S. HRG. 109–698

EXAMINING THE NEED FOR COMPREHENSIVE IMMIGRATION REFORM, PART II

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

JULY 12, 2006

Serial No. J–109–97

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

31–098 PDF WASHINGTON : 2006

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

COMMITTEE ON THE JUDICIARY

ARLEN SPECTER, Pennsylvania, *Chairman*

ORRIN G. HATCH, Utah
CHARLES E. GRASSLEY, Iowa
JON KYL, Arizona
MIKE DEWINE, Ohio
JEFF SESSIONS, Alabama
LINDSEY O. GRAHAM, South Carolina
JOHN CORNYN, Texas
SAM BROWNBACK, Kansas
TOM COBURN, Oklahoma

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

MICHAEL O'NEILL, *Chief Counsel and Staff Director*
BRUCE A. COHEN, *Democratic Chief Counsel and Staff Director*

CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

	Page
Cornyn, Hon. John, a U.S. Senator from the State of Texas	10
prepared statement	69
Feinstein, Hon. Dianne, a U.S. Senator from the State of California	16
Kennedy, Hon. Edward M., a U.S. Senator from the State of Massachusetts	12
prepared statement	89
Kyl, Hon. Jon, a U.S. Senator from the State of Arizona	18
Leahy, Patrick J., a U.S. Senator from the State of Vermont	2
prepared statement	91
Sessions, Hon. Jeff, a U.S. Senator from the State of Alabama	13
Specter, Hon. Arlen, a U.S. Senator from the State of Pennsylvania	1

WITNESSES

Cutler, Michael W., Fellow, Center for Immigration Studies, Washington, D.C.	21
Gutierrez, Carlos, Secretary of Commerce, Washington, D.C.	4
Johnson, Benjamin, Director, Immigration Policy Center, American Immigration Law Foundation, Washington, D.C.	24
McDonald, William F., Professor of Sociology and Anthropology, and Co-Director, Institute of Criminal Law and Procedure, Georgetown University Law Center, Washington, D.C.	26
O'Dowd, Niall, Founder and Chairman, Irish Lobby for Immigration Reform, New York, New York	28

QUESTIONS AND ANSWERS

Responses of Michael W. Cutler to questions submitted by Senator Kennedy	37
Responses of Carlos Gutierrez to questions submitted by Senator Kennedy	50
Responses of Benjamin Johnson to questions submitted by Senator Kennedy	53
Responses of William F. McDonald to questions submitted by Senator Kennedy	56

SUBMISSIONS FOR THE RECORD

Chertoff, Michael, Secretary of Homeland Security, Washington, D.C., statement	67
Cutler, Michael W., Fellow, Center for Immigration Studies, Washington, D.C., statement and letter	71
Gutierrez, Carlos, Secretary of Commerce, Washington, D.C., statement	75
Johnson, Benjamin, Director, Immigration Policy Center, American Immigration Law Foundation, Washington, D.C., statement	82
McDonald, William F., Professor of Sociology and Anthropology, and Co-Director, Institute of Criminal Law and Procedure, Georgetown University Law Center, Washington, D.C., statement	93
Microsoft Corporation, Jack Krumholtz, Managing Director, Federal Government Affairs, Washington, D.C., statement	106
O'Dowd, Niall, Founder and Chairman, Irish Lobby for Immigration Reform, New York, New York, statement	111

EXAMINING THE NEED FOR COMPREHENSIVE IMMIGRATION REFORM, PART II

WEDNESDAY, JULY 12, 2006

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 9:34 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Arlen Specter, Chairman of the Committee, presiding.

Present: Senators Specter, Kyl, Sessions, Cornyn, Leahy, Kennedy, and Feinstein.

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

Chairman SPECTER. Good morning, ladies and gentlemen.

The Senate Judiciary Committee will now proceed with this hearing on immigration. And will you please start the clock on me like everybody else?

It would be our preference to be conferring with the House of Representatives on the immigration matter as opposed to setting aside the month of August for hearings. And I do not believe we are engaging in dual hearings. But when the House announced the scheduling of hearings starting the month of August with the overtone of criticizing the Senate bill, it seems only reasonable to respond to have hearings to demonstrate the necessity to go beyond border security and to have a guest worker program and to take care of the 11 million undocumented immigrants. It is my hope that after we complete those hearings that in September we will move ahead to a conference and produce legislation.

There has been a good deal of talk about a so-called trigger to have border security before we move ahead for the consideration of a guest worker program or to deal with the 11 million undocumented immigrants. I think it is worth noting that in the Senate bill there are a number of delays. I think we should not get bogged down on semantics over substance, but ought to deal with what is the substance, not get bogged down on amnesty, which the Senate bill is not, because we provide for a fine, we provide for no criminal record, we provide for a long period of employment, the learning of English, so that there is no forgiveness and citizenship is earned under the Senate bill.

We do have some built-in delays. For example, there will be no guest worker program under the Senate bill until after there have been appropriations for employer verification so that we will be

sure that we are moving ahead on securing the border to eliminate illegals before we move into the guest worker program.

It is also estimated that the regulations on the guest workers or on the 11 million will take at least 18 months, perhaps longer. So there is a built-in delay. And the 11 million or those of the 11 million who qualify for citizenship will be at the end of the line, and that line will take perhaps as long as 6 years.

I do not often quote Senator Kennedy, but I told him I was going to do this. I do not often quote him in his presence.

Senator KENNEDY. That is right. I can hardly wait to hear this. [Laughter.]

Chairman SPECTER. His comment, by the way, comes out of his time.

But this is what Senator Kennedy said when we had the hearing last Wednesday at the Constitution Center: "So if there are those who feel a greater sense of satisfaction that we are going to move toward the enforcement first, that effectively was in the Senate bill." So that is a concise statement that we may not be so far apart.

I think there is the beginning of some amenity nationally. The recent issue of Time Magazine took up the supportive position on guest workers, pointing out that there is so much domestic consumption of illegal immigrant labor—housekeepers, nannies, gardeners, way above the farmers, the hotels, the restaurants that we traditionally talk about. And the Time Magazine article I think was right on target in identifying the underlying racism and xenophobia which really grips us despite our denial of it with the Chinese Exclusion Act going back to 1882 and the 1924 Immigration Act limiting immigrants from southern Italy targeted at Italians and with the limitation on Jewish immigrants when the Holocaust was on. So that when there is an effort to limit Chinese and Indian immigrants for legal status and HB–1, talented, well-qualified people, we see that the battle goes beyond legal versus illegal.

Today's hearing is going to be another effort, continuing effort to explain to the American people the importance of guest workers and the importance of not having a fugitive underclass of 11 million people.

My red light just went on so I now yield to the distinguished Ranking Member, Senator Leahy.

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator LEAHY. Well, thank you, Mr. Chairman. You have done so much work on this—and Senator Kennedy, Senator McCain, myself, and others have—that I am sorry to find that the election-year politics seem to have diminished the work the Senate has done to find a comprehensive solution to the Nation's immigration problem.

We have worked hard in the Senate. We created a bipartisan bill, delivered fair and comprehensive reforms, but since its passage, we have seen many in the Congress reject efforts to move forward and make progress, and notwithstanding what the Senate Democratic leaders have tried to do to get to conference. So instead, we end up with a series of after-the-fact hearings. Now, a few, like the one held by the Senate Armed Services Committee this week—and I

know Senator Kennedy was at that were supportive of the Senate bill. We heard a powerful statement by General Pace—as those of us with Italian ancestry would say, General "Pa-chay"—this week. The Chairman's field hearing, again, attended by Senator Kennedy, last week, contributed to the record supporting the Senate bill.

But then we see other hearings that have done nothing more than inflame the passions of anti-immigrant activists, and the lines seem clear. The anti-immigrant faction opposes a fair and comprehensive approach. They seem to abhor establishing a pathway to earn citizenship, and they seem to think it is going to help in upcoming elections. I would hope not. I think we reject the best of America and our values when we refuse to recognize all that immigrants bring and mean to this country. And I hope that fear and intolerance are not winning political strategies.

It is unrealistic to think we can apprehend and deport every undocumented individual the administration has allowed into the United States. The reality is that our economy depends upon the labor of foreign workers. When Border Patrol agents are not spending time and resources apprehending people coming here to work, then they can work at really protecting the security of this country.

I believe there is real merit to President Bush's argument that if we increase the opportunity to come to the United States legally, we will reduce the demand for illegal entry.

We are a welcoming, diverse country built and enriched by immigrants. My maternal grandparents came here from Italy. My paternal great-grandparents came here from Ireland. My mother learned English as a second language. My parents-in-law came here from Canada. My wife learned English as a second language as a first-generation American. And how proud they all were to come to this country. The distinguished Secretary knows what that pride feels like

The opposition to providing bilingual ballots to bilingual American citizens, who are vested with the right to vote, is a particularly troubling part of this debate. Section 203's guarantee of equality is not just for immigrants but for Native Americans and those who have long been citizens. The reality is that people who come to the United States embrace the English language along with patriotism, as my grandparents did, as my mother did, as my wife did. And America loses when we discriminate on the basis of national origin or language. Isolating ourselves and turning this country into a police state is not the way our Nation will remain the beacon of freedom and prosperity it has always been. Let us have faith in our traditional values. Let us show the strength and purpose needed to accomplish the comprehensive reform we need.

It is critical that President Bush make good on his commitment to support the Senate's work. I know how hard we worked to get that bill through. But without his active support and his steadfast dedication, the Congressional Republican efforts to derail comprehensive reform will succeed. I applauded the President for his statements earlier on comprehensive reform. I hope he will stay steadfast with that. If he does, we will pass it. If he does not, we will not. I hope he stays with us.

Thank you, Mr. Chairman.

Chairman SPECTER. Thank you very much, Senator Leahy.

We are pleased to have as our first witness today the very distinguished Secretary of Commerce, Carlos Gutierrez; born in Havana, Cuba, in 1953, came to the United States at the age of 7 in 1960; became a naturalized citizen in 1966; went to work for the Kellogg Company as a sales representative in 1975, and then became the youngest CEO in the history of that illustrious company. He has been the Secretary of Commerce since January of 2005, and he brings to the immigration issue a number of perspectives:

First, as Secretary of Commerce, he is in a position to provide expert testimony about the employment picture in the United States, just what is necessary by way of immigrant assistance, what is necessary by way of a guest worker program, what would happen if we did not have immigrants in this country undertaking so many of the jobs.

And then from his own perspective as an immigrant, he can tell us what it feels like to come from foreign shores and to become a part of the United States family and be such a distinguished citizen. And he can perhaps give us some insights as to the problems if we have an 11-million underclass of fugitives in this country, what that means to our society as a whole.

So we welcome you here, Mr. Secretary, and we look forward to your testimony.

Secretary GUTIERREZ. May I proceed with the testimony, Mr. Chairman?

Chairman SPECTER. Yes, you may proceed. Your full statement will be made a part of the record, and the floor is yours.

STATEMENT OF CARLOS GUTIERREZ, SECRETARY, DEPARTMENT OF COMMERCE, WASHINGTON, D.C.

Secretary GUTIERREZ. Thank you, Chairman Specter and Ranking Member Leahy and members of the Committee. I am very pleased to have this opportunity to discuss comprehensive immigration reform with you, and I want to thank you for your leadership and hard work on this important issue.

I believe that immigration is probably the domestic social issue of our time and a key to our future economic health. The President has called for comprehensive reform that includes protecting our borders and recognizing the needs of our growing economy.

Our reality is that our economy is growing faster than any other large industrialized nation. Our unemployment rate is below the average of the past four decades.

Our economy, like other major industrialized economies, faces the challenge of an aging and increasingly educated workforce.

The result is that we have jobs today that American citizens either are not willing to do or are not available to do. I continually hear from industries that they are having difficulty finding workers.

In May, we had 4.1 million job openings in the U.S. with a large amount in the hospitality industry.

As one example, when I was in Texas in June, Alan Simpson, president of the El Paso Restaurant Association and the Silver Streak hamburger chain, said, "When the unemployment rate is below 5 to 6 percent, it is a real challenge to staff restaurants."

So immigrants are not crossing our borders to look for a handout. They are seeking jobs that are available.

I am encouraged that we are starting to reach some consensus. As you know, more than 500 of our Nation's top economists recently sent a letter to President Bush and Congress stating that immigration has been a net gain for American citizens. And two-thirds of American voters say they support bills that include a temporary worker program or path to citizenship, rather than one that focuses solely on border security.

President Bush has called for comprehensive immigration reform to address the many complex issues involved. Everyone agrees that it is essential to secure our borders.

The President has proposed increasing the number of Border Patrol agents from approximately 12,000 to more than 18,000, increasing the use of technology at the borders so we know who is coming through, and improving processes to become more efficient.

We believe that worksite enforcement is also essential. There is an underground industry today built on producing false documentation for illegal workers, and employers have a hard time helping enforce the law because they are not sure which documents are reliable.

The rules must be clear enough to hold businesses accountable, and we must ensure that businesses have the tools they need to follow the law.

We need to create a temporary workers program. It would create a legal means for more workers to enter the United States for a limited time period to fill labor needs. And by providing a legal, enforceable way for immigrants to enter, we would take pressure off our borders.

The President has called for a program to match willing immigrant workers with willing employers in jobs that no Americans have filled. And we need an expanded employment verification system, including biometric card identification for the temporary worker program. We have the technology today to use a person's unique characteristics, such as a fingerprint, to lock in identity.

When we have an effective employment verification system and we have a temporary workers program, the whole dynamics will change.

Over time, it will become very unlikely that people will risk their lives crossing the border if it is well known that unless you have this temporary worker's permit, unless you have this biometric card, you will not find a job.

These are some of the most consequential things we can do to make our borders more secure, and they demonstrate the wisdom of comprehensive immigration reform. The biggest thing we can do for our border is to have a temporary worker's permit for the interior of the country.

The other reality we must confront is that we have 12 million people who are in the country illegally. The President has said that deporting 12 million individuals would not be wise, it would not be practical, and it would not be humane.

The other extreme of the argument is amnesty. The dictionary defines amnesty as an "unconditional pardon—obliterating all memory of the offense." The President does not support amnesty,

and it is not accurate or fair to call his solution to the problem "amnesty."

We are talking about having a hard-earned path to legalization, which would require meeting conditions such as people waiting their turn in line—which can take many, many years—paying fines, paying taxes, learning English, undergoing a criminal background check, and having a job.

Very importantly, when immigrants take the Oath of Allegiance to become American citizens, they give up allegiances to other countries. They promise to support and defend our Constitution and to serve in our military if required.

The process of becoming a U.S. citizen can take more than 8 years. Nothing is guaranteed. So immigrants have to make a real commitment to this country, and stick it out, to earn citizenship and its associated responsibilities.

The last important point that President Bush makes is that we are a Nation of immigrants and we must honor the great tradition of the melting pot.

It is a false choice to think the immigration debate is a battle between America being a welcoming society and being a Nation of laws. We can be both because we are both.

The United States' ability to assimilate immigrants is our comparative advantage in this global economy. Mr. Chairman, many countries today, such as Japan, China, Germany, and France, are having significant demographic problems, and they are seeing that over time their populations will start to decline. And they have more retired workers than they have workers able to support those retirees. Interestingly, they are turning to immigration to solve their demographic problems, and we know, we have seen in the news recently, that they are not having much success with immigration. They do not have experience with immigration. They do not know how to deal with immigration. They do not know how to assimilate immigrants.

We know how to do that. We have been doing it for 230 years. Now at a time when this debate has become so intense, I believe we need to understand that it is not only an issue to be resolved, but it is a tremendous opportunity to give us a competitive advantage over the rest of the world. Our ability to assimilate immigrants is a capability and a competitive advantage that we have that very few countries in the world have.

What we need now is leadership and reasonable compromise in the middle of those two extremes. We need to be talking about the right mix of immigration reform that addresses all the issues.

An immigration reform bill needs to be comprehensive because all elements of this problem must be addressed together, or none of them will be solved at all.

I ask you to commit to comprehensive immigration reform. The longer we wait, the bigger the problems we are passing on to a future generation.

If we address the issues effectively, I am convinced that our children and grandchildren will be proud of what we did.

Mr. Chairman, I thank you and I would be pleased to answer any questions.

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

Chairman SPECTER. Thank you very much, Mr. Secretary. We will now begin the 5-minute rounds for members.

I begin with the central point of the impact on the economy. Recently, more than 500 of the Nation's top economists, including five Nobel laureates, signed a joint letter to the President and Congress stating that immigration has a net gain economically for America. Is there any doubt that the immigrants contribute to the economy and are an indispensable part of having a growing, expanding economy which benefits all American citizens?

Secretary GUTIERREZ. Yes, Mr. Chairman, the estimates that we have seen is that the unemployment rate for undocumented workers is actually below the national average, which suggests that they come for one reason, and one reason only, and that is to work. Approximately—these are estimates—5 or 6 percent of our jobs are carried out by undocumented workers. So—

Chairman SPECTER. And is their presence here and their contribution to the economy a net gain that ripples through to the benefit of all the rest of those of us who are in this country?

Secretary GUTIERREZ. Absolutely. The owners of the businesses that have access to those workers in turn become consumers, in turn spend money in our economy. They invest in their businesses. The immigrants become consumers. There is a multiplying effect to our economy that every estimate I have seen suggests that is positive.

Chairman SPECTER. Moving away from the guest worker program to the 11 million, and pardon me for perhaps interrupting, but moving to central point—each of us has only 5 minutes, and I am going to mind the time meticulously. Moving away from the guest worker issue, what is the impact on American society by having 11 million undocumented immigrants who become a fugitive class and who become an underclass? How does that affect our society in terms of a crime problem, in terms of the overall texture of American society?

Secretary GUTIERREZ. That is a very interesting question. I think that when we start getting to the ground level and understanding these 11, 12 million people, we are talking in many cases of children who are going to school today, because those 11, 12 million people have 3 million children. They were born here. They are going to school. They probably play Little League. They are in the class play. They do not know of any other country. They probably do not really realize that their parents have this problem with documentation, so they are part of the fabric of our society. Estimates that I see suggest that over 7 or 8 million of them have been here for more than 5 years.

Chairman SPECTER. How about the impact of living in the shadows and being subject to deportation and being an underclass and being essentially a fugitive class?

Secretary GUTIERREZ. Yes, which does not enable them or encourage them to assimilate, to learn English, to be part of society. As you say, the more this issue becomes one of enforcement only, we are driving them farther and farther underground. And what

we want, even for our National security, is to drive them above the shadows so we know who they are.

Chairman SPECTER. Mr. Secretary, now moving to the personal level, because you have quite a history as an immigrant, coming from Cuba at the age of 7 and becoming the chief executive officer and later Chairman of the board of one of America's great corporations, you make the point that there is a real commitment to this country by the citizens. Senator Leahy talks about his own background. We all have a background to talk about. And just for a few moments, a few seconds about my father, he came here at the age of 18 from Russia. The czar wanted to send him to Siberia, and he wanted to go to Kansas. And as I jokingly say, it was a close call.

[Laughter.]

Chairman SPECTER. He served in World War I very, very proudly, perhaps in the era before we had draft dodgers. Maybe he did not know anything about dodging the draft, but he was very proud.

As an immigrant, what is the commitment of the immigrants to America?

Secretary GUTIERREZ. The feeling, it is hard to describe, that when you are welcomed by a society, welcomed by citizens, given an opportunity to improve your life, knowing that you have to play by the rules and you have to contribute. But once you have that, there is an unswerving loyalty to this country.

I can tell you, Mr. Chairman, I have lost a lot of things in my life. I have lost pens. I have lost wallets. I have never lost my passport. And for me, that is probably my most prized possession. And I know many, many immigrants who feel the same way.

Chairman SPECTER. Thank you, Mr. Secretary.

Senator Leahy?

Senator LEAHY. Thank you, Mr. Secretary. I hear my grandparents in your voice. I know how much they have talked about it. I have gone back many times to the village in northern Italy where they are from and met the other relatives. And I know how proud my mother was. I know how proud my wife is for her citizenship. You have a remarkable story, and I am glad to hear your testimony in favor of comprehensive immigration reform.

If the Congress is going to send a comprehensive bill to the President's desk—and I think it is safe to say that three of us want to—we are going to need the President's active participation in the process, because there is a big difference between the comprehensive bill that we passed here in the Senate and the House where there is strong opposition to a guest worker program and path to citizenship.

Is the President prepared to get personally involved in this, to increase his involvement in this issue?

Secretary GUTIERREZ. Senator, everything I have seen from the President is that he is deeply involved, deeply engaged, and providing great leadership in an issue that is of great importance for him. I do not want to speak for him, but I know that he is very committed and very engaged.

Senator LEAHY. And he is going to have to stay that way. I know that in the meeting that Senator Specter and I and others had with him, he spoke of his own experience in Texas, and he got very—I would say almost passionately involved in this. But it is going to

require that same kind of passion if we are going to be successful in our efforts.

For example, does the administration support the Senate bill as it is written?

Secretary GUTIERREZ. Well, I believe that the Senate bill is over 700 pages, and the Senate bill, the House bill, there are—

Senator LEAHY. Well, maybe let me put it this way: We have basically a guest worker program and a path to citizenship. You support those concepts?

Secretary GUTIERREZ. Yes, the President supports comprehensive immigration reform, and that is going to require a lot of commitment, a lot of compromise, a lot of dialogue to sort out some very complicated issues and come to an agreement as to that comprehensive reform that is best for our country.

Senator LEAHY. Well, the reason I ask is that there has been some talk about compromise where you do border security measures first, and then once a secure border was certified—which could be years from now—then we could introduce guest worker and a path to citizenship.

Do you support that kind of a one-two step, or do you support trying to do both together?

Secretary GUTIERREZ. Well, clearly, the proposal from the President is comprehensive reform. One of the big challenges is how you execute that. How do we execute comprehensive reform? That execution can take on a lot of different avenues, but it needs to be comprehensive reform. How we execute, which I think is one of the big questions, is one of the big challenges, how we make it workable, how we execute is something that I would hope that we can sort out.

Senator LEAHY. Well, I would hope we can, but I do not think you can do one without the other, and I do not think you can do one first and the other 1 years later.

Incidentally, part of the Senate's debate on comprehensive immigration reform includes a debate about whether English should be an official or a national language of the United States. I, along with others, feel that an official language is not only unnecessary but fails to recognize the multicultural heritage of our country and the legitimate needs of those who are learning English.

I enjoy speaking French with my wife's family, but they also all speak English, fortunately, because my French is not that good.

The President has also expressed this belief. Attorney General Gonzales has as well.

Can you tell me if the administration plans to continue its support of Executive Order 13166? That is the order that improves multilingual access to Federal programs and activities.

Secretary GUTIERREZ. I believe the administration has mentioned that there is support for extending and continuing the current law.

On the English language—

Senator LEAHY. On that one, if I could add just a second part to that, and you take the time you need, some members of the House of Representatives have expressed opposition to Section 203 of the Voting Rights Act which provides bilingual ballots. Do you agree with them on that?

Secretary GUTIERREZ. As I mentioned, the administration has expressed support for the current law as it is written. This is interesting because the President has talked about English-plus, and I hate to get sidetracked on an issue. The President has said if you learn English, you can go from cleaning an office to running an office; you can go from picking agricultural products to owning a restaurant.

So it is a very positive attitude. No one is against second languages. My goodness, I would hope that we would all somehow be bilingual. But what we have said is if we can convince people, encourage them that the best thing for their future is to learn English and to learn it well, I think that is the positive message here, is learn English, this is good for you, it is good for your future. But as the administration has said, we support extending the current law.

Senator LEAHY. Including Section 203 of the Voting Rights Act which provides bilingual ballots?

Secretary GUTIERREZ. The provisions of the current law, yes.

Senator LEAHY. Thank you.

Chairman SPECTER. Thank you, Senator Leahy. Under our early-bird rule, those first to arrive are taken in sequence. Among the Republicans we have Senator Cornyn, Senator Sessions, Senator Kyl, and the Democrats, Senator Kennedy and Senator Feinstein.

Senator Cornyn?

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

Senator CORNYN. Thank you, Mr. Chairman. Thank you, Secretary Gutierrez. It is good to see you again, and thank you for visiting with me recently in my office about this important issue.

As I told you then and I will repeat now, I support comprehensive immigration reform. As you know, Senator Kyl and I introduced a bill almost about a year ago now that addresses all of the various components that you have spoken to. And while there is some divergence among us here in the Senate about some aspects of that, I share your desire and the administration's desire to get to conference and try to work out those details.

As a businessman, you are, I know, committed in your business operations to actually having a policy that will actually work and can be implemented. And I think the biggest concern that some of us have is that we put the procedures in place, we appropriate the money, we hire the people, we train the people, we build the infrastructure that will actually allow comprehensive immigration reform to succeed. That is certainly my goal.

I guess what is such a challenge about this issue is that people tend to approach it from different perspectives, some from a security perspective, and certainly there is that essential element, as you have noted; some from a workforce and an economic perspective, which you have addressed primarily this morning, and it is certainly that as well; some from a human compassion perspective, and it certainly is that as well. And I believe that we need immigration reform that addresses all of those.

But while I believe that immigrants contribute to our society, our culture, and our economy, there are some of my constituents who

are angry at the Federal Government for what they see as the Federal Government's failures to address border security concerns and immigration concerns that have fallen on them in terms of their financial burdens, their tax burden, things like criminals who are housed at our jails and our prisons, that the Federal Government does not help pay for that housing and that incarceration.

Health care costs, 25 percent of my constituents in Texas do not have health insurance, and a large number of those are undocumented immigrants who show up at emergency rooms, and so emergency rooms go on divert status where true emergencies have to go wherever they can find the help.

And then, of course, there are education costs.

In each of those three areas, the Federal Government is simply not—it has mandated those costs be borne, for good reason, but it has not stepped up and paid for them. And so I know you can understand—because I know you were just down in Texas talking to a number of my constituents as well, understand why people have—while they feel proud of our heritage as a Nation of immigrants, while they believe that we are better off for it, they are upset with the Federal Government's failures in this area.

Let me just ask you about the—and I would ask, Mr. Chairman, I have a statement which I would ask to be made part of the record, Mr. Chairman.

Chairman SPECTER. Without objection.

Senator CORNYN. Thank you very much.

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

Senator CORNYN. Let me just, in the minute and 16 seconds I have remaining, ask you about the guest worker program. One of the important things that has happened as a result of this debate on immigration reform is I think people have learned that it is a lot more complex, a lot less simple than they thought at first, and that simplistic solutions will not address our true needs. But I think it is important when we have a debate to use terms that are meaningful and not misleading, even inadvertently so.

Sometimes we hear discussion about a guest worker program; other times we hear a discussion about a temporary worker program. Senator Kyl and I have endorsed in our bill a temporary worker program that would be based upon the principle of work and return, restoring the circular migration patterns that have historically existed between countries like Mexico and the United States that we feel would benefit our economy by creating a legal workforce that could provide workers, but at the same time provide a way for those workers to return to their country of origin, should they wish to do so, in a way that would allow them to bring their skills and savings back home that would help countries like Mexico develop its economy and create opportunities there.

Would you comment on that issue specifically about a guest worker program or temporary worker program and how you would see that structured?

Secretary GUTIERREZ. Well, the way I think about it is a TWP, temporary workers program, that is part of comprehensive reform, but it is not the only part of comprehensive reform. And I believe, as we were talking the other day, that there are probably workers

who want nothing more than just being able to come, work, and go back home.

One of the problems is that until we clarify the future, I believe they have all—they feel a bit reluctant to go back home because they are not convinced they will be able to get back in. So there is a temporary worker's permit program that allows people to work temporarily, go back home, and that is probably all they want. But then there is the other side of what to do with those who would like a path to legalization that have developed roots in the country. And talking about one without the other I think misses the comprehensive nature of what we are thinking about.

Senator CORNYN. We have to deal with both.

