

DEPARTMENT OF HOMELAND SECURITY TRANSI-
TION: BUREAU OF IMMIGRATION AND CUS-
TOMS ENFORCEMENT

HEARING
BEFORE THE
SUBCOMMITTEE ON IMMIGRATION,
BORDER SECURITY, AND CLAIMS
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED EIGHTH CONGRESS
FIRST SESSION

APRIL 10, 2003

Serial No. 11

Printed for the use of the Committee on the Judiciary



Available via the World Wide Web: <http://www.house.gov/judiciary>

U.S. GOVERNMENT PRINTING OFFICE

86-409PDF

WASHINGTON : 2003

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

COMMITTEE ON THE JUDICIARY

F. JAMES SENSENBRENNER, JR., Wisconsin, *Chairman*

HENRY J. HYDE, Illinois	JOHN CONYERS, JR., Michigan
HOWARD COBLE, North Carolina	HOWARD L. BERMAN, California
LAMAR SMITH, Texas	RICK BOUCHER, Virginia
ELTON GALLEGLY, California	JERROLD NADLER, New York
BOB GOODLATTE, Virginia	ROBERT C. SCOTT, Virginia
STEVE CHABOT, Ohio	MELVIN L. WATT, North Carolina
WILLIAM L. JENKINS, Tennessee	ZOE LOFGREN, California
CHRIS CANNON, Utah	SHEILA JACKSON LEE, Texas
SPENCER BACHUS, Alabama	MAXINE WATERS, California
JOHN N. HOSTETTLER, Indiana	MARTIN T. MEEHAN, Massachusetts
MARK GREEN, Wisconsin	WILLIAM D. DELAHUNT, Massachusetts
RIC KELLER, Florida	ROBERT WEXLER, Florida
MELISSA A. HART, Pennsylvania	TAMMY BALDWIN, Wisconsin
JEFF FLAKE, Arizona	ANTHONY D. WEINER, New York
MIKE PENCE, Indiana	ADAM B. SCHIFF, California
J. RANDY FORBES, Virginia	LINDA T. SANCHEZ, California
STEVE KING, Iowa	
JOHN R. CARTER, Texas	
TOM FEENEY, Florida	
MARSHA BLACKBURN, Tennessee	

PHILIP G. KIKO, *Chief of Staff-General Counsel*

PERRY H. APELBAUM, *Minority Chief Counsel*

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

JOHN N. HOSTETTLER, Indiana, *Chairman*

JEFF FLAKE, Arizona	SHEILA JACKSON LEE, Texas
MARSHA BLACKBURN, Tennessee	LINDA T. SANCHEZ, California
LAMAR SMITH, Texas	ZOE LOFGREN, California
ELTON GALLEGLY, California	HOWARD L. BERMAN, California
CHRIS CANNON, Utah	JOHN CONYERS, JR., Michigan
STEVE KING, Iowa	
MELISSA A. HART, Pennsylvania	

GEORGE FISHMAN, *Chief Counsel*

LORA RIES, *Counsel*

ART ARTHUR, *Full Committee Counsel*

CINDY BLACKSTON, *Professional Staff*

NOLAN RAPPAPORT, *Minority Counsel*

CONTENTS

APRIL 10, 2003

OPENING STATEMENT

	Page
The Honorable John N. Hostettler, a Representative in Congress From the State of Indiana, and Chairman, Subcommittee on Immigration, Border Security, and Claims	3
The Honorable Sheila Jackson Lee, a Representative in Congress From the State of Texas, and Ranking Member, Subcommittee on Immigration, Border Security, and Claims	5

WITNESSES

The Honorable Asa Hutchinson, Under Secretary for Border and Transportation Security, U.S. Department of Homeland Security	
Oral Testimony	6
Prepared Statement	9
Mr. Mark Krikorian, Executive Director, Center for Immigration Studies	
Oral Testimony	12
Prepared Statement	15
Mr. Timothy J. Danahey, National President, Federal Law Enforcement Officers Association	
Oral Testimony	22
Prepared Statement	24
Mr. Richard M. Stana, Director, Homeland Security and Justice, U.S. General Accounting Office	
Oral Testimony	31
Prepared Statement	33

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Prepared Statement by the Honorable John N. Hostettler, a Representative in Congress From the State of Indiana, and Chairman, Subcommittee on Immigration, Border Security, and Claims	55
Representative Hostettler additional questions for the record	56
Prepared Statement by the Honorable Sheila Jackson Lee, a Representative in Congress From the State of Texas, and Ranking Member, Subcommittee on Immigration, Border Security, and Claims	57
Representative Jackson Lee letter to Representative Hostettler	58
Representative Gekas letter to Commissioner Ziglar regarding INS's Interior Enforcement Strategy hearing June 19, 2002	60
MALDEF statement for the record submitted by Representative Sánchez	66
Representative King response to MALDEF statement	72
Representative Blackburn additional questions for the record	75

**DEPARTMENT OF HOMELAND SECURITY
TRANSITION: BUREAU OF IMMIGRATION
AND CUSTOMS ENFORCEMENT**

THURSDAY, APRIL 10, 2003

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION,
BORDER SECURITY, AND CLAIMS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:03 a.m., in Room 2237, Rayburn House Office Building, Hon. John Hostettler [Chairman of the Subcommittee] presiding.

Mr. HOSTETTLER. The Subcommittee will come to order.

Ms. JACKSON LEE. Mr. Chairman, I have a point of order.

Mr. HOSTETTLER. Ms. Jackson Lee is recognized for her point of order.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

I object to this hearing on the grounds that the minority was not properly notified on the change of time. If I might read into the record:

"The Subcommittee chair shall make public announcement of the date, place, and subject matter of any hearing to be conducted by it on any measure or matter at least 1 week before the commencement of that hearing. If the Chairman of the Subcommittee, with the concurrence of the Ranking minority Members, determines there is good cause to begin the hearing sooner, or if the Subcommittee so determines by majority vote, a quorum being present for the transaction of business, the Subcommittee Chairman shall make the announcement at the earliest possible date."

I believe, Mr. Chairman, that there was quite a bit of discussion yesterday about the inappropriateness of this 9 a.m. meeting for several of us who had leadership whip meetings and other responsibilities, and the Ranking Member specifically indicated that this would not be an appropriate time for this hearing.

I had to notify my minority Members late into the evening because the word came back that this meeting was going to be held anyhow. I think, in the spirit of comity and fairness, it is appropriate that we work together.

This meeting time was raised at the beginning of the 108th Congress, that this is a time that the Democratic leadership whip organization meets, and other meetings of our Members. As I understand it, a number of our Members are in the leadership whip meeting at this time, and this time does not fare well for the fair-

ness of this Committee, which I know, Mr. Chairman, that you are, if I might say, a distinguished gentleman who believes very much in the fairness of the process.

For that reason, I believe that this hearing should not go forward, inasmuch as only two procedures for deciding to commence the hearing sooner than stated in the initial public hearing, neither of which was followed. The first requires the concurrence of the Ranking Member, and I did not concur. The second requires a majority vote at a Subcommittee business meeting. To my knowledge, no such meeting was held. So I am presenting this letter to you.

I would have possibly been able to accept a change if I had been notified earlier with respect to this change. I am aware that this meeting could have been set at a later time this afternoon. This is an important hearing and I believe that all Members of the Committee should be able to participate. This sudden change I don't think is in compliance with the Committee rules or the Rules of the House.

With that, Mr. Chairman, I thank you very much for your consideration. I would like to put this letter into the record, please. I have a copy for you.

Mr. HOSTETTLER. Without objection.

[The letter of Ms. Jackson Lee follows in the Appendix]

Mr. HOSTETTLER. The Chair now recognizes himself for a brief explanation.

As the Ranking Member knows, and as she stated, the full Committee will be considering the Protect Act on the floor shortly, and as the hearing was originally scheduled for 10 o'clock, it was felt by the Committee that we would be both in this hearing and considering the Protect Act, which was not advisable. So the decision was made to hold the meeting 1 hour earlier in order to potentially accommodate all those, including the witnesses who—I once again want to say, if I do not have the opportunity to say it, that I appreciate your being able to accommodate the earlier schedule.

It will not be the practice of this Subcommittee to change the schedule in this fashion, but given the dynamic that we originally scheduled—we were going to have this hearing on March 27th, and as a result of the confirmation process with the new Bureau of Immigration and Customs Enforcement not having been completed in the other body, we postponed the meeting and ultimately scheduled it at this time when we were able to get the Under Secretary to testify.

So, once again, as the chair I want to apologize for the change in the meeting, but I believe that circumstances, unfortunately, dictated that we act in this manner. With that—

Mr. FLAKE. Mr. Chairman.

Mr. HOSTETTLER. The chair recognizes the gentleman from Arizona.

Mr. FLAKE. I move that the Subcommittee proceed with the noticed hearing.

Mr. HOSTETTLER. The question is on the motion to proceed. All in favor will signify by saying aye. Those opposed will signify by saying no.

Ms. JACKSON LEE. Roll call, Mr. Chairman.

Mr. Chairman, may I ask, do we have a quorum?

Mr. HOSTETTLER. Yes, we do have a quorum for the motion, consideration of the motion.

The CLERK. Mr. Flake.

Mr. FLAKE. Aye.

The CLERK. Mr. Flake votes aye. Mrs. Blackburn. [No response.] Mr. Smith—

Ms. JACKSON LEE. Mr. Chairman, I have a parliamentary inquiry.

Mr. HOSTETTLER. The gentlelady will state her parliamentary inquiry.

Ms. JACKSON LEE. Only to inquire, that it is my understanding that the vote is supposed to occur before the change has occurred. I would like a ruling on that question.

Mr. HOSTETTLER. The vote on the motion to proceed?

Ms. JACKSON LEE. Yes.

Mr. BERMAN. Would the gentlelady yield?

Ms. JACKSON LEE. I would be happy to yield.

Mr. BERMAN. Just on the point of order, before you can hold the hearing, there has to be a vote.

Ms. JACKSON LEE. That is my understanding.

Mr. HOSTETTLER. The appropriate quorum is available for the purpose of considering the motion to proceed with this hearing.

Ms. JACKSON LEE. Mr. Chairman, I will offer an objection to that. Is that the ruling of the parliamentarian or the representative of the parliamentarian?

Mr. HOSTETTLER. It is the ruling of the Chair.

Ms. JACKSON LEE. Then I will continue to object. I will have a continuing objection.

Mr. HOSTETTLER. The question continues on the motion. The yeas and nays have been ordered.

The CLERK. Mr. Flake.

Mr. FLAKE. Aye.

The CLERK. Mr. Flake votes aye. Mrs. Blackburn. [No response.] Mr. Smith. [No response.] Mr. Gallegly. [No response.] Mr. Cannon. [No response.] Mr. King. [No response.] Ms. Hart.

Ms. HART. Aye.

The CLERK. Ms. Hart votes aye. Miss Jackson Lee.

Ms. JACKSON LEE. No.

The CLERK. Ms. Jackson Lee votes no. Ms. Sánchez.

[No response.] Ms. Lofgren. [No response.] Mr. Berman.

Mr. BERMAN. No.

The CLERK. Mr. Berman votes no. Mr. Conyers. [No response.] Mr. Chairman.

Mr. HOSTETTLER. Aye.

The CLERK. The Chairman votes aye.

Three ayes, two noes, Mr. Chairman.

Mr. HOSTETTLER. Without objection, the motion to reconsider is laid upon the table.

Last year Congress enacted the Homeland Security Act, historic legislation creating not just a new department in the Executive branch, but a new home for our newly structured immigration system. Now that the immigration functions have transferred into the Homeland Security Department, we must closely oversee the tran-

sition to ensure that our immigration laws are strictly enforced and that our immigration benefits are fairly administered.

Since we are at this immigration crossroads, we have the perfect opportunity to, as accurately as possible, determine what resources are needed to administer and enforce our current immigration laws. The Homeland Security Act required that the Immigration Services Bureau receive a budget separate from that of the Immigration Enforcement Bureau. This will help each bureau better manage its mission and help us better determine the proper amount of resources needed by each.

Subsequent to the Homeland Security Act being signed into law, the new department reorganized enforcement functions into two categories: the border and the interior. The department combined the Customs interior enforcement functions with the INS' Investigations, Detention and Removal, Intelligence and the Deportation Attorney Corps to create the Bureau of Immigration and Customs Enforcement. The department also combined the Customs border functions with the INS' Border Patrol and Inspections to create the Bureau of Customs and Border Protection, or BCBP.

This hearing focuses on the interior bureau, or ICE, its transition into the new Department, and its resources. For example, in the Justice Department Inspector General's recent report, the Immigration and Naturalization Service's removal of aliens issued final orders, the Inspector General found that aliens with final orders of removal who are not detained are rarely deported. Taking a sample of nondetained aliens, the Inspector General found that the INS removed only 13 percent of nondetained aliens with final removal orders. Within the sample, only 35 percent of aliens with criminal records were removed. Finally, only 3 percent of non-detained aliens with final removal orders who were denied asylum were removed.

The Inspector General also selected a sample of non-detained aliens with final removal orders from countries that the State Department has identified as sponsors of terrorism. The Inspector General reported that the INS removed only 6 percent of this population.

In sharp contrast, 92 percent of detained aliens with final removal orders were removed according to the Inspector General. The INS' typical response to such findings has been that it lacks the resources to remove more aliens with final removal orders.

For too long, the former INS complained that it could not adequately do its job because the agency did not receive enough resources from Congress. That practice of buck-passing needs to end.

In a letter dated June 21, 2002, this Subcommittee specifically asked the former INS what resources it needed to enforce our immigration laws, but the agency was utterly unresponsive in its October 21st, 2002 response.

This new Department requires a new attitude. The American people want our immigration laws enforced. We want the Bureau of Immigration and Customs Enforcement to succeed, but it needs to help us if we are to be of help. When we ask what resources the agency needs to fully enforce all of our immigration laws, we need an honest answer. Otherwise, we cannot attempt to authorize and appropriate sufficient funds. If the new agency continues INS' prac-

tice of being unresponsive, it should not complain that Congress underfunds the agency. Likewise, if Congress is told what resources are needed but falls short on authorizing and appropriating funds to the BICE, Congress should not complain that the agency is not adequately enforcing the laws. More important, if Congress does not fully fund BICE, Americans will remain unprotected from future terrorist attacks.

The purpose of this hearing is to examine the transition of immigration enforcement into BICE, explore the capabilities and limitations of BICE, given the current resources available to the agency, and determine what resources would be needed to fully execute our immigration enforcement laws.

Without objection, the letters mentioned from the various agencies and the Inspector General will be placed into the record.

Mr. HOSTETTLER. I want to thank the witnesses for being so flexible in arriving here today.

I will now turn to the Ranking Member, the gentlelady from Texas, Ms. Jackson Lee, for any opening remarks she may have.

Ms. JACKSON LEE. Thank you, Mr. Chairman. I am going to rely upon the request to put my entire opening statement into the record and ask unanimous consent for such.

I also hopefully want to make clear on the record, Mr. Chairman, with my continuing objection, that representations by staff that the meetings will be held at all times at 9 a.m., I would like to inquire of the Chairman if that's going to be the policy of this Subcommittee, 9 a.m. on Thursday mornings.

Mr. HOSTETTLER. I will work, as Chairman of the Subcommittee, to make the meetings at a later time.

Ms. JACKSON LEE. I thank the Chairman for his kindness.

Might I just simply point out, Mr. Chairman, that I will be leaving around 9:30 and I would appreciate it if—it looks as if the Under Secretary is the first witness, and I would like to be able to at least hear the Under Secretary. I would like to submit this for the record.

The only comment—and this will speak for itself—is to specifically make note of the special registration program that I believe is supposed to, or at least is alleged, to identify dangerous aliens in our midst. From my perspective, and from many of the constituents around the Nation, it substitutes national origin, racial, religious profiling for effective law enforcement based on intelligence and information. Again, I believe that, as we integrate these responsibilities into the Homeland Security Department, we make it very clear in the Judiciary last session that immigration does not equate to terrorism, and that there must be distinctive responsibilities of enforcement as well as immigration services. So I'm looking forward to hearing the testimony of the Under Secretary.

As well, Mr. Chairman, I will work with you for this to be an effective merger, an integration, but not a denial of civil liberties and civil rights.

With that, I ask to put my statement into the record.

Mr. HOSTETTLER. Without objection.

[The prepared statement of Ms. Jackson Lee follows in the Appendix]

Mr. HOSTETTLER. Are there any other opening statements by Members of the Subcommittee? If not, I would like to introduce our panel of witnesses today.

The Honorable Asa Hutchinson is the Under Secretary for Border and Transportation Security in the Department of Homeland Security. Prior to this position, he was Administrator of the Drug Enforcement Administration. We know him best for his membership in the House of Representatives for three terms, during which he served on the Judiciary Committee and the Select Committee on Intelligence. Under Secretary Hutchinson also practiced law in Arkansas for 21 years, when he was appointed by President Reagan as U.S. Attorney for Western Arkansas.

Mr. Mark Krikorian is the Executive Director of the Center for Immigration Studies. Before joining the Center in 1995, he held a variety of editorial and writing positions. He received a master's degree from the Fletcher School of Law and Diplomacy, and a bachelor's degree from Georgetown University. He frequently testifies before Congress, has appeared on many radio and television programs, and has published many articles.

Mr. Tim Danahey, a Special Agent with the Naval Criminal Investigative Service, is the National President of the Federal Law Enforcement Officers Association. He was a police officer with the Stonington Police Department in Stonington, CN before he was hired by the Naval Investigative Service in 1985. Following the events of September 11th, Mr. Danahey was assigned to the Counterterrorism Division within the Naval Criminal Investigative Service. He was in the U.S. Marine Corps before entering the Army, where he reached the rank of major. He is currently in the U.S. Army Reserves. He received a degree in psychology at the University of Rhode Island and completed the advanced study program at the Air Command and Staff College, Andrews Air Force Base.

Mr. Richard Stana is the Director for Homeland Security and Justice Issues at the General Accounting Office. He has worked at the GAO for 27 years on issues relating to law enforcement, drug control, immigration, customs, corrections, court administration, and election systems. Mr. Stana is a U.S. Army veteran and earned a master's degree in business administration from Kent State University. He is also a graduate of Cornell University's Johnson School of Management Program on Strategic Decisionmaking and Harvard University's J.F.K. School, Government Program on Leadership and Performance.

Gentlemen, without objection, your opening statements will be provided for the record. We are going to try to stay as close to the 5 minute time limit as we possibly can.

Secretary Hutchinson, we thank you for coming today, once again, and revising your schedule to be with us. You are free to testify.

STATEMENT OF ASA HUTCHINSON, UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. HUTCHINSON. Thank you, Mr. Chairman. Good morning, and Ms. Jackson Lee. Thank you for your support for the creation of

Homeland Security and, as we go through this process, this Committee's support is very important. It's good to be back in the Judiciary Committee as well, even though I'm on a different side of the rostrum today.

Obviously, my remarks shall be focused on the immigration enforcement side because that's the responsibility that falls to me at Homeland Security. But let me say at the outset that, even though I'm on the enforcement side of immigration, I also recognize the importance of immigration services and the extraordinary contribution that immigrants have made to America. I think that always should be noted as we engage in discussions on this subject.

But at Homeland Security, as the INS functions were transferred to the Department of Homeland Security, the services side report directly to Secretary Ridge, under Eduardo Aguirre, who is doing an outstanding job. My responsibility would be on the enforcement side. That would include the new reorganization that took place on March 1, in which we have the Inspection Services under the Bureau of Customs and Border Protection, with the enforcement side of both immigration and customs enforcement being under the new Immigration and Customs Enforcement Bureau. The Border Patrol is also, I might add, reporting to the Customs and Border Protection, to have a unified face on the border reporting up through one chain. That leadership makes a difference in us carrying out our responsibilities.

Both the Immigration and Custom Enforcement piece and the Customs and Border Protection Bureau report to me as the Under Secretary for Border and Transportation Security.

I want to speak on the Bureau of Immigration and Customs Enforcement. It is responsible for investigating violations from migrant and contraband smuggling, to money laundering, from trade fraud and many other criminal activities frequently linked to terrorism, but also that have other enforcement responsibilities not linked to terrorism.

Our mission includes having a robust intelligence component, air and marine interdiction capability, the ability to detain or remove illegal aliens. ICE is also charged with protecting more than 8,000 Federal facilities, since the Federal Protective Service is a part of that enforcement agency.

All together, ICE brings together 14,000 employees, that include 5,500 criminal investigators. This makes it the second largest investigation team in Federal law enforcement, with only the FBI being larger. I want to note that we are diligently trying to integrate the training for our ICE special agents, which they come from two different agencies. Customs integration, it is important to integrate those closely together and we're working diligently on that.

The transition of the Immigration and Customs Investigative resources has gone well. It will be completed as expeditiously as possible. It is our goal during this transition to make sure we bring them together, but not have any reduction in enforcement capabilities and the fulfillment of our mission during this time of transition.

The President's '04 budget that has been submitted will increase our capabilities. The budget includes \$1.1 billion to support inves-

tigative activities, including immigration, fraud, forced labor, trade agreement investigators, smuggling and illegal transshipment, vehicle and cargo theft. This includes an increase of 355 positions, which will be 207 criminal investigators, 72 attorneys, and 76 support personnel.

As we move through the phased in integration of the Immigration and Customs Enforcement pieces, we started out with an interim structure that relies upon the existing chains of command. Within a matter of months, we will bring those management structures together and start doing more cross-training that should yield a benefit.

On May 24, we are due a report to this Committee detailing the separation of the enforcement functions and the organizational structure that is set up, and the procedure for interaction between ICE and CBP. We look forward to submitting that report.

I have in my written testimony that is submitted an outline of some of the investigative priorities and current operations. I will try not to delve into that deeply, but let me just touch upon the fact that we certainly, since September 11, have had to prioritize investigations that have a relationship to counterterrorism. In conjunction with that, we have joined with the FBI in interviewing over 6,800 individuals since September 11th, and as part of ongoing Liberty Shield, we have interviewed with the FBI scores of people, really hundreds of people, that are of concern, that we want to have more information on.

In January of 2002, we started an initiative called the Alien Absconder Apprehension Initiative, which as the Chairman noted is of a significant concern. The first phase targeted more than 5,900 aliens from countries where al Qaeda is known to operate. In the second phase of this, we will look at the additional 300,000 aliens that have not left the country despite having final orders of removal.

We have engaged a worksite enforcement strategy that targets those airports, airlines particularly, that have vulnerabilities from perhaps the employment of unauthorized workers. That includes Operation Tarmac, in which we reviewed the employment eligibility verification forms of more than 224,000 employees, and more than 900 unauthorized aliens have been arrested in conjunction with that operation.

We have also prioritized looking at terrorist organizations that use human smuggling rings. This is under Operation Southern Focus that targets large-scale smuggling operations. This has to be a continued priority because these smuggling operations can be used by those that want to move illegal aliens into our country, but also can be used by those that have an intent to harm our country.

As you know, Mr. Chairman, and Ms. Jackson Lee, we have instituted the SEVIS program to look at the foreign students that have visited our country. We are trying to improve that process, but clearly, it is important to track those students, to make sure that those students who do not show up for school at the educational institution we have knowledge of and can investigate further as to where they are, why they're out of status, and what action should be taken.

We have implemented, as part of the entry/exist system that's been mandated by Congress, the initial step of the NSEERS program, the National Security Entry Exit Registration System. To date, we have reviewed more than 110,000 individuals from over 140 countries being registered in accordance with that program. To date, that program has identified 11 aliens that have a link to terrorism and has arrested more than 50 criminal aliens. We are continuing to try to improve the processing of that so we do not send a signal unnecessarily to our foreign guests that they are not welcome in the United States, because that is an important part of our outreach to other countries.

We have as an important part of our efforts the Law Enforcement Support Center located in Burlington, VT. The focus of that is to support local law enforcement agencies in trying to determine, when they have contact with an individual, whether that person is, in fact, an illegal, criminal, or fugitive alien. So that center is very helpful in responding to requests from local law enforcement.

I will conclude with that, with this Committee, and I look forward to responding to any questions that might arise.

[The prepared statement of Asa Hutchinson follows:]

PREPARED STATEMENT OF ASA HUTCHINSON

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, thank you for the opportunity today to update you on the transition of the legacy Immigration and Naturalization Service (INS) and the U.S. Customs Service into the newly created Department of Homeland Security (DHS). I would like to focus on the establishment of the Bureau of Immigration and Customs Enforcement (BICE), and in particular the immigration enforcement component, a vital part of both the Bureau and the Department.

When Homeland Security Act of 2002 abolished the INS, its enforcement functions were moved into the Border and Transportation Security Directorate. The interior enforcement functions of INS merged with the interior enforcement functions of Customs, and the Federal Protective Service (FPS) to form BICE, which deals with interior enforcement and investigations. The border functions of INS merged with the border functions of Customs and APHIS to form the Bureau of Customs and Border Protection (BCBP). Both BICE and BCBP report to me as the Under Secretary of the Border and Transportation Security Directorate (BTS).

BICE is charged with enforcing immigration and customs laws within the United States, giving it one of the most complex and far-reaching missions within the Department. It is responsible for investigating immigration violations, migrant and contraband smuggling, money laundering, trade fraud, and many other criminal activities frequently linked to terrorism. Meeting these responsibilities as well as our other statutory missions, requires a robust intelligence capability, an air and marine interdiction capability, and an ability to apprehend, detain, and remove illegal aliens. In addition, BICE is charged with protecting more than 8,000 Federal facilities nationwide against terrorism, employing the Federal Protective Service (FPS) for that purpose.

BICE brings together approximately 14,000 employees, including some 5,500 criminal investigators. This makes it the second largest investigative team in Federal law enforcement, with only the FBI being larger. No mission of the U.S. government is more critical than protecting the Nation and the American people from future terrorist attacks, and that is what BICE along with its DHS and FBI partners are responsible for doing. The law-enforcement functions of BICE are fundamental to protecting the homeland, which is why we made carrying out these functions with minimal interruption our top priority during transition.

