S. HRG. 108–536

SECURING OUR BORDERS UNDER A TEMPORARY GUEST WORKER PROPOSAL

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CITIZENSHIP

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

APRIL 1, 2004

Serial No. J–108–63

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

94–810 PDF WASHINGTON : 2004

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

ORRIN G. HATCH, Utah, *Chairman*

CHARLES E. GRASSLEY, Iowa
ARLEN SPECTER, Pennsylvania
JON KYL, Arizona
MIKE DEWINE, Ohio
JEFF SESSIONS, Alabama
LINDSEY O. GRAHAM, South Carolina
LARRY E. CRAIG, Idaho
SAXBY CHAMBLISS, Georgia
JOHN CORNYN, Texas

PATRICK J. LEAHY, Vermont
EDWARD M. KENNEDY, Massachusetts
JOSEPH R. BIDEN, JR., Delaware
HERBERT KOHL, Wisconsin
DIANNE FEINSTEIN, California
RUSSELL D. FEINGOLD, Wisconsin
CHARLES E. SCHUMER, New York
RICHARD J. DURBIN, Illinois
JOHN EDWARDS, North Carolina

BRUCE ARTIM, *Chief Counsel and Staff Director*
BRUCE A. COHEN, *Democratic Chief Counsel and Staff Director*

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CITIZENSHIP

SAXBY CHAMBLISS, Georgia, *Chairman*

CHARLES E. GRASSLEY, Iowa
JON KYL, Arizona
MIKE DEWINE, Ohio
JEFF SESSIONS, Alabama
LARRY E. CRAIG, Idaho
JOHN CORNYN, Texas

EDWARD M. KENNEDY, Massachusetts
PATRICK J. LEAHY, Vermont
DIANNE FEINSTEIN, California
CHARLES E. SCHUMER, New York
RICHARD J. DURBIN, Illinois
JOHN EDWARDS, North Carolina

JOE JACQUOT, *Majority Chief Counsel*
JAMES FLUG, *Democratic Chief Counsel*

CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

	Page
Chambliss, Hon. Saxby, a U.S. Senator from the State of Georgia	1
Cornyn, Hon. John, a U.S. Senator from the State of Texas	3
Feinstein, Hon. Dianne, a U.S. Senator from the State of California	2
Kennedy, Hon. Edward M., a U.S. Senator from the State of Massachusetts	4
prepared statement	53
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont, prepared statement	57

WITNESSES

Bonner, Robert C., Commissioner, U.S. Customs and Border Protection, Department of Homeland Security, Washington, D.C.	5
Bucella, Donna A., Director, Terrorist Screening Center, Federal Bureau of Investigation, Department of Justice, Washington, D.C.	9
Griswold, Daniel, Associate Director for Trade Policy Studies, Cato Institute, Washington, D.C.	33
Stock, Margaret D., Assistant Professor of Law, U.S. Military Academy, West Point, New York on Behalf of the American Immigration Lawyers Association	34
Verdery, C. Stewart, Jr., Assistant Secretary for Border and Transportation Security Policy and Planning, Department of Homeland Security, Washington, D.C.	6

SUBMISSIONS FOR THE RECORD

Bonner, Robert C., Commissioner, U.S. Customs and Border Protection, Department of Homeland Security, Washington, D.C., prepared statement	43
Bucella, Donna A., Director, Terrorist Screening Center, Federal Bureau of Investigation, Department of Justice, Washington, D.C., prepared statement	48
Griswold, Daniel, Associate Director for Trade Policy Studies, Cato Institute, Washington, D.C., prepared statement	59
Mexican American Legal Defense and Educational Fund, Vibiana Andrade, Acting President, Washington, D.C., letter	62
Stock, Margaret D., Assistant Professor of Law, U.S. Military Academy, West Point, New York on Behalf of the American Immigration Lawyers Association, prepared statement and attachment	65
Verdery, C. Stewart, Jr., Assistant Secretary for Border and Transportation Security Policy and Planning, Department of Homeland Security, Washington, D.C., prepared statement	96
Wenski, Thomas G., Coadjutor Bishop of Orlando, Chairman, U.S. Conference of Catholic Bishops, Orlando, Florida, prepared statement	106

SECURING OUR BORDERS UNDER A TEMPORARY GUEST WORKER PROPOSAL

THURSDAY, APRIL 1, 2004

UNITED STATES SENATE,
SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CITIZENSHIP, COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:36 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Saxby Chambliss, Chairman of the Subcommittee, presiding.

Present: Senators Chambliss, Sessions, Cornyn, Kennedy, Feinstein and Durbin.

OPENING STATEMENT OF HON. SAXBY CHAMBLISS, A U.S. SENATOR FROM THE STATE OF GEORGIA

Chairman CHAMBLISS. This hearing will come to order. Senator Kennedy is on his way. We will let him make an opening statement when he gets here.

To everybody, let me say welcome. This is the second in our series of guest worker hearings to lay the groundwork for reform. President Bush began this process by announcing his temporary guest worker principles on January 7 of this year. In the President's comments, he said the first priority is that America must control its borders, which includes improving information-sharing; identifying terrorists, criminals and immigration violators; and working with the Canadian and Mexican governments to increase border security. This is what we are here today to discuss.

Since 9/11, the administration has taken great strides to strengthen our homeland security. The President has created the Terrorist Screening Center to improve information-sharing. Over 1,000 new Border Patrol agents have been added to enhance our border security. The entry-exit system, US VISIT, is up and running and now collecting information on aliens traveling to the United States on a visa.

Even with our best efforts, illegal immigration is a huge problem. Of the 8 to 10 million, or more, illegal aliens in the United States, it is estimated that 60 percent entered the United States without inspection, which is a criminal offense. Such a large number of illegal aliens created a financial drain due to non-reimbursed medical and educational services, burdens on our judicial system, and allows criminal acts to go unchecked.

Since a temporary guest worker proposal will increase the flow of people into and out of the United States on a visa, we must be confident in our border security. News articles have reported that

Al-Qaeda is expanding operations in Latin America and the false document trade is increasing there.

To stop terrorists, I have advocated for a single, consolidated watchlist that can be accessed by the various agencies in order to connect the dots. I encourage the administration's efforts for better intelligence-sharing, but we are not there yet.

Under a guest worker system, stopping criminals at the border will remain a mighty challenge. The Department of Justice Inspector General recently issued a report calling on the Border Patrol and the FBI to improve their information-sharing efforts in order to access criminal records of people caught illegally at the border. This demonstrates how we must have the necessary policies and procedures in place to get the right information out of the right people.

If a guest worker system is to provide a legal way for workers to enter the United States, illegal entry must be deterred. We know the security concerns and adverse economic impact that illegal aliens cause. We have also heard too many tragic stories of human trafficking and desert crossing. The US VISIT entry-exit system is part of the answer, but any legal system to come and work in the United States must, in return, help to strengthen our border security efforts and effectuate disincentives to illegal entry.

As Congress begins the legislative process toward reform, I believe national security, as well as U.S. economic interests, should shape our policies. This starts with controlling our borders.

I appreciate our witnesses being here today to cover a fairly broad range of critical issues. On this first panel, we have Commissioner Robert Bonner, of U.S. Customs and Border Protection—Mr. Bonner, we are glad to have you back with us—Director Donna Bucella, of the Terrorist Screening Center, and Assistant Secretary Stewart Verdery, of the Border and Transportation Security Directorate at the Department of Homeland Security. We look forward to your testimony.

At this time, I will call on my colleague, Senator Feinstein, for any opening statement she might have.

STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. Thank you very much, Mr. Chairman, and I must say I agree with your opening statement. I thank you for making it. I have served on this Subcommittee now for 12 years, even since I have been on the Judiciary Committee, and I agree with the concept that security must be of paramount concern.

There are five different variations of guest worker programs before this Committee. I believe we should go slowly. I do not believe our borders are in the shape they should be, and I say that from the perspective of somebody who also serves on the Intelligence Committee.

I want to just put into the record of this Subcommittee that total non-immigrant admissions to the United States, according to the Department of Homeland Security, in 2002 were 27.9 million people. Those are non-immigrant admissions to the United States. Of that number, 655,949 were admitted as temporary workers and training; in H–1Bs that year, for specialty occupations, 370,490; for

H–2A, for agricultural workers, 15,628; H–2B, for non-ag workers, 86,987; O–1 visas for workers with extraordinary ability, 25,008; P–1 for internationally-recognized athletes or entertainers, 41,453; for TN visas for professional workers under NAFTA, 73,699; and for L–1 visas for intra-company transferees, 313,699.

Again, 27.9 million people come in and out in the non-immigrant portions of our program, and this doesn't account for the thousands of spouses and children who join these guest workers.

So I guess the point I want to make is that we already have a huge guest worker program going on in this Nation in a host of visa categories. I have real concerns about because 40 to 50 percent of the newcomers in any program come to my State, California. It is a huge problem in terms of being able to have the infrastructure that enables you to cope with the new population. I think it is 15 to 20 percent of our State prison population is illegal immigrants, at a cost of $682 million. So this is a huge item, and my view very strongly is let's go slow right now. Security should be our main concern.

Thank you, Mr. Chairman.

Chairman CHAMBLISS. Thank you, Senator.

Senator Cornyn.

STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CORNYN. Thank you, Mr. Chairman, and thank you for having this hearing, another hearing, on what I consider to be one of the most important subjects that Congress could possibly deal with in certainly a post-9/11 environment. But as Senator Feinstein has pointed out, we have had serious, longstanding problems with our immigration system and the status quo is simply not acceptable.

I think if there is one thing that we can all agree upon, it is that our current system is broken. In addition to the problems that Senator Feinstein mentioned, we have between 8 and 10 million people living in this country illegally now, about 6 million of them part of our workforce. We don't know for sure who they are, we don't know for sure what they are doing, and that is simply unacceptable in a post-9/11 world and inconsistent with our demands for homeland security.

I share with my colleagues and my constituents concerns about our current failure to enforce our immigration laws. I have said many times that I think the failure to enforce the law breeds disrespect for the law generally. We are a country founded on the rule of law, and the status quo in the area of immigration obviously cannot continue.

I am convinced that a temporary worker program will help us enforce our immigration laws by separating those who are in the country work from those who are coming here to try to harm us. As a former State attorney general charged with the responsibility of enforcing Texas law, I know that law enforcement is about setting priorities and making the best use of limited resources. In my view, a temporary worker program is a tool that would allow immigration authorities to focus their limited resources on those who

are here to harm us—the smugglers, the drug dealers and the terrorists.

I am confident we can, if we put our minds to it and if we work long and hard enough—and it will be hard work—devise a temporary worker program that includes tough anti-fraud measures so we are able to confirm that temporary workers are who they say they are. It is crucially important that we prevent and deter fraud in any new temporary worker program that we devise and I am committed to doing that.

Additionally, I think US VISIT will be an extremely important tool to help authorities monitor entry and exit of temporary workers so they can return to their home country when their period of work expires.

Mr. Chairman, while I understand that we are principally concerned with enforcement of our laws at this hearing, I think we always need to keep in mind that we are bound by international treaties with, for example, Mexico and Canada, from which this country, I believe, benefits enormously in terms of trade and the stimulus to our economy.

At the same time we deal with border security, we need to keep in mind that we need to not impair the free flow of legal commerce across our borders. So I hope that we will focus not only on security, but also on the proper balance between security and our economy.

With that, thank you very much.

Chairman CHAMBLISS. Thank you, Senator Cornyn.

I now turn to the ranking member, who has certainly maintained a very cooperative spirit in this process, and we have had a good relationship on this issue.

Senator Kennedy.

STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY. Thank you very much, Mr. Chairman. The hour has moved along. I will put my statement in the record.

[The prepared statement of Senator Kennedy appears as a submission for the record.]

Senator KENNEDY. I want to welcome this panel. I am particularly interested in how we are implementing our border security legislation that we passed some time ago with strong bipartisan support. There were certainly provisions in that legislation that we thought were very important in terms of ensuring that those agencies that should have information would get that information, so that we are going to be able to make sure that we give focus and attention to the problem of terrorists rather than just the question of immigrants.

So I will look forward to questioning our witnesses. I thank them all very much and I thank you, Mr. Chairman, for having this hearing.

Chairman CHAMBLISS. Thank you.

We will start with you, Mr. Bonner. I will tell all of you we have your written statements, but we look forward to you summarizing those statements. We thank you again for being here.

Mr. Bonner.

STATEMENT OF HON. ROBERT C. BONNER, COMMISSIONER, U.S. CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, D.C.

Mr. BONNER. Thank you, Mr. Chairman, Senator Kennedy, Senator Cornyn and Senator Feinstein. I am pleased to have this opportunity to testify today about our efforts to secure the borders of the United States and how the temporary worker program that has been proposed by the President earlier this year, I believe, will contribute to that effort.

Mr. Chairman, this is actually the first time I have had the honor to appear before this Subcommittee. I have been honored by the full Judiciary Committee of being confirmed three times to various offices, but this is the first time I have had a chance to appear before this Committee as the Commissioner of U.S. Customs and Border Protection, and I look forward to working closely with you and this Committee.

Let me just begin my testimony by just a very brief statement about U.S. Customs and Border Protection. This is a new agency that was created as part of the homeland security reorganization and it was just over 1 year ago, on March 1, 2003, that for the first time in the history of our country our Nation established a single agency responsible for managing and securing our borders and all of our ports of entry into the United States.

I think this was a very important part of the Department of Homeland Security reorganization. This new agency, Customs and Border Protection, brings together all of the border inspectors from the legacy United States Customs Service, the former INS, the agriculture inspectors at our borders, as well as the entire U.S. Border Patrol into one new agency, one single agency for our borders that is squarely focused upon the priority mission of the Department of Homeland Security, and that is nothing less than preventing terrorists and terrorist weapons from entering our country.

I believe that our current immigration system is broken and I believe that the President's proposal, which I believe is a bold and courageous proposal by the President, if enacted, will allow us to gain greater control over our borders. This will allow the Department of Homeland Security, and more particularly Customs and Border Protection, to be much more effective in carrying out its mission of preventing terrorists, terrorist weapons and other criminals and contraband from entering the United States and harming the American people.

Some simple data points illustrate, I believe, why this is true. Last year, the Border Patrol, which is now part of for the last year, 13 months, Customs and Border Protection, made 931,310 apprehensions of aliens illegally entering or attempting to enter the United States between our ports of entry.

The vast majority of these apprehensions took place on our southwest border with Mexico, and the vast majority of the individuals arrested presented no terrorist or criminal threat to this country. Most were economic migrants that were coming here to work.

Over the past decade or more, the U.S. Government has responded to this phenomenon by significantly strengthening the U.S. Border Patrol. Indeed, I can tell this Subcommittee that since

September 11 of 2001, the Border Patrol has increased its staffing by almost 1,500 Border Patrol agents.

In the years since the Immigration Reform and Control Act of 1986, and particularly since the mid-1990's, the Border Patrol has literally tripled its staffing. We have also significantly increased our technological resources, such as sensors, cameras and aircraft, as well as strengthened our infrastructure, such as better fencing, lighting, and so forth, along some significant segments of the border, including down near the San Diego and southern California border with Mexico.

But I will tell you that the number of apprehensions, 931,000, should give us all pause. With all of the effort of the last decade, and even with the very real success that we have had in better controlling major segments of our border, including the southwest border, the Border Patrol is still dealing with a literal flood of people on a daily basis, again most of whom are attempting to enter this country in order to work. I am concerned, and I think we all should be concerned that terrorists or other criminals will seek to enter the United States essentially by hiding in this flood.

I believe we also need to be concerned about how lucrative now the alien smuggling business is. Most of the migrants illegally entering our country across the southwest border employ alien smuggling organizations. Those alien smuggling organizations are primarily used by aliens seeking to illegally enter to work in the United States, but they clearly could also be used by terrorists seeking to enter our country to do us harm.

If enacted into law, the President's temporary worker proposal would, I believe, go along way toward driving a stake through the heart of this black-market smuggling enterprise and reduce, and I believe potentially substantially reduce the flood of illegal migrants that the Border Patrol must sift through and apprehend in order to protect our borders against terrorist penetration.

So let me just say I believe the temporary worker proposal is perhaps in some ways what we need to create a smarter border, which is something that we have been trying to do at our ports of entry and elsewhere since 9/11. The temporary worker program is a natural extension, certainly, of a smarter border philosophy, one in which we identify those who are simply coming here for purposes of work, but where we increase our prospects, which I believe we must do, to interdict and be able to apprehend terrorists or criminals or others that are coming into our country to do us harm.

I appreciate the opportunity to testify, Mr. Chairman, and I will be happy to answer questions at the appropriate time.

[The prepared statement of Mr. Bonner appears as a submission for the record.]

Chairman CHAMBLISS. Thank you.

Mr. Verdery.

STATEMENT OF HON. C. STEWART VERDERY, JR., ASSISTANT SECRETARY FOR BORDER AND TRANSPORTATION SECURITY POLICY AND PLANNING, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, D.C.

Mr. VERDERY. Chairman Chambliss, Ranking Member Kennedy and members of the Subcommittee, it is a privilege to be here today

on behalf of the Department of Homeland Security to give you our perspective on how the temporary worker program will enhance border security.

I won't repeat Commissioner Bonner's remarks, but the Border and Transportation Security Directorate, where I run the policy office, oversees the activities of customs and border protection, as well as our Immigration and Customs Enforcement Bureau and the TSA. So we try to bring a macro perspective to border and transportation security issues. I know that my boss, Under Secretary Hutchinson, was here at your prior hearing to testify on these same issues.

It is especially an honor for me, having been a counsel for a Senator Hatch on this Committee several years ago, to return today to talk about the administration's working relationship with the Congress, and with this Committee in particular, on this most important issue.

The written testimony submitted for this hearing by Commissioner Bonner and I, and for the prior hearing by Under Secretary Hutchinson and Director Aguirre, describe in great detail the principles which the President has espoused as crucial elements of a temporary worker program. Let me speak briefly to just some of the key points related to border security here today.

As was mentioned, the first principle in the President's proposal is protecting the homeland by controlling our borders. When you talk about land borders, there are ports of entry in the areas between the ports. Commissioner Bonner has discussed the Border Patrol, obviously a key component of our border security. I would like to discuss in a little bit of detail the US VISIT program.

As US VISIT implements a biometric entry-exit system at our land ports of entry over the next 2 years, border security as we know it will significantly change. We have never had a reliable exit system, and as a result have never known when or how many foreign visitors have overstayed the terms of their visa or have entered the country illegally. But, soon, we will.

Through the deployment of advanced technology in travel documents and at our ports of entry, we will be developing this capability to enforce our immigration and visa laws, and thus provide the integrity that Congress and the American people should rightly insist be a part of a new worker program.

US VISIT has proved extremely effective at air and seaports in finding the needles, the criminals or those with immigration violations, in the haystack of travelers. Not quite 3 months old, US VISIT has successfully and efficiently recorded the entry of over 2.5 million passengers and the exit of over 8,000 travelers without causing delays at ports of entry or hindering trade.

The program to date has resulted in 231 watchlist hits, including serious criminals, because of the biometric collection from non-immigrant visa-holders. Aliens who have repeatedly entered the U.S. with aliases or stolen or altered travel documents are now being detected solely by the biometric component of the system.

The administration's enhanced information-sharing efforts, including those utilized at the Terrorist Screening Center and the National Targeting Center, and between our Department and the

Department of State, are essential to providing the inspectors at our ports and in the field with the information that they require.

The capability of US VISIT will provide a key role in encouraging potential workers to utilize the President's temporary worker program because they will know what the system's capabilities are. On one hand, we will know whether aliens are complying with the terms of the worker program or have otherwise violated our immigration laws as they enter and exit through ports of entry.

On the other hand, these workers will be able to easily travel home to see family or friends and generally maintain the ties that will make their eventual return home more attractive. This eventual return home is the second immigration enforcement principle that the President set out in his proposal.

Participants in the program would be required to return to their home country after their period of work has concluded. As proposed by the President, the legal status granted by this program would last 3 years, and while it would be renewable, it would not be permanent. This proposal does not provide an automatic path to citizenship. Those who have broken the law and remain illegally in our country should not receive an unfair advantage over those who have followed the law.

We do recognize that some temporary workers will want to pursue citizenship, and they will be able to apply for green card status through the existing process behind those already in line. We also look forward to working with Congress on the numbers of those green cards.

The third immigration enforcement principle in the President's proposal is workplace enforcement of our immigration laws. The fiscal year 2005 budget requests an increase of $23 million for this, more than doubling our funds. This illustrates the President's commitment to serious immigration enforcement and the rule of law as part of our temporary worker program.

Temporary workers will be able to establish identities by obtaining legal documents under the program. It is critically important, as Senator Cornyn mentioned, to create a system that prevents the fraud that was so prevalent under the 1986 Act. It is also important that these documents be as compatible as possible with the US VISIT system, and we are working on those issues.

I believe that passing a temporary worker program that works to benefit the American economy, while bringing integrity to our immigration system, is a goal consistent with our homeland security responsibilities. I recognize that this issue, like many immigration issues, is extremely complicated, and that members of Congress have a variety of viewpoints on the President's proposal and many proposals of their own.

However, the complexity of this issue only means that we should continue our efforts, working together to build on those principles and make the temporary worker program a reality. The administration and our department stand ready to make the effort necessary to move forward in achieving this important goal.

Thank you.

[The prepared statement of Mr. Verdery appears as a submission for the record.]

Chairman CHAMBLISS. Thank you very much.

Ms. Bucella.

STATEMENT OF DONNA A. BUCELLA, DIRECTOR, TERRORIST SCREENING CENTER, FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

Ms. BUCELLA. Good afternoon, Chairman Chambliss, members of the Subcommittee. Thank you for the opportunity to discuss the missions and objectives of the new Terrorist Screening Center.

Homeland Security Presidential Directive 6, issued on September 16, 2003, ordered the creation of the Terrorist Screening Center, directing its operations to begin on December 1, and we met that goal. The Terrorist Screening Center was created to ensure that Government investigators, screeners, Federal agents and State and local law enforcement officers have ready access to the information and expertise they need to respond quickly when a known or suspected terrorist is encountered here in the United States, at our borders or overseas.

Today, I will tell you about our daily operations as they relate to the United States Customs and Border Protection's National Targeting Center and our role in preventing terrorists and suspected terrorists from crossing our borders. I will provide as much information as I can in this open forum. However, I would be happy to provide additional, classified details in a closed setting at your request.

We are a multi-agency center, including participants from the Departments of Justice, Homeland Security, State and Treasury. Our goal is to consolidate the Government's approach to terrorist screening and provide for the appropriate and lawful use of terrorist information in screening processes.

Being a diverse center, manned by personnel from both law enforcement and homeland security entities, we communicate and coordinate terrorist screening efforts across the full spectrum of Federal, State and local government agencies. Since December 1, we have been providing key resources for screeners and law enforcement personnel.

These include a single coordination point for terrorist screening data; a consolidated 24/7 call center for encounter identification assistance; access to a coordinated law enforcement response; a full process for tracking encounters; providing feedback to the appropriate entities; and a process to address misidentification issues.

There are three fundamental types of inquiries: within the United States, at our ports of entry and outside our borders. Interior inquiries will normally be made by local law enforcement. Border inquiries are made by United States Customs and Border Protection, or in some instances Immigration and Customs Enforcement agents. Exterior inquiries are conducted by the State Department. Today, I am just going to highlight the border inquiries.

We receive a high volume of calls that originate with CBP inspectors stationed at our Nation's borders. In a typical case, a person attempts to enter into the United States. A CBP inspector queries the name electronically through their Interagency Border Inspection System, IBIS, and receives a response within seconds indicating that that person may be a suspected terrorist or an associate of terrorists.

The CBP inspector contacts the National Targeting Center, where the record will be analyzed, then passed over to our center. We examine the record to determine whether the individual encountered is identical to the person in our database. The TSC then appropriately passes any derogatory information to the NTC and the CBP makes a determination as to whether the individual will be allowed to enter into the United States.

Simultaneously, we contact our operational component at the FBI Counterterrorism Watch, CT Watch. CT Watch provides for the local joint terrorism task force response, which often includes an ICE agent to go to the border. This consolidation between TSC, CBP and ICE has already achieved results. One instance involves a foreign national traveling to the United States. He was inspected by CBP and found to have dangerous substances in his luggage. He was arrested and later removed from the United States and returned to his country of origin. However, less than a month later, that same individual applied for a new visa, and because of his previous encounter with my center, CBP and ICE, his application was denied.

Our cooperation with CBP and ICE has also facilitated the sharing of information related to ongoing investigations. In one case, for example, the TSC–CBP connection provided the FBI with information about someone traveling with a suspected terrorist and led to the initiation of an investigation of the previously unsuspected associate.

We are a multi-agency organization that is contributing to nationwide efforts to keep terrorists out of the United States and locate those who may already be in our country. We work closely with CBP inspectors, ICE agents and the National Targeting Center.

We look forward to working with the Committee in its efforts to secure our Nation's borders. For this unclassified hearing, I have only give you a few of our successes. We have screened over 2,000 calls in the last 4 months since our inception, and assisted in positively identifying a number of known or suspected terrorists encountered during Government screening processes. I appreciate the Committee's interest in our activities and I will be happy to answer any questions you may have.

[The prepared statement of Ms. Bucella appears as a submission for the record.]

Chairman CHAMBLISS. Thanks very much to each of you.

Mr. Verdery, the day after the President announced his seven principles on immigration reform, the byline in the New York Times underneath the headline said that the President has proposed a plan that includes amnesty.

Now, would you tell me what your understanding is of the President's principles as it relates to any form of amnesty for illegal aliens?

Mr. VERDERY. Well, thank you for the question. The proposal is not amnesty. As I understand amnesty, that means a forgiveness that would lead to citizenship. As I mentioned in my opening remarks, this proposal requires people to seek citizenship through existing processes. There is no credited time that would lead to citi-

zenship, and I think that is the distinction that the President has made in presenting these principles.

Chairman CHAMBLISS. You concur with your boss, then. I just want you to know that.

Mr. VERDERY. I do.

Chairman CHAMBLISS. Ms. Bucella, I am curious about this one example that you gave us. I want to know how quickly you had a turnaround time in determining who this individual was that sought reentry into the United States after he had been returned to his country.

Ms. BUCELLA. I will have to get back to you with the exact time, but it was probably within less than 20 minutes.

Chairman CHAMBLISS. Okay, so it is a pretty immediate time.

What if that individual uses another name?

Ms. BUCELLA. Well, if he uses another name that we have been able to previously identify as an alias that they have used, then we would pick him up. But if not, if he had false identification that had never been used before, we might not have gotten him.

Chairman CHAMBLISS. What are we doing in that respect to try to make sure that an individual who says he is John Doe is, in fact, John Doe?

Ms. BUCELLA. At the Terrorist Screening Center, we have a terrorist database. Our database has the names and identifiers of the individuals which have been previously identified by other Government agencies. In our database at the Terrorist Screening Center, we just have the names, the date of birth, the passport number and country of origin. But we also have accessibility to the classified databases or case management files of many government agencies within the United States.

Each of our members at the call center are able to take a look at those databases. So, for example, we do a little bit more than just name-match. What we do is we elicit from the person at the NTC in communications, please give us some descriptors, not just the name, but how tall is the individual, you know, eye color, hair color.

Those are the types of information that, even if they are classified, we are able to take a look in our classified case management systems and we are able to assist in the identities match with the individual that is currently being encountered at the border. So it is not just a name. We need to have a body in front of the CBP inspector or the ICE agent.

Mr. VERDERY. Senator, if I could just jump in on this, it is one of the beauties of the VISIT system that CBP is operating that we are finding people. They may claim to be one person, but the fingerprint is what is catching them. We had one case of identical twins. The pictures looked exactly the same, the story was the same. The fingerprints were not the same. This person had traveled repeatedly back and forth unimpeded, and the fingerprint is what alerted the inspector and they were returned.

Chairman CHAMBLISS. You anticipated my next question to you. In addition to fingerprints, do we have any other biometric devices that are either in place or that we are contemplating using?

Mr. VERDERY. Well, the system is basically fingerprint-based at this time. We are also taking photographs at the ports of entry that

enable the inspector to compare the photograph to the photograph that is taken at the time of visa issuance for those people who have visas. So there is a sense of that. We are working on the facial recognition technology in terms of the visa waiver countries and we can get into that issue a little bit. But, essentially, US VISIT now is a fingerprint-based system.

Chairman CHAMBLISS. Commissioner Bonner, on this same line I am sure you are familiar with the Department of Justice Inspector General's report criticizing the information-sharing between the Border Patrol's IDENT system and the FBI IAFIS database. The report demonstrates that the Border Patrol cannot reliably obtain a hit when they search for possible criminal offenders who have been detained at the border.

Most responses from the agency seem to focus on the lack of technology to integrate the two different systems, one based on two fingerprints and one based on ten fingerprints. However, the IG report specifically calls for a memorandum of understanding between the agencies to establish policies and procedures for sharing information, regardless of the current systems.

Do you agree with the IG's recommendations, and if so, what steps are you taking and what are the time lines for implementation?

Mr. BONNER. Well, first of all, I think that that recommendation actually probably does not fully understand where we are at in terms of the integration of the IDENT and the IAFIS systems for purposes of the Border Patrol because, number one, we have an integrated system that can be used by the Border Patrol to essentially query both the IDENT system, which has a record of people that have been illegally deported or denied entry, and so forth, as well as the IAFIS system, which is the FBI's huge fingerprint database of people with criminal records.

So we have an integrated system. The question is how do we get it out to all of the Border Patrol stations. Right now, we have this integrated IDENT–IAFIS system at 31 of the Border Patrol stations; it is about 90 units. We need to expand it and get it out to all 151 Border Patrol processing stations along our border.

We have a plan for doing that. We have identified funding for doing that. I expect some of that funding, by the way, coming from the US VISIT program, about $1.8 million of it, and about $400,000 that we will fund out of our own budget, unfunded money. But we will have the integrated system at all of the Border Patrol processing stations within about 7 or 8 months.

By the way, this is a tribute to the Department of Homeland Security in the fact that this is something that has been talked about for years and years and years when the INS existed. We are doing it and we are getting it done. That will give the Border Patrol, then, the capability when we have it at all of these stations in 7 or 8 months to be able to run people both against the IDENT system and the IAFIS system, and to better identify illegal aliens that have criminal records and ought to be treated as aggravated criminals and prosecuted through our system.

Chairman CHAMBLISS. Mr. Verdery, in Secretary Hutchinson's February 12 testimony before the Subcommittee he stated, and I quote, "The President's plan provides a disincentive to emigrate il-

legally to the United States when the potential temporary worker aliens know in advance that the legal status granted under this type of program is the beginning or a path to return home and not a path to permanent residency or citizenship," close quote. That is an important point because it really goes to the question of what does the foreign worker really want.

In your deliberations on a guest worker plan, what are the primary incentives for a worker to use the legal system?

Mr. VERDERY. Well, for individuals who are here currently, there are several. Obviously, it would take away the threat of being deported, and we understand that if you are an individual working today, it is a nerve-racking experience knowing that at any minute you might fall into the hands of law enforcement. That puts a tremendous type of stress on family relationships and on just day-to-day living. So that is obviously the primary thing.

But in addition to that, the principles outlined would allow portability of retirement benefits. They would allow the travel that I mentioned in my opening statement. As we know, with the increased number of Border Patrol agents and the heightened security, it is harder for people to sneak back and forth, and that is cutting off the ties that would otherwise lead people to be able to return home. If they can come back and forth through our ports of entry, subject to US VISIT or other processing, that travel is so important.