Secretary GUTIERREZ. Yes, sir.

Senator CORNYN. My time has expired. Thank you.

Chairman SPECTER. Thank you, Senator Cornyn.

Senator Kennedy?

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

Senator KENNEDY. Thank you, and welcome, Mr. Secretary you have an enormously impressive background and experience, and you come to this hearing particularly well qualified to talk about the economics of the undocumented in our society.

Let me just add that, as I was listening to Senator Cornyn, our comprehensive immigration legislation, recognizes that there are responsibilities at the national level to help border communities in the areas of enforcement, education and others. It is important to know that we have those kinds of provisions in the bill. We are hopeful that our President will work with Mexico to try to develop a system where there is going to be less pressure on the border. We have worked very hard on the national security in this area and will continue to do so.

I wanted to quickly review "The New Americans: Economic, Demographic, and Fiscal Effects of Immigration," published by the National Research Council. I understand their conclusions are very similar to yours. The study found that, overall, an immigrant and his family contribute over $80,000 more in taxes over their lifetime than they consume in services. Also, every census since 1890 found that immigrants are more likely than U.S. workers to be self-employed. One analysis has shown that a third of all the start-ups in Silicon Valley were founded by immigrants and that between 1901 and 1991, 44 of the 100 Nobel Prizes awarded to U.S. researchers were won by immigrants or their children, and that over 50 percent of engineering students in the U.S. and 40 percent of students in the natural sciences are foreign born. Most are legal immigrants, but many are not.

Are those observations consistent with what the Department of Commerce review has?

Secretary GUTIERREZ. Yes, Senator.

Senator KENNEDY. We had an enormously interesting hearing in Philadelphia. Mayor Bloomberg talked about what would happen to the city of New York if they did not have immigrants working there. The undocumented that work there have contributed so much to the vitality and the economic strength of New York.

We know from the Department of Labor that close to half of all the new jobs that have been created in this country over the last 5 years have been done by immigrants. The economic contributions of immigrants are something we ought to know and understand.

I just want to mention how moved I was by your testimony regarding the economic issues and the Department of Labor's statistics, and also the very powerful testimony that we had from General Pace, who is the Chairman of the Joint Chiefs of Staff. When he was asked about the performance of immigrants in the service, he mentioned the number of Bronze Stars that were won by immigrants today in Iraq and Afghanistan. I think it was three Silver Stars that were won by immigrants. It might have been two, but I think it was three Silver Stars.

He also commented on the percentage of immigrants that completed courses to advance to an infantryman and others were actually higher than other troops. Their performance in terms of discipline, bravery and courage were equal to any of the troops that he commanded.

Does that surprise you at all?

Secretary GUTIERREZ. It does not, Senator.

Senator KENNEDY. And we listened as well to Reverend Cortes, heads Esperanza, the evangelical group. He talked about their devotion to family, to parents and grandparents, to faith, to religion and their willingness to support one another. And he talked generally about the contributions immigrants are making to their community.

In your experience, is this something that you have been aware of?

Secretary GUTIERREZ. Yes, Senator, I have observed that.

Senator KENNEDY. Well, I wanted to thank you as well.

Secretary Guitierrez, over the course of these hearings, we have faced challenges in trying to have legitimate debate and discussion. For example, the House Immigration Subcommittee will hold a hearing on July 18th and the title of their hearing is, "Should We Embrace the Senate's Grant of Amnesty to Millions of Illegal Aliens and Repeat the Mistakes of the Immigration Reform and Control Act of 1986?" I think you have helped us understand the economic contributions that immigrants make to our country.

Thank you very much.

Chairman SPECTER. Thank you, Senator Kennedy.

Senator Sessions?

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Mr. Secretary, thank you for coming.

We appreciate your leadership, and I am certainly a great admirer of President Bush and the team he has put together and the economic record that you have achieved. And we are celebrating some of the good things that have happened as a result of that.

Mr. Secretary, Americans do believe in immigration. They do affirm immigrants that are here. They do not hate immigrants. All of us have a heritage of immigration. But they are asking sincerely, consistently for over 30 years that we create a lawful system of immigration.

You have expressed an affirmation of that, but, frankly, if you look at the budget requests of the administration, if you look at the prior record of this administration, we have not had a serious commitment to a legal system. The US–VISIT program, which is so central to what we will do if we are going to have a successful legal system, still does not have the exit system in place. And I am told that the budget request does not include sufficient money for that. That is not in your jurisdiction, but I would just share that.

So the American people are rightly concerned. They saw what happened in 1986, and they are rightly concerned that we may make that mistake again.

So I want to say to you and to my colleagues, comprehensive immigration reform is absolutely what needs to be done. I have felt that it was a complicated process and we should take more time to work it out. As we have gone forward, I have found out that it is even more complicated than anticipated and is going to take even longer, really, to put a system together that we can be proud of, that allows immigration into our country, but does so in a lawful way in which the United States acts in its own legitimate national interest. So I want to share those things with you.

The Senate bill, in my opinion, unfortunately, does not meet the test. I am pleased, as I understand the President has never explicitly endorsed that bill. It should never become law. As I have documented, there are loopholes after loopholes after loopholes that just cannot be part of an effective plan. So we have a real problem. That is the reality. It is not an easy thing to fix.

I would like you to point out a couple of things. We are going to have to deal compassionately with the people that are here illegally. I do not dispute that. I do not minimize the fact that they came here illegally and in violation of our law. That should not be encouraged in the future. But we need to treat them compassionately.

But we need to also talk about the future of our immigration policy. How many people does this country and this economy actually need and can sustain and assimilate? We need to ask what qualities we should look for and whether or not language should be a factor in the mission not just the citizenship path.

So I would first ask you, Have you considered and studied the Canadian plan, the point system that Canada has? And I met with their Immigration Minister recently. They are very proud of it. They think it is good. They continue to refine it. But they would never alter that plan. There is nothing like that in our bill, and I have heard nothing from the administration on that subject.

Secretary GUTIERREZ. I believe—and I am not an expert on the Canadian plan. I believe they have done a great job on high-skilled immigration, and they have a certain number of requirements. One of our realities, of course, is that as a society we have moved on. We have grown. We have taken new types of jobs. We are not willing to take the types of jobs that we may have been willing to take 100 years ago or 50 years ago. So the marketplace needs low-skilled today, as well as high-skilled. But a lot of it is what is the marketplace—

Senator SESSIONS. Let me interrupt you there. We have had serious discussions about this. We had at least one Committee hearing

that discussed it. I think the pro-immigrant witness, Chamber of Commerce or whatever person, agreed—they all agreed that low-skilled workers tend to draw more from the economy than they put in and high-skilled workers increase benefits to the economy. They all agreed with that.

You have heard of Robert Rector at the Heritage Foundation, I suppose, the architect of welfare reform. He says this is not going to solve our demographic problems because it is going to add to financial burdens because we are bringing in extraordinary numbers of low-skilled workers without high school degrees.

When you look at the benefits to the economy, you see that those benefits tend to be driven by the immigrants who come and have skills that allow them to prosper and get here and reach their fullest potential.

Have you considered that sufficiently? And I would just add, other professors that we have had—Professor Chiswick from the University of Chicago, Andrew Sum—all say the same thing. Have you thought about that?

Secretary GUTIERREZ. Well, I would just say, as you know, there is a recent letter from 500 economists supporting the benefit of immigrants to our society. We need high-skilled workers. They make a great contribution. Our marketplace needs low-skilled workers as well. Most of the immigrant generations that have come to our country have been low-skilled. The first generate is low-skilled. But because they come to work, because they come in search of a dream, they work very hard to ensure that their children are not low-skilled.

Senator SESSIONS. I would just say one thing, Mr. Chairman. In Mr. Johnson's testimony, whom we will hear in a little bit, I was noting his testimony is very, very strong in favor of less skilled workers in immigration. He notes, though, immigration has raised the average wage of native-born workers by 1.1 percent during the 1990s—1.1 percent during the growth period of the 1990s. He goes on—

Chairman SPECTER. Senator Sessions, how much more time would you like?

Senator SESSIONS. Thirty seconds. He also adds, "Among native-born workers with a high school diploma or more education, wages increased between 0.8 percent and 1.5 percent. Among native-born workers without a high school diploma, wages declined by 1.2 percent"—during the 1990s.

Now, my understanding of the law of supply and demand, if we have a high demand for labor, why haven't the wages gone up more than 1 percent, or even fallen for low-skilled workers?

Secretary GUTIERREZ. Well, the statistics I see, Senator, show that average household income—and that includes everything, benefits, salaries, the impact of lower taxes—has increased in real terms by 13 percent since the President took office. Our unemployment rate is at record levels below the average of the past four decades. More Americans own a home today than ever before in our history. The numbers I look at suggest that our economy is in a period of prosperity, and we have this gap because we are growing, because we are moving on, because we have fewer high school dropouts than we did 10 years ago, because we are evolving, and

we do not have enough people to take these low-skilled jobs that our economy needs.

I think it is one of those simple realities.

Senator SESSIONS. Mr. Chairman, thank you very much. But I really think you need to study the reality of those numbers more carefully, and I do not think they will be as supportive of the position you have taken as you may think.

Chairman SPECTER. Thank you, Senator Sessions.

Senator Feinstein?

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

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

Mr. Secretary, good morning. I would just like to begin with a thank you on behalf of the Governors of Oregon, California, the Congressional delegations of both States for the conference calls last week and for your action on our fishing emergency. Very much appreciated. And I think we are in pretty good shape in the appropriation bill so far, and we will probably move another amendment on the floor. But I want to thank you, and thank you for agreeing to call Senator Cochran. It is a real problem, as you know, so I want to begin with that.

Secretary GUTIERREZ. Thank you.

Senator FEINSTEIN. I want to just share with you my views as somebody that represents the State with the largest number of immigrants, both legal and illegal, and share with you something that Alan Simpson said. Alan Simpson was the Chairman of the Immigration Subcommittee for a number of years. Some of us had the pleasure of serving with him on this Committee. And he said very recently that he felt that one of the big mistakes made back in 1986 was that the bill eliminated any national identity provision which would have allowed employers to quickly identify the legal status of a job applicant.

I thought a lot about that and made a proposal for an orange card, and I want to just spend a moment on it with you.

I think that the Hagel-Martinez scenario, which I voted for, is not really workable because it creates another subclass of people, at least 5 million people. And we do not have the ability to deport 11 or 12 million. We do not have the ability to deport 5 million. And we have industries that are dependent on this labor.

It seems to me that the best way to approach this is with an identity document that is biometric, for everybody that is in the country now that is working, that you are able to say them, This is your identifier, it legally entitles you to work. And it is also coded with numbers so that the earned legalization takes place, and that those people who are here the longest have the opportunity to receive a green card when that green card list is expunged, that they pay their fine, part of the fine to get the orange card, so they earn it. They commit to learn English so they earn it. They pay another fine with the green card so they earn it.

I find one of the most disturbing things in this whole battle is this cry that this is amnesty. And it is not. What we are trying to do is say people should earn the legalization and that you are here,

your labor is needed, we want you here, we do not want you living in the shadows, but you earn it.

And if we could only get that across to people, I think in an important way, and with that document you can then end the document mills. I can tell you places in California where you can buy forged Social Security cards, forged green cards, forged driver's licenses for as little as $15 to $20. And I can tell you, you cannot tell the difference. So for the employer it is extraordinarily difficult to know.

So I proposed this. I did not win it on the floor, but I am hopeful that it might be further considered, because I also think for security reasons it is important to document and know who are in this country. And I do not think you can say to people, well, you have to leave and you can stay. You have to treat a population as a whole.

I think the Senate bill is far preferable. I think it needs work. It is a very big bill. Some of the visa categories need to be cut back on because it is too many new people. But I think for the first time we have an opportunity to do this balanced bill, and then I think it works.

Some of us, and I am one of them because my State is so big and there are so many people that depend on it, we have this huge agricultural industry, the biggest in America, that cannot function without this labor. And I am increasingly concerned about that.

Just one other comment, and then I would like to hear your thoughts.

I would be one that would say have the border enforcement go into play and have a brief hiatus for the rest of the bill to go into play, and then hopefully we can make inroads on the border fence, get the additional Border Patrol, the additional National Guard people in place—not for certification, but to be able to give people on the California, the Arizona, the Texas borders some sense of security. I think that is really important.

My State had a proposition in 1994 called Proposition 187. It passed overwhelmingly, more than 60 percent of the vote. It passed and it was unconstitutional. And I am a very strong believer that immigration has to be orderly so that it can be—the schools can accept people, the workforce can accept people, there is housing for people. And in California, if it comes too far, too hard—

Chairman SPECTER. Senator Feinstein, how much more time would you like?

Senator FEINSTEIN. Oh, sorry. Could I allow him just to comment for a few seconds? I did not mean to go on so much.

Chairman SPECTER. You have a few seconds, Mr. Secretary.

Secretary GUTIERREZ. Thank you.

Chairman SPECTER. Take whatever time you need.

Secretary GUTIERREZ. Thank you, Senator, and thank you, Mr. Chairman.

Senator, what you said, which I think is so important, is I think we have two big challenges here. One is designing a system that is comprehensive, that makes sense, and the other one is executing it. And if we design a wonderful system that is not workable, 10 years from now we are going to say, well, either the system did not work or we did not enforce the law. But what we will find is that

we designed something that was not practical. And you are so right. Whatever we do, let's make sure it works, that it is practical, that it is pragmatic.

So the execution, we have a massive challenge in getting everyone together to talk about comprehensive reform and designing a plan. But then I think the real work starts, which is how do we execute. And getting that right I think is going to be where we make the difference.

So I agree, I think you are right on that.

Senator FEINSTEIN. Thank you.

Chairman SPECTER. Thank you, Senator Feinstein.

Senator Kyl?

STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator KYL. Thank you, Mr. Chairman.

Mr. Secretary, welcome. I will associate myself with the remarks that Senator Cornyn made to you. I know that you visited, and I am looking forward to visiting with you. But our view is that the comprehensive solution is ultimately the only way that we are going to resolve all of the problems. And I usually talk about four specific things: securing the border, enforcing the law—including at the workplace—a temporary work program, and dealing with the people who are here illegally. It may well be that some of the people who are here illegally will go into a temporary worker program. Sometimes there is a distinction between future flow, as the term is used, and also the people who are here illegally.

And that is what I would like to get your thoughts on because your testimony certainly suggests—and what you just said to Senator Feinstein confirms that—you view the employee verification system a critical component to the workability to whatever comprehensive reform is. And we certainly agree with that.

So the questions have to do with how to deal with this problem of document fraud, what kind of document people should have to ensure that in the future everyone will be working legally. And part of that, it seems to me, has to reflect the fact that it is very difficult for employers to be the enforcement agencies here, that experience demonstrates that you cannot expect some employer to be able to hold up the Social Security card and the driver's license and say, well, this is fraudulent, and then have the ability to enforce that by saying, no, you cannot have a job. It is unrealistic to expect that. And that goes to the workability part that you talked about. It has got to be a workable program.

So the employee verification system, it seems to us, needs to be simple to use and the determination of validity or eligibility should not be on the employer but on the Government. And it is really a function of two key things. Does the individual have a legal status—citizenship, green card, temporary worker under a new temporary worker program, whatever that status is? And is the Social Security number attached to that a valid number? And, secondly, is the individual standing in front of you applying for the job the person who has that Social Security number?

You have suggested that for the temporary worker program a biometric identification system would be appropriate and workable, and with that I totally agree.

Here are the two basic questions that I have—and the technology is here for the larger employers. You can have, for example, a swipe-through easy reader that does not cost that much money. Somebody says, well, how about the really small employer, you know, the beautician or whatever? Put one in every post office. They do not cost that much money, and a beautician does not hire that many people in a year, and go down and just swipe it through there.

Anyway, the two key questions are these: With the illegal population that is here, many of them are going to be eligible for and desirous of participating in a temporary worker program along with the future-flow workers. So let's leave aside the question of those who are here illegally and not appropriate for the temporary worker program—the elderly retired person, the young person, whoever may be able to stay here on some other conditions, leave aside what those conditions are. And then also the individual who goes to the employer and says: I am not a temporary worker. I have my—today—fake driver's license, fake Social Security card. I don't need a temporary worker card. So that person is going to have to be verified, too.

The questions are these: Should all people who apply for a job have the same basic document so that we are not distinguishing between those who allegedly—or admittedly are in a temporary worker program as opposed to those who claim they are not? And should the biometric feature be added to that particular identification so that all workers would have—all employers and workers would have the advantage of that? In other words, what is the best way to make it work for all people who try to get a job so we are not discriminating against anyone, the employer is not discriminating when he asks for the identification? Should the documentation be the same, in other words, for people who are clearly in the temporary worker program, as well as all other employees? And should there be any distinction between the people who are here illegally today that participate in the program versus the so-called future flow?

Secretary GUTIERREZ. Well, I happened to bring a biometric card with me, and my staff just reminded me I had a visual aid here. I think the first step is to ensure that we legalize and bring out from the shadows those who are here. Those who are citizens have a way of proving they are citizens in a legal way. What we want to do is eliminate the illegal behavior.

If we give every temporary worker a biometric card that cannot be forged, cannot be tampered, and we make it very clear that if you are going to hire someone, a temporary worker, and they do not have one of these—and you can verify it. We have a national database to verify—that you will be in serious trouble as an employer, not a fine, not a slap on the wrist, but that there will be a meaningful fine.

And I think over time the word will spread among undocumented workers that, you know, if you do not have one of those cards, do not risk it, do not go in under the dark of night, do not hire coyote,

do not even try to cross the desert, because it has become very clear that that system works. And if you do not have that card, you are not going to get a job.

So, ironically, this temporary worker's card is probably the single biggest thing we can do for the border. People will not cross the border if they know they cannot get employed on this side. I think that is the first step to really getting a grip on the people who are crossing over.

Senator KYL. Mr. Chairman, if I just might follow up, would we all have the same type of card, anybody who is applying for a job? Because if you just have it for the so-called temporary worker, a lot of people may continue to say, "I am not a temporary worker. I am entitled to be here." And they do not have that card. They still have their counterfeit driver's license or Social Security card. And how is the employer to make the distinction?

Secretary GUTIERREZ. Well, there is a national database. There is the Basic Pilot Program, a national database to confirm that people are who they say they are. And I believe that those who are here legally and those who are citizens and those who have the right to work have documentation to prove it.

I think the problem we have it that those who are in the country illegally—and that is where we should go. And in terms of whether we should expand beyond that, I think that is something that can be worked out in the design of the bill. My sense is that what is really important is to make sure that temporary workers have one of these, and that will make a huge difference on the border.

Senator KYL. Thanks, Mr. Secretary.

Secretary GUTIERREZ. Thank you, Senator.

Chairman SPECTER. Thank you very much, Senator Kyl.

Secretary Gutierrez, thank you very much for your enlightening testimony. Senator Kennedy had called attention to the title of the hearing in the House next week, which is captioned—and I just borrowed this card from him—"Should we embrace the Senate's grant of amnesty to millions of illegal aliens and repeat the mistakes of the Immigration Reform and Control Act of 1986?" I hope they call you as a witness.

Secretary GUTIERREZ. I hope so.

Chairman SPECTER. So that you can set them straight that it is not amnesty for the reasons you have eloquently testified here today, and that we are not repeating the legislation of 1986, as you have articulated with a sound reason, with a biometric card, and that in dealing with the millions of, they say, illegal aliens, we are taking the only rational course to deal with the problem.

If somebody has a better idea, we are ready to here it in the conference. We would welcome a better idea if somebody has one. But you have laid the logic on the line and you have laid your experience on the line and your example on the line. And for that we are very appreciative. At a minimum, if I find they have not invited you to testify, I am going to send them a copy of your testimony.

Secretary GUTIERREZ. Thank you.

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

We now turn to our second panel: Mr. Michael Cutler, Mr. Benjamin Johnson, Dr. William McDonald, and Mr. Niall O'Dowd.

Our first witness is Mr. Michael Cutler, who joined the Department of Immigration and Naturalization, the Immigration and Naturalization Service in October of 1971 as an immigration inspector; has worked as a criminal investigator, special agent; dealt with organized crime law enforcement. He left the INS in February of 2002 and is currently a Fellow at the Center for Immigration Studies, a Washington-based think tank; a bachelor's degree from Brooklyn College in communications, arts, and science, and he has been an expert witness at nine Congressional hearings. And among his areas of expertise are the nexus between immigration and national security and the impact of immigration on the criminal justice system and strategies to combat illegal immigration.

We are especially interested in your testimony, Mr. Cutler, as to how we deal with the creation of—or permitting the continuation of a 11-million underclass of what essentially are fugitives under our existing laws. We appreciate your being here, and as you see, the time clock is set at 5 minutes, and we look forward to your testimony. Your full statement will be made a part of the record, and do not start the clock until Mr. Cutler starts to speak.

STATEMENT OF MICHAEL W. CUTLER, FELLOW, CENTER FOR IMMIGRATION STUDIES, WASHINGTON, D.C.

Mr. CUTLER. Thank you, Mr. Chairman. One second. I think I have the wrong paperwork. I am sorry about that.

Chairman SPECTER. Take your time. It will be faster.

[Pause.]

Chairman SPECTER. Reset the clock, please.

Mr. CUTLER. Okay. Thank you for your forbearance.

Chairman Specter, Ranking Member Leahy, members of the Committee, ladies and gentlemen, it is an honor and a privilege to be afforded the opportunity to testify before this Committee on an issue that is arguably among the most critical issues confronting the United States today. So many areas of concern are inextricably linked to illegal immigration that when we seek to regain control of our Nation's borders and restore integrity to the immigration system, we will be impacting everything from the economy, education, the environment, and health care to criminal justice and national security.

As I have stated at previous hearings at which I have testified, "A nation without secure borders can no more stand than can a house without walls." It is important, however, to understand that our Nation cannot gain control of its borders until and unless we recognize that we need to do more than focus on the borders of the United States. We need to think of immigration as a system of many components, all of which are critical to the success of the others. A well-designed airplane that is missing a wing will not get off the ground. In order to soar into the sky, all of the components of the airplane must function properly. So, too, all of the components of the immigration system must be made to work effectively and in coordination with the other elements of the immigration system.

It has been estimated that approximately 40 percent of the illegal aliens who are present in the United States today did not run our borders or evade the Border Patrol but, rather, strolled through a port of entry and then disappeared into communities throughout

our Nation. The terrorists who attacked our Nation on September 11, 2001, in fact, all entered the United States through ports of entry and then counted on their ability to evade detection by the former INS. While much attention has been paid to the lack of secure borders, little attention has been paid to the need to have adequate numbers of special agents for ICE enforcing the immigration laws from within the interior of the United States. At present, there are roughly 3,000 special agents employed by ICE carrying out this critical mission. ICE needs to do more than enforce the laws that prohibit an employer from knowingly hiring illegal aliens and seeking to apprehend the hundreds of thousands of alien absconders. Clearly, these two missions are important, but when you consider the fact that according to a recent GAO report on the crisis at USCIS this is a major vulnerability that threatens national security but is not being addressed. ICE needs to work in close coordination with USCIS to make certain that the system by which various immigration benefits, including the granting of resident alien status, and United States citizenship has real integrity. The "9/11 Commission Staff Report on Terrorist Travel" noted the fact that in order to attack our Nation, the terrorists not only needed to first gain entry into our country, an obviously critical issue, but they also needed to be able to embed themselves in our country and have the ability to travel around the Nation and across our borders as they prepared to attack us. When the United States provides an alien with resident alien status or when we naturalize an alien, we are providing him or her with the "key to the kingdom."

If we were able to make the borders of the United States utterly impassable to illegal aliens but then do little, if anything, to detect and combat immigration benefit fraud, thereby providing immigration benefits to aliens who are not entitled to such benefits, we as foolishly as the homeowner who, fearful of having his home burglarized, invests considerable effort and money on buying strong doors and locks for his doors and windows and takes other such measures, but then hangs the key to the secure locks on the outside doorknob, making it simple for anyone passing by to gain entry to that house.

The huge illegal alien population present in the United States has a significant impact on the criminal justice system and on national security as well. While it is extremely difficult to provide a firm number as to the number of illegal aliens who are involved in serious criminal activities in the United States, I believe we can get a sense of the magnitude of the problem by considering statistics that I am familiar with. At present, it is estimated that some 30 percent of the inmate population in Federal correction facilities are identified as being foreign born. From 1988 until 1992, I was assigned as the INS representative to the Unified Intelligence Division of DEA in New York. I conducted a study of DEA arrest statistics and found that nationwide some 30 percent of the defendants arrested by DEA for crimes related to narcotics trafficking were identified as being foreign born, while in New York it was estimated that nearly 60 percent of the defendants apprehended by DEA were identified as foreign born. Those statistics remained constant for more than 5 years, and the 30-percent figure back then is virtually the same today as it was then. Additionally, a GAO re-

port issued in April of 2005 found that in 2004, 27 percent of the Federal inmate population was comprised of criminal aliens. And the same report pegged the cost to the Federal Bureau of Prisons for incarcerating criminal aliens at some $1.2 billion. This same report found that on the local and State level for fiscal year 2003, some 147,000 criminal aliens were in custody.

Additionally, there have been studied that show a relationship between a wide variety of crimes that are committed to support terrorism. Drug trafficking in particular has come to be associated with this fund-raising objective, but other crimes, including mail fraud, arson, and identity theft, also help fill the coffers of terrorist organizations and organized crime groups. Often aliens who come to the United States fleeing not only the grinding poverty and perhaps tyrannical government of their homeland often find that when they come here they also encounter the same criminals who were preying upon them in their home countries.

It is also worth considering that when you have a large illegal population, a series of businesses spring up in the communities that support that population that is not only helpful to the illegal alien who is simply looking to get a job in the United States, but also to members of organized crime groups, violent gangs, drug-trafficking organizations, and, indeed, terrorists. And among these enterprises are money remitters, private mail box services, and fraudulent document vendors. It is also important to understand that in an effort to hide in plain sight or embed themselves in our country, criminal aliens and terrorists often take relatively pedestrian jobs to help pay their day-to-day expenses and to provide themselves with an effective "cover"—

Chairman SPECTER. Mr. Cutler, how much more time will you need?

Mr. CUTLER. Just about another 30 seconds, sir. I am sorry.

The thing to remember is that someone once said that an effective spy is someone who would not attract the attention of a waitress in a greasy spoon diner. You could expand on that statement and state that an effective terrorist is also somebody who would not only not attract the attention of the waitress in a greasy spoon diner but might be that waiter or waitress.

That is why it is important that ICE not only focuses on seeking to find illegal aliens who are employed at supposedly high-value secure venues, such as airports and nuclear power plants, but also as a matter of routine to enforce immigration laws on a random basis.

The final thing that I want to say is I also believe we need to have better foreign language training skills given to our agents who are enforcing the immigration laws throughout the United States.

Chairman, I want you to know that I think that legal immigration is a wonderful thing for our country. It is wonderful for the aliens who come here and America gains by it. My concern is that we have many illegal aliens whose identities are unknown to us and whose purposes are unknown to us, and that is what keeps me awake at night.

I look forward to your questions.

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

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

Our next witness is Mr. Ben Johnson, Director of the American Immigration Law Foundation's Immigration Policy Center. He has been in the field for some 15 years. He has written extensively on the police and the challenges of illegal immigration; has his law degree from the University of San Diego and studied international comparative law at Kings College in London.

We appreciate your being with us today, Mr. Johnson, and the floor is yours.

STATEMENT OF BENJAMIN JOHNSON, DIRECTOR, IMMIGRATION POLICY CENTER, AMERICAN IMMIGRATION LAW FOUNDATION, WASHINGTON, D.C.

Mr. JOHNSON. Thank you, Mr. Chairman and members of the Judiciary Committee, for this opportunity.

