

**SOLVING THE OTM UNDOCUMENTED  
ALIEN PROBLEM: EXPEDITED REMOVAL FOR  
APPREHENSIONS ALONG THE U.S. BORDER**

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**HEARING**

BEFORE THE

**SUBCOMMITTEE ON ECONOMIC  
SECURITY, INFRASTRUCTURE  
PROTECTION, AND CYBERSECURITY**

OF THE

**COMMITTEE ON HOMELAND SECURITY  
HOUSE OF REPRESENTATIVES**

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# CONTENTS

|   | Page |
|---|------|
| STATEMENTS  |      |
| The Honorable Daniel E. Lungren, a Representative in Congress From the State of California, and Chairman, Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity:          |      |
| Oral Statement .....  | 1    |
| Prepared Statement .....  | 4    |
| The Honorable Loretta Sanchez, a Representative in Congress From the State of California, and Ranking Member, Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity ..... | 4    |
| The Honorable Mark E. Souder, a Representative in Congress From the States of Indiana .....   | 19   |
| WITNESSES   |      |
| Mr. David V. Aguilar, Chief, Border Patrol, U.S. Customs and Border Protection, Department of Homeland Security:  |      |
| Oral Statement .....  | 8    |
| Prepared Statement .....  | 9    |
| Mr. Daniel W. Fisk, Deputy Assistant Secretary, Bureau of Western Hemisphere Affairs, U.S. Department of State:   |      |
| Oral Statement .....  | 14   |
| Mr. John Torres, Acting Director, Office of Detention and Removal Operations, Immigration and Customs Enforcement, Department of Homeland Security:   |      |
| Oral Statement .....  | 11   |
| Prepared Statement .....  | 13   |
| FOR THE RECORD  |      |
| The Honorable Sheila Jackson-Lee, a Representative in Congress From the State of Texas:   |      |
| Prepared Statement .....  | 7    |
| Questions for Mr. David Aguilar and John P. Torress .....   | 22   |
| Questions for Daniel W. Fisk .....  | 34   |



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**Wednesday, September 28, 2005**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
SUBCOMMITTEE ON ECONOMIC SECURITY,  
INFRASTRUCTURE PROTECTION, AND CYBERSECURITY,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 2:07 p.m., in Room 311, Cannon House Office Building, Hon. Dan Lungren [chairman of the subcommittee] presiding.

Present: Representatives Lungren, Souder, Rogers, and Sanchez.

Mr. LUNGREN. [Presiding.] The Committee on Homeland Security, Subcommittee on Economic Security Infrastructure Protection and Cybersecurity, will come to order.

The subcommittee is meeting today to hear testimony on how the expedited removal program will enhance DHS's capabilities to detain and remove non-Mexican aliens from the U.S.

First of all, I would like to begin by thanking all of our witnesses for coming to testify on this important topic.

Let me say at the outset that I commend the administration and the Department of Homeland Security for its recent policy announcement to begin the implementation of expedited removal in all Border Patrol sectors along the southwest border of the United States.

We call this hearing today to make clear that the successful execution of this program is vital for our nation's homeland security.

When the president established the Office of Homeland Security in October of 2001, he made its first responsibility to produce a national strategy for homeland security. In this strategy, which was issued in July of 2002, he called on the United States to "rethink and renovate fundamentally its systems for border security." The mobility and destructive intent of modern terrorism insists that we must complete this task with a real sense of urgency, and, frankly, I find the sense of urgency lacking as we move to secure our borders.

We are here today to ensure that the appropriate resources and training exist within and across those agencies that are tasked with this important mission. Not only does the Border Patrol need to expand the use of expedited removal procedures, but there must also be adequate detention space to hold those who are apprehended. Necessary country clearances and travel documents must

be obtained in a timelier fashion so that those undocumented aliens may be returned to their home countries more expeditiously.

In the past 3 years, the apprehension of undocumented aliens from countries other than Mexico, commonly referred to as "other than Mexicans," or OTMs, has more than tripled, increasing by 220 percent. The Congressional Research Service has also reported that approximately 70 percent of OTMs are being released pending immigration removal proceedings, and that approximately 63 percent of those released never appear in court. As a matter of fact, I have heard that the percentage is much, much higher than that.

This is not something that is hidden to the American people. There have been stories, reports on television of this, and the reaction of the American people has been, as you would expect it, that it is unacceptable.

These individuals, of course, if they do not show up, remain in the U.S. undetected. Included among these undocumented aliens are many from special interest countries, including Afghanistan, Iran, Iraq and other countries which we know to be state sponsors of terrorism. This policy, as it has been described on television and other places as "catch and release", was simply not working. It is also totally unacceptable.

At a time in our nation's history when there are terrorists who wish to infiltrate our borders for the purpose of inflicting harm on any American, our own policies have created a system that apparently encourages more undocumented aliens to enter the U.S. illegally. It is my belief that it is this system of border security that the president intended us to reexamine in the post-9/11 world. It is also my belief that this system of border security allows potential terrorists to enter the U.S. between our ports of entry and slip into our society undetected, especially as we harden other legitimate means of entry.

Congress has taken steps to address this issue over the past year. In December 2004, the Intelligence Reform and Terrorism Prevention Act was signed into law and authorized an increase in detention and removal operation bed space by 8,000 beds each year from fiscal year 2006 through 2010 for a total increase of 40,000 detention beds.

Congress also provided funding for an additional 1,950 beds in the Emergency Supplemental Appropriations Act in May of 2005, and both the House and Senate versions of the fiscal year 2006 DHS Appropriations Act provide funding for approximately 2,000 beds for a total bed space increase in fiscal year 2006 of nearly 4,000 beds.

We have with us today Chief Aguilar of the Border Patrol who will testify that the results of using expedited removal in three Border Patrol sectors beginning last year have been dramatic. Since September 2004, the Border Patrol has placed 34,000 aliens in expedited removal proceedings with approximately 20,000 of those having already been removed.

The expedited removal of undocumented alien takes an average of 30 days versus the standard 89 days that it usually takes for removal of an alien without the expedited process. While this is an improvement, I think some would suggest that a month is still too long. Delays are exacerbated by the length of time it takes to ob-

tain travel clearances from the OTMs countries of origin. Those placed in expedited removal must be detained during the entire timeframe, which stresses our already burdened detention bed space.

The additional beds coming online in October will certainly help, but we also need to better manage already existing bed space. During a recent trip by members of this committee to the southwest border, it was found that at least one detention and removal operations facility was operating well under its bed space capacity. It is just unacceptable that this could happen during a time of crisis in our immigration system. We need to be using every bed to gain control of the problem of undocumented aliens and in particular the problem with OTMs.

Expedited removal also has the potential to benefit other agencies, such as ICE and the Department of Justice. If we are successful in removing undocumented aliens before they disappear into our communities, obviously it will save precious time and resources that are being used on the back end by the U.S. Immigration Customs Enforcement to, again, apprehend them and for the Department of Justice' immigration court system to formally process them.

So I look forward to hearing from Director Torres about how ICE plans to coordinate with both the CBP and the State Department in expedited removal proceedings.

We will also hear testimony today from the State Department about the obstacles presented by foreign governments when they are requested by the United States to issue certain travel documents in order to repatriate OTMs in their home country. My understanding is that such countries have an obligation under international law to accept their nationals for repatriation.

We look forward to asking the State Department what it is doing and what it plans to do to obtain more cooperation from foreign governments to eliminate such obstacles.

The Immigration Nationalities Act provides a remedy for non-cooperation by foreign governments in section 243(d), which states that the Secretary of State, in her discretion, may discontinue granting visas to nationals of a country denying or delaying accepting an alien.

Now, I understand we do not want to upset other countries, but I do not understand when it hurts us why we are so reticent to exercise the authority given by the Congress through legislation. The removal of OTMs from the United States should be as much a priority of the State Department as it is for the Department of Homeland Security and the Congress, and we would like to explore if the State Department will more aggressively use this authority given to them by the Congress.

Again, I would like to thank our witnesses for appearing before the committee today. I want them to take away a message that while the Border Patrol can announce new steps to address the OTM problem, there must be cooperative efforts from ICE and the State Department in order for there to be a successful and timely transition from the policy of catch and release to one of "catch and return."

I would like to remind our witnesses of the urgent nature of this task. I am looking forward to hearing from each of them today and how each agency will do its part.

PREPARED OPENING STATEMENT OF HON. DANIEL E. LUNGREN

Good afternoon, I would like to begin today by thanking all of our witnesses for coming to testify about this very important topic.

Let me say at the outset that I want to commend the Administration and the Department of Homeland Security for taking steps to move in the direction Congress has demanded, with its recent policy announcement that expedited removal will be implemented in all border patrol sectors along the southwest border of the United States.

However, the reason for this hearing today is that we must insist on this program's successful implementation. Not only does the Border Patrol need to expand the use of expedited removal procedures to more apprehensions occurring along our borders, but there also must be adequate detention space to hold those apprehended and subject to expedited removal. And there must be further efforts made to obtain the necessary country clearances and travel documents in a timelier manner, in order to return undocumented aliens to their home countries more expeditiously.

There has been a dramatic increase in aliens, commonly referred to as "Other than Mexicans" or OTMs, illegally entering the U.S. and being apprehended by U.S. Border Patrol agents. In a recently issued report by the non-partisan Congressional Research Service, it was found that apprehensions of OTMs have more than tripled over the past three years—increasing by an astounding 220%. CRS also reported that approximately 70% of OTMs are being released pending immigration removal proceedings and that approximately 63% of those released never appear in court. They instead remain in the U.S. undetected. Included among these aliens are many from "special interest countries," including Afghanistan, Iran and Iraq, and other countries known to be state sponsors of terrorism.

This current policy of "catch and release," as it has been called, is simply not working and, frankly, is unacceptable. At a time in our Nation's history where there are terrorists who wish to infiltrate our borders and do us serious harm, our own policies have created a system that in fact encourages more undocumented aliens to enter the U.S. illegally. It is only a matter of time before terrorists will enter the U.S. between our ports of entry and slip into our society undetected, especially as we harden other legitimate means of entry. In fact, terrorists may already have done so. This policy must change—and I understand that the Administration is working hard to end this "catch and release" practice. I am looking forward to hearing from our witnesses today about how each agency will do its part to bring about such change.

Congress also took steps to address this issue over the past year. In December 2004, the Intelligence Reform and Terrorism Prevention Act was signed into law and authorized an increase in Detention and Removal Operations (DRO) bed space by 8,000 beds each year from Fiscal Year (FY) 2006 through FY 2010, for a total increase of 40,000 detention beds. Congress then provided funding for an additional 1,950 beds in the Emergency Supplemental Appropriations Act in May 2005; and both the House and Senate versions of FY 2006 DHS Appropriations Act provides funding for another 2000 or so beds, for a total bed space increase in FY 2006 of nearly 4000 beds.

We have with us today Chief Aguilar of the Border Patrol, who will testify that the results of using expedited removal in three border patrol sectors beginning last year have been dramatic. Since September of 2004, Border Patrol has placed 34,000 aliens in Expedited Removal proceedings, with approximately 20,000 of those having already been removed.

The good news is that placing an alien in expedited removal takes an average of roughly 30 days for the alien to be removed, versus an average of 89 days that it takes for removal of an alien through the regular process. But the downside is that it still takes about a month to conduct so-called "expedited" removal—mainly because of delays in obtaining travel clearances from the OTMs' countries of origin—and that those placed in Expedited Removal must be detained during that entire timeframe, which stresses our already over-burdened detention bed space.

The additional beds coming on line in October will certainly help. But we also need to better manage already existing bed space. During a recent trip by members of this Committee to the southwest border, a DRO facility was found to be operating well under its bed space capacity. This should not happen during this time of crisis



in our immigration system. We need to be using every bed to gain control of the problem of undocumented aliens and, in particular, this problem with OTMs.

Expedited removal also has the potential to benefit other agencies, such as ICE and the Department of Justice. If we are successful in removing these folks *before* they disappear into our communities, we then do not have to expend precious resources on the back end for U.S. Immigration and Customs Enforcement (ICE) to again apprehend them and for the Department of Justice's immigration court system to formally process them. We look forward to hearing from Director Torres about how ICE plans to coordinate with both CBP and the State Department in expedited removal efforts.

We will also hear testimony today from the State Department about the obstacles presented by foreign governments when they are requested by the United States to issue certain travel documents in order to repatriate OTMs to their home country. It is my understanding that such countries have an obligation, under international law, to accept their nationals for repatriation. I look forward to asking the State Department what it has done and what it plans to do to obtain more cooperation from foreign governments to eliminate such obstacles.

The Immigration and Nationality Act provides a remedy for non-cooperation by foreign governments in section 243(d), which states that the Secretary of State, in her discretion, may discontinue granting visas to nationals of a country denying or delaying accepting an alien. However, it appears that this authority has been used sparingly, if at all. The removal of OTMs from the United States should be as much of a priority for the State Department as it is for the Department of Homeland Security and the Congress, and I am curious to learn whether the State Department will more aggressively use the 243(d) sanction authority in the future.

Again I want to thank our witnesses for appearing before the Committee today, and want them to take away the message that, while the Border Patrol can announce new steps to address the OTM problem, there must be a cooperative efforts from ICE and the State Department for this new policy of "catch and return" to work.

Mr. LUNGREN. It is now my pleasure to recognize the Ranking Member, Ms. Sanchez from California, for her opening statement.

Ms. SANCHEZ. Thank you, Mr. Chairman, and thank you for calling this hearing.

And I would like to thank the witnesses we have before us for your testimony today.

I think that this is a very important opportunity for us to focus on the Department of Homeland Security's plan to address the problems associated with the policy of releasing other than Mexican, or OTM, individuals who enter the United States illegally. As a representative of a border state, I know all too well how important it is for our citizens and to legal immigrants that we institute policies that secure our borders and our ports of entry from illegal entry.

CRS reports that al-Qa'ida has begun considering infiltrating the southwest border due a belief that illegal entry is more advantageous than legal entry into our country, and that is a big issue for many of us who are looking at border security and trying to figure out from a homeland perspective what we can do better.

