisis Management: US Response to September 11. *Annals of Tourism Research* 30, no. 4: 813–32.
- Bush, George. 2006. Bush's Speech on Immigration (transcript). *New York Times*, May 15.
- Chishti, Muzaffar, and Jessica Bolter. 2019. The Travel Ban at Two: Rocky Implementation Settles into Deeper Impacts. Migration Policy Institute, January 31. At <https://www.migrationpolicy.org/article/travel-ban-two-rocky-implementation-settles-deeper-impacts>.

- Constitution Project. 2008. *The Use and Abuse of Immigration Authority as a Counterterrorism Tool: Constitutional and Policy Considerations*. Washington, D.C.: Constitution Project.
- Cornwell, Derekh, and Bryan Roberts. 2010. The 9/11 Terrorist Attack and Overseas Travel to the United States: Initial Impacts and Longer-Run Recovery. Working paper, U.S. Department of Homeland Security. At https://www.dhs.gov/sites/default/files/publications/9_11%20and%20Travel%20to%20US%202010.pdf.
- Dewey, Arthur E. 2003. Immigration after 9/11: The View from the United States. U.S. Department of State, April 3. At <https://2001-2009.state.gov/g/prm/rls/2003/37906.htm>.
- Diamond, Jeremy. 2015. Donald Trump: Ban all Muslim Travel to U.S. CNN, December 7. At <https://www.cnn.com/2015/12/07/politics/donald-trump-muslim-ban-immigration/index.html>.
- Dillon, Sam. 2004. U.S. Slips in Attracting the World's Best Students. *New York Times*, December 21.
- Eldridge, Thomas R., Susan Ginsburg, Walter T. Hempel II, Janice L. Kephart, and Kelly Moore. 2004. *9/11 and Terrorist Travel: A Staff Report of the National Commission on Terrorist Attacks upon the United States*. At https://govinfo.library.unt.edu/911/staff_statements/911_TerrTrav_Monograph.pdf.
- Embassy of the United States. 2012. U.S. Visa Interview Waiver Program Expands to Mission India. American Immigration Lawyers Association (AILA) Doc. no. 12112160. At <https://www.aila.org/infonet/do-svisa-interview-waiver-program-mission-india>.
- Forrester, Andrew C., Benjamin Powell, Alex Nowrasteh, and Michelangelo Landgrave. 2019. Do Immigrants Import Terrorism? *Journal of Economic Behavior & Organization* 166:529–43.
- Foxx, Virginia. 2005. Congressional Record—House 151:161 (December 15, 2005), H11817. At <https://www.govinfo.gov/content/pkg/CREC-2005-12-15/pdf/CREC-2005-12-15-house.pdf>.
- Glennon, Britta. 2020. *How Do Restrictions on High-Skilled Immigration Affect Offshoring? Evidence from the H-1B Program*. National Bureau of Economic Research (NBER) Working Paper no. 27538. Cambridge, Mass.: NBER.
- Gonzalez-Barrera, Ana. 2015. More Mexicans Leaving Than Coming to the U.S. Pew Research Center, November 19. At https://www.pewresearch.org/hispanic/wp-content/uploads/sites/5/2015/11/2015-11-19_mexican-immigration__FINAL.pdf.
- Hosenball, Mark, and Jonathan Landay. 2018. No Evidence for Trump Claim on “Terrorists”: Government Sources. Reuters, December 11. At <https://www.reuters.com/article/us-usa-trump-border/no-evidence-for-trump-claim-on-terrorists-government-sources-idUSKB-N1OB05Y>.
- International Trade Administration. 2020. I-94 Arrivals: Monthly–Quarterly–Annual. U.S. Department of Commerce. Archived at <http://web.archive.org/web/20200402000059/https://travel.trade.gov/view/m-2017-I-001/index.asp>.
- . 2021. I-94 Visitor Arrivals Program. U.S. Department of Commerce. At <https://www.trade.gov/i-94-arrivals-program>.
- Lapp, Kevin. 2005. Pressing Public Necessity: The Unconstitutionality of the Absconder Apprehension Initiative. *New York University Review of Law and Social Change* 29:573–612.