But as you mentioned, the key point is signing up for this program is a first step to an eventual return home. The principles of that are things we need to work out, but that is a very key point that Under Secretary Hutchinson made, as well you made in your comments, that it is a first step to a return home.

Chairman CHAMBLISS. Ms. Bucella, in news reports Homeland Security officials have questioned the utility of the Terrorist Screening Center, questioning the possible duplicity of resources.

What is the distinct mission of the Terrorist Screening Center in comparison to TTIC and with any intelligence functions at the Department of Homeland Security?

Ms. BUCELLA. Senator, the Terrorist Screening Center is there to consolidate the Government's approach to watchlisting. We do not at the Terrorist Screening Center maintain the underlying derogatory information on known or suspected terrorists. That stays with each of the individual agencies.

The TTIC is one of the two feeds of information into the Terrorist Screening Center. The TTIC, the Terrorist Threat Integration Center, is run by the CIA. All known terrorist information on international terrorists comes through the TTIC. So whether it is the intelligence community or the law enforcement community, if there is information about known or suspected international terrorists, the feed of information comes from the TTIC to us. The FBI maintains all of the information on known or suspected domestic terrorists. It is at our center where the names become merged, the domestic terrorist names and the international terrorist names. So it is two different feeds of information.

More importantly, I have seen firsthand at my center—we have about 87 people that work there now. We have right now agents from the FBI, Immigration and Customs Enforcement, Customs

and Border Protection, the Transportation Security Administration, the State Department, the Coast Guard and the Office of Foreign Asset Control, and we are just beginning.

This is a wonderful place for true partnership, where each agency brings in their expertise based on whatever mission they have been doing to assist us in helping to identify known or suspected terrorists.

Chairman CHAMBLISS. What is the operational status of that system today?

Ms. BUCELLA. Early on when I started in October, we had to go from concept to operation by December 1. With the help of Homeland Security and setting up a number of FBI agents being brought in from around the country, we were physically operational by December 1.

I thought at the time that we would be able to have a database just with the names of known and suspected terrorists and the other four identities—the name, the date of birth, the passport number and the country of origin. I thought we would be able to have that set up by this summer. Fortunately, with the assistance of my staff, I was able to move that date up to March 12. So we now currently have a consolidated database of known and suspected terrorists.

What we did was we went to a number of different agencies to figure out not only from their watchlists, but also to figure out from their case management systems who they had that were identified by the agencies as known or suspected terrorists.

Obviously, the State Department had one of the largest consolidated lists through TIPOFF. But there were some other lists through the State Department—the Consular Lookout and Support System. The Department of Homeland Security had the IBIS system, also the TECS system. TSA had their no-fly selectee list. The FBI had the violent gang and terrorist organization file. Interpol had their terrorist watchlist. The Air Force had their top ten fugitives list. The Marshals Service had warrant information.

So what we did was we went to these different agencies and we went with information that we needed to gather, just the terrorist information. That is what our charter tells us. We are only there to assist in the positive identity match or assistance in terrorism. So we had to go to the FBI and have the FBI not include in our database those individuals that were involved in gangs. Rather, we just wanted terrorists.

We have now consolidated the CLASS system, the TIPOFF, as far as the names and identities, and the IBIS, no-fly selectee, NAILS, the U.S. Marshals Service's warrant information if it related to terrorists only, and the violent gang and terrorist organization file as it relates to terrorists only. The Interpol terrorist watchlist is something that is still ongoing because there are some governments that define a terrorist as someone who committed a crime. It might not rise to the level of the U.S. Government's definition. So we are making sure that those names on our list are truly known or suspected terrorists.

This is not over yet. I mean, this process is very, very complex. It is trying to understand what government agencies within the United States are actually doing and what information they have.

It might not be in a watchlist version. It may actually just be a part of their case management system where they have identified individuals who are of suspicion to that agency.

So this is a tremendous process where, for the very first time, both the intel community and law enforcement community are joining, and also talking to government agencies that are not involved in law enforcement to figure out what processes or procedures or entitlements they give to people, rights or entitlements, that if they gave that right or entitlement to a terrorist here in the United States it would cause them some very serious concerns. So it is a huge education process and a huge outreach process that we have only just begun.

Chairman CHAMBLISS. Thank you.

Senator KENNEDY. Thank you. I thank the panel again. What you have told is impressive certainly with regard to intelligence-gathering and coordination, because that was obviously one of the real areas that was a failure in the whole 9/11 situation, the exchange of information to the Central Intelligence Agency and to the immigration agencies.

In the Border Security Act, we also required the integration of all the immigration data systems into an interoperable network. Can you give me some idea about where that is now?

In immigration, for example, you have probably six or eight different computers and files in terms of different categories dealing with immigration issues. One of the things that we wanted to try and do is to make sure that you were going to have interoperable information and files on that, as well, which is enormously important in dealing with law enforcement and also in terms of keeping track of people, and with regard to ensuring that people that are innocent are going to be innocent and those who are violating the immigration laws will be able to be considered. We had a requirement in this area.

We also had the requirement for the establishment of a commission in the legislation. What I will do is submit this and you can go back and take a look at it and respond, if you would rather do that in writing.

Mr. BONNER. I would appreciate having a chance to do that.

Senator KENNEDY. Good, all right.

Mr. BONNER. I will just say preliminarily that the former INS, which doesn't exist anymore, had more systems than you could shake a stick at.

Senator KENNEDY. That is right.

Mr. BONNER. It had NAILS and IDENT and everything else. The one I can speak to is we have integrated IDENT and IAFIS. I have just spoken to that. The IBIS system was an integrated system that was run by U.S. Customs, and now Customs and Border Protection, for the lookout list for both terrorist and other purposes.

Obviously, I should say, Senator, as Ms. Bucella has testified to, we now are integrating at least for terrorist purposes, for the very important purpose of terrorists or suspected terrorists, a master watchlist for the entire Government.

But let me get to you on it because there are so many systems and I will get something back to you in short order.

Mr. VERDERY. Senator, if I can just add on that, that was part of the deployment package for US VISIT, is having access to all those databases at the port of entry. That is the deployment at the port of entry. The VISIT system is the mechanism to make that happen. As you know, it is at airports and seaports today. At land ports, it will be deployed at the end of this year and then the following year.

Senator KENNEDY. As you pointed out, Homeland Security divided the immigration functions into three different bureaus of the new department. In February of this year, my office was told that no formal procedures were yet in place to coordinate immigration policy among the three bureaus.

Is that still the case? Are decisions being made in each of these agencies? How are they being coordinated and how are we developing uniformity in terms of the immigration issues?

Mr. BONNER. Let me ask Mr. Verdery to respond to that and then I might add to it.

Mr. VERDERY. We actually have set up a mechanism to coordinate policy development between the BTS Directorate, which encompasses Customs and Border Protection and Immigration and Customs Enforcement, with Citizenship and Immigration Services. CIS is the acronym, the alphabet soup.

We have a mechanism in place. It is basically a tri-level system of decisionmaking and policy development at staff level, at mid-level, and then at a level with Under Secretary Hutchinson and Director Aguirre to tee up issues that need to be resolved, because there are quite a number of issues where we both have equities in play—asylum, immigration caps, refugee issues, US VISIT issues. On almost anything you can think of, we do have to coordinate.

Of course, before anything becomes an official departmental policy, it goes back up through the formal departmental clearance process. I think we have come up with pretty good working relationships at the various levels to make sure that we are on the same page.

Senator KENNEDY. Well, I would be interested—and I will include this in the questions—about how that structure is set up and how it applies locally, because having all of these local entry levels and getting a coordinated policy so that they are doing the same thing in different parts of the country and have similar kinds of rules is important. I would be interested in how it coordinates through those agencies and then how it works in terms of the local communities so we get the same kind of treatment on this.

Let me just ask you about the whole area of biometrics. This was quite an issue at the time we were looking at the legislation. I understand that the U.S. and other countries will not be able to meet the October 2004 biometric deadline.

Can you explain why the deadline can't be met and what efforts are being made to reach the deadline, and can you provide the Committee with any realistic alternative?

Mr. VERDERY. Yes, sir. As I am sure you have heard, the administration has formally gone to the Congress asking for a 2-year extension of the October 26 deadline that will require that travelers from visa waiver countries with passports issued after that date

would have to have a visa or a biometric passport, and also that our department deploy the readers to read those passports.

We have worked very closely with the 27 visa waiver countries and the overwhelming majority of them, including all of the big ones—the United Kingdom, Japan, Germany—have told us they are not going to be able to meet that deadline. It is not their fault. The standards that were set for the passport by ICAO, the international standard-setting body, were only set in May and they are not even really finalized, and so they are not on schedule to meet this deadline.

We have come to the Congress asking for relief because if we are required to issue visas, it is going to be very difficult for us to have the resources overseas to issue the visas. Travel will be deterred and we are looking at an overwhelming number of visas that cannot be issued. Moreover, then it doesn't make any sense for us to be paying money to deploy readers that have nothing to read.

So we have gone to Congress and asked for this extension, and we believe that within 2 years those countries will be able to meet the deadline. The technology will be more mature. It will make sense to have it in place at that time. So that is where stand on that.

Again, you asked about the U.S. meeting the deadline. It does not technically apply to us, but we are going through the same passport development process as the visa waiver countries and we are on a similar time frame due to similar reasons.

Senator KENNEDY. Let me ask about risk management. Many of the security experts conclude that the inspection process must be exercised in risk management. We have 500 million people moving back and forth across the border and 100 million vehicles moving across the ports of entry each year. Even if we had all the resources and time required to conduct the inspections, it would effectively bring the economy to a halt. So we have developed systems that assess and look at risks, and we try and identify and quickly process low-risk travelers so we can concentrate on the higher-risk targets.

Now, can you describe what kinds of systems exist in DHS that you have already put in place with regard to risk management policy?

Mr. BONNER. We, of course, have been pioneering an approach, Senator Kennedy, starting with customs, in terms of risk management for all cargo that is coming into the United States on containers or otherwise. We are also using risk management principles with respect to the, as you say, huge number of people that travel into the United States annually. It is about 70 million, for example, that arrive on international commercial aircraft annually.

First of all, you have to have information about goods or people before they arrive at our borders, and we have done that. Congress has enacted some legislation back in November in 2001 that gave Customs and Border Protection advance passenger information on everybody that is flying into the United States. So we have it ahead of time, hours before people arrive at our ports of entry—JFK, LAX and the like. Similarly, in the cargo area we have done this.

So, number one, we get advance information, get it electronically, and then use risk management criteria as to what or who to look at, whether you are going to ask a few more questions or whether you are going to, in the case of cargo, set it aside and do some sort of an inspection.

So we use targeting systems that have been developed, the automated targeting system and, through the Customs and Border Protection National Targeting Center, have developed criteria to take a look at both goods, primarily, but also an attempt to risk-manage for people who are entering the United States. So that has been in place.

We are trying to do that on a number of bases, and I don't want to go into a lot of detail in an opening hearing, but one is using not just tactical intelligence, but strategic intelligence about who and what the threat is to the United States in terms of that kind of a risk management system, and then using also anomaly analysis based upon the large amount of information that we have about goods and cargo and trade and the way people travel to try to exercise our authority in terms of making decisions as to what to look at and what to scrutinize.

So, essentially, that is a broad overview of essentially an approach we have been attempting to take to more meaningfully use our limited resources to identify particularly someone who might pose a terrorist threat to the United States.

Senator KENNEDY. Well, I think this is enormously important and obviously I am interested in it. We saw the criteria, for example, you had prior to the time of the terrorists. People had Social Security return addresses that weren't obvious, although some of these terrorists had phone numbers where they could call. So we set up these criteria in terms of this and, of course, all of them were able to circumvent it because we had the wrong criteria. So it constantly has to be reviewed and has to be upgraded, and we are in an entirely different situation. I am interested in this and we might pursue it at a later time.

Just finally, Mr. Chairman, we find that many of the experienced people that have been involved in immigration are leaving the service in detectable numbers now and going into these other agencies. I guess the pay and other kinds of benefits are different and so there are a lot of people who have been experienced agents, border personnel and others, who are leaving.

I don't know whether you are aware of that, concerned about it, or have thought about it at all, or have noticed much of a problem or have any ideas about how to deal with it. I don't know if there is anything you need from us to try and help.

Mr. BONNER. Well, certainly, it would be a matter of concern, but let me just say with the Border Patrol, for example, where you were seeing under the INS literally attrition rates of 18 to 20 percent just 2 years ago, the attrition rate right now as part of Customs and Border Protection—I would like to think it is a lot of good management on my part, but for whatever reason the attrition rate at the Border Patrol is going to annualize out at about 5.5 percent this year. So that is a tremendous improvement over the last 2 years.

Similarly, with respect to the inspector workforce, Senator Kennedy—and I am talking about legacy customs inspectors, legacy immigration inspectors—the attrition rate there is running right now, this year, at about 5.4 percent, which is pretty good. When these immigration inspectors were with the INS, it was running last year and the year before we began this merger at about 8 percent.

So it is an improvement, but obviously I am not satisfied with those numbers because we are always hurt when we lose experienced and good people, but the trend rate right now is pretty good with respect to attrition.

Senator KENNEDY. Thank you, Mr. Chairman.

Chairman CHAMBLISS. Senator Cornyn.

Senator CORNYN. Thank you, Mr. Chairman.

I would like to ask a few questions about US VISIT and how it interacts with the various databases that are used either through the Terrorist Screening Center or NCIC and otherwise.

If I understood your testimony, Mr. Verdery, you indicated that one of the principal purposes of US VISIT is to track people when they come into the country and when they leave the country, and then permit the immigration officials and the DHS officials to then match those against various lists.

Is that correct?

Mr. VERDERY. Well, I wouldn't want to oversell the exit part of it just yet. As you know, that is going to be deployed over the next couple of years. I can't get into that if you want, but I wouldn't want to oversell what we have in place today on exit. It is at two pilots, one airport and one seaport, and we will be deploying it later. But on the entry side, sure, we want to check against the watchlists and the criminal databases as people come in.

Senator CORNYN. Well, I want to ask you a little bit more about that, but perhaps, Ms. Bucella, let me ask you this. As I understand it, the number of names on the watchlist that your center employs is relatively modest, isn't it, compared to the number of people, for example, in the NCIC database?

The purpose of your organization is not necessarily to check people who are coming into the country with criminal backgrounds and otherwise, but mainly to focus on suspected terrorists. Is that correct?

Ms. BUCELLA. Yes. We are purely terrorism only, and suspected terrorists. If the individual has a name and that name is checked through the NTC and they do have the prints from US VISIT, we are able still—with the identification of the name, if that name is in our database, we are still able to assist even with the prints. But, currently, at our database, while we are consolidated, we are not fully automated yet. That will be done by the end of this calendar year.

Senator CORNYN. I raise that issue because I want to make sure that we understand the magnitude of the challenge ahead of you, and indeed ahead of us, and I think it is even bigger than perhaps those of us up here might imagine. Certainly, that is the case for me.

What we are talking about, from the last testimony we had before this Committee, is we have between 300,000 and 400,000 people under final orders of deportation that have melted into the

landscape of this country. We simply don't know where they are. We have about 80,000 people who are criminal absconders, who have been convicted of a crime, and we don't know where they are.

So I just want to make clear just so I understand and your testimony is clear, Ms. Bucella, that the scope of your center is not to try to identify either of those groups. Is that right?

Ms. BUCELLA. Yes, sir, terrorists only.

Senator CORNYN. Mr. Verdery, ultimately is it the goal of the US VISIT program to be able to do that, to identify those people so that they can be deported or denied reentry into the United States or reported to the appropriate law enforcement authorities?

Mr. VERDERY. Yes, of course. The integration of the immigration databases will allow an inspector to know if somebody has been deported or is under a deportation order. Of course, as you mentioned, the problem we have now is that there are a large number of people who are in the country who are not trying to leave; they are here. And we obviously have initiatives in place to try to reduce that number, with a priority toward the criminal aliens, as you mentioned, who are under deportation orders.

But, yes, the integration of the databases will make it possible so that if somebody were to leave, having had a deportation order and then tried to come back in, we will know about it and they won't be admitted entry. It happens today.

Mr. BONNER. Let me just sort of parse this out a little bit. If you are coming internationally into the United States, we have advance passenger information, the passport number, the name, the biographic and that sort of thing. Every one of those people are run through NCIC. We have already arrested about 5,000 people coming in through our ports of entry, our airports, because they are wanted in the United States. So they are run through NCIC based upon name and biographic. There is a hit; we know it before they arrive.

Now, what US VISIT does is it gives us a biometric capability. It gives us two things. One, it tells us if the person that was issued the visa at the State Department is, in fact, the person who is presenting himself to our inspectors at the ports of entry, because we have matched them biometrically.

Then, secondly, there is a database, and this is the IDENT database, basically, that those two inkless prints are scanned through. When somebody presents themselves at JFK or LAX or Atlanta or wherever it is, those are run against that database, and that database does have anybody who has entered illegally and subject to a deportation order because INS did take those two prints.

I don't want to say it has everything in the world in it, but it also does have the wants and warrants that the U.S. Marshal uses in terms of people that are criminally wanted.

Senator CORNYN. Let me ask you a little bit about what you just said because my time is limited. You make a good point that where US VISIT has already been implemented at airports, there is a possibility to cross-check the various databases, assuming the name is on the database, with the entry of that person into the country.

I guess what I was thinking about primarily is places where US VISIT has not yet been implemented, but is mandated for the end of this year, for example, at 50 of the busiest land-based ports in

America, a number of which happen to be in my State on the 1,200-mile border between Texas and Mexico.

Is it fair to say just sort of in summary that we still have a lot of work to do to get all these names on the databases so that then the biometric entry and exit program can identify those people as they are coming in and going out?

Mr. BONNER. A lot of work, yes.

Mr. VERDERY. And a lot of deployment of equipment, of course, too.

Senator CORNYN. Well, let me just make a little bit of a plug here, and I know, as I mentioned in my opening statement, that we are principally concerned about the security of our Nation. That is job number one, no doubt about it. But at the same time, we have got to recognize that we have important economic relationships with other countries.

For example, across all of the major ports in my State of Texas—Brownsville, McAllen, Laredo and El Paso—a 1-percent decline in border crossings costs that region $76 million in sales and about 1,500 jobs, and a decrease in gross State product of $1.2 billion. That is a 1-percent decrease in border crossings.

I hear a lot, and I suspect Senator Feinstein and other border State Senators hear from their constituents their concern that while we improve our security efforts, which is a goal they share, that we not ignore the economic impact and that somehow we find a way to marry these two objectives together to keep a strong economy in these areas and to protect our Nation against terrorism and those who want to do us harm.

I worry a little bit because, of course, the next deadline for implementation of the US VISIT program is December of this year. Can you tell me—perhaps, Mr. Verdery, we will start with you—how you are going to do that by December 31?

Mr. VERDERY. It is going to be a lot of work, but we have a very good team in place to do it and we have set the structures in place that make it manageable. One of those, as you know, is our decision as an initial matter to exempt border crossing cardholders from processing in US VISIT on a routine basis, and that is the overwhelming bulk of repeat travelers for—

Senator CORNYN. I don't want to interrupt you, but my understanding is you don't have a contractor in place yet.

Mr. VERDERY. No. The RFP is on the street. There are bidders in place and the award is due, I believe, in about three weeks or four.

Senator CORNYN. And that contractor is going to get it done by the deadline of December 31?

Mr. VERDERY. Well, working with us. It is an umbrella contract and they will be taking direction from Under Secretary Hutchinson and the program office and CBP for specific ports. They will be able to get in place the infrastructure, the RF technology we need, and also the enhanced processing in secondary. We will have a US VISIT capability in secondary for visa-holders or for others such as BCC-holders who are referred to secondary for some reason.

Senator CORNYN. Please understand I am not being critical, but I do think it is important for us to understand the magnitude of what is in front of us here so we can provide you the resources that

you need in order to be successful. But we also need to be realistic about this and make sure it is an approach that takes into account the entire context.

One thing I have learned in Washington, D.C., is people don't necessarily, just because they haven't been there, understand what life is like along our border between Mexico and the United States, where people cross back and forth on a daily basis; they have family members on both sides of the border. And there is an enormous amount of economic benefit on both sides of the border from being able to go back and forth relatively easily, and we are talking about legal travel back and forth, not terrorists. So I just want to make sure we understand the challenge that lies ahead.

Thank you, Mr. Chairman.

Chairman CHAMBLISS. Thank you.

Senator Feinstein.

Senator FEINSTEIN. Thanks very much, Mr. Chairman.

Senator Cornyn is much newer to the Senate than I am, and he was very nice, Mr. Bonner. I am not sure I am going to be as nice on the integration of the IDENT and the IAFIS system. Let me quote from the Inspector General report of March, this past month. "The integration of the IDENT and IAFIS automatic fingerprint systems continues to proceed slowly. Since our last report, the integration project has fallen another year behind schedule and will be delayed further because of JMD's lack of planning for the INS' transfer to the Department of Homeland Security. The slow progress is even more troublesome because the interim enhancements to IDENT resulted in the positive identification of approximately 4,820 apprehended individual aliens with those of suspects wanted for criminal offenses."

It goes on to say that this is a significant risk to public safety and national security, and I agree a hundred percent. If I could ever put any heat on you, I would put heat on you to get this program done. The IG doesn't even think it will be operational by 2007, and this I find unacceptable. I mean, we have been at this thing year after year after year.

Mr. Bonner, I greatly respect you. Show some real oomph.

Mr. BONNER. Senator Feinstein, let me say I have been at it in terms of this immigration issue because of the reorganization for 13 months. But I will say this, and I will correct this if I am wrong, but if the IG is saying it is taking several years to do an integrated IDENT and IAFIS system, he must be talking about making it available to State and local law enforcement or something.

Senator FEINSTEIN. Have you not seen the report?

Ms. BONNER. I have seen the report, and I am telling you, Senator Feinstein, that with respect to the Border Patrol, I have told you that we have identified funding. We have a system; it is an integrated IAFIS–IDENT system. We have already put it in place in some Border Patrol stations, but every Border Patrol station—

Senator FEINSTEIN. Okay, so a Batras or a Resendez case can never happen again. Is that what you are telling me?

Mr. BONNER. I would like to say they would never happen again, but it is true that with an IDENT–IAFIS system, it is much, much less likely that it could happen again, I mean short of Border Pa-

trol agents not following procedures or something like that. The system will be there within 7 or 8 months.

By the way, part of this requires the Appropriations subcommittees of the Congress to approve the spending plan for US VISIT, which I hope they will do. Within 7 months of that, I am telling you I will have the integrated IAFIS–IDENT system at all 150, more or less, Border Patrol stations that do processing.

Now, that will, I think, take us a very, very long way to making sure something like the Batras case, which did not occur on my watch, by the way—this was in 2002, absolutely deplorable, and so was the Resendez case back in 1999.

Senator FEINSTEIN. If people don't know, these are major murderers. If you read it, it just chills you how this thing got botched up.

Mr. BONNER. Batras raped two nuns and murdered one of them. So we have got to do everything we possibly can to see that that cannot happen and that it does not happen. And we are, I will assure you, moving forward aggressively to get this integrated IAFIS–IDENT system to every Border Patrol station in this country. And subject to getting the spending plan approved, which I hope would be done, I think we will get it done within 7 months.

Senator FEINSTEIN. Can you give us a date which I can write down?

Mr. BONNER. Within 7 months of that, and I would hope that that will be done certainly this month that that spending plan will be approved.

Senator FEINSTEIN. Within 7 months of when?

Mr. BONNER. Within 7 months of the approval of the spending plan for the US VISIT program that sets aside $1.8 million to deploy the integrated IDENT–IAFIS system for the Border Patrol. I have got a roll-out plan for it within 7 months to have it in place.

Senator FEINSTEIN. As they say, you are on the record.

Mr. BONNER. I am on the record on that, and I will be back here explaining it if it isn't done, but I want our people to know.

Senator FEINSTEIN. All right, that is good and I appreciate it. You gave me an answer and I appreciate that. Thank you.

I wanted to mention the visa waiver program. It is my view that this is our soft underbelly. The visa waiver program has been used by terrorists and it will again be used by terrorists. I just looked at the numbers in 2002; they are way down. It is 13,230,000 in 2002. I remember before 9/11, we were talking about upwards in the 20 millions of people that came in under a visa waiver program.

So I don't accept that we can't get the fraud-proof passports in place. The other nations may not want to do it. My view is then they should go through the regular passport, you know, through all that has to be done. There are 28 countries involved in this now, and 13 million people in 2002. It is low, comparably, to what it was in the 1990's and in 2000. I have a hard time seeing why we can't get it done. I mean, if somebody wants to drop out of the program, they should drop out of the program.

Mr. BONNER. I am going to refer that to Assistant Secretary Verdery, if you don't mind, Senator.

Mr. VERDERY. Senator, as I mentioned earlier, we believe that the overwhelming majority of countries cannot and will not meet the deadline for reasons largely out of their control.

Senator FEINSTEIN. What would that be?

Mr. VERDERY. The technical standards that would cover what the biometric passports look like are not sufficiently in place. They were just issued by ICAO earlier this year and are not sufficiently detailed to allow people to have the lag time to get the chips in place, to have the programs in place to meet the deadline. We couldn't meet the deadline ourselves if it applied to us, which it doesn't.

Moreover, if we force people to rapidly try to meet the deadline, we are going to get inferior technology that is going to be much more difficult for us to make useful at the ports of entry.

Senator FEINSTEIN. Refresh my memory. When did we do this, and didn't we have it staged? I am trying to remember.

Mr. VERDERY. There were two deadlines maybe which you are remembering. There was a deadline for a machine-readable passport.

Senator FEINSTEIN. That is right.

Mr. VERDERY. Last October was that deadline. The countries couldn't meet that either, and that provision had a waiver in it which Secretary Powell exercised, a 1-year waiver, which will now coincide with October 26 of this year. We understand that the countries will meet that deadline. That does not cover the biometric part of the passport, though, and they will not meet it, with very few exceptions.

If they don't and we have to begin issuing visas, as one example, right now in Japan we issue about 100,000 visas. We have the personnel over there to do 100,000. We would have to do 1.5 million, and it is just not possible to ramp up our resources in those countries to do that kind of workload.

In addition, we believe lots of those travelers will decide not to come to the United States. They will say I don't want to pay the money, I don't want to have to wait for an interview, I don't want to wait in line; I will go to some other country that doesn't require a visa. So it is a difficult problem for sure.

Senator FEINSTEIN. But, respectfully, you are not the chamber of commerce. I know you know that, but I think one of the reasons that Mr. Bonner is so good is that the border has long wanted a law enforcement person, not a trade expediter. We get into this all the time, and if 9/11 didn't teach us that security has to come before everything else, I don't know what will. That is why it is really depressing to hear that

Mr. VERDERY. We actually have a briefing scheduled tomorrow for the bipartisan staff on this issue on our mitigation plan for this issue, which I think you would find interesting. So perhaps we could double back with you after that.

Senator FEINSTEIN. Yes. I think you ought to brief the Senators because I think this is a huge vulnerability.

Mr. VERDERY. We, of course, would be willing to do that.

Senator FEINSTEIN. And it is going to be taken hold of by somebody who is going to do something terrible with it.

Now, let me ask you about another problem. When I last looked at through flights—and I can't remember whether it was 2001 or

2002—there were two 2,000 people who had absconded from through flights; in other words, when passengers are isolated, planes are refueling and moving through the United States.

Do you have a figure for 2003 of the number?

Mr. BONNER. I don't know that I have the number, but I can tell you we canceled the TWOV program, the transit without visa program. I know that there is some discussion as to whether and in what circumstances it should be reinstated.

Senator FEINSTEIN. So that is out now?

Mr. BONNER. It has been out now since—wasn't it August of last year? We considered it to be a security threat. This is through the Department of Homeland Security and the Secretary. So we terminated the program, and that was a program where people landed and there wasn't adequate security. They were moving not to the U.S., but from some country, landing in the U.S. and then flying out from the U.S. to another country.

Now, we are looking at it, I know, to see whether, with significantly higher security, it could be reinstated in some way or another. I don't believe a decision has been made on that subject.

Senator FEINSTEIN. Don't you think we are doing pretty well without it?

Mr. BONNER. Well, we have done okay without it so far, but the question is—well, I think there is a question as to whether or not for certain kinds of flights—you know, I am thinking of the flight that comes up from Brazil to Japan that comes through LAX and that sort of thing. If you had enough security controls, you might be able to reinstate it. I am not going to state one way or the other what my view is because I don't think the Department has decided where we are going to go on that.

Senator FEINSTEIN. Mr. Chairman, I see the red light. Will you allow me one more question?

Chairman CHAMBLISS. Sure.

Senator FEINSTEIN. A USA Today article—"catch and release" is the program. Eighty-six percent of notices to appear do not appear. In 2003, Border Patrol agents caught 905,000 people on the southern border.

What percent were given a notice to appear and what percent did not appear?

Mr. BONNER. First of all, if you take that 900,000 more or less, Senator, about 40,000-some of those were non-Mexicans. It is a term of art, but I will use it because the Border Patrol uses it. It is "other than Mexican," OTMs. So it is really that population that is subject to—well, I am not sure I want to use the "catch and release" policy, but what is happening with respect—

Senator FEINSTEIN. I think that is a mistake. I mean, why shouldn't everybody be treated the same?

Mr. BONNER. Senator, in an ideal world all of them would be detained and then they would be removed back to their home countries. As I understand it, the detention part of this issue is being handled not by Customs and Border Protection, but by ICE. And we are looking at, through the Department and through the Border and Transportation Security Directorate, trying to find the funding to permit us, the Border Patrol, to detain a hundred percent.

That is the way it should be, and we are trying to identify funding to permit us to do that so that they can be detained and then removed. But right now, about a third of the other-than-Mexicans are apprehended by the Border Patrol and because there isn't funding to detain them on the detention end of this, they are being given notices to appear. By the way, these are also sometimes called notices to disappear because very few illegal aliens that are apprehended respond to them.

But I can tell you this: We are working on this issue very hard with the Department and through the Border and Transportation Security Directorate to identify money so that we can terminate this practice so that all "other than Mexicans" are detained and removed from the United States, because it is, in my judgment, invitational, where you have notices to appear.

Throughout Central America and Brazil and other areas of the world, they know that we are doing this and it simply invites more illegal aliens, which increases the problem of border control for the Border Patrol. So we are looking at it and I think we are going to hopefully make some progress.

Senator FEINSTEIN. I also think that from the point of view of national security, the non-Mexicans offer more of a threat to our country. Yet, they have the lax rule of a notice to appear, and if this 86-percent figure in USA Today is correct, you are right; most don't bother, so they disappear. So that is a whole other area where people are coming in.

Mr. VERDERY. Senator, if I could just add, as the Commissioner mentioned, the responsibility for the detention and removal falls within ICE, not within CBP. There are significant requests for new resources for ICE for detention and removal. We are also working on some innovative programs to try to find alternatives to detention that will have security alternative monitoring techniques and the like.

Perhaps most crucially, we are working with the government of Mexico on an interior repatriation strategy so that the Mexicans that are picked up can be transported back to the part of Mexico from which they came, as opposed to being just dumped across the border and are able to come back the next day or the next hour.

Senator FEINSTEIN. Are you telling me that the wristband rumor is correct?