The current immigration debate is over how we respond to an immigration system that everybody acknowledges is broken. The question in Congress has come down to this: Do we pursue an enforcement-only strategy and focus only on the best way to keep people out? Or do we adopt a more comprehensive approach that includes new enforcement strategies but also improves our ability to let people into the country legally? I would argue that for the last 15 years, we have been trying the enforcement-only strategy, and it has been an utter failure.

Since the early 1990s, the border enforcement budget has more than quintupled. It went from about $600 million to now spending more than $4 billion a year on border enforcement. During the same time, the number of border agents has nearly tripled. And what do we have to show for that? The pace of undocumented immigration to the United States has increased. Apprehension rates are down. More people are dying every day at our Southern border. And the business of human smuggling and document fraud has been transformed from a relatively small operation into a billion-dollar enterprise.

Now, I would agree completely that an enforcement strategy has failed in large part, or at least in part because we are fixated on fortifying the Southern border and have ignored other critical components to the immigration enforcement, like an effective employment verification system or the need for more personnel and training to deal with the delays and backlogs at various immigration offices. But even with significant improvements in our enforcement strategies and our adjudication capabilities, stanching the flow of undocumented immigration will remain a Herculean task unless and until we reform the legal channels for admitting people into the country legally.

The bottom line is that immigration is not just a law enforcement issue. It is a valuable resource to our economy and our labor force, and we have to start treating it like a resource and managing it on an ongoing basis. The ability to use our immigration system to supplement and fill gaps in our labor force across the skill spectrum is one of the principal reasons the United States has been

able to create the most diverse, most dynamic, most flexible workforce the world has ever seen.

In the last 15 or 20 years, our economy has been radically altered because of the high-tech globalized world that we live in. In response to this, Congress has made dramatic changes to our trade policies, our banking policies, our telecommunications policies. But Congress has yet to make a concerted effort to align our immigration policies with this new economic environment. In fact, in many areas we are going in the opposite direction. While more and more countries are spending billions of dollars to attract foreign studies and high-skilled workers, the United States is making it more difficult for foreign students to enroll in U.S. universities, more difficult for highly skilled immigrants to come to the United States.

And at the other end of the skill spectrum, where we have undocumented immigration, there has been a lot of controversy over whether in this new economic environment there are some jobs Americans are less interested in and whether we need immigrants to fill these jobs.

But the truth is it is not an insult to the American worker that we have fewer and fewer people in our labor force who are in the market for jobs that require very little education or training. Our labor markets are attracting younger, less educated immigrant workers because our labor force is getting older and it is getting better educated. In the early 1960s, over half of U.S. workers were high school dropouts. Today, only about 15 percent of U.S. workers are high school dropouts. We should be proud of that fact, but we have to recognize that this success means we have fewer workers who are looking for jobs that require no education or training. So we are doing what we have always done. We are turning to our immigration system to fill the gaps in those labor markets.

Unfortunately, while we have been encouraging workers to get an education and improve their skill sets in this new knowledge-based economy that we are creating, we have not been creating more channels of legal immigration to replace those workers. Today, in a labor force of over 150 million workers, we have 5,000 permanent visas available for foreign workers in less skilled occupations. We can debate about how many workers we need in this country, but 5,000 is nowhere near the kind of demand that this economy generates in less skilled workers. And outside of agriculture, the only temporary visa we have for less skilled workers, the H2B visa, is only available to seasonal employers. For companies that employ less skilled workers and operate year-round, we have no temporary worker program for foreign workers.

So, because essentially we have no legal channels of employment-based immigration for these workers, they either come illegally or they attempt to come through the already overburdened family-based system, a system that already requires people to wait 5 to 7 years to be joined with their spouses and children.

In this environment everybody loses. Families are separated, and workers are expected to wait years for jobs that are available today. Nobody should be surprised that when we close the front door on these families and workers, they look for a way in the back door.

The real challenges we face today stem from the fact that we send two message at our border: "Help Wanted" and "Keep Out." And the byproduct of this schizophrenia is that law enforcement agencies, businesses, and families are stuck between a rock and a hard place. In short, we have created an unsustainable contradiction between U.S. economic policy and U.S. immigration policy, and economics is winning. We can either continue to spend billions of dollars in an immigration enforcement battle with our own economy and our own labor force, or we can create an immigration system that is not only good at keeping people out but effective at letting people in.

Thank you.

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

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

Our next witness is Mr. William McDonald, Georgetown University Professor of Sociology and Anthropology, and Deputy Director of the Institute of Criminal Law at their Law Center. He has written extensively in the field of immigration and crime control. His educational background is a bachelor's degree from Notre Dame, master's in education from Boston College, and a doctorate in criminology from the University of California at Berkeley.

Thank you very much for joining us today, Dr. McDonald, and we look forward to your testimony.

STATEMENT OF WILLIAM F. MCDONALD, PROFESSOR OF SOCIOLOGY AND ANTHROPOLOGY, AND CO-DIRECTOR, INSTITUTE OF CRIMINAL LAW AND PROCEDURE, GEORGETOWN UNIVERSITY LAW CENTER, WASHINGTON, D.C.

Mr. MCDONALD. Chairperson Specter and members of the Committee, it is an honor to be here today. I would like to point out for members of our audience that I am an Irish American.

I have been studying the connections between crime and immigration since 1996, and I was informed the other day, when I was asked to speak, that it would be useful if I would touch upon several issues, only one of which I think I have time to address, and that is, statistics regarding the criminality of illegal immigrants. But first I would like to make some general observations.

Although we are a Nation of immigrants, Americans have always worried about the criminality of the next wave of immigrants. There have been many studies in the United States and abroad that have addressed the question of the criminal of immigrants. And while they are by no means unanimous, there is a remarkable degree of agreement among them regarding one important finding: the criminality of the first generation of immigrants, those who actually migrate, is less than the criminality of the native born. Public fears about immigrant criminality have usually not been borne out by research.

I mention this literature on immigrant criminality because there is little reason to believe that the findings would be substantially different for illegal immigrants, assuming that the data were available, that would allow us to make the necessary statistical controls for age, sex, economic status, and immigrant status to do a valid study.

Because of the difficulties of getting proper data, studies of comparative criminality of illegal immigrants are rare and inconclusive. Anyhow, the critics of illegal immigration are not interested in knowing whether illegal immigrants are more or less criminally inclined than the native born. For them, any crime committed by an illegal immigrants represents a crime that would not have happened if the Government had been in control of immigration.

I turn now to the question of the statistics on illegal immigrants who commit crimes. In 1989, the Immigration Subcommittee of the House Committee on the Judiciary asked the Immigration and Naturalization Service the following question: What percentage of the individuals incarcerated in specific cities are illegal aliens? The answer was simply: We do not know; the data do not exist in anything like usable form. And since that time, things have not really gotten much better.

Before proceeding, I must warn you of a terminological quagmire that surrounds this issue. There are technical legal definitions involved that cause confusion. The basic distinction to keep in mind is between criminal aliens and illegal immigrants who commit crimes. Criminal aliens have been around since the beginning of the country. They are noncitizens who have committed crimes, either before or after they have entered the United States. Illegal immigrants did not exist until the Federal Government began regulating immigration in the 1870s.

Not all criminal aliens are illegal immigrants. A legal immigrant who commits a crime while in the United States becomes a criminal alien. Some criminal aliens are deportable, depending upon the crime they have committed. In the late 1980s and 1990s, responding to complaints from the States about increasing numbers of criminal aliens in State and local prisons, Congress added to the terminological confusion. In 1986, it mandated the INS to conduct expeditious proceedings for aliens convicted of deportable criminal offenses. In 1988, it created a new category called "aggravate felon."

In 1994, it introduced the concept of "undocumented criminal aliens" in connection with legislation to reimburse the States for the costs of housing illegal criminal aliens. This reimbursement was only for the costs of housing illegal criminal aliens incarcerated in State and local prisons, not for legal criminal aliens. Only the former were regarded as the Federal Government's responsibility.

It was in that connection that a few studies were done to try to estimate the number of illegal criminal aliens in State and local facilities. The Urban Institute did a major study and came up with some references.

The kind of estimates that the Urban Institute produced have not become institutionalized in any of the annual reports of which I am aware. The Bureau of Justice Statistics produces an annual report on the number of inmates in prisons but does not mention anything about this. The Office of Immigration Statistics of the Department of Homeland Security publishes an annual report, does not mention anything like this. We simply do not have that data available to us,

Finally, when studies have looked at deportability, they find many criminal aliens are not deportable.

Thank you very much.

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

Chairman SPECTER. Thank you very much, Dr. McDonald.

Our final witness is Mr. Niall O'Dowd. He came to the United States in 1979 and soon began his first business, an Irish-American newspaper in San Francisco. In 1985, he moved to New York where he founded the Irish American Magazine and later the Irish Voice newspaper. In 1992, he founded a group called the Connolly House Group, which has been involved in the Irish peace process. He has been awarded an honorary doctorate from his alma mater, University College-Dublin, in recognition of his work on Irish issues in America.

We appreciate your being here, Mr. O'Dowd, and look forward to your testimony.

STATEMENT OF NIALL O'DOWD, FOUNDER AND CHAIRMAN, IRISH LOBBY FOR IMMIGRATION REFORM, NEW YORK, NEW YORK

Mr. O'DOWD. Thank you very much, Chairman. My name is Niall O'Dowd. I am Founder and Chairman of the Irish Lobby for Immigration Reform. I am also founder and publisher of Irish Voice newspaper and Irish American Magazine, the two largest Irish American publications.

I am a native of Ireland, once undocumented, but now a very proud American citizen.

I have lived the immigrant dream in America since coming here in 1979. I started a newspaper with less than $1,000 in 1979 in California and made a success of it. Currently, I employ 22 people in New York City running both my companies.

But I come here representing the 50,000 Irish undocumented in the United States and the millions of Irish-Americans who are looking for a resolution to this issue.

Since the inception of the Irish Lobby for Immigration Reform last December, we have held scores of public meetings across the United States attended by thousands and have held two lobbying days in Washington, D.C. A total of over 5,000 Irish-Americans from across the United States came to Washington for both lobbying days.

The facts are clear to us. Without immigration reform, the Irish-born community in the United States will no longer exist, and one of the greatest contributors to the success of this Nation will be no more.

Our neighborhoods are disappearing. Our community organizations are in steep decline. Our sporting and cultural organizations are deeply affected by the lack of legal immigration.

Meanwhile, our undocumented community is under siege. They can no longer travel to Ireland, even when family tragedies occur.

Their driver's licenses will not be renewed, which means mothers cannot drive their children to school. The day-to-day struggle of living illegally in America has taken a heavy personal toll on them. I submit that they deserve better.

Everything they have worked years for in America, building their own American dream, is now falling around them, and I submit that America will be the big loser.

I know that hundreds of these immigrants, Irish construction workers, worked with little more than their bare hands to try to uncover bodies at Ground Zero after 9/11.

Irish labor union members and construction crews were among the first on the scene, and they tried frantically to save lives working alongside rescuers who included thousands of Irish American fire and police workers.

No one was calling them Irish illegals then.

They did no more than previous Irish generations. As President Bush has stated, "Throughout our history America has been greatly blessed by the innumerable contributions of the Irish." Unfortunately, the contribution of Irish-born may be about to end.

If the Irish antecedents of Andrew Jackson, John F. Kennedy, or Ronald Reagan were trying to enter the United States today, they would have to do so illegally.

The sad reality is that there is simply no way for the overwhelming majority of Irish people to come to the United States legally at present.

So when people say to me that the Irish should get in line to come here, I tell them there is no line we can join. There is no way the vast majority of our people can come legally to America.

The figures for the Irish bear this out. Of the almost 1 million green card visas given out last year, about 2,000 went to the Irish. Since 1995, in the diversity visa program, which was intended in part to help old seed countries, Ireland has been successful in obtaining one-half of 1 percent, or 2,800 visas out of over half a million.

Such realities, however, have not stopped thousands of Irish doing what generations have done since they served in George Washington's army—coming to America and living the American dream like generations before them.

I can tell you about Mary, who is 36, whose brother was killed in a car crash a few months ago, and she had to listen to his funeral down a phone line because she cannot go home and grieve with her family. She is now a registered nurse, a proud homeowners, and intends to marry soon. Hospitals would snap her up in a moment if she became available. She deserves her American dream.

Then there is Brian, who is 32, a contractor, who was among the first to go to Ground Zero because he was working nearby. Brian continues to believe in his American dream. He has six Americans working full-time for him, and he looks forward to the day he can take his new wife back to Ireland and meet the families they have not seen for years.

Eamon, who is 38, came over from Armagh in Northern Ireland 14 years ago. There were no jobs in his town because of the Troubles, and the only recruiting was being done by paramilitaries. Here Eamon now runs his own roofing company and employs six persons legally.

So many others I know have grandchildren their grandparents have never seen or live in daily fear of being deported or, worse, a family tragedy back in Ireland which could end their lives here.

These are typical stories of the Irish undocumented here in America. They ask for just one thing—the opportunity to live their American dream like so many generations of Irish before them.

My deepest desire, and that of millions of Irish-Americans around this great country, is that their wish can be granted. With your help I believe it can.

Thank you very much indeed.

[The prepared statement of Mr. O'Dowd appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Mr. O'Dowd.

We now begin the 5-minute rounds of Senators' questioning, and beginning with you, Mr. Cutler, you gave statistics as to the foreign born, but did not indicate any breakdown between those who had legal status as citizens contrasted with those who were illegal immigrants. Do you have any breakdown of that or any judgment as to how that would break down?

Mr. CUTLER. Well, it is interesting because Professor McDonald made the same point. In all of my research—and I have reached out to other organizations and analysts and so forth—incredibly, our Government does not track that statistic, and I think it is an important issue, because this is a measure of one of the resources that we need for effective immigration enforcement, and yet there is no delineation.

Chairman SPECTER. Mr. Johnson, you testified that we have had 15 years of just an enforcement strategy and little result. The title of the House hearing for next week talks about the failure of the 1986 employer verification system, but they did not have the technology which is available today. And the statistics show that only four enforcement actions were initiated last year, so that there has not been much of an enforcement policy to judge what could happen.

Contrast what this legislation coming out of the Senate has with respect to Border Patrol, some fencing, some virtual fencing, employer verification. Wouldn't the projection be that it is going to be effective if carried out and implemented as directed in our Senate legislation?

Mr. JOHNSON. Yes, the Senate legislation is nothing like the 1986 Act. The failure of the 1986 Act was that it dealt with or attempted to deal with a population, the undocumented population that existed at the time, but it did nothing to respond to why that undocumented population had been created. It did nothing to provide a way for workers to come into the United States legally, particularly less skilled workers. It did not do anything to provide a temporary program for those workers to come in. It did not do anything about providing more permanent green cards for those workers to come in.

The solution was we will grant some folks an amnesty and then we will expect employers to be enforcement agents, and that strategy will not work. You need to have improved channels of legal immigration, and I think the Senate should be commended for recognizing that and trying to develop an immigration policy that will

assure we will not create another pool of undocumented immigrants 10 years from now.

Chairman SPECTER. Dr. McDonald, I am not suggesting in the inquiries about crime that immigrants are any bigger burden than anybody else when it comes to criminal conduct. What we are looking for here is some judgments as to how we deal with 11 million undocumented immigrants and whether we do not relieve some of the pressures on law enforcement if they are motivated to come out of the so-called shadows, if they are not a fugitive class, and if they are recognized as being in a position to earn status as a guest worker, maybe going back, or if we expand the number of green cards, get on the citizenship line, albeit at the end of the line.

What would you say about the Senate bill and trying to deal effectively with eliminating this underclass and fugitive class?

Mr. MCDONALD. Well, that is a difficult question that goes beyond the more focused question about criminality. I would like to restrict my remarks to that part of the issue. I admire what that—I am not an expert on the immigration law. It does appear to me that this bill is not the same as the IRCA bill in 1986, and the biometric measures seem enticing. What worries me is the huge number of small-time employers of illegal immigrants, just neighbors who hire them to do the lawn and things like, they are never going to use the biometric measures.

Chairman SPECTER. Dr. McDonald, let me interrupt you because I want to ask one question of Mr. O'Dowd before my time expires. You cited two very prominent men—President John Kennedy and President Ronald Reagan.

Mr. O'DOWD. Yes.

Chairman SPECTER. I know your views that our country has been immeasurably strengthened by the immigrants. Would you care to expand upon that?

Mr. O'DOWD. Well, I think that if you look at any area of American life, the Irish-Americans have contributed greatly. Eugene O'Neill, people like that have contributed so much to the arts and theater here.

I think the fact is that, from our point of view as a community, it will be America's great loss if Irish-born people can no longer come to America legally, and it is something that I know you have seen the people here who have come all the way from New York this morning. They went to Miami last week. They are people who feel very, very, very strongly about this issue that the Irish-born people who have contributed so much in this country should not be prevented from coming here legally. Unfortunately—and I do not think that was the intent of the laws, but that is the effective nature of the law right now.

Chairman SPECTER. Thank you very much.

Senator Kennedy?

Senator KENNEDY. Thank you very much and welcome. I want to just take a moment to personally welcome Niall O'Dowd. For all of us who are mindful of Northern Ireland's enormous progress, its reduction of violence, and its desire to move from the bullet to the ballot, we must recognize this gentleman here, who was absolutely indispensable in bringing peace to Northern Ireland. You all acknowledged the great role that our friend and former colleague,

George Mitchell, played, but Niall was an enormously important figure as well, in the earliest days of developing the ceasefire and the support for the figures that demonstrated courage at a key point in the evolution. We are still hopeful that those institutions that were established at the time of the Good Friday Agreement are going to be up and running so that we are going to have the beginning of real democracy in the North. I know you could talk about that as well, but we will do that at another time.

The depth of his support is well understood by all of us on this Committee. We welcome our good friends here today, and thank them for joining us. They joined with us in Philadelphia and they joined with us in Miami. I do not see many of the Miami group here, but I cannot let the moment go by without welcoming Kelly Fincham as well, and thank her so much for all that she has done.

We have seen dramatic changes in immigration law. Prior to the 1965 Act, we had about 30,000 Irish that were coming into the U.S. Those numbers dropped to about 20,000 afterward. The 1986 Act was really something different. That Act focused on those that were here undocumented and employer sanctions, something I never thought was going to work and voted against.

What we were trying to do in the 1965 Act was to eliminate discrimination that existed in the law. However, way that that legislation was developed worked in a very dramatic and significant way against the Irish.

Now, we are seeing the elimination of the diversity program. There were only several hundred that took advantage of the diversity program last time, and now we are changing it from requiring a high school education to requiring a much higher degree of academic achievement and accomplishment. In other parts of the bill we provide visas to the highly educated and this change will reduce access to the program.

I am going to be short on the time, unfortunately, but could you tell us, Niall, a little bit about how people feel, first of all, about the criminalization of immigrants. We have heard a good deal about this issue. What is your sense about the extent of the criminality in immigrant communities, the commission of serious crimes, the abuse of the welfare system, failing to play by the rules? I would like you to talk about that. I have another question and only a couple minutes left here.

Mr. O'DOWD. Well, briefly, there is not a single person I know in the Irish community who is against having a secure border in America. There is almost, I imagine, no criminality in the community itself that I would know of. Irish people that come to America come here to work, and they come here to build a life and build their own American dream. So I think they are not direct issues that affect them as much. But I think overall that they feel very strongly that a lot of the statistics are hyped up to make this seem a lot worse than it is in terms of the contribution of illegals or of undocumented Irish to this country.

Senator KENNEDY. Let me ask you to talk about how it feels to be undocumented. I am interested in the fear of deportation, the separation of family, the real dangers of depression and sense of desolation. What does this do to individuals that are attempting to be a part of the American dream, to play by the rules, to make a

contribution, and devoted to their religion and members of their family?

Mr. O'DOWD. I think it is a devastating thing. We had a case, as I mentioned here, of Mary, who is one of our chief operators at the Irish Lobby for Immigration Reform. Her brother was killed in a car crash in Ireland about 3 months ago. She could not go home. She has made her life here. She has been here 16 years. She is a registered nurse. She had to listen to her brother's funeral down the phone line, and you can only imagine the impact that had on her and her family at home.

That is, unfortunately, an all too common theme. People are waiting for that dreadful phone call from Ireland that someone has died or that their parents are ill. We have numerous cases where people have to make a horrific decision between staying here and keeping their hope alive of living the American dream or having to go back to Ireland and basically end everything here because of a family emergency. And these are people, as you say, who have made huge contributions to this society.

I go back to Ground Zero. We figure there were about 300 Irish construction workers who went to Ground Zero that morning, who spent the next 7 or 8 days digging up bodies, helping as much as they could. And the point I made was nobody was calling them illegal then because of what they did. And I think if you look at the number of Irish who died at Ground Zero, you will see what a great tradition and a heroic tradition they represented.

Senator KENNEDY. Thank you. My time is up.

Chairman SPECTER. Thank you, Senator Kennedy.

Senator Sessions?

Senator SESSIONS. Thank you very much. As we go forward, I think the concerns that the American people rightly have and I have is many of these complex questions are not amenable to being settled in a secret conference Committee appointed by the leaders of both Houses without much or virtually any input from the American people in the process. So I am very nervous about that. That is why I think that this hearing and the one you had previously, Mr. Chairman, was good. It allows us to discuss some of the complex issues.

Mr. O'Dowd, you make some points here that I am surprised at. You said if John F. Kennedy or Ronald Reagan or Eugene O'Neill were trying to enter the United States today, they would have to enter illegally. You say, "The sad reality is that there is simply no way for the overwhelming majority of Irish people to come to the United States legally at present," and that out of a million green cards given out last year, only 2,000 went to Irish. Why? Why don't we fix that? I tell you, there is nothing in this bill that fixes that.

Mr. O'DOWD. No.

Senator SESSIONS. So what could we do to draft a comprehensive bill that would allow people with the family and historical connection to have a better chance, some better chance than this to enter the United States?

Mr. O'DOWD. I think my organization is primarily concerned right now with the undocumented Irish who are here, and certainly the Senate bill would work very much in their favor.

Senator SESSIONS. Well, we have got to get beyond just that problem. We are going to treat those people that came illegally somehow in a compassionate way. I am not sure what we are going to do, but we are going to do something.

Mr. O'DOWD. Right.

Senator SESSIONS. But we have got to think about drafting a comprehensive bill. Let's draft one that is comprehensive, that deals with the problems that you just raised. Now, you tell me how we want to fix that. Do not be just a team player now with the crowd. You tell me what you can do.

Mr. O'DOWD. Well, I think up until 1965, obviously, Europeans were able to emigrate legally to the United States in much higher numbers than they are now. And, clearly, if you have a specific plan, like there was in the late 1980s—there was what was called "old seed immigrant countries" that got a certain amount of visas through two programs. One was called the Donnelly visa after Congressman Donnelly. The other was called after Congressman Bruce Morrison, Morrison visas. They were certainly very acceptable, but they were unfortunately time-limited. They only lasted 3 years. But the Irish community at the time developed hugely as a result of those.

So it is a question of fairness more than anything. We do not want to take visas off anyone. We do not want to be seen to do that. But we do want a system where we would get an equal opportunity to come here as much as any other country.

Senator SESSIONS. Thank you. Time is so short on all these issues, and, Mr. McDonald, you gave in the appendix a quote which I thought was interesting. The one in 1911, the first one you lead with was interesting. It said we do not have more crime among immigrants, but "the coming of criminals and persons of criminal tendencies constitutes one of the serious social effects of the immigration movement." The current "law is not adequate to prevent the immigration of criminals, nor is it sufficiently effective" to deport criminals. That is still the truth today, isn't it?

Mr. MCDONALD. Things have not changed much.

Senator SESSIONS. So would that be your suggestion on what we should focus on, how to identify people before they come with criminal tendencies and to be able to identify those who are here that commit crimes and deport them more efficiently?

Mr. MCDONALD. I think the attempt to identify people with criminal tendencies is a dream.

Senator SESSIONS. Well, tendencies, but records. A lot of people that come, they apply at the embassy and they do check some of their records. I do not know how adequate that is.

Mr. MCDONALD. A record of serious criminality I suppose could be a criterion for exclusion, but it would have to be true serious criminality, not the sort of thing that the Congress created when it created the category of "aggravated felon." If you look at the lists included in that category, it is clear that you do not have to be a felon and the crime does not have to be aggravated. It is just a laundry list. So I—

Senator SESSIONS. You mean that two from Honduras that applied to come to the United States and one had a series of minor crimes and one was valedictorian of their class, the one with the

crimes ought to have the equal right to enter as compared to the other?

Mr. MCDONALD. How minor?

Senator SESSIONS. Well, we cannot accept everybody, so why shouldn't we select those that have no criminal history as opposed to those who have a criminal history? Whose interest are we representing—the United States or the person who would like to come?

Mr. MCDONALD. Sure, but I think the standard should not be minor crimes. Minor crimes cover an awful lot of territory. Serious crimes, sure.

Senator SESSIONS. All right. Mr. Cutler, my time is about up, and I did not get to Mr. Johnson, who does a great job in making his presentation. Thank you for those good numbers I made reference to.

I would just ask you, Mr. Johnson, if the wages of native-born workers without a high school diploma have declined in the 1990s, wouldn't that indicate we do not have a labor shortage for unskilled workers?

Mr. JOHNSON. No, sir. The reality is that wage inequality is an issue that we have been dealing with since the 1970s, and maybe even before, and it really had, you know, very little to do with immigration.

Senator SESSIONS. Well, let me ask this question: If there is a shortage of low-skilled labor in America, doesn't the economic reality indicate their wages will go up? And why have they not gone up if there is not—

Mr. JOHNSON. Again, they have not gone up because of the issues of wage inequality. We are in a time now in a knowledge-based economy where we put a high premium on people who have education and training. And we have been paying people who do not have a lot of education and training less and less since the 1970s, before we had large waves of immigration.

It is too simplistic to say supply and demand, the more people come means that the price goes down. Take an easy example. We have today a copy shop on every corner, Starbucks everywhere, and yet people line up every day to pay more than we have ever paid for coffee than at any time in the history of the country because demand has kept pace with supply. So if the demand for less skilled workers is keeping pace with supply, then the impact on wages is not going to exist. It is competition that drives down wages, and that is my point. We do not have a lot of competition with immigrant workers because immigrant workers come in to fill gaps in our labor force. They come in at the low end of the skill spectrum and the high end of the skill spectrum, and the U.S. workforce is right there in the middle.

Senator SESSIONS. Well, I think you would agree that Professor Borjas at the Kennedy School at Harvard who has written a book, "Heaven's Door;" Professor Chiswick of the University of Illinois; Robert Rector at the Heritage Foundation; and Andrew Sum, I believe at Northeastern, would disagree with you.

Mr. JOHNSON. They would disagree with me, and they would also disagree with David Card and Giovanni Perry and Dr. Feinberg at

Brown University. I mean, you get ten economists in a room, you are going to get ten different answers.

Chairman SPECTER. Senator Sessions, how much more time would you like?

Senator SESSIONS. My time is up.

Chairman SPECTER. Senator Sessions, thank you very much.

Mr. Cutler, Mr. Johnson, Dr. McDonald, Mr. O'Dowd—

Senator SESSIONS. You have been very generous, I have to say. [Laughter.]

Chairman SPECTER. Well, we have exceeded the time limit to some extent, but not a whole lot, and we very much appreciate your coming in. We are going to continue these hearings to analyze further the respective positions of the Senate and House on the immigration issue and inform the American people that we are very serious about border enforcement and employer verification. We are also very serious about a guest worker program and very serious about dealing in a human, realistic way with 11 million undocumented aliens. And your contribution has been very substantial, so we thank you, and that concludes our hearing.

[Whereupon, at 11:34 a.m., the Committee was adjourned.]

