

**RESTRUCTURING THE INS—HOW THE AGENCY'S
DYSFUNCTIONAL STRUCTURE IMPEDES THE
PERFORMANCE OF ITS DUAL MISSION**

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RESTRUCTURING THE INS—HOW THE AGENCY'S DYSFUNCTIONAL STRUCTURE IMPEDES THE PERFORMANCE OF ITS DUAL MISSION

TUESDAY, APRIL 9, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 3:02 p.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

Chairman SENSENBRENNER. The Committee will come to order. Will the witnesses please take their places at the table?

Today we take the next step in advancing the process of restructuring the most beleaguered Agency in the Federal Government, the Immigration and Naturalization Service. The Brookings Institution published a book called *Immigration: The Beleaguered Bureaucracy* in 1985. If that book had been made into a movie, a sequel would be long overdue.

During the 1980's and 1990's, the INS reorganized its structure numerous times, as seen in the enlarged chart that is over to my right and your left. In fact, the INS tinkered with the boxes five times just during the 1980's. And in 1994, the Commissioner at the time undid what the previous Commissioner did 3 years before. But if anyone takes only a fleeting glance at the current INS structure, it quickly becomes obvious that, despite all these internal reorganizations, the Agency is as dysfunctional as it has ever been.

In 1990, Congress created a blue ribbon Commission on Immigration Reform, headed by the highly respected former Congresswoman and civil rights pioneer, Barbara Jordan, to examine and make recommendations regarding the implementation and impact of U.S. immigration policy. The boldest recommendation made by the Jordan Commission was that the INS had to be drastically restructured.

Unfortunately, Ms. Jordan did not live long enough to make sure that such a restructuring occurred. And had she survived, my belief is that what we are talking about today would have been done a long time ago. But doing it now will honor her legacy.

Various alternative restructuring proposals were offered during the late 1990's by Members of Congress, think tanks, and even the INS itself; but no such proposal ever has been implemented. Congress more than tripled the INS budget—as can be seen from another one of the charts over there—with the hope that additional

resources would solve many of the Agency's problems. However, the number of illegal aliens in this country grew to at least eight million. The number of applications pending at the INS grew to nearly five million by the end of fiscal year 2001, as shown by the third chart. And the number of GAO reports on the Agency's problems grew in linear feet, as you can see by the stack of reports down in front of the roster. One thing seems obvious: Money is not solving the problem.

According to the Jordan Commission, the INS suffers from mission overload. The Commission reported that the INS must give equal weight to more priorities than any one agency can handle. Such a system is set up for failure and, with such a failure, further loss of public confidence in the immigration system.

On the issue of structural and management reform, the Commission found that the current structure for the administration of the immigration law was problematic. The responsible agencies, especially the INS, suffered from mission overload, in that they had so many responsibilities they were unable to manage all effectively. In fact, the Commission found that no one agency is likely to have the capacity to accomplish all of the goals of immigration policy equally well. Also, the Commission found that the system compounded the problems of fragmentation, redundancy, and delay. To resolve these problems, the Commission's report recommended the dismantling of the INS.

The Agency operates in a constant management crisis mode, responding to error after mishap with no coherent strategy of how to accomplish its law enforcement or services mission successfully. Even when the INS headquarters develops a strategy, it is ignored out in the field.

It has become clear to me that yet another internal tinkering of the boxes is not going to solve the systemic problems that exist. For example, while the number of criminal aliens deported between 1994 and 1999 more than doubled, from 30,000 to 62,800 per year, the INS released 35,318 criminals between October 1994 and May 1999; 11,605 of whom committed further crimes. Among those crimes reportedly were 1,805 violent crimes; including 98 homicides, 142 sexual assaults, 44 kidnappings, and 347 robberies.

In just the last few weeks, the INS issued student visas to two dead terrorists, and admitted four Pakistani crewmen erroneously. These INS mishaps have created strong and growing support for legislation to restructure the INS. The Senate Judiciary Committee is now drafting its own restructuring bill. Members are no longer willing to sit through another internal reorganization of the INS.

With at least eight million illegal aliens in the United States, and about five million immigration applications pending, and our national security on the line, Americans cannot wait for another administrative INS reorganization to fail—as it inevitably will.