Mr. VERDERY. It is a little more stringent than a wristband, trust me. Electronic monitoring that many States use is an idea. It is, in our view, better than the run letter, as the Commissioner mentioned. But, again, this interior repatriation is absolutely critical so that we break the cycle of people returning time and time again.

We are close to an agreement with the government of Mexico. We are working with them. A member of my staff was down there with a team just this past week to try to negotiate the final touches on an agreement that Secretary Ridge and Secretary Creel agreed to, in principle, during their recent trip to Mexico. It is absolutely crucial.

On the TWOV, I would be happy to brief you about where that program stands, the transit without visa program, and where that stands.

Senator FEINSTEIN. You are good on acronyms.

Mr. VERDERY. It is a job hazard.

Senator FEINSTEIN. Thank you. I appreciate it. Thanks, Mr. Chairman.

Chairman CHAMBLISS. I hope you all can understand the level of frustration that we all share with Senator Feinstein here. We may have to extend these deadlines. From a practical standpoint, they are not going to be complied with, and I think that message has gotten through. But by the same token, these deadlines were either asked for by the administration or certainly put in place with the concurrence of the administration.

If there are real reasons why we should do it, then obviously we are going to have to do it. The passports, I think, are a good example why, but some of these other deadlines I really do question the extension on. So we will look forward to continuing the dialogue, but I hope you will carry the message back that there is a high level of frustration on the Hill relative to these extensions.

Senator Sessions.

Senator SESSIONS. Thank you, Mr. Chairman. I certainly agree with that, and I thank Senator Feinstein for her knowledgeable presentation of many of the issues that are out here.

Mr. Bonner, it is good to see you. We had an opportunity to serve together as United States Attorneys. Mr. Verdery, your boss was also in that group and was here not long ago.

Let me just say fundamentally that I have no confidence—and I hate to say this—I have no confidence that there is a serious commitment by this Congress or this administration to get our immigration system straight. The American people simply want that. They are not for dramatically reducing the number of people that come into America. They believe America is a nation of immigrants just like I do, but they expect our Government to be able to enforce the law and they still haven't understood how pathetic the situation is.

When you have 900,000 arrests and 86 percent released that abscond, it is just a mockery of law. I mean, surely you know this. So what I am saying is I am not supportive of plans to deal with the failure. I believe it is time for us to confront our failed system.

I would expect, Mr. Verdery, that if you don't have the money to do what needs to be done, you would be here demanding the money and asking why not and blaming this Congress if you can't get the job done, with a clear presentation of how, if you had a certain amount of money, you could change this failed system. So that is frustrating.

Now, Mr. Verdery, I asked your predecessor who was here before, Mr. Hutchinson, about document fraud. Mr. Bonner was a United States Attorney. I have prosecuted document fraud cases. We are told that one of the reasons we can't do anything about immigration is because everybody has illegal documents. So my question to you is how many cases have been prosecuted in the last year for document fraud.

Mr. VERDERY. I don't have the numbers in front of me here today. I can tell you from seeing our operations reports everyday, almost every single day our Immigration and Customs Enforcement agents are taking cases on illegal documents, whether they are

fake passports, fake immigration documents, fake visas and the like.

I would have to get back to you on the specifics, but as you know from the conversations with Under Secretary Hutchinson, this issue of document fraud and document integrity is a huge priority for him and for our directorate, and that has filtered down to Customs and Border Protection and Immigration and Customs Enforcement. His inspectors are out there everyday seizing these documents as they come in, but clearly there is work to be done. That is one of the beauties, again, of the VISIT program is it can see through these phony documents.

Senator SESSIONS. Well, my question is, to which we don't have the answer—somehow we have just been told it is going to be May. So I can call the Department of Justice, because they have an annual report of convictions in various categories. So I suspect I can get it from the Department of Justice if your agency doesn't know.

A person with a false document, Mr. Verdery, represents one of many. In other words, if he has a false document, then somebody has probably made many, and what you should do is investigate the matter and find out who is making them and prosecute that person. If that is done systematically and with attention and aggressiveness, you can begin to make a dent in that.

Mr. Bonner, do you find that Assistant U.S. Attorneys are prosecuting aggressively document cases that you bring to them?

Mr. BONNER. Every case where somebody presents to Customs and Border Protection, because all the immigration inspectors on the front line are part of CBP, a false or fraudulent document, whether that is a false or phony passport, counterfeit visa or other fraudulent document, each and every one of those cases are presented to a U.S. Attorney's office for prosecution.

No, I am not satisfied because I know from cases that I have been looking at that very frequently we do not get criminal prosecution through the Justice Department and the U.S. Attorneys' office, and we ought to.

Senator SESSIONS. I am sure they get a little jaded, and it is not as exciting as prosecuting some public corruption case that is on the TV news every night. But I think you have a right to insist that the Department of Justice prosecute your cases, and I think you need to be making those cases and taking them to them. And if they are not getting prosecuted, I would like to know.

Mr. VERDERY. Senator, we can get you the statistics. You don't have to go to Justice. We can get them for you. I can get them tomorrow.

Senator SESSIONS. I have been asking for them a month ago, and now I am told you can get them in May. I mean, you should be able to get them in two hours.

Mr. VERDERY. We will do better than that.

Senator SESSIONS. You know, you have the situation with employers, and I had the numbers here. I believe that the President's budget request includes an increase of $23 million for worksite enforcement. It would more than double the number of worksite enforcement investigations, I am told.

I don't know what I did with my numbers here, but as I recall, last year there were 13 cases. Is that about right to you? How many cases did you do last year on worksite enforcement?

Mr. VERDERY. Thirteen does not sound right to me. I know alone on Operation Tarmac, which was the investigation about illegal workers on airport sites, there were over 1,000 people arrested and convicted in that initiative alone.

Senator SESSIONS. What kind of prosecution was that, or enforcement action was that?

Mr. VERDERY. These were people who were illegally working at airport facilities and were either deported or incarcerated, depending on their particular record.

Senator SESSIONS. All right. Well, this is what I have been told with regard to employer sanctions. We heard about Wal-Mart, and you deserve credit for stepping up on that. I am not surprised at the hive that exists to defend this illegality in immigration that attacks you for it, but you are doing the right thing in pursuing those issues.

In 2002, notices of intent to fine were sent to only 42 employers, and only 66 employers actually paid fines in 2002. Some of those were notices obviously issued the year before. In 2003, the number of fines to employers dropped to 21, and the unconfirmed number of notices of intent to fine I have been given is a mere 13. So that is there. So with $23 million as an increase, we ought to be able to get more than 13 notices sent out, shouldn't we?

Mr. VERDERY. I agree, and I would not sit here today and argue that over the last, say, half dozen years that workplace enforcement of immigration laws has been what it should be. Most of that obviously pre-dates our Department, but I think you are seeing an increased willingness to enforce the laws. There is no hesitation here to do that, especially if the Congress were to pass a temporary worker program. Effective enforcement has to come with that. Otherwise, there is no incentive for people to use it. So we need to enforce the existing laws and we need to enforce the laws that you might pass.

Senator SESSIONS. Well, you have said that well. My experience as a prosecutor has been that if you don't prosecute investigators' cases, they become demoralized. If the guys out there on the border arrest 900,000 people and 86 percent of them don't show up for a hearing, they wonder what they are doing. It is a cycle that breeds on itself.

Mr. BONNER. Senator Sessions, could I just make a comment?

Senator SESSIONS. Yes, sir, Mr. Bonner.

Mr. BONNER. First of all, the INS, which no longer exists, criminal investigators are part of ICE. So they have that interior immigration enforcement function, including workplace enforcement. But let us not repeat the mistake of the Immigration Reform and Control Act of 1986. I think the President has a good proposal here.

You and I know that the employer sanctions of that law were watered down to almost nothing, where you had to have two administrative warnings for knowingly hiring illegals, and only the third one could result in a criminal prosecution and that was a misdemeanor. So we are going to have some sort of a more serious

mechanism for—at least I think we ought to be considering a more serious mechanism than that.

Of course, the document fraud, and you have been referring to that—in terms of being able to present to the employer two documents, which can be bought on the streets of Los Angeles for under—counterfeit, fraudulent drivers' licenses and Social Security cards, which is all you need to prove that you can be legally employed in the United States, can be bought for under $50 on the streets of Los Angeles, and probably on the streets of Mobile for all I know.

Anyway, that is one of the things that we certainly are going to have to look at and make sure that we have got some meaningful sanctions here, if we are going to have a good temporary worker program, as the President is proposing, that has some real enforcement parts to it. That is what the President wants. I mean, he wants something that does have a strong enforcement component, and one that will assure us that at the end of the day we are going to be able to better control and secure our borders against criminals and potential terrorists.

Senator SESSIONS. Well, Mr. Bonner, you are saying that well and all of that is true, but I think we have been so overwhelmed so long that we have just gotten kind of stunned and nobody is really looking at the overall picture and saying unless we do "x" number of things, maybe ten different things—if we do those ten things, though, like you said, I think all of a sudden numbers change. If it is effective at the border, maybe you don't have to make 900,000 arrests. And if they removed from the country promptly and effectively, maybe they don't come back as often. So there are a lot of things that can be done.

Briefly, Mr. Bonner, do you know what percentage of documents that get presented are fraudulent? Do you have any numbers on that?

Mr. BONNER. Do you mean of the percentage of overall documents that we are presented with?

Senator SESSIONS. Yes.

Mr. BONNER. That would be infinitesimally small, but I think the total number would be—you know, it is not insignificant and I will get it for you. I don't have it at my fingertips, but we will get it to you in the next day or two.

Senator SESSIONS. This will be the last question.

On the NCIC, Ms. Bucella, John Muhammad was potentially identified in Alabama, the sniper here. The way local law enforcement operates is that they are tied directly to the National Crime Information Center. They utilize that on a daily basis. To me, it is absolutely critical that every individual who has any connection to violence or terrorism be immediately put in the NCIC.

In addition to that, every absconder, in my view, who has been ordered by a court to appear in court and absconds should immediately be put in there. We know that we are not close to putting the absconders in there. Therefore, if somebody absconds in El Paso, Texas, and comes to Alabama and he is picked up for burglary or speeding, the local police will not get a hit when they access the NCIC.

I guess my question to you first is what is the status of being able to enter into the NCIC promptly anyone that may have violated immigration laws and has any connection to terrorism or violence?

Ms. BUCELLA. Senator, I can't speak to NCIC as to all the other categories that are entered in there because the Terrorist Screening Center is only concerned with known or suspected terrorists. What I can tell you is there have been a number of names that have been entered into the NCIC, so that the State or local law enforcement officer puts the name in, and it could be someone that they pulled over for a traffic violation.

Now, they actually have immediate, ready access. The NCIC comes back and identifies that they are to call our Terrorist Screening Center, and for the very first time the local law enforcement officer actually responds to the person that they have pulled over. If they have actually pulled over a known or suspected terrorist, there is immediate action from the joint terrorism task force that reaches out to the State or local law enforcement officer. This has been happening since we opened up our center on December 1, and we are really working hard with the State and locals to get the message out there to run everybody through the NCIC.

Senator SESSIONS. Well, I think that is just a critical component of modern law enforcement. If a person is released on bail and they skip for one joint of marijuana, it goes into NCIC. If there are stopped somewhere else in the United States, there is a hit and that person is detained.

Again, my question is are you certain right now that the system is working with regard to those who may have connections to violence or terrorism? Are those getting in the system promptly?

Ms. BUCELLA. I cannot speak to anything other than terrorism. Our only function at the Terrorist Screening Center is to put names of known or suspected terrorists into the NCIC. As to all those other crimes, that would be a question better directed to the FBI.

Senator SESSIONS. Thank you. Thank you, Mr. Chairman.

Mr. VERDERY. Mr. Chairman, if I could, I actually have an answer to the question about document fraud. In fiscal year 2003, 105 defendants prosecuted, 83 convicted by ICE.

Senator SESSIONS. I would say that is a very, very low number, in my opinion. If you prosecuted at the level of several thousand a year, you could break the back of that system. At 100 a year, that is not touching it. That is just my best judgment.

And it wouldn't be impossible. Those cases are not that hard to prosecute for the prosecutor. They may be a little hard to investigate, but not that hard to prosecute. If the Attorney General tells his U.S. Attorneys he expects them to prosecute those cases and you bring those cases to them without any new money, you could easily have 1,000, 2,000 prosecutions, in my view. Most people will plead guilty before going to trial on a case like that.

Thank you.

Chairman CHAMBLISS. I want to thank you all for the great job you all are doing. Getting our arms around this immigration issue is a huge, huge problem. It appears to me just from what we have said today and what came out of our previous hearing that our con-

centration has been in the area of trying to make sure that from a terrorist threat perspective we have committed the resources and concentrated on doing a pretty good job, at least at this point in time, in getting that system up.

I am pretty encouraged by what you said, Ms. Bucella. And the numbers, Mr. Bonner and Mr. Verdery, that you have to deal with are obviously far greater. We are going to move toward implementation of some sort of H–2A reform, would be guess, hopefully between now and the end of the year as the first step in the immigration reform process.

A number of us have bills out there, but we can't think about that kind of reform without having confidence that our borders are going to be secure, because if we make reforms and we continue to have the flood of illegal immigrants coming in, whether it is for agricultural purposes or other purposes, it is not going to work. So I hope that we are giving you the resources that you need to do the job. If we are not, Senator Sessions is right; you all need to be up here telling us you need the resources.

Ms. Bucella, one other comment I would make on your end is that while this information is plugged into the system and we have the names, and I guess any other number of aliases that these folks have used over the years, we have got to move toward some sort of recognition of really who these people are before they hit our borders.

Again, if it is resources, we have got to commit the resources. Congress has got to make a commitment. If this immigration is going to work and if stopping the terrorists before they get here is going to work, we have got to commit the resources to it, and I think this Committee is prepared to make recommendations along that line.

I commend you on the work you are doing and I just ask you to move ahead with even greater speed than what you have moved thus far. As we move toward the issue of these deadlines, we have got to be kept informed of exactly what is going on out there with respect to your agencies, so I would ask you to do that.

With that, we thank you for being here today and we are going to move to our second panel.

Our next panel is Mr. Daniel Griswold, Associate Director for Trade Policy Studies at the Cato Institute here in Washington, D.C.

Mr. Griswold, welcome. We are glad to have you.

Ms. MARGARET D. Stock is an assistant professor at the United States Military Academy, in West Point, New York.

Ms. Stock, thank you very much for being here.

We have your written statements, and again we would ask that you summarize those statements and we look forward to hearing from you.

Mr. Griswold.

STATEMENT OF DANIEL GRISWOLD, ASSOCIATE DIRECTOR FOR TRADE POLICY STUDIES, CATO INSTITUTE, WASHINGTON, D.C.

Mr. GRISWOLD. Thank you, Chairman Chambliss and members of the Subcommittee, for allowing the Cato Institute to testify on the pressing issue of border security and immigration reform.

Since the terrorist attacks of September 11, 2001, Congress and the administration and this Subcommittee have labored to balance the need to secure our borders with our need to remain a free society open to the world. Long-time opponents of immigration seized on the attacks to argue against legalization of Mexican migration and in favor of drastic cuts in existing levels of legal immigration.

But any connection between terrorism and illegal immigration from Mexico is tenuous. None of the 19 hijackers entered the country illegally or as immigrants. They all arrived in the United States with valid temporary non-immigrant visas. None of them arrived via Mexico. None of them were Mexican. Sealing our southwestern border with a three-tiered, 2,000-mile wall, patrolled by a division of U.S. troops, would not have kept a single one of those terrorists out of the United States.

The problem, Mr. Chairman, is not too many immigrants, but insufficient control over who enters the country. Immigrants who come to the United States to work and settle are but a small subset of the tens of millions of foreign-born people who enter the United States every year. In fact, on a typical day, as you know, more than 1 million people enter the United States legally by air, land and sea, through more than 300 ports of entry. In a typical year, more than 30 million individual foreign nationals enter the United States as tourists, business travelers, students, diplomats and temporary workers.

Now, of those, about 1.3 million will eventually settle here as permanent immigrant residents, some of them illegally. In other words, less than 5 percent of the foreigners who enter the United States each year intend to emigrate in any sense of the word. We could reduce immigration to zero and still not be safe from terrorists who might enter on temporary non-immigrant visas.

Our focus, one might say our obsession in recent years with stifling the migration of Mexicans across our southwest border has not served our National security interests. It has diverted resources and attention away from efforts to identify and keep out people who truly mean to do us harm.

While we were guarding the back door in 2001 to make sure no Mexican immigrants entered our country illegally to work, we were neglecting the far larger barn door of temporary non-immigrant visas, through which all the September 11th hijackers entered.

Most members of Congress understand that willing workers from Mexico are not a threat to America's national security. In May 2002, Congress overwhelmingly approved and the President signed the Enhanced Border Security and Visa Entry Reform Act. We don't get to say this very often at Cato, but that was a good piece of legislation. The law was aimed at the right target: keeping terrorists out of the United States.

It mandates the timely sharing of intelligence with the State Department and border control agencies, and use of machine-readable

and tamper-resistant entry documents, among other common-sense reform. Notably absent from the bill were any provisions rolling back levels of legal immigration or bolstering efforts to curb illegal migration from Mexico.

Indeed, legalizing and regularizing the movement of workers across the U.S.-Mexican border would enhance our National security by bringing much of the underground labor market into the open, encouraging newly-documented workers to fully cooperate with law enforcement officials and freeing resources for border security and the war on terrorism.

Real immigration reform would drain a large part of the underground swamp of smuggling and document fraud that facilitates illegal immigration. It would reduce the demand for fraudulent documents, which in turn would reduce the supply available for terrorists trying to operate surreptitiously inside the United States. It would eliminate most of the human smuggling operations, I believe, overnight. The vast majority of Mexican workers who enter the United States have no criminal records or intentions. They would obviously prefer to enter the country in a safe, orderly, legal way through the standard ports of entry rather than putting their lives in the hands of unscrupulous smugglers.

Just as importantly, legalization would encourage millions of currently undocumented workers to make themselves known to authorities by registering with the Government, reducing cover for terrorists who manage to enter the country and overstay their visas. Workers with legal documents would be more inclined to cooperate with law enforcement because they wouldn't fear deportation.

Immigration reform would free up enforcement and border control resources to focus on protecting the American homeland from terrorist attack. Our Department of Homeland Security, which I believe has a hiring freeze on right now, should concentrate its limited resources and personnel on tracking and hunting down terrorists instead of raiding chicken processing plants and busting janitors at discount stores.

Congress should respond to the leadership shown by President Bush and reform our dysfunctional immigration system. Immigration reform would help our economy grow, it would reduce illegal immigration and it would enhance the Federal Government's ability to wage war on terrorism.

Thank you, Mr. Chairman, and I look forward to your questions.

[The prepared statement of Mr. Griswold appears as a submission for the record.]

Chairman CHAMBLISS. Thank you.

Professor Stock.

STATEMENT OF MARGARET D. STOCK, ASSISTANT PROFESSOR OF LAW, U.S. MILITARY ACADEMY, WEST POINT, NEW YORK, ON BEHALF OF THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

Ms. STOCK. Thank you, Mr. Chairman. I am honored to be here in two capacities. First, I am a member of the American Immigration Lawyers Association and I have been practicing in the field of immigration law as an attorney for more than 10 years. I am also

here as an expert in the area of constitutional, military, national security and comparative law, areas in which I teach.

I am an assistant professor in the Department of Law at the United States Military Academy, at West Point, New York, and I am also a lieutenant colonel in the Military Police Corps, in the United States Army Reserve. But I need to emphasize that the statements, opinions and views I am expressing today are my own opinions and not the opinions of the United States Military Academy, the Department of the Army or the Department of Defense.

With that said, you have my written testimony and I only want to make three key points which are summarized as follows.

First, we secure our borders best by enhancing our intelligence capacity, and national security is most effectively enhanced by improving the mechanisms for identifying actual terrorists, not by implementing harsher immigration laws that blindly label all foreigners are potential terrorists. In fact, that can hurt our intelligence collection capability if it causes people in immigrant communities to be unwilling to come forward and provide us with the information that we need in order to locate the real terrorists.

Any policies and practices that fail to distinguish between terrorists and legitimate foreign visitors or foreign travelers are ineffective security tools that waste our valuable resources, damage the U.S. economy and alienate those groups that we need to cooperate with in the war on terrorism. They also promote a false sense of security by promoting the illusion that we are reducing the threat of terrorism when, in fact, in many cases we are not actually doing that.

Part of security is economic security. We need to stop thinking about security as simply a matter of keeping people out of the country and also think about the fact that security has other dimensions. We can't fight a global war on terrorism with an economy that has been hampered by the fact that we can't get businesses in the country. If American workers are out of jobs because the Japanese investors can't come into the country, for example, that is going to hurt our security. We need to think broadly about security and not limit that concept.

Reforming our immigration laws is critical if we do it in a way that will help us identify those who want to hurt us and distinguish them from those that are no national security threat to us and are already here, already residing here, paying taxes, part of our family networks, even in some cases part of our military.

Second, we need to make our borders our last line of defense, not our first line of defense. The physical borders of the United States should be our last line of defense because terrorism does not spring up at our borders. We need to reconceptualize how we think about our borders because in the modern world they really start overseas and they start at our consulates overseas.

When people refer to our borders, they usually think of the geographic boundaries between us and Canada and Mexico. But to enhance our security, that has to be the last place, not the first place that we look to defend against terrorism. So we have to pursue initiatives such as the North American Perimeter Safety Zone, increase the use of pre-clearance procedures, pre-inspection programs overseas, and provide U.S. officials the opportunity to check people

before they even get on a plane and come to America, before they even try to approach the border.

Third, comprehensive immigration reform is an essential component of any effort to enhance our National security. Right now, our current immigration system, as other people have said, is dysfunctional. I agree with that entirely. We currently allocate massive resources in a futile attempt to enhance a system and enforce a system that does not work.

Our enforcement efforts could be far more effective if our laws made sense. We have laws that simply do not make sense, and I think that is best exemplified by the quote from Karen Croshare in 2001, an INS spokesperson, who said that immigration law is a mystery and a mastery of obfuscation. I think she was right about that.

A new break-the-mold guest worker program is an essential component to sensible reform that would help enhance our security and secure our borders because it would legalize the flow of people that is happening anyway. It is insufficient by itself, however. We also need to offer to those who are residing here, working here, paying taxes and otherwise contributing—some of them have sons and daughters in the military, for example—the opportunity to earn their permanent legal status. We need to recognize that blood is thicker than borders. We need to deal squarely with the issue of family reunification and the backlogs in the family program so that families are not separated 20 years or more, sometimes, by our dysfunctional laws.

I want to put in a small plug, in closing, for the DREAm Act. Just from my personal experience in the military, I know that we have thousands of young people living in America today who came to the United States when they were very small who would like to serve in the military, but they can't because they can't get legal papers.

They speak English and are in great physical condition. They have graduated from our high schools, and yet they cannot serve in the military unless they somehow get in by using fake documents. We should pass a law like the DREAM Act to allow some of those people not only the opportunity to work at janitors at Wal-Mart and things like that, but also the opportunity to volunteer to serve this great country.

In closing, I would say our Nation has no choice but to move ahead with comprehensive immigration reform. We need to think that immigration reform is national security reform, but we need to think about it in a new and creative way if we are going to enhance our security at the border, and we need to do this immediately. We can't wait.

Thank you.

[The prepared statement of Ms. Stock appears as a submission for the record.]

Chairman CHAMBLISS. Well, I thank both of you for those comments. I will have to say I agree with most everything that both of you said.

Professor Stock, I really have been supportive of the President's approach to this because he is the first President we have had who has been willing to say, hey, look, we have got a problem and we

had better face it now. You highlight a real reason why the leadership in this country needs to face this problem, and that is these kids coming along.

They didn't ask for this. They came with their parents who may have come here illegally, and obviously did come here illegally. Yet, they are having to pay really a higher price than what their parents have had to pay. We need to think about the overall issue and those young people who are qualified to be educated, qualified to go into the armed forces, qualified to go into the workforce. Yet, they are going to have this handicap hanging over their head.

I don't pretend to have all of the answers to the question, and I have talked with the President any number of times about this and he doesn't have all of the answers. But the fact of the matter is I applaud him for being willing to face this.

I want to make sure that the next generation—and I have got children and grandchildren—don't have to look at this 30 years from now. If we don't look at it today, then the problem is only going to get more complicated. I don't know that it can get any worse, but it is certainly going to get more complicated by the number of people. So both of you are right in your comments relative to these young folks coming along and, Mr. Griswold, particularly your comment about building a wall. That is simply not going to work.

Ms. Stock, in your written testimony you address border security by describing the issue as terrorist versus legitimate entrants. But we hear about false documentation that is presented at the border, and under a guest worker program we will have hundreds of thousands of people presenting documents at the border.

How would you propose that we address what is sure to be a growing problem of people attempting to enter the United States through our ports of entry in an illegal manner? In other words, how can we be confident in our border security against people illegally entering our country even if they are just seeking a job?

Ms. STOCK. Well, I think part of the guest worker proposal is the idea that we are going to have a drop in the number of people who are trying to come in, and I believe that is the case based on my experience dealing with immigrants.

I know that the vast majority of people coming particularly from Mexico are coming here to work or to be part of a family, and they come in illegally because there isn't a way for them to come legally. If there were a way, these immigrants would love to be legal. I have had so many people over the years come into my office and say, is there any way that I can get legal? They are just dying to do it legally, but the current system is broken and they can't do it.

There is a myth out there among many people that it is easy to emigrate to America. In fact, it is not. It is extremely difficult today. We call ourselves a nation of immigrants. It is not really true today; it hasn't been true for decades. It is extraordinarily difficult for the average person out there in the world to emigrate to America even if they have relatives who are here already and even if they have a job here that nobody wants.

Much of the illegal immigration is driven by the fact that people can't get here legally. I expect if a guest worker program is de-

signed properly and has an earned adjustment or regularization program with it that we will see a significant drop in the flow of people trying to come in illegally with false documents. There won't be any need for them to do that if they can come legally. Why would they run the risk of dying in the Arizona desert when they could simply walk through the San Ysidro port of entry with the correct documents?

Mr. GRISWOLD. Senator, could I just add to that quickly?

Chairman CHAMBLISS. Certainly.

Mr. GRISWOLD. I agree with everything Margaret says. Besides just the common-sense reasons why Mexicans, in particular, would prefer to come in legally, we do have some historical experience. We had the bracero program in the 1950's and into the 1960's, and that program had some flaws. It is not a good model point by point, but President Eisenhower dramatically increased the number of visas available during the 1950's and the apprehensions of people coming in illegally at the border dropped dramatically by 95 percent. I think we have every reason to expect that to happen here.

Wouldn't the job of Mr. Bonner and other people trying to protect our borders be easier if 95 percent of the people coming in illegally now were basically taken off the table and coming in through an orderly process through ports of entry? Then we would know, if somebody was sneaking in, they were probably up to no good.

Chairman CHAMBLISS. You make a good point.

Mr. Griswold, you have written that if President Bush's guest worker plan is put into action, we would eliminate most of the smuggling operations overnight and drain the underground channels by which terrorists might try to enter the United States.

Can you elaborate on that, and particularly in contrast to our border protection agents' ability to control illegal immigration, as recent figures of illegal immigrant arrests seem to demonstrate?

Mr. GRISWOLD. Yes, that is a good point. Well, part of the reason why I think that is true is just the point I made about the historical record of the bracero program. If people can come in illegally, they will choose to come in—if they can come in legally, they will not come in illegally. I think what you do is you reduce the demand for these documents and you will see the supply shrink. Now, there will always be illegal activity, people for one reason or another wanting to come in illegally, but it is more of a manageable problem.

There is some historical analogy with Prohibition, as well. One of the unintended consequences of Prohibition was we created a lot of underground crime. Once Prohibition went away, a lot of that underground crime and organized crime went away as well, and I think we could expect that with this program. Let's get the vast majority, 99 percent or whatever, of people coming across the southwest border who are just coming here to work—let's get them off the table through a legal, orderly process. Then we can focus the full force of our law enforcement and border enforcement on that 1 percent or less whom we have reason to believe are up to no good.

Chairman CHAMBLISS. Ms. Stock, you alluded to this a little bit earlier and you have also written that passing new and more com-

plicated laws will not cure our security problems, but our focus should be on simplifying and implementing existing laws.

Does a massive guest worker program help or hurt this objective to achieve better border security?

Ms. STOCK. Well, I think it is very important to simplify our laws. Right now, it is impossible for the average person to understand our immigration laws. Even the average lawyer doesn't underhand our immigration laws, and I run into that everyday when I try to explain to somebody who comes into my office and says, I have a simple immigration question, and two hours later we are still talking about it.

In fact, our laws are extraordinarily complicated. A guest worker can address that if, in conjunction with the program, we perhaps repeal some of the provisions of the immigration law that tie up or resources, but do nothing to enhance our security.

For example, Section 212(a)(9) of the immigration law currently contains 3-year bars, 10-year bars, permanent bars that essentially divide families up. There are plenty of provisions in the law that keep out terrorists. We have had provisions in the law to keep out terrorists for years. The problem we have is the terrorists don't come up to the border and say, hi, I am a terrorist, can I come in.

What we are doing with a lot of complicated provisions of the law, though, is we are keeping out people that are breadwinners in the family, that are married to Americans, that overstayed a visa for too long or has some problem with paperwork that may not even be their fault. And we are telling them that you need to leave the United States and in 10 years or 20 years you can come back to be here with your family. That makes no sense from a national security perspective.

The average person—as I said, blood is thicker than borders—they are going to try to sneak back in to be with their family members, or we force the American to move to a foreign country to live with their family members. In a lot of cases I have seen, we force the American family to go on welfare because the Mexican worker, for example, who is being deported is the breadwinner in the family. He is married to an American woman and they have a bunch of children. Once he is deported, the family has no income. They then have to go on welfare.

When they are faced with a 3-year bar, a 10-year bar, a 20-year bar, he is not coming back, at least not legally, and the family ends up essentially relying on the taxpayers to support them. These kinds of situations are far too common today because of our immigration laws. Some of the laws, while well-intentioned, don't address national security at all.

I would like to mention just for the record that I did coauthor a report called "The Lessons of 9/11: A Failure of Intelligence, Not Immigration Law," and I would like to submit this report for the record.

Chairman CHAMBLISS. Sure, we will be glad to add that.

Let me give both of you a hypothetical as to how I envision long-term the principles of the President and the general understanding of the ideas that a number of us have thought about relative to the illegals who are here today and how we are going to deal with them.

We are not going to give these folks a green card. I think the President has correctly stated that they have got to be identified as being here illegally today. They didn't comply with the law and we don't want to recognize them as being here legally.

But by the same token, if they are here and they are gainfully employed, they are providing a better quality of life for them and their families, and they are not displacing American workers, then the idea is that we allow them to stay here as a temporary employee, with the understanding that they will have to renew that right of staying here every 3 years or whatever the period may be. Those people, I envision, are going to be what we refer to as blue card-holders. We are going to give them a document that is a non-counterfeitable document that allows them to stay here so long as they are gainfully employed.

Now, if we do that and if we put some sanctions on employers to hire only people who have that blue card or who otherwise are here legally under a green card or a visa or whatever, and that we begin removing or deporting those people who are not here legally under one of those scenarios, do you think that an incentive will be there on those people who are here, gainfully employed, to come forward and make application for that blue card?

