SHOULD MEXICO HOLD VETO POWER OVER U.S. BORDER SECURITY DECISIONS?

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

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TUESDAY, AUGUST 17, 2006

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m., at the Chamizal National Memorial Park Theater, 800 South San Marcial, El Paso, Texas, the Honorable F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

Chairman SENSENBRENNER. The Committee on the Judiciary will come to order. The Chair notes the presence of a quorum for the purpose of taking testimony.

With me here today are Congressman John Hostettler of Indiana, the Chairman of the Subcommittee on Immigration; Congressman Louis Gohmert of the northeastern part of Texas; Congressman Jack Kingston of Georgia; Congresswoman Sheila Jackson Lee of Texas.

Congressman Sylvestre Reyes has got an engagement about now, and when he is done with that engagement, he will come to join us as well.

And I am Congressman Jim Sensenbrenner of Wisconsin, the Chair of the House Judiciary Committee.

I would like to welcome everybody to the second field hearing of the Committee on the subject of illegal immigration. The purpose of this series of hearings is to examine the challenges our nation currently faces with regard to illegal immigration and the impact that the Reid-Kennedy immigration bill passed by the Senate would have if it were to become law.

The Committee's first hearing examined the enormous cost illegal immigration imposes upon American taxpayers and social services. The focus of today's hearing is the issue of whether the United States should be forced to prospectively consult with a foreign government when taking steps to strengthen the security of our borders, something that section 117 of the Reid-Kennedy bill requires.

Today's hearing will also look at the social and fiscal consequences of large-scale illegal immigration, such as drug smuggling, alien trafficking and violent crime in El Paso and the other cities and towns along the southwest border and examine whether the Reid-Kennedy bill would address or merely compound these problems.

A nation's sovereignty is defined in part by the ability to control its borders. President Reagan once remarked that, "A nation without borders is not really a nation."

The United States has historically derived strength from its embrace of legal immigrants from all corners of the globe. However, as a sovereign nation, the U.S. must also maintain the sole power to determine who may enter its borders and under what conditions.

When more than a half million individuals enter the country illegally or fail to abide by the terms of their entry on an annual basis, it not only erodes U.S. sovereignty but presents a clear threat to American citizens in the post-9/11 world.

America's southern neighbor, Mexico, recognizes the importance of being able to control its borders and accordingly has very tough laws and practices to limit the entry of non-Mexicans into that country. One might question, however, whether they respect the United States' right to control its own borders. According to a New York Times article published on May 25th of this year, then candidate and now newly elected President Felipe Calderon stated defiantly, "The more walls they build, the more walls we will jump."

If enacted, the Reid-Kennedy bill would require that before the U.S. can construct any additional fencing and related border security structures along our southern borders, we must consult with Federal, State and local Mexican officials. The mandate in the Senate bill represents an unprecedented surrender of America's sovereignty. Moreover, it defies common sense to require that proposals to strengthen our border security be vetted by the same officials who have actively encouraged the exodus of their nationals across our southern border.

In addition to illegal immigrants who cross unprotected sectors of our southern border in search of improved economic conditions, the lack of a border fence allows those involved in drug trafficking and human smuggling operations, as well as other violent criminal aliens, virtually unobstructed movement across the border.

Despite the daily threat that this criminal element poses to cities and towns along the border and the fact that local law enforcement officials are often outmanned and outgunned, they faithfully perform their duty to fight such criminal activity as best they can. As a result, there are so many criminal aliens in the jails of El Paso and other border towns that city budgets are strained to pay for their detention.

H.R. 4437, the House-passed immigration reform bill that I authored along with Chairman Peter King of the Homeland Security Committee, authorizes $100 million a year to help border community law enforcement agencies cope with the cost of crime committed by illegal immigrants and the Mexican professional criminals. The Reid-Kennedy bill has no such provision.

Finally, the Reid-Kennedy bill would prohibit local sheriffs and police from assisting with the vast majority of immigration enforcement that's civil in nature. This would deprive local law enforcement of vital tools they need to govern their communities and deny the Department of Homeland Security the vital assistance it could otherwise count on in enforcing our immigration laws. H.R. 4437 takes the opposite and better approach of clarifying that local law enforcement can voluntarily assist in the enforcement of all of our immigration laws.

Before I recognize Representative Jackson Lee for opening remarks, I would like to remind Members and witnesses that this

hearing is being conducted consistent with all applicable House and Committee Rules of Procedure. Therefore, I ask witnesses to limit their remarks to 5 minutes of oral testimony and will recognize Members for 5 minutes of questioning, alternating between minority and majority Members seeking recognition.

In addition, because we have Members of Congress present today who are not Members of the Judiciary Committee, I ask unanimous consent that they be permitted to participate in today's hearing, and this specifically applies to Congressman Kingston and Congressman Reyes.

And without objection, so ordered.

At this point, I ask unanimous consent that all opening statements be included in the record and recognize the Gentlewoman from Texas, Ms. Jackson Lee, for her opening remarks.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. Thank you very much for holding this hearing in El Paso, Texas. I know, on behalf of Congressman Reyes, whose district we are in, we are appreciative of that. An opportunity has come to this community, as it has come to Houston and as it has come to Laredo.

However, my disappointment in all of the hearings at—that we have had the opportunity to participate in is that they have not been hearings to seek the input of the community at hand, whether they are proponents or opponents of the question before us. The hearings, of course, have been held by different Committees. But we have come to different cities under the pretense of listening to the American people. And we are not listening to the American people, for we are not allowing a public input to these proceedings.

I am delighted, however, and I thank you, Mr. Chairman, as I understand you were able to visit the Mexican/El Paso or Texas border and had an opportunity to see Border Patrol agents and others working collaboratively and cooperatively together.

Let us be very clear, the Chairman who held the hearing in Houston yesterday made it very clear on the record, "We're here to promote and pump up H.R. 4437, the House bill." But the question is never raised, when you're here to pump up and support H.R. 4437, that that legislation creates felony status for millions and millions of those within—inside the U.S. border. That is really the question that should be answered. All other questions could be answered in the reconciliation of the Conference Committee of which we are not holding.

These hearings are out of regular order. These hearings would not necessarily have to be held. They've never been held. Hearings are usually held before bills are passed. And so we start today on a premise that is incorrect. There is no such thing as a Reid-Kennedy bill. There is a Senate bill that has the support of individuals like Senator Hagel, individuals like Senator John McCain, Senator Specter. It is a bipartisan bill.

But there are elements of the House bill that are worthy of reconciling with the Senate bill. Let's get to work.

The House immigration reform bill, the Border Immigration Enforcement, H.R. 4437, was passed on December 16th, 2005. The Senate immigration reform bill, the Comprehensive Immigration Reform Act of 2006 was passed on May 25th. And as I've just said, now is time for a conference.

H.R. 4437, however, was introduced on a Tuesday—that's the House bill—and without a single hearing before the full Judiciary Committee, it was marked up, moved to the floor and passed the following Friday. This was done without hearings and without any input from the minority party endorsing the bill.

Even though Republicans hold the White House and the majority in both the House of Representatives and the Senate, they refuse to go to conference and develop a real immigration reform package that would be meaningful and bring about long-term results. Instead, they are stalling. They stalled before Congress broke for the August district work period and they're continuing to stall. Republican-controlled Congress is simply doing nothing, nothing about the 12 million people in this country using false identifiers, nothing to better secure the border, nothing to protect the jobs of American workers by implementing a real employee identification system, nothing to help our Border Patrol agents, nothing to change the fact that our immigration system is inadequate and broken. Simply nothing.

And when I went to the San Diego hearing——

Chairman SENSENBRENNER. The gentlewoman will suspend.

The Chair recognizes that all those who have joined us in the audience today and welcomes that. This is a very emotional issue. There are strongly held views on both sides of the issue.

People who are witnesses and Members of the Committee are going to say something that many of you in the audience agree with strongly and many of you disagree with strongly. The next witness or the next Member will probably do the opposite.

Now, in order to conduct this hearing properly and in accordance with House rules, which will specifically prohibit demonstrations of any kind in the audience, either in support or in opposition to the rules. It's the Chair's duty to maintain order at these hearings and to ask all of you to be respectful of the statements that are made, those of which you agree with and those of which you disagree with.

I would point out that Rule XI(2)(k)(4) of the House of Representatives provides, "that the Chairman may punish breaches of order and decorum by censor and exclusion from the hearings, and the Committee may cite the offender to the House for contempt of Congress."

The Chair will use this authority. It hopes he will not have to. And I would ask everybody in the audience to be respectful of statements that are made, whether you disagree with the statements or agree with them.

The gentlewoman from Texas has a minute and 10 seconds left and may proceed.

Ms. JACKSON LEE. And I beg to indulge these individual citizens, Mr. Chairman, but I thank you for your words.

Let me finish by simply saying, in San Diego, I held up the bars of Sailor Perez that was given to me on my journey to Iraq, in the theater protecting those who live in the United States. Sailor Perez has an immigrant background.

The audience in San Diego—anti-immigrant audience on, unfortunately, one of our military bases, booed, and I was cited as demagoguing by some of the alleged staff of this majority.

Let me make it very clear, when I hold up the bars of an individual who is on the front lines who is an immigrant, I hold them up in great respect. And I ask the question, why are we demagoguing reform of the immigration system? Why don't we go to conference? Let's do something.

Let's have comprehensive immigration reform, border security and a pathway to citizenship, decency on behalf of this sailor and many others, who are on the front lines, whose immigrant background says they love America.

I yield back my time, Mr. Chairman.

Chairman SENSENBRENNER. The time of the gentlewoman has expired. Now, the Chair doesn't want to have to repeat what he just said about what the rules of the House require. I would ask the audience to be respectful of the rules of the House, whether you agree with what is said or disagree with what is said.

Now, we have 5 witnesses today. Three were selected by the Republicans, and two were selected by the Democrats.

The first witness will be Sheriff Leo Samaniego, who has served as the Sheriff of El Paso County since he was first elected in 1984. Prior to his election as Sheriff, Leo Samaniego served in the El Paso Police Department for 28 years. He is a 1972 graduate of the FBI National Academy. He serves as a member of the Texas Crime Prevention Association, American Legion Post 74, and as chairman of the El Paso Area Community Justice Council. He has been the recipient of numerous awards, including the League of Women Voters Bravo Award, and the City of El Paso Conquistador Award.

Dr. Alison Siskin is a senior analyst at the Congressional Research Service where she specializes in immigration legislation. Her immigration expertise covers legislation dealing with alien detention and removal, criminal aliens, interior investigations, international adoptions, non-citizen eligibility for public benefits and the Visa Waiver Program. Dr. Siskin received her bachelor's degree in applied mathematics from Brown University and a Ph.D. In sociology from Stanford University.

Andrew Ramirez serves as the chairman of the Friends of the Border Patrol, a non-profit organization that was created to support the U.S. Border Patrol and their agents while improving the quality of life for border residents. Founded in August 2004, the FBP works with and supports law enforcement officials across the United States. It continues to investigate Border Patrol sectors along the border and in Puerto Rico.

Chief Richard Wiles has served in the El Paso Police Department since 1982 and was appointed Chief of Police in 2004. Prior to joining the police force, Chief Wiles also served in the El Paso Fire Department. He is a graduate of the University of Texas at El Paso. And among other post-graduate degrees and certifications, he's a graduate of the FBI's National Academy.

Kathleen Walker is currently the president-elect of the American Immigration Lawyers Association. She serves as chairperson of the Immigration and Nationality Law Board Certification Exam Committee for the State Bar of Texas as well as on the advisory committee. She has served on the standing committee of the State Bar of Texas on immigration and nationality law and has served on the Board of Governors of AILA for several terms. She is currently the

chairperson of the Immigration Department of the El Paso, Texas-based law firm Kemp Smith.

Would all of you please stand and raise your right hand and take the oath.

[Witnesses sworn.]

Chairman SENSENBRENNER. Let the record show that all of the witnesses answered in the affirmative.

Before I recognize the witnesses for opening remarks, I would like to remind the Members and witnesses that this hearing is being conducted consistent with all applicable House and Committee Rules of Procedure. Therefore, I ask the witnesses to limit their remarks of oral testimony to 5 minutes and will recognize Members for 5 minutes of questioning, alternating between minority and majority Members seeking recognition.

So Sheriff Samaniego, you're first up.

TESTIMONY OF LEO SAMANIEGO, SHERIFF, EL PASO COUNTY

Mr. SAMANIEGO. Thank you, sir.

Mr. Chairman, Members of the Committee, welcome to El Paso.

As law enforcement officers on the border with Mexico, our primary concern is the welfare and safety of our citizens and our nation. The terrorism threat to our country is very real. It is unfortunate that most Americans have already forgotten the fear, the terror and the anger that we experienced on 9/11.

The majority of illegal aliens that come across our border are individuals looking for a better life. Unfortunately, there are a large number of criminals also entering among them. Border control must be a priority.

Defective border security and illegal immigration, which is the responsibility of the Federal Government, does not lessen the burden being placed on border law enforcement agencies that are already overburdened, understaffed and underfunded. Law enforcement and criminal justice expenses associated with illegal immigration exceed $89 million annually for border counties.

El Paso is one of the leading gateway cities for the transshipment of narcotics, as well as a staging area for illegal aliens. There are at least five powerful drug trafficking organizations operating in and through the Juarez/El Paso corridor. Hundreds of smaller groups assist the major organizations in their smuggling, stashing, transporting, distribution and money laundering efforts. Mexican drug cartels are quietly taking over Columbia's drug trafficking rings and are becoming the world's largest criminal enterprises.

Mexico does a lot of counter-drug operations and several major traffickers have been arrested, but you do not hear of any seizures or major arrests along the U.S./Mexico border. I have long suspected that drug traffickers and alien smugglers are in control of the border, and not the Mexican Army or law enforcement agencies. The economic conditions in Mexico and the long history of corruption of law enforcement agencies at all levels of government make it easy for drug cartels to operate. Our government should do whatever needs to be done to take control of our border.

Senate bill 2611 requires that Federal, State and locals meet with their Mexican counterparts before building either a fence or

installing barriers. Mexico strongly opposes the erection of any fence on any part of the border. This is tantamount to a homeowner asking a burglar if he approves of the homeowner installing bars on his windows. It is not in the best interest of the Mexican government for the United States to improve security on the border.

Section 607 of the House Resolution 4437 provides $100 million for border county sheriffs from Texas to California to hire, train and equip additional deputies. It also implements Operation Linebacker, proposed by the Texas Border Sheriffs Coalition, to form a second line of defense and protect our border.

One step away from the Federal line is our jurisdiction. When drug loads and illegal immigrants get past the Border Patrol, when a crime is committed against a resident or an illegal alien, we, the sheriffs, have to deal with the consequences. We urge approval of section 607.

The Senate bill authorizes only $50 million for any agency within 100 miles of either the Canadian or Mexican border. In my opinion, the money would be so diluted because of the large number of agencies involved, that it could turn out to be a waste of money.

In January of 2006, Governor Rick Perry decided to provide funding to the 16 Texas border sheriffs to implement Operation Linebacker. The result of Operation Linebacker has been outstanding in regards to crime deterrence, drug seizures, arrests made and citizen satisfaction.

El Paso County Sheriff's office has been criticized and accused of enforcing immigration law by several misguided and misinformed groups.

House Resolution 4437 clarifies that States have the inherent authority to enforce all immigration laws. The Senate bill is similar, but also states that States have inherent authority to enforce only the criminal provisions of immigration law. The assistance of State and local law enforcement agencies can mean the difference between success and failure in enforcing immigration laws. The more than 650,000 officers nationwide represent a massive force multiplier. House Resolution 4437 would give us all the authority we need to enforce immigration law.

I wasn't elected to fail in my responsibility to uphold the law. The Federal Government has failed to provide a response to the threats along the border.

The law-abiding, tax-paying, rural residents in my county demand equal protection from those who have no regard for human life or human dignity. They insist on an immediate response to escalating threats by drug and human traffickers. They pay taxes to live free of intimidation.

I will not fail them. The question is, will you continue to fail them?

Thank you, sir.

Chairman SENSENBRENNER. I thank you, Sheriff.

[The prepared statement Mr. Samniego follows:]

PREPARED STATEMENT OF SHERIFF LEO SAMANIEGO

INTRODUCTION

Chairman Sensenbrenner, Chairman Hostettler, members of the Committee on the Judiciary, welcome to El Paso and thank you for allowing me to present my testimony this morning on border problems. As the Chairman of the Texas Border Sheriff's Coalition, thank you for all you have done on our behalf.

As Law Enforcement officers on the border with Mexico, our primary concern is the welfare and safety of our citizens and our nation. We, the Border Sheriff's Coalition, have done everything possible to bring awareness to the leaders of our state and our nation. The terrorism threat to our country is very real, it is unfortunate that most Americans have already forgotten the fear, terror and anger we experienced on September 11, 2001. God forbid that we experience another day like that, but if we do, I do not want anyone pointing a finger at me and telling me I did not do my job. The truth is that the Southern border is the weak link in our national security.

TERRORISM

Intelligence indicates that terrorist organizations are increasingly probing the U.S./Mexico border. The reports suggest that terrorists are aware of the porous nature of the Southwest border. The proximity to the border provides a fertile environment for terrorist/extremist networks to smuggle humans, deadly weapons, and other resources into the United States. The large international border creates tremendous smuggling opportunities for terrorists and is fertile ground for recruitment and development of. support networks for terrorist organizations. The Mexican drug trafficking and human smuggling organizations use their knowledge of the border to assist terrorist cell members in their attempts to exploit the United States

The multi-cultural aspect of the border area also appeals to the terrorists. There are many nationalities, many of them transients, who live and interact in the border setting. This provides the terrorists the opportunity to blend into the community. There is also a substantial amount of established Middle Eastern businesses and although, the majority of these businesses are legitimate, some of them generate a large amount of money that needs to be monitored so that it does not become a terrorist resource. The southwest border may not be a priority target for a terrorist attack, but it is prime territory for the cultivation, recruitment, transportation, and stashing of terrorist cell members.

Example: In January 2006, the FBI arrested in Houston, Texas South Korean fugitive Tongsun Park who is accused of helping the regime of Saddam Hussein in the Oil for Food Program. It is alleged by the Mexican press that Park was in Mexico prior to his arrest. Again, this shows a link between terrorism, Mexico, and the U. S.

ILLEGAL IMMIGRATION

The majority of illegal aliens sneaking across our border are honest, hard working individuals looking for a better life and an opportunity to better their economic situation. I certainly do not blame them, Mexico has done nothing in order to improve their lot, but there are a great number of criminals, gang members and yes, potential terrorist, also entering among them. The Border Patrol and local law enforcement officers have a tremendous responsibility to make sure that these individuals are deterred or apprehended before they can do harm to our country. The well organized flow of illegal immigrants coming across our border must be stopped. Border control *must be a priority*. What do we do with the eleven or more millions already here can wait until a logical & reasonable solution can be formulated. Amnesty only fuels the desire of millions more to come in illegally and hope that this practice will be repeated.

The fact that border security and illegal immigration is the responsibility of the federal government does not lessen the burden being placed on border law enforcement agencies that are already overburdened, understaffed and most certainly under funded. A 2000 Law Enforcement Management & Statistics Survey, indicates that the number of full time officers per 100,000 residents for agencies in border counties is 62% of the national average (157 officers per 100,000 residents versus 251 officers per 100,000 residents).Texas spends the least per agency in border counties, averaging less than 90% of what the non-border agencies in the state receive. One good thing came out of the survey; the border counties total arrest rates are 16% higher than the national rate per 100,000 residents.

COST

Border communities continue to incur significant costs due to the lack of adequate border security. A 2001 study by the United States/Mexico border counties Coalition found that law enforcement and criminal justice expenses associated with illegal immigration exceed 89 million dollars annually for the southwest border counties.

While the federal government provides states and localities assistance in covering costs related to detention of certain criminal aliens and the prosecution of federal drug cases, local law enforcement along the border are provided no assistance in covering such expenses and must use their limited resources to combat drug trafficking, private property, trespassing, and other border related crimes.

NARCOTICS OVERVIEW

El Paso, unfortunately, is one of the leading gateway cities for the transshipment of narcotics as well as a staging area for illegal aliens. There are at least five powerful drug trafficking organizations (DTO's) operating in and through the Juarez/El Paso corridor. Hundreds of smaller groups assist the major organizations in their smuggling, stashing, transporting, distribution and money laundering efforts. According to The El Paso Intelligence Center, *65% of all narcotics sold in the U.S. market enter the country through the Southwest border*. Violence associated with Drug Trafficking Organizations continues escalating as they attempt to gain or maintain control of their areas of operation throughout the border. For example, Marcos Arturo Nazar Contreras was appointed the Interim Regional Coordinator of the Chihuahua State Investigations agency on May 25. On Sunday, August 8, 2006, he was killed when his vehicle was ambushed by gunmen in the City of Juarez, across the border from El Paso. An autopsy found thirty seven (37) gunshot wounds. His agency had recently been overhauled because of allegations that the leadership was linked to drug traffickers. This was much more than an execution, it sends strong message not to mess with the cartel.

Efforts to secure our border against terrorism have not curbed the use of the Southwest border as the most significant gateway of drugs being smuggled into the United States. The enforcement efforts in other major cities are being increased because we are not stopping the drugs here. If illicit organizations can bring in tons of narcotics through this region and work a distribution network that spans the entire country, then they can bring in the resources for terrorism as well. If illegal aliens can be smuggled through here in truck loads, than terrorist organizations can also covertly smuggle the people to carry out their plans. On the Southwest border, the same organizations involved in smuggling drugs have also been found to smuggle illegal aliens.

According to a Miami Herald story dated 3-15-97, Mexican Drug Cartels are quietly taking over Colombia's Drug trafficking rings and are becoming the world's largest criminal enterprises. Colombian Intelligence documents obtained by the Herald and interviews with top U.S. Law Enforcement officials, Mexico's cartels have begun financing Columbian drug shipments, taking over smuggling routes and managing cocaine distribution rings in major U.S. cities.

I know that Mexico does a lot of counter drug operations and several major drug traffickers have been arrested throughout the country but you do not hear of any seizures or major arrests along the U.S. / Mexico border. I have long suspected that drug traffickers and alien smugglers are in control of the border and not the Mexican army or law enforcement agencies. While researching the matter, I found out that in March of 1997 during Senator Joe Biden's Committee hearing on NAFTA, carried live on C-span, Mr. Christopher Whalen, a Washington based financial expert on Mexico, testified that:

1) Over a 100 billion worth of illegal drugs cross the U.S. / Mexico border every year
2) Mexico cut a deal with the drug cartels. In return for depositing Cartel monies in cash strapped Mexican banks, cartels were given free use of Mexican states along the Mex/Texas border.
3) Mexico nets $15 billion a year from this drug trafficking arrangement.

The economic conditions in Mexico and the long history of corruption of law enforcement agencies, at all levels of government, make it easy for the drug cartels to operate.

BORDER SECURITY

I am of the humble opinion that the U.S. Government should be able and willing to build fences and install barriers anywhere on our side of the border, as approved

by the House on December 16, 2005 when it passed H.R. 4437, in order to curtail drug & human smuggling and potential terrorist incursions. I believe that our government should do whatever needs to be done in order to take control of our border. The Senate bill (S 2611) requires that federal, state and locals meet with their Mexican counterparts before building either a fence or installing barriers. Do they have to agree? I can tell you that Mexico vehemently opposes the erection of any fence on any part of the border. This is tantamount to a home owner asking a burglar if he approves of the home owner installing bars on his windows. Our border must be secured if we are to truly have national security. It is not in the best interest of the Mexican government for the United States to improve security on the border. Mexico has not respected the boundary between our country and theirs, why should they be given a say so on what we need to do to protect ourselves?

On Thursday, November 17, 2005, Representative John Culberson (R-TX) and Representative Silvestre Reyes (D-TX) introduced H.R. 4360. The Border Law Enforcement Act, which will provide authority and direct funding for Border County Sheriffs to support Border Patrol agents in securing our Southern border. The bill implements "Operation Linebacker" proposed by the Texas Border Sheriff's Coalition to form a second line of defense to protect our border from Texas to California.

On December 7, 2005, House Judiciary Committee Chairman James Sensenbrenner (R-WI) introduced H.R. 4437, The Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005. H.R. 4360, the Border Law Enforcement Act, became Section 607. H.R. 4437 was approved by the house on December 16, 2005.

Section 607 of H.R. 4437 will provide $100 million for Border County Sheriffs from Texas, New Mexico, Arizona and California to be able to hire, train and equip additional deputies and build additional detention space to house illegal aliens pending deportation. Deputies will not be Border Patrol or Immigration Agents but will be assigned to patrol in the vicinity of the border in order to deter Drug trafficking, human smuggling, gang related crimes and other illegal activity related to the border. The members of the Texas Border Sheriffs Coalition have a stake in the security of our border;

1) One step away from the federal line is our jurisdiction.
2) When a drug trafficker manages to evade the Border Patrol and gets his load across it is our problem.
3) When a Coyote gets his group of undocumented immigrants into our communities and abandons them it is our problem.
4) When a crime is committed against a law abiding resident or against an undocumented immigrant, we the Sheriffs have to deal with the consequences.

We urge the Senate to approve Section 607 of H.R. 4437. We have the ability and desire to protect our country, *give us the means to do it with*!

Senate bill (S-2611) authorizes $50 million for any agency within 100 miles of either the northern (5000 miles) or southern borders (2000 miles) with preference given to counties and cities with populations below 50,000. There are virtually hundreds of counties & municipalities that would be eligible to apply for funding and in my opinion, none of them would really get what they needed to make a difference. In other words, the funding would be so diluted that in the long run this would be a waste of money. Congressman John Culberson has made it clear that the majority of drugs and illegal aliens are coming through the Southwest border and not the Canadian border.

In January of 2006, Governor Rick Perry, after evaluating the plan, decided that he was going to provide funding to the 16 Texas Border Sheriffs to implement Operation Linebacker pending the final outcome of H.R.4437 and the Senate bill (S-2611). The results of Operation Linebacker have been outstanding in regards to crime deterrence, drug seizures, stolen property recovered, arrests made and, most important, citizen satisfaction and peace of mind. . Consider the fact that **Operation Del Rio** a three week long law enforcement blitz (month of June 2006) saturated a five border county zone with local, state and federal law enforcement personnel and equipment. This initiative resulted in a decrease in 76% in Part One Crime (Homicides, forcible rapes, robberies, assaults, burglaries, larcenies, thefts, motor vehicle thefts) in those border communities.

My dear friend Val Verde County Sheriff A. D'Wayne Jernigan whose agency participated in this program reports ". . .the amount of the thefts last year (in June 2005) was $91,184.00. This year, it was only $1,299.00. It has definitely had impact."

We live and work under unique circumstances along the border. I'm glad to finally see our U.S. Attorney general recognize this. In an Associated Press article written by Tim Kote and published in the El Paso Times on Wednesday, August 2, 2006.

United States Attorney General Alberto Gonzales announced the addition of federal prosecutors to handle immigration-related offenses and drug trafficking in states along the border with Mexico. Gonzales is quoted as saying "There is some correlation." "Obviously smuggling occurs in connection with illegal immigration. Also there is a serious drug trafficking problem on our southern border."

With that in mind, the El Paso County Sheriff's Office has been critized and accused of enforcing immigration law by several Human Rights groups. We are aware that we can only stop someone based on reasonable suspicion and make an arrest based on probable cause. Under the provision of H.R. 4437, subsection 240 D was added to the Immigration & Nationality Act (INA) to clarify that states have the *inherent authority* to enforce immigration law. The Senate bill (S-2611) is very similar to H.R. 4437, but would add a new sub-section 240 D to the INA to clarify that states have the *inherent authority* to enforce only the *criminal* provisions of immigration laws. Law Enforcement officers need to know exactly what they can and what they can not do in regards to immigration law.

The assistance of state and local law enforcement agencies can mean the difference between success and failure in enforcing the immigration laws. The more than 650,000 officers nationwide represent a massive force multiplier. H.R. 4437 would give us all the authority we need to enforce immigration law.

CONCLUSION

During the 9/11 Commission hearings, former National Coordinator for Counterterrorism Richard Clarke stated, "To them who are here in the room, to those who are watching on television, your government failed you, those entrusted with protecting you failed you, and I failed you. We tried hard, but that doesn't matter because we failed." These statements were made publicly. It focused attention to the shortfalls of the government and extended the responsibility for homeland security to every public service agency in the country.

I was elected Sheriff of this great community. I wasn't elected to fail in my responsibility to uphold the law. I have been put in a difficult position in regards to border security. The federal government has failed to provide a measured response to the threat along the border. The silent majority, the law abiding tax paying rural residents in my county demand equal law enforcement protection from those who have no regard for human life or human dignity. They insist on an immediate response to the escalating threats by terrorist cells and drug and human trafficking organizations. They pay taxes to live free of intimidation. I will not fail them . . . the question is will you continue to fail them?

Chairman Sensebrenner, members of the Committee on the Judiciary, thank you very much for giving me the opportunity to testify before this Honorable Body.

May our Lord bless you and give you wisdom.

Chairman SENSENBRENNER. Ms. Walker.

TESTIMONY OF KATHLEEN WALKER, PRESIDENT-ELECT, AMERICAN IMMIGRATION LAWYERS ASSOCIATION

Ms. WALKER. Chairman Sensenbrenner, Ranking Member Sheila Jackson Lee and the rest of the distinguished Members of the Committee and our audience, thank you for the opportunity to provide this testimony this morning.

We have already had my bio. Let me go ahead and go into some of the comments I hope to make today.

First of all, as to the hearing title, I'm perplexed because there is no veto power provided in section 117 of Senate bill 2611. In fact, what it merely provides is what we commonly do here on the border, and that is consult with our neighbors across the way.

In fact, that consultation has led to all sorts of positive results. I want to at least read into this particular record what section 117 specifically provides, that is, "to solicit the views of affected communities, lessen tensions, foster greater understanding and stronger cooperation on this and other important security issues of mutual concern."

The history in El Paso is one of consultation; the U.S./Mexico Border Health Commission regarding health issues that we share, the International Boundary and Water Commission regarding environmental issues. We have several firsts in the State of Texas based on cooperation with our Federal agencies here dealing with security: The first dedicated commuter lane in the State of Texas, the first fast and secure trade lane in the State of Texas. That is due to our cooperation and work with our neighbors across the Rio Grande, as recently as our floods in the past few weeks.

To sit here and tell me that it is somehow a problem to consult, to me, the question is, how can one effectively achieve any objective without proper consultation with your neighbors across the way? I would no sooner build a fence than consult with my neighbor. I'm sure all of us would do so.

Another comment here concerning what we are talking about as to local law enforcement and what H.R. 4437 really provides. I certainly respect Sheriff Samaniego and am certainly grateful for all of his hard work, but section 607 of the 4437 bill talks about sheriffs dealing with people who are not lawfully present in the U.S. As an immigration lawyer, lawful presence right now is tied to a number of different issues. I can fail to file an AR-11, change of address card, I can fail to have the appropriate number of hours as a student, all of that can be a status violation under immigration law. There's a whole series of memos trying to interpret what "unlawful presence" means.

This is not a simplistic analysis. Immigration law is complex. And to sit here and say that it is simplistic to see some sort of demarcated brand of U, undocumented, on someone's forehead is fallacious.

Our National Crime Information Center database tried to throw in information regarding overstays, and then having some local law enforcement agent try to figure out whether or not someone's lawfully here leads to racial profiling, it leads to erroneous arrests of U.S. citizens. We are not at any point right now, concerning the use of NCIC, to be able to figure out whether or not someone's lawfully here.

I've been practicing immigration law for 21 years. I'm still learning. It's still ever changing.

The bottom line regarding this hearing today is asking you to go back to the hill, asking you to come up with a real solution to the issue here. That solution involves two parts, two sides of a coin. We have enforcement. We've dealt with it for the past 10 years concerning Border Patrol, and increase in enforcement has not resulted in a decrease in illegal migration.

Let's go ahead and resolve this, as I know that people on the Hill are capable of doing. We resolve it by addressing employer needs. There's a recent quote last week, Texas Producers Association, basically said—a comparison to Rome burning, "The produce is going to burn in Texas while Congress fails to take action on effective immigration reform to address our employment needs." We are only asking for something rational, something logical, something that indeed gives us true security on this border.

Our history here is one of cooperation, of effectiveness, of real results. We have been able to achieve that by taking the hard issues head on.

I'm very concerned that we are looking at a security-light approach with H.R. 4437. The hard one is to go ahead and figure out how we deal with the undocumented in the United States, the undocumented that, indeed, if we want to look at Social Security Suspense Fund, have put billions of dollars that are basically supporting those of us who are retiring in the United States.

There is some logic here. And the logic here is to go ahead and take effective action and combine immigration reform with enforcement. And then I hope that you will hold all of us accountable for achieving that. We certainly expect that here in El Paso, and we have been able to achieve many positive results by doing effective action together.

Thank you for the time.

Chairman SENSENBRENNER. Thank you.

[The prepared statement of Ms. Walker follows:]

PREPARED STATEMENT OF KATHLEEN CAMPBELL WALKER

Statement of

Kathleen Campbell Walker

on behalf of the

American Immigration Lawyers Association

concerning

"Should Mexico Hold Veto Power Over U.S. Border Security Decisions?"

before the

U.S. House of Representatives
Judiciary Committee
Committee Field Hearing

August 17, 2006

El Paso, Texas

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Chairman Sensenbrenner, Ranking Member Conyers, Congressman Reyes, and distinguished Members of the Committee, I am Kathleen Campbell Walker, National President-Elect of the American Immigration Lawyers Association (AILA). I am honored to have the opportunity to appear before you today concerning provisions of S. 2611, the *Comprehensive Immigration Reform Act of 2006,* which passed the Senate on May 25, 2006 with the vote of sixty-two senators, including the support of twenty-three Republican senators and thirty-eight Democratic senators. The bill's chief sponsors are: Senators Brownback (R- KS), Graham (R-SC), Hagel (R- NE), Kennedy (D-MA), Martinez (R-FL), and McCain (R-AZ).

AILA is the immigration bar association of almost 10,000 lawyers who practice immigration law. Founded in 1946, the association is a nonpartisan, nonprofit organization and is affiliated with the American Bar Association (ABA). AILA members represent tens of thousands of: U.S. families who have applied for permanent residence for their spouses, children, and other close relatives to enter and reside lawfully in the United States (U.S.); U.S. businesses, universities, colleges, and industries that sponsor highly skilled foreign professionals seeking to enter the U.S. on a temporary basis or, having proved the unavailability of U.S. workers when required, on a permanent basis; applicants for naturalization; applicants for derivative citizenship as well as those qualifying for automatic citizenship; 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 to increased port of entry inspection efficiencies, database integration, security enhancement and accountability, and technology oversight, and continue to work through our 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.

Being from El Paso and practicing immigration law here for over 20 years, my practice has focused on consular processing, admissions, business-based cross-border immigration issues, naturalization, citizenship, and family-based cases. I previously served as the president for four years of the El Paso Foreign Trade Association, a member of the Texas Comptroller's Border Advisory Council; a member of the board of the Border Trade Alliance; and a member of the executive committee of the Texas Border Infrastructure Coalition for the city of El Paso. During my tenure as president of the El Paso Foreign Trade Association, the association served as a leader in creating the first Dedicated Commuter Lane in the State of Texas in El Paso. These experiences have provided me with many opportunities to participate in and observe border inspection infrastructure improvements as well as Department of State ("DOS") and Homeland Security ("DHS") projects related to security, including U.S. VISIT.

Summary

The El Paso/Cd. Juarez area exemplifies what a cross-border community can achieve in attempting to balance the flow of trade and people between countries with the increased need for security in today's world. El Paso represents the historic border town between the U.S. and Mexico. The current border though for the U.S. is not here, it is located in all corners of the globe. The virtual border of today includes as our first line of defense, DOS's U.S. consular posts abroad as well as Pre-Clearance Operations ("PCO") and the Immigration Security Initiatives ("ISI") of Customs and Border Protection ("CBP") at foreign airports, advance passenger manifests from arriving airplanes provided to CBP, the US VISIT registration process, the integration capabilities of our enforcement databases, and the operations of our intelligence networks.

What are the true parameters of "securing" this virtual border? The border demarcated by the Rio Grande between the U.S. and Mexico is a last line, not a first line, of effective control of those coming to the U.S. This border must be porous enough to facilitate our economic growth and yet impervious enough to withstand the efforts of those wishing to do our nation harm. My testimony will review concrete efforts by this border community to achieve such results via numerous security related technologies and infrastructure initiatives. However, it is difficult for a community steeped in secure trade initiatives to support an "enforcement only" or "enforcement first" response to our current immigration problems generally, and to the conundrum of illegal immigration specifically given years of failure to fund and be accountable to the American public for border security issues. Where were the funds and the accountability for trade and inspections infrastructure as well as consular visa processing support in the last fifty years that would meet the joint demands of security and trade?

This Texas border community is used to taking the "bull by the horns" as they say here to achieve security and trade objectives. We expect the same from our elected officials inside the beltway. Recent discussions to use some sort of "trigger" of border security before proceeding with addressing the undocumented in our midst and providing a legal means to meet documented labor needs in the U.S. with foreign workers provides no true substantive answer to this multi-layered issue. For example, if we waited to achieve the integration of the IDENT and IAFIS databases to proceed with biometric intake (two or ten fingerprints) for visa processing or certain admissions, we would not have even commenced the US VISIT project which is heralded as a major security achievement by DHS. Full interoperability of IDENT, IAFIS, and US VISIT is still not expected until December of 2009. [1] So how does one achieve border security without proceeding at the same time to make it easier for employers to establish work authorization or to fill labor needs? It is simple to document the problem of

[1] U.S. Department of Justice, Office of Inspector General, Evaluations and Inspections Division, "Follow-Up Review of the FBI's Progress Toward Biometric Interoperability Between IAFIS and IDENT," July 2006 at p. iv.

worker needs and pressures on U.S. businesses. On August 11, 2006, the Associated Press published an article quoting John McClung, President of the Texas Produce Association, indicating that if Congress does not resolve differences between the House and Senate immigration bills, the produce industry will "outsource" its business south of the border. McClung noted that "We are watching Congress fiddle around while Texas and the rest of the industry burns."[2]

A day does not pass without innumerable talking heads lambasting our lack of control of our borders. We here on the border know that talk is cheap and action, including funding and oversight, much harder. For example, the Immigration and Naturalization Service ("INS") Office of Administration reported in the 2nd Data Management Improvement Act ("DMIA") report to Congress in 2003, the following shortages in space for the federal inspection area at land border ports of entry:

- 64 ports have less than 25 percent of required space.
- 40 ports have between 25 and 50 percent of required space.
- 13 ports have between 50 and 75 percent of the space required.
- Some existing ports lack any land for expansion.[3]

The funding backlogs for facility requirements of land ports of entry have been extensive for years. In fiscal year 2003, for example, the funding backlog was over $500 million.[4] Where is the follow-up report evaluating this lack of infrastructure and the plan of action to deal with this issue? If "border security" means sufficient infrastructure at our land border ports, when is this objective actually achievable?

The point of these observations is to express a "zero tolerance" policy for empty placebos. We stand ready to support a real plan of action, which includes a multi-pronged approach to a multi-layered challenge. Let's not sell the issues of our national and economic security short by a quick fix – do the job right and establish the rule of law both from an immigration reform and enforcement lens. Enforcement only or enforcement first legislative fixes are security-light answers to the issue on the table.

BACKGROUND: CROSS-BORDER CONSULTATION AND COOPERATION HAVE A LONG AND SUCCESSFUL HISTORY ALONG OUR SOUTHWEST BORDER

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[2] Elizabeth White, "Texas produce growers say inaction on immigration hurts business," Associated Press, August 11, 2006.

[3] DMIA Task Force: Second Annual Report to Congress, at 33 (December 2003) (herein "2nd DMIA Report").

[4] *Id.*

The Paso del Norte region has a rich and long history as a trade region. El Paso was originally founded by Spanish explorers in 1581. In 2003, trade through the land ports along the U.S.-Mexico border represented about 83% of the trade between the countries. As to numbers of inspection of people, El Paso surpasses all ports of entry in Texas. According to data from the Texas Center for Border and Enterprise Development of Texas A&M International University, in March 2006 alone, El Paso ports had approximately 545,299 northbound (to U.S.) and 421,544 southbound pedestrian crossings. In the same month, 450,813 southbound vehicle crossings and 595,500 northbound vehicle crossings are recorded, in addition to 64,457 trucks heading northbound and 29,634 southbound.

This trade volume and active cooperation between local community groups and their corresponding associates from Mexico have resulted in several firsts from a security and trade perspective in El Paso:

1. First Dedicated Commuter Lane in the State of Texas using Secure Electronic Network for Travelers Rapid Inspection ("SENTRI") through a partnership with the El Paso Chamber Foundation for infrastructure funding.
2. First Expansion of an Existing Cross-Border Bridge (Bridge of the Americas - "BOTA") funded with local trade community voluntary funding project.
3. First and second commercial Fast and Secure Trade ("FAST") lanes for commercial traffic in the State of Texas.
4. First pilot land border use of the Pulsed Fast Neutron Analysis ("PFNA") technology.
5. El Paso Customs and Border Protection Field Office employee develops software to automatically populate the I-94 arrival/departure record with information from a swipe of the applicant's machine-readable passport or laser visa, which is now used nationwide.

Regular meetings are still held between federal, state, and local U.S. and Mexican counterparts regarding the ongoing operations of the FAST and SENTRI lanes operating between El Paso and Ciudad (Cd.) Juarez, as well as concerning our shared ports of entry over the Rio Grande river.

Further, El Paso serves as home to two bi-national organizations: the International Boundary and Water Commission ("IBWC"), originally created by the Convention of 1889, and the U.S.-Mexico Border Health Commission ("USMXBHC"), created in July of 2000 via agreement between the U.S. Secretary of Health and Human Services and the Mexican Secretary of Health. In December of 2004, the USMXBHC was designated as a Public International Organization by the executive order of President George W. Bush.

The mission of the IBWC is to apply the rights and obligations which the U.S. and Mexican governments assume under numerous agreements in a way "that benefits the social and economic welfare for the peoples on the two sides of the boundary and improves relations between the two countries." The construction of any international bridge requires the approval of both the U.S. and Mexico. The mission of the USMXBHC is to provide international leadership to optimize health and quality of life along the U.S.-Mexico border.

El Paso and Cd. Juarez are sister cities separated geographically by a river. The culture, families, and traditions, however, are inextricably intertwined. The El Paso City Council unanimously passed a resolution on April 4, 2006, concerning enforcement and immigration reform. The City resolved that:

> *"**RESOLVED,** that the complex issues of illegal immigration and a porous border cannot be fixed by an enforcement-only approach. Any solutions must take a*
> *multi-layered approach to multi-layered issues created over decades of neglect….*
>
> ***RESOLVED,** that the construction of a fence along the entire southern border or the militarization of the border are not reasonable solutions.*
>
> ***RESOLVED,** that a solution must address allowing the undocumented in the United States who are filling legitimate employment needs a means to obtain legal status without placing them ahead of those who applied to enter the U.S. legally….*
>
> ***RESOLVED,** that the City of El Paso will continue to work in a collaborative manner with our Sister City, Ciudad Juarez, Chihuahua, and other governmental entities in the El Paso/Juarez Borderplex to address issues that are unique to the bi-national, multi-cultural community in which we live…."*

A copy of the City's resolution is attached. The Greater El Paso Chamber of Commerce passed a similar resolution after a chamber membership survey was conducted on the issue of immigration reform and border security. A copy of the Chamber's resolution is also attached.

The bottom line is that the El Paso community has been engaged in the challenges and opportunities presented by the geography of our area for decades. The community has supported security efforts balanced by trade facilitation, with real versus optical security results. Those results are based on a strong history of cross-border cooperation and consultation as well as strong economic interdependence ties.

TEXAS ECONOMIC HEALTH AND THE IMPORTANCE OF CROSS-BORDER TRADE

In the recent Report of the Business and Industry Data Center, as provided by the Office of the Governor of the State of Texas, the Texas gross state product (GSP) is forecast by the Comptroller of Public Accounts to reach $924.55 billion (in current dollars) in 2005. According to 2005 Texas Comptroller calculations, if Texas were a nation, its economy would rank as the tenth largest in the world.

International Trade In 2005

For the fourth year in a row, Texas was ranked as the number one state by export revenues. Texas exports for 2005 totaled $128.7 billion, which is $11.5 billion more than 2004 and represents a 9.82% increase. The countries of Mexico and Canada, followed by Asian and Pacific Rim countries, were the leading destinations for Texas exports in 2005. The state's largest export market continued to be its NAFTA trading partners, which accounted for just over 50% of total state exports during 2005. Mexico continued as the top export destination with $50.1 billion in Texas exports, representing an almost 10% increase from $45.7 in 2004. Canada ranked second with almost $14.6 billion, representing a 18.28% increase from $12.4 billion in 2004.

In 2005, Port Level data from the Bureau of Economic Analysis indicated Texas Port Level imports totaled $235.4 billion, up from $202.3 billion in 2004. 2005 Texas Imports for the top 10 countries of origin accounted for $181.3 billion. NAFTA trading partner, Mexico, was the top country of origin for Texas imports with approximately $166.3 billion in imported goods – or 50% of Texas imports. NAFTA trading partner, Canada, ranked 20th for Texas imports, in striking contrast to its number two ranking for Texas exports in 2005.

The June 2006 report of the Office of Trade and Industry Information, International Trade Administration, U.S. Department of Commerce, notes that the Texas exported to 218 foreign destinations in 2005. The state's largest market in 2005, by far, was NAFTA member Mexico, which received exports of $50.1 billion (39%) of Texas' total merchandise export total. The report further states that, **"In fact, the value of Texas' trade with Mexico alone is larger than the world trade totals of every state but California and New York."**

Anecdotes of Successful Cooperation Between the U.S. and Mexico

Other examples of U.S./Mexican cooperation include the North American Development Bank ("NADB") and its sister institution, the Border Environment Cooperation Commission ("BECC"), which were created under the auspices of the North American Free Trade Agreement (NAFTA) to address environmental issues in the U.S.-Mexico border region. The two institutions initiated operations under the November 1993 *Agreement Between the Government of the United*

States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank (the "Charter"). NADB is headquartered in San Antonio, Texas, while BECC is located in Cd. Juarez. http://www.nadbank.org/english/general/general_frame.htm

Some of the best examples of recent successes stemming from U.S./Mexican cooperation can be viewed at http://mexico.usembassy.gov/mexico/eborders.html, which is the website of the U.S. Embassy in Mexico. For years, the State Department has facilitated Border Liaison Mechanism ("BLM") meetings chaired by U.S. and Mexican consuls general along the border to make the border region safer for migrants, residents, and the officials responsible for protecting them. Some pertinent examples from an enforcement perspective, announced by the U.S. Ambassador to Mexico, include:

Ambassador Garza Honors Mexican Law Enforcement Officials at the U.S Embassy
June 1, 2006 – At a ceremony held at the U.S. Embassy in Mexico City, Ambassador Antonio O. Garza, Jr. applauded the joint efforts of Mexican and U.S. law enforcement officials to fight crime in both the United States and Mexico. "It is only by sharing information and resources, and coordinating our efforts, that the U.S. and Mexican governments can curb the tide of violence and crime that is wreaking havoc in our communities," said Ambassador Garza.

The United States and Mexico Cooperate to Prevent Criminals from Selling a Baby
May 11, 2006 – Garza: "While law enforcement agencies on both sides of the border deserve recognition for preventing an infant from being sold and smuggled, Univision reporters should also be credited for preventing a serious crime from taking place. The arrests of Hidalgo-Rivera and Hernandez demonstrate the importance of cross-border cooperation, and provide one more example of why democratic government depends on the press to investigate and report."

Mexico Destroys Record Amounts of Marijuana and Opium Poppy
May 3, 2006 – Garza: "Mexico's military and law enforcement community deserve recognition for the role its brave members have played in identifying and destroying opium poppy and marijuana fields. These eradication efforts are one more example of our ever-increasing effort to fight the war on drugs effectively and in cooperation with one another."

Alleged Cop-Killer, Michael Paul Astorga, Captured in Mexico
April 3, 2006 -Garza: "We extend our appreciation to Mexico's state and federal law enforcement authorities, who used information provided by their American counterparts to apprehend this vicious fugitive. Once again, the efficient exchange of information among our law enforcement

officials has resulted in the rapid apprehension of a fugitive, and demonstrated that our border cannot be used to flee justice."

International Cooperation Brings Success in War on Drugs
Washington – Steadily increasing cooperation among nations led to "significant successes" in reducing international drug trafficking and criminal activity in 2005, the U.S. State Department declared in releasing the 2006 International Narcotics Control Strategy Report (INCSR) March 1.

Ambassador Garza Praises Investigative Persistence and Close Cooperation between U.S. and Mexico
February 24, 2006 - "We have received preliminary reports that agents of the Mexican Federal Investigation Agency arrested U.S. fugitive JORGE ARROYO GARCIA (aka Armando Arroyo) today in Tonalá, in Mexico's state of Jalisco," said U.S. Ambassador Antonio O. Garza, Jr.

Ambassador Garza Praises Joint Efforts of the United States and Mexico in the Arrest of "Most-Wanted" Murder Suspect
February 27, 2006 - Garza: "Thanks to the close cooperation of the Agencia Federal de Investigacion (AFI), the State of Baja California Judicial Police's Anti-Kidnapping Unit, and the United States' FBI, a dangerous fugitive was arrested. The United States, and especially the people of Tennessee, are very grateful for the efforts of these law enforcement officers."

These cooperative efforts are not just with the Department of State. For example, DHS Secretary Michael Chertoff, on March 3, 2006, announced that, in accordance with the Security and Prosperity Partnership ("SPP"), he and the Secretary of Governance of Mexico, Carlos Abascal, met in Brownsville, Texas, to sign an Action Plan to combat border violence and improve public safety. The commitment between the two nations under the SPP is expected to strengthen procedures between federal law enforcement agencies on both sides of the border to respond to different scenarios ranging from accidental crossings to incidents of violence, or other situations that present risks to those who live, work, or travel at our common border. "Being good neighbors starts at the border. With these agreements on border security and public safety we strengthen our bridges of understanding and cooperation," said Secretary Abascal. "We are committed to protecting all persons who live, work or transit the border region against crime and violence, regardless of their migratory status. We sincerely appreciate the commitment of Secretary Chertoff and the Department of Homeland Security to work together in this direction. We are aware that facing violence and crime, there are no magic overnight solutions, but we are convinced that binational systematic efforts are the best we can do to have better results." It is important to remember these achievements in the context of a consultation requirement in any bill.

SECTION 117 of SENATE BILL 2611 -- CONSULTING MEXICO

The title of this field hearing is confusing at best. Section 117 of S. 2611 merely memorializes what the U.S. does with foreign nations every day to achieve its objectives – that is, to consult. In fact, based solely upon Texas' economic dependence on trade with Mexico, it would be imprudent to proceed with any border security measures that would significantly impact both countries without consulting with Mexico. We hope that the Mexican government will do the same with us on a wide variety of cross-border or bi-national efforts. Section 117 provides absolutely NO VETO power to Mexico. The language of section 117 is set forth below:

SEC. 117. COOPERATION WITH THE GOVERNMENT OF MEXICO.

(a) Cooperation Regarding Border Security- The Secretary of State, in cooperation with the Secretary and representatives of Federal, State, and local law enforcement agencies that are involved in border security and immigration enforcement efforts, shall work with the appropriate officials from the Government of Mexico to improve coordination between the United States and Mexico regarding--

(1) improved border security along the international border between the United States and Mexico;

(2) the reduction of human trafficking and smuggling between the United States and Mexico;

(3) the reduction of drug trafficking and smuggling between the United States and Mexico;

(4) the reduction of gang membership in the United States and Mexico;

(5) the reduction of violence against women in the United States and Mexico; and

(6) the reduction of other violence and criminal activity.

(b) Cooperation Regarding Education on Immigration Laws- The Secretary of State, in cooperation with other appropriate Federal officials, shall work with the appropriate officials from the Government of Mexico to carry out activities to educate citizens and nationals of Mexico regarding eligibility for status as a nonimmigrant under Federal law to ensure that the citizens and nationals are not exploited while working in the United States.

(c) Cooperation Regarding Circular Migration- The Secretary of State, in cooperation with the Secretary of Labor and other appropriate Federal officials, shall work with the appropriate officials from the Government of Mexico to improve coordination between the United States and Mexico to encourage circular migration, including assisting in the development of economic opportunities and providing job training for citizens and nationals in Mexico.

(d) Consultation Requirement- Federal, State, and local representatives in the United States shall consult with their counterparts in Mexico concerning the construction of additional fencing and related border security structures along the international border between the United States and Mexico, as authorized by this title, before the commencement of any such construction in order to--

(1) solicit the views of affected communities;

(2) lessen tensions; and

(3) foster greater understanding and stronger cooperation on this and other important security issues of mutual concern.

(e) Annual Report- Not later than 180 days after the date of enactment of this Act, and annually thereafter, the Secretary of State shall submit to Congress a report on the actions taken by the United States and Mexico under this section.

The reasons set forth in section 117 of S. 2611 regarding consultation with Mexico on the construction of fencing and related border security structures (namely, "to foster stronger cooperation and understanding") are the same reasons that underpin decades of cooperative work between the U.S. and Mexico on a variety of issues of mutual concern. Section 117 does not cede any veto power to Mexico—it merely reflects the norm in our relations with one of our most favored trading partners, Mexico.

The real question here is, why would the U.S. *not* consult with Canada and Mexico as to the construction of any border security structures, including fences? Would you want your neighbor to build a fence on your joint property line without first consulting you?

ADDRESSING THE COMPLEX ISSUES – IMMIGRATION ENFORCEMENT AND REFORM

Polls

Both the Senate and the House of Representatives have come up with immigration proposals, S. 2611 and H.R. 4437, respectively. Only the Senate bill, however, creates a plan of action to address bringing the undocumented population out of the shadows to improve the security of our nation. The issue of immigration in the U.S. is polarizing, but recent polls reflect that the American public by far favors the approach of S. 2611 over the approach of H.R. 4437. According to the TIME magazine poll conducted March 29-30, 2006, 72% of those polled favored S. 2611's approach to the immigration conundrum, which would allow those in the U.S. without legal status to obtain a temporary work visa, in comparison to the House's approach, which would criminalize illegal presence. An Associated Press poll conducted on March 28-30, 2006, also reflects that a majority of Americans (56%) favor allowing immigrants who are in the U.S. without legal status to apply for legal, temporary worker status.

According to an NBC/Wall Street Journal poll conducted on June 9-12, 2006, When asked to choose between a plan similar to the House immigration plan and a plan similar to the Senate immigration plan, the preference of voters for the Senate plan was clear: 33% favored the House plan; 50% favored the Senate plan; 14% favored neither; and 3% were unsure.

A CBS News poll conducted on May 16-17, 2006, found that 77% of Americans favored a plan allowing illegal immigrants who have paid a fine, been in the U.S. for at least five years, paid any back taxes they owe, can speak English, and have no criminal record to stay and work in the U.S., while only 19% oppose.

A CNN/Opinion Research Corporation poll conducted on May 16-17, 2006, found that 79% -- almost 8 in 10 Americans -- favored allowing illegal immigrants already living in the U.S. for a number of years to stay in this country and apply for U.S. citizenship if they had a job and paid back taxes. By contrast, only 18% opposed such a measure.

One would hope that such overwhelming poll results would create an impetus for Members of Congress to convene a conference committee before the November elections and tackle the real work of crafting a solution to the immigration dilemma. Unfortunately, despite the will of constituents, such a solution does not appear to be forthcoming.

