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COMPREHENSIVE IMMIGRATION REFORM II

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COMPREHENSIVE IMMIGRATION REFORM II

TUESDAY, OCTOBER 18, 2005

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, pursuant to notice, at 9:32 a.m., in room 226, Dirksen Senate Office Building, Hon. Arlen Specter (Chairman of the Committee) presiding.

Present: Senators Specter, Grassley, Kyl, DeWine, Sessions, Cornyn, Brownback, Coburn, Kennedy, Feinstein, Feingold, Schumer, and Durbin.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Chairman SPECTER. Good morning, ladies and gentlemen. The hour of 9:30 having arrived, the Judiciary Committee will proceed with its hearing on immigration reform, one of the most important and difficult issues facing the United States today.

We see a problem with our borders being unprotected. We see a great need for labor in this country, both skilled and unskilled. We see a certain apathy and resentment toward immigrants, notwithstanding the fact that this country was built by immigrants and that we need immigrants in order to sustain our economic vitality.

I approach these hearings with a bias of birth because both of my parents were immigrants. My father came to this country at the age of 18 in 1911, served in World War I. My mother came at the age of six with her family, also from Ukraine. I think it fair to say that the Specter family has contributed to this country as this country has been built by immigrants.

We take up the consideration of two bills, one introduced by Senator McCain and Senator Kennedy, and another introduced by Senator Kyl and Senator Cornyn. These bills deal with the subjects of enforcement and guest worker programs. The main differences between these two bills involve how they would deal with undocumented immigrants already in this country.

When we take a look at the economic facts, the Bureau of Labor Statistics report entitled, "Labor Force Projections to 2012: The Graying of the U.S. Workforce," we see that by the year 2012, the labor force in the age bracket of 25 to 34 is projected to increase by only three million while those 55 years or older will increase by 18 million. Chairman Greenspan has described an alarming situation on the economic impact of an aging American population where the diminishing growth in the labor force and the increase in the ratio of elderly workers places an enormous burden on the

Social Security system and the Medicare programs being unsustainable in the long run. We see tremendous shortages in skilled workers in health care and in construction, plumbers, electricians, and virtually all lines.

The Pew Hispanic Center in a recent report showed that for the first time in our Nation's history, the number of illegal immigrants coming into this country exceeds the number of legal immigrants, so we have a major, major problem on our hands.

This Committee worked very promptly through the Subcommittee chaired by Senator Cornyn and then took the issue up at full Committee with a hearing in July. We have been interested in pressing ahead and the administration was not ready, and I understand that, for the July hearing, with the complexities of the issues. A number of us have been at the White House, talking to the administration about the administration position.

In mid-October, the Judiciary Committee faces a daunting workload. That is, candidly, an understatement with what we have done by way of class action reform and bankruptcy reform and reporting out an asbestos bill and the confirmation of the Attorney General, confirmation of the Chief Justice, and a very heavy backlog on controversial and contested Judicial nominees. But we are prepared to tackle this matter. It is a matter of very, very substantial urgency and the one obstacle, the only obstacle to which this Committee will defer is the calendar. Unless we can elongate the months of October and November, it is hard to see how we can fit all of the square pegs into square holes and move forward, but we are determined to do our utmost.

Senator Kennedy is serving as Ranking today because of his longstanding interest and we will await his opening statement. We pride ourselves here on running on time, so I am going to yield back the last 4 seconds of my opening statement—one second of my opening statement.

[Laughter.]

Chairman SPECTER. Our first witness today is the distinguished Secretary of Labor, who is now in her second term. Her resume would take more time than is allotted for her testimony, so we will put it into the record, but I have had the pleasure of working with her extensively on the Appropriations Subcommittee on Labor, Health, Human Services, and Education. She is a tireless worker and I want to thank her especially for her help on our asbestos reform bill.

Before beginning the testimony, may I yield to our distinguished Ranking Member, Senator Kennedy, with a word of praise for his outstanding contribution to the Senate generally, but especially in the field of immigration.

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

Senator KENNEDY. Thank you very much, Mr. Chairman. I want to thank you for calling these hearings. This is the second hearing. We know the Senate has a very full agenda with a lot of very important pieces of legislation, but the whole issue of border security and immigration reform is an issue which is of, I think, concern not

just to areas that are particularly adversely impacted, but to the Nation as a whole.

Senator McCain and I have put forward a proposal, as I know other colleagues have, as well, Senator Cornyn, Senator Kyl, members of our Committee. Senator Feinstein has been enormously interested, as other members of the Committee have been.

I think, first of all, Mr. Chairman, I don't intend to make an extensive statement here, but I think it is important that the country understand that, one, this is a national security issue. We know that the current system is broken. We know that we have spent more than $20 billion over the last 10 years and law enforcement in and of itself has not been able to close the borders. This is a national security issue.

Number two, this whole question and issue we are trying to resolve, I don't believe will ever be resolved unless we have the support of Mexico and the countries of Central America. I think we need to broaden this out to be inclusive of these countries and they need to understand the importance of having not broken borders, but smart borders, that reflect national policy. I don't believe we are going to be able, with all the electronics and all the law enforcement in the world, to function and have an effective system. So we have to include those nations. They have to be serious about it and they have to be responsive to the leadership here in the United States. We are still hopeful that we can work with the President—I am sure my colleagues do as well—in developing a bipartisan policy that is going to address the issues.

And third, we know that we are not going to deport the 11 million undocumented that are here at this present time. It is just not fathomable. For any person that is going to speak on immigration reform, they have to address that or their proposal is not serious. That is a complicated issue. It brings enormous emotion.

Senator McCain and I are not for amnesty. We are not for putting anyone at the front of the line. We are not for forgiving anyone. But we do believe that there is a process that can be developed for those individuals who want to work hard, for those people that want to play by the rules, those people that want to pay their fine and pay their dues, that they can go to the end of the line and through a long period of hard work be able to earn the rights here in the United States. That is consistent with our long tradition as a nation of immigrants.

This is a complicated question. Just these observations are not definitive in terms of an approach. I do favor, as I know Senator McCain does, strong law enforcement provisions and heightened security arrangements. I am very hopeful that perhaps we can all find a way that is going to be responsive to the security measures which are going to be necessary. I also favor a program that is going to admit temporary workers here in the United States through a legal process rather than the 400,000 to 500,000 that come over the border illegally and adjustment of status, which also will give focus and attention to our overall national security issues.

I want to thank you, Mr. Chairman, for having these hearings and for giving a focus and attention to an issue of enormous importance and consequence to our country.

Chairman SPECTER. Thank you very much, Senator Kennedy.

I am advised that the witnesses and the administration prefer to have the order inverted and to start with the Secretary of Homeland Security, Hon. Michael Chertoff. He brings to this position an outstanding record academically. He was a U.S. prosecutor for more than a decade, Assistant Attorney General in the Criminal Division, Court of Appeals for the Third Circuit, and now leaving that lifetime appointment to be Secretary of Homeland Security.

Thank you for joining us, Secretary Chertoff, and we look forward to your testimony.

STATEMENT OF MICHAEL CHERTOFF, SECRETARY OF HOMELAND SECURITY, WASHINGTON, D.C.

Secretary CHERTOFF. Thank you, Mr. Chairman, and thank you, Senator Kennedy and other members of the panel for the opportunity to appear here to discuss vital issues of border security, interior enforcement, and immigration reform as a whole.

Later today, the President is going to sign the DHS appropriations bill into law, and thanks to Congress, DHS now is going to have substantial additional funds to spend on critical border security and enforcement initiatives.

As you pointed out, Mr. Chairman, over the last several months, members of the administration have talked to a lot of Members of Congress about comprehensive immigration reform. We have benefited greatly from the input we have received and we appreciate your support and your focus as we move forward on this very, very important item on the national agenda.

Ever since the President's first inauguration, he placed increasing importance on border security and has devoted significant resources to this challenge. The President believes, and I agree, that illegal immigration threatens our communities and our National security. The fact of the matter is that the ability of undocumented individuals to enter our country represents an obvious homeland security threat. Flagrant violation of our borders undercuts the rule of law, undermines our security, and imposes special economic strains on our border communities. When we don't control our borders, we also risk entering into the U.S. of terrorists or criminals who want to do us harm.

There is also a humanitarian dimension. Migrants who rely on coyotes, human traffickers, and smugglers are often robbed, abused, and left for dead on their illegal trek across our borders, so we have to, from a humanitarian standpoint, as well, address this critical situation at the border.

The fact of the matter is that ending illegal immigration is going to require three pillars. It is a three-legged stool. It requires tough enforcement at the border, tough interior enforcement, and a temporary worker program to deal with the very real draw that the need for labor is exerting on migration across the border.

Now, Secretary Chao is going to discuss the temporary worker program in more detail in a few moments, but I do want to say this from an enforcement standpoint. Without a temporary worker program, we have two huge strains on our current immigration enforcement system: First of all, the high employer demand which draws people into the country; and second, the active participation of eight million undocumented workers in the U.S. economy. In

order to have an effective border security and interior enforcement program, we have to have a workable and enforceable temporary worker program to lift some of the strain off two of the legs of the stool. We think that a well-designed temporary worker program will provide legal channels for U.S. employers and foreign-born workers to match needs in the best interest of the U.S. economy and without disadvantaging workers.

Once we have this in place, of course, it is critical that we couple that program with a tough enforcement strategy, and we have already begun that strategy. We have begun to plan it and we have begun to implement it as part of our responsibility to protect our country.

Since the President took office, the U.S. Government has deported several million illegal migrants, including approximately 300,000 criminal aliens. And since 9/11, yearly spending has increased by $2.7 billion, 58 percent. Yearly spending on immigration enforcement has also increased dramatically and enforcement expenditures have gone up by $1 billion. Every day, our Department agencies take significant steps to secure our borders. The U.S. Customs and Border Protection Agency has over 11,000 Border Patrol agents along the 6,000 miles of Northern and Southern border. An additional 18,000 CBP officers are posted at our ports of entry and Immigration and Customs Enforcement has over 8,000 agents and officers working to apprehend criminals, absconders, and other individuals illegally in the United States. And, of course, the United States Coast Guard also plays a critical role in securing our land and sea borders.

Let me give you some staggering statistics. In fiscal year 2005 alone, Border Patrol agents made over one million apprehensions and CBP field operation officers stopped more than 600,000 aliens attempting to enter our ports of entry. In the same period, Immigration and Customs Enforcement apprehended approximately 140,000 illegal aliens in interior enforcement operations, including 15,000 under its Fugitive Operations Program. ICE also executed removal orders for over 160,000 aliens who had been placed in proceedings, and of those, 84,000 had criminal records. That is both a demonstration of accomplishment, but also an indication of the magnitude of the challenge.

Now, even in the last month, as the Department was very busy coordinating the response to Hurricane Katrina, we have continued to move forward aggressively on the issue of border security. Last month, after Congress had enacted legislation authorizing me to do so, I authorized the elimination of environmental challenges which were holding up completion of the 14-mile border infrastructure system near San Diego, which I know many will remember as being a very grave source of concern to people in San Diego and surrounding communities. That was a step that had languished for almost a decade.

Recently, also in this last month, we have obtained a Predator B unmanned aerial vehicle, which is a follow-on to a pilot program we ran last year, to enhance our ability to secure the Southwest border. We are currently partnering with the Defense Department as part of their training programs to use their UAVs to give us additional ability to see what is going on the ground.

Also importantly, with funds appropriated by Congress earlier this year, we have begun to hire and have already begun graduating 1,500 new Border Patrol agents for deployment along the entire border. As we speak, there are 400 Border Patrol agents training at the academy in Artesia, New Mexico, and I look forward later this week to addressing them when I go down there on Thursday.

So we are grateful to Congress for providing this function. I want you to know we are moving very rapidly to deploy these assets and to take other additional steps.

Let me just take one moment to indicate that this is really part of a comprehensive strategy, because although we have taken significant action, this is a system desperately in need of repair, and the fact of the matter is, people are rightly upset and distressed about the prospect that we do not have control of our border the way we should and that when we apprehend people, they wind up getting released because we don't have a sufficient ability to remove them. So we are very focused along the entire continuum of the system to make sure we are working every lever of power and every resource that we have to make this work more quickly and more efficiently.

I have to say, in one respect, I want to—since the question of Mexico was raised—I want to thank the Mexican officials for the cooperation we have gotten from them in dealing with organized smuggling groups through information exchange and joint targeting. That is going to be very helpful.

But I also think we need to look at the whole system across the board, and I have a couple of charts that will illustrate this.

Chairman SPECTER. Mr. Secretary, how much more time do you think you will need to finish your presentation?

Secretary CHERTOFF. Two minutes, if that would be OK, Mr. Chairman.

Chairman SPECTER. That would be fine.

Secretary CHERTOFF. What I want to indicate is when we think about the issue of apprehensions, we see that 55 percent of those apprehended are those who come—a little more than 55 percent are those who come between the borders. But a significant number, the remainder, are those who are apprehended at the ports of entry.

Now, with respect to those caught between the borders, when they are Mexicans, they are all returned. They are not released. They are simply sent back across the border. But, of course, it is not quite that easy with respect to non-Mexican illegal aliens and that category is approximately 11 percent. What you will see if you look at the narrow slivers on the pie charts is that we have been—out of 160,000 non-Mexicans that we have apprehended, 40,000 have been returned and 120,000 have been released. That is unacceptable and we are going to change that starting immediately.

The key here is to change the amount of time that it takes to move people out of detention, get them back to their countries, and also have additional beds so that we can detain people. That is not only important because we don't want to release them in the community when we have apprehended them, but because we need to deter people from coming across the border. If they think that they

can come across and get released, they are going to keep coming, and we have got to change that.

The next chart is going to show something that we have done with respect to one program, and then, I think, Mr. Chairman, I will stop. We had an operation called Texas Hold 'em which we ran in the McAllen Border Patrol Sector during the course of this summer and this had to do with a focus on Brazilian nationals, which was the largest category of non-Mexican illegal migrants who were coming across the border. When we started this program in June, if you look at the comparison between apprehensions and removals, you will see there were a lot of apprehensions and comparatively few removals.

As we allocated additional bed space to this program, we actually increased the percentage of removals in comparison to apprehensions, but more important, we reduced the number of apprehensions because very quickly, Brazilians got the idea that if they came up through Mexico and they got caught, they weren't going to be released through the community but they were, in fact, going to be held and returned, and I think that is a key finding in terms of our ability to manage this border enforcement.

As I am happy to expand upon in greater length, doing this is going to require addressing all parts of the process. It is going to be increased beds. It is going to involve working with foreign governments to have them move more quickly to take people back to their home countries. It is going to require cutting some of the transaction costs and time that we spend. But I think if we do it, we can get this job done.

So with this experience and, of course, with the three-legged stool of a comprehensive approach, I am confident we can finally give the American people what they are entitled to get, which is control over the borders that works efficiently and that is also consistent with our American ideals.

Thank you, Mr. Chairman.

Chairman SPECTER. Thank you very much, Secretary Chertoff.

[The prepared statement of Secretary Chertoff appears as a submission for the record.]

Chairman SPECTER. We turn now to Secretary Chao, Secretary of Labor, in her fifth year, having served the President since his election. Secretary Chao came to this position with a very extensive background in government. She was Deputy Secretary for the Department of Transportation, Deputy Maritime Administrator. Before that, she had been the President and CEO of the United Way of America. She has a very distinguished academic career from Holyoke and an MBA from the Harvard Business School.

Thank you for joining us this morning, Secretary Chao, and the floor is yours.

STATEMENT OF ELAINE L. CHAO, SECRETARY OF LABOR, WASHINGTON, D.C.

Secretary CHAO. Mr. Chairman, Senator Kennedy, and members of the Committee, thank you for the opportunity to testify today on the President's plan for comprehensive immigration reform. As challenging as this issue is, we can all agree that America needs an immigration policy and a system that effectively secures our

borders and serves our economy, and the President's proposal does both.

A workable, enforceable temporary worker program must be an essential part of any comprehensive strategy to secure our nation's borders. By addressing the economic forces that drive immigration, we can meet employers' needs for workers, provide appropriate legal channels for foreign-born workers to access opportunity, and allow enforcement resources to be targeted on the critical mission of border security.

Last year, the President laid out a comprehensive vision for securing our borders and also meeting our work force needs, and today, we will be discussing the President's plan in greater detail as a result of extensive policy discussions within the administration and with many of you.

First and foremost among the principles the President outlined is protecting the homeland. An effective temporary worker program will allow our country to meet its needs for temporary, legal, foreign-born workers while enabling U.S. enforcement to focus aggressively on achieving control of our borders, punishing those who continue to employ workers illegally, and intercepting and removing workers who violate the temporary worker program requirements.

Now, many of you are familiar with the other key elements of the President's plan, but let me briefly outline them. We need to serve America's economy by matching willing workers with willing employers in a clear, efficient, and timely process. We need to ensure that violation of our immigration laws is not rewarded by giving illegal immigrants an advantage over those who follow the rules.

We should create incentives for temporary workers to return to their home country after their work visas end, and we should also encourage and enable those who are currently living in the shadows an opportunity to come forward and participate in a temporary worker program.

Under the President's principles, those who are currently here illegally would have to pay an up-front fee, or fine, in order to receive a temporary worker visa. They would not be granted amnesty and they would not be rewarded with an automatic path to citizenship. In addition, felons and those currently in removal proceedings would be barred from the temporary worker program.

This administration envisions that this new temporary worker program would replace the current H visa programs for low-skill workers. Today, these H visa categories are too complicated, too complex, too cumbersome, and too confusing. In fact, every year, the Department receives hundreds of requests from Members of Congress petitioning us to reclassify workers into categories whose quotas have not been filled. Let me note, however, that this new temporary worker program does not include the H–1B program for high-skilled workers.

As we go through the process of designing a program to secure our borders while meeting our Nation's economic needs, we will continue to look to the expertise and the wisdom of the Congress. I know that several members of this Committee are deeply interested in pursuing rational and fair immigration laws and reforms, and some of you have also introduced bills outlining significant changes to the current system.

Reforming our temporary worker program is a difficult and complicated undertaking, but I am confident that reforms will be enacted to protect homeland security, restore the rule of law, serve the economic needs of our nation, and also honor our Nation's history of openness and opportunity.

With that, I am now pleased to answer any questions that the Committee may have.

Mr. Chairman, I have a longer statement which I would like to submit for the record, if I may.

Chairman SPECTER. Secretary Chao, your full statement will be made a part of the record, as will all statements of all witnesses.

[The prepared statement of Secretary Chao appears as a submission for the record.]

Chairman SPECTER. We will now proceed with 5-minute rounds by all the members.

Secretary Chertoff, with respect to the efforts to protect the border, our Southern border alone consists of 1,500 miles. Our Northern border with Canada approximates 3,000 miles. How do we realistically approach that issue to secure the border? Is it physically possible?

Secretary CHERTOFF. I think it is, Mr. Chairman, if you look at it as a system, and it is going to require a number of pieces that have to fit together.

Obviously, you need additional Border Patrol agents, and we have gotten 1,500 that we are going to deploy this year. It requires some additional infrastructure. I am not suggesting a fence across the border. There are places where vehicle barriers or fencing or lighting or sensors actually does make a huge difference in terms of being able to deploy Border Patrol agents rapidly in order to intercept people coming across the border.

The third is high-tech. I mean, the ability to use UAVs, even satellites to give you a picture of what is going on over a large area of desert is very important in terms of, again, allowing us to leverage our resources.

But you also have to look at the back end. The fact of the matter is that illegal migrant organizations are very sensitive to incentives and disincentives, as the Texas Hold 'em experience shows. If we catch people and we release them, we are sending a very bad message out, and the message is—

Chairman SPECTER. Without going into that, I would like you to supplement your answer. The infrastructure you describe is important. Increased Border Patrol is important. But give us a program as to how you really are going to tackle 1,500 miles of the Southern border and 3,000 miles of the Northern border.

One followup question on the same line before turning to Secretary Chao, the GAO released a report this year that immigration custom enforcement is devoting more attention to preventing terrorism and less attention to illegal immigrants. Now, obviously, catching terrorists is more important than stopping illegal immigrants from coming into the country. Are the resources at hand—and I know the President is signing the appropriation bill this afternoon—are the resources at hand sufficient to devote to the terrorist problem and still have an effective program against the illegal immigrants?

Secretary CHERTOFF. I believe, Mr. Chairman, that they are. The enhanced resources that Congress has given us are going to be tremendously helpful in doing both.

One thing I do want to point out is that in doing, for example, our worksite enforcement program, we have focused—we have really pursued both goals. We have focused on critical infrastructure. We have focused on those people who are absconders, where there is a national security interest there, there is some reason to believe they may be affiliated with terrorists or criminality. So we have actually been able to pursue both of these goals in a single program and we will make good use of the additional resources that Congress has appropriated to us for these purposes.

Chairman SPECTER. Secretary Chao, in August of this year, you highlighted the need for health care workers, saying that by the year 2012, our country will need more than 3.4 million new health care workers. We have seen a need in the construction industry, skilled tradesmen. How do we effectively and practically take steps to see to it that available U.S. workers are given priority and that there is sufficient publicity going to people who may be in the United States, or who are in the United States who may be in a position to fill these jobs?

There is a great deal of resentment which continues as to immigrants. Somebody speaks a little differently, answers the telephone, there is sort of an innate hostility, and that, of course, is aggravated by the contentions that people are being brought in to take jobs which really ought to go to people in the United States. So what is the practical answer as to how you be sure that there are no U.S. workers available to handle the jobs and yet accommodate these areas of real need?

Secretary CHAO. The President's proposal addresses this issue because the President is very concerned about making sure that willing workers are indeed given the opportunity to work for employers. In the President's proposal, the process of labor certification still goes forward. The employers will still have a responsibility to make sure that they are advertising and that they are searching for American workers first at an actual wage that would make it possible, again, for American workers to have, if you will, the first chance at these jobs.

Only after the employer, with input from the Department of Labor, finds that it cannot hire adequate U.S. workers then can it turn over to hiring a temporary worker who is currently in the country or perhaps a temporary worker who is not in the country currently. There are different procedures for both categories.

Chairman SPECTER. Thank you very much, Secretary Chao. My red light went on after you started your answer, so I will yield at this point to Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman.

Secretary Chertoff, both you and Secretary Chao have said that border security and interior enforcement must be closely tied to legal avenues for workers needed by our economy, but others disagree and want Congress to pass just a border security and interior enforcement bill before it turns to the question of immigration reform, including temporary worker visas. As the head of Homeland Security, why do you take that position?

Secretary CHERTOFF. I think you have to look at the issue, Senator, as a three-legged stool. It is unstable if you only have one or two of the legs. The fact of the matter is, there is tremendous pressure on the border—

Senator KENNEDY. What do you mean by unstable, I mean, in terms of Homeland Security?

Secretary CHERTOFF. It would be enormously difficult if we were to attempt to control illegal migration at the border without having some legal avenue to address the fact that there is a high demand for non-U.S. people to come in and perform certain kinds of jobs and there is a tremendous desire of those people to come in.

Most of the people who come across the border are not coming across to do us harm. There is some percentage who are criminals and maybe a smaller number who are potentially even worse than criminals. But the fact of the matter is, we have to deal with them all equally and the ability to do interior enforcement and border enforcement is stretched well beyond the limit if we have to treat everybody as if they are somebody who has to be the subject of an enforcement action.

If we can channel people into regulated approaches to work where we satisfy the demand for the labor through legal channels, where people who want to work and do us no harm get a legal avenue to do so, that relieves a tremendous amount of pressure. We will still have a big challenge, but we will now be able to apply it against a smaller pool of people that are coming across.

Senator KENNEDY. Also, what is your own view? Do you think our government, even if we had the resources, could have mass deportation of the eight to ten million undocumented here? Is that even conceivable or desirable, and are there any estimates in terms of what those costs would be, both in terms of dollars as well as the economic implications and importantly in terms of human conditions? What would happen?

Secretary CHERTOFF. I think it would be hugely, hugely difficult to do this. First of all, obviously, a lot of these people would not want to be deported. We would have to find them. That would be an enormous expenditure of effort and resources. We would then have to process them and remove them. They would have legal resource. I can't even—I think we are talking about billions and billions and billions of dollars to do it, I think. This is an area where practical concerns are really paramount.

Senator KENNEDY. I am going to come, Madam Secretary, to you in just a minute. I want to ask the Secretary, a number of Senators wrote you earlier this week concerned about the recent DHS actions to impersonate OSHA officials, safety officials. Do you want to make a comment on it? This is where they impersonated OSHA officials. They bring workers in allegedly to get training in terms of safety at the workplace. I mean, I think particularly of Katrina with all the cleanup there. Then there was a sting operation and a number of these people were arrested. That has all kinds of implications, obviously, in training and safety. Just a quick reaction.

Secretary CHERTOFF. I think that was a bad idea and I have directed it not happen again. I am not saying we don't use ruses. It is appropriate to use ruses. But I think a ruse that involves safety or health is not appropriate.

Senator KENNEDY. OK. Madam Secretary, I want to hear from you, too, your sense about why we think legal avenues for workers must be tied to enforcement measures. I think of it in two areas. One, obviously, in the heightened border, but also we move on toward the temporary worker program that is going to provide legal means for these workers. There will also have to be enforcement of those that are going to hire illegal workers or otherwise we are going to have the economic kind of conditions that have been described by the Chairman.

Secretary CHAO. Well, I agree with Secretary Chertoff. If we are going to patrol our borders effectively, having some way to gauge who is coming across our borders must be an essential part of that strategy. And again, to have a workable, enforceable temporary worker program will go a long way to securing our borders. We have got to know who is coming across our borders, and if we have a program that will legally be able to track people coming over the borders, more resources can be more effectively utilized by the Department of Homeland Security to carry out its important functions of securing our borders.

Senator KENNEDY. My time is up. Thank you, Mr. Chairman.

Chairman SPECTER. Thank you very much, Senator Kennedy.

Senator Cornyn? We are proceeding under the early bird rule.

Senator CORNYN. Thank you, Mr. Chairman, and I would ask that my written statement be made part of the record.

Chairman SPECTER. Your full statement will be made a part of the record.

Senator CORNYN. Thank you.

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

Senator CORNYN. Secretary Chertoff, let me ask you about expedited removal. You went over a little bit of that in your opening statement, but it seems to me that unless we are going to build literally tens of thousands of detention beds, we are going to be back in the same old catch-and-release soup that you explained is intolerable.

Right now, to remove an alien who comes into the country, I think other than through the expedited removal process, the average is about 89 days. That is cut down considerably, but still remains roughly 30 days under an expedited removal process, which means you still have to have some means of detaining those individuals.

Could you describe to the Committee what legal measures and diplomatic measures, what other measures that you believe that we can effect that will cut that down even further so we don't have to build tens of thousands of detention beds to make the deterrence at the border real.

Secretary CHERTOFF. I would be delighted to, Senator. I actually have another chart, and this is my last one. I think you have put your finger on exactly the issue. It is an issue of how many days you occupy a bed. The fewer days, essentially, you increase the number of beds.

We have now put expedited removal in place across the entirety of the Southern border, so we are using it everywhere, and its prin-

cipal significance is with respect to non-Mexicans because they can't simply be immediately sent back to Mexico.

You will see that there is an average of a 34-day cycle time now, but a lot of it is taken up with what I would call bureaucratic churn. In other words, we have got an average of 20 days to obtain travel documents from foreign governments. We ought to be able to cut that down in half or to a quarter. We have had 12 days to arrange for country clearance, escort, and schedule air transportation. I have spoken to Secretary Rice. We are working on dramatically cutting the time for country clearance. We are working on a plan now to cut the number of escorts we need for people who aren't dangerous and we are working on a way of getting an increase in air transportation.

If we could cut this in half, we would essentially double the number of beds. That is exactly what we are underway trying to do right now.

Senator CORNYN. Do you believe that with the 20 days it takes to obtain travel documents from foreign governments, are we seeing any foot-dragging by foreign governments when it comes to cooperating in the return of their citizens?

Secretary CHERTOFF. We do. Some countries are very helpful and forthcoming. Others do tend to be a little dilatory or resistant. One thing, for example, we have suggested doing is instead of having in-person consular visits, we will do video conferencing so we don't have to wait for 5 days for a consular person to come. They can just do it over video conference.

At the end of the day, we will probably have to lean pretty heavily on some foreign governments to make sure that they are willing to take back people from their own countries. I have made suggestions. We are willing to have foreign countries send people over here to help us in terms of travel documents. We are willing to use any and all techniques possible to expedite this. I am hopeful that most countries will be responsive and live up to their responsibility, but in the event that some don't want to, I think we do have to push them to do it.

Senator CORNYN. I am very glad that you have seen fit to do expedited removal across the entire border, but I am very concerned that that number of days it takes to accomplish that is still high. I would just point out in the last minute I have in this round, the Congressional Research Service makes a good point that there are a lot of people watching what we are doing along the border, which has a big impact on deterrence and our ability to control who comes into our country and determine why they are here.

They report that U.S. OTM procedures appear to have been disseminated widely, for example, in Brazil. This may be due in part to the Brazilian soap opera entitled, "America," which follows a young woman's illegal journey to the United States through Mexico and has drawn a nightly viewing audience of some 40 million people. According to the Border Patrol, the Brazilians seem to know the process and it seems to be common knowledge that they won't be immediately deported. So I think that is further support, if we needed it, for your conclusion that our catch-and-release program is really contributing to our problem and our lack of effective deterrence and it is absolutely critical that we work hard on that.

Thank you.

Chairman SPECTER. Thank you very much, Senator Cornyn.

Senator Feinstein?

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

I want to associate myself with Senator Cornyn's concern about in the "other-than-Mexican" category.

I also want to agree with you that these figures are unacceptable. I have been looking at them and it is hard to believe this total, which is 1.7 million in just one fiscal year. It used to be that for every one person apprehended, the Border Patrol would assume that three got through. Is that still the case?

Secretary CHERTOFF. I have to say, I have never understood that reasoning and it seems ultimately self-defeating for the following reason. If that were true, then if we stopped apprehending people, three times zero is zero. We could assume no one was coming across the border. That is obviously foolish.

Senator FEINSTEIN. What do you assume? What—

Secretary CHERTOFF. I assume there is some significant number getting through that we are not catching. I don't think a formula captures it. One way we can measure it is by looking at some collateral indications. We can look at the number of times we continue to see the same people coming back and back, over and over again, because we do have fingerprints. After—

Senator FEINSTEIN. What is that number?

Secretary CHERTOFF. I don't have—I think it usually hovers around 40 percent, mostly, I think, Mexicans.

Senator FEINSTEIN. So you would add 40 percent of 1.7 million on top of this?

Secretary CHERTOFF. I would hesitate, Senator, to give you a number. I mean, it would be a wild guess. I am sure—

Senator FEINSTEIN. Could I get those numbers, please?

Secretary CHERTOFF. Sure.

Senator FEINSTEIN. Let me just move on, and let me just give you my observation, and to Secretary Chao, as well. I may be very wrong, but it seems to me that all the talk about the guest worker program actually spurs illegal immigration. I have seen no guest worker program that I, representing California, could vote for in good conscience that I believe would not be a major magnet.

Now, I have served on the Immigration Subcommittee for about 13 years and looked at it as it affects my State. We have a very large number of illegal workers in our State, many of them very good, all of them living in the dark of night, many of them here for as much as 20 years. In my view, we ought to find a way to be able to take people who have lived here without any criminal activity, been good citizens, worked hard, particularly in areas where there is need, which in my State it is agricultural, and be able to give them some kind of official temporary status provided for a period of time they would continue to work in agriculture. I prepared some legislation along that line, which at an appropriate time I would introduce.

But I just want to say to you that from California, that is my view. There is no shortage of willing workers, Secretary Chao. There is an abundance of willing workers. The problem is their status. I think Secretary Chertoff is right that we have got to enforce

the borders, and I was wondering if you could give us a brief progress report on the border fence.

As you know, we appropriated the money. You used the Real I.D. Act to cut environmental reviews. What is the current status and how are you working to make the necessary environmental protections?

Secretary CHERTOFF. One of the things I did do is we had, in the course of negotiating back and forth during the environmental litigation, committed ourselves to an approach that we thought was respectful of the environment, although it wasn't necessarily everything that everybody who opposed the fence on environmental grounds wanted. We are committed to continuing with those undertakings. In other words, we are going to voluntarily comply with what experts that we think are good thought was appropriate.

Now it is really in the hand of the builders. I don't know if it is the Army Corps of Engineers that is going to do it or somebody else. I can find out for you, Senator. But the green light has now gone forward to build this remaining piece of infrastructure and I am convinced not only will it be better for our border, it will be safer for our Border Patrol agents and actually it is going to help the environment because it is going to stop people from coming across illegally, and that tends to have a bad environmental impact of its own.

Senator FEINSTEIN. I would like to ask you about, and this is really not your problem but it is a problem and you are there, Senator Brownback and I cosponsored a bill called the Unaccompanied Alien Child Act. It was voted out of this Committee in April. Some of the Departments indicated they had some concerns. We have tried very hard to negotiate with them. We have been stonewalled all the way and I find this really unacceptable.

I think Justice has taken the lead. I met with the Deputy Secretary of HHS that was in charge of children and families. We said we would submit some amendments which we thought might help the administration. We can't get any response. It has gone from April to October. We have at any given time maybe 5,000 children are here unaccompanied. Some are locked up. How they actually are treated is unacceptable and we would like to get this bill moved. Can you help us?

Secretary CHERTOFF. I will certainly—I know there are a number of Departments involved. I will certainly find out where we are with it. I mean, I don't know, there may be some elements of the bill that there are going to be some objections to, but we certainly ought to get back to you and let you know what issues there are and if they can be addressed, that would be great. So I will do that for you.

Senator FEINSTEIN. I appreciate that. Thank you. Thank you, Mr. Chairman.

Chairman SPECTER. Thank you, Senator Feinstein.

Senator Kyl?

Senator KYL. Thank you, Mr. Chairman.

First, Secretary Chertoff, do you have a program for speeding up the training of Border Patrol agents, since we now have authorization and appropriations for training 1,500, actually, for next year?

Secretary CHERTOFF. I know we can handle in terms of capacity the 1,500 we are talking about. I don't know that we have condensed the process of training. The one thing I—because I did raise this issue with the Border Patrol—the one thing I did want to be careful about is part of the time it takes is an enculturation process to make sure that the Border Patrol agents are enculturated to what they need to do to function in an environment in which they are often by themselves. We want to make sure that they are properly disciplined, that they are resistant to the potential for corruption, because that is always an issue at the border—

Senator KYL. I have some things I want to get into more than that. I know there has been a bottleneck that at least was alleged to have precluded us from training substantially less than 1,000. What you are saying is that we do have the capacity to train 1,500 for the next year?

Secretary CHERTOFF. Correct.

Senator KYL. Thank you. Now, the Senator from Massachusetts talked about mass deportations. I just wanted to ask you, does the proposal that the administration is suggesting involve mass deportations at all?

Secretary CHERTOFF. No.

Senator KYL. You are familiar with bills that have been introduced in the Senate. Are either of you familiar with any bills in the Senate that would require mass deportations?

Secretary CHERTOFF. No, I don't understand that they require mass deportations.

Senator KYL. OK, thank you. Nor am I. Third, the reasons for temporary workers, it seems to me, are twofold, and I would like to get both of you to comment on this. One is included in your statement, Secretary Chao: if these workers are permanent rather than temporary, then one could easily argue that it represents amnesty because it would allow them to remain in the United States while seeking legal permanent residence, something that people who are following the law cannot do. They must apply for that in their home country.

And second, and it seems to me this is really critical, we are in a good employment situation right now, full employment, essentially. We have a very good economy right now in the United States. But I can remember not too long ago that we didn't have a good economy and we had relatively high unemployment, and clearly, those cycles will continue throughout our future.

With temporary foreign workers, you can calibrate, you have the flexibility to calibrate the number of workers to the slots that are needed. In case of an economic downturn, you don't have to issue as many permits for foreign workers because there aren't as many jobs. But if all the people who are illegally in the country today are allowed to remain here on a permanent status, you don't have that same flexibility in the event of a downturn and this, it seems to me, argues against granting permanent legal status to all of the illegal immigrants who are here today. I would like to get both of you to comment on that observation.