Mr. GRISWOLD. Senator, I do think there would be an incentive, and I think you have outlined the issue very clearly. One, they could have portability moving from one job to another. A broader range of jobs would open up. They could move across the border multiple times instead of paying a coyote, a smuggler, every time they come across and risking their lives; you know, all the reasons that were in the previous panel.

I think it is important, as the President outlines, that we not duplicate the mistakes of the 1986 law. That was an amnesty. You have been here 4 years, here is your green card. We didn't do anything to fix the flow of people coming in illegally.

So I think the way the President has outlined it would give an incentive for people to come forward, which has all sorts of positive national security implications if people come forward. It would not allow them to jump the queue and get an extra advantage in getting citizenship or permanent residency.

So for all these reasons, I think the way the President has outlined it offers—of course, Congress will put its stamp on it and there needs to be compromise, but I think the way he has outlined it, all the ingredients are there to fix this problem in a way that serves our economic needs, maintains our free and open society and helps protect us from terrorism.

Ms. STOCK. Could I address that, too?

Chairman CHAMBLISS. Ms. Stock.

Ms. STOCK. I really like the President's proposal, and I agree with you that it was very courageous of him to come forward because obviously a lot of people have not felt positively about the proposal. I believe, though, that if you have a full understanding of U.S. immigration law, you should agree with the President that we need to do something about the situation, particularly the situation involving Mexican workers.

I do think, though, that if we don't consider allowing a certain number of workers who come in as guest workers to have the possi-

bility of adjusting status that we are going to have far fewer takers on the temporary program. There is a sense out there in the immigrant community that if it is just a guest worker program and you can't get a green card eventually through some other method or through the program that you may want to just stay in the shadows because you are simply going to be identifying yourself to the authorities for 3 years and then you are going to be deported.

So in conjunction with the temporary guest worker program, I think it is important to have some avenue for regularizing some of those people. Not everybody is going to want to regularize. Many people from Mexico do come to the United States and they just want to work here for a short time, earn some money and go back. That has been a historic pattern. But there are some that are going to want to stay and that deserve to stay that should be allowed to stay.

So I believe in conjunction with the guest worker program, we should have some kind of earned adjustment program. We should not, of course, make people immediate citizens. That is a crazy idea, but we should have some kind of program in conjunction with the guest worker program that allows some of those people to regularize their status.

Chairman CHAMBLISS. Do you have any numbers of any sort that might indicate how many folks in the Hispanic community would want a green card versus some other temporary status?

Ms. STOCK. No, I don't have numbers on that. I haven't done a poll.

Mr. GRISWOLD. I will say, Senator, we had an experience from the mid-1960's when the bracero program ended until 1986 when we passed IRCA and imposed employer sanctions. It was a kind of "don't ask, don't tell" guest worker program. They could come in without much trouble. Employers could hire them without even asking for documents.

We found during that experience, according to the research, that about 80 percent of them eventually went back to Mexico. The average stay was something like two-and-a-half years. So there is a very clear demand for a temporary entry into the United States. Many Mexican migrants come here to solve temporary problems, to raise some cash for investment back home, to deal with temporary financial problems, and then they want to go back to the country of their birth and their culture. So I think there is a reasonable expectation, based on history, that there would be a demand and compliance with a temporary worker program.

Chairman CHAMBLISS. Ms. Stock, your comment relative to educating the public on the broad immigration issue, I think, is very well taken. I also have said to my friends who are critical of me for supporting the President, you don't really understand what the President has said here. This is not an amnesty program. As Mr. Verdery alluded to once again today, this is a program where we are simply recognizing that people are here illegally, and facing that problem and trying to figure out what is the best way to deal with this issue.

I am not sure where we are going to go from here, but you folks know a lot more about this than any of us do. You deal with it on a much more regular basis, and I would simply say to you that as

we move through the process, don't wait on us to call you. We asked you here today to testify because we knew you had something to offer, and I hope that you will free to contact either me or my staff or Senator Kennedy or his staff as we move through this process.

And it is going to be a long process. We are not going to get an answer to these issues in the short term. It is going to take us months, maybe even years to finally get our arms around this, but we can't do it in the right way without help from folks who know the issues on the ground. That is why we asked you here today, so I hope both of you will stay in touch with us as we go through this and give us your thoughts and your ideas, and give us your criticisms. If we are moving in the wrong direction, we need to hear from folks out there who are really on the street and are a little closer to the issue maybe than we are.

So I thank you for being here today. It has been very insightful to hear your observations and your insight into this issue, and we look forward to continuing the dialogue with you.

Mr. GRISWOLD. Thank you, Senator.

Ms. STOCK. Thank you.

Chairman CHAMBLISS. At the request of Senator Feinstein, we have a statement of Senator Leahy, and also some documents that Senator Feinstein would like to add to the record. That will certainly be done, without objection.

With that, this hearing will stand adjourned.

[Whereupon, at 4:55 p.m., the Subcommittee was adjourned.]

[Submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

Statement of
Robert C. Bonner
Commissioner
U.S. Customs and Border Protection
Before the
Senate Committee on the Judiciary,
Subcommittee on Immigration, Border Security, and Citizenship
April 1, 2004 – 2:30 PM
226 Dirksen Senate Office Building

CHAIRMAN CHAMBLISS AND DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE, I'm pleased to have this opportunity to testify before you today about our efforts to secure the borders of the United States, and how the Temporary Worker Program proposed by President Bush earlier this year, if enacted into law, will make our task easier.

This is the first time I have testified before this Subcommittee as Commissioner of U.S. Customs and Border Protection, and I look forward to working closely with you.

Let me begin my testimony by speaking a bit about U.S. Customs and Border Protection, or CBP. CBP is a new agency, within a new Department of Homeland Security. Over a year ago, on March 1, 2003 – for the first time in recent history – our nation established a single agency responsible for managing and securing the borders of, and all ports of entry into, the United States: CBP. This new agency brings together all of the border inspectors from the legacy Customs Service, INS, and the U.S. Department of Agriculture, as well as the entire U.S. Border Patrol, and is focused squarely upon one of the chief priority missions of the Department of Homeland Security: Preventing terrorists and terrorist weapons from entering the United States.

The President's Temporary Worker proposal is, without question, a compassionate response to a fundamental reality of American life – millions of aliens are illegally in the United States, and thousands of illegal migrants attempt to enter the U.S. to work in our country. These people do not pose a terrorist threat to America. They have come to work in our country, and work hard.

The President's proposal is an acceptance of this reality, will regularize the status of these individuals, and bring them out of the shadows of our society. It will allow them to obtain employment legally, with willing employers. It will allow U.S. law enforcement to get a better handle on who is in our country, and reduce the numbers of people we don't know about and who could present a terrorist threat. And it will ensure that our Labor laws apply to these temporary workers, and ensure that American workers get a first crack at obtaining any available jobs. The President's proposal is a bold step.

The President's proposal will also make my job easier, and allow us to gain greater control over our borders. This will allow the Department of Homeland Security, and CBP, to be much more effective in carrying out its critical mission of preventing terrorists, terrorist weapons, or other criminals and contraband from entering the United States, and harming the American people.

Some simple data points illustrate why this is true. Last year, the United States Border Patrol – now a part of CBP – made 931,310 apprehensions of aliens illegally attempting to enter the United States between our ports of entry. The year before, the Border Patrol made 955,310 arrests. The vast majority of those apprehensions took place on our Southwest Border with Mexico, and the vast majority of the individuals arrested presented absolutely no terrorist or criminal threat to America, and were simply coming here to work. And, because most of those arrested individuals were returned right over the border into Mexico, many of them attempted to cross into the United States again – often within 24 hours of their previous arrest by the Border Patrol. In fact, many of these individuals have been arrested 10, 15, 20 times by the Border Patrol, and never charged with any crime. Each time, they are returned right over the border, only to come right back. Why are they doing this? In most instances, it is because they will seek a job, or already have a job waiting for them in the United States.

Over the past decade, the U.S. Government has responded to this phenomenon by significantly strengthening the U.S. Border Patrol. Indeed, since September 11, 2001, the

Border Patrol has increased its staffing by almost 1,500 agents. And in the years since the Immigration Reform and Control Act of 1986, the Border Patrol has literally tripled in staffing. We have also significantly increased our technological resources, such as sensors, cameras, and aircraft, as well as strengthened our infrastructure along the border – with better fencing, among other things.

With these efforts, the Border Patrol has gotten significant control over certain key areas of our border with Mexico – most prominently in Southern California and in much of Texas. But some areas of the border – Arizona especially – are simply out of control. Indeed, roughly 40% of the 931,000 arrests made last year occurred in the Tucson Border Patrol Sector of Arizona alone. And, given the massive flow of migrants through that Sector, and given the rough desert terrain, it follows that this is where most of the migrant deaths along the border occurred. This is why we launched Operation Desert Safeguard, in conjunction with the Government of Mexico, last year. And this is why we have upped the ante this year, with Under Secretary Hutchinson's rollout of the Arizona Border Control, or "ABC" Initiative, and the concomitant significant increase in CBP, ICE, and other agency resources in the area.

The primary reason we are doing this is to better secure our borders against the terrorist threat. But we are also enforcing our immigration laws, and preventing aliens from illegally entering the United States for any reason.

But I will tell you, that number – 931,310 – should give you pause. With all of the effort of the last decade, and even with the very real success we have had in controlling major segments of our border, the Border Patrol still is dealing with a literal flood of people on a daily basis – again, most of whom are attempting to enter this country in order to work. I am concerned, and we all should be concerned, that terrorists or other criminals will seek to enter the United States by hiding in plain sight within this flood.

We should also be concerned about how lucrative now the alien smuggling business is. Most of the migrants illegally entering our country across the Southwest Border employ

alien smuggling organizations. This is because, with better staffing, technology, and tactics, the Border Patrol has gotten much much better in controlling our border. The days are long past when migrants could simply walk across or storm the border. They now have to pay smugglers, who market their skill in evading the Border Patrol, and getting their products – the migrants – to market, and to their awaiting employers.

Those alien smuggling organizations are primarily used by aliens seeking work in the United States, but they clearly could also be used by terrorists seeking to enter our country and do us harm.

If enacted into law, the President's Temporary Worker proposal would go a long way toward driving a stake through the heart of this black market smuggling enterprise, and reduce the flood of illegal migrants that the Border Patrol must sift through and apprehend in order to protect our borders against terrorist penetration. Imagine if many of those hundreds of thousands of people the Border Patrol currently deals with were regularized, and brought out into the legal open. They would enter legally through U.S. ports of entry, with secure biometrically encoded crossing cards, enabling us to know each person who enters, and who they work for. They will pay taxes, and be able to – and, indeed, be encouraged to – return home after their term of employment was up.

And the Border Patrol could then focus on the real or most serious threats to this country – the terrorists, the criminals, the drug traffickers, the weapons smugglers. We could gain substantial and lasting control of our border, reduce the flood to a trickle, greatly reduce border-related crime, and better secure our homeland.

The President's Temporary Worker Proposal is the ultimate "smart border" program. Since 9/11, I have focused – first as Commissioner of Customs, and now as Commissioner of CBP – on revolutionizing our border, and making it "smarter." What does that mean? The key piece of it is sorting out the relatively few individuals and small proportion of commerce presenting a potential risk to America, focusing our scrutiny on them, and allowing the vast majority of everybody and everything else, presenting little

or no risk, to speed through into our society and economy. This is what motivates signature initiatives like the Customs-Trade Partnership Against Terrorism, the Free and Secure Trade, or "FAST" program, SENTRI, and NEXUS. It is what motivates our collection of advance information, and guides our National Targeting Center. In a sense, it also guides our "extended border" programs like the Container Security Initiative (CSI) and, Air Preclearance, and the Immigration Security Initiative (ISI). Not only should we identify and address terrorist threats well before they hit our shores; we should also identify and clear those individuals and items that present no risk as early as possible – so we don't waste our valuable enforcement resources on them, or disrupt their movement into the United States.

The Temporary Worker Program is a natural extension of this philosophy. We want to identify those individuals who want to work in the United States, and have jobs here. We want to let them come into our country unimpeded, and – importantly – track who they are, when they entered, and where they are working. But otherwise let them go about their business – which presents no threat.

And then our law enforcement resources – most prominently U.S. Customs and Border Protection – can go about the business of securing our borders from the terrorists, and other threats to the American people.

The President's Temporary Worker Program will not change the mission of CBP. Unauthorized entry into the United States will still be illegal, and CBP will continue to improve its ability to prevent and deter it. The Temporary Worker Program will help us do that job better. And, assuming CBP and its Border Patrol continue to have adequate personnel, infrastructure, equipment, and technology to do the job of securing the border – and, importantly, preventing people from evading the dictates of the Temporary Worker Program by crossing illegally between our ports of entry – the strengthened control over our border will in turn increase the chances that the Temporary Worker Program will achieve its goals and make America better and stronger.

Again, I appreciate the opportunity to testify before you, and I would be happy to answer any questions you might have.

STATEMENT OF DONNA A. BUCELLA

DIRECTOR, TERRORIST SCREENING CENTER,

BEFORE THE SENATE JUDICIARY COMMITTEE,

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY,

AND CITIZENSHIP

April 1, 2004

Good afternoon Chairman Chambliss and members of the Subcommittee. Thank you for the opportunity to discuss the missions and objectives of the new Terrorist Screening Center (TSC). Homeland Security Presidential Directive 6 (HSPD-6), issued on September 16, 2003, ordered the creation of the TSC, directing its operations to begin on December 1, 2003, and we met that goal. The TSC was created to ensure that government investigators, screeners, federal agents, and state and local law enforcement officers have ready access to the information and expertise they need to respond quickly when a known or suspected terrorist is encountered here in the United States, at our borders and at our embassies. Today, I will tell you about our daily operations as they relate to the U.S. Customs and Border Protection's National Targeting Center (NTC) and our role in preventing terrorists and suspected terrorists from crossing our nation's borders. I will provide as much information as I can in this open forum, however, I will be happy to provide additional, classified details in a closed setting at your request.

TSC Operations

The TSC is a multi-agency Center, including participants from the Departments of Justice (FBI), Homeland Security, State, and Treasury. Our goal is to consolidate the Government's approach to terrorism screening and provide for the appropriate and lawful use of terrorist information in screening processes. Being a diverse Center, manned by personnel from both law enforcement and homeland security entities, we communicate and coordinate terrorist screening efforts across the full spectrum of federal, state and local government agencies, sharing information pursuant to the applicable legal framework.

Since December 1, 2003, TSC has been providing key resources for screeners and law enforcement personnel. These include:

(1) a single coordination point for terrorist screening data;

(2) a consolidated 24/7 call center for encounter identification assistance;

(3) access to a coordinated law enforcement response;

(4) a formal process for tracking encounters;

(5) feedback to the appropriate entities; and

(6) a process to address misidentification issues.

There are three fundamental types of inquiries: interior (within the U.S.), border (at the points of entry at our borders and ports) and exterior (outside the border). Interior inquiries will normally be made by local law enforcement. Border inquiries are made by

U.S. Customs and Border Protection. Exterior inquiries are conducted by the State Department. Today, I will highlight border inquiries.

The TSC receives a high volume of calls that originate with U.S. Customs and Border Protection (CBP) inspectors stationed on the nation's borders. In a typical case, a person attempts to enter the U.S. at a border crossing. A CBP inspector queries the name electronically, and receives a response from the Interagency Border Inspection System (IBIS) or the National Crime Information Center (NCIC) indicating that the person may be a suspected terrorist or associate of terrorists. The CBP inspector will contact the National Targeting Center (NTC), where the record will be analyzed, then passed to the TSC. We examine the record to determine whether the individual is identical to the person in the Terrorist Screening Center Database. The TSC then appropriately passes any derogatory information on the subject, and CBP makes a determination on whether the individual will be allowed into the United States. Simultaneously, we contact our operational component at the FBI's Counterterrorism Division, the CT Watch. CT Watch provides for the local Joint Terrorism Task Force (JTTF) response.

This collaboration between TSC and CBP has already achieved results. One instance involves a foreign national traveling to the U.S. He was inspected by a number of CBP inspectors and found to have dangerous substances in his luggage. He was arrested, and later removed from the U.S. and returned to his country of origin. Less than a month later, the individual applied for a new visa and was identified by the TSC as a possible threat based on the previous events.

Our cooperation with CBP has also facilitated the sharing of information related to ongoing investigations. Information about the circumstances of international travel and data collected by CBP during border interviews can be very important to other investigators. In one case, for example, the TSC-CBP connection provided the FBI with information about someone traveling with known investigative subjects, and led to the initiation of an investigation of the previously unsuspected associate.

Conclusion

TSC is a multi-agency organization that is contributing to nationwide efforts to keep terrorists out of the U.S. and locate those who may already be in the country. We work closely with CBP inspectors and the National Targeting Center (NTC), and we look forward to working with the Committee in its efforts to secure our nation's borders.

For this unclassified hearing, I have given you only limited examples of our successes. We have screened over 2,000 calls since our inception, and assisted in positively identifying a number of known or suspected terrorists encountered during governmental screening processes. I appreciate the Committee's interest in the TSC's activities and I will be happy to answer any questions you may have.

from the office of

Senator Edward M. Kennedy

of Massachusetts

FOR IMMEDIATE RELEASE
April 1, 2004

CONTACT: David Smith/ Jim Manley
(202) 224-2633

STATEMENT OF SENATOR EDWARD M. KENNEDY AT THE IMMIGRATION SUBCOMMITTEE HEARING ON "SECURING OUR BORDERS UNDER A TEMPORARY GUEST WORKER PROGRAM"

Mr. Chairman, thank you for calling this hearing on the important issue of border security.

Strengthening the security of our borders is an indispensable part of the nation's effort to prevent future terrorist attacks. We need policies and laws that keep up with the serious security threats we face from abroad. But, in our pursuit of terrorists, our government cannot ride rough-shod over the basic rights and liberties of immigrants and citizens or turn its back on our own extraordinary history as a nation of immigrants.

In recent years, even before 9-11, Congress has invested billions of dollars to increase the number of border patrol agents, improve border surveillance technology, and strengthen border enforcement, especially along our southwest border. There is little evidence, however, that these steps have significantly reduced illegal immigration. Many experts believe that several hundred thousand people continue to enter the country illegally each year.

One result of our enforcement strategy has been to channel even more illegal entries through the most inhospitable desert and mountain regions along the border, causing large increases in deaths from exposure to the elements. According to the U.S. Border Patrol, since 1998 nearly 2000 people have died trying to cross that border.

Desperate migrants are being drawn to criminal smuggling syndicates that bring more violence to border communities. As Stephen Flynn, an expert on terrorism told the Foreign Relations Committee last week, our "draconian measures" have produced chaos at our borders, which is ideal for exploitation by criminals and terrorists.

Security experts have also criticized other policies that our government pursued after September 11 that wasted valuable resources and did little to enhance national security.

Registration, interview, and detention policies have targeted Muslims and Arabs because of their religious or ethnic background, and not on suspicion of any of wrong-doing.

Vincent Cannistraro, former director of Counterterrorism Operation at the CIA, concluded that these policies caused tremendous fear and distrust and worked "against intelligence-gathering by law enforcement, particularly the FBI." At a time when we needed critical intelligence information, members of these communities were unfairly stigmatized and discouraged from coming forward to aid our law enforcement and counter-terrorism efforts.

We need sensible border security policies that make the best use of our resources, not squander them. We need to focus our efforts on screening out terrorists and criminals long before they enter the U.S.

Almost two years ago, Congress enacted the Enhanced Border Security and Visa Entry Reform Act, which provided reasonable and focused policies to screen out potential terrorists more effectively. Key provisions in that legislation required law enforcement and intelligence agencies to provide front-line agencies with better intelligence for their decisions on the admission of foreign nationals, for the integration of all of the agency data systems into a common network, for the use of biometric identification methods for visas and other immigration documents, and for more cooperation with other countries to screen foreign nationals before they reach the United States.

Technology is essential in this mission, but other steps are important too, including hiring additional personnel, retaining experienced workers, providing adequate training, and developing effective ways to facilitate coordination and information-sharing among federal agencies.

All of these measures enhance and create important layers of protection against potential terrorist attacks. We look forward to learning more from our Administration witnesses about the progress in implementing these and other provisions in the legislation. We also welcome recommendations from all of our witnesses to bolster the security of our borders without impeding the legitimate flow of people and commerce.

Our borders have to be safe and secure. No terrorists have been apprehended crossing the southern border, but the conditions there are ripe for abuse. Current enforcement policies are not effective, but harsh immigration restrictions won't work either. We can't seal our borders to the more than 30 million tourists, students, and business men and women who come to the United States each year or the 500 millions others who cross our borders each year. We can't deport the millions of illegal workers here in the U.S. without crippling our economy, even if we could find them.

We need sound immigration policies that provide a manageable and orderly system that respects the law instead of ignoring it. It is not enough to just to bring the law into line with current economic realities.

Reforms must also reflect the basic values of family unity, fundamental fairness, and opportunity that are at the heart of our heritage as a nation of immigrants. Legalizing the flow of people at our borders will strengthen our security and reduce the threat from terrorists.

Immigration reforms can only work if they are done the right way. The White House proposal falls short of meeting our border security needs. It creates a new temporary worker program, similar to the shameful programs of the past that treated immigrant workers as second class immigrants. It does little to provide permanent legal status for the millions of undocumented men and women who have worked hard in our country for years and live in our communities.

Without a path to permanent residence, we know what will happen. These millions of undocumented workers will not come out of the shadows and sign up for a temporary worker program. They've spent years in this country, working hard, paying taxes, and raising their children. They contribute significantly to the strength of our economy. Registering for employment now to be deported tomorrow is unfair. It won't work, it won't reduce the size of the illegal population, and it won't free up resources to target suspected terrorists and criminals.

That fundamental flaw in the President's plan can be easily corrected by a genuine earned legalization program for undocumented workers, a revised temporary worker program with protections for both U.S. and foreign workers, a realistic path to citizenship for all deserving immigrants, and a way to unite immigrant families. Each component of this program is critical and shouldn't be excluded.

A fair temporary worker program will provide foreign nationals with a legal way to come to the U.S., and significantly reduce reliance on smugglers, fraudulent documents, and corruption at the border. It will also improve our ability to enforce our immigration laws, to safeguard our borders, to crack down on drug trafficking and other criminal activity, and to protect our national security.

An earned legalization program will encourage undocumented workers to come forward and report to the authorities, enabling our government to properly screen and document them. Reducing the size of the undocumented population reduces the ability of suspected terrorists to hide. Limited enforcement resources can be focused more effectively on the most dangerous individuals who present the highest risks.

Revising the visa program will eliminate the long years of separation that immigrant families are forced to endure. Desperate to be united with loved ones, family members risk danger and even death to cross our border illegally.

It's long past time to deal with the current backlog, adopt realistic levels for immigrant visas for employment and for family members, and remove other obstacles that separate families.

We can't be complacent any longer. Although these reforms will take time to enact, we need to start now. Congress can move ahead this year by enacting two long-stalled bills that have broad bipartisan support – the AgJOBS Act for migrant workers, and the DREAM Act for immigrant students. With President Bush's support, it's very likely that Congress could pass both of these bills very quickly, and take two important steps to help solve these festering and dangerous problems.

I thank our witnesses at today's hearing, and I look forward to their insights on these important challenges we face.

###

Statement of Senator Patrick Leahy
Senate Judiciary Committee
Subcommittee on Immigration, Border Security and Citizenship
Hearing on "Securing Our Borders Under a Temporary Guest Worker Program"
April 1, 2004

Today's hearing features a number of distinguished witnesses and addresses what should have been a timely and important topic. At this point, however, given the President's apparent disengagement from his own guest worker proposal, any discussion of the costs and benefits of a guest worker program seems sadly beside the point.

As everyone here will remember, the President announced his principles for immigration reform to great fanfare in January. But his proposal was lacking in specifics, and he has failed over the ensuing months to define further how he would have Congress act in this area. He has ignored entreaties from both sides of the aisle – including from me – to engage himself fully in this issue and make clear what it is he would have Congress do. Instead, the Administration appears to be paralyzed by the opposition of its right-wing base and by a vocal minority in Congress.

Meanwhile, there are critical immigration matters that this Committee has not addressed. Today, I would like to highlight an issue which employers in all of our States are raising with great urgency. Many are facing an economic crisis this summer. The Bureau of Citizenship and Immigration Services recently announced that the statutory cap on the number of H-2B visas had already been reached for the current fiscal year. These visas are used for short-term workers in the tourism industry – such as restaurants and hotels – as well as for landscapers and fishing, timber, and food production firms. I have received dozens of calls from concerned businesses in Vermont who rely on H-2B workers to meet the increased customer demands that summer brings, and I am sure that Senators from other states are also getting urgent calls from their own constituents.

I have joined with Senator Kennedy and 13 other of my colleagues – including eight Republicans – in introducing S.2252, the bipartisan Save Summer Act of 2004. This bill would increase the cap for the current fiscal year by 40,000. I am disappointed that the Chairmen of the Subcommittee and the full Committee have not joined their Republican colleagues in supporting this bill. They have introduced S.2258, which provides a rather cumbersome approach to solving this problem. I fear that this bill will not accomplish its intended goal, and I would greatly prefer that we pass the Save Summer Act. One thing is clear, however: We cannot afford to delay in passing corrective legislation. Time is of the essence if we are going to help employers in my State and elsewhere serve their customers this summer. The Save Summer Act of 2004 is a necessary response to a critical and unexpected problem, and I urge the Administration and this Committee to support it.

In addition, it is long past time for the Senate to take up S.1545, the DREAM Act. This bipartisan bill passed the Committee last November. It would allow children who graduate from U.S. high schools – but who were brought to this country illegally as

children – to obtain legal immigration status. The bill has 43 cosponsors in the Senate, including myself, and it is a small but important step we could take to reform our broken immigration system.

Finally, I urge the Chairman of the Subcommittee to move forward with S.1645, Senator Craig's Agricultural Job Opportunity, Benefits, and Security Act. This is a compromise bill – cosponsored by 55 Senators, including myself – that would help our farmers find willing immigrant labor, and give those laborers a path to legal status in the United States.

# # # # #

Testimony prepared for the Senate Judiciary Committee
Subcommittee on Immigration, Border Security, and Citizenship
Hearings on "Securing Our Borders Under a Temporary Guest Worker Program"
April 1, 2004

Presented by Daniel Griswold
Cato Institute

First, let me thank Chairman Chambliss and members of the subcommittee for allowing the Cato Institute to testify at today's hearing on the important subject of border security and immigration policy. No constitutional duty of the federal government is more fundamental than protecting the American people from attack from enemies abroad.

Since the terrorist attacks of September 11, 2001, Congress and the administration have struggled to balance the need to secure our borders with the need to remain a free economy open to the world. The challenge confronting members of this subcommittee today is how to keep out dangerous goods and people and the money that supports them without sacrificing the benefits of international trade, investment, travel and immigration.

Long-time opponents of immigration seized on September 11 to argue against legalization of Mexican migration, and in favor of drastic cuts in existing levels of legal immigration. But any connection between the September 11 attacks and illegal immigration from Mexico is non-existent. None of the 19 hijackers entered the country illegally or as immigrants. They all arrived in the United States with valid temporary nonimmigrant tourist or student visas. None of them arrived via Mexico. None of them were Mexican. Sealing the Mexican border with a three-tiered, 2,000-mile replica of the Berlin Wall patrolled by a division of U.S. troops would not have kept a single one of those terrorists out of the United States.

The problem is not too many immigrants. Immigrants who come to the United States to work and eventually settle are but a small subset of the tens of millions of foreign-born people who enter the United States every year. In fact, on a typical day, more than 1 million people enter the United States legally by land, air, and sea through more than 300 ports of entry. In a typical year, more than 30 million individual foreign nationals enter the United States as tourists, business travelers, students, diplomats, and other temporary, nonimmigrant visa holders.[1] Of those, perhaps 1.3 million will eventually settle here as permanent immigrant residents. In other words, less than 5 percent of the foreigners who enter the United States each year intend to immigrate in any sense of the word. The rest plan to stay here only a short time.

Yet up until September 11, 2001, the overriding focus of our border security policy was to keep people out who might stay beyond their visa or enter illegally in search of employment. If you recall, some of the September 11 hijackers were granted a visa without even being interviewed by our consulate personnel. Why? Because they were deemed to be low risk for staying in the United States to seek employment.

Our focus, you might say our obsession, with keeping Mexicans from crossing our Southwester border illegally has not served our national security interests. It has

[1] U.S. Citizenship and Immigration Services, Department of Homeland Security, "Monthly Statistical Report" and *Yearbook of Immigration Statistics*

diverted resources and attention away from efforts to identify and keep out people who truly intend to do us harm.

The Southwest border is not a frontline on the war on terrorism. First, Mexicans themselves are not a national security threat. No Mexican national to my knowledge has been connected with Al Qaeda or any other international terrorist network. Mexicans almost universally come here to work. Second, international terrorists have not viewed the Southwestern border as a preferred means of entry. The Canadian border is more attractive. It's twice as long, with far fewer border patrol personnel per mile. Middle Eastern nationals tend to stand out more in Mexican society than in Canadian society or at a typical international airport. Recall that it was at a port of entry at the Washington state/British Columbia border in 1999 that U.S agents apprehended Ahmed Ressam, one of the so-called millennium bombers.

Why would a potential terrorists incur the risks of sneaking across our Southwest border when other doors are more attractive? A special investigation by the Associated Press last November found that not a single terrorist suspect had been arrested trying to enter the United States across the Mexican border since the September 11 terrorist attacks. As border patrol agent Matt Roggow told the AP, "The people who are coming across [the Mexican] border are people who can only pay $1,500 to a smuggler. A terrorist can pay $30,000 or $40,000 and go to the northern border where we don't have the resources to stop them."[2]

While we were guarding the back door in 2001 to make sure no Mexican immigrants entered our country illegally, we were neglecting the far larger barn door of temporary non-immigrants through which all the September 11 hijackers entered.

Most members of Congress understand that willing workers from Mexico are not a threat to America's national security. In May 2002, Congress overwhelmingly approved and President Bush signed the Enhanced Border Security and Visa Entry Reform Act of 2002. We don't say this very often at the Cato Institute, but that was a good piece of legislation. The bill was aimed at the right target—keeping terrorists out of the United States. Among its major provisions, the law:

- Requires federal intelligence and law-enforcement agencies to share data on suspected terrorists in a timely manner with the INS and the State Department;
- Establishes a uniform database that can be accessed by consulate officials and border agents;
- Requires that all travel and entry documents issued to aliens be machine-readable and tamper-resistant and include biometric identifiers;
- Requires the advance forwarding of passenger manifests for all incoming commercial vessels and aircraft;
- Bars issuance of nonimmigrant visas to aliens from countries that sponsor terrorism, unless approved by the Secretary of State; and
- Requires U.S. colleges and universities to report the arrival, enrollment, and departure of foreign students.[3]

---

[2] Associated Press, "No terror suspects nabbed on border: But death toll rising among migrants along Mexican frontier," November 3, 2003.

[3] See Enhanced Border Security and Visa Entry Reform Act, Public Law No: 107–173.

All these are common-sense provisions that, in hindsight, should have been in place long before 9-11. Notably absent from the bill were any provisions rolling back levels of legal immigration or bolstering efforts to curb undocumented migration from Mexico. Members of Congress rightly understood, when crafting the legislation, that Mexican migration is not a threat to national security.

Indeed, legalizing and regularizing the movement of workers across the U.S.-Mexican border could enhance our national security by bringing much of the underground labor market into the open, encouraging newly documented workers to cooperate fully with law enforcement officials, and freeing resources for border security and the war on terrorism.