We are overdue for a true reform of this beleaguered Agency that ends the existence of the INS as we know it, replacing it with two independent bureaus that specialize in their own missions: enforcement and services. It has been 5 years since the Jordan Commission recommended dismantling the INS. Now is the time to accomplish that.

I am committed to passing an effective restructuring bill this Congress. Today we will hold a hearing, and tomorrow we will mark up the bipartisan H.R. 3231, the "Immigration Reform and Accountability Act."

I now recognize the gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman and Members of the Committee. I welcome the witnesses. Mr. Ziglar, we are delighted to see you back again.

There is not much to add to the Chairman's points. I think there is general concurrence in what he has articulated. And since there is a markup tomorrow, I am hopeful that the witnesses here will be as helpful as they can in bringing the Committee to a constructive resolution on the restructuring idea, which has been around—the idea of restructuring has been around—for a while.

I have a lot of comments to make that are not as positive as I would have—My staff did this work, so I am going to put it in the record, but I will disassociate myself from the more critical—
[Laughter.]

Mr. CONYERS. We have sort of gone back over the last hearing, and we have been through there now. Now this is the positive hearing. This is where we all come together and try to be constructive with how we restructure INS.

And I am going to be especially nice to Mr. Ziglar, because in Miami we came across a problem where the Haitians almost have a different policy as to how they are treated when they end up on these shores. And so I am going to be looking for his cooperation in that regard, as well.

So with those reservations, I ask unanimous consent to place my statement in the record, Mr. Chairman.

Chairman SENSENBRENNER. Without objection, so ordered.

Chairman SENSENBRENNER. And without objection, all Members' opening statements may be placed in the record at this point.

[The statements follow in the Appendix]

Mr. GEKAS. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Pennsylvania.

Mr. GEKAS. Yes. I think it is an important feature of what we are about, Mr. Chairman, to learn what is the status of the four Pakistani ship jumpers. We know that one was apprehended, but we have not heard much lately about the status of the investigation into the whereabouts or status of the other three.

I would ask unanimous consent that the Chairman be permitted to grant Mr. Ziglar two additional minutes in the beginning of his presentation to give us a status report on the Pakistani ship jumpers, so that we would have a clear picture of that before we proceed with the hearing.

Chairman SENSENBRENNER. Mr. Ziglar, will that be enough time for you to explain about what happened to them?

[Mr. Ziglar nods.]

Chairman SENSENBRENNER. Okay. Our first witness is Mr. James Ziglar, who began as INS Commissioner on August 6, 2001. He formerly was the 35th Sergeant at Arms and Doorkeeper of the Senate. Prior to that, he was the managing director of Paine Webber. He has also worked in various capacities in the Federal Government, including as Assistant Secretary of the Interior for

Water and Science. Commissioner Ziglar received his bachelor of arts and law degrees from George Washington University.

The second witness is Richard Gallo, president of the Federal Law Enforcement Officers Association, which represents about 20,000 Federal agents. Mr. Gallo is a senior special agent in the U.S. Department of Agriculture, Office of Inspector General, where he has worked since 1984. He has received his bachelor of science in criminal justice, master's in public administration, and master of arts in criminal justice, all from the John Jay College of Criminal Justice.

Dr. Susan Martin is the third witness. Dr. Martin has served as the director of the Institute for the Study of International Migration at Georgetown University from 1998 to the present. From 1992 to 1997, she was executive director of the U.S. Commission on Immigration Reform, also known as the "Jordan Commission," which began this multi-year process of attempting to reorganize the INS with its restructuring proposal. She received both her Ph.D. and master's degrees from the University of Pennsylvania.

Our final witness for the day is Lawrence Gonzalez, Washington director for the National Association of Latino Elected and Appointed Officials, also known as "NALEO" Educational Fund. Prior to joining the NALEO Educational Fund, Mr. Gonzalez served as a legislative aide in the Illinois Senate. He holds a bachelor's degree in journalism from Western Illinois University, and is currently working toward a master's degree in legislative affairs at George Washington University.

Would each of you please rise and raise your right hand and take the oath.

