

# CRS Report for Congress

## Immigration Fraud: Policies, Investigations, and Issues



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# Immigration Fraud: Policies, Investigations, and Issues

## Summary

Immigration fraud is reportedly widespread, though reliable estimates of its pervasiveness are not available. Given that an estimated 12 million aliens are residing in the United States without legal authorization, it is reasonable to presume that many of these unauthorized aliens are committing document fraud. The extent to which unauthorized aliens enter with fraudulently obtained documents or acquire bogus documents after entry is not known.

Immigration fraud is generally grouped into two types — immigration-related “document fraud” and immigration “benefit fraud” (“benefit fraud” involves misrepresentation of a material fact to qualify for a specific immigration status or benefit). Some view immigration fraud as a continuum of events or overlapping crimes because people may commit document fraud en route to benefit fraud. The types of fraud investigations range in circumstances and scope. Many fraud investigations focus on facilitators, i.e., individuals who sell, distribute, or manufacture counterfeit or altered documents, and on organizations that broker large-scale illegal schemes such as sham marriage rings or bogus job offers. Investigations of immigration benefit applications are another major activity.

Fraud investigations declined overall from FY1992 through FY2003. The cuts in fraud investigations from FY1992 through FY2003 appear to have been generally across the board in terms of types of investigations pursued. CRS data analysis indicates that workyears spent investigating facilitators of counterfeit or altered documents, organizations that broker large-scale illegal schemes, and persons suspected of immigration benefit fraud had all decreased during that period. Successful prosecutions of fraud cases likewise declined from 494 convictions in FY1992 to 250 convictions in FY2003.

Most recently, however, the DHS Office of Immigration Statistics (OIS) reports that indictments for immigration fraud rose from 709 in FY2004 to 1,065 in FY2005 and that convictions rose from 533 in FY2004 to 1,135 in FY2005. OIS also reports that 75,532 aliens were removed for immigration fraud, making up 36% of all formal removals in FY2005.

Complementary to investigating fraud has been the effort to improve the security of immigration documents. Initially, the emphasis was on issuing documents that were tamper-resistant and difficult to counterfeit to impede document fraud and unauthorized employment. Since the terrorist attacks of September 11, 2001 the policy priorities have centered on document integrity and personal identification with a sharp focus on intercepting terrorist travel and other security risks.

The integrity of immigration documents and the capacity to curb immigration fraud are among the central themes that underlie the bigger issue of comprehensive immigration reform legislation. Topics such as adequacy of resources, coordination among agencies and the impact of technologies on personal privacy illustrate the complexity of this debate. This report will be updated as policies change or events warrant.

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# Immigration Fraud: Policies, Investigations, and Issues

## Introduction

### Issue Context

All persons seeking admission to the United States must demonstrate to a U.S. Department of Homeland Security (DHS) Customs and Border Protection (CBP) inspector that they are a foreign national with a valid visa or passport or that they are a U.S. citizen. The United States does not require its citizens to have legal documents that verify their citizenship and identity (i.e., national identification cards).<sup>1</sup> The Immigration and Nationality Act (INA) furthermore requires employers — when hiring citizens and foreign nationals alike — to verify employment eligibility and establish identity through specified documents presented by the employee.

Immigration fraud is reportedly widespread, though reliable estimates of its pervasiveness are not available. Many experts say that document fraud increased following the enactment of the Immigration Reform and Control Act of 1986, which first required employers to inspect the documents of prospective employees.<sup>2</sup> Large-scale black market enterprises of counterfeit immigration documents and “breeder” documents grew up to supply unauthorized alien workers with necessary papers.

Given that an estimated 12 million foreign nationals are residing in the United States without legal authorization, it is reasonable to presume that many of these unauthorized aliens are committing document fraud.<sup>3</sup> The extent to which unauthorized aliens enter with fraudulently obtained documents or acquire bogus documents after entry is not known. Among aliens coming temporarily to the United States, however, committing fraud to obtain a nonimmigrant visa has been an

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<sup>1</sup> Some assert that the United States has *de facto* identification cards in the form of social security cards and driver’s licenses or state identification cards; however, none of these documents establishes citizenship. The U.S. passport is one of the few documents that certifies that the individual is a U.S. citizen; indeed, for most U.S. citizens it is the only document they possess that verifies both their citizenship and identity. For a fuller discussion of national identification issues, see CRS Report RS21137, *National Identification Cards: Legal Issues*, by Alison M. Smith.

<sup>2</sup> For an explanation of employer responsibilities, see CRS Report RL33973, *Unauthorized Employment in the United States: Issues and Options*, by Andorra Bruno.

<sup>3</sup> CRS Report RL33874, *Unauthorized Aliens Residing in the United States: Estimates Since 1986*, by Ruth Ellen Wasem.

ongoing problem.<sup>4</sup> It is also possible that many of the people who broker in immigration documents are legal residents or citizens of the United States.

## Definition of Immigration Fraud<sup>5</sup>

Immigration fraud is generally grouped into two types — immigration-related document fraud and immigration benefit/qualification fraud.

- Immigration-related document fraud includes the counterfeiting, sale, and/or use of identity documents or “breeder documents” (i.e., documents used to confirm identity, such as birth certificates or Social Security cards),<sup>6</sup> as well as alien registration documents and stamps, employment authorizations, passports, visas, or any documents used to circumvent immigration laws.<sup>7</sup>
- Benefit/qualification fraud encompasses the willful misrepresentation of a material fact to qualify for a status or benefit under immigration law in the absence of lawful eligibility for that benefit.<sup>8</sup> Examples of benefit fraud include entering into a sham marriage in order to claim to be the spouse of a U.S. citizen; omitting a disqualifying criminal conviction from a petition to become an LPR; or falsely claiming to have been living in the United States continuously for the requisite time required for naturalization.

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<sup>4</sup> For a range of discussions, see U.S. House of Representatives, Committee on the Judiciary Subcommittee on Immigration and Claims, *Hearing on Visa Fraud and Immigration Benefits Application Fraud*, May 20, 1997; and Subcommittee on Immigration, Border Security, and Claims, *Hearing on John Allen Muhammad, Document Fraud, and the Western Hemisphere Passport Exception*, May 13, 2003.

<sup>5</sup> For legal analysis pertaining to immigration document fraud as well as further explanation of what constitutes document fraud, see CRS Report RL32657, *Immigration-Related Document Fraud: Overview of Civil, Criminal, and Immigration Consequences*, by Michael John Garcia (hereafter CRS Report RL32657, *Immigration-Related Document Fraud*).