Real immigration reform would drain a large part of the underground swamp that facilitates illegal immigration. It would reduce the demand for fraudulent documents, which in turn would reduce the supply available for terrorists trying to operate surreptitiously inside the United States. It would eliminate most of the human smuggling operations overnight. The vast majority of Mexican workers who enter the United States have no criminal record or intentions. They would obviously prefer to enter the country in a safe, orderly, legal process through an official port of entry, rather than put their lives in the hands of unscrupulous smugglers. By entering legally through a temporary worker program, they could travel freely across the border for multiple visits home rather than incurring the risk and expense of re-crossing the border illegally. As a consequence, legalization would drain the underground channels through which terrorists might try to enter the country.

Just as importantly, legalization would encourage millions of currently undocumented workers to make themselves known to authorities by registering with the government, reducing cover for terrorists who manage to enter the country and overstay their visas. Workers with legal documents would be more inclined to cooperate with law enforcement and provide evidence if they do not fear deportation. Furthermore, we would free up enforcement and border-control resources to focus on protecting the American homeland from terrorist attack. Our Department of Homeland Security should concentrate its limited resources and personnel on tracking and hunting down terrorists instead of raiding chicken processing plants and busting janitors at discount stores.

Congress should respond to the leadership shown by President Bush and reform our dysfunctional immigration system. We need to create a legal channel for peaceful hardworking people to enter our country temporarily—and to legalize those workers already here—so they can fill a whole range of jobs where the supply of domestic workers falls short of demand. Immigration reform would help our economy grow, it would reduce illegal immigration, and it would enhance the federal government's ability to wage war on terrorism.

Thank you.

By electronic submission

April 1, 2004

Senate Judiciary Committee
Subcommittee on Immigration, Border Security and Citizenship
416 Russell Building
Washington, D.C. 20515
c/o Senator Ted Kennedy

RE: **Hearing on Guest Workers and Border Security**

Dear Immigration Subcommittee Members:

MALDEF is a national, nonprofit, nonpartisan organization that has been defending the civil rights of Latinos for 35 years. We are writing to address concerns that some have raised about border security in relation immigration policy reform proposals. MALDEF is of course very concerned about national security. Protecting the border, however, does not require that fundamental rights have to be compromised. In fact, as this letter relates, the two issues are inextricably intertwined. Since most U.S. "border policy" concentrates on the Southwestern border with Mexico, and since most of the people crossing that border are Latinos, MALDEF has a long history of studying the challenges in the "border region."

Over the last 18 years, since the implementation of "Operation Gatekeeper," thousands have died at the border and countless more have risked their lives and been subject to unspeakable abuses. Many trafficking victims have not been provided access to the relief and protections required under U.S. law. In addition, in the border region in general, Latino citizens and immigrants alike are also subjected to rights violations such as racial profiling and excessive use of force by law enforcement, which is unnecessary and even unhelpful to U.S. national security. Safe and humane immigration policy could help resolve these issues. We have several points we would like to make in this regard.

First, the rights at stake are fundamental rights. Under the Bill of Rights of the U.S. Constitution, such rights pertain to every person, regardless of their immigration status. Therefore, the U.S. has affirmative legal obligations to not violate and to protect fundamental human rights at the border. Since militarization of the border has led to serious human rights violations, we urge Congress to refrain from further militarization of the border, and instead concentrate on immigration policy reform to provide a safe and legal means of entry to the United States, for those immigrants who are trying to reunite with their families or who fill an economic need of our country. This would significantly

reduce the black market trafficking at the Southwestern border, and reduce the deaths and abuses of those who currently cross illegally.

Under the U.S. Constitution, national security measures that may infringe upon fundamental rights must be shown to be effective and tailored in a way that actually meets government interests. Operation Gatekeeper and its successor operations have not been effective at reducing undocumented immigration, but they have led to tragic human rights violations. MALDEF recommends that whatever new border security policy this Congress oversees be protective of human rights, and that it should be demonstrably effective at protecting actual U.S. security interests.

Second, civil rights protections are also needed to ensure against racial profiling in the border region. Despite progress MALDEF has made in meetings with top Department of Homeland Security ("DHS") officials interested in preventing racial profiling, this practice has actually increased since the transfer of immigration functions from the former Immigration and Naturalization Services ("INS"). Organizations at the border have reported that racial profiling has become a way of life for Latino citizens and immigrants. One reason is the August 2003 reversal of the policy set forth by former Border Patrol Chief William Veal, under which the Border Patrol's jurisdiction was limited to the border. Under the new policy, harassment of Latinos in shopping centers, at elementary schools, and faith-based centers has increased. Such harassment typically also results in other rights violations, such as due process violations and excessive use of force.

MALDEF urges this Congress to limit Border Patrol investigations to circumstances of reasonable suspicion of illegal activity. We also urge this Congress to ensure against racial profiling in the border region, which is unconstitutional. Furthermore, use of racial profiling breaks the trust between the Latino community and DHS officials. Serious civil rights protections must be put into place throughout the DHS, from the top down. Any agent of the DHS who commits rights violations of any person must be held accountable.

Third, we urge Congress to keep in mind that a guest worker-only program would not help border security. The current undocumented population, as well as future entrants *and their employers*, are not likely to sign up for or remain in a guest worker program if it does not correspond to real world needs and market realities. Both the 1940's *bracero* program as well as the H2A agricultural temporary worker program actually encouraged undocumented immigration. This is simply because hard-working migrant workers who are valued by their employers, are hired beyond the term of their temporary visas. If there is not a permanent visa available to sponsor migrant workers who are meeting an economic need, this leads to undocumented immigration. If we are concerned about "border security" in the form of knowing who is in the U.S., Congress needs to design an immigration policy reform that goes well beyond the guest worker-only model. This is the best way to ensure against unauthorized border crossings.

Comprehensive immigration policy reform would be very helpful. As both President Bush and the Democratic Policy Committee have made clear, our nation's current immigration policy has been badly broken and it is out of step with reality. American immigrant families are being torn apart because the backlogs for legal immigration from Mexico are over 10 years. Spouses and even young children are

risking their lives in the desert just to try to reunite with their families, instead of suffering through years and years of separation that is devastating to hard-working people with good family values.

An earned legalization program and making a safe and legal means for future immigration will bring the process out of the shadows and ensure U.S. jobs and labor rights protections. Instead of militarizing the border—which experience shows leads to further deterioration of the situation—the U.S. should bring the process of migrating to the U.S. from Mexico out of the black market and into legality. The logical way to do this is to ensure that immigration policy is inclusive, and in particular that it includes reducing the backlogs from Mexico and other countries, and provides a workable means for family unity. The "other worker" category should no longer be subject to caps, and similarly, deserving spouses and children should have ready access to green cards.

Finally, if the U.S. government is to effectively fight illegal trafficking, it must put into place protections and even mechanisms to "rescue victims of trafficking," as is its duty under the Trafficking Victims' Protection Act. There has been some progress on this issue at the regional/international level. However, it is very troublesome that victims have not been identified and helped by U.S. immigration officials, who instead have been prosecuting the victims and placing them in deportation proceedings. Current border security policies lack mechanisms to identify victims and an understanding that victims will not self-identify due to their trauma. As a result, access to the T-visa is elusive for most trafficking victims.

In sum, militarizing the border and failure to make immigration policy comprehensive does not protect American interests. In contrast, providing a safe and legal means to enter the U.S. for those who deserve to be here, while screening applicants for security purposes, is likely to be less costly, and it would make America more secure. Security must also include economic considerations, in order to keep the economy strong. (See, e.g., §101(b)(1)(F) of the *Homeland Security Act.*) The current undocumented population contributes billions of dollars per year to the U.S. economy.

Many current undocumented immigrants are supporting and even creating U.S. jobs. Moreover, because the native U.S. workforce is aging, we will need even more immigrant labor to fill the jobs that will be available in the future. These are realities we cannot ignore, because the current system is not working for anyone—not for business, not for labor, not for national security, and not for fundamental American rights and values. The DHS cannot protect American interests alone. For all these reasons, we urge this Congress to enact comprehensive immigration reform and to consider all of the recommendations discussed above in the context of border security.

Please do not hesitate to contact Katherine Culliton, Legislative Staff Attorney in our D.C. office, at (202) 293-2828 x14, if you have any questions or need further information.

Best regards,

Vibiana Andrade

Acting President

Statement of

Margaret D. Stock
American Immigration Lawyers Association
Assistant Professor of Law, Department of Law,
US Military Academy, West Point, NY

On

Securing Our Borders Under a Temporary Guest Worker Program

Before the

Senate Judiciary Committee
Subcommittee on Immigration, Border Security, and Citizenship

April 1, 2004

Washington, D.C.

Mr. Chairman and distinguished Members of the Subcommittee, my name is Margaret Stock. I am honored to be here in two capacities: on behalf of the American Immigration Lawyers Association (AILA) and as an expert in the field of constitutional, military, national security, and comparative law. I am an Assistant Professor at the United States Military Academy at West Point, New York. The statements, opinions, and views expressed herein are my own, and do not represent the views of the United States Military Academy, the Department of the Army, or the Department of Defense.

AILA is the immigration bar association with more than 8,500 members who practice immigration law. Founded in 1946, the association is a nonpartisan, nonprofit organization and is an affiliated organization of the American Bar Association (ABA). AILA members represent tens of thousands of American families who have applied for permanent residence for their spouses, children, and other close relatives to lawfully enter and reside in the United States; U.S. businesses, universities, colleges, and industries that sponsor highly skilled foreign professionals seeking to enter the United States on a temporary basis or, having proved the unavailability of U.S. workers when required, on a permanent basis; and healthcare workers, asylum seekers, often on a pro bono basis, as well as athletes, entertainers, exchange visitors, artists, and foreign students. AILA members have assisted in contributing ideas for increased port of entry inspection efficiencies and continue to work through their national liaison activities with federal agencies engaged in the administration and enforcement of our immigration laws to identify ways to improve adjudicative processes and procedures.

As I mentioned previously, I am an Assistant Professor at the United States Military Academy at West Point, New York, where I teach National Security Law, Constitutional Law, Military Law, Comparative Law, and International Law to future military officers. As an attorney and a graduate of the Harvard Law School, I have practiced in the area of immigration law for more than ten years, and have written and spoken extensively on the issue of immigration and national security. I am also a lieutenant colonel in the Military Police Corps, United States Army Reserve. Over the years, I have represented hundreds of businesses, immigrants, and citizens seeking to navigate the difficult maze of US immigration law.

I am honored to be appearing before you this afternoon to discuss the issue of "Securing Our Borders under a Temporary Guest Work Program." This hearing could not be more important or timely because it connects two important issues: border security and reforming our immigration laws. This hearing can help us focus on the central issues that our nation must address successfully if we are to enhance our security and thrive as a nation. Hopefully, we can clarify the major issues at stake, judge where we have succeeded and failed, and question any false assumptions we may hold. For instance, we need to be clear about what we mean when we talk about our "borders." We also need to be willing to take a hard look at the measures we have taken to enhance our security and evaluate honestly whether or not they actually make us safer. In addition, we need to acknowledge that we cannot enhance our security unilaterally. Most of all, we must realize that in these times of unprecedented challenges, we need to work together.

I want to make three key points:

- **First, we secure our borders best by enhancing our intelligence capacity.** National security is most effectively enhanced by improving the mechanisms for identifying actual terrorists, not by implementing harsher immigration laws or blindly treating all foreigners as potential terrorists. Policies and practices that fail to properly distinguish between terrorists and legitimate foreign travelers are ineffective security tools that waste limited resources, damage the U.S. economy, alienate those groups whose cooperation the U.S. government needs to prevent terrorism, and foster a false sense of security by promoting the illusion that we are reducing the threat of terrorism. Reforming our immigration laws will help us to identify those who seek to enter our country or are already residing here.

- **Second, we need to make our borders our last line of defense.** The physical borders of the United States should be our last line of defense because terrorism does not spring up at our borders. In fact, we need to re-conceptualize how we think about our "borders," because in our modern world they really start at our consulates abroad. The Enhanced Border Security and Visa Entry Reform Act of 2002, a law that AILA actively supported, is based on that assumption and must be actively implemented.

- **Third, comprehensive immigration reform is an essential component of enhanced security.** Our current immigration system is an obstacle to enhancing our security because it is dysfunctional. We currently allocate massive resources in a futile attempt to enforce a system that simply does not work. Our enforcement efforts could be far more effective if our laws made sense. A new "break-the-mold" guest worker program is an essential component to sensible reform that would help enhance our security and secure our borders because it would legalize the flow of people who enter our country. However, it is insufficient by itself. We also need to offer to those who are residing here AND working, paying taxes, and otherwise contributing the opportunity to earn their permanent legal status. We also need to recognize that blood is thicker than borders and deal squarely with the issue of family reunification and family backlog reductions so that nuclear families are not separated for up to twenty years by our dysfunctional laws. S. 2010, the Immigration Reform Act of 2004, introduced by Senators Chuck Hagel (R-NE) and Tom Daschle (D-SD), is the only initiative introduced to date that includes all three components necessary for comprehensive reform.

In this mission to secure our borders, we need to grapple with the following questions:

1. **What security measures are most effective in preventing attacks?** In the hours following the deadly terrorist attacks of September 11, 2001, the United States government took the extraordinary step of sealing U.S. borders to traffic and trade by grounding all aircraft flying into or out of the country and imposing a lock-down on the networks of transportation and commerce that are the lifeblood of our economy and society. Given the uncertainty over what might happen next, these emergency procedures were a necessary and appropriate short-term response to the attacks. In

the long run, however, a siege mentality and the construction of a fortress America are ineffective and unrealistic responses to the dangers we face.

If we are to succeed in reducing our vulnerability to further terrorist attacks, we must focus our attention and resources on the gaps in intelligence gathering and information sharing that allowed nineteen terrorists to enter the United States. National security is most effectively enhanced by improving the mechanisms for identifying actual terrorists, not by implementing harsher immigration laws or blindly treating all foreigners as potential terrorists. Policies and practices that fail to properly distinguish between terrorists and legitimate foreign travelers take us down the wrong path as ineffective security tools that do more harm than good. The report I co-authored with Benjamin Johnson, "The Lessons of 9/11: A Failure of Intelligence, Not Immigration Law," for the Immigration Policy Center of the American Immigration Law Foundation focuses on those immigration proposals, including comprehensive immigration reform, that can enhance our security without jeopardizing the important role immigration plays in the war against terrorism and in our economy. I would like to submit this report for the record.

Comprehensively reforming our immigration laws (which I will discuss in more detail) is an essential tool to help us distinguish between those who mean to do us harm and those who are here to fill our labor market needs and reunite with close family members.

2. **What is the role of our "borders" in enhancing security? What and where are our borders?** When people refer to our "borders," they usually mean the geographic boundaries that separate the United States from Canada and Mexico. Yet to enhance our security we must make our physical borders the last line of defense against terrorism, not the first. We must pursue initiatives including multilateral strategies with Canada and Mexico to create a North American Perimeter Safety Zone, and increase the use of pre-clearance and pre-inspection programs that provide U.S. officials the opportunity to check passengers for admission before those passengers board a flight to the United States (while including safeguards to allow asylum protection for those who truly deserve it).

   Our government has been touting the United States Visitor and Immigrant Status Indicator Technology program (US VISIT) as a tool that will help to make us safer by identifying terrorists. While US VISIT can help to identify people, its utility as a security tool is unclear. This new automated entry/exit system is being implemented at our nation's ports of entry and is designed to collect and share information on foreign nationals traveling to the United States (including travel details and biometric identifiers), confirm identity, measure security risks, and assess the legitimacy of travel in an effort to determine who is welcome and who is not. The program is also intended to help speed traffic flow. The overall plan for the implementation of US VISIT calls for the collection of personal data, photos, and fingerprints at U.S. consular offices abroad and at our ports of entry, as well as broad database and information sharing. The system also is intended to track changes in foreign

nationals' immigration status and make updates and adjustments accordingly. Ultimately, the Department of Homeland Security (DHS) plans to make available information captured through US VISIT at all ports of entry and throughout the entire immigration enforcement system.

Will US VISIT help to enhance our security? While the jury is still out, serious questions need to be addressed as to the achievable mission of US VISIT. A June 1998 Senate Judiciary Committee Report (Senate Judiciary Report 105-197 on S. 1360, the Border Improvement and Immigration Act of 1998, June 1, 1998) makes the following apt comment:

> *The Committee is keenly aware that implementing an automated entry/exit control system* ***has absolutely nothing to do*** *with countering drug trafficking, and halting the entry of terrorists into the United States, or with any other illegal activity near the borders. An automated entry/exit control system will at best provide information only on those who have overstayed their visas. Even if a vast database of millions of visa overstayers could be developed, this database will in no way provide information as to which individuals might be engaging in other unlawful activity. It will accordingly provide* ***no assistance in identifying terrorists, drug traffickers, or other criminals.*** (emphasis added)

With regard to tracking visa overstayers, the report further states:

> *Even if a list of names and passport numbers of visa overstayers would be available, there would be no information as to where the individuals could be located. Even if there was information at the time of entry as to where an alien was expecting to go in the United States, it cannot be expected that 6 or more months later the alien would be at the same location. Particularly, if an alien were intending to overstay, it is likely that the alien would have provided only a temporary or false location as to where the alien was intending to go.*

AILA members have previously testified that immigration can best contribute to our national security through another approach: enhancing our intelligence capacities. To that end, AILA strongly supports the Enhanced Border Security and Visa Entry Reform Act. The goal of this law is to make our borders the last line of defense. To that end, the Act authorizes increased funding for the DOS and the immigration components of DHS, requires federal agencies to coordinate and share information needed to identify and intercept terrorists; encourages the use of new technologies by authorizing funds to improve technology and infrastructure at DHS and DOS, targeting much of this effort at strengthening our nation's borders; mandates the transmittal of advance passenger lists; and implements a study to determine the feasibility of a North American Perimeter Safety Zone. (This study includes a review of the feasibility of expanding and developing pre-clearance and pre-inspections programs).

Given this law's ambitious provisions, Congress needs to step up to the plate and provide the federal agencies impacted with the staffing and funding levels they need to implement this measure's provisions, as well as perform adequate oversight. It is simply unacceptable for Congress to pass this bill and not give the federal agencies the funding they need to do a good job. It is also unacceptable for the agencies not to implement the mandates of this law.

3. **Does it make sense from a security perspective to treat differently our northern and southern borders?** From a security perspective it does not make sense to treat our two borders differently. But the United States does just that. There is an extraordinary degree of cross-border cooperation between Canada and the U.S. to facilitate the $1 billion a day in trade and the travel of 220 million people each year. On the northern border, we usually manage to deal with our security needs without disrupting the flow of people and goods. Our southern border is another story altogether. In contrast to the northern border where our government's actions reflect the view that our security imperatives need not disrupt the flow of people and goods, our southern border is characterized by a hardening that I fear does not make us safer. In fact, long lines and delays make it more difficult for our ports-of-entry personnel to screen people and goods adequately and appropriately as they seek to enter this country. This situation is unwise because our relationship with Mexico is one of our most important bilateral relationships as we seek to enhance our security.

   The Canadian/U.S. bilateral relationship should be a model for our relationship with Mexico because it embraces security and economic facilitation as twin goals. Improving our relationship with Mexico will enhance our security as it reflects the importance of our economic relationship. While the United States currently absorbs over 80% of Mexican exports, Mexico has become the third largest export market for the U.S. and an important destination for U.S. direct investment. Furthermore, U.S./Mexico trade has now reached $232 billion, with our long common border being the busiest in the world, with over 340 million legal crossings annually. Family and social ties between the United States and Mexico are just as strong as those with Canada. The United States should reach out to a willing Mexico to strengthen our important bilateral relationship.

   Such an improved relationship is essential for immigration reform because so much of our documented and undocumented immigration flows from Mexico. With regard to crafting a successful guest worker program, the cooperation of the sending country – and we would expect Mexico to be the primary sender – is essential if we are to implement a successful program. Finally, reforming our immigration laws will help us to more easily verify cross border flows. People who have earned their adjustment and participants in worker programs can be easily identified and separated out from those whom we don't know. If a guest worker and earned adjustment program is implemented properly, it will help bring from the shadows many of the eight (8) to fifteen (15) million illegal or "out of status" aliens who live within our borders. These aliens, the vast majority of whom pose no security threat, can come forward to

be identified, fingerprinted, and registered; they can also provide us with information that we can use to focus on the very serious security threats that we face.

4. **How do we balance the flow of people and goods with securing our borders?** The United States has over 300 ports of entry through which authorized travelers and commercial goods enter the country. In 2001, over 510 million people (63% of whom were foreign nationals) and over $1.35 trillion in imports entered the U.S. through these ports. If the inspection of each of these entrants took even a little longer than it currently does, the flow of goods and people (particularly at land ports) would come to a grinding halt. The Department of Homeland Security thus has the challenge of streamlining current border procedures and evaluating future initiatives so that the border crossing processes are both more secure and efficient. Otherwise, security measures that do not take into account travel and trade could cripple our nation's economic viability. As we think about our security needs, we must remember that we need a strong economy to pay for our national security.

   Our economic prosperity depends on the free movement of people and goods. We must be careful not to create an environment conducive to terrorists and criminals at our ports-of-entry. I concur with Stephen Flynn, who in his March 23 testimony before the Senate Committee on Foreign Relations emphasized that the "hemisphere's economic prosperity depends on an open continental system that facilitates the free movement of people and goods." He is concerned, as I am, that "security has trumped cross-border facilitation as our abiding interest" at our southern border, which is a "mistake because it wrongly presumes that there is an automatic trade-off between advancing greater degrees of openness to support the movement of people and goods and the need for more rigorous border controls." Mr. Flynn's "smart border" has many similarities to the "virtual border" approach I outlined above. Both recognize the importance of the continued flow of people and goods, and underscore that effective border management needs to take place away from our physical borders. I would only add that comprehensively reforming our immigration laws is the other component that is necessary for our borders to work and work well because such reform helps identify the people who present themselves at our ports-of-entry, thereby making legality the norm.

5. **What is the role of immigration in the post-September 11 world?** Because all nineteen of the September 11th terrorists were foreigners, some observers have been quick to blame our vulnerability to terrorist attacks on lax immigration laws. While such a response was predictable, it was misguided and has inevitably resulted in overreaction. Calls to impose a "moratorium" on immigration, halt the issuance of student visas, close the borders with Canada and Mexico, eliminate the Diversity Lottery visa program, draft harsher immigration laws, and similar types of proposals reflect a serious misunderstanding of the relationship between immigration policy and national security.

   Although the attacks of September 11th revealed serious management and resource deficiencies in the bureaucracies that administer our borders, U.S. immigration laws

in and of themselves did not increase our vulnerability to attack. In fact, U.S. immigration laws already are among the toughest in the world and have long provided the federal government with broad powers to prevent anti-American terrorists from entering or residing in the United States. A careful analysis of the September 11th attacks reveals that deficiencies in U.S. intelligence collection and information sharing, not immigration laws, prevented the terrorists' plans from being discovered.

The recent Joint Inquiry into the events of September 11th, conducted by the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence, confirms that better intelligence – and action on that intelligence – might have prevented the attacks on the Pentagon and World Trade Center. Similarly, a recent comprehensive study by the Migration Policy Institute points out that "Immigration measures are an important tool in the domestic war against terrorism, but they are not effective by themselves...the lead domestic security response to terrorism should be strengthened intelligence and analysis, compatible information systems and information-sharing and vigorous law enforcement and investigations." In fact, tightening immigration laws and policies in an unfocused manner will make it more difficult for the United States to win the global war on terrorism by damaging the U.S. economy and alienating the immigrant communities and foreign allies whose cooperation the U.S. government most needs. In contrast, immigration reform would allow enforcement efforts to focus on terrorists.

6. **What is the role of a temporary guest worker program in helping to secure our borders?** The U.S. currently has a guest worker program: It is known as undocumented immigration. We must legalize this flow by creating a new temporary worker program that would give workers the opportunity to work where they are needed, and employers experiencing shortages the workforce they need to remain competitive. Such a program would provide legal visas, family unity, full labor rights, labor mobility, and, if the worker so desires and will not displace a U.S. worker, permanent residence and citizenship over time. Such a program also would diminish significantly future illegal immigration by providing people with a legal way to enter the U.S. and return, as many wish, to their home countries, communities, and families. A program such as this would allow our government to better focus resources on those who mean to do us harm. A properly-designed guest worker program would re-create the circularity that has characterized the worker flow for decades. Workers would come to the U.S. and return to their home countries when they finished their work assignments. Currently, our reinforced borders dramatically change that traditional migratory pattern as undocumented workers are now forced to stay in the U.S. or risk death by crossing the borders through increasingly hostile terrain.

   A workable guest worker program, while insufficient as an overall strategy (see my comments below), would help us secure our borders by allowing our government at and between our ports of entry to focus on the people who mean to do us harm, not on

those who are filling our labor market needs and trying to reunite with their family members.

The Bush Administration, on January 7, 2004, unveiled its immigration proposal. The President was eloquent in his recognition that immigration is in America's self-interest, and that "one of the primary reasons America became a great power in the 20th century is because we welcomed the talent and the character and the patriotism of immigrant families." The President correctly recognizes that our current immigration system makes more difficult the urgent task of securing the homeland. Importantly, President Bush also succinctly identifies a problem that needs immediate attention when he said that "[a]s a nation that values immigration and depends on immigration, we should have immigration laws that work and make us proud. Yet today we do not." Our immigration laws do not make us proud.

AILA agrees with the President that our current immigration laws do not make sense, do not make us safer, do not support our economy, and do not reflect our tradition as a nation of immigrants. Does the Administration's proposal adequately address these concerns that the President so eloquently raises? The Administration's reform proposal is centered on an uncapped temporary worker program intended to "match willing foreign workers with willing U.S. employers when no Americans can be found to fill the job." The program would grant program participants temporary legal status and authorize working participants to remain in the U.S. for three years, with their participation renewable for an unspecified period. Initially, the program would be open to both undocumented people as well as foreign workers living abroad (with the program restricted to those outside of the U.S. at some future, unspecified date). American employers must make reasonable efforts to find U.S. workers. Under this proposal, participants would be allowed to travel back and forth between their countries of origin and "enjoy the same protections that American workers have with respect to wages and employment rights." The proposal also includes incentives for people to return to their home countries and calls for increased workplace enforcement as well as an unspecified increase in legal immigration.

While these and other general provisions of the plan are known, much is still unclear and could spell the difference between a proposal that works and one that does not. For example, it is unclear if the proposal would create meaningful access to permanent legal status because, while it does not prohibit temporary workers from applying for legal permanent residency, it would allow them to do so only under existing immigration law. The question thus remains whether the Administration's plan would adequately deal with the three-year, ten-year, and permanent bars, as well as the grounds of inadmissibility that put roadblocks in the way of undocumented people using this program to adjust. A program that includes no real prospects for people to earn permanent resident status will not generate full participation. The proposal also would allow temporary worker program participants who seek to remain in America to pursue citizenship, and calls for a "reasonable increase in the annual limit of legal immigration" for others who seek to immigrate to this country. These temporary workers would be placed in line behind those already in line.

However, unless current law is changed, the process to become a legal permanent resident could take decades for these temporary workers. Finally, the proposal is silent on the pressing issue of family backlog reductions. Our current immigration system is characterized by long backlogs that keep close family members separated for 20 years or longer. AILA has long maintained that comprehensive immigration reform is needed to address the current situation. (See below for more details.)

7. **Is a guest worker program sufficient in itself to secure our borders and enhance our security?** No. It is my view that to secure our borders and effectively reform our immigration laws we need comprehensive immigration reform (such as that included in S. 2010, the Immigration Reform Act of 2004) that includes, along with a worker program, an earned adjustment and family backlog reduction. People who work hard, pay taxes, and contribute to the U.S. should be allowed to obtain permanent residence. Reform should stabilize the workforce of U.S. employers, encourage people to come out of the shadows to be scrutinized by our government, and allow immigrants to work and travel legally and be treated equally. Many have been here for years, are paying taxes, raising families (typically including U.S. citizen and lawful permanent resident spouses and children), contributing to their communities and are essential to the industries within which they work. In order to unite families and keep them together, appropriate waivers must be available for grounds of admissibility and deportability. In addition, our immigration system has been characterized by long backlogs in family-based immigration and long delays in business-based immigration. Illegal immigration is a symptom of a system that fails to reunify families and address economic conditions in the U.S. and abroad. To ensure an orderly future process, our system must reduce bureaucratic obstacles and undue restrictions to permanent legal immigration. Developing an increased legal migration flow will make immigration more orderly and legal. It also will allow more people to reunite with their families and work legally in the U.S., and would facilitate fair, equitable, and efficient immigration law, policy, and processing. It is essential to make legal future immigration that otherwise will happen illegally.

Because many of the problems with the current U.S. immigration system are interrelated, reform must be comprehensive to successfully address our nation's needs and realities. The status quo is unacceptable, especially in a post-September 11 world. Enhanced security is central, but part of that security is keeping our economic security through the continued flow of people and goods. Our current system is characterized by families being separated for long periods of time and U.S. employers unable to bring in needed workers. People are forced to live an underground existence, hiding from government for fear of being separated from their families and jobs. The current enforcement system fails to prevent illegal immigration, and precious resources that should be spent on enhancing our security are wasted on stopping hard-working people from filling vacancies in the U.S. Our immigration system needs to be reformed so that legality is the norm, and immigration is legal, safe, orderly, and reflective of the needs of American families, businesses, and national security.

Immigration reform that legalizes hard-working people already here and that creates a new worker program will help the U.S. government focus resources on enhancing security, not on detaining hard-working people who are filling vacancies in the U.S. labor market and/or seeking to reunite with their close family members. In addition, an earned adjustment program will encourage people to come out of the shadows and be scrutinized by our government, and a new worker visa program will create a legal flow through which people can enter and leave the U.S. The legality that results from these initiatives will contribute to our national security by helping to focus resources on those who mean to do us harm. Such legality also will facilitate enforcement efforts by allowing our government to focus resources. Enforcing a dysfunctional system only has led to more dysfunction, not better enforcement.

Two bipartisan measures now before Congress constitute important "down payments" on comprehensive immigration reform. They are: the Agricultural Job Opportunity, Benefits and Security (AgJobs) Act (S. 1645/H.R. 3142) and the DREAM /Student Adjustment Act (S. 1545/H.R.1684). Both these bipartisan measures would implement needed reforms.

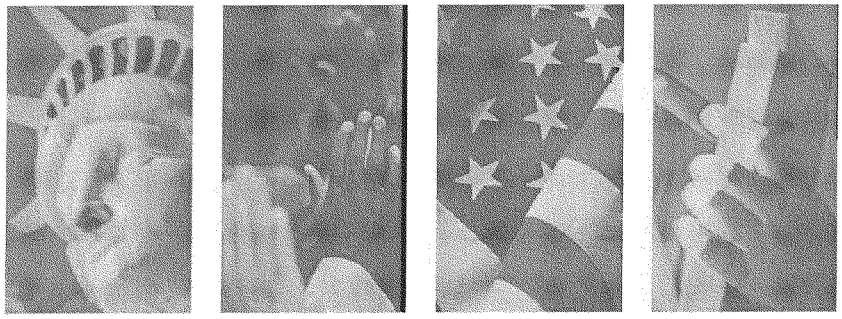
- AgJobs is a landmark example of business, immigration, agriculture, labor, civic and faith-based groups working together to propose solutions to long-standing problems with agricultural labor policy. This measure would reform the H-2A process so that agricultural employers unable to find American workers would be able to hire needed foreign workers. The legislation also provides a reasonable mechanism for undocumented agricultural workers to earn legal status.

