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THE SEIZURE OF VEHICLES USED TO ILLEGALLY TRANSPORT PERSONS INTO THE UNITED STATES

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HEARING

BEFORE THE

SUBCOMMITTEE ON

IMMIGRATION AND NATURALIZATION

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

S. 3093

AUGUST 14, 1978

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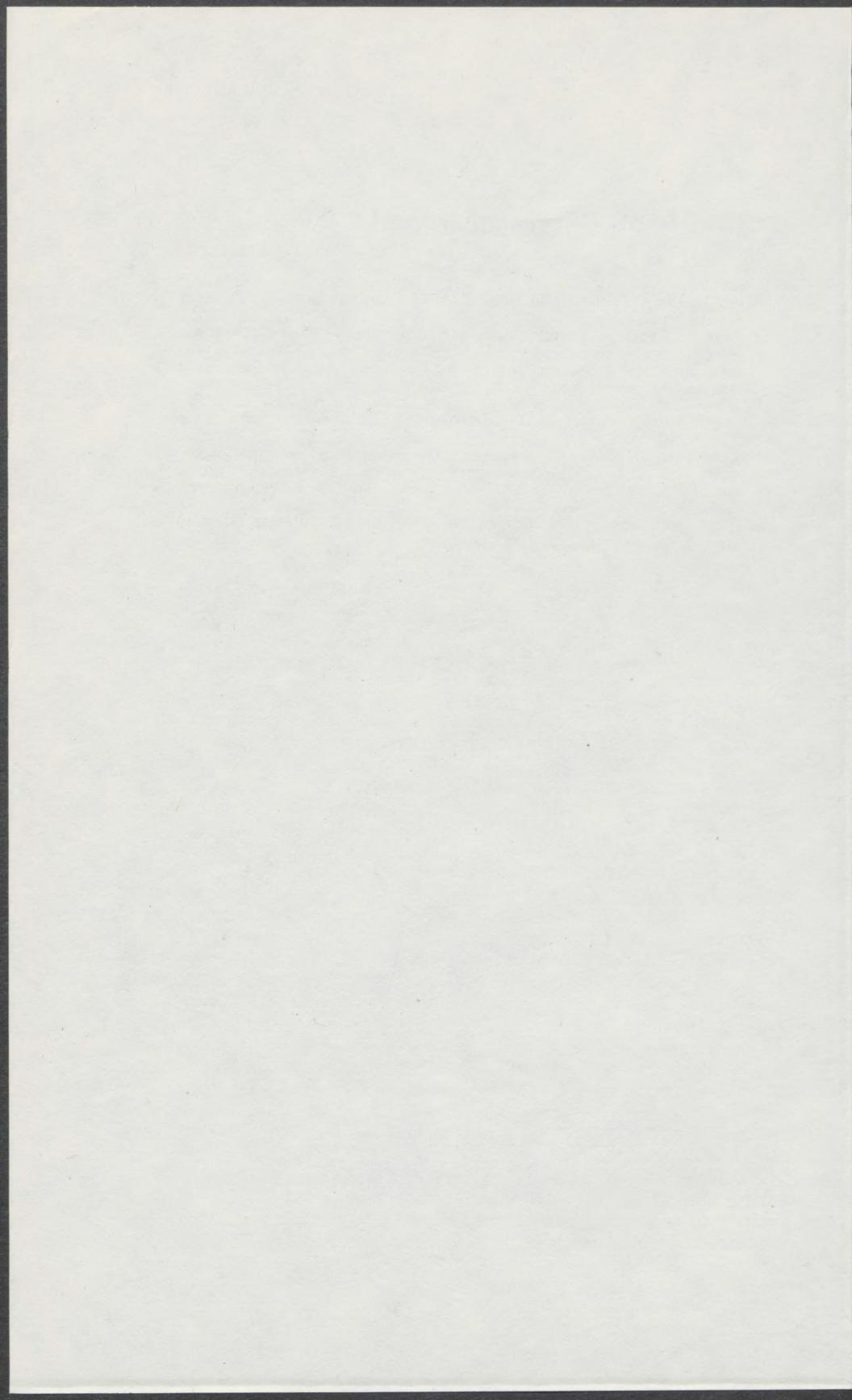
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THE SEIZURE OF VEHICLES USED TO ILLEGALLY TRANSPORT PERSONS INTO THE UNITED STATES

MONDAY, AUGUST 14, 1978

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION AND NATURALIZATION
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:40 p.m., in room 2228, Dirksen Senate Office Building, Senator Dennis DeConcini (acting chairman of the subcommittee), presiding.

Staff present: Timothy K. McPike, acting deputy counsel; Alfred S. Regnery, minority counsel; Sidney B. Rawitz, general counsel; Ashley Hines, counsel; Kathryn M. Coulter, acting chief clerk; Pamela Q. Phillips, acting assistant chief clerk.

Senator DeConcini [acting chairman]. The subcommittee will come to order.

OPENING STATEMENT OF SENATOR DeCONCINI

Good morning, ladies and gentlemen. This hearing is on S. 3093, a bill to grant authority to the Immigration and Naturalization Service to seize and confiscate motor vehicles used to illegally transport persons into the United States. The bill is sponsored by Senator Huddleston, who will be our first witness this morning. Also testifying will be Leonel J. Castillo, Commissioner, U.S. Immigration and Naturalization Service, accompanied by Paul W. Schmidt, Deputy General Counsel, David W. Crosland, General Counsel, and Charles Sava, Associate Commissioner for Enforcement; Michael Hawkins, U.S. attorney for the District of Arizona, Phoenix, Ariz.; Gerda Bikales, assistant to the chairman, Environmental Coalition for North America; Peter Allstrom, food and beverage trade department national representative, AFL-CIO, accompanied by Edward Panarello, director of legislation and political action, and Andrew Kahn, research department; and Phyllis Eisen, immigration program director, Zero Population Growth, Inc.

The incidence of illegal entry into the United States has increased in recent years to such an extent that the problem is constantly being brought to the attention of Congress. The Judiciary Committee and immigration Subcommittee of the Senate have examined many proposals during the 95th Congress that attempt to reduce the influx of illegal immigrants.

The legislation we will examine today has been introduced often during the last several years. Each time it has failed to gain sufficient priority to be enacted into law. With the great increase in illegal immigration, the measure now deserves careful consideration.

The bill would authorize the Immigration and Naturalization Service to seize vehicles used to illegally transport aliens into the United States. Similar authority for the seizure of vehicles carrying contraband articles is exercised by customs agents and officers, but by a quirk of legislative history, authority has never granted to agents of the border patrol.

Because of this lack of authority, smuggling rings on the southern U.S. border are able to repeatedly use the same vehicles to bring persons into the United States with no fear of loss should the vehicle be intercepted. Testimony today will expand upon the extent the seizure of such vehicles would assist the border patrol in diminishing the frequency with which these smugglers, known as "coyotes" are, able to bring persons into the United States.

The hearing will also examine the merits of the legislation to determine if the provisions meet constitutional requirements for Government seizure of private property.

Finally, in a general view, we will look at data concerning the impact the influx of illegal immigrants is having on various sectors of our economy and the degree to which this influx is exacerbated by the organized smuggling rings.

At this point, without objection, I would like to insert Senator Huddleston's prepared statement into the record.

[Prepared Statement of Senator Walter D. Huddleston follows:]

PREPARED STATEMENT OF SENATOR WALTER D. HUDDLESTON

Mr. Chairman, I thank you and the other members of the Immigration Subcommittee for scheduling this hearing on S. 3093 and for the opportunity to testify on behalf of the bill. Your action on this bill at a time when the Senate is operating on an extremely tight schedule indicates that escalating illegal immigration is finally being recognized as a serious threat which requires immediate action.

I would also like to thank Senator DeConcini, who joined me in introducing this bill, for his intense interest and efforts in pushing the bill forward. Without his aggressive assistance I am certain that we would not be as far along on this matter as we are today.

The Immigration and Naturalization Service is presently engaged in the almost impossible task of stopping the flow of hundreds of thousands of illegal aliens into this country each year. In fiscal year 1976 the small INS staff apprehended approximately 875,000 illegal aliens. However, even with this large number of apprehensions it is estimated that many more escaped undetected. While no single additional federal statute will totally eliminate this underground travel, the bill which I have introduced would act as a deterrent by removing some of the profits in the smuggling of aliens.

The bill would authorize the designee of the Attorney General to seize vessels, vehicles and aircraft used to transport aliens into the United States illegally and would make those vehicles subject to forfeiture. Thus authority would be limited in certain circumstances involving common carriers or vehicles that had been acquired illegally. Any vehicle that qualified could be seized without warrant if the seizure is incident to an arrest or if there is probable cause to believe that the conveyance has been used in violation of the statute prohibiting the bringing in and harboring of undocumented aliens. Existing procedures for exercising seizure and forfeiture and for remission or mitigation of losses by innocent parties are incorporated into the bill.

S. 3093 is essentially the same as existing federal law from which the U.S. Customs Service derives its authority to seize vehicles used in smuggling contraband into the United States. These statutes have been upheld many times by the federal courts, and their effectiveness in deterring smuggling is generally accepted. In fiscal year 1977 the Customs Service seized several thousand conveyances. Of these, 989 vehicles, 16 vessels and 25 aircraft were forfeited.

The U.S. Customs Service has found its authority to seize vehicles to be extremely beneficial to its anti-smuggling efforts. And it seems logical that such authority should be extended to the Immigration and Naturalization Service since smuggling is involved in both situations. The Department of Justice has reviewed the bill and strongly endorses it.

The need for this legislation is clearly evident, Mr. Chairman. For almost two years the topic of illegal aliens has been investigation and analyzed by large and small news publications throughout this country. For a long period of time one could rarely read a newspaper without finding an article about illegal aliens. The House of Representatives has acted on this issue several times, and countless bills dealing with this topic have been introduced since the 92nd Congress. The Senate has finally begun to give the issue the attention it desperately needs. The Senate Judiciary Committee recently completed a round of hearings on the Administration's bill entitled the "Alien Adjustment and Employment Act of 1977." However, it appears that the controversy surrounding this bill will force us to wait until next year to complete action on it.

Although the problem of illegal immigration has been studied and debated by congressional committees, presidential task forces, and numerous special interest groups, we still face more efforts along this line. The Administration has recently appointed another inter-agency task force to review the laws, regulations and policies on immigration, and the House has passed a bill which would create a special commission to conduct a thorough review of basically the same matter.

Even though we may lack much of the information needed to formulate a new national policy on immigration, I believe that we do have sufficient information to make necessary adjustments to our existing laws. We do know that illegal immigration is a problem of monumental proportions which, because of its size, has the potential to seriously affect every facet of our economic and social life in this country. Estimates place the number of illegal aliens now living in this country between four and eight million.

And, although the INS is apprehending close to a million per year, it is generally agreed that the total number is growing. Most of the illegals who enter this country are young adults who are seeking employment. They are usually emigrating from a developing country which has a high rate of population growth and high unemployment, or underemployment. The primary cause of this situation is the excessively high birth rate of the developing countries. In 1976 the world population passed the four billion mark, and it is continuing to grow at a staggering rate. Mexico, which accounts for most of the illegal aliens entering the United States, will see its population double in only twenty years, and in fifty years it will probably have more people than the United States. Since most of the illegal aliens come from the western hemisphere countries—approximately 80 to 90 percent from Mexico—we can anticipate that the efforts to emigrate to the U.S. will increase proportionately.

I believe that the large numbers of illegal aliens who are willing to accept almost any type of job under almost any kind of adverse working conditions have contributed to the excessively high rates of unemployment in this country.

Not only do illegal aliens take jobs which could be held by American citizens, many experts believe that they also depress working conditions in the industries in which they are concentrated. Because of their illegal status, the workers cannot take the chance of drawing attention to themselves by demanding safe and healthy working conditions. Also, there are indications that illegal aliens are moving into higher-paying positions because they are more docile as workers.

If illegal aliens have a significant impact on the present economy of this country, the prospects become very disconcerting if we anticipate what the future holds. Zero Population Growth estimates that at current population growth and legal immigration levels, 800,000 illegal immigrants entering the U.S. each year would add eighty million to our population within the next fifty years. This would be the equivalent of adding seven additional cities the size of New York City to this country.

S. 3093 would also be aimed at another side of the issue which directly affects the well-being and safety of the illegal aliens themselves. In response to the increased number of aliens seeking entry and the restrictive measures instituted along our borders to control it, alien smuggling has developed into a large illegal business. The smugglers, "coyotes" as they are called, prey upon those seeking a

better standard of living. Aliens are often charged several hundred dollars for transportation into the United States, and indications are that the business is thriving.

Christopher Dickey, a reporter who has done a series of articles for the Washington Post on the problem of illegal aliens in the area, has called the situation a "cyclical drama." According to Mr. Dickey, the illegal aliens who are apprehended by the INS and are sent back to their home country have little difficulty in locating a "coyote" who will bring them back. Each time an illegal alien comes back, others are encouraged to make the trip because of the stories of employers who are more than willing to give them a job at wages much higher than they could ever earn at home.

Stories of murder, robbery, rape and squalid travel conditions are often associated with these smuggling operations. Although I do not condone the process of illegal entry, I do not have any sympathy for the "coyotes" who use the misery of others for their personal gain. This bill would be one way of striking back at this criminal element by taking some of the profit out of their operations.

Mr. Chairman, I hope that S. 3093 will only be the first step in a series of measures that we can enact to diminish the flood of illegal aliens into the United States. I believe that the next step is new legislation which will provide strong penalties for employing illegal aliens. In order to protect the honest employer and worker, it may be necessary to provide for the issuance of a tamper-proof identification card which would be used according to very strict guidelines to avoid discrimination or harassment.

The matter of adjusting the status of illegal aliens who have been in this country for a specified period is a concept which I have difficulty accepting. I believe that such a process would set a dangerous precedent which would only serve to encourage other aliens to enter illegally. Further, it would reward those who have knowingly and flagrantly violated our laws to accomplish their entry and in effect penalize those law-abiding immigrants who have had to wait years to enter the United States legally. While I have sympathy for these immigrants as disadvantaged human beings who are striving to have a better life, I do not think that this should blind us to the consequences of these acts. The determination of this issue might be better left to a discussion or study devoted to developing a broad, national policy on immigration and refugee assistance.

The real question underlying the present concern with illegal immigration is the future, size, density, distribution, and composition of the United States population. As a frontier nation, we could at one time afford the luxury of inviting and encouraging almost unlimited immigration. In fact, the vastness of our resources and land demanded that we rapidly build up our population in order that we could achieve our full potential as a nation. However, we have now passed the stage of being a frontier country and, while there is still great potential for growth, we must realize that our resources are limited. Because of these limitations we can no longer continue to indiscriminately open our doors to the dissatisfied and growing population of the world without considering the possible adverse consequences to ourselves.

The United States presently admits more immigrants each year than any other country in the world. If we are to continue to do so, we must ascertain whether or not they are exerting an unreasonable drain upon the resources of this country. The political freedom and economic success we have achieved in the U.S. are a bright light in the world which attracts immigrants who aspire to improve their way of life. While we cannot condemn any person for striving to improve his life, we must realize that an immigrant's existence in this country may come only at some expense to the rest of the populace. If what the immigrant contributes to the country is less than what he or she withdraws or vice versa, we should know this and make our decisions accordingly. I am not advocating an isolationist policy which seeks to close the doors to every immigrant. Instead, I am suggesting that we develop a rational immigration policy based upon factual knowledge rather than continuing to assume that policies adopted 25 years ago are still appropriate. I do not believe that the United States can continue to act as a safety valve for other countries without determining what the costs are, if any, to our own citizens.

Senator DeCONCINI. Our next witness will be Commissioner Castillo. We are pleased to have you. Would you care to introduce the people with you?

STATEMENT OF LEONEL J. CASTILLO, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, ACCOMPANIED BY PAUL W. SCHMIDT, DEPUTY GENERAL COUNSEL; DAVID W. CROSLAND, GENERAL COUNSEL; AND CHARLES SAVA, ASSOCIATE COMMISSIONER FOR ENFORCEMENT

Mr. CASTILLO. With me is Paul Schmidt, Deputy General Counsel, David W. Crosland, General Counsel, and Charles Sava, Associate Commissioner for Enforcement.

I am pleased to be here this morning to testify in favor of legislation which will allow the INS to impound vehicles used in the smuggling of aliens.

I am sure that you are all aware of the effects of alien smuggling. Not only do a large number of undocumented aliens enter our country through this route, but the smuggled aliens are victimized and brutalized by the professional smuggler. Smugglers often will demand an alien's entire life savings in order to arrange the illegal entry. The smuggling operation may involve cramming large numbers of persons into tiny spaces, false bottoms, or hidden compartments where they must remain without food, water, proper ventilation, or sanitation for many hours. Such inhumane conditions have resulted in the death or serious injury of some smuggled aliens.

In his message to the Congress on immigration policy last summer, the President stated his commitment to smuggling prevention. In response, I created an Office of Antismuggling Activities to coordinate the nationwide antismuggling effort.

We now have approximately 106 full-time antismuggling agents operating in the field, and we will be adding 164 additional antismuggling agents during fiscal year 1979. The total number of alien smuggling violations presented to U.S. attorneys for prosecution during the first three quarters of fiscal year 1978 was 32-percent greater than the number presented for prosecution during the entire fiscal year 1977. Even more significantly, the antismuggling unit has investigations pending on more than 400 individuals identified as top level participants in major smuggling rings.