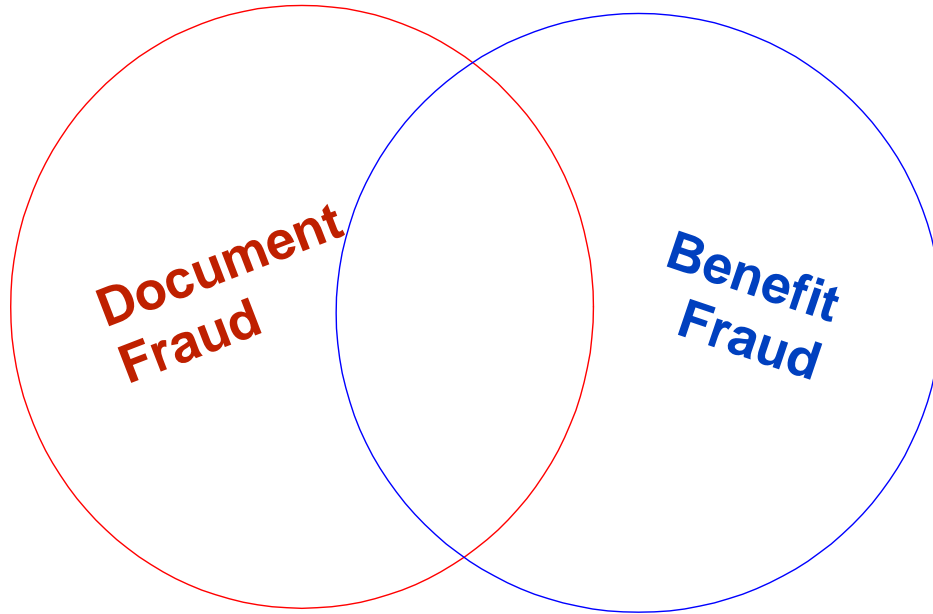
<sup>6</sup> For a sample of discussions on the impact of breeder documents on immigration fraud, see U.S. House of Representatives, Committee on the Judiciary Subcommittee on Immigration and Claims, *Hearing on Counterfeiting And Misuse Of the Social Security Card and State and Local Documents*, July 22, 1999; U.S. National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report*, Executive Summary, July 2004; U.S. General Accounting Office, Report GAO-03-920, *Social Security Numbers: Improved SSN Verification and Exchange of States' Driver Records Would Enhance Identity Verifications*, September 2003; *New York Law Journal*, “Immigration Reform: Balancing Workers and Enforcement,” by Stanley Mailman and Stephen Yale-Loehr, August 2005; and, Center for Immigration Studies, *America's Identity Crisis: Document Fraud is Pervasive and Pernicious*, by Marti Dinerstein, April 2002.

<sup>7</sup> §270.1 of 8 C.F.R.

<sup>8</sup> §274C of INA allows for civil penalties for persons who commit fraud to meet an INA requirement or acquire an immigration benefit. Additionally, a civil penalty under §274C is a separate ground for inadmissibility and deportation.

Some view immigration fraud as a continuum of events because people may commit document fraud en route to benefit/qualification fraud.<sup>9</sup> It is also presented as two overlapping concentric circles, as in **Figure 1**, because there is considerable overlap in the crimes.

**Figure 1. Overlapping Types of Immigration Fraud**



The INA addresses immigration fraud in several ways. First, the law makes “misrepresentation” (e.g., obtaining a visa by falsely representing a material fact or entering the United States by falsely claiming U.S. citizenship) a ground for inadmissibility.<sup>10</sup> Secondly, the INA has civil enforcement provisions, distinct from removal or inadmissibility proceedings, for individuals and entities proven to have engaged in immigration document fraud.<sup>11</sup> Immigration fraud for purposes other than admission or an immigration benefit may nonetheless trigger other violations of immigration law, such as crimes of moral turpitude.<sup>12</sup>

In addition to the INA, §1546 of Title 18 of the U.S. Criminal Code makes it a criminal offense for a person to knowingly produce, use, or facilitate the production

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<sup>9</sup> U.S. House of Representatives, Committee on the Judiciary Subcommittee on Immigration and Claims, *Hearing on Visa Fraud and Immigration Benefits Application Fraud*, May 20, 1997.

<sup>10</sup> §212(c) of INA.

<sup>11</sup> §274C of INA.

<sup>12</sup> CRS Report RL32657, *Immigration-Related Document Fraud*.

or use of fraudulent immigration documents such as visas, border crossing cards, and other documents covered by immigration-related statute or regulation.<sup>13</sup> The U.S. Criminal Code furthermore criminalizes immigration fraud pertaining to the knowing falsification of naturalization, citizenship, or alien registry.<sup>14</sup> More generally, the U.S. Criminal Code criminalizes the knowing commission of fraud in connection with a wide range of identification documents.<sup>15</sup> Fraud-based activity may also be penalized under criminal statutes that generally bar fraudulent activity against the United States.<sup>16</sup>

## Investigating Immigration Fraud

The types of fraud investigations range in circumstances and scope. Many investigations focus on facilitators (i.e., individuals who sell, distribute, or manufacture counterfeit or altered documents), and on organized crime syndicates that broker large-scale illegal schemes such as sham marriage rings or bogus job offers. Investigations of immigration benefit applications are another major activity.

### Historical Trends

For many years, the Immigration and Naturalization Service (INS) collected data measuring its workload in a system, known as the Performance Analysis System (PAS). The PAS compiled data on agent work hours for each of the major INS enforcement activities.<sup>17</sup> In this report, the hours are aggregated into workyears.<sup>18</sup>

As immigration enforcement strategies changed and resources shifted over time, it has become evident that investigations of immigration fraud have declined as a priority (**Figure 2**).<sup>19</sup> In FY1986, for example, the productive workyears devoted to fraud investigation reportedly equaled the time of 256 special agents, and 11,316 fraud cases were completed. Ten years later (FY1995), there were the equivalent of 181 special agent workyears, and 6,455 cases were completed.<sup>20</sup> When the INS issued its “Interior Enforcement Strategy” in 1999, minimizing immigration benefit

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<sup>13</sup> §1546 of 18 U.S.C.

<sup>14</sup> §1015 of 18 U.S.C.