Fencing in Failure

In a recent Immigration Policy Center ("IPC") study on the impact of border fencing, Professor Jason Ackleson of New Mexico State University notes, "Viewing border security as a solely national security matter tends to neglect the larger economic and social forces that underpin the flow of Mexicans and others into the United States to fill gaps in the U.S. labor force."[5] As to the decisions that must be made to use effective technology as a complement to the human factor, the statement of Nancy Kingsbury, the Managing Director of Applied Research and Methods for the then Government Accounting Office is instructive. Ms. Kingsbury states that three key considerations need to be addressed before a decision is made to design, develop, and implement biometrics into a border control system:

1. *Decisions must be made on how the technology will be used.*
2. *A detailed cost-benefit analysis must be conducted to determine that the benefits gained from a system outweigh the costs.*

[5] Ackleson, Jason, Ph.D., "Fencing in Failure: Effective Border Control is Not Achieved by Building More Fences," Immigration Policy Center Brief, American Immigration Law Foundation, p. 6 April 2005.

3. *A trade-off analysis must be conducted between the increased security, which the use of biometrics would provide, and the effect on areas such as privacy and the economy.* [6]

Similar analyses are important in any technology "force-multiplier." In addition, it is absolutely critical to obtain input from local communities and reviews from the field in order to have a realistic assessment of the potential benefits, costs, and problems generated by implementing technologies.

Accountability and Technology Solutions for Border Security

It is imperative that we have a "no tolerance" policy for technology, which does not enhance security as advertised or for technological failures tied to inadequate funding and oversight by Congress and/or the agency charged with implementing such technology. While technology can provide useful enhancements to security capabilities, even the most promising technological plans can be thwarted or sabotaged based on a variety of factors such as:

- Inadequate pilot testing on sight to determine the true capacity of the technology.
- Failures to perform cost-benefit analyses before implementation as well as appropriate follow-up on performance of implemented technologies.
- Inadequate integration of field testing replies on technology in strategizing implementation methodologies.
- Improper cannibalization of technologies during the request for bid process resulting in potential performance reductions.
- Failure to adhere to implementation schedules due inadequate funding and staffing.
- Inability to provide maintenance due to funding or lack of availability.
- Failure to analyze and address cross-over agency issues in the implementation of technologies.
- Failure to provide adequate initial and on-going training to utilize technologies.
- Failure to admit mistakes and learn from them in technology implementation.
- Mandated percentages of technology use for inspections without consideration of effectiveness.
- Failure to preserve biometric data for future use/review.
- Failure to fully integrate watchlist databases to improve effectiveness.

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[6] Kingsbury, Nancy, Testimony before the Subcommittee on Terrorism, Technology, and Homeland Security and Subcommittee on Border Security, Immigration, and Citizenship, Committee on the Judiciary, United States Senate, March 12, 2003 GAO 03-546T, at 13.

Any implementation of technology is always an experiment. The land border has had its share. The following section provides a few examples:

License Plate Readers - Several years ago, license plate readers were installed in our passenger vehicle lanes to read plates of northbound cars to the U.S. to reduce primary inspection times by ending the need to manually input plate numbers. Unfortunately, the technology had problems with the different Mexican plate permutations and the ability to read such plates would at times be at a less than 50% level. The capacity has improved over time, but usage of the system can still be problematic.

Bollards - At one point in time, pneumatic bollards were installed in certain lanes to try to end port runners' escape attempts. Unfortunately, there were functional issues, to wit, deployment to the destruction of the engine and/undercarriage of cars accidentally. The use of such bollards was terminated in the El Paso area.

Document Scanners - Section 303 of the Enhanced Border Security Bill of 2002 (Pub. L. No. 107-713), requires that as of October 26, 2004, all United States visas and other travel and entry documents issued to aliens and passports with biometric identifiers issued to Visa Waiver Program country applicants for admission must be used to verify identity at all ports of entry via biometric comparison and authentication. This deadline was extended for one year by Pub. L. No. 108-299. Note that this requirement is separate from the recordation of admission under US VISIT procedures. Thus, along the U.S./Mexican border, even exempted Mexican laser visa holders under US VISIT procedures (e.g. crossers within 25 mile area of border/75 miles in Arizona for 30 days or less) will require scanning for admission as well as holders of currently valid I-94s. This requirement would apply to pedestrians, persons in passenger vehicles, as well as commercial vehicles. At El Paso ports alone, those inspected in one day can exceed 100,000 people.

In April and May of 2004, scanners were installed at El Paso ports in preparation for the October 2004 deadline. Mexican laser visas and legal permanent resident cards were scanned using this Biometric Verification System ("BVS"), which involved the scan of a print to confirm identity as well as a scan of the identity document. The system did not record the entry date. In addition, the system did not scan the person against watchlists upon intake of the biometric data without further manipulation by the inspector of the database. The card scanned would often get stuck in the BVS readers In addition, the no-read rate for the scanners exceeded 40% at certain ports of entry. Such failures were tied to "wallet-crud" on the cards, damaged cards, and sweaty or dry fingers. Where are the reports to Congress on this scanner issue, which will potentially severely impact land border crossings in October of this year? Now, we are contemplating having to require the use of a passport in addition to these

biometric wonder laser visas based on a recent joint proposed rule by DHS and Department of State ("DOS")on the implementation of the Western Hemisphere Travel Initiative. These laser visas are based on a more secure identity review than the issuance of a U.S. or Mexican passport. What does this say about our capabilities of using biometric documents?

Aerial drones - Customs and Border Protection ("CBP") pulled its Unmanned Aerial Vehicles ("UAV") from the Arizona border earlier this year. Two UAVs, RQ-5 Hunters made by Northrop Grumman Corp., cost $1 million apiece and helped apprehend 287 illegal border crossers and helped seize 1,889 pounds of marijuana from October 1, 2004 to January 23, 2005. The two Hunter UAVs succeeded two Israeli-made Hermes 450s costing about $2 million each, which helped interdict 965 illegal border crossers and about 850 pounds of marijuana.

According to T.J. Bonner, national president of the National Border Patrol Council, these UAVs crash 100 times more often the piloted aircraft, and they are not as efficient or economical as piloted aircraft and/or mobile agents on the ground. For example, during the time frame in which the Hunter UAVs were used, CBP Black Hawk helicopters helped to seize more than 148,000 pounds of marijuana and apprehended more than 100,000 people.

X-Ray – The ports have used a variety of X-ray imaging systems to conduct non-intrusive inspections of commercial cargo. The current state of the art system is the Eagle cargo inspection system, which moves under its own power from one location to another and it rapidly review trucks and cargo containers, even when loaded with dense cargo. It can penetrate 12 inches of steel to scan the contents of a container. Other x-ray options are the Vehicle and Cargo Inspection System ("VACIS"), which employs gamma rays to produce "x-ray" type density images. The Mobile Truck X-ray ("MXTR") uses similar x-ray technology, but it is housed in a cabinet on a truck chassis, and operates by slowly driving past a parked vehicle with a detector boom extended over the targeted vehicle. Obviously, such options are not used regarding the detection of people between the ports.

Sensors - Other systems under consideration include fiber optic sensors, which are not as intrusive as fences, in terms of damage to habitat and wildlife. The government is also testing ground-based radar to detect intruders crossing the border. CBP requested $53.1 million in the FY 2006 budget for America's Shield Initiative, which would fund more surveillance equipment at the border. The ground radar system uses Frequency Modulated Continuous Wave ("FMCW") technology to detect people within a 3 mile range and a vehicle up to 10 miles away. The technology allows sweeps of 360 degrees and relays information to cameras, which can zoom in on the area. This option is certainly an improvement over sensors, which do not allow verification of the reason for the sensor signal.

It is important to note that such "force-multipliers" as cameras and sensors may be useful in detecting intrusions, but they are not capable of interdicting or capturing violators. In addition, they are not capable of tracking persons or objects on the move, except UAVs. The use of these sensors should help though in the antiquated "cutting of sign" required to be conducted by the Border Patrol, but practical limitations of the technology may still force the use of such tried and true methods.

The argument can still be forcefully made and supported that there is no substitute for trained Border Patrol officers in this context, but such officers are only a small part of the solution, which will be further described in this testimony. Obviously, the idea of "prevention through deterrence" via such efforts as Operation Hold the Line have not been successful in reducing the flow of undocumented immigration to the U.S. even with ten years of fairly consistent and large increases in the budget for the Immigration and Naturalization Service (now CBP) and a parallel increase in the number of Border Patrol agents stationed at the border. [7]

The success of technology to help secure the border must be subject to ongoing review and analysis to determine its true effectiveness. In addition, as with the implementation of US VISIT, it is essential that DHS and Congress scrutinize the true security dividends on such an enormous theoretical undertaking.

The three charts below, reproduced from an Immigration Policy Brief of the American Immigration Law Foundation (AILF),[8] demonstrate the failure of our current Southwest border control strategy. The flow of undocumented immigrants has occurred "despite ten years of fairly consistent and large increases in the budget authority for the Immigration and Naturalization Services (now CBP) and a parallel surge in the number of Border Patrol agents" stationed on the border.[9]

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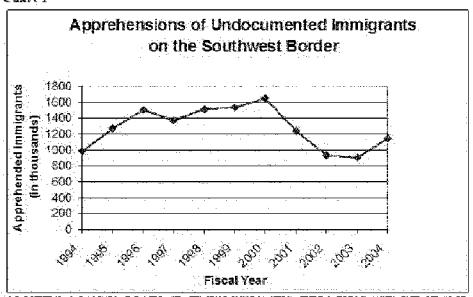
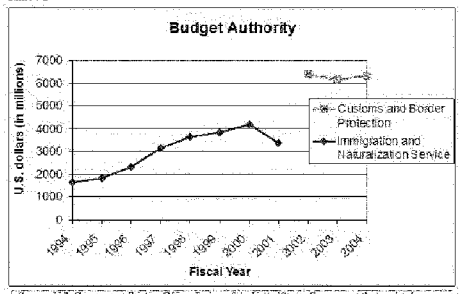
[7] Ackleson, Ph.D., Jason, "Fencing in Failure: Effective Border Control is Not Achieved by Building More Fences," Immigration Policy Center Brief, American Immigration Law Foundation, April 2005.
[8] Id. at pp. 4-5.
[9] Id. at 4.

Chart 1



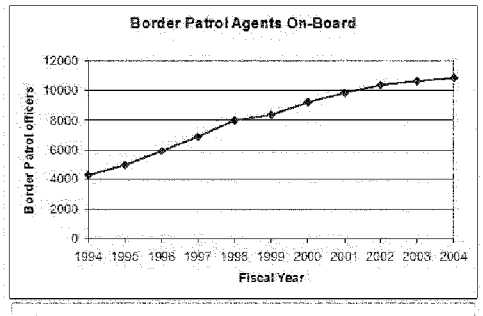
Sources:
1. U.S. Citizenship and Immigration Services, "Southwest Border Apprehensions" (6 March 2005). Available at [http://uscis.gov/graphics/shared/aboutus/statistics/msc/050309/BORD.htm].
2. U.S. Department of Homeland Security, Office of Immigration Statistics, *2003 Yearbook of Immigration Statistics* (September 2004). Available at [http://uscis.gov/graphics/shared/statistics/yearbook/2003/2003Yearbook.pdf].
3. U.S. Department of Justice, Immigration and Naturalization Service, *1999 Statistical Yearbook of the Immigration and Naturalization Service* (March 2002). Available at [http://uscis.gov/graphics/shared/statistics/yearbook/1999/FY99Yearbook.pdf].

Chart 2



Source: U.S. Government Printing Office, *Budget of the United States Government* (last updated February 3, 2005). Available at [http://www.gpoaccess.gov/usbudget/browse.html].

Chart 3



Sources:
1. U.S. Department of Justice, Immigration and Naturalization Service, "Border Patrol FY 2000 Recruiting and Hiring Report" (July 2000), p.2. Available at [http://uscis.gov/graphics/publicaffairs/factsheets/recruit.pdf].
2. U.S. Department of Justice, "Status of Achieving Key Outcomes and Addressing Major Management Challenges" (June 2001), p.18. Available at [http://www.gao.gov/new.items/d01729.pdf].
3. U.S. Department of Homeland Security, U.S. Customs and Border Protection, *Performance and Annual Report Fiscal Year 2004*, p.16. Available at [http://www.cbp.gov/linkhandler/cgov/toolbox/publications/admin/cbp_annual/cbp_annual.pdf].

According to the U.S. General Accounting Office, the "prevention through deterrence" strategy of Operation Blockade/Hold the Line in El Paso in 1993, Operation Gatekeeper in San Diego in 1994 and El Centro in 1998, Operation Safeguard in Nogales in 1995; and Operation Rio Grande in McAllen and Laredo in 1997, have simply moved migrant traffic from one place to the other.[10]

According to Professor Wayne Cornelius in his recent study entitled, *Impacts of Border Enforcement on Mexican Migration: The View from Sending Communities,* he outlines that the basic problem with fortifying borders is that such action does nothing to reduce the forces of supply and demand, which drive illegal immigration. His report further notes that the unintended consequences of the post-1993 border enforcement actions have been: creating new opportunities for people smugglers, making the southwestern border more lethal, and promoting permanent settlement in the U.S.

What else has resulted from "prevention through deterrence?" This failed strategy has led to the deaths of more immigrants in the desert, as the most dangerous areas for crossing become the most available avenues. The Mexican Ministry of Foreign Relations estimates that 2,445 people died from 1997 to

[10] U.S. General Accounting Office (now the Government Accountability Office as of July 7, 2004), *INS' Southwest Border Strategy: Resource and Impact Issues Remain After Seven Years.* GAO-01-842, August 2001.

2003.[11] In addition, from FY 1997 to FY 1999, the number of undocumented immigrants apprehended by the Border Patrol who used smugglers in their attempt to enter the U.S. increased by 80 %. As noted by Walter Ewing in his Immigration Policy Center paper, *From Denial to Acceptance: Effectively Regulating Immigration to the United States*, "The smuggling of people from Mexico to the U.S. is now a $300 million a year business, second in profitability only to drug trafficking, and involves anywhere from 100 to 300 smuggling rings."[12] The higher costs and risks of illegal border crossings have not stopped immigrants from coming to the U.S. These elevated costs and risks, however, have caused immigrants to stop trying to go back home after arriving here.[13] This fact is reflective of the failure of our current migration policy and laws to address the dependence of the U.S. on transnational commerce and immigrant labor.[14]

According to the U.S. Department of Commerce, from 1985 to 2003, the total value of U.S.-Mexican bilateral trade increased more than seven-fold from $32.8 billion to $235.5 billion, which makes Mexico the second largest trading partner for the U.S (with Canada ranking first). In addition, in 2003, Mexico was the largest foreign export market for Texas ($41.6 billion), California ($14.9 billion), and Arizona ($3.2 billion). Mexico also was the recipient of over $1 billion in exports each year from Florida, Illinois, Georgia, Indiana, Louisiana, Michigan, New York, North Carolina, Ohio, Pennsylvania, and Tennessee.[15] In addition, the Office of the U.S. Trade Representative estimates that the stock of U.S. direct foreign investment in Mexico more than tripled from $15.4 billion to $52.2 billion.[16] During this age of globalization, roughly 65,000 transnational corporations cover the globe and hold capital reserves in excess of the budgets of some governments.[17] According to the United Nations Conference on Trade and Development, from 1980 to 2002, merchandise and services exports more than tripled worldwide from $2.4 trillion to $8 trillion.[18]

Notwithstanding these figures, our trade policies (along with our bilateral and multi-lateral agreements) often ignore workforce needs. We simply appear to be more comfortable dealing with goods rather than people—that is, the workforce needs that result from globalization. Governments of developed nations continue to impose arbitrary numerical limits on immigration. These limits do not reflect the actual movement of workers across international borders, which is a more

[11] Ewing, Walter A., Ph.D., "From Denial to Acceptance: Effectively Regulating Immigration to the United States," Immigration Policy Center paper, American Immigration Law Foundation, Vol.3, Issue 5, p. 6 Nov. 2004.
[12] Id. at 6.
[13] Id. at 7.
[14] Id. at 1.
[15] TradeStats Express, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce (http://tse.export.gov/).
[16] Office of the U.S. Trade Representative, *National Trade Estimate Report on Foreign Trade Barriers, 1995 and 2003.*
[17] Ewing, supra note 11, at p. 2.
[18] Id. at 2.

accurate indicator of need.[19] So, when we are tempted to believe that fencing out such flows of workers will resolve our security problems, we also are denying our actual labor needs, as evidenced by such flows. How do such fences avoid fencing out our ability to compete in this global economy for goods and services?

ENFORCEMENT OF FEDERAL CIVIL IMMIGRATION LAWS BY STATE AND LOCAL LAW ENFORCEMENT OFFICERS WILL INCREASE LACK OF TRUST AND RESULT IN AN INCREASE OF ERRONEOUS INTERPRETATIONS OF IMMIGRATION STATUS

Section 607 of H.R. 4437 (see attached) provides any sheriff or coalition or group of sheriffs from designated counties adjacent to the Southern international border of the U.S. the authority to transfer to the appropriate federal law enforcement officials aliens detained by or in the custody of the sheriff who are not lawfully present in the U.S. That section also provides for payment of the costs of performing such transfers by the Attorney General. Such payment for costs includes: detaining, housing, and transporting aliens who are not lawfully present in the U.S. or who have unlawfully entered the U.S. at a location other than a port of entry and who are taken into custody by the sheriff.

To comprehend the intended potential breadth of this section of H.R. 4437, it is important to read it in tandem with the changes proposed in section 203 of H.R. 4437. That section would upgrade the offense of unlawful presence from an immigration violation subjecting the violator to deportation from the U.S. under section 237 of the Immigration and Nationality Act (INA), to a criminal act punishable as a felony. It also would change the offense of unlawful entry to the U.S. from a misdemeanor under 18 USC § 1325 to a felony. The language provided by Section 103 is far more inclusive than just the issue of unlawful presence. It incorporates any violation of U.S. immigration laws and regulations. Thus, the criminal consequences could extend to a student failing to take a full course load or a nonimmigrant failing to timely submit an AR-11 change of address form. Are these violations really of a criminal nature?

Just the interpretation of the term "unlawful presence" has been the subject of many interpretative memoranda from the Departments of State, Justice, and Homeland Security. Many would-be immigrants and, indeed, even many immigration lawyers, may confuse the term "unlawful presence" with one or more of the following concepts: illegality, deportability, ineligibility to change or adjust status, lack of authorization for employment, etc.

[19] *Id.* at 3.

Unlawful presence may sometimes overlap with each of these concepts, but it differs from each in significant ways. A person may accumulate unlawful presence by any of the three following methods:

1. Entry Without Inspection ("EWI"): If a person entered the U.S. without inspection, all of the time accumulated in EWI status, starting April 1, 1997, counts as unlawful presence.

2. Overstay: If a person entered the U.S. as a nonimmigrant and overstays the date specified on the I-94 entry document, each day after the overstay, starting on April 1, 1997, is considered unlawful presence.

3. Status violator: Persons who appear, on paper, to be legally in the U.S., but are actually violating status (e.g., by working without authorization, by failing to comply with the terms of their status, etc.), are not considered to be unlawfully present unless and until either the DHS or the Executive Office for Immigration Review ("EOIR") finds that they are violating status. The period of unlawful presence begins on the date that the finding is made by the DHS or the EOIR. Persons who have been lawfully admitted to the U.S. who do not have a definite departure date (e.g., Canadians without I-94s, students and J exchange visitors given "Duration of Status" (D/S) status) cannot be overstays, but may accumulate unlawful presence as status violators upon the appropriate DHS or EOIR determination.

In addition, § 212(a)(9)(B)(iii) of the INA, as amended, provides that the following classes of persons are exempt from accumulating unlawful presence:

1. Minors: No one under 18 years of age may accumulate unlawful presence.
2. Asylees: No time in which a person has a bona fide application for asylum pending counts as unlawful presence unless the person, during this period, was employed without authorization.
3. Family unity: No time in which a person was the beneficiary of family unity protection may be considered as unlawful presence.
4. Certain battered woman and children.

Further, INA § 212(a)(9)(B)(iv) provides that a non-frivolous application for a change or extension of nonimmigrant status, where the person has not worked without authorization before or during the pendency of the application, tolls the period of unlawful presence for a period not to exceed 120 days. Interpretations by the former Immigration and Naturalization Service provide that a pending application for adjustment of status will also toll the period of unlawful presence.

The reason for this background is merely to illustrate just how complex the terms and concepts contained in our current immigration laws are. Hence, it is not

difficult to imagine how the above-described provisions of H.R. 4437 could lead to various incorrect applications of the law, not to mention the unlawful arrest of foreign nationals.

Sections 203 and 607 of H.R. 4437 would create criminal consequences for what currently are considered civil violations of our immigration laws that already subject the violator to removal from the U.S. In a criminal proceeding, additional rights are provided to the accused, including a right to counsel and trial by jury. Removal hearings are not criminal proceedings. Criminal cases are brought before a judicial trial typically, while removal cases are usually conducted before the Executive Office of Immigration Review ("EOIR") with the Department of Justice ("DOJ") in an administrative proceeding. The constitutional rights provided to an alien in a removal proceeding are generally less than those to which an accused is entitled in a criminal matter. In addition, felony cases normally require a grand jury to issue an indictment. Further, if unlawful presence is subject to more than six months imprisonment, as proposed by H.R. 4437, such allegation would constitute a "serious crime," for which the accused would have a right to a jury trial.[20] In addition, the burden of proof to convict someone for the criminal offense of unlawful presence would be "beyond a reasonable doubt" versus the current standard in removal proceedings of the alien burden to prove by "clear and convincing evidence." [21]

Does it really make sense to stretch our already scarce judicial and enforcement resources by criminalizing such actions as violation of status? Isn't potential removal from the U.S. the correct consequence?

Law Enforcement Reaction

Sections 220, 221, 222 and 225 of H.R. 4437 would: declare that state and local law enforcement authorities have the inherent authority to investigate, identify, apprehend, arrest, detain, or transfer to federal custody aliens in the U.S. for the purposes of assisting in the enforcement of immigration laws; require DHS to provide training on this issue at no cost to the local agency, with the caveat that such training would *not* be a prerequisite to state and local law enforcement personnel participation in immigration law enforcement; provide some financial assistance to states and localities that assist in the enforcement of immigration laws; and bar states and localities that have policies prohibiting law enforcement officials from assisting or cooperating with federal immigration law enforcement from receiving State Criminal Alien Assistance Program ("SCAAP") funding.

These provisions are similar to those contained in the Clear Law Enforcement for Criminal Alien Removal ("CLEAR") Act of 2003 provisions (H.R. 2671, introduced by Rep. Norwood (R-GA) in the 108th Congress). Senators Jeff Sessions (R-AL)

[20] Michael J. Garcia, "Criminalizing Unlawful Presence: Selected Issues," *Congressional Research Service Report for Congress*, May 3, 2006 at p. 4.
[21] *Id.*

and Zell Miller (D-GA) introduced parallel legislation in the Senate (the Homeland Security Enhancement Act ("HSEA") of 2003, S. 1906). Both bills purported to reaffirm the "inherent authority" of state and local governments to enforce civil immigration laws. Furthermore, both bills attempted to criminalize all immigration status violations for the first time in this country's history. The CLEAR Act would have *required* state and local police to enforce federal civil immigration laws or lose certain critical funding. The HSEA would have taken a slightly different tack by denying funding to states or localities that have policies or practices in place which prevent their police from enforcing such laws.

In December 2004, the International Association of Chiefs of Police ("IACP"), the world's oldest and largest nonprofit membership organization of police executives, with over 20,000 members in over 89 different countries, issued a press release in opposition to the CLEAR Act and urged Congress to proceed with caution when considering measures that would compel local and state law enforcement agencies to enforce federal immigration laws.

Other comments from Police chiefs against federal immigration enforcement by their officers include the following:

International Association of Chiefs of Police, Spokesman Gene Voegtlin
"If local police are seen as local immigration officials, there's a concern that immigrants won't report crimes, which will then lead to an increase in crime in communities." ("Police seek to ease crime victims' fear of being deported," *Dallas Morning News*, 12/11/2003)

California State Sheriffs' Association, President Bruce Mix
"CSSA is concerned that the proposed CLEAR Act will undermine our primary mission of protecting the public. In order for local and state law enforcement associations to be effective partners with their communities, we believe it is imperative that they not be placed in the role of detaining and arresting individuals based solely on a change in their immigration status." (letter to Senator Feinstein, 3/10/2004)

California Police Chiefs' Association, President Rick TerBorch
"It is the strong opinion of the California Police Chiefs' Association that in order for local and state law enforcement organizations to be effective partners with their communities, it is imperative that they not be placed in the role of detaining and arresting individuals based solely on a change in their immigration status." (letter to Senator Feinstein, 9/19/2003)

Connecticut Police Chiefs' Association, President James Strillacci
"We rely on people's cooperation as we enforce the law in those communities. With this [legislation], there's no protection for them." ("Mayor asks for federal help," *Danbury News-Times*, 3/26/2004)

El Paso (TX) Municipal Police Officers' Association, President Chris McGill
"From a law-enforcement point of view, I don't know how productive it would be to have police officers ask for green cards. It's more important that people feel confident calling the police." ("Immigration proposal puts burden on police," *El Paso Times*, 10/9/2003)

Hispanic American Police Command Officers Association, National President Elvin Crespo
"The CLEAR Act jeopardizes public safety, it undermines local police roles in enhancing national security, it undermines federal law Enforcement priorities, it piles more onto state and local police officers' already full platters, it bullies and burdens state and local governments, it is unnecessary law-making and most significantly, it forgets the important fact that you can't tell by looking who is legal and who isn't." (letter to National Council of La Raza, 10/21/2003)

National Latino Peace Officers Association, Founder Vicente Calderon
"The role of police is to protect and serve. Clear Law Enforcement for Criminal Alien Removal [CLEAR Act] will greatly contribute toward hindering police from accomplishing these goals." (letter to National Council of La Raza, 10/16/2003)

Federal Hispanic Law Enforcement Officers Association, National President Sandalio Gonzalez
"The CLEAR Act bullies and burdens State and Local governments by coercing them into participating, even though it means burdensome new reporting and custody requirements, because failure to do so means further loss of already scarce federal dollars." (letter to President Bush and Congress, 9/30/2003)

Boston (MA) Police Department, Commissioner Paul Evans
"The Boston Police Department, as well as state and local police departments across the nation have worked diligently to gain the trust of immigrant residents and convince them that it is safe to contact and work with police. By turning all police officers into immigration agents, the CLEAR Act will discourage immigrants from coming forward to report crimes and suspicious activity, making our streets less safe as a result." (letter to Senator Kennedy, 9/30/2003)

Seattle (WA) Police Department, Chief R. Gil Kerlikowske
"Traditionally we have seen that reporting of crime is much lower in immigrant communities because many are leaving countries where the police cannot be trusted for good reason. Adding the fear of arrest or deportation to this could have a tremendous impact on the rate of reporting. At a time when trusting relationships between immigrant communities and the police are vital, the CLEAR Act would have just the opposite effect." (letter, 3/4/2004)

Los Angeles County Sheriff's Department, Sheriff Leroy Baca
"I am responsible for the safety of one of the largest immigrant communities in this country. My Department prides itself in having a cooperative and open

relationship with our immigrant community. [The CLEAR] act would undermine this relationship." (letter to Los Angeles County Neighborhood Legal Services, 10/6/2003)

History and a Local Example

In 1997, local authorities in Chandler, Arizona conducted a series of roundups to help Border Patrol agents find violators of federal civil immigration laws. Widespread complaints by local residents, including U.S. citizens and at least one local elected official who were stopped during the operations, led to an investigation by the Arizona Attorney General. The official report on the investigation concluded that police stopped Hispanics without probable cause, bullied women and children suspected of being illegal immigrants and made late-night entries into homes of suspected illegal immigrants, among other actions. In 1999, the Chandler City Council unanimously approved a $400,000 settlement of a lawsuit stemming from police roles in the roundup. Mayors from cities across the country, including New York, Los Angeles, San Francisco, and Chicago have opposed local police becoming immigration agents for the reasons articulated above: state and local police do not understand immigration law and would thus do a poor job of enforcing such laws, important community relationships that are essential to fighting crime would be damaged, state and local resources would be strained, and states and localities would have to deal with the many negative consequences that would result from poorly conceived attempts to enforce federal immigration laws.

Border Security Plan for Texas

Recently Governor Perry of Texas announced the funding of Operation Linebacker, which was conceived by the Texas Border Sheriff's Coalition as a way to integrate law enforcement resources along the border to increase patrol activity. The funds were supposed to be used to provide an increased patrol presence particularly in rural areas to increase public safety and border security.

Operation Linebacker has received severe criticism for its operation in the El Paso area. In June 2006, 3,000 El Paso residents filed a petition asking Sheriff Samaniego to resign because county residents have been asked for their social security cards and immigration papers by sheriff's deputies during regular traffic stops, traffic checkpoints or while traveling by bus in the past few months. They said they have even been driven to immigration offices in sheriff's patrol cars. A complaint was filed by the Paso del Norte Civil Rights Center regarding the actions of El Paso County and its sheriff's department concerning unlawful searches, seizures, and detentions conducted as part of the County's Operation Linebacker.

On June 23, 2006, El Paso County Sheriff Leo Samaniego announced that he had suspended controversial traffic checkpoints that some county residents said

were being used to snare undocumented immigrants. Sheriff Samaniego also said that the Sheriff's Office has suspended referrals to the U.S. Border Patrol based only on a person's immigration status, and that it would review deputy raining. Sheriff Samaniego, who reiterated that his deputies were enforcing public safety laws and did nothing wrong, said in a prepared statement that the suspension was "in order to abolish any perception regarding individuals' constitutional rights."

This example points to the difficulties in establishing immigration status under U.S. immigration law, and the inherent need for training of those who are responsible for immigration law enforcement.

Immigrants Have a Positive Financial Impact on the U.S. Economy

According to the Pew Hispanic Center, undocumented immigrants comprised 4.9% of U.S. workers as of March 2005. Undocumented immigrants, however, represented 24% of all workers in the farming, fishing, and forestry industry, 17% of the workers employed in building and grounds cleaning and maintenance, and 14% of construction workers.[22] In the August 2006 report by the Pew Hispanic Center entitled, Growth in the Foreign-Born Workforce and Employment of the Native Born, noted that Rapid increases in the foreign-born population at the state level are not associated with negative effects on the employment of native-born workers, based on review of data during the 1990's and the downturn and recovery since 2000.[23] The report's analysis of the relationship between growth in the foreign-born population and the employment outcomes of native-born workers revealed wide variations across the 50 states and the District of Columbia. The report concludes that no consistent pattern emerged to show that native-born workers suffered or benefited from increased numbers of foreign born workers.[24]

Beyond providing a needed labor supply, undocumented workers spend and invest earnings creating new jobs. Based on the report by the Selig Center for Economic Growth at the University of Georgia, Latino buying power totaled $736 billion in 2005 and is expected to increase to $1.1 trillion by 2010.

It is also important to remember that undocumented immigrants pay taxes, which benefit the U.S. Social Security system. The 2005 *Economic Report of the President* states that, "more than half of undocumented immigrants are believed to be working 'on the books,' so they contribute to the tax rolls but are ineligible for almost all Federal public assistance programs and most major Federal-state programs." In addition, undocumented immigrants are considered a major

[22] Jeffrey S. Passel, *The Size and Characteristics of the Unauthorized Migrant Population in the U.S.; Estimates Based on the March 2005 Current Population Survey.* Washington, DC: Pew Hispanic Center, March 7, 2006, p. 11.
[23] Rakesh Kochar, "Growth in the Foreign Born Workforce and Employment of the Native Born," *Pew Hispanic Center,* Executive Summary, August 10, 2006 at p.1.
[24] *Id.*

source of the social security taxes paid into the system by workers who have invalid social security numbers, and who are not entitled to receive social security benefits. The payments to the Social Security suspense fund[25] totaled about $7.2 billion in 2003.[26] According to a new analysis by Standard & Poor's, the cost of providing services to undocumented immigrants is largely offset by the economic benefits they generate.[27] Unfortunately, although states get the benefit of sales taxes and economic growth that undocumented immigrants provide, they miss out on the social security taxes paid to the federal government by these workers.[28]

Former Chairman of the Federal Reserve Bank, Alan Greenspan, noted in his August 27, 2004, speech at a symposium sponsored by the Federal Reserve Bank of Kansas that, "Aside from the comparatively lesser depth of required adjustment, our open labor markets should respond more easily to the changing needs and abilities of our population; our capital markets should allow for the creation and rapid adoption of new labor–saving technologies, and our open society should be receptive to immigrants. These supports should help us adjust to the inexorabilities of an aging population. Nonetheless, tough policy choices lie ahead."

In trying to predict the costs of an increase in legal immigration, the Social Security Administration Office of the Chief Actuary, 2004 Board of Trustees Report, found that an increase in legal immigration would provide a significant increase to Social Security and a reduction of the actuarial deficit. In a poll of eminent economists conducted by the CATO Institute in the mid-1980s and updated in 1990, 81 percent of the respondents opined that, on balance, twentieth-century immigration has had a "very favorable" effect on U.S. economic growth.[29]

Contrary to the belief that an increasing number of people compete for a static number of jobs, in fact, the number of jobs in America has increased by *15 million* between 1990 and 2003, according to the DOL's Bureau of Labor Statistics ("BLS").[30] Between 2000 and 2010, *more than 33 million new job openings* will be created in the United States that require only little or moderate training, according to the BLS. This will represent 58 percent of all new job

[25] If a name or a Social Security Number on a W-2 form does not match SSA records, the Social Security earnings go into a suspense file while the SSA works to resolve discrepancies. In recent years, the SSA has been unable to match employee information with SSA records for 6-7 million workers a year. SSA has deposited $280 billion dollars in the earnings suspense file as a result of the cumulative effect of these no-matches.
[26] Kathleen Pender, *Losing out on a huge cash stash,* Sfgate.com, April 11, 2006.
[27] *Id.*
[28] *Id.*
[29] Julian L. Simon, "Immigration: The Demographic and Economic Facts," Cato Institute and National Immigration Forum (Dec. 11, 1995).
[30] Council of Economic Advisers. *Economic Report of the President 2003*, Table B-37.

openings.[31] A May 2006 U.S. Congressional Budget Office ("CBO") report on the economic and budgetary impact of S. 2611 found that the increase in the number of workers would probably have a very small negative effect on the growth of average weekly wages of workers already in the U.S. The CBO also estimated that the Senate bill would increase GDP by 0.4 percent on average from 2007 to 2011, and by 1.3% from 2012 to 2016.

In an open letter dated June 19, 2006, to President George W. Bush and Members of Congress (see attached), more than 500 economists from all 50 states, including 5 Nobel Laureates, proclaimed that "immigration has been a net gain for American citizens."[32] In their letter, the economists note that, "while a small percentage of native-born Americans may be harmed by immigration, vastly more Americans benefit from the contributions that immigrants make to the economy, including lower consumer prices. As with trade in goods and services, gains from immigration outweigh the losses." The letter also points to many important effects of immigration that may not be widely appreciated: "Immigration is the greatest anti-poverty program ever conceived. Not just because the immigrants are much better off but also because they send billions of dollars of their own money back to their home countries—a form of truly effective foreign aid."

Enhancing National Security: Comprehensively Reforming our Immigration Laws

Our immigration system is broken. Current laws provide no visa category for many needed workers to enter the U.S. legally and no clear path for undocumented workers to legalize their status. This dysfunctional system requires our government to expend valuable resources to identify, detain, and remove these workers, leaving fewer resources to pursue real national security threats and criminals. This situation is untenable. The public understands that it is unrealistic to deport the eight to ten million immigrants and their families residing here without legal status, or stop the flow of undocumented people crossing our borders to work. We can make immigration legal, safe, and orderly, and improve national security, if we place undocumented immigrants on a path to earned adjustment and create new rules for future immigration that make sense.

Why We Need Comprehensive Reform Legislation, which Includes Effective Enforcement - Make Legality the Norm

To bring immigration under the rule of law. Undocumented immigrant workers and their families are our neighbors, our co-workers, our children's nannies and our parents' caretakers. For too long, our immigration laws have been at odds with economic realities, leading to an increased reliance on smugglers and fake

[31] Daniel E. Hecker, "Occupational Employment Projections to 2010," *Monthly Labor Review* (Nov. 2001).
[32] "Immigration Consensus," *Wall Street Journal On-line*, June 20, 2006.

documents. Creating a path to legal status for these valued workers would allow them to come forward, undergo security screenings, and seek legal status. This type of legislation will allow us to know who is here and who is admitted in the future, and create a realistic and orderly immigration system that can be meaningfully enforced.

To make legality the norm and reduce illegal immigration. We need fair and reasonable rules that are realistic and enforceable. We must replace the chaotic, deadly, and illegal flows at our borders with orderly, safe, and legal avenues for immigrant workers and families. In the absence of legal means to obtain work and unite with family members, law-abiding people will take desperate measures. We need laws that embrace reality so that legality becomes the norm.

To improve our enforcement capacity. Enforcing a dysfunctional immigration system leads to more dysfunction and diversion from important objectives. Enforcement resources are inevitably overextended dealing with the undocumented population seeking employment. With laws that encourage illegality, our enforcement agencies waste time and resources investigating workers and families instead of tracking terrorists and criminals. Shrinking the pool of law enforcement targets will enable our officers to train their sights on those who mean to do us harm.

What realistic and effective legislation would accomplish:

It would enable our law enforcement agencies to focus on terrorists and criminals. By bringing undocumented workers and their families out of the shadows and requiring them to pass through security checks, we will dramatically reduce the pool of enforcement targets. Our investigative resources would be more effectively focused on terrorists and criminals.

It would encourage legality at our borders. By providing individuals with a legal mechanism to enter the country to work and reunite with family members, we encourage a legal, orderly admissions process. This limits the dangers confronting both immigrants and border patrol agents, and curtails the use of increasingly violent "coyotes" or human smugglers.

CONCLUSION

The realistic cure to border security involves a multi-layered approach, which reflects the complexity of the issue. The border is our last line of defense. To characterize the achievement of "border security" as the trigger for comprehensive reform of our immigration system is a myopic approach to a much larger issue. In fact, comprehensively reforming our immigration laws is a necessary component to enhancing our security. We must recognize the draw of our economic needs and the total dysfunctionality of our current immigration system. In addition, we must recognize that the "border" is not that line between

Mexico and the U.S. or Canada and the U.S. Intelligent and strategic immigration reform measures address the border at its true starting point: outside of the U.S. Such reform also addresses the problem of our economic needs for workers as well as the need to improve funding and oversight of interior security efforts such as worksite enforcement. The Department of State consular officer, the Department of Homeland Security agent or officer abroad, and our international partners in security and intelligence should all be a part of the true border security effort. Thus, triggering on a "border security" first or enforcement only cure to our immigration related challenges is a failed approach to meet our current and future immigration and economic demands. We ask Congress and the President to have the intestinal fortitude and strength of character in difficult and challenging times to meet this task head on rather than hide within optical sound bytes of achieving "border security" first before addressing the whole equation, which includes immigration reform, to achieve security and economic objectives for the good of this nation we love.

HR. 4437, SEC. 607. DESIGNATED COUNTY LAW ENFORCEMENT ASSISTANCE PROGRAM.

(a) Designated Counties Adjacent to the Southern Border of the United States Defined- In this section, the term 'designated counties adjacent to the southern international border of the United States' includes a county any part of which is within 25 miles of the southern international border of the United States.

(b) Authority-

(1) IN GENERAL- Any Sheriff or coalition or group of Sheriffs from designated counties adjacent to the southern international border of the United States may transfer aliens detained or in the custody of the Sheriff who are not lawfully present in the United States to appropriate Federal law enforcement officials, and shall be promptly paid for the costs of performing such transfers by the Attorney General for any local or State funds previously expended or proposed to be spent by that Sheriff or coalition or group of Sheriffs.

(2) PAYMENT OF COSTS- Payment of costs under paragraph (1) shall include payment for costs of detaining, housing, and transporting aliens who are not lawfully present in the United States or who have unlawfully entered the United States at a location other than a port of entry and who are taken into custody by the Sheriff.

(3) LIMITATION TO FUTURE COSTS- In no case shall payment be made under this section for costs incurred before the date of the enactment of this Act.

(4) ADVANCE PAYMENT OF COSTS- The Attorney General shall make an advance payment under this section upon a certification of anticipated costs for which payment may be made under this section, but in no case shall such an advance payment cover a period of costs of longer than 3 months.

(c) Designated County Law Enforcement Account-

(1) SEPARATE ACCOUNT- Reimbursement or pre-payment under subsection (b) shall be made promptly from funds deposited into a separate account in the Treasury of the United States to be entitled the 'Designated County Law Enforcement Account'.

(2) AVAILABILITY OF FUNDS- All deposits into the Designated County Law Enforcement Account shall remain available until expended to the Attorney General to carry out the provisions of this section.

(3) PROMPTLY DEFINED- For purposes of this section, the term 'promptly' means within 60 days.

(d) Funds for the Designated County Law Enforcement Account- Only funds designated, authorized, or appropriated by Congress may be deposited or transferred to the Designated County Law Enforcement Account. The Designated County Law Enforcement Account is authorized to receive up to $100,000,000 per year.

(e) Use of Funds-

(1) IN GENERAL- Funds provided under this section shall be payable directly to participating Sheriff's offices and may be used for the transfers described in subsection (b)(1), including the costs of personnel (such as overtime pay and costs for reserve deputies), costs of training of such personnel, equipment, and, subject to paragraph (2), the construction, maintenance, and operation of detention facilities to detain aliens who are unlawfully present in the United

States. For purposes of this section, an alien who is unlawfully present in the United States shall be deemed to be a Federal prisoner beginning upon determination by Federal law enforcement officials that such alien is unlawfully present in the United States, and such alien shall, upon such determination, be deemed to be in Federal custody. In order for costs to be eligible for payment, the Sheriff making such application shall personally certify under oath that all costs submitted in the application for reimbursement or advance payment meet the requirements of this section and are reasonable and necessary, and such certification shall be subject to all State and Federal laws governing statements made under oath, including the penalties of perjury, removal from office, and prosecution under State and Federal law.

(2) LIMITATION- Not more than 20 percent of the amount of funds provided under this section may be used for the construction or renovation of detention or similar facilities.

(f) Disposition and Delivery of Detained Aliens- All aliens detained or taken into custody by a Sheriff under this section and with respect to whom Federal law enforcement officials determine are unlawfully present in the United States, shall be immediately delivered to Federal law enforcement officials. In accordance with subsection (e)(1), an alien who is in the custody of a Sheriff shall be deemed to be a Federal prisoner and in Federal custody.

(g) Regulations- The Attorney General shall issue, on an interim final basis, regulations not later than 60 days after the date of the enactment of this Act--

(1) governing the distribution of funds under this section for all reasonable and necessary costs and other expenses incurred or proposed to be incurred by a Sheriff or coalition or group of Sheriffs under this section; and

(2) providing uniform standards that all other Federal law enforcement officials shall follow to cooperate with such Sheriffs and to otherwise implement the requirements of this section.

(h) Effective Date- The provisions of this section shall take effect on its enactment. The promulgation of any regulations under subsection (g) is not a necessary precondition to the immediate deployment or work of Sheriffs personnel or corrections officers as authorized by this section. Any reasonable and necessary expenses or costs authorized by this section and incurred by such Sheriffs after the date of the enactment of this Act but prior to the date of the promulgation of such regulations are eligible for reimbursement under the terms and conditions of this section.

(i) Audit- All funds paid out under this section are subject to audit by the Inspector General of the Department of Justice and abuse or misuse of such funds shall be vigorously investigated and prosecuted to the full extent of Federal law.

(j) Supplemental Funding- All funds paid out under this section must supplement, and may not supplant, State or local funds used for the same or similar purposes.

H.R. 4437, SEC. 203. IMPROPER ENTRY BY, OR PRESENCE OF, ALIENS.

Section 275 of the Immigration and Nationality Act (8 U.S.C. 1325) is amended--

(1) in the section heading, by inserting `UNLAWFUL PRESENCE;' after `IMPROPER TIME OR PLACE;';

(2) in subsection (a)--

(A) by striking `Any alien' and inserting `Except as provided in subsection (b), any alien';

(B) by striking `or' before (3);

(C) by inserting after `concealment of a material fact,' the following: `or (4) is otherwise present in the United States in violation of the immigration laws or the regulations prescribed thereunder,'; and

(D) by striking `6 months' and inserting `one year and a day';

(3) by amending subsection (c) to read as follows:

`(c)(1) Whoever--

`(A) knowingly enters into a marriage for the purpose of evading any provision of the immigration laws; or
`(B) knowingly misrepresents the existence or circumstances of a marriage--
`(i) in an application or document arising under or authorized by the immigration laws of the United States or the regulations prescribed thereunder, or
`(ii) during any immigration proceeding conducted by an administrative adjudicator (including an immigration officer or examiner, a consular officer, an immigration judge, or a member of the Board of Immigration Appeals);
shall be fined under title 18, United States Code, or imprisoned not more than 10 years, or both.
`(2) Whoever--
`(A) knowingly enters into two or more marriages for the purpose of evading any provision of the immigration laws; or
`(B) knowingly arranges, supports, or facilitates two or more marriages designed or intended to evade any provision of the immigration laws;
shall be fined under title 18, United States Code, imprisoned not less than 2 years nor more than 20 years, or both.
`(3) An offense under this subsection continues until the fraudulent nature of the marriage or marriages is discovered by an immigration officer.
`(4) For purposes of this section, the term `proceeding' includes an adjudication, interview, hearing, or review.'
(4) in subsection (d)--
(A) by striking `5 years' and inserting `10 years';
(B) by adding at the end the following: `An offense under this subsection continues until the fraudulent nature of the commercial enterprise is discovered by an immigration officer.'; and
(5) by adding at the end the following new subsections:
`(e)(1) Any alien described in paragraph (2)--
`(A) shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both, if the offense described in such paragraph was committed subsequent to a conviction or convictions for commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony;
(B) whose violation was subsequent to conviction for a felony for which the alien received a sentence of 30 months or more, shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both; or
(C) whose violation was subsequent to conviction for a felony for which the alien received a sentence of 60 months or more, shall be fined under title 18, United States Code, imprisoned not more than 20 years, or both.
`(2) An alien described in this paragraph is an alien who--
`(A) enters or attempts to enter the United States at any time or place other than as designated by immigration officers;
`(B) eludes examination or inspection by immigration officers;
`(C) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact; or
`(D) **is otherwise present in the United States in violation of the immigration laws or the regulations prescribed thereunder.**
`(3) The prior convictions in subparagraph (A), (B), or (C) of paragraph (1) are elements of those crimes and the penalties in those subparagraphs shall apply only in cases in which the conviction (or convictions) that form the basis for the additional penalty are alleged in the indictment or information and are proven beyond a reasonable doubt at trial or admitted by the defendant in pleading guilty. Any admissible evidence may be used to show that the prior conviction is a qualifying crime, and the criminal trial for a violation of this section shall not be bifurcated.
`(4) An offense under subsection (a) or paragraph (1) of this subsection continues until the alien is discovered within the United States by immigration officers.
`(f) For purposes of this section, the term `attempts to enter' refers to the general intent of the alien to enter the United States and does not refer to the intent of the alien to violate the law.'.

ATTACHMENTS

RESOLUTION IN SUPPORT OF COMPREHENSIVE IMMIGRATION REFORM

WHEREAS, the El Paso area was originally discovered by Spanish explorers in 1581, commencing over 400 years as a border community;

WHEREAS, in 2003, trade through the land ports along the U.S.-Mexico Border represented about 83 percent of the trade between the countries. Together, the top 10 ports of entry account for 98 percent of trade passing through the border. El Paso had approximately 20.2 percent of the exports, which put the city only behind Laredo in volume. As to numbers of overall inspections of people, El Paso surpasses all ports of entry in Texas. With $152 billion in land trade with Mexico, Texas surpassed other states by far: California ($30 billion), Arizona ($12 billion) and New Mexico ($1.1 billion);

WHEREAS, the balance of the facilitation of trade with the need to make our community secure has long been of principle importance;

WHEREAS, the El Paso community has worked with representatives and agencies in Mexico and the United States for many years to create secure trade and traffic programs, including the first Dedicated Commuter Lane ("DCL") and Fast and Secure Trade ("FAST") in Texas;

WHEREAS, current immigration law does not have timely legal alternatives to allow companies or individuals to employ such essential workers as those needed in the construction, healthcare, restaurant, transportation, hotel, elder care, and child care job sectors, among others; and

WHEREAS, on December 16, 2005, the U.S. House of Representatives passed H.R. 4437, which fundamentally proposes an enforcement only approach to the complex issue of the control of illegal immigration and the improvement of border security.

THEREFORE, BE IT HEREBY:

RESOLVED, that the complex issues of illegal immigration and a porous border cannot be fixed by an enforcement only approach. Any solutions must take a multi-layered approach to multi-layered issues created over decades of neglect.

RESOLVED, that rational enforcement of immigration policies should include increasing the number of federal enforcement personnel along the border and utilization of the new technologies that are being used by branches of the military and other law enforcement agencies.

RESOLVED, that the construction of a fence along the entire southern border or the militarization of the border are not solutions.

RESOLVED, that a solution must address allowing the undocumented in the United States who are filling legitimate employment needs a means to obtain legal status without placing them ahead of those who applied to enter the U.S. legally.

RESOLVED, that immigration processing backlogs must be reduced for those with valid pending applications.

RESOLVED, that new legislation must address document fraud and include severe penalties for those who prey upon undocumented aliens.

RESOLVED, that people offering to "assist" an undocumented person in the U.S. by providing food, shelter, counseling, or transportation must not be exposed to criminal penalties, if they are not engaged knowingly in smuggling or aiding said individuals to enter into the United States.

RESOLVED, that employers should be provided with a transition period to comply with new document verification processes.

RESOLVED, that any reform of current immigration laws that will have meaningful, long term impact must include active involvement by the Mexican Government.

Approved by the Governing Board of The Greater El Paso Chamber of Commerce on March 21, 2006.

The Independent Institute

Open Letter

Open Letter on Immigration

June 19, 2006

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Dear President George W. Bush and All Members of Congress:

People from around the world are drawn to America for its promise of freedom and opportunity. That promise has been fulfilled for the tens of millions of immigrants who came here in the twentieth century.

Throughout our history as an immigrant nation, those who were already here have worried about the impact of newcomers. Yet, over time, immigrants have become part of a richer America, richer both economically and culturally. The current debate over immigration is a healthy part of a democratic society, but as economists and other social scientists we are concerned that some of the fundamental economics of immigration are too often obscured by misguided commentary.

Overall, immigration has been a net gain for American citizens, though a modest one in proportion to the size of our 13 trillion-dollar economy.

Immigrants do not take American jobs. The American economy can create as many jobs as there are workers willing to work so long as labor markets remain free, flexible and open to all workers on an equal basis.

In recent decades, immigration of low-skilled workers may have lowered the wages of domestic low-skilled workers, but the effect is likely to have been small, with estimates of wage reductions for high-school dropouts ranging from eight percent to as little as zero percent.

While a small percentage of native-born Americans may be harmed by immigration, vastly more Americans benefit from the contributions that immigrants make to our economy, including lower consumer prices. As with trade in goods and services, the gains from immigration outweigh the losses. The effect of all immigration on low-skilled workers is very likely positive as many immigrants bring skills, capital and entrepreneurship to the American economy.

Legitimate concerns about the impact of immigration on the poorest Americans should not be addressed by penalizing even poorer immigrants. Instead, we should promote policies, such as improving our education system, that enable Americans to be more productive with high-wage skills.

We must not forget that the gains to immigrants coming to the United States are immense. Immigration is the greatest anti-poverty program ever devised. The American dream is a reality for many immigrants who not only increase their own living standards but who also send billions of dollars of their money back to their families in their home countries—a form of truly effective foreign aid.

America is a generous and open country and these qualities make America a beacon to the world. We should not let exaggerated fears dim that beacon.

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RESOLUTION

WHEREAS, the El Paso/Juarez Community embraces the international nature of our community and believes that our border joins us and does not divide us.

WHEREAS, in 2003, trade through the land ports along the U.S.-Mexico Border represented about 83 percent of the trade between the countries. Together, the top 10 ports of entry account for 98 percent of trade passing through the border. El Paso had approximately 20.2 percent of the exports, which put the city only behind Laredo in volume. As to numbers of overall inspections of people, El Paso surpasses all ports of entry in Texas. With $152 billion in land trade with Mexico, Texas surpassed other states by far: California ($30 billion), Arizona ($12 billion) and New Mexico ($1.1 billion);

WHEREAS, the balance of the facilitation of trade with the need to make our community secure has long been of principle importance;

WHEREAS, the El Paso community has worked with representatives and agencies in Mexico and the United States for many years to create secure trade and traffic programs, including the first Dedicated Commuter Lane ("DCL") and Fast and Secure Trade ("FAST") in Texas;

WHEREAS, current immigration law does not have timely legal alternatives to allow companies or individuals to employ such essential workers as those needed in the construction, healthcare, restaurant, transportation, hotel, elder care, and child care job sectors, among others; and

WHEREAS, on December 16, 2005, the U.S. House of Representatives passed H.R. 4437, which fundamentally proposes an enforcement only approach to the complex issue of the control of illegal immigration and the improvement of border security.

THEREFORE, BE IT HEREBY:

RESOLVED, that the complex issues of illegal immigration and a porous border cannot be fixed by an enforcement only approach. Any solutions must take a multi-layered approach to multi-layered issues created over decades of neglect.

RESOLVED, that when addressing issues of border security, the emphasis should be on the use of new and emerging technologies that will facilitate legitimate trade and border crossings.

RESOLVED, that the construction of a fence along the entire southern border or the militarization of the border are not reasonable solutions.

RESOLVED, that a solution must address allowing the undocumented in the United States who are filling legitimate employment needs a means to obtain legal status without placing them ahead of those who applied to enter the U.S. legally.

RESOLVED, that immigration processing backlogs must be reduced for those with valid pending applications.

RESOLVED, that new legislation must address document fraud and include severe penalties for those who prey upon undocumented aliens.

RESOLVED, that people offering to "assist" an undocumented person in the U.S. by providing food, shelter, counseling, or transportation must not be exposed to criminal penalties, if they are not engaged knowingly in smuggling or aiding said individuals to enter into the United States.

RESOLVED, that the City of El Paso will continue to work in a collaborative manner with our Sister City, Ciudad Juarez, Chihuahua, and other governmental entities in the El Paso/ Juarez Borderplex to address issues that are unique to the bi-national, multi-cultural community in which we live.

RESOLVED, that the City of El Paso will provide input and seek legislation regarding border security and immigration reform that is effective, responsible, humanitarian and not an encumbrance to international commerce.

ADOPTED this the 4th day of April 2006 by the City Council of the City of El Paso.

CITY OF EL PASO:

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

MEMBERS OF THE EL PASO CITY COUNCIL:

Ann Morgan Lilly
Representative District 1

Susie Byrd
Representative District 2

Document #: 21166
Document Name: Lobby/6/Reso support immigration reform
Document Author: SFIR

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Steve Ortega
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Representative District 8

APPROVED AS TO FORM:

Sylvia Borunda Firth
Assistant City Attorney

Chairman SENSENBRENNER. Chief Wiles.

TESTIMONY OF RICHARD WILES, CHIEF OF POLICE, EL PASO POLICE DEPARTMENT

Mr. WILES. Honorable Chairman and Members, thank you for the opportunity to be here with you today. Welcome to El Paso. I hope, while you've been here, you've had the opportunity to enjoy our great city, even though it's been raining a little bit.

El Paso is immersed in tradition and culture, but its uniqueness comes from being the largest city in the United States on an international border.