- Despite the fact that many undocumented children have grown up in the U.S., attended local schools, and have demonstrated a sustained commitment to learn English and succeed in our educational system, our immigration laws provide no avenue for these students to become legal. Many were brought to the U.S. by their parents at an age at which they were too young to understand the legality of their arrival, let alone take action to rectify this decision. The DREAM/Student Adjustment Act would allow immigrant students who have grown up in this country, graduated from high school, been acculturated as Americans, and have no criminal record, to go to college and legalize their immigration status.

8. **Is it important to move ahead on comprehensive immigration reform to secure our borders?** Yes, absolutely. Our nation has no choice but to move ahead on comprehensive immigration reform if we are to secure our borders and enhance our security. Immigration reform is an essential tool to make us safer. We must proceed post haste.

28ts2014A

IMMIGRATION POLICY FOCUS
Volume 2, Issue 3 December 2003



THE LESSONS OF 9/11:

A Failure of Intelligence, Not Immigration Law

IMMIGRATION POLICY CENTER
American Immigration Law Foundation

ABOUT THE AUTHORS

Margaret D. Stock is an Assistant Professor in the Department of Law at the United States Military Academy, West Point, New York. The statements, opinions, and views expressed herein are those of the author only and do not represent the views of the United States Military Academy, the Department of the Army, or the Department of Defense.

Benjamin Johnson is the Director of the Immigration Policy Center at the American Immigration Law Foundation.

EXECUTIVE SUMMARY & POLICY RECOMMENDATIONS

In the hours following the deadly terrorist attacks of September 11, 2001, the United States government took the extraordinary step of sealing U.S. borders to traffic and trade by grounding all aircraft flying into or out of the country and imposing a lock-down on the networks of transportation and commerce that are the lifeblood of our economy and society. Given the uncertainty over what might happen next, these emergency procedures were a necessary and appropriate short-term response to the attacks. In the long run, however, a siege mentality and the construction of a fortress America are ineffective and unrealistic responses to the dangers we face.

If we are to succeed in reducing our vulnerability to further terrorist attacks, we must focus our attention and resources on the gaps in intelligence gathering and information sharing that allowed nineteen terrorists to enter the United States. National security is most effectively enhanced by improving the mechanisms for identifying actual terrorists, not by implementing harsher immigration laws or blindly treating all foreigners as potential terrorists. Policies and practices that fail to properly distinguish between terrorists and legitimate foreign travelers are ineffective security tools that waste limited resources, damage the U.S. economy, alienate those groups whose cooperation the U.S. government needs to prevent terrorism, and foster a false sense of security by promoting the illusion that we are reducing the threat of terrorism.

National security is most effectively enhanced by improving the mechanisms for identifying actual terrorists, not by implementing harsher immigration laws or blindly treating all foreigners as potential terrorists.

Immigration reform measures that can enhance our security without jeopardizing the important role immigration plays in the war against terrorism and in our economy include:

1. Adequately funding the development of new technology that uses biometric data to identify and track individuals who travel to and from the United States.
2. Continuing the integration of information sharing among federal agencies through the Terrorist Threat Integration Center. Security databases also must include safeguards against potential abuse of data, ensure the security and confidentiality of information, protect the privacy rights of individuals about whom information is collected, and establish procedures to determine how information is entered into and removed from the databases.
3. Implementing a comprehensive, adequately funded, and workable entry-exit system that allows for evaluation of threats on a case-by-

case basis, rather than by profiling entire groups, and also allows legitimate travelers to get quickly through immigration checkpoints.

4. Making the U.S. border the last line of defense against terrorism, not the first, by pursuing multilateral strategies with Canada and Mexico to create a North American Perimeter Safety Zone; requiring all airlines flying to the United States, including foreign airlines, to transmit passengers' names at take-off to the destination airport so that they can be checked against the look-out list; and increasing the use of pre-clearance and pre-inspection programs that provide U.S. officials the opportunity to check passengers for admission prior to their boarding a flight to the United States (while including safeguards to allow asylum protection for those who truly deserve it).

5. Creating an office within the Department of Homeland Security whose mission will be to gain the cooperation of immigrants in the war on terrorism through policies that have an intelligence, rather than an enforcement perspective.

6. Training immigration officials to understand the tactics, techniques, and procedures used by terrorists, as well as in ways to obtain community cooperation in uncovering threats.

7. Simplifying immigration laws in order to address security threats, while eliminating extraneous or obsolete provisions and repealing provisions that tie up resources and add to the complexity and confusion of our immigration system without measurably enhancing our security (i.e., repeal INA §212(a)(9)(B)).

8. Expanding the grounds of eligibility and the number of visas available to persons who provide valuable information on terrorist threats.

9. Developing a comprehensive legalization program to allow undocumented immigrants in the United States to obtain legal status, along with a guest-worker program to provide a legal and orderly flow of immigrants to fill legitimate labor market needs, in order to allow enforcement efforts to focus on terrorists.

10. Restoring integrity to the system by creating a judicial review process for overseas visa denials, in order to be ensure that consular officers are applying consistent policies; and restoring discretion to immigration judges and officials so they can allow aliens who are not security threats to stay in the United States, rather than wasting resources on deporting deserving individuals with ties to our country (i.e., restoration of the old "suspension of deportation" provisions).

UNDERSTANDING THE ROLE OF IMMIGRATION

Because all nineteen of the September 11th terrorists were foreigners, some observers have been quick to blame our vulnerability to terrorist attacks on lax immigration laws.[1] While such a response was predictable, it was misguided and has inevitably resulted in overreaction. Calls to impose a "moratorium" on immigration,[2] halt the issuance of student visas,[3] close the borders with Canada and Mexico,[4] eliminate the Diversity Lottery visa program,[5] draft harsher immigration laws,[6] and similar types of proposals reflect a serious misunderstanding of the relationship between immigration policy and national security.

Although the attacks of September 11th revealed serious management and resource deficiencies in the bureaucracies that administer our borders, U.S. immigration laws in and of themselves did not increase our vulnerability to attack. In fact, U.S. immigration laws already are among the toughest in the world and have long provided the federal government with broad powers to prevent anti-American terrorists from entering or residing in the United States. A careful analysis of the September 11th attacks reveals that deficiencies in U.S. intelligence collection and information sharing - not immigration laws - prevented the terrorists' plans from being discovered.

A careful analysis of the September 11th attacks reveals that deficiencies in U.S. intelligence collection and information sharing – not immigration laws – prevented the terrorists' plans from being discovered.

The recent Joint Inquiry into the events of September 11th, conducted by the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence,[7] confirms that better intelligence - and action on that intelligence - might have prevented the attacks on the Pentagon and World Trade Center. Similarly, a recent comprehensive study by the Migration Policy Institute points out that "Immigration measures are an important tool in the domestic war against terrorism, but they are not effective by themselves...the lead domestic security response to terrorism should be strengthened intelligence and analysis, compatible information systems and information-sharing and vigorous law enforcement and investigations."[8] In fact, tightening immigration laws and policies in an unfocused manner might very well make it more difficult for the United States to win the global war on terrorism by damaging the U.S. economy and alienating the immigrant communities and foreign allies whose cooperation the U.S. government most needs.

THE LEGAL ARSENAL

Far from being too lax, U.S. immigration law in many areas has become an inflexible body of harsh and complex rules that make it difficult for enforcement agencies to focus their resources on people who pose a real threat to national security or public safety.

At the outset, we must disabuse ourselves of the notion that the United States has lax immigration laws. In fact, U.S. immigration laws have long provided the government with broad powers to deny admission to any person suspected of attempting to enter the United States to violate U.S. laws or endanger public safety. Since 1990, Consular officers in posts around the world have had virtually unreviewable discretion to deny a visa to any person who they have "reasonable grounds to believe seeks to enter the United States to engage solely, principally, or incidentally" in any terrorist activity or "any other unlawful activity."[9] Similarly, the definition of what it means to "engage in terrorist activity" has long been broadly defined to include "the preparation or planning of a terrorist activity...the gathering of information on potential targets for terrorist activity...providing any type of material support, including a safe house, transportation, communications, funds, false identification, weapons, explosives, or training," or "the solicitation of any individual for membership in a terrorist organization, terrorist government, or to engage in terrorist activity."[10] Any one of the September 11th hijackers could have been excluded from the United States under these broad powers, had U.S. officials known their intentions. The far more difficult and important task is to provide accurate intelligence information in a timely fashion to the various agencies that enforce these laws, so that the laws can be applied to the terrorists. Simply passing "tougher" immigration laws does nothing to improve the quality or flow of intelligence information.

Far from being too lax, U.S. immigration law in many areas has become an inflexible body of harsh and complex rules that make it difficult for enforcement agencies to focus their resources on people who pose a real threat to national security or public safety. Under current immigration law, for example, the definition of an "aggravated felony" lumps together those who have committed a minor offense with those who have committed murder.[11] Furthermore, there is little that is "lax" about laws that subject a long-term permanent resident to deportation for pulling someone's hair;[12] make it a deportable offense to vote mistakenly in an election;[13] and deport a person who has been in the country since childhood solely because that person took a wrong turn into a school parking lot and had a lawfully registered firearm in his car.[14] Since 1996, more than 11 million people have been refused entry to the United States, told to depart "voluntarily," or actually deported.[15] Millions more have had their application for a visa denied by U.S. consulates abroad. This is hardly the result one would expect from "lax" laws.

U.S. immigration laws not only can be extraordinarily harsh, they also are among the most complicated in the world - so complicated, in fact, that the agency charged with enforcing them has called them a "mystery and a mastery of obfuscation."[16] Federal immigration authorities routinely give out erroneous information about these laws because they themselves

often do not fully understand them.[17] Even if an individual qualifies to immigrate to the United States, he or she often must wait years, or even decades, to get here. The United States calls itself a "nation of immigrants," but immigrating legally is a process fraught with bureaucratic confusion and delays. Making these already convoluted laws even more harsh and complex does not stop terrorists, but it does have the perverse effect of creating more undocumented immigrants, who are then targeted for deportation and removal and whose status becomes a focus of enforcement.

One of the most revealing, yet often ignored, facts about the nineteen hijackers is that they successfully navigated our complicated immigration laws.[18] The terrorists studied our laws carefully and made every attempt to follow them. They hid their true intentions, were issued valid visas by the Department of State, and were allowed into the United States by Immigration and Naturalization Service (INS) agents.[19] When one terrorist did fail to comply with the complicated rules governing his visa, the INS waived those rules, apparently because INS agents misunderstood how the rules were supposed to be applied.[20]

Simply passing 'tougher' immigration laws does nothing to improve the quality or flow of intelligence information.

We must accept the reality that harsher immigration laws would not have stopped the terrorists. Al Qaeda has shown a rare diligence and capacity to comply with the laws, or at least to appear to comply with them. For example, there were indications in the early 1990s that terrorists were trying to use the asylum system to gain entry to the United States. When the U.S. Government became aware of this and started detaining asylum applicants who were suspected terrorists, the terrorists switched their tactics and began using tourist and student visas. More recently, they have been recruiting American citizens, who cannot be excluded from the United States no matter how harsh our immigration laws. As immigration laws change, terrorists simply adapt.

IGNORING HISTORY

The United States has tried before to use immigration policy to prevent terrorism, and failed. In 1993, Islamic terrorists bombed the World Trade Center, killing six people and injuring more than a thousand. Senator Charles Schumer (D-NY) reacted immediately by proposing the Terrorist Prevention and Protection Act of 1993.[21] Had this bill become law, however, it would have done nothing to stop Timothy McVeigh, a U.S. citizen, from blowing up the Oklahoma City Murrah Federal Building in April 1995. Ironically, congressional leaders responded to that attack just as they had responded in 1993: by passing more legislation targeting noncitizens, in this case, the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA)[22] and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA).[23] Billed as measures to enhance national security by improving our ability to exclude and deport foreigners, in reality the immigration provisions of these laws did little or nothing to

improve security. Instead, they caused the INS to expend enormous effort deporting long-term immigrants for reasons entirely unrelated to terrorism. Despite statements from lawmakers that these laws would prevent future terrorist attacks, nothing in AEDPA or IIRAIRA stopped Mohammed Atta and his comrades from carrying out the September 11th attacks.

There is significant evidence that, since September 11th, the U.S. government again is wasting precious resources on immigration policies that do very little to enhance national security. For example, Attorney General John Ashcroft has implemented a program to more rigorously enforce the law requiring immigrants to notify the federal government of any change of address within ten days. This program was billed as an "anti-terrorism" measure, despite the fact that it does little or nothing to detect terrorists. Soon after this program was announced, the federal government was swamped with hundreds of thousands of change-of-address notices, which it was unable to process.[24] There is no reason to believe that forcing potential terrorists to file change-of-address notices would stop them for committing acts of terrorism, but the wheels of bureaucracy churn on, processing the forms anyway. Similarly, with a program called "Special Registration," the government required thousands of mostly male and Muslim foreigners to report repeatedly to immigration offices, where immigration officials collected reams of personal information on them, including their credit card numbers, and made them wait for hours or risk deportation. Not a single terrorist was uncovered through this program, but thousands of immigrants were detained and sometimes abused when they attempted to comply with it. Significant government resources have gone into enforcing this and other similarly ill-conceived bureaucratic responses to September 11th.

There is significant evidence that, since September 11th, the U.S. government again is wasting precious resources on immigration policies that do very little to enhance national security.

U.S. immigration laws are already tougher than most people appreciate. Making them even harsher will do little to enhance security, and actually may do far more to harm it. Harsher immigration laws can exclude the wrong people–people we need to fight the war on terrorism and to build our economy. Moreover, harsher laws must be enforced, and thus require additional law enforcement resources that already are in short supply. While increased enforcement efforts can enhance security if the laws being enforced are carefully focused on security, increased enforcement of harsher laws that are not narrowly tailored to address security concerns simply diverts the limited resources available to target terrorism. Finally, harsher laws give us a false sense of security, a lesson we have failed to learn from prior terrorist attacks.

FAILURES OF INTELLIGENCE

The attacks of September 11th did not stem from a failure of immigration law, but a failure of intelligence. The attacks also demonstrated that U.S. policymakers had neglected to focus resources on the real threats to national security. While the Federal Government was spending

millions of dollars rounding up and deporting undocumented Mexican workers at restaurants and factories around the United States, Mohammed Atta and his terrorist comrades were issued visitor's visas and waved through airport immigration checkpoints.

In 2002, the House and Senate Intelligence Committees held numerous closed and open hearings concerning the intelligence aspects of the September 11th attacks. Among the Committees' findings was that a failure by the intelligence community to share intelligence information with the INS and State Department resulted in missed opportunities to stop or apprehend at least two of the hijackers. The report of the Joint Inquiry states: "For a variety of reasons, the Intelligence Community failed to capitalize on both the individual and collective significance of available information that appears relevant to the events of September 11th. As a result, the Community missed opportunities to disrupt the September 11th plot by denying entry to or detaining would-be hijackers; to at least try to unravel the plot through surveillance and other investigative work within the United States; and, finally, to generate a heightened state of alert and thus harden the homeland against attack."[25]

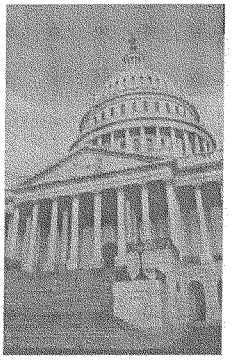
"One of the serious problems identified by our Joint Inquiry is the pervasive refusal of the CIA, in the months and years before September 11, to share information about suspected terrorists with the very U.S. Government officials whose responsibility it is to keep them out of the United States."

- Senator Richard Shelby, Vice Chairman, Senate Select Committee on Intelligence

In additional comments, Vice Chairman of the Senate Select Committee on Intelligence Senator Richard C. Shelby (R-AL) stated, "One of the serious problems identified by our Joint Inquiry is the pervasive refusal of the CIA [Central Intelligence Agency], in the months and years before September 11, to share information about suspected terrorists with the very U.S. Government officials whose responsibility it is to keep them out of the United States: the State Department consular officials who issue visas and the INS officials who man immigration posts at every American port of entry."[26]

Senator Shelby went on to note that INS and State Department personnel regularly screen visa applicants and U.S. arrivals against the TIPOFF system, which serves as a "watchlist" for suspected terrorists and other criminals. "With respect to suspected terrorists," he states, "the TIPOFF database is populated principally through the submission of names from the CIA. Crucially, however, without CIA input, these officials cannot do their job - and even terrorists known to the CIA will be able freely to acquire visas and be granted entry if the CIA has neglected to share their names with TIPOFF. Alarmingly this is apparently precisely what happened for years, because CIA was unwilling to share more than a small fraction of its information about suspected terrorists with State and INS."[27]

In addition to problems with the TIPOFF system, the Joint Inquiry discovered that two of the hijackers - Khalid Almidhar and Nawag Alhazmi - were allowed visas and entry to the country even though the CIA had information indicating the men were suspected terrorists. Both men received visas and entered the United States on January 15, 2000. Almidhar departed in June 2000 and returned on a visitor visa on July 4, 2001.



However, it was not until August 2001 that a CIA cable requested the FBI, INS, and other agencies to look out for Almidhar and Alhazmi.

Eleanor Hill, Staff Director of the Congressional inquiry, testified that the CIA cable did not request an active search for the suspected terrorists. The cable, she said, was not accompanied by any specific notation indicating the INS should use all means possible to find these two suspects. Then-INS Assistant Commissioner for Investigations Joseph Greene testified that INS might have captured the men at the port of entry or elsewhere had the agency received timely information concerning the potential security threat they represented. "We think there is a likelihood that that could have happened," he said. "The capacity is there for us to make a contribution, had we been asked."[28]

Hill said the committees' investigators discovered that an FBI report in July 2001 ("the Phoenix memo") warning about Al Qaeda possibly training terrorist pilots in America was not turned over to the Federal Aviation Administration (FAA) until a number of months after September 11th. "This lapse in sharing intelligence, and the failure to add the names of at least two of the hijackers to the State watch list prior to September 11, were attributed to a lack both of resources and of awareness of watch listing."[29] Claudio Manno, a senior intelligence official at the Transportation Security Administration, testified, "Had we had information that those two individuals presented a threat to aviation or posed a great danger, we would have put them on the list and they should have been picked up in the reservation process."[30]

In a 2003 report that comprehensively reviews the federal government's response to the September 11th attacks, the Migration Policy Institute (MPI) not only reinforces many of the Joint Inquiry's findings concerning the importance of intelligence gathering and information sharing, but goes a step further by examining the relationship between immigration policy and national security. A central conclusion of the report is that immigration controls in and of themselves are not effective means of reducing the vulnerability of the United States to terrorist attack. The report notes that immigration measures are able to "bar terrorists about whom the government already has information from entering the country, and set up gateways and tracking systems so that someone already here can be found if intelligence agencies identify him as a suspect."[31] In other words, as one "senior Western intelligence official" told the report's authors, "tightening immigration controls doesn't help you that much until the intelligence side gives you a name, and then it helps you track them."[32]

A key, albeit disturbing, finding of the MPI report is that "even under the best immigration controls most of the September 11th terrorists would still be admitted to the United States today. That is because they had no criminal records and had not been singled out for special scrutiny by intelligence agencies. The innovation al Qaeda introduced is 'clean operatives' who can pass through immigration controls." As a result, immigration measures "are not effective by themselves in identifying terrorists of this new type."[33]

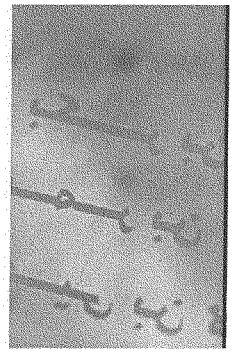
According to many experts, the broad immigration restrictions implemented by the U.S. government after September 11th, particularly those directed at Muslims and Arabs, are not only too unfocused to effectively enhance security, but may actually hinder intelligence investigations by fostering resentment among these groups both within the United States and abroad.[34] Moreover, harsh immigration policies aggravate two key intelligence shortcomings identified after September 11th: the need for human intelligence sources who can infiltrate terrorists' communities, and the need for translators who speak the relevant languages.

Vincent Cannistraro, former director of Counterterrorism Operations and Analysis at the CIA, observes that some immigration policies have "alienated a lot of these [Arab and Muslim] communities, caused a great deal of fear and reinforced the tendency of immigrant communities to huddle together and not trust authorities, which works against intelligence gathering by law enforcement, particularly the FBI...The idea that you stigmatize whole classes of people and profile them because you think this is going to prevent the next terrorist attack is exactly the wrong way [to go about it]...There may very well be another clandestine al-Qaeda cell in North America, but none of these methodologies has contributed to identifying them."[35]

Mr. Cannistraro's comments highlight one of the lessons we have not yet learned about the role immigration law and policy must play in the war against terrorism: The United States needs immigrants in order to fight this war. Rather than turning away immigrants, we must recruit them. The best defense against terrorism, to quote Jack Dempsey and to paraphrase George Washington, is a good offense.[36] This entails improving the human intelligence (HUMINT) from members of the communities in which terrorists live. Immigrants can provide this intelligence.

As the Joint Inquiry noted, the United States lacks the human assets needed to analyze intelligence about terrorists, in large part because intelligence agencies do not have enough people who speak the relevant languages.[37] Margaret Gulotta, chief of the FBI's Language Services Section, has said that most intelligence analysts may not recognize terrorist threats because of language barriers. Although the FBI has hired hundreds of linguists since September 11th, there is still a severe shortage.[38] "Warnings of terrorist attacks may not be translated in time unless more people are hired by the nation's defense and intelligence agencies," Gulotta has said.[39] Only about six hundred American students are now studying Pashto, Dari, Farsi, and Uzbek at U.S. colleges, although 40 million people worldwide speak those languages.[40] The United States simply does not produce enough native speakers of many critical languages.[41]

The State Department - which is responsible for communicating U.S. policies to the Arabic speaking world - has only 54 fluent Arabic speak-



Only about six hundred American students are now studying Pashto, Dari, Farsi, and Uzbek at U.S. colleges, although 40 million people worldwide speak those languages.

ers.[42] Very few American schools even teach the languages needed for the war on terror. Even the Defense Language Institute in Monterrey, California, does not teach some of them. As a result, the United States can either utilize immigrants or outsource translation overseas in order to gain access to sufficient foreign-language speakers to translate the massive amounts of information the Intelligence Community gathers each day.

One can draw similar conclusions about human intelligence. Very few native-born Americans have the ability to infiltrate Al Qaeda camps. The few who have done so - John Walker Lindh and Jose Padilla, for example - have not been used as counterintelligence assets. It will take years to train native-born Americans to infiltrate Al Qaeda terrorist organizations. As a result, the United States must recruit immigrants. The U.S. government, however, is unlikely to gain the cooperation of immigrants by terrifying them and making them unsympathetic to U.S. policies.

The federal government has sometimes lacked sensitivity to this key security issue. For example, shortly after September 11th, Attorney General John Ashcroft announced a crackdown on immigrants. A few days later, he announced that any immigrants who came forward and provided useful information would be rewarded with a visa.[43] Inconsistent messages like these do not encourage immigrants to come forward and help.

A strategy that does succeed in fighting terrorists is one that enlists the aid of members of the communities in which the terrorists live and work.

The government also has summarily deported many individuals who could have provided useful intelligence or acted as counterintelligence agents. Rather than dumping immigrants in Somalia,[44] where they are likely to be killed or turned into future terrorists as a matter of survival, it might have been smarter to consider their value as intelligence sources and treat them accordingly. Creating new terrorists - more angry people who have nothing to lose by attacking the United States - is not a logical strategy.[45]

A strategy that does succeed in fighting terrorists is one that enlists the aid of members of the communities in which the terrorists live and work. Such a strategy was enormously successful in fighting U.S. domestic terrorism after the Oklahoma City bombing.[46] A similar strategy can be applied to fighting Al Qaida, but it requires government officials to think creatively about how to separate the terrorists from the community in which they live, so that this community will identify with the government and not with the terrorists, and thus provide assistance to the government. This is the only strategy that is likely to be successful in the long term.

Despite the urgent need for assistance from the immigrant community, the U.S. government persists in responding to terrorism by enacting increasingly harsh immigration laws. The assumption underlying this approach is that stricter laws will inevitably increase our security by somehow preventing terrorism. In fact, harsher immigration laws undermine national security if they cause us to exclude the wrong people, deprive the government of the human intelligence needed to assess the terrorist threat, waste resources on deporting people who pose no threat to security, and foster the mistaken belief that limiting the number of foreigners who come to the United States will reduce the threat of terrorism.

COLLATERAL DAMAGE

Although harsh immigration policies do little to enhance national security, they do harm the U.S. economy. As immigration laws are tightened in the name of security, many people are excluded who otherwise would immigrate to America or seek to enter for legitimate reasons. Some are deterred by what they perceive as an anti-immigrant political climate, others because they cannot meet the requirements of ever harsher laws. The end result is that these people go elsewhere. The U.S. economy therefore is left with fewer and fewer young, immigrant workers who pay taxes that support a rapidly aging native-born population. In addition, recent declines in the arrival of researchers and scientists, foreign patients, and tourists are having an adverse impact on important sectors of our economy.

Already, more foreign students are choosing to study in countries more hospitable than the United States.[47] As a result, we will not benefit from their talents; instead, Canada, Australia, Russia, Japan, and China will benefit. Students who in the past came to the United States to study and stayed on to become doctors, engineers, and computer scientists will instead go to other, more welcoming countries.

Decline in International Travel to the U.S. 2000-2003

Change in Number of Admissions	- 21.3%
Loss to the U.S. Economy	$15.3 billion

Source: Testimony of William S. Norman, President and CEO, The Travel Industry Association of America, Before The House Committee on Small Business, November 20, 2003.

Losing foreign students serves only to hurt national security and benefit U.S. competitors. Consider India, a country that has traditionally supplied large numbers of foreign students to the United States, many of whom have stayed on to become highly productive members of society. In the backlash against immigrants after September 11th, many of these people are either staying in India or choosing to study elsewhere, fearful of coming to the United States. India is already starting to outstrip the United States technologically. Will U.S. security be enhanced when India holds the keys to high technology?

It is easy to see how harsher laws can exclude the wrong people if we look at a historical example. In December 1932, Albert Einstein sought a visa to escape Nazi Germany and come to the United States. But there was a problem – a U.S. government file showed that Einstein was a suspected socialist and had ties to socialist groups. A conservative organization had sent a sixteen-page report on Einstein to the State Department, urging that he be denied entry to the United States. Einstein was only able to obtain a visa after applying media pressure through the *New York Times* and the Associated Press. He escaped Germany just a few weeks before Hitler seized power in Berlin.[48]

In 2003, seventy years later, if Einstein had made the same application, he would no doubt be excluded from the United States - inadmissible as a terrorist sympathizer. Einstein's documented ties to various subversive groups would mark him as someone to be barred from entry to the United States. If this had been the case in 1932, he would have been left in Nazi Germany, probably to become a victim of the Nazi Holocaust. If he had not been imprisoned and executed, his scientific talents would surely have been put to use by the Nazis to develop nuclear weapons before the United States. As this example illustrates, adopting blanket rules that exclude whole classes of people may keep out individuals who could make invaluable contributions to our national security as well as our economy.

"SOFT POWER"

Those who perceive the United States as a land of opportunity and freedom are likely to join in the war on terrorism. Creating an image of America as xenophobic and isolationist squanders this asset.

One of the greatest national security assets of the United States is the "soft power" of its image. Like the "goodwill" of a corporation, this asset is not easily measured, but it is clear that it currently is being wasted. The United States is safest when she is viewed favorably by others. The image of the United States as a land of freedom is an invaluable national security asset. This image is what makes Americans and others willing to fight and die for her. Preserving this image is in large part a function of keeping America a country where the "rule of law," fairness, and justice prevail.

One of the frequently overlooked "soft power" aspects of U.S. national security is the treatment of immigrants. Those who perceive the United States as a land of opportunity and freedom are likely to join in the war on terrorism. Creating an image of America as xenophobic and isolationist squanders this asset.

Harsher immigration laws also make it more likely that government power will be abused and directed at the wrong people. While harsher laws do not stop terrorists, they do stop legitimate visitors to the United States: foreign students, investors who could increase the nation's productivity, and workers willing to work long hours in jobs most Americans don't want. Restrictive laws keep families from being united, causing untold hardship to U.S. citizens and their children. Legitimate refugees are denied safe haven. More and more immigrants are likely to be deported or mistakenly excluded.

A more practical harm to national security comes, however, from laws and policies that divert attention and resources away from real threats. As the Joint Inquiry found, the attacks of September 11th might have been prevented with better intelligence. But targeting immigrants rather than terrorists does nothing to enhance intelligence capabilities.

Consider, for example, proposals to legalize undocumented immigrants. Some critics have argued that legalization would harm national security.[49]

In fact, a comprehensive legalization program is much more likely to enhance national security. Mexican and other foreign workers pose very little security threat to the United States. Most have no criminal record. Repeatedly hunting them down and deporting them does nothing to enhance security, but merely advertises to the world that the United States cannot stop the determined from coming. A comprehensive legalization program would free DHS from having to waste its limited resources on finding and deporting undocumented workers. Instead, these workers could come forward, be fingerprinted, have their backgrounds checked, be interviewed, pay taxes, and provide information to DHS about their means of entry into the United States. From a security perspective, it is much better to have comprehensive records on these people than to have the current situation, where locating them is entirely hit or miss. Undocumented immigrants who come out of the shadows represent an unused source of intelligence as well as a vast economic benefit to the United States.

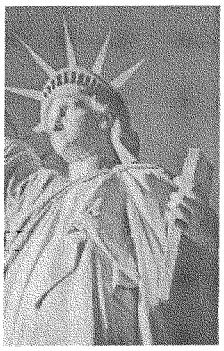
CONCLUSION

The primary fault for the September 11th attacks rests with the terrorists who murdered thousands of human beings. The terrorists died with the blood of innocent people on their hands. The success of the United States in tracking down those who helped finance and mastermind the attacks has improved the chances that such acts can be prevented in the future.

Beyond the terrorists themselves, intelligence shortcomings contributed to the September 11th attacks. As the Joint Inquiry of the Intelligence Committees states, "No one will ever know what might have happened had more connections been drawn between these disparate pieces of information. We will never definitively know to what extent the [Intelligence] Community would have been able and willing to exploit fully all the opportunities that may have emerged. The important point is that the Intelligence Community, for a variety of reasons, did not bring together and fully appreciate a range of information that could have greatly enhanced its chances of uncovering and preventing Osama Bin Laden's plan to attack these United States on September 11, 2001."[50]

The federal government has a history of responding to terrorism by enacting increasingly harsh immigration laws, based on the flawed assumption that stricter laws will inevitably increase security. In fact, harsher immigration laws may actually harm national security if they undermine U.S. economic and "soft" power, reduce the human resources needed to fight terrorism, and allow other nations with more generous policies to pull ahead. "Implicit in the term 'national defense' is the notion of defending those values and ideals which set this nation apart..."[51] Before enacting harsher laws, policymakers must ask whether these laws will actually make

Although harsher laws might give Americans a sense of security, in practical terms they serve mainly to deflect attention and resources away from the key goal of improving intelligence gathering and information sharing.



the nation safer by preventing terrorism. Measures taken to enhance national security in the post-September 11th era must be focused and effective rather than expending scarce resources to hit non-threatening targets.