[Witnesses sworn.]

Chairman SENSENBRENNER. Let the record show that each of the witnesses answered in the affirmative. Without objection, all of the witnesses' written statements will appear in the record as a part of their testimony.

I would ask Mr. Ziglar to sum his testimony up in 7 minutes, and the rest of you in 5 minutes. And Mr. Ziglar, you are first.

**TESTIMONY OF JAMES W. ZIGLAR, COMMISSIONER, U.S.
IMMIGRATION AND NATURALIZATION SERVICE**

Mr. ZIGLAR. Thank you, Mr. Chairman. Congressman Gekas, I am not sure exactly how much detail you want me to reiterate about the Pakistani crewmen situation. We have supplied the Committee with some fairly detailed answers to questions.

But with respect to the issue of where the investigation is at the moment, as you know, we found one of the crewmen in San Antonio, after some, I think, rather good detective investigative work. We tracked him down there. We continue to be tracking leads on the other three Pakistanis with the FBI, local law enforcement. We have obviously put out alerts for these folks all over. And so we do not have the other three.

However, I think it is important to note that there is no information on any of these four—well, now three—individuals that would indicate that they have any connection to any terrorist or criminal organizations. As you know, in our submission to you we noted all of the different sources that we have checked—Interpol, CIA, FBI,

and others—with respect to information on these individuals. We have no reason to believe that they are anything other than ship jumpers; which, of course, is something that occurs from time to time.

Did you want any more discussion of that issue, or is that adequate?

Mr. GEKAS. If I may, Mr. Chairman, I think it is adequate for the description that you have given us to occupy the record for the time being. I simply want everyone to recognize it is an ongoing investigation in which an ample supply of information should be given to us as it is made available.

Mr. ZIGLAR. Congressman, it is definitely ongoing, and at a very intense level. And we will keep you informed as developments occur on that.

Mr. Chairman, I appreciate the opportunity to be here today to talk about reforming and restructuring the INS. Mr. Chairman, anybody who has followed the INS, as you noticed, even for a short period, much less the rather extensive and lengthy time that you and many other Members of this Committee have followed the INS, knows that the major reform and restructuring at INS is not only desirable, but it is absolutely necessary.

It is necessary to better secure our country against terrorists and criminal aliens. It is necessary to more effectively enforce our immigration laws at the border and in the interior. And it is necessary to provide better and more efficient and effective service to legitimate petitioners who are seeking benefits under our immigration laws.

This is not an easy or a simple mission, because it involves more than just changing processes and changing management structures—or moving the boxes around, as you mentioned. It also involves changing the culture of the organization and motivating the workforce.

The process of reforming the INS is made even more difficult by the Agency's existing structure that creates mission confusion, as you point out, and reflects an opaque command and accountability structure. The INS comes into contact every year with over a half a billion people at our ports of entry; and yet we have only 5,000 inspectors to process these hundreds of millions of people. We have only approximately 2,000 investigators throughout the country to deal with persons who have entered illegally, or criminal aliens or terrorists who have engaged in immigration fraud or who have overstayed their visas or otherwise have entered or are in the United States illegally.

The task is daunting, to say the least. Yet the Agency has experienced explosive growth, as your charts so adequately point out, over the past several years; growing each year between 10 and 20 percent, including a doubling in the size of our workforce since 1994. The work load, as again demonstrated in your chart, has grown at even a faster pace. For example, in the last 8 years, we have had more naturalization petitions than we had in the past 40 years combined.

There is no debate about whether the INS must be reformed. When I was asked to take this job, the Attorney General and the President set forth two primary goals for me to achieve, or try to

achieve. The first is to restructure the Agency, and secondly, to reduce the backlogs. There is no confusion in my mind, or the Administration's mind, about the mission. The issue is simply: How can it be done quickly, efficiently, and with the appropriate degree of flexibility?

I believe it is important to recognize, Mr. Chairman, that there are common elements and themes that define the Administration's restructuring plan and the legislation that is being considered by this Committee. First, both plans recognize the importance of separating enforcement and services in such a manner as to address the competing priorities, the problematic chains of command, and the lack of accountability. Thus, we both provide for separate enforcement and services functions.