It seems to me that the catch and release policy is not in the best of homeland security, and that is why I am glad to see that we are looking at catch and return to replace it. But it is my understanding that the previous policy resulted from a serious shortage in detention space. And I think if this new approach is going to succeed, that we have to have the right resources in order for you to do your work. We need that space, and I know that the administration and the Congress that we need to get serious about how we provide DHS these resources.

One of the most basic needs for implementing the catch and return policy is increasing the number of detention bed spaces avail-

able, as Mr. Lungren so eloquently talked about in his statement. So we are looking at urging the administration and the Congress to take immediate steps to enhance DHS border security resources to the levels called for by the 9/11 Act by actually annually adding the following over the next 5 fiscal years: Increasing additional detention bed spaces from 4,000 to 8,000, adding additional 800 ICE agents instead of 200 and providing 2,000 additional Border Patrol agents as opposed to 1,500.

I think we need to provide our state and local law enforcement officials with adequate funding for their work enforcing our immigration laws and detaining criminal aliens. Unfortunately, funding for the State Criminal Alien Assistance Program, or SCAAP, as we have looked at over the last few years, has been not funded. I know that every year we Californians sign a letter together, I think most of us if not all 53, asking the Congress to fully fund these programs.

And as you can see from this chart here, which I want to submit for the record, Mr. Chairman, it shows that the funding has been cut nearly 50 percent since 9/11. The administration has reduced the funding reimbursement to California by more than \$100 million below the pre-9/11 funding levels.

Congress and the administration also need to look beyond short-term policy changes as a solution and look to more comprehensive border security strategies. That would be deploying appropriate resources and technology at our land borders and our other ports of entry, because it is not just our land borders where people are coming in; implementing vigorous work site enforcement through the mandatory use of more reliable employment verification systems and the sanctioning of employers for hiring illegal workers and passing real immigration reform that focuses on border security interior enforcement and the needs of our business communities and the immigrants who desire to work legally here in the United States.

All of this, I think, requires collaboration between the Department of Homeland Security and the Department of State, and that is why it is so exciting to see you, Mr. Fisk, here today as a representative of State. We thought we would not have you today, and I am glad you did come, because I think it is very important for us to hear the struggles that you have in trying to make these agreements with other foreign governments so that we can make sure that that part of the equation is in sync.

Unfortunately, I also have a review going on right now, a threat assessment in the Military Committee, on which I am on a panel that has been doing a lot of work the last 2 weeks, and I am going to have to cut out at some point. So I may not get to the question and answer, but I hope that each of you will discuss with us your concerns and give us some ideas about what needs to change so we can get this done correctly.

Thank you, Mr. Chairman.

Mr. LUNGREN. Thank you very much.

The other members are reminded that they have an opportunity to place their statement in the record.

## FOR THE RECORD

## PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON-LEE

In FY 2004, United States Border Patrol (USBP) agents apprehended 1.16 million aliens attempting to enter the country illegally between official points of entry. Because 93% of the apprehended aliens are Mexican nationals, USBP categorizes the apprehended aliens as "Mexicans" or "Other Than Mexicans" (OTMs).

OTMs apprehended along the Southwest border between official points of entry cannot be returned to Mexico voluntarily or under a removal order. The Mexican government will not accept them. They must be returned to their countries of origin, or to third countries that will accept them. The Office of Detention and Removal Operations (DRO) does not have the facilities to detain them. Over the past three years, OTM apprehensions have more than tripled. In FY2005, OTM apprehensions reached 119,182, on July 11th. The ones who cannot be detained must be released pending removal proceedings before an Immigration Judge, and few return for a hearing.

According to a statement made by DRO Director Lee on June 7, 2005, the detention bed space within DRO is filled to capacity. The majority of those beds are filled with criminal aliens who have been transferred to DRO from county, state, and federal prisons. DRO has roughly 2,500 beds which are full but which are not occupied by criminal aliens, but the USBP is currently apprehending almost 12,000 OTMs every month.

In an effort to deal more effectively with this problem, the Department of Homeland Security (DHS) has expanded the use of expedited removal proceedings to locations between the points of entry. Expedited removal authority originated in section 302 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). In expedited removal proceedings, a USBP agent makes an initial determination as to whether the apprehended person is an alien who entered the United States illegally without a visa or other valid entry document. If the officer determines that the person is an undocumented alien, the person is subject to removal without further proceedings unless he can establish a credible fear of persecution. Aliens who establish a credible fear of persecution are referred to an Immigration Judge for an asylum hearing. If the alien ultimately is removed as a result of either type of proceeding, he is barred for five years from returning.

Expedited removal proceedings are substantially faster than ordinary removal proceedings, which involve a full hearing before an Immigration Judge. Once an OTM is placed in expedited removal process, it takes an average of 32 days for the alien to be removed. In comparison, it takes an average of 89 for an alien who is in regular removal proceedings.

Consequently, the expanded use of expedited removal proceedings should help, but it is not a solution to the OTM problem. While OTMs placed in expedited removal are subject to mandatory detention, they will have to be released on their own recognizance in spite of that requirement if there are no detention facilities for them.

We need more detention facilities, but that will not eliminate the problem entirely. This and other immigration enforcement problems will continue to spiral out of control until we fix our broken immigration system. We must enact comprehensive reform bills such as my Save America Comprehensive Immigration Act of 2005, H.R.2092. Thank you.

Mr. LUNGREN. And I would also say, Mr. Fisk, you probably did not realize how much we were looking forward to seeing you before you heard her statement.

It is my opportunity now to recognize Mr. David Aguilar, the chief of the United States Border Patrol, U.S. Customs and Border Protection, Department of Homeland Security, to testify on how the Border Patrol uses the expedited removal process.

And before you start, I would just remind all members of the panel that your written statements will appear in the record, and we would ask you to confine your comments to 5 minutes, please.

**STATEMENT OF DAVID AGUILAR**

Mr. AGUILAR. Thank you, Chairman Lungren, Ranking Member Sanchez, Congressman Rogers and other distinguished subcommittee members that may be coming in as we progress.

I am extremely pleased to be here this afternoon to give testimony on Border Patrol operations and the detention of “other than Mexican” aliens encountered, detained and arrested by the U.S. Border Patrol, especially in the area of expedited removal, a new program that we have basically implemented and reinvigorated since September 19.

The Border Patrol operates exclusively between the ports of entry and conducts in-depth enforcement operations in direct support of border enforcement as it relates to border security. Our agents conduct operations along our nation’s borders with Mexico and Canada and along our coastal areas, including the Texas Gulf coast, Florida and Puerto Rico. Our agents patrol over 6,000 miles of border.

One of the things that I would like to very quickly touch on this afternoon is our recently revised Border Patrol national strategy and its six core elements which I think are absolutely essential to this hearing.

One is securing the right combination of personnel, technology and infrastructure to help our agents do the job on the border. Two is improving mobility and rapid response to quickly counter any kind of shift or criminal organization activity that happens along our country’s borders—north, south or coastal; deploying defense-in-depth that makes full use of interior checkpoints and applicability of enforcement efforts and transportation hubs, airports and other locations where the criminal element may try to exploit our nation’s arteries into the interior United States; partnerships with other law enforcement agencies absolutely critical to our success along our nation’s borders with Mexico and with Canada; improving border awareness and intelligence, some of which we are doing here today. It is absolutely essential that our country understand what is happening on our borders, and it is absolutely critical that we improve our intelligence capability.

And one of the things that has helped us tremendously since the creation of DHS and the Customs and Border Protection is strengthening the headquarters command structure from Washington, D.C., in order to lend to the mobility and rapid response capability that is required in order to serve our nation along our country’s borders.

The revised national strategy provides a road map for our organization’s continued expansion efforts and bringing operational control to our nation’s borders. Our centralized chain of command provides for a strategic application of existing and future resources and provides for the focused and long-term planning and evolution of our strategy based on risk management, threats and vulnerabilities.

Our ability to focus efforts and resources magnifies the effect of our resources. An excellent example is what we are referring to as Arizona Border Control Initiative Phase II that is currently underway in Arizona, as we speak. Some very quick stats that I think will interest this subcommittee: 200 Border Patrol agents were

moved into the Arizona border almost overnight in order to support this operation. We more than doubled the number of aerial platforms that were working in Arizona that are absolutely essential because of the vastness and remoteness of the area in which we operate. We have permanently reassigned over 160 Border Patrol agents with journeymen level experience in order to augment the experience base in Arizona.

Working in conjunction with DRO out of ICE and ICE investigations, we have had tremendous successes. During this ABCI time period of this year, there has been a reduction of over 22 percent in the number of illegal entries into the Arizona area of operation.

Mr. LUNGREN. Could I interrupt for just a moment?

Mr. AGUILAR. Yes.

Mr. LUNGREN. I just got notice, Mr. Rogers and Ms. Sanchez, that we have an emergency GOP conference at 3 o'clock, so our hearing is going to be cut a little bit short. So I just wanted to mention that.

Mr. AGUILAR. I will do the same with mine, sir.

Today, basically, I am delighted to report that as of September 19 our nine southwest border sectors have implemented expedited removal. We are taking a measured, prudent and strategic approach to effectively manage the available detention space for maximum deterrent effect, which is the outcome that we are looking for in the area of "other than Mexicans."

In closing, I would like to say that our job is nothing less than national security. This is not lost on the men and women of the U.S. Border Patrol. They are working very hard on a daily basis out there along our nation's borders to protect America. The Border Patrol Customs and Border Protection and its men and women are committed to assertively and aggressively expand our operations to continue to build on our nation's security.

I thank the subcommittee for the opportunity to appear before you today and for your strong support of all the men and women at U.S. Customs and Border Protection. I would be honored to respond to any questions that you might have.

Thank you, sir.

[The statement of Mr. Aguilar follows:]

PREPARED STATEMENT OF DAVID AGUILAR

Chairman Lungren, Ranking Member Sanchez, and Other Distinguished Subcommittee Members, thank you for the opportunity to appear before you today to discuss the successes and challenges of border security on the southwest border and in particular the recent expansion of the Expedited Removal program, as demonstrated by the operations and law enforcement initiatives of the Office of Border Patrol, a component of U.S. Customs and Border Protection (CBP). My name is David Aguilar, and I am the Chief of the U.S. Border Patrol within CBP.

CBP, as the guardian of the Nation's borders, safeguards the homeland—foremost, by protecting the American public against terrorists and the instruments of terrorism; while at the same time enforcing the laws of the United States and fostering the Nation's economic security through lawful travel and trade. Integral to this mission is the Border Patrol's time-honored duty of interdicting illegal aliens and drugs and those who attempt to smuggle them across our borders between the Ports of Entry. We are concerned that terrorists, seeking to conduct attacks against the U.S. homeland, may exploit illegal human smuggling routes. Reducing illegal migration across our borders may help in disrupting possible attempts by terrorists to enter our country.

CBP Border Patrol's National Strategy has made a centralized chain of command a priority and has increased the effectiveness of our agents by using intelligence

driven operations to deploy our resources. Partnerships with Immigration and Customs Enforcement (ICE), Department of the Interior, Department of Justice (DOJ), Drug Enforcement Administration, Federal Bureau of Investigation, Department of Transportation, other interagency partners, state, local, and tribal law enforcement agencies and state Homeland Security offices play a vital role in having and disseminating information and tactical intelligence that assists in a quick response, which is essential to mission success.

Recognizing that we cannot control our borders by merely enforcing at the "line," our strategy incorporates a "defense in depth" component, to include transportation checks away from the physical border. Checkpoints are critical to our patrol efforts, for they deny major routes of egress from the borders to smugglers intent on delivering people, drugs, and other contraband into the interior of the United States. Permanent checkpoints allow CBP Border Patrol to establish an important second layer of defense and help deter illegal entries through improved enforcement.

CBP Border Patrol will continue to assess, develop, and deploy the appropriate mix of technology, personnel, and information sources to gain, maintain, and expand coverage of the border in an effort to use our resources in the most efficient fashion.

Historically, major CBP Border Patrol initiatives, such as *Operation Hold the Line*, *Operation Gatekeeper*, and *Operation Rio Grande* in our El Paso, San Diego, and McAllen Sectors, respectively, have had a dramatic enforcement impact on illegal migration patterns along the southwest border, proving that operational control is possible. Together, they have laid the foundation for newer strategies and enforcement objectives and an ambitious goal to gain control of our Nation's borders, particularly our border with Mexico. These initiatives continue to significantly affect illegal migration as we seek to bring the proper balance of personnel, equipment, technology, and infrastructure into areas experiencing the greatest level of cross-border illegal activity along our Nation's borders between the Ports of Entry.

Over the past few years, illegal migration patterns have shifted from an urban to a rural environment, presenting a different challenge to our interdiction efforts. As a result, the Arizona Border Control Initiative, currently in Phase Two, was introduced. CBP serves as the operational lead for ABCI, partnering with other DHS agencies, as well as other federal, state, local, and tribal law enforcement agencies, bringing together resources and fused intelligence into a geographical area that has been heavily impacted by smuggling activity. We continue to build a stronger relationship with the Government of Mexico, which continues to take helpful steps to stem the flow of OTMs, to create a safer and more secure border through the Border Safety Initiative and special repatriation programs. In doing so, we continue to enhance our ability to fight terrorism, illegal migration, and crime in that border area.

DHS and the DOJ have partnered to develop the IDENT/IAFIS integrated workstation, which captures a single set of fingerprints and submits them simultaneously to DHS' Automated Biometric Identification System (IDENT) and DOJ's Integrated Automated Fingerprint Identification System (IAFIS) for identity checks. These integrated systems were deployed to all Border Patrol stations in 2004. With immediate access to IAFIS, our Agents have identified thousands of egregious offenders, including murderers, rapists, kidnappers, and drug traffickers, who otherwise may have gone undetected. This is a significant step towards improving national security and greatly enhancing our ability to secure our nation's borders.

The U.S. continues to experience a rising influx of other than Mexican nationals, or OTMs, illegally entering the country. For FY05, non-Mexican illegal aliens (NMIA), often referred to as OTMs, apprehensions are running at a rate of 136% over FY 04's record number of OTM apprehensions on the southwest border, and 119% over the record national FY 04 OTM apprehension figure of 75,389. Border Patrol processes all apprehended OTMs for removal proceedings. The growth in the apprehension of non-Mexican illegal entrant aliens, however, combined with other detention requirements, in many cases leads to their release on their own recognition.