<sup>15</sup> §1028 of 18 U.S.C.

<sup>16</sup> §1001 -§1002 of 18 USC; CRS Report RL32657, *Immigration-Related Document Fraud*.

<sup>17</sup> An analysis of resources spent on the full range of immigration enforcement activities is available in CRS Report RL33351, *Immigration Enforcement Within the United States*, coordinated by Alison Siskin. (Hereafter, CRS Report RL33351, *Immigration Enforcement Within the United States*.)

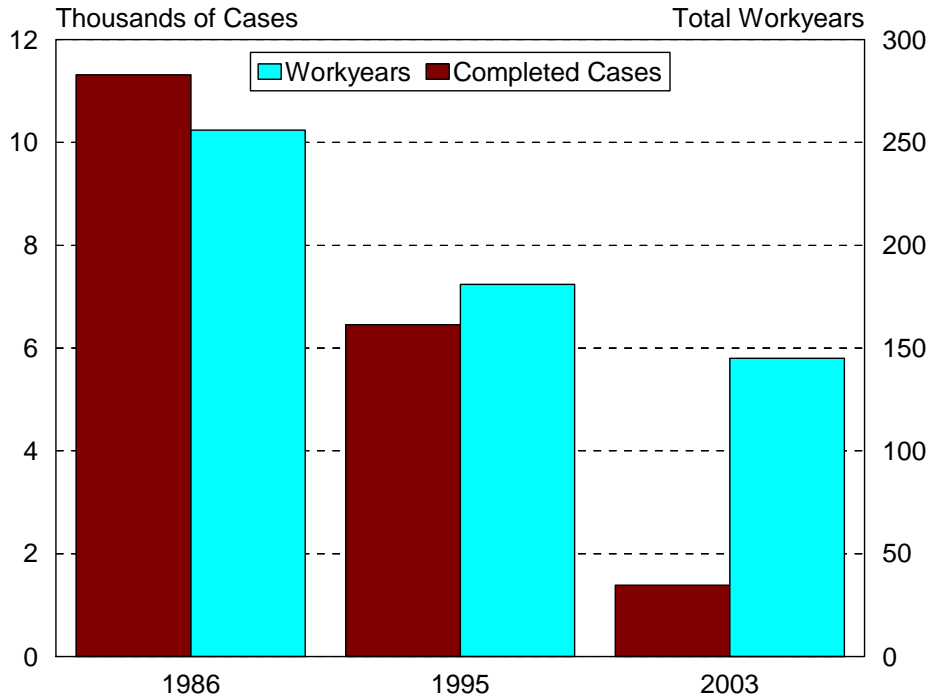
<sup>18</sup> For this analysis, 2,080 hours equal one workyear.

<sup>19</sup> CRS Report RL33351, *Immigration Enforcement Within the United States*.

<sup>20</sup> U.S. House of Representatives, Committee on the Judiciary Subcommittee on Immigration and Claims, *Hearing on Visa Fraud and Immigration Benefits Application Fraud*, testimony of Paul Virtue, May 20, 1997.

fraud and other document abuse was listed as the fourth among the five top priorities.<sup>21</sup>

**Figure 2. Comparison of Special Agent Workyears and Completed Cases for Selected Years**



**Source:** CRS analysis of DHS Office of Immigration Statistics PAS data.

Evaluations of the government’s efforts to combat immigration benefit fraud and document abuse have generally been critical.<sup>22</sup> In 2003, the U.S. Government Accountability Office (GAO) noted that “INS did not believe it had sufficient staff

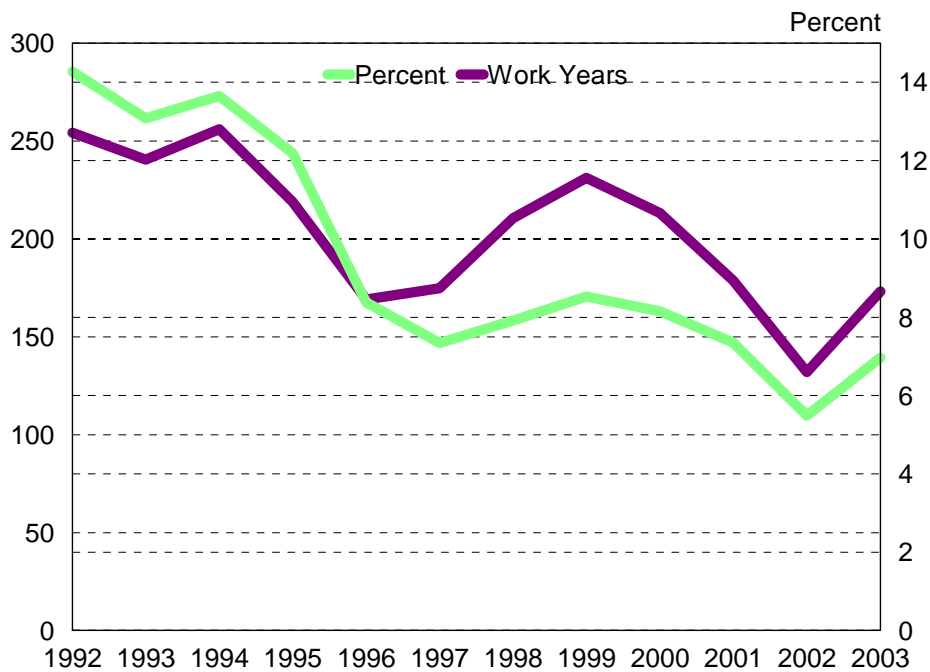
<sup>21</sup> The five priorities (in rank order) were as follows: identify and remove incarcerated criminal aliens from the United States and minimize recidivism; deter, dismantle and diminish smuggling or trafficking of aliens; respond to community reports and complaints about illegal immigration and build partnerships to solve local problems; minimize immigration benefit fraud and other document abuse; and, block and remove employers’ access to undocumented workers. U.S. Department of Justice Immigration and Naturalization Service, *Fact Sheet on Interior Enforcement*, February 2, 1999.