Second, both recognize that some functions, such as the chief financial officer, are better performed reporting directly to Agency leadership, rather than to one of the two Bureaus.

In addition, the legislation provides important buyout and relocation authority which, as we all know, is critical to restructuring, no matter how the restructuring is undertaken.

I have heard loud and clear the many concerns from Members of Congress about the INS; and particularly you, Mr. Chairman. As I stated at the hearing before the Immigration and Claims Subcommittee on March 19, I am using the events of the past few weeks as a catalyst to institute the changes and reforms urgently needed at the INS. The concurrences by the House and Senate Appropriations Committees that were received on March 18th and March 21st, respectively, have given us the green light to move forward with the Administration's restructuring plan.

In fact, as noted in my written testimony that was submitted for the record, I will be taking specific actions this week—and already have, actually, taken some—with respect to the restructuring; including changing and simplifying the chains of command for the Border Patrol, for detention facilities, and for the adjudications functions, among others. These are major changes that will set the stage for formally dividing the service and the enforcement functions. I think that is a goal that we both can agree on.

I want to emphasize that the Administration's restructuring plan is a fundamental reform that splits services and enforcement into two bureaus. While it is true that past Administrations have restructured some parts of the Agency, particularly at the headquarters, as your litany over there points out, these partial reorganizations have not fundamentally changed the way that the organization does its business at the field level, or focused on the core issue of competing and occasionally conflicting service and enforcement priorities.

The Administration's restructuring plan addresses the issues where they need to be addressed, and that is at the operating level in the field. After the incident involving the I-20 notices sent to Huffman Aviation, I suggested a series of proposed regulatory and process changes to the student visa program, in addition to some other regulatory changes that were already in the works at the time.

Yesterday, we made good on our proposals with respect to several of the regulatory changes; including proposed regulations

changing the default period for “B” visa holders from 6 months to the period necessary to achieve the purpose of their trip. We are tightening the circumstances under which extensions of stay can be granted. And we have published a proposed regulation to prohibit changing from visitor status to student status unless the intent of that prospective student is indicated at the time of their entry.

We are also publishing an interim regulation that is effective immediately and prohibits a foreign student from beginning matriculation at an American school until his or her student visa is approved.

Chairman SENSENBRENNER. Mr. Ziglar, do you think you could wrap it up in a minute or so?

Mr. ZIGLAR. I am real close.

We are also publishing a proposed rule that would require that those who fail to surrender for deportation will have additional penalties for it. This is just the beginning. We will be undertaking a number of regulatory and management initiatives to improve our enforcement and our services.

Mr. Chairman, in conclusion, the Administration understands the interest of many Members of the Congress to restructure through a legislative vehicle. We want to work with you and the Congress to complete a restructuring that effectively addresses your concerns and the Congress’ concerns and, at the same time, gives the Attorney General and the Department of Justice the flexibility to adjust to ever-changing needs and circumstances with respect to the enforcement of immigration laws and the provision of immigration services.

Mr. Chairman, thank you very much for this opportunity. I look forward to your questions.

[The prepared statement of Mr. Ziglar follows:]

PREPARED STATEMENT OF JAMES W. ZIGLAR

Mr. Chairman and members of the Committee, I appreciate this opportunity to testify today on reforming and restructuring the Immigration and Naturalization Service (INS).

Mr. Chairman, I have a vision for a reformed INS: It is to ensure that every individual who comes into contact with the Immigration and Naturalization Service, regardless of their citizenship, the circumstances of their birth or any other distinguishing characteristic, will be treated with respect and dignity, and without any hint of bias or discrimination. Mr. Chairman, every sovereign nation has a right—indeed a duty—to protect the integrity of its borders. A reformed INS will continue to protect our borders and defend Americans from terrorism and other national security threats.