Secretary CHAO. First of all, the President is very concerned about controlling our borders, serving the American economy by matching willing American workers with unfilled jobs.

On the permanent status, the President's proposal would have a 3-year stay, which can be extendable for another 3-year stay. The total would be 6 years, at which time the worker would have to return back to their home country and apply. That is if the worker is already here in the United States. So the President's proposal does not anticipate amnesty or a pathway to citizenship. So that is not the intent.

Second of all, the President is very concerned about the American worker and that is why his plan says that American workers come first and employers must determine that no American worker is available to fill a job before offering that position to an immigrant worker.

Senator KYL. Secretary Chertoff, any other thoughts?

Secretary CHERTOFF. I don't think I have anything to add to that.

Senator KYL. OK. It seems to me that the real key, once we have done a better job to control the border and instituted a legal worker program that meets the objectives, Secretary Chao, that you pointed out, and frankly, those objectives are embodied in the two major bills that have been introduced in the Senate, even though they approach it somewhat differently, but the real key is enforcement at the workplace. If you can enforce the law at the workplace, if employers have the means of identifying people and they can check that through a governmental source and that governmental source can then audit the employers and verify that people are not being employed illegally, then we are not likely to have a lot of illegality, amnesty. We are going to have a rule of law that has once again characterized the employment of people in this country.

Would both of you agree that it is really critical that we have workplace enforcement that is as close to perfect as we can get it, anyway, that that is the key to this issue?

Secretary CHAO. I would certainly agree with that. Most of the responsibility for employer sanctions is over at DHS.

Secretary CHERTOFF. I do agree and I think that that means we need to be more efficient in allowing employers to verify. Right now, I have to say I am kind of appalled to say this, that I think when you get a "no match" letter from Social Security, apparently the employer proceeds at his or her peril in terms of taking further steps to find out what is going on because the law is so confused. If you want people to obey the law, I think it is kind of fundamental you let them know how to do it, and I think that is one of a number of things we need to change in order to make workplace enforcement a real reality.

Senator KYL. Thank you very much.

Chairman SPECTER. Thank you very much, Senator Kyl.

Senator Schumer?

Senator SCHUMER. Thank you, Mr. Chairman. I want to thank both of you Secretaries for testifying here today.

I have two questions, really both aimed at Secretary Chertoff. The first is very timely. It is the PATRIOT Act reauthorization to first responder funding formulas. As you know, we have a bipartisan coalition of Senators, Senator Cornyn and Senator Feinstein among them on this Committee, to try and persuade conferees to retain the Lowey-Sweeney bipartisan language which was passed as part of the PATRIOT Act. You have always said that you, and

the administration position is to make it more needs-based. The House does a considerably better job than the Senate.

So what I would like to ask you today is what you are willing to do to try and weigh in on the conference. In the past, Homeland Security—before you came in, it is not at your desk—would say, oh, yes, we are for needs-based, and then never mixed it in at all and we didn't get a needs-based formula. Would you be willing to lobby some of the Senators? The House is united. It only had 40 votes against it. The Senate is more divided. Would you be willing to lobby some of the Senators personally and ask them to go along with the House formula? What can we do? And I only ask this out of frustration, because in the past, your predecessor would speak about it and then we would ask them to get involved and mix in and they were absent.

Secretary CHERTOFF. I would make sure I get involved in a way that doesn't get me in trouble with the law or anything. But I have been unequivocal and I will continue to be unequivocal in supporting risk-based funding and I will be happy to use every legal and appropriate means to communicate that to—

Senator SCHUMER. When I say lobbying, I don't mean you would be hired by somebody.

Secretary CHERTOFF. Right. I mean, I just get nervous. I have been reading the paper—

Senator SCHUMER. You have been hired by the President and this is his viewpoint.

Secretary CHERTOFF. And I know there are some—well, without getting hyper-technical about it, I will—every appropriate means to convey my passionate belief that we need to be as needs-based as possible.

Senator SCHUMER. And it is the administration's position that the House bill is more risk-based than the Senate bill and, therefore, preferable, the House formula?

Secretary CHERTOFF. I think the administration's position is the more risk-based we get, the better we are.

Senator SCHUMER. And the House bill is, in your opinion, more risk-based.

Secretary CHERTOFF. I think it speaks for itself.

Senator SCHUMER. OK. I thank you for that, because we really need your help.

The second deals with another issue that affects—some of us from States that are on the Northern border. As you know, the passport situation has created a huge outcry. I know that you have talked about finding alternatives to passports, which I think places like Buffalo, New York, and Plattsburg, as well as Seattle and Detroit and other places really appreciate. The problem is that what has been talked about so far is the sort of card which would be cheaper than a passport but still present the same problems. For places like Buffalo, the Niagara River, which separates Buffalo from Canada, is more like the Hudson River. It is not like flying to Munich. You don't want to call 3 weeks in advance to say, oh, I am planning to go see a show or a ballgame or whatever on this side of the river.

What can be done? Can you give us some idea of how we can deal with these issues? We need security. I am the first to agree with

that. We also can't afford to just slow down commerce to a standstill. This border card hasn't met with too much favor, at least in its initial discussions, because it has some of the same problems the passport has.

Secretary CHERTOFF. Well, of course, we begin with the fact that we are dealing with a law and we have to comply with the law. The law requires a passport or its equivalent, and I think the President was very clear a few months ago when it came up and I have tried to be very clear about the fact that we were not looking to make passport be the only or the preferred choice, although it certainly would be acceptable, but that we were looking for some alternative that would satisfy the requirement of accurate documentation.

Frankly, a card, and we all carry cards in our wallet. I carry a driver's license. A card seems an efficient way, particularly for people on the border, and I well understand there are people who go back and forth multiple times a day—

Senator SCHUMER. Right.

Secretary CHERTOFF [continuing]. It seems that we have got to find some way to get them a card that is cheap, that satisfies the legal requirement, but that is as convenient to carry as walking out of the house with your driver's license—

Senator SCHUMER. The only other criteria I add, and then I will conclude as my time is concluding, but it also has to be—it has got to be secure, but it has got to be relatively—it has got to be quick and easy to get. Do you agree with that?

Secretary CHERTOFF. I agree, and I think we are going to face that challenge as we were with the Real I.D. Act.

Senator SCHUMER. Right.

Secretary CHERTOFF. We have some time to do this and we are working hard to make sure we do it right.

Senator SCHUMER. Thank you, Mr. Secretary. Thank you, Mr. Chairman.

Chairman SPECTER. Thank you, Senator Schumer.

Senator Coburn?

Senator COBURN. Thank you, Mr. Chairman. I apologize for being late.

I listened with interest to Senator Kennedy's questions on you in terms of the ten to 12 million people who are here. My question really deals with the fact that if somebody is here illegally and the real basis for our society is recognition of the law and equal justice under the law and if they come here illegally, building a case for amnesty, no matter which way you call it or how long it takes, the fact is, you undermine that tremendous important aspect of being an American is recognizing that we are all treated equally under the law.

If we have the President's program in terms of enhancing border security, enhancing enforcement, enhancing the return of those that are here illegally, and then enhancing in some way those that are here already illegally to give them a period of time to come back and do it properly, can you envision a way where we can impact that thought that you have to follow the law? I will tell you, to the people of Oklahoma, amnesty is a terrible word to them—

Secretary CHERTOFF. Right.

Senator COBURN [continuing]. Because it didn't work last time and if we start talking about it now, what you are going to see is more pressure on the border. How do we implement this idea of making people who want to come here and be a part of our society understand the rule of law?

Secretary CHERTOFF. Let me begin, Senator, by saying the President has been crystal clear, it is certainly embodied in the administration's view, that there is not to be an amnesty here. This is not to be a way for people to line-jump to permanent residents or a path through which they can get to permanent resident or citizenship. What it is designed to do is to regularize an existing situation and channel people into a way of dealing with work that will ultimately get them back to their own countries and it focuses on the employer as well as the employee, and let me just take 1 minute to explain what I mean.

The driver here is the demand that employers have for the work. As long as employers are going to be willing to hire people who are here illegally, people are going to come in. The question is, can you give employers a way to do that using a combination of carrot and stick that will put them into the regular channel so that people are coming, they are registered, they have identification, we can track them, and also we build a set of economic incentives that ultimately actually gives them incentives to go back home when they have made some money. What that would do is that would bleed out a significant amount of the pressure on our border enforcement people and let us now focus on the worst of the worst.

Clearly, amnesty would be an affront to the rule of law. It would be an affront to those who are legal, who are waiting their turn. The key is how do you manage a very, very difficult situation.

Senator COBURN. So my followup question to that is at the end of the third year, and then the second, third year and somebody has not complied, what do we do?

Secretary CHERTOFF. I think at that point, you are out of the program, but by then, we have tracked you. We know where you are. We have your address. And also, if the program is designed properly, money that, for example, is set aside for retirement winds up only being available to the migrant if the migrant goes back home to get the money. So the migrant now has a pretty strong economic incentive to go back to that original place in order to get their retirement or benefits.

Senator COBURN. But again, I want you all to think about the contrast. We have a law, and the predicament that Senator Kennedy set up is it is the law, but it may cost too much to enforce it, so we won't enforce it. That is the antithesis of this whole country. If it is the law, either we change the law or we enforce the law. So at the end of 6 years, what do you perceive will happen with the President's program, Secretary Chao or Secretary Chertoff?

Secretary CHAO. I think we are all in agreement that enforcement is a very important part of maintaining a culture of rule of law and also of securing our Nation's borders. But we have also found that enforcement alone will probably not be the entire answer, either. So there must be some way to track these 11 million people who are here illegally and the temporary worker program is an attempt to address that.

Senator COBURN. Thank you, Mr. Chairman.

Chairman SPECTER. Thank you very much, Senator Coburn.

Senator Brownback?

Senator FEINGOLD. Mr. Chairman?

Chairman SPECTER. Pardon me. We should go to Senator Feingold, who just came.

Senator FEINGOLD. Thank you, Mr. Chairman. Thank you, Senator Brownback. I am pleased that the Committee is once again taking up the critical issue of comprehensive immigration reform. We will all be better off if we create a realistic immigration system that recognizes that American businesses need foreign workers sometimes, that allows them to come to the United States legally, that protects their rights in the workplace, and that ensures that the government knows who is entering the country.

Immigration reform is important for all of these reasons, but I also want to mention again the importance of this issue to our economy. I am hearing more and more every day from business owners in Wisconsin telling me that sometimes they cannot find local workers to fill their jobs and that they desperately need to see changes in the immigration system in order to stay in business.

But I do want to take a few of the minutes here to ask about a somewhat different issue, which I understand Senator Kennedy has mentioned. I support vigorous enforcement of our immigration laws, but I am concerned about this incident that occurred on July 6, 2005. Immigration and Customs Enforcement officials impersonating OSHA employees publicized what they characterized as a mandatory OSHA safety training for workers at the Seymour Johnson Air Force Base in Goldsboro, North Carolina. Once workers arrived at the meeting, the ICE officials disclosed that there was no safety briefing and subsequently arrested 48 undocumented workers.

Secretary Chao, a Labor Department spokesperson said at the time that, quote, "This is not something we were involved in and we do not condone the use of OSHA's name in this type of activity." Secretary Chao, do you agree that the actions taken by ICE undermines OSHA's credibility and harm your agency's effort to address workplace safety issues for all workers?

Secretary CHAO. The short answer is, I do. As mentioned, no one at the Department of Labor or at OSHA was involved in this decision or the enforcement action itself, nor did we have any advance notice of it, and we have conveyed our gravest concerns to the Department of Homeland Security and the Secretary.

Senator FEINGOLD. Thank you for that answer.

Secretary Chertoff, I and a number of other Senators just sent you a letter about this incident, asking for further information. I realize you may not have had a chance to review it and I do appreciate your response to Senator Kennedy's questions about this incident. Can you commit to respond to that letter expeditiously?

Secretary CHERTOFF. Yes.

Senator FEINGOLD. I would like to understand how this incident came about. Did the ICE investigators who put together this ruse in North Carolina contact OSHA or anyone else at the Labor Department to ask their views on it before implementing the plan?

Secretary CHERTOFF. I don't know. I mean, I will have to—as I say, I became aware of this yesterday and the facts, I think, will have to be looked into and I will give you—we will respond with a factual summary.

Senator FEINGOLD. I look forward to that information. I took Secretary Chao's comments to be that you believe that there was not this kind of contact. Did you say that in your previous response to me?

Secretary CHAO. Yes.

Senator FEINGOLD. I thought you said that there was no such contact.

Secretary CHAO. No one at the Department of Labor nor OSHA were advised in advance of this plan.

Senator FEINGOLD. According to news reports, Secretary Chertoff, representatives from the Labor Department, Justice Department, and Homeland Security were going to meet to discuss this incident. Can either of you tell me if that meeting has occurred?

Secretary CHERTOFF. I don't know off the top of my head. We can find out.

Senator FEINGOLD. Secretary Chao, has that meeting occurred?

Secretary CHAO. My understanding is, yes, it has.

Senator FEINGOLD. Can you tell me he results of that meeting, then, Secretary Chao?

Secretary CHAO. May I submit that for the record?

Senator FEINGOLD. Yes.

Secretary CHAO. There was a discussion at the appropriate levels with the Department of Homeland Security. There was concern expressed as to how this plan was hatched, what happened, why was it initiated. There was a great deal of concern expressed.

Senator FEINGOLD. I look forward to receiving that information in writing and as thorough as is possible and as soon as possible and I thank you for that.

Secretary Chao, correct me if I am wrong, but I don't believe your testimony covered the issue of visa portability. Do you agree that allowing workers to switch jobs on the same visa would help to protect workers from exploitation by unscrupulous employers who could otherwise threaten to get them kicked out of the country?

Secretary CHAO. I think the goal here, of course, is to protect American workers first. The Department of Labor also has responsibility to enforce labor standards and health and safety rules across the board. So we are concerned about workers being taken advantage of. We are also trying to balance, again, the security issues, as well. So it was thought that if workers were able to apply for this visa, that they would have an opportunity with, let us say, a 45-day grace period if they left one job to be able to go to another. But these are proposals. That is the best effort—best attempt at trying to balance both those needs. So we would be interested in your point of view if you have a different point of view.

Senator FEINGOLD. I thank both of you. Thank you, Mr. Chairman.

Chairman SPECTER. Thank you very much, Senator Feingold.

Senator Brownback?

Senator BROWNBACK. Thank you, Mr. Chairman, and thanks for holding this important hearing. I like your new hairdo. It looks sharp.

Chairman SPECTER. Thank you very much. I am glad to have it recorded on television.

[Laughter.]

Senator BROWNBACK. I am appreciative of all your work and all the key topics you are bringing up, this one amongst them.

Secretaries, thanks for being here. There was a report out two or 3 weeks ago that we now have a higher level of illegal immigration than legal immigration into the United States. Is that accurate? That was in, I believe, a Pew study.

Secretary CHAO. I am not actually—I am not familiar with that and—

Senator BROWNBACK. Secretary Chertoff, are you familiar with that? This is a Pew study that was out a few weeks ago.

Secretary CHERTOFF. I saw the article. I think I said earlier, I am always a little—I always question to some degree some of these studies or surveys because I am not quite sure how they are constructed, so I am not in a position to verify or dispute it.

Senator BROWNBACK. Obviously, we have a high level of illegal immigration in the—

Secretary CHERTOFF. That, I agree with.

Senator BROWNBACK. Do you have any idea why we have so much higher illegal immigration than maybe we used to and certainly a high level relative to our legal immigration into the United States?

Secretary CHERTOFF. Of course, this has been a problem that has been around for 15, 20 years. I remember when I was U.S. Attorney in the early 1990's, going down to the border with U.S. Attorneys and being shown—this is before the fence—being shown people waiting to run across the border.

Why it is higher now, I suspect is partly a function of the labor market, that there is now an intense demand for workers that is not being met and I think that comes back to the point of the temporary worker program, that—

Senator BROWNBACK. Let me jump into that one, because my time is going to run real fast. It looks like, when I have looked at these numbers in the past, I mean, I think you have got the right combination. You have to have both enforcement and some sort of work program, and I want to cite to you some numbers off of that. There may be some of my colleagues that would say, well, I am not sure that that is an accurate reflection of today's situation, but in 1954, we had a big increase in enforcement actions combined with an increase in the then-designed Bracero program that led to a 95 percent reduction in illegal immigration. Are you familiar with those numbers, or is that an accurate reflection of that time?

Secretary CHERTOFF. I have heard about the program. The numbers, as I say, I can't verify or disagree with. I just don't have them on the top of my head.

Senator BROWNBACK. I would appreciate you taking a look at that, because that is quite striking if that is, indeed, what the combination can produce.

I noted in 1964 with the ending of the Bracero program, it triggered a 1,000 percent increase in illegal immigration by 1976. Twelve years, 1,000 percent, and the raw numbers are even more striking than that. We had, I can get down to this, INS apprehensions in 1964, 86,597; in 1976, 875,915. I hope you can take a look at that, because it seems like the model is accurate. Now, the devil is in the details in how to get that done.

Perhaps, Secretary Chao, this would be best for you. I have heard numbers that we have as high as, in the use of Social Security numbers and bad Social Security numbers or illegal ones, 400,000 that claim the Social Security of all zeroes? My guess is some of those are illegal if that is indeed the case, but—

[Laughter.]

Secretary CHAO. Enforcing employer sanctions is not in my Department. It is in the Department of Homeland Security.

Senator BROWNBACK. Secretary Chertoff?

Secretary CHERTOFF. You know, I don't know of it for a fact, but I can believe it. As I said earlier, I find one of the most frustrating aspects of what employers face is some uncertainty about what they can do when they get a "no match." Common sense would tell you if you get a "no match" on Social Security or a Social Security card with all zeroes, at a minimum, you should be able to ask some questions. I am informed that there are all kinds of legal issues about whether the employer is going to get in trouble if he or she does that. At a minimum, we ought to clarify that an employer who has got some kind of notice that there is something funny with a document ought to be able to do the kind of inquiry to get to the bottom of it.

Senator BROWNBACK. If we could, and I know this can be touched and hopefully the next panel can address some of this, but it seems to me that is one of the simple ways we ought to be moving forward, is if this isn't a match, then it ought to have an immediate notification and something in the system that that would be a way to go. I think we have got a model in the past, it is not a perfect fit, but how you mix both the enforcement with a good work visa program for a way to move forward so that we have got a model, and now getting the details of getting that to move forward will be helpful.

Thank you, Mr. Chairman.

Chairman SPECTER. Thank you very much, Senator Brownback.

Senator Sessions?

Senator SESSIONS. Thank you, Mr. Chairman.

Mr. Chertoff, the American people are not happy with the way the system is working. I notice in your written statement, you indicated that enforcement will not wait for enactment of a new temporary worker program. In your verbal statement, I am informed that you said, once we have the new worker program in place, we must couple it with enhanced enforcement.

I am not sure when this new worker program is going to pass. Certainly, I don't think it is going to pass in the form that has been suggested by the administration. So are you going to get busy now to enforce existing law?

Secretary CHERTOFF. Well, we are busy. I mean, I don't want any ambiguity about this. Not only are we going to get busy, we have

gotten busy. As I have demonstrated, for example, with respect to non-Mexicans from Brazil, we ran an operation in Texas. We have got 1,500 Border Patrol that now have been appropriated. We are going to get those online and we are going to move over the next year from a catch-and-release for non-Mexicans toward a catch-and-remove to non-Mexicans. So we aren't going to wait and we haven't waited.

The point I made in my oral statement is that, ultimately, to be effective, I think in a way that I think we need to be, we are going to need more than just brute enforcement. We are going to need a temporary worker program, as well.

Senator SESSIONS. I just want you to know how strongly I think the American people care about this. We know that we need workers in this country, and we have some great people that come into our country from many countries who work well and contribute to our economy and many of them bring brilliance and technology and skills that help us fight disease and make scientific advancements also.

But I was a little troubled when you lightly dealt with the question of 400,000 people with zero Social Security numbers. I mean, that is a big deal. Also, I note that in 2003, I believe, there were about 15 employers sanctioned for hiring illegal workers in an improper way. Do you know what the numbers are this year and what they were in 2004?

Secretary CHERTOFF. Yes. In 2004, on the criminal side, we had—worksite enforcement led to 67 indictments and 46 convictions. In 2005, it was 140 indictments and 127 convictions. In terms of administrative sanctions, in 2004, I think we had 685 arrests and in 2005 we had 1,358, of which 832 were from critical infrastructure facilities. So we are increasing the tempo and pace of our worksite enforcement, but we need to continue to do more—

Senator SESSIONS. That is some progress, but it is still awfully, awfully small, as I think you would admit. What I would suggest to you and what I would say to many people who think this is a hopeless matter, that it is really not. If we enhance our enforcement actions against businesses, if we eliminate areas through fences and enforcement on the border, we enhance the ability for people to come legally with a biometric identifier so they can come and go, this thing can tip and you can make huge progress.

I notice you talk about the other-than-Mexicans and the progress you are making with Brazil, but it still—there are many other other-than-Mexicans than Brazil. As I understand it, it is about an 80 percent chance that if you are apprehended coming into this country from a nation other than Mexico, that you will be released on bail, and over 90 percent do not show up for the court hearing. Is that still true, and what plans do you have to deal with all of these countries?

Secretary CHERTOFF. That has certainly been the historic situation and that is one of the reasons the first thing we initiated in the last month or so was getting 1,800 additional beds, cutting the time in beds, and moving from a catch-and-release to a catch-and-remove.

I completely agree with you. This is one of those areas where there is a tipping point. We saw it with the Brazilians. In fact, we

continue to see a decrease in the number of Brazilians. Part of that is because the Mexicans have actually now reversed their position and are now no longer allowing Brazilians to go in without visas, which is a positive step.

But I completely agree with you. This is an area we can have an impact in 1 year in tipping away people coming in from outside Mexico. I think that would be a very important step forward.

Senator SESSIONS. My time is up. I would just advise and ask that you not wait for Congress to promote these ideas. I think you should be bringing them forward and asking us to help you achieve lawfulness in immigration.

I would also offer, Mr. Chairman, for the record, a letter that Congressman Lamar Smith asked me to make a part of the record, and I would be pleased to, that responds to some of the administration positions, and also a letter signed by 81 Congressmen emphasizing the enforcement needs to come first before we deal with the overall issues of immigration.

Chairman SPECTER. Without objection, those documents will be made a part of the record. Thank you, Senator Sessions.

Senator Durbin?

Senator DURBIN. Thank you very much, Mr. Chairman. My appreciation to both of you for joining us today on this really complicated issue.

My mother was an immigrant to this country. She was brought here at the age of two, came over with her mother and brother and sister, and I am sure as they walked down the ramp at Baltimore, Maryland, people looked up and said, "Not more of those people." I am glad that she came and I am glad that my grandmother and grandfather had the courage to come and I hope we don't overlook that.

The people who make the decision to cross this border and come here leave behind a lot—their language, their culture, their family, their relationships, their churches, their villages. They come here with a special quality of courage that has really made this a much different country, a much better country. I hope that as we consider how we deal with a sensible immigration system, we never overlook the fact that they bring a lot of value to this Nation.

I have met them, and I am sure you have, too, and worked with them, and many of these people who are clearly undocumented are really adding to America, making really beneficial contributions, not just to the economy, but to who we are and our values. Those who just view them in negative terms don't know them and don't know the lifestyle and the values that they bring to us.

What I need to find out in the short time we have together is to ask you what the administration thoughts are on a couple of things. First, does the administration agree that there should be a path to permanent residence for immigrants who work hard, pay taxes, play by the rules, and learn English?

Secretary CHAO. I think the administration has said on many occasions, and the President has, as well, that we have—first, we have put forth five principles, which I won't go into at this point, but that there should not be a pathway to citizenship.

Senator DURBIN. There should not be?

Secretary CHAO. There should not be an automatic pathway to citizenship under the—

Senator DURBIN. Could you clarify the word "automatic"?

Secretary CHAO. Under the President's proposal, we would try to bring out those undocumented workers who are currently living in the shadows. Our goals are to control our borders. Second is to serve the American economy by matching workers with unfilled jobs. Three is promote compassion for immigrant workers. Four is to provide temporary workers with the incentive to return to their home countries. And fifth is to protect the rights of legal immigrants.

So the administration's plan is not an amnesty for illegal immigrants and it does not—

Senator DURBIN. What—

Secretary CHAO. We feel that an automatic pathway to citizenship would reward those who have violated our laws.

Senator DURBIN. So you are opposed to creating a pathway to permanent residence for immigrants who have lived in this country, have paid their taxes, have not broken the law, and have some command of the English language? You would not open a pathway to legal residency to them?

Secretary CHAO. We would ask that temporary workers come and work for—there are two types, obviously, those who are out of the country and those who are in the country. For those that are in the country, which is what we are talking about—

Senator DURBIN. Yes.

Secretary CHAO [continuing]. We would ask them to sign up for the temporary worker program for 3 years and they can extend for another three years for a total of 6 years, and at which point we would ask that they return to their home country.

Senator DURBIN. So there would be no pathway to residence. Let me ask you about—

Secretary CHAO. They can apply for the program and come on back—

Senator DURBIN. They can continue to work, but they wouldn't have any opportunity or pathway to legal permanent residency, as I understand your description.

Secretary CHAO. They would not have a legal pathway to citizenship, no.

Senator DURBIN. Let me ask you about a specific group, then. There are thousands of undocumented students in this country whose parents brought them to the United States when they were children. They grew up here. They have excelled in school. They know no other country. I had a particular case of a young woman who was accepted at the Juliard School of Music, a child prodigy, a Korean American, it turns out was undocumented, the only person in her family who was. When I contacted the then-INS and asked them what to do, they said she has to go back to Korea. She had been here since the age of two.

So I want to ask you, I have introduced a bill with Senator Hatch called the DREAM Act which would allow for students in this circumstance an opportunity, if they played by the rules, haven't violated the law, been here at least 5 years, completed their education, and plan to attend college or even serve in the United

States military, that they would then have a pathway to legal residence, permanent residence, and ultimately citizenship. What would your position be, if not on this particular bill, on this concept of giving these children that opportunity?

Secretary CHAO. Obviously, Senator, as you can guess, I am not ready at this point to express an opinion about the DREAM Act.

No. 2, I think at this point, the President has made his principles quite clear. We are very willing to work with Congress, but the principles are that we do not support an automatic pathway to citizenship.

Senator DURBIN. Well, keep—

Secretary CHAO. For children, I don't know.

Senator DURBIN. Add the word automatic, and I don't want it to be automatic. I think that these immigrants would have to earn their way into a position of possibilities and opportunities and they could lose it by doing the wrong thing. So it is clearly not going to be automatic. I think that may be a difference here, but at the risk of pushing it too hard and too far, I will stop at this point and ask the administration to take a look at this bill more closely.

Thank you, Mr. Chairman.

Chairman SPECTER. Thank you, Senator Durbin.

Senator Grassley?

Senator Grassley. Thank you, Mr. Chairman.

Secretary Chertoff, today, the Inspector General of Homeland Security issued a report requested by me and Congressman Hostettler stating that the Citizenship and Immigration Service fails to accurately count H–1B visas, and these are handed out yearly, a cap of 65,000. CIS went above that cap set by Congress, so that clearly is that Homeland Security is breaking the law. What is worse is that they know they are violating the law and they will continue to violate it if they maintain the counting system that they have today. I don't know how this agency can possibly implement a guest worker program and keep track of ten million aliens when they cannot even count 65,000 each year.

So I don't have a question for you now, but I would like to have your, not your assurance, but your reassurance, because I have had assurance before, that you will make the agency change their ways and stay within the number set by Congress.

Secretary CHERTOFF. We will, Senator. Let me, if I can, just take a moment to say that I think that we have already changed the model in this respect. That problem, which I think occurred last year, occurred because when they estimate in terms of receiving applications what the cutoff is, at which point you hit 65,000, since you don't know how many people are actually going to make their way through the process with the application, what they were doing was that everybody who applied on the last day was getting in and that exceeded the cap.

What they have now done is we issued a regulation saying that on the last day, when you hit the upper limit, to keep within the limit, we will operate a random system so that not everybody who comes on the last day will get within the cap. It will just be a random luck-of-the-draw type of deal. That should cure the problem.

Senator GRASSLEY. I sure hope it does.

Also for you, I want to say that I understand that the Citizenship and Immigration Service has a program known as FOCUS. This program reviews applications for immigration benefits, like green cards for citizenship, where national security concerns are identified. In some cases, applicants may be on the Terrorist Watch List or the FBI is watching them and they could be an associate of a terrorist fundraiser. Rather than simply denying these applications, the agency has allowed them to pile up while trying to get more information about them. People within CIS are saying that there are major problems with getting the information because, too often, law enforcement still doesn't want to share details with non-law enforcement people. Now, I don't understand that, being in the same Department, working for the same agency head, why somebody doesn't want to share information, but that is what I am getting, that they don't want to share the information. I have been told that there are hundreds of these cases and one estimate was as high as 1,400. Yet the total number of people working on this FOCUS problem is about four or five.

If your Department can't adequately deal with security concerns in the processing of six million applications per year, I would question the Department's ability to deal with a massive increase in applications that would come as part of a guest worker program. It leads me to believe that CIS is more worried about customer service than national security.

Now, I wrote you on September 21 about Project FOCUS and benefit fraud and I have not yet received a response. My question is, 4 years after 9/11, we are still hearing that people applying for immigration benefits are not properly screened. Name checks are too narrow, unreliable, and inadequate. Even when there is a hit, CIS is not aggressive enough in finding ways to deny the application. All the emphasis seems to be on backlog reduction, and if a few hundred people slip through the cracks if they have ties with terrorists or criminal organizations, that seems to be an acceptable risk, and I don't think it is acceptable. So what do you think and what are you going to do to put emphasis back on security?

Secretary CHERTOFF. Well, we do think security is important, and one of the things I actually—I think I said in testimony not before this Committee but elsewhere in July was we need to reconfigure the model in which CIS operates and consider the possibility of having, before we give people—before we accept applications and let people come in on a temporary basis or be here on a temporary basis, we ought to reverse the process and do the checking or most of the checking first so they don't get in. We don't consider their application complete until we have done a lot of the background checking. That is not going to happen instantly, but that is what we are aiming to in terms of a model going forward.

As far as the name checks go, I mean, we have worked with the FBI in terms of getting quicker response. I think we all know that sometimes the name checks are not necessarily accurate, and we see that with TSA. So it is fair to dig a little bit deeper. But I share your concern, as I said in July, about the idea that people are going to be here for a long period of time while we are reviewing a national security issue. That is not a sensible way to proceed and that is what we are going to have to correct.

Senator Grassley. Mr. Chairman, we set up the Department of Homeland Security so all of these agencies would be under one roof so that we wouldn't have these separate smokestacks with information being held by the separate Departments. There is just no reason for not having this information, particularly within one Department, shared by others in the Department when it is needed.

Chairman SPECTER. Senator Grassley, you are right. Thank you.

I would like to move ahead with the second panel, but I have had a request from Senator Cornyn for another 5 minutes and I don't want to curtail any line of questioning while we have the two Secretaries here. If there is a request from others, I will accede to that, as well, with one eye on the clock.

Senator Cornyn?

Senator CORNYN. Thank you, Mr. Chairman. I am grateful. It is a wonderful opportunity to have these two Secretaries here and talk about something that is obviously so important.

I wanted to ask Secretary Chao about the administration's rationale for requiring those who qualify under this temporary worker program to return to their country of origin after their permit, basically, their time here is completed. As you know, there are at least two major Senate bills that deal with this whole issue, comprehensive immigration reform, and really what I am focusing on is this principle of work and return as opposed to work and stay. I might also ask you to comment, this would not be, as I understand it, to the exclusion of other paths for legal permanent residency and citizenship that would exist under current law. Could you please comment on that?

Secretary CHAO. The administration's proposal of requiring that workers stay for 3 years with a possible 3-year extension but then must spend 1 year outside the U.S. before readmission to the temporary worker program as one way to ensure that there is respect for the rule of law, that there is not, again, an automatic way to come into this country. So this is an effort at basically ensuring that there is some kind of a penalty and some kind of a fresh start for the worker when they leave so that they can come back and come under a legal program, be legal, and start their life anew.

Senator CORNYN. Looking long-term at the causes of illegal immigration, no doubt the development disparity between countries like Mexico and the United States, Central America, the United States is a great place to work and make better money than you can make in many of the places that people emigrate from. I happen to believe that it is important that we provide incentives for people to return to their country of origin as part of this program with the savings and the skills that they have acquired working in the United States on a temporary basis because no country's economy could withstand the permanent exodus of its workers. And, I think in terms of causes of illegal immigration with respect to the overall comprehensive policy, that makes a lot of sense and I appreciate your comments.

Let me ask quickly, Secretary Chertoff, of course, the 9/11 Commission focused on removing barriers to information sharing, and Senator Grassley just referred to one aspect of that, transforming our government's system, previously described as a "need to know" with a "need to share." I am a little concerned about some pro-

posals that would restrict the access of employment verification data from law enforcement personnel, including immigration enforcement. Do you share that concern? Would you encourage the Congress to adopt policies that provide encouragement for information sharing even in that context?

Secretary CHERTOFF. I am not aware of the specific proposal you are mentioning. I, in general, believe we ought to share information. There is very little percentage in keeping people in the dark like mushrooms.

Senator CORNYN. How about, for people who apply for this or any other program that the U.S. Government may have, would you agree that it is a bad idea to issue employment and travel authorization to aliens before their background screening is completed?

Secretary CHERTOFF. I think one of the issues we identified when we reviewed the operations of the Department over the summer was that the problem with doing precisely that, that under the current situation where people get access to the ability to come in and work while we are processing their background checks, it seems to me that is a vulnerability and we need to reverse that. I don't want to understate the magnitude of the task. The system has now been built a certain way. It has to be reengineered. We have a new nominee, I think he is actually coming to testify today before the Committee. We are very interested in beginning that reengineering process.

Senator CORNYN. Thank you. Thank you very much, Mr. Chairman.

Chairman SPECTER. Thank you very much, Senator Cornyn.

Senator Durbin has requested another five-minute round. Senator Durbin?

Senator DURBIN. Thank you, Mr. Chairman.

I would like to ask Secretary Chertoff about Hurricane Katrina. I am finding it difficult to follow the administration's policy here. After 9/11, are you aware of the fact that the Commissioner of the INS, Mr. Ziglar, made an announcement that people who thought they had lost friends or family in the World Trade Center and contacted local authorities, that they could do so without fear that the authorities would use the information that they obtained for immigration purposes and deportation. That was the policy of the Bush administration after the 9/11 tragedy.

After Hurricane Katrina, it appears there is a different policy. In fact, it is my understanding that several hurricane victims or people who have come forward to agencies have been deported or placed in deportation proceedings, which is totally different than the approach that was used with 9/11.

The same question arises when it comes to the policy of this administration as to workers. In the aftermath of Katrina, the administration suspended the Davis-Bacon Act and waived sanctions for employers who hired undocumented immigrants. This gave employers the ability to hire these people at below-market rates which could, of course, negatively impact workers.

I am trying to figure out what the position is here. It appears that if undocumented immigrants, workers, can be hired for the purpose of reconstruction of Hurricane Katrina, then they are welcome in the United States for that purpose. But if they should ask

for help as victims of Hurricane Katrina, unlike 9/11, they are subject to deportation. Reconcile this for me, if you will.

Secretary CHERTOFF. Well, first of all, the issue of whether people can call in and find their missing relatives, I am not aware of any—I mean, I think there were a number of telephone lines, frankly, or online ways of doing that. I don't know that anyone who wanted to find a missing relative was required to prove their citizenship status.

But I will tell you that the law forbids us to pay benefits to illegal immigrants. I mean, that is the law. So if somebody came forward and said, "I am an illegal immigrant. I lost my house," or they said, "I lost my house," and it emerged they were an illegal immigrant, they would be in violation of the law if we gave them benefits.

I think our general policy was we are not looking to turn this into a law enforcement exercise. On the other hand, we are going to comply with the law.