But we are connected in many ways. Each day, tens of thousands of vehicles and pedestrians move across one of three international bridges between the two cities. Much of this traffic is attributed to NAFTA, shoppers, students, workers, et cetera, traveling between the two countries. It is estimated that the economy of El Paso is favorably impacted by tens of millions of dollars each year because of Mexican shoppers. There is no getting around it, our cities are economically tied to each other in many ways.

But much more important than economics is the issue of families. The Rio Grande divides much more than our two countries, it divides families. Much of the traffic on our bridges is simply everyday people doing all they can to maintain their family relationships. It goes without saying that many United States citizens living in El Paso are originally from Mexico or descendents from individuals who have migrated from Mexico.

According to the 2000 U.S. census, over 78 percent of the population of El Paso is made up of Hispanics or Latinos. 73 percent speak a language other than English at home. And 27 percent of the residents in El Paso are foreign-born. That makes us very unique.

And it makes the situation very difficult when the Federal Government is talking about immigration and immigration reform and trying to tie it in to problems that other cities are having around our nation. We are no strangers to illegal immigration issues.

It's been said, and I agree wholeheartedly, that most illegal immigrants are coming into the United States to seek a better life for themselves and their families. And we do know that we have some that come here for criminal intent. There are drug smugglers. There are human trafficking that occurs. There are criminals that take advantage of the illegal immigrants and commit crimes against them. And those are issues that we have to deal with.

The Federal Government is clearly facing a major challenge when dealing with issues of immigration and immigration reform. There must be a constant balance of ensuring that while the flow of illegal immigration is curtailed, those engaged in lawful migration for purposes of trade and our personal matters are unimpeded.

There's two issues that I want to comment about today, and the first one is the issue of what we've discussed about, are illegal immigrants coming over here to commit crimes. I just want to point out that El Paso, as I've mentioned, has many immigrants, both illegal and legal. And El Paso has been named the second safest city in the United States with a population of over 500,000. We've had that position for two or 3 years now. And prior to that, we were

the third safest city. This is a research—an independent research conducted by Morgan Quitno Press. It includes all the major cities—all the cities in the United States and then separates the major cities over 500,000.

If it were true that the majority of illegal immigrants were coming over here to commit crimes, why is El Paso so safe? You would think here, more than anywhere, we would have significant crime problems within our city limits, and we do not have those problems.

The other issue is in regards to, should local law enforcement be enforcing immigration law? As the Chief of Police of the City of El Paso, I am a member of the Major City Chiefs, which is a leader in the law enforcement field and represents the local law enforcement community. It is comprised of 57 law enforcement executives of the largest police organizations in the United States and Canada.

In June of 2006, the Major City Chiefs adopted a position specific to the issue of enforcement of immigration laws by local police agencies. Because of all the issues that's involved in a city such as El Paso, I was asked to serve on a committee with eight other high-ranking police executives, including the Sheriff of Los Angeles County, the Chief of Police from Los Angeles Police Department, Detroit, New York, Seattle, Tucson and Miami-Dade. This committee ultimately submitted a proposal that was adopted by the Major City Chiefs as the official stance of the entire organization. And I have submitted that proposal for your review.

The issues are numerous, but the main issues I want to point out is lack of resources. We are struggling to retain and recruit officers just to do the daily police and quality-of-life issues that our community expects of us. To expect us to take on another issue, such as immigration, and to find the time to be able to do that, we just don't—we just don't have that time. We don't have the resources.

Secondly, immigration law is very complex. They involve both civil and criminal statutes. The Federal Government and its designated agencies under the Department of Justice and Department of Homeland Security have clear authority and responsibility to regulate and enforce immigration laws.

The most important one, though, that I would like to point out is, what makes El Paso safe is community policing and the trust and partnerships that we've built with the members of our community. We have a significant immigrant community. In addressing crime and disorder at the macro level, we cannot simply police around undocumented immigrants. We need the trust and cooperation of victims and witnesses, whether they are documented or not.

I would like to just close in saying that the communities across our nations are diverse, and many are dealing with a vast amount of social problems and ills, some caused by illegal immigration and some not. Since this issue is one that squarely falls within the realm of jurisdiction of the Federal Government, it's not even proper to ask communities to consider this issue as a cause of dissension and friction in communities that have other pressing problems to deal with. The United States government needs to address this issue at the Federal level.

Understanding that while State and local agencies should not be burdened with the enforcement of immigration laws, we stand ready to assist in areas involving criminal activity.

Thank you.

Chairman SENSENBRENNER. Thank you, Chief.

[The prepared statement of Mr. Wiles follows:]

PREPARED STATEMENT OF RICHARD D. WILES

JOHN COOK
MAYOR

JOYCE WILSON
CITY MANAGER

RICHARD D. WILES
CHIEF OF POLICE

OFFICE OF THE CHIEF OF POLICE

CITY COUNCIL
ANN MORGAN LILLY, DISTRICT 1
SUSIE BYRD, DISTRICT 2
ALEXANDRO LOZANO, DISTRICT 3
MELINA CASTRO, DISTRICT 4
PRESI ORTEGA, DISTRICT 5
EDDIE HOLGUIN JR., DISTRICT 6
STEVE ORTEGA, DISTRICT 7
BETO O'ROURKE, DISTRICT 8

August 14, 2006

U.S. House of Representatives
House Judiciary Committee
Washington, D.C. 20515

Dear Committee Members:

I am writing to respond to your invitation to testify before your sub-committee hearing on Thursday, August 17th, 2006, at 10:00am, at the Chamizal Theater in El Paso, Texas. As the Chief of the El Paso Police Department, I appreciate and thank you for the honor and privilege of being allowed to have input into this very serious issue facing our nation today.

According to the 2000 Census, the City of El Paso, Texas is the fifth largest city in the State of Texas and the twenty-third largest city in the United States with a population of 563,662 covering 251.2 square miles. El Paso is immersed in tradition and culture, but its uniqueness comes from being the largest city in the United States situated on an international border. Ciudad Juarez, Mexico, El Paso's sister city, is the largest city in the State of Chihuahua and the fifth largest city in all of Mexico with a population of approximately 1.3 million.

El Paso and Juarez are connected in many ways. Each day, tens of thousands of vehicles and pedestrians move across one of three international bridges between the two cities. Much of this traffic can be attributed to NAFTA, but much more is because of the daily influx of shoppers and tourists traveling between the two countries. It is estimated that the El Paso economy is favorably impacted by tens of millions of dollars each year because of Mexican shoppers. There is no getting around it; our cities are economically tied to each other in many ways.

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But much more important than economics is the issue of families. The Rio Grande divides much more than our two countries. It divides families. Much of the traffic on our bridges is simply everyday people doing all they can to maintain their family relationships. It goes without saying that many United States citizens living in El Paso are originally from Mexico or are descendents from individuals who migrated from Mexico. According to the 2000 census, over 78% of the population of El Paso is made up of Hispanics or Latinos and 73% speak a language other than English at home. Additionally, 27% of residents of El Paso are foreign born.

The City of El Paso is certainly no stranger to illegal immigration issues. In 1993, just prior to the institution of Operation Blockade by the U.S. Border Patrol, there were over 285,781 apprehensions by the U.S. Border Patrol of undocumented migrants. This initiative, now called Operation Hold the Line, has had a tremendous effect on reducing the occurrences of illegal migration into the City of El Paso. In 1994, the apprehensions by the U.S. Border Patrol of undocumented migrants dropped to 79,688. A decrease of 206,093 apprehensions. Operation Blockade was initiated by then U.S. Border Patrol Sector Chief Silvestre Reyes, now our Honorable Congressman.

While most illegal immigrants are coming into the United States seeking a better way of life for themselves and their families, there is a small minority that has criminal intent. Whether involved in drug smuggling, human trafficking, terrorism or some other criminal offense, their illegal actions have an impact on our citizenry. In 1993 when Operation Hold the Line was first implemented, the crime index for the City of El Paso was 5,546. In 1994, the index dropped to 3,904. While there are certainly many factors that contributed to the decrease in the index crime rate, it is believed among law enforcement professionals in El Paso that Operation Hold the Line has had and continues to have some impact.

The leadership of the federal government is clearly facing a major challenge when dealing with issues of immigration and immigration reform. There must be a constant balance of ensuring that while the flow of illegal immigration is curtailed, those engaged in lawful migration for purposes of trade and/or personal matters are unimpeded.

As the Chief Of Police for the City of El Paso, I am a member of the Major Cities Chiefs (MCC's), which is a leader in the law enforcement field and representative of the local law enforcement community. It is comprised of the 57 law enforcement executives of the largest police organizations in the United States and Canada. In June of 2006, the Major Cities Chiefs adopted a position specific to the issue of enforcement of immigration laws by local police agencies. Because of all the issues this involves in a city such as El Paso, I was asked to serve on a committee with eight other high-level police executives including:

Craig E. Ferrell, Jr., MCC General Counsel
Leroy D. Baca, Los Angeles County Sheriff's Department
William J. Bratton, Los Angeles Police Department

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Ella M. Bully-Cummings, Detroit Police Department
Raymond W. Kelley, New York City Police Department
Gil Kerlikowske, Seattle Police Department
Richard Miranda, Tucson Police Department
Robert Parker, Miami-Dade Police Department

This committee ultimately submitted a proposal that was adopted by the MCC's as the official stance of the entire organization. I attach this report for your review.

Clearly, there are serious concerns by most police executives in regard to having local police departments enforce federal immigration law. Police Departments must consider the following (some are excerpts from MCC's report):

1) **The potential of undermining trust and cooperation of immigrant communities.** El Paso, like many other communities, has a significant immigrant community. In addressing crime and disorder at a macro-level, we cannot simply police around undocumented immigrants. We need the trust and cooperation of victims and witnesses whether they are documented or not. A failure in this regard means that crimes go unreported and as such, our ability to maintain public order, safety and security in the community is compromised. There are many reports where perpetrators threaten undocumented victims with deportation if they report the crime. Immigration enforcement by local police would likely increase these threats and undermine the level of trust and cooperation between local police and immigrant communities. Local police contacts in immigrant communities are important as well in the area of intelligence gathering to prevent future terrorists attacks and strengthen homeland security.

2) **Lack of Resources.** Many local departments are struggling with resources. This is especially true as the federal government reduces funding to local agencies. Additionally, most departments are having major problems with retention as well as recruitment of new officers. The applicant pool as been reduced over the last few years because of the increase in law enforcement opportunities (post 9/11 Homeland Security positions, increase in U.S Border Patrol, etc) as well as current military operations overseas.

3) **Complexity of Federal Immigration Law.** Federal immigration laws are extremely complicated in that they involve both civil and criminal statutes. The federal government and its designated agencies under the Department of Justice and the Department of Homeland Security have clear authority and responsibility to regulate and enforce immigration laws.

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4) **Lack of Local Authority and State Law Limitations of Authority.** The federal government has clear authority over immigration and immigration enforcement. Federal law does not require the states or local police agencies to enforce immigration laws nor does it give the states or local agencies the clear authority to act in the area of immigration. In addition, state laws and local authority may restrict a local police officer's authority to act. Federal agents are specifically authorized to stop persons and conduct investigations as to immigration status without a warrant. Local police officers may be constrained by state and local laws that deal with their general police powers such as the ability to arrest without a warrant, lengths of detention and prohibitions against racial profiling.

5) **Risk of Civil Liability.** Because of the aforementioned issues, local police agencies would face the risk of civil liability and litigation if they chose to enforce federal immigration laws.

It is clear that the federal government is attempting to "tap-in" to the personnel resources of local police agencies to assist in the enforcement of immigration laws that are clearly within the realm of federal jurisdiction. Because of the lack of resources, lack of training in very complex immigration laws, lack of authority at the state and local level and the increased risk of civil liability and litigation, this will most certainly place a tremendous burden on local police agencies and their municipalities.

While many citizens in our communities are supportive of our efforts in working with federal law enforcement agencies when the actions of the perpetrators are purely criminal (i.e., Safe Street Task Force, Human Smuggling Task Force, Internet Crimes Against Children, Fugitive Task Force, HIDTA, etc.), they are far less supportive when the issue at hand is the enforcement of immigration laws. This is not to say that the City of El Paso is a sanctuary for undocumented immigrants. Because of its location on the border, El Paso is the home of many federal agencies that deal with immigration issues on a daily basis. In addition, the Procedures Manual of the El Paso Police Department states that although officers may not arrest an individual based solely on their citizenship status, "when Officers determine, through legal means, that an individual is an undocumented immigrant, he or she will be turned over to the U.S. Border Patrol."

The communities across our great nation are diverse and many are dealing with a vast amount of social problems and ills, some caused by illegal immigration and some not. Since this issue is one that squarely falls within the federal realm of jurisdiction, it is not proper to even ask communities to consider this issue as it causes dissension and friction in communities that have other pressing issues to deal with.

In conclusion, the United States government needs to address this issue at the federal level, understanding that while state and local agencies should not be burdened with the enforcement of immigration laws, we stand ready to assist in areas involving criminal activity, without regard for the perpetrators' immigration status. This is especially true in the area of Homeland Security where we stand together with the federal government in efforts to protect our nation from future terrorists attacks.

Sincerely,

Richard D. Wiles
Chief of Police

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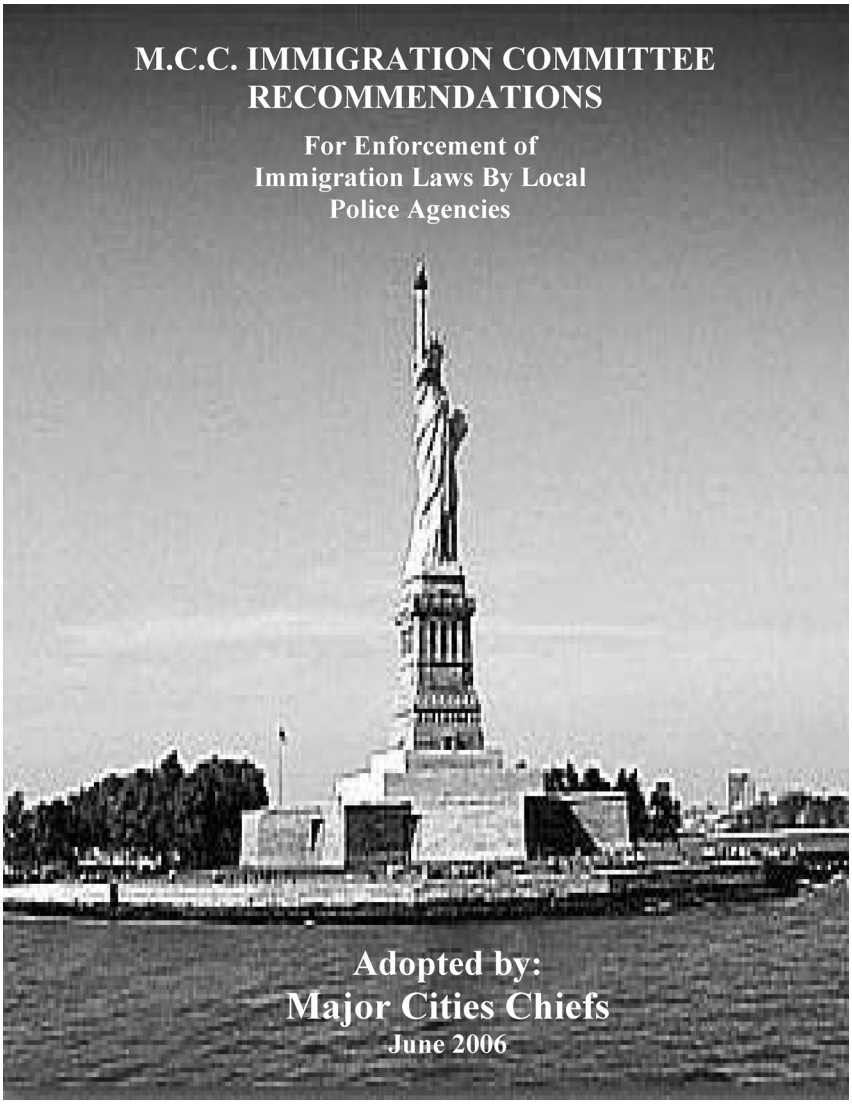
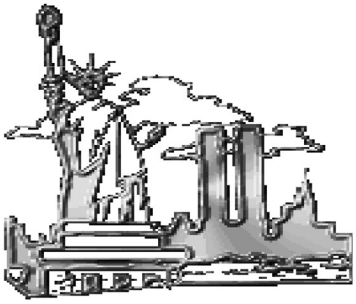

M.C.C. IMMIGRATION COMMITTEE
RECOMMENDATIONS
For Enforcement of
Immigration Laws By Local
Police Agencies
Adopted by:
Major Cities Chiefs
June 2006

Prepared By:

M.C.C. IMMIGRATION COMMITTEE MEMBERS:



Craig E. Ferrell, Jr., (M.C.C. General Counsel),
Chairman of Immigration Committee, Houston Police Department

Leroy D. Baca, Los Angeles County Sheriff's Department
William J. Bratton, Los Angeles Police Department
Ella M. Bully-Cummings, Detroit Police Department
Raymond W. Kelly, New York City Police Department
Gil Kerlikowske, Seattle Police Department
Richard Miranda, Tucson Police Department
Robert Parker, Miami-Dade Police Department
Richard D. Wiles, El Paso Police Department

M.C.C. NINE (9) POINT POSITION STATEMENT

ENFORCEMENT OF IMMIGRATION LAWS BY LOCAL POLICE AGENCIES

A. STATEMENT OF ISSUE

Illegal immigration is a problem that faces our nation and society as a whole and one, which must be dealt with at the national level. It is absolutely critical that our country develop a consistent unified national plan to deal with immigration and this plan must include the critical component of securing our borders to prevent illegal entry into the United States.

Since the horrendous attacks of September 11, 2001, local law enforcement has been called upon to do its part in protecting the nation from future terrorist attacks. The response of local law enforcement to the call to protect the homeland has been tremendous. Today, local police agencies stand as the first line of defense here at home to prevent future attacks. Local law enforcement's unending efforts include providing additional training and equipment to officers, increasing communication and coordination with federal agencies, gathering, assessing and sharing intelligence, modifying patrol methods and increasing security for potential targets such as power plants, airports, monuments, ports and other critical facilities and infrastructure. Much of these efforts have been at a high cost to local budgets and resources.

The federal government and others have also called upon local police agencies to become involved in the enforcement of federal immigration laws as part of the effort to protect the nation. This issue has been a topic of great debate in the law enforcement community since September 11. The call for local enforcement of federal immigration laws has become more prominent during the debate over proposed immigration reform at the national level.

Major city police departments have a long undeniable history of working with federal law enforcement agencies to address crime in the United States whether committed by citizens, visitors, and/or illegal immigrants. Local police agencies have not turned a blind eye to crimes related to illegal immigration. They have and continue to work daily with federal agencies whenever possible and to the extent allowable under state criminal law enforcement authority to address crimes such as human trafficking and gang violence which have a nexus with illegal immigration.

How local agencies respond to the call to enforce immigration laws could fundamentally change the way they police and serve their communities. Local enforcement of federal immigration laws raises many daunting and complex legal, logistical and resource issues for local agencies and the diverse communities they serve. Some in local law enforcement would embrace

immigration enforcement as a means of addressing the violation of law represented by illegal immigration across our borders. Many others recognize the obstacles, pitfalls, dangers and negative consequences to local policing that would be caused by immigration enforcement at the local level.

It is important for Major Cities Chiefs [M.C.C.] as a leader and representative of the local law enforcement community develop consensus on this important subject. The purpose of this position statement is to evaluate and address the impact and potential consequences of local enforcement of federal immigration laws and highlight steps, which if taken might allow local agencies to become involved in immigration enforcement. It is hoped that this statement will help to draw attention to the concerns of local law enforcement and provide a basis upon which to discuss and shape any future national policy on this issue. In this regard it is absolutely critical that M.C.C. be involved in all phases of this debate from developing this official position statement to demanding input and involvement in the development of any national initiatives.

B. OVERVIEW OF IMMIGRATION AND IMMIGRANT STATUS

The federal government has the clear authority and responsibility over immigration and the enforcement of immigration laws. With this authority, the federal government has enacted laws, such as the Immigration and Naturalization Act (INA), that regulate a person's entry into the United States, his or her ability to remain in the country, and numerous other aspects of immigration. The federal government has given federal agencies such as Immigration and Customs Enforcement [I.C.E.] the specific authority to investigate a person's immigration status and deport individuals who have no legal status or authority to be in the United States.

Under the current immigration laws there exists various immigration status classifications. The immigration status of any particular person can vary greatly. The most common status classifications include the following:

1) **Legal Immigrants** are citizens of other countries who have been granted a visa that allows them to live and work permanently in the United States and to become naturalized U.S. citizens. Once here, they receive a card, commonly referred to as a "green card" from the federal government indicating they are permanent residents. Some legal immigrants are refugees who fear persecution based on race, religion, nationality, membership in a particular social group, or political opinion in their home countries. Refugees are resettled every year in the United States after their requests for asylum have been reviewed and granted.

2) **Nonimmigrant Visa Holders** are persons who are granted temporary entry into the United States for a specific purpose, such as visiting, working, or studying. The U.S. has 25 types of nonimmigrant visas, including A1 visas for ambassadors, B2 visas for tourists, P1 visas for foreign sports stars who play on U.S. teams and TN visas for Canadians and Mexicans entering the U.S. to work under NAFTA. Visa Holders are allowed to stay in the U.S. as long as they meet the terms of their status.

3) **Illegal Immigrants** are citizens of other countries who have entered or remained in the U.S. without permission and without any legal status. Most illegal immigrants cross a land or sea border without being inspected by an immigration officer. Some person falls into illegal status simply by violating the terms of a legal entry document or visa.

4) **Absconders** are persons who entered the United States legally but have since violated the conditions of their visa and who have had a removal, deportation, or exclusion hearing before an immigration judge and are under a final order of deportation and have not left the United States.

Currently there are between 8-12 million illegal immigrants living in the U.S., with another estimated 800,000 illegal immigrants entering the country every year. These immigrants by their sheer numbers have become a significant part of local communities and major cities in our nation. Some major urban areas estimate that their immigrant communities, regardless of immigration status, comprise 50%-60% of the local population and other areas report similar trends. The reality for major local police agencies throughout the nation is that the communities they serve and protect are diverse and include significant immigrant communities including documented and undocumented immigrants.

C. CONCERNS WITH LOCAL ENFORCEMENT OF FEDERAL IMMIGRATION LAWS

Local police agencies must balance any decision to enforce federal immigration laws with their daily mission of protecting and serving diverse communities, while taking into account: limited resources; the complexity of immigration laws; limitations on authority to enforce; risk of civil liability for immigration enforcement activities and the clear need to foster the trust and cooperation from the public including members of immigrant communities.

1) Undermine Trust and Cooperation of Immigrant Communities

Major urban areas throughout the nation are comprised of significant immigrant communities. In some areas the immigrant community reaches 50-60 percent of the local population. Local agencies are charged with protecting these diverse populations with communities of both legal and illegal immigrants. The reality is that undocumented immigrants are a significant part of the local populations major police agencies must protect, serve and police.

Local agencies have worked very hard to build trust and a spirit of cooperation with immigrant groups through community based policing and outreach programs and specialized officers who work with immigrant groups. Local agencies have a clear need to foster trust and cooperation with everyone in these immigrant communities. Assistance and cooperation from immigrant communities is especially important when an immigrant, whether documented or undocumented, is the victim of or witness to a crime. These persons must be encouraged to file reports and come forward with information. Their cooperation is needed to prevent and solve crimes and maintain public order, safety, and security in the whole community. Local

police contacts in immigrant communities are important as well in the area of intelligence gathering to prevent future terroristic attacks and strengthen homeland security.

Immigration enforcement by local police would likely negatively effect and undermine the level of trust and cooperation between local police and immigrant communities. If the undocumented immigrant's primary concern is that they will be deported or subjected to an immigration status investigation, then they will not come forward and provide needed assistance and cooperation. Distrust and fear of contacting or assisting the police would develop among legal immigrants as well. Undoubtedly legal immigrants would avoid contact with the police for fear that they themselves or undocumented family members or friends may become subject to immigration enforcement. Without assurances that contact with the police would not result in purely civil immigration enforcement action, the hard won trust, communication and cooperation from the immigrant community would disappear. Such a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community, create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.

2) Lack of Resources

The budgets and resources of local police agencies are not unlimited. Local police agencies struggle every year to find the resources to police and serve their respective communities. Since the events of September 11, local agencies have taken on the added duty of serving as the first line of defense and response to terrorist attacks for our country. These efforts on the local level to deter and prevent another terrorist attack and to be prepared to respond to the aftermath of an attack have stretched local resources even further. Since the creation of the Homeland Security Department, federal funding for major city police departments has been greatly reduced. Local agencies have also had to take on more responsibilities in areas that have traditionally been handled by the F.B.I. whose investigative resources are now more focused on counter-terrorism efforts. Local agencies are forced to fill the gap left by the shift of federal resources away from investigating white-collar crimes and bank robberies; areas traditionally handled by federal agencies.

Enforcement of federal immigration laws would be a burden that most major police agencies would not be able to bear under current resource levels. The cost in terms of personnel, facilities and equipment necessary for local agencies to address the 8-12 million illegal immigrants currently living in the United States would be overwhelming. The federal government which has primary authority to enforce immigration laws has itself failed to provide the tremendous amount of resources necessary to accomplish such enforcement to its own agencies specifically charged with that responsibility. Local communities and agencies have even fewer resources to devote to such an effort than the federal government given all the numerous other demands on local police departments.

Local police agencies must meet their existing policing and homeland security duties and can not even begin to consider taking on the added burden of immigration enforcement until federal assistance and funding are in place to support such enforcement. Current calls for local police agencies to enforce immigration come with no clear statement or guarantee to provide

adequate federal funding. Local agencies also fear that the call for local enforcement of immigration laws signals the beginning of a trend towards local police agencies being asked to enter other areas of federal regulation or enforcement.

3) Complexity of Federal Immigration Law

Federal immigration laws are extremely complicated in that they involve both civil and criminal aspects. The federal government and its designated agencies such as I.C.E. and the Department of Justice have clear authority and responsibility to regulate and enforce immigration laws. It is these federal agencies who have the authority to determine if a person will be criminally prosecuted for their violations of immigration laws or be dealt with through a civil deportation process. Based on their authority, training, experience and resources available to them, these federal agencies and the federal courts are in the best position to determine whether or not a person has entered or remained in the country in violation of federal regulations and the applicability of criminal sanctions.

Immigration violations are different from the typical criminal offenses that patrol officers face every day on their local beats. The law enforcement activities of local police officers revolve around crimes such as murder, assaults, narcotics, robberies, burglaries, domestic violence, traffic violations and the myriad of other criminal matters they handle on a regular basis. The specific immigration status of any particular person can vary greatly and whether they are in fact in violation of the complex federal immigration regulations would be very difficult if not almost impossible for the average patrol officer to determine. At this time local police agencies are ill equipped in terms of training, experience and resources to delve into the complicated area of immigration enforcement.

4) Lack of Local Authority and State Law Limitations of Authority

The federal government has clear authority over immigration and immigration enforcement. Federal law does not require the states or local police agencies to enforce immigration laws nor does it give the states or local agencies the clear authority to act in the area of immigration.

Laws in their respective states define the authority of local police officers. The authority of local police officers to act to enforce against criminal acts is clear and well established. However, federal immigration laws include both civil and criminal process to address immigration violations. It is within the authority of federal agencies such as I.C.E. and the Department of Justice to determine if an immigration violation will be dealt with as a criminal matter or through a civil process. Given the complexity of the immigration laws, it would be difficult for local police agencies to determine if a particular violation would result in criminal charges or purely civil proceedings and regulation. This duality in immigration law creates a gap in authority for local police officers who generally are limited to acting only in criminal matters.

In addition state laws may restrict a local police officer's authority to act even in criminal matters in such a way that it would prevent or hinder the officer's ability to investigate, arrest or detain a person for immigration violations alone. Federal agents are specifically authorized to stop persons and conduct investigations as to immigration status without a warrant. Local police

officers may be constrained by local laws that deal with their general police powers such as the ability to arrest without a warrant, lengths of detention and prohibitions against racial profiling.

An example of this conflict between the civil nature of immigration enforcement and the established criminal authority of local police exists in the federal initiative of placing civil immigration detainer notices on the N.C.I.C. system. The N.C.I.C. system had previously only been used to notify law enforcement of strictly criminal warrants and/or criminal matters. The civil detainers being placed on this system by federal agencies notify local officers that the detainers are civil in nature by including a warning that local officers should not act upon the detainers unless permitted by the laws of their state. This initiative has created confusion due to the fact that these civil detainers do not fall within the clear criminal enforcement authority of local police agencies and in fact lays a trap for unwary officers who believe them to be valid criminal warrants or detainers.

5) Risk of Civil Liability

In the past, local law enforcement agencies have faced civil litigation and liability for their involvement in immigration enforcement. For example, the Katy, Texas Police Department participated in an immigration raid with federal agents in 1994. A total of 80 individuals who were detained by the police were later determined to be either citizens or legal immigrants with permission to be in the country. The Katy police department faced suits from these individuals and eventually settled their claims out of court.

Because local agencies currently lack clear authority to enforce immigration laws, are limited in their ability to arrest without a warrant, are prohibited from racial profiling and lack the training and experience to enforce complex federal immigration laws, it is more likely that local police agencies will face the risk of civil liability and litigation if they chose to enforce federal immigration laws.

D. M.C.C. NINE (9) POINT POSITION STATEMENT

Based upon a review, evaluation and deliberation regarding the important and complex issue of local enforcement of federal immigration laws, the members of M.C.C., who are the 57 Chief Executive Officers of police departments located within a metropolitan area of more than 1.5 million population and which employs more than 1,000 law enforcement officers, hereby set forth our consensus position statement, which is comprised of nine crucial components.

1) SECURE THE BORDERS

Illegal immigration is a national issue and the federal government should first act to secure the national borders to prevent illegal entry into the United States. We support further and adequate funding of the federal agencies responsible for border security and immigration enforcement so they can accomplish this goal. We also support consideration of all possible solutions including construction of border fences where appropriate, use of surveillance technologies and increases in the number of border patrol agents. Only when the federal government takes the necessary steps to close the revolving door that exists at our national borders will it be possible for local police agencies to even begin to consider dedicating limited local resources to immigration enforcement.

2) ENFORCE LAWS PROHIBITING THE HIRING OF ILLEGAL IMMIGRANTS

The federal government and its agencies should vigorously enforce existing immigration laws prohibiting employers from hiring illegal immigrants. Enforcement and prosecution of employers who illegally seek out and hire undocumented immigrants or turn a blind eye to the undocumented status of their employees will help to eliminate one of the major incentives for illegal immigration.

3) CONSULT AND INVOLVE LOCAL POLICE AGENCIES IN DECISION MAKING

Major Cities Chiefs and other representatives of the local law enforcement community such as the International Association of Chiefs of Police and local district attorneys and prosecutors should be consulted and brought in at the beginning of any process to develop a national initiative to involve local police agencies in the enforcement of federal immigration laws. The inclusion of local law enforcement at every level of development would utilize their perspective and experience in local policing, address their concerns and likely result in a better program that would be more effectively implemented.

4) COMPLETELY VOLUNTARY

Any initiative to involve local police agencies in the enforcement of immigration laws should be completely voluntary. The decisions related to how local law enforcement agencies allocate their resources, direct their workforce and define the duties of their employees to best serve and protect their communities should be left in the control of state and local governments. The decision to enter this area of enforcement should be left to the local government and not mandated or forced upon them by the federal government through the threat of sanctions or the withholding of existing police assistance funding.

5) INCENTIVE BASED APPROACH WITH FULL FEDERAL FUNDING

Any initiative to involve local police agencies in the enforcement of immigration laws should be an incentive based approach with full federal funding to provide the necessary resources to the local agencies that choose to enforce immigration laws. Federal funds should be available to participating local agencies to cover the costs associated with enforcement such as expenditures on equipment and technology, training and educational programs and costs of housing, caring for and transporting immigrants prior to their release to federal authorities.

6) NO REDUCTION OR SHIFTING OF CURRENT ASSISTANCE FUNDING

The funding of any initiative to involve local police agencies in the enforcement of immigration laws should not be at the detriment or reduction directly or indirectly of any current federal funding or programs focused on assisting local police agencies with local policing or homeland security activities. Local police agencies are currently working on strained budgets and limited resources to meet local policing needs and strengthening homeland security and in fact need increased funding and grant assistance in these areas. Merely shifting or diverting federal funding currently available for local policing and homeland security activities to any new immigration enforcement initiative would only result in a detrimental net loss of total resources available to local police agencies to police their neighborhoods and strengthen homeland security.

7) CLARIFICATION OF AUTHORITY AND LIMITATION OF LIABILITY

The authority of local police agencies and their officers to become involved in the enforcement of immigration laws should be clearly stated and defined. The statement of authority should also establish liability protection and an immunity shield for police officers and police agencies that take part in immigration enforcement as authorized by clear federal legislation.

8) REMOVAL OF CIVIL IMMIGRATION DETAINERS FROM THE N.C.I.C. SYSTEM

Until the borders are secured and vigorous enforcement against employers who hire illegal immigrants has taken place and the concerns regarding lack of authority and confusion over the authority of local agencies to enforce immigration laws and the risk of civil liabilities are adequately addressed, M.C.C. strongly requests that the federal agencies cease placing civil immigration detainers on N.C.I.C. and remove any existing civil detainers currently on the system. The integrity of the system as a notice system for criminal warrants and/or criminal matters must be maintained. The inclusion of civil detainers on the system has created confusion for local police agencies and subjected them to possible liability for exceeding their authority by arresting a person upon the basis of a mere civil detainer.

M.C.C. would encourage the federal agencies to seek federal criminal warrants for any person they have charged criminally with violations of immigration laws and submit those criminal warrants on the N.C.I.C. system so the warrants can be acted upon by local police officers within their established criminal enforcement authority and training.

9) COMMITMENT OF CONTINUED ENFORCEMNT AGAINST CRIMINAL VIOLATORS REGARDLESS OF IMMIGRATION STATUS

M.C.C. member agencies are united in their commitment to continue arresting anyone who violates the criminal laws of their jurisdictions regardless of the immigration status of the perpetrator. Those immigrants, documented and/or undocumented, who commit criminal acts will find no safe harbor or sanctuary from their criminal violations of the law within any major city but will instead face the full force of criminal prosecution.

Chairman SENSENBRENNER. Dr. Siskin.

TESTIMONY OF ALISON SISKIN, SENIOR ANALYST, CONGRESSIONAL RESEARCH SERVICE

Ms. SISKIN. Thank you, Chairman Sensenbrenner, Ranking Member Jackson Lee and distinguished Members of the Committee for the invitation to appear before you today.

My testimony will focus on the financial impact of illegal immigration on border communities and several of the immigration enforcement related provisions in H.R. 4437, the Border Protection, Anti-Terrorism & Illegal Immigration Control Act of 2005, as passed by the House of Representatives on December 16th, and S. 2611, the Comprehensive Immigration Reform Act of 2006, as passed by the Senate on May 25th.

As the Committee is well aware, it is very difficult to enumerate a population which is trying to avoid detection by the government. A major issue with cost estimates in the unauthorized population is the lack of reliable data on the number and distribution of unauthorized aliens. As a result, attempts to quantify the cost and benefits of unauthorized population are hindered by the simple fact that there is not agreement on the number of unauthorized aliens residing in the United States. Nonetheless, there have been studies using different methodologies which have attempted to qualify the cost of unauthorized migration.

I would like to submit for the record a CRS memorandum discussing the findings of several of these studies.

[The information referred to follows in the Appendix]

Chairman SENSENBRENNER. Without objection.

Ms. SISKIN. And I would like to discuss a 2001 study by the U.S.—United States Border Counties Coalition on the cost of law enforcement, criminal justice and emergency medical services provided to border communities—provided by border communities to unauthorized aliens. The study found that in fiscal year 1999, border communities spent approximately $108 million providing these services to unauthorized aliens.

Specifically, the study found that for law enforcement and criminal justice costs, the border communities of Texas spent $22 million, and of that amount 13 million was spent by the Texas sheriffs, including 5 million spent by the El Paso Sheriff's Department. However, the report did not address the amount of taxes paid by unauthorized aliens which may offset some of the reported costs.

Both H.R. 4437 and S. 2611 have provisions aimed at addressing the cost of unauthorized aliens on State and local law enforcement. H.R. 4437 would create a grant program for States and their subdivisions to procure equipment, technology, facilities and other products that facilitate or are directly related to the investigation, apprehension, arrest, detention and transportation of immigration law violators.

Another program created by the House bill would require the Attorney General to reimburse or provide an advance to county sheriffs within 25 miles of the southern border for costs associated with the transfer of unlawfully present aliens to Federal custody. Under the bill, aliens taken into custody by these sheriffs would be deemed Federal prisoners in Federal custody.

The House bill would also reimburse property owners for the cost incurred repairing private infrastructure damaged by aliens attempting to illegally enter the country.

S. 2611 would create a grant program to reimburse States and local governments for costs associated with processing illegal immigrants through the criminal justice system and create another grant program for eligible law enforcement agencies to address criminal activities that occurs near the border and the impact of the lack of security along the border.

S. 2611 would also create a grant program for Indian tribes with lands adjacent to the border who have been adversely affected by unauthorized immigration. S. 2611 would also reimburse the southern border States and county prosecutors for prosecuting federally initiated and referred drug cases.

Moreover, H.R. 4437 would permanently authorize the State Criminal Assistance Program, SCAP, but prohibit States or political subdivisions that have in effect a statute, policy or practice that prohibits law enforcement officers from assisting or cooperating with Federal immigration officials in the course of carrying out the officers' routine duties from receiving these funds. S. 2611 would simply extend SCAP through fiscal year 2012.

In addition to the cost of unauthorized immigration borne by State and local governments, another issue is interaction between the Department of Homeland Security's Immigration and Customs Enforcement and local law enforcement and the ability and willingness of ICE to take unauthorized or removable aliens into custody when they are encountered by State or local law enforcement or at the conclusion of their criminal sentences.

When local enforcement encounters an alien during their routine duties, they can contact ICE's Law Enforcement Support Center, LESC, to confirm whether the person is a removable or unauthorized alien. Whether ICE will take the alien into custody often depends on the workload of the special agents, the distance to the jail and available detention space. Both of those would mandate that additional information related to certain immigration violators be included in the National Crime Information Center system, NCIC, allowing for instant access by law enforcement to information on the immigration status of certain aliens. However, the bills differ in the information that would be required to be entered.

State and local law enforcement officers also come into contact with criminal aliens in the course of their normal duties. Some are incarcerated in Federal, State or local facilities, while others are in communities around the country because they have already served their criminal sentences. The potential pool of removable criminal aliens is in the hundreds of thousands, but the exact amount is unknown.

In the Institutional Removal Program, which is conducted in State and local prisons—incarcerated aliens convicted of crimes. As a result, the aliens are taken into custody at the end of their sentence and removed quickly. H.R. 4437 would mandate that the IRP be extended to all States, while S. 26 [sic] Would direct DHS to continue to operate the IRP or other similar program.

In addition, both bills would authorize State and local law enforcement to hold an illegal alien up to 14 days after the alien com-

pletes his State sentence to effectually transfer the alien to Federal custody for removal and would allow the State and local law enforcement to issue detainers that would allow aliens who serve prison sentences to be detained until ICE can take the aliens into custody.

Once again, thank you for your invitation to be here. I am at your disposal for questions.

Chairman SENSENBRENNER. Thank you very much.

[The prepared statement of Ms. Siskin follows:]

PREPARED STATEMENT OF ALISON SISKIN

Testimony before the U.S. House of Representatives

House Committee on the Judiciary

By

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Thank you Chairman Sensenbrenner, Ranking Member Conyers, and Distinguished Members of the Committee for the invitation to appear before you today to speak about the financial impact of illegal immigration on border communities, and several of the immigration enforcement related provisions in H.R. 4437 and S. 2611 that may be of special interest to border and local law enforcement communities. I am Alison Siskin, a Specialist in Immigration Policy at the Congressional Research Service. My testimony today will focus on a discussion of the issues surrounding studies that have attempted to estimate the cost of unauthorized immigration, focusing on the findings in a study related to border communities, and on selected enforcement-related provisions in H.R 4437, The Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, as passed by the House of Representatives on December 16 2005, and S. 2611, The Comprehensive Immigration Reform Act of 2006, as passed by the Senate on May 25, 2006.

As the committee is well aware, it is very difficult to enumerate a population which is trying to avoid detection by the government. A major issue with cost estimates of the unauthorized population is the lack of reliable data on the number and distribution of unauthorized aliens. As a result, attempts to quantify the costs and benefits of the unauthorized population are hindered by the simple fact that there is not an agreement on the number of unauthorized aliens residing in the United States. Furthermore, the data required to produce reliable estimates on the costs and benefits of unauthorized immigration would have to include not only an accurate count of the number of unauthorized aliens complete with socioeconomic characteristics, but also reliable information on

the actual use of all relevant services including the actual cost of providing the services, and on the actual revenue generated by the unauthorized aliens. Since these data elements do not exist, many studies make assumptions about the number of unauthorized aliens, their service usage, and their revenue contributions.

Nonetheless, there have been studies using different methodologies which have attempted to quantify the costs of unauthorized migration. I would like to submit for the record a CRS memorandum discussing the findings of several studies, but I would like to discuss one study which seems the most relevant to this hearing. In 2001, the United States/Mexico Border Counties Coalition released a study entitled *Illegal Immigrants in U.S./Mexico Border Counties: Cost of Law Enforcement, Criminal Justice, and Emergency Medical Services*. The United States/Mexico Border Counties Coalition had received a grant from the Department of Justice (DOJ) to measure the costs to the general funds of all 24 border counties for providing law enforcement, criminal justice, and emergency medical services to unauthorized aliens for FY1999. Four university researchers collected data by conducting site visits, interviewing governing board members, department heads, judicial officials, division heads, county managers, and information management specialists. The border patrol and state agencies were also consulted. Since many of the services discussed in the study were provided to noncitizens without ascertaining immigration status, the accuracy of the data is unknown. The study also used data from the decennial census, the Current Population Survey, border crossing data from the former Immigration and Naturalization Service (INS), Border Patrol apprehension data, newspaper accounts, public documents, congressional hearings, and previous research. Importantly, this study only calculated the costs of unauthorized aliens to these communities, and did not include estimates of taxes or other revenues gained from unauthorized aliens.

The study found that overall Texas border communities spent $23.3 million, New Mexico spent $5 million, Arizona spent $24.2 million, and California spent $55.7 million providing law enforcement, criminal justice, and emergency medical services to unauthorized aliens in FY1999. Specifically, the study found that for law enforcement and criminal justice costs the border communities of Texas spent $21.5 million, New Mexico spent $4 million, Arizona spent $19.2 million, and California spent $43.6 million. Of the amount that was estimated to have been spent by Texas border communities on law enforcement and criminal justice services to unauthorized aliens, $12.9 million was spent by Texas sheriffs, and it was estimated that unauthorized aliens costs the El Paso Sheriff's Department $4.5 million. Nonetheless, as discussed above, the report did not

address the amount of taxes paid by unauthorized aliens in the border communities to the government, which may offset some of the reported costs.

Both H.R. 4437 and S. 2611 have provisions aimed at addressing the cost of unauthorized aliens on state and local law enforcement. For example, H.R. 4437 would create a grant program for states and political subdivisions of states to procure equipment, technology, facilities, and other products that facilitate or are directly related to the investigation, apprehension, arrest, detention, or transportation of immigration law violators. To be eligible for these grants, the state or political subdivision would be required to have the authority, and have in effect a policy and practice of assisting in the enforcement of immigration laws during the course of the agency's routine law enforcement duties.

In addition, H.R. 4437 would require the Attorney General (AG) to reimburse or provide an advance to designated county sheriffs within 25 miles of the southern border for costs associated with the transfer of unlawfully present aliens to federal custody. Specifically, sheriffs would be reimbursed for detaining, housing, and transporting unauthorized aliens, and could use a portion of funds to construct, maintain, and operate detention facilities. Funds could also be used for personnel and training such personnel. Under the bill, aliens taken into custody by a sheriff would be deemed to be federal prisoners and in federal custody upon determination by federal law enforcement officials that such alien is unlawfully present in the United States. The House bill would also require DHS to reimburse property owners for the costs incurred repairing private infrastructure that is constructed "on a U.S. government right-of-way delineating the international land border" that is damaged by aliens attempting to illegally enter the country.

S. 2611 would create a grant program to provide reimbursement to states and units of local government for costs associated with processing illegal aliens through the criminal justice system. These costs could include indigent defense; criminal prosecution; autopsies; translators and interpreters; and court costs. In addition, S. 2611 would create a competitive grant program for "eligible" law enforcement agencies to address criminal activity that occurs near the border and the impact of any lack of security along the border. These grants could be used to provide additional resources to address criminal activity occurring along the border, including: (1) obtaining equipment; (2) hiring additional personnel; (3) upgrading and maintaining law enforcement technology; and (4) covering operational costs. The "eligible" law enforcement agencies would include any tribal, state, or local law enforcement agency located in a county no more than 100 miles

from the northern or southern border, or located in a county more than 100 miles from the border, but where such county has been certified as a "High Impact Area" by the Secretary of DHS. Priority would be given to "eligible" law enforcement agencies serving communities with populations of less than 50,000 and located within 100 miles of the northern or southern border. S. 2611 would also create a grant program for Indian tribes with lands adjacent to the international border who have been adversely affected by unauthorized immigration to help pay for law enforcement activities, health care services, environmental restoration, and preservation of cultural resources. In addition, S. 2611 would direct the Attorney General to reimburse Southwest border state and county prosecutors for prosecuting federally initiated and referred drug cases.

Moreover, both bills have provisions related to the State Criminal Alien Assistance Program (SCAAP). SCAAP is a formula grant program that provides financial assistance to states and localities for correctional officer salary costs incurred for incarcerating "undocumented criminal aliens." Currently, SCAAP funds do not cover all of the costs for incarcerating noncitizens. In 2006, Congress reauthorized SCAAP through FY2011. Between FY1997 and FY2005, a total of approximately $4.1 billion has been distributed to states in SCAAP funding. H.R. 4437 would permanently authorize SCAAP but prohibit the states or political subdivisions that have in effect a statute, policy, or practice that prohibits law enforcement officers of the state or political subdivision from assisting or cooperating with federal immigration officials in the course of carrying out the officers' routine duties from receiving funds. S. 2611 would extend the current program through FY2012.

In addition to the costs of unauthorized immigration borne by state and local governments, another issue is the interaction between the Department of Homeland Security's Immigration and Customs Enforcement (ICE) and local law enforcement in relation to the ability and willingness of ICE to take unauthorized or removable aliens into custody when they are encountered by state or local law enforcement or at the conclusion of their criminal sentences. When local law enforcement encounters an alien during their routine duties, they can contact the ICE's Law Enforcement Support Center (LESC) to confirm whether the person is a removable or unauthorized alien. Whether ICE will take the alien into custody often depends on the workload of the special agent, the distance to the jail, and the available detention space. In 2002, there were an estimated 9.3 million unauthorized aliens in the United States and 1,944 INS special agents, or approximately 4,784 unauthorized aliens per one INS special agent. In FY2005, ICE had 5,769 special agents. However, since agents from the former INS and the former U.S. Customs Service were combined into ICE, it is unknown

what percentage of time ICE special agents spend on immigration enforcement functions compared to tasks of the former U.S. Customs Service. As a result, it is not clear if and to what extent the number of agents devoted to immigration enforcement has increased since the creation of DHS.

Even if ICE had the capability to take custody of all removable aliens that come into contact with state and local law enforcement, limited bedspace prevents them from detaining many unauthorized aliens. Between FY2002 and FY2005, the daily detention population exceeded the amount of funded bedspace. In June 2005, 87% of detention bed space was filled with mandatory detainees, making bed space scarce and increasing the need for both good management of detention space, and alternative forms of detention. The funded bedspace for FY2006 is 20,800 and the average daily detention population as of January 30 2006, was 20,594. A lack of bedspace can lead to an increase in the number of apprehended aliens who must be released into the community, and aliens who are not detained are less likely to appear for their removal proceedings and to leave the country if they are ordered removed. For example, in FY2005, 60% of nondetained aliens failed to appear for their removal hearing. Moreover, only 18% of aliens released into the community who subsequently receive final removal orders leave the United States. To counteract the high percentage of nondetained aliens who fail to leave the United States, DHS has a pilot program which began in Hartford, Connecticut, and was expanded to Atlanta and Denver in March 2004, that immediately detains all aliens subject to final orders of removal, so that ICE can ensure that the aliens depart from the United States. Under this program, 94% of detained aliens have been deported.

These issues have given rise to a debate on the extent to which state and local law enforcement can and should enforce immigration law. Both bills would mandate that additional information related to immigration violations be included in the National Crime Information Center System (NCIC) allowing for law enforcement to have information on the immigration status of certain aliens without contacting the LESC, as most law enforcement officers have instant access to NCIC. Currently, NCIC's immigration violators file includes information on: (1) persons previously convicted of a felony and deported; (2) persons allegedly subject to a final order of deportation, exclusion, or removal ("absconders") but who remain in the country; and (3) persons allegedly in violation of the National Security Entry-Exit Registration System (NSEERS). H.R. 4437 would mandate the inclusion of information on all aliens who: (1) were issued final orders of removal; (2) have signed voluntary departure agreements; (3) overstayed their authorized period of stay; and (4) whose visas have been revoked. Under the House bill, the information would be entered into

NCIC's Immigration Violators File regardless of whether the alien received the notice of a final order of removal, had already been removed, or if sufficient identifying information is available.

Similarly, S. 2611 would mandate that any information on all aliens who: (1) were issued final orders of removal; (2) have signed voluntary departure agreements and whose period for departure has expired or who has violated the conditions of the agreement; (3) whom federal immigration official have confirmed to be unlawfully present; and (4) whose visas have been revoked be entered into NCIC. The Senate bill would direct the head of the NCIC to promptly remove any information related to an alien granted lawful authority to enter or remain in the United States, and would direct the Secretary of DHS, in consultation with the head of the NCIC, to develop and implement a procedure for aliens to petition to remove erroneous information, and would prohibit entering such information into NCIC until these procedures are implemented.

State and local law enforcement officers also come into contact with criminal aliens in the course of their normal duties. Criminal aliens are aliens who have committed crimes that make them removable. The aliens may have been legally or illegally present. Some are incarcerated in federal, state, or local facilities, while others are in communities across the United States, because they have already served their criminal sentences. The potential pool of removable criminal aliens is in the hundreds of thousands, but the exact number is unknown. According to DOJ, at midyear 2004, 91,789 noncitizens were in federal and state prisons; 34,422 in federal prisons, and 57,367 in state prisons. It can be assumed that most of these noncitizens are removable.

DHS' Criminal Alien Program is directed at identifying criminal aliens in federal, state, and local prisons, and assuring that these aliens are taken into ICE custody at the completion of their criminal sentences. Although federal prisons have a system to notify ICE when there is an alien in custody, notification from state and local prisons and jails is not systematic, and many criminal aliens are released after their criminal sentences are completed rather than taken into ICE custody, making it more difficult to locate the aliens for deportation and raising the concern that the released aliens will commit new crimes. Like ICE, INS had historically failed to identify all removable imprisoned aliens.

In an effort to help streamline the removal of criminal aliens, §238(a) of the Immigration and Nationality Act (INA) allows for removal proceedings to be conducted at federal, state, and local prisons for aliens convicted of crimes. This program as instituted is known as the Institutional

Removal Program (IRP) and is part of DHS' Criminal Alien Program. Under the IRP, removal proceedings are held while the alien is incarcerated. As a result, the alien can be removed in a shorter period of time which is more cost effective for the U.S. government. Notably, under the INA aliens must complete their criminal sentences before they can be removed from the United States. The former INS developed a nationwide automated tracking system for the federal Bureau of Prisons (BOP) and deployed them to IRP sites. The system covers foreign born inmates incarcerated under the federal system and tracks the hearing status of each inmate. Currently the IRP is operational at 30 sites, of which 11 are in Texas.

H.R. 4437 would mandate that the IRP be extended to all states, while S. 2611 directs DHS to continue to operate the IRP or another similar program. Both bills would also mandate the enhanced use of technology including increasing mobile access to federal databases for state and local law enforcement officials in remote locations so that the IRP can be expanded to remote locations. Both H.R. 4437 and S. 2611 would also authorize state and local law enforcement to hold an illegal alien for up to 14 days after the alien completes his state prison sentence to effectuate the transfer of the alien to federal custody for removal. Similarly, the bills would allow state and local law enforcement to issue detainers that would allow aliens who served prison sentences to be detained until ICE personnel can take the aliens into custody.

In sum, although it is difficult to quantify the impact, both positive and negative, of unauthorized aliens to the United States, it is clear that there is an impact to border communities, and several of the provisions in both H.R. 4437 and S. 2611 would attempt to address that impact. In addition, as discussed, unauthorized aliens encountered by local law enforcement are often not transferred to ICE custody for a variety of reasons. The House and the Senate bills propose provisions aimed at this issue. Thank you once again for your invitation to be here today, and I am at your disposal for any questions you may have.

Side-by-Side Comparison of the Provisions Discussed

Current Law	House-passed H.R. 4437	Senate-passed S.2611	Commentary
Grants to Local Law Enforcement			
No similar provisions.	Would require the Secretary of DHS to create a grant program administered to states and political subdivisions of states for the procurement of equipment, technology, facilities, and other products that facilitate or are directly related to investigating, apprehending, arresting, detaining, or transporting immigration law violators, including any administrative costs under the Act. (§222(a))	No similar provisions, but §229(a) would provide related funding.	States or political subdivisions that have in effect a statute, policy, or practice that prohibits law enforcement officers of the state from assisting or cooperating with federal immigration officials are generally termed "sanctuary" states or cities. Most cities that are considered sanctuary cities have adopted a "don't ask-don't tell" policy where they don't require their employees, including law enforcement officers, to report to federal officials aliens who may be illegally present in the country. Section 222(b) of H.R. 4437 would seem to prohibit states or political subdivisions with "sanctuary policies" in effect from receiving funds under the section.
No similar provisions.	To be eligible for the above grants, the state or political subdivision would be required to have the authority, and have in effect a policy and practice of assisting in the enforcement of immigration laws in the course of the agency's routine law	No similar provisions.	The Attorney General (AG) may enter into a written agreement with a state or political subdivision of the state so that an officer or employee of the state or political subdivision may perform a function of an immigration officer related to the

Current Law	House-passed H.R. 4437	Senate-passed S.2611	Commentary
	enforcement duties. Would appropriate $250 million each year for the grants. (§222(b))		investigation, apprehension, and detention of aliens in the United States. (INA §287(g))
No similar provisions.	No similar provisions.	Would require the Secretary of DHS to reimburse states and units of local government for costs associated with processing illegal aliens through the criminal justice system. Reimbursable costs would include: indigent defense; criminal prosecution; autopsies; translators and interpreters; and court costs. Would authorize $400 million for each year, FY2007 through FY2012 for this program. (§218(a)-(b)(1))	
The AG shall reimburse a state for the costs incurred for the imprisonment of any illegal alien or Cuban national who is convicted of a felony. (§501 of the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603) The Homeland Security Act of 2002 (P.L. 107-296) transferred the primary responsibility for enforcing and administering immigration law from AG to the Secretary of DHS. (INA §103(a)(1))	Current law.	Would transfer authority for this program from the Attorney General (AG) to the Secretary of DHS. (§218(c))	
No similar provisions.	Would require the AG to reimburse or provide an advance for costs to designated county sheriffs within 25 miles of the	No similar provisions.	