Although we have made tremendous strides administratively in the antismuggling effort, we are still faced with some persistent problems.

One of the greatest of these is the repeat use of vehicles by smugglers. At present, the INS has no authority to impound vehicles used in alien smuggling. As a result, when we make a smuggling arrest the owner of the vehicle may simply claim it back from us. Often the vehicle is back in use for smuggling by the next day.

I can illustrate this with several examples from the Chula Vista Border Patrol Sector where our officers have apprehended and successfully sought prosecution of a large number of smuggling rings. A 1978 Ford 1-ton stake bed truck was purchased on April 14, 1978. On April 18, the truck was stopped with smuggled aliens in it. The owner picked it up from storage the same day, and on April 29, the truck again was involved in a smuggling apprehension. Again, the owner picked it up from storage the same day.

The next day, April 30, the truck as stopped carrying smuggled aliens. Perhaps exercising an abundance of caution, the owner waited 2 days, until May 2, before picking up the truck. Thereafter, the vehicle was stopped and seized by the Customs Service, which does have impoundment authority. In another case, a 1967 Chevrolet pick-up engaged in smuggling operations was stopped by INS officers 12 times between April 1977 and March 1978.

These are merely several examples of the blatant repeat violations which we encounter. In the Chula Vista sector, 828 of the 3,600 vehicles intercepted while transporting undocumented aliens during fiscal year 1977 were repeaters. Nationwide, the repeat rate is about 20 percent. Without new legislation, this "revolving door" phenomenon will continue.

S. 3093 presents a simple and straightforward approach to the problem. The bill amends section 274 of the Immigration and Nationality Act, 8 U.S.C. 1324, to provide for the seizure and forfeiture of any vessel, vehicle, or aircraft which has been, or is being, used in transporting any alien into the United States in violation of law.

The bill would apply to common carriers only where the owner or other person in charge was a consenting party or privy to the illegal act. There would be no forfeiture where the owner could establish that the unlawful act was committed by a person who had illegally acquired possession of the vehicle, vessel, or aircraft.

The bill also provides that any conveyance subject to seizure under the bill could be seized without warrant if the seizure were incident to an arrest or the Attorney General had probable cause to believe that the conveyance had been used in the illegal bringing in, transportation, or harboring of undocumented aliens.

The Supreme Court appears to view the validity of such a provision as an open question. I refer you to *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 680 n. 14 (1974).

However, at least some lower courts have ruled that, absent circumstances where a warrant would not be required, seizures for forfeiture purposes may not be made without a warrant. I refer you to *United States v. One 1972 Chevrolet Nova*, 560 F. 2d 464, 467-68 (1st Cir. 1977); *United States v. McCormick*, 502 F.2d 281 (9th Cir. 1974); *Melendez v. Shultz*, 356 F. Supp. 1205, 1210-11 (D. Mass. 1973) (three-judge court).

While other courts have ruled that a warrant is not necessary, see, for example, *United States v. White*, 488 F. 2d 563 (6th Cir. 1973); *United States v. Francolino*, 367 F. 2d 1013 (2d Cir. 1966).

These decisions requiring a warrant in forfeiture situations, absent exigent circumstances or other situations where a warrant would not be required, would cast serious doubt on the constitutional validity of the approach adopted in the bill unless steps are taken to demonstrate that Congress does not intend to authorize seizures beyond those allowed under the fourth amendment.

The bill would adopt the procedures applicable in seizure and forfeiture cases under the customs laws. Provisions of the bill would be enforced by officers designated by the Attorney General who would have the same duties and authorities as customs officers for the pur-

pose of enactment of the bill. Proceedings instituted against vessels would be subject to the rules for admiralty and maritime claims.

The Department of Justice has strongly and consistently supported the enactment of legislation of this type. This legislation would increase the costs associated with smuggling operations and thereby decrease the number and size of those operations.

Since I became Commissioner, the INS has made great progress administratively toward more effective and efficient administration of our immigration and nationality laws. We realize, however, that there is a limit to what we can do administratively.

Many improvements, although quite simple and desirable, require your support in the form of new legislation. Some of these measures were contained in the INS "efficiency bill" which was submitted to Congress by the Attorney General on June 21, 1978. S. 3093 is another measure which would greatly increase the efficiency and effectiveness of our operations and is needed in the fight against smuggling. I strongly urge its passage.

Thank you. I would be pleased to answer questions.

Senator DECONCINI. Thank you very much, Commissioner. We appreciate your testimony.

Commissioner, will it be necessary to amend the bill concerning warrants, or will report language be sufficient in your judgment?

Mr. CASTILLO. I will ask General Counsel to answer that.

Mr. CROSSLAND. We would have to submit the answer for the record. I think we can expedite the opinion.

Senator DECONCINI. Does the bill, in your judgment, risk the possibility that aliens in transit will be treated more harshly if you have the right to seize vehicles?

Mr. CASTILLO. In my opinion, I think the bill would actually reduce the number of instances of people being treated inhumanely and harshly. I think it would reduce the number of cases tremendously.

Senator DECONCINI. Do you ever have to keep these vehicles for evidence? If so, how do you go about doing that?

Mr. CASTILLO. We do not keep them; we use pictures at times.

Senator DECONCINI. What disposition will be made of the confiscated vehicles if this legislation passes?

Mr. CASTILLO. The procedure after it is forfeited is that we then usually give it to GSA or another Government agency. That is, in most cases.

Senator DECONCINI. Do you turn them over to GSA and get them assigned back to you? Is that how you would handle it?

Mr. CASTILLO. I am told that that is possible.

Senator DECONCINI. If you wanted the vehicle or could use it in your operations, would it first go to GSA?

Mr. CASTILLO. Yes. We would see if, in turn, they could assign it back to us.

Senator DECONCINI. Is that what U.S. Customs does?

Mr. CASTILLO. They can be auctioned off, but I am also told that there is a procedure whereby they could be assigned.

Senator DECONCINI. Back to you?

Mr. CASTILLO. Yes. It may be complicated, but it can be done.

Senator DECONCINI. I would like to go to some other questions while we have you here. We have had some problems in the Yuma border area, and I understand you received a letter from Congressman Stump regarding the conditions down in the area. Depending on how you look at it, it is a fortunate or unfortunate article in the Arizona Republic of August 6. Have you had a chance to see that article?

Mr. CASTILLO. I saw it this morning.

Senator DECONCINI. I wonder if you could comment regarding your memo of December of last year as to improvements of the detention center? Before you do so, let me say this. I have been down there and felt that that detention center was anything but a Hilton hotel, certainly. I do not know what has been put into it since then, but perhaps you could fill us in for the record.

Mr. CASTILLO. Certainly.

The question arose shortly after I came in as Commissioner. We had some litigation that argued that our detention facilities did not meet the minimum standards of the Bureau of Prisons.

Senator DECONCINI. Who made that determination?

Mr. CASTILLO. The courts. They were arguing as to whether they were providing the minimum constitutional level called for. This is especially true in the New York City facilities.

So, we decided as a goal that it would be important to bring all of the facilities up to at least the minimum standards of the Bureau of Prisons. So, that is what the intent was.

Nothing that we have put in, in our view, is either unusual or is in any way something you would not see in a regular State or Federal facility.

Senator DECONCINI. What did your memo specifically require them to do? Do you have a copy of it?

Mr. CASTILLO. As I say, I just saw the article this morning and I asked for the memo this morning. I asked for it as I was leaving to come here, but I do not have the memo with me at this time. Specifically, it said that I did not want to see a lot of people sitting around for days in facilities, and if at all possible, we should at least have some reading matter or television or some athletic and recreation equipment. I also said that there should be some medical care available. We would not want someone to die in those situations.

Then, the memo authorized people to do that. That is, to provide these benefits.

Senator DECONCINI. Do you have any idea what the costs might have amounted to?

Mr. CASTILLO. The cost for most of them came to a few thousand dollars.

Senator DECONCINI. Did that in any way take away from the other operations of the border patrol in that area?

Mr. CASTILLO. The budget for the border patrol is separate from the budget facilities. The money that we had in detention, as I understood it, was sufficient for reorganization.

Senator DECONCINI. In other words, in order to implement the desires in your memo to provide better detention facilities, it did not eliminate any funds available for the border patrol operation in Yuma. Is that correct?

Mr. CASTILLO. As I understood it, there were no border patrol positions cut and no budget for the Border Patrol was cut.

Senator DECONCINI. So, any problem that might have been developed with not having vehicles operating or spare parts—or what have you—would not have been caused by your effort to improve the detention facilities; is that right? That is, if there were shortcomings with regard to the border patrol, they would not have been the result of your efforts with regard to the detention centers?

Mr. CASTILLO. The money which was used came from the budget already set aside for the express purpose of the detention facilities. I am under a requirement, both a moral and official requirement, to bring our facilities up to the minimum standards of the Bureau of Prisons.

Senator DECONCINI. I certainly do not condemn you at all. As a matter of fact, I applaud you for bringing those standards up. When I was there, the standards were far below what I would consider to be humane. I have not been back since. I cannot compare them, but I think certainly you are obligated to do that under the court order you mentioned in addition to the moral obligation.

It does concern me when the article refers to wrong priorities and leaves the reader with the distinct impression that moneys which could have been used to provide better resources and facilities for the border patrol were shifted to the detention improvement. That is not correct.

Mr. CASTILLO. That is true, Mr. Chairman, it is not correct.

At the time I received the article, I ask what the problem was with the spare parts. It appears that they allocated some money last week to deal with the question of parts for vehicles and to deal with the money for the airplane pilot as well.

But those were not related to this issue.

Senator DECONCINI. With the additional provisions for appropriations and designation of border patrol agents there, it would seem to me that that sector ought to be better off than it was before 1977.

Mr. CASTILLO. As a result in large part of your interest, Senator, and as a result of the work we have done, we have more people there than we have ever had.

Senator DECONCINI. Do you have any idea why Mr. Black, the deputy chief of the Yuma sector, indicated these somewhat questionable statements as to the facilities being down, with the morale down? The article indicates, and I will be glad to give you a copy of it, that there are certainly a shift from the border patrol money into use for the detention center. Have you had a chance to talk to him?

Mr. CASTILLO. I saw the article this morning. I have not talked with Mr. Black yet. I will ask him.

Senator DECONCINI. For the record, would you mind submitting to use a short statement of the explanation of your memo of December, spelling out clearly if that is what happened? That is, that no funds were diverted from the border patrol to improve the detention center? I think it would be very helpful for your department for this matter so that it is not blown out of proportion.

Mr. CASTILLO. Certainly, Mr. Chairman.

Senator DECONCINI. I commend you for the way you have operated the office. I think the criticism is not well taken. You have been under great pressure for enforcing the law from different organizations and you have taken some very difficult steps in the enforcement of the border patrol. I want to commend you for that and applaud you and your department for a job well done. I truly hope that you can address this problem so that any misinformation in other parts of Arizona can be cleared up.

Mr. CASTILLO. Thank you.

Senator DECONCINI. Does the staff have any questions.

Mr. REGNERY. You mentioned a couple of incidents involving trucks and automobiles which were used repeatedly. To your knowledge, is there also violation using other sorts of vehicles, such as airplanes, buses, and so on?

Mr. CASTILLO. Yes; we have even apprehended mobile homes. We had one mobile home that had 119 people in it. We have had moving vans and almost any type of vehicle that you can imagine.

Mr. REGNERY. Does the problem also exist at other borders? That is, besides the Mexican-American border?

For example, do they use airplanes bringing people in from the Caribbean and that sort of thing?

Mr. CASTILLO. Yes, sir, we have a much smaller problem in terms of numbers on the Canadian border.

We have a problem with boats and planes at other points along the U.S. borders.

I am talking about Florida specifically. In recent months, Florida has had an influx.

Mr. REGNERY. Thank you.

Senator DECONCINI. Commissioner, thank you very much for your testimony. We appreciate your being here.

Our next witness will be Michael Hawkins, U.S. attorney for the District of Arizona.

We welcome you here this morning. We thank you for attending under such short notice. Please proceed.

STATEMENT OF MICHAEL HAWKINS, U.S. ATTORNEY FOR THE DISTRICT OF ARIZONA

Mr. HAWKINS. Thank you, Mr. Chairman.

I am happy to be here this morning as an individual Federal prosecutor whose district, because of its proximity to the Republic of Mexico, feels the enormous impact of the ever-increasing problem of undocumented aliens, citizens of Mexico as well as other countries, flowing into the United States.

I am particularly pleased to be here this morning to lend my support to S. 3093, a proposal which will give the Immigration and Naturalization Service authority to seize, forfeit, and dispose of vehicles used in the unlawful transportation of illegal aliens into the United States.

Although I am obviously but one U.S. attorney, I have spoken by telephone with the other U.S. attorneys whose districts border the Republic of Mexico—Michael H. Walsh, Southern District of California; R. E. Thompson, District of New Mexico; Jaime Boyd, Western District of Texas; and Tony Canales, Southern District of

Texas—and each of them shares my enthusiasm for this important measure.

As the Chair well knows, the United States faces an immigration problem of almost staggering proportions. Each year millions of citizens of other countries attempt to enter the United States unlawfully. And, although we can take some comfort that the economic and political climate of our country would be so attractive, the results of this unprecedented flow of people have strained the abilities of State, local, and Federal governmental agencies to deal with it.

Although there is great debate about the causes of and solutions to this substantial problem, there is one area of concern about which there is little debate: That organized sophisticated rings of alien smugglers—people who commercially profit from the misery of others—should feel the full brunt of Federal criminal prosecution.

Whatever may be said about the “push” factors—those social and economic conditions which are “pushing” unprecedented numbers of citizens of other countries into ours—clearly one of the most powerful “pull” factors—those forces which draw these people to our country—is the availability of employment and the willingness of alien smugglers to run the risk of apprehension and prosecution to achieve substantial commercial profit.

Those of us who deal with the problem on a day-to-day basis—and mine is one office that does—are increasingly convinced that many of the successful investigative and prosecutorial tools that have proven so successful in the area of narcotics smuggling are applicable in the area of alien smuggling.

One of these very effective tools in the area of narcotics investigation and prosecution is the ability of agencies, like the U.S. Drug Enforcement Administration, to seize, forfeit, and dispose of the conveyances used in the smuggling. This is true for several reasons.

First, deterrence. The fear of seizure and forfeiture, particularly where expensive conveyances are employed in smuggling; that is, aircraft, recreational vehicles, or large tractor trailers—offers a substantial deterrent to those considering “entering” the smuggling business. At present, although such a deterrent exists in the area of customs and drug violations, such a deterrent does not exist in the area of immigration violations. S. 3093 would provide that deterrent.

Second, incentive. The ability to seize and forfeit vehicles offers a substantial incentive to enforcement agents involved in combating smuggling. It offers the agent the incentive of being able to strike directly at the various means by which the smuggler operates.

Third, undercover operations. State and Federal narcotics agents have found that seized vehicles can be very effectively employed in undercover operations. Since INS antismuggling agents have no present ability to seize vehicles, their undercover abilities are thereby diminished.

S. 3093 will additionally eliminate a disparity in the enforcement abilities among Federal agencies. All other criminal investigative agencies—FBI, DEA, ATF, IRS, and Customs—presently have seizure and forfeiture authority. The lack of that authority in INS, symptomatic of the lack of resources generally devoted to this problem area, substantially hampers enforcement efforts in the antismuggling field.

Finally, in devising tools to deal with sophisticated, organized crim-

inal elements, it is well to keep in mind that these individuals, perhaps more than anyone else, calculate the "costs" of doing business. Specifically they are often aware of enforcement abilities prosecutorial priorities, and anticipated sentences. In Federal law enforcement, we are increasingly seeing more expensive means of conveyance used in alien smuggling. Airplanes, expensive tractor trailers, large recreational vehicles, because of their ability to hold large numbers of individuals, are finding increasing use in this sordid business. S. 3093 will, if enacted, add a new and substantial cost to the business of smuggling aliens: The threat of the loss of the very means of carrying on the enterprise, the vehicle by which aliens are smuggled.

Thank you for your time. I would be happy to answer any questions you might have.

Senator DECONCINI. Mr. Hawkins, does your office handle the confiscation for the EEA and Customs?

Mr. HAWKINS. Yes; Mr. Chairman, we do.

Senator DECONCINI. Can you tell us about that procedure for the record?

Mr. HAWKINS. It is very much like a normal civil proceedings. The only difference is the defendant in the forfeiture case is the vehicle so you have these civil proceedings where it is the United States against one 1978 Chevrolet truck, its vehicle identification number and the license number. Adequate and specific notice is given to the owner of the vehicle in question. Under present law in my circuit, and I suspect this to be the case in other circuits, the proceeding cannot move forward unless there is some form of specific notice to the owner of that vehicle and an adequate opportunity given to contest the forfeiture.

By the way, these cases do not always move in summary fashion. We lose probably 15 to 20 percent of the forfeiture cases that we bring because the owner is able to come in and successfully prove to the court that the vehicle was in the unlawful possession of the person operating it. They will maintain that they did not know it was going to be used for this unlawful purpose. It is a rental vehicle.

Senator DECONCINI. Is that a valid defense?

Mr. HAWKINS. Yes; it is, and as I read S. 3093, that would be a valid defense under the proposed legislation.

Senator DECONCINI. What if the defendant is incarcerated? Does he or she have an opportunity to appear?

Mr. HAWKINS. Yes.

Senator DECONCINI. The burden of proof is with—

Mr. HAWKINS. The burden of proof is always on the Government. It is not beyond a reasonable doubt as in a criminal case. Rather, it is a preponderance of the evidence as it normally is in a civil case.