To ensure continuity of operations and DHS proper DHS coordination, the BICE transition is being accomplished in a phased manner. On March 1, components of the legacy INS, Customs and FPS came together under an interim reporting structure. Integration of these functions now occurs at BICE Headquarters. The interim structure relies largely on existing chains of command at the field level with the exception of the immigration interior enforcement functions, for which we have established interim District and Regional Directors for Enforcement. Significant work

has already been done to analyze and design headquarters and field structures for the longer term, which we will be implementing over the next several months.

The planning and decisions made to date will be incorporated in and supplemented by the implementation plan that DHS will send to Congress by May 24, in accordance with the Homeland Security Act. This plan will include detailed information about the separation of the legacy INS' enforcement functions, including:

- Organizational structure of Headquarters and the field;
- Chains of command;
- Procedures for interaction among BICE, and CBP; and
- Fraud detection and investigation.

The transition of the legacy INS and Customs investigative resources and functions into BICE is proceeding with vigor, driven by a commitment to ensuring that it is completed as expeditiously as possible, while maintaining effective and comprehensive enforcement of immigration and customs laws. The President's FY 2004 budget request for BICE will bolster the Bureau's efforts to fulfill this commitment. The \$2.8 billion request includes \$1.1 billion to support investigative activities, including immigration, fraud, forced labor, trade agreement investigations, smuggling and illegal transshipment, vehicle and cargo theft. With these funds, BICE will protect the integrity of the lawful immigration system by countering alien smuggling, combating document and benefit fraud, and identifying and removing those who are in the United States illegally.

Historically, enforcing our immigration and customs laws in the Nation's interior has been an exceptionally demanding and challenging mission. The tragic events of September 11, 2001, and our ensuing national commitment to combat terrorism and those who harbor and support terrorists added to the demands and challenges our agents face. Nevertheless, they remain undaunted.

Our highest priority is preserving and protecting the security of our country and its citizens. To meet this priority, we developed a strategy designed to establish a robust continuum of enforcement from the Nation's interior to its borders and out to the farthest reaches of home countries of illegal aliens and goods and the countries they transit through coming to the United States. BICE's interior immigration and customs enforcement strategy seeks to:

- Deter, disrupt and disable terrorist plans, organizations and support networks;
- Identify, apprehend, and remove aliens who threaten the safety and security of the nation;
- Deter and diminish smuggling and trafficking of aliens;
- Protect businesses of national security interest from the vulnerabilities created by the employment of unauthorized alien workers;
- Identify, apprehend, and remove alien criminals;
- Minimize immigration benefit fraud and other document abuse; and
- Respond to community needs related to illegal immigration.

Currently, responsibility for meeting certain of these strategic objectives rests with the Special Agents and Deportation Officers who were reassigned to BICE from the legacy INS. BICE is also staffed by Special Agents from legacy Customs and the FPS. To differentiate among Special Agents, this testimony will refer to those who came from INS as "Special Agents with immigration expertise." Before moving on, it is important to note that we are working diligently to integrate training for both current and future BICE Special Agents, which will greatly expand our capability to enforce immigration law as well as to carry out our other customs-related enforcement functions.

Special Agents with immigration expertise are tasked with a wide range of critical responsibilities related to thwarting terrorists and those who support them. These include serving on FBI-led Joint Terrorism Task Forces and the Foreign Terrorist Tracking Task Force. BICE Special Agents with immigration expertise working with the Joint Terrorism Task Forces play a significant role in strengthening our national security. They have been proactively investigating, targeting, and arresting known terrorists, terrorist organization leaders, members, and associates. Working closely with the FBI, these agents have conducted more than 6,800 joint interviews since September 11, 2001.

In addition, Special Agents with immigration expertise actively participate in Federal, state, and local task forces that target criminal activities and enterprises that frequently involve aliens. These include the Violent Gang Task Forces, which have

been established in major cities across the country, and the Organized Crime Drug Enforcement Task Forces, which are active in nearly 60 U.S. cities.

On March 20 of this year, agents from BICE began seeking out Iraqi nationals believed to be unlawfully in the United States and apprehending them. The joint initiative, carried out as part of Operation Liberty Shield, is aimed at taking individuals off the street who might pose a threat to the safety and security of the American people. The Iraqis targeted as part of the effort were identified using a range of intelligence criteria. The operation is ongoing.

In January 2002, the investigations and detention and removal components of legacy INS launched the Absconder Apprehension Initiative. This initiative is aimed at aggressively tracking, apprehending, and removing aliens who have violated U.S. immigration law, been ordered deported, then fled before the order could be carried out. The first phase targets some 5,900 aliens from countries where Al Qaeda is known to operate or recruit. The second phase of this initiative focuses on the apprehension and removal of more than 300,000 aliens with unexecuted final orders of removal. To facilitate locating these aliens, we are entering their names into the FBI's National Crime Information Center (NCIC) so that the added weight of other Federal, state, and local law enforcement officers is brought to bear on this mission.

Special Agents with immigration expertise involved in work-site enforcement are also focusing their efforts on people who pose threats to our homeland security. Before September 11, the worksite enforcement strategy targeted employers who abuse their workers and violate other Federal and state laws, regardless of industry or geography. Today, we are more sharply focused on protecting businesses of homeland security interests from the vulnerabilities created by the employment of unauthorized workers.

Operation Tarmac, for example, was launched in recognition of the fact that illegal workers at airports pose a serious security risk. It aims to ensure that people working in secure areas at airports were properly documented and to remove those without proper documentation. So far, more than 224,000 Employment Eligibility Verification Forms (Forms I-9) have been audited at more than 3,000 airport businesses. More than 900 unauthorized aliens have been arrested, with more than two-thirds of them being charged with criminal violations. As part of Operation Tarmac, security officials responsible for granting access badges to secure areas are being provided with fraudulent document training.

Operation Glowworm, uses the same goals and methodologies to enhance the security of our Nation's nuclear power facilities. Field offices have already investigated 89 nuclear plants and facilities and 65,000 permanent and contract employees with direct plant and facility access.

BICE's Anti-Smuggling Program aims to dismantle smuggling organizations with links to terrorism and others groups that pose a risk to our national security. Available information indicates terrorist organizations often use human smuggling rings to move around the globe, which makes investigating and dismantling these organizations a vital part of our overall effort to enhance homeland security.

Focusing our anti-smuggling resources on domestic security led to the initiation of Operation Southern Focus, a multi-jurisdictional effort launched in January 2002. This operation targeted large-scale smuggling organizations specializing in the movement of U.S.-bound aliens from countries of concern. Many targets of Operation Southern Focus were believed to be responsible for smuggling hundreds of aliens into the country. Since the inception of this operation, eight significant alien smugglers have been arrested and charged with alien smuggling violations, and significant alien smuggling pipelines have been severely disrupted.

Ensuring that foreign students comply with the terms of their visas is also vital to our nation's security. That is why Student and Exchange Visitor Information System (SEVIS) was developed and deployed. This new Internet-based system will greatly enhance the government's ability to manage and monitor foreign students and exchange program visitors and their dependents during their stay in the United States.

SEVIS maintains critical, up-to-date information that can be accessed electronically, making it a powerful tool for combating fraud and for ensuring that individuals comply with the terms of their visa. Student status violators who may present a heightened security risk are immediately referred to the BICE National Security Unit for appropriate action as determined by the Unit. All others are being prioritized based upon other factors such as criminal history and prior adverse immigration history, and then referred to the appropriate field office.

The National Security Entry Exit Registration System (NSEERS) is also playing an important role in support of our anti-terrorism efforts. Since its implementation in September 2002, more than 110,000 individuals from over 140 countries have been registered. Special Agents with immigration expertise are responsible for inter-

viewing and processing NSEERS registrants referred for investigation of possible immigration violations, criminal violations, or on terrorism-related matters. To date, NSEERS has resulted in the identification of 11 aliens linked to terrorism, the arrest of more than 50 criminal aliens, and the issuance of more than 6,200 notices to appear for removal proceedings.

Immigration benefit and document fraud are also criminal activities that pose serious risks to national security. Investigating these activities is another responsibility of our Special Agents with immigration expertise, and it is also another area where BICE continues to have success even as its transition continues. Early last month, for example, agents seized tens of thousands of fraudulent government identity documents in New York City. These documents, which had a street value of more than \$3 millions, included Resident Aliens Cards, Employment Authorization Cards, Social Security Cards, and driver's licenses from 10 different states.

BICE extends the reach of its Special Agents by providing support to state and local law enforcement through the Law Enforcement Support Center (LESC) located in Burlington, Vermont. The Center's primary mission is to help local law enforcement agencies determine if a person they have contact with or have in custody, is in fact an illegal, criminal, or fugitive alien. The LESC provides an around-the-clock link between Federal, state, and local officers and the immigration databases maintained by BICE.

When a law-enforcement officer arrests an alien, LESC personnel are able to provide him or her with vital information and guidance, and if necessary, place the officer in contact with an BICE immigration officer in the field. The partnerships fostered by the LESC increase public safety. Every day, they result in the apprehension of individuals who are unlawfully present in the United States, many of who have committed a crime and pose a threat to the local community or our Nation.

In FY 2002, the LESC received 426,895 law-enforcement inquiries. These included 309,489 from state and local law enforcement, 24,646 inquiries regarding foreign nationals seeking to purchase firearms, and 24,646 investigative inquiries. The LESC lodged 2,112 detainers for the detention of unauthorized aliens. Additionally, the LESC processed 3,818 queries relating to NCIC hit confirmation requests.

Another way in which BICE continues to respond to the needs of the law enforcement community is through Quick Response Teams (QRTs), which have been established across the United States. There are BICE Special Agents with immigration expertise and Deportation Officers assigned to QRTs. Their primary duty is to work directly with state and local enforcement officers to take into custody and remove illegal aliens who have been arrested for violating state or local laws or who are found to be illegally in the U.S.

Clearly, deterring illegal migration and combating immigration-related crime have never been more critical to our national security. The men and women of BICE are tackling this challenging mission with great diligence, deeply determined to ensure that no duty is neglected even as they continue to adjust to their new home. I am eager to work with you and the other members of Congress make sure that they have what they need to provide the American people with the level of security they demand and deserve. Thank you. I look forward to your questions.

Mr. HOSTETTLER. Thank you, Mr. Secretary.

Mr. Krikorian, you are free to testify. Once again, thank you for your flexibility in your schedule.

STATEMENT OF MARK KRIKORIAN, EXECUTIVE DIRECTOR OF THE CENTER FOR IMMIGRATION STUDIES

Mr. KRIKORIAN. Good morning. Thank you, Mr. Chairman, for the opportunity to speak to this Subcommittee.

Given the short time available, I want to focus my comments on two questions related to interior immigration enforcement. First, is it really likely to yield any security benefit, and second, is it even possible to gain control over interior immigration violations.

There are three parts to any immigration enforcement system, three filters to identify unwanted people for exclusion or deportation. First is overseas, the visa process, which regrettably was allowed to remain in the State Department; second is at the borders, and that's in the capable hands of the new Bureau of Customs and Border Protection; and finally, the enforcement of immigration laws

in the interior of the country, now the responsibility of the Bureau of Immigration and Customs Enforcement.

Since the terror attacks of 9/11, the first two parts of our immigration filter—visas and border control—have seen real improvements. Although much remains to be done, there's a consensus that these first two filters are important and the problems are beginning to be tackled.

The third filter, however, is in much worse shape. Interior immigration enforcement has long been sporadic, and by the late 1990's, all but stopped, except in a few important but narrow areas. The neglect of interior enforcement has helped create a very large illegal population, now estimated by the Census Bureau at more than 8 million people. And contrary to some claims, lax enforcement of immigration law has become a danger to the community by increasing America's vulnerability to terrorist from overseas.

Now, there are a number of reasons of why interior immigration enforcement must be improved: maintaining the rule of law, protecting America's working poor, avoiding huge costs to taxpayers. But the most pressing concern today is the risk from foreign-born terrorists.

In a study completed last year by the Center for Immigration Studies, we found that almost half of the 48 foreign-born, al Qaeda-linked terrorists involved in terrorism in the United States from 1993 to 2001 had committed significant violations of immigration law before taking part in terrorism. Thus, strictly enforcing immigration laws must be a key component of our anti-terrorism efforts, first of all simply because of its ability to directly disrupt terrorist plots and keep terrorist organizations off balance. In many cases, terrorists lived, worked, opened bank accounts and received drivers licenses with little or no difficulty while they were in the United States for an extended period of time in violation of immigration laws.

For example, of the 48 terrorists in the study, at least 13 had overstayed a temporary visa at some point. In addition to visa overstays, we found that some terrorist had engaged in fraudulent marriages to American citizens, such as Fadil Abdelgani, who took part in the New York City landmarks bombing plot in 1993.

Terrorists also provided false information on their applications for permanent residence, such as Sheik Omar Abdel Rahman, the inspiration for several terrorist plots. Also, at least eight terrorists held jobs for extended periods while living in the United States illegally before taking part in terrorism, including participants in the first World Trade Center attack, the New York landmarks bombing plot and the millennium plot.

Because such a large percent of foreign-born terrorists violated immigration law, enforcing the law would be extremely helpful in disrupting and preventing terrorist attacks. Of course, the vast majority of those who violate immigration law are not terrorists.

However, beyond the direct effect that enforcement of immigration law would have on terrorist cells, there are two other reasons that allowing a large, illegal but non-terrorist population to reside in the U.S. facilitates terrorism. First of all, it has created a large, underground industry that furnishes illegals with fraudulent identities and documents that terrorists can and have tapped into. Sec-

ondly, though, the existence of a huge, illegal alien population creates a general contempt or disregard for immigration law.

Although the public may still want the law enforced, the scale of illegal immigration creates a tacit acceptance by local law enforcement, by policymakers, and even by immigration enforcement personnel themselves. In other words, with millions of illegal immigrants in the country, and with immigration laws widely flouted and seldom enforced, it is perhaps easy to understand why, for instance, the immigration inspector at Miami's airport allowed Mohammed Atta back into the United States in January, 2001, or why Brooklyn's subway bomber, Gazi Ibrahim Abu Mezer, was released from INS detention.

Although national security, economic and fiscal arguments against illegal immigration are overwhelming, many people might still argue that there's little that can be done about the situation. In other words, is there really any point to interior enforcement of the immigration law, since people are going to come anyway?

But, in fact, illegal immigration isn't nearly as intractable a problem as it may seem. The INS estimated a few years ago that more than 400,000 people leave the illegal population each year. Some go home voluntarily, others are deported, others get green cards. Of course, something like 800,000 new illegals arrive annually, and so the total population continues to grow.

But if through immigration enforcement, including interior enforcement, we can significantly reduce the number of new illegals entering the country, and increase the number of those going home, even if modestly, we can engineer a steady decline in the illegal population, allowing the problem to become progressively smaller over time through attrition.

Nor is this merely supposition. A special registration program applies to nationals of more than two dozen countries, of which Pakistan has the largest illegal population in the U.S., estimated to have been 26,000 as of January of 2000. Thousands of these illegal aliens, though, have now left the country voluntarily without having to be deported, precisely because of the requirements of the special registration program. In other words, if they showed up at the INS, they would be deported; if they remained here unregistered, they feared arrest, so a large part of the Pakistani illegal alien population has either returned home or gone to other countries, such as Canada.

We can expect any other increases in interior enforcement efforts to yield similar multiplier effects, with each illegal alien actually apprehended causing many more illegals to leave on their own.

Let me conclude by observing that this is, in a sense, an extension of the "broken windows" policy of urban policing. In other words, ignoring small violations of the law leads to general disorder and to larger crimes. And as we saw in New York, for instance, cracking down on seemingly minor infractions, like graffiti or subway turnstile jumping not only apprehends individuals directly guilty of more serious crimes but also leads to a sense that order is being restored and that the law is back in control.

The same is the case in immigration. Comprehensive interior enforcement, rather than a focus solely on criminal alien deportations and antismuggling, as important as they are, would lead to a

spreading sense that order was being restored to the current state of anarchy in our immigration system, and would be one of the most effective means of reducing the threat from foreign-born terrorists domestically.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Krikorian follows:]

PREPARED STATEMENT OF MARK KRIKORIAN

INTRODUCTION

There are three parts to any immigration enforcement system, three filters to identify unwanted people for exclusion or deportation: First, the visa process overseas; second, inspections and patrols at the border; and, finally, enforcement of immigration laws in the interior of the country.

Since the Islamist terror attacks of September 11, 2001, the first two parts of our immigration filter have seen improvements. Increased rigor in the consideration of visa applications at our consulates abroad, and progress toward implementing an effective entry/exit tracking system at the border have marked real steps forward. Although much remains to be done, the problems are being tackled.

The third filter is in much worse shape. Starting in 1993, with the Border Patrol's Operation Hold the Line, in El Paso, and accelerated by the immigration bill passed by Congress in 1996, the focus of immigration law enforcement was the southern border. Important as this was, it was not matched by similar improvements in interior enforcement. In fact, quite the opposite. For instance, when the INS conducted raids during Georgia's Vidalia onion harvest in 1998, thousands of illegal aliens abandoned the fields to avoid arrest. Within hours, employers and politicians registered their displeasure, and the enforcement action was discontinued.

In response, the INS developed a "kinder, gentler" means of enforcing the law, which fared no better. Rather than conduct raids on specific employers, Operation Vanguard sought to identify illegal workers at all meatpacking plants in Nebraska through audits of their personnel records. The INS found about 4,000 workers, out of about 24,000, who appeared to be illegal, and scheduled interviews to determine their status. Three thousand of these workers turned out to be illegal aliens, and never showed up for their interviews, with the remaining 1,000 able to correct errors in their records.

Local law enforcement officials were very pleased with the program: "It's an excellent program," said Grand Island Police Chief Kyle Hetrick. "It's a positive thing. It's effective." Despite the initial promise of this new enforcement strategy, employers and politicians actively criticized the very idea of enforcing the law: "It was ill-advised for Operation Vanguard to start out in a state with such low employment and an already big problem with a shortage of labor," said a former Nebraska governor who had been hired to lobby for an end to immigration law enforcement. As a result, plans to expand the program to other states and other industries were scrapped and the INS official who developed the program was forced into early retirement.

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

This neglect of interior enforcement has helped to create a very large illegal population, now estimated by the Census Bureau at more than eight million. And, contrary to Prof. Bach's claims, lax enforcement of immigration laws has become a "danger to the community" by increasing America's vulnerability to terrorists from overseas.

Fortunately, today there is reason for optimism that interior enforcement will be reinvigorated. When the service and enforcement functions of the former Immigration and Naturalization Service were separated, the Bush Administration further split enforcement into two parts, border and interior enforcement (unfortunately, the first filter—the visa process—was allowed to remain in the State Department). Though somewhat unexpected, this was a very sensible move, given the importance of interior enforcement and the low priority it had been given in the past. And unlike the academics who had held top positions in the prior arrangement of INS, this time the immigration enforcement components of the new Homeland Security De-

partment, including the Bureau of Immigration and Customs Enforcement, are headed by people with genuine law-enforcement backgrounds.

With this new arrangement, our nation can finally work toward restoring order to our anarchic immigration system, by focusing resources and attention on all three filters in our immigration-control system.

WHY IMPROVE INTERIOR ENFORCEMENT?

There are a number of reasons why interior enforcement must be improved. First, in a nation built on the rule of law, allowing any set of laws, including those pertaining to immigration, to be routinely flouted undermines the very foundation of our Republic. More specifically, there are significant costs to the U.S. economy and American taxpayers from allowing millions of people to live in the United States illegally.

Finally, there is the risk from foreign-born terrorists. In a study completed last year by the Center for Immigration Studies, we found that 22 of 48 foreign-born al Qaeda-linked terrorists who were involved in terrorism in the United States between 1993 and 2001 had committed significant violations of immigration laws prior to taking part in terrorism. Thus, strictly enforcing immigration laws must be a key component of our anti-terrorism efforts.

In many cases terrorists lived, worked, opened bank accounts, and received driver's licenses with little or no difficulty. They operated for extended periods within the United States while they were in violation of immigration laws. For example, of the 48 terrorists in the study, at least 13 had overstayed a temporary visa at some point.

In addition to overstaying visas, we found that terrorists have violated immigration laws in a number of other ways. Some terrorists have engaged in fraudulent marriages to American citizens, such as Fadi Abdelgani, who took part in the plot to bomb New York City landmarks in 1993, and Khalid Abu al Dahab, who raised money and helped recruit new members for al Qaeda from within the United States. Terrorists also violated immigration laws by providing false information on their applications for permanent residence, such as Sheik Omar Abdel Rahman, who inspired several terrorist plots. Still other terrorists have violated the law by working illegally in the United States; at least eight terrorists held jobs for extended periods while living in the country illegally before taking part in terrorism, including those involved in the 1993 World Trade Center attack, the plot to bomb New York landmarks, and the Millennium plot. Because such a large percentage of foreign-born terrorists violated immigration law, enforcing the law would be extremely helpful in disrupting and preventing terrorist attacks.

Tolerating illegal immigration facilitates terrorism. Of course, vast majority of aliens who violate immigration laws are not terrorists. However, allowing a large illegal population to reside in the United States facilitates terrorism for two reasons. First, it has created a large underground industry that furnishes illegals with fraudulent identities and documents that terrorists can (and have) tapped into. Several of the 9/11 terrorists were assisted in getting their Virginia driver's licenses from someone who specialized in helping run-of-the-mill illegal aliens obtain them.

Second, the existence of a huge illegal population creates a general contempt or disregard for immigration law. Although the general public may still want the law enforced, the scale of illegal immigration creates a tacit acceptance by law enforcement, policymakers, and even immigration-enforcement personnel themselves. With millions of illegal immigrants already in the country, and with immigration laws widely flouted, it is perhaps easy to understand why the immigration inspector at Miami's airport allowed Mohammed Atta back into the country in January 2001 even though he had overstayed his visa on his last visit and had abandoned his application to change status to vocational student by leaving the country.

The release from INS detention of 1993 World Trade Center Bomber Ahmad Ajaj or Brooklyn subway bomber Gazi Ibrahim Abu Mezer (or, more recently, sniper John Lee Malvo) also does not seem so outrageous when one considers that immigration law is routinely violated and millions of people are allowed to live in the country illegally. Tolerating mass illegal immigration is by no means the only factor increasing the chance that terrorists will successfully enter and remain in the country, but by not enforcing immigration law we have made life easier for the large number of terrorists who have broken immigration laws.

Other reasons for interior enforcement. Of course, combating terror is not the only reason to enforce the immigration law. We know from a variety of sources that illegal aliens are overwhelming unskilled, with more than three-fourths lacking even a high school education. Each year several hundred thousand illegal aliens without a high school education settle in the United States. Allowing in so many

unskilled workers creates very significant economic problems. The economic goal of a modern society such as ours is to create a large middle class through high-wage, capital-intensive jobs exhibiting growing labor productivity and aiming toward a flatter distribution of income. Mass unskilled immigration, a very large share of which is illegal, subverts these goals. In its 1997 report, the National Research Council concluded that by increasing the supply of unskilled workers, immigration was responsible for close to half the decline in relative wages for high school dropouts from 1980 to 1994, translating into lost wages for those dropouts amounting to about 5 percent of their incomes.

From the point of view of employers, this seems like a desirable state of affairs, since lower labor costs mean higher profits, and for consumers it should mean lower prices as well. Of course, for the 10 percent of our workers who lack a high school education and who are already the lowest-paid workers, this reduction is quite harmful. But, putting aside the impact on the working poor, the long-term consequences of illegal immigration for the economy are also harmful.

There is strong evidence that in industries as diverse as construction, garment manufacturing, and agriculture an increasing reliance on unskilled illegal-alien labor is slowing productivity gains and causing the United States to fall behind its international competitors. At least 80 percent of illegal aliens lack a high-school education and this unskilled immigration acts as a subsidy by artificially holding down labor costs by increasing the supply of labor. Businesses tend to want subsidies and often grow dependent on them. But like any subsidy, illegal immigration prevents innovation and causes the industry in question to lose its competitive edge in the long term. Reducing illegal immigration and allowing wages to rise naturally would not only be good for the working poor, it would make for a more productive economy. Employers, in response to upward pressure on wages, would adopt more productive methods, such as dried-on-the-vine raisin production or greater use of pre-fabricated material in construction. We can reduce illegal immigration secure in the knowledge that it will not spark inflation because unskilled workers account for such a tiny fraction of total economic output. High school dropouts account for less than 4 percent of total output in the United States, so even if wages rose substantially for these workers, the effect on prices would be very small.

Illegal immigration is also a problem for public coffers. In addition to reducing wages for the working poor and hindering productivity gains, there is another problem with illegal immigration—it imposes significant fiscal costs, an extremely important concern at a time of huge budget shortfalls in almost every state. As a practical matter, the middle and upper classes in the United States pay almost all of the taxes. The poor—immigrant or native—generally consume significantly more in public services than they pay in taxes. Because illegal aliens are overwhelming unskilled, this results in their having much lower incomes and tax payments. Moreover, while illegal aliens are not supposed to use most welfare programs, in fact they often make use of them anyway. Even if the immigrant himself is not eligible because of legal status, immigrant families can still receive benefits on behalf of their U.S.-born children, whose welfare eligibility is the same as any other native-born American.

In research done by the Center for Immigration Studies, we estimated that of households headed by illegal aliens from Mexico (the largest component of the illegal population), 31 percent used at least one major welfare program. This is lower than the 37 percent estimated for households headed by legal Mexican immigrants. But it is much higher than the 15 percent estimated for natives. Significant use of public services coupled with much lower tax payments means that illegal immigrants almost certainly create a net fiscal drain.

In 1997 the National Academy of Sciences (NAS) estimated that immigrant households consume between \$11 billion and \$20 billion more in public services than they pay in taxes each year. This net fiscal drain (taxes paid minus services used) is almost entirely the result of unskilled immigrants. The NAS estimated that an immigrant with less than a high school education imposes a net fiscal drain of \$89,000 on public coffers during his lifetime. This burden on taxpayers would, of course, become even worse if these immigrants were legalized, because they would remain largely poor, given their limited education levels, but they would become directly eligible for welfare programs. From the point of view of taxpayers, reducing illegal immigration by enforcing the law would almost certainly be desirable.

MAKING INTERIOR ENFORCEMENT EFFECTIVE

What steps are necessary to enable the new Bureau of Immigration and Customs Enforcement to play its vital part in immigration control?