As far as the Davis-Bacon Act, and maybe Secretary Chao has more insight than I do, I don't understand that to have green-lighted letting illegal aliens be hired.

Senator DURBIN. No, that wasn't the part, Mr. Secretary. First, the people I am talking about who were deported weren't asking for a free house from the government. They were usually asking for food and water.

Secretary CHERTOFF. I don't know that we—I mean, I think when people handed out food and water and medical care, I don't know of any policy that said, ask for people's citizenship first.

Senator DURBIN. But do you know, in fact, they were deported or placed in deportation proceedings in several instances?

Secretary CHERTOFF. I must tell you, Senator, I don't know the facts of the specific case. I don't know how someone became aware someone was here illegally, and if they did—you know, once someone becomes aware of a violation of the law, I think at that point, it is often incumbent on them to take action. Now, were these local officials, State officials? I don't know. I can tell you there was no policy to turn relief efforts into a hunt for illegal migrants. But at the same time, it was clear that if someone was an illegal migrant and was seeking to get, for example, benefits—and I am not talking about food and water, but, I mean, something like—

Senator DURBIN. That is exactly what happened here, Mr. Secretary. These were people seeking refuge at the Judson Williams Convention Center in El Paso along with other evacuees and they were deported or placed in deportation proceedings, and I hope you will look into it.

And the second point is, it is not Davis-Bacon. Davis-Bacon was part of the decision to diminish the wages of those who would rebuild Hurricane Katrina. But it was the second part, the decision of the administration to waive sanctions for employers who hired undocumented workers in Hurricane Katrina reconstruction. Doesn't it strike you as an inconsistent policy of this administration to look the other way in one instance and then to deport people seeking the basics of life at these evacuation shelters?

Secretary CHERTOFF. I have to say something. I am just not aware of a decision to allow people to hire illegal workers. I just—

Senator DURBIN. Well, I can tell you I have sent you two letters, September 14 and September 22, asking for you to please respond on this issue—

Secretary CHERTOFF. Well, I will look into them.

Senator DURBIN [continuing]. And I know you are very busy and I want you to focus on the reality of this disaster, but please, get somebody in your office—

Secretary CHERTOFF. Sure. I will.

Senator DURBIN [continuing]. To take a look at it and I think you will find that the facts I have raised really raise serious questions about the consistency of this policy with the administration.

Thank you, Mr. Chairman.

Chairman SPECTER. Thank you very much, Senator Durbin.

In the absence of hearing any other voice, we are going to proceed to panel two.

Secretary Chao and Secretary Chertoff, thank you for your distinguished contribution to our country and thank you for being at the hearing today and let us keep working and see if we can't find the answer.

We move now to panel No. 2, to Mr. Frank Sharry, Executive Director of the National Immigration Forum; Mr. Mark Krikorian, Executive Director of the Center for Immigration Studies; and Dr. Douglas Massey.

Mr. Sharry is the Executive Director of the National Immigration Forum, a Washington, D.C.-based organization with membership of over 250 organizations nationwide. He had been Executive Director of Caentro Presente, an agency that helps Central American refugees in the Boston area. He also led efforts to resettle refugees from various countries, including Vietnam and Cuba.

Thank you very much for joining us, Mr. Sharry, and we look forward to your testimony.

STATEMENT OF FRANK SHARRY, EXECUTIVE DIRECTOR, NATIONAL IMMIGRATION FORUM, WASHINGTON, D.C.

Mr. SHARRY. Thank you, Mr. Chairman. Thanks for this opportunity to all the members of the Committee.

Please allow me to start with my main recommendation. I urge this Committee in the strongest terms possible to take action on immigration reform and soon. The challenge is too great, the need too urgent, and the stakes too high to allow the vacuum to be filled by piecemeal proposals that sound tough but solve nothing. On the other hand, if you move forward with dispatch and courage, it will be this Committee that sets the tone and the direction for this Congress.

Now, we all know that immigration is a controversial issue that defies easy solutions. One reason for this is that there are two seemingly opposed frameworks for addressing it. One side says, get tough. The other side says, open up. And for too long, this either/or argument has led to polarization and paralysis.

If we are to solve this problem, if we are to move beyond the failed strategies of the past, we need a new and broader framework. We need a both/and perspective, one that involves getting tough and opening up.

As I am often asked, what is the solution to reduce illegal immigration, it is usually put this way. Are you in favor of toughening up immigration enforcement or in modernizing our immigration laws? My answer is, yes.

Senator Kennedy captured this both/and approach recently when he said this. Enforcement and legality are two sides of the same coin. This is the insight at the heart of the McCain-Kennedy bill. It is the insight at the heart of the Cornyn-Kyl bill. And it is the insight at the heart of the White House principles for reform that we just heard articulated. All of these proposals seek to integrate enforcement and legality so that they no longer push apart but instead pull together.

Now, for a range of constituencies from across the spectrum and across the country, the McCain-Kennedy bill is the fullest expression of this both/and approach. It has the right architecture and the right elements. It is bipartisan, it is comprehensive, and most importantly, we believe it will be workable, which leads me to my second recommendation, that this Committee use the McCain-Kennedy bill as the template for Senate Judiciary Committee action.

To improve on it, the Committee should incorporate the best ideas from the other serious proposals on the table put there by other Senators as well as by the White House. What should the Senate Judiciary Committee bill include?

On the enforcement side of the coin, a robust combination of, one, border enforcement that integrates professional law enforcement and state-of-the-art technology.

Two, workplace enforcement that makes it virtually impossible for employers to hire those in the country illegally while making it much easier to go after employers who try to do so.

And three, means for negotiating active cooperation from sending countries aimed at cracking down on criminal smugglers and discouraging illegal immigration.

On the legality side of the coin, the bill needs to have, one, future flow visas for both needed workers and separated families so that we can replace the current illegal flow with a legal and orderly one.

Two, a registration and earned legalization solution for the 11 million immigrants currently working and living in the U.S. illegally.

And three, promotion of English language instruction and citizenship. Incentives for circularity are fine and necessary, but the many immigrants that settle here should be encouraged to become new Americans.

Mr. Chairman, the country is crying out for leadership on this confusing, complex, and controversial debate. With all due respect, may I say, let us do this thing. Let us build out this new framework and enact a realistic solution in this Congress. Let us deal with enforcement and legality at the same time and with the right mix. Let us forge an immigration system based on enforceable laws tightly enforced. Let us create a regulatory regime that respects rule of law at the same time it respects the law of supply and demand.

It is time for the either/or argument of the past to give way to the both/and solutions of the future. We no longer have to choose between being a nation of immigrants and a nation of laws. In fact,

it is time to recognize that the only way to be either is to be both. Thank you.

Chairman SPECTER. Thank you very much, Mr. Sharry.

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

Chairman SPECTER. We now turn to Mr. Mark Krikorian, Executive Director of the Center for Immigration Studies. He has a Bachelor's from Georgetown, a Master's from Fletcher, and has done extensive publishing in the Times, Post, and National Review.

Thank you for joining us, and the floor is yours.

STATEMENT OF MARK KRIKORIAN, EXECUTIVE DIRECTOR, CENTER FOR IMMIGRATION STUDIES, WASHINGTON, D.C.

Mr. KRIKORIAN. Thank you, Mr. Chairman. Policymakers face two main questions on immigration. What are we supposed to do with the 11 million illegal aliens who are here, and do we need to import unskilled labor at all?

I will address the second question first. Do we need mass unskilled immigration? The answer is clearly no. Those who answer yes claim, in effect, that we are running out of a precious resource, unskilled workers, and thus we need to import more from abroad. In other words, our vast, flexible, 300-million-person, continent-spanning economy can't function properly without a steady supply of high school dropouts from abroad because they do work that Americans supposedly won't do. Such a claim can only be described as economic gibberish. In fact, employers would do two things if the supply of foreign labor were reduced. One, increase wages and benefits to attract the labor still available, and at the same time, look for ways of increasing productivity through mechanization, for instance.

Some would say that even with higher wages, there just aren't enough Americans to do the work that illegals are doing now. Now, if we were Fiji or Kuwait and didn't have any people, we might have to import a labor force. But if we look at the jobs that illegal aliens hold, we find that there are millions of Americans in those very same occupations and they suffer from much higher rates of unemployment than the national average.

This isn't to say that each illegal alien takes a job from an American. It is not that simple. But it does mean there are very large numbers of Americans who are unemployed or who have dropped out of the labor market altogether who are in direct competition with illegal immigrants. Many of these workers will be drawn into the jobs now performed by illegals and other jobs will be eliminated by technology if only the free market were not short-circuited by mass immigration.

Lobbyists for business will disagree, of course, but claims of doom and gloom are nothing new from that quarter. Forty years ago, for instance, California tomato farmers testified that their industry would cease to exist if the foreign labor program of that time, the Bracero program, were ended. It was ended anyway and what farmers did was invest in harvest machinery, causing output to quadruple and the real post-inflation price of their processed products to fall.

Fifty years before that, the textile industry predicted disaster if child labor were ended. In fact, at a hearing before this body in 1916, one mill owner said that limiting child labor would "stop my machines." Another said that investors would never receive another dividend, while a third said that ending child labor would paralyze the country. America's economy has done just fine without child labor and it would do just fine without more foreign labor.

But that leaves the other question before us. What do we do about the illegals already here? Those who support mass immigration also tend to support legalization, i.e., amnesty. They argue that there are only two options: One, mass round-ups and mass deportations of millions of people in a short period of time; or, since that isn't going to happen, as Senator Kennedy pointed out, amnesty is the only other option available.

Let me say here that anything that launders the status of an illegal alien, permitting him to remain here, is an amnesty. Whether it is a so-called temporary worker program that allows him to stay or an increase in the green card category for unskilled workers or some other means, the result is the same. And whether the illegal alien first has to earn his status by paying a fine or passing an English test or calculating pi out to ten digits, it doesn't make any difference, either. If he gets to remain legally, he has received an amnesty.

But we are not stuck with these two unpalatable choices. There is a third way, and it is the only workable solution in any case, attrition of the illegal population through enforcement. We didn't get into this situation overnight and we are not going to end it overnight with one comprehensive piece of legislation, I am afraid. Instead, by actually enforcing the immigration law consistently and across the board, we can dramatically reduce the settlement of new illegal immigrants and, over a period of years, force millions of those already here to give up and to deport themselves, shrinking the illegal alien problem from today's crisis to a manageable nuisance.

Amnesty supporters claim that we have already tried that and we have failed and so we have to try something else. In fact, the precise opposite is true. We have never tried sustained, comprehensive enforcement, but we have tried many of the reforms that are now being proposed. In 1986, Congress passed an amnesty for illegal immigrants with nearly three million people legalized. Four years later, we substantially increased legal immigration and the issuance of temporary worker visas has grown even faster. The result? More illegal immigration than ever before. It is time to try something new, attrition through enforcement.

Thank you.

Chairman SPECTER. Thank you very much, Mr. Krikorian.

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

Chairman SPECTER. Our next witness is Dr. Douglas Massey, Professor of Sociology at Princeton University. He was also a faculty member at the University of Chicago, where he directed the Latin American Studies Center and Population Research Center.

We appreciate your being here, Professor Massey, and look forward to your testimony.

STATEMENT OF DOUGLAS S. MASSEY, PROFESSOR OF SOCIOLOGY, PRINCETON UNIVERSITY, PRINCETON, NEW JERSEY

Mr. MASSEY. Mr. Chairman and members of the Judiciary Committee, my testimony is very simple. The U.S. immigration system is badly broken. It has been broken since 1986 and has been getting worse.

The central problem concerns the relationship between Mexico and the United States. Mexico accounts for 60 percent of all unauthorized migrants currently in the country and around a fifth of recent legal immigrants. After Mexico's six million unauthorized residents, the next closest countries are El Salvador and Guatemala, with totals of less than 300,000 each. Few unauthorized migrants come from Asia, Europe, Africa, or the Pacific. Undocumented migration is, thus, overwhelmingly a problem of the Western Hemisphere and very disproportionately Mexican.

Next to Canada, Mexico is our closest neighbor and trading partner. Together, we share a 2,000-mile border and trade annually totaling $286 billion. In 2004, 175,000 legal immigrants entered the U.s. from Mexico, along with 3.8 million visitors for pleasure, 433,000 visitors for business, 118,000 temporary workers and dependents, 25,000 intra-company transferees, 21,000 students, 8,400 exchange visitors, and 6,200 traders. At the same time, one million Americans presently live in Mexico and 19 million travel there each year. U.S. direct foreign investment in Mexico now totals $62 billion annually.

These massive cross-border flows are occurring by design under the auspices of the North American Free Trade Agreement. However, at the heart of NAFTA lies a contradiction. Even as we have moved to promote the freer cross-border movement of goods, services, capital, commodities, we simultaneously seek to prevent the movement of labor. We somehow wish to create a single North American economy that integrates all factor markets except one, that for labor.

To maintain this illusion that we can somehow integrate while remaining separate, we have militarized our border with a friendly country that is among our closest trading partners and strongest allies and which poses no conceivable threat to the United States security. Even as binational trade with Mexico grew by a factor of eight from 1986 to the present, the Border Patrol's enforcement budget increased by a factor of ten. The Border Patrol is now the largest arms-bearing branch of the U.S. Government except the military itself, with an annual budget of $1.4 million.

The attempt to stop the flow of Mexican labor into the United States through unilateral enforcement has not only failed miserably, it has backfired. It has not deterred would-be immigrants from entering the United States, nor has it reduced the size of the annual inflow. What it has done is channel migratory flows away from traditional crossing points to remote zones where the physical risks are great, but the likelihood of getting caught is actually small. As a result, the number of deaths has skyrocketed while the probability of apprehension has fallen to a 40-year low. We are spending more tax dollars to catch fewer migrants and cause more deaths.

Moreover, once deflected away from traditional crossing points, Mexican immigrants have moved to new destinations. Whereas two-thirds of Mexicans who arrived in the United States during 1985 to 1990 went to California, during 2000 to 2005, only one-third did so. In essence, our border policies have helped transform a regional movement affecting three States into a national phenomenon affecting all 50 States.

Our policies also serve to transform what had been a seasonal movement of male workers into a settled population of families, increasing the costs and risks of undocumented entry and they have not deterred Mexicans from coming.

Perversely, the policies have only discouraged them from going home once they are here. Having faced the gauntlet at the border, undocumented migrants were loath to do so again and hunkered down for the long term. As a result of our militarization of the border, undocumented trips have lengthened and rates of return migration have plummeted. If the rate of in-migration remains stable while the rate of out-migration declines, only one outcome is possible, a sharp increase in the rate of net undocumented population growth.

In addition, as Mexican migrants stayed away longer, they sent for their wives and children. So rather than constituting a temporary flow of male workers, Mexico-U.S. migration has become a settled population of permanent residents and families.

In sum, the American attempt to stop the flow of Mexican workers within a rapidly integrated North American economy has not worked. Rather, it has reduced the rate of apprehension at the border, raised the death rate among migrants, produced longer trip lengths, lowered rates of return migrations, increased the rate of undocumented population growth, transformed what had been a circular flow of workers into a settled population of families scattered throughout 50 States, all at the cost of billions of dollars of taxpayer money.

Our border policies have thus given us the worst of all possible worlds, continued immigration under terms that are disadvantageous to us, harmful to American workers, and injurious to the migrants themselves. This lamentable state of affairs stems from our failure to come to terms with the contradiction of continental integration under NAFTA. Rather than viewing Mexican migration as a pathological product of rampant poverty and unchecked population growth, we should see it as a natural product of economic development in a relatively wealthy country undergoing rapid transition to low fertility.

I believe the McCain-Kennedy immigration bill moves us substantially in the direction of improving circumstances for American workers, improving circumstances for our closest neighbor, and enhancing the health and status of the United States. I, therefore, support it as a member of the National Academy of Sciences, a citizen of the United States, and a concerned human being.

Chairman SPECTER. Thank you very much, Professor Massey.

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

Chairman SPECTER. Mr. Sharry, you talk about the key to putting immigration on a legal footing is to find a way to encourage

11 million undocumented immigrants to, quote, "transition to legal status." Short of amnesty, which is generally frowned upon, how do you persuade those 11 million people to come out of the shadows so that the transition can be effectuated?

Mr. SHARRY. There is no perfect solution to this, Senator.

Chairman SPECTER. Well, give us some solution that isn't perfect.

Mr. SHARRY. It can't be an amnesty, which is an automatic pardon and a trip to the front of the line.

Chairman SPECTER. You agree that amnesty is out of the question, generalized?

Mr. SHARRY. I do. I do. I also think, though, that if we are going to be realistic about putting migration on a legal footing, we can't simply ignore the fact that there are 11 million people here without status who are afraid to come forward.

I like the idea embodied in the McCain-Kennedy proposal, the idea of coming forward to register, submitting to security checks, paying fines, maintaining a clean record, getting to the back of the line, and participating in English and civics classes. I like the idea of having to earn your way out of the fact that you did break the law and you are here and most of you are going to stay. I think that is the right approach.

Chairman SPECTER. And if they fail to earn their way, a breach along the line, ship them home?

Mr. SHARRY. Yes. If I could just say one more thing about it, I do think that this amnesty word has been abused and overused. I think what the American people want is a solution to the 11 million as long as we have a solution to the problem of open borders, porous borders, lax enforcement. If we get the combination right, I think the American people will be pleased and glad that we have dealt with the 11 million here and they have come out of the shadows.

Chairman SPECTER. Mr. Krikorian, you have an interesting concept on attrition through enforcement and your proposition that there are many people who are unemployed, but how do you deal with the statistics which show that even among construction workers, there are only about 65 percent of the number we need? If you move into the skilled trades, health care workers or plumbers, electricians, there are vast shortages. Looking at the projections from Federal Reserve Chairman Greenspan, that by the year 2030, the growth of the U.S. work force will slow to a half percent and at the same time the population over 65 years of age will rise to 20 percent, that sort of a demographic projection leaves the country in drastic shape on sustaining Social Security and Medicare. Really, is there any answer beyond bringing more workers into this country?

Mr. KRIKORIAN. Yes, there is, Senator. First of all, the idea of the need for labor is a dynamic thing. It is not static. The fact is that the expectation or the presence of large numbers of foreign workers causes those industries that they work in or are expected to work in to develop differently.

One quick example is in California, where the number of acres planted in labor-intensive crops has been steadily increasing because there is an available labor force illegally coming into the country that farmers want to use. With a smaller supply of foreign

workers over time, the industries develop differently. Construction moves more rapidly to manufactured housing, away from stick-built housing. Farming moves more rapidly to mechanized harvests, away from hand harvesting, perhaps even different crops. Carrots, you harvest by machine; strawberries, you don't.

My basic point is the economy is a dynamic system that can adjust one way or the other—

Chairman SPECTER. You think the market forces would accommodate if these workers weren't available?

Mr. KRIKORIAN. If they disappeared tomorrow, that would be extraordinarily disruptive, but there is no prospect of that happening. Over time, yes, market forces would deal with it.

Chairman SPECTER. I have only 30 seconds left and I want to pose a question to Professor Massey, so pardon the interruption. You talk about renewal only once in a lifetime of the visa-holder after he or she returns home. Do you think that there is any practical way that temporary guest workers should be able to earn legal permanent resident status after staying in the U.S. labor force for a period of time without returning home?

Mr. MASSEY. Yes, I do. I think that at the same time you set up a temporary worker program, it is also true that the old saying that there is no such thing more permanent than a temporary worker program. Some fraction of those temporary workers are going to acquire social and economic ties to the United States that will draw them into a more permanent status and there should be a pathway for that small fraction of people to become legal resident aliens of the United States.

But left to their own druthers, the vast majority of people circulating from Mexico would prefer to return home, and so you should try to accommodate that with a temporary worker program, but also have an avenue for permanent settlement for those who acquire ties to the United States to qualify them.

Chairman SPECTER. Thank you, Professor Massey. The red light went on during the middle of your answer.

I will yield now to Senator Kennedy.

Senator KENNEDY. Thank you very much. I thank the panel. I think we have gotten a pretty good impression from this panel about the dynamics of this debate in a lot of different ways.

I want to just ask Frank Sharry about another dimension and that is what we can expect from Mexico and these other countries. The panel hasn't mentioned this issue, but unless we get cooperation in this whole undertaking from Mexico and Central American countries, we are not going to achieve reform even with the proposals that Senator McCain and I have made. I am interested if you would comment on it.

We have the programs in Mexico, the three-to-one programs where some rebates that go back in are used internally to try to help economic development. We haven't talked about the importance of economic development in Mexico and the difference that that can make. There is also a payment. We talked earlier in the course of the hearing about people using fake I.D.s or Social Security cards and we know there are funds that are already in the Social Security fund that will not be claimed. I don't know whether there is any way or opportunity or if there should be one, but it

is a public policy issue whether some of that can be used in terms of helping the development in Mexico and along these border areas so that it changes the atmosphere and the climate. You are going to have to get a change in Mexico and Central America.

Could you comment about the issue just generally, briefly, but—

Mr. SHARRY. Yes, Senator. I agree with your thesis. We can't get this done right unless we have Mexico and Central America, which account for more than 80 percent of the current illegal immigration, at the table as full partners. I do think that we should expect more from them in both public education campaigns, administering temporary worker programs, and in cracking down on smugglers. I also think that part of the deal of engaging them on immigration reform is that their own internal reform agendas get accelerated.

You mentioned the Social Security suspense file, which I understand has some $420 billion in taxes that have been paid by those who can't get matched up to right numbers and the only explanation from SSA is that almost all of that is from undocumented immigrants who have been working and having their FICA taken out. that is a huge sum of money. Now, most of it, I hope, will 1 day get matched up to the workers themselves, but no doubt, some of that will be available both for, perhaps for development processes in Mexico and Central America.

But we need to bring them to the table. They are democratic governments and they will come to the table if we have a fair immigration policy that responds to the law of supply and demand in this hemisphere.

Senator KENNEDY. Thank you. On the issues of wages and the impact in terms of employment, I don't think any of us question that if you are going to pay people $15 or $20 or $25 to make beds or wash dishes, maybe you can get people to do it, but it is going to be a rather dramatic change in the economy in terms of what we are looking at here. We can't even get an increase in the minimum wage from $5.15 an hour in the last 9 years, and the idea that we are going to suddenly alter and change this economy so that we are going to be paying all these people and change this thing dramatically is something that I find quite difficult to get a handle on.

But I am interested in, Professor Massey, just about what is happening out there in the depression of wages, even on American workers. Could you talk about what you think, if we get to a legitimate temporary worker program where a worker is going to have the protections in terms of what they are going to get paid, has got the mobility to move around, as compared to what we have at the current time in terms of the exploitation of the undocumented? What is sort of the swing on that in terms of the economic conditions generally of workers in those areas? What do you see as a professional economist and somebody who has studied this?

Mr. MASSEY. Well, I think one of the major reasons that wages have lagged at the low end of the distribution is that we have seen a buildup of people without any labor rights in the United States. People in undocumented status are, in fact, vulnerable and subject to exploitation, and ironically, this isn't because more people are coming to the United States, it is because when you militarize the border, the paradoxical effect is you deter them from going home.

So what has fallen is not the rate of entry, but the rate of return migration and you have got all these people building up north of the border in undocumented status and by competing in labor markets in this super-exploitable position, it puts downward pressure on American wages and working conditions.

I think the way to improve the situation for American workers is to grant people in the United States full rights within the U.S. labor market and labor markets work to allocate supply and demand, so you should allow people full rights to participate and allow the markets to do their work.

Senator KENNEDY. My time is up. Thank you, Mr. Chairman.

Chairman SPECTER. Thank you very much, Senator Kennedy.

Senator Cornyn, do you have questions for this panel?

Senator CORNYN. Just briefly, Mr. Chairman, if I may.

Chairman SPECTER. Please proceed.

Senator CORNYN. I think all of us agree that there are several different components to immigration reform that we need to address. One, obviously is the national security imperative. The other is the economic issues involved. And third, I would say, are the compassion issues that cause our hearts to go out to those who are literally dying trying to come to America to provide for their families. I don't know anyone under similar circumstances who would not try to do the same, assuming that they had sufficient courage to do that.

My own belief is the best and most compassionate thing we can do for people is to create a legal system and one that can be enforced, because a legal system then provides protection of the laws to workers. It provides protection against the human smugglers. It obviates a necessity for those. And it even helps the spouse who is subject to domestic violence and who is afraid to report it because of her status.

But let me talk first, and perhaps exclusively in the time I have remaining, about enforcement. We know that the nature of immigration has changed across our borders, that it is not the traditional economic immigrant only, but rather we know that that porous border makes us vulnerable to people who want to come here to kill us, literally. It is just a matter of money to the smugglers. They will smuggle guns, they will smuggle drugs, they will smuggle people. They don't care whether they are members of al Qaeda or whether they just want to work and provide for their families.

Mr. Sharry, would you talk about, briefly, what sort of enforcement measures you think are imperative as part of this comprehensive immigration reform package? I understand there are other attributes that you think it needs to include—

Mr. SHARRY. Right.

Senator CORNYN [continuing]. But just talk to us about enforcement.

Mr. SHARRY. Thank you, Senator. Well, let me suggest that I think there are a number of good ideas in the legislation that you have put forward that should be fully considered as part of a Senate Judiciary bill. I think the combination of robust border enforcement with the kind of infrastructure and technology improvements is essential. I think the idea of more boots on the ground, both on the border and in the interior, are ideas that have to be further de-

veloped and implemented. I particularly like the way you have designed the bilateral agreements with sending nations. I think that is a respectful but essential way to engage the sending countries so we get cooperation from them in a meaningful way and I think that that is an excellent idea. And I think the detailed approach that you take to worker verification is essential.

I think at the end of the day, if, in addition to augmenting the increased border enforcement, the key to reducing illegal immigration and draining the swamp of fake document merchants and smugglers is really going to be worker verification, and I think we need to do it. It is tough to do it right. We need to take into account privacy concerns, data concerns, anti-discrimination concerns. They are all legitimate, and I think those elements need to be added in this mix. But at the end of the day, if we have that combination from sending countries to border to interior enforcement combined with legal channels, I think we will significantly reduce illegal immigration.

Right now, about a third of the flow is illegal. Our goal should be nothing less than to have it less than two or 1 percent as a flow, in which our Border Patrol can instantly know if someone is crossing our border and have teams go after those folks. We have got to take care of the networks that move workers so that 1 day, they can't move terrorists.

Senator CORNYN. Mr. Krikorian, would you speak to that same question, please?

Mr. KRIKORIAN. I am inspired that Frank is so pro-enforcement now. It is a refreshing cool drink of water to hear. The problem, though, is that in the discussion of immigration enforcement and security, what we often hear is that the dishwasher isn't the problem, the terrorist is the problem. And the fact, of course, is the dishwasher does not have a bomb vest on him and is not going to blow up a bus. But any immigration system that the dishwasher can sneak through is one that the terrorist can also sneak through.

So we can't do what really has been kind of the implicit sense since 9/11 in immigration enforcement. We can't just pick and choose which immigration laws we are going to enforce or who we are going to enforce them against. We need to do it comprehensively at consulates overseas, at the border, and inside the country in order for the security benefits of it to be realized, because without it, if we look only at people from Egypt and Saudi Arabia, for instance, we will end up with terrorists using French passports or Russian passports or others, and those are not hypotheticals, those are real things. So we need enforcement across the board if it is going to have any security benefits at all.

Chairman SPECTER. Thank you very much, Senator Cornyn.

Without objection, Senator Leahy's statement will be made a part of the record.

Thank you very much, Mr. Sharry, Mr. Krikorian, Professor Massey. Your testimony has been very helpful and now the Committee will struggle with the so-called markup where we try to write a bill.

There is no doubt of the enormous importance of the immigration issue, how we balance many conflicting factors. I was interested to hear the story of Senator Durbin's grandparents, a story very simi-

lar to the story of my parents, both of whom were immigrants. I disclosed at the outset my bias at birth favoring immigrants. Beyond that, we have to have a program which engenders respect for law and protects our borders and sees to it that we have an adequate work force, lots of complications, but within the pay grade of the Judiciary Committee.

That concludes our hearing. Thank you all very much.

[Whereupon, at 11:54 a.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

[Additional material is being retained in the Committee files.]

QUESTIONS AND ANSWERS

Questions For the Record
Senate Judiciary Committee
"Comprehensive Immigration Reform II"
October 18, 2005
Secretary Michael Chertoff

Questions submitted by Senator Charles Grassley

1. During the hearing, I asked you about the over-counting of H-1b visas by CIS and the fact that the agency is blatantly breaking the law. You mentioned that the agency may change their counting by exercising a random counting approach. Even with this mechanism, I believe the agency will continue to violate the law and over-count the annual cap. I would like to know more specifically how the agency will prevent 65,001 H-1b visas from being issued each year.

Response: In light of the underage that occurred during the administration of the cap count for fiscal year 2004, and the subsequent overage that occurred during the administration of the cap count during fiscal year 2005, coupled with recent legislative changes to the H-1B cap, USCIS has redesigned its cap counting and monitoring methodology to ensure a more centralized and streamlined process for fiscal year 2006. Among the major changes implemented for fiscal year 2006 cap eligible cases were the redesign of how USCIS would accept receipts on the last filing date and the implementation of IT enhancements to allow USCIS to capture timely data. This centralized process and availability of real time data, which included the need to access, assess and analyze over 1.6 million records (the last 6 years of H-1B applications), allows USCIS to monitor daily receipts for fiscal year 2006 cases to analyze adjudicative and filing trends to support the cut off of filings in a timely and effective manner.

In this current calendar year, USCIS determined that by August 10, 2005, it had approved and accepted a sufficient number of petitions to adjudicate to meet the FY 2006 H-1B cap. Those applications deemed to have been received in excess to reach the statutory cap were returned to the petitioner. The calculation utilized for cap limit determination is based upon a variety of factors including past approval and denial rates. There are also inherent challenges in this process. As an agency, USCIS is tasked with monitoring the cap at the front end of a rather long and complex process involving several departments in the adjudication and issuance of H-1B visas. Indeed, USCIS has the limited role of adjudicating H-1B petitions. In those instances where the petition is a request for a Change of Status, USCIS is in a position to accurately count that number against the cap. However, there are several other steps in the cap issuance process, none of which USCIS monitors or controls. Petitions for foreign workers where the beneficiary is overseas involve both the Department of State for the visa issuance and CBP, which admits the alien. Because of the lag time between approval of the petition, issuance of the visa, and admission of the individual, projections must be made regarding the relationship between petitions approved and visas likely to be issued.

That said, it appears that our initial monitoring of the cap receipts and implementation of the random selection process were successful. To date USCIS has approved 51,545 petitions, which accounts for 89 percent of the fiscal year 2006 limit of 58,200 (note the cut off was set at 58,200 excluding the Chilean-Singapore set aside). Given denial rate calculations that are based upon adjudication processing times, USCIS appears to be on target to be very near the requisite cap limit once adjudication is completed. In addition, I am confident that recent changes to our processes have gone a long way in establishing a process that is fair, transparent and as reliable

as practicable. In sum, DHS has completely overhauled the methods by which we accept cases as we approach the cap, and DHS is also rejecting all cases deemed in excess of the number needed to generate approvals that use up but do not exceed the cap.

2. I am concerned about internal fraud and corruption at CIS. Even the best system for rooting out benefit applicants with terrorist or criminal ties wouldn't work if CIS employees are influenced by bribes by foreign governments to help applicants get benefits, even though they are ineligible. My understanding is that there is confusion within the Department about what office ought to be responsible for investigating internal corruption. The office officially responsible for internal security has only a handful of criminal investigators and a huge backlog of allegations to deal with. Thousands require administrative review and hundreds more require criminal review, but the Inspector General's Office won't do them. Immigration and Customs Enforcement (ICE) won't do them. It's left to a small internal office without the resources they need to do their job.

   - These sort of allegations need to be taken seriously. When the Inspector General refers them back to the agency, who should be responsible for investigating them?

   - What are you doing to ensure that these internal corruption allegations are taken seriously and that the office responsible for handling them is willing and able to do it aggressively?

Response: As you are aware, Immigration and Customs Enforcement (ICE) transferred responsibility to USCIS for investigating allegations of misconduct against USCIS employees in March of 2005. Although the DHS Office of Inspector General continues to refer allegations to USCIS for review/action, the final responsibility rests with the USCIS Office of Security and Investigations (OSI), the office that has been designated to handle these cases.

With respect to internal corruption allegations, USCIS has reviewed every one of the 500 or so referrals initially labeled as potentially having "criminal" implications. Roughly one-third did not involve allegations about USCIS employees, and were instead allegations concerning illegal aliens present in the U.S. (an ICE issue) or aliens that had perpetrated fraud upon USCIS (thus generating leads for the Fraud Detection and National Security Unit (FDNS) that may ultimately be referred to ICE for investigation). The remaining two-thirds of the cases were already being investigated by OIG (which had retained the investigation and was merely notifying USCIS about that) or were referred by OIG to USCIS for further analysis and, if necessary, investigation and will be vigorously pursued to conclusion by USCIS. In response to various concerns raised about our administrative complaints backlog, USCIS has reviewed a sample of the administrative complaints presently within USCIS jurisdiction. The vast majority have been determined to be complaints about processing delays which have subsequently been resolved or, in much smaller numbers, are complaints resulting in referral to ICE, FDNS, DHS or other components for follow up. Complaints will be referred to OSI-trained field representatives for appropriate administrative follow up.

With respect to process, DHS is committed to ensuring OSI is appropriately staffed, and supplemented by USCIS employees in the field who have been trained to assist with analysis and investigation of allegations, to handle its internal affairs mission. USCIS, and DHS as a whole, is determined to work closely with the OIG and other law enforcement partners in this effort to ensure full investigation of any complaints of such activity. In addition, USCIS Financial Management is working to identify and address any weaknesses in process controls that become apparent in connection with matters referred to USCIS.

- I am concerned that if additional staff needs to be hired to process millions of guest worker applications, this problem will only get worse with more background checks on new hires and the increased potential for fraud. How do you plan to increase the resources devoted to fighting internal corruption?

Response: Any project requiring substantial additional staffing will require additional background investigations of new hires. Similarly, any increase in applicant fraud would require additional investigations for FDNS or ICE. Additional resources may be necessary to conduct these investigations in the future. We will closely monitor the need for resources.

3. If a temporary guest worker program is implemented, the Department will have to upgrade their technology to handle the flow of millions of people.

   - How do you foresee the usage of existing databases?

   - Will a new database need to be created, and will it be able to check other existing databases?

Response: We are dedicating significant thought and planning to this process. Indeed, USCIS is deeply engaged in an urgent and aggressive project to transform its business processes through the installation of new IT infrastructure and the development of new database and case management systems. Although we are still examining the merits of a wholly new system, in any case we anticipate that a TWP will become a product line completely compatible with the new systems, and that we will be able to make necessary modifications to access existing systems as appropriate.

4. I recently sent a letter to you about foreign governments distributing consular cards to its citizens on U.S. soil. Mexico, for example, has the right to provide identification to them. Like I said in my letter, it's up to the federal government in the U.S. to deny them as a means of identification. I want the Department to issue guidance and policy recommendations to state and locals – as well as other federal agencies. I received a response from the Immigration and Customs Enforcement about this matter, but am not satisfied with the answer. Will the Department, under your leadership, communicate the guidance to others beyond the beltway?

Response: I appreciate and share your concerns that these consular identification cards and the processes by which they are issued may have security flaws. Consular identification cards do not establish or indicate lawful U.S. immigration status and should not be valid for that purpose, nor do they establish a foreign national's right to be or remain in the United States. The Department is concerned about how they are issued and the need for a more secure process. DHS strongly encourages state and local licensing agencies to take appropriate steps to verify the identity of individuals to whom they are issuing documents that may provide evidence of identity. Per the terms of the REAL ID Act, as of 2008, these cards will not be eligible for use to obtain a state driver's license that could be used for any federal purpose.

Questions submitted by Senator Jon Kyl

1. How much time will DHS need to set up and staff a secure and reliable temporary worker program?

Response: DHS is committed to implementing a Temporary Worker Program that, on the one hand, is efficient and reliable for its users and, at the same time, provides the necessary security and safety features to protect our homeland. A successful implementation of the Temporary Worker Program (TWP) depends heavily on securing the requisite preparation time, proportionate to the complexity of the program design selected, to facilitate achieving these twin goals.