Senator DECONCINI. And that is tried before a judge?

Mr. HAWKINS. Yes; very often it is in a summary fashion, but that does not mean there is inadequate opportunity for the judge to look at the facts surrounding the case and make an intelligent determination.

Senator DECONCINI. How much of your prosecutorial resources in Arizona are devoted to seizure cases now and forfeiture cases?

Mr. HAWKINS. We have 35 assistant U.S. attorneys in our district

Senator—11 of those devote themselves entirely to civil matters. I would guess that four to five of them spend a substantial portion of

their time on things related to forfeiture. I am talking about forfeiture in drug cases, customs forfeiture, and that sort of thing.

Senator DECONCINI. How many do you think you can handle a year? Do you have any idea?

Mr. HAWKINS. Last year, the number was 312 cases in the district.

Senator DECONCINI. All of those have to go through some kind of proceeding?

Mr. HAWKINS. Yes, sir.

I might add as a followup to that that, also in talking to other U.S. attorneys, I am convinced that adding this ability which the proposed bill would provide to INS will not remarkably increase the caseload that U.S. attorneys have. The Office of U.S. Attorneys will be handling these, incidentally. The Department of Justice, nationally, will not. It will be, so to speak, their field offices which will handle these.

I do not think it will so significantly add on to our caseload such that we could not handle it with existing resources. In fact, we will be happy to do it for the benefits that we can achieve.

Senator DECONCINI. That was going to be my next question. Do you feel your procedures are streamlined enough to handle this?

Have you thought about what it might mean in terms of numbers? Do you think it would double or would there be 20 percent more or what?

Mr. HAWKINS. I would estimate in the area of 10- to 15-percent increase.

Senator DECONCINI. You can handle that with existing resources?

Mr. HAWKINS. I am convinced that my office can. The other U.S. attorneys along the border tell me that they can handle it as well.

That will not mean that we will not have to work a little harder, but for the benefits that we can achieve from being able to forfeit, we will be happy to do it.

Senator DECONCINI. Do you need a warrant in Arizona?

Mr. HAWKINS. As I read the 9th circuit law—first of all, one thing that should be understood is that 98 or more percent of these cases involve the seizure incident to an arrest. It is clear under Supreme Court authority, longstanding authority, that there is no warrant requirement. It is the policy of the Department of Justice, as I understand it—and it certainly is the policy in my office—that in any case where you seize or search vehicles, even where a so-called exigent circumstance might apply, that you will get a warrant when there is time to do so.

We do this for a very practical reason. The courts find that good faith usually lies when the prosecutor does take the time to go to court and get a warrant even if the facts substantiating that warrant do not stand up. If that is the case, you can always fall back and rely on the exigent circumstances, if they exist.

I would be very reluctant, if this statute passed, to authorize a seizure without a warrant, except incident to an arrest. As long as there is time and the vehicle itself is immobilized, there is no reason why you cannot go obtain a warrant. I read nothing in S. 3093 that would prevent you from getting a warrant.

Senator DECONCINI. Mr. Hawkins, do you relate at all the illegal alien problem with the smuggling of drugs?

Mr. HAWKINS. I think there is no question, Senator. As you know from your experience as a prosecutor in southern Arizona, there is a substantial connection between the flow of people being brought illegally into the country and the importation of controlled substances. Very often by force or profit or otherwise the individuals who are brought across knowingly or unknowingly are required as part of the element as getting across to transport narcotics across. In my opinion, there is a substantial connection between the two.

I should point out that a substantial portion of our border narcotics-related cases originate on information not initially developed by the Drug Enforcement Agency but developed by the efforts of the border patrol. This means that they have made an arrest of illegal aliens and they have found narcotics. At that point, they have then notified the drug enforcement agents.

Senator DECONCINI. To refine that a bit further, do you believe the contraband or the controlled substance which is coming in is in a vehicle which is under the control of the person transporting illegal aliens or does it tend to be on an individual alien or a combination of the two?

Mr. HAWKINS. More often than not, it is the vehicle. Sometimes it is the alien, knowingly or unknowingly.

Senator DECONCINI. It is more often the trafficker who is involved who is smuggling the illegal alien as well as the contraband; is that right?

Mr. HAWKINS. Yes, sir.

I might add this, Senator. Some of our intelligence debriefing information indicates that alien smugglers are aware of the low resource capability of border patrol and INS generally. They feel that it is almost safer to transport into this country narcotics in alien smuggling conveyances because they know they can retrieve the vehicle. If the substance is carefully hidden within the vehicle, such as within the frame or in the engine, they can always get their vehicle back and thus, the narcotics as well. As for deterrents, that would certainly apply.

Senator DECONCINI. As for deterrents, that would certainly apply to this particular problem; is that right?

Mr. HAWKINS. Yes, sir.

Senator DECONCINI. Has your office been involved in the last fiscal year in prosecuting any of the smuggling groups, those known as "coyotes," and if so, how many of those cases have you been involved in?

Mr. HAWKINS. I do not have the statistics at hand.

Since Griffin Bell became Attorney General and I became a U.S. attorney shortly thereafter, under his direction we substantially re-ordered our prosecution priorities.

Our efforts in the immigration area are almost exclusively devoted to prosecuting people who commercially profit from organized, sophisticated rings of alien smuggling. We simply do not have the resources nor the desire to prosecute people for illegal entry themselves.

We use those people as witnesses and try to get them quickly released.

As you know, we have a substantial problem with detention facilities for holding some of these witnesses.

However, our priorities are substantially directed toward alien smugglers.

About a month ago, we convicted a well-known alien smuggler from the Nogales area. He received the maximum penalty of 5 years and the maximum fine of \$5,000. That has had a substantial effect on the number of guilty pleas that we have received.

I think in 1977 we have something on the order of 190 successful prosecutions of alien smugglers in Arizona alone.

Senator DECONCINI. Those were not the individual aliens coming across, as I understand it, but they were the smugglers; is that correct?

Mr. HAWKINS. That is correct. They were people on the record that we had evidence on regarding commercial profiting from the smuggling alien operations. Ordinarily, if there is no evidence of commercial profit and if it is a first offense, then we will not prosecute as a felony.

Senator DECONCINI. What kind of profit is made?

Mr. HAWKINS. Right now, depending on where the individual comes from, the profit goes from \$250 to \$450 a head. If they come from Central or South America, there it can run as high as \$1,000 a head because the smuggler usually has a guaranteed return provision in the oral agreement with the person he is bringing in.

In other words, as many times as they are caught and sent back, he will try to get them back into the country.

Senator DECONCINI. Do you have any experience along that line where they have been returned several times?

Mr. HAWKINS. Yes. The repeat rate among Central and South American illegal immigrants is substantially higher in the commercial smuggling enterprise, surprisingly enough, than it is for citizens from the Republic of Mexico.

Senator DECONCINI. Why is that?

Mr. HAWKINS. Well, it seems kind of an illicit business policy among the smugglers that it is kind of like one of the "fly now, pay later" plans. If you pay the initial \$1,000, as long as you can recontact the friendly local smuggler, he will bring you back into the country as many times as it is necessary to get you in.

Senator DECONCINI. What kind of danger do the individuals put themselves in when they contract with a smuggler?

Mr. HAWKINS. First of all, because it is an illicit business, they are usually packed into conditions that are almost unbelievable. A month does not go by when in San Diego or Arizona or the southern border of Texas that we do not read about a van, for example, with 30 or 40 people stuffed inside under hidden floorboards. Michael Walsh, the U.S. attorney in San Diego, and I were talking the other day on the phone. He described an incident that happened about a month ago where they found 160 aliens in the back of a tractor-trailer. There were squalid living conditions. There were no sanitary provisions. It was very bad for the health. It is just clear to us that alien smugglers have absolutely no concern for the welfare or well-being of the people with whom they are dealing.

Senator DECONCINI. Mr. Hawkins, I want to thank you. Does staff have any questions?

Mr. Rawitz?

Mr. RAWITZ. Mr. Hawkins, did I understand you correctly when you made a reference to seized vehicles under such a law which could be used in undercover operations?

Mr. HAWKINS. Yes.

Mr. RAWITZ. Could you explain a little bit about that?

Mr. HAWKINS. All I can do is describe it by analogy.

When we successfully forfeit a vehicle, for example, in the Drug Enforcement Administration area, that vehicle goes into the possession of the General Services Administration which then is capable of assigning it back to the agency which originally seized it.

Just as in the drug business with specific types of vehicles often used by drug transporters gaining acceptance from other drug dealers, there is a similarity of vehicles involved in the alien smuggling enterprise. If they are able to use a vehicle which has been used in smuggling, the chances of successfully operating in the alien smuggling area, in my opinion, would be significantly enhanced.

Right now, the only thing we can do to provide undercover vehicles to antismuggling agents of INS is to get them on a loan basis from the Drug Enforcement Administration.

Mr. RAWITZ. What has been your rate of success in the prosecutions against smugglers of aliens?

Mr. HAWKINS. We have a unique problem in the ninth circuit where my district is, and that is the requirement by the circuit court out there that every material witness must be held all the way through trial, and if you lose any of them awaiting the trial, then you cannot successfully prosecute the case.

Aside from the problem which I just explained, our success is on the order of 95 percent. We do lose 5 or 10 cases a year in my district based on the material witness alone.

Senator DECONCINI. Mr. Hawkins, we want to thank you very much for coming here today.

Our next witness is Ms. Gerda Bikales, assistant to the chairman, Environmental Coalition for North America.

Welcome, Ms. Bikales.

STATEMENT OF GERDA BIKALES, ASSISTANT TO THE CHAIRMAN, ENVIRONMENTAL COALITION FOR NORTH AMERICA

Ms. BIKALES. I am pleased to have this opportunity to address the committee in support of S. 3093.

My name is Gerda Bikales. I am program associate for population immigration affairs at the National Parks and Conservation Association. The NPCA was founded in 1919, at the behest of Stephen Mather, first director of the National Park Service. While its primary responsibility is still to monitor and support the Service, it is a broad purpose environmental organization, with an interest in population issues, among others.

I am also here on behalf of the Environmental Coalition for North America—Encona—where I serve as assistant to the chairman. The coalition, in existence since 1970, is a center for cooperation and consultation among persons associated with labor and environmental organizations. Currently, it has an active Working Group on Immigration, which I am representing here today. Its most active participants are listed in an addendum to my testimony.

Senator DeCONCINI. Thank you, and without objection, we will make that material a part of the record at this point.

[Material follows:]

ENVIRONMENTAL COALITION FOR NORTH AMERICA

WORKING GROUP ON ILLEGAL IMMIGRATION

Participants, with current affiliations

Anthony Wayne Smith, Chairman, Environmental Coalition for North America, President and General Counsel, National Parks and Conservation Association.

Elvis J. Stahr, President, National Audubon Society.

Ellen Kelly, Chairman, National Affairs and Legislation Committee, The Garden Club of America.

John A. Hoyt, President, The Humane Society of the United States.

Justin Blackwelder, President, The Environmental Fund, Inc.

Donald Mann, President, Negative Population Growth, Inc.

Fred G. Evenden, Executive Director, The Wildlife Society, Inc.

Richard H. Pough, President, Natural Area Council, Inc.

Marion Parks, Environment Forum.

Hamilton Pyles, Executive Director, Natural Resources Council of America.

Ms. BIKALES. Senator DeConcini, the interest of the environmental community in the problem of illegal immigration may not be obvious at first glance. I would therefore like to take a moment to explain our concerns. Briefly, these are based on the conviction that eventual population stabilization is essential if our efforts to upgrade the environment and to conserve vital resources are to bear fruit.

The continued and ever-growing influx of illegal settlers into our country, if allowed to go on, dashes all hopes of ever reaching a stable population level in America and makes a mockery of all our attempts to preserve natural areas, protect wildlife, and restore the quality of our air and water.

I have some recent figures which came to light since my preparation of my testimony from the demographer of the environmental fund. I understand that according to his calculations based on birth records, there are now something like 4 million illegal aliens in California alone. This information will be available.

Senator DeCONCINI. Did your organization put that information together?

Ms. BIKALES. No. This is from the environmental fund.

Senator DeCONCINI. Over what period of time did they accomplish that study?

Ms. BIKALES. It is something they did very recently. I just have been told about it myself.

Senator DeCONCINI. We would very much like to see that.

Ms. BIKALES. I would be happy to supply you with the details.

No amount of protective environmental legislation can ultimately rescue us from the ecologically devastating consequences of rapid, unplanned, and unchecked population growth, such as that threatening our Nation. It is the hope of preventing further population-induced damage to our environment that brings us here today.

Very rarely does one have the opportunity to speak out on behalf of proposed legislation that is as simple, as straightforward, as urgently needed, and as beneficial to the national welfare as is S. 3903. My comments will therefore be brief, as the merits of this bill are surely recognized by all who are acquainted with the issues.

Numerous Federal agencies already have authorization to seize property when it is used in lawbreaking operations. Among agencies that have and use this authority extensively in carrying out their law enforcement mission are the Federal Drug Enforcement Agency and the U.S. Customs Service.

One might have legitimate concerns regarding the possibility of seizure of property without due process or the potential injury to innocent third parties. However, those concerns have been addressed over the years by the courts and by administrative adjustments. The right to forfeiture of vehicles has been upheld in a series of court decisions.

Among recent ones that are specifically pertinent, reference is made to *U.S. v. U.S. Coin and Currency* (401 U.S. 715, 1971) and to *Calero-Toledo v. Pierson Yacht Leasing Co.* (95 SC 2080, 1974).

Granting the authority for the seizure, forfeiture, and disposition of vehicles used to illegally transport persons into the United States would therefore not establish new principles of governmental prerogatives but extend well-tested ones to an agency that is urgently in need of such authority in order to carry out its mandate.

The power to confiscate vehicles used in smuggling aliens would have a very definite, desirable effect in stemming the flow of illegal entrants into the United States. In fiscal year 1977, of the 9,500 vehicles intercepted by the Immigration and Naturalization Service in smuggling operations, about 2,000 were recognized as repeat vehicles. Since it is easy enough to change the appearance and license of vehicles, others may not have been recognized.

We must remember, of course, that "vehicle" often means a large conveyance, such as trucks, boats, or airplanes, which are capable of transporting large numbers of aliens all at once. These are expensive smuggling tools, and their confiscation would at least slow down the importation of the next group of illegal aliens.

As smuggling activities become more profitable and sophisticated, these large conveyances are increasingly utilized by operators eager to maximize profits. In Laredo, INS intercepted a mobile home bound for Chicago into which 118 illegal aliens had been jammed.

Last April, the INS in Florida apprehended a planeload of illegal entrants as they were landing in a field. When they were later interrogated individually, one of the plane's passengers explained that he had missed the 5 o'clock flight and therefore had to wait for the 8 o'clock takeoff.

A particularly desirable feature of S. 3093 is that the consequences would be suffered by the smuggling operators, the "coyotes" who enrich themselves by preying upon the desperation of poor people. In their search for profits, they disregard all concerns for the safety of their charges, exploiting them financially and physically, robbing them of basic human dignity by treating them like cattle.

We must not allow ourselves to be a tacit party to this traffic in human cargo by releasing the vehicles through which it takes place. The provisions of the bill under discussion would go a long way toward putting a stop to it.

As you know, the very same provisions have been introduced, in identical language, in the House separately by Congressmen reflecting many different political convictions. Mr. Udall introduced the bill as

H.R. 11581 on March 15, 1978; Mr. Ashbrook introduced it as H.R. 12367 on April 25; and Mr. McDonald introduced H.R. 12782 on May 18. Thus, the bill is blessed not only with timeliness, a tested legal base, assured effectiveness, but also substantial and bipartisan support in Congress.

We are not so naive as to believe that passage of this measure alone will solve the very acute problem of massive illegal immigration into the United States. It would surely slow it down somewhat, and permit INS enforcement to function more effectively, but far more comprehensive legislation is needed to regain control over the integrity of our borders.

One is tempted, of course, to use this opportunity to spell out what we still must do—strengthen border control, bar illegal aliens from access to jobs, and differentiate between those who are and who are not legally entitled to compete in the job market—but this is a temptation I shall resist. Most of all, we need an administration which takes this problem of illegal immigration seriously and refrains from giving out confusing signals by receiving delegations of illegals at the White House and by taking to the public airwaves to advise illegals in English and Spanish on how to legalize their status.

I thank you for this opportunity to appear before you in support of this very fine bill.

Senator DECONCINI. Thank you very much.

Does this bill, in your opinion, pose a danger to persons being transported? Is it possible that they could be treated more harshly if vehicles could be seized and confiscated?

Ms. BIKALES. More harshly by the authorities?

Senator DECONCINI. Either by the authorities or the "coyotes."

If you had less vehicles and more possible deterrents, do you think that would cause more human problems to the illegal aliens?

Ms. BIKALES. I do not really believe so. As I stated in the testimony, I believe that the major impact will be on the operators of the smuggling rings rather than on the illegals themselves.

Senator DECONCINI. Has your organization done any studies in any other States besides California?

Ms. BIKALES. The study I mentioned comes from the environmental fund, which has been active in the Environmental Coalition for North America.

We did not do the study.

Senator DECONCINI. Have they done any such studies in other States?

Ms. BIKALES. They have not, but they have some interesting projections on what the likely realistic population figure might be for the year 2000 if present conditions prevail and are permitted to go. That figure, if I recall correctly, was 306 million people living in America in the year 2000.

