

New Dragnet

How Tools of War On Terror Ensnare Wanted Citizens

**Border, Immigration Agencies
Tap Into FBI Database;
Questions About Privacy**

Mr. Samori's Speeding Ticket

By **BARRY NEWMAN**
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Driving in from Mexico last March, Jaime Correa was stopped by federal inspectors at a border post near San Diego. They fed the 21-year-old U.S. citizen's name into a computer with a fast link to the federal government's huge database of criminal files. Readout: Wanted in Los Angeles for attempted murder.

Another citizen, Issah Samori, walked into a federal office in Chicago the previous year. He is 60, a cabbie, and was there to help his wife get a green card. An immigration clerk fed his name into the same computer. Readout: Wanted in Indiana for speeding.

The border guards handed Mr. Correa over to the San Diego police, who locked him up. The Chicago police came to collect Mr. Samori. He spent the night on a concrete slab in a precinct cell.

Detentions of American citizens by immigration authorities for offenses large and small are becoming routine -- and have begun to stir a debate over the appropriate use of the latest technologies in the war on terror. Since the attacks of Sept. 11, 2001, immigration computers have been hooked up to the expanding database of criminal records and terrorist watch lists maintained by the Federal Bureau of Investigation. The computers are now in use at all airports, most border crossings, and even in domestic immigration offices, where clerks decide on applications for permanent residence and citizenship.

The screenings are mainly meant to trap foreigners, and especially foreign terrorists, but they have also proved to be a tool in the hunt for American citizens wanted by the police. In 2003, U.S. Customs and Border Protection says that it alone caught 4,555 Americans this way. In 2004, the number rose to 6,189.

Some law enforcers applaud that tally. Citizens with nothing to hide, they argue, shouldn't care if their names are put through a criminal search, and criminals should have no "expectation of privacy." The arrests have brought in some serious offenders, like Mr. Correa, a Los Angeles gang member, who was accused of a drive-by shooting. He was convicted this month of assault with a firearm, and sentenced to eight years in prison. There have been others like him: citizens wanted for armed robbery, murder and sex crimes.



Issah M. Samori

But some legal scholars and defenders of privacy worry that easy access to criminal databases is giving rise to indiscriminate detentions of citizens for minor offenses, and to a "mission creep" that is blurring the line between immigration control and crime control. Routine encounters like Mr. Samori's, some say, shouldn't give civil servants a "free shot" to fish for records unrelated to the administrative purpose at hand.

It isn't as if those the computer snags are being "pulled over for a broken tail-light," says former Atlanta policeman Mark Harrold, who teaches law at the University of Mississippi. Rather, as he sees it, they are being caught as they engage in civil pursuits "like going in for a marriage license."

Born in Ghana, Mr. Samori has lived for 35 years in a brick house on Chicago's South Side. When he and his new Ghanaian wife, Hilda, sat down in an immigration clerk's cubicle in mid-2004, Mr. Samori knew that as a citizen he had a right to sponsor her for permanent residence. The two came ready to show that their marriage was genuine. But the clerk just stared at his computer.

"He said we can't do the interview," Mr. Samori recalls. "I asked why. He said, because we have an arrest warrant on you. I told him, whatever it is, I'm ready to face it."

The clerk reached for his phone. Two officers appeared. Hilda Samori cried as her husband was led out. He spent three nights in jail on his way to Indiana court, where his reckless-driving charge, a misdemeanor, was eventually set aside. Mrs. Samori had to wait a year and a half for her green-card application to be reopened.

Immigration service officials say reporting wanted citizens has become standard procedure. "If you have unfinished business with the police, it's best to take care of that before you come in asking for a service or a benefit," says Christopher Bentley, a spokesman for U.S. Citizenship and Immigration Services, the border-protection agency's domestic sister. Apart from confirming a citizen sponsor's identity, he says, clerks search for warrants to make sure that no one on federal property poses "a threat to public safety or national security."


On the borders, the same principles have long applied. Like the immigration service, the border agency now belongs to the Department of Homeland Security. Border inspectors, who wear uniforms and carry guns, are the first line of defense against terrorists, drug smugglers and illegal immigrants trying to enter the U.S. When they face suspicious people -- mostly with dubious documents -- they used to hold them for long security checks. Today, border inspectors need only swipe passports through readers for warrants and watch lists to pop up. Millions of citizens returning from abroad now have their names scanned this way.

Behind the new dragnet is the FBI's National Crime Information Center, a repository of 40 million records covering everything from terrorists to stolen boats. On a single day in 2005 -- May 28 -- the center handled a record 5.3 million queries. Its biggest user now, with 1.5 million daily searches, is Customs and Border Protection.

"There was authority before 9/11 to stop people, but the software makes it easier than ever," says Jeffrey Lustick, a lawyer in Bellingham, Wash., a town near the Canadian border where these arrests are commonplace. "What was theoretical has become real."

The same FBI database is also available now to clerks who carry out the duties of the old Immigration and Naturalization Service. Each year, the clerks, who wear street clothes and sit behind a desk, evaluate over a million applications for

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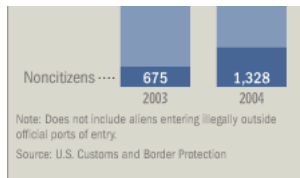
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citizenship and permanent residence, most sponsored by green-card holders and citizens. While clerks at other federal agencies rarely have reason to see FBI files, the immigration-service's clerks do.