Current Law	House-passed H.R. 4437	Senate-passed S.2611	Commentary
	southern international U.S. border for costs associated with the transfer of unlawfully present aliens to federal custody. Would prohibit payment for costs incurred prior to enactment. Specifically, sheriffs would be reimbursed for detaining, housing, and transporting aliens who are not lawfully present in the United States or who have unlawfully entered the United States, and are allowed to use 20% of the funds received for the construction, maintenance, and operation of detention facilities. Reimbursement or pre-payment are to be made within 60-days from a separate account in the Treasury entitled the "Designated County Law Enforcement Account." Aliens taken into custody by a sheriff would be deemed to be federal prisoners and in federal custody. (§607)		
No similar provisions.	Would require designated sheriffs within 25 miles of the southern international U.S. border to be reimbursed or provided an advance for costs associated with the transfer of aliens detained or in the custody of a sheriff. Specifically, sheriffs would be reimbursed for detaining, housing, and transporting aliens who are not lawfully present in the United States or who have	No similar provisions.	The county jails that sheriffs oversee may also be eligible for funding under INA 241(i) (SCAAP).

Current Law	House-passed H.R. 4437	Senate-passed S.2611	Commentary
	unlawfully entered the United States. (§607(b))		
No similar provisions.	Would require reimbursement or pre-payment to be made within 60-days from a separate account in the Treasury entitled the "Designated County Law Enforcement Account." (§607(c))	No similar provisions.	
No similar provisions.	Would authorize up to $100 million per year for the "Designated County Law Enforcement Account." (§607(d))	No similar provisions.	
No similar provisions.	Would authorize the funds provided under §607(b) to be used for the costs of personnel, costs of training such personnel, equipment, and the construction, maintenance, and operation of detention facilities. Would allow only 20% of the funds received to be used for the construction, maintenance, and operation of detention facilities. To be eligible for payment, the sheriff making an application for payment must personally certify under oath that all costs submitted meet the requirements of §607 and are reasonable and necessary. Would clarify that aliens taken into custody by a sheriff would be deemed to be federal prisoners and in federal custody upon determination by federal law	No similar provisions.	

Current Law	House-passed H.R. 4437	Senate-passed S.2611	Commentary
	enforcement officials that such alien is unlawfully present in the U.S. (§607(e))		
No similar provisions.	Would require all aliens detained or taken into custody by a sheriff to be immediately delivered to federal law enforcement officials. (§607(f))	No similar provisions, but §229(a) would provide related requirements.	
No similar provisions.	No similar provisions.	Would provide competitive grants to "eligible" law enforcement agencies to address: (1) criminal activity that occurs near the border; or (2) the impact of any lack of security along the border. The Secretary of DHS is to award grants on a competitive basis, but is to give priority to eligible law enforcement agencies serving communities with populations of less than 50,000 and located within 100 miles of the northern or southern border. (§153(a))	This provision is similar to §607 in H.R. 4437, in that both measures would provide funding to areas along the border. Section 153 of S. 2611, however, makes funds available to communities outside of the border area. The funds under §153 may be applied to combating criminal activity whereas the funds under §607 of H.R. 4437 seem to be more tailored towards addressing immigration offenses.
No similar provisions.	No similar provisions.	Would clarify that grants are to only be used to provide additional resources to address criminal activity occurring along the border, including to: (1) obtain equipment; (2) hire additional personnel; (3) upgrade and maintain law enforcement technology; and (4) cover operational costs. (§153(b))	
No similar provisions.	No similar provisions.	Would require eligible law	

Current Law	House-passed H.R. 4437	Senate-passed S.2611	Commentary
		enforcement agencies to submit an application that: (1) describes the activities for which assistance is sought; and (2) provides assurances to ensure compliance with the requirements of the §153. (§153(c))	
No similar provisions.	No similar provisions.	Would define "eligible law enforcement agency" to mean a tribal, state, or local law enforcement agency: (1) located in a county no more than 100 miles from the northern or southern border; or (2) located in a county more than 100 miles from such border, but where such county has been certified as a "High Impact Area" by the Secretary of DHS. Would define "High Impact Area" as any county designated by the Secretary, taking into consideration: (1) whether local law enforcement agencies have the resources to protect the lives, property, and welfare of the residents of that county; (2) the relationship between any lack of security along the U.S. border and the rise, if any, of criminal activity in that county; and (3) any other unique challenges that local law enforcement face due to a lack of security along the border. (§153(d))	
No similar provisions.	No similar provisions.	Would authorize $50 million for	

Current Law	House-passed H.R. 4437	Senate-passed S.2611	Commentary
		each of fiscal years 2007 through 2011. Two-thirds of the funds are to be set aside for use in the six states with the largest number of undocumented alien apprehensions and one-third for areas designated "High Impact Areas." (§153(c))	
No similar provisions.	No similar provisions.	Would create a grant program for Indian tribes with lands adjacent to the international border who have been adversely affected by unauthorized immigration. Funds could be used for law enforcement activities, health care services, environmental restoration, and preservation of cultural resources. No later than 180 days after enactment, the Secretary of DHS would be required to submit to the House and Senate Judiciary Committees a report that: (1) describes the level of access of Border Patrol agents on tribal lands; (2) describes the extent to which enforcement of immigration laws may be improved by enhanced access to tribal lands; (3) contains a strategy for implementing with cooperation from tribal authorities, access to tribal lands; and (4) identifies grants for border security provided by DHS for Indian tribes, either directly or indirectly through state or local	

Current Law	House-passed H.R. 4437	Senate-passed S.2611	Commentary
		grants. Would authorize such sums as necessary for each year, FY2007 through FY2011. (§220)	
NCIC Reporting Requirements			
The AG shall: (1) acquire, collect, classify, and preserve identification, criminal identification, crime and other records; (2) acquire, collect, classify, and preserve any information which would assist in the identification of any deceased individual who has not been identified; (3) acquire, collect, classify, and preserve any information which would assist in the location of any missing person; and (4) exchange such records and information with, and for the official use of, authorized officials of the federal government, states, cities, and penal and other institutions. *This system is known as the National Crime Information Center.* (28 U.S.C. §534(a))	Would require that no later than 180 days after enactment, the *Under Secretary for Border and Transportation Security (BTS)* provide the NCIC with any information on all aliens who: (1) were issued final orders of removal; (2) have signed voluntary departure agreements; (3) overstayed their authorized period of stay; and (4) whose visas have been revoked. The information would be entered into NCIC's Immigration Violators File regardless of whether the alien received the notice of a final order of removal, had already been removed, or if sufficient identifying information are available. (§410(a))	Would require that no later than 180 days after enactment that the *Secretary of DHS* provide the NCIC with any information on all aliens who: (1) were issued final orders of removal; (2) have signed voluntary departure agreements and whose period for departure has expired or who has violated the conditions of the agreement; (3) whom federal immigration official have confirmed to be unlawfully present; and (4) whose visas have been revoked. (§231(a)(1))	The National Crime Information Center (NCIC) is a computerized database of documented criminal justice information available to virtually every law enforcement agency nationwide. With respect to immigration violators, the NCIC includes: (1) persons previously convicted of a felony and deported; (2) persons allegedly subject to a final orders of deportation, exclusion, or removal ("absconders") but who remain in the country; and (3) persons allegedly in violation of the National Security Entry-Exit Registration System (NSEERS). On Oct. 1 2005, Secretary of Homeland Security, Michael Chertoff, eliminated the Directorate of Border and Transportation Security redistributing its functions to other locations in DHS.
No similar provisions.	No similar provisions.	Would specify that the head of the NCIC should promptly remove any information related to an alien granted lawful authority to enter or remain in the United States. (§231(a)(2))	

Current Law	House-passed H.R. 4437	Senate-passed S.2611	Commentary
No similar provisions.	No similar provisions.	Would direct the Secretary of DHS in consultation with the head of the NCIC to develop and implement a procedure for aliens to petition to remove erroneous information from NCIC. Would prohibit the Secretary of DHS from providing information to NCIC until these procedures are implemented. (§231(a)(3))	
Institutional Removal Program			
The AG shall provide for special removal proceedings at certain federal, state, and local correctional facilities for aliens convicted of certain criminal offenses, to eliminate the need for additional detention, and assure expeditious removal following the end of the alien's criminal incarceration. *This program is commonly known as the Institutional Removal Program (IRP).* (INA §238)	Would direct DHS to continue to operate the IRP and extend it to all states. Would require that as a conditions of any state receiving federal funds for the incarceration of criminal aliens, the state must cooperate with IRP officials, expeditiously identify criminal aliens in jails and prisons, and promptly convey the information to IRP officials. (§223(a))	Would direct the Secretary of DHS to continue to operate to IRP or develop and implement another program to identify criminal alien in federal and state correction facilities, insure that the aliens are not released into the community, and remove the aliens at the end of their criminal sentences. Would allow (but not mandate) the Secretary of DHS to expand the program to all states. (§210(a))	
To the extent permitted by state and local law, state and local law enforcement officials are authorized to arrest and detain unauthorized aliens who have previously been convicted of a felony, and deported or left the United States after such convictions, but only after confirmation from immigration authorities of the alien's status	Would authorize state and local law enforcement to hold an illegal alien for up to 14 days after the alien completes his state prison sentence to effectuate the transfer of the alien to federal custody for removal. Would also allow state and local law enforcement to issue detainers that would allow aliens who served prison sentences to be	Similar provisions. (§210(b))	

Current Law	House-passed H.R. 4437	Senate-passed S.2611	Commentary
and only for such period of time as is required for immigration authorities to take the alien into custody. (§439 of the Antiterrorism and Effective Death Penalty Act of 1996 (P.L. 104-132); 8 U.S.C. §1252(c))	detained until ICE personnel can take the aliens into custody. (§223(b))		
The AG shall provide for special removal proceedings at certain federal, state, and local correctional facilities for aliens convicted of certain criminal offenses, to eliminate the need for additional detention, and assure expeditious removal following the end of the alien's criminal incarceration. *This program is commonly known as the Institutional Removal Program (IRP).*(INA §238)	Would require, to the maximum extent possible, the use of technology (e.g., video conferencing) to make the IRP available in remote locations. Would also require, to the maximum extent possible, that mobile access to federal databases be available for state and local law enforcement in remote locations. (§223(c))	Similar provisions, but the technology could be used for either the IRP or another similar program that the Secretary of DHS implements. (§210(c))	
No similar provisions.	Would authorize appropriations for the IRP of: $100 million in FY2007;$115 million in FY2008; $130 million in FY2009; $145 million in FY2010; and $160 million in FY2011. (§223(d))	Would authorize such sums as necessary for the IRP or another similar program that the Secretary of DHS implements for FY2007 through FY2011. (§210(e))	
No similar provisions.	No similar provisions.	Would require the Secretary of DHS no later than 6 months after enactment to submit a report to Congress on state's participation in the IRP or other similar programs. (§210(d))	
State Criminal Alien Assistance Program (SCAAP)			

Current Law	House-passed H.R. 4437	Senate-passed S.2611	Commentary
If a chief executive officer of a state or local government exercising authority with respect to the incarceration of an undocumented criminal alien submits a written agreement to the AG, the AG shall compensate the average cost of incarceration of a prisoner in the relevant state as determined by the AG. *This program is commonly know as the State Criminal Alien Assistance Program (SCAAP).* (INA §241(i)) Authorizes appropriations for SCAAP of $750 million for FY2006; $850 million for FY2007; and $950 million annually for FY2008 through FY2011. (INA 241(i)(5), as amended by the Department of Justice Reauthorization Act of 2005, §1196 (P.L. 109-162))	Would amend current law by authorizing appropriations of $1 billion for State Criminal Alien Assistance Program (SCAAP) for each subsequent fiscal year after FY2011. (§224) Would authorize for SCAAP such sums as necessary for FY2007; $750 million for FY2008; $850 million for FY2009; $950 million annually for FY2010 through FY2012. (§218(b)(2))		
The State Criminal Alien Assistance Program (SCAAP) was created by §20301 of the Violent Crime Control and Law Enforcement Act of 1994 (INA §241(i)). SCAAP is designed to reimburse states and localities for correctional officers' salary costs incurred for incarcerating "undocumented criminal aliens." Prohibits federal, state, or local government entities or officials from restricting any government	Would make monies that are otherwise available under INA §241(i) (SCAAP) unavailable to states or political subdivisions that have in effect a statute, policy, or practice that prohibits law enforcement officers of the state or political subdivision from assisting or cooperating with federal immigration officials in the course of carrying out the officers' routine duties. This provision would become effective two years after the date of	No similar provisions, but §229(a) provides a related prohibition for monies provided under the section.	Sanctuary cities and policies may be in violation of 8 U.S.C. §1373 and §1644; however, (aside from litigation to stop such actions) there are no penalties enumerated for the sections. Section 225(a) of H.R. 4437 would appear to penalize those cities found to be in violation of requirements similar to those found in 8 U.S.C. §1373 and §1644.

Current Law	House-passed H.R. 4437	Senate-passed S.2611	Commentary
entity or official from sending to, or receiving from, the INS information regarding the citizenship or immigration status, lawful or unlawful, of any individual. Also prohibits a person from restricting, a federal, state, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual: (1) sending such information to, or requesting or receiving such information from, the INS; (2) maintaining such information; and (3) exchanging such information with any other federal, state, or local government entity. Also requires the INS to respond to an inquiry by a federal, state, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual. (8 U.S.C. §1373) Makes it a violation for a state or local government entity to be prohibited, or restricted, from sending to, or receiving from, the INS information regarding the immigration status, lawful or unlawful, of an alien in the United States. (8 U.S.C. §1644)	enactment. (§225(a))		
No similar provisions.	Would clarify that nothing in §225 would require state or local law enforcement officials to	No similar provisions.	

Current Law	House-passed H.R. 4437	Senate-passed S.2611	Commentary
	report or arrest victims or witnesses of a criminal offense. (§225(b))		
No similar provisions.	Would reallocate funds that are not allocated to a state or political subdivision due to the failure of the state to comply with subsection 225(a) to states that comply with the subsection. (§225(c))	No similar provisions.	
Northern and Southern Border Prosecution Initiatives			
No similar provisions.	No similar provisions.	Would direct the AG through the Office of Justice Programs, from the amounts made available, to establish a "Northern Border Prosecution Initiative" modeled after the Southwest Border Prosecutor Initiative (SBPI) to reimburse eligible northern border entities for cost of handling the dispositions of criminal cases that are federally initiated but federally declined-referred. Funds could be used for any lawful purpose including: prosecution costs, court costs, courtroom technology, construction of holding spaces, administrative staff, defense counsel, and detention costs. Would authorize $28 million for FY2006 and such sums as necessary for following years. (§756(a)-(c),(e))	Note: P.L. 108-447 appropriated $30,000,000 for the Southwest Border Prosecutor Initiative (SBPI) to reimburse State, county, parish, tribal, or municipal governments only for costs associated with the prosecution of criminal cases declined by local United States Attorneys offices

Current Law	House-passed H.R. 4437	Senate-passed S.2611	Commentary
No similar provisions.	No similar provisions.	Would define terms for the "Northern Border Prosecution Initiative" grant program. Under the grant program, the term "case disposition" would mean the time between the arrest of a suspect and the resolution of the criminal charges through a county or State judicial or prosecutorial process; and would not include incarceration time for sentenced offenders, or time spent by prosecutors on judicial appeals. Eligible northern border entity would be defined as the states of or any unit of local government in Alaska, Idaho, Maine, Michigan, Minnesota, Montana, New Hampshire, New York, North Dakota, Ohio, Pennsylvania, Vermont, Washington, and Wisconsin. A "federally declined-referred" would mean, with respect to a criminal case, that a decision has been made in that case by a U.S. Attorney or a federal law enforcement agency during a federal investigation to no longer pursue federal criminal charges against a defendant and to refer such investigation to a state or local jurisdiction for possible prosecution; and could include a decision made on an individualized case-by-case basis or decisions made pursuant to a	

Current Law	House-passed H.R. 4437	Senate-passed S.2611	Commentary
		general policy or practice or pursuant to prosecutorial discretion. Would also define "federally initiated" as, with respect to a criminal case, that the case results from a criminal investigation or an arrest involving federal law enforcement authorities for a potential violation of federal criminal law, including investigations resulting from multi-jurisdictional task forces. (§756(d))	
No similar provisions.	No similar provisions.	Would direct the AG, subject to the availability of appropriations, to reimburse Southwest border state and county prosecutors for prosecuting federally initiated and referred drug cases. Would authorize $50 million annually for FY2007 through FY2012 for this purpose. (§757)	P.L. 108-447 appropriated $30,000,000 for the SBPI to reimburse State, county, parish, tribal, or municipal governments for costs associated with the prosecution of criminal cases declined by local United States Attorneys offices.

ATTACHMENT

Memorandum August 11, 2005

SUBJECT: **Cost Estimates of Unauthorized (Illegal) Immigration**

FROM: Alison Siskin
Analyst in Social Legislation
Domestic Social Policy Division

This memorandum provides information on the cost to the federal, state, and local governments of unauthorized aliens[1] living in the United States. This memorandum does not address the issue of the cost to the federal government for enforcing immigration laws (i.e., the cost of investigating, arresting, detaining and removing unauthorized migrants from the United States.) We have focused on studies completed after 1990. In addition, this is not an exhaustive review of the literature on the cost of unauthorized migration to the United States. Cost estimates mentioned in news reports which failed to specify the methodology used to calculate the estimates were not included in this analysis.

Difficulties Estimating the Cost of the Unauthorized Population

It is very difficult to enumerate a population which is trying to avoid detection by the government.[2] The main sources of socioeconomic information in the United States, the Current Population Survey (CPS), the Decennial Census of the Population (Census), and the American Community Survey, collected by the Census Bureau, ask citizenship status, but not immigration status.[3] Thus, it is not possible to use these data sources in calculating the cost of unauthorized aliens.

[1] An alien is "any person not a citizen or national of the United States" and is synonymous with noncitizen.

[2] For example see U.S. General Accounting Office, *Illegal Aliens: National Net Cost Estimates Vary Widely*, GAO/HEHS-95-133, July, 1995; Georges Vernez, and Kevin F. McCarthy, *The Cost of Immigration to Taxpayers: Analytical and Policy Issues* (Santa Monica, CA: RAND, 1996); and Rebecca L. Clark, Jeffrey S. Passel, Wendy N. Zimmermann, and Michael E. Fix, *Fiscal Impacts of Undocumented Aliens: Selected Estimates for Seven States* (Washington D.C.: Urban Institute, Sept. 1994).

[3] In other words, analysis from these surveys can be done on noncitizens; however it is unknown whether the noncitizens are legally or illegally present.

Enumeration of the Unauthorized Population

A major issue with cost estimates of the unauthorized population is the lack of reliable data on the number and distribution of unauthorized aliens.[4] As research is being done on the 2000 census of the U.S. population, preliminary data analyses offer competing population totals that, in turn, imply that illegal migration soared in the late 1990s and that estimates of unauthorized residents of the United States have been understated. The Department of Homeland Security estimates that there are about 7 million unauthorized aliens living in the United States.[5] In testimony before the House Committee on the Judiciary, Subcommittee on Immigration and Claims, Jeffrey Passel, a demographic researcher at the Urban Institute, offered an estimate of 8 to 9 million unauthorized residents. At the same hearing, economists from Northeastern University using employment data reported by business establishments as well as 2000 census totals concluded that the unauthorized population may be 11 million.[6] These discrepancies suggest that attempts to quantify the cost of the unauthorized population are hindered by the simple fact that there is not agreement on the number of unauthorized aliens residing in the United States.

Obstacles to Cost Estimations

There are two main reasons for the absence of reliable estimates on the overall cost of unauthorized aliens. First, the data needed to make these calculations are not collected, which often forces the authors to make assumptions, with little evidence, about who is an unauthorized alien, services used, and revenues collected. Second, studies tend to differ in the types of services and revenues used to calculate the total net cost/benefit of unauthorized aliens.

The data required to produce reliable estimates on the cost/benefits of unauthorized aliens would include:

- an accurate count of the number of unauthorized aliens complete with socioeconomic characteristics,
- reliable information on the actual use of all relevant services including the actual cost of providing the services, and
- reliable information on the actual revenue generated by the unauthorized aliens.

Since these data elements do not exist, many studies make assumptions about the number of unauthorized aliens, their service usage, and their revenue contributions. In other words,

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[4] The discussion of different estimates of the unauthorized population is adapted from CRS Report RL30780, *Immigration Legalization and Status Adjustment Legislation*, by Ruth Ellen Wasem. See also CRS Report RS21938, *Unauthorized Aliens in the United States: Estimates since 1986*, by Ruth Ellen Wasem.

[5] U.S. Immigration and Naturalization Service, *Estimates of Unauthorized Immigrant Population Residing in the United States: 1990-2000*, Jan. 2003. Available from [http://www.immigration.gov/graphics/shared/aboutus/statistics/Illegals.htm].

[6] U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration and Claims, *Hearing on the U.S. Population and Immigration*, Aug. 2, 2001.

studies make assumptions about the same items which they are trying to estimate. Without additional data, the net cost of unauthorized aliens to the treasury is unknown.[7]

As a result, many studies which attempt to estimate the cost/benefits of unauthorized aliens in the United States focus on limited geographic regions (e.g., border communities, states, or cities), and limit the cost/benefit analysis to a discrete issue (e.g., medical care, taxes, criminal justice costs). Some of these studies survey immigrant communities and ask immigration status, while others ask for local agencies to estimate the cost of services provided to unauthorized aliens. Other studies use proxies, such as those who provided a false Social Security number or foreign-born workers who are low wage earners, to determine who is an unauthorized alien. Each of these methods has strengths and weaknesses, and none provides a reliable estimate upon which researchers agree.

GAO Study: Issues with Total Net Costs

The U.S. General Accounting Office (GAO), in its 1995 report Illegal Aliens: National Net Cost Estimates Vary Widely,[8] was asked to examine existing estimates of net cost of unauthorized aliens. The GAO examined 13 studies issued between 1984 and 1994 which estimated the net cost of unauthorized migrants, but only three studies attempted to provide national estimates. The GAO examined the three national studies in detail and concluded that national studies of the net cost/benefits of unauthorized aliens in the U.S. vary considerably, and the actual fiscal impact of unauthorized aliens remains unknown. The studies examined in the GAO study were: (1) "The Costs of Immigration" (by Rice University Professor Donald Huddle);[9] (2) "How Much Do Immigrants Really Cost? A Reappraisal of Huddle's 'The Cost of Immigrants'" (by the Urban Institute);[10] and (3) "A Critique of the Urban Institute's Claims of Cost Free Immigration: Huddle Findings Confirmed" (by Huddle).[11]

The GAO found that approaches used to estimate costs in the three studies were "often based on assumptions whose reasonableness is unknown," and contended that data limitations prevented them from being able to ascertain the validity of several of the positions taken by the researchers. The GAO noted that little data are available on unauthorized aliens' use of public services and payment of taxes, and the studies used indirect and varying approaches with the result that studies were difficult to compare. The GAO study also asserted that small changes in the assumptions for the estimates often resulted in large differentials in the net estimated costs.

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[7] Georges Vernez, and Kevin F. McCarthy, *The Cost of Immigration to Taxpayers: Analytical and Policy Issues* (Santa Monica, CA: RAND, 1996), p. xii. (Hereafter cited as Vernez and McCarthy *The Cost of Immigration to Taxpayers*.)

[8] U.S. General Accounting Office, *Illegal Aliens: National Net Cost Estimates Very Widely*, GAO/HEHS-95-133, July 1995.

[9] Donald Huddle, *The Cost of Immigration* (Washington, D.C.: Carrying Capacity Network, June 4, 1993).

[10] Jeffrey Passel, *How Much Do Immigrants Really Cost? A Reappraisal of Huddle's The Cost of Immigrants* (Washington, D.C.: Urban Institute, 1994).

[11] Donald Huddle, "A Critique of the Urban Institute's Claims of Cost Free Immigration: Huddle Findings Confirmed," *Population and Environment*, vol.16, no. 6 (July 1995).

The GAO also stated that unauthorized aliens generate revenues as well as costs, which offset some of the costs governments incur. The GAO noted that studies indicate that many unauthorized aliens "pay taxes, including federal and state income taxes; Social Security tax; and sales, gasoline, and property taxes," but researchers disagree on the amount of revenues generated and the extent to which they offset government costs. The GAO noted that most studies conclude that unauthorized aliens generate more in costs than in revenues, although the magnitude of those costs is a subject of "continued debate." The major conclusions of the three studies reviewed in the GAO report are summarized below.

The Costs of Immigration. Huddle in his study The Costs of Immigration estimated that the national net cost of unauthorized aliens to federal, state, and local governments was $11.9 billion in 1992. Huddle's study used per capita tax estimates for Los Angeles County from the Internal Services Department (ISD) study,[12] and extrapolated these estimates to arrive at a national estimate of taxes paid by immigrants. The number of unauthorized immigrants in the United States was based on the former Immigration and Naturalization Service (INS)[13] estimates that 6 million aliens were illegally residing in the United States in 1987, and estimates of the Census Bureau and the Center for Immigration Studies. Huddle estimated that in 1992, 4.8 million unauthorized aliens resided in the United States.

How Much Do Immigrants Really Cost? A Reappraisal of Huddle's 'The Cost of Immigrants'. The Urban Institute reviewed Huddle's work in this study, and concluded that Huddle's approach was theoretically valid, but Huddle's study systematically understated the tax collections and overstated the service costs for immigrants. The Urban Institute maintained that the ISD study underestimated taxes paid by immigrants. The Urban Institute also questioned some of the underlying assumptions made in Huddle's estimation, contending that findings for Los Angeles were not representative of the country as a whole. The Urban Institute also asserted that Huddle overestimated the costs of services and job displacement of U.S. workers. The Urban Institute re-estimated the net cost for unauthorized immigrants using the "corrected" assumptions, and found a much lower net cost of unauthorized aliens for 1992 of $1.9 billion.

A Critique of the Urban Institute's Claims of Cost Free Immigration: Huddle Findings Confirmed. After the Urban Institute reviewed Huddle's work, Huddle produced an updated estimate in his study A Critique of the Urban Institute's Claims of Cost Free Immigration: Huddle Findings Confirmed for 1993. Huddle found that the cost of unauthorized aliens was $19.3 billion in 1993, an estimate which was $7.4 billion higher than his initial estimate.

Overview of Selected Studies

Presented below is a list of selected studies examining the costs/benefits of

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[12] Internal Services Division (ISD), *Impact of Undocumented Persons and Other Immigrants on Costs, Revenues and Services in Los Angeles County: A Report Prepared for the County Board of Supervisors*, (Los Angeles County, 1992).

[13] The Homeland Security Act of 2000 (P.L. 107-296) transferred most functions of Department of Justice's Immigration and Naturalization Service (INS) to the Department of Homeland Security (DHS). The transfer of these functions occurred on Mar. 1, 2003, at which time INS as an agency ceased to exist.

unauthorized migration to federal, state and local governments. These studies were selected because they attempt to quantify the cost/benefits of unauthorized migration separate from the total cost of all migration, and because the studies were completed after 1990. Moreover, with one exception, all the chosen studies explain the methodology used to calculate the estimates. The one study which did not present methodology, *Health Care for Unauthorized Immigrants: Who Pays?*, was included because the estimate in the study is often quoted.

For reasons discussed above, none of the studies provide national estimates, and instead the studies focus on limited geographic regions (e.g., border communities, states, or cities), and limit the cost/benefit analysis to a discrete issue (e.g., medical care, taxes, criminal justice costs). Some of these studies survey immigrant communities and ask immigration status, while others ask for local agencies to estimate the cost of services provided to unauthorized aliens. Others use published data sources and modeling to estimate the cost/benefits of unauthorized aliens residing in the United States.

Impact of Illegal Immigration on Mississippi (2006). The Mississippi Office of the State Auditor estimated that unauthorized aliens may cost the state $25 million per year.[14] The study estimated the state's unauthorized population by using published data from the Pew Hispanic Center[15] and the Current Population Survey (CPS), as well as unpublished data from the Department of Homeland Security's Immigration and Customs Enforcement (ICE). The number of unauthorized aliens enrolled in Mississippi's higher education system was estimated using data from CRS.[16] The amount spent on uninsured healthcare services was estimated by using both a finding from the RAND Corporation that 68% of unauthorized alien adults lacked health insurance,[17] and estimates of the total uninsured population (including citizens and noncitizens) from the Mississippi Hospital Association. Importantly, the report noted that "because no data regarding immigration status is collected, it is difficult to determine the accuracy of [the health] estimate..." Incarceration costs were reported by the Mississippi Department of Corrections for aliens who self-reported being illegally present. The report estimated that Mississippi's unauthorized alien population of 49,000 contribute $44.2 million in taxes a year ($40.8 million in sales taxes, and 3.4 million in income taxes) while costing the state:

- $23.7 million a year for education;
- $35 million a year for healthcare;
- $237,360 a year for public safety; and
- $10.3 million in remittance losses.

Impact of Illegal Immigration on Minnesota (2005). The Office of Strategic Planning and Results Management for the State of Minnesota reported that in FY2005,

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[14] Mississippi Office of the State Auditor, *The Impact of Illegal Immigration on Mississippi: Costs and Population Trends*, (Jackson, MS: Office of the State Auditor, Feb. 21, 2006).

[15] Jeffrey S. Passel, *Size and Characteristics of the Unauthorized Migrant Population in the U.S.*, (Washington, D.C.: Pew Hispanic Center, Mar. 2005). (Hereafter Passel, *Size and Characteristics of the Unauthorized Migrant Population in the U.S.*)

[16] CRS Report RL31365, *Unauthorized Alien Students: Issues and Legislation*, by Andorra Bruno and Jeffrey J. Kuenzi.

[17] Dana P. Goldman, James P. Smith and Neeraj Sood, "Legal Status and Health Insurance Among Immigrants." *Health Affairs*, vol 24, no. 6, 1640-1653 (Nov./Dec. 2005).

unauthorized aliens cost Minnesota between $176 and $188 million.[18] The study used the estimates of the unauthorized population from Pew Hispanic Center researcher Jeffrey Passel.[19] The study only estimated costs and did not attempt to consider the benefits of unauthorized aliens in areas such as labor or tax revenues. To estimate the education costs to the state, the study utilized data from the Urban Institute to estimate the number of unauthorized alien children ages 5 to 18 in the state,[20] and used the average daily operating expenditures per child for the school year. Estimates of the costs to Minnesota's health assistance programs was provided by the Minnesota Department of Health and Human Services. Estimates on incarceration costs were provided by the Minnesota Department of Corrections. Specifically the study reported that on unauthorized aliens, Minnesota spent (after federal reimbursement for some health costs):

- $17 million, for public assistance health care programs;
- $146 to $158 million for K through 12 public education; and
- $13 million for incarceration costs.

The High Cost of Cheap Labor: Illegal Immigration and the Federal Budget (2004). This study released by the Center for Immigration Studies[21] uses the March Current Population Survey (CPS) and the decennial census, and relies on the methodology used in two respected studies of the fiscal effects of immigration: (1) *The New Americans* (1997) by the National Research Council (NRC);[22] and (2) *Immigrants in New York: Their Legal Status, Incomes and Taxes* (1998) discussed below. Unauthorized aliens are estimated by using socioeconomic characteristics to assign a probability to each respondent that the respondent is an unauthorized alien. The study uses households as the unit of analysis arguing, as in the NRC study, that the household is the primary unit through which taxes are paid and services used. It is important to note that although the head of the household is an unauthorized alien, it is possible that others in the household are legally present, or United States citizens.

The study noted that cost of unauthorized alien households presents complex fiscal questions, and estimated that on average, each household headed by unauthorized aliens cost the federal treasury $2,736 in FY2002. The study estimated that although unauthorized

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[18] Minnesota Department of Administration, Office of Strategic Planning and Results Management, *The Impact of Illegal Immigration on Minnesota: Costs and Population Trends*, (St. Paul, MN: Minnesota Department of Administration, Dec. 8, 2005). Available at [http://www.state.mn.us/mn/externalDocs/Administration/Report_The_Impact_of_Illegal_Immigration_on_Minnesota_120805035315_Illegal%20Immigration%20Brief%2026.pdf]

[19] Passel, *Size and Characteristics of the Unauthorized Migrant Population in the U.S.*. The authors of the report reportedly talked to Dr. Passel and were informed that Minnesota's unauthorized alien population was indeed 85,000.

[20] Michael E. Fix and Jeffery S. Passel, *U.S. Immigration: Trends and Implications for Schools*, (Washington, D.C.: Urban Institute, Jan. 2003).

[21] Steven A. Camarota, *The High Cost of Cheap Labor: Illegal Immigration and the Federal Budget* (Washington, D.C.: Center for Immigration Studies, Aug. 2004).

[22] National Research Council, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration* (Washington, D.C.: National Academy Press, 1997). This study is not included in this memorandum because it does not distinguish between aliens who are legally present and aliens who are unauthorized.

households paid more than $4,200 in all forms of federal taxes[23] (e.g., payroll taxes, Medicare taxes, income taxes), they cost the federal government $6,949.[24]

Illegal Immigrants in U.S./Mexico Border Counties: Cost of Law Enforcement, Criminal Justice, and Emergency Medical Services (2001). The United States/Mexico Border Counties Coalition received a grant from the Department of Justice to measure the costs to the general funds of all 24 border counties for providing law enforcement, criminal justice, and emergency medical services to unauthorized aliens for FY1999. Four university researchers collected data by conducting site visits, interviewing governing board members, department heads, judicial officials, division heads, county managers, and information management specialists. The border patrol and state agencies were also consulted. Since many of the services are provided to noncitizens without ascertaining immigration status, the accuracy of the data is unknown. The study also used data from the decennial census, the CPS, INS border crossing data, Border Patrol apprehension data, newspaper accounts, public documents, congressional hearings, and previous research. The study found that Texas border communities spent $23.3 million, New Mexico spent $5 million, Arizona spent $24.2 million, and California spent $55.7 million providing law enforcement, criminal justice, and emergency medical services to unauthorized aliens.[25]

Immigrants in New York: Their Legal Status, Incomes and Taxes (1998). In this study by the Urban Institute,[26] researchers used official estimates of the number of unauthorized aliens from the INS for New York. The principal data sources used by the researchers for the income and tax estimates were the March 1995 CPS as modified with the Urban Institute's TRIM2 computer simulation,[27] the 1996 New York City Housing and Vacancy Survey, and a variety of administrative data sources. The researchers estimated that, on average, an unauthorized alien paid $2,400 in federal and state taxes in 1995.

Fiscal Impacts of Undocumented Aliens: Selected Estimates for Seven States (1994). The Urban Institute study Fiscal Impacts of Undocumented Aliens:

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[23] The study estimated that more than half of unauthorized aliens pay payroll taxes and that households headed by unauthorized aliens paid $1,371 in income taxes, $1,687 in Social Security taxes, $446 in Medicare taxes, $83 in unemployment taxes, $84 in corporate income taxes, and $541 in excise and other taxes.

[24] The estimated costs per unauthorized household were: $289 for Social Security and Medicare, $40 for cash welfare programs, $499 for food assistance programs, $659 for Medicaid, $182 for non-cash welfare programs, $591 for treatment for the uninsured, $442 for other tax credit and assistance programs, $371 for education, $760 for prisons/courts and immigration enforcement, $3,115 for other federal costs (including infrastructure maintenance and criminal justice).

[25] United States/Mexico Border Counties Coalition, *Illegal Immigrants in U.S./Mexico Border Counties: Cost of Law Enforcement, Criminal Justice, and Emergency Medical Services* (Washington, D.C.: United States/Mexico Border Counties Coalition, Feb. 2001).

[26] Jeffrey S. Passel, and Rebecca L. Clark, *Immigrants in New York: Their Legal Status, Incomes and Taxes*, (Washington D.C.: Urban Institute, Apr. 1998).

[27] TRIM2 (TRansfer Income Model Version 2) is a microsimulation program developed by the Urban Institute in which essentially the program fills out federal and state tax forms for a CPS household using the information collected in the CPS; the program estimates dependents, exemptions, and various deductions. TRIM2 also estimates the amount of Social Security tax (also referred to as the Federal Insurance Contribution Act tax or FICA) and unemployment insurance paid by household members and on their behalf by employers.

Selected Estimates for Seven States[28] examined specified costs (including incarceration, educational and Medicaid costs) versus tax revenues of unauthorized aliens in the seven states with the highest estimated unauthorized populations: California, Florida, Texas, New York, Illinois, Arizona, and New Jersey. The study examined only the costs of incarceration, elementary and secondary education, and emergency medical services for unauthorized aliens compared to revenues generated by state sales, property and income taxes paid by unauthorized aliens. The researchers cautioned that their estimates could not be used to calculate the net costs of unauthorized aliens.

Incarceration Costs. The estimates for incarceration costs of unauthorized aliens were based on data supplied by the states on all foreign-born prisoners incarcerated in state prisons as of mid-March 1994. The immigration status of the prisoners was determined by either matching the names to INS records or by interviews with the prisoners. The total costs were calculated by multiplying the estimated number of incarcerated unauthorized aliens by state-specific estimates of the annual prisoner costs provided by the Census of State Prisons. The study estimated that 21,395 unauthorized aliens were incarcerated in the seven states as of mid-March 1994, and estimated a total cost of $471 million for all of 1994. The study found that California had 71% percent of all incarcerated unauthorized aliens in the United States at a cost of $368 million to the state. New York spent the second highest amount with an estimated $45 million.

Education Costs. Using data from the Census Bureau, the INS, and the National Center for Education Statistics, the researchers estimated that 641,000 unauthorized alien children were enrolled in public primary and secondary schools in the seven states, at a total state and local cost of $3.1 billion. The researchers estimated that California spent $1.3 billion providing education for unauthorized alien children in 1993-1994.

Medicaid Costs. The researchers concluded that there were problems with state-level data (e.g., the data included people who were not unauthorized aliens) but that other data were not available which would provide reliable estimates of the Medicaid expenditures for unauthorized aliens. The study noted that the seven states reported spending an estimated $422 million on Medicaid costs for unauthorized aliens in 1993.

Tax Revenues. Although there are no direct measures of tax payments by unauthorized aliens, using "standard demographic" methods together with data from the Census, the INS, the states, and other studies, the researchers estimated that $1.9 billion was collected from unauthorized aliens in the seven states for state and local sales, property, and income taxes. Of that total, $1.1 billion was collected in sales taxes; $700 million in property taxes; and $100 million in state income taxes. The study notes that these three types of taxes do not reflect the total revenue generated by unauthorized aliens. The study also found that the estimated share of tax revenues paid by unauthorized aliens is "far less" than their share of the population in each state. For example, the study noted that unauthorized aliens in California paid an estimated 1.7% ($732 million) of all the taxes collected during the period studied, but represented 4.6% of the state's population.

The report did not take into account unauthorized aliens' impact on states' economies as workers, business owners or consumers. The researchers cautioned that because other

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[28] Rebecca L. Clark, and Jeffrey S. Passel, *Fiscal Impacts of Undocumented Aliens: Selected Estimates for Seven States* (Washington D.C.: Urban Institute, Apr. 1, 1998).

expenditures and revenue sources were not analyzed, the estimates could not be used to calculate the net costs of unauthorized aliens.[29]

The Unfair Burden: Immigration's Impact on Florida (1994). The Executive Office of the Governor and the Florida Advisory Council on Intergovernmental Relations produced a report in March 1994 entitled The Unfair Burden: Immigration's Impact on Florida. The study estimated that the cost of unauthorized aliens to the state of Florida was $262 million while the amount expended at the local level was $622 million. The report states:

> It is important to acknowledge the limitations of providing precise numbers in aggregating information for this report. There are few requirements of government agencies and school districts to determine the immigration status of the clientele they serve.

The costs were calculated by multiplying the estimated costs by the estimated percentage of noncitizens who are unauthorized aliens. The underlying assumption of this study that unauthorized aliens use services (such as education, corrections, judicial, law enforcement) in the same manner as noncitizens who are legally present is questionable as there are no data to support the assumption.

Uncompensated Health Care Costs Estimates

Health Care for Unauthorized Immigrants: Who Pays? (2001). The House Research Organization for the Texas House of Representatives noted that the Harris County Hospital District estimated that between 1999 and 2001 it spent $330 million on health care for unauthorized aliens, of which $105 million was reimbursed by the federal government.[30] The study failed to provide methodology for the estimate, and as a result, it is impossible to assess the validity of the estimate.

Medical Emergency: Costs of Uncompensated Care in Southwest Border Counties (2002). In 2002, the United States/Mexico Border Counties Coalition released a study entitled Medical Emergency: Costs of Uncompensated Care in Southwest Border Counties.[31] The survey conducted statistical modeling by identifying sets of non-border communities that "capture essential characteristics of each border community with respect to the demand for emergency medical services." The researchers note the complexity of matching border communities with other communities, as the counties on the U.S./Mexico border are unique on many important dimensions, and this complexity may have impacted the results. The researchers then performed a linear regression, and assumed the differences between the border communities and the similar non-border communities could be attributed to unauthorized aliens. The study concluded that in 2000, $189.6 million was spent by hospitals in the Southwest border communities to provide uncompensated care to unauthorized aliens.

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[29] Rebecca L. Clark, Jeffrey S. Passel, Wendy N. Zimmermann and Michael E. Fix, *Fiscal Impacts of Undocumented Aliens: Selected Estimates for Seven States*, (Washington D.C.: Urban Institute, Sept. 1994).

[30] Texas State Legislature, House Research Organization, *Health Care for Unauthorized Immigrants: Who Pays?*, Report Number 77-13, Oct. 29, 2001.

[31] United States/Mexico Border Counties Coalition, *Medical Emergency: Costs of Uncompensated Care in Southwest Border Counties* (Washington, D.C.: United States/Mexico Border Counties Coalition, Sept. 2002).

Increased Spending in the Local Communities

Chicago's Undocumented Immigrants: An Analysis of Wages, Working Conditions, and Economic Contributions (2002). A study released by the Center for Economic Development at the University of Illinois at Chicago surveyed 1,653 legal and unauthorized aliens living in the Chicago metro area. The sample was not random, as the survey was implemented through community based organizations as a mechanism to over-sample the unauthorized population.[32] Thus, although the results are most likely not representative of other geographic areas, the model the researchers used to estimate the amount that unauthorized aliens in the Chicago spend per year is comprehensive. The estimate was based on the 2001 CPS, the INS estimates of the unauthorized alien population living in Illinois in 2001, and statistics from the survey. The study found that unauthorized aliens in the Chicago area spend approximately $2.89 billion annually which generates an additional $2.56 billion in local spending.[33] In addition, it can be argued that increased spending leads to increased revenues from sales taxes for local and state governments.

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[32] Often researchers will make the decision not to do a random survey to assure that an often under-represented population, such as unauthorized aliens, is large enough in the sample to be statistically significant.

[33] Chirag Mehta, Nik Theodore, Iliana Mora, and Jennifer Wade, *Chicago's Undocumented Immigrants: An Analysis of Wages, Working Conditions, and Economic Contributions* (Chicago: University of Chicago Center for Urban Economic Development, Feb. 2002).

Appendix A: Summary of Studies

Table 1 summarizes the findings of the studies discussed in this memorandum.

Table 1. The Studies and Findings Presented in the Memorandum

Study name and year	Study author	Universe	Findings
The Costs of Immigration (1993)	Donald Huddle	All unauthorized aliens	Net cost of unauthorized aliens to federal, state, and local governments was $11.9 billion in 1992.
How Much Do Immigrants Really Cost? A Reappraisal of Huddle's The Cost of Immigrants (1994)	Jeffrey Passel	All unauthorized aliens	Net cost of unauthorized aliens to federal, state, and local governments was $1.9 billion in 1992.
A Critique of the Urban Institute's Claims of Cost Free Immigration: Huddle Findings Confirmed (1995)	Donald Huddle	All unauthorized aliens	Net cost of unauthorized aliens to federal, state, and local governments was $19.3 billion in 1993.
Impact of Illegal Immigration on Mississippi (2006)	Mississippi Office of the State Auditor	Unauthorized aliens in Mississippi	Mississippi estimates that it spends $25 million a year on unauthorized aliens.
Impact of Illegal Immigration on Minnesota (2005)	Minnesota Department of Administration, Office of Strategic Planning and Results Management	Unauthorized aliens in Minnesota	In FY2005, unauthorized aliens cost Minnesota between $176 and $188 million.
The High Cost of Cheap Labor: Illegal Immigration and the Federal Budget (2004)	Steven A. Camarota	Households headed by unauthorized aliens	Each unauthorized alien household cost the federal treasury $2,736 in FY2002.

Study name and year	Study author	Universe	Findings
Illegal Immigrants in U.S./Mexico Border Counties: Cost of Law Enforcement, Criminal Justice, and Emergency Medical Services (2001)	The United States/Mexico Border Counties Coalition	Border communities in Texas, New Mexico, Arizona, California	Texas border communities spent $23.3 million, New Mexico spent $5 million, Arizona spent $24.2 million, and California spent $55.7 million providing law enforcement, criminal justice, and emergency medical services to unauthorized aliens.
Immigrants in New York: Their Legal Status, Incomes and Taxes (1998)	Jeffrey S. Passel and Rebecca L. Clark	Immigrants in New York	Unauthorized aliens in New York paid $2,400 each in federal and states taxes in 1995
Fiscal Impacts of Undocumented Aliens: Selected Estimates for Seven States (1994)	Rebecca L. Clark, and Jeffrey S. Passel	Unauthorized aliens in California, Florida, Texas, New York, Illinois, Arizona, and New Jersey	For unauthorized aliens, the seven states spent $471 million on incarceration costs (1994), $3.1 billion for education (1993-1994), $422 million for Medicaid (1993), and collected $1.9 billion in taxes (1994).
The Unfair Burden: Immigration's Impact on Florida (1994)	The Executive Office of the Governor and the Florida Advisory Council on Intergovernmental Relations	Unauthorized aliens in Florida	Unauthorized aliens in Florida cost the state government $262 million and the local government $622 million.
Health Care for Unauthorized Immigrants: Who Pays? (2001)	The House Research Organization for the Texas House of Representatives	Unauthorized aliens treated at Harris County Hospital District	Between 1999 and 2001, Harris County Hospital District spent $330 million on health care for unauthorized aliens, of which $105 million was reimbursed by the federal government.

Study name and year	Study author	Universe	Findings
Medical Emergency: Costs of Uncompensated Care in Southwest Border Counties (2002)	United States/Mexico Border Counties Coalition	Border communities in Texas, New Mexico, Arizona, California	In 2000, hospitals in the Southwest border communities spent $189.6 million on uncompensated care for unauthorized aliens.
Chicago's Undocumented Immigrants: An Analysis of Wages, Working Conditions, and Economic Contributions (2002)	Chirag Mehta *et. al.*	Aliens in the Chicago metro area	Unauthorized aliens in the Chicago spend approximately $2.89 billion annually which generates an additional $2.56 billion in local spending.

Chairman SENSENBRENNER. Mr. Ramirez.

TESTIMONY OF ANDREW RAMIREZ, CHAIRMAN, FRIENDS OF THE BORDER PATROL

Mr. RAMIREZ. Thank you, Chairman Sensenbrenner, Ranking Member Jackson Lee and Members of the Committee, for inviting me to testify.

Should Mexico hold veto power over the U.S. border security decisions? That is one of the issues that I am prepared to discuss today.

Other issues that I am prepared to discuss include:

Civilian border observation projects; the virtual wall, including misinformation about boots on the ground; remote video surveillance cameras, ground sensors, tunnel detection and other technologies that can be used to secure our borders;

Two, the ways in which the trade corridors for NAFTA and CAFTA have undermined border security, expanding the flow of illegal narcotics and illegal aliens into the United States while creating areas of lawlessness on our southern border that provides easy access for criminal gangs, and worse, for terrorist organizations.

In an e-mail to my vice chairman, dated August 15, 2006, Fredo Arias-King, former advisor to Mexican President Vicente Fox, wrote: "One thing that is readily noticeable is that the loudest pro-immigration advocates in Mexico were and are the loudest anti-American voices."

Figures in the Fox government, such as Jorge Castaneda and Adolfo Aguilar Zinser, are seen as geopolitical geniuses by the—and I quote him, helpless Pan party officials who suffer from some kind of learned helplessness.

"Castaneda and Zinser," says Arias-King, "long advocated using the immigrants as objects, not subjects, to press Washington and consulate to do certain things or simply for revenge."

Castaneda even wrote at one point, that the Mexican government should repress the U.S. citizens living in Mexico legally.

I would also like to talk about an incident that occurred right here in El Paso. It involves the greatest miscarriage of justice that I have ever witnessed and threatens the ability of the Border Patrol to do its job and protect our country. The two U.S. Border Patrol agents, Ignacio Ramos and Jose Compean, were to be here today, but, due to the terms of their bond agreement, are prevented from coming onto Federal land. However, their wives, Monica and Claudia, as well as their families, are with us today.

These agents stopped a drug smuggler from bringing 743 pounds of marijuana into this country. Administrative errors made during the course of that stop should have been handled under standard disciplinary procedures. But to quote Judge Ted Poe and other Members of Congress, an overzealous prosecutor highjacked those procedures.

In a case that is covered with the fingerprints of misconduct, as stated by Members of Congress and many people throughout America, Agents Ramos and Compean were abandoned by the Border Patrol's own management. The result has been devastating to the morale of rank and file agents, as it has raised questions from local

law enforcement officials about whether the Administration really wants to secure our borders or not. They are reiterating what Agent Ramos himself said, Do they want us to catch them or not?

Chairman SENSENBRENNER. Continue.

Mr. RAMIREZ. That same question is foremost in the minds of 11,000 agents of the Border Patrol, men and women who put their lives on the line for us every day. They all remember Theodore Newton and George Azrak, agents who were murdered by drug smugglers and are now memorialized in the highest decoration that an agent can receive, the Newton/Azrak medal.

In a similar way, those in the Border Patrol who believe in the highest ideals of public service will never forget the names of Ramos and Compean, the first agents in the history of the Border Patrol to go to prison for simply doing their jobs. In fact, during the trial, the smuggler violated the terms of his immunity agreement when he should have been arrested at the point for not telling all information as he was directed within the agreement to do. He didn't and was spirited back to Mexico at the conclusion of the hearing that day.

Mr. Chairman, I do have that agreement, if that could be introduced, as well.

Chairman SENSENBRENNER. Without objection.

Mr. RAMIREZ. Mr. Chairman, I would like to take this opportunity to request a formal investigation into the Ramos/Compean case by the Committee and a public hearing to determine the facts. Questions about the rulings of the judge, the conduct of the prosecutor and the jury and even the Border Patrol itself need to be answered. Thousands of Border Patrol are waiting for answers, not only about this case but also about the greater issues behind it. Until these issues are clarified, all of them risk going to prison.

By making an example of Ramos and Compean, a clear message has been sent to the rest of the Border Patrol. It doesn't matter what the law says, if you violate such policies as nonpursuit, you will go to prison. Intimidation of the Border Patrol, as signaled by the prosecution of Ramos and Compean, coerces others in law enforcement to look the other way, and eventually the American people will be forced to accept the reality of a new transnational sovereignty, the North American communities.

Indeed, Mexico has lost effective control of its northern territories. Mexican police have been compromised by bribery, neutralized by intimidation or eliminated by assassination. Others have joined with criminal elements in drug smuggling and human trafficking. The Mexican military has suffered the same effect with active duty units, including generals, operating in the service of the drug cartels and some here on American soil.

The Department of Homeland Security has documented at least 235 incursions into the U.S. Less known is the Military Incursion Card, which has been given to Border Patrol agents in the Tucson Border Patrol sector as early as 1997, and instructing them in how to react to incursions by military units, which I would also like to submit for the record, as well.

Chairman SENSENBRENNER. Without objection.

Mr. RAMIREZ. The key problem is revealed in the shifting of responsibility for covering key smuggling zones along the Mexican

border, including one here in El Paso. Responsibility has shifted from stations that have hundreds of agents to stations with only a few. Why would the Border Patrol act so blatantly to, if you look at it from one perspective, help the cartels unless the corruption that has riddled Mexico for so many years is finally working its way north.

Once again, our organization feels that the chief of the Border Patrol needs to be questioned as to this redetailing and deployment of zones of responsibility.

The answer to this problem goes back to the creation of the Department of Homeland Security and the reorganization from the Immigration and Naturalization Service, or Legacy INS as it is referred to in the agency, to the new Customs and Border Protection Agency at DHS. Too much power was given to the chief of the Border Patrol with no checks and balances, with the sole exception of Congress and the American people.

Lack of security on our border causes security problems throughout our country. Every city in America is now a border town because these drug smugglers, the human traffickers and the violent gangs associated with them are not confined to the border regions.

I'll just add this, Mr. Chairman—thank you.

[The prepared statement of Mr. Ramirez follows:]

PREPARED STATEMENT OF ANDY RAMIREZ

Official Testimony Presented by:

Andy Ramirez, Chairman
Friends of the Border Patrol

Submitted to:

Committee on Judiciary

The Honorable F. James Sensenbrenner, Chairman

August 17, 2006 – El Paso, TX

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INTRODUCTION

Thank you Chairman Sensenbrenner, Ranking Member Conyers, and members of the committee for inviting me to testify today on behalf of Friends of the Border Patrol. I would also like to thank you for calling these important hearings as the growing threat of terrorism focuses national attention on the vulnerability of our borders, borders that have been weakened by treaties and agreements between the governments of Mexico and the United States.

Friends of the Border Patrol has been investigating border security for over two years. Monitoring operations on both the northern and southern frontiers, we have looked at the Border Patrol from the perspective of its line agents as well as its management. We have also looked at the ways in which the Border Patrol relates to local law enforcement agencies and its relations with border residents. During this time, we have compiled an extensive amount of data, much of which has already been made available to the Congress.

While most Americans are not aware of the details that I am prepared to give to you today, these details are well known to drug smugglers, human traffickers, and every terrorist in the world. They all know our weaknesses. The government of Mexico knows those weaknesses as well. "Should Mexico Hold Veto Power Over U.S. Border Security Decisions?" That is one of the issues that I am prepared to discuss today. Other issues that I am prepared to discuss include:

1. Civilian border observation projects, the virtual wall (including misinformation about boots on the ground) remote video surveillance cameras, ground sensors, tunnel detectors, and other technologies that can secure our borders.

2. The ways in which the trade corridors for NAFTA and CAFTA have undermined border security, expanding the flow of illegal narcotics and illegal aliens into the United States while creating areas of lawlessness on our southern border that provide easy access for criminal gangs and worse, for terrorist organizations. Furthermore, the ways in which the Mexican government is using trade agreements as a cover for its expansionist ambitions in North America.

3. Finally, I would like to talk about an incident that occurred right here in El Paso. It involves the greatest miscarriage of justice that I have ever witnessed and threatens the ability of the Border Patrol to do its job to protect our country.

Two agents of the United States Border Patrol, Ignacio Ramos and Jose Compean, who are here today, with their wives, Monica and Claudia, stopped a drug smuggler from bringing 743 pounds of marijuana into this country. Administrative errors made during the course of that stop should have been handled under standard disciplinary procedures but an overzealous prosecutor hijacked those procedures. In fact, Judge Ted Poe, Member of Congress from Houston and a respected criminal courts judge for over 20 years, referred to Debra Kanof as an "overzealous prosecutor and believes the case was initiated

by people much higher in the Justice Department as an appeasement to the government of Mexico. North Carolina Congressman Walter Jones wrote U.S. Attorney General Alberto Gonzales saying the justice department's outrageous prosecution does nothing but tie the hands of our border patrol and prevent them from securing America against a flood of illegal immigrants, drugs, counterfeit goods and quite possibly, terrorists. This situation cries out for oversight.

In a case that is covered with the fingerprints misconduct, and an overzealous prosecution as stated by Members of Congress, Agents Ramos and Compean were abandoned by the Border Patrol's own management. The result has been devastating to the morale of rank and file agents and it has raised questions from local law enforcement officials about whether the Bush Administration really wants to secure our borders or not. They are reiterating what Agent Ramos himself said, "Do they want us to catch them or not"?