<sup>22</sup> U.S. Department of Justice Office of the Inspector General, Inspections Division, *Immigration and Naturalization Service Document Fraud Records Corrections*, Report Number I-96-09 September 1996; U.S. Senate Committee on the Judiciary Subcommittee on Technology, Terrorism, and Government Information, Statement of Glenn A. Fine, October 12, 2001; U.S. Government Accountability Office, GAO-02-830T, *Identity Fraud: Prevalence and Links to Alien Illegal Activities*, June 25, 2002; U.S. Government Accountability Office, GAO-03-660T, *Homeland Security: Challenges to Implementing the Immigration Interior Enforcement Strategy*, April 10, 2003; U.S. Government Accountability Office, GAO-05-66, *Immigration Enforcement: DHS Has Incorporated Immigration Enforcement Objectives and Is Addressing Future Planning Requirements*, October 8, 2004.

to reach its program goals.” GAO also reported that benefit fraud investigations were hampered by a lack of integrated information systems. “The operations units at the four INS service centers that investigate benefit fraud operate different information systems that did not interface with each other or with the units that investigate benefit fraud at INS district offices.... Thus, INS was not in the best position to review numerous applications and detect patterns, trends, and potential schemes for benefit fraud.”<sup>23</sup>

As **Figure 3** further illustrates, fraud investigations declined overall from FY1992 through FY2003 in terms of actual workyears. FY2003 was the last year these data were available.<sup>24</sup> Although there was an upturn, most likely due to the 1999 Interior Enforcement Strategy previously mentioned, the trends over the decade were downward. As a percent of interior enforcement workyears, fraud investigations dropped from 14.1% in FY1992 to 7.0% in FY2003. Actual workyears fell from 264 to 175 over the same period.

**Figure 3. Fraud Investigation Trends as Actual Workyears and as Percent of Interior Enforcement Hours**



Source: CRS analysis of DHS Office of Immigration Statistics PAS data.

The cuts in fraud investigations from FY1992 through FY2003 appear to have been generally across the board in terms of types of investigations pursued. CRS data analysis indicates that workyears spent investigating facilitators of counterfeit or altered documents, organizations that broker large-scale illegal schemes and

<sup>23</sup> U.S. Government Accountability Office, GAO-03-660T, *Homeland Security: Challenges to Implementing the Immigration Interior Enforcement Strategy*, April 10, 2003.

<sup>24</sup> The last year the Performance Analysis System (PAS) data were reported was FY2003.

persons suspected of immigration benefit fraud have all decreased over this time period.<sup>25</sup>

Successful prosecutions of fraud cases likewise declined from 494 convictions in FY1992 to 250 convictions in FY2003. These data tracked the performance of the former INS, which the Homeland Security Act of 2002 (P.L. 107-296) abolished.

## Recent Activities

As it established the Department of Homeland Security (DHS) in 2003, the Administration stated that Immigration and Customs Enforcement (ICE) would comprise the interior enforcement functions of the former INS, including the detention and removal program, the intelligence program, and the investigations program, along with the former U.S. Customs Service interior enforcement activities.<sup>26</sup> While it was clear that ICE assumed responsibility for investigating immigration-related document fraud, it was less apparent whether ICE or another newly-created DHS bureau — the U.S. Citizenship and Immigration Services (USCIS) — had lead responsibility for investigating immigration benefit/qualification fraud.

In 2006, ICE issued a press release that reported a marked increase in investigations and convictions in FY2004 and FY2005. “Criminal indictments in these cases have increased from 767 to 875, while arrests have risen from 1,300 to 1,391 and convictions have increased from 559 to 992.”<sup>27</sup> Subsequently, the DHS Office of Immigration Statistics published different data, reporting that indictments rose from 709 in FY2004 to 1,065 in FY2005 and that convictions rose from 533 in FY2004 to 1,135 in FY2005 (**Figure 4**).<sup>28</sup>

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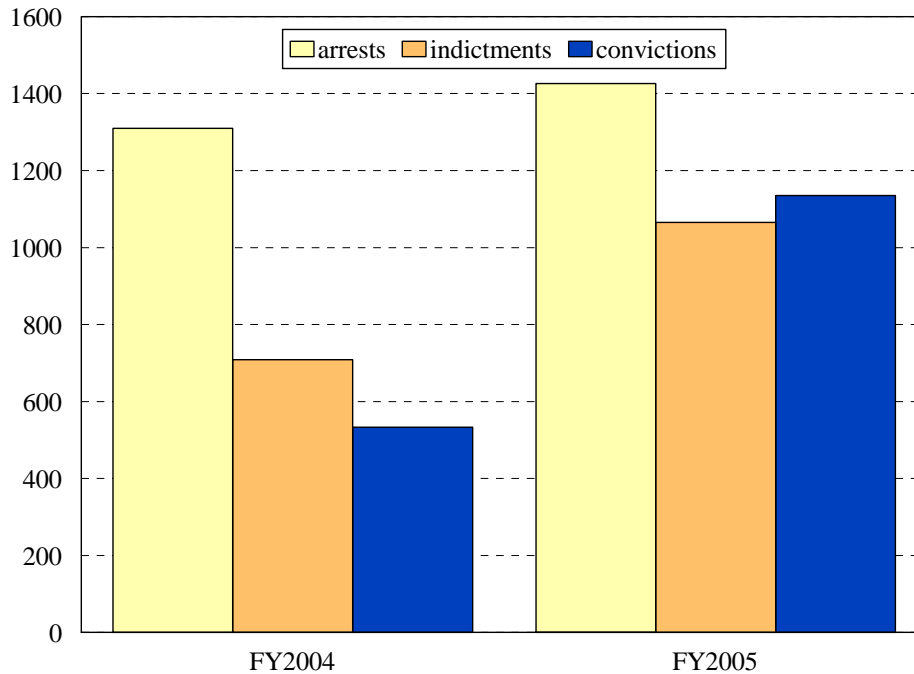
<sup>25</sup> See CRS Report RL33351, *Immigration Enforcement Within the United States*.

<sup>26</sup> CRS Report RL33319, *Toward More Effective Immigration Policies: Selected Organizational Issues*, by Ruth Ellen Wasem.

<sup>27</sup> DHS Immigration and Customs Enforcement, *News Release*, “Joint task forces created in 10 cities to combat document and benefit fraud,” April 5, 2006.

<sup>28</sup> U.S. Department of Homeland Security, Office of Immigration Statistics, *FY2005 Statistical Yearbook of Immigration*, 2006.

**Figure 4. ICE Immigration Identity and Document Fraud Cases, FY2004-FY2005**



**Source:** CRS analysis of ICE data from Tables 37 and 39 of the *Statistical Yearbook of Immigration*, DHS Office of Immigration Statistics, 2004 and 2005.