DHS is considering a variety of possible models for TWP implementation. The staffing, resource and regulatory design requirements associated with these different models, and the consequent length of advance time needed to prepare for program implementation vary considerably. Relevant factors include the scope of the program; the number of aliens; employers and dependents that participate in the program; parameters for aliens present in the United States as opposed to aliens outside the United States; and access to other immigration benefits. Since the design of a TWP is still being debated, at this stage DHS can only project the types of functions and range of performance capabilities necessary to implement a TWP. Once the Department, the Administration, and the Congress have reached consensus on a clear vision of core issues such as the conditions of eligibility for participation, necessary steps in the application or adjudication process, and extent of implementation complexity, DHS will be able to estimate with greater certainty the amount of time necessary to set up and staff a secure and reliable TWP.

2. Has DHS determined how long it would take to improve and stand up a mandatory employment eligibility verification system on the Basic Pilot model? Are there any obstacles to establishing such a system that need to be overcome?

Response: As a small-scale pilot program, the Basic Pilot has proven to be an effective and reliable tool for participating employers in their efforts to maintain a legal workforce. Because of its success as a pilot, there is considerable interest in making electronic verification of employment authorization, along the model of the Basic Pilot, a mandatory national workplace standard. Expanding the Basic Pilot model to a mandatory national program requires that we make changes so the program works better on a large scale so it will meet Congressional expectations and employer needs. There are four areas where improvements are particularly needed before a program similar to the Basic Pilot is made mandatory for all U.S. employers.

The first is the funding source. Ultimately, a decision needs to be made on how this program is funded; whether through appropriated funds, employer fees, or a combination of these methods.

The second issue is data currency. Improvements in DHS data quality have been ongoing, but delays getting information into systems quickly enough to support the immediate needs of electronic verification have continued. DHS is working to resolve this problem so that a future mandatory national system would not have an unacceptable level of manual verifications.

The third area is identity fraud. Although the Basic Pilot reduces counterfeit fraud, it cannot detect true identity fraud that occurs when employees submit stolen or borrowed documents or provide counterfeit documents with information about work-authorized persons. The inclusion of biometric data in electronic employment verification would be a valuable longer-term tool to assist in detecting identity fraud. While there is currently no Federal system that provides biometric data for all persons as changes are made under the Real ID Act, State-issued driver's licenses and non-driver identity cards will make it more difficult to obtain and use fraudulent driver's licenses.

The fourth and final issue is ensuring employer compliance. The evaluation of the Basic Pilot found that some employers were selectively verifying new hires as well as verifying some job applicants and members of their current workforces. Additionally some employers failed to tell work authorized employees that they needed to contact USCIS or SSA to correct their records, and others failed to fire persons who had been found to not be work authorized. These practices are against the Basic Pilot provisions, and in some cases may lead to unauthorized employees continuing to work. Monitoring and evaluating employer compliance must be included in any larger program design to ensure that employers are verifying all new hires correctly and terminating employment of those who cannot be confirmed.

Moving from the Basic Pilot to a mandatory national verification program involves more than just making the Basic Pilot larger. Implementation of a mandatory national program requires a substantial amount of up-front preparation and transformation of processes and systems to a much larger scale. The limitations described above are among those that need to be addressed by USCIS and SSA before USCIS could implement an effective mandatory national electronic employment authorization verification program. Building capabilities for oversight and infrastructure, outreach and publicity, and monitoring and compliance also need to be developed.

I should also note that DHS is currently working on a report which discusses the issues and cost involved in implementing a mandatory workplace electronic employment verification system similar to the Basic Pilot program.

USCIS is already planning for the expansion of the program to make it easier for employers to verify electronically the employment eligibility of workers. The President's FY07 budget request, as passed by both the House and Senate, includes $110 million to begin expanding and improving the Basic Pilot, including conducting outreach, instituting systems monitoring, and compliance functions.

3. Do you believe there needs to be a period of time between DHS' readying itself for a temporary worker program and the actual implementation of that program? If so, have you estimated how much time you will need?

Response: DHS is committed to implementing a Temporary Worker Program that, on the one hand, is efficient and reliable for its users and, at the same time, provides the necessary security and safety features to protect our homeland. And, as noted above, a successful implementation of the TWP depends heavily on securing the requisite preparation time, proportionate to the complexity of the program design selected, to facilitate achieving these twin goals.

As noted above, DHS is considering a variety of possible models for TWP implementation. The staffing, resource and regulatory design requirements associated with these different models, and the consequent length of advance time needed to prepare for program implementation vary considerably. Since the design of a TWP is still being debated, at this stage DHS can only project the types of functions and range of performance capabilities necessary to implement a TWP. Once the Department, the Administration, and the Congress have reached consensus on a clear vision of core issues such as the conditions of eligibility for participation, necessary steps in the application or adjudication process, and extent of implementation complexity, DHS will be able to estimate with greater certainty the amount of time necessary to set up and staff a secure and reliable TWP.

4. Even with the process improvements you identified in testimony, will DHS have adequate detention space to hold every non-Mexican who is placed into expedited removal? If not, do you have an estimate of how many more beds will be required?

Response: Through increased efficiencies in internal processes as well as greater coordination with foreign governments for the issuance of travel documents and acceptance of their nationals and a modest increase in detention capacity already resourced in the FY06 budget, we have effectively ended catch and release of non-Mexican aliens at the border. DHS is closely monitoring apprehension and detention rates and will work with our partners in state and local government as well as private industry to identify capacity that can be acquired and activated/de-activated expediently as demand fluctuates. It is anticipated that the Secure Border Initiative's coordinated strategy of immigration enforcement will have a substantial deterrent effect on

illegal immigration which will reduce the detention and removal resources necessary to detain all non-Mexican illegal aliens apprehended along the border.

5. The United States Commission on International Religious Freedom authored a 'Report on Asylum Seekers in Expedited Removal' in February 2005, which made a number of recommendations to DHS. In your view, do aliens illegally crossing the border of the United States between the ports of entry, and who are placed in expedited removal, have adequate legal safeguards under the Immigration and Nationality Act and regulations, and adequate procedural safeguards under DHS' expedited removal process, to ensure that aliens seeking asylum or relief under the Convention Against Torture?

Response: Yes, I do believe that DHS has adequate procedural safeguards in place. The United States accepts refugees and asylum seekers based on both domestic law as well as international treaty obligations. However, it is clear that the United States must be a place of welcome and refuge for those fleeing persecution, not only because of legal obligations, but also because it is a moral imperative for our nation. CBP training and policies for implementation of Expedited Removal (ER) both at the Ports of Entry and between the Ports of Entry, emphasize the importance of the asylum protections enacted in the ER statute and our obligations under international treaties and conventions to protect asylum seekers. CBP Officers and Border Patrol agents, through training and policy, are reminded that any expression of fear of return by an alien should be referred to an appropriate Asylum Officer for review. The Department has an internal Expedited Removal Working Group, which monitors the implementation of ER and reviews, led by the Office of Civil Rights and Civil Liberties, the operation of ER by CBP.

I am further pleased to report that we are in agreement on a number of recommendations, and have already taken steps to implement certain recommendations set out in the Commission on International Religious Freedom report. For example, to protect the rights of those seeking asylum in the United States, a new position, Refugee Coordinator for the Department, was created to oversee all such Department initiatives.

6. How, specifically, are you and Secretary Rice encouraging foreign governments to more quickly accept the repatriation of their own citizens? Do you believe that Congress should take additional steps to ensure that countries accept the prompt repatriation of their citizens?

Response: The Department of Homeland Security and the Department of State have been working closely together to encourage countries to expeditiously repatriate their nationals. Both departments have met several times with representatives from the governments of El Salvador, Guatemala and Honduras. Nationals from these three countries constitute the vast majority of OTM apprehensions along the southern border. These countries have been advised that their failure to meet their international obligation to accept their nationals may bring about repercussions. Such repercussions may include visa sanctions or limitations on the eligibility of nationals from non-cooperating countries for the proposed Temporary Worker Program. We will

continue to work with the Department of State and meet with other countries as SBI expands its operations.

7. Is DHS taking full advantage of privately contracted detention space in the Southwest to support the expansion of the Expedited Removal process?

Response: DHS is detaining aliens at 100% funded detention capacity, including along the Southwest border. DHS has dedicated a number of beds in support of the expansion of Expedited Removal (ER) by working closely with its partners from state/local government and private industry to ensure required secure detention capacity is available as needed. Deterring future entries and accelerating removal of aliens ordered removed will enhance DHS's ability to secure the border, and to focus its resources on the greatest threats to public safety and to national security.

8. DHS recently acquired a Predator B Unmanned Aerial Vehicle (UAV) at a reported cost of around $14 million. What consideration is being given to smaller, cheaper UAVs so that DHS has more to work with?

Response: Based upon present DHS operational mission requirements and lessons learned from previous UAV feasibility studies, DHS / CBP determined that a medium altitude long endurance platform would meet this requirement. As DHS continues to use the Predator B in an operational environment, it will continue to explore other possible scenarios and missions where a smaller, less expensive system could be applied to supplement present capabilities. At such time that such opportunities are identified, they will be rigorously pursued.

Questions submitted by Senator John Cornyn

1. Secretary Chertoff, you testified at the hearing that it takes an average of 20 days to obtain travel documents from foreign governments. Could you clarify whether that timeframe applies to aliens placed in expedited removal proceedings, aliens placed in formal removal proceedings, or both?

Response: In general, this timeline is the same for both aliens placed in formal removal proceedings and aliens placed in expedited removal proceedings. However, those aliens who are placed in expedited removal proceedings after being intercepted at airports are generally removed on the next available flight to their port of embarkation for the United States.

2. Under the Immigration and Nationality Act, if the Secretary of Homeland Security notifies the Secretary of State that the government of a foreign country denies or unreasonably delays accepting an alien after the Secretary of Homeland Security ask whether the country will accept the alien, the Secretary of State shall order consular officers in that country to discontinue granting immigrant visas or nonimmigrant visas, or both, to citizens, subjects,

nationals and residents of that country. How many times has a Secretary of Homeland Security made that notification and, if the provision has not been utilized, why not?

Response: In 2000, the Attorney General, prior to the stand up of the Department of Homeland Security, notified the Secretary of State of Guyana's non-acceptance of its nationals, which resulted in visa sanctions for that country. That instance was the last issuance of such a notice.

In the past year, a Visa Sanctions Working Group was formed with ICE Detention and Removal Office (DRO), the Department of State, the Homeland Security Council and the National Security Council in order to explore options for dealing with countries who refuse to accept their nationals or who delay issuance of travel documents. The first three countries the group chose to initiate discussions with were Jamaica, India and Ethiopia. Significant progress was made with Jamaica without the need to use sanctions authority. However, in the cases of India and Ethiopia, little progress has been made and discussions continue to determine whether sanctions should be established.

3. Expedited removal has proven successful and efficient, and you testified that its application to Brazilians resulted in a ninety percent reduction in apprehensions within a few months. But you also testified that you are looking for ways to reduce the thirty-four day average time for removal. If Congress imposes additional procedural steps in the expedited removal process, such as additional review of determinations, could those changes impede your ability to maintain or shorten existing cycle times?

Response: If Congress were to impose additional procedural steps in the expedited removal process, the changes would certainly impede DHS' ability to shorten existing cycle times. The length of time in detention from apprehension to removal would be lengthened while aliens are going through any additional review steps.

Questions submitted by Senator Russell D. Feingold

July 6 ICE Investigation Incident

At the hearing, I asked about an incident that occurred on July 6, 2005, where Immigration and Customs Enforcement (ICE) officials, impersonating Occupational Safety and Health Administration (OSHA) employees, publicized what they characterized as a mandatory OSHA safety training for workers at the Seymour Johnson Air Force Base in Goldsboro, North Carolina. Once workers arrived at the meeting, the ICE officials disclosed that there was no safety briefing, and subsequently arrested 48 undocumented workers.

1. At the hearing, Secretary Chao indicated that there was "no contact" between ICE officials and anyone at the Department of Labor, including OSHA, prior to the Seymour Johnson Air Force Base arrests on July 6, 2005.

a. At that time, did ICE have a policy regarding ICE employees impersonating other agency personnel as part of an investigation? If so, what was it, and how was it communicated to ICE agents?

Response: At the time, there was no written policy concerning the impersonation of agency personnel prior to an operation.

b. Were there any instances prior to July 6, 2005, in which ICE investigators impersonated OSHA personnel or the personnel of any other? If so, please explain the incident(s) in detail.

Response: I am not aware of other instances in which ICE investigators impersonated OSHA personnel prior to this incident. When necessary, ICE, like all investigative law enforcement agencies, utilizes undercover operations that occasionally require impersonation to advance the investigation and to ensure officer and public safety.

c. I understand that on July 22, 2005, Marcy Forum, Director of the Office of Investigations, issued a memorandum to all ICE special agents in charge directing them to coordinate efforts with relevant agencies in the future if ICE personnel intend to use a ruse involving impersonation of other agencies' employees. Have there been any other documents issued designed to prevent a future incident like the one in Goldsboro?

Response: In addition to the July 2005 memorandum, more extensive directives were subsequently issued by Marcy Forman, Director of the Office of Investigations, and by John Torres, Acting Director of the Office of Detention and Removal.

2. At what level are decisions made to use a "ruse" to investigate or arrest illegal aliens?

Response: In general, the principal field manager makes these determinations. Under the policy put into place through the directives referenced above, prior notice to the potential affected agencies with a procedure for issues or concerns to be raised and decided at the respective appropriate agency levels is required. The directives also state that "ICE Headquarters has directed that the use of ruses involving *health and safety programs* administered by a private entity or a federal, state, or local government agency, such as Occupational Safety and Health Administration (OSHA), will be discontinued. All other ICE investigative enforcement actions requiring the use of a health or safety-based ruse must be pre-approved by the Assistant Secretary of ICE and coordinated with the respective government agency or private entity."

Nonetheless, the use of ruses by law enforcement agencies as a tool to facilitate the investigation and apprehension of violators is a long-standing, widespread law enforcement practice. When properly employed, a ruse can enhance officer safety, prevent subjects from fleeing, and effectuate the safe arrest of a large group of violators. While the methods employed at the Seymour Johnson Air Force Base should not have included an OSHA representation ruse without prior coordination with DOL, it did enable the various stakeholder agencies to safely and expeditiously arrest 48 undocumented aliens who were competing in the labor market with legal

workers for jobs and wages funded by federal contracts, and who were unlawfully working on a U.S. military base.

3. Why was OSHA not informed of this particular ruse?

Response: OSHA should have been consulted. ICE has acknowledged the problem and has taken corrective action. The Directors of Investigations and Detention and Removal Operations have issued written guidance to field managers prohibiting ruse operations that involve the use of the name of another government agency or legitimate private entity without prior coordination and approval. Specifically, written directives now state that "ICE Headquarters has directed that the use of ruses involving *health and safety programs* administered by a private entity or a federal, state, or local government agency, such as Occupational Safety and Health Administration (OSHA), will be discontinued. All other ICE investigative enforcement actions requiring the use of a health or safety-based ruse must be pre-approved by the Assistant Secretary of ICE and coordinated with the respective government agency or private entity."

4. Who made the decision to go forward with the ruse that was implemented on July 6, 2005, in Goldsboro?

Response: A supervisor in the SAC Atlanta area of responsibility made this determination.

- What other officials were made aware of the ruse plan before it was carried out?

Response: Other agencies participating in the ruse included the Defense Criminal Investigative Service (DCIS) and the Air Force Office of Special Investigations (AFOSI).

- Has anyone responsible for this incident been reprimanded or disciplined in any way for their actions?

Response: The managers involved in this operation were: (i) thoroughly questioned regarding the decision making process leading up to the incident; (ii) informed of the adverse effect of their decisions on DOL, and others; (iii) informed of the importance of coordinating any ruse operation involving the use of the name of another agency or private entity; and (iv) made aware of the subsequently issued written directives referenced above.

5. Secretary Chao confirmed at the hearing that this type of action undermines OSHA's credibility.
- Do you agree?

Response: Certainly, DHS recognizes the seriousness of OSHA's primary mission. DHS's mission in this area is to remove illegal aliens from sensitive facilities and critical infrastructures, such as military bases. Both missions are vital to a safe and lawful work environment. Indeed, the missions are coterminous, not divergent.

- Do you understand the concerns that have been expressed by the Labor Department about the problems this type of incident creates for ensuring workplace safety?

Response: As I have expressed, we certainly understand and appreciate DOL's concerns.

6. According to news reports, representatives from the Labor Department, Justice Department, and Homeland Security were going to meet to discuss this incident. Secretary Chao stated at the hearing that it was her understanding that the meeting had taken place.

a. Who attended the meeting?

Response: ICE received a call from the Solicitor of Labor and discussed the issue. ICE advised the Solicitor that guidance would be issued to the field concerning this incident.

b. Please describe the meeting and its results in detail.

Response: Please see above.

c. Was any new policy developed as a result of the meeting? If so, please provide a description of it, and a copy of any documents issued as a result of the meeting.

Response: ICE issued the aforementioned field guidance memoranda. A copy was provided on April 13, 2006, and is attached hereto.

Comprehensive Immigration Reform

7. You testified at length about the Department of Homeland Security's efforts to curb illegal immigration. Do you agree that creating more channels for workers to come here legally to seek employment will allow your agency to focus its enforcement efforts on people who are entering the country with the intent to harm the United States, as opposed to those who are coming here to fill jobs?

Response: Yes, I believe the effectiveness of our border security and enforcement initiatives is tied to creating legal channels for workers our economy needs to continue growing. Creating these channels will better enable the Department to focus our enforcement efforts on identifying and apprehending those individuals who present the greatest threats to our national security and public safety.

8. You stated in your testimony that "ending illegal immigration is going to require three pillars. It is a three-legged stool. It requires tough enforcement at the border, tough interior enforcement, and a temporary worker program to deal with the very real draw that the need for labor is exerting on migration across the border." Illegal immigration is not the only aspect of comprehensive immigration reform. It is also important to address those who have entered the

United States legally according to current immigration regulations, but must wait years to obtain legal permanent residency due to backlogs or caps on visa quotas. Their family members often face even longer delays for similar reasons.

How would the President's plan for immigration reform address the waiting period for legal foreign immigration?

Response: It is evident after study of this issue that the waiting period for legal foreign immigration is the product of two factors. The first factor is the congressionally imposed statutory limits on available immigrant visas in relation to the number of petitions for those visas. The second factor is benefit adjudication processing times. USCIS has made substantial progress toward reducing processing times to six months by the end of FY 2006. Simultaneously, based on the principles of the DHS Second Stage Review, USCIS is developing a business transformation plan that will reengineer the entire adjudication process. This transformation will solidify our achievements in eliminating the adjudication backlog and create an efficient, flexible, customer-centric process.

In regard to the question of available visas, the President has pledged to work with Congress to reasonably increase the number of immigration visas awarded annually. Increasing the level of lawful immigration will alleviate pressure on waiting periods.

9. Do you support immigration reform that allows for visa portability – that is, allowing workers to change jobs while in the United States pursuant to a temporary worker visa?

Response: Certainly, the concept of visa "portability" is consistent with the goals of the President's reform plan. Portability is an important means to reduce the possible exploitation of foreign temporary workers and is a key incentive for enrolling in the temporary worker program.

It should also be noted that some non-immigrant visa categories currently allow temporary workers to change jobs while remaining in the United States. The American Competitiveness in the Twenty First Century Act [Public Law 106-313], signed October 17, 2000, allows non-immigrant workers on an H-1B visa to begin working for a new H-1B employer as soon as the employer files an H-1B petition for the worker. This law is intended to protect qualified workers from exploitative employers and improve the market flexibility of qualified workers for U.S. employers to hire.

10. You stated at the hearing that it would be impractical to attempt to deport every undocumented alien currently in this country. Many of these undocumented workers have made their lives here, have U.S. citizen children, and would like to remain in the United States permanently. The President's proposal does not provide any avenue for foreign workers to earn permanent legal status.

- What causes you to believe those who wish to stay in the country would participate in the President's new temporary worker program?

- What incentives would they have to participate in the program if they know they will ultimately have to leave the United States?

Response: As envisioned by the President, comprehensive immigration reform must contain strong incentives to participate for individuals wishing to stay in the United States, even if they ultimately may have to leave the United States when their work visa expires. Chief among these incentives is that increased interior enforcement will make it more difficult for an undocumented worker to remain employed in the shadows, thus undocumented workers will come into compliance with the law and no longer have to fear removal from the United States based on illegal immigration status. Obtaining lawful status in the United States has the further advantage of enabling immigrants to travel to and from their home country.

Undocumented workers often are limited to jobs in sectors of the economy where they believe their immigration status is not likely to be examined. Thus, obtaining lawful status will enable them to pursue employment opportunities in a greater range of market sectors. Together, the benefits derived from obtaining lawful status and improving their financial opportunities represent compelling reasons to take steps to legalize their status.

Hurricane Katrina

11. Last month a group of Senators sent you two letters urging the Department to make clear to immigrant victims of Hurricane Katrina that they can seek help from relief agencies without fear of being turned over to immigration authorities. While DHS has urged immigrants affected by the hurricane to seek aid, it has stopped short of the action taken by the head of the then-INS after the terrorist attacks of September 11, 2001. At that time, the then-INS publicly announced that people in the country illegally could seek help without fear that their information would be turned over to immigration authorities.

- Why was DHS unwilling to take this step after Hurricane Katrina?

- Will you reconsider that decision?

Response: The Department, through press statements and through FEMA notification, did made clear that it would not collect information regarding an alien's status unless that information was required to receive the benefit. Specifically, the stated DHS position was that, "DHS would not review FEMA records for immigration purposes. However, if in the course of fraud or other criminal investigation, DHS encountered undocumented aliens appropriate action would be taken."

ICE and CBP sent personnel to the area affected by Hurricane Katrina with the intent to assist those communities with humanitarian relief. Neither agency did so in order to conduct targeted enforcement actions against Hurricane Katrina evacuees nor have any enforcement directives been issued by those agencies calling for special immigration enforcement activities in the affected areas. The purpose for the deployment was law enforcement assistance, emergency aid

and search and rescue. While the officers have apprehended some criminal aliens, they have done so in the context of response to a criminal incident rather than information derived solely from the person's immigration status.

Questions submitted by Senator Tom Coburn

1. My staff and I have talked with current and former border agents and ICE officers who are deeply frustrated and feel that much of their work is wasted. These men and women put their lives on the line each and every day and it is our job to make sure it is not done in vain. In your travels across our country and in your discussions with border agents – what is your feeling about their morale?

Response: My experience is that the men and women of the Department of Homeland Security (DHS) are extremely committed to their mission. For Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE), that includes combating the terrorist threat and increasing our border security by aggressively enforcing our immigration laws at and between the ports of entry and going after smuggling organizations that put lives in danger. DHS has been in existence for approximately 3 years and since its establishment in March of 2003, it has unified 22 different federal agencies with a combined total of 180,000 employees. It has pushed forward under one mission: to lead the national unified effort to secure America, by preventing and deterring terrorist acts, protecting against and responding to threats and hazards to our Nation, and ensuring safe and secure borders, while welcoming lawful immigrants/visitors and promoting the free flow of commerce. While this has been challenging at times for our agents and officers, we are making progress in our efforts to secure the borders and enforce our immigration laws. I am confident that our successes will translate into improved morale and higher job satisfaction for our employees.

2. What specifically can be done to force countries to send travel documents to DHS sooner in order to expedite the removal of illegal immigrants?

3. Following up, can we or should we tie this in the countries foreign aid?

Response: In order to expedite the removal of illegal immigrants, the United States must ensure that foreign governments understand that failure to accept their nationals through the repatriation process could lead to repercussions. Possible repercussions include the ineligibility of their nationals to obtain specific immigration benefits, such as participation in the Temporary Worker Program (TWP), extensions of Temporary Protected Status (TPS), and the potential imposition of visa sanctions in accordance with Section 243(d) of the Immigration and Nationality Act.

We have recently had success in working with Honduras and El Salvador to decrease the processing time for travel documents. As a result of the increased apprehension rate along the border, many consulates have encountered an ever-increasing demand to process travel documents. These consulates lack sufficient resources or technological capabilities to process

this substantial increase in a timely manner. The U.S. Government is continually working with these countries to identify areas for improvement. ICE has addressed streamlining the travel document process through two programs: Video teleconferencing (VTC) and the Electronic Travel Document Program. VTC has been adopted by the Governments of both Honduras and El Salvador. VTC eliminates the need for consular representatives to travel from detention facility to detention facility in order to conduct alien interviews for the purpose of procuring travel documents. The Electronic Travel Document Program is currently under development at ICE and will be used along with the VTC Program. With this program, documents can be batch processed and electronically issued, eliminating the current delay associated with the request for, and the receipt of, each travel document.

4. One of the most frustrating issues for me and many of my constituents is chain migration (or what some call "anchor babies"). Young women who are 7 or 8 months pregnant make a dangerous trip, sometimes across a hot desert to have their babies delivered in the United States. As a doctor, I have delivered many of these babies. I cannot imagine a greater motive to come to our country that the fact that the baby will instantly become an American citizen. Mr. Secretary, what are your thoughts on this issue?

Response: There are many "pull factors" that result in aliens illegally entering the United States. Some of these factors are economic while others are social. Both factors may lead to illegal aliens making dangerous journeys across unforgiving terrain and in extreme conditions. In response, the Department has developed a comprehensive approach to deter illegal migrants from making those journeys. The Secure Border Initiative is such an approach, based on a three-pronged strategy: (i) greater enforcement at the border to stop illegal migration; (ii) increased interior enforcement to enforce our immigration laws against those already in the United States illegally; and (iii) the President's proposal for a Temporary Worker Program to reduce the economic incentive to attempt to illegally enter the United States. Through this approach we are confident that we can bring integrity back to the United States immigration laws, and discourage illegal migration, while providing illegal aliens with a safe and legal alternative to making a dangerous trek across our borders, without placing families in harms way.
Does this system not encourage illegal immigrants and make your difficult job even harder?

Response: As mentioned above, there are many factors that draw illegal immigrants to the United States. We feel that our new strategic approach to illegal migration, which is carried out through the Department's Secure Border Initiative, provides for a comprehensive and robust plan to protect our borders and discourage illegal migration.

5. Many supporters of various forms of amnesty or legalization claim that enforcement does not work. They claim that we have spent billions over the past decade and have little to show for it. What do you say to those who claim that enforcement simply will not work?

Response: This Department rejects the principle that enforcing our laws at our borders is a pointless endeavor. As indicated in previous responses, the Department's Secure Border Initiative will provide greater enforcement at the border to stop illegal migration, increases in

interior enforcement will enforce our immigration laws against those already in the United States illegally, and the President's proposal for a Temporary Worker Program will reduce the economic incentive to attempt to illegally enter the United States. Additionally, targeted enforcement efforts along our border and within the interior of the U.S. have been very effective in identifying and apprehending illegal aliens.

6. What is DHS doing to combat human smuggling – especially across the southern border?

Response: Criminal organizations operating worldwide are responsible for smuggling and trafficking tens of thousands of illegal aliens and thousands of pounds of illegal narcotics into the United States. These organizations generate millions of dollars in illicit profits that are moved through wire services, laundered through front businesses and transported out of the country. By exploiting vulnerabilities in border integrity, criminal organizations, whether they smuggle humans or illegal narcotics, are an unquestionable threat to the security of the United States.

Human smuggling is by definition an international crime. ICE has developed a full range of investigation and enforcement methodologies to confront the problem at every point—in source and transit countries, at sea, at our nation's borders and ports, and in the U.S. interior. In U.S. embassies throughout the world, ICE Attachés work with their counterparts in foreign law enforcement to better coordinate investigations and communication and to follow the money and seize the millions of dollars in profits from these organizations. ICE is also integrating our intelligence and enforcement efforts and we are mobilizing other governments and international organizations in the fight against human smuggling and trafficking.

One of the broad strategic goals of ICE is to dismantle criminal organizations and take away their assets and profit incentive. ICE targets criminal organizations by bringing to bear its broad range of authorities, expertise and capabilities, by aggressively investigating smuggling, trafficking and money laundering crimes, and by identifying and seizing assets and criminal proceeds.

Office of Investigations

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536

U.S. Immigration
and Customs
Enforcement

MAR - 6 2006

MEMORANDUM FOR: ALL SPECIAL AGENTS IN CHARGE

FROM: Marcy M. Forman
Director

SUBJECT: Use of Ruses in Enforcement Operations

This memorandum serves to clarify guidance issued on July 22, 2006, on the use of ruses in criminal investigations and law enforcement operations. The use of undercover ruses in the performance of the ICE law enforcement mission remains a valuable and effective tool. One of the main objectives of a ruse is to prevent violators from fleeing and placing themselves, officers and innocent bystanders in a potentially dangerous situation.

However, the use of ruses utilizing the names of agencies and companies involved in the administration of health and safety programs can impede the functions of those organizations by creating a perception that these organizations are acting as an enforcement tool of ICE. The use of ruses involving health and safety programs undermines efforts to increase safety in the workplace and undercuts workers willingness to report workplace safety violations based on a fear of law enforcement action being initiated against the reporting worker.

Effective immediately, the use of ruses involving *health and safety* programs administered by a private entity or a federal, state, or local government agency, such as OSHA, for the purpose of immigration worksite enforcement, will be discontinued. All other ICE investigative enforcement actions requiring the use of a health or safety-based ruse must be pre-approved by the Assistant Secretary of ICE and coordinated with the respective government agency or private entity.

Should you have any questions regarding this issue, please contact Acting Deputy Assistant Director Matthew Allen at (202) 514-0078

ANSWERS TO FOLLOW UP QUESTIONS POSED TO SECRETARY CHAO

SENATE JUDICIARY COMMITTEE HEARING ON IMMIGRATION
OCTOBER 18, 2005

Senator Kyl:

Q. You indicate in your testimony that annual caps on the number of low-skilled and seasonal agricultural work visas issued in the U.S. "creates an unfair system of winners and losers that does not serve our national interests." [p.4]. Is the Administration suggesting that the numerical limits be lifted?

A. The Administration is not suggesting that all numerical limits for temporary worker visas should be eliminated. While there are no numerical limits on H-2A visas for temporary agricultural workers, there is often a great deal of pressure on the cap levels for other types of temporary workers. The Administration's view is that a Temporary Worker Program (TWP) for lower-skilled workers needs to be responsive to the demands of the U.S. economy and should admit an adequate number of willing workers to meet the employment needs of American employers, provided that American workers are first afforded the opportunity to fill those jobs. We look forward to working with the Congress to determine that adequate number.

Q. What preparation has the Department of Labor made in preparing for the temporary guest worker program envisioned by the President? What additional resources will the Department require?

A. The Department is unable to project what resources it might need to fulfill its responsibilities under a TWP as the details of a new program and the resulting Departmental responsibilities have not been finalized. We look forward to continuing to work with Congress on the development of a TWP.

Q. Your testimony indicates that the Administration "fundamentally believes that the private marketplace is best equipped to design and manage an efficient . . . system" to match willing employers and willing employees. [p. 8]. How do you envision that happening?

A. To a great extent, the private marketplace has already created systems for matching workers and employers. Many private-sector job-matching services, labor brokerage services, employer associations, non-profit groups, local government organizations, and Internet-based job "search engines" already exist and match willing workers and willing employers in a variety of jobs and industries. The Administration's view is that a TWP will support and strengthen the Federal government's enforcement and oversight role. Matching workers and employers, however, is a task that should largely be left to the ingenuity and flexibility of the private sector, which has already demonstrated a capability to devise market-responsive systems to serve workers and employers. We would expect to work with the Congress in determining the appropriate parameters of such a system.

Q. Do you envision the Department of Labor taking steps to simplify or improve the labor market test? If so, what steps will you take?

A. The Department is constantly looking for ways to simplify and improve our processes. The labor market test is no exception. One option to improve the labor market test could be modeled on the recently reformed PERM process. For example, in the PERM program, employers seeking to hire foreign workers on a permanent basis attest to their recruitment efforts through the program's web-based application system, replacing what was once a lengthy, paper-intensive and heavily supervised process. Streamlining on the front end would be supplemented with thoughtful, effective fraud-prevention activities. Such reforms would help make labor market test procedures more timely and responsive to employers while maintaining essential protections for employees, both foreign and domestic, by ensuring that employers live up to their recruitment and other labor-related obligations.

Senator Cornyn:

Q. Secretary Chao, you testified that the President's proposal would provide no new pathway to legal permanent residence. Additionally, aliens who reach the six year limit as a temporary worker would be required to depart the U.S. and return to their home country for a one year period. In your opinion, why will undocumented aliens sign up for a program that does not create a new path to permanent residence and which could require them to depart the United States?

A. Devising a system that can achieve the goal of participation without unfairly rewarding illegal behavior is a central challenge in creating a new program. A foreign temporary worker program should be just that: a program to provide a temporary job for a foreign worker. Additionally, establishing a TWP is one of three important elements to achieve overall immigration reform. The other two elements – improving border security and increasing interior enforcement – will further encourage illegal aliens to "sign up" under a TWP.

The benefit of this system to an undocumented worker is that it enables him or her to come out of the shadows and to freely travel back and forth between the U.S. and their home country. Current undocumented workers live in a constant state of fear of discovery in the U.S. and an attempt to return to their home country may involve making a physically dangerous border crossing and raises the chances of being caught. Additionally, requiring workers to return to their home country helps support a system of "circularity," by which foreign temporary workers can come to the U.S. to work and freely travel back and forth to their home country. We expect that the benefit of open and legal travel back and forth across the border will be a positive inducement for undocumented workers to participate in a new program.

Feingold: (same question was posed to Chertoff)

Q. According to news reports, representatives from the Labor Department, Justice Department, and Homeland Security were going to meet to discuss this incident. Secretary Chao stated at the hearing that it was her understanding that the meeting had taken place.

a. Who attended the meeting?
b. Please describe the meeting and its results in detail.
c. Was any new policy developed as a result of the meeting? If so, please provide a description of it, and a copy of any documents issued as a result of the meeting.

A. Senior staff from DHS and DOL, including the Solicitor of Labor, discussed by telephone the Seymour Johnson Air Force Base sting operation conducted by Immigration and Customs Enforcement. Department of Labor officials have expressed to their DHS counterparts our strong objection to using an Occupational Safety and Health Administration briefing as a ruse in an immigration enforcement action. The Departments have agreed that ruses involving health and safety programs, such as OSHA, will not be used for immigration worksite enforcement

Additional Responses of Secretary of Labor Elaine L. Chao
To Questions from Senator Russell D. Feingold

Hearing on President's Comprehensive Immigration Reform Plan
Before the Senate Judiciary Committee
October 18, 2005

Q. Under current law, the Labor Department issues certifications to employers seeking workers under a number of visa programs, indicating the employers have tried but cannot find American workers to fill those jobs. Would the President's plan for a new temporary worker program rely on the current labor certification standards? If not, how would the standards be changed?

A: The President's proposal requires that any new Temporary Worker Program (TWP) would, like a number of programs under current law, ensure that foreign workers do not undermine the wages of U.S. workers and that employers must first recruit American workers before looking abroad to fill those positions. Recognizing that any TWP proposal ultimately must be enacted by Congress, we would expect that a new TWP program would utilize the processing efficiencies, such as attestations, that are part of the labor certification process in the current PERM program.

Q. The Labor Department in July 2004 created backlog reduction centers in Dallas and Philadelphia to address a backlog of thousands of DOL permanent labor certification applications, some of which have been pending since 2000.

a. Please report on the progress of the backlog reduction centers.

A: We have taken several steps to assure that our goal of eliminating the backlog of permanent labor certification cases by September 30, 2007 is met. The following backlog elimination measures are currently in place:

- The consolidation of case processing into two Backlog Elimination Centers (BECs) is addressing the time delays that were associated with the old system, which required employers to first file a case at the state level for review before the case was moved to the Federal level for final determination. All case processing is now performed at either the BEC located in Philadelphia, Pennsylvania or Dallas, Texas.