- Los Angeles Business Journal*. 2006. Border Line. January 23. At <https://labusinessjournal.com/news/2006/jan/23/border-line/>.
- Meissner, Doris, Donald M. Kerwin, Muzaffar Chishti, and Claire Bergeron. 2013. *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*. Washington, D.C.: Migration Policy Institute.
- Migration Policy Institute. 2021. U.S. Refugee Admissions and Refugee Resettlement Ceilings, Fiscal Years 1980–2020. At <https://www.migrationpolicy.org/programs/data-hub/charts/us-annual-refugee-resettlement-ceilings-and-number-refugees-admitted-united>.
- Motivans, Mark. 2019. Immigration, Citizenship, and the Federal Justice System, 1998–2018. U.S. Bureau of Justice Statistics, August. At <https://www.bjs.gov/content/pub/pdf/icfjs9818.pdf>.
- Mueller, John. 2020. *Terrorism since 9/11: The American Cases*. Columbus: Ohio State University; Washington, D.C.: Cato Institute.
- National Immigration Law Center, Washington Defender Association, Immigrant Legal Resource Center, National Immigration Project of the National Lawyers Guild, National Immigration Law Center, and Immigrant Defense Project. 2012. Defeating ICE Hold Requests. <https://www.nilc.org/news/special-reports/guide-to-defeating-ice-detainers/>.
- Nowrasteh, Alex. 2019. *Terrorists by Immigration Status and Nationality: A Risk Analysis, 1975–2017*. Policy Analysis no. 866. Washington, D.C.: Cato Institute. At <https://www.cato.org/publications/policy-analysis/terrorists-immigration-status-nationality-risk-analysis-1975-2017>.
- . 2021. President Trump Reduced Legal Immigration. He Did Not Reduce Illegal Immigration. Cato Institute, January 20. At <https://www.cato.org/blog/president-trump-reduced-legal-immigration-he-did-not-reduce-illegal-immigration?query-ID=157a9864d6702495c7017b99a54aa47e>.
- Nowrasteh, Alex, and Andrew Forrester. 2018. The California TRUST Act Reduced Deportations. Cato Institute, August 14. At <https://www.cato.org/blog/california-trust-act-reduced-deportations>.
- . 2019. H-2 Visas Reduced Mexican Illegal Immigration. Cato Institute, July 11. At <https://www.cato.org/blog/h-2-visas-reduced-mexican-illegal-immigration>.
- Passel, Jeffrey S., and D’vera Cohn. 2019. Mexicans Decline to Less Than Half the U.S. Unauthorized Immigrant Population for the First Time. Pew Research Center, June 12. At pewresearch.org/fact-tank/2019/06/12/5-facts-about-illegal-immigration-in-the-u-s/.
- Reyes, Rachel J. 2015. *Immigration Detention: Recent Trends and Scholarship*. New York: Center for Migration Studies.
- Rose, Joel. 2017. White House Says Refugee Admissions Can Resume, with New Security Vetting. NPR, October 24.
- Santangelo Group. 2004. Do Visa Delays Hurt U.S. Business? At <https://www.govexec.com/pdfs/visasurveyresults.pdf>.
- Tanfani, Joseph. 2016. Donald Trump Warns That Syrian Refugees Represent “a Great Trojan Horse” to the U.S. *Los Angeles Times*, October 19.

- UNESCO Institute for Statistics. 2021. UIS.Stat. At <http://data.uis.unesco.org/>.
- United Nations Conference on Trade and Development. 2021. Foreign Direct Investment: Inward and Outward Flows and Stock, Annual. At https://stats.unctad.org/handbook/EconomicTrends/Fdi.html#ref_Unctad_2020c.
- United Nations Population Division. 2017. International Migrant Stock: The 2017 Revision. At <https://www.un.org/en/development/desa/population/migration/data/estimates2017/estimates17.asp>.
- . 2019. International Migrant Stock 2019. <https://www.un.org/en/development/desa/population/migration/data/estimates2/estimates19.asp>.
- United Nations World Tourism Organization. 2019. International Tourism Highlights. At <https://www.e-unwto.org/doi/pdf/10.18111/9789284421152>.
- . 2000. Tourism Highlights. At <https://www.e-unwto.org/doi/book/10.18111/9789284403745>.
- U.S. Border Patrol. 2020. Border Patrol Agent Nationwide Staffing by Fiscal Year. Customs and Border Protection. At https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/U.S.%20Border%20Patrol%20Fiscal%20Year%20Staffing%20Statistics%20%28FY%201992%20-%20FY%202019%29_0.pdf.
- U.S. Bureau of Consular Affairs. 2021. Nonimmigrant Visa Statistics. U.S. Department of State. At <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/non-immigrant-visa-statistics.html>.
- U.S. Committee for Refugees and Immigrants. 2001. In the Aftermath of September 11: U.S. Refugee Resettlement on Hold. *Refugee Reports* 22, nos. 9–10. At <https://www.refworld.org/docid/3c5809994.html>.
- U.S. Department of Commerce. 2007. Visas and Foreign Direct Investment: Supporting U.S. Competitiveness by Facilitating International Travel. At <https://www.trade.gov/sites/default/files/2020-12/Visas%20and%20Foreign%20Direct%20Investment.pdf>.
- U.S. Government Accountability Office (GAO). 2005a. *Border Security: Strengthened Visa Process Would Benefit from Improvements in Staffing and Information Sharing*. GAO-05-859. Washington, D.C.: U.S. GAO.
- . 2005b. *Homeland Security: Some Progress Made, but Many Challenges Remain on U.S. Visitor and Immigrant Status Indicator Technology Program*. GAO-05-202. Washington, D.C.: U.S. GAO. At <https://www.gao.gov/products/gao-05-202>.
- . 2005c. *Streamlined Visas Mantis Program Has Lowered Burden on Foreign Science Students and Scholars, but Further Refinements Needed*. GAO-05-198. Washington, D.C.: U.S. GAO. At <https://www.gao.gov/assets/gao-05-198.pdf>.
- U.S. Senate Committee on the Judiciary. 2011. *The Dream Act: Hearing before the Subcommittee on Immigration, Refugees, and Border Security of the Committee on the Judiciary*. No. J-112-30. 112th Cong., 1st sess. At <https://www.govinfo.gov/content/pkg/CHRG-112shrg20267/html/CHRG-112shrg20267.htm>.
- White House Office of the Press Secretary. 2014. Fact Sheet: Immigration Accountability Executive Action. November 20. At <https://obamawhitehouse.archives.gov/the-press-office/2014/11/20/fact-sheet-immigration-accountability-executive-action>.

Wishnie, Michael, Margot Mendelson, and Shayna Strom. 2009. *Collateral Damage: An Examination of ICE's Fugitive Operations Program*. Washington, D.C.: Migration Policy Institute, February. At https://www.migrationpolicy.org/sites/default/files/publications/NFOP_Feb09.pdf.