Because the FY2004 and FY2005 ICE document fraud data are derived from the Treasury Enforcement Control System (TECS) that was developed and used by the former U.S. Customs Service, it is not known how comparable these measures are to those based upon the FY1992-FY2003 PAS data. It is also not clear whether these document fraud indictments are unduplicated counts; that is, whether one case, for example, may be counted as immigration fraud as well as alien smuggling and human trafficking if the case was initiated as part of a human trafficking investigation and all three elements of the law are included in the arrest charges.

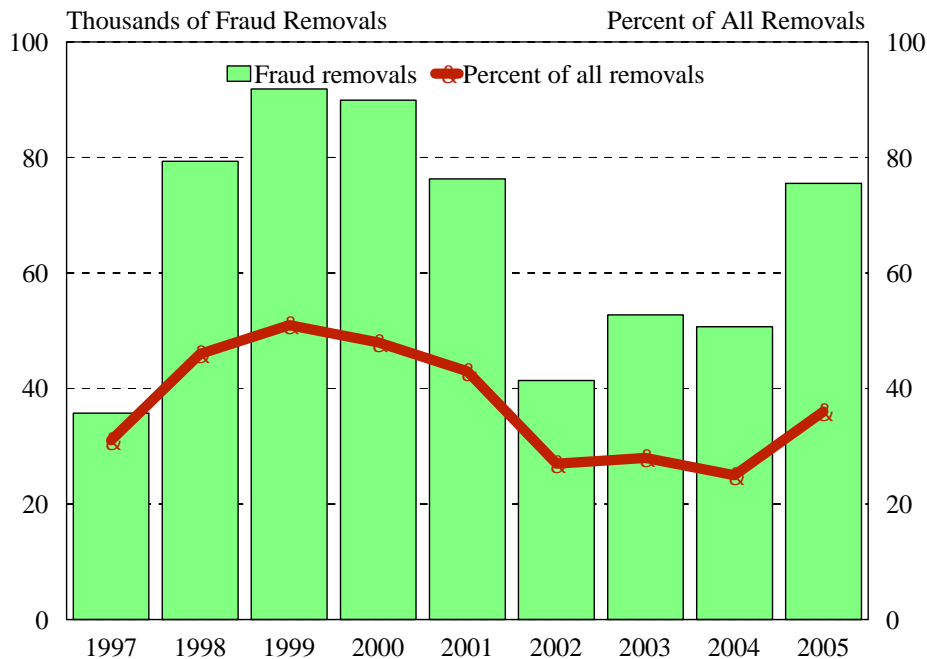
In terms of cases prosecuted, the 2005 Syracuse University analysis of Department of Justice data reveal that immigration document fraud formed the basis for about 5% of the 37,765 immigration cases that DHS referred for prosecution in FY2004.<sup>29</sup> This reported 5% referral rate is similar to the percentages depicted above in **Figures 2** and **3** for the percentage of interior enforcement workyears allocated to fraud investigations (7.0%) and the percentage of successful immigration fraud prosecutions (4.1%).

<sup>29</sup> Transactional Records Access Clearinghouse (TRAC), *Report on DHS Criminal Immigration Enforcement*, Syracuse University, August 24, 2005; available on-line at [<http://trac.syr.edu/tracins/latest/131/>], accessed April 30, 2007.

## Removals for Immigration Fraud

As noted earlier, immigration fraud is a basis for inadmissibility and removal. Foreign nationals who are suspected of presenting fraudulent documents during inspection by a CBP officer at a port of entry are immediately put into removal proceedings, known as expedited removal.<sup>30</sup> The INA defines an alien who lacks proper documentation or has committed fraud or willful misrepresentation of facts to gain admission into the United States as inadmissible, and the alien may be removed from the United States without any further hearings or review, unless the alien indicates either an intention to apply for asylum<sup>31</sup> or a fear of persecution.

**Figure 5. Formal Removal of Aliens Who Attempted Entry without Proper Documents or through Fraud or Misrepresentation**



**Source:** CRS analysis of data published in the DHS Office of Immigration Statistics, FY2005 Yearbook of Immigration Statistics, (2006).

As **Figure 5** depicts, alien removals for attempted entry without proper documents or through fraud or misrepresentation has ebbed and flowed over the past decade. FY1997 was the first year the expedited removal policy was in place and

<sup>30</sup> Aliens lacking proper documents who have been present in the United States for less than two years may become subject to expedited removal. Currently the policy is in place at the border and near the southern border in specific areas. CRS Report RL33109, *Immigration Policy on Expedited Removal of Aliens*, by Alison Siskin and Ruth Ellen Wasem.

<sup>31</sup> The INA provides immigration protections to aliens who have a well-founded fear of persecution, most notably in the form of asylum status. CRS Report RL32621, *U.S. Immigration Policy on Asylum Seekers*, by Ruth Ellen Wasem.

included in the formal removal data. In FY1999, removals due to immigration fraud peaked at 91,891 removals and comprised 51% of all alien removals. Removals for immigration fraud fell to 41,392 (27%) in FY2002, a level almost as low as 35,738 (31%) in FY1997, which was the first year after expedited removal was enacted. In FY2005 (the most recent year data are available), OIS reported 75,532 aliens were removed for immigration fraud, making up 36% of all formal removals.<sup>32</sup>

## Improving Document Security

Complementary to investigating fraud has been the effort to improve the security of immigration documents. Initially, the emphasis was on issuing documents that were tamper-resistant and difficult to counterfeit to impede document fraud and unauthorized employment. Since the terrorist attacks of September 11, 2001 the policy priorities have centered on document integrity and personal identification with a sharp focus on intercepting terrorist travel and other security risks.

For well over a decade, there has been a consensus that immigration documents also should include biometric identifiers, but determining what type of biometric identifier has posed a variety of technical issues.<sup>33</sup> Congress imposed a statutory requirement for the biometric border crossing card known as laser visas in 1996 and added requirements for biometric visas in 2001 and 2002.<sup>34</sup> The report of the National Commission on Terrorist Attacks Upon the United States (also known as the 9/11 Commission) made several recommendations that underscore the urgency of implementing provisions pertaining to biometric visas and the entry-exit system.<sup>35</sup>

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<sup>32</sup> For a more complete discussion of alien removal, see CRS Report RL33351, *Immigration Enforcement Within the United States*.