- All cases, numbering over 360,000, were transferred from the 50 states to BECs. No case was lost during this transfer process.

- We have made a significant resource investment to ensure that the BECs are appropriately staffed to eliminate the backlog on schedule. Currently, approximately 250 full-time equivalent (FTE) staff, in total, are working at the BECs. We will increase that number by approximately 48 FTE in the first half of 2006.

These measures have already shown results. Within the past year, the backlog of permanent labor certification cases has been reduced from approximately 360,000 to less than 260,000. Our interim goal calls for reducing the backlog to 150,000 by the end for FY 2006.

We are continuing to identify ways to increase the efficiency of the backlog elimination effort through information technology enhancements and management initiatives to increase the productivity of the Backlog Elimination Centers.

b. Do you think a similar backlog will occur should a new temporary worker program be created? How would the President's plan treat temporary worker applicants while DOL certification is pending?

A: We would not expect the President's proposal for a new temporary worker program to result in the labor certification backlogs that were experienced under the old permanent labor certification program. Recognizing that any TWP proposal ultimately must be enacted by Congress, we would expect that a new TWP program would utilize the same processing efficiencies, such as attestations, that are present in the current permanent labor certification – or "PERM" – program. Under the President's proposal, temporary workers would not be admitted to the U.S. until an employer's petition to hire the temporary worker – which includes a DOL-approved labor certification – was approved by the Department of Homeland Security.

Q. Secretary Chertoff stated at the hearing that it would be impractical to attempt to deport every undocumented alien currently in this country. Many of these undocumented workers have made their lives here, have U.S. citizen children, and would like to remain in the United States permanently. The President's proposal does not provide any avenue for foreign workers to earn permanent legal status. What causes you to believe those who wish to stay in the country would participate in the President's new temporary worker program? What incentives would they have to participate in the program if they know they will ultimately have to leave the United States?

A. Devising a system that can achieve the goal of participation without unfairly rewarding illegal behavior is a central challenge in creating a new program. A foreign temporary worker program should be just that: a program to provide a temporary job for a foreign worker. Additionally, establishing a TWP is one of three important elements to achieve overall immigration reform. The other two elements – improving border security and increasing interior enforcement – will further encourage illegal aliens to "sign up" under a TWP.

The benefit of this system to an undocumented worker is that it enables him or her to come out of the shadows and to freely travel back and forth between the U.S. and their home country. Current undocumented workers live in a constant state of fear of discovery in the U.S. and an attempt to return to their home country may involve making a physically dangerous border crossing and raises the chances of being caught. Additionally, requiring workers to return to their home country helps support a system of "circularity," by which foreign temporary workers can come to the U.S. to work and freely travel back and forth to their home country. We expect that the benefit of open and legal travel back and forth across the border will be a positive inducement for undocumented workers to participate in a new program.

SUBMISSIONS FOR THE RECORD

STATEMENT OF
SECRETARY OF LABOR ELAINE L. CHAO
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

October 18, 2005

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on the President's plan for comprehensive immigration reform. I would like to begin by underscoring the point that the effectiveness of border security and interior enforcement initiatives is tied to creating a legal avenue for the workers our economy needs to keep growing. This will allow U.S. enforcement to focus on achieving control of our borders. When integrated with a workable and enforceable temporary worker program, U.S. border security and enforcement resources can be maximized to strengthen our homeland security, stop illegal immigration, and meet U.S. needs for a legal workforce.

Last year, the President proposed that we reform our current system for admitting and employing temporary foreign workers in this country. The President set forth principles that should guide comprehensive immigration reform. Those principles are:

- **Protect the Homeland by Controlling Our Borders**: A new program must support ongoing efforts to enhance homeland security.

- **Serve America's Economy by Matching a Willing Worker with a Willing Employer**: When no U.S. worker is available and willing to take a job, the program should provide workers for American employers. The process should be as clear, streamlined, and efficient as possible so people can find jobs and employers can find workers in a timely manner.
- **Protect the Rights of Legal Immigrants**: The program should not permit illegal immigrants to gain an advantage over those who have followed the rules.
- **Provide Incentives for Return to Home Country**: The program will require the return of temporary workers to their home country after their period of work has concluded.
- **Promote Compassion**: The program should afford illegal immigrants who are currently working an opportunity to join the temporary worker program and avoid exploitation. Participants in a new program would be able to travel back and forth between their home and the U.S. without fear of being denied re-entry into America.

A reformed temporary worker program based on these basic principles will provide America with several benefits, including:

- **A More Secure Homeland by Improving the Efficiency and Management of All People Crossing Our Borders**: It is in the interest of

our country, and each community, to identify foreign visitors and immigrants and clarify the nature of their intentions during their stay.

- **A More Prosperous Economy**: The program would allow workers to find jobs and employers to find workers, quickly and simply.

I know there are several immigration and temporary worker-related bills under consideration in Congress. I am not here today to endorse any particular bill you may be considering. Instead, I will share with you the Administration's plan for comprehensive reform that addresses border security, interior enforcement, and a temporary worker program. Reform must address these three aspects to be effective, but also must not allow amnesty.

I will focus my comments on the need for a reformed temporary worker program as an integral component in improving the safety and border security of the nation. An improved temporary worker program will enhance border security and interior enforcement by providing a workable and enforceable process for hiring foreign temporary workers.

The President's plan for reform recognizes that foreign workers are drawn to this country because of economic opportunity. These workers find employment here because many important sectors of our economy rely on foreign temporary

workers to fill certain jobs when there are shortages of willing and able U.S. workers.

But, the current system for hiring and admitting foreign workers is complex and burdensome for both the employer and employee. The Department of Labor has initiated some regulatory reforms over the past couple of years to help improve procedures in the labor certification process. But making additional effective improvements to our system of admitting and tracking temporary foreign workers will require legislative as well as administrative changes.

The President's plan seeks to address problems in the current temporary worker system by streamlining the process so that willing workers can efficiently be matched with employers who need foreign temporary workers to fill jobs for which there are no willing U.S. workers. The President's plan would also bring illegal immigrants who currently work in an underground economy into the open. And, of course, any reforms that improve the process for workers and employers must be matched with reforms that improve the safety and border security of our country as a whole.

Our current system is overloaded, ineffective at deterring fraud, does not work well for workers or employers, and strains the nation's enforcement abilities. Our country faces a continuing high demand for foreign labor in several sectors

of the economy. This demand is strongest among lower skilled occupations and for seasonal positions in businesses and agriculture. This constant, and in many cases increasing, demand for foreign labor strains our current admission system. As the members of this committee know, some visa programs have annual limits that are often reached in the first few months of the year. This environment creates an unfair system of winners and losers that does not serve our national economic interests.

The Department hears about these problems from employers and from members of Congress. Each year, we receive scores of inquiries from Congressional offices about pending visas or requesting the re-classification of entire groups of workers from one visa category to another with available slots.

When the demand for visas overwhelms the supply, many workers resort to illegal border crossings. Once in our country, these workers often use fraudulent documentation in order to obtain employment. As a result, employers can unwittingly hire illegal workers because there is no quick and efficient way to verify the authenticity of identification documents. And of course, some employers knowingly resort to hiring illegal workers because they fail to obtain legal foreign workers or because they do not want to incur the expense of navigating the complex bureaucracy required to obtain a foreign worker with a visa.

A well-designed temporary worker program will help alleviate each of these concerns by providing stability and certainty to workers, employers, and the American people. With a technologically advanced new system in place, workers will have visa documentation that clearly establishes their eligibility to work. Employers will have access to a verification system that enables them to quickly check the eligibility and verify the identity of potential employees. And with increased enforcement efforts, the American public will have confidence that employers are obeying the law and hiring only those people who are in the country legally.

The reforms should enable those who are here unlawfully an opportunity to come forward, apply for a legal temporary work status, and participate in the legal economy. But these people will not be granted amnesty for their violations of law. President Bush strongly opposes amnesty, because it unfairly rewards lawbreaking and because amnesty encourages further illegal immigration. At a minimum, those who come forward will not be offered an automatic pass to citizenship and should be expected to pay a substantial fine or penalty to participate in the temporary program. Applicants for the temporary worker program, including those already in the country, should undergo credentialing procedures and background checks, and at a minimum should have to meet the

legal admissibility standards set by Congress. Felons and those in removal proceedings would not be eligible to participate in the program.

Workers should also be issued biometric, tamper-resistant cards that will allow them to cross U.S. borders during their stay here. Currently, many illegal immigrants do not leave the U.S. because it can be costly and dangerous to make a return trip. A new temporary worker program will remedy this situation by providing workers with temporary status the ability to freely travel back and forth to their home country. This will help enable temporary workers to maintain ties to their home and help encourage them to return when their temporary visa expires.

That is a basic outline of how a new program would be structured for workers. Now let me share with you this Administration's view of the responsibilities a new program would entail for employers.

The President is committed to ensuring that every U.S. worker who wants a job can find one. Under the President's plan, U.S. workers come first. U.S. employers would have to make reasonable efforts to find a U.S. worker to fill a job before extending job offers to foreign workers. The temporary worker program must include strong workplace enforcement provisions and incentives for foreign workers to return home when their time in the program is done.

These program requirements are necessary to ensure that we protect our jobs for U.S. workers.

The Department of Labor has a limited, but important, role in the current work visa programs. As a prerequisite to hiring a foreign worker through most work visa programs, an employer must first have attempted to hire U.S. workers for the job openings. If that effort proves unsuccessful, an employer may then apply to hire foreign workers with a temporary work visa. The effort by employers to seek out and attempt to hire sufficient numbers of U.S. workers is referred to as a "labor market test."

The Department is responsible for verifying that an employer who wishes to hire temporary foreign labor has properly complied with the labor market test. In addition, the Department is responsible for enforcing the labor standards associated with these temporary worker programs to prevent the exploitation of the temporary workers and guard against adverse employment effects on U.S. workers.

Our colleagues at DHS and DOJ enforce the immigration laws. DHS also conducts security checks, determines admissibility, and adjudicates benefits, and we anticipate they would continue their role of ensuring that workers abide by

the program requirements, and that employers hire only documented temporary foreign workers.

On the topic of matching willing workers with employers, this Administration believes that the private marketplace, rather than a vast government bureaucracy, is better suited to meet this challenge. The federal government will have a great deal of work to do in completing background checks on temporary worker applicants, issuing visas, and improving border security. Private organizations, whether they are nonprofit or for profit, could help match employers with available workers. Of course, such a system will have to contain some government controls and regulations to prohibit, for example, the imposition of excessive fees on workers. But this Administration fundamentally believes that the private marketplace is best equipped to design and manage an efficient matching system.

The Department of Labor takes very seriously its responsibility to ensure that our workforce, including foreign workers admitted under temporary worker programs, is fully protected by our nation's labor laws. The Department will continue its strong enforcement of labor laws to protect the health, safety, working conditions and pay of all workers. It is this Administration's policy to hold employers accountable and to enforce all labor laws without regard to the legal status of workers. These efforts not only help protect foreign born workers

from exploitation, but also help ensure that U.S. workers are not undercut by unscrupulous employers.

The Administration looks forward to working with the Senate and the House in the coming months. I know Senators are deeply interested in the temporary worker program and members of this committee have introduced bills suggesting significant changes in that system. Reforming our temporary worker programs is a difficult and complicated undertaking. Working together, I am confident that reforms will be enacted to protect homeland security, restore the rule of law, serve the economic needs of our nation, and honor our history of openness to legal immigration.

STATEMENT OF SECRETARY MICHAEL CHERTOFF
U.S. DEPARTMENT OF HOMELAND SECURITY
BEFORE THE UNITED STATES SENATE
JUDICIARY COMMITTEE
TUESDAY, OCTOBER 18, 2005
WASHINGTON, D.C.

INTRODUCTION

Mr. Chairman, Senator Leahy, and members of the Committee: thank you for the opportunity to address you today, and for your ongoing support of the Department of Homeland Security's efforts to keep America secure. I am honored and pleased to appear before the Senate Judiciary Committee for the first time in my current capacity to discuss the vital issues of border security, interior enforcement and immigration reform as a whole.

Illegal immigration is a severe and growing problem. As members of this Committee know, over the last few months this Administration has been consulting with members of Congress on comprehensive immigration reform. We have been grateful for your input in these productive sessions. And I am thankful for your support and input as we move forward. Citizens are rightly disturbed by illegal immigration. The President has heard these concerns. And I have heard them too, from all across the country and from right here on Capitol Hill. I am committed to taking aggressive and innovative steps to solve the problem.

We are moving to end the old "catch and release" style of border enforcement, increasing removals by tens of thousands a year. We have expanded Expedited Removal along the entire southwest border. We are hiring and training hundreds of new border patrol agents. We are deploying new technologies, from advanced telecommunications to unmanned aerial vehicles. And we are finding new ways to work with state and local law enforcement to deal with illegal immigration and the ills that it brings.

Illegal immigration hurts everyone. It flouts the rule of law, and it allows criminal elements to enter our country. It undercuts those who patiently pursue legal immigration proceedings. It places heavy economic strains on towns, overwhelming their ability to cope with the tide of humanity. And it threatens the lives of the migrants themselves. The human smugglers and traffickers -- known as "coyotes" -- who bring them to the country all too often rob them, abuse them and leave them for dead. In addition to this human cost, these smugglers also traffic in guns and narcotics, a threat to the stability of both the United States and Northern Mexico. Finally, if we can not control our borders, we leave the way open for terrorists hoping to do us harm.

Since his first inauguration, President Bush has placed the utmost importance on border security and has devoted significant resources to this challenge. The President believes -- and I agree -- that illegal immigration threatens our communities and our national security.

The President understands that ending illegal immigration means both tough enforcement and action to reduce the demand that draws illegal migrants into the country. That's why his Administration believes we need a three-pillar, comprehensive approach to reforming our immigration system: (1) gain control of the border; (2) build a robust interior enforcement program; and (3) establish a Temporary Worker Program (TWP).

The effectiveness of our border security and interior enforcement initiatives is closely tied to creating a workable and enforceable TWP. While Secretary Chao will speak in more detail, the TWP seeks to address two huge strains on the current immigration system: high U.S. employer demand for workers and active participation of an estimated eight million undocumented workers in the U.S. economy. A well-designed TWP will provide legal channels for U.S. employers and foreign born workers to meet the needs of a vibrant and successful U.S. economy without disadvantaging American workers.

The President believes we need a well-designed TWP, coupled with a tough enforcement regime, to gain control of our borders. We must aggressively enforce our immigration laws. And enforcement will not wait for enactment of the TWP. We already are making a substantial down payment on the enforcement measures that the President's program will require. Indeed, since President Bush took office in 2001, the United States government has deported several million illegal aliens, including approximately 300,000 criminal aliens. Since 9/11, yearly spending on border security has increased by $2.7 billion, or 58 percent. Yearly spending on immigration enforcement has also increased dramatically. Enforcement expenditures by DHS and Justice have gone up by $1 billion, or 35 percent.

I would like to talk today about some of the enforcement measures the Department of Homeland Security is already taking.

U.S. Customs and Border Protection currently has over 11,000 Border Patrol agents along the 6,000 miles of our northern and southern borders, which is an increase of 1,649 Border Patrol Agents since 2001. In addition, an additional 18,000 CBP officers are posted at our Ports of Entry (POEs), an increase of 4,533 officers since 2001. Immigration and Customs Enforcement, or ICE, has over 8,000 agents and officers working to apprehend criminals, absconders, and other aliens illegally present within the United States. These DHS agents and officers apprehend illegal aliens in a variety of ways.

For example, CBP Border Patrol agents apprehend aliens attempting to enter the U.S. between the POEs, while CBP and ICE officers at our POEs stop illegal entry by aliens who possess stolen or fraudulent documents. In addition, CBP apprehends or detects aliens who attempt entry with terrorist or criminal intent while ICE officers and agents

work with federal, state, and local correctional facilities to identify and remove aliens with criminal records. And I would be remiss if I did not mention the critical role that the U.S. Coast Guard plays in securing our land and sea borders.

In FY 2005 alone, CBP Border Patrol agents made over 1.1 million apprehensions. CBP Field Operations officers stopped more than 600,000 aliens attempting to enter at our POEs; our officers referred them for further law enforcement action such as detention or prosecution for those with criminal records. In the same period, ICE apprehended approximately 140,000 illegal aliens in interior enforcement operations with an additional 15,000 aliens apprehended under its Fugitive Operations Program. Under the President's leadership, ICE developed the Fugitive Operations Program and its first teams were deployed in 2004. CBP also voluntarily returned over 940,000 Mexicans and refused entry to an additional 425,000 aliens at POEs. ICE also executed removal orders for over 130,000 aliens who have been placed in proceedings, including 77,000 with criminal records. These are solid numbers demonstrating a solid commitment to law enforcement.

Today, the President is signing the DHS Appropriations Bill into law. Thanks to this Congress, DHS now has $940 million in new resources for DHS law enforcement agencies to further strengthen border security and enforcement. This includes more than $890 million alone for CBP and ICE, our primary border enforcement agencies. These increased resources will support a full range of critical border security needs, including 1,000 Border Patrol agents on top of the 500 new agents added last year. The bill also permits further expansion of detention capacity by as many as 1,920 additional beds, provides 250 additional ICE investigative agents, and adds 8 new fugitive operations teams to track down individuals ordered to leave this country, but who instead absconded.

Even now when DHS is continually focused on our response to the tragedy of Hurricanes Katrina and Rita, we have remained constant in our enforcement of the law and have not allowed those tragedies to prevent us from implementing new approaches to border security. For example:

- In September I authorized eliminating the environmental challenges that had for years blocked completion of the 14-mile border barrier in San Diego. This barrier will provide multiple layers of security, further reducing illegal entry to the United States and improving border security.

- With funds appropriated by the Congress earlier this year, we have begun to hire, 1,500 new border patrol agents for deployment along the entire border. This brings the total Border Patrol agent increase to 3,070 agents since President Bush took office in 2001. We have already begun to graduate these new agents. In addition, there are currently 400 border patrol agents at the academy in Artesia, New Mexico, whom I will have the honor of addressing this Thursday. We are grateful to the Congress for providing us the additional funds to hire these agents.

- We recently obtained a Predator B unmanned aerial vehicle. This innovative technology enhances our ability to secure the southwest border. In addition we continue to partner with the Department of Defense to take advantage of training opportunities. For the next month, as part of such training, the Defense Department is providing four UAVs in the El Paso sector.

- We have deployed additional Border Patrol agents and support personnel to the Tucson Sector as part of the Arizona Border Control Initiative, a partnership that combines the best efforts and resources of our DHS law enforcement agencies with other federal government agencies and with State, Local, and Tribal law enforcement.

- We are providing additional Immigration Enforcement Agents devoted to criminal removal programs and additional fugitive operations teams to track down absconders.

- We have targeted violent criminal street gangs nationwide for immigration enforcement, particularly the Mara Salvatrucha organization, one of the most violent and rapidly growing street gangs. Recently, ICE arrested 359 MS-13 members including 10 clique leaders. The phenomenal success of this effort since its launch in March 2005 led to its expansion to include all criminal street gangs, a targeted effort to keep our communities safer.

Our most pressing enforcement responsibility is on the southwest border, the pathway for two-thirds of the illegal aliens currently in our country. (The other third are mostly visitors who enter legally and then overstay their visas.) While visiting the southwest border, I have seen first-hand the efforts of our border enforcement staff. They have done much; but, as we all realize, much still remains to be done.

Our apprehension work draws upon three interdependent tools: technology, infrastructure and people. Deploying all three assets in proper harmony is the key to our border enforcement work.

In the weeks ahead, I will be speaking much more about a systematic program of technology acquisition, infrastructure improvements, and workforce efficiencies that will animate our work at the border. Congress has generously provided for additional technology investment. I have created a new DHS program office and hired a talented leader for that office. With our DHS team, we will define clear performance mandates for how best to make these investments. Our work ahead is not just about buying more gizmos – it is about using all the considerable tools in our border security toolkit in a more disciplined, systematic, and effective manner.

This is not rocket science, but it does involve properly applying both high-tech tools such as detection sensors and low-tech, proven tools such as vehicle barriers. What is needed in rural areas will be different from the asset mix needed for border security in urban

areas. I have directed that a comprehensive, border-wide plan be established for these investments.

The public is impatient for these improvements and I share that impatience. I am convinced that we can soon make dramatic improvements in the use of technology, infrastructure, and our rapidly growing enforcement team. We will set clear, measurable goals and report routinely to Congress and the American public about our performance.

While much of the public attention regarding border security has focused on apprehending those crossing the border, catching illegal entrants is just the first step. Obviously, the security of America and the integrity of our nation's legal immigration system require that the number of removals at least equal the number of apprehensions. Otherwise, apprehensions lead to release and disappearance. Regrettably, today apprehensions exceed removals.

Once detained, an illegal immigrant must be held until he or she is successfully removed from the country. For most illegal entrants, removal is swift, and detention is not a substantial administrative or budget problem. For example, the nearly 900,000 Mexicans who are caught entering the U.S. per year illegally are returned immediately to Mexico.

But other parts of the system have nearly collapsed under the weight of numbers. The problem is especially severe for non-Mexicans apprehended at the southwest border. In FY 2005 alone, the Border Patrol apprehended over 160,000 non-Mexican nationals. Only 30,000 of these illegal entrants were removed from the United States. The rest will be released, either under bond conditions or on their own recognizance

Let me reiterate this point. When a non-Mexican is caught trying to enter the U.S. across the southwest border today, he has an 80% chance of being released immediately because we have nowhere to hold him. Of course, he will be charged as an immigration law violator, but he will likely fail to appear at his immigration hearings.

This practice of "catch and release" acts as an enticement for additional border crossers. Indeed, Border Patrol apprehensions of non-Mexican nationals crossing into the U.S. illegally across the Mexican border have tripled in just three years. We must end "catch and release" and implement "catch and return." In fact, we are already taking steps to implement "catch and return" as I speak. We are reengineering our detention and removal process, without which we cannot have an effective enforcement strategy. This is the problem we have attacked first, in part to demonstrate decisively the advantage of taking a comprehensive approach to immigration enforcement problems.

In attacking this problem, we have also learned valuable lessons from recent successful operations. When a large number of Brazilians began illegally crossing the southwest border, we responded in July 2005 with ***"Operation Texas Hold 'Em."*** We prioritized the existing space, dedicated bed space and began detaining and removing *all* of the illegal Brazilians we apprehended. The word spread surprisingly swiftly; within its first thirty days, the operation had already begun to deter illegal border crossings by

Brazilians. In fact, the number of Brazilians apprehended dropped by 50%. After 60 days, the rate of Brazilian illegal immigration through this sector was down 90%, and it is still significantly depressed all across the border. In short, we learned that a concentrated effort of removal can actually discourage illegal entries by non-Mexicans on the southwest border.

Building on that experience, we asked how we could achieve the same results with all non-Mexican entrants. We undertook a comprehensive review, identified choke points in the existing removal process, and devised ways to eliminate them.

The essence of our plan is to expand removals by better using our detention and removal assets. For example, our system will be three times as efficient if, instead of removing one person after a three-month detention, we can remove three people after detentions of just one month each. So our comprehensive plan calls for both more beds and faster turnover.

To improve turnover, we are expanding removal authority, pressing foreign governments to take back their nationals more promptly, streamlining review by their consular officers—we have been experimenting with secure video links to facilitate this -- modifying our staffing requirements for escorts on international flights, modifying our air transport contracts, and streamlining the paperwork involved in removal flights. Additional steps are also being examined. Our experience with Brazilian entrants tells us that an aggressive removal program will deter illegal immigration attempts, multiplying the effect from increased beds and more rapid turnover of those beds.

Today I am announcing this goal for DHS: eliminate completely the "catch and release" enforcement problem. Return every single illegal entrant -- no exceptions. What's more, it should be possible to achieve significant progress in less than a year, as we apply concentrated removal efforts with the support of individual countries.

I am pleased to report that DHS has already begun implementing many significant changes in transitioning from "catch and release" to "catch and return." Here are some of those changes:

- We have substantially expanded our detention capacity as of October 1. With the President's signing of our appropriations bill, we will have $90 million in new resources to add hundreds of more beds. Even with no additional efficiencies in the process, this one change will allow us to remove thousands of additional illegal aliens apprehended along our borders. We are

- I have directed the expanded use of Expedited Removal to all Border Patrol sectors along the southwest border. This allows us to remove quickly eligible aliens, reducing the time required in detention prior to removal. Over all, we expect to cut removal times in half, reducing days in detention from an average of 90 days to an average of 45 days.

- We have contracted for expanded air transportation services to move illegal migrants back to their home more quickly and efficiently.

- I have also directed the overhaul of our ground transportation system. We have a complex system that requires moving more than 1.8 million apprehended individuals per year, but we have identified significant opportunities to improve and streamline this process. For example, we will cut costs and removal time by using bus drivers and other contractors, rather than law enforcement agents, to transport apprehended migrants.

- We are modifying our policies on when removed aliens require escorts. By adopting a risk-based policy, our officers and agents can send more illegal migrants home faster and more efficiently while maintaining the safety of all involved in the removal process.

- Working with the Secretary of State, we are in the process of streamlining country clearances, an internal U.S. government processing change that could cut several days from every escorted deportation. Because an overstuffed removal pipeline is our most immediate problem, cutting even a few days from the average deportation will allow us to increase removals by thousands a year.

- Also working with the State Department, we have begun aggressive dialogues with foreign governments to ensure better foreign-country compliance with our repatriation requirements. We often find that people who are removable sit in our detention facilities—simply because the foreign country has failed to give us a "travel document" agreeing to take its citizen back. We must make this a top priority in our bilateral relationships around the world, and working with Secretary Rice, I am sure that we will.

- We are moving to implement internal "best practices" so that all of our offices throughout the country operate using best-practices information. We want our removal process to be dynamic and efficient over the long run.

The comprehensive approach we have taken to removal can be applied more broadly to other aspects of border and interior enforcement. In that sense, what we are doing in our removal efforts is simply a down payment on our overall border enforcement initiative, which we are designing as a complement to the President's Temporary Worker Program.

There is a vitally important component to comprehensive immigration reform that I have not yet discussed: worksite enforcement. We can all agree that the current state of worksite enforcement does not work well enough. In anticipation of the Temporary Worker Program (TWP), we must strengthen our efforts to monitor worksites to ensure that both now, and with the start of the TWP, we deploy the necessary resources to ensure those employers who violate the current laws face appropriate punishment. We already have more aggressive efforts underway, including the ICE Worksite Enforcement Units. In addition, we must also give employers the necessary tools to verify the legal status of

their employees. The current verification system is insufficient to detect fraud, particularly document fraud, and we must resolve this.

Interior enforcement is not worksite enforcement alone, however. It also includes a focus on criminal aliens, aliens considered a national security risk, traffic stop responses as well as criminal investigation and apprehension of aliens with final orders who have absconded. Importantly, it includes working with individual state and local governments to coordinate responses. I have heard and recognize the frustration that some state and local law officials have expressed about illegal immigration and their desire for closer relations with immigration enforcement agencies. We will find new ways to work with them. This will include new border enforcement task forces and expanded use of our existing legal authorities to train state law enforcement personnel.

Working with DHS's state partners is also a key part of our border strategy. We will actively reach out to our state partners for their agreement to improve our cooperation. and these are just some of the ideas by which our partnership with state and local law enforcement can be most effective.

In summary, my immediate enforcement priorities at DHS focus on five tasks:

- First, we will undertake transformational investment in technology and infrastructure.
- Second, we will work with Congress to staff effectively these enhanced enforcement efforts.
- Third, we will end the policy of catch and release.
- Fourth, we will implement more robust interior enforcement.
- Fifth, we will coordinate better with our federal, state, local and international partners to improve immigration enforcement overall.

These steps will significantly deter illegal immigration. Moreover, they will greatly improve border security.

Each facet of comprehensive immigration reform program that Secretary Chao and I discuss here today is carefully considered. Taken together, they offer a comprehensive strategy. We will continue regularly to apprise this Congress of the steps forward, and the expected outcomes.

As Secretary of Homeland Security I am committed to working closely with the Administration and with the members of this Congress to pass comprehensive immigration reform legislation that reflects the principles discussed with you today. This must be legislation that will meet the needs for a total solution to immigration reform. Nothing I do as Secretary of the Department of Homeland Security is more important to the national security of the United States than securing our borders, and I look forward to working with the members of Congress on this critical task.

STATEMENT OF SENATOR JOHN CORNYN
Before the United States Senate Committee on Judiciary
Comprehensive Immigration Reform II
October 18, 2005

Thank you, Chairman Specter, for holding this hearing today on a topic of great importance to the country and to my constituents. I appreciate your efforts to address this issue in the Committee and to grant all proposals and opinions equal consideration.

Since the last Full Committee hearing on Comprehensive Immigration Reform in July, the Governors of Texas, New Mexico and Arizona have all taken steps to address the prevalent crime and lawlessness that accompanies our broken immigration system. But at the end of the day, controlling our borders is a federal responsibility and long-term immigration reform will require federal action.

And so I look forward with great interest to the testimony of Secretary Chertoff and Secretary Chao. While it is unfortunate that they were unable to testify at the hearing in July, I know that much work is being done at both agencies. Their testimony is essential because none of us are interested in a solution that the Administration cannot implement or does not have the will to implement.

I have previously testified before this committee that immigration reform must be comprehensive and must combine increased enforcement of our laws with improved avenues for legal immigration. There is no question that we must authorize additional resources for enforcement of our immigration laws, and we must make substantive changes to existing laws so that the Department of Homeland Security may promptly remove aliens who have no legal right to enter or remain in the country.

I support efforts to pass legislation that will lead to greater control over our borders and am pleased with the increased funding for border security in the Department of Homeland Security appropriations bill. But after chairing a half-dozen hearings related to our immigration system and hearing the testimony of numerous expert witnesses, I do not believe an "enforcement only" approach is the best policy. Not only will it adversely impact our economy, it is not the best use of our limited resources. I want our highly trained law enforcement officers going after the human smugglers, the felons, and the terrorists. By channeling economic migrants into legal channels, our law enforcement officers will be in a better position to identify gang members and to address the increasing number of illegal entrants from countries of special interest.

While I support reform that will create new legal channels and that will address the ten to twelve million aliens already here, Congress must work towards reform that will not perpetuate the problems that we have today. If we don't achieve circular migration, the most highly-motivated workers from other countries will continue their one-way migration – and our hope of improving the economic conditions of sending countries will be lost.

We must also balance the need to induce illegal aliens already here to come forwards and register with the pull that any such program will have on aliens who are not yet in the United States. We must evaluate each proposal not just by the participation rate of illegal aliens already here, but also on whether it will encourage a worker in El Salvador, Honduras or any other country to take the dangerous journey to the U.S. because he believes that he will benefit from the next round of immigration reform.

I believe that the bill that Senator Kyl and I have introduced strikes the appropriate balance. It proposes the most comprehensive plan for improving enforcement of our immigration laws, but it does not do so at the expense of our economy and our proud tradition of welcoming legal immigrants. It creates a new temporary worker category with a sufficient number of visas, and it provides a way to transition the existing population of undocumented workers into a legal status without granting them preferential treatment or allowing them to go through different processes.

I look forward to working with members of this Committee and with the Chairman to reach a long-term solution.

Thank you.

EMBASSY OF HONDURAS
WASHINGTON, DC

October 17, 2005

Senator Arlen Specter
Chair, United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Patrick Leahy
Ranking Member, United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

RE: Comprehensive Immigration Reform

Dear Chairman Specter and Ranking Member Leahy:

On behalf of the Embassy of Honduras, I write to respectfully urge, as the Committee deliberates immigration reform, that it consider extending the opportunity for a more stable status to the 81,000 Hondurans living and working legally in the United States on Temporary Protected Status (TPS).

The Department of Homeland Security is authorized to grant TPS to foreign nationals who are unable to return home as a result of armed conflict, environment disasters or other extraordinary or temporary conditions. The United States government kindly granted TPS to these Hondurans in 1999 as a result of the devastation cause to the country by Hurricane Mitch.

In addition to Hondurans, 4000 Nicaraguans and 250,000 Salvadorans benefit from the TPS program, constituting 98% of all TPS recipients. Many have been living and working in the United States for over six years now and have developed contractual and employment relationships and significant ties to their community. TPS beneficiaries are required to register with the U.S. government and must maintain a clean criminal record, thus pose a low security risk. The remittances they send home are crucial for maintaining stable democracies and market economies in Central America and to increase trade, control immigration, and combat organized crime and drug trafficking in the region.

TPS is limited in duration, however, and without legislation creating some mechanism by which these individuals may seek a more stable status, at some point they will lose their status.

The sudden return of hundreds of thousands of workers could be destabilizing to the affected Central American economies. Several of the countries were recently overcome by hurricanes Stan and Tammy The storms reportedly led to at least 1,153 deaths and the destruction of tens of thousands of homes and other properties.

I have attached a more detailed statement the Embassy submitted to the Committee this past July.

Thank you for your time.

Ramon Custodio
Chargé d'affaires, a.i.

EMBASSY OF HONDURAS
WASHINGTON, DC

Statement

of

The Embassy of Honduras

Before the Senate Committee on the Judiciary

For the
July 26, 2005
Hearing Entitled

Comprehensive Immigration Reform

Chairman Specter, Ranking Member Leahy, and Members of the Senate Committee on the Judiciary, the Embassy of Honduras respectfully submits this statement. We thank you for holding hearings on this important issue and Honduras and its people thank you for all of the initiatives supported by the United States that assist Honduran immigrants.

Introduction

As you deliberate immigration reform legislation, we urge you to consider extending the opportunity for a more stable immigration status to the more than 81,000 Hondurans working legally in the United States on Temporary Protected Status (TPS).[1] In addition to Hondurans, 4000 Nicaraguans and 250,000 Salvadorans benefit from the TPS program, constituting 98% of all TPS recipients.[2] These workers pay U.S. taxes and are an essential part of the U.S. economy. Many have been living and working in U.S. on TPS for over six years and have developed contractual and employment relationships as well as significant ties to their communities. They are required to register with the U.S government and must maintain a clean criminal record to retain their TPS, thus are easily traceable and pose a low security risk. The remittances they send home are crucial for maintaining stable democracies and free market economies for

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[1] *See* U.S. Citizenship and Immigration Services Press Release: *October 29 2004, DHS Announces 18-Month Extension of Temporary Protected Status (TPS) for Nationals of Honduras and Nicaragua.* Available at *http://uscis.gov/graphics/publicaffairs/newsrels/Hon_Nica_TPS_04_11_01.pdf.*

[2] *See* U.S. Citizenship and Immigration Services Press Releases: *October 29 2004, DHS Announces 18-Month Extension of Temporary Protected Status(TPS) for Nationals of Honduras and Nicaragua; January 6, 2005 DHS Announces 18-Month Extension of Temporary Protected Status(TPS) for Nationals of El Salvador.* Available at *http://uscis.gov/graphics/publicaffairs/newsrels/Hon_Nica_TPS_04_11_01.pdf and http://uscis.gov/graphics/publicaffairs/newsrels/elsal_2005_01_06.pdf.*

U.S. allies in Central America and to increase trade, control immigration, and combat organized crime and drug trafficking in the region.

TPS has a limited duration, however, and without legislation creating some mechanism by which these individuals may seek a more stable status, tens of thousands of Hondurans may suddenly lose their legal status. This would harm both the U.S. and Honduras. The U.S. would loss hundreds of thousands of legal workers and the Honduras would lose remittances, which are a vital source of income for much of our population. Moreover, the sudden influx of hundreds of thousands of people would profoundly destabilize Honduras' relatively new free market economy and democracy. Honduras has been a valuable ally of U.S in providing for a secure and stable region during Central America's civil wars in the 80's and in the current war against terror . Honduras and its Central American neighbors are also partners of the U.S. under the Dominican Republic – Central American Free Trade Agreement.

Providing a means by which TPS recipients may achieve a more stable status would benefit both the U.S. and Honduras. In Honduras' case, the U.S. could retain over 80,000 registered law abiding workers who are easily traceable and, through remittances, provide a steady stream of aid supporting democracy and economic stability in Honduras. Honduras would continue to receive the much needed remittances and avoid having to suddenly absorb ten of thousands of workers.