That same question is foremost in the minds of 11,000 agents of the Border Patrol, men and women who put their lives on the line for us everyday. They all remember Theodore Newton and George Azrak, agents who were murdered by drug smugglers and are now memorialized on the highest decoration that an agent can receive, the Newton-Azrak Medal. In a similar way, those in the Border Patrol who believe in the highest ideals of public service will never forget the names of Ramos and Compean, the first agents in the history of the Patrol to go to prison for simply doing their jobs.

Mr. Chairman, I would like to take this opportunity to request a formal investigation into the Ramos-Compean case by this committee and a public hearing to determine the facts. Questions about the rulings of the judge, the conduct of the prosecutor and the jury, and even the Border Patrol itself need to be answered.

Thousands of Border Patrol agents are waiting for answers, not only about this case but also about the greater issues behind it. Until those issues are clarified, all of them are at risk of going to prison. All of them have sworn to uphold the law but all of them are subject to the authority of the President, a President who has committed himself to the "North American Community". He would like to open our borders with Canada and Mexico immediately but the laws on the books still recognize the United States as a sovereign nation with borders that need to be secured. The President cannot, therefore, order the Border Patrol to "stand down"; such an order would be politically impossible at this time. But he can achieve the same objective by other means; he can punish the Border Patrol if they do their jobs too well.

By making an example of Ramos and Compean, the Bush Administration is sending a clear message to the rest of the Border Patrol; "it doesn't matter what the law says, if you violate the President's policy, you will go to prison." Intimidation of the Border Patrol, as signaled by the prosecution of Ramos and Compean, coerces others in law enforcement to "look the other way" and eventually the American people will be forced to accept the reality of a new transnational sovereignty, the "North American Community."

The conflict between law and policy has created confusion on the border and that confusion has created opportunities for smugglers, traffickers, and terrorists. Congress must act to bring the borders under control but the Congress must act in a responsible way. Unfortunately, the Senate has passed a bill (S 2611) that will only make things worse. By any other name it is still an amnesty and if the House agrees to it, then the consequences for national security will be catastrophic. The Department of Homeland Security will immediately certify that the borders are secure when, in fact, they are not. The truth is that our southern border is a war zone where, after dark, the border counties in Texas "go western."

Indeed, Mexico has lost effective control of its northern territories. Mexican police have been compromised by bribery, neutralized by intimidation, or eliminated by assassination. Others have joined with criminal elements in drug smuggling and human trafficking. The Mexican military has suffered the same fate with active duty units operating in the service of the drug cartels, on American soil! The Department of Homeland Security has documented at least 235 incursions into the United States. Less known is the "Mexican Military Incursion Card" given to Border Patrol agents in the Tucson Border Patrol Sector as early as 1997 and instructing them in how to react to incursions by military units, including a warning not to interfere.

Nuevo Laredo is one of many examples in northern Mexico where drug violence has broken down civil authorities and the problem is spilling over into the United States, making the job of the Border Patrol more perilous than ever. We know, from inside sources, that Border Patrol agents have come increasingly under assault, being shot at by high caliber firearms from across the border and on American soil. Unfortunately, reports are being doctored to exclude the mention of shootings and other assaults against agents, as well as incursions by the Mexican military. Failure to report accurate data is an opening to corruption that cannot be excused as just "following orders." David Aguilar, Chief of the Border Patrol, needs to be questioned, "Who gave that order?"

Another problem is revealed in the shifting of responsibility for covering key smuggling zones along the Mexican border, including one here in El Paso. Responsibility has been shifted from stations that have hundred agents to stations with only a few. Why would the Border Patrol act so blatantly to help the cartels unless the corruption that has riddled Mexico for so many years is finally working its way north. Once again, Chief David Aguilar needs to be questioned, "Why this is being done?"

The answer to this problem goes back to the creation of the Department of Homeland Security and the reorganization from the Immigration and Naturalization Service, or "Legacy INS" as it is referred in the agency, to the new Customs and Border Protection Agency at DHS. At Legacy INS, the biggest problem confronted then by the Border Patrol was the very bureaucracy responsible for management as the agency was impaired with red tape. Morale was superior, and we never heard complaints about the failure to conduct interior enforcement operations, investigators and agents alike did their job, which was prior to the destruction of INS. The machine ran well, compared to today.

The Border Patrol today has no oversight, no checks and balances, and has created what many agents, and retired managers behind closed doors state to be a "Supreme Ruler" style of management that has rendered this agency to be broken and in need of a complete overhaul. Also, many retired and active duty sources have stated that the Border Patrol suffers from a "culture of corruption" that has promoted inexperienced agents into managerial positions at all levels, who due to lack of both experience and years in the service are in a position that their positions can be held against them. The experienced agents know how to keep their sectors operational, in spite of headquarters, through their creativity. For example, if I am promoted at 40 years of age to a rank between Special Operations Supervisor and Chief Patrol Agent, I know that I have to "play ball" no matter what the effect could be for the agents on the line and after a while, this type of manager has been retrained to the type of "minion" that will follow the company line regardless of the truth, or consequences by misleading the men and nation. This mechanism is how headquarters maintains control, while those who don't play along are forced into retirement, which for some consider it the equivalent of being paroled.

Consider the nonstop reports by the media and by our organization that morale is at its worst level ever. This is unprecedented in the agency and certainly the argument can be made that it is due to the free-reign Congress gave the position of National Chief of the Border Patrol (Assistant CBP Commissioner) during the reorganization. Now when we need the agents to do their job most effectively during this "Global War on Terror," decisions made by headquarters prevent the very agency responsible for the territory between the ports of entry from enforcing their mission, and many agencies who share this joint responsibility complain about lack of communication or cooperation by the Border Patrol.

At the time the Congress sought to assist the agency by removing all the internal oversight and red tape and instead created the ineffective organization, or monster, we see today that is rampant with charges of corruption, noted by internal fear by their own agents, mistrust and non-communication with other agencies, and a leader who continues to mislead the Congress and nation and at the same time refuses to implement programs or discuss information that could have disastrous consequences for the nation. The Border Patrol is an out of control agency and an ineffective force that must be repaired immediately by the Congress.

Our inability to deal with border corruption is further weakened by S 2611, the Senate's guest worker/amnesty bill. It would prevent local peace officers from assisting in the enforcement of Federal immigration laws. Still worse, the bill's requirement for consultation with the Mexican government before enhancing border security will make such enhancements impossible. The involvement of Mexico's government in the promotion of illegal immigration is well known and the involvement of Mexican officials with the drug cartels is notorious. Giving the Mexican the government veto powers over our border security will. We cannot entrust the security of the United States to Mexican officials who are for sale.

Lack of security on our border causes security problems throughout our country. Every city in America is now a border town because the drug smugglers, the human traffickers, and the violent gangs associated with them are not confined to the border regions anymore. These criminals, along with their terrorist counterparts have free and open access to all of the United States and, as long as the Department of Homeland Security remains under its current management, the nightmare will continue. The Congress of the United States has the power to intervene and in the interest of national security, the Congress must do so quickly.

Coercing the Border Patrol into standing down is an obstruction of justice with national security implications. The same applies to officers of the Border Patrol who, acting according to military code, should know that it's illegal to follow an illegal order. Anyone in the Congress, or elsewhere, who thinks that it's acceptable to follow orders to "look the other way," has forgotten Nuremberg.

We must immediately abandon these agreements with Mexico due to the war on the border, and due to the high degree of corruption by the Mexican Government, which is ruled by bribes, intimidation, and assassinations in the border regions, and corruption throughout the nation. We cannot consider any legislation that gives any approval to such a corrupt and hostile neighbor as our testimony demonstrates, and real immigration reform must include overhauling the agencies responsible for enforcing the laws approved by the Congress and signed into law. To simply add more parts to a broken agency is not enough when the Border Patrol continues to be badly mismanaged by their managers as it has for the past few years. That's simply giving a tourniquet to a band-aid type wound. We must fix the agencies, and department itself for it is unconscionable to continue to leave this agency "as is" while fighting this "Global War on Terror."

Mr. Chairman, thousands of Border Patrol agents are looking to you for justice while millions of Americans are looking to you for security. We cannot have one without the other. Open an investigation and call a hearing. Correct the miscarriage of justice that has been committed against Agents Ramos and Compean and restore them to their families.

It's particularly appropriate that the 9-11 Families for a Secure America have announced their support of Agents Ramos and Compean. There have been too many times when our government has acted too late to protect the American people. Don't let it happen again with the Border Patrol. The coercive power of the presidency can be very intimidating when they seek to erase the borders into a North American Community. If they are not safe, none of us is safe.

I look forward to responding to your questions

Mexico and the U.S. Foreign Policy Establishment

The Transnational Perspective

In numerous trade and border security treaties and agreements signed between the United

States and Mexico, the plans for the reorganization of the border emphasizes traffic corridors more closely integrating the economies of the two countries and planned transnational of the borderlands on both sides into an integrated transition *zone* replacing the current constitution of the borderlands along a sharp international *boundary* in which economic integration takes precedence over state sovereignty.

Throughout these documents we read about security concerns, yet those concerns are so vague as to be beyond critique at this time. The implication is that economic integration takes priority over cross-border threats as seen in The growing power within the borderlands of drug cartels, the menace of international terrorism and the influx of criminal elements spreading across the country from south of the border.

The transnational merger of the United States and Mexico, in what has been described as the "North American Community", and modeled on the borderless European Union and as revealed in these government documents, might well work with two countries as similar and as compatible as the United States and Canada. The merger as envisioned between a Third World country like Mexico and the most developed country in the world, the United States would, however, involve a major risk in terms of eventual outcomes in a number of ways, most importantly in terms of national security as defined above.

The Mexican side of the border, for example, is no longer under the effective control of the Mexican authorities. Powerful drug cartels have intimidated and bought Mexican police at all levels (local, state and federal) as well as the Mexican Army whose active units regularly mount armed incursions into the United States as escorts for illegal drug runs. The cartels also have their own' armed units consisting of former military personnel trained by the Mexican and the United States armies (the infamous Zeta are perhaps the best known examples). Under such circumstances the kind of effective high level law enforcement cooperation envisioned in these documents are highly unrealistic at best and down right dangerous at worst, since intelligence flows from the United States to Mexico as envisioned in those documents runs the high risk of being diverted and used by organized drug smugglers and other criminal elements, thus increasing danger to American law enforcement agents.

What these protocols and plans reveal is either a willful disregard for those obvious facts, and thus for the lives and well-being of American police and Border Patrol agents, or a willingness to accept those risks and their outcomes in the higher interest of more profitable trade between these two disparate countries.

The documents reveal on the US side a transnational plan based on a disregard for the disparities between the two countries and the consequences involved. The vision on the Mexican side, to judge by the words and deeds of Mexican elites of all political parties, is indeed an EU-like arrangement between the two countries, but for far more particularistic purposes: to assure the continued flow of what the Mexican elites regard as their excess population, people-dumping in short, as a safety-valve to maintain their current privileged position; the continued flow of remittances that achieve the same purpose and

relieve the Mexican government of finding a way to make its own resources more profitable to their nation, and as a means of extending their political power into the United States.

The Mexicans people are avowed nationalists and would probably object to the transnational plan of the United States if they understood what it meant for them in the long run. In the short run, however, the elites manipulate this nationalism as a means of achieving their own ends in a spirit far indeed from the vision of the American trans-nationals whose policies the United States government is quietly but determinedly putting in place.

While the Americans are pursuing a transnational policy guided by a transnational vision it appears that the Mexicans are exploiting this vision for the pursuit of a nationalist policy. Both the United States and Mexico were conceived as territorial nation states, that is, as nations consisting of communities of citizens characterized by a unifying language and culture living within a sovereign territory bounded by clear borders. This was the model of the original nation state in Europe and the United States. Another model is the ethnic nation defined by a population that shares a common language and culture, and striving to achieve national sovereignty, but one that extends into the territories governed by different states. This was the model that took hold in Eastern Europe where ethnic populations extended into other poly-ethnic territories under different sovereigns. The attempt to tighten ethnic and territorial lines was one of the prime causes of violence in the Balkans at the end of the nineteenth century to the present, giving rise to the term "Balkanization". (For discussions of the scholarly literature on the difference between territorial and ethnic nations and their outcomes see Ernest Gellner "Nations and Nationalism" 1983 Cornell University Press: Ithaca NY, pp. 99-101 and Anthony D. Smith "The Ethnic Origin of Nations", 1986 Blackwell: Oxford UK, pp. 129-161)

The Mexican government has redefined Mexico from a territorial to an ethnic state; those Mexican citizens resident in this country as well as their offspring born here are considered Mexicans, and moves are underway to make them dual citizens in the hope that the Mexican elite can play on Mexican nationalism abroad to advance their agenda and to solidify their privileged position in Mexico, a situation that has driven so many Mexicans from their homeland in the first place.

In sum, Mexican elites are striving to create an EU-like arrangement in North America not to advance a transnational vision as are their American counterparts, apparently with the goal of establishing a condominium in the borderlands and extending their influence throughout the United States through their Mexican ethnic nation resident here in an effort to protect and enhance their own position in Mexico at the expense of American sovereignty and citizenship. In order to achieve these goals the Mexican elites are:

1. Deliberately dumping their "excess" population on the United States in violation of American sovereignty and at great expense both fiscally and socially to the United States.

2. Violating the Treaty of Vienna on consulates by interfering in the internal affairs of the

United States and doing so by utilizing their consular service

3. Encouraging Mexican nationalism and promoting dual citizenship in order to manipulate American policies in their own particular interests.

These are hostile acts against the American nation, state, and its citizens, acts to which the Bush administration, in the interest of a transnational vision and narrow economic interests, are willing accomplices.

This type of planning without attention to a carefully designed plan for minimizing illegal immigration will lead to an increase in the flow and with it, the ingress of criminal elements and potential terrorists.

However, the only voice in the Bush Administration counter to this policy path, has been U.S. Ambassador to Mexico, Antonio Garza, who issued a blunt retort in a five page New Year's 2006 statement to Mexicans' growing criticism of tougher U.S. border security measures, calling the criticism "excessive, often irresponsible and almost always inaccurate."

Again, Ambassador Garza rejected critics' comparisons of a proposed border fence extension to the Berlin Wall and dismissed the idea that illegal aliens have a right to seek employment in other countries.

"There is no human right to enter another country in violation of its laws," Garza wrote. "Illegal immigration is a threat to our system of laws and an affront to the millions around the world, including in Mexico, who play by the rules in seeking to come to the United States."

"While no one doubts the majority of illegal immigrants from Mexico are simply looking for work or a better way of life, the sheer volume of illegal crossings offers ample opportunities for those who might have other plans," Garza wrote, referring to potential terrorists.

Garza called comparisons of the border fence to the Berlin Wall "disingenuous and intellectually dishonest" and "personally offensive to me." He noted that while the Berlin Wall was meant to keep communist East Germany's own citizens from leaving, the U.S. border fences are meant to keep illegal immigrants out.

Below is evidence of Mexican intentions and their agenda in the words of Mexican leaders of all political factions.

The Mexican Perspective

Former foreign minister Jorge Castañeda PRI hold-over in the president administration, wrote in 0the Atlantic Monthly as far back as 1995 that "any attempt to clamp down on immigration from the south [by the United States] – by sealing the border militarily, by

forcing Mexico to deter its citizens from emigrating or through a federal version of Proposition 187 – will make social peace in the barrios and pueblos of Mexico untenable."

"You're Mexicans – Mexicans who live north of the border". 1998 President Ernesto Zedillo said to Mexican Americans. He also said, "The Mexican nation extends beyond the territory enclosed by its borders."

Samuel P. Huntington, chairman of the Harvard Academy for International and Area Studies... "Mexico is a dramatic example of the intensifying activity of foreign governments to influence American policy and to mobilize their Diaspora for that purpose." (Who Are We: the challenge to America's national identity" p287).

From the very start Fox asserted his policy towards his northern border. In 2000 in his Five Year Fox called the enforcement of American immigration law on American soil by American authorities "police persecution". In a speech delivered in December of that year in Nogales, Mexico, he called illegal aliens in the United States "heroes" and condemned the Mexican police for preying on them in their northward trek. In 2001 Fox's new Commissioner of the Northern Border, US-born Ernesto Ruffo Appel former governor of the Mexican state of Baja California, told the press (The News published in Mexico City) that he would like to mount a public awareness campaign to warn potential illegal entrants into the United States of the dangers of their enterprise, or as The News puts it, "with an eye towards improving migrants' crossing practices". Ruffo advised illegal border-crossers, "if the Border Patrol finds you try again. The game is over … for this round. Tomorrow begins another day." He continued by says, "We must tell them, in January, February and March, if you pass through the mountains it is cold. In June, July and August it is really hot. So the time to cross …" The journalist reports that at that point the Mexican Commissioner for the Northern Border "trailed off with a smile".

Also, in the summer of 2001when fourteen illegal aliens perished in the desert of Western Arizona, the Mexican government issued "survival kits" with maps and accessories that would help them survive along with advice that would guide them to US tax supported public assistance once they had arrived across the border. One wonders, however, how serious such a gesture was for each kit also included such non-survival devices as condoms and tips on meditation. The gesture did show, however, the contempt that the Mexican government holds for US immigration laws and territorial sovereignty. In May 2002, the Mexican government erected solar operated beacons on the Mexican side of the border and water stations in eastern California in order to guide illegal aliens in that dangerous stretch of desert

Even before Fox took office the Mexican government had made an attempt to protect emigrants on Mexican soil by establishing a special police unit known as Grupo Beta designed to protect illegal aliens while on Mexican soil. Journalist Sebastian Rotella describes these plain-clothes men in action. "Piratical-looking men in army jackets materialize out of the night" where they join a crowd of emigrants near the fence. The huddled emigrants cringe at the strangers' approach. "The officers crouch next to the

migrants to survey the landscape, the gleaming-wet silhouettes of the U.S. Border Patrol vehicles gliding through the mist. The officers pass out business cards. Don't worry, compa, we're the police. Beta, Gobernación (Interior Ministry). We are here to help. Any problems? Seen bandits around? Any police bother you? Let us know". Grupo Beta has even prepared a pamphlet in comic book form written in simple Spanish and illustrated with colored pictures so the illegal migrant can better understand, explaining how to deal with hazards illegal entrants might encounter on their way to the border crossing. The pamphlet includes directions on how to file complaints against police who have exploited them. As Heather MacDonald says, this essentially pits "two types of Mexican lawlessness against each other."

In December 2004 the Mexican foreign ministry published a 32-page manual, also in comic book form, titled The Guide for the Mexican Migrant that serves as a how to manual for illegal aliens cross into the United States and what they should do once they get there. The New York Times (1/9/05) published the following excerpts. The manual begins:

Dear Countryman:

This guide is meant to give you some practical advice that could be useful if you have made the difficult decision to seek new labor opportunities outside our country.

The safe way to enter another country is to obtain and passport from the Mexican foreign ministry and, and a visa from the embassy or consulate from the country to which you wish to travel.

Still, in practice we see many cases of Mexicans who try to cross the northern border without the necessary documents, documents, traveling through dangerous terrain, which includes deserts, and rivers and with strong and sometimes invisible currents.

By reading this guide, you can find out about basic legal issues concerning your stay in the United States of America without the appropriate immigration documents, as well as about the rights you have in that country, once there, regardless of your migratory status.

The manual goes on to advise how best to overcome the dangers of the border cross, what the illegal migrant should do if apprehended and how to manipulate the system and avoid the authorities once inside the United States.

Crossing the river can be very risky, especially if you cross alone and at night.

Heavy clothing grows heavier when wet and this makes it difficult to swim or float.

If you cross the desert, try not to walk during hours when the heat is not so intense.

The highways and towns are very spread out, so it will take several days to find roads and you will not be able to lug food or water for such a long time; you can get lost.

Drinking water mixed with salt will help replace lost body fluids. Although you will feel Thirstier, there is much lower risk of dehydration if you drink salt water.

If you get lost use power lines, train tracks or dirt roads as guides.

Do not let him [hired guide] out of sight; remember he is the only one who knows the terrain and, therefore can lead you across.

[if detained] do not resist arrest.
Do not assault or insult an official
Do not throw stones or objects at officials
Do not try to run or escape.
Do not cross high-speed highways.
It is better that they detain you for a few hours and repatriate you to Mexico than to get lost in the desert.

Your rights are:
To refuse to make a declaration or sign documents especially if they are in English.
To have food and water whenever you need it.
To receive medical attention if you are injured or sick.
Not to be hit or insulted, etc.

[Once in the United States] Avoid calling attention to yourself, at least while you arrange your stay or documents for living in the United States.

The best formula is to alter your routine at work or at home; do not drive and drink, for if arrested you might be deported; don't engage in domestic violence, a point illustrated in comic book picture of a man punching a woman in the face.

In spite of increasing awareness of the problem of illegal immigration in the United States and the political response to it, the Mexican government went ahead with the strategy of encouraging its unwanted population to go north. Towards the end of January 2006 the government's National Human Rights Commission announced that it planned to issue some 70,000 maps informing illegal border crossers how to negotiated the dangerous areas in Arizona while illegally entering the United States. The map shows the location of roads and highways as well as water tanks and rescue beacons designed aid aliens to illegally cross the border from Mexico into the United States. The Mexican agency said that the maps were being printed for mass distribution in order to help save lives. When the plan was made known by the press in the United States, at the same time that a heavily armed Mexican drug escort in Humvees and military uniforms chased off American law enforcement on the American side of the line, Homeland Security chief Chertoff told the Mexican government "in the strongest terms" of his disapproval. "This effort will entice more people to cross", he said, "leading to more migrant deaths and the further enrichment of the criminal human trafficking rings that prey on the suffering of others." The Mexican agency planning the map "suspended" its plan, not because of

anything Chertoff had said, but to protect the migrants from American vigilantes.

Once They Get Here: Mexico's Subversive Use of its Diplomatic Missions

Heather McDonald's article in City Journal (2005) provides a glimpse into the activities of Mexico's government in implementing that country's sovereignty-sharing agenda. Deputy Consul General Mario Velasquez-Suarez told her, "immigration is an internal question", and "we have to respect that regardless of whether it pleases us or not". This statement, says McDonald, is "utterly false" since Mexican diplomats are busily engaged in "massive and almost daily interference in American sovereignty" by "shamelessly" promoting entry by its citizens into the United States in violation of American law and by attempting to normalized the status of Mexican illegal aliens once here in violation of the will of the American public. Mexican diplomats are doing this by engineering their own backdoor amnesty while trying to discredit American enforcement of its immigration laws, a campaign well beyond the bounds of accepted diplomacy.

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Mexican president Vicente Fox has called enforcement of American immigration law "police persecution" and his government has also launched, through its consulates in the United States, a campaign against American enforcement of the country's immigration laws. For example, when Proposition 187 came before the voters in California in 1994 which would have denied welfare benefits to illegal aliens, the Mexican consulate in Los Angeles joined other groups in an effort to invalidate the law, even supplying one anti-187 group, the Coalition for Humane Immigration Rights a computer and data base to aid the legal battle against the measure. When a federal judge followed the politically correct course and shoved Proposition 187 into limbo, the new mayor of Los Angeles, Antonio Villaraigosa bragged that then president of Mexico Ernesto Zedillo had helped to undermine it.

In November 2004 the voters of Arizona passed a similar initiative. There was nothing new in the law since it restated existing law that stipulates proof of citizenship before certain welfare benefits can be dispensed. The Mexican consulate in Phoenix supported the Mexican-American legal Defense and Education Fund to fight the measure in court, and Mexico's foreign minister threatened to bring suit in international tribunals for violation of human rights.

New Ipswich, New Hampshire Police Chief W. Garret Chamberlain was exasperated with the government for refusing to pick up illegal aliens his deputies had reported to the immigration service. He thus took adopted a novel strategy. He charged those people illegally in the town with trespassing. A police chief in a nearby town followed suit. If this idea catches on it will threaten the sanctuary illegal aliens enjoy in the interior. The Mexican government immediately went to work to scotch this effort. The Mexican government paid the legal costs of those charged with trespassing, a move that goes well beyond the bound of diplomatic missions in foreign country.

The Mexican general consul in Boston, Porfirio Thierry Muñoz Ledo, adopting the rhetoric that he knew would carry the most weight with the elites in the United States declared the trial in Ipswich was "legally invalid, discriminatory and a violation of human rights". The defendants, he said were discriminated against because they were Mexican. The fact is the defendants were charged not because they were Mexican but because they were in a place without legal authority. By equating illegals with Mexicans the Mexican government is making a presumption that would be called "racist" if made by an American. In August 2005, however, a New Hampshire judge ruled that trespassing laws could not be applied to illegal status thus preserving the sanctuary that illegal residents in the United States enjoy.

Another assault on citizenship is the Matricula Consular, a Mexican issued identification card devised as a way for Mexico to unilaterally instigate a de facto amnesty for illegal aliens from Mexico. Consulates from many countries issue registration cards to their ex-patriot nationals as a way of keeping track of them and so help in locating them if they should disappear.

After 9/11 when it became clear that the Mexican government's plan for amnesty in the United States was delayed the Mexican government urged ordered its consulates in the United States to advertise those cards to illegal aliens in the country as a way to acquire privileges reserved for legal aliens in the country. The illegals of course saw the advantage and swamped the consulates requesting such cards. For example the consulate in Santa Ana, California an area of high concentration of Mexican illegals issues 200 such documents a day. Mexican consulates also began an effort to persuade ell outside banks and local officials to accept those cards as valid identification. The implicit logic in their argument is: these people are here; they are not going away; more are coming; you can't do anything about it; face reality and give them some kind of legal cover so they can do business with you (banks) and so that you'll have less hassle (local bureaucrats). Banks and many local governments simply give in, or agree with the argument on their own, since they know that the Bush administration has no intention the law, and that they (local governments and businesses) will have to adapt to the situation the best way they can. Such efforts on the part of Mexican consulates go well beyond the bounds, and the propriety, of diplomats into the realm of political lobbying. The Bush administration either doesn't care, approves, or regards such subversion of American immigration law and sovereignty a useful aid in implementing its own agenda.

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The Latino/Hispanic community and continued poll manipulation

The court of public opinion is clearly being misrepresented through many mediums. For instance, the Bush Administration reports it has the support of the Latino community when it comes to their immigration policies, including a guest worker program, which is obviously being dictated by Mexico City and the transnational globalists. However, this is patently false. For the past four years, I have spoken with many in the Latino community who are outraged by these policies that are an absolute affront, by the manipulation of polling, and by the smokescreen better known as the race card. Most importantly, the affront is based on the fact that they applied for and received their green cards and waited in line. These same citizens and legal alien residents are now losing their jobs, and their children are now losing spots in collegiate institutions to illegal aliens.

Prop 200 was passed at nearly the same percentage margin in Arizona as Prop 187 a decade before, with a near dead heat in the Latino community. Yet, Arizona Governor Janet Napolitano campaigned against Prop 200. Until this summer, Napolitano was against increasing border enforcement measures before joining New Mexico Governor Bill Richardson in declaring a State of Emergency due to our border emergency that is raging out of control. Yet, while they declared these direly needed states of emergency for their respective states out of one side of their mouths, they renewed the call for

"legalizing those people already here (illegally)" out of the other. That's what made those calls disingenuous. They continue to subvert the laws, though the will of the people long mandated at the polls states the complete opposite.

Look at the special recall election of California Governor Gray Davis for further evidence. On Davis' watch, we dealt with the brownouts, overspending beyond California's budgetary means, which led to the greatest debt in California history, and numerous other problems faced by his administration. Yet, what led to his historical ousting from office, besides Congressman Darrell Issa's funding the paid signature gatherers, was Davis signing Senate Bill 60 the drivers' license for illegal aliens bill by California State Senator "One Bill Gil" Cedillo. When SB-60 was signed into law that was the final nail in Davis' coffin and put the recall on the path to success. That was the final straw for California's voters. Many people were undecided, and up to that point had felt the recall was purely about partisan politics as disgruntled Republicans were using the recall to oust Davis a Democrat. Not only did Davis get recalled, but Lt. Governor Cruz Bustamante, a Latino Democrat who opposed Prop 187, finished 2nd in his bid to succeed Davis, while candidate Arnold Schwarzenegger won, and State Senator Tom McClintock finished third. Both men are registered Republicans and stated their support for Prop 187, though McClintock had a proven record in the legislature of introducing bills attempting to prohibit taxpayer financed services from being provided to illegal aliens, and who actively campaigned for passage of Prop 187 in 1994. In December 2005, the California State Legislature repealed SB-60, due to the fact that California citizens had collected enough signatures to force a referendum. Had the recall failed, or Bustamante won, a case could be made that Californian's support illegal immigration. These facts demonstrate that Californians remain opposed to illegal immigration beyond a shadow of a doubt a decade after the passage of Prop 187.

President Bush claims that according to exit polls 44% of the Latino community supported his last election, up from 35% in 2000. That statement is something easily disputable, when you look at Propositions 187 and 200, as well as the Davis recall. It's not like these votes took place in Pennsylvania or Wisconsin. They took place in the Southwest with large Latino communities. Many in the Latino community do not like Bush's immigration policies, and though it was an important issue, did not feel John Kerry was any better than George W. Bush, and based their vote on other traditional conservative issues, which Kerry did not have a track record to speak of. I personally wrote in a fellow Republican's name because I could not in good conscience vote for George W. Bush, specifically due to his immigration policies, let alone John Kerry.

If real polling were available asking a few simple questions, without data manipulation, the public would see what many in the Latino community already know, Latinos support legal immigration and want America secured from illegal immigration. That is based on a respect for the law and rule of law. Mexico does not tolerate illegal immigration, though they are using illegal immigration to export their labor force to the United States, and their 2nd largest export, narcotic trafficking, but I'll come back to that shortly.

Actual polling in 2004 revealed a discrepancy in the Latino support reported by the Bush campaign. Steve Sailer and others conducted studies and show a contradiction in the numbers the Bush campaign claimed they received from the Latino community over John Kerry lowering from 44% to 38%. According to Sailer, the numbers did not break new ground and were approximately at the same level as President Reagan's.

The Ultimate Smokescreen: The Race Card

The supporters of illegal immigration who claim to represent the Latino community use the race card as it suits them. However, they have had the assistance of the media in accomplishing this smokescreen.

I've lost count of the number of published articles, or television news reports labeling supporters of illegal immigration to be "human rights activists." Yet, have any of these activists been noted for their opposition to the great human rights abuses taking place at the hands of those foreign governments, or smugglers now in control of our borders.

No pro-illegal alien groups, including Gente Unida, Border Angels, and American Friends Service Committee have denounced human smuggling, which has led to a high loss of life, and murder at the hands of the smugglers of humans and narcotics profiting from the illegal smuggling trade. They announce without proof that American vigilantes are responsible for the murders, when in reality the smugglers are responsible.

Consider that these self anointed "human rights activists" have stated that they oppose Americans observing the border. Furthermore, they also contend that Americans have taken the law into their own hands and act as vigilantes along the borders, when in reality the observers solely contact the Border Patrol and do not attempt to apprehend or detain any aliens entering America illegally.

Their leaders claim that "these are racist vigilantes, and responsible for the murder of helpless migrants." There remains no documented proof of any murder, violent incident, let alone unlawful apprehension or detention of any illegal alien. Since late April 2005, the supporters of illegal immigration and smuggling have resorted to what they accused the "vigilantes" of.

These same "human rights activists" have labeled me a coconut, vendido (meaning race traitor), and countless names that cannot be repeated. I have had including high bounties placed on me, and been accused of being a "cazaimigrante" meaning immigrant hunter for standing up as an American citizen against illegal immigration.

Infiltrating the American Political System

There is also more to Mexico's assertiveness than concern for the maintenance of its safety-valve and the free flow of lucrative remittances, for the Mexican elites of both the Party of the Institutionalized Revolutionary (PRI) and Fox's National Action Party (PAN) are unified in an

active policy vis-à-vis the United States in which the massive stream of illegal immigration will eventually allow the Mexican elite to exert influence from within the United States on American policy. The Mexican plan started under the PRI, which held power for 71 years before Fox was elected.

Given what he has said, and the interest at stake, if leftist Lopez Obrador should win the next election, he would certainly continue to carry it out. For example, in 1995 PRI Mexican president Ernesto Zedillo told Mexican-Americans in Dallas, Texas that once the Mexican Constitution had been amended to allow dual citizenship he hoped that they would help Mexico "create an ethnic lobby with political influence similar to that of the Jews" in influencing American politics for a foreign power.

Adolfo Aquilar Zinser, former Fox government National Security Advisor (a cabinet level post) and later Mexican ambassador to the U.N., repeated this hope in two articles he wrote in El Siglo de Torreon (5/5/05, 8/24/05). Citing Jews and also Cubans he wrote that Mexicans in the United States and their descents should use the same kind of political leverage over the American government that Jews and Cubans have done. For forty years, he wrote, Cubans have "infiltrated the fissures of the American political system and have found a permanent ally in the Republican right." The Cubans, he says, have "abducted the politics of the United States for the island, obtaining privileged treatment for its migrants and monopolizing political power in Florida". In the same way Aquilar Zinser hopes that a growing Mexican and Mexican-American population north of the border will allow Mexico to make common cause with the American left who he identifies as "liberal Democrats, unions and Civil Rights and social movements" in order to influence American policy in the best interest of the Mexican elites.

In January 2005 the State Department issued a warning to travelers on the Mexican side of the border and northern Mexico. At the same time American ambassador to Mexico Tony Garza wrote a letter to both Luis Ernesto Derbez, Mexico's Secretary of foreign relations and Mexican attorney general Rafael Macedo de la Concha, raising the issue of border violence. The State department's public announcement urges U.S. citizens "to be especially aware of safety and security concerns when visiting the border region." Explaining that drug related crime is high and that "Mexico's police forces suffer from a lack of funds and training, and the judicial system is weak, overworked, and inefficient. Criminals, armed with an impressive array of weapons, know there is little chance they will be caught and punished." The advisory also says, "In some cases, assailants have been wearing full or partial police uniforms and have used vehicles that resemble police vehicles, indicating some elements of the police might be involved." The State Department thus warns citizens that they "should be aware of the risk posed by this uncertain situation" while traveling on the Mexican side of the border and in northern Mexico.

The Mexican government reacted sharply to the announcement. Interior Secretary Santiago Creel said that the Bush administration had "went too far" with the announcement, hinting that there were limits to U.S.-Mexico friendship and that the United States was not doing enough on its side in the struggle against illegal drugs.

President Vicente Fox's office issued a statement said that the president shared the State Department's concerns, but that the warning "did not reflect the situation in the country", nor would Mexico accept the judgments of foreign governments. Derbez also added his comments to the reaction, saying the State Department's public announcement was "exaggerated and outside the scope of reality."

In May 2005 the United States Congress passed the Real I.D. bill to tighten requirements on driver licenses in the United States in the interest of homeland security. In response a frustrated Fox protested that "Mexican immigrants … are doing work there in the United States that even blacks want to do there in the United States", and his interior secretary Santiago Creel was quoted in the Financial Times (5/13,/05) as saying "Building walls doesn't help anyone build a good neighborhood." When asked about the Minutemen then keeping watch over the border Derbez reiterated the position of the Fox administration when he said they should be prosecuted.

When governor Bill Richardson declared a state of emergency along the southern border of New Mexico, saying that the region "has been devastated by the ravages and terror of human smuggling, drug smuggling, kidnapping, murder, destruction of property and death of livestock …", the Mexican government issued its own statement acknowledging that there were problems along the border (they can scarcely deny it) but also saying that some of Richardson's statements arise from "generalizations that do not correspond to the spirit of cooperation and understanding that are required for dealing with problems of common concern along the border", The Foreign Minister of Mexico, however, did say in his note that he has requested that the Mexican consulates in El Paso and Albuquerque to meet with officials of New Mexico "to promote pertinent action by the authorities of both countries in the framework of existing institutional mechanism", mechanisms that so far do not seem to have worked very well at all. Mexican authorities are very touchy about their shortcomings, and resent anyone who brings them to public attention. Thus despite the globalized vision of the Mexican elite the old animosity, jealousy and fear of the northern neighbor remain, along with a decided national self-interest, as the way Mexico carries on its relationship with the United States.

While Mexican authorities angrily denounce any sign that the United States government is attempting to defend its sovereignty, Mexican officials loudly denounce any recognition on the part of the United States of problems in Mexico, reacting the way Latin Americans and other Third World elites have so often done in the past in such cases. For example, when the United States State Department issued warned that the lives of American citizens were at risk in the escalating drug war for lucrative trade routes across the U.S. Border, the Mexican government reacted that way all Third World countries react when the truth is told about their failures.

Mexico's Interior Minster Santiago Creel said that the Bush administration "went too far" when it issued a consular report suggesting that Mexican authorities were unable to control the murders and kidnappings that were plaguing the region, hinting that there were limits to U.S.-Mexico friendship, and pointing the finger of blame at the United States for not doing enough to combat the illicit drug trade. Vicente Fox's office also

chimed in saying that it shared American concerns but that the State Department's warning "did not reflect the situation in the country" and that Mexico would not accept the judgments of foreign governments, all the while criticizing and meddling in the governing process of the United States.

When Congress finally got around to plugging two gaps, one a mile line another 31/2 miles long, in the 14 mile fence from the ocean to Otay Mesa east of San Diego, Fox lamented the project saying walls were not the best way to meet challenges on the border. In 2005 Mexican interior secretary Santiago Creel admonished the United States for "building walls" by exercising its sovereign rights to protect its border, while at the same time Vicente Fox has militarized its own southern border in an effort to stop illegal immigration into Mexico. And Mexican Foreign Secretary Luis Ernesto Derbez said the plans for the improvements were "inappropriate."

Also, when Fox heard about the Minuteman Project he dispatched police and the Mexican army to the border, by one estimate 1,600 troops, to keep a close eye on the situation and to interdict and divert the stream of illegal border crossers, transporting them in army trucks to places where they could illegally cross unobserved by the Minutemen. After the project was over the Congressional Immigration Caucus issued a report, recommending that 36,000 National Guard troops or state militia should be dispatched to the border to provide the additional manpower that could "dramatically reduce if not virtually eliminate" the uncontrolled flood of migrants crossing the border.

The Mexican government, watching every move made in the United States, quickly condemned the report for wanting to "militarize the border" (something they have tried to do on their southern border). They said this when the Mexican government had stationed troops across from the Minutemen on its northern border and dispatched soldiers to prevent embarrassing displays before television cameras at a Friends of the Border patrol press conference in San Diego and while at the same time militarizing its own southern border with Guatemala and cracking down on illegal immigration into Mexico from across Mexico's southern border. And in December 2005 in response to an American legislator's proposal for two parallel wire fences to run the entire length of the border, Fox said that such a measure would violate immigrants' rights. "The disgraceful and shameful construction of walls, the increasing enforcement of security systems and increasing violation of human rights and labor rights will not protect the economy of the United States", he told immigrants returning to Mexico to spend the Christmas holiday. "I hope that next year we finally get an immigrant agreement", he told his audience.

At the end of December 2005 under increasing pressure from their constituents, the House of Representatives passed the Border Protection, Antiterrorism and Illegal Immigration Act that would erect lights, fences and cameras along 700 miles of the border with Mexico. The Mexican government was furious, as if the United States House of Representatives had no right to express the will of those who elected it by passing a measure to defend American sovereignty when Mexico defends its sovereignty in the most overt manner. Fox called the measure "shameful". His foreign minister Luis Ernest

Derbez said, "Mexico is not going to bear, it is not going to permit, and it will not allow a stupid thing like this wall." He promised to bring the act of America's defense of its sovereignty to the international community in order to mobilize the rest of the world against the legislation.

The government's Foreign Relations Department also stepped in sponsoring an ad on radio aimed at Mexicans returning to Mexico for Christmas. "Had a labor accident in the United States? Call ..."The government has also begun to recruit ethnic identity political groups and left wing organizations in the United States to fight the legislation, an overt act of interference in the internal affairs of another country, as well as consumers of cheap labor and some church groups, an indication of what leverage a foreign government can muster once it has exported enough of its nationals in to threaten internal economic and political reprisals when the host country deviates from the behavior demanded by the invasive country.

The countries exporting what they consider their excess population to the United States were deeply concerned when in the last weeks of 2005 the House of Representatives passed tough measures designed to curb illegal immigration. The concerned countries met on January 9, 2006 in Mexico City to consider action against what most Americans regard as a proper defense of its sovereignty, and what the elites of the exporting countries regard as a shift in direction that will adversely affect their privileged positions.

The people dumping countries, Mexico, Guatemala, El Salvador, Nicaragua, Honduras, Panama and Belize, created at their meeting a working group of regional interests billed as an organization to avoid migrant abuse and to monitor the bill as it moves forward in Congress. Derbez, who has so far been harsh in his criticism of the United States for not acquiescing to Mexico's demands, toned down his rhetoric a little. After having called the legislation "stupid and underhanded", he said, "It's not the Mexican government's position to tell the U.S. Senate what to do." It is, however, quite obvious what the Mexican and other people dumping governments in the region want from the Senate "guest worker" program that would safe-guard the flow, and "regularization", amnesty, for those already there.

Mexican military and police have violated American sovereignty for years in the pay of an increasingly brazen regime of narco-trafficking across the southern border. On January 23, 2006 one of a number of such incursions, at Neely's Crossing on the Rio Grande 50 miles east of El Paso, attracted enough attention that U.S. ambassador to Mexico Tony Garza called for a "full investigation". Mexican foreign minister Luis Ernesto Derbez shot back at a press conference by saying that it was the Americans' fault.

"Members of the U.S. Army have helped protect people who were processing and transporting drugs", he said. "And just that has happened ... it is very probable that something like that could have happened (the uniformed mean with machine guns on the U.S. side of the border) were members of some of their groups disguised as Mexican soldiers with Humvees." Derbez accused the outgunned American law enforcement officers, who were confronted by men armed in Mexican military weapons, dressed in

Mexican uniforms and using Mexican military vehicles, and who withdrew rather than suffer the consequences of challenging the intruders, as "racists" for reporting the incident. "There would have been racial descriptions, and that would imply a certain element of racial discrimination on the part of the American sheriffs".

The American side of the border is so heavily populated by people of Mexican descent, bilingual and often with relatives on both sides of the border, that you often cannot tell by looking what their citizenship is. And in the case of law enforcement the only way you know is by the insignias on their uniforms that say United States Border Patrol, like the national head of the Border Patrol David V. Aguilar, who said that Derbez's accusation doesn't make sense, and hundreds of field agents all along the line of Mexican descent such as Arvin West the Sheriff of Hudspeth County, where the intrusion took place, Leo Samaniego, many Texas State Troopers and sheriff's deputies in the borderlands. Also, the top representative of the United States in Mexico is Ambassador Tony Garza of Mexican decent. The only racial factor here is Ernesto Derbez for playing the racists card in his attempt to squirm out of a tight diplomatic situation. It didn't stop there. Derbez chastised Garza for bringing up an incident that embarrasses the Mexican political elite.

"We should not convert this, as (Garza) apparently did by publishing his article, into a public relations issue," said Derbez. Following the dictum a good defense is a good offense the Mexican government went even further by issuing a formal diplomatic note to Secretary of State Condeleeza Rice demanding that the United States stop talking about events that might embarrass the Mexican political elites and requesting quick results for the shooting of an illegal border crosser in San Diego by an American Border Patrol agent.

The Fox government's claim that increased American border control is wrong is shared by former Mexico City mayor Andrés Manuel López Obrador, likely candidate from the opposing Party of the Democratic Revolution in the 2006 presidential election, who said in 2005 that he was also opposed to "building walls and using border controls" by the United States. In January of 2006 he emphasized this point at a rally in Tijuana before a crowd of 7,000. "It must be made clear to our neighbors", he said, "that nothing will be resolved by building fences, nor with more border patrol agents, nor with severe laws or with firm hand threats." He went on to say, "All these measures will only provoke more human rights violations and more conflicts in bilateral relations between the two governments", one of which he hopes to run.

On May 15, 2006 Bush said in a speech, under growing pressure to do something about securing the border, that he would send 6,000 National Guardsmen in support roles to aid the Border Patrol. The Mexican political establishment angrily shot back with senators, congressmen and party leaders condemning Bush's modest plan some saying that it threatened to violate Mexican sovereignty, and one Mexican party leader comparing it to the Nazis and to South Africa's apartheid. Left wing candidate for the Mexican presidency derided Fox's inability to determine American immigration policy, calling Bush's National Guard proposal "xenophobic". He was also quoted in the Mexico City

daily El Universal, "President Bush's decision is unjustified, unacceptable and implies a serious aggression toward a sovereign nation." Another contender for the presidency, Roberto Madrazo of the PRI said that Bush's plan was an indication of Fox's failed foreign policy that is, to maneuver the United States into accepting Mexico's people dumping policy, and PAN candidate said the Bush plan was unworkable. The Fox government also reacted angrily to Bush's feeble show of American sovereignty in defiance of the will of the Mexican political elite, saying that it would carefully watch the National Guard troops to make sure that they do not cross the line between support and active police work. "We want the assurance on the part of the U.S. government that the National Guard will not do the work of the Border Patrol" said Interior Secretary Carlos Abascal in other words, that the U.S. military will not replicate what the Mexican Army is already doing on its own southern border. And foreign secretary Luis Ernesto Derbez told a Mexico City radio station that if his government detects any such activity it will "immediately" file suit in U.S. courts through its consulates in the United States.

Three parties are in contention for the 2006 elections a resurgent Party of Institutionalized Revolution that formulated the present policy against the United States, the Party of National Action of which Fox is the head, which has carried out those policies with vigor and the left-wing Party of the Democratic Revolution which has signed onto what has become Mexican national policy. One of those parties will rule Mexico for the next six years and thus a continuity of the parasitic dependence on remittances from poor people working in the United States that now pumps money into Mexico, the ambitions of influencing American policy through unrestricted immigration and the exploitation of the northern neighbor to keep from facing any real change in the interest of the ruling elite, thereby releasing the potential of Mexico and allow it to become the first world country it could and deserves to be. Behind that elitist self-interest, however, is the Third World resentment of a failed country when looking at a successful nation, along with what would otherwise be a healthy nationalism. The opponent in that case, and motivating force behind the actions of the elite, is the Mexican people.

Mexican foreign secretary Luis Ernesto Derbez, in a speech delivered at the Texas Pan-American University at Edinburgh, Texas told students on April 18, 2005 of the inevitability of the "complete integration" of the populations of the United States and Mexico.

No longer is the vision of the Mexican elites national, as it was then, but rather transnational in which they see their fortunes not in national terms but in terms of an association like that of the European Union.

Fox himself has repeatedly called for an EU-type border with the United States and in March 2002 the United States Supreme Court handed down a ruling in a labor dispute unfavorable to a Mexican citizen who had used false documents to secure a job in the United States on the grounds that a decision that favored the plaintiff would "contradict underlying policies" of US immigration law. The Mexican government reacted with outrage, threatening to appeal the decision to the International labor Organization and the

Inter-American Court of Human Rights. In this regard Deputy Foreign Minister Enrique Berruga said, "There are basic rights that have been violated" in the case. Fox also commented on the case by saying, "The court ruling makes it all the more urgent to regularize the legal status of workers (illegally in the United States) who contribute to the prosperity of that nation." Alluding to American law and sovereignty, he went on to say that the "rights" of workers illegally in the United States "is a universal principle that overrides notions of sovereignty".

Fox reiterated this position in his Madrid speech at the Club XXI when he told his audience that the "construction of a strategic association for prosperity with the United States and Canada…" has a "particular dimension for the presence of large Mexican communities settled in that country, more than twenty million Mexicans". He went on to say, "In the last few months we have managed to achieve an improvement in the situation of many Mexicans in that country, regardless of their migratory status", that means special privileges for Mexicans illegally in the country that other illegal aliens do not enjoy. Through "schemes that have permitted them access to health care and education systems, identity documents, as well as the full respect for their labor and human rights". The twenty million Mexicans to which the Mexican political elite alludes are not just immigrants, both legal and illegal, but their American born descendants as well. Such interference in the internal affairs of the United States is designed to win the loyalty of Mexicans in this country, and by means of dual citizenship to bind them closer to Mexico, to neutralize their loyalty to the United States and to provide a vehicle for manipulating American domestic and foreign policy for the Mexican national interests.

Fox's vision for the emerging New World he wishes to promote, was explained to the members of the Club XXI in a speech entitled "Mexican Foreign Policy in the 21st Century" in Madrid, Spain on May 21, 2002. This is what he had to say about the new global order and its relationship to national sovereignty

In recent years a new International System has been developing, oriented towards the establishment of norms and principles of universal jurisdiction, above national sovereignty, in the areas of what is called the New Agenda, such as human rights and democracy, questions of gender and discrimination, the protection of the environment …

The construction of new rules on international co-existence must continue… we are actively participating in various forums in the construction of this new international architecture.

This means that issues with popular emotional appeal such as "human rights," "democracy" the "environment", etc, will be used as the means of overriding national agenda in the pursuit of certain agendas such as those shared by the European elites who are doing the same thing in Europe in pursuit of their own agendas. Fox explains to his audience that his vision is more like that of Europeans than of the people he must work with in North America when he says, "Mexico is closely linked with the European nations for historical reasons and because of cultural affinity" and that it is "logical that Mexico approach Europe. We have an identity of values which unites us with European

nations, even more than with our neighbors of North America". Fox's vision for North America is "to establish with the United States, but also with Canada, our other regional partner, an ensemble of connections and institutions similar to those created by the European Union, with the goal of attending to future themes as important as the future prosperity of North America, and the freedom of movement of capital, goods, services and persons." This "new framework", says Fox, "is inspired in the example of the European Union". The problem Mexico confronts in this project, however, are the Anglo-Saxon neighbors he has to deal with who resist such progressive efforts. "We have to confront", says Fox, "what I dare to call the Anglo-Saxon prejudice against the establishment of supra-national organizations". Optimistically he concludes that, "with realism we can overcome the obstacles and construct a more prosperous and secure community for our peoples".

Anglo-Saxon v. continental Europe; Anglo-Saxon v. Latin America: Mexico and continental Europe united against the Anglo-Saxons. All this sounds very much like the rhetoric we hear from France as well as the rhetoric we hear from traditional Latin America. In one sense this talk is motivated by cultural chauvinism not proper globalism, although the global rhetoric sometimes serves as a cover for the chauvinistic and anti-American sentiment. Which one is it in the case of Mexico? Cultural chauvinism provides an effective appeal to the masses in Mexico, while globalism is the goal of the elite. Both run counter to the interests of the vast majority of the American people, if not to a small percentage of its elite.

Mexico is working within the United States and through diplomatic channels to bring about as much integration as possible through incremental means; by-passing legal residency with their own identification documents and advocating driver's licenses and in-state college tuitions for illegal residents in the United States and to grant them in-state tuitions at state colleges and universities and encouraging Mexican-American lobbying groups and hometown associations to advocate policies in line with Mexican government policies.

None of this European-style rhetoric, however, means that the Mexican political elites have decided to sacrifice any of Mexico's traditional sovereignty, nor to alter its national culture. Such compromises and alterations are expected not of Mexico, but of the United States. The redefinition of the northern border appears quite safe from the Mexican perspective for the demographic situation in the borderland will mean the readjustment of American, not Mexican sovereignty and the redefinition not of Mexican but of American culture. Moreover the exportation of the Spanish language and Mexican culture probably strikes a positive popular chord as well as evoking glee from Mexican intellectuals since the shoe is now on the other foot. There is, therefore, no nationalist opposition in Mexico to what is perhaps generally seen as essentially a nationalist policy.

In sum, Vicente Fox deplores "the Anglo-Saxon prejudice against the establishment of supra-national organizations", that in the words of his foreign minister would bind the American Gulliver "with norms, principles, resolutions, agreements, and bilateral, regional and international covenants" in a way Europe would like to bind the giants,

elites across the Atlantic in "an identity of values which unites European nations [with Mexico] even more than our neighbors to the north". The Mexican political elites, both Fox and his PRI predecessors have been pursuing another way of gaining a political advantage over the northern neighbor; by redefining Mexico as a North American rather than a Latin American country, and in their words and actions by redefining Mexico from territorial to an ethnic nation, at least in its relationship to the United States.

Fredo Arias-King, former advisor to Mexican President Vicente Fox, compares the relationship between the Mexican and American elites to co-dependents.

He writes, "Lacking internal or external pressure, the Mexican elites have taken the path of least resistance, which is not the best outcome for the country."

He also writes, "Paradoxically, as happens in co-dependent relations, a firm but polite defense of American interests by Washington would force the Mexican elites to act and in the end (surely after a brief period of acrimonious recriminations) would be beneficial for Mexico, much as the European Union's tough accession laws force elites in lesser-developed aspiring members (Spain in the 1980s and Central European countries in the 1990s) to adopt painful and otherwise politically unfeasible reforms that affect special interests but that benefit average citizens."

Unfortunately, that is not the policy path chosen by the Bush Administration.

The U.S. Border Patrol

David V. Aguilar, Chief of the Border Patrol claims we have not had Mexican Military incursions, other than by accident or impersonators (testimony before Chairman McCall's Homeland Security Subcomm), and that the Southwestern border is secure. But that is a blatant falsehood and this is well known within the Border Patrol. Otherwise, how does one explain Mexican Military incursion cards when they continue to be provided to agents in Tucson Sector, the very sector that Mr. Aguilar was the Chief Patrol Agent of, prior to ascending to his current appointment as national chief? We must keep in mind, that if we cannot admit to the Mexican Military incursions, though we provide agents instructions in the event of an incursion, and we cannot prevent millions of illegal aliens consisting of Mexicans, and OTMs (or Other Than Mexican), I guarantee we cannot prevent Special Interest Aliens, which potentially include terrorists who have obtained IDs and are portraying themselves as Mexican or other aliens from Latin American nations.

Earlier this year, I received a copy of an Officer Safety Report released to some Border Patrol agents by the Department of Homeland Security, based on FBI reports, dated December 21, 2005, warning "Unidentified Mexican Alien Smugglers Plan To Hire MS-13 (Gang) Members To Kill U.S. Border Patrol Agents. However, many Border Patrol agents were unaware of the existence of the document.

That Officer Safety Report follows a card issued by the Tucson Sector that addressed Military Incursions. It states: **Remember S.A.L.U.T.E.** This is based on the long-used Army border policy of the same name and intention. On this double-sided card, the following is stated:

Immediately communicate the following:

***S**ize of the unit (Number of personnel)*
***A**ctivity*
***L**ocation and direction of travel*
***U**nit (Identify if possible)*
***T**ime (If reporting an earlier encounter)*
***E**quipment of the personnel*

The other side states:

REMEMBER:
Mexican Military are trained to escape, evade, and counter-ambush if it will effect their escape.

- *Secure detainees and pat down immediately.*
- *Separate leaders from the group.*
- *Remove all personnel from proximity of the border.*
- *Once scene is secure, search for documents.*

Additional Tips:

- *Keep a low profile*
- *Use cover and concealment*
- *Don't move excessively or abruptly.*
- *Use shadows and camouflage to conceal yourself.*
- *Stay as quiet as possible but communicate!*
- *Hiding near landmarks is easier to locate.*

Avoid it!

So clearly the Border Patrol has identified that the Mexican Military will counter-ambush our Border Patrol agents and citizens, and that violent MS-13 gang members are being recruited to assassinate U.S. Border Patrol agents.

I would be remiss if I did not bring to your attention the following information, which numerous sources have provided during the course of our investigation.

"We cannot get a straight answer when it comes to how many Special Interest Aliens have been apprehended by CBP or ICE, other than a standard response of "Pending Investigation." Yet, the Border Patrol knows how many teddy bears it gives away, how many cheese crackers it has in reserve (I would bet down to the individual cracker), diapers, etc., so the fact that it keeps absolutely no statistics on the people caught from terrorist countries as a mere accident defies all credibility. Obviously, the BP does not

keep these statistics as a matter of policy and the reason is pretty transparent. Let me also add that the media has attempted to gain those very figures as well as the dispositions of apprehensions of SIAs that they learn about through sources. However, those results are seldom, if ever released, so the public has no way to learn if there is any information beyond what has been reported by sources."