To address this situation by expediting the removal process for OTMs, in August 2004, DHS issued a Federal Register Notice allowing CBP Border Patrol Agents to place certain illegal aliens, apprehended between the ports of entry within 100 miles of the border and within 14 days of their illegal entry, into Expedited Removal (ER) proceedings. ER proceedings shorten the time spent in detention facilities and eliminate appearances before immigration courts and judges. ER was initially implemented in five Border Patrol sectors. Tucson and Laredo Sectors fully instituted the process, with San Diego, El Centro and Yuma Sectors using ER cases for aliens who would otherwise be subject to a reinstatement of prior orders of removal.

ER is not a new procedure. It was created in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and has been used at ports of entry since 1997. Expedited Removal is a powerful tool that speeds the removal of aliens who

are attempting to, or have entered the country illegally. When someone is placed in expedited removal processing, the person is detained and returned to his or her country as soon as circumstances will allow. This drastically shortens the typical detention period and can relieve pressure on detention resources.

As with the implementation of expedited removal at ports of entry over the last nine years, special safeguards are in place. DHS has taken a measured and careful approach to the expansion of expedited removal, and has provided comprehensive training for our agents, to ensure that those who may have legitimate asylum claims will be referred to a Citizenship and Immigration Services (CIS) asylum officer.

Aliens processed in expedited removal are required to be detained by law. This detention, and subsequent removal has had a large deterrent effect. Let me provide you with a specific example: the Rio Grande Sector was experiencing very large numbers of Brazilian-national apprehensions before the ER process was implemented. The Sector had been apprehending an average of 160 Brazilian nationals per day prior to the implementation of the ER process. On July 2, 2005, ER was introduced into the Rio Grande Valley Sector (formerly the McAllen Sector) to streamline the removal process. Within the first week Brazilian apprehensions started dropping precipitously, and now are averaging about 20 or less per day.

This month, Secretary Chertoff approved expanding the use of ER to the remaining Southwest Border Sectors. DHS expects that ER, and the associated general rule of detention pending removal, will become a significant tool to deter future illegal migration between the ports of entry, particularly for non-Mexican illegal alien nationals who transit through Mexico.

In closing, CBP Border Patrol is tasked with a very complex, sensitive, and difficult job, which historically has presented immense challenges. We face these challenges every day with vigilance, dedication to service, and integrity as we work to strengthen national security and protect America and its citizens. Mr. Chairman, I want to take this opportunity to thank you, as well as Ms. Sanchez, and each Member of this Subcommittee for your strong support of all of the men and women of U.S. Customs and Border Protection, including the Border Patrol. We appreciate your continuing commitment to border security and we are grateful for your support. I would be pleased to respond to any questions that you might have at this time.

Mr. LUNGREN. Thank you very much, Chief Aguilar.

The chair now would recognize Mr. John Torres, acting director of the Office of Detention and Removal Operations, U.S. Immigration and Customs Enforcement of the Department of Homeland Security, to testify about the detention and removal capacity available for the expedited removal process.

#### **STATEMENT OF JOHN TORRES**

Mr. TORRES. Good afternoon, Chairman Lungren, Ranking Member Sanchez, Congressman Rogers and distinguished committee members. Thank you for the opportunity to address the role of immigration and customs enforcement in implementing that expedited removal program along the southwest border.

I would like to begin my testimony by providing the subcommittee with a brief overview of detention and removal operations, mission and achievement. DRO's mission is the apprehension, detention and removal of illegal aliens through the fair enforcement of our nation's immigration laws. In fiscal year 2004, DRO reached unprecedented levels of removal. During that period, DRO officers removed 160,000 aliens, including over 85,000 criminals. In fiscal year 2005, as of July 31 of this year, DRO had removed more than 109,000 aliens, including almost 65,000 with criminal records.

As part of our law enforcement mission, DRO is also responsible for managing bed space resources for detained aliens. During fiscal year 2004, ICE detained a daily average of almost 22,000 individ-

uals. Moreover, the past 2 fiscal years, DRO has maintained 100 percent detention capacity.

As I mentioned before, the ultimate goal of immigration enforcement is the removal of illegal aliens from the United States. The timely issuance of travel documents by foreign governments is critical to achieving this goal since DRO cannot remove aliens without proper travel documentation. Relying on the cooperation from the State Department, a key stakeholder in the arena of immigration enforcement, ICE continues to work with foreign government officials in order to expedite the issuance of travel documents.

DRO is also improving the removal process through greater utilization of video teleconferencing, which allows foreign government embassy officials to interview their nationals from detention centers around the country. The Department of Homeland Security employs several tools in order to accomplish its mission in effective immigration enforcement. Expedited removal is one of those tools.

E.R. allows detention and removal operations to quickly remove certain aliens who are either seeking entry or who have recently entered the U.S. illegally. Expedited removal applies to aliens who have no valid entry documents or who have fraudulent travel documents, are apprehended within 100 miles of the border and who cannot demonstrate that they have been present in the United States for more than 14 days following their illegal entry.

Expanded expedited removal has primarily been directed toward nationals of other countries, of countries other than Mexico and Canada, primarily known as OTMs, "other than Mexicans," and to a certain extent, Mexican and Canadian nationals with criminal backgrounds involved in alien smuggling or who have a history of repeated immigration violations.

The Border Patrol initially implemented this expanded E.R. authority in the Tucson and Laredo sectors in September 2004. Additionally, from June through August of 2005, a focused enforcement operation was conducted in the Rio Grande Valley sector. On September 14 of this year, DHS expanded E.R. authority across the entire southwest border. As of September 5, over 17,000 aliens have been referred over to DRO and placed in an expedited removal proceeding, with over 14,500 of those being removed, roughly about 85 percent.

The E.R. process results in a final order of removal which prohibits reentry for a period of at least 5 years. This deters unlawful entry and makes it possible to pursue future criminal prosecution against those who continue to enter the United States in violation of the law.

However, the most important benefit of expedited removal is that it streamlines the processing of inadmissible aliens, because individuals in E.R. proceedings are generally not entitled to a hearing before an immigration judge or eligible for release on bond unless they express a credible fear of return to their country.

In fiscal year 2004, the average detention time for third country nationals and removal proceedings before an immigration judge, from section 240 of the Immigration Nationality Act, was 71 days. However, the average length of detention for those same third country nationals placed in the expedited removal proceedings who did not claim a credible fear was only 25 days.



Expedited removal is an excellent tool to deter illegal migration, and mandatory detention ensures measurable progress toward 100 percent removal rate. DRO and ICE fully supports the principle of expedited removal, as it deters foreign nationals without protection claims from illegally entering our country, ensures expeditious removal of illegal aliens present in the United States and reduces the growth of the absconder population.

Deterring future entries and accelerating the removal of aliens will further enhance DHS's ability to secure the border and to focus its resources on threats to public safety and national security.

In conclusion, with the implementation of the expedited removal program, DRO has partnered with the Border Patrol in a DHS initiative designed to utilize our combined resources in order to secure the southwest border. By aggressively enforcing these laws, we will continue to seek to strengthen the legal immigration process for worthy applicants and deter criminal and terrorist organizations that threaten our way of life.

Thank you for the opportunity to testify before you today, and I will gladly accept any questions you have.

[The statement of Mr. Torres follows:]

PREPARED STATEMENT OF JOHN P. TORRES

#### **INTRODUCTION**

Chairman Lungren, Ranking Member Sanchez, and distinguished Committee members, thank you for the opportunity to address the role of Immigration and Customs Enforcement (ICE) in implementing the Expedited Removal Program along the Southwest Border. I would like to begin my testimony by providing the Subcommittee with a brief overview of Detention and Removal Operations' (DRO) mission and achievements.

DRO's mission is the apprehension, detention, and removal of all illegal aliens through the fair enforcement of our nation's immigration laws. This critical mission also includes the management of non-detained individuals while their cases progress through immigration removal proceedings. In Fiscal Year (FY) 2004, DRO reached unprecedented levels of both removals and fugitive alien apprehensions. During that period, DRO officers removed 160,000 aliens, including over 85,000 individuals with criminal records. In FY 2005, as of July 31, DRO had removed approximately 109,100 aliens, of which 64,917 were criminals. Also in FY 2004, ICE's 17 Fugitive Operations Teams apprehended over 11,000 fugitive aliens with final orders of removal. This figure represents a 62 percent increase from FY 2003. In FY 2005, as of September 22, DRO had apprehended 14,508 absconders.

As part of our law enforcement mission, DRO is also responsible for managing the bed space resources for detained aliens. During FY 2004, ICE detained a daily average of more than 21,900 individuals. The year-to-date statistics for FY 2005, through August, include the detention of 218,608 aliens. Moreover, DRO has maintained 100 percent average daily detention capacity for the past two fiscal years.

As I mentioned before, the ultimate goal of immigration enforcement is the removal of illegal aliens from the United States. The timely issuance of travel documents by foreign governments is critical to the removal process, since DRO cannot remove aliens without proper travel documentation. Relying on the support from the U.S. Department of State, a key stakeholder in the arena of immigration enforcement, ICE continues to work with foreign government officials in order to expedite the issuance of travel documents. DRO is also improving the removal process through greater utilization of video teleconferencing (VTEL), which allows foreign government embassy officials to interview their nationals from detention centers around the country. VTEL has recently been installed at the Honduran Consulates in Houston and Los Angeles, and is expected to be installed at the Honduran Consulate in Phoenix within the next month.

The Department of Homeland Security (DHS) employs several tools in order to accomplish its mission; Expedited Removal (ER) is one of those tools. ER allows DRO to quickly remove certain aliens who are either seeking entry or who have recently entered the U.S. illegally. In September 2004, DHS began implementing Expedited Removal on a limited basis between ports of entry. This expanded ER ap-

plies to aliens who have no valid entry documents or who have fraudulent travel documents, are apprehended within 100 miles of the border, and who cannot demonstrate that they have been present in the U.S. for over 14 days following their illegal entry. Expanded ER has primarily been directed towards third-country nationals (nationals of countries other than Mexico and Canada) and to certain Mexican and Canadian nationals with criminal backgrounds, involvement in alien smuggling, or a history of repeated immigration violations.

This expanded ER authority was initially implemented by the Customs and Border Protection (CBP) Office of the Border Patrol in the Tucson and Laredo Sectors. From June through August 2005, a focused enforcement operation was conducted in the Rio Grande Valley Border Patrol Sector. Most recently, on September 14, 2005, DHS expanded ER authority from three to nine Border Patrol Sectors, implementing the program across the entire Southwest border. As of September 5, 2005, 17,428 aliens have been placed in ER proceedings, with 14,679 being removed.

The ER process results in a final order of removal, which prohibits re-entry for a period of at least five years, absent special permission. This deters unlawful entry, and makes it possible to pursue future criminal prosecution against those aliens who continue to enter the United States in violation of the law. But the most important benefit of ER is that it streamlines the processing of inadmissible aliens, because individuals in ER proceedings are, generally, not entitled to a hearing before an Immigration Judge, or eligible for release on bond, unless they express a credible fear of return. In FY 2004, the average detention time for third-country nationals in removal proceedings before an Immigration Judge under Section 240 of the Immigration and Nationality Act was 71 days. However, the average length of detention for those third-country nationals in ER not claiming credible fear was only 25 days.

Expedited Removal is an excellent tool to deter illegal migration, but the ER program must be carefully managed with the appropriate human resources and transportation requirements. Moreover, mandatory detention ensures measurable progress toward a 100 percent removal rate. Deterring future entries and accelerating removal of aliens ordered removed will enhance DHS's ability to secure the border, and to focus its resources on threats to public safety and to national security.

Expedited removal between ports of entry has provided DHS with an effective means of enforcing our immigration laws. DRO fully supports the principle of Expedited Removal as it deters foreign nationals without protection claims from illegally entering our country, ensures expeditious removal of aliens illegally present in the United States, and reduces the growth of the absconder population.

#### **CONCLUSION**

In conclusion, the ability to detain aliens who attempt to enter our country illegally while admissibility and identity is determined, as well as to quickly remove foreign nationals without protection claims, is critical to national security and public safety. With the implementation of Expedited Removal, DRO has partnered with the CBP Office of Border Patrol in a DHS initiative designed to utilize our combined resources in order to secure the Southwest border. By aggressively enforcing our immigration laws, we will continue to seek the strengthening of the legal immigration process for worthy applicants, and to deter criminal and terrorist organizations that threaten our way of life.

I thank you for the opportunity to testify today on behalf of the dedicated men and women of DRO, and look forward to working with this Subcommittee in our efforts to secure our national interests. I will be glad to answer any questions you may have at this time.

Mr. LUNGREN. Thank you very much, Mr. Torres, for your testimony.

The chair would now recognize our final witness, Mr. Daniel Fisk, the deputy assistant secretary for Cuban and Central American affairs and policy planning and coordination for the Department of Justice. Mr. Fisk will testify about the State Department's role in facilitating country clearance and travel documents for the removal of aliens.

#### **STATEMENT OF DANIEL FISK**

Mr. FISK. Chairman Lungren, thank you very much.

Ranking Member Sanchez, good to see you again—and other distinguished members of the committee.

I appreciate the opportunity to be here today to discuss, from the perspective of the State Department's Bureau of Western Hemisphere Affairs, our role in supporting the expedited removal process for undocumented aliens.

We fully understand the vulnerabilities posed by insecure borders and share your concern about securing our frontiers against criminals and terrorists. As the Deputy Assistant Secretary of State with responsibility for relations with Central America, I am most familiar with the issue of undocumented aliens from that region.

Our role in immigration enforcement is primarily to engage with the foreign governments to facilitate their cooperation in repatriating their citizens expeditiously. We work closely and cooperatively with the Department of Homeland Security, both here in Washington and with DHS personnel stationed in our embassies overseas.