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

QUESTIONS AND ANSWERS

Michael W. Cutler
Fellow
Center for Immigration Studies
1522 K Street, Suite 820
Washington, DC 2005

Honorable Arlen Specter,
Chairman, Senate Judiciary Committee
United States Senate

August 9, 2006

Dear Chairman Specter:

I want you to know that I greatly appreciate the opportunity you afforded me to appear before the Senate Judiciary Committee at the hearing on July 12, 2006. I believe that the immigration crisis confronting our nation is one of the most significant issues facing our country today. How we as a nation choose to deal with it will have ramifications well into the future and will, in large measure, determine the future of our nation.

On September 11, 2001 the worst terrorist attack ever committed against our nation had a profound impact on the United States as well as on all democracies around the world. As I stated at a hearing before the House Subcommittee on Immigration, Border Security and Claims, "No American city is safe if any American city is attacked." While all of the United States was indeed attacked on that horrific day, the impact was felt most profoundly in the city in which I live, New York City. I shall never forget that day. The ashes from the conflagration at the World Trade Center that came to be known as, "Ground Zero" fell upon my home and my family in Brooklyn, New York, where I live. In the days that followed, all too many trees in front of my neighbors' homes had yellow ribbons tied around them in as these victims' family members hoped against hope that they would ultimately be able to find their missing loved ones. In the days that followed, I gave up counting how many cars, trucks and vans drove by with photos placed in the windows of these vehicles with a simple question written next to the photo asking, "Have you seen my wife?" "Have you seen my son?" "Have you seen my dad?"

Many years ago, Senator Kennedy's family lost two of their brilliant family members to assassins' bullets. Our nation was deprived a young and brilliant president and a dedicated attorney general when President John F. Kennedy and Robert Kennedy were assassinated. While the United States lost two incredible leaders, Senator Edward Kennedy and members of his family lost even more, they lost two brothers who played many roles in the lives of other members of their family. They were husbands, fathers, brothers, uncles, and children. They were good friends to many other people. All of their relatives and close friends suffered the loss of these two great men. When we lose loved ones, although some might say that, "Time heals all wounds," this is not an accurate statement. The loss of a loved one or close friend is not the flu but an amputation. The

pain may dim somewhat over time, but the pain remains in our hearts as long as we live and it often takes very little for that pain to reemerge and hurt us anew.

On September 11, 2001 nearly 3,000 human beings were, in effect, assassinated. While neither a president of the United States nor an attorney general was among those slaughtered, each of those lives was precious and unique. Three thousand families suffered on that day and continue to suffer to this very day. They will continue to suffer the profound loss of those whose lives those three thousand victims touched. There are those who make the emotional argument that we need to consider family reunification when we consider immigration policy. I too am concerned about family reunification but the family reunification that I think about often is something that legislation will not achieve. The family reunification I often think about would require no less then divine intervention. Wouldn't it be truly wondrous to have those families and friends and associates who lost loved ones on September 11, 2001 reunited with those who were slaughtered? We all know that this is an impossible dream that will not happen in our lifetimes. Since that is indeed an impossible dream, the next best thing would be to make certain we do all we can, as a nation, to prevent more families from suffering the devastating loss of loved ones to future terrorist attacks. In order to do this, our leaders must not ignore the findings and recommendations of the Presidential Commission of the Attacks of September 11, 2001, but rather use the report issued by that commission, as well as a follow-up report issued by members of the 911 Commission staff, referred to as the "911 Commission Staff Report on Terrorist Travel" to guide our nation as we seek to make our borders and immigration system more secure against the threat of terrorism, to make certain the events of 9/11 are never permitted to occur again.

Having lived through that disaster, my objective is straightforward; I want to do everything I can as a citizen of this great nation, to make certain we take the reasonable and prudent measures to help secure our nation and our people against another such attack.

During the hearing you made the point that anyone who does not want to embrace the illegal aliens living among us perhaps suffered from xenophobia. To be honest, I find that accusation difficult to accept and unfair. I am the son of an immigrant. My mother legally immigrated to the United States in the years before the onslaught of the Holocaust. Her mother, my grandmother, perished in the Holocaust in Poland. In fact, I am named for her. My dad was born in the United States but his family legally immigrated to the United States in 1908 from Russia fleeing the tyranny of the Tsar. As a New Yorker, I am delighted that just about every culture and ethnicity can be found in large abundance. Indeed, it is this ethnic and religious diversity that makes New York the unique city that it is. Cultural diversity enriches our nation and enriches our lives.

When I was a high school student, I was a president of a local B'nai B'rith group. In 1964 I participated in a demonstration outside the White House to ask then President Lyndon Johnson to pressure the former Soviet Union to permit Jews living in the Soviet Union to emigrate to the United States and Israel. In the early 1970's when I was an immigration inspector working at John F. Kennedy International Airport, I took great

delight in admitting refugees into our country, and not just from the Soviet Union. America is enriched when we permit decent people to legally come to our country to share the "American Dream." My concern is that by permitting the immigration system to become the dysfunctional disaster it now is, there are aliens who are illegally present in our country and others who are seeking to enter our nation who would contribute to an American nightmare.

I do not suffer from xenophobia but I do worry about the failure of our government to secure our borders against illegal aliens especially those who might be involved in criminal activities and terrorism. The use of language also obfuscates the issue and I believe represent a disservice to the American people. Legislators must be particularly attuned to the choice of language. Although it is a term that seems to have been stricken from the vernacular, the term "Alien" is not a pejorative. The Immigration and Nationality Act defines an alien as being any person who is not a citizen or national of the United States. In point of fact, when we, as American citizens journey to other countries anywhere in the world, we become aliens. I do not know of any other country that is reluctant to use that term or an equivalent term to describe us in those situations. In Mexico, the term, "Foreigner" is used to distinguish aliens from citizens. Yet, ever since the administration of President Jimmy Carter, employees of the former INS were absolutely ordered to immediately stop using the term, "Illegal alien" to describe an alien who was illegally present in the United States. Today we have seen an amazing array of contrived terms being used to describe a simple concept. President Bush has made numerous references to the need to, "Legalize immigrants." As a former INS senior special agent I am amazed to hear such an interesting combination of words. From a legal perspective, an immigrant is an alien who has been lawfully admitted for permanent residence and has a so-called "green card.". An immigrant has the right to work at any job in the United States he or she is qualified to do. An immigrant has the right to travel freely around our country and across our nation's borders. An immigrant has the right to petition our government to afford his (her) spouse and minor children, immigrant status. An immigrant, in fact, is an alien who is on the path to United States citizenship. How much more legal can we make an immigrant? To offer to make an immigrant legal makes about as much sense as offering to make water wet- it is already.

When you spend as many years in law enforcement as I have, you become, I am afraid, a bit cynical. I cannot help but believe that the use of language we have seen where immigration is concerned is not an accident but done in an effort by some, to obfuscate the issues, as I noted above. When I sat in the hearing and listened to the stories about how many immigrants have contributed to the United States I was frustrated in not being able to stand up and say that I agree with you totally about our nation having been built by immigrants, but the debate is not about immigrants, the debate is about illegal aliens and what we need to do with them. To confuse the term 'immigrant' with the term 'illegal alien' is equal to confusing the term 'houseguest' with the term 'burglar.' If I was to call the police in the middle of the night and say that I was holding a house guest at gun point, the police would probably respond by sending a SWAT team and a hostage negotiator. If, on the other hand, I called the police in the middle of the night and told them I was holding a burglar at gun point, they would send a couple of squad cars to my

house to take the intruder off my hands. As George Orwell clearly made the point when he created the concept of *Newspeak* for his novel, "1984," words and terms have impact.

I am making this point because I believe that we all want to make America a secure nation that honors its rich tradition of providing a secure and yet democratic way of life for its citizens. As our nation and our leaders grapple with the immigration crisis, I hope that we will be honest with our words as well as with our deeds. Immigration is, for many reasons, a highly emotional issue and therefore the language we use must be as neutral, accurate and dispassionate as possible.

As for the questions submitted by Senator Kennedy, I have re-written his questions below and followed them with my responses.

(1) In your testimony you discussed the link between undocumented immigration and the threat of additional terrorist attacks within the United States, and you argued that in order to minimize the risk of terrorism we must enforce immigration employment laws at high-value targets and also on a random basis throughout the US economy.

I agree with you that we must increase worksite enforcement at critical infrastructure locations and in general; that's why I supported an amendment to the Senate bill to increase Immigration and Customs Enforcement staffing by 11,000 agents.

I also agree with the Coalition for Immigration Security, a group of nine former high ranking Department of Homeland Security charged with Homeland Security. They argue, in part, that:

"The current flow of illegal immigrants and people overstaying their visas has made it extremely difficult for our border and interior enforcement agencies to be able to focus on the terrorists, organized criminals, and violent felons who use the cloak of anonymity that the current chaotic situation offers.

"An appropriately designed temporary worker program should relieve this pressure on the border (by bringing) these economic migrants through lawful channels. Instead of crossing the Rio Grande or trekking through the deserts, these economic migrants would be interviewed, undergo background checks, be given tamper-proof identity cards, and only then be allowed in our country. And the Border Patrol would be able to focus on the real threats coming across our border. This will only happen, however, if Congress passes a comprehensive reform of our border security and immigration laws."

They also reject the idea that the United States can or should round up 12 million people and deport them, and they argue that Congress must craft an earned legalization program to bring these people out of the shadows and into the legal mainstream. The describe anything less than this as "amnesty by default."

Question: Do you believe it would enhance our counterterrorism efforts if we knew the name and identity of every undocumented immigrants living in the United States? Do you disagree with these former high-ranking DHS officials that

the most reliable way to obtain this information is by providing them with incentives to come out of the shadows and join the mainstream?

Question: Do you agree with these former DHS officials that it would enhance US national security and counterterrorism efforts if border enforcement personnel were able to concentrate on a search for terrorists and real criminals, rather than those whose only crime is to seek illegal employment in the United States?

(2) You are a fellow at the Center for Immigration Studies, which has been a leading advocate of the so-called attrition approach to immigration enforcement. The idea here, as I understand it, is that if we enforce sufficiently draconian immigration rules at worksites and ramp up state, local, and federal enforcement efforts that as many as half of all undocumented immigrants will choose to self-deport over a five year period.

Question: According to CIS, the best-case scenario is that half of the current undocumented population would leave within five years. Would you consider our current reform efforts successful if at the end of the process there are still six million undocumented immigrants living in the United States?

Let me start out by saying that I welcome this opportunity to respond to your questions and share my thoughts with you, Senator Kennedy.

In your first question you ask if I believe if we knew the name and identity of each illegal alien living in the United States, that our counterterrorism efforts would be enhanced. Without any equivocation I would certainly have to agree that the goal of properly identifying each illegal alien would indeed, enhance our national security. The problem is not with the goal, it is with the methodology of achieving the goal that I take issue. I know that you have quoted a group of nine former high-ranking DHS officials who postulated that a guest worker amnesty program would get the illegal aliens out of the shadows so that we could properly identity them. While these members of the Coalition for Immigration Security are quick to advocate the benefits of a guest worker amnesty program, I do not believe that any of them have been involved in conducting terrorism investigations or have real world experience in conducting interviews with criminal aliens who use false identities the way that a chameleon uses changes in coloration in order to hide in plain sight.

Senator Kennedy, I believe that you have seen my bio. If you review it, you will see that I have spent most of my adult life enforcing the immigration laws from various perspectives, having been an immigration inspector assigned to John F. Kennedy International Airport at New York City, I was an adjudications officer in the unit that determined whether to grant resident alien status to aliens on the basis of being married to United States citizen or resident alien spouse. In 1975 I became a criminal investigator (special agent) and remained in that position for the balance of may career at the former INS. During my career as a special agent I rotated through every section of the Investigations Branch of the INS in New York and did everything from arrest aliens who were working illegally to conduct investigations of fraud, both seeking to uncover and

dismantle organizations producing and distributing false identity and supporting documents as well as fraud schemes in which aliens sought to receive immigration benefits by deception. I was a member of the first anti-smuggling squad in New York; I was assigned as the marine intelligence officer and participating in boarding various vessels with members of the U.S. Customs Service to search for contraband and stowaways. I was assigned to the Unified Intelligence Division of the DEA in New York as the INS representative and finally I was promoted to the position of senior special agent and assigned to the Organized Crime, Drug Enforcement Task Force. During my career, I arrested aliens from nearly every country in the world who were involved in simple status violations to aliens involved in drug trafficking, firearms possession, rape and murder. My investigations also involved the arrest and/or investigation of a half dozen terrorists from various countries.

I have worked closely with fellow law enforcement officers from various federal law enforcement agencies as well as from various state and local police departments and law enforcement organizations. I have also worked closely with law enforcement officials from a number of foreign countries.

I furnished testimony to the Presidential Commission on the Attacks of September 11, 2001 and have testified at numerous Congressional hearings. It is my real-world experience that a cursory interview will not generally determine the true identity of a terrorist or criminal who is intent on concealing his true identity for nefarious purposes. I have often said that the only thing worse than no security is false security. It is my opinion that there is no way of conducting meaningful interviews with millions of illegal aliens who are referred to as being "undocumented" meaning that they do not possess official identity documents.

According to a report issued by the General Accountability Office in March of this year, USCIS is unable to weed out the massive fraud in the various applications for immigration benefits. No matter what our nation does to secure our borders, if we provide aliens with immigration benefits, especially resident alien status and United States citizenship, we are, in effect, providing them with the keys to the kingdom. It is critical that the immigration system possesses real integrity and that integrity at present is sorely lacking. When you look at the accomplishments touted in a paper issued by the Coalition for Immigration Security that you speak so glowingly about, you see where one of the accomplishments that they boast about is the reduction of the backlog of applications for immigration benefits by some 83%. In fact they state that… "U.S. Citizenship and Immigration Services (USCIS) has reduced the backlog of benefit applications from a high of over 3.8M in January of 2004 to under 700,000 in January of 2006." I find it worrisome, to put it mildly that their focus was on the reduction of the backlog of pending applications for immigration benefits but that they did not address the issue of making certain that these applications were properly adjudicated where meaningful efforts were made to identify fraud thereby making the integrity of the process at least equal to the reduction of the backlog in terms of the prioritization of the adjudications process. It is not really all that difficult to reduce a backlog of pending applications if you are willing to ignore high levels of fraud. The problem is that as more

applications are quickly approved as the focus on backlog reduction becomes the priority, quality of the process and consequently, fraud detection suffers. The more that fraudulent applications are approved, the more that aliens are encouraged to file more fraud-laden applications further increasing the backlog and further eroding the integrity of the system. This results in an ever-increasing spiral of fraud and a greater backlog. The long term solution to the backlog and the need to restore integrity to the immigration benefits program is to do a better job of weeding out the fraud, prosecuting as many individuals involved in filing applications containing fraud as possible, to deter more aliens from filing more fraudulent applications. It is also important to make certain that when an application is determined to be fraudulent that efforts be made to locate the alien beneficiary of the application and seek his removal from the United States. Yet the Coalition for Immigration Security did not even raise the issue of immigration benefit fraud, which makes me wonder, how that organization can seriously refer to itself as being the Coalition for Immigration *Security* when they do not even address the issue of immigration benefit fraud. Furthermore, it is worth noting that the 911 Commission made it clear that the terrorists who attacked our nation on September 11, 2001 were able enter our country and then embed themselves in our country through the commission of immigration fraud. That is why, while much talk about the need to increase the interior enforcement of the immigration laws is focused on efforts aimed at apprehending absconders and seeking to punish employers who knowingly hire illegal aliens, it is at least equally important that interior enforcement also focuses on fraud; both the investigation and elimination of document mills that produce various identity documents as well as a wide array of supporting documents as well as on criminal organizations that conspire to enable aliens to circumvent immigration laws through fraud schemes.

If we provide terrorists and criminals with secure identity documents in false names under the aegis of a guest worker amnesty program, they will be able to circumvent the various terrorist watch lists and so-called "No-fly" lists and gain access to secure venues. They will be able to travel freely around our country and across our nation's borders. In short, they will be able to embed themselves in our nation and hide in plain sight as they prepare to attack us again. You quoted the Coalition for Immigration Security as stating that, "The current flow of illegal immigrants and people overstaying their visas has made it extremely difficult for our border and interior enforcement agencies to be able to focus on the terrorists, organized criminals, and violent felons who use the cloak of anonymity that the current chaotic situation offers." The fact that the identity documents will be tamper resistant is of scant comfort considering that the system itself would most likely be so flawed that the issue of integrity will begin with the way that interviews will be conducted and the identity of the alien applicants determined. There is no way that millions of undocumented aliens can have meaningful "background checks" conducted as the Coalition on Immigration Security refers to the process. In order to determine the true identity of an alien who is undocumented a thorough field investigation would need to be conducted. There is no way that the huge number of undocumented aliens can have their backgrounds thoroughly researched and verified. Simply running a name that an undocumented alien provides on a computer and running his/her fingerprints is only slightly less than useless. Documents that they may provide in support of their claimed identity will be virtually worthless as well. Rent receipts, utility bills and the like mean

nothing because anyone can bring in such documentation and claim it refers to them. According to the report issued by staff members of the 911 Commission, entitled "The 911 Commission Staff Report on Terrorist Travel" stated that the 19 terrorists who attacked our nation on September 11, 2001, in the aggregate, used some 364 separate pieces of identification.

Frankly I fear that a guest worker amnesty program will provide these pernicious criminals and terrorists with a new cloak to better conceal their true identities and intentions. That cloak, given the poor track record of USCIS, may well be these secure identity documents that would become a valuable breeder document for those who would do grave harm to our nation and our people.

It is also important to take another issue into account. If we are unable to establish with any real certainty the true identity of the millions of illegal aliens who would be all too happy to participate in a guest worker amnesty program such as that which is offered by S. 2611, then it will be even more difficult to ascertain how long these illegal and undocumented aliens have actually been physically present in the United States. Any alien who was desperate enough to run our borders at grave risk to their safety, in fact, their survival, would not hesitate to claim to have been present in the United States for the "magic" 5 year period that would open all of the doors for them. It is worth remembering that when the former INS implemented the Amnesty of 1986 that the original estimate of the number of illegal aliens who would participate in that program would be somewhere between 1 million and 1.5 million. Having learned the lesson of the history of that amnesty program, we know, of course that roughly 3.5 million illegal aliens ultimately participated in that ill-fated program. Perhaps part of the drastic increase was due to errors made in the original estimate of the illegal aliens who were present when that program went into effect. However, I can tell you that it is my belief that many of those additional illegal alien applicants actually entered the United States after the fact and succeeded in 'gaming' the system by falsely claiming that they had been present in the United States for the requisite period of time.

You posed a question about the concept that a guest worker program would enable aliens who simply wish to work to come to the United States to work would be able to do so, thereby enabling law enforcement officials to focus on criminals and terrorists. I wish that it were that simple.

I recently testified at a hearing before the House International Relations Committee -- Subcommittee on Oversight and Investigations. I addressed this issue at that hearing and I have attached a copy of my testimony immediately below that deals with my concerns that it is virtually impossible to weed out terrorists from aliens seeking employment in the United States. I believe that my testimony would be helpful in enabling you and your colleagues in the United States Senate to understand my concerns:

"The President of the United States and other political leaders have often said that we should focus law enforcement's resources and attention on those who would do us harm and not waste the extremely limited resources of ICE to enforce the immigration laws

from within the interior of the United States on those who simply come to the United States to seek employment. It would indeed make sense to do this if it were such a simple proposition. Someone once said that an effective spy is someone who would not attract the attention of a waitress at a ``Greasy spoon diner.`` The same can be said of an effective terrorist. In fact, it might well be that the waitress or waiter of such an establishment is, in fact, a spy or a terrorist.

In the mid 1980s, as a special agent of the former INS, I was assigned to conduct an investigation of a diner in Staten Island, New York. We had received information that a number of illegal aliens were working at that restaurant who had come from a variety of countries. We ultimately arrested a number of employees, most of whom worked in the kitchen of the diner. One of the employees, a dishwasher, was a citizen of Egypt who realized what was going on fled out the back door of the restaurant and it took a bit of a chase to finally arrest him. Once in custody, we took him back to his apartment to attempt to obtain his passport, a standard procedure, since that travel document would be essential if we were to have him deported.

He was cooperative and in we entered his apartment. My partner and I were at a loss to understand why we found many shopping bags from department stores filled to the brim with coupons for various grocery items ranging from laundry detergent to diapers and dog food. When questioned about it, he fumbled for an answer and then said that the kids in the neighborhood played with the coupons. We knew it made no sense, but having nothing else to go on, we simply retrieved his passport and lodged him in the immigration detention facility. He was ultimately deported.

Several months later, I watched a televised news program and to my consternation and frustration, learned that the PLO had been sending their minions to the United States to raise money for terrorist activities by committing a variety of crimes including coupon fraud. Apparently the dishwasher was one of those who had come here to raise money to fund terrorism. There have been published accounts in newspapers of terror suspects who have worked at a wide variety of seemingly menial jobs in the United including one guy who drove an ice-cream truck and others who have driven taxi cabs while still others have worked in used car lots or even taught school. I can tell you from personal experience having spent years conducting surveillance in conjunction with conducting various criminal investigations into a wide variety of criminal activities that when a bad guy gets in his or her car and drives to a location where he gets out of his vehicle and meets with another individual, that it is easy presume a meeting has taken place and we could follow the other participant in that meeting to further the investigation. In the case of the terror suspect who drove an ice-cream truck, think about how many people may approach that truck on a warm afternoon seeking to buy ice- cream. How could you tell if any of them were actually associates of the driver of that truck who were there to meet with him in a very effective clandestine manner? How many meetings could a terrorist have with his ``passengers`` in his taxi cab that would evade detection by a surveillance team? Furthermore, ice-cream trucks and taxi cabs are truly ubiquitous. They can be used for surveillance by terrorists because they blend in so well with the urban landscape. These menial jobs can help terrorists to hide in plain sight.

Yet, the administration talks about targeting sensitive locations such as airports and nuclear power plants and military bases to look for illegal aliens. Certainly these locations should come under intense scrutiny because of their obvious potential as targets for terrorists, but by focusing on these locations we are, in effect, providing a play book to our adversaries. The message is clear, if you want to embed yourself in our country and not arouse the attention of law enforcement, especially ICE, do not get a job in a nuclear power plant but sell hot dogs outside that power plant and no one will bother you or even pay attention to you."

Finally, you asked me about the concept of attrition as an alternative to deportation. I am, in fact an architect of that concept. I used a slightly more colorful way of describing this concept when I said that "...No one would break into an amusement park if they could not get to go on the rides and no one stays in the amusement park at the end of the day when they turn off the lights and shut down the rides." While it is certainly true that most likely at least several million illegal aliens would not voluntarily leave the United States under this concept, there are a few issues worth considering. First of all, there is no door the United States can shut to prevent additional illegal aliens from entering the United States even if we were to implement a guest worker amnesty program. I believe that this program would encourage millions of additional illegal aliens to manage to enter the United States in the hope of participating in the program, or with the hope that ultimately, our nation will implement yet another such amnesty. Law enforcement is most effective when it acts as a deterrent against illegal activity. The enforcement of immigration laws to deprive illegal aliens the ability to get the jobs that have enticed them into entering our country in violation of law would deprive those who would violate our laws of the incentive that would draw them across our borders. This will help to decrease the pressure on our nation's borders and on our immigration system.

The goal of reducing pressure on the border is certainly worthwhile; therefore, I do not understand why our nation does not make more of an effort to reduce the reason that so many illegal aliens come to the United States from their home countries, the failure of those countries to provide a decent future for their own citizens. I believe that it is outrageous that one of Mexico's most important exports is its own citizens! The reason that so many illegal aliens from Mexico and elsewhere is to achieve economic success that is not possible within their respective countries. It is time for the United States to take a true leadership position and take the moral high road, demanding that in order to participate in any economic agreements with the United States; a prerequisite be established that these countries do a far better job of sharing the wealth of their nations with their citizens. It is time for the United States to enforce the immigration laws fairly and objectively without the politicization that has come to pass for 'business as usual' where illegal immigration is concerned. If we could create greater economic opportunities in other countries, then the citizens of those countries would be able to have greater hope for their future and their children's futures without needing to flee the grinding poverty that has, until this very day, motivated them to cross into our country in violation of law and at great peril to their safety, indeed, survival. This would, I believe take significant pressure off of our borders and create a far more humane situation for so

many people in other countries around the world, especially within our own backyard, in Mexico and Latin America.

Conversely, as we learned in the disastrous Amnesty of 1986, providing the impoverished masses from a wide variety of countries around the world, the offer of a guest worker amnesty program encourages more illegal immigration, hence greater pressure on our borders by those alien who hope to participate in such a program. Whether or not you agree with me in declaring the Senate bill, S. 2611 as an amnesty bill, the point is that the provisions of this legislation would enable aliens who have violated our nation's immigration laws to achieve the goal that lured many of them to enter our country illegally by running our nation's borders, the prospect of being able to work in the United States to send money home. While you have stated that S. 2611 does not offer amnesty for the millions of illegal alien who are in our country today because these illegal aliens would pay a $2,000.00 fine and be placed on the back of the line for United States citizenship, I must respectfully disagree with your assertions. First of all, a $2,000.00 fine for aliens who have most likely paid a multiple of that sum to alien smugglers in order to enter our country surreptitiously, would undoubtedly see that fine as a simple "surcharge" to be paid to achieve their goal of gaining the ability to enter the United States and work and be able to participate in the Social Security system, even when they have committed identity theft. Additionally, as one of the other witnesses stated during the hearing at which I testified before the Senate Judiciary Committee, there are a substantial number of illegal aliens who are working in the United States who do not wish to become citizens of the United States, but rather simply want to "commute" across our nation's borders. Indeed, this is precisely one of the arguments I have heard made for a guest worker amnesty program; to enable those aliens who wish to simply go home to do so without fear that it would be difficult for them to return to the United States to resume their jobs here.

They do not want to go to the back of the line for United States citizenship. These aliens who simply want to work and be able to move freely across our nation's borders only want to wait on one line; the line where paychecks are handed out.

There are few law enforcement efforts that achieve a 50% rate. Effective law enforcement requires that strategies be devised that not only punish the law violators but that discourage people from committing violations of law. Certainly, halving the number of illegal aliens in the United States is a worthwhile objective. I cannot imagine any law enforcement organization that would turn down a reasonable proposal to slash the number of law violators under their jurisdiction by 50%. Additionally, by making the attainment of the illegal goals of those aliens who would violate our borders and our immigration laws more elusive by punishing those who knowingly hire illegal aliens and by seeking to dismantle fraud rings that enable aliens to circumvent the immigration laws, it is my belief that these actions would act as a deterrent against illegal immigration, further reducing pressure on the border.

It is also important to note that the influx of illegal aliens into the United States has served to depress wages and in some cases, by doing this, has made certain jobs unattractive to citizens and resident aliens. We often hear that illegal aliens do the work that Americans will not do. The issue is that in order to justify setting an alarm clock to go to a job, the person going to that job has to be able to support himself and possibly his family, from his efforts at work. While it may well be advantageous to corporations to hire illegal aliens who will work under substandard conditions for substandard wages, this practice hurts America's working poor and even America's middle class. Increasingly, this influx of illegal aliens has made the "American Dream" more and more elusive. My dad was a plumber. He passed away while I was a college student. He and his buddies in the various construction trades, helped to build our nation. They embodied the "can do" attitude that has been the hallmark of America. Many of these tradesmen today have found that they are being displaced by day laborers. These tradesmen are true craftsmen who take pride in their work and who have passed their trades from father to son for a number of generations. Today their futures are uncertain because of the influx of illegal aliens whose skill levels are far lower than the tradesmen they have displaced, but who are willing to work for less money under worse conditions. This is only one example of how the influx of illegal aliens hurts our citizens and aliens who are legally entitled to work in the United States.

