



REFLECTING ON OUR IMMIGRATION POLICY AFTER OSAMA BIN LADEN'S DEATH

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One cannot help reflect on how Osama bin Laden so radically changed immigration policy for the worse. After the 9/11 attacks, masterminded by bin Laden, everything concerning immigration was viewed through the prism of national security. Even a garden variety bona fide marriage case between a US citizen and foreign national spouse will only be approved after every aspect of the spouse's information is extensively checked against humongous and error-prone national data bases.

While Bin Laden may have had his footprints on terrorist attacks even before 9/11, the paradigm shift occurred only after that day when planes spectacularly and tragically crashed into the twin towers, the Pentagon and in a field in Pennsylvania while on its way to a more sinister mission. Just a few days before, 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. After the Bin Laden inspired terrorist attacks of September 11, the Section 245(i) extension never saw the light of day. To come to think of it, we may have had Comprehensive Immigration Reform a long time ago if Bin Laden never inspired the attacks on 9/11 .

Instead, 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 the then 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.

The Bush Administration then 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.

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 under the Obama administration, disregarding its inherent power to favorably exercise discretion (which it had no compunctions in exercising unfavorably to arrest and deport immigrants after 9/11). Several efforts to achieve CIR 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. An entrepreneur finds it next to impossible to obtain a visa for the purpose of establishing a branch of his foreign business in the US. This branch can potentially create more employment for US workers, but national security concerns trump job creation when we most need it. Various states are competing with each other to pass laws that will punish suspected immigrants who are not in lawful status.

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. Surely, the danger is not over. New members of Al Qaida can rise and retaliate against the US. But there is no one with the same mythical status as Osama bin Laden, who was able to perpetuate it by evading capture or death. His death, if it makes the world more safe, should lessen the trauma in the days, months and years to come.

Can we hope for more sensible bi-partisan immigration reform, that will lead to economic growth and more prosperity as Michael Bloomberg suggested in the [Wall Street Journal on May 1, 2011](#)? Can we revert to our old values of not being fearful and embrace immigrants because of all the wonderful benefits they bring to the US? Can we restore due process because the erosion of the rights of immigrants ultimately result in the loss of rights for all? Can we overcome the fearmongering of rabidly nativist anti-immigration organizations through a more positive message that believes in the dignity of all persons including the immigrant?

There may be a sliver of a chance for all this to happen especially since Osama bin Laden is no more.