

DeFranco: Terrorism doesn't just happen
by Marisa DeFranco
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The Boston Marathon bombing on April 15, 2013, was a terrorist act that was preventable, and our government utterly failed us on that awful day. The Department of Homeland Security (DHS) in particular failed to enforce specific current immigration laws and policies that would have stopped the bombers.

DHS also failed to interact/communicate with other government agencies that could have provided information that would have stopped the bombers. While some in the media have correctly criticized the FBI's ignoring of intel from Russia about the bombing brothers, there has been no media examination of the failures of Homeland Security. We must look long and hard at these failures because we must be sure that our elected representatives and the agencies they oversee are seeking correctives that will protect us and are not blithely, and with disrespect to the victims and the survivors, avoiding such examination and trying to pass it off to the American people as "terrorism happens."

Furthermore, before we as a country dive into comprehensive immigration reform, we, the people, must demand that the parts of the immigration law that are good be retained and strictly enforced. One part of the current immigration system that makes perfect sense is the rule that once the U.S. grants refuge to a person in the form of asylum, that person is not permitted to travel back to the country that he claimed persecuted him. The Immigration and Nationality Act clearly spells out that the attorney general may terminate asylum status if a person returns to his home country. Furthermore, the U.S. Citizenship and Immigration Services (USCIS) fact sheet, "Traveling outside the United States as an Asylum Applicant, an Asylee, or a Lawful Permanent Resident Who Obtained Such Status Based on Asylum" also definitively spells it out. Our government (and especially DHS), should pay attention to and enforce existing clearly defined laws and policies.

Tamerlan Tsarnaev traveled back to his home country of Dagestan and stayed there for six months even though he and his family sought refuge here in our country from alleged persecution there. A person who is afraid of death or torture in his homeland does not return to his homeland; if he does, the system is set up to raise a red flag. When he re-entered the U.S. on July 17, 2012, and presented himself to Customs and Border Protection officials at JFK as he would have had to do, the computer system should have had a record of his travel back to Dagestan. As soon as the customs officer saw that he traveled back to his country of alleged persecution, Tsarnaev should have been pulled immediately from the line and put into at least secondary inspection and probably deferred inspection. CBP could have detained him, contacted Immigration and Customs Enforcement (ICE), and then ICE could have issued a "notice to appear," which is the document used to put someone into deportation proceedings. Our laws would have even given him the chance to explain why he should not be deported. Was this information in the CBP system as it should have been? Why didn't CBP question him? Why hasn't the media requested these records? Why haven't journalists asked these questions of CBP?

Now, enforcement of these laws on asylum would have been enough — Tsarnaev would have been detained at the very least and possibly deported. But, even more disturbing is that there is another set of immigration laws regarding green cards that was also completely ignored.

When the U.S. grants permanent residence (the "green card") to someone, that person has certain obligations that must be fulfilled in order to maintain his/her status. The U.S. government does not just give out green cards and say, "Do whatever you want now." A green card is a privilege, and if the holder wants to keep it, he/she better follow our laws and rules.

One rule required to keep a green card is that you cannot travel outside the U.S. for lengthy periods of time without prior permission from the U.S. government. If a green card holder is outside of the country for more than 180 days, the holder must establish his intent to remain in the U.S. permanently. CBP, again, could have easily flagged Tamerlan for his lengthy stay outside the U.S. Indeed, I have seen businesspeople and entrepreneurs, with sterling records, questioned for being outside the U.S. for one or two months, not even close to the 180 days. Yet, Tsarnaev goes beyond the 180 days outside the country and is untouched. Some in the media have written about CBP's failure to flag Tsarnaev because he was in the FBI database, and indeed, that is a terrifying failure. Yet, it is more terrifying that the seemingly mundane day-to-day rules of DHS that serve the purpose of keeping our borders secure were just flat-out ignored. If someone is a green card holder and applied to be a permanent resident in our country, DHS has the absolute right to question when they return after leaving the U.S. for long periods of time. The fact that there is no media focus on this failure at a time when the media puts on talking head after talking head about immigration reform is very concerning.

A third very good rule is that you can't go out and commit crimes and keep your green card. The failure to use this

rule was, again, a missed opportunity to protect the people of Boston. Tsarnaev was charged with assault and battery in July 2009; why wasn't he referred to ICE? Even though charges were dismissed, it does not always matter in immigration law — a person may be deportable based on the facts of the arrest. We have enough of our own homegrown batterers in the U.S.; we don't need to give shelter to those from other countries.

The lesson from all of these failures is that we must demand that our government agencies work for us and that they follow their policies and procedures. If the person is a security risk or has a criminal violation or has violated the immigration rules or has stayed outside of the country for too long, flag them and investigate them. And by all means, if they have done all four, deport them. Most of all do not insult the American people and especially us in Massachusetts and tell us that nothing could have been done to prevent this day of terror.

Marisa DeFranco is an immigration attorney with 17 years of experience and a practice on the North Shore. In 2011, she was honored as a Top Woman of Law by Massachusetts Lawyers Weekly. She has also received the National Legal Aid & Defenders Association's Beacon of Justice Award for her pro bono service in 2010. She is a Democratic candidate for Congress in the 6th District.

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