This is not an easy mission, and it is one made more difficult by the agency’s structure. More than five hundred million inspections are conducted at our ports of entry every year, and hundreds of millions enter the United States without visas, through visa waiver programs or other exemptions from the normal visa process; the INS has roughly 5,000 Inspectors to process these hundreds of millions of visitors who arrive at our borders every year. INS has approximately 2,000 investigators throughout the country to deal with persons who have entered illegally, are criminal aliens, or have overstayed their visas or otherwise have violated the terms of their status as visitors to the United States. The agency has experienced explosive growth over the past several years, growing at an annual rate of more than 10 to 20%, including a doubling in the size of its workforce since 1994. In the past 8 years alone, more people have applied for naturalization than in the previous 40 years combined.

There is no debate as to whether the INS must be reformed. When I was asked to take this job, the Attorney General and President set forth two goals: restructure the agency and increase its efficiency. There is no confusion about the mission; the issue is simply how it can be done quickly, efficiently, and with the appropriate degree of flexibility.

Although we are not in a position to express a formal position on H.R. 3231 beyond the comments included in my statement, we note that the Administration's restructuring proposal and H.R. 3231 share important common goals.

First, both plans recognize the importance of separating enforcement and services in such a manner as to address competing priorities and problematic chains of command. Thus, both provide for separate enforcement and services functions.

Second, both recognize that some functions, such as that of a Chief Financial Officer, are better performed reporting directly to agency leadership, rather than within one of the two bureaus.

In addition, H.R. 3231 will provide important buyout and relocation authority, which is important for restructuring efforts.

I have heard loud and clear the many concerns from Members of Congress about the INS. As I stated at the hearing before the Immigration and Claims Subcommittee on March 19, I want to use the events of recent weeks as a catalyst to institute the changes and reforms urgently needed at the INS. The concurrence by the House and Senate Appropriations Committees that were received on March 18 and March 21, respectively have given us the green light to move forward with the Administration's Restructuring Plan.

After the incident involving the I-20 notices sent to Huffman Aviation, I put forward a series of significant regulatory and process changes to the student visa program. I also made a series of high-level personnel moves at the INS to reshape our management team. After the recent incident in Norfolk, Virginia, where indications are that procedures on waivers for four Pakistani crewmen were not followed, I moved quickly to reassign the supervising officer, pending an investigation, and instituted a zero-tolerance policy on failure to follow policy from headquarters.

Mr. Chairman, we want to work with you and the Congress to complete a restructuring that effectively addresses your concerns and at the same time gives the Attorney General and the Department of Justice the flexibility to adjust to ever-changing needs and circumstances with respect to the enforcement of immigration laws and the provision of immigration services.

In my testimony today, I will address first the Administration's restructuring proposal. I then will address certain reforms that are proposed in H.R. 3231 and why they raise concerns for the agency.

ADMINISTRATION'S RESTRUCTURING PROPOSAL

In November, the Attorney General announced the start of a reorganization of the Department of Justice to reorient DOJ as a department whose primary responsibility is to defend Americans against terrorism and other national security threats. At that time, he stated that the administrative restructuring of the INS is a major part of that reorganization. As you know, we sent the Congress an administrative Restructuring Proposal for the INS last November, and as noted earlier in late March, the Department of Justice received letters from the House and Senate Commerce, Justice, State Appropriations Subcommittees concurring in INS moving forward with that full restructuring plan.

The INS restructuring plan is a fundamental reform that splits service and enforcement into two bureaus. It will clarify and streamline the chain of command at INS and increase accountability. While it is true that past Administrations have restructured some parts of the agency, these partial reorganizations have not fundamentally changed the way the agency does its business at the field level or focused on the core issue of competing and occasionally conflicting service and enforcement missions. Moreover, due to an unprecedented growth in staffing and expansion of its mission, the agency is very different today than in the past, and the merits of the current proposal should not be judged against those with different and, indeed, narrower aims.

We are moving quickly on key steps to restructure the Agency. We are in the process of:

- Establishing a direct reporting relationship from Chief Patrol Agents in the field to the Border Patrol Chief in Headquarters;
- Announced that we will establish an Office of Juvenile Affairs reporting directly to the Commissioner with direct line authority over officers in the field making and implementing decisions regarding juveniles.
- Advertising for the position of Chief Information Officer (CIO). The CIO will ensure the effective integration and coordination of data systems of mutual interest to the bureaus of Service and Enforcement as well as other federal agencies;

- Advertising for the position of Chief Financial Officer (CFO). The CFO will be responsible for ensuring sound fiscal management reporting directly to agency leadership; and
- Planning has begun for the Headquarters Detention and Removal Program to oversee facility management, care of detainees, management of detention standards and bed space allocations at all INS owned and operated Service Processing facilities; and
- Begun the process of realigning reporting relationships in the adjudications arena.