Senator DECONCINI. Does staff have any questions?

If not, we thank you very much and we appreciate your testimony.

Our next witnesses will be Peter Allstrom, from AFL-CIO, accompanied by Edward Panarello and Andrew Kahn. We are pleased to have you here.

Would you like to proceed?

STATEMENT OF PETER ALLSTROM, FOOD AND BEVERAGE TRADE DEPARTMENT NATIONAL REPRESENTATIVE, AFL-CIO, ACCOMPANIED BY EDWARD PANARELLO, DIRECTOR OF LEGISLATION AND POLITICAL ACTION, AND ANDREW KAHN, RESEARCH DEPARTMENT

Mr. ALLSTROM. Good morning, Mr. Chairman.

I would like to introduce the two gentlemen who are accompanying me. With me today is Edward Panarello, director of legislation and political action, and Andrew Kahn from the research department.

The Food and Beverage Trades Department, AFL-CIO, would like to thank the Senate Judiciary Subcommittee on Immigration for the opportunity to express our views on S. 3093, providing for the seizure of vehicles used to illegally transport persons into the United States.

The food and beverage trades department represents 14 food and related service unions comprising over 2.7 million workers. We fully support S. 3093 because the workers in our trades shoulder the burden for this Nation's failure to responsibly address illegal immigration.

Illegal aliens impose tremendous costs to our society borne by those who can least afford them. That is, the disadvantaged workers who compete with illegals in the secondary job market. This market is characterized by jobs that are low-paying, low-skilled, and nonunionized. They often offer few opportunities for advancement and poor health and safety conditions. For some underdeveloped nations, illegal immigration may represent a perverse form of foreign aid; for many blacks, Puerto Ricans, legal immigrants, women, teenagers, and handicapped in this Nation, it means lives of continued poverty and unfulfilling work.

The tide of illegal immigration has unquestionably massive proportions. Just last year the INS apprehended and deported over 1 million undocumented immigrants. Estimates of that total population range up to 12 million persons. Responsible studies assure us that at least 4 million illegal immigrants reside within our borders.

More importantly, it is a mistake to believe that the problem is geographically confined. Nearly every major urban area in this country experiences a substantial yearly increase in the number of illegal aliens. The staff report submitted in written testimony found evidence of major concentrations of undocumented workers in many urban food and service industries.

In southern California, the Southwest Border Regional Commission reveals that more than 44 percent of all the illegals apprehended by the INS urban-based investigative unit worked in wholesale and retail trade. More than 91 percent of these individuals were employed in restaurants and bars.

In Detroit, the INS has estimated that 50 percent of 1,500 apprehended aliens worked in service industries. A similar report for May 1978 found over 40 percent employed in services. This proportion, it should be noted, does not include the sizable number of aliens employed by food processing plants in the area.

In New York City, the INS estimated in 1975 that this metropolitan region held 1.5 million illegal aliens. Of the 777 captured by the INS who reported employment, 325 worked in service trades. Another 420 worked in light industry, very often food-related.

In Washington, several recent articles in the Washington Post and Washington Star confirm the statement of Washington District Director, Joseph Mongrello, "There is not a restaurant in the city that has not used illegal aliens." Interviews with many restaurant owners make it clear that the employer knows they are illegal and prefers them to legal resident workers.

In short, throughout the cities of this country illegals are clustering in food and service industries. Despite the popular mythology of the undocumented worker performing stoop labor in the fields, probably more work nationwide in service and light industry in the food and beverage sector is actually the case. Canneries, food processing plants, meat packing plants, hotels, restaurants, bars, bakeries, and grocery stores accounted for close to one one-fifth of a national sample analyzed by researcher David North in a survey published in March 1976.

While our Nation has close to 7 million unemployed, the presence of millions of these low-skilled workers has a profoundly destructive impact on employment standards. The economic implications for the secondary market are presented in a National Commission for Manpower Policy special report of February 1978.

The problem is much broader than merely the number of additional workers in the labor market. The illegal status of these workers is the real factor tending to undermine labor standards in the food and service industries. Employers both prefer and exploit the aliens because: (1) The illegal fears any nondocile behavior will result in a call to INS from the employer; and (2) the illegal is so fearful of detection and deportation that he scrupulously avoids any contacts with the Government and his larger community.

Simply stated, this depressive effect is amplified because the illegal is afraid to join unions. Certainly evidence exists that some illegals do sign up. David North, director of the Center for Labor and Migration Studies of the New Transcentury Foundation, reported that 16.4 percent of his survey belonged to unions. Some of these workers can even be more dedicated and zealous members—having so little to lose.

On the whole, however, illegals constitute a major hindrance to collective bargaining. Several organizers of the Amalgamated Meat Cutters and Butchers Workmen locals in Texas have reported that employers have persistently used the fear of deportation to break organizing campaigns, strikes, and efforts at collective bargaining.

Ramon Corral, of Amalgamated Meat Cutters Local 505, describes the situation in El Paso. In several organizing drives, he noted, it was known that management took the illegals aside and talked to them about the possibility of calling the INS. Often, the illegals in the work force were singled out privately and threatened. These instances help explain the fact that most journeymen meatcutters in the area receive \$3 or \$4 an hour while the few union workers make \$8.54 an hour.

Local 540 in Dallas has had similar problems. General Counsel David Twedell describes a recent case before the 16th Region Labor Board. The "El Fenix" Co. had every means in the book to break the union. The organizers had learned from the illegals that management had threatened to call the INS if they supported the union.

Unfortunately, given the delaying tactics used by company lawyers, by the time the case came to a hearing these individuals were already

back in Mexico and unable to testify. Clearly many employers know they have undocumented workers and use that knowledge to keep wages down and unions out.

As a result, illegal immigration perpetuates the unsavory conditions of the secondary labor market, including: (1) low wages—in many cases below the legal minimum; (2) long hours, often without legally mandated overtime pay; (3) health and safety conditions that are frankly abominable; and (4) no rights to collective bargaining or organized representation.

A nation that possesses a legal and philosophical attachment to equality under the law must act quickly to end this situation. The first move must be a prevention of continued illegal immigration. Improvements in the enforcement capability of the Immigration and Naturalization Service are of the utmost importance.

Covering the Nation's southernmost border is a task of incredible size. The INS employs some 1,700 officers in the Southwest border area; yet the White House correctly notes that figure represents only one patrolman every 10 miles.

There is no way that an agency with the unfortunately limited resources of the INS can deal with the problem without the proper legal instruments. S. 3093 represents an effective enforcement tool for the transport aspects of illegal immigration.

It is well known that many aliens rely on "coyotes" or professional smugglers to both enter and move about the country. INS statistics show 1,800 out of 9,600 intercepted vehicles are "repeaters." Many of these are vehicles modified expressly for the purpose of packing in as many aliens as physically possible without risking detection. It is absurd that the INS has not been able to remove these from the smuggling traffic.

While this bill is a necessary device, much more remains to be done. As our written testimony outlines, a multifaceted approach is necessary to deal effectively and fairly with the problem.

Senator DECONCINI. If you would like to make that material available for the record, then without objection, that material will be inserted into the record at this point.

[Material follows:]

PREPARED STATEMENT OF PETER ALLSTROM, NATIONAL REPRESENTATIVE OF THE FOOD AND BEVERAGE TRADES DEPARTMENT, AFL-CIO

I. INTRODUCTION

While nearly forty percent of black teenagers scour the streets looking for work, every year hundreds of thousands of people cross this nation's border and join "the Unwanted"—the millions of illegal aliens. They come here for one reason above all: to work in the nation's fields, factories, and restaurants. The communities and often families they leave behind are dirt-poor and overcrowded, whether in Mexico, Haiti, or Hong Kong.

Americans should rightfully have sympathy for world's desperate poor. Some have referred to the tide of illegal immigration as one of the most significant forms of foreign aid the U.S. offers. Yet who pays for this beneficence? At a time when there are seven million unemployed, it is the most disadvantaged workers in this nation—Blacks, Puerto Ricans, legal immigrants, women, teenagers, and the handicapped—that must bear the burden. Indeed, the unknowing aid-givers are primarily the workers in the food and service industries.

These legal residents are both competing for jobs with the undocumented aliens, while experiencing the depressive influence of these aliens in the labor market. In short, the whole of American society has a responsibility to deal with illegal immigration: No longer can our poorest and least skilled citizens carry the entire burden for the rest of the country.

II. CHARACTERISTICS OF ILLEGAL IMMIGRATION

A. Dimensions of the tide

The size of the problem is only dimly known but unquestionably large. The number of illegal aliens that the Immigration and Naturalization Service (INS) catches and deports each year gives some indication of the scope. In fiscal 1977, over 1,000,000 illegal aliens were apprehended, substantially above the 766,000 caught in FY 1975. This number is more than twice that of legally admitted immigrants. And these totals reflect a steady climb from 1964, when only 86,597 were apprehended.

The INS and all knowledgeable observers admit that apprehension/deportation figures are just the tip of the iceberg. Estimates of the number of illegals range from as low as 4 million to as high as 12 million. Consensus assessments from the INS and other researchers tend to land on the 8 million figure for early 1977.

There is little doubt that the numbers of illegals in this country grows larger every year. Conservative estimates point to a rate of increase of at least 250,000 per year. A more commonly accepted figure is 800,000 new illegal residents per year. With all these footsteps the invasion is none too "silent".

B. Labor force participation

Why is the Food and Beverage Trades Department, AFL-CIO, particularly concerned with the influx of illegals? Almost all of them enter the American labor market. Their motivation for their journey is obvious. They leave because they expect nothing more than continued unemployment or starvation wages in their homelands. While field labor in Mexico might earn \$2 a day, working as a dishwasher in a San Diego restaurant will probably net the illegal at least two dollars an hour. Thus the Congressional Research Service allows that "the economic motivation of illegal aliens is one of the few aspects of the problem about which there is universal agreement."

Further, repeated surveys have shown undocumented workers to be prime wage-earners: young, mostly male and either unmarried or separated from their wives. Fordham University Professor Charles Keely's suggestive survey of social service agency interviews with Haitian and Dominican illegals showed more than three-quarters of them were employed. Wayne Cornelius, speaking with 1000 returned aliens in Mexico, found that over 70 percent held a job within 10 days of their entry. Thus, the INS's 1975 estimate that illegals were holding 3.8 million jobs seems a likely baseline figure, pointing strongly to the conclusion of the U.S. Domestic Council Committee on Illegal Aliens that "The major impact of illegal aliens at this time seems to be in the labor market."

C. Where do they go?

Certainly less well known are the national dimensions of the illegal influx. No longer can this problem be seen as only of concern to States in the Southwest, or only an issue between U.S. and Mexico. Increasingly, these workers are ending up in the nation's largest cities, and increasingly they come from a large group of poor nations in the Western Hemisphere. Furthermore, many of these illegals are in the "visa abuser" category: Rather than running the border without inspection, they enter the nation with a valid passport and visa and either overstay their time and/or violate the terms of the visas by working when not permitted to do so.

Data on these trends is hard to obtain because of INS priorities in apprehension. A disproportionate share of INS manpower and resources is currently deployed along our southwest border, with a resulting overemphasis on Mexicans entering California and the Southwest in the available data. For instance, while INS reports 90 percent of its apprehensions are Mexican, experts like Walter Fogel of UCLA, guess a more accurate figure would be two-thirds of all illegals. Even with imbalances in enforcement, apprehension statistics made it obvious that non-Mexican illegal immigration is a growing problem: The INS reports that the number of apprehension of non-Mexican illegals rose 19-fold between fiscal years 1964 and 1974.

Yet even the continued predominance of Mexican illegal immigration would not mean the problem is geographically confined within the U.S. The southwestern labor markets which open to the illegals have become rather saturated, causing many to go further north to Denver, Portland, Seattle, Kansas City, Milwaukee, Detroit, and especially Chicago.

Chicago now ranks behind only Los Angeles and the cities of Texas (Houston, San Antonio, El Paso) in the size of its Mexican origin population. The INS estimates of November 1976 looked as follows: Los Angeles 1,300,000, Houston 500,000, Chicago 415,000.

Elsewhere, the flood of illegals from Canada and through international airports contributes to a considerable problem in the major cities. New York and Washington are the most frequent destinations of these predominantly non-Mexican immigrants. The INS District Office in New York estimates some 1,500,000 illegals reside in the area, their numbers increasing by up to 100,000 each year. Washington, according to 1975 estimates, houses at least 50,000. Finally, by INS at November 1976, Miami is said to provide haven for 400,000 or more undocumented residents. It should be clear, in short, that the problem of illegal aliens extends to most major metropolitan areas.

D. Penetration into food and service industries

Finding illegal aliens in our major cities is not generally difficult: All one need do is look in the restaurants, food processing plants, and the cafeterias throughout the area. Most of the available data and hundreds of comments by those involved with illegals point to clustering in food and service industries.

Considering their employment in the service area in general, in 1975 the INS prepared estimates of the effects of a sanction against employers for hiring illegals. Of the one million jobs the INS suggested could be freed for U.S. citizens, 309,000 would be in service occupations. In other words, approximately one-third of the jobs held by illegals are in "service" industry. This assessment parallels the results of a study of 793 apprehended illegals prepared by David North and Manior Houston for the Employment Training Administration in March 1976. North and Houston report that 20.6 percent of these interviewed were service workers. (In the overall American work force the average is only 13.3 percent.) Interestingly, despite the predominance of Mexicans apprehended in the Southwest in his sample, only 18.8 percent of the whole group were farm-workers, challenging the "migrant farm worker" stereotype of illegals.

The North-Houston data show that non-Mexican illegals cluster even more strongly in service occupations. For instance, illegal immigrants from Eastern Hemisphere countries worked in service in more than 35 percent of the cases. Furthermore, considering the location of their U.S. jobs, service workers made up only 7.3 percent of those apprehended in the Southwest, while composing 28.2 percent of East Coast illegals and 26.9 percent of Mid Northwest workers. North's overall figure of 20 percent—while suggesting the strong concentration of illegals in service occupations—still underestimates the number because of the Southwest biased geographic distribution of his sample.

Finally, North's data also show how many of the illegals' occupations were specifically in the food and beverage trades: Close to one-fifth of his sample. These workplaces include food manufacturing and processing plants, bakeries, grocery stores, and eating and drinking places. Restaurants alone account for one-seventh of the illegal aliens in the survey. Eating and drinking places constituted the largest single industry in the North-Houston sample, employing almost as many workers as in agriculture, forestry and fisheries. There can be little doubt that this nation's typical illegal alien is not harvesting vegetables but rather is cooking the vegetables to be served by an illegal on dishes washed by other illegals.

The data on concentration in food and beverage industries contained in the North-Houston report is confirmed by both INS estimates and the impressions of knowledgeable observers. The situation is repeated throughout our major cities:

(1) Washington

The old joke around Washington says that if all the illegal aliens in the area were caught and deported, all the local restaurants and most of the hotels would have to close down. As the Washington Star notes, "for a joke, it's not far from the truth." Joseph A. Mongiello, District Director of the INS Washington office, definitely states, "There isn't a restaurant in the city that hasn't used illegal aliens." Local restaurants quoted in the Star article agreed on their presence: One owner with 12 illegals on his staff commented "There certainly are plenty of them around. We don't have much trouble finding them—they find us." Of course this manager and others like him, have made it clear that illegals are often the preferred workforce in Washington restaurants.

(2) Detroit

The INS published reports on the economic participation of a group of 1500 apprehended aliens, of which 900 reported having a job. Service industries hired 50 percent of them. Light industry (often canning and food packing) took another 31 percent.

(3) *New York*

In the entire metropolitan region, there are an estimated 1.5 million illegal aliens. Norman Bromberg, area director of the Wage and Hour Division of the U.S. Department of Labor comments that the majority of the workers in the restaurants investigated "are in my opinion, here illegally. They're Ecuadorians, Colombians and some Haitians. They're the people most likely to be exploited."

INS investigators find illegals employed as unskilled and semi-skilled service workers throughout the region. Some have even been found working as kitchen helpers in the Government facilities at the United States Military Academy at West Point and in the cafeteria of the Federal Office Building at 26 Federal Plaza.

As a U.S. Senate staffer working with legal immigrants commented, "If you took the illegals away from the restaurants, cleaners and laundries in New York, that whole economy would collapse."

(4) *El Paso*

With unemployment at perhaps 30 percent across the border, illegals stream continually into this city's grocery stores and food processing plants. INS testimony in 1973 before a subcommittee of the House Judiciary Committee noted that 51 percent of deported Mexican aliens were working in food handling.

(5) *Chicago*

Texas residents in speaking of illegals constantly mention "the Chicago connection". One of them commented that the major interstate highway, if you see Illinois plates, the chances are two or three to one that the car is carrying illegals to work or home again.

Every month the INS apprehends about a thousand illegals and buses them home. But about 250,000 in Chicago still remain. As Atlantic magazine writer Elizabeth Midgley writes, they cluster in low-paying jobs, as hotel, restaurant, laundry, or hospital workers, gardeners, janitors, cooks, maids.

They are found working for \$2 to \$6 an hour. William Bartley, INS district director, told U.S. News and World Report: "It is a year round routine—but we're getting further behind every day."

(6) *San Diego*

The same 1973 INS figures showed that about 80 percent of the apprehended aliens were in food industries. The other 20 percent were semi-skilled laborers in manufacturing. Throughout Southern California, 44.3 percent of the aliens apprehended by the INS' urban-based investigative unit were in wholesale and retail trade. According to a study prepared by the Southwest Border Regional Commission, it turns out that 91.7 percent of them worked in restaurants and bars.