As this Subcommittee well knows, other than Mexican nationals, some of the largest flows of undocumented aliens comes from Central America. These governments are very aware of the security challenges posed by this flow to the United States and have traditionally worked cooperatively with us to repatriate their citizens.

Since the approval by DHS of the initiative to expand the use of expedited removal, we in the Western Hemisphere Affairs Bureau have taken several steps to assist with the implementation of this.

First, to make sure that our own diplomatic personnel in Central America understand the new policy and its objectives, I met last week with our Ambassadors to that region to walk them through the policy. Prior to that, in the case of El Salvador specifically, our Embassy there hosted a DHS delegation for initial discussions with the government of that country.

Here in Washington, together with DHS representatives, I have met with the Ambassadors from El Salvador, Guatemala and Honduras, not only to inform them that the U.S. Government is dedicating increased resources and personnel to border security, especially to detaining and returning undocumented aliens attempting to cross our border, but also to lay the foundation for more detailed government-to-government discussions on the logistics of implementing this program.

In Central America, specifically in Honduras, El Salvador and Guatemala, U.S. Embassy officials, either at the Ambassador or Charge level, have already communicated with senior government officials to reinforce this message, reiterating that increased border security benefits all countries in the region by allowing a greater focus on aliens with criminal or terrorist links.

With this enhanced emphasis on expedited removal, Central American governments will be required to dedicate more resources and personnel to the repatriation of their citizens who are detained while trying to cross our borders illegally. In particular, we have emphasized the need for these governments to increase the resources they dedicate to providing travel documents and streamlining other repatriation procedures.

The response from these governments has been positive. They are friends and allies and have approached this with us in a constructive manner. For example, the Honduran government has already identified consular officials able to travel to DHS detention centers for week-long periods to issue travel documents. The Honduran Embassy here in Washington is also working to put their DHS-provided videoconferencing equipment to use to obviate the need for such consular travel. And Honduras has agreed in principle to allow more deportee flights and increased access to other facilities.

In El Salvador, we have met with the Minister of Government and President Saca himself to enlist their cooperation on accepting a greater number of repatriations. The Salvadorian government has agreed to form a working group with us to examine how best El Salvador can accept greater numbers of deportees.

And in the case of Guatemala, the Guatemalan Foreign Minister has agreed that Guatemala will take the necessary measures to accept the increased flow of its repatriated citizens.

The Central American nations have been cooperative, but they are looking to the United States for help in processing the return of these migrants. Specifically, some countries have asked for resources to help improve airport reception detention facilities to deal with returned criminal aliens and to expand processing facilities to handle an increased number of flights.

Mr. Chairman, we agree that securing America's borders is a critical issue. We look forward to continuing to work with our colleagues in DHS in implementing the Secure Border Initiative. Again, thank you for the opportunity, and I will be happy to take questions.

Mr. LUNGREN. Thank you very much for your testimony.

Again, I would just mention for Mr. Souder's edification that we have an emergency GOP conference at 3 o'clock, so we are going to have proceed expeditiously here. And I would presume that if we have other members who come and want to ask questions, we might have to recall the witnesses at a future date.

I will just limit myself to 5 minutes.

Mr. Fisk, what you have told us sounds very, very positive, and I would assume that members of Congress may be positively disposed to assisting some of these countries with some of the requirements that they have if that is going to lead to greater implementation of expedited deportation.

It strikes me, though, that all the countries you mentioned are countries who are beneficiaries of the Central American Free Trade Agreement that many of us just worked on here in the Congress, and I would hope those countries would understand that many of us who supported that also support the implementation of expedited deportation in this regard.

Can you tell me whether it has ever been discussed in the State Department, either shared with or not shared with these countries that we are talking about, the authority that you have under section 243(d) to withhold issuance of visas to nationals of foreign countries who deny or delay accepting their citizens back?

Mr. FISK. I will speak to what I know in terms of the Western Hemisphere Affairs Bureau, and I am not aware that we have raised that issue at all with them.

And I would submit, Mr. Chairman, at this point, these are friendly countries. We are trying to approach this, and I am convinced they are trying to approach this, in a constructive way. And that at this point all these instruments I think have their place in terms of the application. But we have not specifically discussed that, and at this point, I think it is premature to go to them and kind of wave an ugly stick around.

Mr. LUNGREN. Well, it may be premature but you should get a sense of what we are hearing from our constituents back home. And when you see an OTM policy which basically results in Brazilians coming to the United States in increasing numbers and instead of running away from our Border Patrol officers seeking them out so they can be arrested so they can be caught and released, you have got to realize that people think that maybe waiting around for something else is not what we have in mind.

I understand, I am a friend of these countries, I supported CAFTA, but the message ought to be very, very loud and clear from the Congress to the State Department that in fact we would like action now, not later, and very much appreciate the fact that we are being informed of an expansion of this program as far as the Department of Homeland Security is concerned, but if it does not get an improvement in terms of the documents that are required by these other countries, it just may not work.

Chief Aguilar, can you tell me if the State Department was involved in the planning process in this new policy that you have articulated?

Mr. AGUILAR. Expedited removal, as implemented, was implemented across the nine southwest border sectors. The State Department is definitely aware of the concerns that we had—

Mr. LUNGREN. Right. I am not asking about whether they were aware. Were they part of the planning? When you were coming up with this, did you go through the problem that would exist if you started getting all these folks and actually filled up all your detention beds and we did not have an improvement in the cooperation that we are having from these countries, that in fact the whole program could not succeed?

Mr. AGUILAR. Yes, sir, it could implode. The State Department was being talked to throughout the actual planning processes.

Mr. LUNGREN. What challenges has the Border Patrol experienced in its implementation of the expedited removal authority to the three Border Patrol sectors a year ago?

Mr. AGUILAR. Absolutely outstanding situation. Let me give you an example, Congressman. In McAllen Center, which was the most impacted sector for Brazilians throughout the nation, during the first 30 days of implementation of E.R., the number of Brazilians apprehended dropped by 54 percent. At the 60-day mark, it dropped by over 90 percent and is still continuing to drop.

Mr. LUNGREN. So the word got out.

Mr. AGUILAR. Absolutely, yes.

Mr. LUNGREN. What about challenges? Any particular challenges you have had in implementing the policy?

Mr. AGUILAR. No, sir. The only real challenge that we had was a bed space requirement, but myself and Mr. Torres worked together immediately on making the most of those beds that were available at the time of implementation. And since then, I am sure the congressman's aware, there have been an additional 1,800 beds now allocated to DRO.

Mr. LUNGREN. But if there were no challenges that you saw other than bed space, why hadn't we pursued this policy before?

Mr. AGUILAR. Because at that time when we implemented, we had to approach it in a very measured approach because of the limited bed spaces that we had. We did not want to overload the system.

Mr. LUNGREN. So the limiting factor was the bed space.

Mr. AGUILAR. Yes, sir, absolutely.

Mr. LUNGREN. And would continue to be the case if we do not give you enough space, correct?

Mr. AGUILAR. That is correct.

Mr. LUNGREN. Anything else limiting it?

Mr. AGUILAR. No, not from a Border Patrol operations perspective. I believe Mr. Torres would have some concerns with the ability to remove these people as fast as possible.

Mr. LUNGREN. Mr. Torres?

Mr. TORRES. Yes, Mr. Chairman. In addition to the beds and having to implement the use of those beds in a measured approach, there are two other factors I see that could limit the success of expedited removal.

One of them is the ability for us to get travel documents and also obtain the country clearances in a timely fashion. Currently, as expedited removal is implemented, it takes ICE about 10 days to get a country clearance to send someone back on an escort to that foreign country to remove someone.

When we implemented this, it was an average of about 32 days in the San Antonio area of detention for each person that was arrested. The other part of that timeframe, in that 30-day timeframe, had to do with actually getting the travel document. In some instances, the majority of the Brazilians did arrive with travel documents, but when they did not, it requires us to detain them until we actually get those travel documents.

Mr. LUNGREN. Thank you very much.

Ms. Sanchez?

Ms. SANCHEZ. Thank you, Mr. Chairman.

And thank you again, gentlemen.

I would like to ask Mr. Fisk, what do you say to all of this? I mean, has there been—from your standpoint, and I know you may have a limited view, maybe you were not in these meetings, but from your understanding, what are the types of meetings that have gone on to try to iron all of this out? Because, according to Mr. Torres, it is not just bed space but it is travel documents and country clearances. So what kind of collaboration has been going on or has there been, and do we need to change that?

Mr. FISK. Thanks for the question.

Having been in government long enough, I realize that the inter-agency process has its own dynamic, just the government communicating with itself.

My assessment is in this case the communication has worked very well. Our office, first and foremost Mexican Affairs, was brought into the process very early in the process with Mexico being an early focus point. Also our Brazilian and Southern Cone office also has been involved on the issue of the Brazilians.

From the Central America perspective, I probably spent more e-mail time, phone time and meeting time on this issue recently in the last few weeks, and it competes with just about any other issue, except Nicaragua possibly, in terms of the concentration of my time and attention.

And, frankly, DHS has been very proactive in reaching out to us, so I have been very, very pleased and feel like that we have been partners in this process. And in fact one of the things I wanted to point out in my statement was how much of this we have done together with DHS, State and DHS at the table together.

We want to make it clear, and it goes back to Chairman Lungren's comment, make it clear what the message is. The policy has changed. Expedited removal is a reality. It is happening. We are not here to debate that point. It is time to move on to the other issue, which is logistical implementation.

Ms. SANCHEZ. So the policy has changed, you guys are working together. What can you estimate will be the difference between the old policy and today's policy with respect to actually returning—

Mr. FISK. As I understand, and I will defer to my colleagues from DHS, but it goes to the issue of how long an alien spends time in detention. DHS can speak to what its goals are in that. My job at State is not to argue with that, my job is to help them make that happen, and that is what we have committed to, in this case, the Central Americans specifically.

Ms. SANCHEZ. To you, gentlemen.

Mr. TORRES. Sure. With respect to the amount of length of stay for people that we arrest and then detain, we would like to cut that down by 50 percent. One of DHS's goals currently is to get to 100 percent detention of OTMs by the end of fiscal year 2006 but also reduce the amount of length of stay that each person remains in custody. Currently, as we saw in south Texas, it was 32 days. We are seeing that drop now to about 25 days, and we would like to cut it down even further and get it between 10 and 15 days.

Some of the instances that I talked about in getting those travel documents is that some of these countries require a personal interview of all their foreign country nationals, of their nationals that we are going to return to them. And so until they can actually provide a consular official to our detention site, we are at their mercy at that point where we are detaining someone while the consul will make, what we call, a 2-week run. They may hit each facility once every 2 weeks and then they will interview as many as they can that day and then continue on to the next detention facility.

That is one of the reasons why we have taken a serious look at implementing the video teleconferencing concept, and right now Honduras has actually accepted and bought off on that idea, and we are working through the implementation of that, and we are still awaiting back to hear from El Salvador and Guatemala.

Ms. SANCHEZ. Mr. Torres, is 100 percent detention of OTMs possible?

Mr. TORRES. With the current resources we have, no, but that is why we have a homeland security at DHS level working group with representatives not only from State but from Detention and Removal Operations, from our Investigative Division, from the Office of the Border Patrol, as well as from throughout the remainder of Customs and Border Protection, their resources.

They are all working very hard at this over the past 6 to 8 weeks, and this has been one of their top priorities. Their sole focus right now is, how do we make this work and how do we actually identify how many resources we will need and what will it cost them.

Ms. SANCHEZ. What is the criterion used to determine whether an OTM individual arrested by the CBP versus a criminal alien arrested by the ICE agents is detained? And how is it possible to address these competing demands given the tremendous shortage of funded detention space?

Mr. TORRES. That is an excellent question. We have our priorities. We set a prioritized scale of how we implement our detention bed space. Obviously, national security is the highest priority. Community safety is another priority, and then there are some people that we arrest that its mandated statutorily that we have to detain them. I am talking about criminal aliens that are aggravate felons that fit into that category. In this instance also, when you use expedited removal, it is mandated we have to, by statute, actually detain the aliens.

So the question then becomes, do we hold a criminal or do we hold someone that is a non-criminal that is here that is being charged with expected removal, which is one of the reasons why we are using the measured approach.

In working with all three of our staffs here and addressing the problem, we take a look at we do not want to let criminals back out on the street, we have to ensure that there is sufficient bed space for national security arrests and still be able to apply a significant portion of our beds for expedited removal of non-criminals. And so we look at other ways to make the system more efficient, such as getting travel documents more quickly or being able to get country clearances for our officers that travel in a more expeditious manner.

Mr. LUNGREN. Thank you.

Mr. Souder?

Mr. SOUDER. I appreciate we have a time restriction here, so I am going to ask a series of questions and would ask for written responses. I will get you the questions in writing so that you do not have to necessarily remember them all.

First, in OTMs, we have in the staff supporting documents here, Mr. Torres had some but from Pakistan and Iran, and I know this is collected because at San Isidro I was given how many people had been detained from terrorist-watched nations, how many were actually on a terrorist watch list. But could you give us a list that you have of the OTMs that you have intercepted, why don't we say, this year from terrorist-watched nations?

Then I am also, as you well know, interested in narcotics. There is a difference between somebody indicted and somebody who is on a watch list, that you would expect they are part of an organiza-



tion. I would like to know how many of those may be there that, in effect, either we are going to deport or would in worst case be let go to return on their own recognizance.

Also, the percentage that are actually on a terrorist list, which would be the highest priority from the national security.

Then we have some information on this but I would like to know who actually shows up at their deportation hearing. Are they stupid or are they people with a challenge? Are they people who are ready to go home? It is not clear why if you were let go on your own recognizance you are going to show back up.

And I would like some kind of comment on that. And if you would also give us—I heard the chairman's question, and you answered this to some degree, but if you could—I heard Mr. Torres make the comment—I am sorry, Mr. Aguilar's opening statement, but that you said that you felt expedited removal was a deterrent.

Do you believe it is more of a deterrent than being held in prison, say, for 6 to 12 months before you are deported? Because in many of these cases, particularly if it is not that far, they will work their way right back up.

And since we know they have committed an illegal act or they would not have been detained, and we are detaining them not technically doing the whole term, I do not understand, and it is clearly, as you stated a beds question, why they should be let go on their own recognizance at all.