The Office of Restructuring, which was established to move the restructuring initiative, will implement Headquarters restructuring this fiscal year. We will create the new Bureaus of Immigration Services and Immigration Enforcement by realigning reporting relationships and streamlining chains of command. The actions already taken, as noted above, reflect the first phases of the creation of separate bureaus. Field planning will entail a detailed analysis of facilities and workload distribution and development of a comprehensive human resource plan for making the necessary personnel adjustments. As part of field implementation, to be completed in 2003, we will abolish the existing Regional and District offices, as well as the positions of Regional and District Directors, and establish the new services and enforcement areas.

Mr. Chairman, the restructuring of INS is designed to address key problems identified by Members of Congress and the public. Two interrelated criticisms that have been identified are: 1) that the current INS structure incorporates a mixed mission, and 2) that the agency lacks clear chains of command. Currently, the field structure of the INS centers around District Directors, who report to Regional Directors, who in turn report to the Executive Associate Commissioner for Field Operations. All of these individuals have dual service and enforcement responsibilities. The Administration's plan changes that. Under the restructuring plan, the positions of District Directors and Regional Directors will be eliminated. In their place, the Border Patrol, Inspections, Investigations and Intelligence components of INS will be under the command of the Chief of the Border Patrol and Interior Enforcement Division, who will report to the Executive Commissioner for Immigration Enforcement. The International Division and the Detention and Removals Division will also report directly to the Executive Commissioner for Immigration Enforcement. Services personnel will report through a Services chain of command, leading up to the Executive Commissioner for Immigration Services. A key element of the restructuring is to provide clarity of function by improving accountability and professionalism through a clear and understandable chain of command with specific expertise at all levels.

Another significant problem at INS is information technology. The restructuring plan seeks to address part of this problem by establishing the new position of Chief Information Officer (CIO). The plan establishes an Information Coordinator, working through the CIO, to ensure that Enforcement and Services Bureau personnel maintain necessary and appropriate access to interrelated enforcement and services data.

Concerns have been raised that INS enforcement does not always respond in the most appropriate or timely manner. This plan will enhance immigration law enforcement and improve our ability to respond to national security threats by eliminating current layers of reporting and the dual service and enforcement responsibilities out in the field. For example, the 21 Border Patrol Sector Chiefs now report to three Regional Directors rather than straight to the Chief of the Border Patrol. In some cases, they were reporting to persons with no law enforcement background. These extra reporting layers at times prevented rapid deployment and redeployment of agents and equipment in the field. The current reporting structure for Investigations, Inspections and the Detention and Removal program is even more problematic as those components report through District Directors and Regional Directors before reaching headquarters, and may be reporting to individuals without the requisite experience in those programs.

As noted earlier, a key step in restructuring on the enforcement side will be accomplished by requiring the 21 Border Patrol Sector Chiefs to report straight to headquarters to the Chief of the Border Patrol. In addition, under our proposal, there will be nine Enforcement Areas, where a Special Agent in Charge (SAC) for Investigations and an Area Port Director for Inspections in each of the areas will be co-located for coordination and administrative purposes. Special Agents in Charge and Area Port Directors will report to the Chief of the Border Patrol and Interior Enforcement Division. Similarly, the Detention and Removal program will have an independent chain of command that will support the Border Patrol, Inspec-

tions and Investigations programs and continue to detain and remove illegal aliens from the United States.

Another problem that has been identified is INS' treatment of juveniles who come into our custody. The restructuring establishes an Office of Juvenile Affairs, whose director will have the necessary authority to ensure that custody and placement decisions with respect to juveniles are appropriate.