Because lawbreaking can disqualify applicants, all must submit to fingerprinting and a full criminal-history check. The job used to be done by hand with the FBI's help. Now fingerprints have gone digital, and immigration clerks can hunt for applicants by name on the FBI warrants list. Citizen sponsors aren't fingerprinted, but "in the course of doing our business," says Mr. Bentley, their names are checked against the warrants list as well.

"When an individual comes into our office," he adds, "if there's an outstanding warrant, we will call local law enforcement and let them know the person's here."

The policy hasn't been announced, but immigration lawyers around the country say they have slowly been made aware of it over the past two or three years -- often by surprise.

Paul Zoltan, a Dallas immigration lawyer, says his foreign client's citizen wife was arrested in 2003 at her marriage interview and charged with shoplifting. "My trust in your office has been deeply shaken," the lawyer wrote the immigration service, complaining that the arrest had nothing to do with the immigration service's job. He got no reply, and the service has no comment. A citizen husband at an interview in Chicago was held for hours on a Georgia cocaine-possession warrant, says his wife's lawyer, Rebecca Reyes. The warrant was "years old," she says. Georgia wasn't interested; the husband was released.

Jim Austin watched as his client's citizen wife was arrested for trespassing in Kansas City, Mo. Rebecca White took her foreign client's two children into a bathroom in Seattle so they wouldn't see their citizen father taken away; the charge was failure to return household rental equipment. Also in Seattle, a citizen sponsoring his wife's application was jailed overnight on a warrant for someone else.

"They apologized," says Diana Moller, a lawyer who represented the wife, explaining why the man preferred not to give an interview. "He wants to leave it at that."

Arrests of this kind have become common enough that many lawyers now quiz citizens about warrants before sending them into immigration interviews. The service doesn't count the citizens it arrests; if any dangerous criminals have been among them, it can't say.

Customs and Border Protection can. When it nets citizens on their way into the country who are wanted for serious crimes, it puts out press releases. Two standouts from the Mexican border: a man from North Carolina wanted for multiple sex crimes against children in Arizona and Massachusetts; and a young couple on the run from Colorado, both wanted for committing a double murder. And one from the Canadian border: an escaped robber from Seattle driving a stolen car with a shotgun in the trunk and an Uzi in his luggage.

"This technology is a fast, effective weapon in the war on terror," one announcement quotes the agency's chief, Robert C. Bonner, as saying, "but also gives our agents a means to apprehend criminals and fugitives of every kind."

At airports, the border agency's screening for fugitives has become still more efficient with the passage of a new antiterror law requiring flights from overseas to transmit passenger lists before landing. Now, inspectors can organize welcoming parties in advance.

"They're surprised, let me tell you," says a former inspector at Los Angeles Airport who asked not to be named. Often, his warrants were for Las Vegas gambling debts. "Couples come back from Cancún and the husband has to explain. The wife says, 'Why didn't you tell me?' I've seen tears. I've seen breakdowns."

In 2003, the Transportation Security Administration, also part of Homeland Security, floated the idea of screening all passengers for warrants, citizens included, before they board domestic flights. The TSA's goal was to "ensure that passengers do not sit next to known terrorists and wanted murderers." After an outcry across the board -- from the American Civil Liberties Union to the American Conservative Union -- it backed off, and now is rolling out a system that limits such searches to terrorist-watch lists.

At the immigration service, the authority to run checks on citizens dates back to at least 2002, the service says in a statement. That's when the FBI granted the old INS access to "certain" files "for the purpose of adjudicating immigration-benefit applications." The new service says it derives limited access to files on citizens from that deal with the FBI.

The arrangement comes as news to legal experts and law-enforcement officials, including Judson Barce, the prosecutor in Benton County, Ind. "A civil authority ran a criminal check?" he says. "How do they do that?"

It was thanks to the search run by a Chicago immigration clerk that Mr. Barce was able to bring Issah Samori to justice.

As soon as the clerk said the word "warrant," Mr. Samori guessed what it was about. Six months earlier, on a Sunday drive to visit a relative, he was heading south in his Camry on a state highway when a Benton County police car pulled him over.

The patrolman said Mr. Samori had hit 86 miles per hour in a 55 mph zone, fast enough to be reckless in Benton. Mr. Samori says he called the county to get a court date, but no appointment letter ever reached his house. That was the last he thought about the ticket until he and his wife went in for their marriage interview.

After the immigration clerk found the warrant Benton County issued because Mr. Samori had missed his court date, he spent two nights in Chicago-area jails. Then Benton's sheriff arrived to drive him, in handcuffs, 70 miles to Indiana, where Mr. Samori spent his third night in a cell.

In court the next day, he didn't contest the charge. "I just wanted to get it over," he says. In return for a \$400 bond, he was set free. He returned a month later with proof that he had taken a defensive-driving course. The reckless-driving charge was dismissed. Less the sheriff's expenses for driving down from Chicago, he got a refund of \$203.98.

At the end of July, after an 18-month pause, the Samoris sat down once again at a clerk's desk in Chicago's federal building to complete their green-card interview. They brought a pile of papers and an album of wedding pictures to prove their marriage is real. They are still waiting for the immigration service to make its decision.

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