Another question I have is, do we have any Mexican citizens who have been on a terrorist watch list? Because part of this debate over the border and OTMs, and I will ask that also of other Central and South Americans, or in effect do we need to separate the OTM and the Mexican question? One is more of a work and immigration question, one is more of a terrorist question.

And if you have people that you have intercepted on a terrorist watch list who have a Mexican I.D. or a Nicaraguan I.D. or an Ecuadorian I.D. or a Brazilian I.D., were they actually long-time nationals of those countries or are they people who got a Mexican I.D. or a Brazilian I.D.? In other words, in the homeland security area as we look at this and try to look at the broader question of how we are going to secure the border, which is very controversial in how we are going to deal with immigration and other questions.

But in dealing with the OTMs, are we really looking in a security risk at Mexicans, Central and South Americans here as a security risk or are we actually looking in a smaller group and where are they, and do some of them move then if would just concentrate on them, to pick up false I.D.s, and then does that give you when you are screening a whole different look?

And particularly in the detention if we have a limited number of beds, if we don't fund it to give 100 percent, shouldn't that be the target then of those who are greatest risk if you say you have a national security type of thing? And I wanted to see the data that would, in effect, back that up.

I thank you for your work, look forward to continuing with you as we go through multiple hearings of this committee and also the Government Reform and Oversight, but we are trying to move through some legislation yet this fall, if possible, on this border, on

OTMs, on the guys who do the running, whether we need more beds.

One other comment also: I am bothered by this 100 percent capacity question. I have visited pretty much almost every crossing on the South and a few in San Isidro and the major Texas crossings multiple times. I have never seen the beds full. I have been there in the middle of the night, I have been there in the morning, I have been there in the afternoon. I have never seen them full at any single location. And I am curious where that number comes from.

Can't they at least be detained for a while then before they are released? In fact, the last two times I did not see—I think there were two people in the whole unit at the border.

Mr. LUNGREN. You are going to submit questions?

Mr. SOUDER. Yes. I will give those in writing, and they have got the general drift. And I believe the data is there.

Mr. LUNGREN. Right.

I want to thank you for appearing. We normally would have a longer hearing and have more members here, but we have had some unexpected news today, and we are required to have a Republican conference that was not scheduled until about 2:10 today.

We thank you for this.

This subcommittee will continue with its interest in this issue, and I just want to assure you that we congratulate you for expanding this program. But I should also tell you that members of Congress feel very, very, very strongly about this issue, and I think most of them would encourage you not only to do what you are doing but to be as vigorous in pursuing that as possible.

And once again, thank you for being here.

This subcommittee hearing is adjourned.

[Whereupon, at 2:56 p.m., the subcommittee was adjourned.]

#### FOR THE RECORD

QUESTIONS FOR FOR DAVID AUILAR AND JOHN P. TORRES FROM HON. MARK E. SOUDER

**1. Do you believe expedited removal is more of a deterrent for OTMs than being held in prison for six to 12 months before deportation?**

**Response:** The Department believes that one hundred percent detention and guaranteed rapid removal of the vast majority of OTMs via expansion of Expedited Removal will have far more deterrent effect than the current approach because it will achieve increased certainty of outcome at an acceptable cost. Six to twelve months of ICE detention is far more costly than the two to five weeks of detention that are usually needed to arrange travel documents, country clearance and transportation for repatriation in an Expedited Removal (ER). The costs of so-called "regular" removal proceedings under Section 240 of the Immigration and Nationality Act, which include the costs to the government of the immigration judges and ICE trial attorneys that prosecute the cases, are also significantly higher than those associated with expedited removal. In addition, the longer process enables the aliens to apply for forms of relief and extend their stay by repeated appeals. While it is anticipated that the vast majority of OTMs would be removed via ER, CBP would like to continue the 240 proceedings in order to pursue criminal charges against the alien or to ensure the longer bar to reentry (NB: Normal Section 240 proceedings can result in a ten year bar to reentry, while Expedited Removal provides for a five year bar).

**2. Could you provide a list of the OTMs that have been intercepted this year from terrorist-watched nations?**

**Response:** Nationals from foreign countries are evaluated based on threats. This information is Law Enforcement Sensitive and will be provided upon request.

3. As you know, there is a difference between an OTM that is indicated and one who is on a watch-list that you would expect is a part of an organization. **How many of those that are scheduled to be deported return on their own recognizance? Also, what percentage of OTMs that are being deported, are on a terrorist watch-list?** I am also interested in which of these OTMs actually show up at their hearings unless they are looking to be deported.

**Response: A:** Approximately 15 percent of all aliens scheduled for removal and who were not detained at the time of their order surrender for removal. This means approximately 85 percent do not surrender for removal. Some portion of the 85 percent eventually self-deport. However, our databases do not record whether the alien self-deported or whether the alien's deportation was arranged for and paid by the government. In addition to those aliens who later self-deported, others were removed after being apprehended by fugitive operations.

**B:** This information is law enforcement sensitive and can be provided separately upon request.

**C:** ICE does not collect data that shows how many aliens failed to show for their hearing. The Executive Office for Immigration Review annual statistical report indicates an overall failure to appear rate for all aliens (not just aliens of special interest) of 25 percent for FY 2004. This number includes all aliens scheduled for removal proceedings, regardless of detention status. The rate for non-detained aliens is 40 percent and the rate for those released on bond or recognizance is 37 percent.

The Department of Justice Office of the Inspector General (OIG) issued a report in 2003 (Report #I-2003-004) that focused on the former INS' ability to remove aliens based on their detention status. Of their sample, the OIG found that 92 percent of detained aliens were removed. Of the non-detained aliens, the OIG found that only 13 percent were removed.

4. **Does our country have any Mexican citizens who have been on a terrorist-watch list? Do you have people that have been intercepted on a terrorist watch-list who have a Mexican, Nicaraguan, Ecuadorian, or Brazilian ID? As we deal with OTMs, are we really looking at Mexicans and Central and South Americans as a security risk or are we actually looking for a smaller group that we focus our concentration on to pick up false ID's?**

**Response:** The content of the Terrorist Screening Database (TSDB) is maintained by the Terrorist Screening Center (TSC) under HSPD-6. Border Patrol Agents have received counterterrorism training and are trained to look for indications in an alien's personal effects, demeanor and behavior for terrorist or other factors that might require additional scrutiny or screening, regardless of nationality. Border Patrol policy and protocol requires referring any suspected terrorists or persons that may present a terrorism risk for additional records checks via the National Targeting Center (which links with the TSC's terrorism watch list). ICE is notified of the apprehension of potential suspects through the NTC; the Joint Terrorism Task Force is also alerted for possible further action.

With regard to false identification, most aliens apprehended are not in possession of documents. However, agents are trained to: question those persons apprehended about their immigration status; look for signs of criminal activity (such as gang membership or smuggling operations); identify attempts at false identities; and watch for other terrorist indicators. All apprehendees' names and fingerprints are run through IDENT/IAFIS to determine if there are outstanding criminal or immigration violations. In addition, through questioning, agents are often able to identify false citizenship claims. For example, using various Spanish dialects or idioms, for example, which may be unknown to someone posing as being from a certain country.

5. **I am troubled by the multiple reports that we are at 100-percent capacity for detention beds. I have visited every major border crossing on the southern border and the majority of crossings on the northern border and I have yet to see the beds full at a single location. In fact, the last time I was at the southern border, there were only two people who were being detained.**

**Response:** ICE DRO operates at 100 percent of funded detention capacity. As a function of the apprehension and removal process, the population at any detention facility will fluctuate during any given period. However, the fluctuation will always be within a small percentage of the ICE operational capacity. The Office of Border Patrol and the ports-of-entry maintain holding cells within their offices. These cells are designed for very short-term detention; they are not staffed or equipped for sustained detention, but as interim housing until the alien can be transferred to a DRO detention facility. As a result, these beds are not counted as part of the DRO capacity for detention.

QUESTIONS FOR THE RECORD FROM REPRESENTATIVE DAN LUNGREN

1. The Subcommittee is very supportive of the new expedited removal policy initiative of the Department but your written testimony provides very few details about how the Border Patrol plans to effectively implement the use of expedited removal along the entire southwest border of the United States. The success of this program is truly in the details—specifically the level of coordination and cooperation between CBP, U.S. Immigration and Customs Enforcement, and the State Department.

• **Was U.S. Immigration and Customs Enforcement (ICE) involved in the planning process and if so, to what extent?**

**Response:** ICE has been involved in the planning and execution of the new expedited removal initiative. ICE's Detention and Removal (DRO) and CBP have worked together to streamline the removal process and maximize efficiencies. CBP and DRO exchange information to track developing trends in apprehensions and provide resources where needed. Likewise, DRO has worked with the Department of State to elicit support from those countries most affected by the new expedited removal policy. State and DRO encourage these countries to increase their efforts in issuing travel documents and receiving their nationals quickly to minimize the aliens' time in detention.

• **Was the State Department involved in the planning process and if so, to what extent?**

**Response:** Through the US-Mexico Border Partnership Plan of 2002 and strengthened in the Security and Prosperity Partnership for North America (SPP), DHS and the Department of State are working with the Government of Mexico to coordinate visa policy as one of many tools to enhance security in the hemisphere. The Department of State is also currently working with the governments of several Central American countries to expedite the issuance of travel documents necessary for the repatriation of their nationals and to increase capacity to receive their repatriated nationals. For example, El Salvador presently accepts only 140 of its nationals per week even though the average weekly apprehension rate for Salvadoran nationals is over seven times higher at approximately 1,000. This 140 equated to two flights of 70 El Salvadoran nationals, split fairly evenly between criminal and non-criminal aliens. However, as the result of discussions between the government of El Salvador and DHS, in October 2005, El Salvador agreed to an unlimited increase in the number of non-criminal deportees per week and to an increase in the number of flights for these non-criminal deportees. A limit of one flight of 70 criminal deportees per week remains.

• **What challenges has the Border Patrol experienced since implementation of expedited removal authority to three border patrol sectors a year ago? How has the agency dealt with those challenges?**

**Response:** The ER pilot program was implemented in the Tucson and Laredo Border Patrol Sectors in September 2004. During the planning of the pilot program, ICE dedicated substantial detention resources to the program. Therefore, no placement challenges were experienced by those sectors. As expedited removal is expanded to other sectors, the Department has worked to allocate adequate detention resources and prioritize aliens for detention. For example, under "Operation Texas Hold 'Em," ICE and CBP partnered to detain one hundred percent of apprehended Brazilians for Expedited Removal in the Rio Grande Valley Sector (formerly McAllen). The Secretary announced expansion of Expedited Removal to the entire southwest border in September.

A Department working group considered: 1) designated points of contact for both agencies in the field and at the Headquarters level; 2) transportation issues; 3) daily intake levels; and 4) the initial nationalities that were going to be processed for the 1,800 newly-acquired detention beds primarily for the Del Rio and Rio Grande Valley Sectors. The remaining seven southern border sectors were also advised to expand the use of ER to the extent possible based upon available detention beds by their local ICE Detention Centers.

2. In March, this committee examined whether U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) should be merged back together because of reported problems created by the artificial separation of border enforcement and interior enforcement. One of the problems the committee identified is that "bureaucratic walls" have developed between the two agencies.

• **Please describe for the committee the challenges your agency faces by having a separate agency making the decisions whether the aliens your**

**agents apprehend are able to be detained? What level of cooperation and what changes are necessary to make this policy initiative a success?**

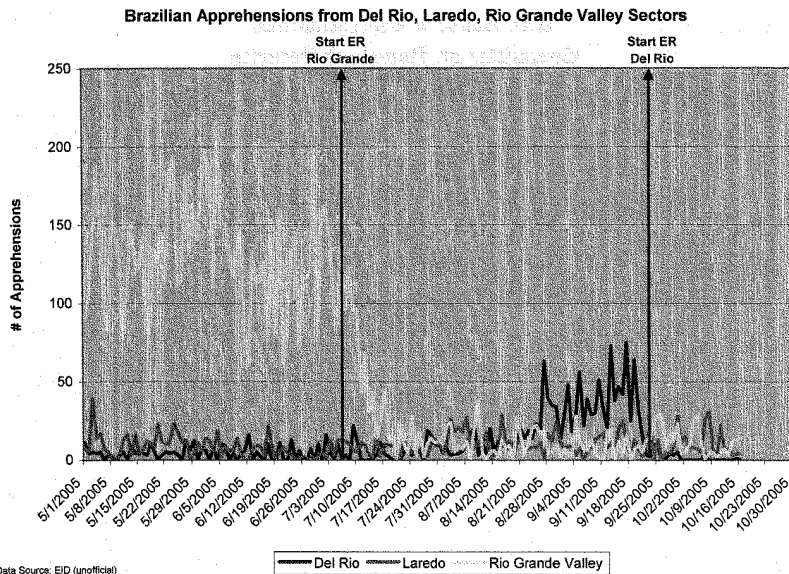
**Response:** The Department is working with CBP and ICE to ensure that a new model of enforcement is being developed so that CBP and ICE detentions can be tied together. To meet the Secretary's stated goal of ending catch and release, the Department is developing an allocation plan of detention beds, a personnel plan and transportation plan to accommodate these removals

3. The Border Patrol is truly "on the front lines" of defending our homeland. However, the Department's "catch and release" policy for dealing with Other than Mexicans has only created an incentive for more illegal entries.