Set forth below is a more detailed explanation of TPS and importance of providing these workers with an opportunity to seek more a more stable immigration status.

Temporary Protected Status (TPS)

TPS permits eligible nationals of designated countries or regions to temporarily live and work in the United States. Under the Immigration Act of 1990 and Homeland Security Act of 2002, Secretary of Homeland Security is authorized to provide TPS to foreign nationals in the United States who temporarily are unable to safely return to their native country as a result of armed conflict, environmental disaster, or other extraordinary and temporary conditions.

To be eligible for TPS, a foreign national must:

- Establish continuous physical presence and residence in the United States for a specified period of time; and
- Timely register for TPS benefits and re-register if an extension is granted.

The foreign national is not eligible for TPS, if he or she is:

- convicted of any felony or two or more misdemeanors;
- a persecutor, terrorist or otherwise subject to one of the bars to asylum; or
- subject to one of several criminal-related grounds of inadmissibility for which a waiver is not available.

As stated above, TPS is temporary and there is no mechanism by which most TPS recipients can achieve a more stable status. Thus, in most cases, when the Secretary terminates TPS for a country, the former TPS recipients are no longer eligible to live and work legally in the United States.

Central Americans in the U.S. on TPS

There are approximately 335,000 Central Americans living and working in the United States on TPS. Out of those, are 81,875 Hondurans and 4,309 Nicaraguans granted TPS in 1999 as a result of the devastation caused to their countries by Hurricane Mitch. The remainder are Salvadorans granted TPS in 2001 because of a series of earthquakes that severely damaged that country. The Department of Homeland Security has extended the TPS period for these Central Americans as their countries continue to suffer from the effects of the natural disasters. TPS for Hondurans and Nicaraguans is set to expire in July 2006 and for Salvadorans in September 2006.

The Need for a More Stable Status

A. The Impact of Terminating TPS

The TPS program has provided much needed support to Honduras in the form of continued employment for TPS recipients at a time when Honduras and its neighbors continue to recover from the aforementioned natural disasters and other difficulties they have faced. The situation in Honduras is illustrative. Our economy is very dependent on remittances. According to the Central Bank of Honduras, total official family remittances sent from Hondurans working in the U.S. (including, but not exclusively Hondurans here on TPS) is US $900 million, or 13% of the Honduras's GDP. By some estimates, remittances support 25% of the population.

Moreover, it would destabilize Honduras' economy and strain its infrastructure to absorb the TPS recipients at this time. If the over 80,000 workers currently on TPS were

to suddenly return to Honduras, the country's unemployment rate could increase by as much as 60%. Honduras' capacity to provide food, housing, health, education, and other social services, also would be severely strained. Indeed, according to the most recent official data from the XXVI Permanent Multipurpose Household Survey (EPHPM), of September of 2003, of a total 1,346,362 dwellings (of which 652,938 are urban, and 693,424 to rural level): 209,378 are under conditions of overcrowding; 242,913 do not have sanitation systems, and an additional 282,904 do not have drinkable water.

B. Benefits to the Providing a More Stable Status

1. Economic Benefits

Providing TPS recipients with an avenue for a more stable status provides benefits to both the U.S. and Honduran economies. The Essential Workers Coalition, the AFL-CIO, the U.S. Chamber of Commerce, the restaurant industry, the National Association of Manufacturers and a number of institutions such as the Catholic and Episcopal Churches, the Immigration Forum, the American Bar Association, and others cite evidence that immigrants are beneficial to the U.S. economy and that the United States cannot function without them.[4]

Most economists have established, however, that maintaining a healthy U.S. economy requires population growth and a continued flow of immigrant workers. The

[4] The University of Illinois at the New Center for Urban Economic Development at the College of Urban Planning and Public Affairs published a study entitled "Chicago's Undocumented Immigrants: An Analysis of Wages, Working Conditions, and Economic Contributions," February, 2002. The study is enlightening and supports the argument that immigrants, including undocumented workers, benefit the United States. The key findings of the study indicate that undocumented immigrants primarily seek work in low wage service and labor occupations and are paid less than their counterparts. A substantial portion of them, relative to immigrants with legal status, work at high risk jobs and do not receive health insurance or other benefits. To the contrary, the study demonstrates that the economic activity of undocumented immigrants in the Chicago area generates more than 31,000 jobs in the local economy and adds $5.45 billion dollars annually to the gross regional product. Approximately 70% of the undocumented workers pay taxes, according to the study, yet they use very few of the public benefits available.

2000 U.S. Census indicated that in recent years Latinos contributed close to 50% of the growth of the U.S. population. Without this growth, the U.S. economy would slow down considerably.

2. Security at Home and Abroad

As U.S. attention turns to countries engaging in the fight against terrorism, the remittances that Honduras receives from its nationals abroad, including those benefiting from TPS, undercuts the ability of international drug cartels and terrorist organizations to operate in Honduras and the other Central American countries. This is an important policy consideration in the U.S. war on terrorism and its efforts to promote international stability, democracy, and security.

Also, the Honduran TPS recipients are 81,000 registered law abiding workers who are registered and have undergone background checks as part of the TPS process. As a result they are easily identifiable , traceable, and pose a low security risk at home.

Conclusion

Honduras and its people are deeply thankful for all of the initiatives supported by the United States to assist Honduras. The United States' continuous support cements the long-term friendship and common objectives shared by the peoples of both countries, has made a difference in the lives of hundreds of thousands of Hondurans, and will allow Honduras to face the ongoing process of national reconstruction and transformation.

It is clear that the return of over 80,000 Hondurans in less than a year to a country "unable to handle adequately their return" would have serious negative effects on

Honduras' political, economic, and social stability, and could even reverse the progress made to date in the areas of democratization and free market reform, at a time when events throughout Latin America threaten gains made in these areas.

Thus, we respectfully request you consider extending the opportunity for a more stable immigration status to the more than 81,000 Hondurans currently legally living and working here in the U.S.

Thank you for your time.

INTERFAITH STATEMENT IN SUPPORT OF COMPREHENSIVE IMMIGRATION REFORM
October 14, 2005

We, the undersigned faith-based leaders and organizations, join together to call upon President Bush and our elected officials in Congress to enact comprehensive immigration reform legislation that establishes a safe and humane immigration system consistent with our values. Our diverse faith traditions teach us to welcome our brothers and sisters with love and compassion.

The Hebrew Bible tells us: "The strangers who sojourn with you shall be to you as the natives among you, and you shall love them as yourself; for you were strangers in the land of Egypt (Leviticus 19:33-34)." In the New Testament, Jesus tells us to welcome the stranger (cf. Matthew 25:35), for "what you do to the least of my brethren, you do unto me (Matthew 25:40)." The Qur'an tells us that we should "serve God…and do good to…orphans, those in need, neighbors who are near, neighbors who are strangers, the companion by your side, the wayfarer that you meet, [and those who have nothing] (4:36)."

We call for immigration reform because each day in our congregations, service programs, health-care facilities, and schools we witness the human consequences of an outmoded system. We see and hear the suffering of immigrant families who have lost loved ones to death in the desert or immigrants themselves who have experienced exploitation in the workplace or abuse at the hands of unscrupulous smugglers and others. In our view, changes to the U.S. legal immigration system would help put an end to this suffering, which offends the dignity of all human beings.

We call upon our elected officials to enact legislation that includes the following:

- An opportunity for hard-working immigrants who are already contributing to this country to come out of the shadows, regularize their status upon satisfaction of reasonable criteria and, over time, pursue an option to become lawful permanent residents and eventually United States citizens;
- Reforms in our family-based immigration system to significantly reduce waiting times for separated families who currently wait many years to be reunited;
- The creation of legal avenues for workers and their families who wish to migrate to the U.S. to enter our country and work in a safe, legal, and orderly manner with their rights fully protected; and
- Border protection policies that are consistent with humanitarian values and with the need to treat all individuals with respect, while allowing the authorities to carry out the critical task of identifying and preventing entry of terrorists and dangerous criminals, as well as pursuing the legitimate task of implementing American immigration policy.

While we support the right of the government to enforce the law and protect the national security interests of the United States, we recognize that our existing complex and unworkable immigration system has made it nearly impossible for many immigrants – who seek to support their families or reunite with loved ones – to achieve legal status. Reforming the immigration system to address this reality would allow the U.S. government to focus its enforcement efforts on real threats that face all Americans – citizens and immigrants alike.

We urge our elected officials to conduct the immigration reform debate in a civil and respectful manner, mindful not to blame immigrants for our social and economic ills or for the atrocities committed by the few who have carried out acts of terrorism. A polarized process that is lacking in civility would hinder deliberative discourse and not serve the best interests of our nation.

As faith-based leaders and organizations, we call attention to the moral dimensions of public policy and pursue policies that uphold the human dignity of each person, all of whom are made in the image of God. We engage the immigration issue with the goal of fashioning an immigration system that facilitates legal status and family unity in the interest of serving the God-given dignity and rights of every individual. It is our collective prayer that the legislative process will produce a just immigration system of which our nation of immigrants can be proud.

National Organizations:
Anti-Defamation League
American Friends Service Committee (AFSC)
American Jewish Committee
American Jewish Congress
American Society for Muslim Advancement (ASMA)
B'nai B'rith International
Catholic Legal Immigration Network, Inc. (CLINIC)
Church World Service/Immigration and Refugee Program
Columban Justice, Peace and Integrity of Creation Office
Conference of Major Superiors of Men
Episcopal Church USA
Gamaliel National Clergy Caucus Leadership Council
Hebrew Immigrant Aid Society (HIAS)
International Catholic Migration Commission
Irish Apostolate, USA
Islamic Circle of North America
Jesuit Conference
Jesuit Refugee Service/USA
Jewish Council for Public Affairs
Jewish Reconstructionist Federation
Jubilee Campaign USA
Justice for Our Neighbors Immigration Clinic Network
La Ermita - The Hermitage
Lutheran Immigration and Refugee Service
Mennonite Central Committee U.S. Washington Office
Mexican American Cultural Center
Missionary Oblates of Mary Immaculate
National Council of Jewish Women
National Ministries, American Baptist Churches USA
U.S. Conference of Catholic Bishops
Union for Reform Judaism
United Jewish Communities
United Methodist Committee on Relief
United States Province of the Priests of the Sacred Heart
Women In Islam, Inc.
Women's League for Conservative Judaism
World Relief

Local Organizations:
Baltimore Jewish Council
Building Bridges: Hispanic Outreach Project Community of St. Anthony Church in Canton, Ohio
Cabrini Immigrant Services, Dobbs Ferry, New York
Cabrini Immigrant Services, New York, New York
California Province of the Society of Jesus
Capuchin Province of St. Joseph, Detroit, Michigan
Catholic Charities Diocese of Des Moines
Catholic Charities Diocese of San Diego
Catholic Charities Hawaii
Catholic Charities Health and Human Services, Diocese of Cleveland
Catholic Charities Housing Opportunities (CCHO), Youngstown, Ohio
Catholic Charities in the Archdiocese of Santa Fe, New Mexico
Catholic Charities in the Diocese of Paterson, New Jersey
Catholic Charities of the Diocese of Arlington, Virginia

Catholic Charities of Tennessee, Inc.
Catholic Charities of the Archdiocese of Galveston-Houston, Texas
Catholic Charities of the Archdiocese of Washington
Catholic Migration Office of the Diocese of Brooklyn, New York
Catholic Social Services in Anchorage, Alaska
Clerics of St. Viator, Chicago Province
Commonwealth Catholic Charities of the Diocese of Richmond, Virginia
Community Relations Council of the Jewish Federation of San Antonio
Congregation of Holy Cross, Southern Province
Congregation of Our Lady of Victory Missionary Sisters, Huntington, Indiana
Detroit Province of the Society of Jesus
En Camino, Migrant and Immigrant Services, Diocese of Toledo, Ohio
Family Unity & Citizenship Program of the Diocese of Las Cruces
HIAS and Council Migration Services of Philadelphia
Hogar Hispano - Catholic Charities, Falls Church, Virginia
Houston Dominican Sisters
Human Concerns Commission of the Diocese of San Jose
Interfaith Refugee and Immigration Ministries of Illinois
Jewish Alliance for Law and Social Action, Boston
Jewish Community Action, St. Paul, Minnesota
Jewish Community Relations Council of the Jewish Federation of Southern Arizona
Lutheran Children and Family Service of Eastern Pennsylvania
Lutheran Family Services in the Carolinas
Lutheran Social Service of Minnesota
Lutheran Social Services of Michigan
Lutheran Social Services of New England
Lutheran Social Services of Northern New England
Lutheran Social Services of South Dakota
Lutheran Social Services of the National Capital Area
Marianist Province of the United States, St. Louis, Missouri
Metropolitan Council on Jewish Poverty, New York
Migration and Refugee Services Diocese of Trenton, New Jersey
Missionary Sisters of the Immaculate Conception, Province of the Immaculate Conception, Paterson, New Jersey
Missionary Sisters of the Sacred Heart of Jesus, Stella Maris Province, New York, New York
Missionhurst-CICM, Arlington, Virginia
National Catholic Rural Life Conference, Des Moines, Iowa
Northern Indiana Ecumenical Multicultural Ministry (NIEMM), Morocco, Indiana
Organización for Latino Awareness of the Catholic Theological Union in Chicago
Priests of the Sacred Heart (SCJ), Hales Corners, Wisconsin
Provincial Council of the Province of St. John the Baptist of the Order of Friars Minor, Cincinnati, Ohio
River's Edge Community Church, Oella, Maryland
Saints Peter and Paul Church, Savannah, Georgia
Society of Jesus (Jesuits), New York Province
Society of the Divine Word, Chicago Province
St James Faithful Citizenship, Elizabethtown, Kentucky
St James Parish Council, Elizabethtown, Kentucky
St James Parish Social Ministries, Elizabethtown, Kentucky
St. Benedict's Abbey, Benet Lake, Wisconsin
UJA-Federation of New York
Vincentian Center for Church and Society at St. John's University, New York
Washington Buddhist Peace Fellowship (WBPF)
Western Dominican Province, Oakland, California
Wider Church Ministries - United Church of Christ, Cleveland, Ohio
Wisconsin Province of the Society of Jesus

Individual Faith Leaders:
Pamela Beech, Archdiocese of Detroit, Lay Leadership and Formation
Rev. Dr. Stephen P. Bouman, Bishop, Metropolitan New York Synod, Evangelical Lutheran Church in America
Rev. Dr. Clive Calver, Walnut Hill Community Church, Bethel, CT
P. Adem Carroll, 9/11 Relief Director Islamic Circle of North America USA (ICNA Relief)
Patrick Gilger, SJ, Loyola University Chicago
Most Reverend Nicholas DiMarzio, Bishop of Brooklyn
John E. Dister, SJ, Detroit Province Jesuits, Loyola of the Lakes Retreat House
Bob Dunden, SJ, St Benedict the Moor Parish, Omaha, NE
John C. Fickes, Detroit Province of the Society of Jesus
Francis Cardinal George, Archbishop of Chicago
Michael Higgins, C.P., Provincial Superior of Holy Cross Province of the Passionists, Chicago, Illinois
Daniel Idzikowski, Catholic Charities of the Diocese of La Crosse, Inc., La Crosse, Wisconsin
Fr. Michael J. Kavanaugh, Port Wentworth, Georgia
Dr Khurshid Khan, President of the Islamic Circle of North America
Most Reverend Gerald Kicanas, Bishop of Tucson
Clifton Kirkpatrick, Stated Clerk of the General Assembly, Presbyterian Church-USA
Abbot Jerome Kodell, OSB, Subiaco, Arkansas
Reverand John S. Korcsmar, CSC, Austin, Texas
Sister Larraine Lauter OSU, Owensboro, Kentucky
Reverand Msgr. Ronald T. Marino, Brooklyn, New York
Peter Vander Meulen, Office of Social Justice and Hunger Action, Christian Reformed Church
Allan Parker, Pastor, Quitman Church of the Nazarene, Quitman, GA
Sylvia Romero, Hispanic Ministry at Grace United Methodist Church, Olathe, Kansas
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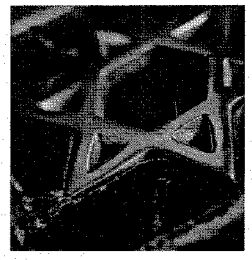

A Jewish Vision

FOR THE FUTURE OF AMERICAN IMMIGRATION & REFUGEE POLICY

JULY 5, 2005

Three hundred and fifty years ago, the first Jewish immigrants arrived in America seeking freedom and opportunity. While initially facing hostility and deportation, these 23 Jews from Brazil established what has become one of the strongest Jewish communities in history. Today the American Jewish community includes both native-born American Jews and foreign-born Jews from Russia and other former Soviet states, Argentina, South Africa, Australia, Iran, Israel and many other countries around the world. These new Jewish refugees and immigrants came to the United States seeking freedom from persecution and opportunities for religious liberty, as well as to receive education at universities and yeshivas, reunite with family members and assume religious and other professional occupations. Jewish immigrants benefited from these freedoms and opportunities, and, in the process, made contributions to American society – economically, politically, culturally, and in many other ways – far beyond their numbers.

Jewish religious and ethical values provide a firm foundation for Jewish involvement in immigration and refugee policy. Central Jewish teachings emphasize protection of the stranger, as seen in the over 36 references to this principle within the Torah, including: "When strangers sojourn with you in your land, you shall not do them wrong. The strangers who sojourn with you shall be to you as the natives among you, and you shall love them as yourself; for you were strangers in the land of Egypt" (Leviticus 19:33-34). Jewish tradition also includes principles of *Piddyon Shevuyim* (redeeming the captive), *Chesed* (kindness), and *Hachnasat Orchim* (hospitality) that create a solid framework for a compassionate response to the needs of immigrants and refugees.

Based on these core values, and recognizing that other immigrants would also benefit from, and be of benefit to, American society, the Jewish community has – over the 350-years history of its presence on American shores – been actively engaged in the struggles of new immigrants and in the development of the nation's immigration policy. From the 1880s to early 1920s, the Jewish community strongly opposed efforts to curtail immigration and institute a national origin quota system. The community's opposition continued after these harmful principles were included in the immigration acts of 1921 and 1924 – with devastating effects during the Holocaust – and until these quotas were eliminated in 1965. The Jewish community championed the cause of refugees following World War II, and advocated for the Refugee Act of 1980 that created today's refugee resettlement system. Additionally, in recent years many Jewish organizations worked to restore due process protections and access to public benefits

Signatories updated: October 14, 2005. This statement remains open for endorsement by Jewish organizations. For more information, or to sign on, email: hiasdc@hias.org. HIAS Washington DC • 2020 K Street NW • Suite 7700 • Washington, DC 20006 202-828-5115 • Fax 202-828-4144 • www.hias.org

that were eliminated for legal immigrants in draconian legislation enacted in 1996.

In the period since the attacks of September 11, 2001, many in the Jewish community and the broader American public have reviewed the nation's immigration and refugee policies. Immigration restrictionists have put forth scenarios that blame immigrants for the nation's ills and attempt to conflate immigration with terrorism. Concern for national security is not inconsistent with fair immigration policies. To the contrary, intelligent immigration reform can and should play an important role in enhancing national security. This balanced approach avoids the false conclusion that immigration is a danger to our country – a conclusion that would undermine fundamental Jewish community interests including security concerns, religious and ethical values, positive community relations and access to the United States for Jews from around the world – while acknowledging the prominent role that national security must play in national policies in these difficult times.

In light of these important Jewish interests, the undersigned agencies encourage a thoughtful and serious discussion of immigration and refugee protection issues within the Jewish and American public and action by the U.S. government to develop policies that are consistent with the following principles:

Immigration ~ Sensible and generous immigration policies serve essential American interests including economic and social development, family reunification, and humanitarian values. These interests should be the basis for decisions relating to levels of immigration and categories of migrants permitted to seek admission and obtain permanent residence and citizenship in the United States. Segments of the American population have greeted each new immigrant group with distrust and concern, but immigrants have over time integrated into the society and made important contributions to America. Learning from the past, the United States should not establish limitations on immigration because of exaggerated fears that today's immigrants will not become productive and patriotic Americans.

Enforcement and Security ~ Because the United States faces serious threats from terrorists and dangerous criminals intent on misusing the American immigration system, improved border security, visa reform, and interior immigration enforcement are important national goals. Changes to rules governing entry into the United States; issuance of visas at consulates abroad; intelligence sharing; investigation, detention and removal of migrants; tracking of foreign nationals; as well as other aspects of immigration enforcement should focus on those who wish to do us harm and not be based on the mistaken belief that all problems with the immigration system are part of a generalized terrorist threat. Security reviews are essential, but can be done effectively without creating unreasonable delays for applicants waiting to receive immigration benefits. Additionally, all individuals seeking admission should be afforded a meaningful appeals process if they are mistakenly identified as a threat under enhanced screening procedures. Protection of privacy, due process and other civil liberties should be integrated into immigration enforcement policies and procedures.

Refugees ~ It is in our national interest that refugees fleeing persecution continue to look to the United States as a champion of refugee protection. The United States should develop effective programs to assist and protect refugees in locations around the world, such as the Sudanese refugees in Chad who fled genocide in their homeland. The U.S. should also provide generous access to resettlement for refugees in need of this durable solution, including Jews from the former Soviet Union and Iran; and should offer compassionate and fair asylum policies that recognize the particular vulnerabilities of refugees who enter the United States seeking safe haven from persecution. Victims of gender violence, children, persecuted religious

minorities and other particularly vulnerable migrants should receive special attention and protection by the United States.

Comprehensive Immigration Reform - The existence of a population of approximately eight to twelve million undocumented migrants residing in this country is unacceptable, as are the hundreds of thousands more facing death and discrimination as they enter illegally each year seeking employment. Also unacceptable are the massive backlogs of immigrants waiting to be reunited with close family members, and immigration and labor law enforcement that has not served either to restrict undocumented migration, or to protect migrants. The "enforcement-only" approach of recent years has failed. Moreover, a massive effort to try to "close the border" and expel all undocumented migrants would be extremely costly and cause enormous social and economic disruption. In light of these facts, the best hope to prevent future undocumented migration would be an approach that is comprehensive and realistically related to economic realities. This plan should promote legal and orderly migration, provide a path to citizenship for undocumented migrants, improve immigration and labor law enforcement, and create new migration programs that will serve America's security, social, economic and humanitarian interests. As this comprehensive plan is developed and implemented, the government should consider addressing the immediate and special needs of specific populations such as students, farm workers and others.

Public Benefits and Due Process Restoration - The harmful restrictions on access to public benefits and on the due process rights of legal immigrants - enacted as part of several pieces of legislation passed in 1996 - should be eliminated or significantly modified. The United States benefits from immigrants' and their children's economic and social contributions and should not discriminate against these immigrants if they fall on economic hard times. Additionally, principles of proportionate punishment, reasonable use of detention and access to parole, judicial review and waiver authority to permit judges to ensure equitable results during removal cases should once again be applied to legal immigrants.

Immigration Services - As a nation of immigrants, the United States should ensure that all applications for immigration benefits be handled in a timely and consistent manner, and that the massive backlogs that have long plagued the system be eliminated. Immigrants, and their American families and employers, should receive the highest level of customer service from immigration authorities. Additionally, the immigration functions of the United States government must receive appropriate funding levels justified by such an important national priority.

Citizenship - The United States must augment its immigration policies with enhanced programs to ensure the full integration of newcomers. The naturalization process should meaningfully promote civic education and civic values and take into account the special needs of immigrants with lower educational levels, the elderly and the disabled. The government should offer assistance to immigrant communities and other knowledgeable private sector agencies to provide high quality job training, English language instruction and other services to prospective citizens. Through such changes these immigrants and refugees will be able to receive the assistance they need to secure the rights and responsibilities of American citizenship and to fully participate in the civic life of their new homeland.

Signatories

National Organizations

Agudath Israel of America
American Association of Jews from Former USSR
American Jewish Committee
Anti-Defamation League
Areyvut
Association of Jewish Family and Children's Agencies
B'nai B'rith International
Bukharian Jewish Congress of USA and Canada
Hadassah, the Womens' Zionist Organization of America
Hebrew Immigrant Aid Society
International Association of Jewish Vocational Services
Iranian American Jewish Federation
Jewish Council for Public Affairs
Jewish Labor Committee
Jewish Reconstructionist Federation
National Council of Jewish Women
Union for Reform Judaism
Union of Orthodox Jewish Congregations of America
United Jewish Communities
Workmen's Circle/Arbeter Ring

Local Organizations

Augusta Jewish Federation
Baltimore Jewish Council
Community Relations Council of the Jewish Federation of San Antonio
Fort Wayne Jewish Federation
HIAS and Council Migration Service of Philadelphia
Jewish Community Action, St. Paul, Minn.
Jewish Community Board of Akron
Jewish Community Council of Metropolitan Detroit
Jewish Community Relations Council of Des Moines
Jewish Community Relations Council of Greater Miami
Jewish Community Relations Council of Greater Washington
Jewish Community Relations Council of Southern Arizona
Jewish Community Relations Council of Southern New Jersey
Jewish Community Relations Council of St. Louis
Jewish Community Relations Council of Los Angeles
Jewish Community Relations Council of Minnesota and the Dakotas
Jewish Council on Urban Affairs in Chicago
Jewish Employment and Vocational Service of Philadelphia
Jewish Family and Children's Services of Minneapolis
Jewish Family and Children's Services of San Francisco, the Peninsula, Marin and Sonoma Counties
Jewish Family and Children's Services of St. Louis
Jewish Family Service Agency of Cleveland
Jewish Family Service, Rhode Island
Jewish Family Services of Buffalo
Jewish Family Services of Metropolitan Detroit
Jewish Family Services of Nashville
Jewish Family Services of Southern New Jersey
Jewish Family Services of Toledo
Jewish Federation Association of Connecticut
Jewish Federation of Central Massachusetts
Jewish Federation of Greater Buffalo
Jewish Federation of Greater Des Moines
Jewish Federation of Greater Los Angeles
Jewish Federation of Greater Miami
Jewish Federation of Greater Middlesex County
Jewish Federation of Greater Monmouth County
Jewish Federation of Greater New Haven
Jewish Federation of Greater Rockford
Jewish Federation of Greater Seattle
Jewish Federation of Lehigh Valley
Jewish Federation of Nashville
Jewish Federation of Philadelphia
Jewish Federation of Rhode Island
Jewish Federation of Southern New Jersey
Jewish Federation of St. Joseph's Valley
Jewish Federation of the Berkshires
Jewish Vocational Service of Minneapolis
Madison Jewish Community Council
Ohio Jewish Communities
Progressive Jewish Alliance of Los Angeles
UJA-Federation of New York
UJA Federation of Northern New Jersey
United Jewish Community of the Virginia Peninsula, Inc.
United Jewish Federation of Greater Toledo
United Jewish Federation of San Diego County
Youngstown Area Jewish Federation

Statement of Edward M. Kennedy
Hearing by the Judiciary Committee
"Comprehensive Immigration Reform II"
October 18, 2005

Congress needs to deal as soon as possible with the problems and challenges of our broken immigration system, and we need to tackle these problems as a whole. Especially in these troubling times, our national security and economic vitality are too important to pass half-way repairs that look and sound tough, but offer no real solutions or protections.

Yet that is exactly what we will end up with if Congress deals with border security and interior enforcement alone, and fails to reform other huge problems in our immigration laws. As Secretary Chao and Secretary Chertoff both correctly state in their testimony, "the effectiveness of border security and interior enforcement is tied to creating legal avenues for workers our economy needs."

We need sensible solutions, not feel-good empty gestures. Effective reforms must address these three issues together. If we're serious about repairing what's broken, we need to combine increased enforcement and increased legality. Better border control and better treatment of immigrants are consistent with each other, and both are necessary for success.

We've tried enforcement alone in the past and it's failed. In the past 10 years, the government has spent more than $20 billion, tripled the number of border patrol agents, built fences, and adopted other border enforcement laws. Yet, none of our efforts have ever been adequate to halt illegal immigration, for the simple reason that vast numbers of American firms have made a practice of hiring illegal workers to reduce costs and bolster profits. That culture of illegality has become so deeply embedded in our society that to uproot it now would do irreparable damage to our economy.

In fact, as a recent report by Professor Douglas Massey of Princeton finds, our border enforcement strategies have backfired. In 2002, we spent $1700 to make each arrest, compared to $300 in 1992. The probability of being caught fell from 20 percent or higher in the mid-1990s to 5 percent in 2002. We're catching fewer people, and it's costing more. Even more perverse, these policies have helped to increase the illegal population. Workers who once came here temporarily and periodically went home are now staying and sending for their families. So those already here are not leaving, and new illegal immigrants keep coming in.

We need to mend our broken system once and for all. We need realistic solutions to the huge problem we face. The American people don't want open borders – but they don't want closed borders either. They want fair and effective

immigration laws that can actually be enforced, that protect our security, respect our ideals, and honor our heritage as a nation of immigrants.

A poll of Republican voters released yesterday emphasizes this point. Eighty-four percent of them believe that it is impossible to deport the 11 million illegal workers who care for our children and our elderly, harvest our crops, and build and clean our homes and office buildings. These voters soundly reject the "enforcement-only" approach. Seventy-eight percent support an "enforcement-plus" package combining stricter border security, higher penalties on employers, registration for temporary workers, and a path to eventual citizenship for today's illegal workers.

The only realistic way for us to know who is here and who is coming here is to combine strict enforcement with realistic reforms in admissions. The best way to help all workers is to eliminate the culture of illegality that undermines wages and working conditions for all workers. We can be both a nation of immigrants and a nation of laws.

In February, Senator Craig and I introduced the AgJOBS bill. In May, Senator McCain and I introduced the Secure America Act. Both of these bills are offering practical solutions to the difficult problems we face. We combine tough, targeted enforcement with adequate legal channels and proper screening for workers and family members crossing the border.

Our goals are consistent with the President Bush's proposal – to bring immigrants out of the shadows, shut down the black markets, and restore the rule of law at our borders, in our workplaces, and in our communities.

Our bills offer a genuine alternative -- not an amnesty, not a free pass, not an automatic pardon. We offer sensible plans to encourage unauthorized workers to come forward to receive work permits and earn legal status. They will pay a substantial fine and go through rigorous security and criminal background checks. Those who want permanent legal status must pay all their back taxes, learn English, maintain a strong work record, stay out of trouble, and wait their turn.

A bipartisan effort is essential to achieve comprehensive immigration reform now. I look forward to working with the Administration, this committee, and my other colleagues to enact responsible and long overdue reforms to solve these difficult problems.

Statement of Mark Krikorian
Executive Director, Center for Immigration Studies

Before the Senate Committee on the Judiciary
Hearing on "Comprehensive Immigration Reform II"
October 18, 2005

Thank you, Mr. Chairman, for the opportunity to testify before this panel on the issue of immigration.

There is broad dissatisfaction with the current state of our immigration policy. We have in our country 11 or 12 million illegal aliens among a total immigrant population of 35 million, the largest number in our nation's history and soon to be the largest percentage of the population in our history. Despite misleading reports to the contrary, the pace of immigration is not abating; in the past five years, eight million people from abroad have settled in the United States, about half of them illegally.

How should we deal with the illegal aliens who are here? How should we structure future immigration policy to prevent this situation from recurring? There are two major proposals before this house attempting to answer these questions, one by Senators Kyl and Cornyn, the other from Senators Kennedy and McCain. In addition, there are at least two comprehensive proposals before the other house. And, of course, the Administration has its own proposal. The plans differ widely, but most have some form of legalization (i.e., amnesty) for illegal aliens already here, plus provisions to import large numbers of foreign workers in the future, whether through guestworker programs or large increases in permanent immigration.

Rather than examine the minutiae of the various measures, I want to address some of the fallacies that pervade the discussion of immigration in general, and of amnesty and foreign-worker schemes in particular, in order to offer some principles by which to judge the soundness of the various proposals.

Immigration is not inevitable

The bedrock assumption underlying most of the immigration plans being offered is that the flow of workers from Mexico and elsewhere is unstoppable – a natural phenomenon like the weather or the tides, which we are powerless to influence. Therefore, it is said, managing the flow in an orderly and lawful manner is preferable to the alternative.

On the surface, the flow of Mexican immigration may indeed seem inevitable; it is very large, rapidly growing, and spreading throughout the country. But a longer view shows that this flow has been created in large part by government policies, both in the United

States and Mexico. And, government policy having created the migration flows, government policy can interrupt the flows, though a social phenomenon like this is naturally more difficult to stop than to start.

Migration is often discussed in terms of pushes and pulls – poverty, corruption, oppression, and general societal dysfunction impel people to leave their homelands, while high wages and expanded economic and social opportunities attract people to this country. While true, this analysis is incomplete because it overlooks the connection between the sending country and the receiving country.

No one wakes up in Timbuktu and says, "Today I will move to Milwaukee!" – migration takes place by way of networks of relatives, friends, acquaintances, and fellow countrymen, and few people immigrate to a place where these connections are absent. Consider two countries on the other side of the planet – the Philippines and Indonesia. These neighbors both have large, poor populations and share many cultural similarities, yet there are more than one million Filipino immigrants in the United States and only a handful of Indonesians, and annual immigration from the Philippines is routinely 40-50 times greater than immigration from Indonesia. Why? Because the ties between the United States and the Philippines are numerous and deep, our having ruled the country for 50 years and maintained an extensive military presence there for another 50 years. On the other hand, the United States has very few ties to Indonesia, whose people tend to migrate to the Netherlands, its former colonial ruler.

At the end of the Mexican War in 1848, there were only a small number of Mexican colonists living in the Southwest, many of whom soon returned to Mexico with the Mexican government's assistance. The immigration of Mexican workers began in a small way with the construction of the railroads beginning in the 1870s and later with the expansion of other industries. But the process of mass migration northward to the United States, and the development of the networks which made further immigration possible, began in earnest during the Mexican Revolution of 1910-1920. The Cristero rebellion of the late 1920s was the last major armed conflict in Mexico and was centered in the states of west-central Mexico; partly to prevent further trouble, the newly consolidated Mexico City regime adopted a policy of encouraging emigration from these very states. The power of government-fostered migration networks is clear from the fact that even today these same states account for a disproportionate share of Mexican immigrants to the United States.

On the U.S. side, federal policies that established migration networks between the United States and Mexico arguably began in the 1920s, when Congress specifically excluded the Western Hemisphere from the newly enacted immigration caps so as not to limit the flow of Mexican immigrants. Then in 1942, the Bracero Program to import Mexican farmworkers was started under the cover of World War II, and it continued until 1964. About 4.6 million contracts were issued to Mexican workers (many were repeat contracts for workers who returned several times, so that an estimated one to two million individuals participated). By creating vast new networks connecting the United States and Mexico, the Bracero Program launched the mass illegal immigration we are still

experiencing today. Illegal immigration networks were reinforced by the IRCA amnesty of 1986, which granted legal status to nearly three million illegal aliens, at least two-thirds of whom were Mexican. This new legal status conferred by the federal government generated even more immigration, legal and illegal, as confirmed by a 2000 INS report.[1] And the federal government's effective abandonment of interior immigration enforcement has served to further promote immigration from Mexico.

As a result of this series of government decisions, the flow of Mexican immigration to the United States is very large. The Mexican immigrant population ballooned from less than 800,000 in 1970 to nearly eight million in 2000, and is more than 10 million today, most having arrived since 1990.[2] This rapid growth has created a snowball effect through the reinforcement of old networks and the establishment of new ones. If present trends continue, within a few years Mexico will have sent more immigrants to the United States in 100 years than Germany (currently the leading historical source of immigrants) has in more than 300 years.

Far from being an inevitable process with deep historical roots, then, mass immigration from Mexico is a relatively recent phenomenon created by government policies. The same is true for most other sources of immigration to the United States, such as Cuba, India, Central America, Russia, Vietnam, and elsewhere.

We have not seriously tried to enforce the law

A supporter of a guestworker/amnesty program might respond that while interrupting immigration flows may be possible in theory, it cannot be accomplished in practice, and the proof of that is that we have tried to enforce our immigration laws and failed.