Mr. Chairman, here are some facts about a few Border Patrol Sectors from well-placed sources who asked me to present this information to the committee today on their behalf. The reason that those sources are unable to do so themselves would be to place their careers at risk for retribution by Border Patrol and DHS managers at Headquarters in Washington, DC. I think the reason for their' fears is well established and acknowledged as the Ramos-Compean case has demonstrated beyond all reasonable doubt.

The Congress and the American public have been completely misled by Border Patrol's managers at Headquarters in DC. The northern border is nowhere near secure though Chief of the Border Patrol David Aguilar would inform you otherwise. Chief Aguilar was quoted in several newspapers, both Canadian and U.S. that "measures have been taken to bolster agent strength in the affected areas to include overtime payments." According to my sources, the statement by Mr. Aguilar was inaccurate and never happened. There was no high alert, no overtime and no additional bodies. It is nothing but business as usual.

As a matter of fact, several networks, both cable and broadcast, stated that there are 1,000 agents on the Northern Border. Wrong again. No detailers, nada. One Sector on the northern border has not received agent attrition replacements in about 2 years now. This same sector is currently authorized at 147 agents and, because of details (mandated), sick leave, maternity leave, rubber guns, etc. etc. This sector is at an actual strength of 102. Though, as I understand it, this sector has been traditionally ignored for agent and support personnel staffing. If you want to put this in percentage terms, this sector's personnel, agent-wise is down 31%.

Let me add that at one particular station in this sector bordered by water, they are lucky to have two agents on during a 24-hour period. It takes two agents to run a boat. They have a total of 5 agents, with 8 vacancies, obviously not enough to monitor boat traffic. Keep in mind that a major Canadian city recently named as a possible terrorist target is on the other side of that very station's area of responsibility.

Furthermore, according to our sources Chief Aguilar has been personally and repeatedly warned about potential threats, and has ignored such information. Of course that would not be the first time he has ignored intel requests, or challenges to his inaccurate public statements. This type of action is not unprecedented when one recalls that earlier this year, DHS Secretary Michael Chertoff stated that reports on Mexican Military incursions were being overblown when they continue to this day, one occurring as recently as Saturday, July 1, 2006 at 13:10 hours, according to a civilian source in Tucson Sector. This incursion included a drug load.

In 2004, I personally challenged a statement Chief Aguilar made to The Daily Sentinel on August 31, 2004, regarding border security, in which he declared the southwest border to be secure. His statement was countered by numerous sources including Michael Shelby, U.S. Attorney from the Southern District of Texas.

Additionally, in a Washington Times article published October 13, 2004, entitled "Chechen terrorists probed." The article stated, "U.S. security officials are investigating a recent intelligence report that a group of 25 Chechen terrorists illegally entered the United States from Mexico in July.... Members of the group, said to be wearing backpacks, secretly traveled to northern Mexico and crossed into a mountainous part of Arizona that is difficult for U.S. border security agents to monitor, said officials speaking on the condition of anonymity."

Moving on, I would also like to address an item known in the Border Patrol as Project Athena, developed by Raytheon. In this project the Border Patrol would be able to monitor shipping traffic as it approached the U.S. coastline. The cost was minimal compared to other systems currently being utilized such as "remote video surveillance" (RVS) cameras and other items providing a virtual wall that has been proven to be a bottomless, and ineffective money-pit. I can use the name Project Athena, as it is in the public domain and can be looked up on the internet. The operational names I learned that Project Athena has been called in USBP testing are Operation Lake View and Gulf View. Chief Aguilar would be a better respondent, as I am certain that he has been properly debriefed.

Local Border Patrol Sector Chiefs have written to headquarters requesting that "Project Athena" or subsequent generations of similar capabilities be funded and provided to meet the goal of secure our coastlines, lakes and waterways. Yet, this program, which can monitor maritime traffic up to 95-100% capability, though still listed on life-support, is certain to not be implemented. Clearly our having such technology available, but not implemented though the testing ran one year ago is definitive proof that DHS and USBP HQ under Chief Aguilar lack the intent regardless of the requests by local Sectors for those very needed items that ensure their mission, and are leaving us vulnerable.

In fact, the Border Patrol Sector Chiefs have also been informed that they would receive additional agents to fill their numerous vacancies and technology holes. I understand that the agents and technology often mentioned is to be used to implement a "virtual wall" would be provided by Secure Border Initiative funding. It is our opinion that this is yet another empty promise, or if you will, "fool's gold" to those sector chiefs, and I look forward to elaborating on why RVS Camera Systems and Tunnel Detection are ineffective during this hearing, leaving our nation wide-open, and also why we will not get those boots on the ground promised by the administration and DHS.

They know as we do how the 30:1 ratio it takes to come up with one recruit for the Border Patrol, screening process, academy capacity, which is grossly inadequate, and difficulties of graduating due to the Spanish language requirement, and the ten-month exam that takes place after the academy. They also know the actual attrition rate. The

reports of the high numbers of agents throughout the service seeking employment opportunities elsewhere are not just rumors but are fact.

Many BP Agents deserve an opportunity to tell their facts, and expose the truth, which is how DHS has ordered agents to stand down, and not report all the facts in order to prevent Congress from learning the truth. Outside of an extremely limited few, Border Patrol Agents' voices have been silenced. All statements provided, and Congressional tours are pre-scripted and approved by Mr. Aguilar's office, as he is the ultimate micro-manager. Any Sector Chief you speak with, including my friend my friends in management know as I do that they have to answer to Mr. Aguilar, as he is the top agent in the chain of command. I am certain you would hear the reality if they were authorized to provide it, on their own without retribution from Mr. Aguilar. Yet, the fact is, under regulations implemented in 2004 by the Department of Homeland Security, you will never get anything that strays from the official approved script. That is why it is important you have witnesses who do not have to worry about being retired by DHS or detailed from what is considered a good managerial detail to an outpost such as Ramey.

If you do not believe the extent of the mistrust of many law enforcement agencies with the federal government and the Border Patrol, then you must not be paying attention to what many border sheriffs have been stating for months. Like me, they're not doing it for publicity or electoral reasons, they are telling the truth and standing by it because they are concerned about our nation's being compromised and vulnerable to terrorists entering our borders. In March 2006, I witnessed an incident that took place in El Paso Texas during a break between meetings of the Border Sheriffs Coalition and Border Patrol. It defines the mistrust many have with the Border Patrol, and the administration.

If we are to discuss vulnerability along our borders, we must not forget the clearly forgotten Ramey Border Patrol Sector, located at Aquadilla, Puerto Rico. As badly undermanned as the northern border is, our greatest strategic weakness is Ramey. While DHS has begun planning to increase manpower levels, which I cannot identify here, due to national security, they will continue to be inadequate as long as the agency is more concerned about appearance than it's mission of protecting the homeland as stated in the National Border Patrol Strategy. For the level of staffing being planned, it is illogical to call this a Border Patrol Sector, so that it will have increases in managerial staffing, when the same command structure can be achieved by detailing a Patrol Agent In-Charge (PAIC), and would be better served by attaching Ramey as a Border Patrol Station to the Miami Sector would save money for Ramey consists of one solitary station, not several unlike the other sectors. Furthermore, what a waste of taxpayer dollars to pay for these additional managers, while agents are still restricted from performing enforcement duty beyond Search and Rescue when agents are requested to literally "pick-up" illegal aliens attempting to incur by sea who land on Mona Island, and when their area of operation remains restricted to the northwest corner of Puerto Rico.

The Inland Valley Daily Bulletin of Ontario, CA has published a number of reports indicating the vulnerability of this strategic island, which has regular sea incursions using Yola boats. Their manpower level is so grossly under-strength that it defies all logic. They have 21 agents, with three more soon to leave the island for other duties or

agencies, and regularly see their agents detailed to southwestern border sectors or the academy, without being replaced. Yet, the irony is that they have nearly as many managers as agents. Their manpower is so under strength that they are limited to one corner of the island, and has to completely eliminate one shift for lack of available personnel. One thing agents have reported is that OTMs, or Other Than Mexican illegal aliens actually self-report with their flight tickets already in their possession for CONUS (Continental U.S.) destinations as the word is out in the region that after receiving their documents requesting a return for court appearance they will be free to leave the island for other destinations. For the record, the USBP agents do not have access to San Juan, where illegal aliens, which could include Special Interest Aliens, acquire phony identification documents. That is ICE-turf.

I know I need not remind this committee of the strategic importance of Ramey Sector, as it is approximately 500 miles north of Venezuela, which is led by Hugo Chavez who continues to make headlines with his anti-American rhetoric, which must be taken as serious as a heart attack considering his recent well-publicized trip to Iran.

It's obvious that while countless agents have their complaints about "Legacy INS, the current state of the Border Patrol is in dire need of the Congress to engage in an immediate overhaul without delay.

On the northern border, numerous sources have reported that ICE regularly requests Border Patrol assistance, as they do not have the manpower or resources to apprehend or detain on their own. It is to the degree that the Border Patrol is often requested to provide transport for illegal aliens detained, and that the Border Patrol can provide agents depending on availability due to operations and on a priority level.

It is well documented as to the level of compliance by Border Patrol managers in Washington, DC with the policies and requests by the Mexican Government. Consider the parrot-like statements of our own government when it comes to Mexico. For anything and everything, Mexico provides a declaratory conclusion to a matter before even convening more than a surface investigation followed by concurrence by our own government. After that, come the so-called investigation and more discrediting info.

Consider that Tucson Sector agents represented by Local 2544 of the National Border Patrol Council has gone on record by posting on their website as to the level of access and control by the Mexican Government, which has placed agents along the southwestern border often in dangerous, compromised situations. Also, consider that Border Patrol Headquarters continues to deny that Mexican Military incursions regularly occur, and that Sector Chiefs provided information about civilian border observation locations to the Mexican Government though clearly lacking Congressional authority, and clearly exceeding the Vienna Convention Treaty. While the Border Patrol denied the Inland Valley Daily Bulletin's published report, and attempted to discredit reporter Sara Carter after Agent Mario Martinez, their PIO who responded to her inquiry, after he initially admitted that such info was shared.

I met with a Border Patrol Sector Chief Patrol Agent who took responsibility, and apologized for the disclosure of a property our organization used as a base-camp for border observations last summer as he understood my outrage, that our "secret" location I had personally provided to law enforcement, was provided to the Mexican Government. My meetings with a number of Chief Patrol Agents have been the only ones between civilians and Border Patrol managers to my knowledge. However, the Mexican Government and DHS have both expended great energy in attempting to discredit the news coverage in their denials and by stating that such locations were self-provided on websites, which was not the case of our location, including lying in numerous written responses to Congress and news interviews before the nation.

It is interesting to note that Chief Patrol Agent Darryl Griffen of the San Diego Border Patrol Sector, a person that I consider to be a personal friend, was the sole chief patrol agent mentioned on their website though I understand several sectors provided similar information about activities and locations of lawful civilian border observations to Mexico. The Mexican Government endangered U.S. citizens by publishing such information on their website where drug cartels, their enforcers, military personnel, and violent gangs could have gathered such intel and plotted to harm, or even murder concerned citizens, including me. Yet, not one Congressional hearing has been conducted by any committee of either the House or Senate.

The Mexican Government also attempted to undermine the chief personally by solely publishing his name and no others, as he has been quite proactive in the fight to secure our portion of the border and quite creative. I am certain that by damaging his name and reputation, they felt Congress would have seen him removed or reassigned. To me, this action demonstrates the level of cooperation by the Border Patrol managers at HQ, which undermines their very mission to secure America's borders; especially considering that the Mexican Government is long identified by its corruption.

When did the Congress relinquish authorization or control of the Border Patrol to Mexico City? Is this why Grupo Beta, previously an effective Mexican agency, was reduced to less than security guards, as they have been replaced by our own taxpayer financed Border Patrol? These are questions that must be answered before we even think to consider reconciling bills. Consider that I've scarcely even mentioned the failure known as ICE, a completely ineffective agency that should be absorbed into the Border Patrol, or Customs whose managers believe the best way to secure the border is by securing the ports of entry, which has been the mentality of CBP while leaving the borders wide open to incursion by violent terrorists, smugglers, and Mexican Military personnel.

It is outrageous that there is such coordination and cooperation, lest any of us forget about the maps and comic books they provide to illegal aliens, which include terrorists. Perhaps the Members are unaware but the State Department provided the funding for our Border Patrol to train personnel of Grupo Beta and other Mexican Government entities along their southern border such as sign-tracking and other tactics used by the patrol. With Mexico's record, how can this government continue to see them as a partner, when they have done absolutely nothing to prevent terrorism?

I would be completely remiss if I did not mention to the committee today that such behavior by the Mexican Government would not be unprecedented as border residents for years have been terrorized for years by violent gangs, bandits, drug cartels, smugglers, local Mexican law enforcement officials and even personnel of the Mexican Military who assist with smuggling operations.

Allow me to share a couple of stories with you today about local border residents, who are our fellow U.S., citizens. Victoria Hope lived in San Diego's East County region. She did what many of us do for our neighbors. She was looking after her neighbor's property while her neighbors were away. When you live in the border region, it is imperative that you work with your neighbors as livestock gets out, or bandits and smugglers often trespass your property, which endangers one's family and neighbors. Mrs. Hope was viciously murdered by illegal aliens who, as if this heinous crime was not nearly enough, these same individuals stole her car.

Mr. Bob Maupin is a longtime community leader in San Diego's East County. Mr. Maupin is a second generation border resident having lived a stone's throw from the border. He was surrounded and disarmed 100 yards north of the border on his property by the Mexican Military and through negotiation convinced them to go to his home to contact law enforcement in Boulevard, CA (noted for it's high narcotic traffic). The reason this happened is the day before he reported a meth lab to the DEA and that was the response the following day of the Mexican Military and cartels. Mr. Maupin has assisted me today with providing photos that have been taken of humans and narcotics being smuggled across the border. You'll find this as Item-6 following my testimony.

Ed and Donna Tisdale also live close to the border in East County, and one year alone counted over 12,000 individuals by observing footprints that crossed their property. They have experienced a number of incidents involving individuals who smuggle humans and narcotics across their property and while not easily intimidated have been threatened and given reason to fear for their lives. They have found markings of violent gangs on their property. In fact, one year ago, a man was arrested in connection with the attempted murder of a Border Patrol agent near Red Shank Ranch last year during an interrupted drug deal that was connected to the cartels. The agent's vehicle was riddled with holes from an automatic weapon (23 to be exact). The Tisdale's saw the patrol vehicle and have informed me that it was a chilling site. The suspect fled through their ranch road at a high rate of speed and back onto the reservation, adjacent to their property, which I understand has a high amount of trafficking.

My friends who live along the border and face this form of terrorism 24/7 have long concluded that due to the presence of the organized crime cartels and gangs who orchestrate the majority of the smuggling of drugs, people and contraband here in San Diego, that they do not believe that such individuals would hesitate to smuggle items that would be used to cause harm to America and her citizens--especially if the price was right. A concern that many law enforcement agencies concur with, as do we.

However, this is not an isolated story. Over the past 14 months, I have met with and earned the trust, support, and friendship of many San Diego border area residents, which is not given, but earned. They have dealt with wrong-way drivers of load vehicles, which involve narcotic, or human smuggling loads, sometimes both. The load drivers when spotted, or they think they've been spotted by law enforcement officers including Border Patrol agents cross to the wrong side of the road. This practice utilized to evade and escape Border Patrol agents, CHP officers, and Deputy Sheriffs happens often along the border. This is yet another type of terrorism our fellow citizens face. Imagine the day that the load vehicle hits a busload of school children on the way to or from school. Deaths have occurred as a result of wrong-way drivers and it is completely avoidable if we secure our borders and protect our citizens.

That's a critical point we hope everyone here today considers. Terrorism is not limited to people that are members of violent terrorist organizations with bombs, sniper rifles, or detonators. Terrorism includes those very types of groups and individuals I mentioned above that have not been dealt with for far too long. We have no business calling groups gangs when they bring chaos, mayhem, violence, mayhem, and murder to our cities, neighborhoods, parks, and schools. It is pure and simple, they are terrorists, too, and must also be broken up and brought to justice for those are the most obvious people to recruit here within our own nation and entering our Swiss-cheese borders. Or does calling people that are terrorizing and murdering our fellow citizens terrorists not happen because of the propaganda that the War on Terror is in Iraq and Afghanistan and does not include our own borders?

That is something that this committee and the House of Representatives must recognize as fact, publicly acknowledge. The supporters of open borders in the House and Senate as well as the Bush Administration know this, which is why we are inundated with fancy slogans or politically correct terminology, the dog and pony press events, and the smoke and mirrors about willing workers doing jobs Americans won't, which continues to exclude Americans being displaced from the labor force. By campaigning in such a way, this is why our borders remain vulnerable and why we get such absurd proposals from Washington. It is why many people in Southern California today, and within the Border Patrol felt it imperative that I appear as a witness, to discuss these items publicly that are being hidden from the Congress and public. As a civilian, I have nothing to lose, except my country as I am the only non-government employed witness past or present testifying.

Far too many people today are in this nation, and we do not know who they are, or their backgrounds, and Mexico will never cooperate with U.S. law enforcement requests, though they'll make every demand on us to adhere to their demands though they continue to plan protests, monitor civilians and public figures alike, and undermine our sovereignty. Furthermore, too many people are now at large within this nation and trying to establish lives in our nation, plus having anchor babies, which has made it difficult to enforce our immigration laws. Until the United States Supreme Court and the Congress address this identified issue the problem will continue.

Many children of illegal aliens, including those considered to be Special Interest Aliens have mixed loyalty. Some are being bred and brainwashed to hate America. Groups like MECHA among others do not believe in U.S. sovereignty, and openly protest against anyone who disagrees with them. I have personally witnessed their usage of violence and intimidation as primary tactics, the very tactics we see overseas used to terrorize other democracies and republics. Such individuals are targets for recruitment by terrorist organizations. As long as our government ignores them, such individuals and groups will continue to recruit and flourish, while continuing to plan or operate.

This happens because our government does not tell the Mexican Government to back off, and mind their' own store. Instead, our government parrots their lies, endangers law enforcement officers and civilians alike, and allows such behavior to continue, which I consider to be open espionage against the United States.

My active duty sources in the Border Patrol have risked their careers and futures in order to provide me the truth, which I, in turn, have forwarded to Congressional leaders, and shared with other law enforcement agencies or Members of Congress. Each of them deserves an opportunity to tell their facts, and expose the truth, which is how this administration through DHS has ordered agents to stand down, and even lie in order to prevent Congress from learning the truth. But their voices, outside of a handful others are being squelched as this administration and Chief Aguilar rules his fiefdom with an iron fist. All statements and tours Members take are pre-scripted and approved by his office. He is the ultimate micro-manager. Any Sector Chief you speak with, including my friend Chief Griffen knows as I do that he has to answer to Mr. Aguilar, as he is the top agent in the chain of command. I am certain you would hear the reality if they were authorized to provide it, on their own without retribution from Mr. Aguilar. Yet, the fact is, under the new rules and regulations implemented since 2004 by the Department of Homeland In-Security, you will never get anything that strays from the official approved script. That is why it is important you have witnesses who do not have to worry about being retired by DHS or detailed from what is considered a good managerial detail to an outpost such as Ramey.

Many Americans feel that these hearings are to be nothing more than staged dog and pony shows, with a sell-out by Congress agreeing to amnesty following these hearings. This is why so many Border Patrol agents just simply have refused to talk. They cannot make themselves vulnerable to what our sources and many news outlets have reported as the "culture of corruption" at BP Headquarters that has led to such fear and retribution within the agency. As a result, the Mexican Government continues to undermine our nation, and people, while assisting terrorists. This is how the Chief of the Border Patrol continues to put his agents at risk, because nobody under his command trusts our Congress to fight for them so they can step forward and tell the truth, beyond citizens such as myself who has enough of a media spotlight, due to the trust we've earned, that we will present the truth on their behalf to Congress.

Instead, agents have to depend on civilians staging publicity stunts to take cameras out to the desert under horrible conditions in the hopes that something will happen in front of

the news media so that the truth gets out. As I was informed during meetings along the northern border, it is a shame that civilians have to provide technology that DHS can easily provide for themselves, but refuse to do. But someone has to do it, and this particular official as well as numerous others were pleased that someone was willing to step forward and do so. Instead we are reduced to watching the continuation of the sham being perpetrated by our own government who each day looks more like a two-bit dictatorship, as they constantly mislead and hide the truth from our citizens.

If you do not believe the extent of the mistrust that many law enforcement agencies with the federal government and the Border Patrol, then you must not be paying attention to what many border sheriffs have been stating for months. Only, like me, they're not doing it for publicity or electoral reasons, they are telling the truth and standing by it because they are concerned about our nation's being compromised and vulnerable to terrorists entering our borders. Please review an interview I did with the New American Magazine published in May 2006 in which I discussed an incident that took place in El Paso Texas during a break between meetings of the Border Sheriffs Coalition and Border Patrol. It underscores and exemplifies the mistrust many have with the Border Patrol. Sheriff Arvin West and others can tell volumes of stories about this problem.

Until Congress steps up to the plate and fixes by overhauling DHS, CBP, ICE, CIS and the Border Patrol, the invasion of our nation will continue without anyone to stop it. As a result the quality of life of our fellow Americans residing along the borders will continue to deteriorate as will the threat against our lives throughout the nation for if we ignore terrorists, how long will it take for the next 9-11, and as everyone knows, our nation's leaders were targets of that tragic days attack, including the Pentagon, World Trade Center, and even you, our nation's leaders in Washington, D.C. For the fact remains, the only effective agency remaining in the Department of Homeland Security is the very one responsible for the protection of the President and Vice President of the United States, while the rest of us depend on the agents and officers being outgunned and out-manned on our borders and in our cities.

Facts about RVS Cameras and Tunnel Detection, what Congress and the public aren't being told

Friends of the Border Patrol has developed and offered technology that we call FREEDOM (Free Electronic Domestic Observation and Monitoring) border surveillance cameras. We have also developed tunnel detection equipment. We have provided a few facts for committee members to review. We would be happy to provide our paper on the FREEDOM Camera System to committee members upon request.

When describing the fiscal, managerial and national security catastrophe -- which is DHS -- it is sometimes good to use local examples. It's good to be able to talk about things right outside this room's door rather than in abstruse, ethereal, and abstract concepts.

The Border Patrol has just installed its latest and most modern technological wonders right along San Diego's border with Mexico. These new Monuments to Border Security are to assist in illegal alien detection and apprehension

This technology consists of 12' tall poles topped with video cameras. Most of these poles are mounted within the very narrow "no man's land" between the primary and secondary border fences separating our two "Great Nations."

Installed at immense cost (present real-dollar estimates are $800,000 per camera pole), these cameras offer the Border Patrol technology not seen since about 1986. Total cost since implementation are at $429 million since 1997, and the cameras take 20 months to install according to testimony by DHS Inspector General Richard Skinner presented to a Congressional Homeland Security Subcommittee last December 16, 2005.

Twenty year old technology might seem anachronistic in a world of Burt Rutan and actual space ports being built across our Midwest, but to the Border Patrol it is still better than what they had before – which was nothing.

The problem is that these cameras look at the border just as you would if you were peering through a toilet paper tube. You can look to the east through that toilet paper tube and you can look west through that toilet paper tube but God help you if while you are looking one place as there's a stampede north just a few feet from where you are looking – because you won't see it. Here is where it gets worse.

Half of their new cameras are touted as "night vision" cameras. The problem with them is that many nights you can't see anything. Further, it is child's play to blind them – even permanently. It would be a breach of National Security to say what happens naturally or what can be done purposely to make these incredibly expensive cameras worthless, so I won't.

What these people really need are "staring eye" cameras taking in wide swaths of the border all at one time and then other cameras that can even get mug shots of the border perpetrators.

Further, the cameras should not be mounted right along the border but *north* of it so that a wide swath of border can be viewed all at one time and so border crossers aren't just flickering points of light flittering across the camera field but instead are to the cameras like the US Marine Corp Band marching in lock step in the Rose Parade.

If you mount the cameras on the border you see crossers usually for not more than 30 seconds and that is only if you happen to have your toilet paper tube looking at them at the very moment they decide to cross.

If you mount the cameras north of the border then you can watch them even for 30 minutes as they trudge north; with or without their musical instruments.

Lastly, we have a truly serious threat to our national security that is being purposely ignored. That threat is border tunnels. It would be the height of stupidity to believe that campesinos are digging tunnels even 80 feet below ground and 2,500 ft long just so that they can go pick strawberries in Fresno.

The people and things crossing through those tunnels are the most dangerous and violent possible.

A 2,500 ft long tunnel is not fantasy. Such a tunnel was just handed to the Border Patrol on a phoned in tip.

That tunnel took the removal of about 300 full sized dump trucks of earth – or about 2,000 pickup truck loads. Technology of even 1972 would have detected the change in seismic activity south of the border as those trucks of dirt were hauled away.

That simple hardware exists to find such tunnels is – by now you should know it's all true – already available. But instead of funding people who will do something, the organization tasked with a solution -- JTF-6 -- only have jobs so long as the *seek* an answer rather than actually solving the problem. So nothing is actually accomplished because if it was... then they would be out of a job.

Of course, the politicians launch themselves into the fray with inane legislation telling us that now all will be well. Gloriously, California Senators Diane Feinstein and Barbara Boxer have actually made it illegal to dig a tunnel into the USA. Now, we all are safe.

Please notice that they have no interest or intention to actually stop the tunnels, they just added another few years to the life sentence the perpetrators will already be facing for drug smuggling, WMD smuggling, and terrorist smuggling.

It took a local 12-year old child to demonstrate a working tunnel detection system. Yes, he did it in San Diego. While certainly the child is some kind of little genius, the fact is that anyone can do a Google search on tunnel detection and discover that 20 years ago the US Army proved a simple and effective technology to find tunnels. All that kid did was implement what the US Army already proved works a decade before he was even born. I have attached the Aberdeen Proving Ground research document for you and a video of the child and his tunnel detector.

The child's technology was covered by the major news outlets. The day after the news event that 2,500 ft tunnel was reported to the DEA. Somebody should understand that while DHS might not think what the kid has works.. there's a good chance that the drug cartels do:

http://www.kfmb.com/features/crimefighters/story.php?id=35277

Google:

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Feasibility of cosmic-ray **muon** intensity measurements for **tunnel ...**
Title: Feasibility of cosmic-ray **muon** intensity measurements for **tunnel detection**
Authors: Celmins, Aivars Affiliation: AA(Ballistic Research Labs., **...**
adsabs.harvard.edu/abs/1990brla.reptQ....C - Similar pages

Title:	Feasibility of cosmic-ray muon intensity measurements for tunnel detection
Authors:	Celmins, Aivars
Affiliation:	AA(Ballistic Research Labs., Aberdeen Proving Ground, MD.)
Publication:	Final Report, Feb. 1989 - Feb. 1990 Ballistic Research Labs., Aberdeen Proving Ground, MD.
Publication Date:	06/1990
Category:	Space Radiation
Origin:	STI
NASA/STI Keywords:	COSMIC RAYS, MUONS, RADIANT FLUX DENSITY, RADIATION DETECTORS, SIGNAL DETECTION, STRUCTURAL PROPERTIES (GEOLOGY), UNDERGROUND STRUCTURES, DEPTH, FEASIBILITY, GEOPHYSICS, MATHEMATICAL MODELS, MINERALS, ROCKS, TOMOGRAPHY
Bibliographic Code:	1990brla.reptQ....C

Subsurface cosmic-ray muon intensity depends on the amount of material above the point of reference and is therefore influenced by anomalies in rock density. Because such anomalies might be caused by geological structures (e.g. ore bodies), cosmic-ray intensity measurements have been used for geophysical exploration. Recently, cosmic-ray muon intensity measurements have been also proposed as a method to detect tunnels. The feasibility of this application depends on the type of radiation detection apparatus (it must fit into a bore hole) and on the magnitude of the signal by a tunnel. If the signal is too weak, then the required observation times are estimated for a projected bore-hole radiation detector and for tunnels with a 2m diameter. The estimates show that a reasonable upper bound for the detector depth is about 30 to 40m if the observations are to be used in a tomographic reconstruction of the density field. The required observation times at that depth are of the order of days. The upper bound for the depth of detectable tunnels is less than the quoted bound for the detector depth. It might be possible to use the method at greater depths if special data interpretation techniques are developed that take into account prior knowledge about the tunnel, e.g. its anticipated direction.

The fact is that these "technological wonders" that the Border Patrol claims are so desperately needed, and that they claim are not available when my own organization presented the very technology in a briefing with San Diego's Border Patrol Sector (SDC)

managers. I personally have discussed our technology at all levels of SDC Sector and was informed that our technology was superior to anything that they had, including their own security cameras. To me this states the obvious, regardless of their dire need in an "attempt" to gain operational control of the border, OBP headquarters, and the Bush Administration will continue to talk about, not provide what's needed in the field to improve their chances, and will continue to pay lip-service by blatantly lying to the public about our improving border in-security, while the clock continues to tick on our lives. In addition, insiders who are former managers within the Border Patrol, or people associated or related to them will continue to gain contracts, some of which are to provide technology already acknowledged in DHS testimony as ineffective. These facts that I have presented here are beyond any shred of doubt. Period.

The Ramos – Compean Case

Mr. Chairman, I have been working on a case since March 2005, this being the case by the U.S. Government against Senior Patrol Agents Ignacio "Nacho" Ramos and Jose A. Compean of the U.S. Border Patrol's El Paso Sector – Fabens Border Patrol Station (Fabens, TX).

The case against Border Patrol Agents Ignacio "Nacho" Ramos and Jose A. Compean is without question one of the greatest miscarriages of justice I've ever seen.

On February 17, 2005, Osbaldo Aldrete Davila, a known drug smuggler and Mexican National, 743 pounds of narcotics across the Mexican border into Fabens, TX. When Aldrete-Davila tripped a sensor, Border Patrol Agent Jose Compean responded and the rest has become a part of a history so outrageous and incomprehensible that there are simply no words in any language to describe it.

In a nutshell, the border patrol agents engaged in a pursuit of Aldrete-Davila as they were trained to do, and violated the pursuit policy forbidding them from pursuits without the permission of supervisors. Compean cut the smuggler off at the Rio Grande River upon which a scuffle ensued as Aldrete-Davila tried to evade capture and re-enter Mexico. Compean was overpowered and left bleeding from a cut. At this point, Ramos was attempting to get to the scene where the struggle had taken place and heard shots fired, though he could not see the scene, but understood as he was a firearms instructor that Compean had to be in trouble. As he entered the scene he saw, Compean down and cut and attempted to capture Davila who was still fleeing towards Mexico. At this point, the smuggler turned and the agents' thought he had a weapon in his hand at which point Ramos fired one shot from his sidearm.

Neither agent at the time thought any shots had ever hit the smuggler, as he did not fall, limp, or showed any discomfort. Once in Mexico Aldrete-Davila was met by a vehicle, which he entered and sped away.

A number of agents, including a supervisor had reached the scene, and secured the smuggler's load-vehicle, which was filled with 743 pounds of marijuana.

Here's where the problems lie as the FBI should have been notified to investigate the scene as there was an assault on a Border Patrol agent, in this case, Compean who was clearly cut and as shots had been fired. But true to what we hear from the line, the entire assault and shooting incident was ignored and it was not reported by anyone to the FBI, including Field Operations Supervisor Jonathan Richards.

At this point, every Border Patrol agent on scene who was aware of the incident was guilty of not reporting the shooting incident and assault, and if anyone thinks that not one person who may claim to be aware of the shots having been fired, well I've got an opportunity to buy some cheap coastal property in Bay Park, San Diego for a nickel a square foot. The penalty at this point for non-reporting is very simple, as mandated in the DHS, Customs and Border Protection penalty table, five days administrative suspension. That's it, no termination of employment, and certainly not prison time.

The only other problem was that an agent picked up spent shell casings but not to cover it up. What was there to cover up? To their thinking the shots were fired, but nobody was ever hit. You'd think the story ended there, but it doesn't. The smuggler had a life-long friend who is a Border Patrol agent in Wilcox, AZ named Rene Sanchez. This is where the incident now elevates from sloppy due to the non-reporting to ugly.

Agent Rene Sanchez claims that he was notified by his mother in-law about the shooting, as he and the smuggler were friends. Also, that he repeatedly called the Fabens Border Patrol Station requesting information to see if there were any seizures or shootings.

However, according to the Department of Homeland Security in a memorandum of activity document, Rene Sanchez stated that he queried the Border Patrol Tracking System (BPETS) and found that the Fabens Border Patrol Station seized a load of marijuana on February 17, 2005.

Rene Sanchez calls the Office of Inspector General (OIG) at DHS and speaks to a Special Agent Christopher Sanchez who was a four-month trainee in OIG. Previously Chris Sanchez served as an ICE agent in Arizona before lateraling over to OIG. Chris Sanchez began investigating the case on March 4, 2005. This is when the agents learn that there was a claim that the smuggler was wounded two weeks before during the incident at Fabens.

Eventually, Chris Sanchez goes to Mexico and brings Davila back to El Paso and the William Beaumont Army Medical Center and has a fragment of a bullet removed. The chain of evidence, including custody gets really murky at this point and the agents are arrested, charged, and arraigned within days.

Agent Rene Sanchez' mother in-law drove Aldrete-Davila into El Paso for his hospital treatments at the William Beaumont Army Medical Center. He also assisted with securing an attorney to sue Agents Ramos and Compean in a civil case.

At this point, the family begins to contact the National Border Patrol Council Executive Board for help and assistance, as nobody in the agency would help either agent or their families, including peer-counseling services who, according to the family's sources had been ordered by Sector Chief Patrol Agent Luis Barker.

It was at this point that an aunt of Agent Ramos called me trying to learn if there was anything that could be done to assist them, and asking, who to call. Immediately I began looking into the case. What appeared to me was that the only problem was an administrative matter and the family and I remained in contact from that point of contact forward. However, I provided the contact information of TJ Bonner, president of the National Border Patrol Council, and Rich Pierce, Executive Vice President of the NBPC to family members. In fact, until this past week, there was no intent to provide any relief, until the agents were acquitted. It was reported to me that the agent's wives were contacted to see if they were okay. However, when the families wanted to utilize support services, they were not only ignored, but they were shunned. An agent who must remain anonymous later informed the families that all chaplains were ordered to stand down by command. That in and of itself has left me with one of the greatest and most disturbing questions of all, which is where was the national leadership from the agent's union all this time? Did they fall asleep, or were they ordered to stand down, too?

The Assistant U.S. Attorney Debra Kanof engaged in an overzealous prosecution, that never should have reached the indictment level, but it is clear she was after Agent Ramos. As I have been told, Kanof met Maria Ramirez, the attorney for Agent Compean and offered immunity if he would testify against Agent Ramos having already threatened other agents with indictment if they did not change statements, which was later admitted by those agents during the trial on the witness stand. To this day, three agents remain on administrative duty **with pay** by the Border Patrol while Field Operations Supervisor Jonathan Richards, who was on scene after the incident and saw the cut on Agent Compean, though not reporting the assault as required to the FBI, has since been promoted in rank to Special Operations Supervisor. In addition, Agents Ramos, and Compean have had their initial terminations rescinded and have remained on suspension without pay.

Agents Ramos and Compean received a letter on March 25, 2005 from El Paso Border Patrol Sector Chief Patrol Agent Luis E. Barker, of which I have provided key excerpts, which stated as follows:

Your conduct at issue seriously impairs the efficiency of the OBP and the federal service in that as a law enforcement agency we demand the highest integrity and best behavior of our employees. We must do so in order to maintain the public confidence, in the just and fair accomplishment of our mission. As a Border Patrol Agent your employer and the

public must have complete trust in your judgment, behavior, and abilities to uphold and enforce the laws of the United States of America.

However, the crime for which you have been arrested and charged with raises serious questions about your judgment and behavior, and causes me to lose trust in your ability to perform the functions and responsibilities of your job and uphold the laws you were sworn to enforce. Your position as a Border Patrol Agent directly involves actions in which it is your duty and responsibility to apprehend individuals who violate laws. Therefore, you as a BPA must uphold the law. All of the foregoing negatively impacts our agents' ability to maintain the public's trust. Therefore, I find that this proposal is warranted and if effected will promote the efficiency of the service...

Chief Barker, since promoted to National Deputy Chief of the Border Patrol with that statement within his letter to Agents Ramos and Compean acted as judge, jury, and executioner, without one witness being called to testify, and without allowing for due process ever taking place. With the service records of Agents Ramos and Compean, and the fact that Field Operations Supervisor Jonathan Richards in knowledge of an assault against Agent Compean, and his not reporting the incident as required to the FBI, leaves no doubt that Agents Ramos and Compean were abandoned by their command and singled out.

Prior to the trial Kanof offered every type of plea bargain, including a one-year plea to Agents Ramos and Compean, which they refused as they were never guilty of anything beyond an administrative non-reporting policy violation, which would have resulted in a 5 day suspension according to DHS/CBP disciplinary policies. The case was obviously so weak that it was to the degree that one could state the prosecution was playing "Let's Make a Deal" and grasping for any type of deal. I'm surprised that they didn't offer probation as part of a plea bargain as Kanof was grasping for straws to make something stick.

During the trial, ruling after ruling went against the defense by Judge Kathleen Cardone, including the prevention of introducing into evidence Mexican Military incursions, violence against Border Patrol agents and other law enforcement officials. This type of rulings were established by the ruling of February 14, 2006 that said all evidence indicating such threats had to be ruled on in advance by Judge Cardone.

At one point in the trial Kanof accused the agents of going against one of their own, by playing the same race card, usually played by Maldef, La Raza, LULAC, and every other open border supporter, which includes the president. Since when is an illegal alien drug smuggler to ever be considered one of law enforcement's own, unless Assistant U.S. Attorney Kanof is implying that their own now includes drug smugglers. When one engages in law enforcement, it is a critical element that justice is blind to color, gender, etc, with the sole exception of violating the law.

Here are some critical elements that came during the trial when the smuggler and other witnesses testified. The smuggler testified that he had turned himself in to the American Consulate in Juarez, MX on the advise of his hometown friend, Rene Sanchez who is a border patrol agent working in Wilcox, AZ. The smuggler turned himself in one month after the incident in Fabens, TX, which he claimed U.S. Border Patrol agents had shot him. Aldrete-Davila was instructed by Rene Sanchez to not testify without requesting immunity first. He further testified that Rene Sanchez instructed him as to what to say including denial of having a gun when he assaulted the two Border Patrol agents.

Rene Sanchez told the smuggler to say that he had nothing to do with the van loaded with the 743 lbs of marijuana. Rene Sanchez also told the smuggler to say that he had run because the agents were trying to beat him up. Rene Sanchez further instructed the smuggler to say that he had been shot in the back, never mentioning where he was actually shot. The smuggler also said in his original statement that he was shot while entering the U.S. illegally, which was not the case, and made no mention of the vehicle loaded with 743 lbs of marijuana. This information is also in his report to Christopher Sanchez, the Homeland Security investigator, and the ONLY investigator in this case.

When asked during the trial how he, the smuggler, knew he could sue the government for five million dollars, he responded that he didn't know. The smuggler also testified that Rene Sanchez retained Attorney Walter Boyaki, in addition to negotiating on the smuggler's behalf, and that the smuggler claimed not to have any knowledge of the five million dollar lawsuit filed against the U.S. Border Patrol.

During the trial, the smuggler (Davila) and Rene Sanchez contradicted each other's testimony throughout the trial. The smuggler also testified that he and Rene Sanchez were both born and raised in San Ysidro, MX and had known each other since they were kids. The smuggler testified that he and Rene Sanchez had not seen each other in the past year, while Rene Sanchez testified that he had not seen the smuggler since he was seven years old.

The smuggler also testified that he had met and talked to Rene Sanchez in Laredo before the drug bust in Fabens, TX in which he was wounded. He also testified that he had run into Rene Sanchez in Juarez sometime in October and before the original trial date of October the 17th. He also testified that Rene Sanchez and Christopher Sanchez had picked him up on Sunday, two days before trial and taken him to the federal building in El Paso to prepare for the case with the prosecutors. Rene Sanchez testified that although they were all in the same car, they never talked to each other.

When Rene Sanchez took the stand he testified that he had not seen the smuggler for approximately eight years. Rene Sanchez admitted to having advised the smuggler to turn himself in and admitted to having told him what to say. Rene Sanchez also admitted to having got the smuggler the lawyer, whose last name is Boyaki, to file the five million dollar lawsuit against the border patrol.

One agent by the name of Blanchett who was subpoenaed by the defense was not allowed to testify. He would have testified that Rene Sanchez kept calling him about drug smuggling activities in Fabens and also when and where the busts were occurring. Agent Blanchett made a report of this to the Border Patrol because he was suspicious of Sanchez and was reprimanded for doing so.

Homeland security agents went to Fabens to question Blanchett about his reporting the calls from Rene Sanchez. Agent Blanchett was asked questions without representation, and was requested to surrender his weapon. Blanchett requested representation, which he received from his Federal Law Enforcement Officer's representative who then instructed Blanchett to leave during the questioning by DHS agents and Blanchett immediately walked out of the room.

They were trying to protect Rene Sanchez because he was one of the government's chief witnesses in this case. The government does not know how corrupt he is. Blanchett was then transferred to Deming, New Mexico with the border patrol claiming that he had been in Fabens on temporary assignment.

All the illegal moves of Rene Sanchez concerning his personal investigation without knowledge or permission from the U.S. government are a matter of public record in the trial transcripts.

Through sources and public records it has been learned that the smuggler, Osvaldo Davila smuggled a load of Marijuana into the U. S. last year before the original Oct. 17th trial date. Sources have stated that when the prosecutors found out about this, they took away his crossing card and refused to give him any more free medical treatment at the Army Hospital in El Paso. The prosecution asked for postponement of the original trial on the day that the jury was being picked. The claimed that the postponement was necessary because the smuggler need additional medical treatment and had to be taken to San Antonio, TX for surgery. This never happened.

The defense lawyers agreed to the postponement in good faith providing that the agent's be release from house arrest which they had been under for eight months. I would think that the defense should have agreed only if the prosecutors would have agreed to no more count stacking against the two agents. The two agents were freed from house arrest, but in the meantime, while awaiting trial, the prosecutors superceded the original indictment twice adding approximately eight more counts. This viciousness is only common in cases against repeated felons, murderers, and rapists. We are now talking about two good, young, dedicated, and brave with 15 years of combined service without ever having assaulted any illegal aliens or drug smugglers.

Agent Ramos was previously assaulted, and has been fired upon in 1996 without apprehension of the shooter, though nearly 900 pounds of marijuana was seized. In 2001, Agent Ramos was assaulted by an illegal alien with a syringe that later tested positive for HIV and Hepatitis C. In 2004, Agent Ramos was assaulted by an illegal alien, who

attempted to grab the agent's weapon to use on him and suffered a broken hand in the incident. I mention this to illustrate that Agent Ramos knew by experience when an assault was taking place and how far an illegal alien, or criminal alien was willing to go.

The agents feel betrayed by their own government. They were convicted on contradicting lies by the smuggler, and repeated fabrication by the prosecution. Again, keep in mind that agents, who testified for the government, did so under immunity from the prosecution, including Field Operations Supervisor Jonathan Richards. So they knew they could say anything they wanted, and in this current state of the Border Patrol they knew to have a future, and not face what Agents Ramos and Compean were facing, they had to play ball.

Agents Compean, Ramos and Yrigoyen testified that they had told Richards that Compean had been assaulted. Border Patrol Trainee agent Mendez was going to testify for the government but was never used. He is the agent who saw agent Compean come out of the bathroom at the Fabens station after the drug bust and had told agent Compean that his hand was bleeding. Agent Compean also had a cut on his face. Mendez supposedly did this in front of Richards, and Richards then asked Compean if he wanted to file assault charges. Agent Mendez was subpoenaed by the prosecutors but was not called to testify. I feel that the reason was that if they did not call him, the defense would not be able to question him. This is yet another case of suppression by prosecutors.

Field Operations Supervisor Jonathan Richards never notified the F.B.I. as per Government policy for assaults on agents. The agents that testified for the government were on immunity from prosecution and are still on administrative suspension with pay because they admitted to lying in their original statements to Christopher Sanchez. Besides his repeated lies on the stand the people of this nation should be aware that took place during the trial according to sources, and court records.

When Attorney Antcliff, one of Agent Compean's attorneys asked Agent Juarez if he was on administrative suspension with pay, he answered "yes". Antcliff asked him, why are you on suspension? Juarez, replied, "for lying." Antcliff asked him, "did you lie in you statement last March? Did you lie in your statement last April? Did you lie in your statement last September?" All three times, Juarez answered "yes".

Let me get back to agent Christopher Sanchez. The smuggler testified on the stand that he and "Chris" had become real close in the year awaiting trial and that is why he referred to him as "CHRIS." When the smuggler testified that his fellow smugglers had a death threat on the Ramos and Compean families, he was asked if he had disclosed this information to anyone. He testified that he had told "CHRIS," which is in the DHS documents. However, when they asked Christopher Sanchez if he had reported the threat to anyone, he answered, yes. When asked who Christopher Sanchez had reported it to, he responded that he notified Mexican authorities in Juarez, MX.

Why Mexican authorities, and not U.S. law enforcement authorities? That's idiotic when you have a death threat against law enforcement officers to not notify the agents' themselves, their agency, and the FBI.

To date, the families continue to receive death threats, and have received no support, or protection from any federal law enforcement agency. The sole support has come from the Office of El Paso County Sheriff Leo Samaniego.

According to testimony, after the bullet fragment was removed from the smuggler at the hospital, he was supposedly taken to Christopher Sanchez's home to spend the night. The chain of custody for evidence was never produced and I find it suspect and questionable that there is a ballistic report for a bullet fragment, which should be tested as how could that come from one firearm when nine were in custody. One needs to check the documents, which were given to the defense counsel, which leave many more questions.

I must further add the following information. When I first met with and interviewed Agents Ramos, and Compean, along with their attorneys and wives, this past March 23 and 24, 2006 in El Paso, TX, I spoke later that day with Sheriff Leo Samaniego of El Paso County, and Sheriff Arvin West of Hudspeth County, TX, who both provided the following assessment, "This was a good shoot, and outside of an administrative problem by not reporting, which should result in either suspension, these guys did not do anything wrong." As Sheriff Samaniego personally added, "These guys are not criminals." While not an official statement, this is how they responded to my questions regarding the case.

This case leaves many questions from the original press statement by the Office of U.S. Attorney for West Texas Johnny Sutton, to the most recent, which continues to not only mislead the public but contradict the facts as stated during the trial.

The agents report that there was a 9-3 vote in favor of acquittal and yet within two days it was reversed to a 12-0 conviction. On Sunday, August 13, 2006, the Inland Valley Daily Bulletin's Sara Carter broke a story with statements from two of the jurors who state for the first time in public interviews what really happened in the jury room. Links to that article, in addition to the original exclusive interview of Agent and Mrs. Ramos published on August 6, 2006, are both available on our FriendsOfTheBorderPatrol.com website.

On Friday, two of the 12 jurors who convicted the agents said pressure from the prosecution and possible misconduct involving other jurors may have led to the conviction.

In an interview with the Daily Bulletin Saturday, a juror who asked to be identified only as Claudia said she was the last holdout on the jury before the guilty verdicts were handed down.

"I've had nightmares about the family since the day of the verdict," Claudia said. "I want to do whatever I can to support the families. I'm not at peace."

Claudia and another juror, Bob Grouley, who teaches special-needs students, said the guidelines provided to the jury were at times difficult to understand and that several of the guidelines regarding the convictions were open to interpretation.

Both added that several of the jurors, including the foreman, pressured colleagues to go with a guilty verdict because spring break was a week away and they didn't want to be stuck in a long deliberation. Grouley said the foreman told the jurors, several of whom were holding out, that Judge Cardone would not accept a hung jury.

Grouley said he contacted Mary Stillenger, Ramos' attorney, several weeks after the trial was over to let her know he was not comfortable with the verdict.

"We had to go by the judge's orders, but this punishment doesn't fit the crime," Grouley said.

The El Paso Times published a report on the trial verdict on March 9, 2006, which stated, "Compean and Ramos' boss, Robert W. Gilbert, the Chief Patrol Agent for the El Paso Sector of the Border Patrol issued a written statement Wednesday saying the agents *chose to violate the trust of the citizens they swore to protect*."

Though the facts, through the admissions that were revealed during the trial by all parties showed that Agents Ramos and Compean had only committed an administrative error, it is clear that the managers of El Paso Border Patrol Sector chose to ignore the evidence, withheld services that the agents and their families were eligible for, and abandoned their agents to the wolves though the facts in the case demonstrates misconduct by the prosecution, witnesses, and jury. Something well understood by local law enforcement throughout the Texas border region.

On behalf of Friends of the Border Patrol, and the tens of thousands of letters, and emails that have been received, we request that Congress, specifically the House Committee on the Judiciary, and the House Committee on Homeland Security investigate this case, and we request that both committees convene a joint hearing regarding this case.

Furthermore, thousands of emails, and letters are being sent from across the nation in support of the agents. The letters all have a common theme, question of misconduct by the Department of Justice, and the Department of Homeland Security, including the Office of Inspector General, and the Office of Customs and Border Protection (Office of Border Patrol). The mounting sentiment we are reporting to the Congress is that if the evidence includes any orders given by the Office of the President, including the President, and his subordinates to abandon these agents, or engage in an improper prosecution that the public wants articles of impeachment be introduced by the House Committee on the Judiciary.

It is clear to Friends of the Border Patrol and the millions of Americans who are still learning of this great injustice, that Senior Patrol Agents Ignacio Ramos, and Jose Alonso Compean be exonerated and cleared of all alleged crimes and that all individuals who had anything to do with charging these brave agents, and besmirching their names and reputations be immediately arrested, and charged so that justice is finally served.

Mr. Chairman, we further call on President George W. Bush to pardon these agents of any and all charges and convictions pertaining to this case, and order the agents restored to active duty, with all back-pay these agents are due and the thanks and apologies they so deserve.

FBP's recommendation to Congress

Mr. Chairman, in the interests of national security, the Congress must act to secure our borders. First, it must act to pressure the Bush Administration to enforce the laws that are already on the books. Second, it must act to assist law enforcement agencies to do their jobs without political interference. And third, it must review agreements and treaties with our neighbors that make our country vulnerable to drug smuggling, human trafficking, and international terrorism. The worst thing the Congress could do, would be to agree to the guest worker/amnesty bill proposed in S 2611 or the proposal offered in the House by Mr. Pense rather than the enforcement provisions contained in HR 4437.

The House of Representatives can take immediate action through its oversight powers to review the conduct of the Department of Homeland Security and how that department has failed to defend the United States against foreign interests. Informing the Mexican government of the location of civilian border observations goes beyond the Vienna Convention and even beyond the limits of a good neighbor policy it enables the fox to guard the hen house. Agreements between our DHS and Mexico's Secretariat of Governance, such as the one signed on March 3, 2006 but not made public need to be reviewed.

The Department of Homeland Security has been informing the public, through the media, that the Border Patrol has achieved "operational control" of our borders and that would-be border crossers have a "substantial probability of apprehension". If the House agrees to the provisional conditions in S 2611 that require "operational control" of the border, then DHS will immediately certify that the border is secure. That, in turn, will enable the amnesty to go forward. DHS does not know how to run an efficient agency but they do know how to follow political orders. They may be incompetent administrators but they are loyal allies of the President. The Department suffers from what we at Friends of the Border Patrol call the "FEMA Syndrome". We saw the consequences of cronyism last year in New Orleans.

The only thing that DHS has been able to do successfully is to convince the media that our borders are secure. Photo opportunities with the Nation Guard give a false impression of a level of security that doesn't really exist. Hopefully, the Congress can see these "dog and pony" shows for what they are, propaganda.

After investigating the vulnerabilities of our borders, it is painfully evident that the United States remains wide open to incursions by drug smugglers, human traffickers, and terrorist organizations. Although Mexican military units are available to assist many of them in crossing the border, the sad fact is that military assistance isn't always necessary. The borders are open to everyone.

Before giving serious consideration to S 2611, the House should take up the more urgent matter of the Border Patrol itself. I am declaring the Border Patrol to be a broken agency in dire need of overhaul. The Congress must act quickly to overhaul the Border Patrol, beginning with the removal of political cronies in leadership positions. Replace political accountability with job performance and many of the problems will begin to solve themselves. If the Congress is willing to investigate this problem, without regard to political ramifications, then you will find hundreds of witnesses willing to appear before you with the facts that you need to know how to wage a real war against terrorism. Do you really want to stop terrorists from coming into the United States? Fix the problems at DHS and the Border Patrol. Then tell Mexico to fix their' own problems.

The Bush Administration needs to stop providing incentives for Mexico's poor to come to the United States and instead, should pressure the Mexican government to help them. By providing a "safety valve" for Mexico, Bush is actually enabling Mexico's richest citizens to exploit the poor. At the same time, "looking the other way" when Americans hire illegal aliens enables our own employers to exploit them here. It's immoral. It's all about cheap labor and we will all pay a price for it in the end.

The American people are opposed to the guest worker/amnesty program that is contained in S 2611 and they have made that point very clear through poll after poll. Unfortunately, employers have little to worry about when hiring illegal aliens. The Border Patrol is prohibited from interior enforcement operations under the National Border Patrol Strategy and Memo of Understanding between Customs and Border Protection and Immigration and Customs Enforcement released to the agencies on November 16, 2004, as well as by understanding the long-term ramifications of the Ramos-Compean case, who for doing their job and stopping a drug smuggler, face prison over an administrative matter, and for stopping "the natural flow of migration" as Mexico calls it.

We cannot secure our borders as long as we continue to encourage illegal immigration. It's time to put America's security first by enforcing immigration laws and cutting off the job magnet. Those who profit from cheap labor make generous campaign contributions but the cost of cheap labor is too high in the long run. While the Bush Administration is noted for its slogans, we have one of our own; the guest workers/amnesty program should be known as "No Bribe Left Behind."

In keeping with clause 2(g)(4) of House Rule XI regarding grant or contract disclosures, Friends of the Border Patrol has not received any contract or grant award since our inception in 2004, including our inception.

Chairman SENSENBRENNER. Your time is expired.

The Chair will recognize Members alternately from the Republican and Democratic side under the 5-minute rule.

The gentleman from Indiana, Mr. Hostettler.

Mr. HOSTETTLER. Thank you, Mr. Chairman.

And I want to thank our witnesses for your contribution to our record on this very important issue.

And, Sheriff Samaniego, I want to say hello to you and good to see you in your home surroundings. Appreciate your contribution to the record earlier this year as you testified before our Subcommittee.

In that testimony, as a result of the question I asked you, you gave a very, I think, important perspective on the issue of one of the central elements of the Senate bill, and that is providing legalization, some of us would go as far as saying amnesty, for millions of illegal aliens currently in our country. And in your testimony, you talk about the potential results for that, if we should repeat the mistakes of 1986.

Could you elaborate on what you think will happen with regard to the flow of illegal aliens even after an amnesty such as suggested by the Senate bill?

Mr. SAMANIEGO. Yes, sir.

I know it's an extremely difficult situation as to what we're going to do with the 11, 12, 20 million that are already here. And when you start talking about amnesty or anything that sounds like amnesty, you fuel the hope of millions—millions of people all over the world that they, too, can come into the United States, and eventually we are going to do the same thing. We are going to repeat what happened in 1986 and what is about to happen here, from, you know, what I understand.

I think amnesty is not the answer. You only encourage more people to come into this country, because they know that somewhere down the line, they're—they are going to be legalized.

And in my opinion, I think we need a worker program.