Tracking System for Temporary Visa Holders. There is a longstanding problem that the federal government often has no idea whether foreign visitors have left when their temporary visas expire. In addition, it often has no idea where foreign citizens live while their visas are still valid. A number of terrorists have been tourists and business travelers, and it would be very difficult to track such individuals within the United States. Even in the current environment, it is unrealistic to expect all foreign visitors to submit their passports every time they check into a hotel and to expect hotels to report that information. Currently, foreign travelers are required to write down their destination upon entering the United States, but no effort is made to verify the information; in fact, two of the 9/11 jihadists listed “Marriott Hotel, New York” as their destination.

The Special Registration system in place for visitors from selected, mostly Middle Eastern, countries is a valuable first step toward a comprehensive entry/exit tracking system, but it would probably not be feasible to apply it in its current form to the millions of alien visitors from all countries. But it would be possible to keep such close tabs on all foreign citizens residing here for extended periods of time who are affiliated with an American institution responsible for their whereabouts. Such a system makes sense because many of these long-term visitors (here from one to six years, or more) reside here for a long time in a legal status, whereas short-term visitors are less likely to have the time to hatch sophisticated plots before their visas expire. Although short-term tourists and business travelers, who are not attached to any American institution, make up the majority of non-immigrants, the number of long-term visa holders requiring oversight is still quite large. In 2001, there were more than 1 million foreign students and exchange visitors admitted (including their spouses and young children), as well as almost 1.4 million long-term foreign workers (including family), each more than double the number admitted just five years previously. Tracking these individuals through their American institutions is both desirable and possible. If they leave their schools, jobs, or otherwise violate the terms of their admission, we would know immediately, and then we could send out an investigator while the trail was still warm.

Tracking foreign students—and others. One of the largest single categories of long-term temporary visitors is foreign students (admitted on F1 and M1 visas). A number of terrorists originally entered on student visas, including Eyad Ismoil, a conspirator in the 1993 World Trade Center bombing, and 9/11 hijacker Hani Hanjour, and both were in the country illegally when they committed their crimes. Ismoil dropped out after three semesters and remained in the United States illegally, while Hanjour never even attended class. Both Khalid Abu al Dahab and Wadhi el Hage originally came to the United States on student visas, later married Americans, and became naturalized citizens.

The 1996 immigration law mandated that the INS develop a computerized tracking system for foreign students to replace the failed paper-based system. Unfortunately, that system did not move beyond the pilot stage because of scorched-earth opposition from universities and colleges. Institutions opposed it, and continue to oppose the current Student Exchange and Visitor Information System (SEVIS), fearing the extra administrative burden, but mainly because they do not like the idea of treating foreign students differently from their American counterparts. But given the very real threats we face, tracking students makes perfect sense. Ideally such a system would provide the INS with real-time information verifying a student's enrollment and immediately notify the INS if the student drops out or otherwise is not honoring the terms of his visa. The border security bill signed by the president last May has accelerated the development of a workable student-tracking system, but as this subcommittee heard last week, there is still a long way to go.

Despite the current difficulties faced by SEVIS, this strategy should not be limited only to foreign students. There are an additional million temporary workers, trainees, and intra-company transferees who can and should be included in such a system. Expanding the new tracking system to cover all long-term non-immigrants is necessary to ensure that the system is as comprehensive as possible. INS enforcement could then follow up with the sponsoring employer or other institution as soon as it learns that the alien violated the terms of the visa.

Names of visa violators should be in the national crime database. In January of 2002, the INS announced that it was going to add to the FBI's National Crime Information Center (NCIC) database the names of more than 300,000 illegal aliens who have been ordered deported, but whose departure the INS cannot verify. This is certainly a good start, but once a well-functioning entry/exit system is in place, the names, photos, and fingerprints of *all* those who overstay or otherwise violate the terms of their admission to the U.S. should be added to the criminal database. In that way, if they are ever arrested for a crime or even pulled over in a traffic stop they can be held by local police and then turned over to the BICE

agents. This could become a key component of interior enforcement. With 3 to 4 million visa overstayers living in the United States, there is no question that tens of thousands of them have some encounter with the authorities each year. Traffic stops and arrests are a significant opportunity to apprehend those in the country illegally, and we should take full advantage of them.

While adding visa violators to the criminal database would help reduce illegal immigration, one may still wonder if it would ever be useful against terrorists. In fact, two of the 9/11 hijackers were pulled over in traffic stops in months preceding the attacks. In the spring of 2001, the plot's ringleader, Mohammed Atta, received a traffic ticket in Broward County, Florida, for driving without a license. He had, by this time, overstayed his visa on his previous visit to the United States between June of 2000 and January of 2001, though the INS at Miami International Airport allowed him back into the country. Had a system of carefully tracking overstays and placing their names in the criminal database been in place, then we might have been able to apprehend Atta and perhaps avert the 9/11 attacks. Although he had not overstayed his visa, Ziad Samir Jarrah, who was on board United Airlines Flight 93 that crashed in Pennsylvania on 9/11, was issued a speeding ticket on September 9 in Maryland for driving 95 miles an hour in a 60-mile-per-hour zone. Thus, even the most sophisticated terrorists in American history seem to have run afoul of the law prior to carrying out their plans.

For BICE to quickly take custody of visa violators detained by police, it would need many more agents assigned to interior enforcement and much more detention space. By adding the names of visa overstays to the criminal database, the INS would in effect enlist the help of thousands of local law enforcement officers.

Enforcing the ban on hiring illegal aliens. The centerpiece of any new interior enforcement strategy has to be a resumption in enforcement of the ban on hiring illegal aliens. While worksite enforcement, as it is commonly called, may not seem to be important to national security at first glance, it is, in fact, vital to reducing the terrorist threat. Gaining control of the border between crossing points (now the job of the Homeland Security Department's Bureau of Customs and Border Protection) is only possible if BICE is able to dramatically reduce the number of illegal job seekers trying to sneak into the United States by making it extremely difficult for them to find work.

As already indicated, the estimated 8 million illegals now living in the country have also created a vast market and infrastructure for fraudulent documents. The existence of widespread fraud can only make it easier for terrorists to operate in the United States. In addition, it would be much harder for terrorists who overstay their visas to blend into normal life if finding a job is made more difficult. At least eight of the terrorists in our study worked in the United States illegally before being arrested. Of course, terrorists could still come with large sums of cash and try to live undetected, but doing so would be much harder if getting a job is much more difficult.

Worksite enforcement must be made effective. There are two steps that are needed to make worksite enforcement effective. First, a national computerized system that allows employers to verify the work-eligibility of new hires needs to be implemented. Employers would submit the name, date of birth, Social Security number (SSN), or alien registration number to the INS for each new hire. This information is already collected for I-9 forms, but is not used for enforcement. After an instant check of its database, the employers would then receive an authorization number indicating that the person is allowed to work in the United States. The authorization number would provide the employer an ironclad defense against the charge that they knowingly hired an illegal alien. Tests of such systems have generally been well received by employers.

Document fraud, of course, is widespread, but a computerized system would be a key tool in uncovering it. For example, a valid SSN that is linked to a different name and submitted to immigration authorities, or a SSN and name that show up among numerous employers across the country, would both be indications that a worker is trying to skirt the law. BICE could develop procedures to identify potential problems of this kind. When a potential problem is identified, special agents would then go out to the employer and examine all the paperwork for the employee, perhaps conducting an interview with the worker and determine the source of the problem.

Dramatically increase the number of investigators. Investigators from BICE are charged with such tasks as worksite enforcement, anti-smuggling efforts, and combating document fraud. Before the reorganization, there were only about 2,000 agents assigned to interior enforcement for the entire country. This number must be increased dramatically. Also, there were only the full-time equivalent of 300 INS inspectors devoted to worksite enforcement year-round, whose job it is to enforce the

ban on hiring the five or six million illegal immigrants in the workforce. If the number of investigators was increased to the levels necessary, they could begin to visit employers identified by the verification system as having a potential problem, and additionally could randomly visit worksites to see that employers were filing the paperwork for each worker as required by law. Those employers found to be knowingly hiring illegals would be made to pay stiff fines.

It is not just in the area of worksite enforcement that additional investigators could be put to work. The system of tracking students and perhaps other visitors requires that there be enough agents to locate those identified by the tracking system as having violated their visas. If we create a tracking system, for example, but there are no agents to investigate those who stop working or attending class, then a tracking system is almost meaningless. Failure to develop such a system means that millions of illegal immigrants will continue to work and live in the United States facing little or no penalty. Not only does this make a mockery of the rule of law, harm the working poor, and impose significant costs on taxpayers, it also exposes the country to significant security risks.

Employment verification as a proxy for comprehensive registration. Most of the recommendations outlined above have dealt with temporary visa holders or efforts to reduce illegal immigration. More effective monitoring is also needed of permanent residents. A number of militant Islamic terrorists have been legal immigrants, including Sheik Omar Abdel Rahman, Siddig Ibrahim Siddig Ali (ringleader of a plot to bomb New York landmarks) and Mahmud Abouhalima, a leader of the 1993 attack on the World Trade Center.

Until the early 1980s all non-citizens living in the United States were required to register annually their whereabouts with the INS. This practice should probably not be revived in that form. Potential terrorists cannot be expected to dutifully send in post cards with their addresses. However, the employment verification system outlined above could be a very effective tool in locating non-citizen legal immigrants. This is especially important when a person is placed on the watch list after he has entered the country. At present, there is often no way for immigration authorities to know where that individual lives; but the employment verification process would provide them with the last known employer for green card holders who work. Thus, if it became necessary to arrest, or undertake surveillance of a non-citizen, his last known employer would be a place to start. The verification system would, in effect, be a means of alien registration, at least for those resident aliens who work.

Prevent illegals from putting down roots. One change that seems obvious is to expand the concept of employer sanctions to other aspects of life. In other words, we should require verification of legal status not only when a person starts a new job but also when a person applies for a driver's license, and a bank account, and a mortgage, and college admission. Bank accounts are especially important because they make it easier for people who work illegally in the United States to cash paychecks and transfer money abroad. Thus, by permitting illegal aliens to open bank accounts we make it easier to be an illegal alien, which in turn can only increase illegal immigration. This is the unintended consequence of the U.S. Treasury Department's explicit policy of giving a green light to banks to accept Mexico's consular registration card, a document useful within the United States only to illegal aliens.

Another key is to prevent illegals from getting driver's licenses. A number of the 9/11 terrorists were able to get licenses and open bank accounts with little difficulty. Virginia, which issued eight drivers licenses to 9/11 terrorists, only required that a third party attest to the fact that the license applicant is a state resident. This is a clear invitation for illegal aliens and terrorists to obtain driver's licenses.

All states must require birth certificates and other supporting documents for licenses. Unfortunately, a number of states do not carefully verify identity or eligibility for a license, and in fact some states now explicitly allow illegal aliens to get licenses. Not only do licenses make it easier to open bank accounts, licenses are also helpful when accessing government documents, looking for a job, renting motor vehicles, and of course boarding commercial airliners. If we are serious about reducing illegal immigration and protecting the country from terrorists, then doing a great deal more to prevent illegals from opening bank accounts and obtaining drivers licenses will have to be part of our efforts.

Amnesties for illegal aliens have helped, not hindered, terrorists. The existence of a large illegal population clearly creates a host of problems for the United States. Instead of enforcing the law, some have suggested giving green cards to the illegals, thereby defining away the illegal population and simplifying the work of interior enforcement. Superficially appealing as this may be, it would not solve the problem of future illegal immigration; after the last amnesty in 1986, the 2.7 million illegals who were given green cards were entirely replaced by new illegal aliens within less than 10 years. While the events of 9/11 significantly reduced political

support for what had been growing momentum to grant amnesty to Mexican and perhaps other illegals, the idea continues to be suggested; some have even argued after 9/11 that granting amnesty would be helpful to national security because it would allow law enforcement to know who is in the country. For this reason some amnesty advocates have even taken to calling it a “registration” of illegal aliens. However, in the past, amnesties have helped terrorists, and not impeded them in any way.

Mahmud “The Red” Abouhalima, an Egyptian illegal alien working as a cab driver in New York, received amnesty under the 1986 Immigration and Reform and Control Act, falsely claiming to be an agricultural worker. Given limited resources, it was not possible to investigate or even verify the stories of the millions who applied for amnesty. As a result, the vast majority who applied for the amnesty were approved, including huge numbers of fraudulent applicants. Issuing Mahmud Abouhalima a green card facilitated his terrorism because he could then work at any job he wished and was able to travel to and from the United States freely. In fact, according the October 4, 1993, issue of Time magazine, it was only after he received his green card in 1990 that he made several trips to Pakistan, where he received combat training. Thus, the 1986 amnesty is what made his training by al Qaeda possible. Had Abouhalima not been given permanent residency, he would not have been able to travel abroad and become a trained terrorist.

The case of Mohammed Salameh, who rented the truck used in the 1993 World Trade Center bombing, shows why an amnesty will not hinder terrorists. Salameh’s application for amnesty was denied because he was not as adept at making fraudulent claims as was Abouhalima. The INS was able to do its job in his case and rejected his application on its face. However, because there was no mechanism in place to force people who are denied amnesty to leave the country, he continued to live and work in the United States illegally and ultimately take part in terrorism. Thus, in the past terrorists who applied for amnesty either received it, making their operations easier, or, when turned down, simply continued to engage in terrorism unhindered.

In sum, the last amnesty only helped terrorists and did nothing to hinder those involved in the first World Trade Center bombing. If we are to have an amnesty, then at the very least we first need to devote vastly more resources to interior enforcement, including detention space and INS agents assigned to investigate applications and to detain and remove those found ineligible.

CONCLUSION

Although the national security, economic, and fiscal arguments against illegal immigration are overwhelming, many people still might argue that there is little that can be done about this situation. In fact, illegal immigration isn’t nearly as intractable a problem as it may seem. The INS estimated several years ago that each year roughly 150,000 illegal aliens leave the country on their own, another 200,000 or so get green cards as part of the normal “legal” immigration process, 50,000 illegals are deported, and about 20,000 die. In sum, at least 400,000 people leave the illegal-alien population each year.

Of course, something like 800,000 new illegals arrive annually, and thus the total illegal population continues to grow. But the numbers leaving the illegal population are still huge, and we can use this fact to our advantage. If we significantly reduce the number of new illegal aliens entering the country and increase the number who go home, even if only modestly, we can engineer an annual decline in the illegal-alien population, allowing the problem to become progressively smaller over time through attrition.

Nor is this mere supposition. The special-registration process applies to nationals of more than two dozen countries, among which Pakistan has the largest illegal-alien population in the U.S., estimated to have been 26,000 in January 2000. Thousands of those illegal aliens have left the country voluntarily, without having to be deported, because of the special registration requirements. We can expect that any other increases in interior enforcement efforts would yield similar multiplier effects, with each illegal alien actually apprehended causing many more illegals to leave on their own.

Strict enforcement of the law overseas, at the border, and in the interior of the United States can help restore order to our anarchic immigration system and is one of the most effective means we have of reducing the threat from foreign-born terrorists. Failure to develop a vigorous interior enforcement system will result in the continual increase of the illegal alien population, imposing significant costs on unskilled American workers, taxpayers, and, in the long-run, American business. By enforcing

immigration laws we can improve the lives of the working poor, save taxpayers money, and help protect the safety of our homes and families.

Mr. HOSTETTLER. Thank you, Mr. Krikorian.

Mr. Danahey, you are free to testify. Thank you for your flexibility once again in your schedule.

**STATEMENT OF TIMOTHY J. DANAHEY, NATIONAL PRESIDENT,
FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION**

Mr. DANAHEY. Good morning, Mr. Chairman, and distinguished Members of the Subcommittee. I am honored to testify on such an important and vital subject.

The Federal Law Enforcement Officers Association, FLEOA, is a voluntary, nonpartisan professional organization. FLEOA currently represents over 19,000 Federal law enforcement officers.

As a national officer of FLEOA, I represent many of the outstanding men and women who enforce our Nation's immigration laws. These men and women risk their lives every day in an environment that is increasingly violent.

To make this mission more efficient, while restoring public confidence in immigration enforcement, FLEOA would like to see the following issues, matters of concerns and problems addressed in the creation of the Department of Homeland Security.

General arrest authority. Under the former INS, a key provision of the Immigration Act of 1990 has yet to be implemented. The authority granting INS law enforcement officers general arrest authority has never been implemented. The Department of Homeland Security, and specifically ICE, should implement the regulations as stated in law to give agents/officers general arrest authority. It is our understanding that U.S. Customs agents already possess this.

Training. Presently, the former INS special agents, 1811s, have been hired from positions such as immigration inspectors, deportation officers, and Border Patrol agents. FLEOA recommends that all special agents who have not received the investigations training, such as the one offered at the Federal Law Enforcement Training Center, FLETC, and the Criminal Investigator Training Program, CITP, be given transitional training courses so that they may be on par with U.S. Customs special agents.

Cross-training of special agents previously employed by the former INS and U.S. Customs Service should begin immediately. We feel that cross-training of agents is absolutely essential. We note there is no substitute for personnel resources.

We recommend a specific standardized training program be developed and implemented relating to each job classification within ICE. If individuals transfer within job classifications within the Department of Homeland Security, we recommend that they receive training in a transitional program designed to accommodate each classification, such as inspectors to deportation, or deportation to special agent.

Equal pay. As noted in the current Homeland Security statute, pay parity is a major concern. A journeyman INS special agent is paid a full grade lower than a U.S. Customs special agent. The problems associated with this are self-evident. We recommend an immediate across-the-board increase for all INS special agents, as well as all agents currently assigned the 1811 job classification

within the DHS. With less than 2,000 special agents nationwide, the cost is minimal.

Interior enforcement. Currently, the number of aliens illegally in the United States is estimated at about 8.5 million, or 28 percent of the foreign-born population in the United States.

As the former INS investigations and detention and removal component transition to ICE, we note the concerns raised in a 2002 GAO report entitled, "Immigration Enforcement, Challenges to Implementing the INS Interior Enforcement Strategy", remain the same today. In this report, the GAO noted that having an effective interior enforcement strategy is an essential complement to having an effective border strategy. The GAO stated that the former INS faced numerous and daunting enforcement issues, such as the potential pool of removable criminal aliens and fugitives that number in the hundreds of thousands.

Using the events of September 11th as a barometer, we can clearly see what the lack of commitment to the base immigration mission yields.

If they have not already done so, we recommend that ICE immediately create a planning and policy formulation office. The planning and policy functions should succinctly and articulately state the ICE mission and/or missions. This stated mission should chain-drive the budget formulation, rather than the budget process driving the stated mission, as was the case with the former INS.

ICE needs to address problems concerning interior capacity issues in relation to the National Security Entry/Exit Registration System, NSEERS, Student and Exchange Visitor Information System, SEVIS, and other law enforcement agencies referrals. Budget formulation, budget execution, resource deployment, personnel staffing, position management and position classification must address the lack of special agents, deportation officers, and other clerical staff actually in place to address leads from NSEERS and SEVIS, as well as from sources including Federal, State and local law enforcement agencies. We caution that, as in the past, these resources have not been developed at the expense of anti-smuggling, fraud, and other complex caseload reasons.

In regard to the interior immigration law enforcement mission, we recommend that a commitment be made to deal with complex, protracted criminal cases, such as alien smuggling/human trafficking cases, immigration fraud cases, and NSEERS and SEVIS related tracking investigations.

We recommend that these investigations be conducted by the special agent 1811 component of ICE. Secondly, the administrative functions of interior enforcement such as administrative jail cases, the Institutional Hearing Program, and other law enforcement referrals, should be given the same commitment.

To see that criminal cases generated from ICE special agents are given consideration in the ever-competitive world of Federal law enforcement, we recommend that an Assistant United States Attorney in each United States Attorney Office be dedicated to immigration enforcement similar to those dedicated for asset forfeiture matters.

To accomplish its immigration enforcement mission, ICE would need to increase staffing levels by 100 percent in both the inves-

tigations program and the detention and removal program. An increase in special agents from its current level of approximately 2,000 to 4,000 would cost approximately \$234,078,000, according to modular costs. An increase in deportation officers to 2,000 officers would be needed to handle the current immigration enforcement workload, and again, according to modular costs, would cost approximately \$241,054,000.

Alien smuggling. The GAO noted in a 2000 report entitled, "Alien Smuggling: Management and Operational Improvements Needed to Address Growing Problem" that without improvements in its investigations and intelligence programs, INS' ability to disrupt and deter increasingly sophisticated and organized alien smugglers and dismantle their organizations will continue to be hampered.

To assist the alien smuggling mission, ICE needs to think with some breadth and depth of vision. No longer can we think from a narrow, blinded point of view. We recommend the consolidation of the overseas operations at the Border Transportation Security directorate level, since they involve elements of the ICE and the CBP mission. These functions should include oversight of visa issuance at overseas posts and the headquarters coordination of all alien smuggling investigations.

In a 2002 report entitled, "Immigration Benefit Fraud, Focused Approach Needed to Address Problems", the GAO noted that the former INS did not know the extent of the immigration benefit fraud problem. However, reports and statements from former INS officials indicated that the problem is pervasive and significant and will increase as smugglers and other criminal enterprises use fraud as another means of bringing illegal aliens, including criminal aliens, terrorist and foreign intelligence agents into the United States.

In 2002, FLEOA testified that it was our view that the INS has lost the confidence of the American people. Noting that following a GAO report in 1991, entitled "Immigration Management: Strong Leadership and Management Reforms Needed to Address Serious Problems," the INS undertook administrative reform in 1994. Again in 1997, the GAO issued a report entitled, "Immigration Management, Follow-up on Selected Problems." This again prompted INS reform in 1998. Since the GAO report in 1991, there has been a succession of negative and critical reports in regard to the former INS by numerous other governmental and private entities.

Mr. HOSTETTLER. Mr. Danahey, could you summarize?

Mr. DANAHEY. Yes, sir.

The immigration issue is based upon law and should not be dictated by the politics of the moment. On behalf of the Federal Law Enforcement Officers Association, and the many dedicated men and women who risk their lives enforcing immigration laws, I appreciate your time and attention.

[The prepared statement of Mr. Danahey follows:]

PREPARED STATEMENT OF TIMOTHY DANAHEY

Good afternoon, Mr. Chairman and distinguished Members of the Subcommittee. I am honored to testify on such an important and vital subject. I respectfully request my written submission be admitted to the record.

The Federal Law Enforcement Officers Association—FLEOA, is a voluntary, non-partisan professional association. FLEOA currently represents over 19,000 federal

law enforcement officers and is the largest association for federal officers of its kind. Several years ago, FLEOA joined with all of the major state and local national police associations to form the Law Enforcement Steering Committee. The Law Enforcement Steering Committee includes the following prominent and important organizations: Fraternal Order of Police, National Troopers Coalition, Major Cities Chiefs of Police, Police Executive Research Forum, the National Association of Police Organizations, National Organization of Blacks in Law Enforcement, the International Brotherhood of Police Organizations and the Police Foundation. In becoming a part of this group, federal agents were able to add our voices to those of the over half a million state and local officers already commenting on the issues that our Association considers to be of greatest importance. I tell you today, as I have told our membership and the Law Enforcement Steering Committee for the past several years that the continuing revitalization of immigration law enforcement is one of our highest priorities. A year ago FLEOA testified before this committee for the seventh time imploring this committee to recommend a legislative restructuring of the Immigration and Naturalization Service (INS). FLEOA believes that the creation of the Department of Homeland Security (DHS) and the abolishment of the INS is exactly what were needed.

It was FLEOA's belief that the revitalization of our nation's immigration law enforcement will occur through passage and complete implementation of the Homeland Security Act of 2002. We appreciated the committee seeking our input on concerns we wish to discuss in the spirit of assisting you in making the Department more efficient and effective.

FLEOA believes the merger of several Federal law enforcement agencies into this Department was a vital step towards correcting many of the obstacles that have arisen over the years within Federal law enforcement. We, America's Federal Agents, pledge to work with you to fulfill the expectations of the public.

I want to take a moment to comment on the creation of the Department of Homeland Security and, specifically, the creation of the Bureau of Immigration and Customs Enforcement (ICE). Upon hearing of the Administration's intent to abolish the INS, I was asked by a colleague my thoughts on this drastic reform. I responded by relaying a popular Churchill story in which a man received a telegram saying his mother-in-law had died and asked for instructions. The man wired back: "Em-balm, cremate, bury at sea. Take no chances."

As a National Officer of FLEOA, I represent many of the outstanding men and women who enforce our Nation's Immigration Laws. These men and women risk their lives every day in an environment that is increasingly violent. To make this mission more efficient while restoring the public confidence in immigration enforcement, FLEOA would like to see the following issues, matters of concerns and problems addressed in the creation of Department of Homeland Security.

GENERAL ARREST AUTHORITY

Under the former INS, a key provision of the Immigration Act of 1990 has yet to be implemented. The authority granting INS law enforcement officers general arrest authority has never been implemented. The Department of Homeland Security and specifically, ICE should implement the regulations (as stated in law) to give agents/officers general arrest authority. It is our understanding that currently US Customs agents have it. FLEOA recommends that ICE begin the process to implement general arrest authority provisions and extend protection against legal liability to all current ICE Officers.

TRAINING

Professionalism must be enhanced in the new department of Homeland Security. One means to accomplish this would be through enhanced training of all Special Agents (1811s), Deportation Officers, and analysts. We recommend, strongly, that ICE adopt the USDA Graduate School's program for the training of government analysts in legal, technical, and management areas.

Presently, the former INS Special Agents (1811s) have been hired from positions such as Immigration Inspectors, Deportation Officers and Border Patrol Agents. FLEOA recommends that all Special Agents who have not received the investigations training, such as the one offered at the Federal Law Enforcement Training Center (FLETC), the Criminal Investigator Training Program (CITP), be given a transitional training course so that they may be on par with US Customs Special Agents. We can no longer rely on the past INS model of On-The-Job (OJT) training, which is beneficial only as it complements CITP training.

Cross training of Special Agents previously employed by the former INS and the US Customs Service should begin immediately. While we feel that cross training of

agents is absolutely essential, we note that there is no substitute for personnel resources. For too long, we have attempted to accomplish immigration law enforcement without admitting the need for the requisite personnel enhancements. Training for agents, supervisors and upper management should be conducted in an academy type setting, away from day-to-day distractions.