While September 11th clearly revealed the need for improved counter-terrorism and security policies, it should not serve as a pretext to abandon the traditional openness of the United States to newcomers. We should take note of the words spoken by Solicitor General Ted Olson, who lost his wife, Barbara, in the September 11th attack on the Pentagon:

> "We cannot, and we will not, dishonor or wash away the memories of those who somehow clawed their way out of poverty, tyranny and persecution to come to this country because it was America, and because they were willing to risk death to become Americans, and to give their children and grandchildren the opportunity and freedom and inspiration that makes this place America. Americans could no longer call themselves Americans if they could walk away from that legacy."

He added, "We will prevail for the very reason that we have been attacked. Because we are Americans. Because the values that made us free make us strong."[52]

Understanding the true role of immigration law and policy in the events of September 11th is essential in order to craft reforms that strengthen national security while avoiding the divisive and historically ineffective impulse to scapegoat non-citizens. Although harsher laws might give Americans a sense of security, in practical terms they serve mainly to deflect attention and resources away from the key goal of improving intelligence gathering and information sharing. If the United States is to prevent another terrorist attack, the federal government must direct its resources at correcting the specific intelligence failings that made September 11th possible. If the government squanders its resources, however, by attempting to cast a security net over the entire foreign-born population, rather than actually identifying terrorists, the country will remain vulnerable to attack. Moreover, we will have sacrificed some of the core values and freedoms that define our nation; inflicted long-term damage on our economy; and fostered growing anger and resentment among immigrants and the international community, without whom the war on terrorism cannot be won.

ENDNOTES

[1] Most prominently, the Center for Immigration Studies published a series of papers in which it claimed that current laws were inadequate to meet the threat of terrorism. See, e.g., Mark Krikorian & Steven A. Camarota, *Immigration & Terrorism: What Is To Be Done?* Washington, DC: Center for Immigration Studies, November 2001.

[2] Steven Camarota, *Safety in (Lower) Numbers: Immigration & Homeland Security.* Washington, DC: Center for Immigration Studies, October 2002 (arguing that the best way to give INS "breathing room" and to address homeland security concerns is to reduce temporary and permanent immigration).

[3] Holly Step, "Curbs Feared On Foreign Student Body," *Miami Herald,* September 26, 2001.

[4] Thomas Ginsburg, "U.S. immigration policy to undergo scrutiny," *Philadelphia Enquirer,* September 18, 2001, at A17 ("We must close the borders now, and have all illegal aliens deported.").

[5] Mark Krikorian, "Feel Safer Yet?," *National Review* Online, September 10, 2002.

[6] Neil Munro & Elisabeth Frater, "Wanted: New Watch Powers," *National Journal,* September 29, 2001.

[7] *Findings of the Final Report of the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence Joint Inquiry into the Terrorist Attacks of September 11, 2001,* December 2002, the Context, Part 1, Findings and Conclusions, at 5. The entire report of the Joint Inquiry is available at http://intelligence.senate.gov/pubs107.htm.

[8] Muzaffar A. Chishti, Doris Meissner, Demetrios G. Papademetriou, Jay Peterzell, Michael J. Wishnie & Stephen W. Yale-Loehr, *America's Challenge: Domestic Security, Civil Liberties, and National Unity After September 11.* Washington, DC: Migration Policy Institute, 2003, at 153.

[9] Section 212(a)(3)(A) of the Immigration and Nationality Act (INA) as amended by the Immigration Act of 1990.

[10] Id. at Section 212(a)(3)(B)(iii).

[11] Under Section 101(a)(43) of the INA, the term "aggravated felony" means "murder, rape, or sexual abuse of a minor," but also includes "a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment is at least 1 year." Under Section 101(a)(48)(B), the definition of "term of imprisonment" is not limited to time actually served in custody but includes any "suspension of the imposition or execution of that imprisonment or sentence in whole or in part."

[12] Michael D. Goldhaber, "Deportation Horror Tales Encouraging Changes in Arbitrary Immigration Laws," *Fulton County Daily Report,* September 13, 2000.

[13] "Non-citizens to Choose Next President Says U.S. Border Control," PR Newswire, November 9, 2000 (describing how "motor voter" laws have led many aliens to register to vote because states don't always verify citizenship status, but explaining that voting is a deportable act for a non-citizen).

[14] The author, Margaret Stock, represented this individual several years ago. A member of the Alaska National Guard, he was a citizen of the Philippines and a lawful permanent resident of the United States who was the stepson of a U.S. Government employee. He paid a municipal traffic ticket after being stopped by a school security guard for having a firearm in his car on school property. The firearm was legally registered. After he paid his traffic ticket, INS served him with papers to have him deported to the Philippines because, under the Immigration & Nationality Act, any firearms conviction, however minor, requires deportation. See 8 U.S.C. §1227(a)(2)(C) ("Any alien who at any time after admission is convicted under any law of purchasing, selling, offering for sale, ex-

changing, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18, United States Code) in violation of any law is deportable").

[15] Randall Richard, "Criminal deportees from U.S. wreak havoc around world," *Chattanooga Times Free Press*, October 26, 2003, at A10.

[16] "Metro: In Brief," *Washington Post*, April 24, 2001, at B1 (quoting INS spokeswoman Karen Kraushaar as stating "Immigration is a mystery and a mastery of obfuscation, and the lawyers who can figure it out are worth their weight in gold").

[17] U.S. General Accounting Office, "Several Factors Impede Timeliness Of Application Processing," GAO-01-488, May 4, 2001 (describing how "information provided by INS field offices was often incorrect and misleading").

[18] Calvin Woodward, "Thicket of visa rules does not necessarily stop those versed in making trouble," Associated Press, July 11, 2002; see also U.S. Department of Justice, Office of the Inspector General, "The Immigration and Naturalization Service's Contacts With Two September 11 Terrorists: A Review of the INS's Admissions of Mohamed Atta and Marwan Alshehhi, its Processing of their Change of Status Applications, and its Efforts to Track Foreign Students in the United States," May 20, 2002, available at http://www.usdoj.gov/oig/special/02-05/fullreport.pdf.

[19] Id.

[20] Alfonso Chardy, "Application for Pilot Visa Made Suspect's U.S. Entry Legal, INS Says," *Miami Herald*, October 21, 2001, at 10A; see also Margaret D. Stock, "United States Immigration Law in a World of Terror," National Security White Paper, The Federalist Society for Law & Public Policy (2001).

[21] H.R. 1301, Terrorist Prevention & Protection Act of 1993, 103rd Cong. (1993).

[22] Anti-Terrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, 110 Stat. 279 (Apr. 24, 1996

[23] Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996).

[24] Julie Sullivan & Richard Read, "INS Crumbles Amid 9/11 Reforms," *Portland Oregonian*, September 10, 2002, at A01 (stating that when INS announced it was going to enforce the change-of-address notification requirements, "[f]oreigners complied, flooding the INS with more than 700,000 change of address cards, which the agency announced last week it had no time to process"); see also "INS Backlog Shows Folly of Casting Too Large A Net," *Portland Press Herald*, August 7, 2002, at 8A (describing how INS officials admitted that a Missouri warehouse held two million unprocessed documents, including change of address cards, that the agency was unable to manage).

[25] *Findings of the Final Report of the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence Joint Inquiry into the Terrorist Attacks of September 11, 2001*, the Context, Part 1, Findings and Conclusions, at 5.

[26] Additional Views of Senate Richard C. Shelby, Vice Chairman, Senate Select Committee on Intelligence, September 11 and the Imperative of Reform in the U.S. Intelligence Community, p.24.

[27] Id., at 24 (emphasis added). The General Accounting Office recently criticized information sharing within the federal government as less than optimal due to competing technology systems and other problems.

[28] Philip Shenon & David Johnston, "Threats and Responses: The Inquiry; 2 Agencies Say Silence Prevented Pair's Tracking," New York Times, October 2, 2002, at A1.

[29] Id.

[30] Id.

[31] *America's Challenge*, at 6.

[32] Id., at 17.

[33] Id., at 153.

[34] John N. Paden & Peter W. Singer, "America Slams the Door (On Its Foot): Washington's Destructive New Visa Policies," *Foreign Affairs*, May/June 2003.

[35] Joe Feuerherd, "Critics say immigration tactics

threaten security," *National Catholic Reporter*, March 28, 2003.

[36] William Safire, "Preemption Proves Itself," *International Herald Tribune*, April 15, 2003, at 6.

[37] Rowan Scarborough, "Troops Lack Intel Support," *Washington Times*, September 4, 2002 ("agencies on which they depend to provide enemy locations, such as the Defense Intelligence Agency and the CIA, lack reliable human sources and enough foreign-language speakers").

[38] Daniel Klaidman & Michael Isikoff, "Lost in Translation," *Newsweek*, October 27, 2003, p.26 ("hundreds of hours of tapes from wiretaps and bugs pile up in secure lockers, waiting, sometimes for months on end, to be deciphered.").

[39] Mark Niesse, "Translator Shortage Hampers Intelligence," Associated Press, November 8, 2002.

[40] Id.

[41] See Richard D. Brecht & William P. Rivers, *Language & National Security in the 21st Century* (National Foreign Language Center, 2000), at 119 ("The nation's capacity in the so-called LCTLs [Less Commonly Taught Languages] is shockingly thin, particularly outside of Arabic, Chinese, Japanese, and Russian.").

[42] Charles Leroux, "U.S. not using its technical edge to win 'public diplomacy' war," *Chicago Tribune*, October 14, 2003, at 1C.

[43] Thomas Ginsburg, "Visa program sees few post-9/11 takers," *San Diego Union-Tribune*, February 12, 2003, at A18.

[44] See, e.g., Janine di Giovanni, "How American Dream faded in downtown Mogadishu," *The Times* of London, February 26, 2002 (describing how the United States Government deported a group of men - including an Intel Corporation employee – to Mogadishu, Somalia, where there is no functioning government).

[45] Ironically, we have also created a threat to other nations' security by deporting large numbers of American-trained criminals. See., e.g., Randall Richard, "Criminal deportees from U.S. wreak havoc around world," *Chattanooga Times Free Press*, October 26, 2003, at A10.

[46] See Lane Crothers, *Rage on the Right: The American Militia Movement from Ruby Ridge to Homeland Security* (2003).

[47] Peter Delevett, "Visa Process Frustrates International Students in U.S.," *San Jose Mercury News*, Oct. 10, 2003 (describing foreign students who grew frustrated with the lengthy U.S. visa process and decided to study elsewhere).

[48] Fred Jerome, *The Einstein File* (St. Martin's Press, 2002).

[49] Jerry Seper, "Bush's 'open door' slammed; Tancredo calls his 'altruistic views' a threat to security," *Washington Times*, April 19, 2002, at A01.

[50] *Findings of the Final Report of the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence Joint Inquiry into the Terrorist Attacks of September 11, 2001*, at 5.

[51] United States v. Robel, 389 U.S. 258, 264 (1967).

[52] Speech by Ted Olson to the Federalist Society, November 16, 2001.

ABOUT THE FOUNDATION...

The American Immigration Law Foundation is a 501(c)(3) non-profit organization dedicated to increasing public understanding of immigration law and policy and the value of immigration to American society; to promoting public service and excellence in the practice of immigration law; and to advancing fundamental fairness and due process under the law for immigrants.

AMERICAN IMMIGRATION LAW FOUNDATION
918 F Street, NW, 6th Floor, Washington, DC 20004
P: (202) 742-5600 · F: (202) 742-5619 · E mail: info@ailf.org
Visit our website at www.ailf.org

Testimony of C. Stewart Verdery, Jr.
Assistant Secretary for Border and Transportation Security Policy and Planning
Department of Homeland Security
Before the Committee on Judiciary
Subcommittee on Immigration and Border Security
U.S. Senate
April 1, 2004

Chairman Chambliss, Ranking Member Kennedy, and Members of the Committee, thank you for the opportunity to testify about the Department of Homeland Security's perspective on security our borders under a Temporary Guest Worker Program.

The U.S. has a close, cooperative relationship with our neighbor Mexico that accordingly generates many initiatives, agreements, and plans between our governments. DHS is a key player in several of these US-Mexico activities. While it must be noted at the outset that when the President announced his proposed Temporary Worker Program on January 7, he did not announce the temporary worker program just for Mexican nationals. However, it is anticipated that many Mexicans would benefit as they do under existing legal immigration programs. In addition, we have an important border and relationship with Canada, our northern neighbor, that will likely be affected by the President's proposal.

I. Protecting the Homeland by Controlling Our Borders

The first principle of the President's proposal for a temporary worker program is "Protecting the Homeland by Controlling our Borders" and the facts illustrate why controlling our common border with Mexico is as important a homeland security relationship as we have with any other country.

- Sixty percent of the 500 million aliens who DHS admits to the United States each year cross that shared border.
- In addition, 90 million cars and 4.3 million trucks cross into the United States from Mexico each year – all part of $233 billion a year in trade conducted at our border.

For more than a century, the story of our nations has been one that transcends just being neighbors. As Secretary Ridge recalls from an early visit to Mexico, Secretary of the Interior Santiago Creel underscored this fact when he quoted from letters that were exchanged between Abraham Lincoln and Benito Juarez during the darkest days of our Civil War.

The mission of our Department of Homeland Security is to prevent terrorist attacks against the United States. In doing so, we are protecting the inalienable rights of

life, liberty and pursuit of happiness that our nation established as its foundation in our Declaration of Independence.

Of course, we do not hold these principles as ours alone. In the Declaration that accompanied the Border Partnership Plan signed nearly two years ago, we stated that "The United States and Mexico are joined by common values, shared interests, and geography in ways that create unprecedented opportunities to work together to strengthen our peoples' physical safety and economic prosperity." It goes on "The terrorist attacks of September 11 were an assault on our common commitment to democracy, the rule of law, and a free and open economy - conditions upon which our nations' well-being depends." Since that time, we have participated in implementing an integrated inter-agency strategy with the Departments of State, Justice and Transportation, state and local partners, as well as an equally broad array of Mexican counterparts. This coordinated approach to collaboration with Mexico enables us to facilitate legitimate trade and travel and simultaneously improve interdiction and investigation of illicit movements of drugs, people, weapons, cash or materials which could potentially be utilized by terrorists to attack our country.

We have accomplished a lot in the border partnership plan as with many other facets of our bilateral relationship with our southern neighbor. In fact, just one month ago, Secretary Ridge, Undersecretary Hutchinson, and many other senior officials traveled to Mexico City to meet with their counterparts as the most recent in a series of regular meetings to monitor progress under that accord. At that meeting, Secretaries Ridge and Creel signed two important companion agreements, a Memorandum of Understanding on the repatriation of Mexican nationals and a 2004 Border Plan of Action. These agreements provide a framework for ensuring a secure, safe, and orderly border, especially during the upcoming summer months when dangers to migrants are the most acute. We have agreed with Mexico to focus efforts on the Arizona-Sonora corridor with a combination of resources, equipment, training, and law enforcement cooperation.

A. ABC Initiative

On March 16, Undersecretary Hutchinson announced the Arizona Border Control ("ABC") Initiative – a first of its kind integrated operation aimed at saving migrant lives, enhancing border security, disrupting smuggling operations, and reducing violence in border communities. Congressman Kolbe joined in the ceremony to launch ABC and alert the community that we are beginning to build up our operational capacity to deal with the unprecedented flow of undocumented migrants through this dangerous terrain.

Together with our Mexican counterparts we are strengthening joint public safety campaigns and intensifying remote surveillance along high-risk routes into the United States. We have provided search, rescue, and lifesaving training to DHS and Mexican officers to respond to migrants who are lost or stranded by smugglers in the dangerous terrain or exposed to the harsh climatic conditions.

Additional personnel, technology, detention and removal capacity, and aviation assets will be available on the ground to DHS and its many law enforcement partners from state and local agencies, the Tohono O'Odham Nation, and the U.S. Attorney's Office.

ABC integrates not only law enforcement at all levels, but integrates efforts along the border, at our ports-of-entry (POE), and in Arizona communities away from the border. Between our POEs, we will deploy 200 additional Border Patrol Agents bringing the Tucson Sector to over 2,000 strong. At our POEs we will strengthen the Anti-Terrorism Contraband Teams and increase use of Non-Intrusive Inspection Equipment. We will intensify the presence of DHS authorities at inland transportation terminals and airports.

ABC and similar enforcement improvements are consistent with the goals of the President's proposed temporary worker program. The President's proposal would provide participants with lawful documentation. This would permit temporary workers to travel legally and freely through our ports of entry, resulting in more efficient management of our borders, and decrease the number of aliens who will desperately attempt to cross our border through desert land in dangerous conditions, thereby saving lives.

Through Operation Ice Storm – an initiative of Immigration and Customs Enforcement (ICE) – we are already disrupting and dismantling smuggling operations, uncovering drop houses, and targeting human smuggling infrastructure in Arizona's largest cities and communities. Through unprecedented cooperation and coordination with Mexican law enforcement, we are exchanging intelligence about smuggling loads moving toward our borders and taking actions to seek prosecution of ringleaders on both sides of the border.

To ensure the coordination essential for the success of these multiple law enforcement partnerships and integrated operations, there will be a Departmental "integrator" reporting directly to Under Secretary Hutchinson. Chief Patrol Agent David Aguilar will serve in this assignment.

In addition, the President's request for the FY 2005 Department of Homeland Security budget includes $2.7 billion for border security inspections and trade facilitation at ports of entry and $1.8 billion for border security and control between ports of entry. This includes $10 million for Unmanned Aerial Vehicles testing and $64 million for border enforcement technology, such as sensors and cameras.

B. US-Mexico Border Partnership Plan

The Border Partnership Plan outlines 22 concrete actions our countries are taking jointly to confront terrorism, drug trafficking, crime, and other threats against the American and Mexican people. Three major pillars support the plan – often called our

Smart Border Plan: (1) Secure Infrastructure; (2) Secure Movement of People; and (3) Secure Movement of Goods. The guiding spirit is to facilitate legal and low-risk trade and travel while increasing capacity to stop illicit and dangerous flows. Of course, the secure exchange of information transcends the entire plan, making possible the effective management of the border.

To cite but a few of the many accomplishments under the plan that fit into our strategy of securing the border:

- SENTRI is one of several programs designed to facilitate the cross-border travel of pre-screened, low-risk travelers thereby enabling DHS officers to focus resources on unknown, higher-risk travelers who seek admission to our country. Currently, we operate SENTRI lanes in Otay Mesa, San Ysidro, and El Paso. Eight additional SENTRI vehicle lanes are planned for as early as the end of 2004. We had nearly 70,000 travelers enrolled in SENTRI as of the end of January. Of these, approximately 61% are US enrollees and 37% are Mexican. As part of the enrollment process, applicants and their vehicles undergo a security check. The names of enrolled participants are regularly checked against watch lists. We increased the period of enrollment from one to two years for pre-screened participants who qualify for the program. At no cost to SENTRI participants, we are also switching over to the higher technology that we currently use in the NEXUS system on our northern border.

- We opened the first FAST (Free and Secure Trade) lane in El Paso for commercial traffic and qualifying truck drivers in September and a second one last month in Laredo. Like SENTRI, participants in FAST are pre-screened to determine low-risk and suitability for the program. Allowing FAST participants to move quickly through POEs has the twin goal of freeing Government resources to inspect unknown, higher risk commercial traffic while providing faster access to known, lower risk travelers.

- We launched the Customs-Trade Partnership Against Terrorism in Mexico to secure every link in the supply chain. We now have 51 importers certified for the program and another nine pending certification.

- We are screening rail cargo moving in both directions across the US-Mexico border with Vehicle and Cargo Inspection System (VACIS). The Rail VACIS systems are deployed in 7 of the 8 rail crossings. The final location will be installed during the calendar year 2004. Once this is complete, all crossings will receive 100 percent screening for rail traffic arriving into the United States from Mexico.

- We assisted Mexico with the development of its Advanced Passenger Information System and together, we are finalizing arrangements for exchange of this critical information on who is entering North America by commercial airline.

- CBP Border Patrol has trained and equipped close to 800 Mexican law enforcement and rescue personnel in search and rescue, basic medical training and swift water rescue. Additionally, Border Patrol has worked cooperatively with Mexico to develop a bilateral media campaign with a single message regarding border safety.

Each of these initiatives includes working with other U.S. agencies to help Mexico increase its capacities to participate fully and successfully in the programs.

C. US-VISIT on the Land Border

During the recent visit of President Fox to Crawford, TX, President Bush announced that the Department is committed to facilitating Mexican Border Crossing Card (BCC) holders ability to cross the border yet still satisfy requirements under US-VISIT – our new entry-exit system that allows biometric comparison to certain criminal and terrorist information of nonimmigrant visa holders who seek admission at our air POEs.

State Department consular posts in Mexico issue a combined Border Crossing Card and B1/B2 visa called a BCC and known colloquially as a "laser visa." The BCC includes two biometrics, the photograph and the fingerprint. DHS is working to integrate the technology used for BCCs with US-VISIT requirements. Site surveys are underway to prepare the ports for deployment by the end of June.

The BCC is both a crossing card and a visa. The BCC is valid for entry to the United States within 25 miles of the Southwestern border for 72 hours or less (the "border zone"). Since 1999, the zone is 75 miles in Arizona only. No other document is needed for entry.

Mexican nationals who use the travel document only as a BCC will not initially be subject to US-VISIT processing during primary inspection inasmuch as the holder's biometric information was captured at the time the document was issued. This is an interim solution for our land border while the Department explores the long term solution to record the entry and exit of such individuals crossing our land POEs.

However, if used as a B1/B2 visa for travel outside the border zone or for a longer period, the traveler is issued the I-94 entry document by a Customs and Border Protection inspector and will be subject to US-VISIT requirements. Similarly, Mexican nationals require nonimmigrant visas if they seek admission for a purpose other than a visit for business or pleasure. For instance, Mexican nationals require student or temporary worker visas and they, too, will be subject to US-VISIT requirements.

The President's request for the FY'05 Department of Homeland Security budget asks for $340 million for US-VISIT, a proposed increase of $12 million over the FY 2004 funding. Only two months old, US-VISIT has successfully and efficiently recorded the entry of 2,540,738 passengers and the exit of 8,551 travelers without causing delays at

ports of entry or hindering trade. The program has resulted in 231 watch list hits, including serious criminals, because of the biometric collection from nonimmigrant visa holders. Aliens who have repeatedly entered the U.S. illegally and used multiple aliases are now being detected. US-VISIT will play a key role in the President's temporary worker program by validating that aliens are complying with the terms of the worker program as they enter and exit through ports of entry, making it easier to enforce the program.

D. U.S. Canada Smart Border Plan

Within months of the tragic events of September 11, the United States and Canada committed themselves to work together to address threats to our people, our institutions, and our prosperity. Both nations recognized that our current and future prosperity – *and security* –depend on a border that operates efficiently and effectively under any circumstance. The long tradition of cooperative border management among the customs and immigration officials allowed us to shape so quickly the *Smart Border Plan* more formally known as the "Action Plan for Creating a Secure and Smart Border" that was signed on December 11, 2001. That action plan of 32 concrete goals allows the safest most efficient flow of people and goods across our common border and provides secure infrastructure and exchange of critical information.

Many of the goals have already been implemented including the NEXUS program that is highly representative of the bilateral cooperation between our two nations. NEXUS, with nearly 60,000 enrollees as of the end of January, is a binational program designed for pre-screened travelers. Under NEXUS, applicants must satisfy both countries' rules and screening requirements and, once cleared, have access to special lanes at eleven border crossings to facilitate the north and southbound flow of passengers. Similarly, we have 12 FAST lanes on the northern border for the secure flow of commercial traffic. Other issues reflect ongoing efforts such as the Integrated Border Enforcement Teams, harmonized passenger analysis, automated targeting of container shipments, and the implementation of the "Safe Third" Country asylum agreement.

As with the U.S.-Mexico Border Partnership Plan, the sharing of information is critical to the success of individual goals. To this end, the Department and the Department of State have invested significant effort and attention. First, it is important to note that the United States established an agreement with Canada on May 23, 1997 to share terrorist information, using what was then the State Department's TIPOFF database, which is now maintained by the Terrorist Threat Integration Center (TTIC). The Terrorist Screening Center, an interagency body that includes the Department and Department of State officers, now has a mandate to share with Canada unclassified TIPOFF information provided by TTIC. In addition, Section 413 of the USA PATRIOT Act of 2001 granted the Secretary of State authority to provide to a foreign government

information in the Department's computerized visa lookout databases. The first part of this new authority allows, on a reciprocal basis, the establishment of agreements to share visa lookout information, including information for the purpose of preventing terrorism, on a case-by-case basis. Thus, our two Departments, working together, concluded a Statement of Mutual Understanding for case-by-case sharing with Canada in 2003. More importantly, the second part of the Secretary of State's new authority specified that the Secretary could establish agreements with foreign governments to share visa lookout information systematically, including information for the purpose of preventing terrorism.

On June 12, 2003 the Secretary of State approved an authorization to negotiate and conclude such an agreement for the systematic sharing of visa lookout database information with Canada, and approved a draft executive-level agreement to do so. At the same time, he gave blanket authorization to pursue such an agreement with any other willing country, using the effort with Canada as a model. In January 2004 the first negotiating session with Canada was held, and negotiations are ongoing.

E. Customs and Border Protection

We believe the President's proposed temporary worker program should link efforts to control our border through agreements with countries whose nationals participate in, and benefit from, the program. Cooperation from the Mexican government will be especially critical, including possibly greater Mexican efforts to control the flow of Mexican migrants not qualified under the temporary worker program to the U.S. border. U.S. Customs and Border Protection (CBP) will continue its Integrated Border Enforcement Team (IBET) operations on the Canadian border and continue its cooperative efforts with both the governments of Canada and Mexico.

For a temporary worker program to work effectively, border enforcement will be critical. It is important to recognize that DHS has set the stage for an effective program. Between the ports of entry on the northern border, the size of the Border Patrol has tripled to more than 1,000 agents. In addition, the Border Patrol is continuing installation of monitoring devices along the borders to detect illegal activity. Moreover, since March 1, 2003, all CBP officers have received antiterrorism training. The CBP Office of Training and Development is currently developing additional antiterrorism training for all CBP officers.

The Border Patrol is also adding sensors and other technology that assist in detecting illegal crossings along both our northern and southern borders, including Remote Video Surveillance (RVS) systems. These RVS systems are real-time remotely controlled force enhancement camera systems, which provide coverage along the northern and southern land borders of the United States, 24 hours per day, 7 days a week. The RVS system significantly enhances the Border Patrol's ability to detect, identify, and respond to border intrusions, and it has a deterrent value as well. There are currently 269 completed Remote Video Surveillance (RVS) sites in operation; 200 along the southwest border and 69 along the northern border. An additional 216 installations are in progress.

CBP pursues many initiatives in the ongoing effort to ensure a balance of two critical DHS objectives: (1) increasing security; and (2) facilitating legitimate trade and travel. These initiatives include the use of advance information, risk management, and technology, and partnering with other nations, other agencies, state and local authorities, and with the private sector. Using these principles, CBP understands that security and facilitation are not mutually exclusive. Since 9/11, we have developed strategies and initiatives that make our borders more secure while simultaneously ensuring a more efficient flow of legitimate trade and travel.

In improving our nation's homeland security, CBP has created "One Face at the Border." This includes designating one Port Director at each port of entry and instituting a single, unified chain of command for all CBP Officers at all of our ports of entry and all our inspectors - whether they be legacy customs, immigration, or agriculture employees. CBP has also developed specialized immigration and customs antiterrorism response teams and consolidated its passenger analytical targeting units. These units coordinate with CBP's National Targeting Center, which serves as the interagency focal point for obtaining manifests and passenger information for flights of concern.

A Temporary Worker Program will enhance CBP's ability to carry out its continuing mission. Unauthorized entry into the United States will still be illegal, and CBP will continue to improve our homeland security by gaining greater control over our borders and more effectively and efficiently inspecting and screening arriving passengers, vehicles, and conveyances. For this reason, as reflected in the President's 2005 budget request, it will be more important than ever to ensure that the Border Patrol has adequate funding for the personnel, infrastructure, equipment and technology to continue to adopt its tactics and deploy its resources to meet its priority anti-terrorism mission.

II. Providing Incentives for Return to Home Country

The President's proposal also provides incentives for return to the participant's home country. As proposed by the President, the legal status granted by this program would last three years, be renewable, and would have an end. Returning home is made more desirable because during the temporary work period, workers would be permitted to come and go across the U.S. borders so the workers can maintain roots in their home country. This has proven particularly important to Mexican nationals.

In addition, the Temporary Worker Program would offer additional incentives for these workers to return home, including portability of investments and the skills learned and education attained during their work experience in America. With respect to Mexican participants in the program, we would certainly work with Congress and the Mexican Government to identify incentives for Mexican nationals to return home.

III. Workplace Enforcement of Immigration Laws

Another principle in the President's proposal is workplace enforcement of our immigration laws. The FY 2005 President's budget request includes an increase of $23 million for worksite enforcement. This request to more than double the number of worksite enforcement investigations illustrates the President's commitment to serious immigration enforcement and the rule of law as part of a temporary worker program.

The worksite enforcement mission is now located in Immigration and Customs Enforcement's (ICE) National Security Division. The goal is to maintain integrity in the employment procedures and requirements set forth under our immigration laws. The Critical Infrastructure Protection Unit within the ICE National Security Division is the unit responsible for coordinating enforcement of our employment requirements under the Immigration and Nationality Act. ICE will continue to coordinate its employer sanctions and worksite enforcement activities with agencies having relevant jurisdiction, such as the Department of Labor and the Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices, where there are indications of worker abuse based on illegal status or intentional abuses of salary requirements and laws on account of an alien's illegal status. Further, monitoring will occur in situations such as criminal and administrative investigations of employers, in conjunction with ongoing alien smuggling and trafficking investigations, and in industries where intelligence and ICE auditing indicates widespread disregard of employment verification requirements.

Since 9/11, DHS has audited 3,640 businesses, examined 259,037 employee records, arrested 1,030 unauthorized workers, and participated in the criminal indictment of 774 individuals. Post-9/11 enforcement operations targeting unauthorized workers at critical infrastructure facilities identified over 5,000 unauthorized workers who obtained employment at airports, nuclear plants, sporting arenas, military bases, and federal buildings by presenting counterfeit documents to their employers and providing false information to security officials. DHS' challenge is to enhance public safety to ensure that individuals intending to do us harm are not providing access to controlled areas.

Temporary workers will be able to establish their identities by obtaining legal documents under a worker program. It is critically important to create a system that prevents fraud as it was so prevalent under the 1986 Immigration Reform and Control Act (IRCA) worker and legalization programs. It is essential that a new temporary worker program provide uniform documentation for participants that is tamper-proof and as fraud-proof as possible. While this proposed program is a generous and compassionate one, we do not wish to reward those who abuse the program through fraud. Fraud prevention should be a component in creating this temporary worker program. Immigration fraud poses a severe threat to national security and public safety because it enables terrorists, criminals, and illegal aliens to gain entry and remain in the United States. ICE's goal, in conjunction with CIS and CBP, is to detect, combat, and deter immigration fraud through aggressive, focused, and comprehensive investigations and prosecutions. If approved, the $25 million FY 2005 budget request will provide stable funding to ICE's benefits fraud program by replacing funding previously provided through the Examinations Fee Account.