It is worth considering that there are a variety of visa categories for aliens who wish to work in the United States, both immigrant as well as nonimmigrant. The guiding principle of immigration has historically been to protect citizens of the United States from foreign workers who would displace American workers. I believe that this priority should be maintained today and that, when there are truly no workers in our nation who can fill a job vacancy that then and only then, foreign workers should be sought to take such a job. The number of visas can be adjusted and the process can be made less unwieldy.

Senator Kennedy, I hope that you agree with my concerns and that after careful consideration, you ultimately conclude that there is real justification for my position on these critical issues. I have done my best to address your concerns and questions.

Now, however, I have a question for you, if you don't mind.

There are a number of other provisions of the Senate bill, S. 2611 that have, frankly left me shaking my head in disbelief. I am at a loss to understand why there are politicians who would, for example, reward illegal aliens who have used, or claimed to have used, other people's Social Security Numbers to seek employment to not only not be punished for identity theft, the fastest growing white collar crime in America today, but to reward them for such criminal, indeed felonious conduct by permitting them to receive Social Security benefits for any work they performed under someone else's name and number. I am equally outraged that there are confidentiality provisions under S. 2611 to help shield illegal aliens from law enforcement authorities. Why would the United States Senate pass a bill that has these provisions incorporated into immigration reform legislation?

It has been said that you only get one opportunity to make a first impression. The first laws aliens entering or seeking to enter our country generally encounter are the immigration laws. The message would appear to be clear to these millions of people; in the United States, not only can you expect to be able to get away with breaking the law, we are happy to reward you for violating our laws. That is a wrong and very dangerous message, especially at this point in time with the ongoing war on terror and supposed wars against drugs and gangs. No reasonable home owner would open his door to a stranger without looking through the peephole of his front door to make certain that the visitor standing on his front porch does not represent a threat to his safety. Our nation should do no less.

I greatly appreciate that you have provided me with an opportunity to clarify my position on some of the many issues that comprise the immigration crisis confronting our nation today. Please feel free to contact me if you believe my insight, experience and perspectives can be helpful to you.

Sincerely,

Michael W. Cutler

The Honorable Carlos M. Gutierrez
Secretary of Commerce
FOLLOW UP QUESTIONS AND ANSWERS
FROM THE SENATE JUDICIARY COMMITTEE

Questions from Senator Kennedy

Question 1: *Are employers more or less reliant on immigrant labor today than they were 20 or 50 years ago? If they are more dependent, does that imply an even greater need for comprehensive reform at this time?*

America has dealt with difficult immigration issues in the past. There have been large waves of immigrants from Asia, Western Europe, and Eastern Europe, throughout our history. In fact, proportionately, we have fewer foreign-born people living in the United States today than we did in 1890. In 1890, 14.8 percent of our population was foreign-born. In 2004, 12 percent was foreign born.

However, immigrants are a substantially higher proportion of the labor force today than they were 20 or 50 years ago. Currently, immigrants are approximately 15 percent of the labor force, and over the period from 1996 to 2002 they accounted for more than half of the labor force's growth.

U.S. workers have become more educated and increasingly work in jobs requiring higher education levels. Between 1996 and 2004, the number of high school dropout native adults fell by 4.6 million. As a result, employers turn to immigrant labor to fill these low-skilled jobs that American workers are not available to do.

It is important to underscore that a substantial portion of immigrants are highly skilled professionals who contribute to America's innovation and strengthen our competitiveness. Immigrants accounted for 23 percent of employment growth between 1996 and 2002 in high-skilled occupations. One study conducted by the Public Policy Institute of California estimated that approximately one quarter of all Silicon Valley high-tech businesses in the late 1990s were led by a CEO who was a Chinese or Indian immigrant.

Immigrants clearly serve as an important source of labor for American employers. Comprehensive immigration reform is needed to protect American workers and provide American employers access to foreign workers that can fill jobs that, in some cases, American workers are not available to do.

Question 2: *Would passage of the House's enforcement-only bill be true to Reagan's vision of immigration reform? What kind of message would it send to potential legal immigrants and to our allies in the war on terror if the United States deports millions of undocumented immigrants – many of them with US citizen families – and builds a longer and stronger Berlin Wall on our own southern border?*

Recently, 33 prominent conservatives wrote an op-ed that appeared in the *Wall Street Journal* stating, "The best way -- the only way -- to realize President Reagan's vision is through comprehensive immigration reform legislation." We do not need to choose between the false dichotomy of being a lawful society and a welcoming nation. We can be both.

Increased efforts to secure the border are a necessary component of immigration reform, but are insufficient since they do not address the root cause of what attracts immigrants to the United States. According to a Public Agenda survey, nearly half of Mexican immigrants say that they are drawn to the United States by the opportunity to work. The best way to stop illegal immigration is to establish a practicable system of workplace enforcement and a legal mechanism to match foreign workers with domestic employers for jobs that American workers are not filling.

A lawful Temporary Worker Program (TWP) will regulate the flow of foreign workers so that the Department of Homeland Security can focus their efforts on identifying and stopping terrorists, drug traffickers and smugglers from crossing our borders. A TWP gives honest immigrants a way to provide for their families while respecting the law, replaces illegal workers with lawful taxpayers, and enables us to make certain we know who is in our country and why they are here. To reduce pressure on our borders, the immigration reform must also provide for a vigorous and effective enforcement of our worksite immigration laws. If we reduce the ability of illegal immigrants to find easy employment in the United States, more and more aliens would decide against entering this country unlawfully.

It is neither practical, nor is it humane, to believe that we can deport 12 million illegal immigrants or the three million children of illegal immigrants who are U.S. citizens by birth. We must confront this reality and provide an alternative that is neither amnesty nor deportation. The President's proposal provides a hard-earned path to legalization, which would require meeting conditions such as waiting their turn at the back of the line, paying a meaningful penalty, paying taxes, learning English, and undergoing a criminal background check.

Question 3: *What effect would the inclusion of a temporary worker program have on the economies of our two countries? What role can Mexico play in helping to implement and administer this program?*

The economic beneficiaries of a TWP include Mexican workers, American employers, their customers, and their other employees. Mexican workers who migrate to the United States under a TWP would be able to work legally and earn substantially higher wages than are available in Mexico. American employers would find it easier to fill jobs that native workers are unavailable to fill. American consumers would pay lower prices than they otherwise would pay for a variety of goods and services that are produced with the help of immigrants.

Additionally, Mexicans remaining in Mexico would benefit from remittances. According to a recent World Bank analysis, remittances are the fastest-growing source of income for

many developing countries. Low-income nations reported $167 billion in receipts from overseas workers last year - a figure more than twice the level of international aid. Mexico's annual remittance inflow has doubled since 2002 to nearly $20 billion.

From the perspective of U.S. workers, many studies have found that the impact of immigration on Americans' wages is small and perhaps even positive on average. This is because immigrants are likely to be complements rather than substitutes for American workers. The National Research Council's *The New Americans* determined that by complementing skilled U.S. workers and other factors of production (such as capital and land), immigrants slightly increase the total income of Americans.

Mexico's assistance in implementing a TWP program will depend largely on the details of the program that is finally agreed upon by Congress. The President remains hopeful Congress will be able to come together and develop a compromise that includes TWP.

Question 4: *What would be the effect, in your opinion, [of] forcibly removing these undocumented workers or of denying employers access to their labor without additional changes to ensure that employers have access to a legal workforce?*

The mass deportation of illegal immigrants could be highly disruptive to the U.S. economy, especially in the short run and for industries, firms, and localities that employ high numbers of immigrant workers, some of which may be undocumented.

According to the Pew Hispanic Center, about 7.2 million undocumented workers were employed in March 2005, accounting for approximately 5% of the labor force. They made up 24% of all workers employed in farming occupations, 17% in cleaning, 36% of all insulation workers, 29% of all roofers and drywall installers, and 27% of all butchers and other food processing workers. Over 10 percent of the labor forces in California, Texas, and Arizona were born in Mexico, many of whom are undocumented.

If these immigrants were removed without providing a new source of legal workers, then many firms would face higher labor costs and prices for goods and services produced by such immigrants would tend to rise. Shortages of labor are already affecting certain industries. Recent news reports indicate that a lack of foreign labor is hurting the Florida citrus industry where millions of boxes of oranges may not be picked this season leading to the second smallest harvest in 14 years.

Comprehensive immigration reform must include both a TWP that provides employers with a legal means to hire foreign workers as well as strong worksite enforcement. Businesses that knowingly employ illegal workers are undermining our laws, violating the public trust, and contributing to the problem of illegal immigration. The Immigration and Customs Enforcement (ICE) has replaced the old system of administrative hearings and fines with a much tougher combination of criminal prosecutions and asset forfeitures. ICE is conducting far more criminal investigations than the former Immigration and Naturalization Service (INS), which tended to rely on administrative fines as a sanction. The President has also proposed an electronic verification system that would allow employers to quickly and accurately check the legal status of newly hired workers.

IMMIGRATION POLICY CENTER

...providing factual information about immigration and immigrants in America

Response from Benjamin Johnson
Director, Immigration Policy Center

To Written Questions by United States Senate
Committee on the Judiciary

Question #1

Question: As you know, Congress has spent millions tripling the number of border patrol agents as well as increasing the number of immigration and customs enforcement agents. On the services side of immigration, do you believe we should also increase the number of immigration benefits adjudicators? Shouldn't better-trained, well-funded immigration adjudicators also be part of comprehensive immigration reform? How do you think that will help in stemming the tide of illegal immigration?

Response: The enforcement and adjudication functions of the U.S. immigration system are inextricably linked. Yet for the last decade and a half, Congress has poured billions of dollars into hiring new Border Patrol agents, building new border fences, and implementing other enforcement-driven programs, while largely ignoring the service side of the immigration agency. A secure, effective immigration system requires more than "boots and guns." Equally important to the goal of reforming our immigration system are the adjudicators who review the millions of applications submitted by prospective immigrants and visitors every year. For reasons of national security, as well as economic security, who we let into the country is as important as who we keep out.

A truly comprehensive immigration reform package must include the funding and resources necessary for the timely and effective review of applications from those seeking to enter the country legally. Most immigrants come to the United States to find jobs or to reunify with family members. But their ability to do so through legal channels is hampered by two serious flaws in the U.S. immigration system: arbitrary numerical caps on family-based and employment-based immigration, and enormous backlogs of immigration-benefit applications that can delay consideration of a case for months or years. These lengthy delays make it more likely that families and businesses will look for avenues of immigration outside of our inefficient and overly bureaucratic system.

Reducing these backlogs by providing more resources and staffing to the service side of the immigration agency would therefore lessen some of the pressures which drive undocumented immigration. Would-be immigrants would not face the agonizing choice between coming to the United States without authorization or not seeing their families for months or even years as they wait for their immigration petitions to be processed. Similarly, businesses would not have to wait years for legal channels of immigration to provide them with workers they need now to fill available jobs for which native-born workers are not available in sufficient numbers. In addition, a more effective and efficient immigration agency also is less likely to deny legitimate applications or to approve fraudulent ones, which is crucial to national security. Adjudicators who are not burdened by massive backlogs and the

A DIVISION OF THE AMERICAN IMMIGRATION LAW FOUNDATION
918 F STREET, NW, 6TH FLOOR • WASHINGTON, DC 20004 • TEL: (202) 742-5600 • FAX: (202) 742-5619
www.immigrationpolicy.org

political pressure to eliminate them are less likely to make a mistake and let in the next Mohammed Atta or refuse entry to the next Albert Einstein.

It also is important to recognize that the agencies performing security checks are an intrinsic part of the adjudications process. Many of the most egregious delays in the processing of immigration applications occur when an applicant's name comes up as a "hit" against a government watch list. Most of the time, the hit is due to a similarity in names between the applicant and someone on the watch list, but the innocent applicant must wait months and sometimes years for this to be established. This not only contributes to bureaucratic delays, but also raises serious security issues in cases where the subject of the hit is actually on a watch list and yet his or her application is not followed up on for months or years. The FBI and other agencies performing these checks must be adequately funded to do the job expeditiously, and must recognize that immigration checks are a core part of their mission.

Creating a more effective and secure system of adjudicating applications will require more than simply hiring more adjudicators. Congress must also change the way that immigration services in general are funded. Under the current system, the filing fees paid by applicants and petitioners are supposed to pay for all adjudications functions. But Congress has diverted a significant portion of these fees to other functions. In addition, under the existing fee structure, budget estimates for future years are based on previous years' filings. Unforeseeable changes in receipts (often from changes in law) and new, unfunded mandates from Congress have helped create severe budget shortfalls for the adjudications division. Moreover, filing fees do not cover the costs of updating and maintaining computer, filing, and other infrastructure systems, nor do they cover necessary overtime costs for backlog reduction.

Fee-based funding is little more than a giant, government-endorsed pyramid scheme, always on the brink of collapsing under its own weight. Because of the backlogs, new filing fees must be used to pay for adjudication of applications filed in previous years. Essentially, new sales are being used to purchase old inventory, with no visible means to pay for the new inventory that continues to come in. Paying overhead out of the fee account is a particularly dangerous action and could be the factor that finally causes the pyramid to fall. Overhead does not rise and fall with the number of applications: it remains fixed whether the agency gets one application or one million. But if the volume of applications decreases, so does the income generated from fees. And there is no reliable stream of income to continue to maintain the fixed expenses. Overhead expenses and backlog-reduction funds must be appropriated by Congress.

Question #2

Question: I would like you to comment on the so-called attrition theory (immigrants self-deporting after enforcing harsh immigration rules). As you know, seventy percent of the undocumented have been here five years or longer. Over half of all undocumented immigrants have families in the United States, and three million US citizen children have one or more undocumented parents. Many have purchased homes or started their own small businesses. Their employers depend on them to remain in business in tight labor markets throughout the country. In sum, most of the undocumented have extensive ties to the U.S.

Advocates of the attrition theory believe that many of the families will choose to voluntarily comply and self-deport. Do you think that these families will choose to self-deport? What's to prevent them from responding to enhanced enforcement by moving deeper underground, including by moving from the formal to the informal economy?

Response: Recognizing that mass deportations are as impractical as they are untenable, many opponents of immigration have argued for slowly driving undocumented immigrants out of the country by systematically making their lives more and more difficult here in the United States. This "attrition" plan, however, is fundamentally flawed.

Putting aside the moral implications of inflicting even more hardship on undocumented workers and their families than they suffer already, and rendering them even more vulnerable to exploitation than they are now, the attrition proposal rests on the flawed assumption that these workers will simply abandon their lives here. The attrition theory fails to recognize the extent to which many undocumented immigrants have put down roots in the United States. Nearly 4 million have lived here for ten years or longer. More than 3 million U.S.-citizen children live in families headed by undocumented immigrants. In addition, there are nearly 2 million undocumented children, many of whom have grown up in this country and are as culturally "American" as the native-born. As a result, the question confronting many of the undocumented is not simply whether to "voluntarily self-deport," but whether to tear apart their families and force their children—including U.S. citizens—to move to countries they may not even know, and where they most likely will not have the same educational and economic opportunities they would have here. Needless to say, many undocumented parents will be reluctant to deny their children the chance for a better life.

Beyond the humanitarian considerations, the attrition theory does not account for the vital role that undocumented workers play in filling less-skilled jobs for which well-matched native-born workers are in short supply. Putting a stranglehold on these workers will also put a stranglehold on our economy. Undocumented immigrants now account for roughly a quarter of all workers in farming, 17 percent in building and grounds cleaning and maintenance, 14 percent in construction, and 12 percent in food preparation and serving. The labor needs of U.S. businesses that depend on these workers would not magically disappear if undocumented immigrants were somehow removed from the job market. Rather, many employers would face the same quandary that they do today: in need of workers who cannot be found in sufficient numbers in either the native-born labor force or among those immigrants allowed to enter the country under current legal limits.

In response to the pull of family ties and available jobs, it is likely that many undocumented immigrants, particularly those with children who have grown up in the United States, would respond to an increasingly hostile environment by moving further "underground." In the process, they would become even more marginalized and vulnerable to exploitation than they already are. And lawmakers would again find themselves facing the question that lies at the heart of the current debate over immigration reform: do we try to round up and deport millions of hard-working, law-abiding men and women (and their U.S.-citizen children)—or do we acknowledge the value of their economic contributions and the depth of their family and community ties by creating an immigration system that actually meets the labor needs of the U.S economy and promotes family reunification.

Responses of Professor William F. McDonald[1]
to
Senator Edward M. Kennedy's Questions
Judiciary Committee Immigration Hearing on "Examining the Need for Comprehensive Immigration Reform, Part II"
Wednesday, July 12, 2006
Responses of July 24. 2006

(1) Statistics on "Criminal Aliens"

Regarding your questions about trying to reconcile Mr. Cutler's statement that "some 30 percent figure of the inmate population are identified as being foreign born" with the figures I quoted from the 1995 Criminal Justice Policy Council's finding that only 8.5 percent of inmates in Texas state prisons were foreign-born, this is what I have found.

I have asked Mr. Cutler to clarify his reference and to identify his source. He said it refers to the federal prison population and he believes it may have come from a Bureau of Justice Statistics (BJS) report.

I have not been able to locate a BJS report with that information. But there is a Government Accountability Office (GAO) study that is probably his source. GAO found that from year-end 2001 to year-end 2004 the percentage of all federal prisoners who were "criminal aliens" remained the same at about 27 percent.[2] No percentage of all state prisoners who were

---

[1] Professor, Department of Sociology and Anthropology, College of Arts and Sciences; Co-Director, Institute of Criminal Law and Procedure, Law Center, Georgetown University.

[2] United States. Government Accountability Office, "Information on Criminal Aliens Incarcerated in Federal and State Prisons and Local Jails,", GAO-05-337R. April 7 2005, Author, 13/07/2006 <http://www.gao.gov/htext/d05337r.html>. There were 42,000 criminal aliens in Federal prisons at year-end 2001 and 49,000 at year-end 2004. In 1994 there were 18,929 up from 4,088 in 1984 John Scalia, *Non-citizens in the Federal Criminal Justice System, 1984-94*,

"criminal aliens" was given.

Bureau of Justice Statistics Special Report, NCJ 160934 (Washington, DC: Government Printing Office, 1996).

The report states that 147,000 "criminal aliens" (the figure used by Cutler) were incarcerated during FY 2003 in local jails.[3] GAO derived this figure from data submitted by the states to the federal State Criminal Alien Assistance Program (SCAAP) in order to be reimbursed for the cost of housing *illegal criminal aliens*.

Let me repeat my warning about the terminological quagmire. This GAO data consists of apples and oranges. The "criminal aliens" in federal prison may be *legal or illegal aliens*. If they are legal aliens, they may or may not be deportable – depending upon the crime of conviction. The "criminal aliens" in state prisons and jails accounted for by the SCAAP data *must* be *illegal aliens* at the time of incarceration. What is more, those who are in jails may not be convicted of any crime. They could be illegal immigrants awaiting trial or removal. (I am not sure how illegal immigrants detained awaiting removal hearings are counted in the statistics I have cited. I assume that all detainees for any reason are included. I have never seen statistics on jail detentions that break out the cases awaiting trial or removal from those serving a sentence.)

If that is not confusing enough, consider the fact that many aliens in the United States are not "immigrants." In 2004 there were about 26,000,000 foreigners who visited the U.S. as tourists, students or business people plus 75,500 refugees in the country.[4] No doubt some of these people were convicted for some crimes and incarcerated at the state or local levels. They would be "criminal aliens" who are legally in the country and not subject to SCAAP reimbursement.

The GAO report concluded that its number of criminal aliens in state and local jails was "sufficiently reliable for the purposes of [its] report." But that does not mean the number is suitable for use in calculating the percentage of inmates in state and local prisons/jails who are "criminal aliens." It omits criminal aliens who are legally in the country. It double counts those illegal criminal aliens who get incarcerated in more than one jurisdiction in the same year – a real possibility but with unknown dimensions.

The best available national information on the percentage of federal and state inmates who were aliens is a BJS study which reported the change in the numbers between 1991 and 1997 (see Table 1).[5] The percent of non-citizens among state inmates went from 4.4% in 1991 to

---

[3] The total number of "criminal aliens" incarcerated in state and local prisons/jails according to the report is 221,000 (147,000 in local jails) and (74,000 in state prisons).

[4] United States. Department of Homeland Security. Office of Immigration Statistics, *2004 Yearbook of Immigration Statistics*. 2005, Author, 21/07/2006 <http://www.uscis.gov/graphics/shared/statistics/yearbook/index.htm>.

[5] Bureau of Justice Statistics. U.S. Department of Justice, "Correctional Populations in the United States: 1997,", NCJ 177613. Nov. 2000, Author, 21/07/2006 <http://www.ojp.usdoj.gov/bjs/pub/pdf/cpus9704.pdf>.

5% in 1997. Among federal inmates the percentage declined from 18.4% in 1991 to 18.3% in 1997.

Table 1. Percentage of State and Federal Inmates Who Are

	State Inmates		Federal Inmates	
	1997	1991	1997	1991
Percent of inmates	5	4.4	18.3	18.4
Number of inmates	1,059,607	704,203	89,072	54,006

BJS, Correctional Populations in the United States, 1997. T 4.1

2. With regard to your question about whether it is appropriate in an estimate of immigrant criminality to include undocumented immigrants who have status violations but have not committed additional crimes, I would say that the answer depends upon your purpose.

If you are trying to obtain an estimate for the purpose of reimbursing state and local governments for the costs of incarcerating undocumented aliens, then it would be appropriate to include the cases of undocumented immigrants who: (1) are awaiting immigration hearings; (2) are awaiting trial in "conventional" criminal matters; (3) and are awaiting removal.

If you are trying to obtain an estimate of the criminality of immigrants for the purpose of measuring the extent to which immigrants commit crimes, then it is inappropriate to include immigrants who have committed only status violations.[6] Doing so overstates the "criminality" of immigrants for two reasons: immigration violations are not "crimes" which native- borns can commit; and criminal justice systems here and abroad are more likely to hold immigrants in pretrial detention for fear of their absconding. When studying adult criminality we do not count as "criminal behavior" status offenses which only juveniles can commit.

[6] This is my view and that of several other criminologists, especially those dealing with European data on immigrant criminality which rely upon incarceration data and where it is known that many immigrants in the data are being held because of their status as foreigners.

3. With regard to the question as to why immigrants have been found to be less involved in criminality than the native-born, there is no simple, consensus answer. Some researchers who have reported the lower rate did not try to explain it.[7] Perhaps they did not want to run the risk of the fallacy of *ex post facto* theorizing. Anyone can offer a plausible theory once an empirical relationship has been found. The xenophobe, for example, might say that the lower rates of crime among immigrants mean that they are cunning at concealment or at finding outlets for their criminality in well-concealed organized crime.

Some researchers have offered interpretations. Referring to the finding that immigrants were less criminally inclined than the native-born of the 1931 Wickhersham Commission, the renown American criminologist, Edwin H. Sutherland, explained it as follows:

> Immigrants developed respect for law in their home countries. In their homogeneous and stable groups they were controlled during their formative years by the traditions which had come down to them through the generations, and by their primary groups they were welded together into a general community unity. These habits ideals, and codes pesist after they reached America so that they are not so criminalistic as persons reared in the social disorganization of the American city.[8]

More recently an expert on the lower rate of criminality of immigrants compared to natives in Australia discounted the idea that immigrants have some common personality profile but did not dismiss a view that is popular among some researchers. He wrote:

"A substantial reason for migration to Australia must be the desire for material

---

[7] Alida C. Bowler, "Recent Statistics on Crime and the Foreign Born," in *Report on Crime and The Foreign Born*, ed. U.S. Commission on Law Observance and Enforcement (Washington, D.C.: Government Printing Office, 1931), 79-196.

[8] Edwin H. Sutherland, *Principles of Criminology*, 4th ed. (Chicago, IL: J. B. Lippincott, 1947), 124.

betterment. From that it follows that the justifiable belief in legal economic opportunities available in Australia should partly negate the need to resort to illegal means. This may be a partial explanation for the low overall rate of migrant crime."[9]

[9] Ronald D. Francis, "Crime and the Foreign Born in Australia," in *The Australian Criminal Justice System: The Mid-1980s*, ed. Duncan Chappell and Paul Wilson (Stoneham, MA: Butterworths Inc., 1986), 148.

Another popular explanation has to do with the nature of the communities in which some immigrants settle. As early as 1935 it was noted that crime rates tended to be lower among immigrant communities, referred to as "ethnic enclaves," which exist in comparative isolation from the larger surrounding community. The rates were higher in communities which were not as tightly knit.[10]

More recently, researchers have conceptualized what they think is at work in such enclaves, namely "collective efficacy," i.e. the "mutual trust among neighbors combined with the willingness to intervene on behalf of the common good, specifically to supervise children and maintain public order."[11] In Chicago neighborhoods where collective efficacy is strong, rates of violence were low regardless of the sociodemographic composition or even the degree of disorder observable.

This social structural feature of ethnic communities is regarded by some researchers as the explanation for the "Latino paradox," the fact that for over a decade in the United States Latinos have done better on various social indicators including measures of violence than expected given their socioeconomic disadvantages.[12] [13]

---

[10] Erdmann D. Benyon, "Crime and Custom of the Hungarians of Detroit," *American Institute of Criminal Law and Criminology* 25 (1935): 755-74.

[11] Robert J. Sampson and Stephen W. Raudenbush, "Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy," *Science* 277, no. 5328 (Aug. 15 1997): 918-25; Robert J. Sampson and Stephen W. Raudenbush, *Disorder in Urban Neighborhoods--Does It Lead to Crime?* NCJ Number: 186049. Feb. 2001, National Criminal Justice Reference Service, 24/07/2006
<http://www.ncjrs.gov/App/search/Abstracts.aspx?id=186049&library=Publications_Lib&query=%26lt%3BRecordset%26gt%3B%26lt%3BLibrary%20name%3D%26quot%3BPublications_Lib%26quot%3B%26gt%3B%26lt%3BField%20name%3D%26quot%3BDOC_BODY%26quot%3B%26gt%3B%26lt%3BQuery%26gt%3B%26lt%3B%21%5BCDATA%5Bcollective%20efficacy%5D%5D%26gt%3B%26lt%3B/Query%26gt%3B%26lt%3B/Field%26gt%3B%26lt%3BField%20name%3D%26quot%3Bis_full_text%26quot%3B%26gt%3B%26lt%3BQuery%26gt%3B%26lt%3B%21%5BCDATA%5BY%5D%5D%26gt%3B%26lt%3B/Query%26gt%3B%26lt%3B/Field%26gt%3B%26lt%3B/Library%26gt%3B%26lt%3B/Recordset%26gt%3B>.

[12] Robert J. Sampson, "Immigration and the Crime Drop," *Newletter: Crime, Law, and Deviance: A Section of the American Sociological Association*, Winter 2006, 5.

[13] The remarkable upsurge in Hispanic immigrants to the US since the1980s did not make it more likely that Hispanics would have encounters with non-Hispanics. Rather, it resulted in an increased concentration of Hispanics in enclaves. (This was not unexpected. Immigrant networks channel new arrivals to communities where immigrants have already settled Douglas S. Massey, "Ethnic Residential Segregation: A Theoretical Synthesis and Empirical

Review," *Sociology and Social Research* 65 (1985): 311-22.. Between 1980 and 2000 Hispanics were increasingly isolated due to an increase in segregation plus a high rate of growth in the Hispanic population John R. Logan, Brian J. Stults, and Reynolds Farley, "Segregation of Minorities in the Metropolis; Two Decades of Change," *Demography* 41, no. 1 (2004): 1-22.. In Los Angeles, for example, Hispanics lived in neighborhoods where 50% of their neighbors were other Hispanics in 1980 but by 2000 the proportion was 63%. In Dallas the jump was from 24% in 1980 to 45% in 2000 Logan, Stults, and Farley, "Segregation of Minorities in the Metropolis; Two Decades of Change," 9.. Massey (2001) reports that between 1970 and 1990 "Hispanic isolation indices rose markedly throughout the nation. . . . Hispanic isolation rose most strongly in Southern California cities, going from 19 to 50 in Anaheim, 38 to 72 in Los Angeles, and 20 to 40 in San Diego" Douglas S. Massey, "Residential Segregation and Neighborhood Conditions in U.S. Metropolitan Areas," in *America Becoming: Racial Trends and Their Consequences* (Washington, DC: National Academies Press, 2001), 406..