We recommend a specific standardized training program be developed and implemented relating to each job classification within ICE. If individuals transfer within job classifications within The Department of Homeland Security we recommend that they receive training in a transitional program designed to accommodate each classification such as Inspections to Deportation or Deportation to Special Agent. Under the former INS, an individual who transferred from a Deportation Officer to the Special Agent position received no job specific training after they transferred.

We recommend that all law enforcement personnel hired in the future within the Department of Homeland Security undergo a standardized training program while at the academy. Upon completion of this training they should receive advance training specific to each job classification.

It is reasonable to note that although many former INS Special Agents currently lack the CITP certificate, the training they did receive in the Border Patrol Academy and the Immigration Officers Academy as well as the intensive Spanish language immersion program, was as difficult and demanding as any currently offered at the current Federal Law Enforcement Academy training.

EQUAL PAY

As noted in the current Homeland Security statute, pay parity is a major concern. Currently, a journeyman INS Special Agent is paid a full grade lower than a US Customs Special Agent. The problems associated with this are self-evident. We recommend an immediate across the board increase for all INS Special Agents as well as all agents currently assigned the 1811 job classification within the DHS. With less than 2000 Special Agents nationwide, the cost is minimal.

FLEOA has advocated for many years legislation addressing the pay disparity existing between the public and private sectors. We have brought to your attention the problems this poses for effective Federal law enforcement. We would like to take time now to remind this body of the need to pass the current House Resolution H.R. 466, which will amend the Federal Law Enforcement Pay Reform Act of 1990. This Bill will do two things: adjust the locality pay percentages for America's federal agents and allow mid to high-level supervisors to earn up to 25% of their salaries in overtime. Additionally, this needed legislation will enable Federal law enforcement agencies to recruit and retain the best and brightest candidates. Today, there is very little incentive to progress to upper management positions.

INTERIOR ENFORCEMENT

Currently the number of aliens illegally in the United States is estimated at about 8.5 million or 28% of the foreign-born population in the United States. Researchers have noted the difficulty in determining the flow of undocumented aliens into the country. However, if the numbers described above are "in the ball park", i.e. there are in fact 8-9 million undocumented aliens in the U.S. today, the annual increase in the undocumented population must be in excess of 500,000 per year and could possibly be higher for recent years. This is a surprising number, at least to most analysts, who have been working with empirically based estimates of this clandestine population.

The results from Census 2000 call into question some of the basic information regarding immigration which we relied upon in the past. The surprise figures from the Census suggest strongly that immigration levels, particularly undocumented and temporary immigration, are substantially higher than most had suspected. With these numbers in mind we recommend that in addition to its customs enforcement responsibilities, ICE's main responsibility should be to the "base" Immigration Mission—starting with the development of a meaningful, comprehensive, integrated enforcement strategy. Preservation of the integrity of the immigration processes and systems must not be forgotten as our great Nation rushes to embrace the counter-terrorism mission. We should remember that part—a major part—of the reason we have a terrorism problem is because we neglected the staffing and support of components devoted to enforcement of the Nations basic immigration laws.

As the former INS Investigations and Detention and Removal components transition to ICE, we note the that concerns raised in a 2002 GAO Report titled "Immigration Enforcement, Challenges to Implementing the INS Interior Enforcement Strategy", remain the same today. In this report, the GAO noted that having an effective interior enforcement strategy is an essential complement to having an effective bor-

der strategy. The GAO stated that the former INS faced numerous and daunting enforcement issues such as, the potential pool of removable criminal aliens and fugitives number in the hundreds of thousands. The number of individuals smuggled into the United States has increased and alien smuggling has become more sophisticated, complex, organized and flexible. Thousands of aliens annually seek immigration benefits fraudulently. The GAO concluded that the former INS's tasks with regard to interior enforcement are considerable given the nature, scope, and magnitude of illegal activity. The GAO found that the former INS was and in our view today ICE is an agency that faces significant challenges in appropriately staffing program areas, providing reliable information for program management, establishing clear and consistent guidance for working-level staff to do their jobs consistent with the goals of the program, promoting collaboration and coordination within ICE and with other agencies, and developing outcome-based measures that would indicate progress toward the strategy's objectives. ICE needs to address these issues within its immigration law enforcement component immediately if it is to achieve full program potential.

Using the events of September 11 as a barometer, we can clearly see what the lack of commitment to the base immigration mission yields. A study of terrorism conducted by the Center for Immigration Studies on U.S. soil over the past decade concludes that including the September 11th hijackers, 48 foreign-born militant Islamic terrorists have been charged, convicted, plead guilty, or admitted to involvement in terrorism within the U.S. since 1993. Almost all of these individuals are thought to be linked to Osama bin Laden's al Qaeda organization. The study further concluded that foreign-born militant Islamic terrorists have used almost every conceivable means of entering the United States including sneaking across the Northern border of the United States. A true comprehensive, integrated interior enforcement strategy must be developed to provide a blueprint for the new ICE. In efforts to avoid "stove piping," the Department of Homeland Security, Office of the Secretary, should ensure that a mechanism exists to REQUIRE cooperation between ICE, CBP and CIS. To cite an example where this type of coordination is currently lacking between DHS components, members working in a key smuggling corridor have indicated that the Border Patrol Sector has intentionally excluded ICE Special Agents from smuggling related events it encounters during the course of its routine patrol duties.

If they have not already done so, we recommend that ICE immediately create a planning and policy formulation office. The planning and policy functions should succinctly and articulately state the ICE mission and/or missions. This stated mission should chain-drive the budget formulation, rather than the budget process driving the stated mission, as was the case with the former INS.

ICE needs to address problems concerning interior capacity issues in relation to National Security Entry Exit Registration System (NSEERS), Student and Exchange Visitor Information System (SEVIS) and other law enforcement agencies referrals. Budget formulation, budget execution, resource deployment, personnel staffing, position management and position classification must address the lack of Special Agents, Deportation Officers, and other clerical staff actually in place to address "leads" from NSEERS and SEVIS, as well as from sources including federal, state, and local law enforcement agencies. Systems such as NSEERS or SEVIS will be rendered toothless if ICE doesn't have the interior enforcement resources to deal with NSEERS or SEVIS information on overstays, status violators and other law enforcement referrals. Without any consequences attached, we have only created the enforcement equivalent of a Potemkin Village. We CAUTION as in the past these resources must not be developed at the expense of anti smuggling, fraud, and other complex casework resources.

In regard to the interior immigration law enforcement mission we recommend that a commitment be made to deal with complex, protracted criminal cases, such as alien smuggling/human trafficking cases, immigration fraud cases, and NSEERS and SEVIS related tracking investigations. We recommend that these investigations be conducted by the Special Agent (1811) component of ICE. Secondly, the administrative functions of interior enforcement such as administrative jail cases, Institutional Hearing Program (IHP) and other law enforcement referrals should be given the same commitment. FLEOA recommends that the administrative mission of ICE immigration enforcement such as IHP and county jail cases be assigned to the Detention and Removal component. We note that these are related-but-different programs. Both missions must be accomplished—and one cannot be emphasized at the expense of the other.

To see that criminal cases generated from ICE Special Agents are given consideration in the ever competitive world of federal law enforcement, we recommend that an Assistant United States Attorney in each United States Attorney Office be dedi-

cated to immigration enforcement similar to those dedicated for asset forfeiture matters. We would ask for 50% of his/her time at a minimum be devoted to immigration related matters.

To allow ICE Special Agents to focus on the complex criminal matters as well as matters relating to national security it is essential that ICE Special Agents be relieved of all administrative jail duties. ICE Special Agents should no longer be utilized to accomplish routine administrative activities such as processing aliens under the NSEERS program or approving schools under the SEVIS program. These time consuming duties, as well as routine deportation escorts, would be better accomplished by the Detention and Removal component of ICE or through contracts with non-government entities and/or rehired annuitants. To accomplish its immigration enforcement mission, ICE would need to increase staffing levels by 100% in both the Investigations Program and the Detention and Removal Program. An increase in Special Agents from its current level of approximately 2000 to 4000 would cost approximately \$234,078,000 according to modular costs. An increase in Deportation Officers to 2000 Officers would be needed to handle the current immigration enforcement workload, and again according to modular costs would cost approximate \$241,054,000. We should note that these numbers would only be realistic with a net zero growth in the illegal alien population. Furthermore, ICE would need to immediately revamp and streamline the former INS's enforcement operations, directives and policies.

Our members in the field have continuously stated that one of the greatest problems in enforcing our Nations Immigration Law is in the area of detention and removal. Large amounts of illegal aliens are released in some districts (as many as fifty a day) before ever seeing an Immigration Judge. Lack of bed space is always cited as the reason. Many of the available beds available for immigration detainees have disappeared because of unrealistic "Detention Standards" imposed on local and county jails that house federal inmates in 1998. We would ask that these be relaxed or allow all existing jails some of which are very old to be "Grandfathered" so that they need not apply all 39 of these unworkable detention standards to housing immigration detainees. One such jails, which supports the enforcement of the Northern Border in the State of Vermont, is one of the only facilities in the State that has room for immigration violators. It has space for INS detainees and is favored by detainees but was removed from being able to hold detainees more than 72 hours due to these detention standards. This impedes immigration enforcement and increases costs. Many of these jails have existed for decades without incident. Many illegal aliens are released despite the fact that many do not have a valid, verifiable address and are never heard from again. In simple terms, ICE needs to learn how to detain and remove undocumented aliens.

ALIEN SMUGGLING

The GAO noted in a 2000 report titled "Alien Smuggling: Management and Operational Improvements Needed to Address Growing Problem" that without improvements in its Investigations and Intelligence Programs, INS's ability to disrupt and deter increasingly sophisticated and organized alien smugglers and dismantle their organizations will continue to be hampered.

Again in a GAO Report on the former INS in 2002, the GAO was very critical of the INS's ability to investigate alien smuggling groups, stating that without improvements in its investigations and intelligence programs, INS anti-smuggling efforts will continue to be hampered in the face of the growing tide of aliens entering the United States with the aid of smuggling organizations. The GAO went on further to note that INS's alien smuggling investigative efforts have been fragmented and uncoordinated.

Although the problems within the INS Anti-Smuggling program are well documented, FLEOA recommends that ICE be the central investigative agency for all human trafficking/alien smuggling investigations. Currently, there is no stated mission involving the targeting of human trafficking/alien smuggling organizations within ICE. Research indicates that the majority of illegal entrants have utilized the assistance of a smuggling organization to enter the United States. As Congress has heard in previous expert testimony, alien smugglers have developed dozens of alternative routes; fewer illegal immigrants come in by ship or cross the United States Borders by land. They are increasingly coming in by air. Utilizing stolen or counterfeited passports, immigrants are allowed to board U. S. bound planes by unsuspecting airline officials or by bribing foreign airport personnel.

We recommend that by making human trafficking/alien smuggling investigations one of ICE's primary enforcement functions, the need exists to immediately fund and staff this component to levels that allow it to be effective. Research and experi-

ence has led us to believe that the most effective means to enforce laws relating to human trafficking/alien smuggling organizations would be to centralize all human trafficking/alien smuggling investigations into one agency with adequate staffing, funding and a strong headquarters component. It is imperative this program be given the requisite attention.

To assist the alien smuggling mission, ICE needs to think with some breadth and depth of vision. No longer can we think from a narrow, blinded point-of-view. We recommend the consolidation of the overseas operations at Border Transportation Security (BTS) directorate level, since they involve elements of the ICE and CBP mission. These functions should include oversight of visa issuance at overseas posts and the headquarters coordination of all alien smuggling investigations.

FLEOA would like to bring to the committees attention a March 20, 2003, Washington Post article in which it noted that the Attorney General had granted the FBI, the U.S. Marshal's Service and some local law enforcement agencies authority to detain foreign nationals for alleged immigration violations. The Attorney General has realized what FLEOA has been saying for years, that immigration law enforcement has been overlooked and that the approximately 2000 INS Special Agents assigned to interior enforcement matters is not adequate.

We should resist any attempts to divide the immigration law enforcement mission into many agencies. ICE should be the clearinghouse for all immigration related law enforcement issues. We should keep in mind the 1991 GAO report regarding immigration law enforcement. The GAO report stated that INS leadership had allowed the INS organizational structure to become decentralized without adequate controls. The field structure designed to carry out INS enforcement functions was bifurcated between districts and Border Patrol Sectors, resulting in uncoordinated, overlapping programs. It is our belief that any attempts to integrate duties historically executed by one agency into many, will only make matters worse and again lessen the quality and quantity of immigration law enforcement. The solution, as we see it, is resources, specifically, additional immigration 1811 Special Agent positions, who are trained and experienced in the enforcement of the immigration laws of the United States. Anything less, would not be fair to the legal immigrants who enter this nation each and every day.

BENEFIT APPLICATION FRAUD

In a 2002 GAO report titled "Immigration Benefit Fraud, Focused Approach Needed to Address Problems". The GAO noted that the former INS did not know the extent of the immigration benefit fraud problem. However, reports and statements from former INS officials indicated that the problem is pervasive and significant and will increase as smugglers and other criminal enterprises use fraud as another means of bringing illegal aliens, including criminal aliens, terrorist, and foreign intelligence agents into the United States. The GAO reported that the former INS interior enforcement strategy failed to lie out a comprehensive plan to identify how components within and among service centers and district offices are to coordinate their immigration benefit fraud investigations.

In a 1997 Washington Post article, Bill Branigin reported, "that in most cases suspected benefit fraud is never investigated". Branigin, states, "that the INS says, it lacks the manpower and resources to do so, more than half the fraud cases referred to it go unaddressed". INS officials stated further, "we have a large number of suspected fraudulent applications in our hands that we can't even touch".

The GAO notes that efforts to address benefit fraud were given a lower priority within the former INS, and resources devoted to it were limited. The GAO report concluded that immigration benefit fraud has been a long-standing problem for the former INS that has grown more intense and serious as criminal aliens and terrorists have used the application process for illegal activities, such as crimes of violence, narcotics trafficking, and terrorism. Institutionally, the former INS has not done much to combat this significant problem, which threatens the integrity of the legal immigration system because it results in granting valuable benefits to ineligible aliens. We recommend that ICE immediately prioritize investigations targeting Immigration Benefit Fraud and adopt the recommendations made in the GAO report.

If ICE is to accomplish the tasks outlined above in both the enforcement of alien smuggling and benefit fraud statutes, we recommend that ICE increase case funding to the extent of 5 million per year. As Congress has heard in previous testimonies, the former INS had consistently under funded or misdirected criminal case related funding.

MANAGEMENT

In April of 2002, FLEOA testified that it was our view that the INS has lost the confidence of the American people. Noting that following a GAO report in 1991, entitled "Immigration Management: Strong Leadership and Management Reforms Needed to Address Serious Problems," the INS undertook an administrative reform in 1994. Again in 1997, the GAO issued a report "Immigration Management, Follow-up on Selected Problems". This again prompted INS reform in 1998. Since the GAO report in 1991, there has been a succession of negative and critical reports in regard to the former INS by numerous other governmental and private entities. In March, 60 Minutes broadcast a report in which it noted "few if any federal agencies have a worse record than the INS when it comes to mismanagement, corruption, inefficiency and ineptitude". A few days after that report it was reported that the INS notified a Florida flight school that student visas for two of the September 11 hijackers had been approved.

Based upon the above stated accounts and numerous other accounts that are similar, it is our view that careful consideration should be given in the selection of former INS managers to management positions within ICE. We recommend that only individuals with extensive 1811 experience should hold all future appointments to Special Agent in Charge (SAC) positions. Furthermore, it is recommended that all SAC's be appointed to a different geographical location in order to ensure standardization while eliminating questions of nepotism. This will ensure the promotion of seasoned and well-rounded managers.

Rotation of personnel between HQ and the field must be a systematic, sincere, and substantive policy. While this was first recommended 63 years ago (page 143 of the Secretary of Labor's Report on the Reorganization of INS, dated 1940—also known as the "Dimock Report")—it never really happened. We recognize that this now is mandated by statute. Further, positions that are redundant, such as OCDETF coordinators from both Customs and INS should be eliminated.

As Congress has heard in previous testimony, Federal Agents cannot do their jobs properly with current restrictive policies put in place by Headquarters managers overly concerned with the perceptions of enforcement activities in the media. Our members have provided various examples as to these restrictive policies and their effects on job performance and morale. In one case, a Deportation Officer noted that in his Region, a policy was put out on how Deportation Officers can conduct fugitive operations. What was once a routine duty, going out in the field, running down leads, locating and apprehending fugitive aliens, now requires that an "operation plan" be written up and signed off by a supervisor, even for just one alien. Special Agents in one former INS Region are no longer able to search for fugitive aliens after sundown, to do so would require written approval by the Assistant District Director for Investigations.

In addition, Special Agents must also write up and get approved, at numerous levels, an "operation plan" to apprehend any alien—even if a probation officer calls to say a criminal alien is sitting in his office. In one former INS District, when agents began concentrating on arresting sex offenders, the former District Director put out a policy that agents couldn't apprehend any "breadwinners." This policy prevented a gang unit agent from apprehending a gang member, who the very next week, shot and killed an innocent bystander at a taco stand. Incidents like this have led to the decline of morale. In a November 2002, directive promulgated by the former INS Headquarters, it was mandated that any attempt to operate an undercover operation utilizing smuggled illegal aliens will be accompanied by the *illegal alien's identity data* and *immigration status* before the operation will be approved. The use of an undercover operation in the first place assumes the lack of knowledge in regards to these details making this the equivalent of approaching a drug trafficker and asking him/her to provide the name and date of birth of the trafficker that will bring the narcotics into the US.

In essence, the work environment for immigration law enforcement has changed drastically. The statutory mandates as well as funding for immigration law enforcement have similarly undergone dramatic changes, yet the former INS remained stagnant, at best, and highly resistant to those very changes.

I respectfully submit to this distinguished Subcommittee today that the events of September 11, 2001, are proof positive that such an integral part of our homeland defense must be professional in every sense of the word and will thereby be successful.

IMMIGRATION ENFORCEMENT CAN SUCCEED

Immigration law enforcement must be both professionalized and depoliticized. We must no longer confuse effective immigration law enforcement as being anti-immigration.

Yes, we are a nation of immigrants, but as this nation was built on its immigration, its immigrants were inspected and documented. Today's flow of immigration remains increasingly clandestine, undetected and in some cases deadly, taking advantage of our benevolence. We are a nation that respects the rule of law above all else. Effective immigration law enforcement should be looked upon as a safeguard for those who seek shelter and a better life in America. Effective immigration enforcement will decrease the ability of unscrupulous alien smugglers, document vendors, employers and immigration consultants to jeopardize our safety, or to pray upon the immigrant's desperation in seeking a better life in America.

The consolidation of enforcement functions within the Department of Homeland Security and ICE will not only alleviate the problem of overlapping enforcement programs, but will enhance the ability to maintain consistent service and enforcement postures throughout the United States.

The establishment of integrated sub-units under ICE at the field level would ensure an appropriate level of specialization while maintaining flexibility, and would facilitate a cooperative and balanced approach.

FLEOA recommends the establishment of a Chief Enforcement Officer who supervises all enforcement components in a particular field enforcement sector, who reports to ICE Headquarters, is an idea whose time has come.

Congress must begin to strike a balance between enforcement on our borders and enforcement in the interior. Clearly, the catastrophic attacks of September 11th demonstrated that a total focus on the first line of defense will lead to only a hollow victory. Word of mouth travels rapidly back to the source countries that one must merely make it across the border in order to obtain this new gift of unsanctioned amnesty. In short, we will never restore domestic tranquility until we begin to establish meaningful rather than token control over our borders and the interior of the United States through comprehensive immigration law enforcement.

Mr. Chairman, I would respectfully submit that upon creation of the Bureau of Immigration and Customs Enforcement, it is not necessary to reinvent the wheel but merely adopt tried and true successful practices of modern day law enforcement entities. FLEOA recommends strongly the Implementation of Enforcement Sectors within the ICE and CBP. This would facilitate a cooperative and balanced approach to enforcement of our nation's immigration laws. In turn, you will then begin to see the accountability and productivity that our citizens not only deserve but also, are demanding of immigration enforcement.

The immigration issue is based upon law and should not be dictated by the politics of the moment. FLEOA would stress that the Director of the new Enforcement Bureau must be guaranteed freedom from political interference. Without equal emphasis in ICE for immigration law enforcement, it is unlikely that the legislative innovations against international terrorism passed by the 104th Congress in 1996 will ever be used to their full potential. Only through streamlining the bureaucracy, overcoming institutional inertia, and establishing balance through a separation of functions, can modern day immigration law enforcement be successful.

On behalf of the Federal Law Enforcement Officers Association, and the many dedicated men and women who risk their lives enforcing our immigration laws, I appreciate your time and attention, and the opportunity to share our views; these employees support what you are doing. I will be happy to answer any questions you may have. Thank you.

Mr. HOSTETTLER. Mr. Stana, you're free to testify. Once again, thank you for your flexibility in your schedule and for being here today.

STATEMENT OF RICHARD M. STANA, DIRECTOR, HOMELAND SECURITY AND JUSTICE, U.S. GENERAL ACCOUNTING OFFICE

Mr. STANA. Thank you, Mr. Chairman, and Members of the Subcommittee. I am pleased to be here today to discuss the challenges facing the immigration interior enforcement strategy.

This is essentially the same strategy that INS issued in 1999, and refocused following the events of 9/11. The strategy is designed to identify and remove criminal aliens from the United States, dis-

mantle and diminish alien smuggling operations, resolve community complaints about illegal immigrants, detect benefit and document fraud, and deny employers access to unauthorized workers. Historically, interior enforcement programs have received about one-fifth of the funding devoted to border enforcement.

My prepared statement discusses in detail the results of our most recent work on these programs, and in my oral statement I would like to focus on three main points.

First, like INS before it, ICE faces daunting interior enforcement issues. For example, as Mr. Danahey mentioned, the potential pool of removal criminal aliens and fugitives numbers in the hundreds of thousands. Criminal aliens are incarcerated in hundreds of Federal, State and local facilities, while others are fugitives at large across the country. The number of individuals smuggled into the United States has increased dramatically, and alien smuggling has become more sophisticated, complex, organized and violent. Annually, thousands of aliens seek immigration benefits, such as work authorization and change of status, and some of these aliens use the benefits to enable them to conduct criminal activities. Hundreds of thousands of aliens unauthorized to work in the United States have used fraudulent documents to circumvent the process designed to prevent employers from hiring them. In some instances, such aliens have sought and obtained employment in sensitive industries. Given the nature, scope and magnitude of these issues, ICE needs to ensure that it's making the best use of its limited enforcement resources.

Second, our work has disclosed fundamental management challenges that affect the interior enforcement programs and need to be addressed by ICE as it inherits this responsibility. The following four examples illustrate the need for improvement.

The first example: In several areas we noted that INS did not believe it had sufficient staff to reach its program goals, but it also lacked data on how best to use existing or additional staff. In the criminal alien removal and criminal benefit fraud programs, INS lacked good management information to determine how many staff it needed and how to allocate additional staff to best achieve program goals.

Example two: INS had long-standing difficulty developing and fielding information systems to support its program operations. Too often, program and management data were kept in a variety of automated systems that were difficult to access and analyze. Further, data gaps and inaccuracies put program officials in a poor position to make fact-based decisions about applicant eligibility and program management.

Example three: Working level guidance was sometimes lacking or nonexistent. We found that guidance had not been established for opening and prioritizing benefit fraud, and worksite enforcement investigations, and without such guidance, ICE cannot be assured that the highest priority cases are investigated and resources are used optimally.

The final example: Performance measurement was sometimes problematic. INS had not established outcome-based performance measures for the interior enforcement strategy in general, or for the individual programs in particular. Such measures would have

helped to assess the results of the programs and identify areas for improvement.

We have made many recommendations to INS in these areas, some of which have already been implemented, while others require attention by ICE. In our strategic plan, we express our intent to follow up on these issues and recommendations.

My last point is that since the attacks of 9/11, and with the formulation of DHS, new management challenges have emerged. For example, ICE needs to create appropriate cross-walks to other DHS components to assure collaboration and cooperation, such as to BCBP for alien smuggling and intelligence initiatives, and to BCIS, for benefit application reviews. As a second example, ICE needs to assure that its investigators receive training to perform their expanded antiterrorism duties effectively, while recognizing citizen and alien rights. And it needs to reinforce management controls to help assure compliance with DHS policies and procedures.

In closing, let me say that having an effective immigration interior enforcement strategy is an essential complement to having an effective border control strategy. ICE faces numerous and difficult challenges, some long-standing and some new. In the final analysis, successful implementation of the strategy will depend largely on dedicated and sustained leadership and management attention to resolving the problems.

This concludes my oral statement, and I would be happy to answer any questions Members of the Subcommittee may have.

[The prepared statement of Mr. Stana follows:]

PREPARED STATEMENT OF RICHARD M. STANA

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the Department of Homeland Security's (DHS) Immigration Interior Enforcement Strategy, whose implementation is now the responsibility of the Bureau of Immigration and Customs Enforcement (BICE). As you know, this strategy was originally created by the Immigration and Naturalization Service (INS). This statement discusses the interior enforcement strategy and selected issues pertaining to its implementation and management.

In the 1990s, INS developed a strategy to control illegal immigration across the U.S. border and a strategy to address enforcement priorities within the country's interior. In 1994, INS's Border Patrol issued a strategy to deter illegal entry. The strategy called for "prevention through deterrence"; that is, to raise the risk of being apprehended for illegal aliens to a point where they would consider it futile to try to enter. The plan called for targeting resources in a phased approach, starting first with the areas of greatest illegal activity. In 1999, the INS issued its interior enforcement strategy designed to deter illegal immigration, prevent immigration-related crimes, and remove those illegally in the United States. Historically, Congress and INS have devoted over five times more resources in terms of staff and budget on border enforcement than on interior enforcement.

In my statement today, I make the following points:

- INS's interior enforcement strategy was designed to address (1) the detention and removal of criminal aliens, (2) the dismantling and diminishing of alien smuggling operations, (3) community complaints about illegal immigration, (4) immigration benefit and document fraud, and (5) employers' access to undocumented workers. These components remain in the BICE strategy.
- INS faced numerous challenges in implementing the strategy. For example, INS lacked reliable data to determine staff needs, reliable information technology, clear and consistent guidelines and procedures for working-level staff, effective collaboration and coordination within INS and with other agencies, and appropriate performance measures to help assess program results. As BICE assumes responsibility for strategy implementation, it should consider how to address these challenges by improving resource allocation, information technology, program guidance, and performance measurement.