Detention and removal of illegal aliens present in the United States is critical to the enforcement of our immigration laws. A requested increase of $108 million in FY 2005 will expand ongoing fugitive apprehension efforts and the removal from the United States of jailed offenders, and support additional detention and removal capacity. Adequate detention space has long been considered a necessary tool to ensure effective removal operations. An increase in bed space to accommodate a higher volume of apprehended criminal aliens results in a significantly higher appearance rate at immigration proceedings. When final orders of removal are issued, this will result in a greater number of removals and fewer absconders. With the $5 million request, ICE will enhance its ability to remove illegal aliens from the United States.

As part of its overall immigration enforcement strategy, ICE will continue to analyze data generated through the Student and Exchange Visitor Information System (SEVIS) and US-VISIT program to detect individuals who are in violation of the nation's immigration laws and pose a threat to homeland security. If approved, the President's request for the FY 2005 budget of $16 million will increase the funding for ICE's SEVIS and US-VISIT compliance efforts by over 150 percent.

I want to highlight another key aspect to the President's Temporary Worker Program proposal - ensuring that past illegal behavior is not rewarded. This proposal does not provide an automatic path to citizenship. The program has a finite period of time and requires workers to return home. Those who have broken the law and remain illegally in our country should not receive an unfair advantage over those who have followed the law. We recognize that some temporary workers will want to remain in the U.S. and pursue citizenship. They will be able to apply for green card status through the existing process behind those already in line.

A sensible immigration policy begins with security at our nation's borders. The President's proposed Temporary Worker Program is a bold step, aimed at reforming our immigration laws, matching willing workers with willing employers, and securing our Homeland. The President's proposal holds the promise of strengthening our control over U.S. borders and, in turn, improving homeland security.

Illegal entry across our borders makes more difficult the urgent task of securing the homeland. Our homeland will be more secure when we can better account for those who enter our country, instead of the current situation in which millions of people are unknown. With a temporary worker program in place, law enforcement will face fewer problems with unlawful workers and will be better able to focus on other threats to our nation from criminals and terrorists.

Passing a Temporary Worker Program that works to benefit the American economy while bringing integrity to our immigration system is a reasonable goal for all of us. The Administration is ready to work with the Congress to move forward in achieving this important goal.

Testimony of Most Reverend Thomas G. Wenski

Coadjutor Bishop of Orlando

Chairman, U.S. Conference of Catholic Bishops'

Committee on Migration

On

U.S. Immigration Policy Reform

Senate Judiciary Subcommittee on Immigration, Border Security

and Citizenship

April 1, 2004

I am Bishop Thomas Wenski, coadjutor bishop of Orlando, Florida and chairman, U.S. Conference of Catholic Bishops' Committee on Migration. I testify today on behalf of the Committee of Migration on the issue of comprehensive immigration reform and the U.S.-Mexico relationship.

Mr. Chairman, I am pleased to have the opportunity to testify today on this important topic. The United States and Mexico are, more than ever, tied together economically, socially, and culturally. We share a two-thousand mile border region which both unites and divides us; which facilitates the free flow of commerce yet also hosts an ever increasing border enforcement regime; and which shares cultural and social values but divides and separates families. Now, together, our two nations must address these fundamental contradictions and redefine how issues of migration can be addressed in a comprehensive, uniform, and just manner.

Mr. Chairman, on September 6, 2001, Mexican president Vicente Fox addressed a joint meeting of the United States Congress on the issue of migration and called for the "regularization" of undocumented Mexican immigrants in the United States. At that time, there was real opportunity for reform in U.S. immigration policy, including a legalization of the undocumented in our nation.

As we are all aware, the events of September 11, 2001, changed the landscape and political environment for achieving comprehensive immigration reform. Our nation understandably turned its attention to security concerns and to ensuring that we are able to distinguish the migrant who comes to contribute to our nation from those who seek to harm us.

We are hopeful that President Bush's re-entry into the immigration debate on January 7, 2004, and hearings such as the one you are conducting today mark a new beginning of a debate on comprehensive immigration reform.

In order to achieve real reform, the administration and Congress must work together on a comprehensive package which would legalize undocumented migrants and their families in the U.S., provide legal means for migrants to enter our nation to work and support their families, and reform the system whereby immigrants come to the United States to reunited with close family members.

Moreover, it is our hope that the recent meeting between President Bush and President Fox in Crawford, Texas, will mark a new beginning in negotiations on a bilateral migration agreement. It is through this framework, with the support of the legislative bodies of each country, that both nations will best be able to address all elements of the migration issue—economic inequities and other root causes, joint security concerns, legal avenues for migration, workers' rights, Social Security totalization—to name a few. We call upon both presidents to recommence these talks as soon as possible.

Mr. Chairman, in January 2003, the U.S. and Mexican Catholic bishops issued a historic joint pastoral letter on the issue of migration entitled *Strangers No Longer: Together on the Journey of Hope*. Among its many recommendations, it outlines the elements which the bishops of both nations believe are necessary to reform U.S. and Mexican immigration policy in a comprehensive and just manner. With your permission, Mr. Chairman, I ask that the chapter of the pastoral letter addressing policy recommendations be included in the hearing record.

My testimony today will focus on many of the recommendations contained in the U.S.-Mexican bishops' joint letter, including 1) the need to address the root causes of migration so that migrants can remain home to support themselves and their families; 2) the need to reform U.S. immigration policy so that migrants can enter in a safe, legal, orderly, and humane manner; and 3) the need to reevaluate our immigration enforcement policies so that the abuse, exploitation, and death of migrants are eliminated at the same time legitimate national security concerns are addressed.

Specifically, my testimony recommends that Congress—

- Enact comprehensive immigration reform legislation which provides a legalization program (path to permanent residency) for undocumented workers in our nation; reforms the employment-based immigration system so that low-skilled workers can enter and work in a safe, legal, orderly, and humane manner; and reduces waiting times in the family preference system for families to be reunited;

- Devise an aid package for Mexico which focuses on sustainable economic development, especially in sending communities, and reevaluate the impact of NAFTA on farmers and other low-skilled sectors of the Mexican economy;

- Enact immediately the Agricultural Job Opportunity, Benefits, and Security Act of 2003 (S. 1645, H.R. 3142) and the Development, Relief, and Education for Alien Minors Act (DREAM) and Student Adjustment Act (S. 1545 HR 1684);

- Reexamine immigration enforcement policy on the U.S.-Mexican border to ensure that migrant abuse and deaths are prevented; and

- Include the necessary elements in any legislation to efficiently implement immigration policy, including taking actions to eliminate the enormous backlogs in the adjudication of immigration benefit petitions and applications.

I. Catholic Social Teaching and Migration

The Catholic Church is an immigrant church. More than one-third of Catholics in the United States are of Hispanic origin. The Church in the United States is also made up of more than 58 ethnic groups from throughout the world, including Asia, Africa, the Near East, and Latin America.

The Church's work in assisting migrants stems from the belief that every person is created in God's image. In the Old Testament, God calls upon his people to care for the alien because of their own alien experience: "So, you, too, must befriend the alien, for you were once aliens yourselves in the land of Egypt" (Deut. 10:17-19). In the New Testament, the image of the migrant is grounded in the life and teachings of Jesus Christ. In his own life and work, Jesus identified himself with newcomers and with other marginalized persons in a special way: "I was a stranger and you welcomed me." (Mt. 25:35) Jesus himself was an itinerant preacher without a home of his own as well as a refugee fleeing the terror of Herod.
(Mt. 2:15)

In modern times, popes over the last 100 years have developed the Church teaching on migration. Pope Pius XII reaffirmed the Church's commitment to caring for pilgrims, aliens, exiles, and migrants of every kind, affirming that all peoples have the right to conditions worthy of human life and, if these conditions are not present, the right to migrate.[1] Pope John Paul II states that there is a need to balance the rights of nations to control their borders with basic human rights, including the right to work: "Interdependence must be transformed into solidarity based upon the principle that the goods of creation are meant for all."[2] In his pastoral statement, *Ecclesia in America,* John Paul II reaffirms the rights of migrants and their families and the need for respecting human dignity, "even in cases of non-legal immigration."[3]

In our recent joint pastoral letter, the U.S. and Mexican Catholic bishops further define Church teaching on migration, calling for nations to work toward a "globalization of solidarity:" "It is now time to harmonize policies on the movement of people, particularly in a way that respects the human dignity of the migrant and recognizes the social consequences of globalization."[4]

The U.S. and Mexican bishops also point out why they speak on the migration issue. As pastors, we witness the consequences of a failed immigration system every day in the eyes of migrants who come to our parish doors in search for assistance. We are shepherds to communities, both along the border and in the interior of the nation, which are impacted by immigration. Most tragically, we witness the loss of life at points along our southern border when migrants, desperate to find employment to support themselves and their families, perish in the desert.

For these reasons, the Catholic Church holds a strong interest in the welfare of immigrants and how our nation welcomes newcomers from all lands. The current immigration system, which can lead to family separation, suffering, and even death, is morally unacceptable and must be reformed.

II. The Immigration Debate and the Administration proposal

---

[1] Pope Pius XII, *Exsul Familia (On the Spiritual Care of Migrants)*, September, 1952.
[2] Pope John Paul II, *Sollicitudo Rel Socialis,* (On Social Concern) No. 39.
[3] Pope John Paul II, *Ecclesia in America (The Church in America)*, January 22, 1999, no. 65.
[4] *Strangers No Longer: Together on the Journey of Hope. A Pastoral Letter Concerning Migration from the Catholic Bishops of Mexico and the United States,"* January 23, 2003, n. 57.

The U.S. Catholic bishops welcome President Bush's decision to propose changes in U.S. immigration policy. Since his January 7, 2004, announcement, the debate on this important issue has received national attention and more serious consideration by members of Congress. We are hopeful that the national debate will focus upon the many contributions that immigrants, both documented and undocumented, make to our country and not scapegoat newcomers for unrelated economic or social challenges we face as a nation. History informs us that our nation has been built, in large measure, by the hard work of immigrant communities. We must remember that, except for Native Americans, we are all immigrants or descendants of immigrants to this great land.

President Bush's January 7, 2004, announcement contained many statements and outlined many goals with which we agree and support. It is significant, for example, that the President recognizes that the U.S. immigration system is broken and is in need of reform and that immigrants contribute to our nation in many areas. It is even more significant that the President proposes to provide legal status to undocumented persons in the United States who work and contribute to this nation.

However, we have some concerns about the type and scope of the administration proposal. In our pastoral letter, the U.S. and Mexican bishops outline immigration reform which is *comprehensive* in nature and examines all aspects of the U.S. immigration system. This would include employment-based immigration, family-based immigration, and opportunities for permanent residency for the undocumented currently living in the United States. The administration proposal only addresses the employment-based aspects of the system and does so in an inadequate fashion.

Perhaps the most troubling omission of the administration proposal is the absence of any path to residency for undocumented immigrants living in the United States, outside normal immigration channels. As I will outline in my testimony, the U.S. bishops believe that a path to residency is critical to ensure that long-term residents and their families can "come out of the shadows" and become full members of their communities. It also would help stabilize the low-skilled labor force in this nation.

We support the administration's stated intention to increase the number of permanent residency visas for low-skilled workers, of which there are only 5,000 available annually. Because of the low number of visas available and because eligibility for these visas would be limited, we do not believe that this initiative is a substitute for a legalization program which allows workers to "earn" residency for themselves and their families.

A second omission in the administration proposal is the absence of any proposed reforms in the family-based immigration system. Because of per-country limits, preference category limits, and limits on the total number of visas available each year, waiting times for family reunification can extend for years. For example, a Mexican permanent resident who petitions today for his or her immediate family members must wait at least eight years to reunite with them. This is unacceptable. Any comprehensive solution to the immigration crisis must understand that migrants come to the United States to join their family members as well as to find employment.

Finally, the temporary worker program proposed by the administration does not contain all the elements necessary to protect the rights of workers, both foreign and domestic. As I will explain in greater detail, a new model must be created which avoids the abuses of past "guestworker" programs. This new model would need to include, among other elements, enforceable worker protections, wages and benefits which do not adversely impact U.S. workers, and a path to residency for participants in the program.

Despite these shortcomings in the administration plan, we hope to work with the administration and members of Congress in the months ahead to enact comprehensive reforms to U.S. immigration policy. A comprehensive approach would provide legal avenues for migrants to migrate and prepare our nation for the migration flows of the twenty-first century.

III. Policy Recommendations

In our pastoral letter, the U.S. and Mexican Catholic bishops write that..."the realities of migration between both nations require comprehensive policy responses implemented in unison by both countries. The current relationship is weakened by inconsistent and divergent policies that are not coordinated and, in many cases, address only the *symptoms* of migration and not its *root causes*."[5]

It is critical that the Congress and the administration look at the immigration issue with Mexico as part and parcel of the entire bilateral relationship, including trade and economic considerations. Addressing the immigration systems of both nations, for example, will not control the forces which compel migrants to come to the United States.

Without a systematic approach which examines why people migrate, the U.S. and Mexican governments will not be able to address the underlying causes of migration. It is clear that Mexican workers continue to come to this nation regardless of enforcement strategies pursued by both governments. What attracts them is employment which either cannot be found in their own communities or better opportunities because of underemployment in Mexico, in which jobs do not pay enough or are not full time.

Specifically, we recommend that Congress consider the development of an economic package which targets sectors of the Mexican economy which employ low-skilled workers, particularly agriculture. In addition, as we assess the ten year impacts of the North American Free Trade Agreement (NAFTA), we ask that you examine in particular the impact of the agreement on low-skilled labor and migration and consider ways to mitigate any adverse effects on economic sectors which are labor-intensive.

In an ideal world for which we must all strive, migrants should have the opportunity to remain in their homelands and support themselves and their families. In this regard, we renew our call to both the U.S. and Mexican governments to resume bilateral migration negotiations so that all issues which impact migration to the United States are addressed.

A. Legalization (permanent residency) of the Undocumented

[5] *Strangers No Longer, n. 56.*

With regard to immigration policy reform, it is vital that Congress and the administration address legalization, or a path to permanent residency for the undocumented currently in the United States; employment-based immigration through a new temporary worker model; and family-based immigration reform. Without addressing reform in each leg of the "three-legged stool," any proposal will eventually fail.

A main feature of any comprehensive immigration reform measure should be a legalization program which allows undocumented immigrants of all nationalities in the United States the opportunity to obtain permanent residency, either because of contributions already made or through a prospective work requirement. Such a feature would provide benefits to both countries and would help migrants and their families to "come out of the shadows" and become members of the community. Legalization would provide many benefits, as follows:

- **Legalization would keep families together and improve the well-being of U.S.-citizen children.** Legalization would help stabilize immigrant families and would protect U.S.-citizen children in "mixed" status families. A 1999 study by the Urban Institute found that 85 percent of immigrant families were of "mixed" status, that is, families in which "one or more of the parents is a non-citizen and one or more children is a citizen." Looked at from a different angle, 9 percent of U.S. families with children nationwide were of mixed status. The figure rises to 14 percent in New York and over 25 percent in California.[6]

- **Legalization would recognize and maintain the economic contributions of the undocumented.** Undocumented workers are an integral part of many industries across the country, including agriculture, service, construction, meatpacking, and poultry processing. For example, undocumented workers make up more than 50 percent of the labor force in agriculture. Of the roughly five to six million undocumented workers in the U.S. labor force, the Pew Hispanic Center estimates that more than 1 million are in manufacturing, 600,000 in construction, 700,000 in restaurants, and 1 to 1.4 million in agriculture.[7] In addition, undocumented workers contribute billions to the tax and Social Security systems.

- **Legalization would improve wages and working conditions for all workers.** By legalizing the labor force in a way which allows immigrants to become permanent residents, wages and working conditions would improve for all workers. According to a North American Integration and Development Center study, a new legalization program would increase the wages of immigrant workers by 15 percent, similar to the effect after passage of the 1986 Immigration Reform and Control Act.[8] Legalization

---

[6] Micheal Fix and Wendy Zimmerman, *All under one Roof: Mixed-Status Families in an Era of Reform.* Washington, D.C.: Urban Institute, June 1999.

[7] Pew Hispanic Center, *How many undocumented: the numbers behind the U.S.-Mexico migration talks*, March 21, 2002.

[8] Raul Hinojosa Ojeda, *Comprehensive Migration Policy Reform in North America: The Key to Sustainable and Equitable Economic Integration.* Los Angeles, California: North American Integration and Development Center, School of Policy and Social Research, UCLA, August, 2000.

also would allow workers to organize and assert their rights, leading to better working conditions and wages for all workers.

- **Legalization would promote development and stability in Mexico and Central America.** Legalization would ensure that immigrants in the United States, many of whom have lived here for years and do not intend to return to their homeland, are not deported and add to the instability in sending nations. It also would ensure that remittances, which now amounts to $10 billion a year in Mexico, continue to assist sending communities.

- **Legalization would help bring U.S. immigration policy in line with U.S. economic policy.** The United States and Mexico are more integrated than ever. U.S. immigration policy has yet to adjust to the fact that U.S. economic policies such as NAFTA have facilitated rapid interdependence between Mexico and the United States. As economic policies are integrated, so, too, must bilateral migration policies.

Despite the dire warnings of opponents of a legalization path for undocumented workers, evidence suggests that legalization would yield benefits at many levels by preserving family unity, securing the economic contributions of migrants, and raising the wages and working conditions of all workers. It would also ensure the participation of all undocumented workers because of the opportunity for residency. The administration proposal, which leaves out this component, does not provide an incentive for full participation.

Any legalization program which leads to permanent residency through prospective work requirements must be achievable and independently verifiable. To be achievable, a worker must be able to realistically work the number of days per year necessary and must be able to "earn" residency over a reasonable amount of years. To be independently verifiable, the program must involve Qualified Designated Entities (QDEs) which can independently attest that the worker has completed the necessary requirements.

B. Employment-Based Immigration

Perhaps the most problematic aspect of immigration policy reform is the creation of a worker program which protects the basic rights of all workers, both foreign and domestic. The history of "guestworker" programs in the United States has not been a proud one. Indeed, the *Bracero* program, the largest U.S. experiment with temporary laborers from abroad, ended abruptly in 1964 because of abuses in the program. The U.S. Catholic bishops have long been skeptical of large-scale "guestworker" programs. Nevertheless, the status quo, which features a large underclass of undocumented workers unprotected by the law, is unacceptable.

In this regard, the U.S. and Mexican bishops have proposed a new model for a worker program which includes several elements. Each of these elements, properly implemented, would, in our view, help protect the rights of foreign and U.S. workers and ensure that legal avenues are provided for future migrants so that they can enter the country in a safe, legal, and humane manner.

- **Wage and Benefit Levels.** Any worker program must feature wage levels and benefits given domestic workers in an industry. Overtime pay should be available. Benefits such as worker's compensation, social security, housing, and health-care should be made available.

- **Worker Protections and Job Portability.** Workers should enjoy the same protections of U.S. labor law as U.S. workers, regardless of industry, including a right to redress grievances in federal court and a transparent arbitration system; safe and sanitary working conditions; and expressed terms of employment. Workers should be able to move to other employment within an industry and not be tied to one employer. Work accrued toward permanent residency should not be affected by changing jobs or employers.

- **Family Unity.** Workers should be able to be joined by spouse and children in the United States during the length of the worker's visa. Either spouse should be eligible for work authorization, regardless of whether they work in the program. Spouse and children should be able to become eligible for permanent residency at the same time as the worker in the program.

- **Labor-Market Test.** A mechanism should be included to ascertain whether U.S. workers within an area are adversely impacted by the hiring of workers from abroad. Employers should be required to advertise job openings to the maximum extent practicable and make good-faith efforts to recruit U.S. workers for a sufficient amount of time.

- **Mobility.** Workers and their families should be able to travel throughout the United States, travel back and forth from the United States to their country of origin, as well as travel from work site to work site, regardless of location, for the duration of their visa. Visas should be renewable as long as workers meet the requirements of the program, and applicable waivers to bars to admission should apply.

- **Enforcement Mechanisms.** Resources should be appropriated to ensure proper enforcement of worker protections in the program. Workers should be given the right to sue in federal court for violation of rights.

- **Path to Residency.** Workers should have the option of working to earn permanent residency over time, similar to an earned legalization program, as outlined in my testimony.

In our view, any new temporary worker program must contain these elements in order avoid the abuses of past such programs and to ensure that worker's rights are protected. In addition, it should be enacted in conjunction with a legalization program for the undocumented so that groups of workers are not pitted against each other. A just worker program also will mitigate the amount and effects of undocumented migration, which can lead to the abuse, exploitation, or even death of migrants.

C. Family-Based Immigration

Family reunification, upon which much of the U.S. immigration system has been based for the past 40 years, must remain the cornerstone of U.S. immigration policy. Immigrant families contribute to our nation and help form new generations of Americans. Even while many migrants come to the United States to find employment, many come as families.

The U.S. family-based immigration system, which helps keep families together, is in urgent need of reform. The current visa quota system, last revised by Congress in 1990, established statutory ceilings for family immigration that are now inadequate to meet the needs of immigrant families wishing to reunite in a timely manner. The result has been waiting times of five years or more—and more than eight years for Mexican permanent residents—for spouses to reunite with each other and for parents to reunite with minor children. The waiting times for adult siblings to reunite can be twenty years or longer. [9]

Such lengthy waiting times are unacceptable and actually provide unintentional incentive for some migrants to come to the United States illegally. Substantial changes must be made to the U.S. family-based immigration system so that it will meet the goal of facilitating, rather than hindering, family unity. Such changes can be made in several ways, but they should not alter the basic categories in the family preference system.

While there are a variety of ways reforms could be made, I call your attention to two suggestions that have recently appeared in legislation that is currently before you:

- **Raising current world-wide numerical limitations.** Significantly raising the current world-wide numerical limitations on immigrant visas, as well as raising the ceiling on various family visa categories could dramatically reduce the current family backlog. Currently, the Immigration and Nationality Act (INA) sets an annual minimum family-sponsored preference limit of 226,000. In addition, the per-country limit for preference immigrants is set at seven percent of the total annual family-sponsored and employment-based preference limits. These limitations result in lengthy waits for family members abroad awaiting visas to immigrate to the United States. Raising these numbers significantly would reduce these waits.

- **Changing the treatment of "immediate relatives."** The immediate relative category, which currently includes only the children, spouses, and parents of U.S. citizens is not subject to the family preference numerical limitations. However, the number of immediate relative visas granted is subtracted from the overall family immigration cap. Reducing the family backlog can be achieved by: 1) not counting immediate relatives of U.S. citizens against the family immigration cap and 2) placing the immediate relatives of lawful permanent residents into the same category as immediate relatives of U.S. citizens. This would help free up visas for other categories.

---

[9] *U.S. Citizenship and Immigration Service Fact Sheet,* January, 2004.

The U.S. family-based immigration system is in need of one or both of the above changes. However, these changes alone are not sufficient to create an immigration policy which protects the family. In addition, we must revise stringent income requirements ("public charge") which prevent family members from joining their families and we must repeal bars to admissibility for unlawful presence, which can separate families for up to ten years.

D. Border Enforcement Regime

Since the advent of Operation Gatekeeper in San Diego in 1994, the United States has spent more than $20 billion dollars on Border Patrol agents, reinforced fencing, and technology along the U.S.-Mexico border. This "border blockade" strategy has failed. According to the Pew Hispanic Center, over roughly the same time period the number of undocumented persons from Mexico who have entered the United States has risen from 300,000 to 500,000 annually. [10] Tragically, because of the blockade of more traditional routes of migration, more than 2,000 migrants have died in remote regions of the American Southwest since 1998.

The recent announcement by Department of Homeland Security Undersecretary for Border and Transportation Security Asa Hutchinson of the Arizona Border Control Initiative (ABC) is troubling. The $10 million initiative, which will feature an increase in Border Patrol agents and technological equipment in Douglas, Arizona, and other parts along the Arizona border, is designed to close off the Arizona border from migrants. It also will feature, for the first time, the use of unmanned drones to monitor the border regions. We are fearful that this initiative will not halt the flow of undocumented migrants but will lead them to take even more dangerous routes into the interior and/or rely more heavily on unscrupulous smuggling operations.

Mr. Chairman, the border "blockade" strategy pursued by our government should be revisited. It has given rise to sophisticated smuggling networks, in which migrants pay exorbitant fees to smugglers to transport them across the border. The much publicized deaths of 19 migrants in Victoria, Texas, in May, 2003, highlights the brutal nature of these networks. It is evident that the basic human need to survive will continue to force migrants to attempt to run the gauntlet of our southern border, despite the money and resources applied by our government to prevent it.

We are hopeful that comprehensive immigration policy reform which emphasizes legal avenues for migration will mitigate the perceived need for a blockade enforcement policy. Such reform could alleviate the pressure on border enforcement by undermining human smuggling operations and reducing the flow of undocumented migrants across the border. It also could help create a more stable atmosphere for the implementation of enforcement reforms, such as biometric visas and passports, which will help better identify those who come to harm us.

E. Passage of the Agricultural Job Opportunity, Benefits, and Security Act of 2003 and the Development, Relief, and Education for Alien Minors Act of 2003

---

[10] B. Lindsay Lowell and Roberto Suro, *How Many Undocumented: The Numbers behind the U.S.-Mexico migration talks,"* Pew Hispanic Center, March 21, 2002.

While we urge the committee and Congress to place comprehensive immigration reform as a top priority, there are two measures which enjoy bipartisan support which can be enacted in the near future.

The Agricultural Job Opportunity, Benefits, and Security Act of 2003 (S. 1645, H.R. 3142) "AgJobs" represents a bipartisan initiative which would help protect both a vital industry and a labor force which is vulnerable to exploitation. The measure, which represents a negotiated agreement between the agricultural employers and the United Farm Workers, would both stabilize the labor force in this important industry and ensure that employers have access to a work-authorized supply of labor, if necessary.

Currently, more than fifty percent of the agricultural labor force is undocumented and is subject to abuse and exploitation. S. 1645/H.R. 3142 would provide a path to permanent residency for many of these undocumented farm workers in the United States. This would allow these workers to earn permanent status, thus stabilizing their families and allowing them to "come out of the shadows." It also would allow employers to hire such workers without fear of penalty, thus providing them with a legal and stable supply of workers. In addition, it would place in statute many worker protections for farm workers, including a three-fourth work guarantee (ensuring work during three-fourth of a season) and expressed terms of employment.

The Development, Relief, and Education for Alien Minors Act (S. 15 45) in the U.S. Senate and the Student Adjustment Act (HR 1684) in the House of Representatives represent a bipartisan initiative which would allow some undocumented students to be eligible for in-state tuition and give them an opportunity to become permanent legal residents. Having entered the United States as very young children, often through no fault of their own, these students have otherwise contributed to their schools and communities. Many have lived in the United States for years.

We urge Congress to enact both of these important pieces of legislation before the end of the 108th Congress.

IV. Implementation of Immigration Policy Reform

It is important to understand that the manner in which comprehensive immigration reform is implemented is vital to its success. A public-private partnership is necessary so that immigrant communities are aware of the facts of the application process (thus eliminating the involvement of "notarios") and are able to receive assistance in accessing the program. We recommend the inclusion of the following elements in any legislation to ensure that a program is implemented appropriately:

- **Confidentiality.** Applicants for both the legalization and temporary worker program should be extended confidentiality and not be subject to arrest and deportation if they fail to qualify for the program. This would ensure maximum participation in the program and that those who do qualify are not discouraged or intimidated from applying.

- **Qualified Designated Entities.** Board of Immigration Appeals (BIA)-accredited Qualified designated entities (QDEs) should be created to assist in implementation of both programs.

- **Adequate Funding.** Adequate Funding should be appropriated in order to ensure the full and complete implementation of the program.

- **Reasonable Implementation Period.** Sufficient time should be given between enactment and implementation so that regulations, procedures, and infrastructure are in place. Deportations of prospective applicants should be suspended between these two dates.

- **Creation of a Separate Entity.** A separate entity, similar to the asylum corps, should be created within the U.S. Bureau of Citizenship and Immigration Services (USCIS) to implement the legislation; such an entity should be adequately funded through appropriations.

- **Derivative Benefits.** Immediate family members should receive the same immigration benefits under legalization/temporary worker program as the worker.

- **Generous Evidentiary Standards.** For purposes of verifying an alien's eligibility for legalization, evidentiary standards should be based upon "preponderance of the evidence" and should include a wide range of proof, including attestation.

- **One-Step Legalization.** A one-step legalization program would verify eligibility and security and background checks in one process up front and not in a two-step process, i.e. upon conditional status and then permanent status.

- **Operational Terms should be defined:** Operational terms in the bill, such as "continuous residence," "brief, casual, and innocent," and "known to the government," should be defined in the legislation to avoid later confusion.

- **Broad humanitarian waiver.** A broad waiver of bars to admissibility for legalized aliens, such as unlawful presence, fraud, or other minor offenses, should be included in the legislation.

The inclusion of these elements in any legislation would facilitate the implementation of any program.

In addition, the Congress and the administration should take steps to reduce the immigration adjudication backlogs which now exist so that immigrants receive benefits in a timely way and that the U.S. Citizenship and Immigration Service (USCIS) is able to implement any new program.

Currently, waiting times in many adjudication categories are too long. According to the U.S. Citizenship and Immigration Service, processing for naturalization applications has grown from

10 months in September, 2002, to 13 months in August, 2003, and is significantly longer than 13 months in many districts. The backlog for adjustment of status applications has reached an all-time high of 1.2 million.[11]

Moreover, the government has just increased fee applications by approximately $55 per application, leaving these benefits financially out of reach of many applicants.[12] At the same time, USCIS reduced its funding request for directly appropriated funds by $95 million for FY 2005.[13]

Mr. Chairman, reduction in the current backlogs in naturalization and adjustment of status applications should be part of our nation's efforts to reform our immigration system. We recommend that Congress evaluate the budget of the U.S. Citizenship and Immigration Service (USCIS) and provide more directly appropriated funding for infrastructure and backlog reduction. Without more efficiency in the system, a new comprehensive reform program of any type may be unworkable, absent the creation of a new entity to implement it.

V. Conclusion

Mr. Chairman, we appreciate the opportunity to testify today on the issue of comprehensive immigration reform, especially as it relates to the U.S.-Mexico bilateral relationship. More than ever, the United States and Mexico are interdependent economically, socially, and culturally. It is necessary that the United States pay particular attention to the relationship with our neighbors to the south.

Mr. Chairman, we urge you and the committee to consider our recommendations as you consider the myriad issues in this vital area. We also ask you to join us to urge the Bush administration and that of President Vicente Fox of Mexico to renew in earnest bilateral migration talks.

We are hopeful that, as our public officials debate this issue, that immigrants, regardless of their legal status, are not made scapegoats for the challenges we face as a nation. Rhetoric which attacks the human rights and dignity of the migrant are not becoming of a nation of immigrants. Neither are xenophobic and anti-immigrant attitudes, which only serve to lessen us as a nation.

Mr. Chairman, the U.S. Catholic bishops strongly believe that comprehensive immigration reform should be a top priority for Congress and the Administration. We look forward to working with you and the administration in the days and months ahead to fashion an immigration system which upholds the valuable contributions of immigrants and reaffirms the United States as a nation of immigrants.

Thank you for your consideration.

---

[11] *U.S. Citizenship and Immigration Services Fact Sheet,* January, 2004.
[12] 69 Federal Register 5088 (February 3, 2004)
[13] FY 2005 Budget Submission for the Department of Homeland Security, February, 2004.

○