<sup>33</sup> For a discussion of these issues see CRS Report RS21916, *Biometric Identifiers and Border Security: 9/11 Commission Recommendations and Related Issues*, by Daniel Morgan and William Krouse, February 7, 2005; and U.S. General Accounting Office, *Technology Assessment: Using Biometrics for Border Security*, GAO-03-174, January 2002.

<sup>34</sup> The scientific and technical issues surrounding biometric identifiers are beyond the scope of this report. However, §403 of the USA PATRIOT ACT (P.L. 107-56) requires the development of a technology standard that can be used to verify the identity of persons seeking a visa to enter the United States. It further requires the technology standard that is developed to be a “cross-agency, cross-platform electronic system” that is fully integrated with law enforcement and intelligence information relevant to confirming the identity of persons applying for a visa to enter the U.S. or seeking entry into the country. Similar provisions include §202 of the Enhanced Border Security and Visa Reform Act (P.L. 107-173). For the latest discussion of National Institute of Standards and Technology (NIST) role in biometric identification, go to [<http://www.itl.nist.gov/div893/biometrics/index.html>], accessed March 5, 2007.

<sup>35</sup> In 1996, Congress required the development of an automated entry and exit data system that would track the arrival and departure of every alien. This system evolved into what is now known as the U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT). For a complete discussion of the entry-exit system (US-VISIT) and its biometric requirements and features, see CRS Report RL32234, *U.S. Visitor and Immigrant Status Indicator*

(continued...)

## Laser Visas

The “laser visa,” which includes a photograph and both index fingers as biometric identifiers, is issued to citizens of Mexico to gain short-term entry (up to six months) for business or tourism into the United States. The Mexican laser visa has traditionally been called a border crossing card (BCC). It may be used for multiple entries and is good for at least 10 years. Mexican citizens can get a laser visa from the Department of State’s Consular Affairs if they are otherwise admissible as B-1 (business) or B-2 (tourism) nonimmigrants, and the laser visa issued is a combined BCC/B-1/B-2 nonimmigrant visa. Current rules limit the BCC holder to visits of up to 30 days within the border zone of 25 miles along the border in Texas, New Mexico, and California and visits up to 30 days within a border zone of 75 miles in Arizona.<sup>36</sup>

## Biometric Visas

For the past several years, the Department of State (DOS) Bureau of Consular Affairs has been issuing machine-readable visas. Consular officers use the Consular Consolidated Database (CCD) to electronically store data on visa applicants, with some records dating back to the mid-1990s.<sup>37</sup> Since February 2001, the CCD has stored the photographs of all visa applicants in electronic form, and more recently the CCD has begun storing fingerprints of the right and left index fingers. Since October 2004, all visas issued by the United States use biometric identifiers (e.g., finger scans) in addition to the photograph that has been collected for some time.<sup>38</sup>

## Legal Residency “Green Cards”

The permanent resident card, commonly called a “green card” because it had been printed on green stock, is a plastic document similar to a credit card. Since April 1998, the card has incorporated security features, including digital images, holograms, micro-printing, and an optical memory stripe. It has digital photograph and fingerprint images which are an integral part of the card and, therefore, more tamper-resistant. It features a hologram depicting the Statue of Liberty, the letters “USA” in large print, an outline of the United States and a government seal.

On the reverse side of the permanent resident card, there is an optical memory stripe — similar to CD-ROM disk technology — with an engraved version of the

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<sup>35</sup> (...continued)

*Technology Program (US-VISIT)*, by Lisa M. Seghetti and Stephen Viña.

<sup>36</sup> 8 CFR §235.1(f). In certain instances specified in the regulation, the BCC entry is limited to 72 hours.

<sup>37</sup> According to the Department of State Office of Legislative Affairs, consular officers have stored photographs of nonimmigrant visa applicants in an electronic database for over ten years. These data are now in CCD.

<sup>38</sup> §414 of the USA Patriot Act (PL. 107-56) and §303 of the Enhanced Border Security and Visa Reform Act (P.L. 107-173) require that visas and other travel documents contain a biometric identifier and are tamper-resistant.

information contained on the front of the card, including the cardholder's photograph, name, signature, date of birth and alien registration number. This laser-etched information cannot be erased or altered. In addition, this same information, along with the cardholder's fingerprint, are digitally encoded in the stripe and can only be read by a specially designed scanner. According to the USCIS, approximately 14.6 million biometric "green cards" have been issued FY1998-FY2006.

## **Employment Eligibility Documents**

Aliens who are temporarily in the United States and eligible to work file a request for an employment authorization document (EAD). Other aliens who are authorized to work freely in the United States without restrictions also apply to USCIS for EAD. Examples of aliens who need EADs are refugees, asylum applicants and asylees with cases pending, aliens who are covered under Temporary Protected Status (TPS), aliens for whom an immigration judge or the Attorney General has granted relief from removal, and specified nonimmigrants.<sup>39</sup> The EAD has incorporated security features, including digital images, holograms, and micro-printing, since 1998. More than 8.3 million biometric EADs have been issued through FY2006, according to the USCIS.<sup>40</sup>

## **Activities Aimed at Immigration Fraud**

Almost all of the federal agencies that have a role in administering immigration law are also tasked with stymieing immigration fraud. The Department of States' Bureau of Consular Affairs as well as the USCIS have a critical responsibility to check the backgrounds and confirm the identities of persons seeking visas, immigration services or adjudication of benefits. Inspectors with DHS' Customs and Border Protection (CBP) examine and verify the documents of U.S. citizens and foreign nationals who seek admission to the United States at ports of entry, and border patrol agents play a critical enforcement role along the border and between ports of entry. The lead agency for investigating immigration fraud is Immigration and Customs Enforcement (ICE).<sup>41</sup> While detecting immigration fraud is an important duty across these federal agencies, the activities described below are expressly aimed at immigration fraud.

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<sup>39</sup> LPRs and nonimmigrants with restricted permission to work, such as an H-1B temporary specialty worker who may only work for an H-1B approved employer or L-1 intracompany transfers who may only work for the multinational corporation that employed them abroad, do not need EADs because work authorization is directly linked to their immigration status.

<sup>40</sup> For more complete analyses of alien employment laws, policies, and issues, see CRS Report RL33973, *Unauthorized Employment in the United States: Issues and Options*, by Andorra Bruno; and CRS Report RS22180, *Unauthorized Employment of Aliens: Basics of Employer Sanctions*, by Alison Smith.