- The creation of DHS has focused attention on other challenges to implementing the strategy. For example, BICE needs to coordinate and collaborate with the Bureau of Citizenship and Immigration Services (BCIS) for the timely and proper adjudication of benefit applications, and with the Bureau of Customs and Border Protection (BCBP) to assist in antismuggling investigations and sharing intelligence. In addition, BICE needs to assure that training and internal controls are sufficient to govern investigators' antiterrorism activities when dealing with citizens and aliens.

My testimony today is based primarily on the results of work that we have completed in recent years, namely, our February 1999 testimony on INS's efforts to identify and remove criminal aliens,¹ our April 1999 report on INS's worksite enforcement program,² our May 2000 report on alien smuggling,³ our May 2001 report on the processing of immigration benefits,⁴ our January 2002 report on immigration benefit fraud,⁵ our March 2002 report on INS' Forensic Document Laboratory,⁶ our November 2002 report on INS's alien address information,⁷ and our January 2003 reports on major management challenges and program risks at the Departments of Homeland Security and Justice.⁸

In these reports we made many recommendations to improve INS operations. INS had implemented or was in the process of implementing some of these recommendations. We plan to follow up on DHS plans to improve the various programs.

COMPONENTS OF THE INTERIOR ENFORCEMENT STRATEGY

In January 1999, INS issued its Interior Enforcement Strategy. This strategy focused resources on areas that would have the greatest impact on reducing the size and annual growth of the illegal resident population. Certain criteria were used to develop the priorities and activities of the strategy. The criteria focused on potential risks to U.S. communities and persons, costs, capacity to be effective, impact on communities, potential impact on reducing the size of the problem, and potential value for prevention and deterrence. The strategy established the following five areas in priority order:

1. Identify and remove criminal aliens and minimize recidivism. Under this strategic priority, INS was to identify and remove criminal aliens as they come out of the federal and state prison systems and those convicted of aggravated felonies currently in probation and parole status.
2. Deter, dismantle, and diminish smuggling or trafficking of aliens. This strategic priority called for INS to disrupt and dismantle the criminal infrastructure that encourages and benefits from illegal migration. INS efforts were to start in source and transit countries and continue inside the United States, focusing on smugglers, counterfeit document producers, transporters, and employers who exploit and benefit from illegal migration.
3. Respond to community reports and complaints about illegal immigration. In addition to responding to local law enforcement issues and needs, this strategic priority emphasizes working with local communities to identify and address problems that arise from the impact of illegal immigration, based on local threat assessments.
4. Minimize immigration benefit fraud and other document abuse. Under this strategic priority, INS was to aggressively investigate and prosecute benefit

¹U.S. General Accounting Office, *Criminal Aliens: INS' Efforts to Identify and Remove Imprisoned Aliens Continue to Need Improvement*, GAO/T-GGD-99-47 (Washington, D.C.: Feb. 25, 1999).

²U.S. General Accounting Office, *Illegal Aliens: Significant Obstacles to Reducing Unauthorized Alien Employment Exist*, GAO/GGD-99-33 (Washington, D.C.: Apr. 2, 1999).

³U.S. General Accounting Office, *Alien Smuggling: Management and Operational Improvements Needed to Address Growing Problem*, GAO/GGD-00-103 (Washington, D.C.: May 1, 2000).

⁴U.S. General Accounting Office, *Immigration Benefits: Several Factors Impede the Timeliness of Application Processing*, GAO-01-488 (Washington, D.C.: May 4, 2001).

⁵U.S. General Accounting Office, *Immigration Benefit Fraud: Focused Approach Is Needed to Address Problems*, GAO-02-66 (Washington, D.C.: Jan. 31, 2002).

⁶U.S. General Accounting Office, *INS Forensic Document Laboratory: Several Factors Impeded Timeliness of Case Processing*, GAO-02-410 (Washington, D.C.: Mar. 13, 2002).

⁷U.S. General Accounting Office, *Homeland Security: INS Cannot Locate Many Aliens Because It Lacks Reliable Address Information*, GAO-03-188 (Washington, D.C., Nov. 21, 2002).

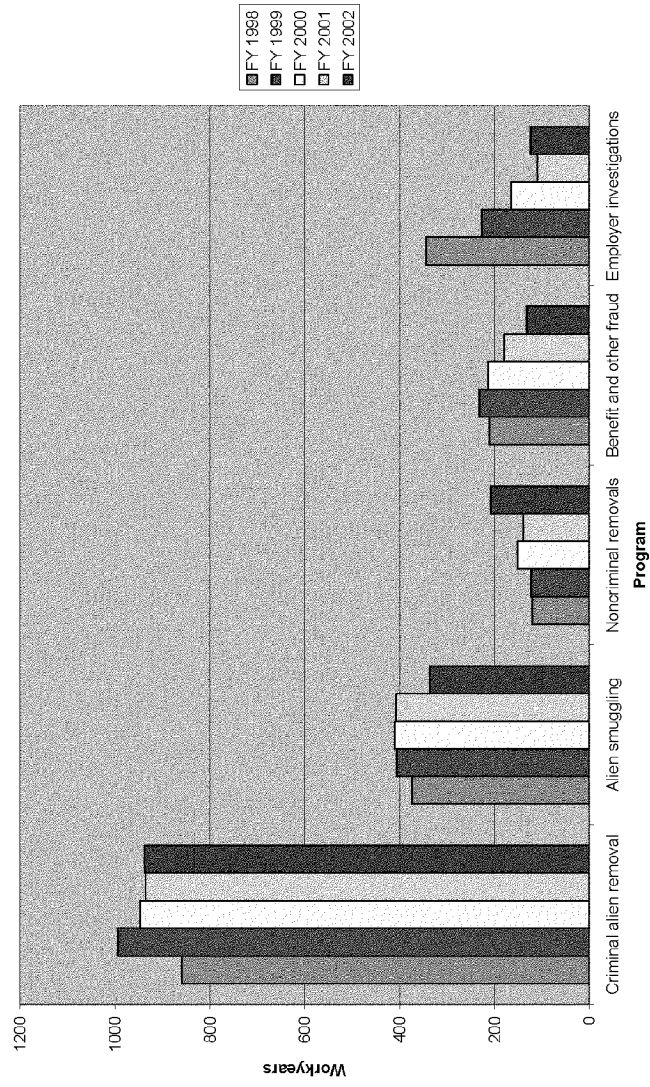
⁸U.S. General Accounting Office, *Major Management Challenges and Program Risks: Department of Homeland Security*, GAO-03-102 (Washington, D.C., Jan. 2003); and *Major Management Challenges and Program Risks: Department of Justice*, GAO-03-105 (Washington, D.C., Jan. 2003).

fraud and document abuse to promote integrity of the legal immigration system.

5. Block and remove employers' access to undocumented workers. The strategy emphasizes denying employers access to unauthorized workers by checking their compliance with the employment verification requirements in the Immigration Reform and Control Act of 1986. Coupled with its efforts to control smuggling activity, this effort could have a multiplier effect on access of employers to illegal workers and on the overall number of illegal residents in the country.

Figure 1 shows that INS had generally allocated its interior enforcement resources consistent with these priorities and that the workyears devoted to several of INS's interior enforcement efforts had either declined or stayed about the same between fiscal years 1998 and 2002.

Figure 1: INS Investigations Workyears



Source: GAC's analysis of INS's data.

Note: Workyear totals do not include administrative time.

CHALLENGES TO IMPLEMENTING THE INTERIOR ENFORCEMENT PROGRAMS

Our work has shown that INS faced numerous daunting enforcement issues, as will BICE as it assumes responsibility for the strategy. For example, the potential pool of removable criminal aliens and fugitives numbers in the hundreds of thousands. Many are incarcerated in hundreds of federal, state, and local facilities, while others are fugitives at large across the country. The number of individuals smuggled into the United States has increased dramatically, and alien smuggling has become more sophisticated, complex, organized, and flexible. Thousands of aliens annually illegally seek immigration benefits, such as work authorization and change of status, and some of these aliens use these benefits to enable them to conduct criminal activities. Hundreds of thousands of aliens unauthorized to work in the United States have used fraudulent documents to circumvent the process designed to prevent employers from hiring them. In many instances, employers are complicit in this activity.

Given the nature, scope, and magnitude of these activities, BICE needs to ensure that it is making the best use of its limited enforcement resources. We found that fundamental management challenges exist in several of the interior enforcement programs and that addressing them will require the high-level attention and concerted efforts of BICE.

Need for Better Staff Levels and Allocations

In several reports we noted that INS did not believe it had sufficient staff to reach its program goals. Having data on how to effectively allocate staff and placing sufficient staff in the right locations is important if BICE is to achieve program goals. Staff shortages had contributed to INS's inability to promptly remove the majority of criminal aliens after they have completed their prison sentences. In 1997 INS did not place into removal proceedings 50 percent of potentially deportable criminal aliens who were released from federal prisons and state prisons from 5 states. In 1999 we reported that, although the removal of criminal aliens was an INS management priority, INS faced the same staff shortage issues in 1997 as it had in 1995. In particular, agent attrition—about one-third of the workforce—continued to impede INS's ability to meet its program goals. INS had told us that since 1997, the attrition rates of agents in this program has stabilized and that, in fiscal year 2003, the agents from this program would be reclassified as detention removal officers, which INS believed should further help reduce attrition.

Even if INS had additional staff working in these program areas, it lacked good management information to determine how many staff it needed to meet its program goals and how best to allocate staff given the limited resources it did have. With respect to its program for removing incarcerated criminal aliens, INS told us that beginning in fiscal year 2002, the agency implemented our recommendation to use a workload analysis model. This was to help identify the resources the agency needed for its criminal alien program in order to achieve overall program goals and support its funding and staffing requests. We have not reviewed this new model to ascertain its usefulness.

With respect to alien smuggling, INS lacked field intelligence staff to collect and analyze information. Both 1998 and 1999 INS Annual Performance Plan reports stated that the lack of intelligence personnel hampered the collection, reporting, and analysis of intelligence information. Although INS's Intelligence Program proposed that each district office have an intelligence unit, as of January 2000, 21 of INS's 33 districts did not have anyone assigned full-time to intelligence-related duties. Our ongoing work at land ports of entry shows this to be a continuing problem.

The worksite enforcement program received a relatively small portion of INS's staffing and budget. In fiscal year 1998, INS completed a total of 6,500 worksite investigations, which equated to about 3 percent of the estimated number of employers of unauthorized aliens. Given limited enforcement resources, BICE needs to assure that it targets those industries where employment of illegal aliens poses the greatest potential risk to national security. The program now has several initiatives underway that target sensitive industries.

Need for Better Information Technology

INS had long-standing difficulty developing and fielding information systems to support its program operations, and effectively using information technology continued to remain a challenge. For example, in 2002 we reported that benefit fraud investigations had been hampered by a lack of integrated information systems. The operations units at the four INS service centers that investigate benefit fraud operate different information systems that did not interface with each other or with the units that investigate benefit fraud at INS district offices. As a result, sharing information about benefit applicants is difficult. The INS staff who adjudicate applica-

tions did not have routine access to INS's National Automated Immigration Lookout System (NAILS). Not having access to or not using NAILS essentially means that officers may be making decisions without access to or using significant information and that benefits may be granted to individuals not entitled to receive them. Thus, INS was not in the best position to review numerous applications and detect patterns, trends, and potential schemes for benefit fraud.

Further, in 2002 we reported that another INS database, the Forensic Automated Case and Evidence Tracking System (FACETS), did not contain sufficient data for managers to know the exact size and status of the laboratory's pending workload or how much time is spent on each forensic case by priority category. As a result, managers were not in the best position to make fact-based decisions about case priorities, staffing, and budgetary resource needs.

With respect to the criminal alien program, in 1999 we reported that INS lacked a nationwide data system containing the universe of foreign-born inmates for tracking the hearing status of each inmate. In response to our recommendation, INS developed a nationwide automated tracking system for the Bureau of Prisons and deployed the system to all federal institutional hearing program sites. INS said that it was working with the Florida Department of Corrections to integrate that state's system with INS's automated tracking system. INS also said that it planned to begin working with New York, New Jersey, and Texas to integrate their systems and then work with California, Illinois, and Massachusetts. We have not examined these new systems to determine whether they were completed as planned or to ascertain their effectiveness.

In 2000 we reported that INS lacked an agencywide automated case tracking and management system that prevented antismuggling program managers from being able to monitor their ongoing investigations, determine if other antismuggling units were investigating the same target, or know if previous investigations had been conducted on a particular target. In response to our recommendation, INS deployed an automated case tracking and management system for all of its criminal investigations, including alien smuggling investigations. Again, we have not examined the new system to ascertain its effectiveness.

Need for Better Guidance to Program Staff

Our review of the various program components of the interior enforcement strategy found that working-level guidance was sometimes lacking or nonexistent. INS had not established guidance for opening benefit fraud investigations or for prioritizing investigative leads. Without such criteria, INS could not be ensured that the highest-priority cases were investigated and resources were used optimally.

INS's interior enforcement strategy did not define the criteria for opening investigations of employers suspected of criminal activities. In response to our recommendation, INS clarified the types of employer-related criminal activities that should be the focus of INS investigations.

INS's alien smuggling intelligence program had been impeded by a lack of understanding among field staff about how to report intelligence information. Staff were unclear about guidelines, procedures, and effective techniques for gathering, analyzing, and disseminating intelligence information. They said that training in this area was critically needed.

Need for Better Performance Measures

INS had not established outcome-based performance measures that would have helped it assess the results of its interior enforcement strategy. For example, in 2000 we reported that while INS had met its numeric goals for the number of smuggling cases presented for prosecution in its antismuggling program, it had not yet developed outcome-based measures that would indicate progress toward the strategy's objective of identifying, deterring, disrupting, and dismantling alien smuggling. This was also the case for the INS intelligence program. INS had not developed outcome-based performance measures to gauge the success of the intelligence program to optimize the collection, analysis, and dissemination of intelligence information.

In 2002 we reported that INS had not yet established outcome-based performance measures that would help it assess the results of its benefit fraud investigations. Additionally, INS had not established goals or measurement criteria for the service center operations units that conduct fraud investigation activities. INS's interior enforcement strategy did not clearly describe the specific measures INS would use to gauge its performance in worksite enforcement. For example, in 1999 we reported that the strategy stated that INS would evaluate its performance on the basis of such things as changes in the behavior or business practices of persons and organizations, but did not explain how they expected the behavior and practices to change.

And although INS indicated that it would gauge effectiveness in the worksite area by measuring change in the wage scales of certain targeted industries, it left unclear a number of questions related to how it would do this. For example, INS did not specify how wage scales would be measured; what constituted a targeted industry; and how it would relate any changes found to its enforcement efforts or other immigration-related causes. The strategy stated that specific performance measurements would be developed in the annual performance plans required by the Government Performance and Results Act.

According to INS's fiscal year 2003 budget submission, the events of September 11th required INS to reexamine strategies and approaches to ensure that INS efforts fully addressed threats to the United States by organizations engaging in national security crime. As a result, with regard to investigating employers who may be hiring undocumented workers, INS planned to target investigations of industries and businesses where there is a threat of harm to the public interest. However, INS had not set any performance measures for these types of worksite investigations.

CHALLENGES FACED BY DHS RELATING TO INTERIOR ENFORCEMENT

Since the attacks of September 11, 2001, and with the formation of DHS, a number of management challenges are evident. Some of the challenges discussed above carry over from the INS, such as the need for sound intelligence information, efficient use of resources and management of workloads, information systems that generate timely and reliable information, clear and current guidance, and appropriate performance measures. Other challenges are emerging. These include creating appropriate cooperation and collaboration mechanisms to assure effective program management, and reinforcing training and management controls to help assure compliance with DHS policies and procedures and the proper treatment of citizens and aliens.

Need for Program Collaboration/Coordination

BICE will need to assure that appropriate cooperation and collaboration occurs between it and other DHS bureaus. For example, both the Border Patrol, now located in the Bureau of Customs and Border Protection (BCBP), and BICE's immigration investigations program conducted alien smuggling investigations prior to the merger into DHS. These units operated through different chains of command with different reporting structures. As a result, INS's antismuggling program lacked coordination, resulting in multiple antismuggling units overlapping in their jurisdictions, making inconsistent decisions about which cases to open, and functioning autonomously and without a single chain of command. It's unclear at this time how the anti-smuggling program will operate under DHS. Should both BCBP's Border Patrol and BICE's Investigations program continue to conduct alien smuggling investigations, Under Secretary Hutchinson will need to assure that coordination and collaboration exists to overcome previous program deficiencies.

The Bureau of Citizenship and Immigration Services (BCIS) is responsible for administering services such as immigrant and nonimmigrant sponsorship, work authorization, naturalization of qualified applicants for U.S. citizenship, and asylum. Processing benefit applications is an important DHS function that should be done in a timely and consistent manner. Those who are eligible should receive benefits in a reasonable period of time. However, some try to obtain these benefits through fraud, and investigating fraud is the responsibility of BICE's Immigration Investigations program. INS' approach to addressing benefit fraud was fragmented and unfocused. INS' interior enforcement strategy did not address how the different INS components that conducted benefit fraud investigations were to coordinate their investigations. Also, INS had not established guidance to ensure the highest-priority cases are investigated. Secretary Ridge will need to ensure the two bureaus work closely to assure timely adjudication for eligible applicants while identifying and investigating potential immigration benefit fraud cases.

BICE's Intelligence Program is responsible for collecting, analyzing, and disseminating immigration-related intelligence. Immigration-related intelligence is needed by other DHS components such as Border Patrol agents and inspectors within BCBP and personnel within BCIS adjudicating immigration benefits. BICE will need to develop an intelligence program structure to ensure intelligence information is disseminated to the appropriate components within DHS's other bureaus.

Need to Reinforce Training and Internal Controls

Since the attacks of September 11, 2001, and with the formation of DHS, the linkages between immigration enforcement and national security have been brought to the fore. Immigration personnel have been tapped to perform many duties that previously were not part of their normal routine. For example, as part of a special reg-

istration program for visitors from selected foreign countries, immigration investigators have been fingerprinting, photographing, and interviewing aliens upon entry to the U.S. Immigration investigators have also participated in anti-terrorism task forces across the country and helped interview thousands of non-immigrant aliens to determine what knowledge they may have had about terrorists and terrorist activities. As part of its investigation of the attacks of September 11, the Justice Department detained aliens on immigration charges while investigating their potential connection with terrorism. An integrated Entry/Exit System, intended to enable the government to determine which aliens have entered and left the country, and which have overstayed their visas, is currently under development and will rely on BICE investigators to locate those who violate the terms of their entry visas.

All of these efforts attest to the pivotal role of immigration interior enforcement in national security and expanded roles of investigators in the fight against terrorism. It is important that BICE investigators receive training to perform these expanded duties and help assure that they effectively enforce immigration laws while recognizing the rights of citizens and aliens. It is also important that DHS reinforce its management controls to help assure compliance with DHS policies and procedures.

CONCLUDING OBSERVATIONS

Having an effective interior enforcement strategy is an essential complement to having an effective border strategy. To be sure, BICE's tasks with regard to interior enforcement are considerable given the nature, scope, and magnitude of illegal activity. INS faced significant challenges in appropriately staffing program areas, providing reliable information for program management, establishing clear and consistent guidance for working-level staff to do their jobs consistent with the goals of the program, and developing outcome-based measures that would indicate progress toward the strategy's objectives. With the creation of DHS, immigration functions are now in several different bureaus that will require enhanced coordination. Addressing these issues are important if BICE is to achieve full program potential.

Mr. Chairman, this concludes my prepared statement, I would be pleased to answer any questions that you or other members of the subcommittees may have.

Mr. HOSTETTLER. Thank you, Mr. Stana.

We will now turn to questions, and the chair recognizes himself for 5 minutes.

Mr. Secretary, in your written testimony you list BICE's seven interior Immigration and Customs Enforcement strategy items. In that list you do not mention specifically garden variety unlawful employment. You speak about issues regarding national security businesses, but the garden variety employment issue is missing from the list.

Is that intentional, given Congress' desire in '86 to make sure that illegal aliens and employment in this country was a priority to be considered by INS?

Mr. HUTCHINSON. Well, if you look at the priorities, it does refer to respond to community needs as they relate to illegal immigration, so many times those types of concerns are identified because complaints are received. So there is a response. It is measured in terms of the other priorities. For example, criminal aliens that pose a danger to society or terrorist activities.

I will also remark that as ICE comes into Homeland Security, we are going to be reevaluating priorities, because clearly, with the new responsibilities that we have, and with the potential for overlap, we want to make sure we reassess and work with the Committee in determining the appropriate priorities.

Mr. HOSTETTLER. Very good. And we're open to the issue of resources and we'll talk about that a little bit later, of what we need to move that garden variety law enforcement for employment into those priorities.

In the '96 Immigration Act, Congress authorized the Attorney General to deputize State and local police to help enforce immigration laws. Attorney General Ashcroft pursued this multiplier effect with a few States. Do you intend to also pursue agreement from State and local police departments to multiply the effect of your limited number of immigration enforcement agents?

Mr. HUTCHINSON. The Florida initiative, in which I think there was 35 to 50 State law enforcement officers that were trained in immigration enforcement, that pilot project has worked very well. I would add that I think it was accompanied by a 5-week training course. So we are definitely open to mirroring that pilot project in Florida with other States and developing those partnerships that has to be accompanied by adequate training.

I know that in Alabama they're looking at that, so we're open to it. We're just looking at the proper training to be able to accomplish that when the right opportunity presents itself.

Mr. HOSTETTLER. Very good.

Following on that, Mr. Krikorian states in his written testimony that traffic stops and arrests are a significant opportunity to apprehend those in the country illegally and that we should take full advantage of them. That has actually been the subject of a hearing that this Subcommittee has already held this year.

Do you agree with the statement that Mr. Krikorian makes?

Mr. HUTCHINSON. I absolutely agree with his statement. It is important that we enter into the NCIC system, the criminal database maintained by the FBI that local law enforcement has access to, that the appropriate individuals who are on watch lists or who are subject to a final order of removal are entered into that system. We will work with the FBI to make sure that the proper names are in that system.

It is a slow and laborious process. We hope to be able to accelerate it.

Mr. HOSTETTLER. Just for your information, in some of the testimony we received in that Subcommittee—and the subject of the testimony was sanctuary laws—one of the concerns we had was that some communities are not allowing their law enforcement officials to work directly with INS, and that is something this Subcommittee is going to be concerned about and will continue to look at. We look for your input in that situation as well.

Let me ask you one other question. What is your opinion of the Mexican matricula consular, the card that many banks and State and local entities have decided to accept as proof of identification of a Mexican national. We have received information that there is no security to these documents and non-Mexicans are found with these matriculas, sometimes multiple matriculas, with different identities.

Do you think any Government entity in the U.S. should accept these cards, and also, do you believe that recognition of foreign government-issued identity documents make it more difficult to enforce our immigration laws?

Mr. HUTCHINSON. It makes it more difficult if they are subject to fraudulent use, or they are used as a vehicle to get legitimate documents in the United States that can be used to get benefits or services or access to facilities they would not otherwise have. So

clearly, as a sovereignty, the government of Mexico has the right to issue such documents, but we want to urge them to make them tamper-proof, which is a concern, and secondly, to educate American businesses, whether it's banking facilities or whether it is the States that render services, that they do not use that as a vehicle to allow someone who is here fraudulently to reap a benefit they would not otherwise be entitled to.

Mr. HOSTETTLER. Thank you.

The chair now recognizes the gentlelady from California, Ms. Sánchez.

Ms. SÁCHEZ. Thank you, Mr. Chair.

Under Secretary Hutchinson, under the reorganization, what agency is going to be in charge of visa processing?

Mr. HUTCHINSON. The visa oversight responsibility has been transferred by Congress from the State Department to Homeland Security. The law says that the visas will be—that our responsibility is to exercise, through the State Department, the actual physical issuance of the visa. But our responsibility is to make sure regulatory training and from an oversight standpoint that visas are not issued to people who inappropriately come to America and want to harm us. We are currently working with the State Department to enter into a Memorandum of Understanding as to how to divide those responsibilities clearly, in accordance with the congressional mandate.

Ms. SÁCHEZ. So as of this moment, there really isn't a clear understanding of what the responsibilities of each agency is?

Mr. HUTCHINSON. Well, at the present time, the State Department continues their traditional role of issuing visas and reviewing the appropriate lookout list to make sure bad people do not get visas, so they continue that responsibility. So that function is happening, and it will be transferred to the Department of Homeland Security.

Ms. SÁCHEZ. It is my understanding that it has been 2 minutes or less spent on visa interviews; is that correct?

Mr. HUTCHINSON. I do not have the specific time frame for that. I think it would probably depend upon the circumstances. Some people would have a much more extended interview than someone who they would have no reason to suspect, or they're satisfied as to their credibility.

Ms. SÁCHEZ. Moving on to the subject of the matriculas, what percentage of the matriculas have been found to be fraudulent?

Mr. HUTCHINSON. I do not have any information on that. I would be glad to get back with you, but I do not have that information.

Ms. SÁCHEZ. Okay. Also, I understand that the new bureaus that have been created for handling various aspects of immigration law have been working hard right now to try to transition from the old INS. But one concern that has been raised on numerous occasions, both within the old INS structure and the new bureaus, is the use of racial profiling by Customs agents. According to a recent GAO study, more terrorists have been found since Customs stopped using racial profiling as a technique. Now State and local law enforcement agents are also being asked to uphold immigration laws in some situations.

What kinds of training is being given to ensure that they're not using the less reliable method of racial profiling instead of using more specific information based type of stops?

Mr. HUTCHINSON. Any time immigration authority would be utilized by a State and local official it should only happen with very significant training. As I mentioned in Florida, approximately 50 officers were trained through a 5-week course.

I would also add that there will be no toleration for racial profiling at Homeland Security. We certainly do not believe that, in the routine enforcement of our laws, that that should be any type of acceptable practice.

Ms. SÁCHEZ. Within the new bureau structure, are the new performance measures going to include whether or not terrorist arrests are made, based on the changes that are made?