From all these examples, the message is clear: throughout the nation's urban areas, illegal aliens are finding jobs primarily in the food and service-related sectors.

III. IMPACT

Every writer on illegal aliens has noted the incredible task it is to identify how many illegal workers exist, how many more are arriving, and where they are going (both geography and occupation). Trained economists and sociologists are properly appalled at the lack of hard data in this area.

Nonetheless, this Department believes it is impossible for policy-makers to continue to use the excuse of "inadequate information" any longer. "Soft" data is readily available and points to the conclusion reached by the House Immigration Subcommittee after hearings in 1975: "... illegal aliens take jobs which could be filled by American workers . . . reduce the effectiveness of employee organizations; compete most directly with unskilled and uneducated American citizens and constitute for employers a group highly susceptible to exploitation."

The plight of the unfortunate illegal warrants sympathy and assistance, but it is time for federal legislation to relieve the burden of his immigration from the backs of the poorest American workers. Furthermore, the illegals themselves, are being oppressed to the point where we have arrived at, in the words of David North, "a caste system with a remarkably depressed underclass."

A. *Displacement*

The most direct effects of the presence of illegal aliens is in displacing legal workers from well-paid jobs.

It is simply not true, as some economists and spokesman for employers' associations claim, that illegals are taking only low-paying undesirable jobs, jobs which Americans will not take. A significant number are employed like the alien apprehended in Washington, D.C. during 1975, a French baker making \$8 an hour.

The North-Houston report presents unpublished INS data that shows that 4.6 percent of those apprehended in 1975 were earning \$4.50 or more per hour: In the Northwest, that proportion was 14.4 percent of the sample. Given the small but significant percentage, this effect should not be seen as the primary one. On the other hand, it is necessary to the very direct costs of illegals taking the job of a highly skilled worker.

B. Earnings and Employment

Basic economic theory suggests all else being equal that wages will remain stationary or fall if there are more workers than jobs. Given at least 6 million unemployed in this nation, a depressing effect on the labor market of several million illegal entrants is hard to deny.

To what extent this effect is observed depends partly on the state of the economy. During periods of full employment, immigrants will complement resident workers and provide such economic benefits as lower production costs and prices, and greater economic growth.

But, as the Domestic Council Committee on Illegal Aliens notes, with high unemployment immigrants substitute for domestic workers and contribute to both higher rates of unemployment and lower wages.

Empirical studies can offer no definitive answers on this question, but they have provided a strong indication that wage levels are being depressed by the presence of undocumented workers. This is easy to understand from the wage data in North-Houston: Respondents (excluding those in agriculture and private households) earned substantially less than U.S. production and non-supervisory workers in an average hourly wage of \$2.66 as compared with \$4.47.

More direct evidence is offered by two regional studies. Professor Walter Fogel of UCLA found that within California, wage rates increased from the south (the border) to the north for unskilled manual occupations (where illegals tend to be clustered), but for most skilled ones.

A second study was conducted by economists Barton Smith and Robert Newman. The authors, after controlling the sample for individual differences in human capital (educational levels, for example), found incomes of resident workers lower in Texas border cities than in Houston 150 miles away from the border. The income-drag effect was particularly pronounced among Mexican-Americans.

Years of dependence on a low wage in South Texas with freely available and exploitable labor force has contributed to a generally depressed local economy. The area has an unemployment rate which is consistently much higher than that of the State or the nation. It comprises the poorest counties in Texas, and sustains a very low level of union membership.

C. Exploitation

The depressing effect on the labor market is neither wholly nor primarily a result of the number of illegals entering the market. Rather, as the 1978 report for the National Commission for Manpower Policy states, "it is the lack of rights of the illegal workers . . . that brings their adverse consequences to the labor market." Put in brief, illegals must work constantly under the fear of discovery and deportation.

This lack of rights insures, first, a high level of motivation. Secretary of Labor Ray Marshall, expressed it succinctly: They work "scared and hard". Secondly, illegals may not be more productive, but as a result of their isolation and dependence they are much more likely to be *docile*. They often work without complaining, for long hours at a grueling pace under unhealthy conditions. As a Washington restaurantier smugly put it, "They are happy to do anything."

Third, illegals come cheaper than legal workers for the disreputable employer. The productivity of the illegals' work is an unknown quantity; no one has yet to prove it is better or worse. On the other hand their illegal status leaves them open to a variety of means of exploitation:

(1) *Wages*.—There is ample evidence to show that illegals are often paid below minimum wage. In the North-Houston sample, 182, or 23.8 percent, of 766 illegals apparently received less than the minimum wage. About 18 percent of those in service occupations reported wages under the then minimum of \$2 an hour.

(2) *Hours*.—Norman Bromberg, New York Area Director of the Wages and Hours Division of the U.S. Department of Labor, reports that almost every restaurant investigated in New York is in violation of the overtime law, and most of them are staffed primarily by illegals. The North-Houston study found illegals working outside agriculture and private households worked an average 44.5 hours per week, while the American worker's average was 35.9 hours. The spread is even larger on services: 45 hours averaged for illegals versus 33.7 hours for legal workers.

(3) *Health and safety*.—Given the illegal's fear of deportation, they are scared to contact any government agency. This includes the Occupational Health and Safety Administration. Little statistical information is known or available on the treatment of illegals in health and safety matters. But as the Southwest Border Regional Commission has noted, the workplaces where illegals work next to legal immigrants and native American workers are often in flagrant defiance of OSHA standards.

The dirty and unsafe conditions they are forced to accept leads to the self-fulfilling prophecy "doing the dirty work no one else will." This is exactly the definition of the "secondary market" staffed by illegals and reinforced by their presence.

(4) *Unionization*.—The illegal alien will be found in the unions much less frequently than legal workers. Indeed, he is always susceptible to an employer saying "if you join, I'll call the INS and have you deported." All too often this threat has worked and shops have remained non-union.

All of these factors explain why illegals offer very strong competition with legal workers: They offer a workforce both more profitable and more docile. In doing so, however, legal workers are either forced to work at the same sub-standard wages and conditions or to accept unemployment and welfare. Here is the true "displacement effect": illegal aliens keep wages low enough (where they cluster) so that the increase in income that a legal worker might receive by working instead of participating in income transfer programs is so minimal as to make it pointless.

D. The secondary labor market: Are we stuck with it?

The above analysis offers a strong contrast with the arguments made by MIT economist Michael J. Piore and others. He is correct in identifying a "secondary" labor market in this country in which disadvantaged workers compete for jobs that have low wages, poor working conditions and few chances for advancement. These characteristics indeed mark many of the jobs in the food and service sectors.

Piore and others go on to argue, however, that many Americans will refuse to take this sort of work. A recent article in the *Washington Monthly* also asserted:

"Many of the jobs held by illegal aliens are the kind that few Americans accept, regardless of their skills . . . the aliens don't make much difference to unemployment because unskilled Americans understandably prefer subsisting on welfare or unemployment payments to working long hours at low-paying drudgery.

This sort of argument is, of course, loved by the restaurant owners and other employers of illegals. Richard Gaucher, counsel for the National Restaurant Association maintains that "even unemployed people aren't going to take jobs washing dishes in restaurants."

This argument is above all wrong because it assumes that the nature of the secondary workforce is "set in concrete", as the National Commission for Manpower Policy put it.

In other words, if given the choice between finding a way to fill these jobs as they are now constituted or changing the nature of these jobs, Piore and friends would contend that we need the "escape valve" of alien workers to fill jobs-as-given.

This is, as David North has so aptly deemed it, a "self-fulfilling prophecy." This theory neglects the fact that the illegals in fact undermine the very structure where they are concentrated.

Illegals are desperate for work of any kind and at almost any wage. This means their employers can avoid a variety of adjustments listed in the National Commission for Manpower Policy Report:

- (1) mechanization of those work procedures that can be mechanized.
- (2) job redesign, to make the work somewhat more attractive—cleaner, safer, etc.
- (3) increase in wages.

- (4) movement to other locations, inside or perhaps outside the U.S.
- (5) acceptance of lower profits (or longer hours for a proprietor-manager).

E. The Question of Job Elimination

Of course, employers are fond of discussing a final, drastic alternative . . . going out of business.

Employers constantly warn that a probable result of ending illegal immigration would be the reduction of many employment opportunities. They claim that cutting the supply of illegals would force the industry to offer higher wages, and in turn shops will close down and jobs will be eliminated. This alternative is a false one. Historical experience shows that an increase in wages would have little if any discernible impact on the industry. Specifically, the situation is exactly parallel to what happened when an increase in the minimum wage was proposed: Employers cried about how many jobs would be lost. Yet testimony from Robert E. Juliano, Legislative Representative for the Hotel and Restaurant Employees and Bartenders International Union, showed how in two cases the food service industry accommodated well to wage rises and soon was providing more jobs than previously.

In California, a minimum wage increase and repeal of a tip credit provision resulted in a 25 percent increase in employer-paid wages. The union's investigation found that in the following year (1976), employment in the California food service industry increased by nearly 25,000 jobs. As a matter of fact, employment increased at an even greater annual rate in 1977 despite another \$.30 an hour increase in the minimum wage.

Juliano further reports "The California food service industry is healthier than ever, and growing at a faster pace." The number of food service establishments increased by 1,294 in 1976, a larger increase than the previous year, and increased at an annual rate of 1,608 more establishments during 1977. In short an increase in the average wages of California's lowest paid workers did not eliminate jobs or workplaces.

The same wage effect held true on the national level. In 1968 the Secretary of Labor reported to Congress on the economic impact of covering large segments of the food service industry and the hotel and motel industry under the minimum wage laws for the first time (the 1966 FLSA Amendments). The Secretary concluded as follows:

"Employment rose by an estimated 500 workers to almost 265,000 in covered hotels and motels during the 6 month period spanning the effective date of the \$1.00 minimum wage. The largest regional increase was a gain of 4,000 workers in the South. This was of particular note since southern establishments were the only ones in which the minimum wage has a significant impact.

In regard to eating and drinking places, he reported that: "Nationwide employment in non-covered establishments declined by 2,600 workers between October 1966 and April 1967 as contrasted with an increase of 3,900 in covered establishments."

In short, the doomsayers of job elimination were proved wrong. These two historical experiences suggest that wage increases in the fast-growing food industry can be handled without eliminating jobs. Even if stopping the flow of illegals meant an increase in wages was necessary to attract enough workers, the chances are that the food and service sectors would continue to prosper without hurting employment opportunities.

F. Effects on Unions

Just as illegals fear protesting their sweatshop conditions to the authorities, they also tend to make the process of unionizing more difficult. This is purely a matter of their illegal status, not their ethnicity or underlying attitudes. Indeed, observers in Texas note that some of the workers are more devoted and zealous union members than legal migrant workers having less to lose than resident workers.

On the other hand, employers of illegals have used the fear of apprehension countless times to break organizing campaigns, collective bargaining efforts and strikes. Examples abound from local unions throughout Texas and California. Organizer Ramón Corral of the Amalgamated Meat Cutters Local 505 in El Paso tells the story of a strike against Western Packing Company. This employer singled out illegals in the work force and threatened to call the INS if they joined the union. Meanwhile, most of the illegals in the El Paso area working as journeymen meat cutters were getting \$3 to \$4 an hour less than half the union wages of \$8.54 an hour.

Arnold Mayer, Legislative Representative for the AMCBW, testified: "In 1972 I got a letter from Mr. Franklin Garcia of another Amalgamated Meat Cutters local in South Texas. Mr. Garcia's acquaintance had entered the U.S. illegally from Mexico in 1958, married a Mexican American woman and they had four children. They settled in Brownsville, Texas. He was a member of the union while working at a food processing plant in Brownsville, Texas. The plant closed down."

"About two years after the plant closed this man came to Garcia, and told him that he was going to abandon his family so that his wife and children could get on welfare. He asked Garcia to look in on his family, but never to tell his wife why he had left her and the children.

"He told Garcia that he had applied for unemployment compensation and the company had filed objections on the basis that he had been fired. He said that he had gone to the company office to get an explanation and was informed that if he were to appeal, as any worker is entitled to do, he would be reported as an illegal alien and would be deported.

"He told Garcia that after this incident he was never able to hold a job for over two or three years at a time. This man abandoned his family and added five people to the welfare roll. There can be little question that he could only be exploited this way because he was an illegal alien."

Finally, David Twedwell of Meat Cutters Local 540, describes a recent case before the 16th Regional Labor Board. The "El Fenix" Company, complete with union-busting lawyers, had spent thousands of dollars trying to keep the union out. The management was caught threatening to go to the INS if their illegal employees supported the union, demonstrating once again that employers do know when their workers are illegal aliens and do use that knowledge to thwart the union efforts.

G. Public services

Though much exaggerated material has over-emphasized the burden, embattled local and state governments are not forced to shoulder the burdens created by federal immigration policy. In New York, Evelyn Mann, Chief of the Planning Commission Population Division, has told Federal officials that because some 750,000 illegal aliens went uncounted, the city lost at least \$20 million per year in the 1973 allocation of revenue-sharing funds.

Meanwhile, the unfortunate illegals continue to contribute excessively to public health problems. In New York, Mann estimates that as many as 7 percent of New York illegals are carrying untreated tuberculosis. In the Chicago area, Dr. Joyce Pricto, Chairman of the Department of Family Practice at Cook County Hospital, observes: "A large number of them don't vaccinate their children. They don't even get the diphtheria-whooping cough shots because they're afraid—simply afraid of the society." Clearly, the cost of human lives, hospitalized or not, is a horrible by-product of their illegality as much as their poverty.

The importance of the public health danger is impossible to quantify, but the cost to the local taxpayer is clear. Los Angeles County guessed the cost of illegal aliens to its hospitals at \$8 million in 1974 and sent a bill for most of this to the Immigration Service. Though the County argued the INS was legally bound to keep the aliens out of the area, the bill was not paid.

On the other hand, the impact of illegals on many social welfare costs is probably slight. Several studies have found that very few illegals collect unemployment compensation, go on welfare, receive food stamps or use medicaid. Education and free public hospitals are the areas where a small incremental cost is being imposed by the illegal alien. On the tax revenue side, many surveys show that most illegals do have social security and federal income taxes withheld from their pay, although a good proportion according to the Domestic Council Committee on Illegal Aliens apparently pay less than what would be their legal obligation of these taxes.

The very low incidence of social welfare payments to illegals says nothing about the indirect costs which they may produce by displacing domestic workers from employment to various social welfare programs. These are probably considerable in size: for every one million adult illegals in the United States, public policy consultant Richard G. Darman estimated that there would be a net tax burden of roughly \$2 billion. Given 6 million or more illegals in this country, if 80 percent of them were adults, then the nation would be losing annually at least \$9 billion dollars.

Though this is a rough estimate, it does point to the massive dimensions of the social and economic losses to this nation because of our unfortunate approach to illegal immigration. One could also include the burden on our resources of having an increasing number of illegal entrants added to our population. CBS News Researcher Elizabeth Midgeley estimates that annual net gain of 800,000 illegal immigrants would eventually result in a population of 26 million larger than it would otherwise be at the turn of the next century. It should be obvious that the current flood of illegal aliens not only continues the exploitation of America's lowest paid workers, it also imposes significant costs on our entire society.

IV. POLICY

The difficulties posed by illegal immigration are serious and growing by leaps and bounds. Yet despite President Carter's proposals and several bills in Congress, nothing has changed. The problem demands action on a variety of fronts.

A. Employer sanctions

Illegals come here for a job, and many employers *know* illegals when they hire them. This nation must reduce the "magnet" of a job making immigration so appealing. Moreover, the law should not allow the illegal to be punished while the employer, who may even have assisted his passage, gets off scot-free. The current approach is an irrational and unrealistic means of halting the illegal flow. As the 94th Congress House Judiciary Committee reported, "... it is apparent that this problem cannot be solved as long as jobs can be obtained ..."

The imposition of penalties for the employment of illegal aliens has received support from many groups concerned with the issue. For many years INS leadership has urged that such a provision would make its task much easier. Secretary of Labor Ray Marshall, the Cabinet-level Domestic Council Committee on Illegal Aliens, the AFL-CIO Executive Council, the National Parks and Conservation Association all have called for this legislation.

President Carter's recent proposals went a long way towards developing constructive deterrent to the hiring of illegals. The Administration urged that employers be prosecuted who were found to have a "pattern or practice" of employing illegal aliens. Convicted employers would be guilty of a civil offense, subject to fines up to \$1,000 for each alien unlawfully employed.

While Carter's plan is a significant move in the right direction, the penalties here are too weak. Congress should push for higher fines and/or replacing the civil sanctions with criminal penalties. Furthermore, by insisting on the "knowing" employment of an illegal, the Government has taken upon itself the burden of proving beyond a reasonable doubt that the employer knew of the alien's status. This is a near-impossible task. The employer should only be able to cover himself by attesting to the fact that he demanded and inspected a responsible form of identification.

Several Hispanic groups have joined business representatives in opposing strong employer sanctions. They fear increased discrimination against all Spanish speaking people. Their arguments unfortunately neglect the depressive influence of the undocumented worker or the economic well-being of his fellow Hispanics, legal immigrant or American born. Furthermore, Congress can mitigate this effect by establishing a new and foolproof system of identification and by indicating that it must be requested of all workers, not merely those who "look" like illegals.