**• In your view, what impact have you seen over the past year since expedited removal has been used, and what impact do you anticipate from full implementation along the entire southwest border?**

**Response:** The use of expedited removal is an effective deterrent against attempted illegal entry because it requires mandatory detention and rapid repatriation. ER sends a strong message that an illegal entrant will not be released into the country but detained and removed. In the Laredo and Tucson Sectors, the original ER pilot sectors, ER has had a significant impact. Implementing ER in these sectors ended the significant increase in the rates of OTM apprehensions that had been seen in neighboring sectors without ER. The Rio Grande Valley Sector, for example, began ER on July 1, 2005 under "Operation Texas Hold-Em". In that sector, the majority of aliens placed in ER proceedings were Brazilian nationals. Analysis of statistical and intelligence indicators of application of ER for Brazilian illegal entrants in the Rio Grande Valley Sector showed that a rapid and significant decrease in apprehensions resulted from the implementation of ER. The combination of detention resources and accelerated repatriation has deterred illegal entry by Brazilian nationals in the Rio Grande Valley. Brazilian illegal entrant apprehensions, which were averaging 125 to 131 per day during May and June, decreased to only ten per day by the end of August. The successful outcome of "Operation Texas Hold-Em" in the Rio Grande Valley Sector is attributed to the close cooperation between CBP and ICE/DRO in allocating bed space and other detention and removal assets to ensure the detention and removal of all apprehended Brazilians placed in ER.

The San Antonio Field Office of ICE/DRO has also been helpful in providing not only the maximum number of detention beds available in the system and securing travel documentation and repatriation transportation for the program. The overwhelmingly positive operational outcome of "Operation Texas Hold-Em" hinged upon this strong and continued level of support for the duration of the operation.



On September 14, 2005, Secretary Michael Chertoff announced the extension of ER across the entire southwest border. This completes the implementation of ER

as an enforcement option across the southwest border. San Diego, El Paso, Marfa, Del Rio, Yuma, Rio Grande Valley, and El Centro have complete ER authorization. Tucson Sector (TCA) and Laredo Sector (LRT) continue to have DRO bed space available for *all* of their apprehended ER eligible OTMs. With the implementation of ER in Del Rio Sector on September 19, 2005, the shift of illegal Brazilian entrants to the Del Rio Sector, following the implementation of ER in the Rio Grande Valley Sector, has been reversed.

To support the ER expansion, ICE/DRO has allocated 1,800 additional beds. The 1,800 added beds have a positive operational impact on Brazilian OTM apprehensions. For example, for the entire month of October 2005, only five Brazilian illegal entrant aliens subject to ER proceedings were apprehended in Del Rio Sector. Although a total of nine Brazilian OTMs were apprehended, four were juveniles and family members who, according to policy, are not placed in Expedited Removal. Therefore, prioritization for detention space has been shifted to Hondurans, although apprehensions show signs of declining below available bed space.

The ER program has shown significant success everywhere it was implemented. ER is central to the implementation of any plan to detain and remove all illegal entrant OTMs subject to removal.

**4. What are the specific procedures that CBP agents must engage in when processing an alien for possible expedited removal?**

**Response:** Before DHS can process an illegal alien for ER, DHS must first determine that:

- The alien is present in the United States, without having been admitted or paroled following inspection by a CBP Officer at a designated port-of-entry, AND
- The alien was encountered by a Border Patrol Agent within 100 air miles of the U.S. international border and has not established, to the satisfaction of the agent, a physical presence in the U.S. continuously for the fourteen (14) day period immediately prior to the date of encounter. Once that determination has been made, DHS must also ensure that the alien is eligible to ER.
- The alien is in a category of persons qualified for ER. ER cannot be applied to the following aliens, due to policy, statute, or judicial action: Unaccompanied Juveniles; Cubans; El Salvadorans; and verified members of the class action settlement in *American Baptist Churches (ABC) v. Thornburgh*.

Aliens placed in ER who indicate an intention to apply for asylum or a fear of return are referred to a USCIS asylum officer for an interview to determine whether the alien has a credible fear of persecution or torture. If the alien establishes a credible fear, he or she is referred to an immigration judge for removal proceedings under section 240 of the Act where the alien can obtain adjudication of his or her asylum claim. An alien, who is determined not to have a credible fear, after an opportunity for review by an immigration judge, remains eligible for ER.

All persons apprehended—whether ER candidates or otherwise—who meet appropriate age guidelines (juveniles under fourteen years of age are not included) are entered into the Integrated Automated Fingerprint Identification System (IAFIS). This system checks the subject's ten fingerprints against IAFIS and IDENT for prior immigration or criminal encounters, or violations. Once these checks are completed, and if no derogatory information is found, DHS can then process the alien. If it is determined that the alien is eligible for ER, DHS verifies the availability of bed space and processes the alien for ER. Once the processing is complete, ICE detains and removes the alien.

**• How much time does this take?**

**Response:** Aliens are processed through CBP's ENFORCE system. An agent will generally take between ninety and one hundred and twenty minutes to process the alien through the ER process. If a language barrier exists, such as with Chinese and Brazilian nationals, the use of an interpreter adds to the processing time.

**• Given the additional processing time the Expedited Removal process takes, what does the Border Patrol need to ensure that this program can be sustained without a reduction in Agent patrol time or other necessary duties?**

**Response:** Although the initiation of the ER process is only slightly longer than that required to place an alien in to standard INA 240 removal proceedings, the entire process is completed much faster than the standard removal proceeding. OTM aliens placed in INA 240 proceedings who are not among the priority detention classes (terrorist suspects, criminals) are generally released on their own recognizance (OR) with a notice to appear for a future hearing. OR can be problematic because release without any significant detention or bond does not generally result

in removal and therefore encourages numbers of other OTMs to try to enter illegally. The continued use and expansion of the use of ER should generate sufficient deterrence to result in fewer attempted illegal entries, and fewer expedited removals, therefore releasing agents for more patrol duties. To alleviate some of the differences in processing time over a standard removal proceeding, OBP is also planning to streamline the processing paths in the ENFORCE system to a single dedicated path for ER. In general, however, Border Patrol agents recognize the importance of ER as a tool in securing operational control of the border and support its use, regardless of processing time.

**5. What does CBP do differently when processing an OTM for Expedited Removal versus a Mexican citizen apprehended for illegally entering the U.S. for Voluntary Removal? Compare the time involved in each process for Border Patrol agents.**

**Response:** In order to capture the information needed on the legal documents required to process an ER case, border agents use two separate paths in the ENFORCE system. When an agent has completed the IAFIS and IDENT check on the Mexican national and the system responses are negative, the agent utilizes the Voluntary Return (VR) path of ENFORCE and completes the processing. The processing of a Mexican national for a VR to his country usually takes from five to fifteen minutes, depending on how quickly the biometric systems provide their return information. While the processing of an OTM for ER typically takes longer than the processing of a Mexican for VR, it does not make a significant difference in the total agent time spent processing because the vast majority of individuals apprehended are Mexican nationals.

6. The Subcommittee has a few questions regarding the training of Border Patrol agents:

**• How many Border Patrol agents have received Expedited Removal training?**

**Response:** Approximately eighty percent (7,970 out of a total of 9,971) of agents stationed on the southern border have received such training. The remaining agents were unavailable for training due to travel, temporary details to other duty stations, special operations or other temporary assignments and will be trained as soon as practical. The northern and coastal border sectors are next in sequence to be trained in ER, after development of a single consolidated training course, which addresses the unique training needs of sectors from all Border Patrol geographic areas.

**• Please provide a description of the training program including length of time and curriculum.**

**Response:** The Train-the-Trainer (TTT) sessions are sixteen hours in length and are used to train senior-level agents in the processes who will return to the field to train other agents. The field training is eight hours in length. Both the TTT and field training sessions consist of sections regarding the application of Expedited Removal, asylum referrals, Enforce Training, and practical exercises. The training concludes with a question and answer session followed by a course evaluation.

When available, representatives from CIS Asylum, Detention and Removal, and Customs and Border Protection Legal Counsel attended the training. These representatives provide valuable information regarding the asylum and removal process for persons expressing a credible fear of return to their home countries.

**• What was the cost to the Border Patrol of providing this training to each agent?**

**Response:** Substantive costs incurred by the Office of Border Patrol (OBP) during the Train-the-Trainer sessions were travel and per diem costs. This amounted to roughly \$12,600.00 per trainer for a total of \$50,400 for all of the TTT sessions along the Southwest Border. Training was supplied by the Office of Training and Development. Local field trainers conducted the training at their respective Border Patrol stations. Man-hours and training supplies constitute the majority of costs incurred during the Expedited Removal field training.

**• Will this training become part of the basic new agent training provided at the Border Patrol Academy?**

**Response:** The Border Patrol Academy will be included in the development of the new consolidated training syllabus and will be part of all training iterations for northern and coastal sectors. The Academy is planning to cover ER in both basic and advanced training and will develop systems and testing to validate such training.

**• How are Border Patrol agents trained to identify aliens with credible fear and asylum claims?**

**Response:** During the Train-the-Trainer sessions, a representative from CIS Asylum is present to instruct the asylum portions of the class. As part of their training, agents are directed to refer any alien claiming any fear of return to their respective asylum office.

During the Expedited Removal process, agents are mandated to ask every alien the following questions:

1. Why did you leave your home country or country of last residence?
2. Do you have any fear or concern about being returned to your home country or being removed from the United States?
3. Would you be harmed if you are returned to your home country or country of last residence?
4. Do you have any questions or is there anything else you would like to add?

Agents are also trained to look for non-verbal indications of fear, such as crying or trembling. When an alien's verbal response indicates any fear of return, or where the alien exhibits non-verbal signs of fear, the alien will be referred the local asylum office. Agents are instructed to be over inclusive when referring aliens to asylum.

Agents are also required to read a prepared statement advising the alien that if the alien has a fear or concern about return, he or she should tell the agent and that the alien will have an opportunity to speak privately with another officer about that fear or concern.

7. In your testimony, you describe the alarming increase of non-Mexicans or OTMs illegally entering the U.S. Based on your testimony, it looks like Border Patrol has apprehended about 90,000 more OTMs in FY05 than in FY04. (Note: There were 75,389 OTMs in FY04 and BP says that FY05 has seen a 119% increase, which equals 89,712.9 more for a total of about 165,101.9 OTMs total for FY05).

• **How can this enormous increase be explained in the number of OTMs crossing this year from last?**

**Response:** Economic factors generally spur trends in illegal migration and have been the principal motivation for aliens from developing nations, including most Central American countries. Another reason for an increase in illegal migration by OTMs is because the majority of those apprehended have been released on their own recognizance to attend immigration hearings. For example, virtually all of the OTMs that are scheduled for an immigration hearing at the Harlingen District Executive Office for Immigration Review (EOIR) do not appear for their hearings. For example, in FY04, the Harlingen District EOIR office, in Southern Texas, experienced a ninety percent no-show rate for the non-detained OTMs (also referred to as OR OTMs). Typically, illegal aliens will migrate to the United States by themselves, but upon establishing domicile in the United States, will then send for family members to join them, thereby continuing to contribute to illegal migration to the United States. Similarly, the existence of entrenched smuggling organizations makes the Rio Grande Valley Sector, formerly known as the McAllen Sector, a popular corridor for illegal aliens. Situated near the Panama Highway corridor, this route traverses through Mexico from the Guatemalan border and becomes I-35 at the Laredo, Texas border.

• **Can you provide the Subcommittee with an overview by Sector of how many OTMs are crossing the border and their nationalities?**

**Response:** The information below reflects the Office of Border Patrol's apprehensions for the Del Rio, Laredo and Rio Grande Valley Sectors from July 1 through the end of September 2005, which accounted for seventy-five percent (104,987 of 165,175) of all OTM apprehensions.

| DEL RIO SECTOR   |        |       | LAREDO SECTOR    |        |       | RIO GRANDE VALLEY SECTOR |        |       |
|------------------|--------|-------|------------------|--------|-------|--------------------------|--------|-------|
| COUNTRY          | APPS   | *ADOA | COUNTRY          | APPS   | *ADOA | COUNTRY                  | APPS   | *ADOA |
| HONDURAS         | 14,481 | 40    | HONDURAS         | 8,443  | 23    | BRAZIL                   | 18,475 | 71    |
| EL SALVADOR      | 8,886  | 24    | BRAZIL           | 4,563  | 13    | HONDURAS                 | 14,953 | 57    |
| GUATEMALA        | 3,724  | 10    | EL SALVADOR      | 3,909  | 11    | EL SALVADOR              | 12,509 | 48    |
| BRAZIL           | 2,462  | 7     | GUATEMALA        | 2,511  | 7     | GUATEMALA                | 3,917  | 15    |
| NICARAGUA        | 1,468  | 4     | NICARAGUA        | 522    | 1     | CHINA                    | 1,112  | 4     |
| ECUADOR          | 28     | <1    | ECUADOR          | 248    | 1     | NICARAGUA                | 788    | 3     |
| HAITI            | 24     | <1    | PERU             | 90     | <1    | COSTA RICA               | 425    | 2     |
| CHINA            | 14     | <1    | CHINA            | 80     | <1    | ECUADOR                  | 146    | 1     |
| COSTA RICA       | 14     | <1    | BOLIVIA          | 73     | <1    | ALBANIA                  | 100    | <1    |
| INDIA            | 12     | <1    | ALBANIA          | 37     | <1    | DOMICAN REPUBLIC         | 84     | <1    |
| TOP 10 COUNTRIES | 31,111 | 118   | TOP 10 COUNTRIES | 20,476 | 76    | TOP 10 COUNTRIES         | 52,503 | 201   |
| ALL OTHER OTMS   | 128    | <1    | ALL OTHER OTMS   | 314    | <1    | ALL OTHER OTMS           | 458    | 2     |
| GRAND TOTAL      | 31,239 | 120   | GRAND TOTAL      | 20,790 | 80    | GRAND TOTAL              | 52,961 | 203   |

\*ADOA represents Average daily OTM apprehensions.



The Office of Border Patrol arrested OTMs from 154 different countries; sixty-four percent (106,288 of 165,175) of the OTMs were nationals of Central American countries.

8. In your testimony, you mention the dramatic decrease in the Rio Grande Sector of Brazilian foreign nationals being apprehended from 60 to 20 per day since the Expedited Removal program was implemented.

**• Has the Border Patrol seen the aliens shift to Sectors without the Expedited Removal process in place?**

**Response:** When the Rio Grande Valley Sector (McAllen) began its ER program, there was an initial significant shift of Brazilian illegal entrants from MCA to the Del Rio Sector (DRT). This shift bypassed the Laredo Sector, which already had ER in place. This shift in apprehensions to DRT has been reduced and at the rate of apprehensions is even lower than previous levels of apprehensions of Brazilians with the implementation of ER in DRT. For the entire month of October, DRT has apprehended only nine Brazilian illegal entrants, five of which were eligible for ER. By contrast, the week before ER was implemented in DRT, there were 321 such apprehensions. No other shift in OTM entries to other sectors has yet been identified.