First of all, we need to control the border. Without border control, you might as well forget about what we're going to do with the ones that are here because the flow continues. More and more people are coming in because they—they have heard that the ones that are already here may get amnesty, and they hope to come in and get the benefit of that, sir.

Mr. HOSTETTLER. Thank you, Sheriff. And I also want to thank you and your department and officers of your department for their service to our Committee today and to the House of Representatives.

Mr. Ramirez, at the outset, I want to thank you for your testimony, especially with regard to Agents Ramos and Compean. Their plight has reached the Eighth District of Indiana. I got a question yesterday in Brazil, Indiana, in west-central Indiana at a Rotary luncheon about the fate of these two agents who have faithfully served our country and have run upon this very discouraging and troubling situation. We will have an investigation of their situation, and we will go as far as it needs to go to determine what is going on there.

Let me ask you, with your relationship with the Border Patrol, what happens of morale of Border Patrol agents after legalizing millions of illegals, given the fact that these individuals have, for their entire professional life, sought to enforce our immigration laws, secure the border, and some of them, in fact, as you and all of us know, have given the last full measure of devotion to that calling and have perished as a result in the line of duty? What happens to the morale of these folks, if we decide that what they have been doing for years is now going to be rewarded with legalization?

Mr. RAMIREZ. First of all, thank you for your comments that you just made about an investigation. On behalf of the families, I would like to thank you for that.

But with regards to the patrol, morale—and I've received a flood of e-mails from agents from all over this nation, from as far as Puerto Rico to San Diego, as far north as Blaine, all the way to Maine. Agents all over this nation understand what this case means. The morale has been shot. It is lowered ever since the reorganization into the Department of Homeland Security from Legacy INS.

Agents' morale, not just about this case—this case actually is really the exposure, the—if you will, the taking off the Band-Aid from a tourniquet wound. Agents all over the nation report being directed to follow orders from above that were never provided to them beyond a verbal order. To do so, they risk all sorts of penalties, insubordination, which they can either be suspended or terminated for.

For example, the—the pursuit policy is a fine example of that. In a letter I saw, dated in 2003, by the current Deputy Chief of the Border Patrol, Luis Barker, one of the things he did was actually state to the agents why they are not allowed to engage in that policy, and as a result of that, one of the things that happens is they could be fired.

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. I thank the Chairman very much.

I think you can see that we are strongly outnumbered here, so our time will be so much more abbreviated.

But let me join the Chairman of the Subcommittee, as a Ranking Member on the Immigration Committee, there is no divide between Democrats and Republicans on the respect and admiration we have for the Border Patrol and law enforcement, in general.

I welcome the investigation. We will do it enthusiastically. And we say that to the families, because we are fact finders. So we look forward to that.

Let me, first of all, thank the witnesses, as well. And quickly pose my questions and concerns.

Let me acknowledge Congressman Reyes and his presence here and thank him again for his outstanding leadership. We've worked together on many legislative initiatives.

Sheriff, let me—again, it is well-noted that you have given us testimony before, and I guess it speaks to my point, not for your great service but that we have heard these questions asked and answered over and over again. I think what you are saying is, let's get to work.

We thank—Ms. Siskin, I will not ask you any questions because you've given us a very good story of the two bills, which is your job. As CRS, you are a researcher.

I commend you to H.R. 4044. That is my legislation that is supported by the National Council of Border Patrol Agents that, in fact, was the basis of the equipment portion of the 4437. I wrote that language of giving Border Patrol agents all of the necessary equipment that they have.

Sheriff, I want to have you reflect, if you would, on Texas law as it relates to peace officers. You're actually forbidden from engaging in aggressive tactics without authority dealing with immigration issues. There's a body of law that you have to respect. I would simply say to you that this bill would conflict with that.

The other point that I want to make on your testimony is that it seems that you are inclined to support 4437 for false reasons. It has $50 million in the Senate bill, $100 million in the House bill. That's what the conference is all about. You have my support for $100 million. But we can't get anywhere unless we sit down in the conference.

So I would just simply ask, would you support a conference so that we could get the two bills together and come out with the $100 million? Would that be helpful to you?

Mr. SAMANIEGO. Congressman Jackson Lee——

Ms. JACKSON LEE. Yes.

Mr. SAMANIEGO.—a pleasure to have you here.

I agree with you. This is not a Democrat——

Ms. JACKSON LEE. My time is short.

Mr. SAMANIEGO.—or a Republican thing.

Ms. JACKSON LEE. Right. And I agree with you on that. Let me just go on because my time is short.

I thank you. So you agree that if we could work together.

I'm holding in my hand the status—the document—the language of the 4437. You know, we cover over that. We're talking about vetoes and misrepresenting the language of the Senate bill, which really is a consultation.

My friends, legal status, the very fact that you are here unlawfully, as Ms. Walker said, for any manner or reason, you would be subject to being in jail for 1 year and a day. This was added so that it could be a felon. And our own congressional research says that this would—you would make it a serious crime for which the accused would have the right to a jury trial.

Ms. Walker, what would that do to the legal system? And, Chief Wiles—because I have to go so quickly and I'm going to have to interrupt you, just quickly give me an answer.

And Chief Wiles, what would that do to your system of government?

And by the way, the President has zeroed out the SCAT provisions, which reimburses you for any cost that you may have on immigration issues.

Ms. Walker?

Ms. WALKER. Very fast, it's just a dichotomy between a civil and criminal violation with the accompanying rights to trial, rights to jury, and of course, the time frame that one spends in prison. In response to that, instead, right now, we deal with it by removal.

Ms. JACKSON LEE. Chief Wiles, what would that do to your system.

And let me thank you for the statement of the Major Chiefs, Los Angeles, Chicago, I guess, Houston—many, many cities are opposed to provisions to force you to be engaged in immigration work.

Mr. WILES. Yes, ma'am.

Ms. JACKSON LEE. Of course, if someone has perpetrated a crime, you arrest them.

Mr. WILES. Yes, ma'am. Whether they're immigrants or not, and that was approved by the entire Major City Chiefs.

But we don't have the resources to do that, and you're exactly right.

And I'm really concerned about the State law on racial profiling, if we have our officers attempting to stop people that look like illegal immigrants.

Ms. JACKSON LEE. Let me just share with you why we are failing. The Republicans have done nothing since they were elected to office. Under Clinton, we have done more on the number of new Border Patrol agents. Under Bill Clinton, we've done more in INS fines, immigration enforcement. And 78 percent fewer completed immigration fraud cases have been—have been done under the Bush administration. It emphasizes my point, they have done nothing, and this is a stalling tactic.

We need to go back to Washington, have a Conference Committee and be able to address the questions of the American people.

I yield back.

Chairman SENSENBRENNER. The gentlewoman's time has expired. The Chair does not want to have to repeat the admonition that he has given. This is the fourth time that the Chair has reminded the audience that statements of support or opposition and expressions thereof are in violation of the rules.

Somebody will say something on one side of the issue. The next person will say something on the other side of the issue. This is a hearing to receive testimony and answer questions, not a decision on which side can make the most noise.

The gentleman from Texas, Mr. Gohmert.

Mr. GOHMERT. Thank you, Mr. Chairman.

And I appreciate the hearing, and I do appreciate each of the witnesses here.

We notice the lights keep coming in and going out. I don't know if that's to subliminally to tell people Congress is in the dark or not. I was thinking it was more the Senate. But in any event, we do appreciate your presence here.

But I need to address some things very quickly. First of all, my colleague across the aisle had indicated—she said we are not listening to the American people. And I don't know what this "we" stuff is, but I've been coming home every weekend, listening to people, having town halls—town hall meetings. I've sent out a survey. I've gotten hundreds of thousands of responses back. We're doing everything we can, including this hearing, to listen to the American people, listen to witnesses.

And yes, we had hearings on this bill before we passed it. But since there is a log jam, it is important to have additional evidence

come in so that we can try to break the log jam and move this thing along.

I also would like to mention that we do need immigration. We need immigration. We need assimilation. We need all the attributes that assimilating immigrants bring. But we do not need to abandon our laws.

I keep finding this incredible irony, that we don't have a better neighbor to our south than we do. People accuse the United States of dividing families, when the fact is, as Mr. Ramirez has indicated, there is corruption across the border. As the sheriff had indicated——

Sheriff, you indicated, in your written testimony, Mexico has done nothing in order to improve their lot. You've indicated the southern border is the weak link in our national security. I submit to you, it's not just the southern border. We ought to be protecting all of our avenues of entry and making sure people are not coming in to hurt us. But we do not need to abandon the enforcement of the laws.

I would submit to you that the reason that this country has prospered, and now Mexico is forcing families to divide and some to come here in order to survive, is that they have not been a nation that enforced the laws as well across the board as we have. We've had our problems continue, but we are the greatest nation on earth in enforcing our laws. They have not. Corruption abounds, as we've heard the testimony here today.

And so it's so ironic to have people come into this country and say, "We want you to abandon enforcement of your laws," which will make us like the country they had to abandon in order to make a living. It's tragic.

But I also noted, Ms. Walker made a good point about it's not just about border enforcement. We have a problem with our immigration service, whether you want to call it the INS as it was or CIS, ICE. We've got a problem. The President announced we want a target of 6 months to respond to applications. That was a good goal. But we've still got some areas that take two to 3 years to respond. That's outrageous, and we need to keep moving until we get them on track and responding appropriately.

But, Mr. Ramirez, you brought up—and thank you for bringing up Agents Ramos and Compean. We owe our Border Patrol better than they've gotten. We've not adequately equipped them. We have not given them the support they need. And I'm glad to hear both the Chairman of this Committee and the Chairman of the Immigration Subcommittee indicating—and I urge that. We need to have an investigation, explanation and correction to get to the bottom of this. That is not fair to law enforcement, and it needs to be dealt with. And as a former judge and chief justice, that is certainly a pet peeve of mine.

But I need to ask, Mr. Ramirez, do you have any evidence that corruption, as you say, has now made its way across the border, or do you think this is political correctness run amuck?

Mr. RAMIREZ. No. It's actually a fact. When I speak with many Border Patrol agents and other agents from across the various services, everybody reports the same thing, that right now what we're finding is—as an example, the narcotics isn't coming across

the river, it's coming right here through the city. It's coming through the city.

San Diego, we have a port director who is now in prison for allowing narcotics to go through the port in San Diego itself. So we have—it's basically corruption on both sides, and it's all across.

When you look at the northern border, to elaborate on that, you have a system called Project Athena that was never implemented by OBP, by the Office of Border Patrol, by Chief Aguilar or Chief Barker, and this was requested by both Chief Spades and Moran.

Mr. GOHMERT. I've just got a few seconds left.

Mr. RAMIREZ. Yes, sir.

Mr. GOHMERT. And I appreciate that. We need to pursue that further.

I do want to make sure everybody understands that the Chairman of this Committee had an amendment to make the felony reduced to a misdemeanor for illegally being in this country, and all but eight Democrats voted against making that a misdemeanor, and one of those people was my friend across the aisle——

Ms. JACKSON LEE. Absolutely.

Mr. GOHMERT.—Ms. Jackson Lee.

Ms. JACKSON LEE. We don't want any criminals.

Mr. GOHMERT. She did not want to reduce it to a misdemeanor.

Ms. JACKSON LEE. Would the gentleman yield? Would the gentleman yield.

Mr. GOHMERT. My time has expired, actually.

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentleman from Texas, Mr. Reyes.

Mr. REYES. Thank you, Mr. Chairman.

And I apologize for being late, but I will tell you I was late because we were doing the grand opening of the U.S.O. Center here at Fort Bliss. We've been working very hard on that. And I think we owe it to our military to stay true to them. So I apologize for being late.

But having said that, welcome to El Paso, all of you.

And I know, Mr. Chairman, that you had a chance to go out with the Border Patrol last night.

And I would hope that my colleagues make an opportunity, if not on this trip, in the immediate future, to go out with the great men and women of the United States Border Patrol.

Having been an agent, myself, I think that it's important to make the point that when you put on a badge and a gun, you're held to a higher standard in terms of the enforcement of the law. I'm of the opinion that you can't enforce the law if you can't respect it.

So I support, Mr. Chairman, your having hearings on the two agents that were mentioned here, because I think that probably will be, at this point, the only way we are going to be able to clear the record on all sides. You know, a lot of things are flying in the Internet. There's a lot of phone calls coming in, a lot of misinformation out there. So I think hearings is the way to go, and I hope you do do it. And Mr. Chairman, I hope you will invite me to those hearings.

Chairman SENSENBRENNER. Consider it done.

Mr. REYES. Thank you, Mr. Chairman.

I just wanted to make a few points, because one of the things that gets lost here is the fact that we are working with Mexico, and Mexico is cooperating on many different levels. I think, Mr. Chairman, you saw some of that cooperation last night between the agents and the Mexican police on the Mexican side of the border.

That is—that is always a priority of any chief, to make sure that you're able to have that kind of cooperation and at least relationship. We cannot unilaterally do our jobs by expecting that our men and women of the Border Patrol can do it on their own without us seeking and requiring the cooperation of Mexico.

Without—one of the issues that I wanted to make is that when we—when we talk about creating this new class of criminals, which I don't support—and I will stipulate to my good friend from Texas, Congressman Gohmert, that I voted against that as well, because I don't think we need to criminalize a whole new status of people.

And the one thing that we never take into account—and I hope you will listen to this carefully, because I have been talking about this for the 10 years that I've been in Congress—we can't have enforcement—we can't say we're going to hire 2,000 Border Patrol agents this year, and then next year 200. It's got to be a steady growth because only then can you have the right balance and the right mix and the right expertise of experience-to-trainee agents. That's vitally important because these guys operate independently, on their own, and under very dangerous conditions. So we need to take that into account.

The other thing that we don't want to forget is the support pipeline. When we increase the Border Patrol, we need to take into account that we need to increase U.S. attorneys, we need to increase U.S. marshals, we need to increase detention officers, we need to increase detention space, all of the things that work in unison if we're going to be successful. You can't choke off by thinking that more—strictly more enforcement is the—is the right answer.

I was going to make a comment to my good friend from Texas, when he talked about the lights being dimmed. You know, after this hearing, I hope that people don't think that we are out to lunch either, because we are a long ways from finding a solution to this problem.

And I will tell you this: Although I know that we are in disagreement about these hearings, I can tell you that my sense is that a lot is being learned by you, my colleagues in Congress, about what the community feels about immigration reform, about how hard the job is for our nation's Border Patrol.

And the fact that the international border, like the environment, corruption doesn't respect an international border. I was making mention to a couple of my colleagues that three of the sheriffs that I worked with when I was chief down in McAllen succumbed to that and are doing time. Corruption does not respect the international boundary. We need to realize it. We need to understand that. And we certainly don't need to blame Mexico for the corruption that exists on the U.S. side.

So with that, Mr. Chairman, thank you for giving me an opportunity to speak.

Chairman SENSENBRENNER. Thank you very much.

The gentleman from Georgia, Mr. Kingston.

Mr. KINGSTON. Thank you very much, Mr. Chairman. And I wanted to thank the Members of the Judiciary Committee and you for letting me tag along.

This is part of a series of hearings. I believe there are eight different Committees that are having over 40 hearings around the United States. So there is, in fact, a lot of listening going on.

And I also wanted to say to my friend, Mr. Reyes, it's good to be back in El Paso. I think that the country has a lot to learn from El Paso and Juarez and the cooperation that you have always had historically, in terms of economic overlap and emotional overlap and families and friends. There is a lot of leadership that has gone on in this border town that we can learn from in Georgia and everywhere else.

I'm here from Georgia, because we have the seventh largest illegal alien population in the country, and it is something that has become a big issue no matter where you are and what part of the country.

So, Mr. Ramirez, I had a question. And I think Ms. Walker alluded to why—how we get illegals in the State of Georgia. And as I understand it, from my Border Patrol tour yesterday, that the border here does a very good job, very thorough job in terms of the ports of entry—the port of entry. However, a lot of people, as Ms. Walker said, come and they overstay. They may rent a passport to get through the border. They might do everything legally. But once they're here, they overstay.

Now, I was looking around the city, and I saw a lot of bus stations, and a lot of places where people who are legally here could get on a bus and go to Denver, Colorado, for example, and, perhaps, get through the checkpoint that's farther down the road.

I also notice lots of advertising for Liberal, Kansas and Guymon, Oklahoma, which seemed to me very odd as opposed to, you know, Denver, a big hub city. But why would you advertise, not just at one bus station but at several bus stations, for Liberal, Kansas and Guymon, Oklahoma? What goes on in those cities?

And is it possible that these bus services could be a conduit for people who come here illegally to get into the interior of the United States? And is that something that Friends of Border Patrol is looking at?

Mr. RAMIREZ. Yes, sir. We actually are. Because one of the things we understand, in discussing this with many line agents, once you get past the line—and right now, there are stations—and I'm not going to, obviously, identify them—that you could say are the backduty stations. They're sending their agents up to the line as well.

But reports have come in all over the country. Agents are being ordered to stand down. So when you are basically telling them, "Go on the line but just stand there," as the Ramos/Compean case further tells them, then what happens is, they've got a free shot to the interior.

As I understand it, and a source just told me this within the past 2 weeks, the Albuquerque station—Border Patrol station here in this very sector is actually being shut down. Albuquerque is a transportation hub.

Mr. KINGSTON. Let me interrupt you a minute.

Because I guess what I saw yesterday is a very thorough job being done on the Rio Grande crossing in El Paso, Texas by the Border Patrol. But then, once folks are here, through a rented passport or whatever or, you know, because they have a visa to come here for a short period of time, but then they get on a bus and they go to someplace like Liberal, Kansas. Do you feel that that is a pipeline that we are ignoring? It gets outside the 25-mile limit of the Custom and Border Patrol here, and it goes under the ICE people.

And are we letting our guard down there, and is that a critical checkpoint?

Mr. RAMIREZ. Yes, sir, absolutely. And many chiefs and just managers that I've spoken with around the country have reported that ICE isn't capable of doing the job in the interior. They call the Border Patrol for help.

Mr. KINGSTON. Why would so many bus stations here in El Paso be advertising Liberal, Kansas and Guymon, Oklahoma.

Mr. RAMIREZ. Perhaps, for the job magnet.

Mr. KINGSTON. So would that mean that there, on the other end, is an employer waiting who is somehow communicating and saying, "Yeah, we will take these folks".

Mr. RAMIREZ. That's what we expect, yes.

Mr. KINGSTON. And it would be that blatant.

Mr. RAMIREZ. Absolutely, sir.

Mr. KINGSTON. Okay. Ms. Walker, do you want to comment on that? Because you had mentioned overstays. And these would be folks who come in legally but do overstay and then become illegal. I just—you had mentioned that, and I just wanted to give you an opportunity to maybe address what we should do about overstays.

Ms. WALKER. Thank you for the opportunity.

Overstay, though, when you talk about the 25-mile perimeter, it's also a different perimeter when we're talking about Arizona being 75 miles. What that means is still that I've been admitted into the United States, and I'm going beyond that perimeter. If I'm going to stay beyond 30 days, then I'm supposed to get an I-94 document, which then indicates my period of stay in the United States.

As far as our ability to track, though, and to know whether or not someone overstays, that is something that U.S. VISIT attempts to address. But let's face it, I mean, what we have in order for people to get a laser visa, which is what Mexican nationals have, is that they must go through—pay $100 to go through a background check, be printed, and then they are subject to inspection not only at time of admission, but on every major thoroughfare out of El Paso, we have checkpoints that are manned by the Border Patrol. So they are checking. They check me every time I'm heading up to Ruidoso.

Mr. KINGSTON. But would they check each and every person on a bus.

Ms. WALKER. Yes, sir. They certainly do.

Chairman SENSENBRENNER. The gentleman's time is expired.

Mr. KINGSTON. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. The Chair recognizes himself for 5 minutes. Sheriff Samaniego, H.R. 4437, which was my bill which passed the House, incorporated the Culberson-Reyes language rel-

ative to the $100 million of assistance to the sheriffs of the 29 border counties on the southwestern border. How would you use the money that would come under this proposal? And the Senate's proposal is a lot different. But how would you use the money under the House proposal.

Mr. SAMANIEGO. Yes, sir. Thank you for the question.

We are already doing what we told the Congress we were going to do, under 4437, where the Border Law Enforcement Act that was co-sponsored by Congressman Reyes, that we would put extra officers all along the border. It started in Texas from El Paso to Brownsville, and then it kind of mushroomed into New Mexico, Arizona and California, because the bill would finance all their operations, also.

But we're doing that now, thanks to Governor Perry, who made a statement that he could no longer wait for the Federal Government to take care of the border. He felt a necessity for the State of Texas to take action, and he made funding available to the 16 sheriffs on the border for us to begin implementing Operation Linebacker. And we have been doing that with tremendous results.

All we do is put extra patrols along—in the vicinity of the river. We're not on the line. We're not Border Patrolmen. We patrol the areas in the vicinity of the river, the neighborhoods, streets, et cetera.

The main thing that has happened, we have deterred a lot of crime. We have made a lot of drug seizures. We have arrested a lot of criminals. And we have come across illegal aliens.

And I understand we don't—we don't—we're not enforcing immigration law. But in the course of our duties, if you're in El Paso County, you're going to run into illegal immigrants. And if we're investigating a crime and we find that some of the individuals are here illegally, we will turn them over to Immigration or the Border Patrol.

Chairman SENSENBRENNER. Thank you.

Chief Wiles, we had representatives in San Diego of law enforcement in California, and there seems to be the impression that the House bill mandates local law enforcement to enforce the immigration law. That is not the case. Neither the House bill nor the Senate bill mandate local law enforcement enforcing the immigration law. However, the House bill does allow local enforcement to enter into voluntary agreements with the Federal Government to work cooperatively in dealing with this issue.

If that part of the House bill becomes law, would the El Paso Police Department be amenable to entering into a voluntary agreement? And if not, why not?

Mr. WILES. Well, the El Paso Police Department right now works with many Federal agencies. We work with the FBI, with DEA, the U.S. Marshal Service. We're willing to work in partnerships with the Federal Government when it's issues of a criminal nature.

I don't think it's appropriate or right to ask our officers to enforce immigration law.

Chairman SENSENBRENNER. Well, if you have someone who is an illegal immigrant and his illegal presence in the country is obvious, who is suspected of committing a criminal offense which would be a violation of State and/or Federal law, wouldn't it be helpful for

you and your officers to detain that illegal immigrant while the investigation put together the evidence that would necessarily seek an indictment for the criminal charge?

Mr. WILES. Well, don't get me wrong. Our policy now is that if officers come into contact with an illegal immigrant through lawful means, in other words, we stop an individual who's suspected of criminal activity and they happen to be an illegal immigrant, we can turn those over to the Border Patrol. It's not that we're totally ignoring them.

My concern is that we do not want to become agents of immigration seeking out individuals who are here illegally.

Chairman SENSENBRENNER. Okay. Well, that's not the issue in the House-passed bill.

I have one quick question for Ms. Walker. You represent the American Immigration Lawyers Association. If the legalization or amnesty or pathway to citizenship provision in the Senate bill becomes law, how much do you think you would charge somebody who would apply for the benefits under that?

Ms. WALKER. I have no idea, sir. I mean, right now, we're proceeding, through the American Immigration Lawyers Associations, to establish a pro bono network regarding those who are not able to afford legal services.

And the goal here is that every lawyer is not seeking—is only seeking their own beneficial gain financially, then you negate all of my credibility and yours, as well, sir.

Chairman SENSENBRENNER. I just point out that, you know, 12 million illegal immigrants, if the fee was $2,000 for that, that is $2,400,000,000.

Ms. WALKER. Why don't we talk about the smuggling trade right now and the amount of money they're taking in for our failure to act.

Chairman SENSENBRENNER. Thank you.

My time is expired. We will have a second round of questions.

Gentleman from Indiana, Mr. Hostettler.

Mr. HOSTETTLER. Thank you, Mr. Chairman.

Sheriff Samaniego, in your testimony—written testimony, you reiterate testimony that was given by a Washington-based financial expert during a 1997 hearing on NAFTA in the Senate.

And you say, "Mexico cut a deal with the drug cartels. In return for depositing cartel monies in cash-strapped Mexican banks, cartels were given free use of Mexican states along the Mex/Texas border."

There's been a high level of documentation of corruption throughout Mexico's government, from the Federal level to the local level. That being the case and given the requirement under the Senate bill to consult with—with State, local and Federal leaders on the Mexican side, what is your confidence in the fact that corruption will not taint the consultation inasmuch as there will be input from the Mexican side?

Mr. SAMANIEGO. Well, I think I mentioned in my statement that I consider that like a homeowner asking the burglar if he can put bars on his home.

And, you know, we have a problem. Mexico has not respected our border. They use it at will. And they have no respect for our juris-

diction. And for us to have to consult with them and ask them if it's okay to build a fence, I know what the answer is. Right after the bill was approved, there was a lot of news coverage, and they very strongly opposed any fence.

And as I mention also in my statement, it is not in their benefit. It is not going to benefit Mexico if we beef up our border. If we build fences, if we put barriers and crossing points, it would virtually stop the flow of illegal aliens that are coming in.

And Mexico gains a great deal with every individual that makes it into the United States and gets a job. They're sending back to their homes—I've heard several amounts, the most prevailing, I guess, is $20 billion a year. You know, Mexico is not going to get rid of that cash flow.

Also, the—this was testimony that was given before a Senate Committee headed by Senator Joe Biden where this individual, Jonathan [sic] Whalen, testified that in return for putting the cartel's money in Mexican banks, they were given freedom along the U.S./Mexico border to operate.

I've been here 50 years. I just completed 50 years in law enforcement. I can see that. There is no control of the Mexican government on the border. The drug cartels, the human smugglers control the Mexican side of the border.

Mr. HOSTETTLER. And if they control that side of the border and possibly even the political decisions of local, State and Federal officials along in that area, isn't it possible that the decision, with regard to—they make in our required consultation under the Senate bill with them, will be tainted by the fact that not only individuals who only wish to come to America for a better way of life but it's possible that—that input from Mexico will be over—will be shadowed by the notion that drug trafficking must continue into the United States as well.

Mr. SAMANIEGO. That is correct, sir.

And we had the ambassador to the U.S. from Mexico here. He attended a symposium. He was interviewed by the newspaper and made a statement, Don't look at us as a—the problem, look at us as a source of the solution. And I keep looking and looking, and I keep hearing, you know, that they're doing all kinds of things. I do not see it. I'm sorry. I do not see their cooperation.

Mr. HOSTETTLER. Thank you.

Yield back the balance of my time.

Chairman SENSENBRENNER. Gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

I would like to put on the record that I would hope that our Committee would hold hearings on H.R. 4044, the Rapid Response Border Protection Act, portions that are jurisdictionally under this particular Committee, in the very near future, because if this is a bipartisan effort, as has been suggested, or that Democrats are not, if you will, interested in comprehensive immigration reform, then I would commend a bill that has been supported by the Border Patrol organization to have that opportunity.

I would just put on the record that, Sheriff, the legislation allows for a State to declare an international emergency and 1,000 Border Patrol agents to be dispatched to that State, in consultation with

Department of Human—Homeland Security. My good friend Congressman Reyes is on that legislation. And do you think that would work for you?

Mr. SAMANIEGO. I'm not aware of all the details.

Ms. JACKSON LEE. But would it work if—if the State of Texas declared an international emergency and there was legislation that said they could dispatch 1,000 Border Patrol agents to the State, would that help you.

Mr. SAMANIEGO. Yes, ma'am. And let me tell you why.

Ms. JACKSON LEE. Sheriff, if you would, my time is short.

Mr. SAMANIEGO. Yes, ma'am.

Ms. JACKSON LEE. And I appreciate your answers. And I would just respect you, but I want to get some other answers in.

Let me also make note that although we might appreciate what the State is doing, $100 million from the State coffers impacts negatively on non-performing schools in our State, lack of children's health care in our State. And frankly, I think it's important to note that immigration is a Federal issue. The failure of the immigration system should be on us, and we should be doing our work.

Mr. Chairman, I'd like to add, if I could, I ask unanimous consent to put in the record a letter to the Speaker from the MALDEF president and the National Council of La Raza.

Chairman SENSENBRENNER. Without objection.

[The information referred to follows in the Appendix]

Ms. JACKSON LEE. A memo from Luis Figeragra of the Legal Defense Fund.

Chairman SENSENBRENNER. Without objection.

Ms. JACKSON LEE. And a resolution from the mayor and senator and a number of officials from El Paso——

Chairman SENSENBRENNER. Without objection.

Ms. JACKSON LEE.—that has been stated on this issue.

I want to pursue very quickly this question of what this bill stands for. I think that we are misinterpreting our purpose here if we are focusing on the title of this hearing about a veto, because there is no veto. The Senate bill simply says that you will consult.

But diplomacy is a national issue. That's up to the president to sit down with the leadership of Mexico and address these failures. We did it, and it was done under the Clinton administration. We addressed these questions. That's why our numbers are so high. We had more Border Patrol agents. We had more fraud cases.

Let me just say, this is what is the sticking point, Sheriff—and I want you to understand, and I hope you will be able to answer this question, and Ms. Walker and Chief Wiles—this bill makes a felon, gives a felony status to the local priest, Catholic charities, to the relative that has in their house an unstatused individual.

We've already heard this is a Federal issue, and therefore, the Senate bill provides security at the borders; what the Sheriff wants, a compromise will generate the relief for sheriffs.

Which, by the way, Sheriff, you're not at the border. Operation Linebacker is that you're internal. You're the back-up.

Mr. SAMANIEGO. The back-up.

Ms. JACKSON LEE. And we understand that. You wouldn't be, because it's a Federal issue to be at the borders.

And so, Ms. Walker, what is the impact——

And, Sheriff, let me just say this: Do you want to make a local priest a felon? That's what this H.R. 4437 bill does. They will be a felon if they are considered aiding and abetting an unstatused individual.

Mr. SAMANIEGO. Would you allow me to read one little paragraph.

Ms. JACKSON LEE. I would be happy to. My time is going. Is it yes or no? Do you want to make the priest——

Mr. SAMANIEGO. There's—it's not that simple, you know——

Ms. JACKSON LEE. But do you want to make the priest——

Mr. SAMANIEGO. There's a lot of circumstances. We—we need to secure our border. We need to secure——

Ms. JACKSON LEE. May I just have Ms. Walker——

I thank you. Maybe you'll be able to answer later.

Yes.

Ms. WALKER. Very briefly, we'll have very full prisons of attorneys and people providing assistance, including priests.

And God knows what will happen to us in heaven. I have no idea about that.

Thank you.

Ms. JACKSON LEE. Let me just say, I'd like to put this statement from the Catholic Diocese in the record.

And I would simply say, Sheriff, if you want to finish answering the question.

Mr. SAMANIEGO. Yes, ma'am.

Let me—it's not a simple yes or no. If somebody is aiding and abetting someone that is here illegally, we need to do something. You know, things are out of control.

Ms. JACKSON LEE. And the Senate bill does something. They want to create a procedure for that individual. But you would then be subjecting the priest——

Chairman SENSENBRENNER. The time——

Ms. JACKSON LEE.—to a criminal jury proceeding——

Chairman SENSENBRENNER. The time of the gentlewoman——

Ms. JACKSON LEE.—and going to jail.

Chairman SENSENBRENNER.—is expired.

The gentleman from Texas, Mr. Gohmert.

Mr. GOHMERT. Thank you, Mr. Chairman.

As I understand, the current law prohibits encouraging or inducing and also prohibits aiding and abetting. That's generally the language we have in the State penal code here in Texas. But 4437 adds the words "assists and directs" to plug the gaps in the current law.

And I can understand persons who believe that it should not be a crime at all. But it still kind of begs the question, wouldn't it be better, if that is your view, to have it a misdemeanor than a felony? So that, though, is still a little hard to understand if that's the position.

But my good friend Mr. Reyes made the point that corruption doesn't recognize international boundaries, and that's what we've been hearing in the evidence here today, and that's true.

But we've heard the expression before that capital is a coward, that money for investment will flow into areas where it is least at risk, which is one of the reasons so much money has come to the

United States from investment and continues, because even though there is some corruption here and we continue to need to pursue it and never should rest, but that it is safer here than it is in Mexico because there is more corruption there.

So I would submit to you that corruption is a coward. And we ought to encourage our neighbors to the south to be about the business of enforcing the law, and that needs to become with an—become an exclamation point.

And I could not agree more with my friend Congressman Reyes who said we should not just hire 2,000 Border Patrol agents 1 year and 200 the next. That has got to be an ongoing continuing battle. We appropriated, I believe, more than $275 million, more than the Administration had asked for last year, which shows really the heart of where we are in the House of Representatives.

But I also think it's worth noting, when it comes to compassion and caring, the United States has traditionally voted for issues of compassion and human rights in the United Nations. And I haven't seen yet the new figures for 2005, but I saw the numbers for 2004 and was staggered to see that our neighbor to the south votes against the United States' position nearly three-fourths of the time. So it would be good to have a neighbor that was more on board with us in some of these areas.

Now, we've also heard from the Chief that crime within the city of El Paso is not a major problem, and that the—apparently, the reports are wonderful, indicating a great job by the local police.

But I'd like to ask you, Sheriff, what problems, if any, are being experienced by rural land owners in the county that may be or is resulting from illegal entry to this country and to people's property?

Mr. SAMANIEGO. First of all, let me clarify——

Mr. GOHMERT. Could you move that mike a little closer.

Mr. SAMANIEGO. Yes, sir.

Let me clarify the issue of whether illegal aliens are committing crimes in El Paso County or not.

Mr. GOHMERT. Okay.

Mr. SAMANIEGO. I have the statistics here for last year. We booked 15,733 illegal aliens into the El Paso County Jail, charged with a State crime or a Federal crime. And, to me, that doesn't indicate that we don't have a problem with them. We certainly do.

Mr. GOHMERT. Could I ask you, do you know what happened to those 15,000? Were they deported, or did they actually stand for the charge that was brought against them.

Mr. SAMANIEGO. Yes, sir. If they were tried by municipal court or county court or whatever, after their sentence was served, they are turned over to immigration. They take care of them. I don't know what happened to them, sir.

Mr. GOHMERT. Well, I know, having been a judge, I had one case where the guy had had multiple DWIs and had never been deported. And then he finally was driving drunk and hit someone and seriously hurt them and then came to my court as a felony. And since—I treated him as I would anyone who had had that many DWIs, and I sent him to prison. And then, within the year, he was back in my court. And I said, "How did you get here?" And he indicated that he, as soon as he got to the prison, was deported and

naturally came right back and hit somebody else and committed another felony.

And anyway, it is an ongoing problem. They don't just wait until they serve the sentence. I know two cases I had where they didn't wait.

Chairman SENSENBRENNER. The gentleman's time is expired.

The gentleman from Texas, Mr. Reyes.

Mr. REYES. Thank you, Mr. Chairman.

To my colleague from Texas, Mr. Gohmert—or Congressman Gohmert, when you talk about encouraging Mexico to enforce the law, I would remind all of us that that applies for us in what I have been saying in Congress, that we ought to be enforcing employer sanctions, which was passed in 1986. We haven't done that. We have not been able to get even a hearing on employer sanctions in Congress. That—that has to be a priority.

We've had one hearing on H.R. 98, which includes the border—the Social Security card, a fraud-proof Social Security card and also the system——

Mr. HOSTETTLER. Would the gentleman yield.

Mr. REYES.—that won't——

Mr. HOSTETTLER. If I can, as Chairman of the Immigration and Border Security Subcommittee, we have had numerous hearings on both employer sanctions and on the impact of illegal immigration on employment of American citizens in our Subcommittee.

Mr. REYES. Okay. Reclaiming my time.

Why—why is it so hard, when the Administration is controlled by the Republicans, the House and the Senate are controlled by Republicans, why can't we get employer sanctions enforcement?

I wrote a letter to Secretary Chertoff, a couple of weeks back when he made an announcement that he was assigning 25 prosecutors to border communities to prosecute immigration violations. I said, "Announce that you are going to have a thousand of your Immigration Customs Enforcement agents start enforcing employer sanctions." That one announcement will serve to put employers on notice and to have them comply with the '86 laws, and then it will also send a message that you don't need to—you can't even consider coming back into this country, because you're not going to be able to get a job.

We saw that in '86. I forget which—I think my friend from Georgia was talking about the morale in '86 about amnesty. We—I was a chief in McAllen. The morale was fine, because in '86 we thought finally Congress has got it right. Congress is going to help us with the pull factor by passing employer sanctions. Well, the law passed, but no resources. No priority was ever given that.

Today, I get people that tell me, "Why don't you pass this law or that law about illegal immigration?" It doesn't do any good to pass a law if you're not going to enforce it.

Let me just comment on local—local law enforcement enforcing the immigration law. The immigration law is the second most complex law in the world, next to maritime law. The Chief and the Sheriff have to be concerned about being personally liable for one of their officers going out and stopping a U.S. citizen because they look Hispanic or they look Puerto Rican or they look Haitian or something else, when in reality they are either citizens or they're

lawfully in this country and it's a false arrest. You could get sued for that. I would be very uncomfortable. And it would entail a tremendous amount of training to get local and State officers to enforce that law.

The issue of—as a Sheriff mentioned, we had both Ambassador Garza and Ambassador De Icaza for the Border Security Conference here a couple of days ago. They both highlighted the fact that we are much better served by cooperating. We are much better served by making sure that there's a partnership on this international border.

You know, it's—it's more than a bit insulting to say, I don't see Mexico cooperating. Mexico does not respect our border, when just August 8th there was a Mexican official that was killed by the drug cartels because he was replacing an individual that hadn't done the job.

The Mexican government repeatedly suffers losses. And I'm not talking about people moving away or people getting replaced, I'm talking about people dying because they're trying to help and cooperate and manage this border. We need to be very careful how we criticize Mexico when we expect them to be our partners.

The last thing I want to say in the 15 minutes I've got left is that it is critical—15 seconds, I'm sorry.

It's critical—it's critical that we look at a comprehensive reform package. You can't do employer sanctions without a guest worker program because you place our economy in jeopardy there.

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentleman from Georgia, Mr. Kingston.

Mr. KINGSTON. Thank you, Mr. Chairman.

We had talked earlier about the number of Border Patrol that had been hired under President Bush. And I just wanted to clarify for the record, when the President went into office, the number of Border Patrol agents was 9,096. Today, it's 11,523. And by '08, it should be up to 18,319.

In the last several years, they've apprehended 400,000 criminals trying to get into the United States of America, 400,000 known criminals, not just persons of interest. And that's in about 6 million people that they have apprehended.

Mr. Ramirez, do you agree that currently the Border Patrol right now is cooperating and working somewhat with the Mexican government on the El Paso border and probably most of the borders?

Mr. RAMIREZ. Well, that's actually the problem, because in working with the Mexican government, you are dealing with a government that has, as I stated earlier in my testimony, a lot of problems dealing with bribes. As has been repeatedly stated, there are a number of agreements that have been enacted over the past few years and signed by this Administration. But Mexico doesn't keep their end.

Mr. KINGSTON. Well, the reality is, though, they are talking back and forth to their Mexican counterparts, sometimes with mixed results, but they are talking. Now the reason why I say that——

Mr. RAMIREZ. If I can add this: In some cases, they're overtalking, such as the Civilian Border Observations that have taken place, where the DHS has lied to the public.

Mr. KINGSTON. The reason why I say that is because there is a degree of local cooperation, and again, with mixed results. But to mandate some bureaucracy in Washington to define what consultation is and then get the State Department involved with international law on whatever legal law there is, that would certainly bog down the local Border Patrol. And therefore, having Mexican veto power over American law as respects modifying detention beds, modifying the fence, modifying virtual cameras or whatever, would slow down the effort of the Border Patrol. Is that not correct.

Mr. RAMIREZ. Absolutely.

Mr. KINGSTON. Okay. I wanted to ask another question. Ms. Walker.

Ms. WALKER. Yes, sir.

Mr. KINGSTON. You had stated in your testimony that illegal aliens pay $7.2 billion in Social Security. Should illegal aliens be entitled to Social Security benefits in your opinion.

Ms. WALKER. If they've worked in the United States in order to put that money into our system, yes, they should. But—and the "but" that's important there is, we need a system that allows us to be able to fill employer needs and deal with legalizing those individuals.

Mr. KINGSTON. Well, I understand that. I just wanted to make sure, though, that your association supports illegal aliens receiving Social Security money when they were in the United States working illegally.

Ms. WALKER. I take it you're a lawyer, as well.

Ms. JACKSON LEE. Would the gentleman yield? Would the gentleman yield.

Mr. KINGSTON. I'll yield when I'm through with my questions, I'll be glad to.

And let me ask you this: Sheriff, just on—and Ms. Walker, I really want to go down the line, so let me start with you. You may be the slowest, in a complimentary sense.

Ms. WALKER. Thank you so much.

Mr. KINGSTON. I know how thorough you are, the answers.

Do you support a biometric ID card, because that would eliminate a lot of the uncertainty and protect the employee and employer as well? Would you support a biometric ID?

Ms. WALKER. Are you asking me if I support a national identification card.

Mr. KINGSTON. A biometric ID card for employment—well, I tell you what, you define what you would support. How about that.

Ms. WALKER. Well, let's talk about what we already have. I mean——

Mr. KINGSTON. I tell you what, let me yield to you. Let me—I'm going to have to reclaim my time, because this—I would really like to go real quickly on the yay and nay and give me about 15-second response, and so I'm going to get back to you, Ms. Walker.

Chief, biometric ID card, yay or nay? Good idea? Bad idea in some cases?

Mr. WILES. I think this is out of my expertise. But I would say, like a Social Security card, if there's some ID for employment that you would think would be appropriate, I would say yes.

Mr. KINGSTON. Well, we're just talking tamper-proof ID card because of the trumped-up I-94s, I think is one of the big breakdowns right now that we're having.

Mr. WILES. Sure.

Mr. KINGSTON. Mr. Ramirez.

Mr. RAMIREZ. It has its merits, yes.

Ms. SISKIN. I abstain, being from CRS.

Mr. KINGSTON. That's a wise decision.

Are you going to yield your time to Ms. Walker? She'll take it.

Ms. SISKIN. Go ahead.

Ms. WALKER. I need a lot of time.

Mr. KINGSTON. Sheriff.

Mr. SAMANIEGO. If it's for individuals that are here legally, and I presume that would be the case, yes.

Mr. KINGSTON. And Ms. Walker.

Ms. WALKER. All right. I'm going to try to make it short.

You said "trumped-up I-94 card." To get an I-94 card, I have to go through, before that, I have to get a passport and I have to get a visa, if I'm a Mexican national, not a Canadian national. To get that, I have gone through biometric U.S. VISIT registration. I've been checked against the class database. I've had also facial recognition done upon me, before I'm allowed to be admitted into the United States.

So we have biometric ID concerning those who legally come here. It's U.S. citizens who don't have it. That's the problem.

Mr. KINGSTON. Okay. So—but would you say that our documentation program now is insufficient.

Ms. WALKER. For foreign nationals or for U.S. citizens.

Mr. KINGSTON. For foreign nationals. The only reason why I say that is because we talk about employer sanctions, which I support.

Ms. WALKER. Yes, sir.

Mr. KINGSTON. But one way to be——

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. KINGSTON. I would like to correspond with you later, and I appreciate it. We'll talk.

Chairman SENSENBRENNER. Okay. The Chair recognizes himself for 5 minutes to wrap up the hearing.

Thank you all for coming to this hearing. Thank all of the witnesses for their testimony and the answers to the questions.

I think this shows how tremendously difficult dealing with the entire issue of immigration is. I think we all agree that the current immigration system is completely broken. We have a net increase of about 550,000 illegal immigrants in the country. The apprehensions by the Border Patrol and deportations are about a million a year.

And we've also got a problem on the northern border. Next week we're up in New Hampshire and then upstate New York. So it's not just the southern border that is causing the problem.

It seems to me that in order to do something that works, we have to secure the border first, and this is more important in the post-9/11 situation than before the terrorist attacks of September 11th. And we have to cut off the magnet of cheap jobs through the enforcement of employer sanctions.

I was in the Congress in 1986 when the Simpson-Mazzoli bill was passed. And for the record, I voted against it because I thought it wouldn't work. And I'm sorry to say that I was right. I would like to see an immigration reform bill passed that works, because we have one opportunity now to do it and to do it right. And if we blow this opportunity, I'm afraid that the situation is only going to get worse. The number of illegal immigrants will continue to flood across the border. They will impact on our schools. They will cause a collapse of our healthcare system, particularly in border communities, and they will put a tremendous tax on the social services that are provided more by private church-related organizations than by public agencies because the '96 welfare reform bill made illegal immigrants ineligible for most public assistance benefits.

So the border security provisions, and that includes the $100 million that Sheriff Samaniego has talked about, as well as increasing the fines and employer sanctions and giving employers a way to verify Social Security numbers so that they can get around the fraudulent documents that are presented at the time an application for employment is made, complete with an I-9 form, is vitally important. Because if we don't crack down on the bad actors that violate the law by hiring illegal immigrants, no matter how many fences we build and how many Border Patrol officers we have on the border, the magnet will be there to draw people across the border.

So having a workable employer sanctions proposal is absolutely essential, because there is no way anybody can get around the fact that in most cases, it is cheaper to hire an illegal immigrant than to hire either a citizen or a legal immigrant with a green card.

Now, there have been a number of mentions made on why we haven't gone to conference. The answer to that is simple. We haven't gone to conference because the Senate has not sent the House the papers to send the bill to conference. They have kept the papers in the Senate even though they passed their bill before Memorial Day. When we passed our bill in December, the papers were sent over very promptly on that.

And the Senate also has a problem in their bill in that there is $50 billion in new taxes on the American public contained in the bill. The Constitution is quite plain that tax legislation has to originate in the House of Representatives, so the Senate bill is unconstitutional on its face because of that violation of the provision of the Constitution.

Now, there have been a number of allegations that have been made about 4437, which I think are flat-out wrong. First of all, I favor reducing the penalty for illegal presence from a felony to a misdemeanor. But it should be a crime, because if you are illegally present in the United States, whether you entered illegally or overstayed your visa following a legal entry, you violated the law, and there ought to be some punishment that is attached to that. And having it as a misdemeanor would be a 6-month jail term, and I would just compare that with the 6-year jail term for illegal presence in Mexico that is a part of that country's law.

We've heard allegations, including those today, that the House-passed bill would throw priests and soup kitchen operators in jail. The 1986, in the Simpson-Mazzoli bill, encouraging an illegal immi-

grant to stay in the country was made a Federal crime, and that bill was passed with the support of most of the religious organizations.

Our U.S. attorneys have said that the current law makes it very hard to prosecute "coyotes," the criminal alien smugglers who make money over bringing people across the border. But the House-passed bill was done at their suggestion to try to get more of these people convicted. I think that's a good goal.

And I would ask everybody who is concerned about this issue that if you don't like the language in the House bill, for the sake of getting at the "coyotes," help draft some language that is going to make everybody happy, because the coyotes are bad actors and the more of those we can get out of commission the better off we are.

So again, thank you for hearing all of these arguments.

Mr. REYES. Mr. Chairman, I have a unanimous consent request.

Chairman SENSENBRENNER. Yes.

Mr. REYES. Could I ask that my statement be entered into the record and also the border security by the numbers.

Chairman SENSENBRENNER. Without objection, so ordered.

So thank you.

Ms. JACKSON LEE. And a point of inquiry, Mr. Chairman.

Chairman SENSENBRENNER. State your parliamentary inquiry.

Ms. JACKSON LEE. Mr. Chairman, would it be appropriate that this Committee or Members here join in a signature letter to the House leadership encouraging a conference to be had, based upon the hearings that we've had, in order to reconcile and add language——

Chairman SENSENBRENNER. Reclaiming my time.

Without getting the bill from the Senate, we can't have a conference.

Ms. JACKSON LEE. If I could continue my inquiry.

Chairman SENSENBRENNER. That's very—that's very clear under the rules. Now——

Ms. JACKSON LEE. If I could continue my inquiry.

Chairman SENSENBRENNER. That was not a proper parliamentary inquiry. But if you have a proper parliamentary inquiry, please state it.

Ms. JACKSON LEE. My inquiry is that the Senate has at least named its conferees, the House has not. I think if you put the pressure on, you could proceed.

Chairman SENSENBRENNER. Yeah. The gentlewoman is not making a proper parliamentary inquiry.

The Senate has named no conferees. They have not requested a conference. They have not sent the papers to the House so that the House could request a conference.

I would suggest—I would suggest talking to the Senators on that because the House has done everything that it can under the rules that have been around since 1789 relative to Conference Committees.

Ms. JACKSON LEE. Then you would join me in asking for both houses to move forward in a signed letter.

Chairman SENSENBRENNER. Well, I think there are ways to move forward, and we don't have to have a press release and a letter on that.

Since the purpose of this hearing has been concluded——

Ms. JACKSON LEE. Well, I think any efforts that we could make to encourage——

Chairman SENSENBRENNER. The purpose of this hearing——

Ms. JACKSON LEE. Any effort that we could work together would be appropriate.

Chairman SENSENBRENNER. The gentlewoman is not recognized. She was—she said she had a parliamentary inquiry, and those weren't parliamentary inquiries. Those were——

Ms. JACKSON LEE. Point of information, Mr. Chairman.

Chairman SENSENBRENNER. Well, the rules do not provide for points of information.

Ms. JACKSON LEE. I'm left hopeless.

Thank you, Mr. Chairman. I yield back.

Chairman SENSENBRENNER. Okay. Thank you again for coming. It has been a pleasure to come to El Paso.

Let me just state for the record that lest anybody be concerned that this Committee is only concerned about the southern border, next weekend's hearings will be in Concord, New Hampshire and Queen's Way, New York.

So have a good day, and please drive home safely.

And this hearing is adjourned.

[Whereupon, the Committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT BY THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, COMMITTEE ON THE JUDICIARY

Ordinarily, hearings are held before bills are passed, not after. Hearings are used to gather information that is needed to draft the bill. The House immigration reform bill, the Border and Immigration Enforcement Act of 2005, H.R. 4437, was passed on December 16, 2005, but the hearings were not begun until August of 2006, more than seven months later.

The Senate immigration reform bill, the Comprehensive Immigration Reform Act of 2006, S. 2611, was passed on May 25, 2006. Normally, when the two houses of Congress have both passed a bill on the same subject, the bills go to a conference at which differences are worked out. Instead of following the normal order and moving forward to a conference, the Republican leadership in the House has moved backwards to the hearing stage of the legislative process. The reason is obvious. They want to avoid a conference because immigration reform divides their party and this is an election year.

H.R. 4437 was introduced on a Tuesday, and without a single hearing before the full Judiciary Committee, it was marked up, moved to the floor, and passed the following Friday. This was done without hearings and without any input from the minority party in drafting the bill. There was no deliberative process between the two parties despite America's need for meaningful immigration reform.

Even though Republicans hold the White House and a majority in both the House of Representatives and the Senate, they refuse to go to a conference and develop a real immigration reform package that would produce meaningful, long-term results. Instead, they are stalling. They stalled before Congress broke for the August district work period, and they are continuing to stall. The Republican- controlled Congress is doing nothing.

- Nothing about the 12 million people in this country using false identifiers.
- Nothing to better secure the border.
- Nothing to protect the jobs of American workers by implementing a real employer verification system.
- Nothing to help our border patrol agents.
- Nothing to change the fact that our immigration system is inadequate and broken.
- Nothing.

The failure to act has made our immigration problem exponentially worse. State and local governments are being forced to assume immigration responsibilities on account of the failure of the Federal Government's immigration policies. In recent years, we have seen their frustration with Congress's inaction turn to desperation as they try to legislate federal immigration issues at the state level.

If the Federal Government is not going to act this year to change this situation, we should at least reimburse State and local governments for the immigration expenses they have incurred. For instance, we should provide funding for the State Criminal Alien Assistance Program so that California taxpayers will not have to bear the $635 million burden of incarcerating criminal aliens. Instead, the President zeroed out funding for this program.

Our failure to act means that employers who need low-skilled labor can continue to exploit undocumented workers. Few if any of them offer health insurance to these workers and the costs are passed on to state and local governments.

The House Republicans did not hold a single hearing on H.R. 4437 before they passed it. Now, they are holding an unprecedented number of field hearings, but the focus is on what is wrong with the Senate bill, S. 2611. The House Republicans were not interested in hearing from the public or experts about HR 4437 before it was passed, and they still are not interested. If this were not the case, these hearings also would be about whether H.R. 4437's enforcement-only approach would work. The reality is that we need comprehensive immigration reform if we are going to fix our broken immigration system, such as is provided by the Senate immigration reform bill, S. 2611, not just a new enforcement program.

LETTER FROM TEXAS STATE SENATOR ELIOT SHAPLEIGH

RECEIVED

SEP 14 2006

Subcommittee on Immigration, Border Security, and Claims

The Senate of the State of Texas

COMMITTEES:
Veterans Affairs & Military Installations
Subcommittee on Base Realignment and Closure - Chair
International Relations and Trade - Vice Chair
Infrastructure Development and Security
Nominations

Senator Eliot Shapleigh
District 29

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August 29, 2006

The Honorable F. James Sensenbrenner, Jr.
U.S. Congressman
2449 Rayburn House Office Building
Washington, D.C. 20515-5101

VIA: U.S. Mail

RE: National and State Immigration Policy

Dear Congressman Sensenbrenner:

I am deeply disturbed by the anti-immigrant fervor that has once again gripped this great nation founded and fostered by immigrants. The current one-sided debate on illegal immigration raging in Congress is fueled by xenophobia, fear, ignorance, and misinformation. The mean-spirited and misguided legislation that may result threatens both the social fabric and economic future of the country.

The tactics that you and your committee adopted in El Paso to hear only voices that you support are reprehensible. Americas' democracy is founded on open and honest debate that you have done all you can do to thwart on this critical issue. Immigration reform that focuses solely on enforcement would be a travesty. If we pass the bill favored by the U.S. House of Representatives, we will only delay the day we achieve true and comprehensive reform. The debate on the immigration legislation in Congress should be comprehensive and informative. That is the only way to reach a solution to this complex issue. While it is imperative for our country to reform the immigration system, focusing only on the enforcement component will hurt our economy, lead to human and civil rights violations, and create social instability for the millions of American families that include immigrants.

I also have serious reservations concerning the ongoing militarization of the Texas-Mexico Border. As the state Senator who represents the U.S. side of the largest bi-national city in the world, I am deeply concerned that these policies being adopted in Washington, D.C. are having a profound negative effect on the lives and livelihood of my constituents.

I would like to elaborate on these issues and share with you my recommendations for how America can avoid the pitfalls of the current debate on illegal immigration and influence positively the future of immigration policy in this country.

Crafting an Effective and Humane National Immigration Policy

Framing a Fair Immigration Debate

The narrow framing of the current immigration debate, not only neglects some of the most important social, economic, cultural and security concerns, it impairs our ability to consider meaningful reform of our immigration system[1]. The language used by you and others to frame the immigration debate is "anything but neutral." It focuses solely on the problems associated with illegal immigration – such as the federal government's inability to control its borders, exploitation of weak labor laws, job loss among native-born Americans, the strain on government services, and so on. Focusing solely on the problems caused by immigrants or the failure of government to enforce our immigration laws, while ignoring the many advantages of immigration, cripples the debate and renders policymakers incapable of exploring solutions to the challenges that immigration brings without sacrificing its benefits.

The current debate must be expanded to include the following factors that influence immigration, both legal and illegal: U.S. foreign policy, international trade agreements, and our historical commitment to embracing immigrants fleeing from economic or social injustice and religious or political persecution. Above all, we must not neglect the ongoing demographic, social and economic transformation of our nation and the world. Statistics show that while the American population is aging and having fewer children, immigrants are revitalizing the U.S. demographic composition. This trend is occurring at home and abroad. According to a United Nations report, the number of immigrants around the world has doubled over a 25-year period and is expected to increase in the next 50 years. About three percent, or 175 million people now reside outside their country of birth[2]. As the U.N. Secretary General recently stated, "it is time to take a more comprehensive look at the various dimensions of the migration issue, which now involves hundreds of million of people and affects countries of origin, transit and destination. We need to understand better the causes of international flows of people and their complex interrelationship with development[3]."

