



REFLECTIONS OF TWO IMMIGRATION LAWYERS ON THE 20TH ANNIVERSARY OF THE SEPTEMBER 11 ATTACKS

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By Cyrus D. Mehta and Kaitlyn Box*

It is hard to believe that 20 years have gone by since planes hijacked by terrorists crashed into the Twin Towers in New York, the Pentagon in DC and into a field in Pennsylvania instead of Capitol Hill killing just under 3000 people. These cataclysmic events on September 11, 2001 forever changed the role of immigration lawyers. For the past 20 years, our mission has been to advocate that immigration is completely separate from terrorism. This was our mission on the 10th anniversary of the 9/11 when Cyrus Mehta was inspired to write a deeply personal [blog](#) and it remains our mission even on the 20th anniversary. Although Kaitlyn Box was too young on September 11, 2001 to be practicing law, it was this event that inspired her to join the ranks of immigration lawyers in 2021 to repeat the mantra that immigration is not a threat to America.

A week before 9/11, Presidents Vicente Fox of Mexico and Bush were [in serious negotiations on an immigration deal](#) that would have granted benefits to undocumented immigrants. But after the terrorist attacks, 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 has continued to break, and crash, but Congress has never been 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. Skilled workers are also trapped in never ending backlogs under the employment-based second and third preferences only because of the measly fixed supply of

visas and the per country limits. 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.

Although the tragic events of 9/11 are now twenty years in the past, the scars of racism and xenophobia that they left behind continue to bleed today. President Trump and his administration's four-year assault on immigration made devastatingly clear that some in the United States still view immigrants, particularly non-white immigrants and those from Muslim-majority countries, as a threat. Trump repeatedly equated immigrants, especially undocumented immigrants, to criminals, terrorists, and job stealers. These views were plainly reflected in the administration's policies as well. Trump's rationale for constructing a wall along the U.S. border with Mexico, among his earliest campaign promises, was to stop the flow of rapists and drug dealers into the United States from Mexico, despite abundant evidence that immigrants commit fewer crimes than native-born U.S. citizens. The various iterations of the travel ban, beginning with Executive Order 13769, "Protecting the Nation From Terrorist Attacks by Foreign Nationals" in 2017, blocked nationals from a number of primarily Muslim-majority countries from entering the United States under the guise of preventing terrorist attacks. A more watered down version of this policy motivated by a combustible mix of Islamophobia and xenophobia, which came to be known as the Muslim ban, was upheld by the Supreme Court in [Trump v Hawaii](#). After the Supreme Court upheld the Muslim ban, Trump got emboldened and used the immense power given under INA 212(f) to find other ways to restrict immigration and asylum. The administration's inhumane attitude towards immigrants was further illustrating by the policy of separating children from their parents at the border, as well as the Migrant Protection Protocols (MPP), which trapped asylum seekers in Mexico while their cases were adjudicated. Through a variety of Presidential Proclamations that limited green card applications and the issuance of employment based visas, the administration propagated the idea that even highly-skilled immigrants are a menace to the U.S. economy and push American employees out of the workforce.

Trump's xenophobia as president of the United States was made possible by the hysteria caused by the 9/11 attacks. Less than ten days after September 11, President Bush's Attorney General John Ashcroft tweaked the rules to make it

easier to detain immigrants. The expanded regulation authorized immigration enforcement agents 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 plus immigrants who were detained and deported in secret were not charged or convicted of terrorism. 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. No one was convicted of terrorism under the now discredited Special Registration program.

Just as race and religion were being used as proxies for individualized suspicion and guilt post September 11, Trump also used race and religion to brand immigrants as dangerous and thus justifying travel bans, enhanced enforcement and the stripping away of the power of Immigration Judges to control their courtrooms and dockets.

Though Trump has now been replaced, his malignant policies live on in the courts and continue to perpetuate harmful and untrue narratives about immigrants. While President Biden had rescinded MPP, a federal judge in Texas [ordered](#) the administration to reinstate the program, finding that the administration “failed to show a likelihood of success on the claim that the memorandum rescinding the Migrant Protection Protocols was not arbitrary and capricious”. Even if the Biden administration is ultimately able to overcome this order, asylum seekers will be left vulnerable in Mexican border cities while it crafts a stronger justification for rescission of the program. The U.S. District Court for the Southern District of Texas recently found Biden’s immigration enforcement [priorities](#) to be a violation of the Administrative Procedure Act, at least as applied to detention cases. Biden’s priorities would have focused removal efforts on only those noncitizens who were a national security risk, entered the United States on or after November 1, 2020, or posed a threat to public safety. In July, the same federal court [held](#) that the DACA program, too,

violated the APA and barred any new applications. It is the fear caused by 9/11 that precluded the full evacuation of Afghans after the messy withdrawal of the US twenty years after it invaded Afghanistan.

On the twentieth anniversary of the September 11th terrorist attacks, the United States finds itself weathering another crisis, that of the COVID-19 pandemic. Unfortunately, the pandemic has proved to be another reason for exclusionary immigration policies. In the early stages of the pandemic, the Trump administration enacted numerous COVID-related travel bans under the authority of INA 212(f), which have since been extended by the Biden administration. Another Covid related ban under Title 42 Public Health Law overrides asylum laws and restricts people fleeing persecution from applying for asylum. This was imposed by the Trump administration but continues to be used by the Biden administration.

Downtown Manhattan revived and became a vibrant business district and residential neighborhood in the years after the September 11 attacks. As the area completely reinvented itself epitomized by One World Trade Center, the tallest tower in the western hemisphere, the COVID-19 pandemic again caused havoc and people no longer come to the new office towers or shop and dine there. It is too soon to write the obituary of Downtown Manhattan just as it was after the September 11 attacks, and we are confident that it will again revive. Our offices continue to remain in Downtown Manhattan as we endeavor to help immigrants and advocate for more fair immigration laws and policies, whether it was in the aftermath of 9/11, during the Trump years or now while the Covid-19 pandemic still rages. The fate of immigrants have been intertwined with the tragic events of September 11 and other events since who have withstood attacks against them and have instead helped build and heal America. The people who died on 9/11 also represented the immigrant fabric of the country. We stand in solidarity with them, and continue to broadcast today on the 20th anniversary of 9/11 and for all times that immigrants are not a threat to America.

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