B. National identification

A general identification system is required if any program to deal with the illegal alien problem is to have any chance of success. Two safeguards are required to prevent possible misuse or invasion of privacy: (1) a requirement that no person eligible under the law be denied a card, and (2) a requirement that no card can be revoked if issued according to law. A several year phase-in could ease administrative problems.

This system could rely on the social security number. Right now most Americans are asked to show their cards or number before commencing employment. We thus have a de facto national identification system with very few restrictions or protections built into it. Unfortunately, the procedures for the investigating applicants are not very rigorous. Furthermore, the current social security card is too easily counterfeited.

While some civil libertarians fear the implications of national identification, David North and Marion Houston rightly point out that the "situation is suffi-

ciently serious to call for the creation of a work permit system covering all U.S. workers . . . despite its complex ramifications, the work permit program is more likely to inhibit immigration than any other proposed program." Work permits may represent a difficult step for our society to take; on the other hand, most of the world's industrial democracies have had work permit systems for decades.

Whatever the system of identification chosen, the important matter is that a choice be made. Most Americans realize the importance of a sound identification system and also what a hollow argument it is to speak of such procedures as an infringement of civil liberties. Roper polls show that half the public favors a national identity card, and of those opposing, more than half support a forge-proof Social Security card. Even conservative William F. Buckley, Jr. defends I.D. cards from the charge of threatening basic American freedoms:

"What is un-American is the invasion of privacy. The documentation of individual Americans is not in itself a violation of privacy. What is done with that documentation is what matters."

Given the proper restrictions, a national identification procedure could preserve our freedoms while stemming the flow of illegals at a low economic and social cost.

C. Adjustment of status and amnesty

Obviously, the illegals currently in this country could not be deported on a massive scale. As the Domestic Council Committee expresses it, that sort of operation would be "both inhumane and impractical." Thus it is necessary to provide a carefully worked out program of adjustment of status for the illegals now here. The President has proposed that "temporary resident alien status" be granted to those aliens entering the U.S. before January 1, 1977, giving them five years before final adjustment of status.

The focus in such a program should be proving at the earliest possible date a considerable attachment to the community for the alien to be allowed to become a legal resident.

The number of years an alien has lived in the U.S. is a prime factor to be taken into consideration. Also of importance would be subjective values such as compassion for the affected families. This is of particular relevance to the non-Mexican illegal in urban areas, for he often has his family in the U.S.

On the other hand, care must be taken to insure amnesty is not so easily attained that all respect for immigration law is lost. Strict penalties should be provided for failing to register. The length of time before final adjustment should be minimized: five additional years (as in the President's bill) will enable the aliens to develop stronger social ties to the U.S., practically guaranteeing permanent resident status when the final determination is made.

Finally, we must avoid letting amnesty create a large body of second-class further illegal immigration. More resources must be devoted to border-control workers. This nation's egalitarian tradition demands that all workers be treated alike, having the same rights and privileges. Not only would those in the temporary resident category lack the vote, they would be excluded from all Federal welfare benefits, including medical assistance under the Social Security Act, AFDC assistance, supplemental security income for the aged, blind and disabled under the Social Security Act, and Food Stamps. Permitted only the right to work, temporary residents would constitute little more than a class of peons. The amnesty program must be expedited so as to minimize this inequality.

D. INS enforcement

No amnesty system will be operative unless further efforts are made to prevent further illegal immigration. More resources must be devoted to border-control efforts along our Southern border. However, this Department is also concerned about the impact of Non-Mexican illegal aliens. To gain entrance to the States many of these use the international airports, where the INS Fraudulent Entrants Study found a special application of manpower netted 12 to 14 times the average number of apprehensions made during routine operations. Improvements on INS efforts on both fronts is a necessary preventive approach: It is certainly more cost-effective and less intrusive than locating and apprehending the illegal once he is working in the United States.

Aside from increasing INS manpower and resources, other changes would make their work easier. For instance, the INS should be empowered to seize vehicles used in the smuggling of aliens. In fiscal year 1977, the INS found that over one-

fifth of the vehicles intercepted were "repeaters"; many were vans especially modified for the purpose. Senator DeConcini's bill, S. 3093, provides the necessary legal tool in the battles against the institutionalized traffic in illegal aliens.

Finally, the INS needs support from other federal agencies also in contact with illegals. Concerted enforcement of tax and labor laws could greatly reduce the competitive advantages of illegal aliens in the labor market. At present, however, the INS has rather poor relations with HEW, the IRS and many other federal agencies.

The administration could attempt to soften the institutional jealousy here with the establishment of multi-agency strike forces, as recommended by North and Houston. These would include enforcement officials from the following:

- (1) Employment Standards Administration, for minimum wage violations.
- (2) Occupational Safety & Health Administration, for OSHA violations.
- (3) State Employment Security Agencies, for violations of unemployment insurance tax laws.
- (4) Internal Revenue Service, for Social Security and income tax.
- (5) INS.

This multi-agency effort would require greater attention to the problem, but could prove an extremely effective deterrent to the hiring of illegals. The strike force would also constitute a real blow at the illegal and often inhuman conditions now prevalent in this nation's secondary labor market.

E. Temporary workers, H-2's and the labor certification program

The AFL-CIO has long opposed any type of "bracero" program which would permit the importation of cheap foreign labor for farms. Congress should resist all attempt to revive this practice, discarded in 1962. Such proposals only repackage the illegal alien population without changing their depressive influence on American Labor markets.

Unfortunately the Department of Labor's certification program for temporary workers has often revived this pernicious approach. First of all, allowing the Attorney General to override the Secretary of Labor's recommendation, as in the case of the Presidio area growers, totally defeats the purposes of the certification program. In that case, the employees were paid by piece-rate, not even meeting the \$2.20 minimum wage. Housing was not provided for; the H-2 workers were further charged for transportation. The United Farm Workers Vice President, Gil Padilla, rightly commented on the H-2 program, calling it "a bracero program by another name."

More stringent controls are needed to insure the employer has widely publicized a legitimate job. Guarantees must be provided by the employer or grower that unemployed Americans are unavailable to perform the work, that the reasons are not low wages or bad conditions, and that labor market standards would not be eroded by the immigrants. The Department of Labor must also insist the search for citizen workers be widened beyond the mere 20 percent who register with the state unemployment services. Also, much further in advance the employer ought to be contacting the relevant unions and widely publicizing the jobs. No longer should we tolerate a system where half or more of those aliens applying for certification are *already on the job*.

F. Visa abusers

Many of the illegals entering the food and service trades will not be smuggled over the border, but instead will enter legally and then break the terms of their visa. The State Department must strengthen its program for making visa determinations. This will require additional resources and manpower; it will also necessitate more prestige being attached to the visa issuance function. The State Department must also be willing to absorb more pressure from host nations regarding visa denials. In short, as North and Houston write, "the prevention of illegal immigration warrants a significantly high place on the State Department's list of priorities than it now has."

G. Foreign aid

No program to control illegal immigration would be workable or humane were it not to include massive efforts at developing the economies of the less developed world currently sending their "excess" population here. Mexico in particular must be awakened to the need of providing labor-intensive rural agricultural development and putting on a lid on its population growth.

On the other hand, aid in the form of "twin plant" tariff loopholes, which merely export jobs previously held in American factories, must be opposed. Our

government persists in absentmindedly allowing this sort of unbalanced growth to continue. A revived agricultural economy, not a steel industry, is what Mexican economic development calls for.

More resources are needed for this battle; but it is a myth that this all need be in foreign aid dollars. Mexico has one of the most unequal distribution of incomes of any nation. Unfortunately, all illegal immigration to the United States achieves is a lessening of the pressure on the Mexican government for major socio-economic reforms. Ending illegal immigration might force the angry peasant to look to his own political system for assistance, not to the "promised land to the North."

SELECTED BIBLIOGRAPHY

AFL-CIO, Food and Beverage Trades Department F&B Topics, Vol 1, No. 3, 1978.

U.S. Domestic Council Committees on Illegal Aliens Preliminary Report, December 1976.

National Commission for Manpower Policy "Manpower Immigration Policies in the United States." Special Report No. 20. Washington, D.C. Prepared by David North and Allen LeBel. February 1978.

North, David S. and Houston, Marion F. "The Characteristics and Role of Illegal Aliens in the U.S. Labor Market: An Exploratory Study." Washington, D.C.: prepared for the Employment and Training Administration, U.S. Department of Labor by Linton and Company, Inc., March 1976.

Congressional Research Service. "Illegal Aliens Analyses and Background," prepared for the use of the House Committee on the Judiciary. Washington, D.C., U.S.G.P.O. June 1977.

AFL-CIO American Federationist "Illegal Aliens: A Story of Human Misery" by Andrew C. McLellan and Michael D. Boggs, August 1974.

"The Immigrant Worker Ploy", Washington Post, July 16, 1978, pp. A1, A8.

"Aliens: Where They Come From, What Awaits Them." New York Times, May 1, 1977, p. E3.

"Illegal Aliens: Doing the Dirty Work No One Else Will?" Washington Star, August 8, 1977, p. A2.

Keely, Charles B., et al., "Profiles of Undocumented Aliens in New York City: Haitians and Dominicans." New York Center for Migration Studies. Occasional Paper No. 5, 1978.

Subcommittee on Immigration of the House Committee on the Judiciary. Hearings: Illegal Aliens. Feb.-March 1975.

Comptroller General of the U.S. Report to the Senate Committee on the Budget: "Impact of Illegal Aliens on Public Assistance Programs—Too Little Is Known." December 1, 1977.

"What Illegal Aliens Cost the Economy". Business Week, June 3, 1977, pp. 85-90.

Fogel, Walter. "Illegal Alien Workers in the United States." Los Angeles Institute of Industrial Relations, University of California. Reprint No. 272, 1977.

Levering, Robert "Is Business Pro or Con Illegal Immigration?" Business and Society Review.

Mr. ALLSTROM. This ought to include the following things.

One, sanctions on employers for hiring illegals.

Two, a national identification system based on an upgraded social security card.

Three, some adjustment of status for the millions of long-time illegal residents that we could not deport without great expense and cruelty.

Four, more pervasive efforts to inform illegal workers of their rights in the workplace.

Five, greater resources for INS enforcement, including support from other Federal agencies.

Six, reworking of the Department of Labor's certification program for temporary and H-2 workers.

Seven, vigorous attention to the growing number of visa abusers.

Eight, foreign aid to develop labor-intensive rural industry, particularly in Mexico.

It is our hope that the passage of S. 3093 will not only reduce the flow of illegal immigration, but will also—more importantly—open an era of more rational public discussion of the problem and movement toward more humane treatment for legal and illegal workers.

Thank you.

Senator DECONCINI. Thank you very much.

Mr. Panarello?

Mr. PANARELLO. You have heard Mr. Allstrom in his oral statement talk about this very serious subject. I would like to echo and emphasize the deep concern our department has for it as well as the AFL-CIO. The topic, we recognize, is expansive and complex, but it deserves immediate attention.

The testimony you heard deals with employment which is an important situation here in the United States. I know that you are deeply concerned about it, Senator.

Only last year the administration proposed to grant amnesty to close to a million illegal aliens. This backfired because the proposal then incorporated a consideration for welfare and disability benefits. That is another aspect of this problem.

So, I am sure under your guidance and under this committee this bill, S. 3093, will get the attention it needs. We hope it moves right down the line for enactment.

Senator DECONCINI. Thank you.

Let me ask you a couple of questions. In your expanded statement, I assume that you are in support of the President's amnesty program for aliens?

Mr. ALLSTROM. Generally, yes. There are a few areas where we have certain technical problems with it. But generally, we agree with it.

Senator DECONCINI. How do you rationalize that with your statement regarding the job problem? Are you not fearful that if these people are granted amnesty and not deported they will take jobs away from Americans?

Mr. PANARELLO. I cannot answer for Mr. Allstrom, but I am quite sure he had that in mind when he mentioned certain reservations. I think we have to take a good hard look at it.

When the time comes to pass this, then it could become a reality—that is, amnesty could become a reality. But, hopefully we can understand what the figures signify. There is training of course. There is the question of whether we have operational procedures to train these people.

As you know, our affiliates deal with a high, intensive labor market. We are talking about services trade. So, it—

Mr. ALLSTROM. I would like to add a few considerations.

No. 1, I think we have to recognize that there is a certain amount of humility in dealing with these workers who have established deep roots in certain communities. Secondly, what we visualize as the major problem with the illegals is not simply their number but their illegal status in this country and the constant jeopardy which they feel and the consequent ability of many employers to exploit their status, thereby reducing labor standards because these people do not realize their full protection under law.

With an amnesty program, which we would consider fair, we feel that these people could be worked into the labor force without major dislocations of U.S. workers.

Senator DECONCINI. How about the unknown numbers? Is that a consideration also in the AFL-CIO's position on this? How about if it turned out to be 20 million?

Mr. ALLSTROM. If it turned out to be 20 million, yes, we would have some reservations.

Senator DECONCINI. So, we do not really have the numbers.

Mr. ALLSTROM. Our philosophical position would have to be fairly firm. I mentioned the measure of humanity. We understand that exploitation is principally a feature of the status the illegals have. There would be adjustments to remain responsible to our economy, certainly.

Senator DECONCINI. Is it safe to say, then, in principle you support it depending on some variables and one of those variables is how astronomical their number might be? Is that right?

Mr. ALLSTROM. That is fair to say, yes.

Senator DECONCINI. Has the situation you described in the restaurant and food service industry been documented in any other trade?

Mr. ALLSTROM. Do you mean within food economy?

Senator DECONCINI. Any other trades.

Mr. ALLSTROM. I am aware of certain other studies. I could give you a list for the record.

Senator DECONCINI. Do you know any other specific industries that have been especially impacted?

Mr. ALLSTROM. The building trades have been heavily impacted. I know about that.

Senator DECONCINI. Why is the restaurant and food service such a magnet for illegals for employment? Is it difficult to police them or what?

Mr. ALLSTROM. Generally, I would say that it has the transient work force. There is a high turnover in many sectors of the food economy. It makes it easier for somebody who does not want to be traced to avoid detection.

Many of the jobs in the food economy are not highly skilled occupations and not demanding a tremendous knowledge of the English language and not demanding many skills that an alien would not have. He can fit in more comfortably into that situation.

Senator DECONCINI. I have no further questions. Does staff have any questions?

Mr. RAWITZ. Yes. Is it your position that these jobs in the food and beverage industry now being held by illegal aliens could be readily filled by persons in the United States in lawful status as citizens if the illegals were expelled?

Mr. ALLSTROM. I think there is a problem in determining exactly how many aliens would be expelled under any sort of crash program to deport.

It is our position generally that many jobs are lost to U.S. citizens because of the illegal work force in the United States; yes.

Mr. RAWITZ. I take it that many of these jobs are rather unattractive jobs?

Mr. ALLSTROM. Unattractive?

Mr. RAWITZ. Yes; they are low pay and low status, is that right?

Mr. ALLSTROM. They are unskilled jobs. They have the characteristics that we described in our assessment of the secondary force; yes.

Mr. RAWITZ. But there is a ready labor market in the United States to fill these jobs if there were no illegal aliens to fill them; is that correct?

Mr. ALLSTROM. I think the answer to that is yes. However, the permeation of the jobs in our economy is so extensive by the illegal aliens that if you are talking about a specific sector and a certain kind of job, then I might need some more specifics to answer your question.

We have found cases of the illegal aliens in Maryland not very far away. One was working in a bakery for nearly \$8 an hour.

We have found cases of illegal aliens in computer analyst jobs. They pay exceptionally high wages. Very many Americans would be happy to take those jobs. They would be considered very attractive jobs.

There are any number of examples that you might consider attractive or not attractive. I guess I need more particulars.

Mr. RAWITZ. Thank you.

Mr. PANARELLO. Let me comment.

You might read often in the paper about these jobs not being filled because they are not too attractive. I am talking about restaurants or hotels.

We often take a good hard look at it. There are circumstances surrounding a situation of that sort. You have a welfare reform being considered. As we go along, when we have such considerations with people on welfare and when we have the intense study about being employed, I think that you will find that we do have in the United States a market of workers who would secure these jobs based on certain classifications.

You will also find that in the organization of these workers that their conditions are improved year by year, but depending on collective bargaining. So, the job itself becomes more attractive.

I think all of these little elements will fit into the picture also.

Mr. ALLSTROM. There is another aspect that I neglected to mention. One frequently encounters the argument that the aliens are creating jobs or making jobs possible in situations where American citizens would not accept employment.

In large measure, that is a self-serving argument. What we find is that where there are illegal aliens, there is a depressed area of labor standards. Those labor standards are against current law quite frequently.

That sort of condition is what we really object to.

Senator DeCONCINI. Can you substantiate that with an example?

Mr. ALLSTROM. It is a fairly complex phenomenon. In the situations that we have described here, often we have workers who are working overtime and not receiving proper compensation. We have people working below the minimum wage.

Senator DeCONCINI. Is that because of a lack of enforcement of the existing laws?

Mr. ALLSTROM. Lack of enforcement in large measure. There is a litany of things which we have already asked for legislatively, and among those there are a few laws which ought to be inserted into the books which would help rectify this situation also.

Mr. PANARELLO. Last night there was a movie on television titled "River of Promises" which depicted what you are talking about. It was a "Police Story" segment regarding the transportation done by the "coyotes" with, of course, the Hollywood flair. But it could be used as a documentary of the testimony produced here today. It was on from 9 to 11 last evening on channel 4. You might look that up, Senator.

Senator DECONCINI. Thank you very much, gentlemen. We want to commend your organization for their interest in this area, in both the humanitarian and economic aspects for your members and all American workers.