**• Have you seen similar reduction rates in apprehensions in other Sectors and with other nationalities?**

**Response:** Since ER has to date concentrated heavily on Brazilians and Hondurans, no other significant reductions have been observed for other nationalities.

Below is a depiction of the impact/reduction in Honduran arrest along the southwest border sectors from September 18, 2005 through October 24, 2005.

| Sector            | Arrests—Before ER Expansion<br>(08/12—09/17) | Arrests—After ER Expansion<br>(09/18—10/24) | Total Percentage Change |
|-------------------|--|---|-------------------------|
| San Diego         | 26   | 39  | 50                      |
| El Centro         | 31   | 34  | 10                      |
| Yuma              | 51   | 41  | -20                     |
| Tucson            | 293  | 210   | -28                     |
| El Paso           | 138  | 179   | 30                      |
| Marfa             | 31   | 21  | -32                     |
| Del Rio           | 2,190  | 1,329                                       | -39                     |
| Laredo            | 1,168  | 1,087                                       | -7                      |
| Rio Grande Valley | 3,581  | 2,887                                       | -19                     |
| <b>TOTAL</b>      | <b>7,509</b>                                 | <b>5,827</b>                                | <b>-22%</b>             |

This table captures the southwest border arrest of all Hondurans thirty-sevens days before and after the expansion of ER to the southwest border.

**9. Please explain the process for issuing a Notification to Appear (NTA) to an alien and then releasing the individual. How many NTAs did the Border Patrol issue in FY04 and FY05?**

**Response:** Aliens who cannot be removed under ER due to the current ER policy, statute, or via judicial action, or who otherwise require processing before an immigration judge, are referred for a removal hearing before an immigration judge under Section 240 of the Immigration and Nationality Act. The Border Patrol agent, after checking the alien's biographic and biometric information through the IAFIS and IDENT systems, and upon receiving a negative response, processes the OTM in Enforce to create the necessary forms and case file for this referral. Unlike ER, a Section 240 proceeding, barring a statutory mandatory detention requirement, allows for a discretionary decision by the apprehending agency whether or not the alien may post a bond or be released on his own recognizance rather than being detained, pending the hearing. Once the alien is processed he is provided with a future immigration hearing date, advised of the location of the immigration hearing, instructed

on the consequences of not appearing before the immigration judge on his specified hearing date, advised on how to notify the immigration judge in the event of a change of address, and released from custody. Aliens, other than arriving aliens, who have been denied a bond, have a right to a bond hearing and can be ordered released by an immigration judge after they are placed in Section 240 proceedings, unless they are subject to mandatory detention. See Matter of X-K—, 23 I&N Dec. 731 (BIA 2005).

During FY 2004, the Border Patrol released 45.25% of OTM apprehensions (34,164 of 75,500). During FY 2005, the Border Patrol released 69.57% of OTM apprehensions (114,912 of 165,175).

**10. The law requires that all aliens in the Expedited Removal process be detained prior to their deportation. Given the number of detention beds available, what is the total number of OTMs that Border Patrol can place in the Expedited Removal process?**

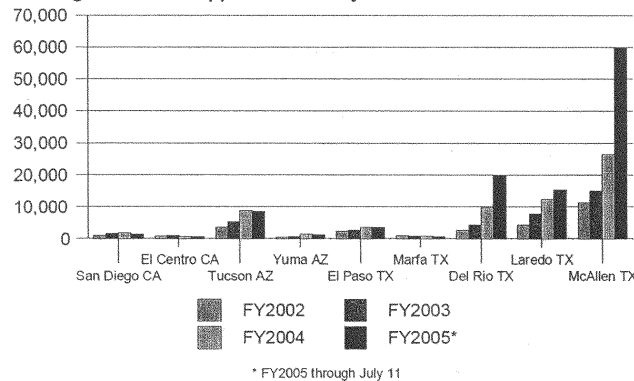
**Response:** At the outset of the ER pilot program in the Tucson and Laredo sectors, ICE and the Office of Border Patrol agreed that ICE would accept all ER cases. ICE completes all required processes to remove currently detained aliens, including obtaining travel documents from the foreign country. ICE dedicated 1,800 detention beds to the ER efforts, resulting in an additional 80 beds a day for the Del Rio and Rio Grande Valley. The number of available beds is expected to increase as the deterrent effect of Expedited Removal results in fewer apprehensions.

**11. Please describe for us the challenges faced by Border Patrol due to the fact that ICE controls the bed space available for aliens apprehended between ports of entry.**

**Response:** Currently there is very close cooperation between ICE/DRO and CBP/OBP in addressing and planning for increasing the number of detention beds available for ER and in the development of transportation plans to accommodate these removals to meet the Secretary's stated goal of ending catch and release.

**12. Has any trend analysis been done to determine why for the past 4 years (FY02–FY05), the McAllen Border Patrol Sector has had the largest number of OTMs? What is it about this Sector that makes illegal crossing so attractive? (see table on the following page) In addition to the Expedited Removal program, what is the Border Patrol doing to fortify this area?**

Figure 2. OTM Apprehensions by southwest Border Sector



Source: CRS Analysis of CBP Data.

**Response:** While illegal migration has many root causes, economic factors often spur the flow of migrants from Central American countries.

13. Over the past year, there have been repeated reports that ICE lacks sufficient detention space, which has caused ICE to release aliens that should otherwise be detained. However, full implementation of the expedited removal initiative along the southwest border will inevitably result in the need for more detention space.

• **What specific steps is ICE going to take in order to ensure that bed space is available for those aliens apprehended by Border Patrol that could be processed through expedited removal? What specific steps are being taken at the Departmental level to ensure adequate bed space?**

**Response:** ICE DRO fully participates in the Department's Secure Border Initiative (SBI). SBI will take a comprehensive view of immigration enforcement including border control and interior enforcement. ICE DRO, in conjunction with DHS, has been working closely with the Department of State and foreign governments to obtain travel documents to remove aliens apprehended at the border within 15 days of arrest. This expeditious processing and removal timeframe will provide a faster turnover of available detention space, which will result in a more efficient removal process. In addition, the SBI effort will require extensive increases in human and capital resources. The extent of that need is still being developed by SBI.

**• Was ICE part of the process in development of this initiative? Does ICE foresee needing further resources in order to make this policy a success?**

**Response:** ICE is an integral part of the Secure Border as it is responsible for the detention and removal of aliens, key components of the goal of gaining full control of our borders in order to prevent illegal immigration and security breaches.

14. In your written testimony, you state that "the ER (expedited removal) program must be carefully managed with the appropriate human resources and transportation requirements."

**• In your view, what are appropriate human resources and transportation requirements needed and do current plans fill these needs?**

**Response:** The Department is developing a comprehensive border security and immigration enforcement strategy that will outline the necessary resources and requirements.

15. The Subcommittee is very concerned about the level of coordination, or lack thereof, between ICE and CBP, and ICE and the State Department to implement the expedited removal initiative.

**a. Is this initiative being coordinated at the Secretary level of the Department? And if so, what specifically does ICE plan to do to deal with the detention space issue?**

**Response:** Secretary Chertoff has been very involved in all phases of the conceptual and development stages of this initiative and has been closely coordinating with other Department Heads. His office has worked with ICE and other DHS components to develop a comprehensive strategy to accomplish the objectives of the SBI.

The recent committee trip to the southwest border revealed serious management issues with available bed space. Our members were told that the decision on how many beds to fill comes from DRO Headquarters. However, when committee staff followed up on this issue, they were told that the decision is local.

**b. Can you please describe how the decisions about detention space are made, and who is responsible for making those decisions?**

**Response:** ICE operates at 100 percent of funded detention capacity. ICE manages its detention capacity nationally, in order to support the enforcement continuum as efficiently as possible, while providing for the safety and security of the detained population. As a function of the apprehension and removal process, the population at any detention facility will fluctuate during any given period. However, the fluctuation will always be within a small percentage of the ICE operational capacity.

**c. Do the local offices have flexibility and some autonomy? In other words, if there are available beds in a facility and Border Patrol calls ICE to determine if there is room, what steps have to occur to fill the bed and who has to sign off on the decision?**

**Response:** The ICE field offices have flexibility and autonomy. They can utilize their authorized detention capacity in order to best serve their respective customers, which includes Border Patrol, CBP Field Operations, and ICE Office of Investigations. ICE Field Office Directors work with their enforcement partners during the planning of special operations in order to make detention capacity adjustments locally and nationally.

**d. DRO has funding for about 19,400 beds per day. How many of those beds are available for the Expedited Removal program? How many current aliens in detention are OTMs?**

**Response:** The breakdown of detention capacity by population type can sometimes be very complex. ICE estimates that, prior to the Secure Border Initiative, it dedicated approximately 3,000 beds to support Border Patrol expedited removal operations in Tucson and Laredo Sectors. ICE DRO identified 1,800 additional beds to support expedited removal expansion within the scope of the Secure Border Initiative. As of the last week in FY2005, ICE had over 15,000 OTMs in custody.

**16. In the DHS announcement and subsequent press interviews, DHS has said that they will acquire additional bed space to house the expected increase in expedited removal cases. Where will these detention beds be located and how will DRO meet the bed space needs for the additional OTMs?**

**Response:** ICE DRO will work closely with the Department and CBP to identify the location of those beds.

17. The Subcommittee understands there is a unit that is dedicated to obtaining travel documents and country clearances.

• **Can you please describe this unit? (personnel, resources, when formed, etc.)**

**Response:** The Travel Document Unit (TDU) is a unit within the Office of Detention and Removal, Removal Management Division. It supports the field and overseas entities to ensure the safe and orderly removal of persons from the United States. The unit works with governmental and non-governmental organizations such as the Department of State, TSA, travel agents, commercial airlines, over 200 embassies and consulates within the U.S., foreign governments and countless law enforcement organizations worldwide. Currently, there is one Chief, 3 permanent staff officers, 2 officers detailed to the unit from the field, 2 officers detailed at overseas posts (Frankfurt and Rotterdam), and 1 program analyst.

The scope of duties of the TDU varies significantly. TDU officers procure travel documents, usually for cases where local field offices have been unsuccessful in obtaining a travel document. It also provides removal support to ICE field offices as well as to ICE and U.S. Embassy personnel located overseas. The TDU is responsible for coordinating with foreign governments in all aspects of return issues, including repatriation agreements and the return travel of fugitives to foreign law enforcement authorities.

The Centralized Ticketing Unit (CTU) was created in 2003 and works with the TDU. CTU is staffed mainly by contract staff and is responsible for sending removal notification and country clearance cables to U.S. Embassies overseas. The cables are routed to ICE Attaches or other U.S. Embassy personnel for notification of local authorities. The CTU also coordinates with DRO's travel agency and field offices in establishing itineraries and ticketing for all removal travel, as well as accounting for funds spent for removals via commercial airlines.

• **What is the process by which DRO personnel work with the alien's home country to obtain travel documents and country clearances?**

**Response:** Once there is a final order of removal in a case, DRO field personnel begin the process to obtain a travel document, if necessary. Contact is made with the consulate having jurisdiction over the location of the field office. DRO sends the consulate a request for a travel document which includes copies of the removal order, charging document, biographical information, and any other documents or applications which a consulate may require. The travel document processing time differs from one consular office to another. Some consulates require that they interview the alien; others conduct an investigation in the home country, while others make a determination of nationality based on the documents submitted by DRO. To expedite the issuance of travel documents, establishing a good working relationship with consulate staff is vital. If the process of obtaining a travel document becomes extremely difficult, or reaches an impasse, the field refers the case to the Headquarters Office of Detention and Removal, Travel Document Unit.

• **Is this process handled locally by each facility and on a case-by-case basis? Or are there any Standard Operating Procedures (SOPs) for dealing with foreign governments?**

**Response:** Each field office handles the process locally with the consulate having jurisdiction over that office. There are Standard Operating Procedures for dealing with foreign governments and listing country specific requirements for obtaining travel documents.

• **What are some of the main reasons or problems that can be attributed to the length of time it takes many countries to approve the return of their nationals?**

**Response:** Each country has its own process for issuing travel documents. Some consular officials have the authority to determine nationality and issue travel documents. Some must have authorization to issue granted by their foreign ministry, which can involve lengthy investigations of citizenship and identity. Some countries, such as the former Soviet Union, have new citizenship laws that may result in the determination that some detainees are "stateless" and not able to be accepted. Other countries require personal interviews with their nationals. In the case of Central

America, where the volume of detainees is high, the consular officials conduct a “circuit run” to the various detention facilities in their jurisdiction. This “circuit run” can result in a two-week delay in scheduling interviews because of the lack of consular officials to interview at each detention facility. There are also other countries with which the U.S. does not have diplomatic relations or which simply do not want to accept their nationals who are being removed.

18. A report released last week by the Congressional Research Service (CRS) says that from October 2004 to May 2005, the Border Patrol released 65,709 OTMs with Notices to Appear (NTAs) because there was not enough detention space available to detain them. There cannot be any doubt that more bed space is critical if the Expedited Removal program is going to work.

- **How much does an average day of detention cost?**

**Response:** An average day of detention costs approximately \$95 per bed day. The \$95 per day figure includes the cost of lodging, detainee welfare, health and medical care as well as transportation to proceedings and hearings. DRO obtains detention beds at DRO-owned Service Processing Centers (SPCs), Contract Detention Facilities (CDFs) and local or county jail space through Inter Governmental Service Agreements (IGSAs).

- **How many beds does DRO fill on an average day?**

**Response:** On average, DRO detained 21,928 aliens in FY 2004 and 19,718 aliens in FY 2005. This includes Bureau of Prisons and Office of Refugee Resettlement funded bed space. Bed usage over the past several months has sharply increased. The average detained population for the last week of FY 2005 was 20,791.

- **What is the maximum capacity that DRO has available nationwide?**

**Response:** Our maximum capacity is our funded capacity, which at the end of FY2005 was 18,500, not including the Bureau of Prisons or the Office of Refugee Resettlement.