Mr. HUTCHINSON. I'm sorry, could you repeat that question?

Ms. SÁCHEZ. Sure. Under the new performance measures, under the new bureau structure, are the performance measures by which you're going to rate the accuracy and effectiveness of the new bureau structure, are they going to include whether terrorists are being arrested, those types of statistics?

Mr. HUTCHINSON. We're working on the performance measures. One, we believe they are very important. Obviously, whenever you're looking at the border and the effectiveness there, there is a number of measures of effectiveness: one, do any terrorists sneak through, or people who go through with fraudulent documents. Another measure of performance is how long it takes to do inspections, and how long the wait lines are. So all of that is a measure of effectiveness because our mandate is to protect our borders, but also to not interfere with or impede the flow of commerce. So we're going to be working to develop appropriate measures of performance.

Ms. SÁCHEZ. It just seems to me that, if that is the goal of moving the INS structure under the new bureau structure, if one of the main concerns is stopping terrorism, then at least those type of statistics would be used in the new performance measures.

Mr. HUTCHINSON. Certainly that would be a factor to be considered.

Ms. SÁCHEZ. No more questions. I reserve the balance of my time.

Mr. HOSTETTLER. The chair recognizes the gentleman from Arizona, Mr. Flake.

Mr. FLAKE. Thank you, Mr. Chairman. I thank those of you for testifying, for providing such "earth shaking" testimony. [Laughter.]

Recent press accounts indicate that al Qaeda may be using our southern route to sneak into the country. In fact, Congressman Jim Kolbe's brother owns a ranch in the southern part of Arizona and recently found a backpack with Arabic notes written inside. I doubt that Arabic is being taught very much in Mexican high schools; it isn't here much. Obviously, this may be an issue.

How seriously is this new agency taking items like this?

Mr. HUTCHINSON. Well, seriously enough for me to go to the border and meet with Congressman Kolbe and be on those ranches that you're referring to. I just returned from a tour of the border

in Arizona, and I actually examined some of the documents that you referred to.

Clearly, the southern border is a means by which illegal immigrants try to come across to the United States, and this is not limited to our Latin American neighbors but would also include traffic patterns from a variety of other countries. There has been instances in which we have stopped Mid Easterners who have tried to come across our border. That does not mean they are terrorists or have terrorist intentions, but it certainly means that a broad variety of national origins will use our southern border, as they will use our northern border.

Mr. FLAKE. I grew up on a ranch in northern Arizona and I recall interior enforcement back in the Seventies, quite active interior enforcement. It seems that we're returning to some semblance of that at least with ICE.

Several of us are working on a guest worker program, which would allow a legal framework for individuals, willing workers who want to come through legal check points, through legal means, and then return home legally.

What flexibility does ICE and CBP have to shift focus, if we have—as we all know, an overwhelming majority of those who come through the southern border simply are coming to work, not for any nefarious purpose. What flexibility do these new agencies have under one head now to actually shift focus, if we have a program, where the southern border won't be as much of an issue and there won't be as many illegal crossings but, rather, interior enforcement will become more important. I guess it's shifting resources from CBP to ICE, and with that, again on the employer enforcement, are we gearing up for that possible time? I believe, with the meat packing industry, for example, we have a system to check more quickly if a Social Security number is fraudulent or not.

Does this new agency envision being able to shift resources, manpower, quickly enough once we have a system like that in place?

Mr. HUTCHINSON. Well, that is very important, for us to have the flexibility to respond to new threats, as well as changes in policy. So one of the responsibilities and benefits of having both Customs and border protection and ICE reporting to the same directorate means that we can make sure they're effectively coordinated and that we can make sure they're responding to those threats.

Whenever you're talking about the guest worker program, that's a policy decision that Congress has to make, but certainly we will have the flexibility to adjust to any such changes that Congress might dictate.

Mr. FLAKE. Mr. Krikorian, do you have any comments on that, or thoughts on that?

Mr. KRIKORIAN. I would question the assumption that a guest worker program would actually lead to less need for border enforcement, because during the last big guest worker program we had with Mexico, the Bracero program, at the height of the Bracero program in the 1950's, we actually saw the greatest wave of illegal immigration that we had ever seen and wasn't matched until 30 years or 40 years later. Because all immigration creates more immigration, so a flow of guest workers inevitably also creates a flow of illegal immigrants accompanying it, because many people who now

would want to come would not be able to qualify and so the need for border enforcement, it seems to me, might actually increase with the guest worker program, rather than decrease.

Mr. FLAKE. Thank you.

Mr. HOSTETTLER. I thank the gentleman.

The chair now recognizes the gentleman from Iowa, Mr. King.

Mr. KING. Thank you, Mr. Chairman.

First I would direct my initial question to Mr. Danahey, and I would point out that I grew up in a law enforcement family. As I listened to some of the discussion about profiling here and profiling in general, it is my understanding that that has been a long-standing traditional practice, a very wise practice, that has helped us with our investigations and, in fact, would make some of those investigations impossible if we did not build a profile of the people we're looking for.

Is it your belief that you can enforce the law without using any type of profiling?

Mr. DANAHEY. I believe that you have to establish some parameters to work from, that some sorts of profiling actually jump out at you. In the case of September 11th, it was definitely a specific set of individuals that conducts the acts, far different from people we're used to in the United States on the norm.

I think you need to use guidelines to establish parameters, so that you have a base to work with.

Mr. KING. Would you accept a definition that certain stereotypes are really what we're addressing when we use the word "profile"? I mean, I have used the term profiling in the police term, which means this is good investigative work, but it's inappropriate to stereotype people by membership in groups.

Mr. DANAHEY. I don't like the word "stereotyping". It leads to at least thinking of other things. But I think the basic criteria for an individual is identified, which would lead one to believe, working through an investigative process, that this is the right route to take.

Mr. KING. So, in fact, we may have to do some type of profiling, even though we're careful not to make it discriminatory?

Mr. DANAHEY. Yes, sir.

Mr. KING. Thank you.

To Mr. Krikorian, as I listened to your testimony—and you focused on interior issues with regard to immigration—you mentioned that we have three points, that we address immigration overseas, I think was the term you used, and I would say any foreign country rather than necessarily overseas, but the intent is the same. And then also at our borders and the third one was interior. Then you focused also on the numbers of illegal immigrants that voluntarily leave the country.

I would suggest that, in a perfect world, everyone would respect our laws. We first write the perfect laws and then everyone would respect them. In a near perfect world, we would be able to enforce all of our laws. If we were able to do that at the border, wouldn't that ultimately also conclude the illegal immigration issue within the interior of the United States?

Mr. KRIKORIAN. Hypothetically, maybe, at least with regard to some element of the illegal immigrant flow. In other words, those

people crossing the border illegally would be able to be kept out in some theoretical perfect world, were we able to do that. Although, if you talk to any Border Patrol agent, they'll tell you that they need interior enforcement in order to do their job.

But, that having been said, some 40 percent of the illegal immigrant population actually entered legally. They crossed the borders with our permission. They had visas, they came to the United States, and then they violated the terms of those visas by overstaying, by working without permission, by not going to a school they were supposed to be going to. All of those forms of violation of the immigration law need interior enforcement.

The most ideal, perfect, sort of platonic ideal of border enforcement, still wouldn't address a substantial part of the illegal immigration problem.

Mr. KING. Then, in your estimation, when you look at this entire issue of the three areas where we have our enforcement, what percentage of our resources would you focus in each one of those three—overseas, at the border, and internally?

Mr. KRIKORIAN. I wouldn't want to come up with a numerical percentage. As Mr. Danahey pointed out, we need to find out what the mission requires and then budget for it. So the answer is I don't have any kind of magic number.

Mr. KING. Thank you, Mr. Krikorian.

In the moments we have left, Mr. Under Secretary, can we get there? Can we get where we need to go to provide safety and have secure borders, and secure also the continuity of the culture?

Mr. HUTCHINSON. I believe we can, but technology has a great deal to do with it. So the Congress has mandated an entry/exit system, where we can track our foreign guests that come in here and know when they leave. This is a technological solution to one aspect of the problem. There is not any silver bullet, but I believe that we have the right strategy, some of which has been articulated here by my colleagues at the panel.

Where we layer our enforcement to have a filter overseas through visa issuance, we have more information in advance on people and cargo coming to our country, we have a good inspection system at our ports of entry through technology. And we have to use technology, whether it's sensors or perhaps even drones, to help protect the land between our ports of entry. So we can get there, but it's going to take a lot of teamwork between what we do and what Congress does.

Mr. KING. I will be happy to work with you. Thank you, Mr. Hutchinson, and thank you, Mr. Chair.

Mr. HOSTETTLER. Thank you, Mr. King.

The chair now recognizes the gentleman from California, Mr. Gallegly.

Mr. GALLEGLY. Thank you very much, Mr. Chairman. Welcome, Mr. Secretary. It's great to have you there. I had the privilege of serving with you for many years on this Committee, and I have newfound reason for optimism with your leadership dealing with issues affecting the INS, something that has not always been a real confidence builder for me.

As you may remember, back in the mid-90's I was the Speaker's Chairman on the Task Force for Immigration Reform. During that

period of time, we took a trip, which later became known as the “Kromegate” trip—you may or may not remember the specifics of it. But one of the stops on that trip that I took, along with seven or eight Members of Congress, was to New York’s Kennedy Airport, and then also down to Miami’s International Airport, and then on to the Krome Detention Center in Miami.

One of the things we found at Kennedy in New York and also at Miami is that when we had folks coming into the country with documentation that was not correct, as immigration processed these folks that had a problem, for those that were considered to be a low flight risk they would process them in and give them a date to appear, which I guess is a common practice.

The interesting part of those that were considered to be low flight risk, both in New York and in Miami, 94 percent of those that were processed out as low flight risk flew the coop. They never returned. Now, I don’t know really what constitutes the issue of low flight risk, but I can tell you, quite frankly, that didn’t seem acceptable to me.

What are we doing, or what can we do—I know you have a detention problem with beds and so on and so forth—but has that been tightened up? What are we doing? Why not just put them back on the airplane?

Mr. HUTCHINSON. Well, first of all, the problems you described have led to the fact that we have over 300,000 aliens who are under a final order of removal and they have not been found and removed. In other words, they have not responded to their bond in which they’re supposed to appear.

That is one of the challenges that we face. It is a challenge both in terms of legal process—because you asked about whether we could immediately remove them, and many times, obviously, if they request asylum, if they raise certain legal issues, it involves a long legal process. Then you have the issue, if you have a high bond, do we have the detention facilities to detain them.

I guess I’m reciting some problems. These are things we have to work on, whether you use technology, where you don’t detain them but you have a stronger basis to track them.

Mr. GALLEGLY. Mr. Secretary, correct me if I’m wrong, because you’re the constitutional lawyer here and I’m not, but until such time as they clear Customs, even though they’re physically in the United States, my understanding is they have not technically entered the United States until they have cleared Customs. And until they cleared Customs, they do not have all the constitutional rights as someone would have who has entered the country formally, which would mean the rules are changed once you have given them the right to go out and return; is that correct? So we wouldn’t be denying anyone constitutional rights if they didn’t have them?

Mr. HUTCHINSON. There is a distinction between whether they’re found in the country, whether they’re found at the port of entry. There is a difference as to whether they are presenting fraudulent documents or whether they present themselves requesting asylum. So varying legal rights attach under those circumstances.

One of the things we need to look at is how we can more effectively administer all of that program.

Mr. GALLEGLY. One other quick question, Mr. Secretary. You may not know the answer to this, but I would really appreciate it if you would find out for me.

During the course of that same trip, it was found that—in fact, the IG did an investigation after a group of employees came up to me with 50 or 60 signatures about how we were being give a “dog and pony show”, how we were lied to by the INS, and how they had cleaned up the detention center and released hundreds of people into the streets, high risk, with communicable diseases, from Haiti and other places, and also that there had been a couple hundred put on buses and moved throughout Florida to make it look like the Chrome Detention Center was being run pristinely. Of course, I thought these were disgruntled employees, but I turned it over to the IG.

What started out to be a 90 day process ended up taking a couple of years, with seven of Michael Bromwich’s top people and costing probably several million dollars. There were several people that were terminated or demoted, and so on and so forth, and then, of course, the board, whatever you call that board, reinstated most of them.

But there was one individual by the name of Dan Cadman. I don’t know if that name rings a bell or not, but that’s the name I would like for you to check for me. Mr. Cadman was the director of operations in Miami, who was principally responsible for orchestrating this whole issue. He accepted a voluntary demotion in lieu of prosecution because of destroying documents that were under subpoena, purging records—actually deleted. He didn’t purge. He got caught on that one—and lying to Congress. He accepted voluntary demotion.

The IG had stated that, under no circumstances, should this individual ever be put in a position of trust or managing people. I didn’t hear any more about Dan Cadman until about the 12 or 13 of September, 2001, a couple of days after the incident on 9/11, only to find out that we found Dan Cadman working at INS in charge of the anti-terrorism group for INS. Needless to say, that raised a few eyebrows with some of my colleagues and myself.

I would like to know where Mr. Cadman is right now with the INS. Someone had told me they kind of shuffled him off to a high level position in Spain or somewhere. But I would be interested to know that.

Mr. HUTCHINSON. We’ll be happy to report back to you.

Mr. GALLEGLY. Thank you, Mr. Chairman.

Mr. HOSTETTLER. I thank the gentleman.

The chair now recognizes the gentlelady from Tennessee, Mrs. Blackburn.

Mrs. BLACKBURN. Thank you, Mr. Chairman, and thank you to all of you for being here, for your well-prepared testimonies.

I think we all want to do what we can to help you move to a plan of action. It sounds as if you have defined a problem, and it would be our hope that we can assist you in moving to action to restore the trust of the American people, that, indeed, we are addressing illegal immigration and the problems it brings.

I do have a couple of questions for you. Mr. Stana, thank you for your well-prepared report. One thing I do want to ask, have you

all developed any framework for coming to what fraudulent documentation and illegal immigration is costing American business each year?

Mr. STANA. No, we don't have a figure on what it's costing American business, but it is a large problem with employers on verification of eligibility to work.

As was pointed out earlier by others on this panel, it is a big industry to create false documents, and many of them are very good. It is not always easy to determine who is eligible and who isn't. So that's an issue.

The other issue is that oftentimes employers don't want to know. It's a source of cheap labor, so they'll look to the card and say "that looks good to me" and hire the individual. But I don't have a figure for you.

Mrs. BLACKBURN. Is anybody taking any steps to come to a figure, or are we just going to let that lay out there and say ignorance is bliss on the issue?

Mr. STANA. I'm not aware of anyone coming to a figure on that. INS had a pilot program to verify authorization documents. I don't know where that is right now. A report was expected to be issued a year ago on how successful that program was. I haven't seen that report yet.

Mrs. BLACKBURN. Okay. Thank you.

You also note that the INS in their time had noted that they didn't have sufficient staff. The general things we hear is we don't have enough staff, we don't have enough time, we don't have enough money.

Now, my question to you and to Mr. Secretary is, do we have a workable plan of action that will take us toward addressing what needs to be done, and do we have that on a time frame, not just that it's out there but do we have a date certain, some benchmarks and some timelines for—

Mr. STANA. What I would suggest happen here—and Mr. Under Secretary can answer also—you have to answer this at two levels. First, we're undergoing a transformation from the old INS to the new DHS. This is a new day. Top leadership needs to drive the change, communicate a coherent mission, reset the priorities—which Mr. Hutchinson said they're in the process of doing, make sure everyone knows what their job is and what the timelines and the goals are, and encourage employee involvement. That's at the upper level.

At the more immediate level, I think steps have to be taken to find problems before they become bigger than they start out to be. We've seen instance after instance where that's not done and small problems become big. You have to fix the information technology, you have to fix the guidelines, the roles, the reward structure, and finally, you have to come up with better performance measures that measure outcomes, not just activity.

Mrs. BLACKBURN. My question is, and not to interrupt but to move along, where are we in that process? Do we have a timeline, do we have that plan of action, and are we moving forward satisfactorily on that?

Mr. HUTCHINSON. I believe that we are. The Department has been in existence with these agencies for less than 45 days, and

we're moving aggressively in that regard. Part of it is money. Obviously, the '04 budget we believe is a significant investment, with 355 new positions.

The second part is strategy. The third part, as was mentioned, is information technology. There is a timeline specifically that we're going to have the information technology in place to accomplish these goals.

Finally, on the priorities, there is a timeline in place to reassess those priorities.

Mrs. BLACKBURN. One other question for you, Mr. Secretary.

I'm new to this body this year, but I came from the State Senate in Tennessee where I led the fight to close the loophole that illegal aliens were using to get valid Tennessee drivers licenses. You mentioned in your testimony that one of the keys to preventing illegal aliens is the drivers license. What specifically are you all going to do, in conjunction with our State and with the AAMVA, to work to prevent illegal aliens from getting valid drivers licenses?

Mr. HUTCHINSON. Well, I would say there are two parts to that. One, I think we need to develop a system in which drivers licenses are not driving every service that is delivered or access to the voter rolls or other benefits that might be received. And secondly, we have to work with the States in order to accomplish this. Your leadership was critical in Tennessee, and I hope that's a model for other States. We are certainly pushing all across the board for more tamper-proof documents. Even Social Security cards. I met with Jo Anne Barnhart, the Commissioner of Social Security, and there were a lot of discussions there as to how to eliminate that as an aspect of fraud. So there is much work to be done, but we are working in partnership with the States and other agencies to reduce that type of fraud of all documents.

Mrs. BLACKBURN. Thank you very much.

Thank you, Mr. Chairman.

Mr. HOSTETTLER. I thank the gentlelady.

I will now move into a second round of questions that I have for a few of the other witnesses, and the other Members can take part as well.

First of all, Mr. Krikorian, you mentioned the low numbers of interior agents assigned to worksite enforcement and other functions. There was a discussion earlier about the numbers and the implementation of the right number of agents. But, given the system today, with its strengths and its weaknesses, in rough terms, how many agents do you think would be needed to completely enforce our immigration laws.

Mr. KRIKORIAN. I would say that Mr. Danahey's suggestion would be a starting point, double the number of agents from 2,000 to 4,000, and then see if it's adequate. I mean, 2,000 agents to enforce a whole panoply of immigration laws across the entire United States, when there are 33 million foreign-born people in the United States, is clearly inadequate.

I don't have a magic number, but I would suggest double it and then see if it's enough. It may well not be. I mean, in a sense, Mr. Chairman, part of the problem is that I think we're not quite sure how much we, as a people, Congress, the Administration, aren't really quite sure how much we want to spend on this, but we aren't

really matching our means to our goals. In other words, if we want an enormous flow of people from overseas, it's going to require vast amounts of money being spent every year indefinitely in order to make sure that's managed properly.

If the amount of money that we need to spend is something more than we're comfortable with, we need to rethink whether that enormous flow of people from overseas is something we really want to continue.

Mr. HOSTETTLER. I think that's an excellent point. That's why these hearings are vitally important, because the Chairman, at least, wants the American people to know how much this is going to cost, whether it's enforcement of our laws or the facilitation of immigration and naturalization to this country and all that that entails. I think the American people should at least know what it's going to cost for Congress and the Executive branch to execute our constitutional requirements with regard to immigration and naturalization. As you pointed out, doubling it might be a good start, but that might not be enough.

Mr. Danahey, you state in your written testimony that immigration law enforcement officers need "general arrest authority," something Congress has authorized but has never been implemented by any Administration. Could you explain what general arrest authority is and give an example or two of how it would be undertaken?

Mr. DANAHEY. Sir, if I could, I would like to call on one of the individuals from immigration who is with us today behind me, Special Agent Kevin Ryan. I believe he could answer that.

Mr. HOSTETTLER. Without objection, that would be fine.

Mr. DANAHEY. Special Agent Ryan.

Mr. RYAN. Our understanding of general arrest authority—

Mr. HOSTETTLER. Mr. Ryan, could you give your full name and your title, please, for the record.

Mr. RYAN. My name is Kevin Ryan. I'm a Special Agent with INS, or former INS, in Buffalo, NY. I'm the FLEOA President for INS.

Mr. HOSTETTLER. And you are now with ICE?

Mr. RYAN. Yes, with ICE, in Buffalo.

Mr. HOSTETTLER. Thank you. Please proceed.

Mr. RYAN. General arrest authority was granted in the 1991 Immigration Act for immigration officers to arrest for nonimmigration-related offenses that occur in our daily activities investigating other Federal laws.

We have never had that implemented. I know FLEOA has asked for that in at least six other times that we've testified before various Committees, to have general arrest authority. It's a liability issue for agents, because we are assigned to other task forces. We are deputized and that kind of covers us, but in many cases agents will go out on a task force or be assigned to a task force and that process of being deputized is not always fully implemented prior to going out and we are making arrests for other than section 274 of the Immigration Act, nonimmigration-related offenses.

Mr. HOSTETTLER. For the layman, hypothetically, could you give an example?

Mr. RYAN. A drug arrest. I have no title XXI authority. If I was assigned to a drug task force and I wasn't deputized and was exe-

cutting a warrant for a XXI violation, to my understanding I'm kind of in a gray area. That's been a concern of our Members that is constantly brought up.

I don't know all the legal definitions that go with general arrest authority, but I know it's a concern to our Members.

Mr. HOSTETTLER. Because while executing a warrant with regard to immigration law, and you see another infraction—is that what you're talking about?

Mr. RYAN. Well, again, immigration assists in many local and State task forces, or a Federal task force, and State, and we will execute arrest warrants other than for title VIII authority, which is the Immigration and Naturalization Act, which we have jurisdiction for under our Federal Code of Regulations.

When we step outside of that, without having general arrest authority, again, I don't know the exact legal definition, but it has been told to me that if I step outside of title VIII, I don't really have authority unless I've been deputized to do that.

Mr. HOSTETTLER. Okay. And without that deputization, what happens in that hypothetical situation with the drug—

Mr. RYAN. Well, it would be a liability to me if something were to happen that the arrest would not proceed normally and we took other action, and that would give that individual an ability to come back at me and say, you know, Special Agent Ryan did not have authority to arrest me. That's my understanding. Again, it's not a legal definition, or I don't know the legal definition. But that is the understanding that's been told to me.

Mr. HOSTETTLER. Very good.

The gentleman from Iowa, Mr. King?

Mr. KING. No questions, Mr. Chair.

Mr. HOSTETTLER. The gentlelady from Tennessee, Mrs. Blackburn.

Mrs. BLACKBURN. Thank you, Mr. Chairman. I do have just a couple more things.

Mr. Danahey, you laid out seven steps that you felt would be necessary for you all to perform to the best of your abilities in addressing immigration situations. Step number four is interior enforcement, and you spoke of the SEVIS program in there. We had a hearing on that last week and heard from some folks that feel like maybe that's not working quite as well as it should be and they have spent \$38 million on it.

If you could, can you speak briefly to SEVIS and to what you see as either the success or failure and possibly what we should do to address that?

Mr. DANAHEY. I believe the problem with SEVIS is manpower, once again, and the ability to follow up on the individuals who aren't where they're supposed to be once they register for the program.

Mrs. BLACKBURN. Okay.

Mr. HUTCHINSON. Could I add to that a little bit?

Mrs. BLACKBURN. Please do.

Mr. HUTCHINSON. First of all, the SEVIS program was implemented through a private contract, so we rely technically upon a contractor—in this case, EDS—in order to oversee the system. There were some glitches in it, so we're working with our con-

tractor, the private sector, to remedy that. I think we're making progress.

The second part of it I would just add, is that it's a good system, it's the right strategy to get this information flow on students who might not show up under the visas.

To illustrate the information flow, since December the universities have called in 2,000 names of students who had visas that did not show up for their education, for their classes. They call in the toll-free number. So then we have to process those 2,000 names and follow with the leads.

We have prioritized those and are going after, first of all, the countries of concern. We have issued out 180-some leads to follow up from an investigatory standpoint. So we need to make progress both in terms of the system, making sure it operates well for the universities, but secondly, to make sure that we have the capability to handle the information that comes in and responsibly address any overstates of visas or misuse of the visa authority.

Mrs. BLACKBURN. Excellent. Thank you very much.

Mr. Secretary, you mention the Absconder Apprehension Initiative in your written testimony. If you would speak to that for just a moment, how has that helped you to apprehend some individuals and where are we with that? How many are on the list?

Mr. HUTCHINSON. Well, there is really two parts to that. There's the criminal alien removal program, which is much easier because they're in custody, have finished their prison sentence, they're an illegal alien and we take them before they leave and remove them from the country. That is something that I think we are addressing fairly effectively.

The second part of it is the 300,000-plus that have a final order of removal and do not show up to be removed. We have our alien apprehension initiative in which we put resources toward that. We first have to figure out if they actually have left the country, because they might have a final order of removal and, just because we didn't remove them, they still might have left. They could have gone up through Canada and left and we just have no record of it. So we have to determine whether they're actually here or not, and then determine where their location is and go through a very lengthy investigation to find them.

We are looking at ways to improve that, partnering with our United States Marshal Service, having a Top 10 list to go after the most dangerous, and publicize it more. And then the resources that are being requested in the '04 budget will help us to move further along that initiative.

Mrs. BLACKBURN. Thank you. Your task is daunting and I thank you for your time, all of you.

Thank you, Mr. Chairman.

Mr. HOSTETTLER. I thank the gentlelady.

Once more, I want to thank the panel for your attendance today and your flexibility in this. As the gentlelady from Tennessee said, your task is daunting, Mr. Secretary, and all of your inputs today have been very much appreciated.

Without objection, the chair enters into the record a report by Ms. Sánchez of California by the Mexican-American Legal Defense

and Education Fund, regarding civil rights concerns within the Department of Homeland Security.

[The report follows in the Appendix]

Mr. HOSTETTLER. Likewise, without objection, the Subcommittee will have five legislative days to enter any statements or questions into the record.

The business of the Subcommittee being completed, this Subcommittee is adjourned.

[Whereupon, at 10:47 a.m., the Subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF CHAIRMAN HOSTETTLER

Last year, Congress enacted the Homeland Security Act, historic legislation creating not just a new department in the executive branch, but a new home for our newly structured immigration system. Now that the immigration functions have transferred into the Homeland Security Department, we must closely oversee the transition to ensure that our immigration laws are strictly enforced and that our immigration benefits are fairly administered.