In light of the increasing importance and changing nature of immigration, we should adopt progressive policies that offer better educational opportunities to these future taxpayers and help the United States stay competitive in a global economy. Overlooking the importance of

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1 George Lakoff and Sam Ferguson. "The Framing of Immigration," Rockridge Institute, (2006). Online. Available:http://www.rockridgeinstitute.org/research/rockridge/immigration. Access: July 21, 2006.
2 United Nations, *Number of World's Migrants Reaches 175 Million Mark.* Press Release POP/844 (2002). Online. Available: http://www.un.org/News/Press/docs/2002/pop844.doc.htm Accessed: July 19, 2006.
3 Ibid

immigration to focus solely on short-term solutions to the problems caused by unchecked illegal immigration will have devastating consequences for this country.

The United States is a Land of Immigrants

"Give me your tired, your poor,
Your huddled masses yearning to breathe free,
The wretched refuse of your teeming shore,
Send these, the homeless, tempest-tossed to me,
I lift my lamp beside the golden door!"
Statue of Liberty Inscription

Aside from our indigenous populations, we are all the sons and daughters of immigrants. Immigrants nourish and revitalize each American generation; without them, we would not be the nation that we are today. A few examples worth mentioning include: Albert Einstein, who came to the U.S. during the early 1900s, and whose superior knowledge helped to raise our standards for education; the Chinese immigrants who built the American Transcontinental railroad in the mid 1800s; and the bracero workers brought here during a period of labor shortage during World War II. In formulating the current debate on immigration reform, we must keep in mind that our great nation continues to rely heavily on the contributions of its immigrant population. There are presently millions of immigrants represented not only in the service industry, but also in high-skilled fields, where nearly half of American Ph.D. holders are foreign born. The new global economy knows no frontiers. Immigrants' contributions are more relevant now, than ever, if we are to remain competitive.

The contributions made by immigrants are not only recognized by scholars or progressive leaders. Business leaders have long acknowledged the invaluable contributions immigrants make to America's competitiveness. Take, for example, the comments made by Michael C. Mailbach, Vice President of Intel Corp:

> "Today's immigrants might not come here with much money, they might look different and speak strange languages, but their entrepreneurial spirit and desire to achieve is 100 percent American... People migrate to places where they can be free and permitted to succeed. Our company is better, our industry is more competitive, and our nation is more prosperous because of immigrants[4]."

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4 Michael C. Maibach. "Why Our Company Needs Immigrants." The Maibach Foundation 1996. Online Available: http://www.maibachfoundation.org/Articles/NeedImmigrants.htm. Accessed: July 27, 2006.

In general, Americans understand that increased globalization not only boosts the movement of goods and capital across borders, but also the movement of people in search of the jobs created by globalization. Americans also appear to understand how much their lifestyle depends on the cheap labor of immigrants. Finally, Americans recognize the value of legalizing the hard-working immigrants who already contribute in so many ways to our economy, bringing them out of the shadows so they can reach their full potential and, in turn, enable America to reach its full potential.

The ability of Americans to rise above the politicians who scapegoat immigrants for the nation's economic woes, or exploit them for political gain, in favor of understanding immigrants as persons who, like all Americans, are deserving of a better life, is reminiscent of the famous words of Eleanor Roosevelt who, decades ago, asked and answered the following question:

> "Where, after all, do universal human rights begin? In small places, close to home- so close and so small that they cannot be seen on any map of the world. Yet they are the world of the individual person: the neighborhood he lives in; the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman and child seeks equal justice, equal opportunity, and equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them so close to home, we shall look in vain for progress in the larger world[7]."

Contrary to the nativist argument that immigrants weaken the U.S. culture by eschewing its customs and values, studies show that immigrants want to assimilate. For instance, a study by the Pew Hispanic Center, in collaboration with the Henry J. Kaiser Family Foundation, probed the attitudes of Latinos toward the English Language. The study found that Latinos, regardless of income, party affiliation, fluency in English or how long have they been residing in the United States, believe that immigrants should speak English in order to become part of the U.S. society. Further, the study found that "Latino immigrants are slightly more likely (57 percent) to say that immigrants have to learn English that native-born Latinos (52 percent)."

Clarifying the "Cost" of Immigration

Some of the most popular arguments against comprehensive immigration reform focus only on the "cost" of illegal immigration to the nation from the use of government programs, health care services, and education. These biased analyses fail to consider the considerable taxes paid by immigrants, which can outweigh the costs. For example, undocumented immigrants pay real estate taxes, sales and other consumption taxes the same as citizens and legal immigrants do. These taxes fund the majority of state and local costs of schooling.

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7 Eleanor Roosevelt, remarks at presentation of booklet on human rights, *In Your Hands*, to the United Nations Commission on Human Rights, United Nations, New York, March 27, 1958.

In April 2006, Standard and Poor's (S&P) conducted a report to study the impact of undocumented immigration in the United States. The report noted that although it is difficult to evaluate the impact of undocumented immigrants on states' and localities' credit ratings, "many localities that attract high numbers of undocumented immigrants, such as California, Texas, Florida, and New York, also enjoy relatively low unemployment rates, healthy income growth and increasing property values, all of which contribute to stable financial performance."

The report also points out that previous studies have demonstrated that funds, originated from sales taxes and paid by undocumented immigrants, compensate some of the costs that these immigrants generate. The study cited California, the state with the largest number of undocumented immigrants, and where, according to the report, undocumented immigrants, by paying sales taxes, generate roughly one-third to one-half of their cost to the state. The report affirms that a more complete analysis should include not only immigrants' contributions through payroll and income taxes, but also real estate taxes they pay as homeowners or as renters. The Standard and Poor's report considers that industries that depend heavily in undocumented workers such as construction, agriculture, nursing home and health-care, would be negatively affected if current immigration patterns were severely restricted. The cost for employers in these industries would rise, and this cost would then be passed to the consumers.

Further, according to S&P each year the U.S. Social Security Administration retains roughly $6 billion to $7 billion of Social Security contributions in an "earnings suspense file" (an account for W-2 tax forms that cannot be matched to the correct Social Security number"). This revenues file, in 2002 alone, accounted for $56 billion in earnings, or about 1.5 percent of total reported wages. Presumably, the majority of these unmatched numbers belong to undocumented immigrants who do not claim their benefits. Not only Stephen C. Goss, the Social Security 's chief assumes undocumented immigrants are the main contributors to this file, but also researchers from the Center for Urban Economic Development, say undocumented immigrants are the main contributors to these revenues[8].

In a study conducted in the Washington, D.C., metropolitan area, from 1999 -2000, immigrant households paid nearly $10 billion in taxes, or about 18 percent of all taxes paid by households in the region, a share that was proportionate to their share of the population. The report concludes that immigrants should be welcomed to the Washington D.C. area, because they are a significant and growing part of the region's economy and tax base.

A recent article from the Los Angeles Times considers the negative consequences that restrictive immigration legislation may have in the U.S. economy. According to the article, in

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8 Eduardo Porter. "Illegal Immigrants Are Bolstering Social Security With Billions," *The New York Times*, April 5, 2005. Online Available:
http://www.nytimes.com/2005/04/05/business/05immigration.html?ei=5090&en=78c87ac4641dc383&ex=1270353600&adxnnl=1&partner=kmarx&adxnnlx=1156539984-8LeD2Z0vyIN6Do5Mo/ymXw . Accessed: July 17, 2006.

Georgia, the state that recently passed one of the most severe and far-reaching immigration laws, the number of Latinos buying homes has dropped considerably. Statistics from the U.S. Census show that, up until now, Georgia was the second-fastest growing Latino population in the nation, and 37 percent of Latinos were homeowners. According to information from the Home Mortgage Disclosure Act, in Atlanta, Latino-purchased homes grew from about 3,500 in 1999 to 8,500 in 2004, and has since dropped considerably.

A commonly held, specious premise at the heart of the debate on immigration is that undocumented immigrants take jobs away from native-born Americans. This xenophobic sentiment runs through much of the rhetoric of the conservative movement. This sentiment has persisted without any empirical evidence proving it to be so. The biggest blow to this fallacious argument is the evidence that disproves the link between undocumented immigrants and employment opportunities for native-born Americans, as was concluded in a recent study released by The Pew Hispanic Center. The study points out that the overall growth of the economy is what determines employment opportunity for native-born Americans. Furthermore, it observes that even during the brief recession in 2001, there was no link between undocumented immigrants and loss of employment opportunity for native-born Americans.

HR 4437 Would Have a Disastrous Impact on the Nation, Texas and El Paso

Extreme enforcement-only immigration reform, such as that proposed by HR 4437, could criminalize not only undocumented immigrants, but also church groups, social workers and the family members who assist them. According to Human Rights First, this bill goes against our nation's commitment to protect those who flee persecution, a cornerstone of our great nation's foreign policy, and puts the U.S. in violation of its commitments under the Refugee Convention and its protocol of 1951. The inclusion of a provision to legalize the millions of undocumented immigrants is the most realistic and humane response to the millions of undocumented and U.S. citizen children who have at least one undocumented parent.

The face of Texas is changing. In 1990, there were approximately 4.2 million Texans who declared themselves as non-White in the U.S. Census, representing a quarter of the state's population. From 1990-2000, the non-White population in Texas grew to approximately 9.9 million people, representing 48 percent of the total population. In 2005, at the national level, there were 6.6. million families in which one of the parents was unauthorized, and nearly two-thirds of the children living in these families were U.S. citizens by birth[9]. Since Texas is the second largest state of residence for undocumented immigrants, the negative effects of an enforcement-only policy would be felt in from El Paso to Brownsville and Laredo to Dallas.

These families include our teachers, our sons and daughters fighting in Iraq, our

[9] The Size and Characteristics of the Unauthorized Migrant Population in the U.S. Pew Hispanic Center March 7, 2006
http://pewhispanic.org/files/reports/61.pdf

entrepreneurs, and our civil servants. Under HR 4437, these families could face the prospect of their grandparents, mothers and father, or brothers and sisters being deported because they failed to get the papers needed to become legal residents. These families shape our great state just like every other Texas family. Just as we have a responsibility to oppose policies that hurt our economic competitiveness – as HR 4437 would – when crafting immigration policy we also have a moral obligation speak out on behalf of these families who have worked so hard and contributed so much to making Texas the great state it is today.

America should never erect a wall between itself and Mexico – our closest neighbor and #1 trading partner.

- *Across the world, walls are symbolic of failed and repressive efforts to thwart human freedom and prosperity. Instead of wasting precious resources on erecting a wall, the federal government should invest now in secure, fast and smart technology solutions to afford free trade and movement in our Hemisphere for the security of people and products.*

A giant wall on our southern border would not be effective. Proponents of the wall use the rhetoric of security and protection when that is the improper paradigm from which this problem should be viewed. After all, hardly any known terrorists have entered this country via the southern border; instead, most had overstayed their visas. Since the wall would not be effective, it would be only a symbolic measure. However, to build a wall would send the wrong message to Mexico and the increasingly global world.

The most successful walls that demarcated one kingdom from another (i.e. the Great Wall of China, walls separating sectarian neighborhoods in Northern Ireland, or the walls on the Israeli border) were used in situations where both sides are in a state of war with each other. This is not the case between the U.S. and Mexico. It is irresponsible to erect a symbol of exclusion and war between us and our largest trading partner. U.S. policy should focus on building bridges, not walls. The construction of a wall at the border would impede the legitimate flow of commerce and people into and from Mexico.

While achieving adequate security is a central issue along the Border, security policies should not include highly fortified barriers that impede economic growth along the U.S.-Mexico Border. Areas like El Paso use their strategic location on the border to develop a strong economy, and can do so while maintaining citizens' safety. Our region has the potential to build a strong and flourishing integrated regional economic zone if we capitalize on our strengths.

Currently, my office is working with the Border Legislative Conference (BLC), comprised of four states in the United States and the six states in Mexico along the U.S.-Mexico border, to develop strategies with federal, state, and local governments in the United States and Mexico to promote stability and economic development along the Border. The post-9/11 age is a great opportunity to rethink our international ports-of-entry. We must add national security to the mix

of law enforcement and regulatory issues, while developing strategic alliances across the different levels of government and with the Mexico authorities.

Several influential members of the Republican Party have been very vocal against the idea of building a wall along the U.S.-Mexican border, as the following quotes illustrate:

> "This notion of building a wall across the entire southern border I just think sends the wrong message,...To completely seal off America from our friend Mexico would be a mistake." U.S. Attorney General Alberto Gonzales (Houston Chronicle, May 19, 2006)

> "The Berlin Wall did not work perfectly and the wall that the Israelis are putting up is not going to work perfectly...So, a wall alone is not the answer." Colin Powell, former Secretary of State, speaking at a conference in Mexico City. (www.NewsMax.com, May 9, 2006)

> And, finally, building a wall is "a silly idea." Texas Governor Rick Perry talking about a fence to stop illegal immigrants (CNN. Lou Dobbs Tonight. January 12, 2006)

Building a wall also thwarts the main objectives of international trade agreements, such as the General Agreement on Tariffs and Trade (GATT) and the North American Free Trade Agreement (NAFTA): to promote economic growth, increase exports by eliminating barriers to trade and investment, and create jobs that support expanded trade. According to the Office of Trade and Industry Information (OTII), export-supported jobs account for an estimated 7.9 percent of Texas's total private-sector employment. Further, according to data released in 2001, 22.7 percent of all manufacturing workers in Texas depend on exports for their jobs.

Since Mexico's entry into GATT and NAFTA, in 1986 and 1993 respectively, Mexico has become the United States' number one trade partner. In 2005, Mexico was Texas's largest market. Last year alone, Mexico received exports of $50.1 billion (39 percent) of Texas's total merchandise export. In sum, while achieving adequate security is a central issue along the border,

security policies should not include highly fortified barriers that impede economic growth along the U.S.-Mexico Border or the legitimate flow of commerce and people into and from Mexico.

- *For immigrants who have demonstrated citizenship, paid taxes, birthed children and grandchildren, our nation should grant citizenship under clearly defined guidelines.*

We should support fair and comprehensive immigration legislation that balances border security concerns with recognition of the United States' demand for workers. This reform should include a guest worker program and a path to legalization:

S. 2611, the "Comprehensive Immigration Reform Act of 2006" passed by the senate, is a Sound Approach to Fair and Effective Immigration Reform.

On May 25, 2006, the Senate passed a bill that would increase border security while offering a path to citizenship to undocumented immigrants. Contrary to the widespread negative sentiments associated with H.R. 4437, comprehensive immigration legislation, such as S.2611, has been welcomed by a wide array of organizations including the U.S. Chamber of Commerce, the Service Employees International Union (SEIU), and the U.S. Conference of Catholic Bishops.

We should support immigration policy that follows the main components of S. 2611, including the following:

1. A temporary essential worker program that would allow employers to sponsor low-skilled immigrant workers to obtain a permanent residence status. Students who entered the U.S. before the age of 16, and who have finish high school (or GED), would be able to apply for a conditional resident status, leading to a permanent status.
2. Undocumented students under 21 would satisfy the employment requirements by attending an institution of higher education or secondary school full-time.
3. A larger number of employment and family based green cards to promote family unification and reduce backlogs in application processing.
4. Development and implementation of plans regarding information-sharing, international and federal-state-local coordination, technology, and anti-smuggling.
5. Development of multilateral agreements to establish a North American security plan to improve border security.
6. Anti-fraud measures such as biometric data on all visa and immigration documents.
7. Additional funding to states for reimbursement of the indirect costs relating to the incarceration of undocumented immigrants.

The Texas National Guard Should Not be Deployed to Enforce Our Borders

- *In America, 'posse comitatus' means that our military guarantees our security from external threats not from domestic initiatives.*

The original intent of the Posse Comitatus Act, a Federal law enacted in 1878 at the end of Reconstruction, was to stop Federal soldiers from overseeing elections in former Confederate States. The guiding principle of Posse Comitatus is that federal troops are a separate entity from law enforcement. The law does include important exemptions, such as national guard units acting under the authority of the governor of a state to quell domestic uprisings, extreme emergencies like the release of nuclear materials, and the use of the Coast Guard in peacetime to combat smuggling. However, when these exemptions have been exploited to justify the use the military in civilian internal matters, such as enforcing immigration, the consequences have been fatal.

Take, for example, the shooting death of an 18-year old goat herder, Esequiel Hernandez Jr., by a camouflaged Marine leading an anti-drug patrol near Redford, Texas, on May 20, 1997. In response to this incident, the Pentagon appointed Major General John Coyne[10] to investigate and issue a detailed report on the events and circumstances that led to that fatal misstep. The main finding of the Coyne report was that the military should not be involved in domestic law enforcement: they are not prepared for it, they are not trained for it, and as a result they are inappropriate for it. Among its principal findings the Coyne report determined that:

1. The Marines involved in the incident did not receive sufficient training on the appropriate use of force among civilians;
2. Basic Marine Corps training is intended to instill an aggressive spirit as an essential component of combat skills;
3. More training is needed before junior, fully armed Marines are placed in a domestic environment to perform noncombat duties;
4. None of the training received by Marines prepares them to recognize the humanitarian duty to render aid; and,
5. The potential for civilian casualties in counter-drug operations should have been a

recognized risk that was addressed in the planning and training of the Marines in this particular situation.

The U.S. Secretary of Defense at the time, William Cohen, suspended anti-drug patrols along the Border soon after Esequiel Hernandez was killed. Judith Miller, general counsel for the Department of Defense, bluntly told Secretary Cohen that should another Redford-like incident occur, "we will not be able to protect those involved from possible criminal action from state officials." The ten-state U.S.-Mexico Border Legislative Conference concurred, issuing policy Statements in August 2005 and May 2006. These statements stipulated that 1) only experienced and certified immigration officials should be in charge of enforcing immigration laws, and 2) immigration enforcement programs should be methodically planned to prevent the violation of U.S. and Mexico laws, human rights, and the loss of life.

- *Federal resources should focus on strategies to improve interdiction at ports-of-entry, such as aerial improved technology, and highly trained Border Patrol agents*

[10] Major General John T. Coyne USMC, ***Investigation to Inquire Into the Circumstances Surrounding the Joint Task Force-6 (JTF-6) Shooting Incident That Occurred on 20 May 1997 Near the Border Between the United States and Mexico***, United States Marine Corps, **April 07, 1998.** Online Available: http://shapleigh.org/files/focus_documents142.pdf Accessed: August 28, 2006.

Similar tragedies to the death of Esequiel Hernandez, Jr., are unavoidable if we pursue the misguided and dangerous policy of using the Texas National Guard to enforce our borders. The Texas National Guard is a unit of the U.S. military and is thus well trained in the laws of combat. In a combat situation, the first response of a military unit is to disable the enemy at whatever cost. In contrast, units of law enforcement are trained to avoid the use of deadly force, resorting to it only when all other options have been exhausted. The use of the Texas National Guard to enforce our immigration laws -- which should rarely, if ever, call for the use of deadly force -- is inappropriate and highly dangerous. Military personnel, aside from not having the proper training to enforce immigration law are likely unfamiliar with the culture of the communities living along the U.S.-Mexico border. The lack of knowledge about the border culture will create a tense environment between the people of the region and the military, potentially resulting in human and civil violations. Examples from the past have proved that these situations have also exposed Border communities and state taxpayers to civil liability for civil rights violations.

Take, for example, the clear case of civil rights violations exposed in Murillo v. Musegades[11], the class action lawsuit filed against the INS in the El Paso community more that a decade ago. This lawsuit against the U.S. Immigration and Naturalization Service (INS) and thirteen of its federal agents documented the serious personal harm incurred by individuals when government officials violate basic U.S. laws. Plaintiffs in this case were subjected to violations of the Fourth and Fifth Amendments through the widespread unlawful searches, seizures, and harassment by the federal agents.

It is further irresponsible to deploy the Texas National Guard to the Border to enforce immigration laws as Hurricane season gets underway. It is also unlikely to significantly deter illegal immigration. A recent analysis of government data questioned whether the number of Border Patrol agents has any impact at all on the number of arrests made or leads to less illegal immigration. The analysis found that while the number of Border Patrol staff doubled over the past decade, arrests of illegal immigrants fell only about 10 percent. Because our nation's current leaders have failed to lead on immigration, the National Guard has been deployed in our community as a failed stop gap measure.

Our great nation must develop an immigration policy that focuses on interdiction at the Border's points-of-entry and makes a serious investment in the border patrol. The National Guard is trained for war, not immigration enforcement.

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[11] Murillo, et. al. v. Musegades, et. al., **809 F. Supp. 487 (West. Dist. Tex. 1992)** Online Availavle: http://shapleigh.org/files/focus_documents141.pdf Accessed: August 28, 2006.

- *As we consider ways to make our borders more secure, we should look at technology solutions that offer low-cost alternatives to the interdiction efforts of local law enforcement that lead inevitably to racial profiling*

A viable alternative to the virtual watch program or a wall would be the use of Unmanned Aerial Vehicles (UAV). UAVs current uses are mostly military, but they are being tested as a tool for law enforcement in North Carolina, Maryland, Los Angeles, and even Scotland. UAV technology has come a long way, as the high-end UAVs have incredible flight endurances, top speeds, and ranges. However, the smaller UAVs are a useful tool in patrolling the border. The Scan Eagle has been used to gather information for the U.S. Navy and has recorded 16 hour flight endurances. It has a 10-foot wingspan and does not require any sort of runway, as it is launched by a catapult and retrieved by catching a rope on the top of a 50-foot pole.

An even smaller, less costly alternative exists in the Raven, a hand-launched UAV currently used for "over-the-hill", short range surveillance in Iraq and Afghanistan. It is small, with only a four-foot wingspan, and is so easily operated that one of the best Raven "pilots" in the Iraq theater was a cook, according to the Defense Industry Daily. Col. John Burke even said that the controls resemble a PlayStation controller. Applying these unmanned military tools would prove to be more effective and less costly than hiring the extravagant amount of border patrol agents required to oversee a wall.

Unmanned Aerial Vehicles (UAV's) are currently being used in Iraq and Afghanistan for military purposes. They are also slated to be tested in Los Angeles to aid law enforcement in carrying their duties and provide an "eye-in-the-sky" by using technology capable of sending stream color video to an officer on the ground.

The technology behind UAV's is impressive. Some UAV's can flight for 40 plus hours, at 125 knot's and have ranges of over 2500 nautical miles (4600 km). There is also a growing wave of autonomous vehicles that do not need to be controlled in any way. It's plan is programmed and the vehicle flies. While the present can yield remote-controlled unmanned vehicles, the future will yield reliable autonomous vehicles. These planes are more effective than any wall could ever be.

Crafting an Effective Immigration Policy for Texas

Educating Our Young Immigrant Population Should be a Top Priority

Sound public policy should recognize the value of giving young immigrants the tools they need to become full participants in our national economy. Knowing that today's young immigrants are tomorrow's taxpayers, we should ensure they have access to quality public education and the opportunity to get a higher education. We should not only ensure that

undocumented students can qualify for in-state tuition, but also increase our investment in higher education. Immigrants that learn more, earn more. Even the U.S. Supreme Court has adopted a

policy that speaks about educating our future leaders, regardless of immigration status. In its opinion, the court cited the many negative consequences of preventing undocumented immigrants access to education.

States Should Not Tax Immigrants' Remittances

Currently, legislatures in Texas, Arizona and Georgia are considering taxing immigrants' wire transfers to create revenue sources for health care funding. Taxing the money immigrants send their families represents a discriminatory act that targets only a group of health care users. By taxing remittances, legislators are not only condoning double taxation, but also impeding economic development. Take for example the social networks of Mexican immigrants, better known as Mexican Hometown Associations (HTAs)[12]. These social groups promote the well being of their hometowns through financial contributions in the form of remittances, and to promote economic development, thereby reducing migration to the U.S. Rather that taxing remittances, we should support bilateral agreements such as the U.S.-Mexico Partnership for Prosperity and Mexico's 3 for 1 programs. Imposing additional costs to immigrant's remittances, would disrupt these grassroots movements, and thwart bilateral cooperation aimed to reducing the pressures migration to the U.S.

According to a recent study, remitters already pay a high cost when they send wire transfers. The study shows that reducing the current fees on remittances, from 10-15 percent to 5 percent for the amount remitted, would result in more than $1 billion a year being sent by some of the poorest U.S. households to their families in their countries of origin. This revenue not only would benefit the families outside of the United States, but also the local economies of the communities when remitters reside.

Conclusion

The United States needs to adopt fair and effective immigration reforms that strengthen its borders and protects its citizens from those who would do us harm; recognize the economic importance of immigrants; maintain our historical commitment to offering a save haven for those fleeing persecution in their home county; and keep immigrant families intact. Such an approach is both economically and politically feasible. We should also recognize the vital role that immigrants play in our economy and expand its commitment to helping young immigrants grow into productive and contributing members of our society.

Please place my remarks in the permanent record of your committee so that a fair debate can shape this critical issue.

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[12] Xóchitl Bada. "Mexican Hometown Associations" Americas Program, (2003). Online Available: http://americas.irc-online.org/citizen-action/series/05-hta_body.html Accessed: August 28, 2006.

Very truly yours,

Eliot Shapleigh

ES/éh

cc: The Honorable John Conyers, Jr.
The Honorable Edward Kennedy
The Honorable Sheila Jackson Lee
Mr. Benton Keatley, House Judiciary Committee

LETTER FROM MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND AND THE NATIONAL COUNCIL OF LA RAZA

July 3, 2006

The Honorable J. Dennis Hastert
Speaker of the House
U.S. House of Representatives
235 Cannon House Office Building
Washington, DC 20515

Dear Mr. Speaker:

On behalf of the Mexican American Legal Defense and Educational Fund (MALDEF) and the National Council of La Raza (NCLR), we write to express our disappointment and concern over the House's planned series of field hearings on the overhaul of our nation's immigration laws, scheduled to begin this week. The timing of these hearings strongly suggests that they are intended as a vehicle for delay and inaction, at a time when real movement on comprehensive immigration reform is urgently needed. Every day that goes by without comprehensive immigration reform is another day that families are threatened with separation and deportation, and that the nation fails to make its borders more secure.

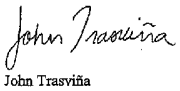
A comprehensive approach to immigration reform – one that strengthens our borders while providing a path to earned citizenship for hard-working, tax-paying immigrants – is in step with the needs and wishes of the American public. We urge you to use your leadership to name conferees and move forward with the conference process, rather than stall action on urgently-needed reform.

However, if the House does proceed with field hearings in congressional districts in the Southwest, South, and other regions, our expectation is that the witnesses allowed to testify will truly represent the diversity of the venues, and that members of the Latino community will play a vital role in the discussion. Further, our hope is that the field hearings will serve as the touchstone for the convening of formal negotiations between the House and Senate. It is vital to our national interest that the legislative process continues toward a comprehensive immigration reform package.

President Bush has publicly stated that he is undeterred in his efforts to pass comprehensive immigration reform, despite the complexity of the issues at hand. On the eve of our Nation's celebration of our independence and the contribution of hard-working immigrants that have made this country great, we encourage the House to heed the

President's directive and produce a final bill that improves on the important start made by the Senate. Americans deserve nothing less.

Sincerely,



John Trasviña
Interim President and General Counsel
MALDEF

Janet Murguía
President
NCLR

CC:

Rep. Nancy Pelosi
Rep. F. James Sensenbrenner
Rep. John Conyers
Rep. John Hostettler
Rep. Sheila Jackson-Lee
Rep. Grace Napolitano
Rep. Luis Gutiérrez

STATEMENT OF LUIS FIGUEROA, LEGISLATIVE STAFF ATTORNEY, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

Luis Figueroa,
Legislative Staff Attorney
Mexican American Legal Defense and Educational Fund (MALDEF)

Wednesday, August 16, 2006

Nationally, MALDEF has advocated for comprehensive immigration reform in an effort to promote common sense changes that would promote family values by reuniting families, support our national and local economies by providing a legal path for immigrants to work and live in the United States, and promote national security that is respectful of our civil rights and focused on those that seek to do harm instead of immigrants that seek to work and participate in the American dream. While MALDEF promotes the discussion of immigration reform on all levels we have become concerned about the increasing involvement of state, local, and private entities in enforcing federal immigration laws.

However, every discussion of policy recommendations must start with facts rather than conjecture. In the area of immigration policy, many myths have supplanted the facts in the media.

Undocumented Immigrants are not a Drain on the Local, State, or National Economy

Studies consistently find that undocumented immigrants make significant contributions to the national and local economy and well-being. They work, spend money, and pay taxes. They are anything but a drain on resources.[1] They are an integral part of our country and, over the next decade, will play an increasingly vital role in achieving economic prosperity in the United States.

Undocumented Immigrants Provide Significant and Vital Labor

Undocumented immigrants typically provide sorely-needed labor to United States industries that lack sufficient workers. They work in some of the lowest-paying and toughest jobs in the nation. They often perform the manual labor and services that, as one reporter has put it, "Americans simply refuse to do."[2]

Recent studies have calculated undocumented workers' significant financial contribution to the national economy. A 2001 study by UCLA's North American

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[1] Studies consistently find that immigrants contribute far more in taxes to the government than they use in government services. *See, e.g.*, M. Fix & J. Passel. "Immigration and Immigrants: Setting the Record Straight." Urban Institute (1994) at 6 ("Overall, annual taxes paid by immigrants to all levels of government more than offset the costs of services received, generating a net annual surplus of $25 billion to $30 billion.").

[2] K. Weinstock. "Immigrants' Contribution to Economy Can't be Ignored." *The Atlanta Journal and Constitution* (September 23, 2002).

Integration and Development Center found that the undocumented Mexican population alone, if excluded from the country, would result in a dramatic $155 billion drop in U.S. economic output.[3]

Similarly, a 2000 study found that undocumented labor in selected industries contributes $1.6 to $3.8 billion of value added to the Minnesota economy, and that, if undocumented workers were removed, economic growth in the state would be reduced by 40%.[4]

The increasing number of native-born Americans who obtain college degrees do not seek the entry-level jobs often filled by undocumented immigrants. Between 1990 and 2000, major industries requiring semiskilled labor experienced a dramatic increase in their reliance on Mexican workers. Nationwide, the percent of Mexican born workers in the agricultural and related industry rose from 8.8 percent to 15.3 percent; in construction from 3.3 percent to 8.5 percent; in non-durable goods manufacturing from 3.5 percent to 9.1 percent; and in the service industry from 4.2 percent to 9.5 percent.[5]

There is no reason to think that employers will have to rely any less on immigrant workers in the future. In recent years, organizations such as the American Health Care Association, the American Hotel and Motel Association, and the National Association of Home Builders have written Congress, expressing concern that many employers "find themselves 'with no applicants of any kind for numerous job openings.'"[6] The U.S. Bureau of Labor Statistics projects that 22 million new jobs will be created by 2010, with 70 percent of those requiring only on-the-job-training.[7] And, by 2010, 43 percent of all job openings will require minimal education, and the retirement of blue-collar baby-boom workers will leave employers in many sectors of the economy in even greater need of workers.[8]

Immigrant Consumer Spending Spurs the Economy and Creates Jobs

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[3] R. Hinojosa Ojeda. "Comprehensive Migration Policy Reform in North America: The Key to Sustainable and Equitable Economic Integration." North American Integration and Development Center, University of California, Los Angeles (2001) at 6. Available at http://naid.sppsr.ucla.edu/working-papers_series.htm.

[4] J. Kielkopf. "The Economic Impact of Undocumented Workers in Minnesota." HACER (2000) at 12, 17 available at http://www.hacer-mn.org/pdfs/undocumented.pdf.

[5] "Mexican Immigrant Workers and the U.S. Economy," *Immigration Policy Focus*, September 2002: Vol. 1, Issue 2 at 7. American Immigration Law Foundation.

[6] *Id.* at 5.

[7] *Id.*

[8] K. Weinstock. "Immigrants' Contribution to Economy Can't be Ignored."

Undocumented immigrants contribute to the economy through their consumer spending, helping spur the economy and create new jobs. Sources of economic input include opening and using a bank account, paying rent, shopping for clothes at the local mall or food at the grocery store, or going to the movies. When there is an increased demand for goods and services, more jobs are created.

A 2000 study of the economic impact of undocumented workers on the State of Minnesota concluded that "at least 20,500, and more likely 48,900, Minnesota workers owe their jobs to the presence of undocumented labor in the industries studied . . . . This means that every undocumented worker produces enough to provide at least one more job to a citizen or legal resident in Minnesota. The corollary is *that for every undocumented worker removed from the Minnesota economy, at least one citizen or legal resident loses a job somewhere in Minnesota.*"[9]

A 2001 survey by the University of Illinois' Center for Urban Economic Development found that "[t]he consumer expenditures of undocumented immigrants in the Chicago metro area generate more than 31,000 jobs in the local economy and add $5.45 billion annually to the gross regional product."[10]

According to a 2003 study by the Center for Business and Economic Research of the University of Nevada, Las Vegas, "every job filled by a Hispanic immigrant helps create 0.6 of an additional job in the Clark County economy."[11]

Undocumented Immigrants Pay More in Taxes Than They Use in Services and Benefits

Undocumented immigrants pay billions of dollars a year in income, sales, and property taxes (which, even if they rent, are typically factored into rent payments). Although not commonly understood, many undocumented workers pay federal and state taxes, contributing to Social Security, Medicaid, and unemployment insurance, through payroll deductions. UCLA Professor Raul Hinojosa concludes that, in California alone, undocumented immigrants pay $3.5 billion in federal taxes each year. Many don't file a tax return with the IRS, even though entitled to a refund, because they fear discovery. The IRS reportedly has $280 billion that has been deducted from employee paychecks

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[9] J. Kielkopf. "The Economic Impact of Undocumented Workers in Minnesota" (2000) at 11.

[10] C. Mehta, N. Theodore, I. Mora & J. Wade. "Chicago's Undocumented Immigrants: An analysis of wages, working conditions, and economic contributions." University of Illinois, Center for Urban Economic Development (2002) at vi, 34. Available at http://www.globalchicago.org/reports/reports.asp.

[11] J. Casey. "Economic Impact: Study Reveals Hispanics' Contributions." *Las Vegas Review-Journal* (April 17, 2003).

but has not been reconciled with agency records, and much of it is believed to be from undocumented workers' paychecks.[12]

Likewise, undocumented immigrants tend to underutilize government assistance programs. Undocumented immigrants are generally not eligible to participate in federal benefit programs, including, among others, food stamps, temporary assistance for needy families, and unemployment insurance. Their participation is limited in the few programs for which they are eligible. For example, they may only receive emergency medical services under Medicaid and non-cash benefits and in-kind services provided by the Federal Emergency Management Agency. Children born in the United States are citizens and therefore may be eligible for food stamps and cash assistance even though their parents are not. Unwilling to risk exposure to authorities, undocumented immigrants tend to avoid involvement with public benefits programs and their officials. In addition, many come from countries with no tradition of social welfare programs and as a result are unaware of their existence and do not seek such programs out. The net result is that undocumented immigrants "use fewer public services than they are entitled to."[13] For example, the 2001 University of Illinois' Center for Urban Economic Development study found that "[t]he vast majority of undocumented immigrants reported that they, and adults in their household, do not receive benefits under government safety-net programs, despite their low earnings."[14]

Some have argued that immigrant population growth has led to overcrowding at emergency hospitals. However, just as the case is with government assistance immigrants tend to underutilize emergency departments as well. A study by Health Affairs stated:

> (G)iven the very low levels of ED {emergency departments} use among poor noncitizens in general (many of whom are likely to be undocumented immigrants), it is very unlikely that these highly localized problems with ED crowding will affect the nation more generally as the Latino population increases and migrates to other parts of the country. Low use of the ED among noncitizens reflects low use of health care services in general and perhaps fear among undocumented immigrants about being asked about their immigration status.[15]

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[12] M. Sanchez. "Undocumented workers see upside to filing with the IRS." *Kansas City Star* (April 16, 2003). See also, " AILA Backgrounder Social Security and Immigration."

[13] R. Hinojosa Ojeda. "Comprehensive Migration Policy Reform in North America: The Key to Sustainable and Equitable Economic Integration" at 23.

[14] Supra, Mehta note 10.

[15] P. Cunningham, "What Accounts for Differences in the Use of Hospital Emergency Departments Across the U.S. Communities?" Health Affairs The Policy Journal of the Health Sphere (2006) at 5,6. Available at http://content.healthaffairs.org/cgi/content/full/hlthaff.25.w324.

As stated by the United States Supreme Court, when the state of Texas attempted to exclude undocumented immigrants from their public school system: "There is no evidence in the record suggesting that illegal entrants impose any significant burden on the State's economy. To the contrary, the available evidence suggests that illegal aliens underutilize public services, while contributing their labor to the local economy and tax money to the state fisc."[16]

Immigrants Come to the United States in Search of Work, not Social Services

The predominant incentive for immigrants to come to this country is jobs, not the availability of public benefits. For a job, many are willing to risk even their lives. Consider the obstacles many immigrants are willing to endure simply to make it to the United States, let alone to find and keep a job. Since 1994, there have been more than 2,300 *reported* deaths of immigrants attempting to cross the U.S.-Mexico border; many more have no doubt disappeared in the desert. A record 460 migrants died crossing the U.S.-Mexican border during the last fiscal year (October 1, 2004, through September 29, 2005).[17] With employers in housing, retail, and service industries still reporting a lack of workers, and with the U.S. Bureau of Labor Statistics predicting that 22 million new jobs will be created by 2010, the lure of work in this country will remain.

Again, as stated by the Supreme Court, "'The evidence demonstrates that undocumented persons do not immigrate in search for a free public education. Virtually all of the undocumented persons who come into this country seek employment opportunities and not educational benefits. . . . There was overwhelming evidence . . . of the unimportance of public education as a stimulus for immigration.'" *Plyler,* 457 U.S. at 428 n.24 (quoting district court opinion). Indeed, as stated by the district court, "The conclusion that employment is the main incentive for illegal migration from Mexico has been consistently agreed upon. The undisputed testimony to this effect at trial is supported by *every* source this court has consulted."[18] No study has ever suggested that employment is not the principal motive for immigration to the United States.

Those who charge, against all evidence, that immigrants come to the United States seeking public benefits only generate hostility against immigrants. Similarly, proposals to ban public benefits for undocumented immigrants are redundant and quite useless from a policy perspective.

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[16] *Plyer v. Doe,* 457 U.S. 202, 222 (1982).While some point to the cost of educating undocumented immigrant children, they never consider the savings in expenditures that did not have to be made on the education of immigrants raised and educated in another country. R. Hinojosa Ojeda. "Comprehensive Migration Policy Reform in North America: The Key to Sustainable and Equitable Economic Integration" at 24.

[17] Available at http://www-c.pbs.org/frontlineworld/stories/mexico/facts.html.

[18] *Plyler v. Doe,* 458 F.Supp. 569, 578 n.14 (emphasis added).

Supplementing, Replacing, or Supporting Federal Immigration Enforcement with State or Local Law Enforcement will only Worsen the Broken Immigration System Along the Texas Mexico Border

Local Enforcement of Federal Immigration law Undermines the Effectiveness of Police Officers

State and local government enforcement of immigration laws will likely decrease the ability of police to fight crime and protect local residents. Community policing requires trust between law enforcement and the people they protect. All people, regardless of immigration status, must communicate with police in order for officers to do their jobs. When local residents report crimes and provide law enforcement honest information regarding investigations this information becomes a significant factor in declining crime rates.[19] Hans Marticiuc, President of the Houston Police Officers Union stated it best, saying, "It's very difficult in the immigration communities to get information from folks, and if there's a fear of being reported to the INS because of illegal status, then it just makes our job that much more difficult and it makes the city have that much more criminal activity."[20]

When immigrants believe their immigration status may be questioned, they will hesitate to come forward to report a crime or other relevant information.[21]

Adding Immigration Enforcement to the Duties of Local Law Enforcement Places a Strain on Already Limited Resources

The Texas Legislature has long valued the goal of containing costs for state and local law enforcement. Exactly because immigration enforcement drains the resources of state and local agencies, many local police departments and sheriffs oppose the imposition of immigration enforcement initiatives and have publicly taken the position that they will not proactively enforce immigration laws or that they oppose such efforts such as the CLEAR Act that would require them to undertake immigration enforcement.[22] Senior Cpl. Glenn White, President of the Dallas Police Association stated, "The strain on local police already is enormous, and to ask us to arrest and detain immigrants is something the federal government needs to address by funding the INS some more and hiring additional

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19 Cecilia Munoz and Michele Waslin, Immigration Duties for Police Officers?, San Diego Union Tribune, Oct. 7, 2003 at B-7 (noting declines in violent crimes as a result of community policing efforts).

20 "Houston police stick to hands-off immigrant policy." (Houston Chronicle March 3, 2003).

21 Phillip Kretsedemas, Ironic Title for Murky Legislation, Miami Herald Oct. 2, 2003 at A-21 (describing case of Rhode Island immigrant placed in deportation proceedings shortly after serving as a witness in a murder case).

22 See National Immigration Forum available at http://www.immigrationforum.org/DesktopDefault.aspx?tabid=568

personnel."[23] Cpl White makes it clear that state and local law enforcement officials have enough to do as it is. The border community needs Congress to pass common sense legislation not stop-gaps by state legislatures that will undermine local law enforcement and have a multitude of unintended and negative consequences.

Private Individuals Taking the law into Their own Hands is Dangerous and Counterproductive to a Safer Border Region

Federal law enforcement officials have opposed amateur border patrols. Border patrols by individuals, many of whom are dangerous vigilantes, are not adequately equipped -- either to protect the individuals doing the patrols or to determine who has legal status in the US. Vigilante organizations like the Minutemen, Ranch Rescue and Border Watch have increased racial tensions, encouraged racial profiling along the border, and been investigated for violating state and federal laws.

MALDEF has successfully sued those who have taken the law into their own hands on the Texas border. Ranch Rescue is a group of vigilantes that purports to patrol the U.S.-Mexico border region. In 2003, rancher Joseph Sutton recruited Ranch Rescue to come onto his ranch and conduct their activities. On March 18, a group of Salvadoran immigrants were traveling on foot through Sutton Ranch when Ranch Rescue vigilantes clothed in camouflaged uniforms attacked them. The immigrants were held at gunpoint by their assailants for a long period of time, during which a Ranch Rescue member hit one of them on the back of his head with a handgun. They were interrogated, threatened with death and terrorized by Sutton before finally being released. As a result of MALDEF's suit the defendants including the ranch owner paid damages to the immigrants.

The Legislature should not encourage the actions of vigilantes by creating or supporting volunteer forces to uphold federal law and should not tacitly approve of individuals who take the law into their own hands. Private enforcement of immigration laws puts everybody needlessly at risk.

In conclusion, real immigration reform must address the problem comprehensively in a way that allows immigrants to come out of the shadows and have a path to permanent status. MALDEF encourages local entities, state legislatures, and private citizens to relay the message to Congress to take action and pass a common sense solution to our broken immigration system. Legislation that models "The Secure America and Orderly Immigration Act" submitted by U.S. Senators John McCain (R- Arizona) and Edward Kennedy (D- Massachusetts) would strengthen our borders while providing a path to earned citizenship for hard-working, tax-paying immigrants and is in step with the needs and wishes of the American public including those that live on the border.

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[23] "Local agencies could enforce immigration; Groups denounce U.S. proposal as threat to civil rights, policing" (Dallas Morning News April 4, 2002).

LETTER FROM THE COMMITTEE ON MIGRATION OF THE U.S. CONFERENCE OF CATHOLIC BISHOPS

USCCB Committee on Migration
C/O MIGRATION AND REFUGEE SERVICES
3211 FOURTH STREET NE • WASHINGTON DC 20017-1194 • 202-541-3227 • FAX 202-722-8755
WEBSITE: www.usccb.org/mrs

April 25, 2006

Mr. F. James Sensenbrenner, Jr.
Chairman, House Judiciary Committee

Mr. Henry J. Hyde
Chairman, House International Relations Committee

Mr. Peter T. King
Chairman, House Homeland Security Committee

Dear Congressmen:

On behalf of the U.S. Conference of Catholic Bishops, I wish to acknowledge your April 5 "open letter" to the U.S. bishops regarding immigration reform proposals currently under consideration in Congress. This is a matter of considerable importance to our nation and to the bishops, for we see the harm caused by the current immigration system.

We bishops have communicated on a number of occasions about our belief that to be effective, reforms to our nation's immigration system must be comprehensive and include reforms to the employment- and family-based immigration systems and include provisions for an earned legalization program for the undocumented in our country. It is for this reason that we are opposed to the House-passed bill, which we believe is unnecessarily punitive and would ultimately be ineffective, because of its narrow focus on harsh enforcement measures. History informs us that if the root causes of the desperation motivating migration and the pull factors in the form of employment and family in the U.S. are not addressed, people will continue to risk even their lives in an effort to come to this country.

We believe H.R. 4437 would cause harm and suffering not only to the undocumented, but to asylum-seekers, refugees, and even immigrants here in an authorized status. Furthermore, the provisions that make unlawful presence a crime and criminalize those who would "assist" the undocumented are of considerable concern to the bishops.

While we certainly agree that we should redouble our efforts to apprehend and prosecute smugglers, human traffickers, and drug traffickers, we believe that this objective can be achieved without placing church and humanitarian workers in jeopardy. We appreciate your explanations regarding these provisions. However, we note that reducing the penalty for unlawful presence from a felony to a misdemeanor, as your letter proposes, would still leave these aliens criminalized for the first time in history.

And while we appreciate your belief that prosecutors would not actually use the provision in H.R. 4437 that would make "assisting" undocumented aliens a crime punishable by harsh criminal and civil penalties, we believe that if you do not wish to see the provision used it should be stricken from the legislation altogether.

MEMBERS
Most Reverend Gerald Barnes, Chairman
Most Reverend Sean O'Malley
Most Reverend Kevin Farrell
Most Reverend Curtis John Guillory
Most Reverend Gerald Kicanas
Most Reverend Dominic Luong
Most Reverend Armando Ochoa

CONSULTANTS
His Eminence Francis Cardinal George, O.M.I.
His Eminence Adam Cardinal Maida
His Eminence Theodore Cardinal McCarrick
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Most Reverend Edgar da Cunha, SDV
Most Reverend Nicholas DiMarzio
Most Reverend John Kinney
Most Reverend John Manz
Most Reverend Joseph Perry
Most Reverend Thomas Wenski
Most Reverend John Wester
Reverend Jerry Brown
Sister Raymonda Du Vall
Mr. Robert Galligan
Mr. Ken Hackett
Mr. Dan Kerwin

We fear that if it is part of the law, a zealous prosecutor could use the provision against the Church as well as against other good Samaritans, notwithstanding the view that you expressed in your letter.

Although we disagree with your conclusions on these two provisions and many other provisions in H.R. 4437, we remain available to work with Congress to adopt appropriate provisions that strengthen the government's efforts to combat smuggling and trafficking, while holding church and humanitarian workers harmless as they provide legitimate aid to those in need, irrespective of their immigration status.

To be clear, the criminalization provisions of the House measure represent only a few of our many concerns with the legislation. Provisions involving mandatory detention, passport and document fraud which victimizes asylum seekers and denies them and other immigrants future relief, and the erection of walls along our southern border are among some of the other provisions we find harmful. These concerns were outlined in a letter to all House members on December 14, 2005.

We have been encouraged by the approach being considered in the Senate. Though we believe that some of the enforcement measures in the Senate bill are also unnecessary and overly punitive, the bill's comprehensiveness in addressing the various aspects of immigration better reflect what we perceive to be a growing consensus for the type of reforms needed.

We bishops will continue to advocate for comprehensive reforms as outlined in our pastoral letter, *Strangers No Longer: Together on the Journey of Hope*. As we have engaged the Catholic community and others in education about the reforms sought by the bishops, we have seen an increasing number of people agree with the need for reforms and the proposals we espouse. Some still labor under misunderstandings about immigration and immigrants, so more education is needed. But, we remain optimistic that the moral and political leadership necessary to achieve comprehensive reforms will prevail and the American people can once again be proud of our immigration system, while having confidence in its ability to provide security and the rule of law.

We bishops remain available to work with Congress on this important matter. Thank you for your leadership on the range of public policy issues affecting our nation.

With hopeful prayers and a commitment to continue working with you to fashion comprehensive immigration reforms, I am

Sincerely,

+ Gerald R. Barnes

Most Reverend Gerald Barnes
Bishop of San Bernardino
Chairman, USCCB Committee on Migration

"MAYOR'S CONGRESO ON IMMIGRATION REFORM RESOLUTION"

Mayor's Congreso on Immigration Reform Resolution

Know ALL Men By These Presents:

THE FOLLOWING RESOLUTION IS A CONSENSUS STATEMENT BY THE COMMUNITY OF THE EL PASO, TEXAS REGION TO ENCOURAGE THE UNITED STATES CONGRESS AND THE ELECTED OFFICIALS OF THE STATE OF TEXAS TO PASS FAIR AND COMPREHENSIVE IMMIGRATION REFORM.

WHEREAS, the topics of immigration reform, border security, and state and federal cooperation on immigration concerns are of great importance to state and local government entities on both sides of the United States-Mexico border; and,

WHEREAS, immigrants make important contributions to the economics and cultures of the United States and Mexico; and,

WHEREAS, immigrants collectively earn $240 billion a year, pay $90 billion a year in taxes, and receive $5 billion in social services; and,

WHEREAS, immigrants have demonstrated their patriotism through their valor and bravery in defending this country in numerous military conflicts and Hispanics have received the highest proportion of Medals of Honor and Purple Hearts than any other ethnic group; and,

WHEREAS, border security is critical to the safety and, quality of life, and economic prosperity of the United States-Mexico border region; and,

WHEREAS, our historical receptiveness toward immigrants reflects our faith in the American ideal, that it is possible for all men and women to improve their status via hard work, and that opportunity should be denied to no one on the basis of their race or country of origin; and,

WHEREAS, though today's immigrants, like yesterday's, may arrive in the United States with no money, looking different and speaking foreign languages, they come with an entrepreneurial spirit and desire to live the American Dream; and,

WHEREAS, immigrants come to the United States because we are nation that cherishes individual freedom and rewards individual effort: and,

WHEREAS, across the world, walls erected to divide peoples and nations are symbols of failed and repressive efforts to thwart human freedom and prosperity; and,

WHEREAS, enforcement of federal immigration laws is neither a state nor local responsibility, state and local agencies do not have the training, expertise or authority to enforce immigration laws; and,

WHEREAS, the principle of *posse comitatus,* meaning the necessary and traditional separation of civilian and military authority, is critical and should be renewed and strengthened; and,

WHEREAS, the city of El Paso has been, and remains, committed to the protection of civil rights, liberties and security for all peoples as expressed in the United States and Texas Constitutions; and,

WHEREAS, local law enforcement shall treat immigrants with dignity and respect.

THEREFORE, BE IT RESOLVED, BY WE THE UNDERSIGNED THAT OUR NATION'S AND TEXAS' IMMIGRATION POLICIES SHOULD ADHERE TO THE FOLLOWING PRINCIPLES:

Economics/Fiscal Impact

- Limited state resources should not be diverted to support policies and initiatives that tolerate or result in racial profiling in our communities.
- Instead of wasting precious resources on erecting a wall, the federal government should invest now in secure, fast and smart technology solutions to afford fast movement in our Hemisphere of people and products.
- Initiatives aimed at promoting investment and economic opportunities in Mexico, such as the U.S.-Mexico Partnership for Prosperity and Mexico's 3 for 1 program that encourages the use of remittances to build local infrastructure and economic development in Mexico, should be supported.
- Legislation that authorizes additional federal funds to states and hospitals for reimbursement of the indirect and direct costs related to emergency health services, prosecution, and the incarceration of undocumented immigrants should be supported.
- State legislation that aims to tax immigrants' remittances not only alienates U.S. corporations but discriminates against and penalizes hardworking individuals, and reduces investment in Mexico where jobs can be created to support Mexican economic growth.

Education

- A temporary worker program that allows employers to sponsor low-skilled immigrant workers to obtain a permanent residence status should be supported. Undocumented students under the age of 21 should be able to satisfy the requirements under such a program by attending an institution of higher education or a secondary school full-time.
- Our nation must remain committed to the constitutional principles that guarantee a public education for all children regardless of their immigration status.

Legal/Political

- Legislation that focuses solely on enforcement will be ineffective. We need and should support fair and comprehensive immigration legislation that balances border security concerns with recognition of the U.S. demand for workers in the numerous sectors of the U.S. labor force, including agriculture, construction, and the service economy.
- Local law enforcement should not be given the powers to stop, interrogate, detain or otherwise participate in immigration enforcement activities.
- Our nation should offer a path to citizenship, under clearly defined guidelines, to immigrants who have demonstrated citizenship, paid taxes, and parented citizen children and grandchildren.
- Legislation that provides a larger number of employment and family-based green cards to promote family unification, reduce backlogs in application processing, and that demands sensitive quotas, should be supported.
- Funding a $100-million expansion of a failed state immigration program, while budget shortfalls force cuts to vital state services in Texas including higher education and the Children's Health Insurance Program, is bad public policy.

Security

- Federal resources should be focused on strategies to improve interdiction at our borders.
- It is the federal government's obligation to fund and oversee a robust Border Patrol
- As we consider ways to make our borders more secure, we should look at technology solutions that offer low-cost alternatives to the interdiction efforts of local law enforcement that lead inevitably to racial profiling

- The development and implementation of plans regarding information-sharing, international and federal-state-local coordination, technology, and anti-smuggling should be supported.
- The development of multilateral agreements to establish a North American security plan to improve border security should be supported.
- Measures that would include anti-fraud measures and biometric data on all visa and immigration documents should be supported
- The ongoing implementation of the Security and Prosperity Partnership of North America between the U.S., Canada and Mexico aimed at establishing a common security strategy, competitiveness, quality of life, and to promote economic growth by streamlining the secure movement of low-risk traffic across our shared borders, should be supported.

Social Justice

- Legislation that promotes any action by civilians - individual or groups - that interfere with the duties of United States law enforcement officials in securing the border region should be condemned. This should include the apprehension of individuals, the use of any weapons against individuals, or purporting to act in any law enforcement capacity.
- Legislation that criminalizes immigrants, their families, and the organizations that provide assistance to them, should be condemned.
- Legislation or any acts that violate the human rights of immigrants, documented or undocumented should be condemned. Law enforcement agencies, both federal and state, must treat all immigrants with respect and dignity and adhere to the legal rights they are entitled under state, federal or international treaties, especially the rights of minors through the utilization of procedures and programs that protect them.

BY THE UNANIMOUS CONSENT AND IN WITNESS WHEREOF THE FOLLOWING PERSONS PRESENT, THE SEVENTEENTH DAY OF AUGUST IN THE YEAR TWO THOUSAND AND SIX, WE HEREUNTO SUBSCRIBE OUR NAMES:

Honorable John E. Cook
John Cook
Mayor of the City of El Paso, Texas

Honorable Trinidad Lopez
Trinidad Lopez
Mayor of the City of Socorro, Texas

Honorable Eliot G. Shapleigh
Eliot Shapleigh
Texas State Senator, District 29

Honorable Norma Chavez
Norma Chávez
Texas State Representative, District 76

Honorable Jose Rodriguez
José Rodríguez
El Paso County Attorney

Honorable Lisa Colquitt Munoz
Lisa Colquitt Muñoz
El Paso Independent School District Board President

Honorable Charlie Garcia
Charlie Garcia
Socorro Independent School District
Board President - VICE

Honorable Hector Montenegro
Hector Montenegro
Ysleta Independent School District Superintendent