As you can see, there is a variety of possible explanations. As a sociologist I am by disciplinary orientation most inclined to favor explanations based on ethnic enclaves and collective efficacy. However, that explanation has troubling implications for social policy. It suggests that assimilation of immigrants into the larger community – a goal that has traditionally been regarded as a desirable outcome – may be associated with an increase in criminality (and criminal victimization) among immigrants.

REFERENCES CITED

Benyon, Erdmann D. 1935. "Crime and Custom of the Hungarians of Detroit." *American Institute of Criminal Law and Criminology* 25:755-74.

Bowler, Alida C. 1931. "Recent Statistics on Crime and the Foreign Born." Pp. 79-196 in *Report on Crime and The Foreign Born*, edited by U.S. Commission on Law Observance and Enforcement. Washington, D.C.: Government Printing Office.

Bureau of Justice Statistics. U.S. Department of Justice. 2000. "Correctional Populations in the United States: 1997" (NCJ 177613). Retrieved 21/07/2006. Author (http://www.ojp.usdoj.gov/bjs/pub/pdf/cpus9704.pdf).

Francis, Ronald D. 1986. "Crime and the Foreign Born in Australia." Pp. 132-49 in *The Australian Criminal Justice System: The Mid-1980s*, edited by D. Chappell and P. Wilson. Stoneham, MA: Butterworths Inc.

Logan, John R., Brian J. Stults, and Reynolds Farley. 2004. "Segregation of Minorities in the Metropolis; Two Decades of Change." *Demography* 41(1):1-22. http://muse.jhu.edu/journals/demography/v041/41.1logan.html

Massey, Douglas S. 1985. "Ethnic Residential Segregation: A Theoretical Synthesis and Empirical Review." *Sociology and Social Research* 65:311-22.

———. 2001. "Residential Segregation and Neighborhood Conditions in U.S. Metropolitan Areas." Pp. 391-434 in *America Becoming: Racial Trends and Their Consequences*. Washington, DC: National Academies Press. http://people.umass.edu/cnle/soc361/docs/ab1-13.pdf

Sampson, Robert J. 2006. "Immigration and the Crime Drop." *Newletter: Crime, Law, and Deviance: A Section of the American Sociological Association*, Winter, p. 5.

Sampson, Robert J. and Stephen W. Raudenbush. 1997. "Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy." *Science* 277(5328, Aug. 15):918-25. http://search.epnet.com/login.aspx?direct=true&db=aph&an=9708282546

———. 2001 (NCJ Number: 186049). Retrieved 24/07/2006. National Criminal Justice Reference Service (http://www.ncjrs.gov/App/search/Abstracts.aspx?id=186049&library=Publications_Lib&query=%26lt%3BRecordset%26gt%3B%26lt%3BLibrary%20name%3D%26quot%3BPublications_Lib%26quot%3B%26gt%3B%26lt%3BField%20name%3D%26quot%3BDOC_BODY%26quot%3B%26gt%3B%26lt%3BQuery%26gt%3B%26lt%3B%21%5BCDATA%5Bcollective%20efficacy%5D%5D%26gt%3B%26lt%3B/Query%26gt%3B%26lt%3B/Field%26gt%3B%26lt%3BField%20name%3D%26quot%3Bis_full_text%26quot%3B%26gt%3B%26lt%3BQuery%26gt%3B%26lt%3B%21%5BCDATA%5BY%5D%5D%26gt%3B%26lt%3B/Query%26gt%3B%26lt%3B/Field%26gt%3B%26lt%3B/Library%26gt%3B%26lt%3B/Recordset%26gt%3B).

Scalia, John. 1996. *Non-citizens in the Federal Criminal Justice System, 1984-94*. Bureau of Justice Statistics Special Report, NCJ 160934. Washington, DC: Government Printing Office.

http://www.ojp.usdoj.gov/bjs/pub/pdf/nifcjs.pdf
Sutherland, Edwin H. 1947. *Principles of Criminology*. 4th ed. Chicago, IL: J. B. Lippincott.
United States. Department of Homeland Security. Office of Immigration Statistics. 2005. Retrieved 21/07/2006. Author (http://www.uscis.gov/graphics/shared/statistics/yearbook/index.htm).
United States. Government Accountability Office. 2005. "Information on Criminal Aliens Incarcerated in Federal and State Prisons and Local Jails" (GAO-05-337R). Retrieved 13/07/2006. Author (http://www.gao.gov/htext/d05337r.html).

SUBMISSIONS FOR THE RECORD

Secretary

U.S. Department of Homeland Security
Washington, DC 20528

March 27, 2006

The Honorable John Cornyn
United States Senate
Washington, D.C. 20510

Dear Senator Cornyn:

Thank you for your support of critical injunction reform legislation, which will significantly enhance our ability to end "catch and release" of non-Mexican illegal aliens apprehended on the Southwest border. We urgently need Congress to pass this legislation so that we can ensure that long-outdated court decisions do not frustrate our efforts to secure the border.

We have made great strides in increasing the number of non-Mexican illegal aliens detained for removal along the Southwest border. Indeed, most individuals from Central and South America, other than Salvadorans and family groups, are now detained for prompt removal upon apprehension at the Southwest border. But we are stymied in making further progress because of a 1988 court order that has impeded our ability to quickly remove Salvadorans caught after they illegally cross our borders.

This 1988 court decision was issued at a time when El Salvador was in the midst of a civil war and when immigration was governed by very different statutes, yet it continues to dictate our handling of Salvadorans. On November 17, 2005, we fully explained to the district court the dramatic changes in the facts and law that have occurred since the entry of its perpetual injunction in 1988. We asked the district court to lift its order in November, but we have no firm date for when this process will reach its conclusion in the district court or on appeal.

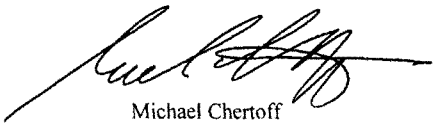
Other longstanding civil injunctions, including one that was issued 30 years ago, likewise impede our ability to effectively enforce the immigration laws. These district court decisions have created onerous operating procedures requiring the commitment of vast amounts of government resources. They detrimentally impact immigration enforcement on a daily basis and often frustrate our efforts. One such other order has resulted in the creation of extra procedures requiring substantial additional resources for routine visa processing. Another injunction has resulted in certain Freedom of Information Act requests being given priority over other pressing work. Invasive court-ordered requirements, for all practical purposes, hamstring the authority of the President and the Congress over the borders. Yet the conditions which gave rise to such requirements may have changed.

Under current law and court procedures, it can be extremely time-consuming and difficult to end these injunctions. With this legislation, Congress will be taking significant steps to ensure that we are no longer hostage to these old, out-of-date, court orders.

Because of the urgent need, I strongly encourage you to attempt to move this legislation both as free-standing legislation and as an amendment to the pending immigration bill. Without such legislation, we simply cannot end the "catch and release" policy for illegal immigration.

Thank you again for your support of our efforts to end "catch and release," so that we can take a major step toward complete control over our borders.

Sincerely,



Michael Chertoff

cc: Chairman Arlen Specter
Senator Patrick Leahy

JOHN CORNYN

United States Senator - Texas
CONTACT: John Drogin
(202) 224-0703 office
(202) 494-8472 cell

FOR IMMEDIATE RELEASE
July 12, 2006

CORNYN: IMMIGRATION REFORM MUST ADDRESS PUBLIC SAFETY

WASHINGTON—*U.S. Sen. John Cornyn, chairman of the Immigration, Border Security and Citizenship subcommittee, made the following opening statement during the Judiciary Committee's hearing, titled,* Examining the Need for Comprehensive Immigration Reform II:

"Thank you, Chairman Specter, for holding this hearing today on a topic of great importance to the country.

"Over the past year, we have seen how illegal immigration is affecting communities that, until recently, viewed the problem as a Texas issue, or an Arizona issue, or a California issue.

"Last week, this Committee heard testimony from Mr. Louis Barletta, the Mayor of Hazleton, Pennsylvania: a city of 22,000 people. Though the city is thousands of miles from the southern border, its Mayor testified that Hazleton's municipal services are "buckling under the strain" of illegal immigration.

"Some of the burdens of which Mayor Barletta spoke are, of course, nothing new for Texas, whose local governments and hospital systems have struggled financially for many, many years because of illegal immigration.

"But I am wary of the effort by some to portray all illegal immigrants as hardened criminals, gang members, or terrorists. That is simply not true.

"The overwhelming majority of illegal immigrants work hard, support their families here and at home, and contribute to our society. When there is a shortage of U.S. workers, our immigration laws should allow those workers to enter our country through legal channels and work temporarily in the United States.

"But we also cannot turn a blind eye to the fact that, amidst the millions of tourists, workers and immigrants who enter our country each day, some will be criminals.

"I'm talking here about people like Angel Resendiz – otherwise known as the "railway killer" – who authorities have been able to link to 15 victims – at least 8 of them in the U.S. Resendiz was executed just a few weeks ago, after a killing spree that spanned 23 years.

"I have documents showing that this murderer was arrested by authorities and deported, back across our southern border, no less than 20 times, and from these records, one can infer that he freely crossed the border many more times, as he had a common law wife in Mexico's Durango state.

-more-

"Resendiz was arrested in multiple locations – from as far north as Sterling Heights, Michigan, where he was found in a boxcar at a Ford Motor Company plant – southeast to Miami, where he was convicted on burglary, auto theft and aggravated assault charges, to San Bernardino, California, for trespassing and possessing a firearm, to El Reno, "Oklahoma, for presenting false documentation and falsely reporting himself as a U.S. citizen.

"We simply cannot allow a system to continue which affords criminals like Angel Resendiz the opportunity to cross our borders, with impunity, and victimize innocent Americans.

"But right now, our immigration system does a poor job of distinguishing between those who are coming to work and those who are coming to commit crimes.

"It is for that reason that I favor a comprehensive immigration bill. I believe that addressing the 12 million illegal aliens already here in the U.S. will enhance public safety in several important ways.

"Investigators, prosecutors and judges could focus on dangerous illegal aliens and repeat offenders. The government could dedicate additional detention space for criminal illegal aliens – 80,000 of whom have already been ordered deported but never left the country.

"And by issuing secure identification to all aliens, state and local police will be in a better position to determine whether routine stops are more than just routine. There are over 700,000 members of state and local law enforcement around the country, and these officials are the ones most likely to encounter a criminal alien or suspected terrorist – most often in the context of a stop related to a minor offense.

"While police officers have access to centralized terrorist screening centers, that access is worth little if the police officer is unable to determine the individual's real identity. By requiring all immigrants to carry secure identification, and eliminating the market for fraudulent and forged documents, we will ensure both the safety of our law enforcement personnel as well as the safety of the American people.

"Thank you for the opportunity to comment, and I look forward to the testimony of our distinguished witnesses."

* * *

Sen. Cornyn will serve on the conference committee that will reconcile the differences between the House and Senate immigration bills. Sen. Cornyn has played a key role in the Senate immigration reform debate and continues to work to bolster border security and implement comprehensive immigration reform.

Cornyn and Sen. Jon Kyl (R-Ariz.) authored a separate bill titled: The Comprehensive Enforcement and Immigration Reform Act (S.1438). The key components of their legislation include enhanced border security and interior enforcement, employer accountability, and reform to bring the current illegal population into compliance with the law.

-30-

TESTIMONY OF MICHAEL W. CUTLER
FOR THE HEARING TO BE HELD ON
July 12, 2006
BEFORE THE SENATE JUDICIARY COMMITTEE

"EXAMINING THE NEED FOR COMPREHENSIVE IMMIGRATION REFORM, PART II"

Chairman Specter, Ranking Member Leahy, members of the Committee, ladies and gentlemen, it is an honor and a privilege to be afforded the opportunity to testify before this committee on an issue that is, arguably, among the most critical issues confronting the United States today. So many areas of concern are inextricably linked to illegal immigration that when we seek to regain control of our nation's borders and restore integrity to the immigration system, we will be impacting everything from the economy, education, the environment and health care to criminal justice and national security. As I have stated at previous hearings at which I testified, "A nation without secure borders can no more stand than can a house without walls." It is important, however, to understand that our nation cannot gain control of its borders until and unless we recognize that we need to do more than focus on the borders of the United States. We need to think of immigration as a system of many components, all of which are critical to the success of the others. A well designed airplane that is missing a wing will not get off the ground. In order to soar into the sky, all of the components of the airplane must function properly. So too, all of the components of the immigration system must be made to work effectively and in coordination with the other elements of the immigration system.

It has been estimated that approximately 40% of the illegal aliens who are present in the United States did not run our borders or evade the Border Patrol but rather strolled through a port of entry and then disappeared in communities throughout our nation. The terrorists who attacked our nation on September 11, 2001, in fact, all entered the United States through ports of entry and then, counted on their ability to evade detection by the former INS. While much attention has been paid to the lack of secure borders, little attention has been paid to the need to have an adequate number of special agents of ICE enforcing the immigration laws from within the interior of the United States. At present there are roughly 3,000 special agents employed by ICE carrying out this critical mission throughout the entire country. ICE needs to do more than enforce the laws that prohibit an employer from knowingly hiring illegal aliens and seeking to apprehend the

hundreds of thousands of alien absconders. Clearly these two missions are important, but when you consider the fact that according to a recent GAO report on the crisis at USCIS where immigration benefit fraud is concerned you realize that this is a major vulnerability that threatens national security but is not being addressed. ICE needs to work in close coordination with USCIS to make certain that the system by which various immigration benefits including the granting of resident alien status and United States citizenship has real integrity. The "911 Commission Staff Report on Terrorist Travel" noted the fact that in order to attack our nation, the terrorists not only needed to gain entry into our country, an obviously critical issue, but they also needed to be able to embed themselves in our country and have the ability to travel around our country and across our borders as they prepared to attack us. When the United States provides an alien with resident alien status or when we naturalize an alien, we are providing him or her with the "keys to the kingdom."

If we were able to make the borders of the United States utterly impassible to illegal aliens but then do little, if anything, to detect and combat immigration benefit fraud thereby providing immigration benefits to aliens who are not entitled to such benefits, we act as foolishly as the homeowner who, fearful of having his home burglarized, invests considerable effort and money on buying strong doors and locks for his doors and windows and takes other such measures, but then hangs the key to the secure locks on the outside doorknob, making it simple for anyone passing by to gain entry into his home.

The huge illegal alien population present in the United States has a significant impact on the criminal justice system and on national security as well. While it is extremely difficult to provide a firm number as to the number of illegal aliens who are involved in serious criminal activities in the United States, I believe we can get a sense of the magnitude of the problem by considering some statistics I am familiar with. At present it is estimated that some 30% of the inmate population are identified as being foreign born. From 1988 until 1992 I was assigned as the INS representative to the Unified Intelligence Division of the DEA in New York. I conducted a study of DEA arrest statistics and found that nation-wide, some 30% of the defendants arrested by the DEA for crimes related to narcotics trafficking were identified as being foreign born, while in New York it was estimated that nearly 60% of the defendants apprehended by DEA were identified as foreign born. Those statistics remained constant for more than 5 years and the 30% figure back then is virtually the same today

as it was then. A GAO report issued in April, 2005 found that in 2004, 27% of the federal inmate population is comprised of criminal aliens. That same report pegged the cost to the federal Bureau of Prisons for incarcerating criminal aliens at some 1.2 billion dollars. This same report found that on the local and state level for FY 2003, some 147,000 criminal aliens were in custody where SCAAP (State Criminal Alien Assistance Program) funds were provided to the local and state governments to help defray the cost of incarcerating these criminal aliens. This is not the total number of criminal aliens in state and local custody, however and the trend has been for these numbers to increase each year.

Additionally, there have been studies written showing a relationship between a wide variety of crimes that are committed to support terrorism. Drug trafficking in particular has come to be associated with this fund-raising objective but other crimes including mail fraud, arson and identity theft also help fill the coffers of terrorist organizations as well as organized crime groups. Often aliens who come to the United States fleeing not only the grinding poverty and perhaps tyrannical government in their home country, they are fleeing the criminal element of their home country. All too often, they are horrified to find that when they come to the United States, they learn that many of the criminals they are fleeing in their homelands have managed to come to our country, continuing the process of preying on these aliens who came here seeking the "American Dream."

It is also worth considering that when you have a large illegal alien population, a series of businesses spring up in support of that population that is not only helpful to the illegal alien who is simply seeking to get a job in the United States to send money home, but to members of organized crime groups, violent gangs, drug trafficking organizations and terrorists. Among these enterprises are money remitters, private mail box services and fraudulent document vendors. It is also important to understand that in an effort to hide in plain sight, or embed themselves in our country, criminal aliens and terrorists often take relatively pedestrian jobs to help pay their day to day expenses and to provide themselves with an effective "cover" so that they do not call attention to themselves. In the parlance of intelligence, this is how "sleeper" cells operate. Someone once said that an effective spy is someone who would not attract the attention of a waitress at a "greasy spoon" diner. You could expand upon that statement and state that an effective terrorist is also someone who would not attract the attention of a waitress or waiter at a "greasy

spoon" diner, and indeed, it might well be the waitress or waiter who is the terrorist.

That is why it is vital that ICE not only focus on seeking to find illegal aliens who are employed at supposedly high-value secure venues such as airports and nuclear power plants, but to also as a matter of routine, enforce the immigration laws on a random basis at all sorts of employment situations.

It is therefore of extreme importance that there be many more special agents employed by ICE who can carry out the missions that come within that agency's purview. To put it in perspective, it has been estimated that there are about 15 million to 20 million illegal aliens currently residing in the United States. There are a little more than 8 million residents who live in the City of New York, my home town. New York has been found to be the safest big city in America because we have a police department, the NYPD, whose 37,000 highly trained police officers patrol the streets of New York and conduct other activities consistent with law enforcement. Compare the number of cops in New York with the 3,000 ICE agents who cover the entire country.

Finally, I would also recommend that the previous practice followed by the former INS be reinstated where ICE special agents were required to successfully complete a Spanish language training program and, in fact expand such foreign language training to include strategic foreign languages. Simply stated, you cannot investigate individuals you are unable to communicate with.

I look forward to your questions.

SECRETARY CARLOS GUTIERREZ

FOR A HEARING ON

"Comprehensive Immigration Reform"

BEFORE THE

Committee on the Judiciary

United States Senate

July 12, 2006

Chairman Specter, Ranking Member Leahy, Members of the Committee, I'm pleased to have this opportunity to discuss comprehensive immigration reform with you. **Thank you for your leadership and hard work on this important issue.**

I believe immigration is the domestic social issue of our time – and a key to our future economic health. The President has called for comprehensive reform that includes protecting our borders **and** recognizing the needs of our growing economy.

Economy

The reality is that our economy is growing faster than any other large, industrialized nation. Our unemployment rate is below the average of the past four decades.

Our economy – like other major industrial economies – faces the challenge of an aging and increasingly educated workforce.

The result is that we have jobs that American citizens either aren't willing or aren't available to do. I continually hear from industries that they are having difficulty finding workers.

In May, we had 4.1 million job openings in the U.S. with a large amount in the hospitality industry. (Bureau of Labor Statistics)

As one example, when I was in Texas in June, Alan Simpson, president of the El Paso Restaurant Association and the Silver Streak hamburger chain, said, "When the unemployment rate is below 5 to 6 percent, it's a real challenge to staff restaurants."

So, immigrants aren't crossing our borders to look for a handout. They're seeking jobs that are available. More than 81 percent of immigrants say, "A person has to work very hard in this country to make it." (Now that I'm here, Public Agenda, 2003)

***

I am encouraged that we are starting to reach some consensus: As you know, more than 500 of our nation's top economists recently sent a letter to President Bush and Congress stating that immigration has been a **net gain** for American citizens.

And two-thirds of American voters say they support bills that include a temporary worker program or path to citizenship, rather than one that focuses solely on border security. (Ayres McHenry poll, 6/06)

President Bush has called for comprehensive immigration reform to address the many complex issues involved.

Everyone agrees it is essential to secure our borders. The President has proposed:

- Increasing the number of Border Patrol agents from approximately 12,000 to more than 18,000;
- Increasing the use of technology at the borders, so we can know who is coming through;

- And improving processes to become more efficient.

We believe that worksite enforcement is also essential.

There's an underground industry built on producing false documentation for illegal workers, and employers have a hard time helping enforce the law because they are not sure which documents are reliable.

The rules must be clear enough to hold businesses accountable, and we must ensure that businesses have the tools they need to follow the law.

We need to create a temporary worker's program. It would create a legal means for more workers to enter the United States for a limited time to fill labor needs. By providing a legal, enforceable way for immigrants to enter, we would take pressure off of our borders.

The President has called for a program to match willing immigrant workers with willing employers in jobs no Americans have filled.

And we need an expanded employment verification system, **including biometric card identification** for the temporary worker program. We have the technology today to use a person's unique characteristics, such as a fingerprint, to lock in identity.

When we have an effective employment verification system -- and we have a temporary worker's program -- dynamics will change.

Over time, it will become unlikely that people will risk their lives crossing the border if it is well-known that, unless you are in this country legally, you will not find a job.

These are some of the most consequential things we can do to make our borders more secure. And they demonstrate the wisdom of comprehensive immigration reform.

The other reality we must confront is that we have 12 million people who are in the country illegally. The President has said that deporting 12 million individuals wouldn't be wise, practical, or humane.

The other extreme is **amnesty**. The dictionary defines amnesty as an "**unconditional pardon** – obliterating all memory of the offense." The President does not support amnesty, and it's not accurate or fair to call his solution to this problem amnesty.

We're talking about having a hard-earned **path to legalization**, which would require meeting conditions:

- People waiting their turn at the back of the line,
- Paying fines,
- Paying taxes,

- Learning English,
- Undergoing a criminal background check,
- And having a job.

When immigrants take the Oath of Allegiance to become American citizens, they give up allegiances to other countries. They promise to support and defend our Constitution, and to serve in our military if required.

The process of becoming a U.S. citizen can take more than eight years, and nothing is guaranteed. So, immigrants have to make a real commitment to this country, and stick it out, to earn citizenship and its associated responsibilities.

***

The last important point that President Bush makes is that **we are a nation of immigrants, and we must honor the great tradition of the melting pot.**

It is a false choice to think the immigration debate is a battle between America being a welcoming society and being a nation of laws. We can be both because we are both.

The United States' ability to assimilate immigrants is our comparative advantage. Many countries today, such as Japan, China, Germany, and the United Kingdom, have declining populations. We can avoid this problem and build a vibrant, diverse country in part through immigration.

What we need now is leadership and reasonable compromise in the middle. We need to be talking about the right mix of immigration reform that addresses all the issues.

An immigration reform bill needs to be comprehensive, because all elements of this problem must be addressed together, or none of them will be solved at all.

I ask you to commit to comprehensive immigration reform. The longer we wait, the bigger the problems we are passing on to a future generation.

If we address these issues effectively, I'm convinced that our children and grandchildren will be proud of what we did.

Thank you. I would be pleased to answer your questions.

Written Testimony of

Benjamin Johnson
Director, Immigration Policy Center
American Immigration Law Foundation

Before the Committee on the Judiciary
United States. Senate
July 12, 2006

Mr. Chairman and members of the committee, thank you for the opportunity to appear before you today and to provide testimony on behalf of the Immigration Policy Center (IPC). The IPC is an independent, non-partisan research center dedicated exclusively to research and analysis of immigration and immigration policy in the United States. The IPC is a division of the American Immigration Law Foundation, a non-profit educational foundation which for 20 years has been dedicated to increasing public understanding of immigration law and policy and the role of immigration in American society.

The root of the current crisis of undocumented immigration is a fundamental disconnect between today's economic and labor market realities and an outdated system of legal immigration. Undocumented immigration is driven in large part by a U.S. labor market that is creating a higher demand for less-skilled workers than is being met by the native-born labor force or by the current legal limits on immigration. Migration from Mexico in particular has increased over the past two decades as the U.S. and Mexican governments have actively promoted the economic integration of the two countries. As the past decade and a half of failed federal border-enforcement efforts make clear, immigration policies that ignore these larger economic forces merely drive migration underground rather than effectively regulate it. In short, there is an unsustainable contradiction between U.S. economic policy and U.S. immigration policy, and economics is winning. The problem is not undocumented immigrants, but a broken immigration system that sends the dual messages "Keep Out" and "Help Wanted" to the Mexican, Central American, and other foreign workers the U.S. economy depends on.

The Failure of Enforcement Only Strategies

The federal government has tried for over a decade to stop undocumented immigration through an ever expanding use of enforcement strategies. The experiment has been a failure. From FY 1993 to FY 2005, the Border Patrol budget quadrupled from $362 million to $1.4 billion and the number of agents nearly tripled from 3,965 to 11,300. Most of these resources were devoted to fortifying traditional border-crossing locales in the southwest. Despite these efforts, the pace of undocumented immigration to the United

States has increased. The Pew Hispanic Center estimates that the number of immigrants entering the country in an undocumented status, or falling into undocumented status by overstaying a visa, rose from about 400,000 per year between 1990 and 1994, to 575,000 per year between 1995 and 1999, to 850,000 per year between 2000 and 2005.[1] As the U.S. Government Accountability Office concluded years ago, heightened border-enforcement efforts primarily have shifted undocumented immigration from one place to another[2] and have motivated more prospective migrants to hire people smugglers to guide them into the country.[3]

It makes little sense to continue pouring federal money and personnel into an enforcement-only strategy that does not work. It makes even less sense to force local and state police departments to go along for the ride. Turning police into immigration agents would destroy the community trust that many police departments have spent years building. The breakdown in this important relationship means many people – and not just illegal immigrants – will be less likely to report crimes or to cooperate in criminal investigations if they fear that doing so could lead to deportation of them, a family member, friend, or neighbor. This loss of public trust would not only undermine crime-prevention, but would erode national security as members of immigrant communities become even more afraid than they already are to offer tips to government authorities on potential security threats. There also is the problem of paying for local enforcement of federal immigration law. As Philadelphia Police Commissioner Johnson testified in this Committee's July 5th field hearing, local police already are doing more with less money. If they also must enforce federal immigration laws but are not given federal funds to do so, "enforcement of local and state laws, as well as our Homeland Security duties, would be compromised."

In arguing for the continuation of enforcement-only strategies some have attempted to use frightening images of immigrants as terrorists or criminals. This rhetoric, however, bears no relationship to the reality of the immigrant experience in America. To quote a 1997 paper jointly sponsored by the Carnegie Endowment for International Peace and the Urban Institute, "Few stereotypes of immigrants are as enduring, or have been proven so categorically false over literally decades of research, as the notion that immigrants are disproportionately likely to engage in criminal activity."[4] More recent work from the Migration Policy Institute has again confirmed that "in fact,

---

[1] Jeffrey S. Passel, *The Size and Characteristics of the Unauthorized Migrant Population in the U.S.: Estimates Based on the March 2005 Current Population Survey*. Washington, DC: Pew Hispanic Center, March 7, 2006, p. 2-3, 17.

[2] U.S. General Accounting Office, *INS' Southwest Border Strategy: Resource and Impact Issues Remain After Seven Years*, GAO-01-842, August 2001, p. 2.

[3] U.S. General Accounting Office, *Alien Smuggling: Management and Operational Improvements Needed to Address Growing Problem*, GAO/GGD-00-103, May 2000, p 6.