We have done no such thing. Increases in immigration enforcement over the past decade have been confined almost exclusively to patrolling the border; as important as that is, enforcement of the immigration laws inside the country has declined precipitously, and without such a combined strategy, success is impossible. In particular, enforcement of the ban on hiring illegal aliens, the centerpiece of any effort to regain control of our chaotic immigration system, has been all but abandoned. We might date the abandonment from INS raids in Georgia during the Vidalia onion harvest in 1998, which caused large numbers of illegal aliens – knowingly hired by the farmers – to abandon the fields to avoid arrest. By the end of the week, both of the state's senators and three congressmen had sent an outraged letter to Washington complaining that the INS "does not understand the needs of America's farmers," and that was the end of that.

So, the INS tried out a "kinder, gentler" means of enforcing the law, which fared no better. Rather than conduct raids on individual employers, Operation Vanguard in 1998-99 sought to identify illegal workers at all meatpacking plants in Nebraska through audits of personnel records. The INS then asked to interview those employees who appeared to be unauthorized – and the illegals ran off. The procedure was remarkably successful, and

was meant to be repeated every two or three months until the plants were weaned from their dependence on illegal labor.

Local law enforcement officials were very pleased with the results, but employers and politicians vociferously criticized the very idea of enforcing the immigration law. Gov. Mike Johanns organized a task force to oppose the operation; the meat packers and the ranchers hired former Gov. Ben Nelson to lobby on their behalf; and, in Washington, Sen. Chuck Hagel (R-Neb.) pressured the Justice Department to stop. They succeeded, the operation was ended, and the senior INS official who had thought it up in the first place was forced into early retirement.

The INS got the message and developed a new interior enforcement policy that gave up trying to actually control immigration and focused almost entirely on the important, but narrow, issues of criminal aliens and smugglers. As INS policy director Robert Bach told *The New York Times* in a March 9, 2000, story appropriately entitled "I.N.S. Is Looking the Other Way as Illegal Immigrants Fill Jobs": "It is just the market at work, drawing people to jobs, and the INS has chosen to concentrate its actions on aliens who are a danger to the community."

The enforcement statistics tell the story in a nutshell: According to the GAO, even in 1999, only 417 notices of intent to fine were levied against employers who knowingly hired illegal aliens; but in 2004, the number of employer fines was 3. That's "three".[3] Nationwide.

Tony Blankley, the *Washington Times*' editorial-page editor, summed it up last year:

> I might agree with the president's proposals if they followed, rather than preceded, a failed Herculean, decades-long national effort to secure our borders. If, after such an effort, it was apparent that we simply could not control our borders, then, as a practical man I would try to make the best of a bad situation. But such an effort has not yet been made.[4]

Amnesties and foreign-worker programs can't stop illegal immigration

Even if it is possible to enforce the law, wouldn't accommodating the immigration flow through a guestworker program or increased issuance of green cards (plus an amnesty for those already here) be another way of eliminating illegal immigration?

No.

Putting aside their other effects, amnesties and increased immigration (whether permanent or "temporary") simply cannot eliminate illegal immigration. To begin with expansions in immigration: The sense seems to be that the economy demands a certain amount of foreign labor each year, but that the various legal channels only admit a portion of the needed flow, with the rest entering illegally. It would follow, then, that

establishing a legal means for those foreign workers "forced" to come illegally would all but eliminate ordinary illegal immigration.

This represents a simplistic understanding of both the economy and of immigration. Immigration always creates more immigration and, as the discussion above about Bracero Program made clear, the proliferation of connections created by the arrival of workers from abroad will continually expand the pool of people who have the means to come here, leading to more immigration, legal and illegal. In fact, a large body of sociological research shows that one of the best predictors of a person's likelihood to immigrate to the United States illegally is whether he has legal immigrant family members already here.

This is why the momentum of immigration continues regardless of economic circumstances; the economy today no longer serves as a regulator of immigration levels. For instance, if we examine the four years before and after 2000, we see that the first period, 1996-2000, was a time of dramatic job growth and rapid expansion, while 2000-2004 saw slower economic growth and weaker labor demand. Immigrant unemployment grew significantly during that period, as did the number of unemployed immigrants. And yet immigration actually *increased* slightly, from 5.5 million arrivals during the first period and 6.1 million new immigrants during the second.[5]

The experience with amnesties is no different. About 2.7 million people were legalized in the late 1980s and early 1990s as a result of the amnesties contained in the Immigration Reform and Control Act (IRCA) of 1986. But INS figures show that by the beginning of 1997 those former illegal aliens had been entirely replaced by new illegal aliens, and that the unauthorized population again stood at more than 5 million, just as before the amnesty.

In fact, INS estimates show that the 1986 amnesty almost certainly *increased* illegal immigration, as the relatives of newly legalized illegals came to the United States to join their family members. The flow of illegals grew dramatically during the years of the amnesty to more than 800,000 a year, before dropping back down to "only" 500,000 a year.

To sum up: If increased admission of foreign workers served to limit illegal immigration, how can it be that all three – legal immigration, "temporary" work visas, and illegal immigration – have all mushroomed together? In 1974, legal immigration was less than 400,000; in 2004, it was nearly 1 million. In 1981, about 45,000 "temporary workers and trainees" were admitted; in 2004, the number was 684,000. Twenty years ago, the illegal population was estimated to be 5 million; today it is 11-12 million, even after nearly 3 million illegals were amnestied.

Whatever other arguments might be made for them, neither amnesties nor foreign-worker programs are a solution to illegal immigration.

The poor are not overpaid

But perhaps an amnesty and foreign-worker program, despite the illegal immigration they spark, are worth it because a reliable supply of cheap labor is needed to fill low-paying jobs that Americans won't take.

This too is false.

Rejecting amnesty and worker-importation programs, and enforcing the immigration law instead, would result in a gradual decline in the number of foreign workers. Employers would respond in two ways, both of them good for America, by 1) making the jobs more attractive for legal workers, and 2) using existing workers more efficiently.

As to the first: in a free-market economy, when a prospective buyer can't find sellers to trade with, he increases what he is willing to pay until a seller comes forward. With regard to employment, if workers are not responding in sufficient numbers to job offers, employers offer more money, or additional compensation in some other form, in order to purchase their labor.

If we assume, for the sake of argument, that a labor shortage exists at the bottom of the labor market, one needs to ask whether Congress should interfere with the natural workings of that market (by increasing either temporary or permanent immigration) to prevent wage increases. A foreign-worker program would do precisely that – by artificially inflating the supply of low-skilled workers, it would short-circuit any market incentives for employers to increase the wages and benefits, or improve working conditions, for entry-level blue-collar workers.

Support for a foreign-worker program, then, must be based on the assumption that the poor are overpaid and that the government should intervene to lower their wages. The inflation-adjusted wages of full-time workers with less than a high school education actually declined more than 7 percent during the 1990s. What's more, high-school dropouts are already the poorest workers in our country, so the drop in wages caused by additional imported labor, or the rise in wages caused by the lack of such labor, would have a much greater impact on their quality of life.

The drop in wages has been even more pronounced among farmworkers, the subset of the low-skilled workforce which would be most immediately affected by the admission of more foreign workers. According to a March 2000 report from the Department of Labor, the real wages of farmworkers fell from $6.89 per hour in 1989 to $6.18 per hour in 1998 – a drop of more than 10 percent.[6] A new guestworker program would continue this downward trend in farmworker wages.

And wages aren't the only indicator. Of full-time workers without a high-school diploma, fully 54 percent are not offered health insurance by their employers. There are signs, however, that this trend may be shifting. Because of difficulty in recruiting and retaining low-skilled workers at the end of the 1990s expansion, the fast food industry, for instance, began to offer medical and dental insurance. What's more, these employers,

such as McDonald's, Burger King, and Taco Bell, began to offer 401(k) plans, stock options, home and car insurance, etc.[7]

Some fear that allowing wages at the bottom of the economic ladder to rise in this way would spark inflation. Mexican immigration in the 1990s, for instance, held prices down by, at most, two-tenths of 1 percent.[8] But since all high-school dropouts – native-born and foreign-born, legal and illegal – only account for about 4 percent of total output in the United States, even a substantial increase in their wages from tighter immigration policies could not have more than the most minute impact on prices.

The purpose of a foreign-worker program is to slow the rise in wages for the poor by removing the natural incentives for businesses to increase compensation. Passage of such a program, then, would reflect the sense of Congress that the poor do not require the better pay that the market would otherwise begin to offer them in the absence of unskilled foreign labor.

Jobs Americans *will* do

But even at higher wages, aren't there jobs that Americans simply won't do, and that foreign workers – either as illegal aliens, guestworkers, or conventional immigrants – must be imported for?

It seems very likely that most jobs held by Mexican immigrants are jobs that would not interest the majority of Americans, because they are generally low-paying jobs done by unskilled workers. However, it is also clear that there are millions of Americans who are already doing precisely these kinds of jobs. In March 2003, there were 8.8 million native-born full-time workers without a high-school education, 1.3 million native-born dropouts unemployed, and a further 6.8 million not even in the work force.[9] There is a good deal of evidence that these workers are in direct competition with Mexican immigrants – i.e., these are jobs that Americans will do and are doing already.

With the exception of agricultural labor, native-born and Mexican-born workers have a similar distribution across occupations. Thus, natives who lack a high school education and Mexican immigrants appear to be doing the same kind of jobs and are therefore in competition with one another. Another way to think about whether Mexican immigrants compete with unskilled native-born workers is to look at their median wages. If Mexican immigrants were employed in jobs that offered a very different level of remuneration than native-born dropouts, then it would imply that the two groups do very different kinds of work. But, in fact, the median wage of Mexican immigrants and native-born high school dropouts is very similar; the median weekly wage for native-born high school dropouts who work full time is $350, while the median weekly wage for full-time Mexican immigrants is $326. Like their distribution across occupations, the wages of the two groups seem to indicate that they hold similar jobs.

Other research has shown the same thing – that unskilled immigrants and natives compete for the same jobs. A report prepared by the Bureau of Labor Statistics concluded that native-born and immigrant high school dropouts are almost perfect substitutes for one another in the labor market.[10] That is, they compete directly with one another for the same jobs. In a paper published by the Brookings Institution in 1997, Harvard economists George Borjas, Richard Freeman, and Lawrence Katz also found that natives and immigrants who lack a high school education tend to hold similar jobs and concluded that immigration had a significant adverse impact on the wages of natives without a high school education.[11] And a National Academy of Sciences report also came to the same conclusion – unskilled natives and immigrants tend to compete with one another for the same jobs.[12]

Mass immigration slows innovation

Even if wages were increased and American blue-collar workers flocked to the jobs that immigrants now fill, wouldn't there still be a shortage of labor that foreign workers would need to fill?

No.

The above discussion focussed on the first part of an employer's response to a drop in the number of foreign workers – offering higher wages and benefits. The other part of the response would be to use existing labor more efficiently, more productively, through mechanization and reorganization of work. And mass immigration (whether of illegal aliens, "temporary" workers, or permanent immigrants) slows this process of technological innovation and increasing productivity in the industries where foreign workers are concentrated.

Elementary economics tells us that capital is likely to be substituted for labor only when the price of labor rises, something a foreign-labor program is specifically intended to prevent. A 2001 report by the Federal Reserve Bank of Boston highlights this problem by warning that a new wave of low-skilled immigrants over the course of this century may slow growth in U.S. productivity.[13]

That this is so should not be a surprise. Julian Simon, in his 1981 classic, *The Ultimate Resource*, wrote about how scarcity leads to innovation:

> It is all-important to recognize that discoveries of improved methods and of substitute products are not just luck. They happen in response to scarcity – a rise in cost. Even after a discovery is made, there is a good chance that it will not be put into operation until there is need for it due to rising cost. This point is important: Scarcity and technological advance are not two unrelated competitors in a Malthusian race; rather, each influences the other.[14]

This is true for copper or oil, and is just as true for labor; as wages have risen over generations, innovators have devised ways of substituting capital for labor, increasing productivity to the benefit of all. The converse, of course, is also true; the artificial superabundance of a resource will tend to remove much of the incentive for innovation.

Stagnating innovation caused by excessive immigration is perhaps most apparent in the most immigrant-dependent activity – the harvest of fresh fruit and vegetables.[15] The period from 1960 to 1975 (roughly from the end of the "Bracero" program, which imported Mexican farmworkers, to the beginning of the mass illegal immigration we are still experiencing today) was a period of considerable agricultural mechanization. Although during hearings on the proposed termination of the Bracero Program in the early 1960s, California farmers claimed that "the use of braceros is absolutely essential to the survival of the tomato industry," the termination of the program prompted mechanization which caused a quintupling of production for tomatoes grown for processing, an 89 percent drop in demand for harvest labor, and a fall in real prices.[16]

But a continuing increase in the acreage and number of crops harvested mechanically did not materialize as expected, in large part because the supply of workers remained artificially large due to the growing illegal immigration we were politically unwilling to stop.

An example of a productivity improvement that "will not be put into operation until there is need for it due to rising cost," as Simon said, is in raisin grapes.[17] The production of raisins in California's Central Valley is one of the most labor-intensive activities in North America. Conventional methods require bunches of grapes to be cut by hand, manually placed in a tray for drying, manually turned, manually collected.

But starting in the 1950s in Australia (where there was no large supply of foreign farm labor), farmers were compelled by circumstances to develop a laborsaving method called "dried-on-the-vine" production. This involves growing the grapevines on trellises, then, when the grapes are ready, cutting the base of the vine instead of cutting each bunch of grapes individually. This new method radically reduces labor demand at harvest time and increases yield per acre by up to 200 percent. But this high-productivity, innovative method of production has spread very slowly in the United States because the mass availability of foreign workers has served as a disincentive to farmers to make the necessary capital investment.

We've seen this phenomenon in manufacturing, as well.[18] A 1995 report on Southern California's apparel industry, prepared by Southern California Edison, warned of the danger to the industry of reliance on low-cost foreign labor:

> In Southern California, apparel productivity gains have been made through slow growth in wages. While a large, low-cost labor pool has been a boon to apparel production in the past, overreliance on relatively low-cost sources of labor may now cost the industry dearly. The fact is, Southern California has fallen behind both domestic and international competitors, even some of its lowest labor cost

> competitors, in applying the array of production and communications technologies available to the industry (such as computer aided design and electronic data interchange).[19]

Conversely, homebuilders, who are still less reliant on foreign workers than some other industries, have begun to modernize construction techniques. The higher cost of labor means that "In the long run, we'll see a move toward homes built in factories," as Gopal Ahluwalia, director of research at the National Association of Home Builders, told the Washington Post several years ago.[20] But as immigrants increasingly move into this industry, we can expect such innovation to spread much more slowly than it would otherwise.

And, despite the protestations of employers, a tight low-skilled labor market can spur modernization even in the service sector: automated switches long ago replaced most telephone operators, continuous-batch washing machines reduce labor demand for hotels, and self-service ordering allows restaurant staff to be more efficient. As unlikely as it might seem, many veterans' hospitals are now using mobile robots to ferry medicines from their pharmacies to various nurse's stations, eliminating the need for a worker to perform that task.[21] And devices like automatic vacuum cleaners, lawn mowers, and pool cleaners are increasingly available to consumers. Artificially suppressing the cost of low-skilled labor through any kind of foreign-worker program would stifle this ongoing modernization process.

There's nothing as permanent as a "temporary" worker

But whatever the effects of a guestworker program, at least the "temporary" workers will go home – right?

Wrong.

The distinguishing feature of a guestworker program, as indicated by its name, is that the "guests" are expected to return home rather than settle permanently. This is an attempt to make the importation of people operate more like the importation of goods, such that only the product of their labor stays behind. As President Bush said of his proposal last year, "This program expects temporary workers to return permanently to their home countries after their period of work in the United States has expired." Toward that end, the White House has suggested "tax-preferred savings accounts" for foreign workers who returned home and totalization agreements which would apply U.S. work experience toward qualifying for the home country's pension system.

But history conclusively shows that such efforts are in vain and that the "guests" stay long after the party is over – precisely because people are not objects, but instead have their own plans and purposes. The Bracero program from Mexico, for instance, was supposed to be a temporary expedient during a wartime emergency. Yet once farmers became addicted to it, they devoted resources to lobbying to keep it rather than to

mechanization and innovation. Thus the "wartime" measure lasted for 22 years, until it was ended in 1964.[22]

Not only did the program last longer than intended, but it also dramatically increased Mexican legal and illegal immigration; during the 22 years the program lasted, there were a total of 4.6 million Bracero entries, but also 5.3 million illegal-alien apprehensions and more than half a million Mexican legal immigrants. Rather than work temporarily and go home, large numbers of Mexican guestworkers over time settled and served as magnets for further immigration, sparking one of the largest migrations in human history.

Overseas the story is the same. Germany has become a "reluctant land of immigration" because of its program for guestworkers from Turkey and elsewhere. The number of these workers peaked in 1973 at 2.6 million, when the oil crisis prompted the German government to stop recruiting guestworkers. The government had been told that the now-unemployed guestworkers were part of a "circular" migration pattern, like the supposed back-and-forth migration among Mexican workers in the Southwest. Instead, the Turks and other workers stayed in Germany (just like the Mexicans here), figuring correctly that neither job prospects nor the social safety net were any better at home. What's more, now that they were established in Germany, they had their families join them, leading to an 82 percent increase in the number of foreigners in Germany between 1973 and 1999.

This could not have been otherwise. Once employers come to depend on foreign workers, they cease looking for alternatives, and foreign workers come to depend on their guestworker wages to support their families. In addition, guestworker programs distort the economy, as employers factor in the presence of workers in their future plans, vastly increasing the likelihood that the "guests" will move in for good.

The old aphorism is as true today as it has ever been: There is nothing as permanent as a temporary worker.

The high cost of cheap labor

Supporters of amnesty and foreign-worker programs also claim that such schemes don't negatively impact taxpayers. Temporary workers don't use government services, the story goes, while illegal aliens, once they are amnestied, will start to pay taxes and carry their own weight.

This, too, is false.

In fact, because of the inevitable large-scale settlement of guestworkers and their families, friends, acquaintances, and fellow countrymen, the long-term budgetary fallout of a guestworker program would likely be enormous.

The modern American economy increasingly rewards skilled workers, while offering very limited opportunities to the unskilled, a category that would include current illegal

aliens as well as most guestworkers and those who follow them into the United States. The best way to gauge the fiscal reverberations of a guestworker program is to look at the characteristics of current Mexican immigrants, since many of them who are now illegal would participate in such a program and because they are similar to the new guestworkers who would arrive from Mexico.

Due to their low levels of education, Mexican immigrants experience limited economic mobility in the United States.[23] The average income of Mexican immigrants is less than half that of natives. While their income rises steadily the longer they live in the United States, even long-time Mexican immigrants do not come close to closing the gap with natives. According to data from the Census Bureau's March 2000 Current Population Survey, more than half of legal Mexican immigrants who have been in the United States for more than 20 years and their U.S.-born children (under age 18) live in or near poverty.

This poverty guarantees high levels of welfare use. Even after welfare reform, welfare use among Mexican immigrant households remains much higher than that of natives. Based on Center for Immigration Studies analysis of the same Census Bureau survey, an estimated 33.9 percent of households headed by a legal Mexican immigrant and 24.9 percent headed by an illegal Mexican immigrant used at least one major welfare program. In contrast, 14.8 percent of native households used welfare. Moreover, Mexican immigrant welfare use remains much higher than that of natives even among those who have lived in the United for many years.

Also, more than half (52.6 percent) of Mexican immigrants do not have health insurance, compared to 13.5 percent of natives; Mexican immigration by itself accounted for 3.3 million or 29 percent of the growth in the size of the nation's total uninsured population from 1987 to 2000. Even among legal Mexican immigrants who have lived in the country for more than 20 years, more than one-third are still uninsured.

It is unlikely that our society would want, or be able, to deny public services to millions of foreign workers. Much of the 1996 welfare reform that limited welfare eligibility for immigrants has been rolled back, and even those portions that remain have been almost completely negated by state decisions to provide benefits.[24] Congress expressed an unwillingness in 1996 to give states even the option of denying public education to illegal-alien children – so there would seem to be little likelihood that even a suspension of automatic birthright citizenship for children born here to guestworkers (as has been suggested by some) would have any effect in limiting their use of public services.

The above discussion has been about the fiscal fallout of a foreign-worker program. But even an amnesty of the illegal aliens already here would result in huge additional costs to taxpayers. We estimate that households headed by illegal aliens paid $16 billion in taxes in 2002 – but imposed more than $26.3 billion in costs on the federal government.[25] The result was a net fiscal deficit of more than $10 billion a year, or $2,700 per illegal-alien household. Amnesty advocates are correct in saying that legalization would increase tax payments from illegal-alien households, as more of them "came out of the shadows" and

worked on the books; our estimate is that tax payments would increase by 77 percent. However, the same "out of the shadows" phenomenon would cause use of government services to balloon by 118 percent. This means that legalizing the illegal population would cost federal taxpayers $29 billion, or $7,700 per illegal household, nearly triple the current costs. Note that these estimates are only for federal taxes and services; the cost to taxpayers at the state and local level is likely to be even larger.

In short, there is no way to avoid the high cost of cheap labor.

No amnesty or foreign-worker program is administratively feasible

In any large government program, plans on paper must translate into policies on the ground. Any amnesty or foreign-worker program would require extensive background checks as well as simple management of the program – processing applications, interviewing applicants, checking arrivals, tracking whether a worker is still employed, enforcing the departure of those who are supposed to leave. Supporters of the various amnesty and foreign-worker proposals have assumed that administering these programs would not be a problem.

But it is not explained how the immigration bureaus within the Department of Homeland Security, already choking on massive workloads, are supposed to be able to accomplish these goals. The GAO has reported that the backlog of pending immigration applications of various kinds was at 6.2 million at the end of FY 2003, up 59 percent from the beginning of FY 2001.[26] It has since shrunk to "only" 4.1 million.

Because of the enormity of the backlog, the immigration service often issues work permits and travel documents to green-card applicants right when they submit their forms, knowing that it will be years before anyone actually reads the application. What's more, the immigration bureaus are trying to implement vast new tracking systems for foreign students and foreign visitors. The crush of work has been so severe, that many important statutory deadlines have been missed.[27]

And the context for all this is a newly created Department of Homeland Security, which incorporates pieces of the old Immigration and Naturalization Service and many other agencies in various combinations. To add to DHS's well-known management problems, all three immigration bureaus are currently without a head.

The registration and screening and tracking of million of additional aliens for amnesty or foreign-worker programs would result in complete institutional paralysis and breakdown. After all, the workload created by any such program would be larger than the total number of visas issued annually worldwide by the State Department (approximately 5 million), and many, many times larger than the total number of green cards issued each year by DHS (around 1 million). None of this is to pin blame on the bureaucrats charged with implementing congressional mandates. Rather, the immigration proposals

themselves are the problem, because they are not based on any real-world assessment of the administrative capacity of the immigration agencies.

Massive fraud is a security threat

In addition to widespread paralysis, overloading administrative agencies with the vast and complicated new responsibilities of an amnesty and foreign-worker program would cause staggering levels of fraud, as overworked bureaucrats are pressured to rubber-stamp applications.

In fact, even without the tsunami of paperwork that new immigration programs would cause, fraud is already dangerously widespread. Stephen Dinan of *The Washington Times* reported earlier this month that internal investigators at U.S. Citizenship and Immigration Services (USCIS) have uncovered thousands of cases of misconduct, including bribery, exchanging immigration benefits for sex, and being influenced by foreign governments.[28] And new charges are being added at the rate of 50 per week.

Nor is this a new development. A January 2002 GAO report addressed the consequences of such administrative overload.[29] It found that the crush of work has created an organizational culture in the immigration services bureau where "staff are rewarded for the timely handling of petitions rather than for careful scrutiny of their merits." The pressure to move things through the system has led to "rampant" and "pervasive" fraud, with one official estimating that 20 to 30 percent of all applications involve fraud. The GAO concluded that "the goal of providing immigration benefits in a timely manner to those who are legally entitled to them may conflict with the goal of preserving the integrity of the legal immigration system."

This last point was reinforced in an especially lurid way by the last big amnesty program, which was part of the Immigration Reform and Control Act (IRCA) of 1986. As Paul Virtue, then general counsel of the INS, testified before Congress in 1999, "the provisions of IRCA were subject to widespread abuse, especially the Special Agricultural Worker (SAW) program."[30] There were nearly 1.3 million applications for the SAW amnesty -- double the total number of foreign farm workers usually employed in the United States in any given year, and up to six times as many applicants as congressional sponsors of the scheme assured skeptics would apply. INS officials told *The New York Times* that the majority of applicants in certain offices were clearly fraudulent, but that they were approved anyway, since the INS didn't have the means to prove the fraud.[31] Some women came to interviews with long, painted nails, while others claimed to have picked strawberries off trees. One woman in New Jersey who owned a five-acre garden plot certified that more than 1,000 illegal aliens had worked on her land.

This is a problem not just because it offends our sensibilities but because ineligible people will get legal status – people like Mahmud Abouhalima, a cabbie in New York, who got amnesty as a farmworker under the 1986 law and went on to help lead the first World Trade Center attack. Having an illegal-alien terrorist in your country is bad;

having one with legal status is far worse, since he can work and travel freely, as Abouhalima did, going to Afghanistan to receive terrorist training only after he got amnesty.

And we cannot safely assume that at least those illegal aliens who have snuck across the Mexican border are no threat, since they want only to wash our dishes. For example, Iraqi-born smuggler George Tajirian pled guilty in 2001 to forging an alliance with a Mexican immigration officer to smuggle "Palestinian, Jordanian, Syrian, Iraqi, Yemeni, and other illegal aliens through Mexico and into the United States."[32] And in late 2003, the former Mexican consul in Beirut was arrested for her involvement in a similar enterprise.[33]

Another amnesty or large foreign-worker program is guaranteed – guaranteed – to give legal residence to a future terrorist.

A third way – neither roundups nor amnesty

The final selling point for supporters of amnesty and foreign-worker programs is that there are only two options available to us – either massive roundups and a huge burst of deportations, or some form of legalization. And since it's clear there's no way we can remove 11 million people all at once, the only option available to us is amnesty, however it might be labeled or camouflaged.

But there is a third way that rejects this false choice, and it is the only approach that can actually work: Shrink the illegal population through consistent, across-the-board enforcement of the immigration law. By limiting the settlement of new illegals, by increasing deportations to the extent possible, and, most importantly, by increasing the number of illegals already here who give up and deport themselves, the United States can bring about an annual decrease in the illegal-alien population, rather than allowing it to continually increase. The result would be attrition of the illegal population, shrinking it over a period of several years to a manageable nuisance, rather than today's looming crisis.[34] This is analogous to the approach a corporation might take to downsizing a bloated workforce: a hiring freeze, some layoffs, plus new incentives to encourage excess workers to leave on their own.

Churn in the illegal population. This strategy of attrition is not a pipe dream, or the idle imaginings of a policy wonk. The central insight is that there is already significant churn in the illegal population, which can be used to speed the decline in overall numbers. According to a 2003 report from the Immigration and Naturalization Service,[35] thousands of people are subtracted from the illegal population each year. From 1995 to 1999, an average of 165,000 a year went back home on their own after residing here for at least a year; the same number got some kind of legal status, about 50,000 were deported, and 25,000 died, for a total of more than 400,000 people each year subtracted from the resident illegal population. The problem is that the average annual inflow of new illegal

aliens over that same period was nearly 800,000, swamping the outflow and creating an average annual increase of close to 400,000.

A strategy of attrition would seek to reverse this relationship, so that the outflow from the illegal population is much larger than the number of new illegal settlers from abroad. This would be a measured approach to the problem, one that doesn't aspire to an immediate, magical solution to a long-brewing crisis, but also does not simply surrender, as the amnesty and foreign-worker proposals do.

There are a number of real-world examples of successful enforcement. During the first several years after the passage of the IRCA, illegal crossings from Mexico fell precipitously, as prospective illegals waited to see if we were serious. Apprehensions of aliens by the Border Patrol – an imperfect measure but the only one available – fell from more than 1.7 million in FY 1986 to under a million in 1989. But then the flow began to increase again as the deterrent effect of the hiring ban dissipated, when word got back that we were not serious about enforcement and that the system could be easily evaded through the use of inexpensive phony documents.

That showed that reducing new illegal immigration is possible; but what about increasing the number of illegals already here who give up and leave? That, too, has already been demonstrated. After the 9/11 attacks, immigration authorities undertook a "Special Registration" program for visitors from Islamic countries. The affected nation with the largest illegal-alien population was Pakistan, with an estimated 26,000 illegals here in 2000. Once it became clear that the government was getting more serious about enforcing the immigration law – at least with regard to Middle Easterners – Pakistani illegals started leaving on their own in large numbers. The Pakistani embassy estimated that more than 15,000 of its illegal aliens left the United States, and the Washington Post reported the "disquieting" fact that in Brooklyn's Little Pakistan the mosque was one-third empty, business was down, there were fewer want ads in the local Urdu-language paper, and "For Rent" signs sprouted everywhere.[36]

And in an inadvertent enforcement initiative, the Social Security Administration in 2002 sent out almost a million "no-match" letters to employers who filed W-2s with information that was inconsistent with SSA's records.[37] The intention was to clear up misspellings, name changes, and other mistakes that had caused a large amount of money paid into the system to go uncredited. But, of course, most of the problem was caused by illegal aliens lying to their employers, and thousands of illegals quit or were fired when they were found out. The effort was so successful at denying work to illegals that business and immigrant-rights groups organized to stop it and won a 90 percent reduction in the number of letters to be sent out.[38]

A policy of attrition through enforcement would have two main components: an increase in conventional enforcement – arrests, prosecutions, deportations, asset seizures, etc. – plus expanded use of verification of legal status at a variety of important points, to make it as difficult and unpleasant as possible to live here illegally.

Conventional enforcement. As to the first, the authorities – from the White House on down – need to make an unambiguous commitment to immigration enforcement. There must be an end to the climate of impunity for border-jumping, and illegal employment, and fake documents, and immigration fraud. To use only one example of the longstanding lack of commitment, aliens who repeatedly sneak across the border are supposed to be prosecuted and jailed, and the Border Patrol unveiled a new digital fingerprint system in the mid '90s to make tracking of repeat crossers possible. The problem is that short-staffed U.S. attorneys' offices kept increasing the number of apprehensions needed before they would prosecute, to avoid actually having to prosecute at all.

It would be hard to exaggerate the demoralizing effect that such disregard for the law has on immigration enforcement agents. Conversely, the morale of immigration workers would soar in the wake of a real commitment to law enforcement.

Among measures that would facilitate enforcement: hiring more U.S. Attorneys and judges in border areas, to allow for more prosecutions; expanding our laughably small Border Patrol which, even with recent increases, is barely one-quarter the size of the New York Police Department and is only able to deploy an average of one agent per mile along the Mexican border during any given shift; promoting enhanced cooperation between federal immigration authorities and state and local police; and seizing the assets, however modest, of apprehended illegal aliens; expanding detention capacity; streamlining the immigration appeals process to deport aliens more quickly.

Firewalls. Even if we were somehow to increase deportations ten-fold, most of the decline in the illegal population would have to come through self-deportation, illegal aliens giving up and going home. Unlike at the visa office or the border crossing, once aliens are inside the United States, there's no physical site to exercise control, no choke point at which to examine whether someone should be admitted. The solution is to create "virtual choke points" – events that are necessary for life in a modern society but are infrequent enough not to bog down everyone's daily business. Another analogy for this concept is to firewalls in computer systems – filters that people could pass through only if their legal status is verified. The objective is not mainly to identify illegal aliens for arrest (though that will always be a tool) but rather to make it as difficult as possible for illegal aliens to live a normal life here.

This is the rationale for the prohibition against employing illegal aliens – people have to work, so requiring proof of legal status upon starting a job would serve as an important firewall. Congress instituted this firewall tactic in 1986 when in prohibited the employment of illegal aliens; but in the absence of a mandatory verification mechanism, such a system could not succeed. The immigration service has already developed a verification system which has proven both workable and popular with participating businesses (including my own Center for Immigration Studies). Building on this fledgling system, we need to find other instances in which legal status might be verified, and thus illegals barred, such as getting a driver's license, registering an automobile, opening a

bank account, applying for a car loan or a mortgage, getting a business or occupational license, and obtaining government services of any kind.

An important element in this firewall tactic is secure documentation. By enacting the Real ID Act, Congress has already taken a step toward establishing uniform standards for state driver's licenses, which serve as our nation's de facto national identification system. At least as important is to formally prohibit acceptance of consular registration cards, chiefly Mexico's "matricula consular" card, which functions as an illegal-alien ID; when accepted by U.S. jurisdictions and companies as a valid ID, it enables illegal aliens to pass through many firewalls.

An important point about using verification of legal status as a way downsize the illegal population is that its effects would be felt gradually, rather than all at once. A new, functional verification system for employment, for instance, would be applied mainly to new hires (though employers should have the option of checking existing employees as well). The same is true for getting a driver's license or a mortgage – these are not things people do every day, so the effects of verifying legal status would unfold over a period of time.

Mr. Chairman, you and your colleagues should deliberate on immigration policy secure in the knowledge that reasserting control over immigration requires no land mines, no machine guns, no tattoos – none of the cartoonish images invoked by opponents of tight immigration controls. All that is needed is the consistent application of ordinary law-enforcement tools – plus a rejection of measures that would undermine enforcement, such as amnesties or expanded foreign-worker programs. I look forward to any questions you might have.

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Statement of Senator Patrick Leahy,
Ranking Member, Judiciary Committee
Hearing on "Comprehensive Immigration Reform II"
October 18, 2005

I commend the Chairman for convening a second hearing on this important topic. Securing our borders is a challenge that we must face, no matter how complex and difficult. While tackling these issues we also need to recognize the key role immigrant labor plays in our economy and adopt practical guest worker programs that are supportive of that contribution.

In July, the Administration cancelled the appearance of its two scheduled witnesses, Michael Chertoff, Secretary of Homeland Security, and Elaine L. Chao, Secretary of Labor, just days before the hearing. It was the first of two such last-minute cancellations of administration witnesses before the Committee that week. I am pleased that Secretaries Chertoff and Chao are here today.

Since the July hearing, we have heard many rumors about a White House proposal on comprehensive immigration reform. Today, we will hear about the President's plan in broad terms, but apparently without significant detail. I believe that we should give all due respect to any serious attempt to reform our broken system, whether it comes from the Congress or the White House. I am disappointed, however, to see time slipping away. Over the summer, the Senate Majority Leader said that immigration is not likely to be taken up on the Senate floor this year. We all know that 2006 is an election year, making it difficult to advance proposals to solve our immigration problems free from campaign rhetoric and posturing. I hope that we can take up these serious issues this year, and avoid the pressure of an election cycle.

In May, Senators McCain and Kennedy introduced their bill, S.1033, the Secure America and Orderly Immigration Act. I have said many times that I believe the McCain-Kennedy bill is the appropriate starting point for the Judiciary Committee to consider immigration reform. This bill recognizes that much of the nation's economy depends on immigrant labor, and that some of those immigrants do not have legal status. The bill provides an opportunity for those workers to earn legal status. It contains border security and enforcement provisions.

Just prior to the July hearing, Senators Cornyn and Kyl introduced S.1438. Their approach supports the concept of a guest worker program but makes it exceedingly difficult for these non-citizens to obtain legal status. Illegal immigrants would have to

leave the U.S. and then meet certain criteria before they could re-enter with legal, temporary status. The Cornyn-Kyl approach contains some troubling provisions that we must review carefully. It would authorize state and local police to enforce federal immigration laws, a policy that could undermine community policing efforts in immigrant communities. It would also expand expedited removal programs, which are already hurting bona fide asylum seekers.

Border security is a pressing issue in Vermont. I remain concerned that the Administration seems to have ignored Congress' clear and consistent call for substantial increases in staffing for the Border Patrol. The Border Patrol's presence on our Northern Border was minimal before the September 11th attacks, with about 300 agents assigned to the 4,000-mile border. Last December, Congress passed and the President signed the Intelligence Reform and Terrorism Prevention Act of 2004, which mandated an increase of at least 2,000 Border Patrol agents for FY 2006, with at least 20 percent of the increased agents to be assigned to the Northern Border. The President's budget, however, would have provided only enough funding to add 210 Border Patrol agents, or about 10 percent of what Congress mandated. Moreover, it appears that, of those agents provided for in the President's budget, not a single one would be assigned to the Northern Border.