Our next witness is Phyllis Eisen, immigration program director, Zero Population Growth.

We welcome you, Ms. Eisen. Would you care to proceed?

**STATEMENT OF PHYLLIS EISEN, IMMIGRATION PROGRAM
DIRECTOR, ZERO POPULATION GROWTH, INC.**

Ms. EISEN. Good morning. I am Phyllis Eisen, immigration program director for Zero Population Growth.

ZPG is a private, nonprofit, membership organization supported by citizens around the country who believe the United States would benefit from a voluntary stabilization of its population growth.

On behalf of ZPG, I would like to thank you for the opportunity to testify my general support on S. 3093, which would authorize the Immigration and Naturalization Service to seize and confiscate vehicles used for smuggling illegal immigrants into the United States. This legislation speaks to a specific problem of current law enforcement.

The escalation of illegal immigration into the United States during the past decade has led to efforts to tighten the border enforcement. In response, there has been a dramatic increase in the organized smuggling of individuals into the country illegally.

Last year alone, the number of smugglers apprehended by INS increased 29.2 percent over the previous year. In the past 10 years, the number has increased to a staggering 925 percent. Just as the number of apprehended smugglers has increased, so has the number of undocumented aliens immigrating into the country. In 1977, the number of illegal immigrants caught with smugglers rose 67.4 percent over 1976. Unless more effective penalties are established to deter the illegal trafficking of men and women, stricter enforcement of the border will ultimately serve the interests of smugglers by encouraging their business.

Due to the experience and sophistication of smuggling operations, individuals who enter the country illegally by these means have a better chance of avoiding detection upon entry than do individuals coming in illegally on their own.

For example, it was reported by the INS that the communications systems enable "coyotes" or smugglers to locate Border Patrol surveillance vehicles as well as to determine when the Border Patrol must open its checkpoint stations to unrestricted traffic.

Once over the border, illegal aliens are often transferred by smuggling rings from the Southwest to the Midwestern and Northern metropolitan centers of the United States. This information is according to the General Accounting Office. Smuggling thus serves an important function by facilitating the geographic distribution of illegal immigrants throughout the United States. Professional smugglers provide immigrants with necessary fraudulent documents—for example, social security cards, drivers' licenses, and birth certificates—as well as to secure housing and employment for them.

According to INS Border Patrol officials, many vehicles are used repeatedly in smuggling, although they may be employed by different smuggling rings. These vehicles are often registered in the United

States and/or Mexico under assumed names, repainted, sold, and repossessed. This makes the ownership of the vehicle difficult to trace, but even if the vehicles could be traced, many smuggling rings have been found by INS not to use the same vehicles for extended periods of time.

The high velocity of circulation of these rental vehicles makes it possible for smuggling operations to transport people across the border continuously.

For all of these reasons, smuggling is a significant part of the trend of illegal immigration, and the repeated use of vehicles appears to contribute to it.

However, INS has no authority to seize or confiscate vehicles when smugglers are apprehended to remove them from the flow of the illegal traffic.

I am going to skip over a lot of the cases which I have presented in my written testimony because you have heard enough of them today, but I would like to give you a short one which illustrates how profitable smuggling is.

In one case, an INS Border Patrol agent stopped a pickup truck and two motor homes near Laredo, Tex., which were carrying 124 illegal immigrants. The smuggler had \$18,000 in his possession. That is a great deal of money to be carrying around, and it is not at all unusual.

Under present conditions, criminal prosecution certainly does not serve as a deterrent to smugglers. Less than half of all violations are prosecuted, and of these, punishments are negligible. The average net fine in 1975 was a mere \$99, and the average net sentence was 95 days. These cannot be considered significant deterrents to drivers who are believed to earn at least \$100 per trip or to smugglers who amass tens of thousands of dollars.

Effective prosecution is further impeded by current law which has the effect of hindering the procurement of evidence and permitted use of vehicles for smuggling. Since it is not empowered to seize or confiscate vehicles used to transport illegal aliens, INS cannot use these vehicles as material evidence as has been pointed out already today.

Since the INS can only impound the vehicles left on Government property, the majority of vehicles involved in smuggling are towed to private lots. Individuals who can demonstrate ownership or possession of a vehicle in a private lot can pay for its towing and storing charges, and reclaim it. This is considered inadequate deterrent to smugglers involved in repeated use of these vehicles.

For example, a survey by the Yuma Border Patrol in 1976 revealed that of 362 commercial—professional smugglers—vehicles found transporting undocumented immigrants, 22 percent had been caught at least once before. According to INS antismuggling agents, a vehicle may be used 5 to 10 times before it is detected.

INS distinguishes between noncommercial smugglers—that is, part-time weekend smugglers—and commercial full-time smugglers who account for the bulk of the smugglers. With the seizure and confiscation authority provided by S. 3093, INS officials expect to be able to secure the temporary or permanent loss of vehicles which could reduce the amount of noncommercial “fringe” smugglers significantly. The reduction of this “fringe” smuggling activity could in turn have an indirect consequence for commercial smuggling by allowing the INS anti-smuggling division to focus its energies on large-scale operations.

Another indirect effect may benefit INS investigation of smuggling. Professional smugglers have been found to employ newer and better equipped vehicles such as vans or pick-up trucks. They would lose substantial investments with seizure and forfeiture of vehicles which may encourage organized smuggling rings to persist in trying to recover confiscated vehicles. That in turn could assist INS in its investigations of commercial smuggling.

Similarly, INS could use the vehicles as material evidence in prosecution.

Common carriers, including rental vehicles, have been found to be used in smuggling. S. 3093 would allow INS to use its discretion in exercising its authority to seize and confiscate a vehicle and a rental vehicle would be exempted from seizure and forfeiture if the owner was not a consenting party of the illegal act. A special litigative procedure would have to be established to make this determination.

Since INS already has authority to search vehicles given probable cause, this legislation's new authority to detain vehicles should not open possible new avenues of discrimination against legal U.S. residents who share a common ethnic or national origin with the suspected smugglers.

Instead, it is hoped that the exercise of this authority would have the effect of penalizing the profiteering heads of smuggling rings who exploit the desperation of individuals seeking entry to the United States.

If there is a risk of infringement of civil liberties posed by this authority, it may be in the rental market. With the increased incidence of impoundment, smugglers may depend more on rented vehicles. As a result, private rental companies will have the responsibility to be more careful in selecting their customers in order to minimize loss of revenue due to possible detainment of their vehicles. If given seizure and confiscation authority under this legislation, INS should be encouraged to work with appropriate civil rights agencies and private businesses to develop reasonable and effective safeguards against possible discrimination.

When ZPG testified before this committee in the spring, we had two concerns. One was the enforceable law and two concerned the broader policy issues. We have consistently supported the idea of a national commission which we would hope would deal with the broader issues; that is, the root causes of this enormous problem.

The bill under consideration by this committee today deals with the enforceable law aspect. This is just one aspect but one cannot be substituted for the other. We need to deal with all aspects of the problem.

However, this is vitally important because it will allow INS to focus on the commercial professional smuggler who is gaining so much profit from such an exploitive trade.

Thank you for allowing me to testify. I will be glad to answer any questions you might have.

Senator DECONCINI. Thank you for that fine testimony. Without objection, your testimony will be inserted into the record at this point.

[Material follows:]

Statement

S. 3093, AUTHORIZING SEIZURE AND FORFEITURE FOR THE U.S. IMMIGRATION AND NATURALIZATION SERVICE

Phyllis Eisen, Immigration Program Director
Zero Population Growth, Inc.

Committee on the Judiciary
U.S. Senate

I. INTRODUCTION

Good afternoon. I am Phyllis Eisen, representing Zero Population Growth, Inc. ZPG is a private, non-profit, membership organization that believes the U.S. would benefit from a voluntary stabilization of its population growth. In addition, ZPG recognizes the integral role immigration plays in continued U.S. population growth. We are concerned about the international ramifications of large-scale immigration of both sending and receiving countries.

On behalf of ZPG, I would like to thank you for the opportunity to testify on S. 3093, which would authorize the Immigration and Naturalization Service to seize vehicles used for smuggling illegal immigrants into the United States.

II. OVERVIEW

The recent escalation of illegal immigration into the United States has resulted in the tightening of American borders. Because of the subsequent difficulty of gaining entrance into the U.S., the use of smuggling as a method of illegal entry has increased dramatically over the past decade. See Graph I. Last year the number of smugglers

apprehended increased 29.2%, and over the last ten years it has risen a staggering 925%. See Graph II. Indeed, not only has the number of smugglers increased but so has the number of undocumented immigrants they surreptitiously transport into the U.S. In 1977 the number of illegal immigrants caught with smugglers rose 67.4%. Unless more stringent penalties are instituted to deter the illegal trafficking of men and women, stricter enforcement of the border will ultimately serve the interests of the smugglers by expanding their business. ZPG is concerned about this exploitative situation. We are cognizant of the conditions which compel people throughout the world to emigrate from their native countries. Penalties should focus on those who profit from this illicit trade, not on the impoverished immigrants themselves. To reduce the flow of illegal immigrants, the phenomenon must be addressed at its roots, for example, by improving poorly designed development programs. Large-scale immigration is symptomatic of basic structural determinants. As a result, ZPG believes that a humanitarian approach to this issue would include: increased developmental assistance to the major "source" countries of immigration to the U.S., and more effective regulation of U.S. borders. Such a delicate situation in which the principles involved are human beings requires compassion. Thus, ZPG believes that prevention of entry is more suitable and more humane than deportation.

III. SIGNIFICANCE OF THE SMUGGLING TREND

Due to the experience and sophistication of smuggling operations, illegal immigrants have a greater chance of avoiding detection upon entry. For example, communication systems enable "coyotes" (smugglers) to locate border patrol surveillance vehicles as well as to determine when the Border Patrol must open its checkpoint stations to unrestricted traffic.

Once over the border, smuggling rings often transfer illegal immigrants from the southwest to the midwestern and northern metropolitan centers of the United States. See Maps, Graph III. Smuggling thus serves an important function by facilitating the geographic distribution of illegal immigrants throughout the U.S. Moreover, professional smugglers provide immigrants with necessary fraudulent documents (e.g. social security cards, drivers' licenses, and birth certificates), and procure housing and employment for them.

IV. CASE STUDIES

Many vehicles are used repeatedly in smuggling activities although they may be employed by different smuggling rings. These vehicles are often registered in the U.S. and/or Mexico under assumed names, repainted, re-sold, or repossessed. As a result, the ownership of these vehicles is very difficult to trace, and, even if it could, many smuggling rings do not use the same vehicles for extended periods of time. Indeed, the high velocity of circulation of these automobiles enables smuggling operations to continuously transport their human

contraband across the border. Without the authority to seize and confiscate vehicles used to smuggle illegal immigrants into the U.S., the Immigration and Naturalization Service (INS) is deprived of a potent power in attempting to curb this illicit flow.

REPEAT USAGE OF VEHICLES. A known smuggling ring in California purchased a new pick-up truck in early April of this year. On April 14th this truck was stopped with a full load of undocumented immigrants, and was reclaimed that same day. Four days later it was found carrying illegal immigrants and again reclaimed the same day. One week-and-a-half later it was discovered transporting another load of illicit human cargo, and was reclaimed the following day. According to Vernon Jacques, a Chula Vista, California Anti-Smuggling agent, this is a common occurrence; it is not unusual to find automobiles used by smugglers that have travelled over 100,000 miles and yet are only one year old. On May 2nd this case was concluded when the truck was seized by Customs agents on a narcotic violation. Customs currently has the necessary authority to seize and confiscate vehicles used in violation of laws within its jurisdiction.

CIRCUMVENTION OF IMMIGRATION LAW. On November 14, 1976 a pick-up truck was found in Washington, D.C. with a concealed cargo of 25 illegal immigrants. The driver, who did not own the truck and was an illegal immigrant himself, admitted to several trips from Los Angeles to Washington. Since this was his first arrest, he was prosecuted on a mere misdemeanor charge and received a suspended jail sentence together with a minimal fine. But even if he had been sentenced to jail, the maximum penalty for a misdemeanor offense is only six months.

Joseph Mongiello, INS director, said that in this case he suspected the owner of the truck " is the leader or one of the leaders" of a large Los Angeles-based alien transportation network, but unfortunately there was no evidence to implicate anyone. Drivers are used to "front" for the principle members of smuggling organizations, protecting them from prosecution. As a result, the driver was deported along with his fellow illegal immigrants to the border, most likely to begin their journey over again. When the smuggling ring sent an accomplice to reclaim the pick-up truck, its members remained unscathed; no fines, no criminal sentences, and no confiscation of their property.

MAGNITUDE AND LUCRATIVE NATURE OF TRADE. Border Patrol agents stopped a pick-up truck and two motor homes near Laredo, Texas carrying 124 illegal immigrants. One smuggler had \$18,000 in his possession. It is important to note that smuggling fees range from \$150 to \$600, contingent upon the length of journey and services rendered. Thus, it is easy to understand the proliferation and increasing sophistication of smuggling rings given the considerable profits derived from the trafficking of undocumented immigrants.

SOPHISTICATED OF SMUGGLING RINGS. The Las Hueras ring was broken up after a 3-year probe by INS agents; 25 persons were indicted. The ring was smuggling up to 50 immigrants a day into the Los Angeles area from Tijuana.

IV. INEFFECTUAL PROSECUTION.

Under present conditions, criminal prosecution certainly does not serve as a deterrent to smugglers. As demonstrated by Graph IV, on

page 14 , less than half of all violations are prosecuted; and all those prosecuted are obviously not convicted. Punishments are negligible. The average net fine in 1975 was a mere \$99, while the average net sentence imposed was only 95 days. This is hardly a deterrent for the drivers who make at least \$100 a trip or to smugglers who amass tens of thousands of dollars.

The smuggling of undocumented migrants is a felony punishable by a fine not to exceed \$2,000 and/or by imprisonment not in excess of 5 years, per immigrant and per offense. Yet, at present most violations are prosecuted as misdemeanors. U.S. district court judges are unreceptive to trying immigration cases for they are considered low-priority offenses. Thus INS officers believe that prosecuting cases as misdemeanors expedites the processing of the cases and results in relatively higher sentences and fines.

Finally, many drivers are undocumented immigrants themselves, and are simply prosecuted as such.

V. PRESENT LEGAL SITUATION

HINDERS THE PROCUREMENT OF EVIDENCE. The INS is not empowered to confiscate nor even seize vehicles used to transport undocumented immigrants. This hinders the use of these vehicles as material evidence in the prosecution of some smuggling offenses. Many times apprehended illegal immigrants are willing to give state evidence and identify the vehicles which brought them into the United States. But most of the impounded vehicles are reclaimed in a few days, making

them difficult to relocate. Therefore, the authority to seize vehicles would undoubtedly assist the INS in the prosecution of certain smuggling cases.

PERMITS REPEAT USAGE OF VEHICLES. The INS can only impound vehicles left on government property and hence the majority of vehicles found violating smuggling laws are towed to private lots. Presently, demonstration of ownership (or possession in California) is enough to reclaim automobiles used in smuggling activities after paying towing and storing charges. This simple procedure to reclaim vehicles is insufficient to deter the smuggling of undocumented immigrants. Consequently, the same vehicles are used repeatedly.

A survey by the Yuma Border Patrol in 1976 disclosed that of 362 commercial (professional smugglers) vehicles found transporting undocumented immigrants, 22% had been caught at least once before. See Graph V. However, this statistic merely hints at the extent of the problem for many Anti-Smuggling agents insist that a vehicle makes five to ten smuggling trips before it is detected.

V. IMPACT OF S. 3093

The primary intent of this bill is to enable the INS to more effectively utilize their resources by increasing the penalties for smuggling undocumented migrants. By seizing vehicles, the part-time or weekend (non-commercial) smuggler would be deterred from entering this smuggling market. The permanent or even temporary loss of their automobiles would greatly reduce the number of non-commercial smugglers or smuggling "fringe". Once these numerous "small-timers" are

eliminated, the Anti-Smuggling Division of the INS can focus its energies on the large, commercial smuggling operations -- the backbone of this illicit trade.

Professional smugglers usually employ newer, better equipped vehicles because of their large volume (usually vans and pick-up trucks) than non-professional smugglers. As a result, they risk the loss of substantial investments with the seizure and forfeiture of their vehicles. Although this will add to "coyotes" overhead costs, the persistence of organized smuggling rings to recover their confiscated vehicles will probably assist the INS in their investigation of commercial smuggling operations.

The present language of this bill grants the INS discretionary power to seize and confiscate vehicles involved in smuggling activities. This flexibility will enable the INS to make distinctions between vehicles used by commercial smuggling rings and those vehicles whose owners were not aware that their automobiles were being used for illicit purposes. Thus, a separate litigative procedure would be instituted to determine if the owner of a seized vehicle was directly involved in transporting undocumented immigrants. For example, under the provisions of the bill, a "common carrier" such as Avis truck rentals would not be liable for forfeiture unless it was proven that the rental agency was directly involved in smuggling operations. Although many vehicles would be reclaimed, the amount of time they would be taken out of circulation would have a negative impact on the flow of undocumented immigrants into the United States, particularly on those that would

ordinarily gain admission through non-commercial means. Consequently, this would free INS to concentrate its energies on remaining commercial smuggling enterprises.

VI. IMPACT OF BILL

CIVIL LIBERTIES IMPLICATIONS. The powers granted to the INS by the "subject to seizure and forfeiture" clause of the bill are important to a discussion of possible civil liberties violations. This language will give the proper officials discretionary power over which vehicle shall be forfeited.