[4] "Immigration and the Justice System," *Research Perspectives on Migration*, July/August 1997, Vol. 1, No. 5, Washington, D.C.: Carnegie Endowment for International Peace and the Urban Institute.

immigrants have the lowest rates of imprisonment for criminal convictions in American Society."[5]

Using Immigration to Complement the Native-Born Workforce

Treating immigration primarily as a law enforcement issue is a distraction from the far more important and more valuable goal of using immigration as a powerful resource for the U.S. labor market. The ability to supplement and fill gaps in our labor force with foreign workers across the skill spectrum is one of the principle reasons the United States has been able to create the most diverse, most dynamic, and most flexible workforce the world has ever seen.

Underlying the growth of undocumented immigration to the United States in recent decades is the fact that fewer and fewer native-born workers are filling many of the less-skilled jobs being created by the U.S. economy. These are jobs in industries such as construction, food service, agriculture, and building maintenance that generally are filled by younger, less-educated employees. The native-born labor force, however, offers a diminishing pool of workers to fill such jobs because it is growing older and is better educated than in the past. As of 2004, 15 percent of the native-born labor force was within 10 years of the traditional retirement age, while an additional 4.4 percent was already over the age of 65. At the same time, the diminishing number of younger native-born workers is becoming better educated. The proportion of the native-born labor force age 25 and older with a high-school diploma or less fell from 44.3 percent in 1994 to 37.8 percent in 2004. The proportion with a four-year college degree or more education rose from 27.2 percent to 32.6 percent.[6] Although the trend towards a more highly educated native-born workforce is obviously a positive development, it leaves an employment gap in those sectors of the economy that rely on younger, less educated workers.

The transition to an older and more highly-educated native workforce would be less of a problem if the number of less-skilled jobs were shrinking. But it is not. The Bureau of labor Statistics (BLS) projects that between 2002 and 2012 a significant share of new jobs and job openings will be in industries that employ large numbers of workers with lower levels of formal education or training. BLS projects that 75 percent of new job openings during this period will be filled by workers who do not have a bachelor's degree and who are entering an occupation for the first time. Moreover, 48 percent of all job

---

[5] Rumbaut, Ruben G., Gonzales, Roberto G., Komaie, Golnaz, and Morgan, Charlie V. "Debunking the Myth of Immigrant Criminality: Imprisonment Among First- and Second-Generation Young Men." *Migration Information Source* June 2006. (Available online: http://www.migrationinformation.org/Feature/display.cfm?id=403). Migration Policy Institute.

[6] Immigration Policy Center, *Economic Growth and Immigration: Bridging the Demographic Divide*. Washington, DC: American Immigration Law Foundation, November 2005, p. 8-9.

openings in this period are expected to be held by workers who have a high school diploma or less education.[7]

Bridging the Demographic Divide

As the number of less-skilled jobs has increased, it has become increasingly difficult for employers to find native-born workers, especially younger ones, with the educational levels that best correspond to those jobs. Immigrant workers have become a vital complement to a native-born labor force that is growing older and better educated. On average, foreign-born workers are younger than their native-born counterparts and a larger proportion have less formal education. As a result, immigrants provide a needed source of labor for the large and growing number of jobs that do not require much formal education.

Immigrants hold a large number of the less-skilled jobs in which BLS predicts high job growth. In 2004, 15 percent of U.S. workers were immigrants. But in less-skilled occupations such as farming, janitorial services, construction, and food preparation, between 20 and 38 percent of workers were immigrants. The foreign-born share of workers was lowest in occupations that require U.S. education and training, such as legal occupations, police and protective services, and social services.[8] According to the Pew Hispanic Center, undocumented immigrants comprised 4.9 percent of workers in the United States as of March 2005. However, they accounted for 24 percent of all workers in farming, fishing, and forestry; 17 percent in building and grounds cleaning and maintenance; 14 percent in construction; 12 percent in food preparation and serving; and 9 percent in production occupations.[9]

The complementary nature of the skills, occupations, and abilities of immigrant workers increases the productivity of natives, stimulates investment, and enhances the choices available to consumers. As a result, immigration raised the average wage of the native-born worker by 1.1 percent during the 1990s. Among native-born workers with a high-school diploma or more education, wages increased between 0.8 percent and 1.5 percent. Among native-born workers without a high-school diploma, wages declined by 1.2 percent.[10]

The economic benefits of immigration extend beyond increasing the available labor supply. As immigrant workers spend and invest their earnings, new jobs are

---

[7] Roger Moncarz & Olivia Crosby, "Job outlook for people who don't have a bachelor's degree," *Occupational Outlook Quarterly* 48(4), Winter 2005, p. 3.
[8] Immigration Policy Center, *Economic Growth and Immigration: Bridging the Demographic Divide*. Washington, DC: American Immigration Law Foundation, November 2005, p. 13-14.
[9] Jeffrey S. Passel, *The Size and Characteristics of the Unauthorized Migrant Population in the U.S.: Estimates Based on the March 2005 Current Population Survey*. Washington, DC: Pew Hispanic Center, March 7, 2006, p. 11.
[10] Giovanni Peri, *Immigrants, Skills, and Wages: Measuring the Economic Gains from Immigration*. Washington, DC: Immigration Policy Center, American Immigration Law Foundation, March 2006, p. 1.

created, demand for labor increases, and wage levels rise – offsetting any decline in wages that might have resulted from the introduction of more workers into the labor force. According to the Selig Center for Economic Growth at the University of Georgia, Latino buying power totaled $736 billion in 2005 and is expected to increase to $1.1 trillion by 2010. Asian buying power totaled $397 billion in 2005 and is expected to increase to $579 billion by 2010.[11] Given that roughly 44 percent of Latinos and 69 percent of Asians were foreign-born in 2005, the buying power of immigrants reached into the hundreds of billions of dollars.

In addition, undocumented immigrants pay taxes that benefit the Social Security system. According to the 2005 *Economic Report of the President*, "more than half of undocumented immigrants are believed to be working 'on the books,' so they contribute to the tax rolls but are ineligible for almost all Federal public assistance programs and most major Federal-state programs." Undocumented immigrants are also believed to be a major source of the social security taxes paid by workers who have invalid or mismatched social security numbers and who therefore can not receive social security benefits. As of 2002, these payments totaled $463 billion.[12]

Ineffective Channels of Legal Immigration

Despite the critical role immigrants play in filling less-skilled jobs, we offer few opportunities under the current immigration system for them to come to the U.S. legally. Nearly all of the visa "preference" categories for less-skilled workers have numerical caps far below the labor demands of the U.S. economy. As a result a large number of prospective employment-based immigrants compete for a small number of employment visas or they are forced into the already overburdened visa system for family reunification.

There are three types of employment visas for low-skilled workers: one for permanent immigration and two for temporary immigration.

The permanent immigration preference category for less-skilled workers allots only 5,000 visas each year to workers in occupations that require less than two years of education, training, or experience. This visa category, which is designated for "other workers," is nearly the only employment-based avenue for permanent immigration available to workers in less-skilled jobs.

There is a similar bottleneck for low-skilled workers who seek temporary employment-based visas. Of the 16 different types of temporary immigrant visas

[11] Jeffrey M. Humphreys. "The multicultural economy 2005: America's Minority Buying Power," *Georgia Business and Economic Conditions*, Third Quarter 2005, Vol. 65, No. 3, p. 5, 7.
[12] *Economic Report of the President*, Washington, DC: U.S. Government Printing Office, February 2005, p. 107-108.

available for employment and training in the United States only two – H2A and H2B – are available to workers with little or no formal training. H2As are restricted to agricultural workers. H2Bs are limited to "seasonal" or otherwise "temporary" work, but the definitions of these terms are very restrictive and don't apply to workers in many industries. Moreover, the total number of H2B visas that can be awarded in a year is capped at 66,000. In Fiscal Year (FY) 2004 this cap was reached in March, half way through the fiscal year. In FY 2005 the cap was reached in January, only three months into the fiscal year.

Since most immigrants come to the U.S. through a family sponsor rather than an employer sponsor, it might seem that the family-based immigration system could compensate for deficiencies in the employment-based system. However, the effectiveness and efficiency of the family-based immigration system has its own problems. For one, the system is undermined by excessively long delays caused by arbitrary numerical caps and complex rules and regulations.

U.S. citizens may immediately obtain "visa numbers" for a spouse and minor children (under age 21). However, the allotment of visa numbers for all other relatives of U.S. citizens, and for all the relatives of lawful permanent residents (LPRs), is governed by a complex "family preference" system characterized by lengthy waiting times. For instance, in the case of Mexican nationals, wait times are currently 7-10 years for the spouse of an LPR and 10-12 years for the unmarried adult child of a U.S. citizen. In general, wait times for the relatives of LPRs are many years longer than the wait times for relatives of U.S. citizens. These long waits not only undermine the family-reunification goal of the family-based immigration system, but also render that system ineffective in responding to U.S. labor demand. The rise of undocumented migration is a predictable result.

Conclusion

No amount of enforcement can compensate for outdated immigration policies. Over the past two decades, the economies of North America, the western hemisphere, and the world have become increasingly integrated. The U.S. economy continues to create large numbers of less-skilled jobs even as native-born workers grow older and better educated and are increasingly unavailable to fill such jobs. Yet the federal government continues to impose outdated numerical caps and other restrictions on immigration that bear little relationship to the economic realities of our time. As a result, enforcement resources are devoted in large part to trying to stem the labor migration the U.S. economy attracts and which is an outcome of globalization. As New York Mayor Bloomberg testified to this Committee last week, "You might as well sit in your beach chair and tell the tide not to come in."

Lawmakers must tackle the issue of undocumented immigration with less rhetoric and more realism. Continuing the status quo by trying to enforce immigration policies that are at war with the U.S. and global economies will do nothing to address the underlying problem. Nor is it feasible to wall off the United States from the rest of the world. The most practical option is to bring U.S. immigration policy in line with the realities of the U.S. labor market and an increasingly transnational economy.

Effectively controlling undocumented immigration will require lawmakers to craft immigration policies that are as responsive to market forces as their economic policies, while implementing and enforcing tough labor laws to guarantee fair wages and good working conditions for all workers, be they natives or immigrants. A truly comprehensive approach must include a process by which undocumented immigrants already living and working in the United States can apply for legal status, as well as the creation of a temporary worker program with stringent protections for both temporary workers themselves and native-born workers who might feel threatened by their presence. By taking these steps, the U.S. government would be able to more effectively control, regulate, and monitor immigration, rather than consigning a large portion of it to a shadowy and insecure black market.

from the office of

Senator Edward M. Kennedy

of Massachusetts

FOR IMMEDIATE RELEASE
July 12, 2006

CONTACT: Laura Capps/Melissa Wagoner
(202) 224-2633

STATEMENT BY SENATOR EDWARD M. KENNEDY ON NEED FOR COMPREHENSIVE IMMIGRATION REFORM

(AS PREPARED FOR DELIVERY BEFORE SENATE JUDICIARY COMMITTEE)

Thank you, Mr. Chairman, for calling this additional hearing on immigration reform.

In recent days, we've witnessed a strong outpouring of support for strong, sensible, comprehensive immigration reform – reform that enhances enforcement, but also allows the 12 million undocumented immigrant families to earn their way out of the shadows and sets a course to meet our future workforce needs as well.

Americans know that immigration is a complex challenge that calls for a comprehensive solution.

We heard this in our hearing in Philadelphia last week from Mayor Bloomberg, religious leaders, and community leaders. We heard it from General Pace on Monday in Miami as he spoke so movingly of his immigrant heritage and the valor of immigrants who serve in our armed forces. We heard it from conservative leaders in the Wall Street Journal yesterday, when they called on Congress to pass comprehensive reform. And we heard it from the President of the United States last week as he spoke eloquently again on the importance of full reform to our security, our progress and our values.

These leaders understand the urgency in this post-9/11 era of enforcing our borders and bringing illegal immigration under control. But they also know of the vital contributions that immigrants bring to our economy, our communities, our values, and our national strength.

Yet, there are those in Congress who prefer to play politics with this issue. Instead of supporting realistic and comprehensive solutions to the immigration crisis, they put forward bumper sticker slogans that will leave us weaker and at greater risk. They suggest that all we need to do is build more walls and hire more border patrol agents and our immigration problems will just disappear.

Americans know better and they expect responsible, comprehensive action – and now.

That's what this hearing is about.

We have tried enforcement-only approaches for the last 10 years, and they have failed. We've spent more than $20 billion on border enforcement. But even after a decade of ramped-up enforcement, undocumented immigration has doubled to nearly 12 million immigrants today.

These are not just numbers. They are real people who love their families, practice their faith, and contribute to their communities. They are parents with children, because 1.6 million of the undocumented are children and three million American citizen children have undocumented parents. They work hard to support their families and, just like millions before them, they want nothing more than to live the American dream.

We must also recognize that the challenge of addressing modern immigration challenges is made even more complex by the global economy. More than 12,500 trucks legally cross the border from the United States into Mexico every day, carrying $620 million in merchandise. There are 660,000 legal passenger crossings per day at the 35 Ports of Entry along the U.S.-Mexican border. Mexico is not only the largest country of origin for legal immigration, but also our second-largest trade partner. Between a third and one half of all undocumented immigrants enter legally and remain here after their visas expire. No number of fences or walls will stop these flows.

No one denies the need for additional enforcement at the border and, especially, at US worksites. But, the real debate is about whether we will create the conditions for enforcement to succeed. To win, we need not only to keep out those who would harm us, but to welcome those who will help us. The Senate bill has a plan to accomplish this goal. The House bill does not.

The Senate bill lays the foundation for success by addressing the roots of today's crisis: too few legal visas to meet legitimate demands for family- and employment-based immigration. As long as this basic imbalance exists, employers will seek workers any way they can and undocumented immigrants will always find a way to live and work in the United States.

The Senate bill also includes a realistic and humane plan to deal with the millions of existing undocumented immigrants. We are not going to round up 12 million men, women and children and drive them across the border. Immigration reform cannot succeed without a realistic strategy to provide them with a path to earn the privilege of American citizenship.

But we must act now. Time is not on our side. The number of undocumented immigrants grows by half a million a year.

Once again, I thank our Chairman for this hearing and his leadership on this issue, and I look forward to hearing from today's witnesses.

Statement
United States Senate Committee on the Judiciary
Examining the Need for Comprehensive Immigration Reform, Part II
July 12, 2006

The Honorable Patrick Leahy
United States Senator , Vermont

Statement of Senator Patrick Leahy
Ranking Member, Judiciary Committee
Hearing on Examining the Need for Comprehensive Immigration Reform, Part II

July 12, 2006

I am disappointed that in recent weeks we have seen election-year politics diminish the hard work the Senate has done to find a comprehensive solution to the nation's immigration problem. The Senate worked hard to create a bipartisan bill that delivered fair and comprehensive reforms. Since its passage we have seen the Republican Congress reject efforts to move forward and make progress, despite the efforts of the Senate Democratic leader to get the matter to conference. Instead of progress toward legislation we see a series of after-the-fact hearings. A few, like the one held by the Senate Armed Services Committee this week and the Chairman's field hearing last week contribute to the record supporting the Senate bill. Others seem intended to do nothing more than inflame the passions of anti-immigrant activists and attempt to doom any chance of progress towards a comprehensive solution.

The lines that have been drawn by opponents to comprehensive legislation are clear: The anti-immigrant faction opposes a fair and comprehensive approach. They abhor establishing a pathway to earned citizenship. Apparently they believe this anti-immigrant position will help them in the upcoming elections. I hope not. I think we reject the best of America and our values when we refuse to recognize all that immigrants bring and mean to this country. I hope that fear and intolerance are not a winning political strategy.

It is unrealistic to think that we can apprehend and deport every undocumented individual the Bush-Cheney Administration has allowed into the United States. The reality is that our economy depends upon the labor of foreign workers. Small and large business owners have told us this, the Mayor of the one of the largest cities in the world—who is no stranger to economic success—has told us this, and labor unions have told us this.

The Wall Street Journal editorial board recently wrote that the choice—framed by immigration opponents as a choice between "amnesty" or border security—is a false one. It is false because we can have border security at the same time we bring out of the shadows and assimilate individuals who are hard working, honest people contributing to our economy.

I do not often agree with The Wall Street Journal editorial board, but in this case we do agree. When border patrol agents are not spending time and resources apprehending people coming here to work, they can focus on preventing the true threats to our national security. I believe there is real merit to the President's argument that if we increase the opportunity to come to the United States legally, we will reduce the demand for illegal entry.

It is disheartening to watch this debate devolve into a discourse with tinges of intolerance for those who come as immigrants. We are a welcoming, diverse country built and enriched by immigrants. Isolating ourselves, and turning this country into a police state is not the way our Nation will remain the beacon of freedom and prosperity it has always been.

Many decry a realistic immigration policy as the downfall of our unique American culture and way of life. In these arguments, I hear the echoes of those who resisted women finally obtaining the right to vote and when the modern civil rights movement helped end Jim Crowism. We are an inclusive society that draws strength from diversity and believes in equality.

The opposition to providing bilingual ballots to bilingual American citizens, who are vested with the right to vote, is a particularly troubling aspect of this debate. A recent Washington Post editorial pointed out the obvious: when more eligible voters can make an informed and intelligent choice in voting, our democracy benefits from their participation. Section 203's guarantee of equality is not just for immigrants but for Native Americans and those who have long been citizens. The reality is that people who come to the United States embrace the English language along with patriotism. Immigrants do not deserve or need the legal restrictions sought by the English-only crowd. And America loses when we discriminate on the basis of national origin or language.

Let us have faith in our traditional values and show the strength and purpose needed to accomplish the comprehensive reform we need. Our democracy and free markets can adapt. We should not fear these changes. We should embrace the cultural and economic opportunities that change will bring. Most importantly, along with a comprehensive policy will come better border security. When government agencies can identify and account for those who are here, and those who are crossing the border, we will be more secure as a result of that knowledge. We know well that no matter how much effort we pour into locking up our border, those who desire to come to the United States will find a way, which in turn will lead to more people in the shadows of society, more deaths in our deserts, and more trafficking in human beings.

It is critical that President Bush make good on his commitment to support the Senate's work. Without his active support and his steadfast dedication, the congressional Republican efforts to derail comprehensive reform will succeed. Many conservative commentators have praised the President for his "political courage." I hope the President will remain true to his pledge to support comprehensive reform our immigration laws.

Testimony of William F. McDonald[1]

Hearing on "Immigration"

Senate Judiciary Committee

Washington, DC

July 12, 2006

Mr. Chairperson and Members of the Committee. Greetings. It is a honor to appear here today.

I have been studying the connections between crime and immigration since 1996. As you know, this is a complex and highly charged issue. I shall try to play the role of the impartial expert but testifying about this issue is giving me a new appreciation of what it means to be walking near the third rail.

I have been informed that it would be helpful if I could touch upon three particular issues: the statistics on the criminality of "illegal immigrants"[2]; the likely response of victims in helping the police if the state and local police were authorized to enforce immigration law; and the deterrent value regarding illegal immigration of having state and local police enforce immigration law and also of increasing fines and penalties to private entities including such ideas as requiring landlords to check immigration status.

I have tried to do so but I have only had time to prepare remarks addressing the first point, one which I think is important to clarify. Perhaps in the Q and A I could respond to the other points. I would like to make a few general observations.

Although we are a nation of immigrants, Americans have always worried about the criminality of the next wave of immigrants.[3]

There have been many studies in the United States and abroad that have addressed the question of the criminality of immigrants. While by no means unanimous, there has been a remarkable degree of agreement among them regarding one important finding. The criminality of the first generation of immigrants (those who migrated as opposed to their children) is less than that of the native-born.[4] Public fears about immigrant criminality have usually not been born out by research.

I mention this literature on immigrant criminality because there is little reason to believe that the findings would be substantially different for illegal immigrants assuming data were available that would allow us to make the necessary statistical controls for age, sex, economic status and immigrant status.

Obtaining such data has long been a major challenge for studies of the immigration-crime nexus. Most contemporary researchers in Europe and Australia have given up on trying to get information about a person's immigrant status. They just use race and ethnicity.[5]

Because of the difficulties of getting proper data, studies of the comparative criminality of illegal immigrants are rare. Without adjustments for the age and sex composition of the population, the few available studies are inconclusive.[6]

Personally, I believe that the critics of illegal immigration are not interested in knowing

whether illegal immigrants are more or less criminally inclined than the native-born. For them any crime committed by an illegal immigrant represents a crime that would not have happened if the government had been in control of immigration.

I turn now to the question about the statistics on illegal immigrants who commit crimes. In 1989 the Immigration Subcommittee of the House Committee on the Judiciary asked the Immigration and Naturalization Service: "What percentage of the individuals incarcerated in specific cities are illegal aliens?"[7] The answer was simply that the data do not exist in anything like a useable form.[8] Since then, things have not gotten much better.

Before proceeding further I must warn you of a terminological quagmire that surrounds this issue. There are technical (legal) definitions of terms that cause a lot of confusion.[9] The basic distinction to keep in mind is between "criminal aliens" and illegal immigrants who commit crimes.[10] Criminal aliens have been around since the country began. They are non-citizens who have committed crimes either before or after they arrived in the United States. Illegal immigrants did not exist until the federal government began regulating immigration in the 1870s.[11]

Not all criminal aliens are illegal immigrants. A legal immigrant who commits a crime while in the United States becomes a criminal alien. Some criminal aliens are deportable depending upon the crime they have committed. In the late 1980s and 1990s responding to complains from the states about increasing numbers of "criminal aliens" in state and local prisons Congress added to the terminological confusion. In 1986 it mandated the INS to conduct expeditious proceedings for aliens convicted of deportable criminal offenses. In 1988 it created a new category of criminal alien called the "aggravated felon"who could be expeditiously removed.[12]

In 1994 Congress introduced the phrase, "undocumented criminal aliens," in connection with legislation to reimburse the states for the costs of housing illegal criminal aliens.[13] This reimbursement was only for the costs of housing illegal aliens incarcerated in state or local prisons. It was only for illegal criminal aliens, not legal criminal aliens. Only the former were regarded as the federal government's responsibility.

It was in connection with these concerns about illegal criminal aliens held in state and local facilities that a few studies were done to determine the numbers involved so that the costs could be established. The Urban Institute conducted a major national study intended to estimate the number of "illegal aliens" – as defined by the Immigration Reform and Control Act of 1986 – in the prisons in seven states as of March 1994.[14] One of their important findings was that it appeared to that the number of prisoners erroneously counted as "illegal aliens" was quite small.

The kind of data the Urban Institute study produced has not become an institutionalize piece of information in any annual reports of which I am aware.

Finally, I think it is useful to look at the outcome of all these efforts to expeditiously remove criminal aliens.. Several studies have found that substantial proportions of the criminal

aliens are not deportable. A 1990 special study of the releasees from the Los Angeles County jail found that 19% of the 17,774 releasees in May were foreign born but 42% of them were not deportable.[15] A 1995 examination found that of all 115,145 inmates in Texas state prisons (excluding those held in county jails) only 8.5 percent were foreign born. Of those 39.6% were not deportable; 48.4% were deportable; and 14% were undetermined.[16]

In conclusion, I would say that obtaining updated the statistics on "illegal immigrants who commit crime" would not be easy and may not be of great value either to policy decisions or to theories about criminality.

Appendix A. Sample of Some Major Findings Reported Regarding Immigration and Crime

While it does not appear from available statistics that criminality among the foreign-born increases the volume of crime in proportion to the total population, nevertheless the coming of criminals and persons of criminal tendencies constitutes one of the serious social effects of the immigration movement. The present immigration law is not adequate to prevent the immigration of criminals, nor is it sufficiently effective as regards to the deportation of alien criminals who are in this country.

– U. S. Immigration Commission (1911)[117]

[I]n proportion to their respective numbers the foreign born commit considerably fewer crimes than the native born; that the foreign born approach the record of the native born most closely in the commission of crimes involving personal violence, and that in crimes for gain the native born greatly exceed the foreign born.

– National Commission on Law Observance and Enforcement (1936)[218]

Studies have consistently shown that persons from the general migrant population commit fewer offences and are less likely to be in prison than persons from the Australian-born population.

– K. Hazlehurst, Australian Institute of Criminology (1987) [19]

The reality is that , for a number of reasons, imimgrants generally have lower propensities for crime than their native-born counterparts except where a group's cultural tranditions legitimate certain illegal acts.

– M.Yeager, Criminologist (1997/98) [20]

Controlling for the demographic characteristics of the cities, recent immigrants appear to have no effect on crime rates. In explaining changes in a city's crime rate over time,

---

[1] U.S. Immigration Commission. *Reports of the Commission: AbstractsS. Doc. No. 747*, 61st Cong., 3d sess. Cong., at 27 (1911h)

[2] U.S. Commission on Law Observance and Enforcement, *Report on Crime and The Foreign Born* (Washington, D.C.: Government Printing Office, 1931), 4.

recent immigration against has no effect. Youth born abroad are statistically significantly less likely than native -born youth to be criminally active.

– Kristen F. Butcher & Ann M. Piehl, Economic researchers (1995) [21]

Contrary to what one would predict from their characteristics, immigrants are much less likely to be institutionalized than natives. In fact, if native-born men had the same institutionalization rates of immigrants with the same characteristics the institutionalized population would be two-third its current size.

– Kristen F. Butcher & Ann M. Piehl, Economic researchers (1997)[3] [22]

The risk of committing violence is comparatively lower for recent immigrant youth. Chicago and its suburbs are magnets for immigrants: According to Census 2000, the area has more than 1.4 million foreign-born residents (including more than 580,000 Mexican immigrants and more than 130,000 Polish immigrants). For those Chicagoans surveyed for this study, the odds of first-generation immigrants engaging in violence were almost one-half those of third-generation immigrants—implying that one reason whites and Latinos have lower levels of violence than blacks is that the first two groups are more likely to be recent immigrants. "Our data do not support the common link of immigration and violence," says Sampson.

– Robert Sampson, Sociologist (2006) [23]

The evidence compiled by the authors suggests that in spite of posited societal, social, and economic disadvantages that should lead to a higher crime rate, the rate of crime committed by immigrants nationwide does not exceed that of the indigenous population. Even the aftermath of the Mariel boat lift from Cuba in 1980 did not result in a long-term increase in crime committed by Cuban immigrants in Florida.

– Ramiro Martinez, Jr., Matthew T. Lee and Amie L. Nielsen. Criminologists (2000) [24]

In this paper, we examine and compare the impact of social disorganization, including recent immigration, and other predictors on community counts of black and Latino motive-specific homicides in Miami and San Diego. Homicides for 1985 to 1995 are disaggregated into escalation, intimate, robbery and drug-related motives. Negative binomial regression models with corrections for spatial autocorrelation demonstrate that

[3] Kristin F. Butcher and Anne Morrison Piehl, "Recent Immigrants: Unexpected Implications for Crime and Incarceration,", Working Paper No. 6067. 1997. *National Bureau of Economic Research*, 29/06/2006 <http://www.nber.org/papers/w6067.pdf>.

there are similarities and differences in effects of social disorganization and other predictors by motive-specific outcomes, as well as for outcomes across ethnic groups within cities and within ethnic groups across cities. Recent immigration is negatively or not associated with most outcomes. Overall, the study shows the importance of disaggregating homicide data by race/ethnicity and motive and demonstrates that predictions based on existing theories are qualified on local conditions.

– Amie L. Nielsen, Matthew T. Lee, Ramiro Martinez, Jr. Criminologists (2005)

25

ENDNOTES

REFERENCES CITED

Abbott, Edith. 1931. "The Problem of Crime and the Foreign Born." Pp. 21-78 in *Report on Crime and The Foreign Born*, edited by U.S. Commission on Law Observance and Enforcement. Washington, D.C.: Government Printing Office.

Barbagli, Marzio. 1998. *Immigrazione e Criminalità in Italia*. Bologna: Il Mulino.

315066136 ———. 2002. *Immigrazione e Reati in Italia*. Bologna: Il Mulino.

