



REFLECTING ON 9/11 AFTER 10 YEARS AS AN IMMIGRATION ATTORNEY

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In the spring and summer of 2001, and the days just prior to September 11, 2001, things were not going so badly for immigrants. Although the Section 245(i) deadline of April 30, 2001 had expired, hundreds of thousands of people had managed to file their applications before the deadline to hopefully benefit from this provision and ultimately adjust status in the US even though they were in the US unlawfully. A week before September 11, Presidents Vicente Fox of Mexico and Bush were in [serious negotiations on an immigration deal](#) that would have granted benefits to undocumented immigrants, especially those from Mexico. In the same week, on September 6, 2001, a compromise was reached between the Senate and the House (the Senate had earlier passed its version) to extend the Section 245(i) provision to April 30, 2002, which would have allowed those unlawfully in the US to adjust status, albeit under more limited terms.

It was on that beautiful crystal clear Tuesday morning, September 11, just as I was leaving my Manhattan apartment for the office, worried about an impending deadline for an immigration case that a neighbor told me that a plane had crashed into the first tower. I went back home, and saw the second plane crash into the second tower on my television set. Before one could realize the horrific extent of the calamity that tragically killed just under 3,000 people, the towers came crashing down. It was difficult to realize then as I watched agape with horror how much would change for me as an immigration lawyer. I was the Chair of the Committee on Immigration and Nationality Law of the New York City Bar, and our next meeting was scheduled on September 13. I decided we should go ahead with the meeting and not call it off. It was

important to have this meeting as our work was cut out, and I prepared remarks for the members of the committee. On September 12, it was important to send a loud and clear message that immigration was completely separate from terrorism. This became the most critical mission for the immigration lawyer and it remains so even ten years later.

Less than ten days after September 11, the Executive under Attorney General Ashcroft tweaked the rules to make it easier to detain immigrants. The expanded regulation, which took effect on September 20, 2001, authorized INS to hold any non-citizen in custody for 48 hours or an unspecified "additional reasonable time" before charging the person with an offense. In the post 9/11 sweep, immigrants from mainly Muslim countries were detained and deported in secret. Although they were detained because of immigration violations, it was under the pretext of investigating them for suspected links to terrorism. In the end, the 1000+ immigrants who were detained and deported in secret were not charged or convicted of terrorism. I remain surprised that not more noise has been made about this. As all this was happening, I wondered whether [immigrants caught in the post 9/11 sweeps were being subjected to the same treatment as Japanese-Americans](#) who had been interned after the Pearl Harbor attacks. Were not certain immigrants after 9/11 being broadly profiled in the same way under expanded powers in the name of national security as Japanese-Americans after Pearl Harbor? Was this another dark period in American history, and would we ever learn history's lessons?

As if this were not enough, the Bush Administration implemented Special Registration, which applied to males from 26 countries, 25 of which had significant Islamic populations. Dutifully, 85,000 people lined up to register, thinking that they should cooperate with the government. 13,000 men who were found to have immigration violations, many of whom may have been on the path to getting green cards, were placed in deportation proceedings. Those who failed to register during the filing window continue to be affected even today, and may be unable to apply for an immigration benefit even through marriage to a US citizen. Special Registration [confirmed my worst fears](#) that race and religion were being used as proxies for individualized suspicion and guilt. In the end, Special Registration did not catch a single terrorist or make our country safer. Instead, it separated families, created more burdens on the government to administer the program, and in the end special registration was disbanded because it was a colossal failure.

The INS was dismantled and folded into the Department of Homeland Security bureaucracy. A new agency within DHS, Immigration and Customs Enforcement (ICE) came into being, which continues to expand and deport immigrants with even greater zeal. Databases got integrated, and fingerprints of all visitors needed to be taken at ports of entry. Visa interviews became mandatory and visa grants got delayed due to security checks. Many of the delays were needlessly caused due to the fact that one's name matched a name in the humongous government database.

Yet it is a testament to the power and clout of immigrants that the basic underlying architecture of American immigration law did not change after September 11. There were no drastic cutbacks in visa quotas or categories. People continued to receive nonimmigrant visas and green cards. Foreign students continued to come to study at US universities of all stripes. The practice of immigration law continued in the same way. The only difference was that everything was seen through the prism of national security. Even a garden variety bona fide marriage case between a US citizen and foreign national spouse would only be approved after every aspect of the spouse's information was extensively checked against error-prone national data bases.

While the immigration system was left intact, including the draconian provisions from the 1996 immigration law, the September 11 attacks unfortunately prevented it from being improved and to keep pace with globalization. The 245(i) extension that was about to happen the week before September 11 never saw the light of day. The deal that was made between Presidents Bush and Vicente to legalize the status of millions of productive undocumented immigrants was put into cold storage. The immigration system continued to break, and then crash, but Congress was never interested in fixing it, perhaps based on a subconscious fear that immigration equated to terrorism. The immigrant visa preferences remain hopelessly oversubscribed resulting in waits lasting more than a decade. The H-1B cap limit of 65,000 has never been expanded, save for an additional measly 20,000 under a special advance degree cap. Several efforts to achieve Comprehensive Immigration Reform in Congress have failed. The last effort to pass the DREAM Act in December 2010 also failed. Even business immigration, which can spur growth and more jobs, has gotten bogged down because of national security concerns. There are admittedly other forces also at work. The sluggish economy, along with joblessness, can also serve as a disincentive for immigration reform, along

with nativist backlash. But the main bogeyman has been national security, largely as a result of the trauma caused by the 9/11 attacks. Various states are competing with each other to pass laws that will punish suspected immigrants who are not in lawful status. And then there is the [combustible mix of Islamophobia and Xenophobia](#), which got unleashed nearly 10 years after September 11.

I was all set to move downtown prior to September 11, 2001 to spanking new offices, and when the attacks happened, I did not break my new contract and moved in the hope that the area would get rejuvenated, and the immigration system would too. It took a long time for downtown to break itself from the doom and gloom of 9/11, but it did. Today, it has become a vibrant and bustling neighborhood with attractive restaurants, and I see each day with some joy the new World Trade Center rising like a phoenix, along with many other residential towers along with the opening of swanky new restaurants and shops. After ten years, I fervently hope that the immigration system will also break itself free from the shackles of the September 11 attacks. I yearn for a new immigration system like the new WTC that will invigorate the economy and attract the best from all over the world like we did before September 11. I also hope for an immigration system that will recognize the dignity of the individual and restore due process.