Finally, complaints about INS service performance have been long-standing. Under the restructuring, service will improve because the chain of command will be clarified and streamlined. Officers and staff in the field will report to their respective program managers directly without being judged or adversely affected by competing interests, such as is now the case in District and Regional offices. Eliminating the District Director and Regional Director positions in this chain of command will increase accountability and establish clearer points of contact for immigrants, U.S. citizens and Congressional offices. The six Area Directors, who will focus solely on adjudications and related service functions, will have substantial authority to control activities within their area.

H.R. 3231

Mr. Chairman, as noted at the outset of my testimony, we recognize and appreciate the positive aspects of H.R. 3231, including the separation of the service and enforcement functions, buyout authority, recognition of the importance of functions that serve both services and enforcement purposes, and an emphasis on customer service, such as establishing an Ombudsman position. We have, however, some concerns about H.R. 3231, particularly with regard to the supervisory authority of the Attorney General and the new Associate Attorney General for Immigration Affairs (AAGIA). We hope that these issues can be addressed as the legislation moves forward.

Under current law, the Attorney General's exercise of authority over the Commissioner, or other Department officials, is based upon the principle of delegation. The Attorney General has delegated substantial authority to the Commissioner, but retains the ultimate statutory responsibility to administer and enforce the immigration laws under section 103 of the Immigration and Nationality Act (INA). In H.R. 3231, this principle is substantially weakened, because it is the subordinate officials who are vested with the statutory authority over immigration services and enforcement, rather than their supervisors.

The bill statutorily transfers from the INS Commissioner to the Director of the Services Bureau the immigration service functions, and from the Commissioner to the Director of the Enforcement Bureau the enforcement functions. Therefore, although the Associate Attorney General for Immigration Affairs has nominal supervisory responsibility over the Directors, they in fact have substantially greater statutory functions than their nominal supervisor.

As the functions that would be transferred to the Directors by statute are currently regulatory, not statutory, H.R. 3231 would transform the current delegation of the Attorney General's authority by regulation into a direct statutory assignment of functions to lower-level Department officials. These provisions potentially could call into question the ultimate authority of the Attorney General, acting through the Associate Attorney General for Immigration Affairs, to direct and control the immigration services and enforcement functions. Although technical drafting concerns regarding transfers of functions may be solved through appropriate technical amendment, these provisions raise substantive concerns as well regarding the intended scope of the Associate Attorney General for Immigration Affairs' authority to direct and control the service and enforcement bureaus.

The issue of accountability further arises in this respect, since the Attorney General and the new AAGIA would be nominated by the President and confirmed by the Senate, whereas the specific experience requirements of H.R. 3231 make it almost assured that career immigration officials would occupy the posts of Directors of the Service and Enforcement Bureaus. The experience requirement additionally for the AAGIA also uniquely limits the President's appointments authority. These constraints on the President's Appointments Power raise constitutional as well as prudential concerns.

Another issue the bill raises is flexibility. The statutory establishment of numerous positions from the national level down to the local level would circumscribe the ability of the Attorney General and Department of Justice to restructure and reorganize these offices as needs may dictate without future legislation. This, as well as some other provisions, would uniquely limit the ability of current and future Attorneys General or Presidents to reorganize operations related to administering our immigration laws. Retaining the ability to respond quickly and thoroughly to changed

circumstances, as well as to trends that develop over time, is an advantage of administrative restructuring or of a less detailed bill.

Finally, while an immigration services customer relations office is a shared feature of H.R. 3231 and the Administration's restructuring plan, the reporting requirements of the Ombudsman provisions in the House bill raise separation of powers concerns. Under H.R. 3231, the Ombudsman is to issue reports and legislative recommendations directly to Congress without the Department of Justice or other executive branch officials being permitted to examine the reports prior to issuance. By constraining executive branch channels of review in this manner, this provision raises a serious constitutional question with respect to its impairment of the President's ability to oversee the functions of an Executive Department and to "take care that the laws be faithfully executed." Art. II, sec. 3.

The restructuring of the INS is an important issue. The aftermath of the attacks on the Pentagon and World Trade Center was an incredibly tense time for everyone. Any agency leader needs to be able to make quick decisions regarding staff deployment, directing the investigation and detention of possible terrorists and their accomplices, and formulating new regulations and procedures with regard to the INS' participation in the investigation of and response to the attack. It is crucial to preserve the ability to respond quickly to changing circumstances and to maintain a strong leader at the top to allow swift and decisive action, particularly in times of crisis.