Since we are at this immigration crossroads, we have the perfect opportunity to, as accurately as possible, determine what resources are needed to administer and enforce our current immigration laws. The Homeland Security Act required that the immigration services bureau receive a budget separate from that of the immigration enforcement bureau. This will help each bureau better manage its mission and help us better determine the proper amount of resources needed by each.

Subsequent to the Homeland Security Act being signed into law, the new department reorganized enforcement functions into two categories—the border and the interior. The Department combined the Customs interior enforcement functions with the INS' investigations; detention & removal; intelligence; and the deportation attorney corps to create the Bureau of Immigration & Customs Enforcement (BICE). The Department also combined the Customs border functions with the INS' Border Patrol and inspections to create the Bureau of Customs and Border Protection (BCBP). This hearing focuses on the interior bureau, ICE, its transition into the new department, and its resources.

For example, in the Justice Department Inspector General's recent report, "The Immigration and Naturalization Service's Removal of Aliens Issued Final Orders," the Inspector General found that aliens with final orders of removal who are not detained are rarely deported. Taking a sample of non-detained aliens, the Inspector General found that the INS removed only 13 percent of non-detained aliens with final removal orders. Within the sample, only 35 percent of aliens with criminal records were removed. Finally, only three percent of non-detained aliens with final removal orders who were denied asylum were removed. The Inspector General also selected a sample of non-detained aliens with final removal orders from countries that the State Department has identified as sponsors of terrorism. The Inspector General reported that the INS removed only six percent of this population. In sharp contrast, 92 percent of detained aliens with final removal orders were removed according to the Inspector General. The INS' typical response to such findings has been that it lacks the resources to remove more aliens with final removal orders.

For too long, the former INS complained that it could not adequately do its job because the agency did not receive enough resources from Congress. That practice of buck-passing needs to end. In a letter dated June 21, 2002, this Subcommittee specifically asked the former INS what resources it needed to enforce our immigration laws, but the agency was utterly unresponsive in its October 21, 2002 response.

This new department requires a new attitude. The American people want our immigration laws enforced. We want the Bureau of Immigration and Customs Enforcement to succeed, but it needs to help us if we are to be of help. When we ask what resources the agency needs to fully enforce all of our immigration laws, we need an honest answer. Otherwise, we cannot attempt to authorize and appropriate sufficient funds. If the new agency continues INS' practice of being unresponsive, it should not complain that Congress under-funds the agency. Likewise, if Congress is told what resources are needed but falls short on authorizing and appropriating funds to the BICE, Congress should not complain that the agency is not adequately enforcing the laws. But more important, if Congress does not fully fund BICE, Americans will remain unprotected from future terrorism attacks.

The purpose of this hearing is to examine the transition of immigration enforcement into BICE, explore the capabilities and limitations of BICE given the current resources available to the agency, and determine what resources would be needed to fully execute our immigration enforcement laws.

JOHN N. HOSTETTLER
8TH DISTRICT, INDIANA
COMMITTEE ON ARMED SERVICES
SUBCOMMITTEES:
MILITARY INSTALLATIONS AND FACILITIES
MILITARY PROGRAMS AND DEVELOPMENT
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEES:
THE CONSTITUTION
COURTS, THE INTERNET AND
INTELLECTUAL PROPERTY



Congress of the United States
House of Representatives

April 29, 2003

1507 LINDSEY DRIVE, OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4600
INTERNET: John.Hostettler@mail.house.gov
http://www.house.gov/hostettler

COUNTRIES
DAVIES
GIBSON
GREENE
KNOX
LAWRENCE
MARTIN
VANDERBURGH
MURPHY
FRANK
PHELPS
FUSEY
SULLIVAN
WARRICK

The Honorable Asa Hutchinson
Under Secretary for Border and Transportation Security
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Under Secretary Hutchinson,

I appreciated your testimony during the oversight hearing on the Department of Homeland Security transition on April 10, 2003. During that hearing, the concept of "general arrest authority" was discussed briefly. Please supply the Subcommittee and myself with your perspective on general arrest authority and its usefulness in immigration enforcement. I would appreciate any insight you could give into this matter. This information would be very helpful in preparation for our next oversight hearing, so I would ask that you submit your comments to the Subcommittee by May 8, 2003.

Thank you again for your participation in the April 10th hearing, and I look forward to working with you in the future to determine what resources are needed to administer and enforce our current immigration laws. Please do not hesitate to contact me in the future with any concerns or advice you might have.

Sincerely,

John N. Hostettler

101 N.W. MARTIN LUTHER KING, JR. BLVD.
ROOM 124
EVANSVILLE, IN 47708
(812) 465-6484

328 NORTH 2ND STREET
SUITE 304
VINCENNES, IN 47591
(812) 882-0632

120 WEST 7TH STREET, SUITE 314
BLOOMINGTON, IN 47404
(812) 334-1111

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE

I will start by expressing my desire to support the Bureau of Immigration and Customs Enforcement, particularly with respect to its vital role in the war against terrorism. I will help in any way I can. The transition from the former Immigration and Naturalization Service into the Bureau of Immigration and Customs Enforcement should be undertaken so as to ensure effective and fair enforcement, while minimizing disruptions and delays. It also is necessary for the Bureau to pursue its objectives without violating the civil rights of the immigrants in our country.

For example, I would like to see an end to the special registration program. This program is supposed to identify dangerous aliens in our midst. In fact, though, it substitutes national origin/racial/religious profiling for effective law enforcement based on intelligence information. Our nation will not be made more secure by requiring innocent immigrants to report to INS offices to "register," only to find themselves subject to arbitrary arrest, detention, abuse and possible deportation.

The Homeland Security Act addresses the need for internal oversight by creating a civil rights officer and a privacy officer, but it does not go far enough in granting authority to these officials to effectively protect civil rights and liberties. Such authority is vitally needed.

The Administration is trying to keep certain detainees from having access to counsel by labeling them "enemy combatants." In the case of José Padilla, the courts have recognized this as unconstitutional and required the government to let him seek counsel. Also, the military tribunal regulations prevent defendants from seeking their own counsel; they must choose from a pre-approved list of lawyers.

The Administration has employed extreme tactics in the war against terrorism, such as the surveillance provisions of the USA Patriot Act, secret hearings, interrogations, secret wiretaps, and prison camps, yet we still hear of new terror threats.

In establishing the Homeland Security Department, the President moved existing agencies into a new cabinet department and did nothing to fix the problems that exist in those agencies. For example, he did not reform our traditional lookouts, the FBI and CIA, which failed to analyze the clues they had regarding September 11.

Officials within your Bureau need to understand immigration policy, recognize the importance of both adjudications and enforcement, and work to ensure the necessary coordination of the separated adjudications and enforcement functions.

I also hope that the Bureau deals with the management problems that plagued the former INS and prevented it from functioning effectively. This requires first and foremost a visionary leadership, which must be coupled with clear and uncompromising chains of command that are understood and honored.

Lastly, I strongly believe that state and local police should not be used to enforce immigration laws. These officials are not trained in the complicated field of immigration law and should not be expected to perform immigration duties in addition to their already demanding job responsibilities. When put in this untenable posture, experience shows that state and local officials too often default to racial profiling instead of objective standards when they decide who to question about immigration status.

Thank you.

The Honorable John N. Hostettler
 Chairman
 Subcommittee on Immigration, Border Security, and Claims
 House Judiciary Committee
 B-370 Rayburn House Office Building
 Washington, D.C. 20515

Dear Chairman Hostettler:

An oversight hearing was scheduled for tomorrow morning at 10:00 on the "Department of Homeland Security Transition: Bureau of Immigration and Customs Enforcement." At 4:59 this afternoon, Emily Sanders from your subcommittee staff emailed a notice to my counsel that you had changed the hearing to an earlier time, 9:00 in the morning instead of 10:00. This was done in violation of Rule III(a) of the Committee on the Judiciary Rules of Procedure, the pertinent part of which reads as follows:

The...Subcommittee chairman shall make public announcement of the date, place, and subject matter of any hearing to be conducted by it on any measure or matter at least one week before the commencement of that hearing. If the ...Chairman of the Subcommittee, with the concurrence of the ranking Minority Members, determines there is good cause to begin the hearing sooner, or if the...Subcommittee so determines by majority vote, a quorum being present for the transaction of business, the...Subcommittee chairman shall make the announcement at the earliest possible date.

This rule permits only two procedures for deciding to commence a hearing sooner than stated in the initial public announcement, neither of which was followed in this case. The first requires concurrence of the ranking member. I did not concur. The second requires a majority vote at a subcommittee business meeting. To my knowledge, no such meeting was held.

Notwithstanding this violation, I would have accepted the change in an attempt to foster cooperation had it been possible for me to do so. As you were advised when the first hearing was held during the 108th Congress at 9:00 on a Thursday morning, I have a weekly leadership whip

meeting that I must attend at that time. You chose the one time during the week when you knew that it would be difficult for me to attend.

Sincerely,

Sheila Jackson Lee
Member of Congress

JAMES SENSENBRENNER JR. Wisconsin
CHAIRMAN

HENRY J. HYDE Illinois
J. PETER W. LUKAS Pennsylvania
MICHAEL COBLE North Carolina
JAMAR S. SMITH Texas
ELTON CALLEGOSI California
BOB GOODLATTE Virginia
ED BRYANT Tennessee
STEVE CHABOT Ohio
BOB BARR Georgia
WILLIAM L. JENNINGS Tennessee
CHRIS CANNON Utah
LINDSEY O. GRAHAM South Carolina
SPENCER BACCHUS Idaho
JOHN N. HOSTETTLER Indiana
MARK GREEN Wisconsin
RICK LARSEN Florida
CARROLL E. RISA California
MELISSA A. HART Pennsylvania
JEFF FLAKE Arizona
MIKE PENCE Indiana

ONE HUNDRED SEVENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951
<http://www.house.gov/judiciary>

June 21, 2002

JOHN CONYERS JR. Michigan
RANKING MINORITY MEMBER

BARNEY FRANK Massachusetts
HOWARD L. BERNAN California
RICK BOUCHER Virginia
JERROLD RUSSELL New York
ROBERT C. "BOBBY" SCOTT Virginia
MELVIN L. WATTS North Carolina
ZOE LOFGREEN California
SHELIA JACKSON Lee Texas
MAKINE WATERS California
MARTIN T. MEEHAN Massachusetts
WILLIAM D. DELACROIX Massachusetts
ROBERT WEXLER Florida
TAMMY BALDWIN Wisconsin
ANTHONY D. WERNER New York
ADAM E. SCHIFF California

The Honorable James W. Ziglar
Commissioner
Immigration and Naturalization Service
Washington, DC 20536

Re: Follow-up questions for June 19, 2002 hearing

Dear Commissioner Ziglar:

Thank you for allowing Assistant Commissioner for Investigations, Joseph R. Greene, to testify before the Subcommittee on Immigration and Claims about the Immigration and Naturalization Service's (INS's) Interior Enforcement Strategy at our hearing on that subject on June 19, 2002. I would like to follow up on some points that were made during that hearing.

At the hearing, Mr. Greene stated that the INS has "less than 2,000 Special Agents throughout the world." Dr. Steven Camarota, from the Center for Immigration Studies, asserted that the number of INS Special Agents assigned to interior enforcement "must be increased dramatically." Richard Stana from the General Accounting Office testified, however, that even if the INS had additional staff working in interior enforcement program areas, the agency (at least in the past) "lacked good management information to determine how many staff it needed to meet its program goals and how best to allocate staff given the limited resources it did have."

I request that you respond to the following questions, which follow up on the preceding statements. These questions and your responses will be included in the hearing record for the June 19, 2002 hearing:

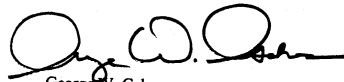
1. Has the INS examined its interior enforcement efforts to ensure that it is using its 2,000 Agents as efficiently as possible? Please include any studies, reports, staffing models, etc. which you have prepared to assess whether those agents are being employed as efficiently as possible. If the INS has not examined this issue, please explain why it has failed to do so.

Commissioner James W. Ziglar
June 21, 2002
Page 2

2. In addition to its Special Agents, the INS also has Deportation Officers, who, I believe, monitor aliens who are in proceedings but not in custody, and locate fugitive aliens. Is this correct? Please describe all of the duties that the INS's Deportation Officers perform, and state how many Deportation Officers the INS has and where they are assigned.
3. Does the INS believe that it has sufficient employees in its Investigations Program to achieve the stated goal of the interior enforcement program, that is, to reduce the size and annual growth of the illegal resident population? If not, how many Special Agents, Immigration Agents, and staff do you believe that you need to enforce the immigration laws in the interior of the United States? Please state where each agent that you believe you would need would be assigned, and which specific strategic priority each would handle. Include any studies, reports, staffing models, etc. upon which you have relied in making this determination.

Please provide the Subcommittee with answers to these questions and with any responsive documents on or before July 19, 2002, so that your responses can be included in the hearing record for the June 19, 2002 hearing. If you have any questions regarding this request, please contact Committee Counsel Andrew Arthur at 202-225-5727. Thank you very much for your attention to this matter.

Very truly yours,



George W. Gekas
Chairman, Subcommittee on Immigration and Claims

cc: The Honorable Sheila Jackson Lee
Ranking Member, Subcommittee on Immigration and Claims



U.S. Department of Justice
Immigration and Naturalization Service

HQOPS 50/18-C

Office of the Commissioner

425 I Street NW
Washington, DC 20536

OCT 21 2002

The Honorable George W. Gekas
Chairman
Subcommittee on Immigration,
Border Security, and Claims
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter dated June 21, 2002, regarding the Immigration and Naturalization Service's (INS) Interior Enforcement Strategy. I apologize for the delay in responding to your questions. I will answer them briefly and look forward to discussing them in greater detail with you and your staff.

- 1) **Has the INS examined its interior enforcement efforts to insure that it is using its 2,000 agents as efficiently as possible?**

Reviewing the tasking laid on the available Special Agents is a constant activity for our Headquarters Investigations, the District Directors, and the Assistant District Directors for Investigations. As was noted in Assistant Commissioner Joseph Greene's testimony before the Subcommittee on June 19, 2002, despite the heightened focus on counterterrorism, none of the priorities within the INS Interior Enforcement Strategy can be dismissed. In the local offices, commitment to counterterrorism efforts has the first priority, while the others have been pursued with somewhat fewer agent work years devoted to them.

In process is a major effort to shift the responsibility for the identification, interviewing, and removal of criminal aliens from the Investigations branches to the Detention and Removal branches of the INS District Offices. As currently planned, Immigration Enforcement Agents will be reassigned to the Detention and Removal units, Detention Enforcement Officers will receive additional training, and both will be responsible for interviewing aliens incarcerated in federal, state, and local corrections and jail facilities. This will allow INS Special Agents to perform additional investigative casework.

The Honorable George W. Gekas
Page 2

No formal studies were conducted for this period because it was viewed as a transitional year for the implementation of the new strategy. Nevertheless, a number of significant cases were completed during this period that were both consistent with and highlighted by the national strategy. Mr. Greene mentioned several of these cases in his June 19, 2002, testimony.

The Interior Enforcement Strategy was publicized in January 1999, but the first full assessment period for this strategy was fiscal year (FY) 2000. The breakdown of total cases completed for FY 2000 shows 49.5 percent involved criminal alien cases, 22.2 percent involved smuggling investigations, 11.6 percent involved fraud investigations, 8.3 percent involved worksite enforcement, and 8.4 percent involved the arrest of other status violators. The community support and policing objective was tracked through reports of local law enforcement officials and through the Law Enforcement Support Center.

During FY 2001, the INS developed an annual implementation plan that closely followed the objectives of the national Interior Enforcement Strategy. Results from this performance period included the removal of 174,488 immigration violators from the United States, of whom 71,648 were convicted criminal aliens. Quick Response Teams alone, which represent approximately 10 percent of the total agent workforce, accounted for 15,820 arrests during this period. For the same period, 52.5 percent of the total cases completed involved criminal alien cases, 23.8 percent involved smuggling cases, 10.6 percent involved fraud investigations, 5.8 percent involved worksite enforcement, and 7.3 percent involved other immigration status violators. The increase in case completions over the prior year is consistent with the focus on criminal aliens.

In response to a 1999 General Accounting Office report that stated that the INS did not have in place procedures to coordinate resources regarding investigations of major smuggling cases, the INS reemphasized the Global Reach strategy of interrupting smuggling organizations in countries of origin and transit as well as coordinating Border Patrol and District antismuggling in corridors stretching from the southwest border to interior destinations. In October 2001, the INS implemented, Servicewide, the Criminal Investigations Reporting System (CIRS), which centralizes intelligence and information of major criminal violators.

As Mr. Greene testified, the events of September 11, 2001, changed the focus and the emphasis of the INS Interior Enforcement Strategy. Given the relatively brief period of time to implement and monitor performance under the strategy, no assessment of its efficiency can be definitive. However, during the relevant period, personnel and resources were applied consistently with the benchmarks and objectives of the strategy.

The Honorable George W. Gekas
Page 3

- 2) **In addition to its Special Agents, the INS also has Deportation Officers, who, I believe, monitor aliens who are in proceedings but not in custody, and locate fugitive aliens. Is this correct? Please describe all of the duties that the INS' Deportation Officers perform and state how many Deportation Officers the INS has and where they are assigned.**

Deportation Officers are the senior law enforcement officers within the INS Detention and Removal program. Presently, 629 Deportation Officers are assigned to District Offices, suboffices, and detention facilities nationwide. Deportation Officers are responsible for every case where an alien is placed in immigration removal proceedings and tracked as being under "docket control." Approximately one million aliens are under docket control. Around 20,000 of these aliens are detained at any given time. Deportation Officers are responsible for ensuring that all charging documents which initiate and continue proceedings are in order and ushering the cases through the Executive Office for Immigration Review. Deportation Officers adjudicate requests for stays of deportation (temporary relief from removal), requests for parole/release from custody, and requests for employment authorization, as well as numerous other formal and information requests. Officers visit detained aliens to advise them of the status of their proceedings or to interview an alien to obtain information for travel documents or information relating to criminal activities. Deportation Officers coordinate with foreign consular officials to obtain travel documents for an alien's return to his or her country of origin, or to advise them about the status of an alien's immigration proceedings.

The remainder of the one million aliens who are not detained may be at any stage of their proceedings, including having absconded after receiving a final order of removal. At this stage, Deportation Officers are responsible for locating and arresting fugitives before accompanying them through the process discussed above. In this capacity, Deportation Officers work very closely with local, state, and other federal law enforcement agencies, as these fugitives are often wanted for other criminal violations. Ultimately, Deportation Officers may escort aliens to their home countries.

Deportation Officers are highly trained professionals. They may give direction to Detention Enforcement Officers (DEOs) and often head teams of DEOs in fugitive operations. They coordinate with all branches of the District Offices, INS trial attorneys, immigration court personnel, as well as with other federal, state, local, and foreign government officials.

- 3) **Does the INS believe that it has sufficient employees in its Investigations Program to achieve the stated goal to reduce the size and annual growth of the illegal resident population?**

While this goal as an overall outcome is part of the INS Interior Enforcement Strategy, our annual requests for additional resources are keyed to improvements in achieving the specific elements of that strategy.

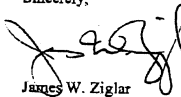
The Honorable George W. Gekas
Page 4

Introduced in January 1999, the Interior Enforcement Strategy came too late in the 10-year U.S. Census cycle to make valid inferences about its impact on the population of illegal residents in the United States. Nevertheless, it is possible to project the number of potential illegal residents, whose entry into the United States was prevented by dismantling fraud and smuggling schemes, prosecuting their principles, and seizing their assets. Based on evidence developed during the course of the respective investigations that took place between January 1999 and the present, we estimate that 108,500 potential illegal residents were prevented from entering the United States. This result is in addition to the 359,620 aliens removals reported for FYs 2000 and 2001.

Our staffing needs will be affected by INS initiatives that will be implemented over the next several quarters, including the Student Exchange Visitor Information System, the Alien Absconder Initiative, and the National Security Entry/Exit Registration System project. Together, these systems will affect the likelihood that illegal residents will succeed in entering, remaining, or re-entering the United States. I assure you that my staff and I will continue to work with you, members of the Subcommittee, and Congress to fashion a multi-year staffing proposal that is both fiscally responsible and effective for performing our domestic security and immigration law enforcement missions.

I hope that this information is helpful. Please contact me if you have additional questions or concerns.

Sincerely,



James W. Ziglar
Commissioner

cc: The Honorable Sheila Jackson Lee
Ranking Member, Subcommittee on Immigration,
Border Security, and Claims

PREPARED STATEMENT OF THE MEXICAN AMERICAN LEGAL DEFENSE AND
EDUCATIONAL FUND ("MALDEF")

Civil Rights Concerns Within the Department of Homeland Security

The Mexican American Legal Defense and Educational Fund ("MALDEF") is a national, non-profit, non-partisan organization dedicated to defending the civil rights of the more than 37 million Latinos living in the United States.

MALDEF is concerned about the Department of Homeland Security ("DHS") and civil rights violations that could occur if the civil rights protection is not a priority in the development of the new agency.¹ The new DHS includes all prior functions of Immigration and Naturalization Services ("INS") and the U.S. Customs Service and is slated to be up and running by March 1st. The mission of the DHS is to fight terrorism. With all INS functions subsumed into the DHS, the effect will be to look at all immigrants, including millions of legal immigrants, as suspected terrorists, instead of who they really are.

As discussed herein, in this context, we are concerned about civil rights issues, such as racial profiling, human rights violations at the border, and the use of state and local police to enforce federal immigration laws. We are also concerned about our failed immigration policy, which has resulted in a complete lack of legal recognition of millions of immigrants who are the backbone of the U.S. economy.²

- Among other measures, we strongly suggest that the new Undersecretary of Border and Transportation Security, Asa Hutchinson, and the new chief of immigration services, Eduardo Aguirre, neither of whom have a background in immigrants' rights, enlist the help of high-level aides with backgrounds in civil rights and immigration services issues. Otherwise, our customs agents and border patrols are likely to commit grave violations of the rights of immigrants, which will do nothing except undermine national security.
 - We need to count on the cooperation of everyone—including immigrants—to win the war against terrorism, and this can be done through a DHS based upon fairness, teamwork and effectiveness, instead of the type of random harassment of immigrants' rights that we have seen occurring when our system of checks and balances has been weakened.
 - Finally, for the reasons discussed herein, including the need to ensure our economic and national security, we urge this Congress to consider legalization of the 8–9 million undocumented persons living and working here in the U.S.
- 1. Racial profiling is unconstitutional³** and has long been a serious problem among INS officials, especially border patrol officials. Examples of "a pattern of 'selective enforcement' that has undermined the rights of citizens and legal residents and terrorized the larger [Latino] community"⁴ include:
- **Kentucky, 2002–2003.** Amidst a series of illegal INS raids performed without proper warrants against Latinos, including citizens, a Latino

¹For more information, contact Katherine Culliton, Immigrants' Rights Attorney, in our D.C. office at (202) 293–2828 x 14.

²See for example: Northeastern Univ. Center for Labor Market Studies, *Immigrant Workers and the Great American Job Machine: The Contributions of New Foreign Immigration to National and Regional Labor Force Growth in the 1990s* (Prepared for the National Business Roundtable, Wash. D.C., August 2002). This groundbreaking study found that new immigrants made up more than ½ of the growth of the nation's entire civilian workforce between 1990 and 2001. Among other findings, Northeastern University concluded that: "The findings in this research report on the role of immigrant labor in meeting the employment needs of the nation's employers, especially in the private business sector, deserve the careful attention of the nation's and states' economic policy makers, the business community, organized labor, and state and local workforce development boards. At no time in the past 90 years was the nation so dependent on immigrant labor to meet its growing need for labor, especially among male workers, whose native supply barely increased in the past decade and actually declined in a number of regions and states . . ." Summary of Findings, pp. 38–43 @ §viii.

"A fairly high fraction of these new immigrant workers, especially in less skilled occupations, are undocumented workers. . . . Our national immigration policies have largely been a failure in reducing undocumented immigration, and our work force needs are being met by a group of workers who possess little rights . . ." §x.

³Investigating Latinos (or anyone else) based on race/ethnicity while enforcing immigration laws is unconstitutional. See, e.g., *Carrasca v. Pomeroy*, No. 00–03590 (D.N.J. Dec. 10, 2001); No. 02–1127 (3rd Cir., Feb. 18, 2003)(www.ca3.uscourts.gov/opinarch/021127p.pdf).

⁴The Mainstreaming of Hate: A Report on Latinos and Harassment, Hate Violence, and Law Enforcement Abuse in the 90s (NCLR, Nov. 1999) @ pp. 21–22.

services center is told by the INS District Director that it must provide immigration status information about its clients.⁵

- **With the recent boom in the Latino population across the South,** highway patrols are stopping Latinos, especially new immigrants, and waving through Anglos. This type of racial profiling occurs at checkpoints as well as through normal highway patrols, which stop and harass Latinos based on race/ethnicity and then check their immigration status.⁶
- **“August 1999, Orange County, CA.** Orange County Sheriff Deputies allegedly harass Latino day laborers gathered at a strip mall by barring them from business, using ethnic slurs, and gave them tickets for loitering.
- **“July 10, 1999, Wichita Falls, TX.** According to news reports, immigration officers broke down the front door of a Hispanic family’s home, brandished firearms, and terrorized them, during a ‘routine’ attempt to round up undocumented immigrants in their neighborhood.
- **“February 1998, Seattle, WA.** In a raid at Steeler Manufacturing, INS agents detained 10 Latino workers. With one exception, all were legal residents or U.S. citizens. One citizen, Raul Chaves, was handcuffed and detained. Agents finally released him when a friend brought his birth certificate to the workplace. According to case law, ethnic appearance alone does not constitute ‘reasonable suspicion’ that a person is undocumented. . . .
- **“October 20, 1997, Elba, NY.** Sergio Cordoba, a permanent resident-and a supervisor at a farm located just east of Buffalo-witnessed immigration agents descend on Torrey Farms, searching fields and packing sheds. The agents handcuffed all workers who “looked” Latino without specifically interrogating them as to their immigration status. *The New York Times* reported that the agents knocked down doors and wrestled people to the ground, despite the fact that the latter offered little resistance. . . .
- **“July 9, 1997, Portland, OR.** INS agents in unmarked vehicles began arresting almost fifty Latino day laborers who were waiting for work on street corners along East Burnside Street. The agents did not identify themselves, and arrested the majority of people without asking questions. . . . Only Latino men were arrested. Other people at the scene, including a light-skin Mexican, were not even questioned.”⁷

As we work to secure our borders, including ports of entry such as airports and seaports,⁸ we must ensure that the DHS is subject to Congressional oversight and appropriate regulations, in order to ensure that basic American principles of equality and freedom from discrimination are safeguarded in the process. Otherwise, our resources will be diverted from finding real terrorists, to targeting and punishing immigrants based on perceptions about

⁵ Somos inmigrantes, no terroristas 2 *Hoy* No. 12, pp. 1–2 (Louisville’s Spanish Newspaper, Feb. 14, 2003).