Presumably under this bill, an INS agent could seize a vehicle to deter large-scale smuggling, yet also exercise discretion so a vehicle of an impoverished person smuggling relatives would not necessarily be confiscated.

Moreover, since INS already has the authority to search vehicles (given "probable cause"), the fact that this legislation proposes the detainment only of vehicles, this bill seemingly opens no new avenues of discrimination against Hispanics and other ethnic minorities.

In fact, this Bill should serve to penalize the profiteering heads of smuggling rings rather than the drivers and undocumented immigrants on whom they prey and who now bear the sentences.

Several possible infringements of civil liberties do arise, however. ZPG is apprehensive about the increased risk to coyotes, for it may lead to higher smuggling fees and ultimately give smugglers free reign to further abuse undocumented immigrants.

In addition, we suspect that a subtle infringement on civil

liberties may develop within the rental vehicle market. With the increased incidence of impoundment, smugglers may depend more on rented cars and trucks. As a result, private companies will have the responsibility to be more careful in selecting their customers in order to minimize the loss of revenue during the detainment of their vehicles. ZPG is therefore concerned over the potential discriminatory practices that may arise against Hispanics, the poor, and other minorities due to the imposition of tighter screening procedures.

VII. SUMMARY

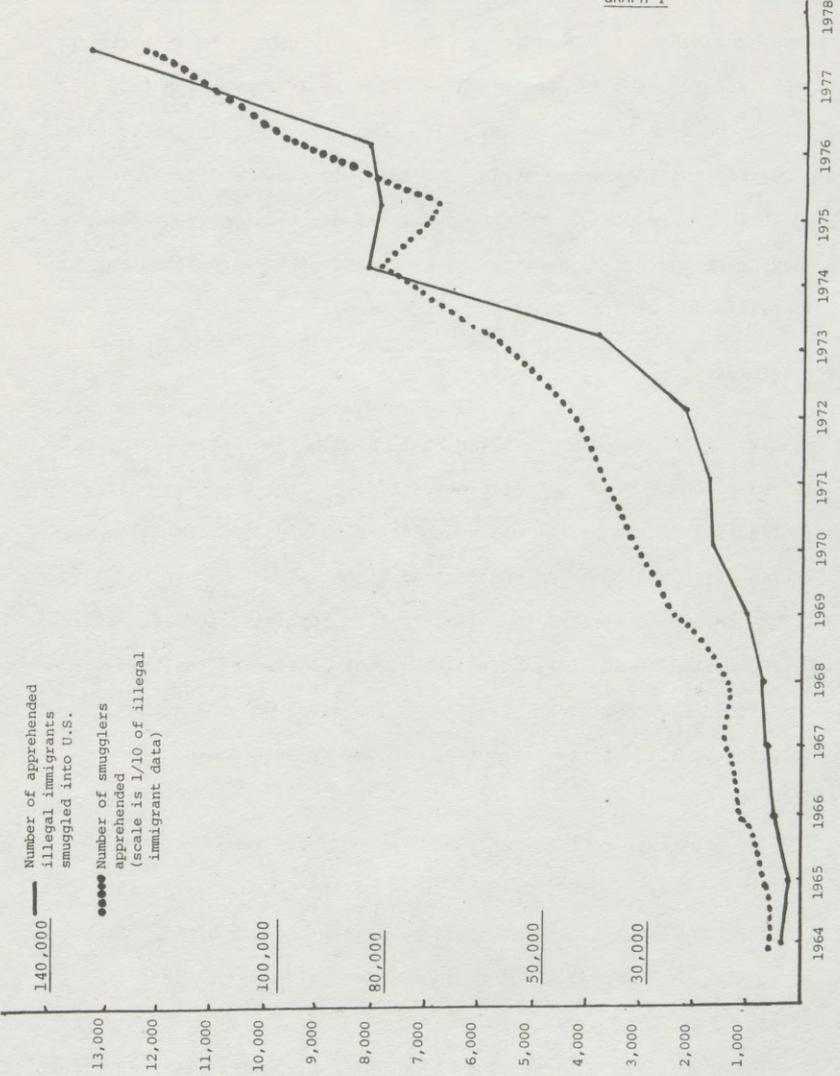
In conclusion, the startling rise in smuggling activity demonstrates the increased demand for surreptitious entry into the U.S., as well as the ineffectual nature of current smuggling penalties. Present law allows smuggling to thrive on human desperation.

We have demonstrated smuggling to be a sophisticated, lucrative trade, and hasten to add that smuggling is not limited to the use of motor vehicles. Boats and planes are also involved in a number of smuggling violations, and cannot be ignored as automobile trafficking is curtailed.

The Drug Enforcement Agency and Customs have been vested with this power for many years and the absence of this authority in INS is conspicuously evident. Moreover, the Mexican counterpart to the INS currently possesses this authority. There is no reason that INS should be excluded.

Thank you, Mr. Chairman. I, along with my colleagues Brad Michaels and Robert Manning, would be glad to answer any questions you may have.

GRAPH I



GRAPH II

	1964	% Δ	1965	% Δ	1966	% Δ	1967	% Δ
APPREHENDED SMUGGLERS	513	--	525	2.3	959	91.0	1219	27.1
ILLEGAL IMMS APPREHENDED W/ SMUGGLERS	2401	--	1726	28.1*	3813	120.9	5671	48.7

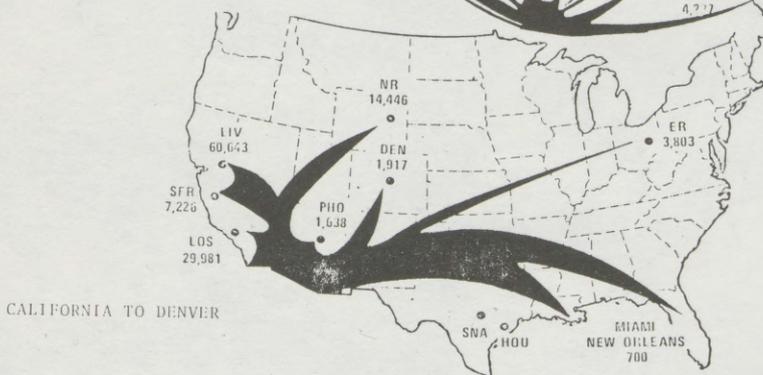
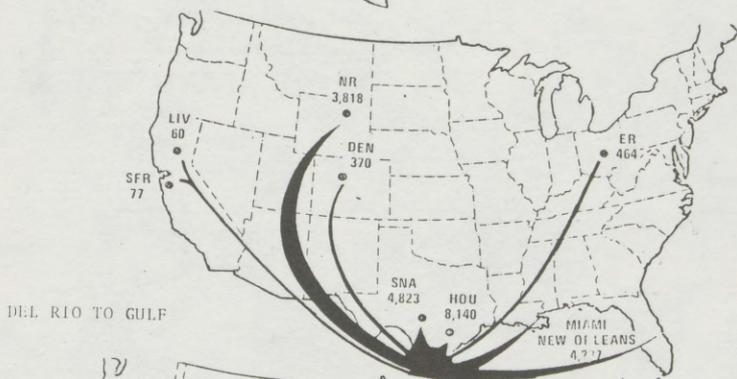
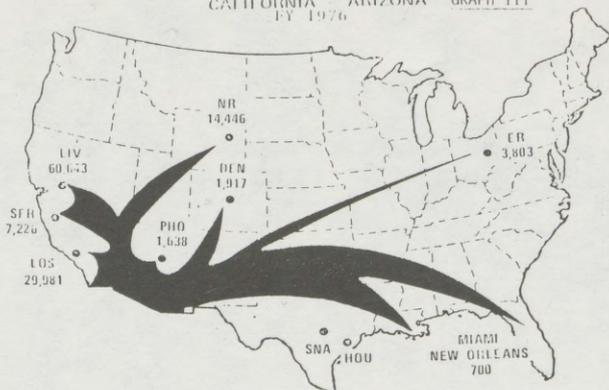
	1968	% Δ	1969	% Δ	1970	% Δ	1971	% Δ
APPREHENDED SMUGGLERS	1210	0.7*	2048	69.3	3298	61.0	3814	15.7
ILLEGAL IMMS APPREHENDED W/ SMUGGLERS	6662	17.5	11,784	76.9	18,747	59.1	19,765	5.4

	1972	% Δ	1973	% Δ	1974	% Δ	1975	% Δ
APPREHENDED SMUGGLERS	4564	19.7	6355	39.2	8074	27.1	6860	15.0*
ILLEGAL IMMS APPREHENDED W/ SMUGGLERS	24,918	26.1	41,589	66.9	83,114	99.9	80,383	3.3*

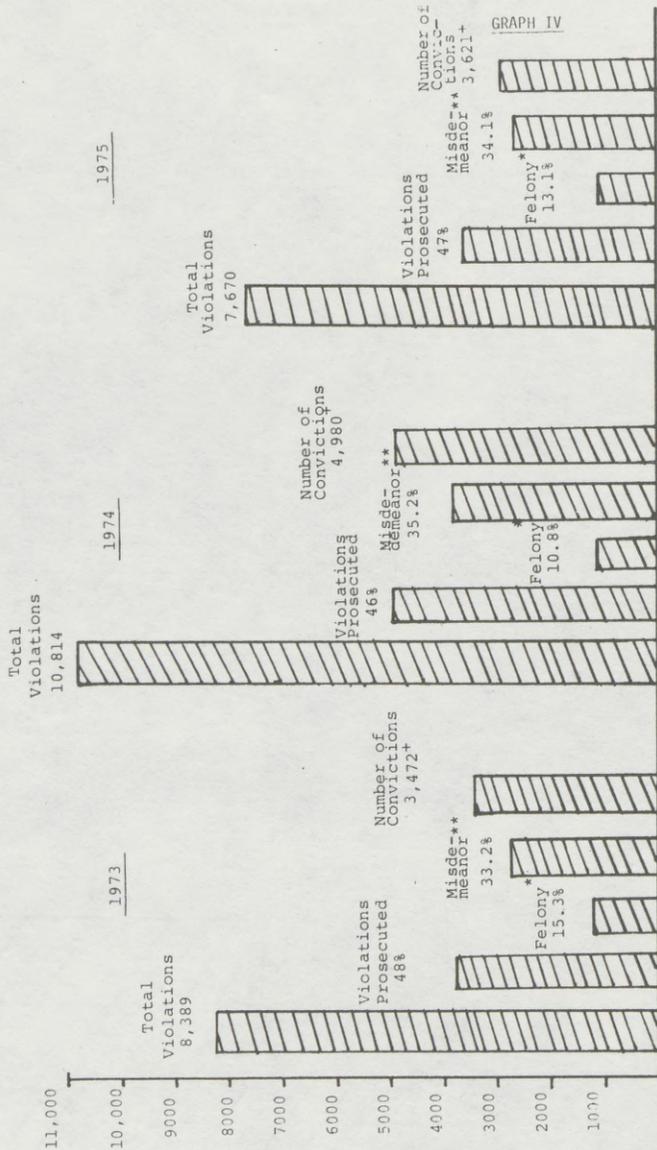
	1976	% Δ	1977	% Δ
APPREHENDED SMUGGLERS	9600	39.9	12,405	29.2
ILLEGAL IMMS APPREHENDED W/ SMUGGLERS	82,910	3.0	138,805	67.4

* Denotes decline in percentage terms.

PLACE OF ORIGIN OF PERSONS
 MEXICAN BORDER
 CALIFORNIA ARIZONA GRAPH III
 FY 1976



SMUGGLING OFFENSES—FISCAL YEARS
1973-75



† This figure represents 85% of the number of cases prosecuted. Average net fine imposed in 1973 \$78 Average net sentence imposed (days) 89

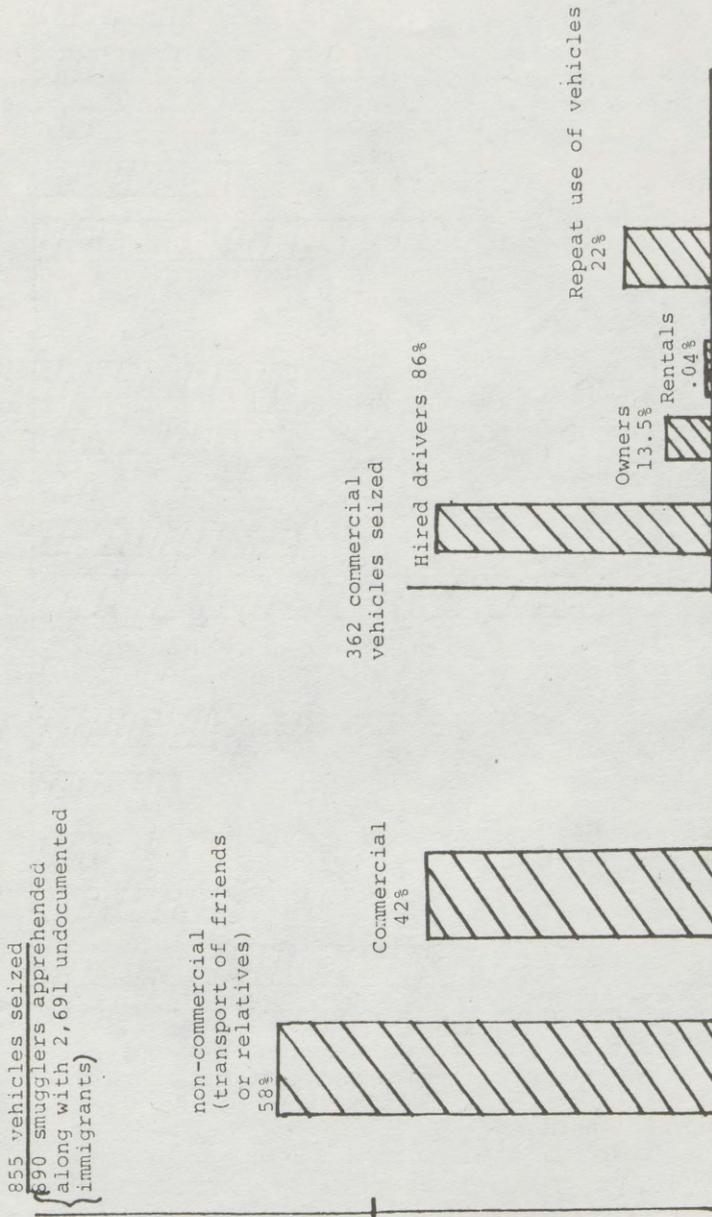
‡ This figure represents 88% of the number of cases prosecuted. Average net fine imposed in 1974 \$88 Average net sentence imposed (days) 95

* The percentage of violations prosecuted as misdemeanors.
** The percentage of violations prosecuted as misdemeanors.

GRAPH IV

GRAPH V

YUMA SECTOR BORDER PATROL
 (YUMA AND MOHAVE COUNTIES, ARIZONA)
 STATISTICS FROM CALENDAR YEAR 1976



Senator DECONCINI. Your entire testimony will appear in the record, and we are pleased to have that.

You mentioned the possible discriminatory impact of the legislation with regard to the rental vehicles and Spanish Americans. Do you have any suggestions on how the bill could be amended to minimize that?

Ms. EISEN. No; I really do not. I think they will have to work closely with civil rights legislation and civil rights groups to see how this can be avoided.

I think it is something that ZPG is concerned about. It should be taken into consideration.

Senator DECONCINI. Do you think this bill might have any negative impact on the way illegals are treated during the trip across the border? That is, would he—the alien—receive worse treatment because the smuggler is less willing to risk the use of an expensive vehicle?

Ms. EISEN. I think it certainly is a possibility, yes. They are not treated very well right now.

Senator DECONCINI. Do you think they would be treated worse from what you currently are informed about?

Ms. EISEN. I think the smugglers are out for as much money as they can get with the least amount of overhead and the least amount of trouble. I think there is a possibility of more abuse, but I have no evidence to show that there would be.

Senator DECONCINI. Does ZPG have any estimates of the influx into the United States?

Ms. EISEN. We go along with the INS estimates at present, which is 3 to 5 million—that is, an average of 3 to 5 million—at any time in the United States. As to flow, we do not have any or many hard facts, but we would hope a national commission could deal with that.

Senator DECONCINI. As I recall, you testified to that previously.

Ms. EISEN. Correct.

Senator DECONCINI. You suggested that we needed to get a handle on the numbers, is that right?

Ms. EISEN. Yes; we must. The trend is there. The problem is there. We all recognize that. It is enormous.

As to the exact extent, we need to find out that information. We do not have the hard data yet.

Senator DECONCINI. Thank you very much for your testimony. Does staff have questions?

Mr. RAWITZ. Do you have any concern that a seizure and forfeiture law would not so much inhibit the traffic as raise the ante to the alien?

Ms. EISEN. It would definitely inhibit the traffic and it will raise the ante. It will do both. There is no way to avoid that.

However, I just came back from a trip to Mexico. I spoke to several Mexican officials there. They are very concerned about this. They are convinced that if we can seize these vehicles, we can eliminate well over 50 percent of the flow.

This may be true. If we can do that with this bill, I am convinced it will stop a tremendous amount of the flow, and that would be fine.

Mr. RAWITZ. Thank you.

Senator DECONCINI. Thank you once again, Ms. Eisen, for your testimony and for the organization's interest in this situation.

There being no further testimony, we will stand in recess at this time.

[Whereupon, at 11:10 p.m., the committee was adjourned.]