- **Does DRO contract with state and county jails to house excess aliens?**

**Response:** Yes, approximately 52% of ICE detention capacity is acquired via intergovernmental service agreements (IGSA) with state and local governments.

- **What is the average cost of using local or county jail space?**

**Response:** DRO utilizes local or county jail space through the use of Inter Governmental Service Agreements (IGSAs). The average cost of utilizing IGSAs for FY05 was approximately \$60 per bed day. Local or county jail space typically is not subject to the Department of Labor wage rates, which distinguishes it from guard service for SPCs and CDFs. Additionally, the IGSA average per day rate does not include any DRO personnel costs and usually does not include health care, religious services, or the cost of local transportation of detainees. The specific negotiated IGSA for each local facility utilized dictates how these costs are paid.

- **Has DRO investigated different temporary detention options? If so, are any in use?**

**Response:** ICE currently utilizes various types of facilities and acquisition models. For example, temporary detention facilities are maintained at various DHS offices, where aliens may be held for several hours during processing until they can be transferred to a facility for longer-term detention. However, ICE does not compromise on the safety and security of the detained population and strives to ensure that appropriate conditions of confinement are maintained.

**19. How does DRO communicate with Department of State when countries do not cooperate or appear to delay accepting their nationals back? Is there a formal process?**

**Response:** There is no “formal” process established. If the HQDRO TDU cannot make progress with an embassy on its own, they then contact the Department of State desk officer for that country. HQDRO also has a liaison officer assigned to the Department of State who assists in making contact with the desk officers and setting up meetings with foreign embassies. If a formal action is requested against a country, DRO communicates with State through official DHS channels.

- **Has DRO ever requested that State use the 243(d) sanction authority to force greater cooperation from violating countries?**

**Response:** Yes, DRO has requested that the Department of State use 243(d) sanction authority. In 2000, DRO was successful in coordinating with the Department of State in establishing sanctions against Guyana. Visa restrictions were first placed against diplomatic visas for government employees and their families other than those required by treaty or international agreement. Within a few weeks, Guyana became compliant and began issuing travel documents.

In the past year, a Visa Sanctions Working Group was formed to explore options for dealing with countries who refused to accept their nationals or who delayed issuance of travel documents.

**20. How many countries have agreed to use the video conferencing system with DRO to facilitate the interview process? How much time will this save in the removal process? Do you have plans to try to expand the use of Video Tele-Conferencing (VTC) to African, Asian, and Middle Eastern countries? If not, why not?**

**Response:** Three countries have been approached to use video teleconferencing (VTC) to facilitate the interview process: El Salvador, Guatemala and Honduras. Honduras officially agreed to use VTC in April 2005. The system has been installed in the Honduran Consulates in Houston, TX and Los Angeles, CA and will soon be completed in Phoenix, AZ. Orders have been placed for systems to be installed in the remaining seven consulates in the United States. Discussions with El Salvador and Guatemala regarding use of VTC are on going. DRO estimates that the use of VTC will save 7 to 10 days of detention for each removal case. There are no current plans to expand the use of VTC to African, Asian or Middle Eastern countries. In comparison to the three Central American countries, the numbers of detained cases for African, Asian and Middle Eastern countries is quite small. Additionally, many of these countries do not require a personal interview to determine nationality.

#### QUESTIONS FOR DANIEL W. FISK FROM HON. DANIEL E. LUNGREN

The Subcommittee understands that it was quite a challenge for the State Department to figure out who to send as a witness for this hearing due to the fact that there is no central “person” or “office” who handles this issue. However, we are very concerned about that fact since initiative has the potential to have many more foreign nationals who need country clearances and travel documents.

**• Can you describe for us, in your view, why the State Department does not have a central “person” or “office” to coordinate efforts with foreign governments? What are the challenges of centralizing such an effort?**

**Response:** The Department of State’s role in immigration enforcement is primarily to engage with foreign governments to facilitate their cooperation in repatriating their citizens expeditiously. This activity has traditionally been accomplished through the relevant bureaus and the respective country desks, as these personnel who deal day-to-day with countries are in the best position to gauge the bilateral relationship and communicate with host country embassies in Washington.

Centralizing such a is complicated by the fact that nations cooperate differently on the removal issue, and are open to different types of suasion. In addition, the issue of migration relates to other issues and is part of a larger bilateral relationship, and channeling communication and policy through the relevant desks and bureaus ensures that the U.S. Government speaks with one voice.

In March 2005, U.S. Immigration and Customs Enforcement (ICE) launched Operation Community Shield to round up violent street gangs—mainly targeting MS-13 gang members from El Salvador—and removing them from the United States. When the Committee staff was briefed by DHS they were told that El Salvador does not want to repatriate its citizens because they believe they have been “criminalized” in the U.S. However, when the Committee staff was briefed by the State Department they were led to believe that El Salvador has been cooperative in removal efforts.

**• Can you please for the committee whether you currently have problems removing these violent street gangs their home country and, if so, describe the steps that the State Department is taking to eliminate any impediments to removal?**

**• As the State Department’s expert in Latin American Affairs, can you please describe the challenges to removal with other countries under your purview?**

**Response:** The Department of State shares the Committee’s concerns about the gang problem in the United States and is working with the Department of Homeland Security and the Department of Justice to increase the return rate of Salvadoran gang members to El Salvador and work with the Salvadoran government in addressing the gang issue. The Salvadoran government has to been cooperative in repatriating gang members, but the number of repatriations is not keeping up with the detention rate. In coordination with DHS and DOJ, the Department of State is with the Salvadoran government to identify what is needed to take back an increased flow of gang members, including more consular resources for interviews, en-

hanced communication of criminal records, and improved secure receive returned gang members.

Our Embassy in San Salvador has formed a group with senior Salvadoran government officials to determine specific mechanisms to increase the homeward flow of all Salvadoran aliens. The group has met several times, and has generated a working visit to the U.S. by Salvadoran officials to meet with State and DHS officials on the issue.

The challenges to quick removal to other countries in Central America are similar: limited consular resources for interviews and travel document issuance to detainees in the United States, and limited home-country and resources to expeditiously repatriate their citizens.

Under section of the Immigration and Nationality Act (INA), the Secretary of State has the discretion to withhold issuance of visas to nationals of foreign countries who deny or delay accepting their citizens back. However, apparently this authority has never been used, although it has been threatened on rare occasions.

**• Can you please explain to the Subcommittee why this authority has not been used? What are the considerations that might factor into a decision to use this authority?**

**Response:** Section 243(d) of the INA provides that “on being notified by Chairman Daniel Lungren Security Attorney General that the government of a foreign country denies or unreasonably delays accepting an alien who is a citizen, subject, national, or resident of that country after the Attorney General asks whether the government will accept the alien . . . , the Secretary of State shall order consular officers in that foreign country to discontinue granting immigrant visas, or both, to nationals of that country until the Attorney General notifies the Secretary that the country has accepted the alien.” Accordingly, section contemplates notification by the or Attorney General (now the Secretary of Homeland Security) before visa issuance is ceased.

In October 2001, Section 243(d) visa sanctions were imposed against Guyana. Guyana had been refusing to accept the return of any of their deportable criminal aliens for a lengthy period, in some cases two years. The sanctions were lifted in December 2001 when Guyana had issued the requested travel documents.

In the case of the Central American nations, they *are* taking back their nationals and are working with DHS and the State Department to meet the increased demands on the flow of detainees. Given that DHS’ increased detention and return initiative is quite recent and that Central American nations are cooperating—and to cooperate even more—invocation of 243(d) authority would be premature.

The top five OTM (Other Than Mexican) countries for the past four years are all Central and South America: Honduras, Brazil, El Salvador, Guatemala and Nicaragua.

**• Besides this new policy initiative, what other specific steps is the State Department taking to immediately alleviate the problems? In your view, what are the most pressing challenges to removal of undocumented aliens to Latin America? Please provide specific examples**

**• Are we having problems with any of these countries accepting back their nationals or taking a long time to provide the clearance?**

**• Has the 243(d) sanction been used against any of these countries?**

**• What is State’s policy direction to the country desks and embassies for these countries as far as negotiating faster and more compliant processing?**

**• Is State working with the countries to encourage their participation in the videoconferencing system?**

**Response:** The Department of State is in almost daily communication with the Department of Homeland Security to coordinate our approaches to Central American officials both here in Washington and in the region. Our Embassies maintain a consistent dialogue with host-country officials on the issue of migration, and our Embassy in El Salvador has formed a working group with senior Salvadoran government officials to determine the most effective and concrete ways to increase the rate of returnees to that country. Here in the U.S., the Government of Honduras has recently inaugurated DHS-funded video-teleconferencing equipment at two of its consulates to expedite consular interviews, and is seeking to refurbish a second airport to accept repatriation flights. The issue of accepting an increased flow of returnees has also been discussed with the Guatemalan Foreign Minister in late October during a meeting with senior Department of State officials.

The most pressing challenges to removal of aliens is timeliness. Central American governments have not yet deployed sufficient consular resources to quickly interview and issue travel documents to all their detained aliens. A second challenge for the

Central American governments is to develop sufficient infrastructure to process a larger flow of returnees—including criminal deportees—back into their countries.

All the Central American countries identified as of priority interest by DHS—Guatemala, Honduras, and El Salvador—are currently unable to fully meet the DHS timelines for interviews, document processing, and alien return. As El Salvador, Guatemala, and Honduras are currently accepting the return of hundreds of their nationals, including criminal aliens, sanctions have not formally invoked against any of the Central American countries.

The Department of State is working closely with DHS and host governments to identify specific and concrete improvements to accelerate the timely return of detained aliens. State Department policy remains that accepting the return of nationals to their respective countries of assignment is an international obligation, a priority for the U.S. Government, and a measure of the strength of our bilateral relationship.

As a result of our collaboration with DHS, Honduras is actively participating in the videoconferencing system, and Guatemala and Nicaragua are for ways to fit videoconference technology under regulations calling for face-to-face consular interviews.

**Can you please describe for the Subcommittee the bilateral policy implications of removing foreign nationals to their home countries?**

**Response:** Central American governments regard the status of their migrants in the United States as a priority foreign policy issue. Changes in U.S. immigration policy are viewed politically as a measure of the bilateral relationship. Governments will perceive increased removals of their citizens as a deterioration in their overall relations with the U.S. and this could affect the outlook for bilateral cooperation.

According to State Department officials who briefed our committee staff, you indicated that the repatriation of foreign nationals is a matter of sovereignty for foreign governments. **Can you please provide some examples of what other nations require to prove citizenship of its nationals and what challenges exist in obtaining such proof (documents)?**

**Response:** Foreign governments have the obligation to accept repatriation of their own nationals once the nationality of the alien has been determined. Sorting out who is where is the first challenge in the repatriation equation. When aliens do have an identity document proving citizenship, such as a birth certificate, a passport, or national identity card (cedula), this is relatively simple. In many cases, however, aliens arrive at the border with no documentation whatsoever. The consular interview is therefore the mechanism by which governments verify the nationality of those claiming to be citizens but lacking any documentation to back up their claim. Once the consular official is satisfied that the alien in question is a citizen, he or she can proceed to issue a travel document acceptable for the return of that alien.

Your staff indicated that a “Demarche” is a mechanism to request that specific steps be taken by the Ambassador to elicit cooperation foreign nation. **Can you please explain what is involved in process, how often it has been used and the results of using this mechanism?**

**Response:** A demarche is a formal instruction the Department of State to the Embassy in question to deliver an official message to the host government. On September 23, the Department instructed our Ambassadors in Guatemala, Honduras, and El Salvador to deliver this formal message—the demarche—to the respective Presidents or Foreign Ministers that the United States requests their cooperation in repatriating their nationals more speedily. The result of this communication—in tandem with the Department’s contacts with Ambassadors resident in Washington—has been increased willingness of the respective governments to explore how to process their nationals more expeditiously.

Challenges to removal have been described as falling into one of three different categories—political, logistical, and legal. **Can you please describe for the subcommittee the challenges to removal involved in each of these categories?**

**Response:** Central American governments pay special attention to their migrant communities in the United States, and derive important fiscal and political benefits looking after migrant interests. While Central American governments are working with us to expedite the removal of aliens, it is at a great political cost for these governments. U.S. immigration policy is seen as a bellwether for the bilateral relationships, and the United States removing significant numbers of migrants would be viewed as a deterioration of U.S. relations with these governments.

Logistically, the challenge is for home countries to increase their consular resources to keep pace with the increased detention of their nationals in the United



States. Honduras has already begun to mobilize consular personnel, but the diplomatic services of all three countries will need more personnel and more resources to collocate with DHS detention facilities. In addition, Central American nations are looking for ways to remodel and refurbish airport infrastructure to accommodate increased numbers of repatriation flights as well as to deal with returned criminals.

The legal impediments for the return of aliens vary, depending on the laws of each country on how to identify their migrants. For some countries, the return of minors requires additional steps. One obstacle facing DHS is the decision, which requires DHS to not remove detained Salvadoran migrants for 7 days, to allow them to seek counsel. This court decision results in longer stays for Salvadoran migrants than otherwise be the case. In addition, asylum claims or other procedural issues may restrict DHS removal proceedings.

Do you think that DHS should be prioritizing operationally the expedited removal cases versus the regular removal cases? What effect would this have on the process?

**Response:** From the perspective of the burden on consular resources, expedited removal and regular removal both require increased consular resources on the part of governments. The Department of State is working with the Central Americans to get those resources and speed up the return of detained nationals back to their home countries.

The Subcommittee has been told that foreign nationals detained for a minimum of 10 days before we can remove them United States. **Is there any statute, regulation, or policy that requires a minimum of 10 day removal period? If not, is this something the State Department does as a courtesy to other nations?**

**Response:** The Department of State has no jurisdiction regarding the length of time foreign nationals are detained. DHS notes that scheduling, country clearance, and other notification issues require roughly 10 business days before ICE can effect removal. There is no statute, regulation or policy that requires this 10 day period, though the decision does require DHS not remove detained Salvadoran aliens for seven days.