While I was disappointed that the Homeland Security Appropriations Conference Report passed by the Senate and House earlier this month failed to reach authorized levels, it did allocate a total of $6 billion for securing our Nation's borders, which is $378 million more than the President's request. This includes $1.8 billion for border security between ports of entry, including hiring 1,000 additional Border Patrol Agents to reach the goal of 10,000 more agents over the next 10 years, and $79.5 million to annualize the cost of 500 Border Patrol Agents funded in the Intelligence Reform and Terrorism Prevention Act of 2004.

The approaches to immigration reform that we will discuss today are complex. I commend Senators for studying the issues carefully and putting forward their proposals for our consideration. I look forward to today's hearing and thank all the witnesses for their contributions.

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Testimony of Douglas S. Massey
Senate Judiciary Committee
October 18, 2005

Mr. Chairman and members of the Judiciary Committee, my testimony is very simple. The U.S. immigration system is badly broken. It has been broken since 1986 and has been getting worse. The central problem concerns the relationship between Mexico and the United States. Mexico accounts for 60% of all unauthorized migrants currently in the United States and around a fifth of recent legal immigrants. After Mexico's six million unauthorized U.S. residents, the next closest countries are El Salvador and Guatemala with totals of less than 300,000 each. Few unauthorized migrants come from Asia, Europe, Canada, Africa, or the Pacific.

Undocumented migration is thus overwhelmingly a problem of the Western Hemisphere, and very disproportionately Mexican. Next to Canada, Mexico is our closest neighbor and largest trading partner. Together we share a 2,000 mile border and trade annually totaling $286 billion. In 2004 175,000 legal immigrants entered the US from Mexico, along with 3.8 million visitors for pleasure, 433,000 visitors for business, 118,000 temporary workers and dependents, 25,000 intra-company transferees and dependents, 21,000 students and dependents, 8,400

exchange visitors and dependents, and 6,200 traders and investors. At the same time, one million Americans presently live in Mexico and 19 million travel there each year along as visitors. U.S. foreign direct investment in Mexico now totals $62 billion annually.

These massive cross-border flows are occurring by design, under the auspices of the North American Free Trade Agreement. However, at the heart of NAFTA lies a contradiction:

even as we move to promote the freer cross-border movement of goods, services, capital, and commodities we simultaneously seek to prevent the movement of labor. We somehow wish to create a single North American economy that somehow integrates all factor markets except one—that for labor. To maintain the illusion that we can somehow integrate while remaining separate, we have militarized our border with a friendly country that is among our closest trading partners and strongest allies and which poses no conceivable threat to U.S. national security. Even as binational trade with Mexico grew by a factor of eight from 1986 to the present, the Border Patrol's enforcement budget has increased by a factor of ten and the number of officers tripled. The U.S. Border Patrol is now the largest arms-bearing branch of the U.S. government save the military itself, with an annual budget of $1.4 billion.

The attempt to stop the flow of Mexican labor into the United States through unilateral enforcement has not only failed miserably, it has backfired. It has not deterred would-be immigrants from entering the United States nor has it reduced the size of the annual inflow. What it HAS done is channel migratory flows away from traditional crossing points to remote zones where the physical risks are great but the likelihood of getting caught is small. As a result, the number of deaths has skyrocketed to a record 460 persons per year while the probability of

apprehension has fallen to forty year low. We are spending more tax dollars to catch fewer migrants and cause more deaths.

Moreover, once deflected away from traditional crossing points, Mexican migrants have moved on to new destinations as well. Whereas two thirds of Mexicans who arrived in the United States during 1985-90 went to California, during 2000 to 2005 only one third did so. In

essence, our border policies have helped to transform a regional movement affecting three states into a national phenomenon affecting all 50 states.

Our policies also served to transform what had been a seasonal movement of male workers into a settled population of families. Increasing the costs and risks of undocumented entry did not deter undocumented migrants from coming; perversely, it only discouraged them from going home once they were here. Having faced the gauntlet at the border, undocumented migrants were loathe to do so again and hunkered down for the long term. As a result of our militarization of the border, therefore, undocumented trips have lengthened and rates of return migration have plummeted. If the rate of in-migration remains stable while the rate of out-migration declines, only one outcome is possible demographically: a sharp increase in the net rate of undocumented population growth. In addition, as male migrants stayed away from home longer, they sent for their wives and children. Rather than constituting a circular flow of temporary male workers, Mexico-U.S. migration has become a settled population of permanent residents and their families, thus driving up the social and economic costs of immigration to American taxpayers.

In sum, the American attempt to stop the flow of Mexican workers within a rapidly

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integrating North American economy has reduced the rate of apprehension at the border, raised the rate of death among migrants, produced longer trip lengths, lowered rates of return migration, increased the pace of undocumented population growth, and transformed what had been a circular flow of workers affecting three states into a settled population of families scattered throughout 50 states, all at the cost of billions of taxpayer dollars.

These are statements of fact, not opinion, as data from the Mexican Migration Project reveal. Figure 1 shows the shift to new crossing points and destinations during the 1990s. Figure 2 documents the tripling of the death rate among undocumented border crossers after the launching of the Border Patrol's Operation Blockade. Figure 3 shows the remarkable decline in the probability of apprehension after 1995. Figure 4 shows the relatively constant rate of in-migration that has prevailed since 1980 combined with the steadily falling rate of return migration. Figure 5 draws upon U.S. census data to show the inevitable result of declining rates of return in the face of constant rates of entry: a sharp acceleration in the rate of Mexican population growth after the middle 1990s.

Our border policies have thus given us the worst of all possible worlds: continued immigration under terms that are disadvantageous to us, harmful to American workers, and injurious to the migrants themselves. This lamentable state of affairs stems from our failure to come to terms with the contradiction of continental integration under NAFTA. Rather than viewing Mexican migration as a pathological product of rampant poverty and unchecked population growth, we should see it as a natural product of economic development in a relatively wealthy country undergoing a rapid transition to low fertility. Mexico is presently a one trillion

dollar economy with a per capita income approaching $10,000, 92% literacy, a total fertility rate of just 2.2 children per woman, and a population growth rate of just 1.2% per year. Rather than attempting to suppress the movement of workers back and forth across the border, we should bring the flows above board, legalize them, and manage them in ways that minimize the costs and maximize the benefits for all concerned, putting us in a better position to protect American

workers, lower the costs of immigration to taxpayers, and enhance the security of our nation. I believe the McCain-Kennedy immigration legislation moves us substantially in this direction and for this reason I support it as a scientist and member of the National Academy of Sciences, a dedicated citizen of the United States, and a concerned human being interested in the welfare of both immigrants and the American people

Written Statement of Tyler Moran
Policy Analyst, National Immigration Law Center
to the U.S. Senate Committee on the Judiciary
on Employment Verification Systems in Comprehensive Immigration Reform
October 18, 2005

The National Immigration Law Center (NILC) is a nonpartisan national legal advocacy organization that works to protect and promote the rights of low-income immigrants and their family members. Since its inception in 1979, NILC has earned a national reputation as a leading expert on immigration law and the employment and public benefit rights of low-income immigrants. We conduct policy analysis, advocacy, and impact litigation, as well as provide training, publications, and technical assistance for a broad range of groups throughout the U.S. NILC's extensive knowledge of the complex interplay between immigrants' legal status and their rights under U.S. employment laws is an important resource for immigrant rights coalitions and community groups, as well as national advocacy groups, policymakers, attorneys and legal aid groups, workers' rights advocates, labor unions, government agencies, and the media.

NILC is encouraged by the fact that the Senate is addressing the need for comprehensive immigration reform. The renewed attention to the issue confirms our belief that there is an unstoppable momentum towards comprehensive immigration reform, which to be meaningful and effective must include legalization of currently undocumented workers. This momentum is based on the country's economic needs, the reality of a shrinking world and increased trade, demographic change, increased civic participation by immigrants, and the inherently undemocratic and unstable nature of our current immigration system. The only question is the pace and nature of the reforms to come. However, we have grave concerns with proposals that include mandatory, nationwide expansion of electronic employment verification systems, such as the Basic Pilot Program.

Summary of Problems with Vastly Expanding Electronic Employment Verification
Expansion of electronic employment verification systems is often treated as an easy solution to our immigration troubles—a no-brainer—by persons who are unfamiliar with the problems encountered by the current Basic Pilot Program and the improvements and protections that would need to be in place before such a system could be acceptably applied to all U.S. employers. Unfortunately, such a nationwide mandatory system is not yet ready for prime time. If implemented using the existing technology, procedures, and databases, the costs would be high and the results frustratingly inaccurate. In addition, an expanded system would result in dangerous privacy breaches and increased discrimination against individuals who look or sound foreign.

These are exactly the kinds of missteps that should be avoided as our nation embarks on a new chapter in its immigration policy. Faith in the current system has broken down on all sides, and one of the imperatives for a system that works is that it be able, as the 9/11 Commission said, to "deliver on its promises." The last thing we need is a massive new program involving the entire American workforce that does not address predictable severe implementation problems.

If an expanded employment verification system must be included as a component of comprehensive immigration reform, it is critical that it be implemented in a manner that ensures accuracy of data, privacy of information, and protection from misuse.

Background
The Basic Pilot Program is an internet-based program that allows employers to electronically verify workers' employment eligibility by directly checking the records maintained by the Department of Homeland Security (DHS) and the Social Security Administration (SSA). The Basic Pilot Program is one of the three pilots created by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and began operating in six states in 1997. The other two pilot programs were discontinued. However, in December 2004 Congress extended the Basic Pilot to all 50 states, and it is now available to employers who voluntarily choose to participate in the program (several employers are required to participate as a condition of litigation or penalties). According to the Government Accounting Office, there were approximately 2,300 employers that voluntarily used the Basic Pilot Program in 2004.

In creating the pilot programs in 1996, Congress required the former Immigration and Naturalization Service (INS) to have an independent evaluation conducted before they could be extended. The INS selected two firms -- the Institute for Survey Research at Temple University and Westat -- to conduct the independent evaluation. In January 2002, an evaluation of the Basic Pilot Program was issued. It found that although most employers who had volunteered to participate found the program to be effective and most workers were authorized, there were inaccuracies and outdated information in the INS databases that hindered the program. The evaluators also discovered that employers engaged in prohibited practices. For example, 45 percent of employees surveyed who contested a tentative non-confirmation were subject to pay cuts, delayed job training, and other restrictions on working, and 73 percent of employees who should have been informed of work authorization problems were not. In the end, the evaluators recommended that the Basic Pilot Program **not** be expanded to a mandatory or large-scale program, and that the INS and SSA should address the deficiencies of the program.

Additional problems cited by the report:

- The program was hindered by inaccuracies and outdated information in the INS databases;
- The program did not consistently provide timely immigration status data, which delayed the confirmation of a worker's employment authorization in one-third of the cases (note that, according to the report, the greatest burden for inaccurate and unreliable data falls on workers who are penalized by employers unsure of their work status);
- A sizeable number of workers who were not confirmed *were work authorized* but for a variety of reasons did not correct their records with the INS or SSA (42 percent of a possibly unrepresentative sample taken by the investigators were found to be work authorized compared to less than a quarter which were "most likely" unauthorized);
- Some employers surveyed did not follow the federally mandated memorandum of understanding they were required to sign as a condition of participating in the Basic Pilot;
- Participating employers engaged in prohibited employment practices, including:
    - Pre-employment screening, which not only denies the worker a job but also the opportunity to contest database inaccuracies;
    - Taking adverse employment action based on tentative nonconfirmations of employment authorization, which penalizes workers while they and the INS work to resolve database errors; and

- Failure of employers to inform workers of their rights under the program;

- Some employers compromised the privacy of workers in various ways, such as failure to safeguard access to the computer used to maintain the pilot system, including leaving passwords and instructions in plain view;

- Some employers missed deadlines required by the pilot, and failed to inform workers of their rights when the system was unable to confirm their work authorization;

- Some employers continued to employ workers despite the lack of confirmation;

- The INS and SSA were not accessible: 39 percent of employers reported that SSA never or sometimes returned their calls promptly and 43 percent reported a similar experience with INS; and

- The cost to expand the pilot program to all employers and to convert it from a voluntary to a mandatory system would exceed $11 billion.

The *Basic Pilot Program Extension and Expansion Act,* which authorized expansion of the Basic Pilot Program to all 50 states, also required DHS to submit a report by June 2004 to the Committees on the Judiciary of the U.S. House of Representatives and the Senate. This report should have evaluated whether the problems identified by the independent evaluation of the Basic Pilot had been substantially resolved, and it should have outlined what steps the DHS was taking to resolve any outstanding problems before undertaking the expansion of the Basic Pilot program to all 50 states.

While the DHS did submit a report to Congress, it failed to adequately address the concerns laid out in the independent evaluation. Most importantly, it failed to address the explicit recommendation by the independent evaluation against expanding the Basic Pilot program into a large-scale national program until the DHS and the SSA address the inaccuracies in their databases that prevent those agencies from confirming the work authorization of many workers.

Most recently, the Government Accounting Office noted in its report, *Immigration Enforcement: Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts*, that although DHS has taken some steps to improve the timeliness and accuracy of information in its database, it cannot effectively assess increased program usage without information on the "costs and feasibility of ways to further reduce delays in the entry of information into DHS databases." According to DHS staff, they may not be able to complete timely verifications if the number of employers using the Basic Pilot Program were to significantly increase.

Provisions that Must Accompany a Nationwide, Mandatory Employment Verification System
The biggest weaknesses of the current Basic Pilot Program include its lack of resources, database inaccuracy, and employer misuse of the system to discriminate against workers. In order for an expanded employment verification system to improve upon the existing Basic Pilot Program, Congress should include the following provisions –

- Any nationwide employment verification system that applies to all 5.6 million employers in the country should be implemented in stages, incrementally, with rigorous evaluation of its performance at each stage before any further expansion can take place. As recommended in the

GAO report, *Immigration Enforcement: Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts*, the USCIS should complete its evaluation of the Basic Pilot Program, which will assess the program's current costs, any improvements in DHS database accuracy, employers' compliance with the program, and the feasibility and costs of addressing these weaknesses;

- The employment verification system must include a secondary verification process where the employer is required to request manual verification by SSA and/or DHS if the employee chooses to contest the non-confirmation. The current system puts the burden of the secondary verification process on the employee; however, according to the GAO report, the primary reason for non-confirmations is delays in entry of employment authorization information into DHS databases. Additionally, the timeframe of 10 working days that is currently allotted to employees to contest their nonconfirmation has been inadequate. Workers have had a difficult time meeting this deadline, particularly when they need to obtain source documents to correct the discrepancy or they live in rural areas far from a local DHS office;

- The employment verification system must allow individuals to view their own records and correct any errors through an expedited process established by SSA and DHS. Even if significant resources are devoted to cleaning up the databases, it is probable that some workers will continue to experience problems which may result in denial of employment based on misinformation. We believe that all workers must be able to view their own records and have a reasonable time in which to fix inaccuracies with DHS and/or SSA;

- The employment verification system must be designed to prevent discrimination based on citizenship status and national origin. The 2003 evaluation found instances where employers were able to use the Basic Pilot program to engage in unlawful employment-related practices such as pre-screening potential employees and re-verification of status when an employee lodges a complaint or engages in organizing;

- The employment verification system must protect against abuse of the system. Specifically, it should be unlawful for employers or other third parties: 1) to use the System selectively or without authorization; 2) to use the System prior to an offer of employment; 3) to use the System to exclude certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required; 4) to use the System to deny certain employment benefits, otherwise interfere with the labor rights of employees, or any other unlawful employment practice; and 5) to take adverse action against any person, including terminating or suspending an employee who has received a tentative nonconfirmation. Finally, penalties for discriminatory practices must be included;

- The employment verification system must protect information in the database from unauthorized use or disclosure. It is critical that privacy protections be included so that the information contained in the databases is not used for non-employment verification purposes. The 2003 evaluation found several instances where employers or other non-authorized individuals gained access to the Basic Pilot Program for uses other than the designated purpose. Privacy protections and penalties for failure to comply must be included; and

- The employment verification system must require an independent assessment of the program once implemented. Reports to Congress in years two and three of the program should be

included to ensure that the program is meeting the needs of both employers and employees. Reports should specifically evaluate the accuracy of DHS and SSA databases, the privacy and confidentiality of information in the databases, and if the program has been implemented in a nondiscriminatory manner.

Analysis of Proposed Employment Verification Systems in the Secure America and Orderly Immigration Act of 2005 and the Comprehensive Enforcement and Immigration Control Act of 2005

The Secure America and Orderly Immigration Act requires the Commissioner of SSA, in consultation with DHS, to establish an Employment Eligibility Confirmation System (the "System") that allows employers who have hired individuals under the new temporary worker program to electronically verify their identity and employment eligibility through machine-readable documents. SSA must also establish a process to require employers to conduct annual reverification of the employment eligibility of all individuals. The goal of the system is to replace the I-9 process to verify the employment eligibility of all workers. The bill incorporates important protections within the new System that we have recommended, including a secondary verification process, prohibited practices, privacy protections, and anti-discrimination protections.

The Comprehensive Enforcement and Immigration Control Act requires DHS to expand the Basic Pilot Program nationwide. Within a year of the bill's enactment, all 5.6 million employers in the U.S. would be required to participate in the Basic Pilot. While the bill does include important confidentiality provisions, it does not provide general guidelines regarding use and misuse of the program.

Our concerns with these proposals include the following –

- Neither bill requires USCIS to finish its evaluation of the current Basic Pilot Program before further expansion. Without this information, Congress cannot effectively assess possibilities for future implementation of the program.

- Neither bill extends the amount of time that workers are given to contest a nonconfirmation of their employment eligibility beyond 10 working days, which has been inadequate.

- The Secure America and Orderly Immigration Act transfers the authority of verifying workers' employment authorization status from DHS to SSA, which fundamentally changes SSA's mission rendering it more like an immigration enforcement agency than an agency administering benefits.

- The Secure America and Orderly Immigration Act requires annual reverification of the employment eligibility of every worker in the U.S. Under the Basic Pilot Program, employers have used reverification of employment eligibility as a means to retaliate against workers who complain about labor conditions. This situation would likely be exacerbated with a system that requires annual reverification.

- The Secure America and Orderly Immigration Act requires a host of new information to be collected on all workers, including occupation, annual wages paid, period of employment eligibility, when a worker begins a job and when they are terminated. This information will be

warehoused in a massive database that sets the framework needed for a national ID system, which raises grave civil liberties and civil rights concerns.

- The Comprehensive Enforcement and Immigration Control Act does not provide any guidance regarding use and misuse of the program. At minimum, the bill must include a secondary verification process, anti-discrimination protections, and prohibited practices to prevent the program from being misused.

Any expansion of employment verification systems should build on the lessons learned from the current Basic Pilot Program. Put simply, DHS and SSA cannot currently administer a successful, national mandatory program. Moving forward without addressing the current deficiencies would hurt employers and employees alike without improving immigration enforcement. If Congress does move forward with such a proposal, we hope that it will consider the recommendations we have listed above.

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Testimony of
Frank Sharry
Executive Director
National Immigration Forum
Before the Senate Committee on the Judiciary
On Comprehensive Immigration Reform
October 18, 2005

Many thanks to Chairman Specter and to the other members of the Senate Judiciary Committee for this opportunity to share my views on the urgent challenge of fixing our broken immigration system.

The American people are right to demand that Congress and the Administration take effective action to restore the rule of law to our nation's immigration system. The evidence of the system's dysfunction is all around us: young men and women die gruesome deaths in southwestern deserts as they attempt to enter the U.S. in search of work; fake document merchants and criminal smugglers turn huge profits in networks that one day might be exploited not by those seeking work in our economy but by those seeking to attack our nation; local community tensions simmer and sometimes explode as housing gets stretched, schools experience change, and language differences emerge; immigrant families remain divided for years, even decades, by restrictive admissions policies and inefficient processing; immigrant workers afraid of being discovered and deported are subject to abuse and exploitation by unscrupulous employers seeking to gain an unfair advantage over law-abiding competitors; meanwhile, public frustration mounts as the federal government seems incapable of mobilizing the political leadership and enacting the policy changes to fix the system once and for all.

Mr. Chairman, I urge you and the Committee to lead the way and take effective action in this Congress. The country is crying out for leadership on this issue and a solution to this problem. Immigration policy is fundamentally and constitutionally a matter for the federal government. States and local communities are understandably frustrated with the effects of a broken immigration system, but they cannot and do not set national immigration policy. It is up to Congress and the Administration to rise to the occasion.

I believe the Senate Judiciary Committee is uniquely suited to the task at hand. This Committee has rightly earned a reputation for confronting difficult challenges in a professional and dignified manner. Others on Capitol Hill may be tempted to take the path of least resistance and enact piecemeal measures that sound tough but solve nothing. But this Committee, if it acts with dispatch and intelligence, can set the tone and direction for the debate in this Congress, and create the template for immigration reform that is bipartisan in its formulation, comprehensive in its approach, and workable once fully implemented.

A problem as hard to diagnose as it is to solve

Fixing the broken immigration system requires sizing up its complexity and its dimensions. The numbers tell part of the story. Some 11 million undocumented immigrants now live and work in the United States. That means that almost one third of all the immigrants in America lives here without government authorization. 14 million people, including some 5 million kids, live in households headed by an undocumented immigrant. 1 out of 20 workers in the nation's labor force is living and working here illegally. Two-thirds of them have arrived in the last decade. More than half are from Mexico. More than 80% are from Latin America and the Caribbean. America's backyard is showing up on America's front porch.

Illegal immigration is no longer a niche issue affecting a handful of gateway states and cities. It has gone nationwide. Consider the five states with the fastest growing populations of undocumented immigrants: North Carolina, Utah, Colorado, Arizona, and Idaho. In fact, a wide swath of the nation's heartland, from the old South stretching up through the Mountain states to the Northwest, is undergoing a remarkable demographic transformation with little to no recent experience to draw on to respond to it.

Moreover, most new undocumented immigrants appear to be here to stay. The vast majority no longer fit the stereotype of the migrant male on his own here to do temporary work before returning home. Today, 70% live with spouses and/or children. And only 3% work in agriculture. The vast majority are employed in year-round service sector jobs. After all, the jobs are plentiful. More than half the new jobs created in the American economy require hard work, not multiple diplomas. Meanwhile, young native-born workers are smaller in number, better educated than ever, and more interested in office work than manual labor. Consequently, much of the nation's demand for housekeepers, childcare workers, landscapers, protein processors, busboys, cooks, janitors, dry wallers, and construction workers is met by a steady flow of some 500,000 undocumented migrants who enter and settle in America each year.

Which begs the question: Since the U.S. has a legal immigration system, why don't these workers from Mexico and elsewhere simply wait in line and enter with legal visas? Answer: what legal visas? There are virtually none available for these workers. While the labor market demands an estimated 500,000 full-time low-skilled service jobs a year, our immigration laws supply just 5,000 permanent visas for workers to fill these jobs. And this tiny category is so backlogged it has been rendered useless. As the Immigration Policy Center recently pointed out, of the other 15 immigrant visa categories available for employment and training, only two are available to industries that require little or no formal training. These two categories (H2A and H2B) are small and seasonal. In addition to the enormous mismatch between labor market realities and our government's immigration policy, our family visa lines are so backlogged that it can take a decade for spouses to be reunited, legally. Not surprisingly, many stop waiting and cross the border illegally in order to reunite with their loved ones.

What to do? Some argue that the solution is to simply enforce the laws we already have on the books. And while we certainly need tighter, more targeted, and more effective enforcement as part of a comprehensive overhaul, the fact is that over the past two decades the "enforcement only" approach has failed miserably. As another of this hearing's witnesses, Princeton professor Douglas Massey, recently documented, since 1986 the border patrol budget has increased ten-fold in value. This beefing up of border enforcement has been augmented by tough restrictions on immigrant access to employment, public services, and due process protections.

And yet this unprecedented increase in enforcement has coincided with an unprecedented increase in illegal immigration.

Why hasn't "enforcement only" worked to stem illegal immigration? Because our current approach to immigration and border security policy fails to recognize that the United States has an increasingly integrated labor market with Latin America. In much the same way that we used to see workers from rural areas in South migrate to the urban North to fill manufacturing jobs, we now see workers from rural areas south of the border migrating to all areas of the U.S. to fill service jobs. Our failure to account for this fact of life leads to a failure of policy. Instead of building a workable regulatory regime to govern what is essentially a market-driven labor migration, we keep legal channels severely restricted and then wonder why workers and their families have nowhere to go but into the clutches of a migration black market dominated by smugglers, fake document merchants, and unscrupulous employers.

Dan Griswold of the Cato Institute sums it up this way: "Demand for low-skilled labor continues to grow

in the United States while the domestic supply of suitable workers inexorably declines – yet U.S. immigration law contains virtually no legal channel through which low-skilled immigrant workers can enter the country to fill that gap. The result is an illegal flow of workers characterized by more permanent and less circular migration, smuggling, document fraud, deaths at the border, artificially depressed wages, and threats to civil liberties." He adds, "American immigration laws are colliding with reality, and reality is winning."

Griswold is right. We will not be able to restore respect for the rule of law in our immigration system until we restore respect for the law of supply and demand. Instead of "enforcement only" or "enforcement first," we need an "enforcement plus" approach.

I recall the first time I came face to face with the reality of an integrated labor market and the futility of an "enforcement only" strategy. In the late 1990's I accompanied a delegation that visited Tixla ("Teesh-la"), a "sending community" located in the Mexico. Most of its sons and daughters had left and migrated illegally to Chicago to fill available service jobs in construction, landscaping, hospitality, and childcare. Those left behind consisted mostly of women, children, and the elderly. The workers used to come back and forth, at least for visits, but this had mostly stopped due to the press of their multiple jobs up north and the risks associated with re-crossing the border illegally. The townspeople were proud to show us the new school and basketball court which had recently been built with pooled remittances. And there, right there in the middle of the basketball court, was a huge replica of the logo for the Chicago Bulls.

That's when it hit me. Tixla, a dusty, rural town south of Mexico City, is a bedroom community for Chicago. We may not think of it that way, but it is 21st century fact. The town produces the workers needed to fill newly-created service sector jobs in the Chicago area. There is plenty of work available just up the road, and these workers are willing to risk their lives to make the commute.

Needed: a new perspective and a comprehensive strategy

Like so many other public policy debates, the highly-charged immigration debate is often polarized and paralyzed by an "either/or" framework. The tit-for-tat goes something like this: you are either for immigrants or for control; you are either for higher levels or lower levels; you are either for closed borders or open borders; you are either for lax policies or tough policies. This narrow and lopsided framework is a trap that obscures realistic solutions.

What's needed is a "both/and" approach that recognizes the reality of an integrated labor market with Latin America *and* the legitimate U.S. demand for operational control of its borders in a post 9/11 world. Such an approach seeks to integrate seemingly contradictory elements into a comprehensive package; a package that combines expanded enforcement strategies *and* expanded legal channels for those entering the U.S. to work and join families *and* expanded pathways to legal status and citizenship for undocumented immigrants already living and working in the U.S. We need to change our immigration laws so that they are enforceable *and* enforce them effectively.

Senator Edward Kennedy put it this way in recent testimony before this Committee: "The past debate has long been polarized between those who want more enforcement and those who want more visas. But to repair what's broken, we need to combine increased enforcement and increased legality. Better border control and better treatment of immigrants are not inconsistent – they are two sides of the same coin."

This new perspective was first promoted and popularized by Presidents Bush and Fox in their 2001 migration negotiations. The two presidents imagined a system based on improved border security and widened legal channels. The idea was, and is, to recognize, regularize, and regulate the status of workers

who are either coming from south of the border to jobs in the U.S. or already here working and contributing to our economy. The goal? Make the healthy, positive, and predictable movement of workers to available jobs safe, legal, and orderly.

The President deserves considerable credit for getting this "big idea" and sticking with it. In January 2004 he announced principles for immigration reform that, although somewhat vague and incomplete, captured this new perspective. And this vision of immigration reform has spawned two significant immigration reform proposals in the Senate. One is authored by Senators McCain and Kennedy. The other is authored by Senators Cornyn and Kyl. Both proposals are serious and go beyond an "enforcement only" approach. However, in our view only the McCain-Kennedy bill is both fully comprehensive and workable. That is why the organization I direct has joined with constituencies from across the political spectrum and across the country to endorse the *Secure America and Orderly Immigration Act of 2005*.

***Secure America*: A cure for what ails us**

Secure America is not perfect, but it is an excellent draft that should serve as the basis for fixing our broken immigration system. Specifically, the bill combines 1) enhanced enforcement to ensure the reformed immigration system is effectively policed; 2) widened legal channels for the future flow of workers and families; 3) a workable solution for the 11 million undocumented immigrants currently working and living in the United States; and 4) support for the successful integration of newcomers in the communities where they settle.

The key to effective enforcement is to augment our border enforcement efforts with a system that ensures that *all* workers hired in the United States are in our country legally. The bill accomplishes this by building an electronic worker verification system (the bill contemplates credit card swipe machines, but for social security cards, drivers' licenses, or immigration documents, and only at the point of hire) combined with tough sanctions for employers who attempt to end-run the new system. I predict that responsible employers will support it as long as the verification system is functional and the new system is combined with legal channels for workers here and those needed in the future. I predict that unscrupulous employers -- those that benefit from the dysfunctional status quo -- will oppose it.

The keys to making the admissions system realistic, controlled, and workable are a) to provide enough visas for the expected future flow of workers and families; and b) to avoid the exploitation and abuses of old-style guest worker programs. *Secure America* accomplishes the first by creating 400,000 worker visas a year and increasing family reunification visas so that the current illegal flow will be funneled into a legal one while being fair to those from around the world. It tackles the second by requiring employers to pay newly-admitted workers the same wages as similarly-situated workers, and by mostly de-linking workers' status from employer say-so. For example, workers on temporary visas (three year visas, renewable) will be able to "vote with their feet" and change jobs without threatening their immigration status. After four years in the country, such workers will be able to self-petition for permanent residence – rather than having to ask for the blessing of a particular employer.

The key to putting migration on legal footing once and for all is finding a way for the 11 million or so undocumented immigrants to come out of the shadows voluntarily and transition to legal status. *Secure America* addresses this controversial issue head on. It offers incentives for undocumented immigrants already here to come forward, register with the government, submit to criminal, security, and health screenings, pay a hefty fine, study English and civics, and clear up their taxes as a way to eventually earn permanent residency. Immigrants who meet these requirements can apply for permanent residence after six years, and become eligible for citizenship in 11 years at the earliest. And this component interacts with the family reunification provisions such that those waiting in the queue outside the U.S. secure permanent

residence *before* those previously undocumented immigrants who obtain temporary status.

Critics label this process of registration and earned legalization an "amnesty." Senator Kennedy rightly objects that "there is no free pass, no automatic pardon, no trip to the front of the line." The *Wall Street Journal* editorial page, which I suspect rarely lines up with the senior Massachusetts Senator, agrees: "This amnesty charge may be potent as a political slogan, but it becomes far less persuasive when you examine its real-world implications. If paying a fine isn't good enough for illegals already here, what are the restrictionists proposing? Mass arrests, raids on job-creating businesses, or deportations? . . . . Those who wave the 'no amnesty' flag are actually encouraging a larger underground illegal population. The only reform that has a chance to succeed is one that recognizes the reality that 10 or so million illegal aliens already work in the U.S. and are vital to the economy and their communities."

Finally, the bill promotes the successful integration of new immigrants into local communities. Immigration to America has worked throughout our history because newcomers have been encouraged to become new Americans. *Secure America* takes steps to renew this commitment by increasing English classes for adult immigrants, citizenship promotion and preparation, and the legal security immigrant workers need to move up the economic ladder. In fact, it's worth noting that when 3 million undocumented immigrants became legal immigrants some 20 years ago, their wages increased by 14% over 5 years – they were no longer afraid to speak up or change jobs – and their productivity increased dramatically – they studied English and improved their skills through training. The bill also deals with a longstanding and legitimate complaint from state and local governments by reimbursing costs related to health care and other public services.

The bill certainly has its faults and its critics. The immigration enforcement provisions are strong but will need to be strengthened if we are to ensure immigrant workers and families use widened legal channels and no others. Similarly, the bill aims to construct a temporary worker program that adequately protects both native and immigrant workers alike, but will probably need to be tweaked to fully realize this objective. After all, the goal of immigration reform should be nothing less than to restore the rule of law – both to our immigration system and to low-wage labor markets. And unfortunately, the bill does not adequately address the acknowledged long-term solution to the migration challenge: economic development in sending nations and communities. It is my hope that this session's immigration reform debate will serve as a stepping stone to, if not a venue for, a much-needed review of trade, aid, and development policies in the Americas.

Overall, though, the bill's premise is brilliant and its promise viable: take migration out of the black market and bring it under the rule of law; funnel the illegal flow into legal channels; increase the legality of the migration that is occurring, rather than increase the numbers of those who enter; get control of the flow so we get control of our border; bring undocumented immigrants out of the shadows and under the protection of our laws; know who is in our country and who is entering it; shift from repressing migration ineffectively to regulating migration intelligently; turn the broken status quo into a functioning, regulated system; drain the swamp of fake documents and criminal smugglers; vetted airport arrivals instead of deaths in the desert; families united rather than divided for decades; verification mechanisms that work and fake documents that don't; legal workers and an equal playing field for honest employers; equal labor rights for all rather than a race to the bottom for most. In sum, this bill represents a 21st century solution for a 21st century challenge.

The Cornyn-Kyl bill: Right direction, but falls short

The proposal introduced recently by Senators John Cornyn and Jon Kyl is a serious bill. And Senator Cornyn in particular has distinguished himself recently by his eloquent diagnosis of our broken

immigration system. He has repeatedly said that the only way to solve the immigration dilemma is to combine tougher enforcement with a legal regime that deals realistically both with those entering our nation and those already here.

Unfortunately, the bill as introduced is not workable. Instead of offering carrots to draw the 11 million out of the shadows so they register with the government, submit to screenings, pay a fine, and get in line for eventual permanent residency, it presents mostly sticks that would end up with most undocumented immigrants opting to remain in the shadows. Instead of reuniting families in a more timely fashion and keeping nuclear families together, the bill fails to address existing backlogs and instead would most likely result in more families split between different countries for longer periods of time. Instead of ensuring that immigrant workers are treated equally so that both low-wage workers and law-abiding employers benefit, the bill would likely end up favoring employers who undercut their competitors by hiring short-term guest workers. Instead of providing for a stable workforce and promoting citizenship, the bill threatens to force workers out of the country or out of their jobs, and provides no meaningful path to citizenship.

Nevertheless, the authors have rightly steered clear of an "enforcement only" or "enforcement first" approach and have developed a number of ideas worthy of consideration and inclusion in a Senate Judiciary Committee bill. It is my hope and recommendation that this Committee, led by its Chairman, will start with the McCain-Kennedy template and include the best of the proposals before it in a way that builds momentum and support in the full Senate for workable comprehensive reform.

Final remarks

We at the National Immigration Forum have been working on challenges related to immigration policy for more than 20 years. We understand how hard it is to fashion immigration reform that can pass Congress and work on the ground once enacted. We are fully prepared to support and fight for a combination of tough and smart enforcement measures if combined with simultaneous reforms to our admissions policies that bring undocumented immigrants out of the shadows and provide a sufficient number of worker and family reunification visas for the future flow. But we cannot and will not support proposals that have no realistic chance of working once implemented. Our stand is that we not only get it done, but that we get it done right.

But we are optimistic. We believe this is our generation's best shot at enacting workable reform. As a nation we seem poised to moved beyond the old debate -- characterized by simplistic and shallow prescriptions of the past, the non-solution, sound bite-driven "get tough and be done with it" approach. The nation is ready to take part in a new debate, one that takes *all* of the moving parts into full consideration and at the same time. The old debate suggests that we have to choose between being a nation of immigrants or a nation of laws. The new debate recognizes that the only way to be either is to be both.

We look forward to working with the Committee to turn this vision of reform into a reality.

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