51-2 Barnes, Harry Elmer and Negley K. Teeters. 1959. *New Horizons in Criminology*. 3d ed. Englewood Cliffs, NJ: Prentice-Hall.

Bowler, Alida C. 1931. "Recent Statistics on Crime and the Foreign Born." Pp. 79-196 in *Report on Crime and The Foreign Born*, edited by U.S. Commission on Law Observance and Enforcement. Washington, D.C.: Government Printing Office.

Butcher, Kristin F. and Anne Morrison Piehl. 1995. "Cross-City Evidence on the Relationship Between Immigration and Crime." A Paper Presented at the Wiener Center Lunch, Kennedy School of Government, Oct.

———. 1996. "Immigration and Institutionalization." Presented at Various Seminars at MIT, Harvard, Standford Universities, April.

———. 1997. "Recent Immigrants: Unexpected Implications for Crime and Incarceration" (Working Paper No. 6067). *National Bureau of Economic Research*. Retrieved 29/06/2006 (http://www.nber.org/papers/w6067.pdf).

file://c:documents+and+settingswfm3my+documentsmmig+referencesutcher+&+piehl+1997.pdf

California. Los Angeles County. Countywide Criminal Justice Coordination Committee. 1990. *Criminal Aliens in the Los Angeles County Jail Population: Final Report*. Ad Hoc Subcommittee on Criminal Aliens. Los Angeles, CA.: County of Los Angeles.

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

Gordon, Charles and Stanley Mailman. 1988 [1995]. *Immigration Law and Procedure*. Looseleaf. New York, N.Y.: Mathew Bender.

Hazelhurst, Kayleen M. 1987. *Migration, Ethnicity, and Crime in Australian Society*. Canberra: Australian Institute of Criminology.

Lalasz, Robert. 2005. "Surpising Social Factors Linked to Racial and Ethnic Disparities InYouth Violence." In *Population Reference Bureau*. Retrieved 07/06/05 (http://www.prb.org/Template.cfm?Section=PRB&template=/ContentManagement/ContentDisplay.cfm&ContentID=12352).

Martinez, Ramiro, Jr., Matthew T. Lee, and Amie L. Nielsen. 2000. "On Immigration and

Crime." Pp. 485-524 in *Criminal Justice 2000: The Nature of Crime: Continuity and Change*. Washington, DC.

http://www.ojp.usdoj.gov/nij/international/immigrat.pdf

Nielsen, Amie L., Matthew T. Lee, and Jr. Martinez, Ramiro. 2005. "Integration Race, Place and Motive in Social Disorganization Theory: Lessons from a Comparison of Black and Latino Homicide Types in Two Immigrant Destination Cities." *Criminology* 43(3, Aug.):837-72.

http://proquest.umi.com/pqdweb?index=0&did=947462181&SrchMode=1&sid=1&Fmt=6&VInst=PROD&VType=PQD&RQT=309&VName=PQD&TS=1143489599&clientId=5604true&db=aph&an=17947285

Parker, Richard A. and Louis M. Rea. 1993. *Illegal Immigration in San Diego County: An Analysis of Costs and Revenues*. Sacramento, CA: California. Senate. Special Committee on Border Issues.

Pennell, Susan, Christine Curtis, and Jeff Tayman. 1989. *The Impact of Illegal Immigration on the Criminal Justice System*. San Diego, CA.: San Diego Association of Governments.

Sampson, Robert J. 2006. "Open Doors Don't Invite Criminals" (Op-Ed Contributor). *The New York Times*, Mar. 11. Retrieved 14/03/2006 (http://www.nytimes.com/2006/03/11/opinion/11sampson.html?_r=2&oref=slogi&oref=slogin).

Texas. Criminal Justice Policy Council. 1995. *Criminal Alien Project for the State of Texas*. Report to the Interstate Criminal Alien Working Group, Sept. Austin, TX: Author.

U.S. Commission on Law Observance and Enforcement. 1931. *Report on Crime and The Foreign Born*. Washington, D.C.: Government Printing Office.

U.S. Congress. Senate. Committee on Government Affairs. 1993. *Criminal Aliens in the United States*. Washington, D.C.: Government Printing Office.

U.S. Immigration Commission. *Reports of the Commission: AbstractsS. Doc. No. 747*, 61st Cong., 3d sess. Cong. (1911h) http://0-web.lexis-nexis.com.library.lausys.georgetown.edu/congcomp/attachment/a.pdf?_m=13cef50d73cf22308b322160f2758ccd&wchp=dGLbVzb-zSkSA&_md5=08a716504a2c83b81422b31663287845&ie=a.pdf

United States. Immigration Commission. 1911. *Immigration and Crime*. Washington, DC: Govt. Print. Off.

LC Number: 12035824 ; LC Call Number: JV6415

Yeager, Matthew G. 1997/98. "Immigrants and Criminality: A Cross-National Review." *Criminal Justice Abstracts* 29:143-71. file://c:documents+and+settingswfm3my+documents*mmig+referencesyaeger_matt_immig+and+crime.pdf.*

ENDNOTES

1. Professor, Department of Sociology and Anthropology, and Co-Director, Institute of Criminal Law and Procedure, Georgetown University, Washington, D.C. wfm3@georgetown.edu. My remarks are my own personal opinions.

2. Even the phrase "illegal immigrants" has become a bone of contention in this hotly disputed discourse about immigration. I will use the phrase because of its use in legal documents. However, I take it to mean: "unauthorized," "undocumented," "irregular" or "clandestine" immigration.

3. For much of the eighteenth and nineteenth centuries, there was good reason for Americans to worry. England first and then other European countries transported their criminals and vagrants to America. Ben Franklin's famous quip about Americans sending rattlesnakes to England came in response to the British government's position that sending criminals to America was "absolutely necessary" Harry Elmer Barnes and Negley K. Teeters, *New Horizons in Criminology*, 3d ed. (Englewood Cliffs, NJ: Prentice-Hall, 1959), 15..

In 1670 the Virginia House of Burgesses passed an act that stated the "'apprehensions and fears'" of the Virginia counties that the peace of the Colony would be 'too much hazarded and endangered by the great number of felons and other desperate villains sent hither from the several prisons in England,' and the act provides that 'any jail birds . . . who for notorious offenses have deserved to die in England' should not be allowed to land" Edith Abbott, "The Problem of Crime and the Foreign Born," in *Report on Crime and The Foreign Born*, ed. U.S. Commission on Law Observance and Enforcement (Washington, D.C.: Government Printing Office, 1931), 24..

4. See Appendix A.

5. Italy is an exception to the rule. The Italian government has collected robust statistics on the criminality and victimization of immigrants. See Marzio Barbagli, *Immigrazione e Criminalità in Italia* (Bologna: Il Mulino, 1998); Marzio Barbagli, *Immigrazione e Reati in Italia* (Bologna: Il Mulino, 2002)..

6. The 1989 study by the San Diego Association of Governments of the impact of illegal immigration on the criminal justice systems in San Diego, California and El Paso, Texas is a robust study with some difficult to obtain data, namely, the number of inmates in the local jails who were citizens, legal immigrants, and illegal immigrants. But the study did not determine whether the rate at which illegal immigrants were arrested and incarcerated were more or less than that of citizens and legal immigrants adjusting for their numbers in the general population Susan Pennell, Christine Curtis, and Jeff Tayman, *The Impact of Illegal Immigration on the Criminal Justice System* (San Diego, CA.: San Diego Association of Governments, 1989)..

Similarly, a 1993 study done for the California Senate of illegal immigrant criminality in San Diego did not adjust for age and sex distributions of the local population. It estimated that 7.9% of the county's population were illegal immigrants; and found that 22% of felony arrests were illegal aliens. But if most of those illegal immigrants were young males in the notorious "crime-

prone years" then one would expect a high felony arrest rate even though their individual offending rates (known as lambda λ) might be no higher than that of citizens or legal immigrants Richard A. Parker and Louis M. Rea, *Illegal Immigration in San Diego County: An Analysis of Costs and Revenues* (Sacramento, CA: California. Senate. Special Committee on Border Issues, 1993)..

A 2002 study by Ramiro Martinez of Latino homicide in Miami, Houston, El Paso, San Diego and Chicago reports: <<T]here was little evidence that immigrants were more crime-prone than native-born Latinos or other citizens. There was even less evidence that "illegal" immigrants were overly involved in violent crime, or at least much more so than "legal" immigrants, at least on San Diego's border" {Martinez 2002 - Not Found>>.

7. Pennell, Curtis, and Tayman, *The Impact of Illegal Immigration on the Criminal Justice System*, 23.

8. The INS replied: "There is no simple, direct answer to the question as posed. There are no reliable data, collection methods, or requirements maintained by either the INS or any city government" Pennell, Curtis, and Tayman, *The Impact of Illegal Immigration on the Criminal Justice System*, 23.,

9. [Senator Roth] Let me ask you [INS Commissioner Meissner] this question, because I understand not all criminal aliens are deportable. Only those criminal aliens who commit so-called crimes of moral turpitude, aggravated felons with certain limitations are deportable. I find it somewhat confusing to understand these definitions and I have been told that is somewhat true among the INS personnel as well.

   Would you agree with that? Do you think Congress should simplify the definitions for which criminals can be deported?

   [Commissioner Meissner] I am sorry, I am not in a position to give you a definitive answer about that. The aggravated felon definition is a fairly recent one. It is helpful to us because it eliminates certain forms of relief that have been time consuming where effective U.S. Congress. Senate. Committee on Government Affairs, *Criminal Aliens in the United States* (Washington, D.C.: Government Printing Office, 1993), 51..

10. I am referring to crimes defined by criminal codes, not the crime of illegal entry or overstaying one's visa.

11. "The first one hundred years of our national experience was a period of unimpeded immigration" Charles Gordon and Stanley Mailman, *Immigration Law and Procedure*, Looseleaf (New York, N.Y.: Mathew Bender, 1988 [1995])..

Illegal entry was not made a crime until 1918 with the war time passport act of May 22, 1918. Its legal basis was subsequently clarified by Congress in 1929 (45 Statutes at Large 1551).

12. Anti-Drug Abuse Act of 1988.
It subsequently expanded the list of offenses that qualified as "aggravated felonies."

13. Section 20301, Subtitle C, Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322.

14. Arizona, California, Florida, Illinois, New Jersey, New York, Texas Rebecca L. Clark et al., *Fiscal Impacts of Undocumented Aliens: Selected Estimates for Seven States* (Washington, D.C.: Urban Institute, 1994)..

15. California. Los Angeles County. Countywide Criminal Justice Coordination Committee, *Criminal Aliens in the Los Angeles County Jail Population: Final Report*, Ad Hoc Subcommitte on Criminal Aliens (Los Angeles, CA.: County of Los Angeles, 1990)..

16. Texas. Criminal Justice Policy Council, *Criminal Alien Project for the State of Texas*, Report to the Interstate Criminal Alien Working Group, Sept. (Austin, TX: Author, 1995).

17. United States. Immigration Commission, *Immigration and Crime* (Washington, DC: Govt. Print. Off., 1911).

18.Alida C. Bowler, "Recent Statistics on Crime and the Foreign Born," in *Report on Crime and The Foreign Born*, ed. U.S. Commission on Law Observance and Enforcement (Washington, D.C.: Government Printing Office, 1931), 79-196.

19.Kayleen M. Hazelhurst, *Migration, Ethnicity, and Crime in Australian Society* (Canberra: Australian Institute of Criminology, 1987).

20.Matthew G. Yeager, "Immigrants and Criminality: A Cross-National Review," *Criminal Justice Abstracts* 29 (1997/98): 143-71.

21.Kristin F. Butcher and Anne Morrison Piehl, "Cross-City Evidence on the Relationship Between Immigration and Crime," A paper presented at the Wiener Center lunch, Kennedy School of Government, Oct. 1995.

22.Kristin F. Butcher and Anne Morrison Piehl, "Immigration and Institutionalization," Presented at various seminars at MIT, Harvard, Standford Universities, April 1996.

23.Robert Lalasz, "Surpising Social Factors Linked to Racial and Ethnic Disparities InYouth Violence," *Population Reference Bureau*. Apr. 2005, 07/06/05 <http://www.prb.org/Template.cfm?Section=PRB&template=/ContentManagement/ContentDisplay.cfm&ContentID=12352>; Robert J. Sampson, "Open Doors Don't Invite Criminals,". *The New York Times* Mar. 11 2006, Op-Ed Contributor, 14/03/2006 <http://www.nytimes.com/2006/03/11/opinion/11sampson.html?_r=2&oref=slogi&oref=slogin>.

24.Ramiro Martinez, Jr., Matthew T. Lee, and Amie L. Nielsen, "On Immigration and Crime," in

Criminal Justice 2000: The Nature of Crime: Continuity and Change (Washington, DC, 2000), 485-524.

25.Amie L. Nielsen, Matthew T. Lee, and Jr. Martinez, Ramiro, "Integration Race, Place and Motive in Social Disorganization Theory: Lessons from a Comparison of Black and Latino Homicide Types in Two Immigrant Destination Cities," *Criminology* 43, no. 3 (Aug. 2005): 837-72.

Microsoft Corporation
Law and Corporate Affairs
1401 Eye Street NW, Suite 500
Washington, DC 20005

Tel. 202-263-5900
Fax 202-263-5901 or 5902
http://www.microsoft.com/

Microsoft

July 18, 2006

The Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Specter,

Microsoft thanks and commends the Committee, and the entire Senate, for its careful and sustained work to resolve the range of complex immigration issues facing this country. As that work continues with today's hearing examining the need for comprehensive immigration reform, we are writing to emphasize the urgent need to solve the crisis in United States policy toward high-skilled immigration.

It has long been a central goal of U.S. immigration policy to extend a broad welcome to the world's brightest and most highly skilled students, scientists, professors, and other professionals. When the world's best thinkers collaborate, it permits new levels of creativity and innovation that would not otherwise be reached. The results reach across society: the quality of the national life improves, new jobs are created for workers at all skill levels and their families, and the national economy is strengthened.

Yet our law and policy toward high-skilled immigration, set over a decade and a half ago, have long since failed to match the country's – and the world's – changed economic and educational conditions. Our programs for high-skilled immigration are woefully inadequate to the meet the needs of U.S. employers in many key fields. H-1B visas, the most critical professional work visa, run out faster and faster each year, annually leaving employers without access to urgently needed professionals for periods reaching well over a year. The wait time for many key categories of green cards for high-skilled workers reaches nearly five years..

Other countries recognize and are benefiting from this situation, changing their immigration policies to attract students and professionals who would otherwise enter this country's skill supply. Moreover, economic opportunities in the home countries of many of the world's top scientists and engineers have increased dramatically during the last decade. At the same time, not nearly enough U.S. students are training for and entering

careers in science, technology, engineering, and mathematics. Current immigration policies impede our own access to the global talent pool, at a time when we are striving to maintain global innovation leadership. Congress must take action this year to end this debilitating cycle.

The following discussion will explain in greater detail the dimensions of the high-skilled immigration crisis.

H-1B Visas

The congressionally determined supply of H-1B visas bears no relation to the country's demand for skilled professionals. The base cap of 65,000 is an arbitrarily chosen limit, and is in no way related to or calibrated to meet legitimate business needs. For Fiscal Year 2007, the supply did not last even eight weeks into the filing period, and a new low was reached when H-1B visas ran out more than 4 months before that fiscal year will even begin. This leaves U.S. employers unable to hire needed professionals for 16 months. Even a special, limited exemption from the cap for workers with an advanced degree from a U.S. university is nearly depleted, and will also run out at a record pace for the coming fiscal year. It will probably not last through this summer.

The very low H-1B cap hurts American competitiveness and often forces U.S. employers to shift projects abroad where the highly skilled workers they need are available or can be brought using another country's immigration processes. Difficulty with the H-1B cap dampens the ability of U.S. companies to recruit the best and brightest workers, and it discourages the world's most talented scientists, engineers, researchers, doctors, and other skilled workers from considering a career in the United States.

Green Card "Retrogression"

As with H-1B visas, the demand for employment-based green cards far exceeds supply. Today, only 140,000 permanent employment-based visas are available each year, including not only the key employees, but also their family members. There is a massive backlog in many of the employment-based green card categories, and wait times reach five years. Ironically, they are even longer for nationals of India and China: the very countries that are key recruiting grounds for the best and brightest in the most urgently needed fields.

This causes significant problems both for U.S. companies and for foreign nationals proceeding through the green card process, as well as their families. U.S. companies have difficulty recruiting top talent because of uncertainty about the permanent residence process, and companies are often unable to promote or relocate key foreign national employees until the green card process has been completed. In addition, companies are forced to invest tremendous resources on patching together a variety of visa options to ensure that foreign nationals can continue to remain the U.S. and continue to work for the company while awaiting progress in the green card process. Most important, it is causing top-notch international talent to look elsewhere as they plan their professional futures.

Shortages of U.S. Workers

When faced with these shortages, U.S. employers cannot simply return to the U.S. workforce. The United States simply is not producing enough engineers, mathematicians and scientists. The U.S. Department of Labor has projected that, between 2002 and 2012, there will be 2 million job openings in the United States in the fields of computer science, mathematics, engineering and the physical sciences. Yet in 2001, only 8 percent of all degrees awarded in the U.S. were in engineering, mathematics or the physical sciences. This marks a decline of more than 50 percent since 1960. Recent declines in enrollment are particularly pronounced in computer science. Moreover, a substantial portion of the graduates from U.S. universities with technical degrees are foreign nationals, and this especially is the case at the graduate level. Employers recruiting at U.S. universities must hire some proportion of foreign nationals. When U.S. employers recruit foreign nationals, it is not to bypass U.S. workers; there simply are not enough U.S. workers with the needed qualifications.

Many U.S. employers – with Microsoft forcefully among them – are making substantial contributions to promote and support technical education at the K-12 and higher education levels. Moreover, the H-1B program already includes important measures to help address this problem. H-1B employers pay a $1500 fee that goes toward U.S. worker scholarships and training. This means that new filings in the H-1B program today generate as much as $127.5 million each year. (Certain small employers pay $750 rather than $1500.) This huge annual sum contributes greatly toward educating and training U.S. workers. If the H-1B program is adjusted to meet demand, this contribution will only increase.

Program Enforcement

Enforcement to ensure program integrity is essential. The H-1B and green card programs include strict compliance requirements. The agencies have significant, and recently expanded, enforcement authority, including both administrative and criminal penalties where justified. There are also additional new resources for enforcement. Under recent H-1B reform legislation, employers pay a $500 anti-fraud fee when filing H-1B petitions, for example. This generates over $43 million each year toward strengthened program enforcement. If the H-1B program is adjusted to meet demand, this additional resource stream – supplied by H-1B employers themselves – will only increase.

Impact of Immigration Policy on Employee Retention, Recruitment, and Morale

The inadequacy of our current high-skilled immigration policy has a direct negative impact on U.S. employers and their employees. It presents a major recruitment problem. Where H-1B visas are unavailable, of course, workers needing that visa to work in this country simply cannot be recruited. Green card shortages hamper recruitment as well, since many of the world's best and brightest do not want to suffer through the years of delay to obtain a green card. It also presents a significant retention problem, as talented

foreign national employees choose to return home or go to other countries in order to avoid the long waits and career restrictions caused by our current immigration policies.

The following current examples, which come from Microsoft's own employee pool employees, illustrate these problems. These examples unfortunately are backed by countless similar situations that arise every day.

Retention Problems Due to the 5-plus Year Wait for a Green Card: A Microsoft employee, who is an Indian national, has a Master's degree in Computer Engineering from the University of Cincinnati. He has been instrumental in the development of software tools to identify and correct security vulnerabilities in Microsoft Office products. This has been particularly important in the development process for Windows Vista, Microsoft's next-generation operating system. He has a green card application pending, and recently learned that his mother, who lives in India, has been diagnosed with Lou Gehrig's disease. He is now faced with the decision of whether to return to India to be with his mother. If he ultimately decides to leave and then later return to Microsoft in the U.S., the company would likely need to start the green card process for him all over again, and his multi-year wait for a green card will begin all over again as well. It is doubtful that this person, who has been a key contributor to important products for Microsoft, would ultimately return to the U.S. given the huge delays in the green card process.

Critical Employees Leaving the U.S. to Avoid Restrictions on their Spouse's Careers: Many high-skilled foreign nationals are married to other high-skilled foreign nationals. One Microsoft employee is a Chinese national who holds a Ph.D. from Syracuse University. His wife is a Ph.D. candidate at Syracuse University who will graduate by the end of this year. Her studies are focused on digital signal processing in electrical engineering, which has tremendously important application to work being performed by significant defense contractors. However, defense contractors frequently are restricted to hiring only U.S. citizens or green card holders for work on defense contracts. As a result, the delays in obtaining a green card are a significant problem for this employee's wife, because she won't be able to work in her career field until she has her green card. This, of course, causes harm not just to the employee and his spouse, but also the interest in the United States to have the best engineers working here. This employee and his wife are considering relocating to Canada, where the permanent residence process is faster and more predictable, to allow them both to achieve their career goals with more security.

Employee Morale Problems as a Result of Green Card Delays: A Microsoft employee who is an Indian national and works as a Software Engineer is directly impacted by the retrogression in availability of employment-based green cards and is facing a multi-year wait for a green card. While he can continue to work for Microsoft while he waits, his wife, who has a Master's degree in Human Resources, is not able to work in the U.S. and has had to put her career on hold while waiting to be able to file for a green card. The H-1B cap means that she could not obtain her own H-1B until October 2007. She therefore has no choice but to continue to wait, taking community college classes to pass the time until an immigrant visa number becomes available and she can file an adjustment of

status application to be able to work in the U.S. This is a significant financial and emotional drain on this family, and the frequency of this type of problem ultimately impacts employee morale and productivity.

Efforts By Other Countries to Attract High-Skilled Workers

The U.S. is not alone in its need for high-skilled workers to support growing economies. Competition is particularly fierce for foreign students and professionals in the fields of science, engineering and information technology, and several countries have in fact shaped their own immigration policies to attract the very high-skilled workers who are dissuaded or blocked from coming to or remaining in the U.S. because of our current immigration restrictions. For example, Australia, Canada, Germany, France, New Zealand, Ireland, and the United Kingdom all have immigration procedures designed to simplify the process for recruiting highly skilled workers, In August 2005, the Australian government launched a global recruitment drive to attract an extra 20,000 "skilled migrants" per year. In November 2005, Canada has implemented key immigration reforms, including a new streamlined process to allow immigrants with Canadian experience or Canadian education to apply for permanent resident status. The changes will target highly qualified persons, graduate students, and skilled trades. Similarly, the United Kingdom now applies simplified fast-track procedures for issuing work permits for certain occupations and has extended the list of shortage occupations. When other countries improve their immigration processes to attract high-skilled workers and the U.S. does nothing, U.S. businesses lose.

Conclusion

The Senate's comprehensive immigration reform bill would very effectively address the crisis in our country's high-skilled immigration programs. The problems caused by these crisis conditions cannot wait; it is critical that Congress resolve them this year. Microsoft is committed to working toward prompt solutions with both Houses of Congress, and we appreciate the superb work that the Committee has done on high-skilled immigration reform. I would be grateful if this letter could be introduced into the record of the July 12 hearing.

Sincerely,

Managing Director, Federal Government Affairs
Associate General Counsel

TESTIMONY OF

NIALL O'DOWD

FOUNDER AND CHAIRMAN
IRISH LOBBY FOR IMMIGRATION

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

"EXAMINING THE NEED FOR
COMPREHENSIVE IMMIGRATION REFORM, PART II"

WEDNESDAY, JULY 12, 2006

DIRKSEN SENATE OFFICE BUILDING ROOM 226
9:30 A.M.

My name is Niall O'Dowd I am Founder and Chairman of the Irish Lobby for Immigration Reform and also founder and Publisher of Irish Voice Newspaper and Irish America Magazine the two largest Irish American publications.

I am a native of Ireland, once undocumented, but now a proud American citizen.

I have lived the emigrant dream in America since coming here in 1979. I started a newspaper with less than $1,000 dollars in 1979 in California and made a success of it. Currently, I employ 22 people in New York City running both of my companies.

But I come here representing the 50,000 Irish undocumented in the United States and the millions of Irish Americans who are looking for a resolution to this issue.

Since the inception of the Irish Lobby for Immigration Reform last December we have held scores of public meetings across the United States attended by thousands and have held two lobbying days in Washington D.C. A total of over 5,000 Irish Americans from across the United States attended both lobbying days.

The facts are clear to us. Without immigration reform the Irish-born community in the United States will no longer exist and one of the greatest contributors to the success of this nation will be no more.

Our neighborhoods are disappearing, our community organizations are in steep decline. Our sporting and cultural organizations are deeply affected by the lack of emigration.

Meanwhile, our undocumented community is under siege. They can no longer travel to Ireland, even when family tragedies occur.

Their drivers licenses will not be renewed which means mothers can not drive their children to school. The day to day struggle of living illegally in America has taken a heavy personal toll on them. I submit that they deserve better.

Everything they have worked years for in America, building their own American dream is now falling around them and I submit that America will be the big loser.

I know that hundreds of these emigrants, Irish construction workers, worked with little more than their bare hands to try to uncover bodies at Ground Zero after 9/11 .

Irish labor union members and construction crews were among the first on the scene and they tried frantically to save lives working alongside rescuers who included thousands of Irish American fire and police workers.

No one was calling them illegals then.

They did no more than previous Irish generations. As President Bush has stated

"Throughout our history America has been greatly blessed by the innumerable contributions of the Irish." Unfortunately the contribution of Irish-born may be about to end.

If the Irish antecedents of Andrew Jackson, John F. Kennedy, Ronald Reagan or indeed, America's greatest dramatist Eugene O'Neill, were trying to enter the United States today they would have to do so illegally.

The sad reality is that there is simply no way for the overwhelming majority of Irish people to come to the United States legally at present.

So when people say to me that the Irish should get in line to come here I tell them there is no line we can join, no way the vast majority of our people can come legally to America.

As a July 10th op-ed article in the Wall Street Journal by 33 leaders of the Conservative movement noted " While immigrants continue to be drawn to the jobs created in this country they have no legal way to enter the country."

The figures for the Irish bear this out, of the almost 1 million green card visas given out last year about 2,000 went to the Irish. Since 1995 in the diversity visa program, which was intended in part to help old seed countries Ireland has been successful in obtaining one half of one per cent or 2,800 out of 553,000.

Such realities, however, have not stopped thousands of Irish doing what generations of Irish have done since they served in George Washington's army - coming to America and living the American dream like generations before them.

Unfortunately, of course, they are undocumented which is why I am here today to tell their story.

I can tell you about Mary who is 36, whose brother was killed in a car crash a few months ago and she had to listen to his funeral down a phone line because she cannot go home and grieve with her family.

Yet she has boundless faith in the goodness of this country and has spent sixteen years making her life here.

She is now a registered nurse, a proud homeowner and intends to marry soon. Hospitals would snap her up in a moment if she became available. She deserves her American dream.

Then there is Brian, who is 32, a contractor, who was among the first to go to Ground Zero because he was working nearby
Brian continues to believe in his American dream. He has six Americans working full time for him, all legally and he looks forward to the day he can take his new wife

back to Ireland and meet the families they have not seen for years.

Eamon who is 38, came over from Armagh in Northern Ireland 14 years ago. There were no jobs in his town because of the Troubles and the only recruiting was being done by paramilitaries. Here Eamon now runs his own roofing company and employs six persons legally.

So many others have grandchildren their grandparents have never seen, or live in daily fear of being deported or worse, a family tragedy back in Ireland which could end their lives here.

These are typical stories of the Irish undocumented here in America. They ask for just one thing - the opportunity to live their American dream like so many generations of Irish before them.

My deepest desire, and that of millions of Irish Americans around this great country, is that their wish can be granted. With your help I believe it can.

Thank you very much.