<sup>41</sup> CRS Report RL33319, *Toward More Effective Immigration Policies: Selected Organizational Issues*, by Ruth Ellen Wasem.

## **ICE Immigration Investigations**

The ICE immigration enforcement activities include investigating aliens who violate the INA and other related laws. These activities primarily focus on the range of immigration-related probes that are national security priorities. Additionally, the main categories of non-terrorism immigration-related crimes they investigate are suspected criminal acts — notably suspected fraudulent activities (i.e., possessing or manufacturing fraudulent immigration documents) and suspected smuggling and trafficking of aliens. ICE set up the Identity and Benefit Fraud Unit when DHS was formed in 2003. ICE investigators are law enforcement agents.<sup>42</sup>

## **ICE Forensic Document Laboratory**

The Forensic Document Laboratory (FDL) was placed in ICE after the INS was abolished. The FDL provides a variety of intelligence support and document analysis to all CBP, ICE and USCIS programs, as well as to other U.S. government agencies involved in the enforcement of immigration laws. The FDL provides forensic examination of documents for handwriting, stamp and seal impressions, ink analysis and other attributes as well as analyzing the biometric data. It also provides evidentiary support and expert testimony in court cases.

## **USCIS Fraud Detection and Admissibility**

Adjudication of immigration and naturalization petitions is not a routine matter of processing paperwork. USCIS must confirm not only that the aliens are eligible for the particular immigration status they are seeking, but also whether they should be rejected because of other requirements of the law. USCIS established the Office of Fraud Detection and National Security in 2003 to work with the appropriate law enforcement entities to handle national security and criminal “hits” on aliens and to identify systemic fraud in the application process. In January 2005, immigration officers from Fraud Detection and National Security were deployed in the USCIS field offices.

USCIS refers 100% of suspected benefit fraud cases to ICE in the form of “requests for investigations” and suspends the adjudication of the benefit while the case is with ICE. USCIS allows ICE up to 60 days to decide if a criminal investigation is warranted. If ICE does not pursue a criminal investigation, USCIS initiates an administrative review process to determine if the benefit should be denied and the alien placed in removal proceedings.

## **DOS Visa and Passport Security**

In response to the 9/11 Commission recommendation that the United States combine terrorist travel intelligence, operations, and law enforcement in a strategy to intercept terrorists, find terrorist travel facilitators, and constrain terrorist mobility, the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458)

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<sup>42</sup> CRS Report RL33351, *Immigration Enforcement Within the United States*.

established a Visa and Passport Security Program. The role of this Department of State program is to target and disrupt individuals and organizations at home and in foreign countries that are involved in the production, distribution, or use of fraudulent visas, passports, and other documents used to gain entry to the United States.<sup>43</sup>

## Selected Issues

In many ways, immigration fraud is not an isolated issue; rather, it is inextricably linked to various issues that have led most observers to conclude that the U.S. immigration system is broken. As noted above, many of the estimated 12 million unauthorized aliens in the United States likely have some form of immigration document that is either expired or counterfeit. The integrity of the documents issued for immigration purposes and the capacity to curb immigration fraud are among the central themes that underlie the bigger issue of comprehensive immigration reform legislation. The selected issues discussed below illustrate the complexity of this debate.

### Inter-agency Coordination and Performance

There are documented problems between USCIS and ICE in the area of fraud and national security investigations. Although many presumed that ICE would perform the fraud detection and investigation duties formerly handled by the INS, a complete transition did not occur. In 2004, GAO reported, “The difficulty between USCIS and ICE investigations regarding benefit fraud is not new.... As a result, some USCIS field officials told us that ICE would not pursue single cases of benefit fraud. ICE field officials who spoke on this issue cited a lack of investigative resources as to why they could not respond in the manner USCIS wanted.”<sup>44</sup> USCIS established the Office of Fraud Detection and National Security to address the immigration fraud activities that the ICE Identity and Benefit Fraud Unit was not performing. A March 2006 GAO report continued to find coordination and communication problems between USCIS and ICE, but noted that the two agencies in February 2006 signed a memorandum of agreement to establish information sharing mechanisms.<sup>45</sup>

USCIS reportedly has problems of its own. The DHS Inspector General found problems in the background checks of applicants for which USCIS is now responsible. Among other findings, the IG report concluded that USCIS’ security checks are overly reliant on the integrity of names and documents that applicants submit and that “USCIS has not developed a measurable, risk-based plan to define

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<sup>43</sup> CRS Report RL31512, *Visa Issuances: Policy, Issues, and Legislation*, by Ruth Ellen Wasem.

<sup>44</sup> U.S. Government Accountability Office, *Management Challenges Remain in Transforming Immigration Programs*, GAO-05-81, October 2004.

<sup>45</sup> U.S. Government Accountability Office, *Immigration Benefits: Additional Controls and a Sanctions Strategy Could Enhance DHS’s Ability to Control Benefit Fraud*, GAO-06-259, March 2006, p. 33.

how USCIS will improve the scope of security checks.” It further stated that “USCIS’ management controls are not comprehensive enough to provide assurance that background checks are correctly completed.”<sup>46</sup> Most recently, GAO expanded on the concerns the DHS Inspector General expressed in its report on USCIS.<sup>47</sup>

The extent to which USCIS should have an enforcement arm to investigate benefit fraud and other adjudications-related violations has become a policy issue. Although Title IV of the Homeland Security Act of 2002 (P.L. 107-296) tasked ICE with immigration enforcement responsibilities, some maintain ICE’s efforts are not sufficient. Pursuing single cases of benefit fraud is not a priority, yet it is possible that some of these single cases may be linked together in larger fraud schemes that are overlooked without a coordinated “big picture” approach. This linkage has been characterized as critically important in the context of discerning terrorist travel.<sup>48</sup>

## Priority of Fraud Investigations

The observable decline in investigator work years allocated to document and benefit fraud has led some to question the federal government’s commitment to the enforcement of immigration laws. Among those who would reform immigration law and policy, the question arises as to whether current law is adequate but the dedication of resources is not. This debate grows in importance when weighing the role bogus documents and benefit fraud play in facilitating other violations of law.<sup>49</sup>

Some argue that it is critical to investigate the black market in counterfeit documents and benefit fraud because it is especially important to international terrorists, organized crime syndicates, and alien smuggling rings — all of whom rely on fraudulent documents to minimize detection. They point out that document and benefit fraud are criminal violations of immigration law and criminal law, and — as a result — merit rigorous enforcement and prosecution.<sup>50</sup>

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<sup>46</sup> U.S. Department of Homeland Security, Office of Inspector General, *A Review of U.S. Citizenship and Immigration Services’ Alien Security Checks*, OIG 06-06, November 2005, p. 2.