⁶See, e.g., State of Georgia Public Hearings on HB851 (Nov. 18, 2002)(testimony that Latinos stopped at checkpoints while Anglos were waived through without question); J. Elliston, J. Elliston, “Busting Trust? Latino Leaders want assurances that a new INS squad won’t prompt racial profiling by local police,” *Independent Weekly* (May 2, 2001), *Independent Weekly* (May 2, 2001), www.indyweek.com/durham/2001-05-02/triangles.html; See also Discussion of racial profiling and state and local police enforcement of federal immigration laws, §2, *infra*.

⁷The Mainstreaming of Hate, *supra* n.3 @pp.21–22.; A Report on Latinos and Harassment, Hate Violence, and Law Enforcement Abuse in the 90s (NCLR, Nov. 1999) @ pp. 21–22.

⁸Note that visas issued overseas will continue to be issued by the Department of State; however, in this respect the State Department will be subject to DHS supervision. §428, Homeland Security Act of 2002, P.L. 107–296, 116 Stat. 2135 (Nov. 25, 2002).

The State Department consular officials who adjudicate overseas visa applications, and higher-level officials who make policy for them, have not been immune to racial profiling. See *Olsen v. Albright*, 990 F. Supp. 31 (D.D.C. 1997). In *Olsen v. Albright*, a Brazilian consular officer contested his termination for refusal to adjudicate nonimmigrant visas on basis of factors such as applicant’s race or national origin. Two types of policies were discriminatory—one that used general descriptions such as “looks poor” and “looks rough,” and another that named Arab, Chinese and Koreans residing in Brazil for additional scrutiny because they were thought to engage in “major fraud.” The Court compared such policies to the terrible error committed against Americans of Japanese ancestry, denounced them as discriminatory and unconstitutional, and found that in the Brazilian consulate case, “the Consulate’s visa policies stand in direct opposition to the progress this country has made in eliminating discrimination in the context of immigration law.” 990 F. Supp. 39.) See also 962 F. Supp. 5 (1997)(State Dept. requested to provide further information about profiling scheme)(whistleblower case apparently settled).

race and ethnicity, which are at best unreliable and at worst highly damaging to individual rights as well as national security.

- MALDEF urges Congress to ensure that the DHS, including the Directorate of Border and Transportation Security, is subject to clear and enforceable regulations designed to prevent racial profiling, investigate instances of its occurrence, and provide for remedies to correct and compensate for racial profiling.
- Congress must also ensure adequate training and oversight of all officials involved in immigration enforcement and services, as well as border and other security officials, to ensure against the tendency to investigate and prosecute based on race, ethnicity, national origin and immigration status,⁹ instead of using objective criteria to ensure our collective security in this multicultural democracy.
- Also, now that the INS is no longer under the Department of Justice, the Border & Transportation Security Directorate (as well as the Immigration Services Division) must work closely with and be accountable to the Civil Rights Officer to be appointed as part of the new Department of Homeland Security. Furthermore, DHS-wide accountability to an independent Inspector General authorized to investigate any civil rights, due process, civil liberties and/or human rights violations is essential.

2. **The use of state and local police to enforce immigration laws leads to higher incidences of racial profiling and other abuses of due process and civil rights.** Until recently, the Justice Department agreed with the Supreme Court¹⁰ that the power to enforce immigration laws rested exclusively with the federal government.¹¹ However, Attorney General Ashcroft's statements during a press conference in June 2002 confirmed the existence of a new DOJ opinion. Ashcroft stated that the DOJ now believes that state and local officials have some degree of "inherent authority" to engage in immigration enforcement. The ACLU Immigrants' Rights Project prepared a Freedom of Information Act ("FOIA") request for a copy of Attorney General Ashcroft's DOJ opinion that would overturn American constitutional law,¹² but to date the DOJ has refused to turn over documents in response to the FOIA request. Because we do not have any information as to the basis of his opinion, we are uncertain as to what legal basis Attorney General Ashcroft might have to assign immigration law enforcement functions away from the federal government.

State and local police are not empowered to enforce or involve themselves in federal immigration laws because such plenary power rests exclusively with the federal government. State and local police are not trained in immigration law, and case after case has proven the tendency of untrained officials to use racial profiling rather than objective standards in their quest for immigration law enforcement. We know of numerous cases in which Latinos have been stopped, questioned aggressively, intimidated and arrested because state and local police have presumptively acted on their misguided hunches about their immigration status.¹³ As this Congress and Administration are well aware, Latinos are now the

⁹The Leadership Council for Civil Rights ("LCCR") reported that, according to a study conducted by the Arizona Attorney General's Office, "local police and U.S. Border Patrol Officials implementing Operation Endeavor 'without a doubt . . . stopped, detained and interrogated [Chandler residents] . . . purely because of the color of their skin.' Similarly, in Katy, Texas, the INS and officers from the Katy Police Department conducted a joint operation whereby they stopped and detained cars driven by individuals of 'Hispanic appearance,' conducted street swaps in which Hispanics were the only ones targeted or questioned, and undertook searches of Hispanic residents." Justice on Trial: Racial Disparities in the American Criminal Justice System (LCCR, 2000) @ Ch. I, Race and Police, p. 4. The LCCR also reported that: "Overall, nearly three-quarters (73.5%) of all those deported by the INS are of Mexican origin, according to INS statistics, even though Mexicans constitute less than half of all undocumented persons in the United States. Hispanics constitute approximately 60% of undocumented persons, but well over 90% of those subjected to INS enforcement actions are Hispanic." *Id.*

¹⁰See, e.g., *De Canas v. Bica*, 424 U.S. at 351 (1976) at 354. ("The power to regulate immigration is unquestionably exclusively a federal power.")

¹¹See Memorandum Opinion for the United States Attorney Southern District of California, Assistance by State and Local Police in Apprehending Illegal Aliens (DOJ, Feb. 5, 1996)(state and local police may assist only in cases of criminal violations of federal immigration laws, under the circumstances of a *Terry* stop; or in cases of emergency, if a special deputization has been undertaken by Justice and supervised by federal officials; or if an exceptional memorandum of understanding has been agreed to, in accordance with special provisions of the 1996 federal immigration law reforms).

¹²See Michael Wishnie, Devolution of Immigration Power, Equal Protection and Federalism, 76 N.Y.U.L. Rev. 493 (May 2001).

¹³See, e.g., *Lopez v. City of Rogers*, Civil Action No. 01-5061 (W.D.Ark. 2002).

largest minority in the United States, and the great majority of Latinos are here legally—in fact they are fighting our wars, defending our national values, contributing to the strength of the American family, and acting as leaders in our government and business communities. Of course, Hispanics enjoy the right to freedom from discrimination the same as any other American, and must not be subject to racial profiling by state and local police. Furthermore, although state and local police can and should assist in national security matters, in the end it is the job of the federal government to decide who to admit and who to deny visas, residency and citizenship, and against whom to enforce federal immigration law.

- Congress should insist upon receiving a copy of the new DOJ Office of Legal Counsel opinion, and review the advisability of involving state and local police in immigration matters. As the Homeland Security Act is being implemented, regulations and oversight should provide that state and local police may only be involved in immigration matters under very limited circumstances, as prescribed by well-settled constitutional law.¹⁴
- If state and local police are at all involved in immigration law enforcement, they should be accountable under the highest standards of the Equal Protection clause.¹⁵

3. Human rights violations at our border with Mexico have been well-documented by the United Nations, which found that Operation Gatekeeper and other similar tactics are leading to the death of hundreds of Mexicans in the desert every year. Operation Gatekeeper has diverted illegal border crossings from California to the harsh and dangerous Arizona desert, increased abuses of migrants by smugglers, drug traffickers, and traffickers in women and children, but has not reduced illegal immigration at all. The U.N. denounced the private vigilantes who are undertaking to intercept Mexican migration, documenting their racism and xenophobia, and further denounced the impunity with which vigilantes terrorize peasants crossing the border.¹⁶

Now, more than ever, we need the cooperation of the United Nations, and we most certainly need to maintain good relations with our Mexican neighbors, who we count on for economic stability and national security. Violating the human rights of Latin Americans crossing the border will do nothing to increase national security, and in fact may set us back. Every human being is entitled to respect of his or her fundamental human rights.

- For all these reasons, we urge Congress to consider the relevance of the high-level bilateral negotiations that were underway in 2001, in which the United States and Mexico were “to hold formal negotiations on the future direction of migration policies in order to create a process of orderly migration that guarantees humane treatment of migrants, provides protection of their legal

¹⁴For example, under current federal law, Memoranda of Understanding (“MOU”) between local police and the INS typically provide that local police “shall not stop an individual on the street or pull over a car, when an individual/driver has not committed a violation, merely to find out whether the person can prove he or she is in the U.S. legally.” Such MOUs further stipulate that “officers will not contact the INS without notifying the police chief, and that when foreign-born suspects are in custody, they will be guaranteed access to a lawyer and consular officials.” See, e.g., J. Elliston, “Busting Trust? Latino leaders want assurances that a new INS squad won’t prompt racial profiling by local police,” *supra*. n. 5.

¹⁵See *Matthews v. Diaz*, 426 U.S. 67 (1976); *Graham v. Richardson*, 403 U.S. 365 (1971)(anti-immigrant welfare discrimination violates Equal Protection); and *See Takahashi v. Fish & Game Comm’n.*, 334 U.S. 410 (1948)(anti-immigrant discrimination in granting of commercial fishing licenses violated Equal Protection); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886)(same for anti-immigrant laundry licensing scheme). It is important to note that when state and local police, or for that matter any federal officials, make decisions based upon race or ethnicity—stopping Latinos on the basis of being Latino—their actions are subject to strict scrutiny under the Equal Protection clause.

¹⁶The United Nations Special Rapporteur on Migration found that the International Covenant on Civil and Political Rights (“ICCPR”), the Convention for the Elimination of all forms of Racial Discrimination (“CERD”), the Convention for the Elimination of all forms of Discrimination Against Women (“CEDAW”), and the Convention Against Torture were being violated at the border, and that the government should take all measures necessary to remedy these human rights violations. As Congress is aware, all of these treaties (and the legal obligations therein) have been ratified by and are part of the internal law of the United States. *U.N. Spec. Rap. Human Rights of Migrants, Executive Summary, Mission to the Border of the United States and Mexico*, U.N. Doc. No. E/CN.4/2003/85/Add.3 (Oct. 30, 2002).

rights, ensures acceptable work conditions for migrants and also recognizes the right of nations to control the flow of people across their borders.”¹⁷

- And we urge the DHS to ensure compliance with the human rights law embodied in our American constitutional system, which is founded upon the respect for and equal protection of individual rights and liberties.¹⁸

4. **Finally, this is the time to recognize that our failed immigration policy must be normalized.** This Congress must re-evaluate and change the complete lack of legal recognition of millions of immigrants who are the backbone of the U.S. economy. For example, everyone is aware that there are over 4 million undocumented Mexicans living and working here in the U.S., providing our services, construction, agricultural and other industries with essential labor, by doing the jobs that U.S. citizens and residents do not want. As Alan Greenspan acknowledges, even with the current economic crisis, our economy is dependent on undocumented workers, who are replacing the productivity lost through the aging of our workforce.¹⁹

The portion of Mexican workers in the U.S. has doubled in the past decade, and they are providing work that is increasingly vital to the U.S. economy.²⁰ The great majority of undocumented Mexicans came here to save their families from abject poverty.²¹ Under the North American Free Trade Agreement (“NAFTA”), jobs are being lost in Mexico, which is now importing U.S. agricultural products.²² As long as globalization is crucial to the U.S. economy, our free trade policy must take into account migration.

- For whatever reason 8–9 million undocumented workers are here, Congress must guard against jeopardizing the U.S. economy by marginalizing their contribution. Moreover, this is no time to keep millions of people legally unidentifiable and unable to interact with government about safety and national security issues.
- For all these reasons, MALDEF urges Congress to re-open the legalization discussions that culminated in the Fox-Bush visit of September 5, 2001, and remember our commitment to provide for legalization of undocumented workers in the U.S., and to negotiate fair and effective future migration policies.²³
- The situation of all undocumented persons should be normalized so that we can move forward towards economic recovery and national security together.
- Recent Congressional proposals along these lines deserve urgent attention, as we must take these reasonable economic and national security concerns into account, and fashion a just, effective, sensible solution to the fate of 8–9 million people living in the U.S.

¹⁷*Id.* @ ¶53 (citing United States-Mexico Joint Communiqué on Migration Talks, June 2001, www.state.gov/r/pa/prs/ps/2001/3733.htm (consulted on July 12, 2002)).

¹⁸The legal norms of human rights treaties cited by the U.N. Special Rapporteur on Migration (ICCPR, CEDAW, CERD, CAT)(note 15, *supra.*) are also embodied in the fundamental values of our nation and in the 1st, 4th, 5th and 14th amendments of our Constitution, which apply to all persons within our borders, even including those who entered illegally. *Matthews v. Diaz*, 426 U.S. 67 (1976); *Plyler v. Doe*, 457 U.S. 202 (1982).

¹⁹See Federal Reserve Board Chairman Alan Greenspan’s Semiannual Monetary Report to Congress, Uncertainty on Iraq Limits Economic Growth, Greenspan Says, U.S. Dept. of State, Int’l. Info. Programs (Feb. 11, 2003) @ p. 9.

²⁰See Mexican Immigrants and the U.S. Economy: An Increasingly Vital Role, Vol. 1, Issue 2, Immigration Policy Focus (American Immigration Law Found., Sept. 2002).

²¹See Dan Griswold, Willing Workers: Fixing the Problem of Illegal Mexican Migration to the U.S. (Cato Institute, Trade Policy Analysis No. 19, Oct. 15, 2002).

²²Ginger Thompson, “Nafta to Open Floodgates, Engulfing Rural Mexico,” New York Times (Dec. 9, 2002), at A3.

²³As the CATO Institute summarizes: “Although the U.S. government has encouraged closer trade, investment, and political ties with Mexico, it has labored in vain to keep a lid on the flow of labor across the border. Since 1986, the numbers of tax dollars appropriated and agents assigned for border control have risen dramatically, yet by any real measure of results, the effort to constrict illegal immigration has failed. . . . Demand for low-skilled labor continues to grow in the United States while the domestic supply of suitable workers inexorably declines-yet U.S. immigration law contains virtually no legal channel through which low-skilled immigrant workers can enter the country to fill that gap. The result is an illegal flow of workers characterized by more permanent and less circular migration, smuggling, document fraud, deaths at the border, artificially depressed wages, and threats to civil liberties. . . .

“Legalizing Mexican migration would, in one stroke, bring a huge underground market into the open. It would allow American producers in important sectors of our economy to hire the workers they need to grow. It would raise wages and working conditions for millions of low-skilled workers and spur investment in human capital. It would free resources and personnel for the war on terrorism.” Dan Griswold, Trade Policy Analysis No. 19, *supra.* n. 20.

Conclusion:

The problems discussed above existed long before September 11, 2001, and will continue to exist and become compounded unless they are addressed directly. Across the board, experts agree that failure to resolve these problems will only be detrimental to our collective national security.²⁴ The Homeland Security Act in and of itself does not provide adequate protection for civil rights. MALDEF urges this Congress and the Administration to take positive, concrete measures to ensure the protection of the fundamental rights of immigrants, as we make the transition to the new Department of Homeland Security.

A national non-profit organization, MALDEF promotes and protects the rights of Latinos through advocacy, community education and outreach, leadership development, higher education scholarships and when necessary, through the legal system.

#

FEBRUARY 25, 2003

²⁴ See Moving Forward in Reforming Our Immigration System: Quotes from Across the Spectrum (Nat'l. Immigration Forum, Feb. 2003)(citing Editorials, Columns and Op-Eds, Elected and Appointed Officials, including the Bush Administration, and Diverse Allies of the Nat'l. Immigration Forum).

**Statement Immigration, Border Security and Claims Subcommittee Oversight
Hearing for Department of Homeland Security Transition: Bureau of Immigration
and Customs Enforcement
Thursday, April 10, 2003**

Chairman Hostettler, thank you for holding this hearing on this important and timely subject. Given the recent transition of immigration functions to the Department of Homeland Security, we must carefully ensure that the immigration laws are enforced.

I would like to take a moment to comment upon the statement by the Mexican American Legal Defense and Educational Fund (MALDEF), entitled "Civil Rights Concerns Within the Department of Homeland Security" which was introduced into the record today at the request of Ms. Sanchez. I find there are some very serious problems with this statement that must be addressed.

The first thing I must object to is MALDEF's use, throughout the paper, of the term "Latino" in place of the accurate and technically correct "illegal alien." Not all Latinos are illegal aliens, and not all illegal aliens are Latino. MALDEF should not try to conflate the two distinct terms. Many Latinos comply with our immigration laws and are here in the United States legally. Use of the term "Latino" instead of "illegal alien" serves only to racialize the important issue of illegal immigration, and is divisive and unfair to legal immigrants.

Second, the enforcement of immigration law is not "racial profiling," as MALDEF tries to insinuate. It is simply law enforcement. As Friends of Immigration Law Enforcement points out, federal immigration authorities and law enforcement officers are already prohibited from racial profiling; when a law enforcement officer suspects that a person is in the country illegally, he or she may rely on simple, common sense judgment, and particular characteristics to justify that suspicion. These characteristics include dress, appearance, language, behavior, and location. If, for example, a law enforcement officer stops a van on I-80 for speeding, and that van is carrying 30 non-English-speaking persons wearing clothing typical of Mexican peasants, the officer is entirely justified in suspecting U.S. immigration laws are being violated. Similarly, if a law enforcement officer stops a van for speeding, and smells alcohol, the officer is entirely justified in suspecting drunken driving laws are being broken-regardless of the driver's ethnicity. In other words, there is a significant difference between "racial profiling" and "criminal profiling."

Third, MALDEF urges Congress to "ensure adequate training and oversight of all officials involved in immigration enforcement and services, as well as border and other security officials, to ensure against the tendency to investigate and prosecute based on...immigration status." But, of course, immigration and law enforcement officers *must* "investigate and prosecute based on...immigration status." On what other grounds would an illegal alien ever be prosecuted for an immigration violation at all, except based on immigration status? By demanding Congress mandate that law enforcement officers ignore immigration status, MALDEF exposes its true concerns, which are not for the "civil rights of the more than 37 million Latinos living in the United States" at all.

Rather, MALDEF seems to want a total collapse of immigration law enforcement, a massive amnesty for illegal aliens (or at least all Latino illegal aliens), and a complete abdication of the duty of law enforcement officers to enforce the will of the American people as expressed through its representatives in Congress.

Fourth, MALDEF gives the impression that it is representing the best interests of Latinos when it advocates for non-enforcement of immigration laws. This is a false impression and racially divisive. Latinos, like all Americans, desire our laws to be enforced, and are opposed to amnesties for illegal aliens. In spite of the impression MALDEF gives, most Latinos do not advocate lawbreaking, and MALDEF's attempt to cast illegal immigration and support for illegal aliens as Latino issues is offensive.

Fifth, MALDEF argues, "the use of state and local police to enforce immigration laws leads to higher incidences of racial profiling and other abuses of due process and civil rights." This argument is simply untrue. There are already strong and necessary safeguards in place to prevent civil rights abuses. Officers do not engage in racial profiling, but rather criminal profiling. Enforcement of immigration laws is not, as MALDEF alleges, *ipso facto*, a civil rights violation. Furthermore, even though MALDEF has expressed confusion regarding the legal authority of state and local officials to enforce immigration law, Congress has *explicitly* granted such authority.

Sixth, currently, there are only about 2,000 interior investigative agents charged with apprehending the more than 315,000 alien absconders who have already been ordered deported from the United States, but who have, instead, ignored those orders. Some of these include violent criminals; some may be terrorists. Local law enforcement can play a crucial role in helping to take dangerous absconders into custody, and failure to utilize the nation's entire law enforcement community to accomplish this goal puts the safety and security of all the nation's citizens at risk-including the Latino community for whom MALDEF claims to speak. Therefore, in my view, MALDEF's arguments against firm and common sense immigration law enforcement by the *entire* law enforcement community are not in the best interests of a sound immigration policy.

Seventh, MALDEF claims that our attempts to secure our borders "are leading to the deaths of hundreds of Mexicans in the desert every year." This is nonsense. The tragic deaths along our borders, while completely unacceptable, are caused by two things: 1) the attempts by foreign nationals to enter the United States illegally, and 2) the "magnets" that lure these foreigners to make the dangerous crossing in the first place. Ironically, MALDEF itself *encourages* the continued existence of such magnets by advocating for amnesties, free health care, etc., for illegal aliens.

Eighth, MALDEF cites findings by the United Nations that purport to condemn the United States and our immigration laws, writing, "[n]ow, more than ever, we need the cooperation of the United Nations." However, "cooperation" with the United Nations, or Mexico, for that matter, cannot take precedence over U.S. sovereignty, or the laws or best interests of the American people. As Friends of Immigration Law Enforcement points out, "In a world in which nearly five billion persons live in countries poorer than Mexico, the United States simply must become serious about illegal immigration." In fact, the

United Nations, too, established, "It is the right of every nation State to decide who can enter and stay in its territory and under what conditions." MALDEF advocates denying Americans that basic right.

Ninth, MALDEF repeatedly makes the discredited claim that illegal aliens are "vital" to the U.S. economy. No serious study has found this. What *has* been established is that illegal and legal immigration benefits a few narrow business interests and adds, very insignificantly, to the overall economic output of the country. This should not be surprising; increasing the number of persons in the United States should, of course, increase economic activity. The real question is: What are the effects of illegal immigration on the average American? The answer is clear: illegal immigration, by flooding the market with low-skilled, largely uneducated workers, drives down wages for America's low-income and most vulnerable citizens, increases the gap between rich and poor, and saddles the middle class with an enormous tax burden. Illegal immigration also has a huge and negative social cost by undermining the rule of law.

Finally, I would like to take a moment to point out something MALDEF did not mention in their brief-the illegal drug trade. Lax border crossing and immigration enforcement, the very policies that MALDEF advocates, create a friendly environment for drug traffickers. Increased illegal alien traffic across the southern border is linked to increased drug trafficking. In fact, the smugglers of illegal aliens or "coyotes" often require the people they smuggle to act as "mules" and carry illegal drugs across the border with them. I am very concerned about the drug problem in this country. In my home state of Iowa, I believe a significant amount of the methamphetamine comes from outside Iowa across our southern border with Mexico. We must work fight drug trafficking and secure our borders from drug traffickers.

Mr. Chairman, Congress must not allow the political agenda of any organization to interfere with effective law enforcement. We must, for the safety and security of the American people, secure our borders, firmly and fairly enforce our immigration laws, and help those who are in our country illegally to return to their homes.

107TH CONGRESS, 1ST SESSION
Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

2021 225-3951

<http://www.house.gov/judiciary>

May 6, 2003

Mr. Hutchinson
 Under Secretary for Border and Transportation Security
 Department of Homeland Security
 Washington, DC 20528

Mr. Krikorian
 American Immigration Law Center
 1000 17th Street, NW
 Washington, DC 20036

The Honorable Asa Hutchinson
 Under Secretary for Border and Transportation Security
 Department of Homeland Security
 Washington, DC 20528

Dear Mr. Hutchinson,

We are writing to request additional information for the hearing record for the April 10, 2003, hearing of the Subcommittee on Immigration, Border Security, and Claims hearing on the "Department of Homeland Security Transition: Bureau of Immigration and Customs Enforcement," as well as for additional information concerning immigration detention.

In order to expound on your written and oral testimony before the Subcommittee, please provide the Subcommittee, no later than May 14, 2003, with a response to the following question:

You agreed with Mr. Krikorian that traffic stops present a significant opportunity to apprehend those in the country illegally. What specific steps is the department taking to provide training to state and local law enforcement officials to best utilize these opportunities?

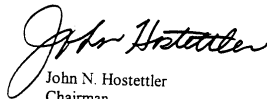
Additionally, we would like to inquire about the current status of the Office of the Federal Detention Trustee. Congress established the Office of the Federal Detention Trustee and activated it in September 2001 (Pub. L. 106-553, § 166, 114 Stat. 2762 (2000)) in response to growing concerns regarding federal detention. The office was established to better coordinate the management and delivery of federal detention services by three separate agencies: the United States Marshals Service (USMS), the Federal Bureau of Prisons (BOP), and the Immigration and Naturalization Service (INS). Prior to the creation of this independent office within the Department of Justice, these three agencies competed against one another for available detention space at both private and publicly run facilities. This competition drove up the federal government's costs of securing needed detention space.

The Honorable Asa Hutchinson
May 1, 2003
Page Two

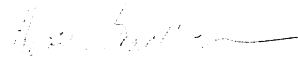
Now that INS has transitioned to the new Department of Homeland Security, we are interested in determining the status of the former agency's Detention and Removal personnel and resources, and determining whether or not the Office of the Federal Detention Trustee will maintain responsibility for coordinating the detention requirements of the Bureau of Immigration and Customs Enforcement (ICE), BOP, and USMS. Please provide the Subcommittee, by May 14, 2003, with an explanation of how the Bureau of Immigration and Customs Enforcement (ICE) is coordinating its detention needs with the Detention Trustee.

If you have any questions concerning these requests, please contact Committee Counsel Andrew Arthur at 202-225-5727. Thank you in advance for your assistance.

Sincerely,



John N. Hostettler
Chairman
Subcommittee on Immigration, Border Security,
and Claims



Marsha Blackburn
Member of Congress