<sup>47</sup> U.S. Government Accountability Office, *Immigration Benefits: Additional Controls and a Sanctions Strategy Could Enhance DHS’s Ability to Control Benefit Fraud*, GAO-06-259, March 2006, p. 5.

<sup>48</sup> U.S. National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report*, Executive Summary, July 2004; and, *Monograph on 9/11 and Terrorist Travel*, August, 2004.

<sup>49</sup> For a fuller analysis of this debate on the priorities of interior enforcement, see CRS Report RL33351, *Immigration Enforcement Within the United States*.

<sup>50</sup> U.S. House of Representatives, Committee on the Judiciary Subcommittee on Immigration and Claims, *Hearing on Visa Fraud and Immigration Benefits Application Fraud*, May 20, 1997; Subcommittee on Immigration, Border Security, and Claims, *Hearing on John Allen Muhammad, Document Fraud, and the Western Hemisphere Passport Exception*, May 13, 2003; and Subcommittee on Immigration, Border Security, and Claims, *Interior Immigration Enforcement Resources*, March 10, 2005.

Others argue that limited enforcement resources should not be spent going after unauthorized aliens who present false documents so they can work. They assert that the preponderance of counterfeit documents is used to obtain employment in the United States. These critics agree that ICE should prioritize the investigation of international terrorists, organized crime syndicates, and alien smuggling rings rather than shifting more resources to investigating what they consider to be the lesser threat of immigration fraud, presumably that is solely to obtain employment.<sup>51</sup>

## New Technologies and Privacy Concerns

Many observers look to emerging technologies to enhance document integrity and stymie immigration fraud. The basic concept is that a card with personal identifiers embedded in it would be less vulnerable to counterfeiting, identity theft, and immigration fraud. A current issue is the integration of the competing biometric — and in some instances radio frequency identification (RFI) — technologies and databases.<sup>52</sup>

**Competing Technologies.** The difficulties thus far in determining what biometric identifiers are most appropriate are exacerbated by the competing technologies used by the existing databases and systems. The various key agencies (e.g., CBP, USCIS, and DOS) have already heavily invested in technologies that are not necessarily compatible with each other. This issue most clearly manifests in the scarcity of card readers at ports of entry that are able to read the biometric information in “green cards,” laser visas, and biometric visas.

**Privacy Concerns.** A 2007 report of the National Institute of Standards and Technology (NIST) explains that privacy considerations exist when the technology uses, collects, stores, or discloses personal information.<sup>53</sup> According to NIST, for the purposes of current privacy regulation, the most important distinction about the information being addressed is whether personal information is personally identifiable information.<sup>54</sup> The GAO noted several privacy issues in its 2005 report: “notifying individuals of the existence or use of the technology; tracking an individual’s movements; profiling an individual’s habits, tastes or predilections; and allowing for secondary uses of information.”“Without effective security controls,

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<sup>51</sup> For an example, see Julia Preston, “Illegal Worker, Troubled Citizen and Stolen Name,” *New York Times*, March 22, 2007.

<sup>52</sup> U.S. Congress, Senate Committee on the Judiciary Subcommittee on Technology, Terrorism and Government Information, *Border Technology: Keeping Terrorists Out of the United States — 2003*, hearing, March 12, 2003.

<sup>53</sup> U.S. Department of Commerce, National Institute of Standards and Technology, *Guidelines for Securing Radio Frequency Identification (RFID) Systems*, Special Publication 800-98, April 2007.

<sup>54</sup> *Ibid.* “Personally identifiable information (PII) is information that can be used to uniquely identify, locate, or contact an individual. Examples of data elements that typically are considered PII include, but are not limited to, an individual’s full name, social security number, passport number, financial account or credit card numbers, and biometric data such as fingerprints.”

data on the tag can be read by any compliant reader;” GAO further stated, “data transmitted through the air can be intercepted and read by unauthorized devices; and data stored in the databases can be accessed by unauthorized users.”<sup>55</sup>

**Radio Frequency Identification.** Approved applicants in the “trusted traveler” program with Canada (known as NEXUS) are issued a card, for example, that includes photo-identification and the contactless integrated circuit device commonly known as RFI technology. Although RFI technology has been used for many years in pass card security systems, proposals to incorporate it in immigration documents are quite controversial.<sup>56</sup> While cards with RFI technology may also include biometric identifiers, they are typically used for cargo or transportation (e.g., *E-Z Pass* commuter traffic lanes are one common application of RFI technology.)

Proponents point out that — unlike magnetic strips or bar codes — not all RFIs require manual scanning. It is reportedly possible to read hundreds of RFIs in a few seconds. Proponents further maintain RFIs may be read under visually and environmentally challenging conditions in which barcodes or other optical technologies are ineffective. Security and privacy concerns, some proponents assert, are being exaggerated.<sup>57</sup>

In addition to the concerns that NIST and GAO identified, opponents of RFI technology warn that powerful RFID readers created by criminals or foreign agents who are violating FCC regulations could monitor the movement and activities of people carrying cards with these technologies embedded in them. Other have expressed concerns that police or government agencies may use such technologies to track individuals in violation of their civil liberties and right to privacy.

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<sup>55</sup> U.S. Government Accountability Office, *Information Security: Radio Frequency Identification Technology in the Federal Government*, GAO-05-551, May, 2005, p. 18-19.

<sup>56</sup> In October 2006, the Secretary of State published a proposed rule to issue a card format for the passport that would be used for international land and sea travel between the United States, Canada, Mexico, the Caribbean, and Bermuda. As proposed, this passport card would show the bearer’s origin, identity, and nationality and would be subject to existing passport statutes. The passport card would use a full facial image printed on the card as the biometric identifier. As proposed, each passport card would utilize radio frequency identification (RFI) technology to store and transmit a unique reference number. This proposal intends to implement §7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458), known as the Western Hemisphere Travel Initiative.

<sup>57</sup> James A. Lewis, *Much Smoke, No Fire: The RFID Debate*, Center for Strategic and International Studies, November 2006.