Mr. Chairman, you and this Administration share exactly the same goal—and that is to improve the effectiveness and efficiency of enforcement of our immigration laws and service to those who are entitled to benefits under those same laws. We may differ as to the specific approach in reaching that shared goal, but I hope and believe that we will be able to find common ground in realizing our objective.

Chairman SENSENBRENNER. Thank you very much, Mr. Ziglar.
Mr. Gallo.

**TESTIMONY OF RICHARD J. GALLO, NATIONAL PRESIDENT,
FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION
[FLEOA]**

Mr. GALLO. Good afternoon, Mr. Chairman, Ranking Member Conyers, Members of the Committee. Thank you for allowing the Federal Law Enforcement Officers Association—

Chairman SENSENBRENNER. Mr. Gallo, could you turn your microphone on?

Mr. GALLO. Yes, sir.

Chairman SENSENBRENNER. Sounds better. Thank you.

Mr. GALLO. I will start over now. Good afternoon, Mr. Chairman, Ranking Member Conyers, and Members of the Committee. Thank you for allowing the Federal Law Enforcement Officers Association, known to many as "FLEOA," to testify on an important and vital subject.

FLEOA is a voluntary, non-partisan, professional association consisting exclusively of Federal agents. We currently represent agents from over 50 different agencies. We represent many of the outstanding men and women who enforce our Nation's immigration laws.

Our association considers the issue of INS reform to be of the greatest importance. This is the seventh time in the last 6 years that America's Federal agents have testified in support of reforming the Immigration and Naturalization Service. We hope it is the last time that we have to testify on this topic, but we also wonder when the eighth time or the ninth time is going to happen.

Each time we have testified before Congress, we have said INS is suffering from mission overload; suffering from a management matrix that makes the employees serve two different masters. The law enforcement branches, in order to do their job effectively and

efficiently, have to be separated from the benefit branches. All other Federal law enforcement agencies, except ATF, which just went to the INS model 3 years ago—which means in a few years we may be here talking about ATF's management problems—all other Federal law enforcement agencies have a different management structure than INS.

FLEOA believes the necessary reform of INS will be accomplished with the passage of the recently introduced Immigration Reform and Accountability Act, H.R. 3231, and we hope with swift and successful congressional action.

I want to take a moment to comment on the INS's restructuring proposal. FLEOA supports the Administration's desire to improve the INS through restructuring. The proposed restructuring is a good effort toward reform. However, it is FLEOA's concern that this internal plan may not solve the problem.

Commissioner Ziglar has brought to the forefront that which FLEOA has been imploring be enacted for many years, and we appreciate the job he has done so far. It is not Commissioner Ziglar's fault that INS suffers from mission overload, and we commend him for the job that he has done in this past year; for he has done more on restructuring than has been completed in the previous 8 years. But it is still FLEOA's belief that H.R. 3231 will go even further to improving the Immigration and Naturalization Service.

The restructuring of INS must be carried out in order to improve INS; for the Agency has crumbled under its own weight. Does anyone believe that INS' previous attempts to reform itself have worked? It is FLEOA's view that INS can only reform itself if Congress plays a substantial and aggressive role.

Mr. Chairman, I would also respectfully submit that upon creation of the stand-alone enforcement bureau, it is not necessary to reinvent the wheel, but merely adopt tried and true successful practices of modern law enforcement entities.

We must no longer confuse effective immigration law enforcement as being anti-immigration. Yes, we are a nation of immigrants; but first and foremost, we are nation that respects the rule of law above all else. As Robert F. Kennedy said, "The fight against crime is in the last analysis that [sic] same as the fight...to preserve that quality of community which is at the root of our greatness."

Immigration law enforcement should be looked upon as a safeguard for those who seek shelter and a better life in America. The investigation division employs approximately 1,800 special agents today for the entire interior of the United States. The Administration itself estimates that for every one alien apprehended by the Border Patrol, two get through; and that approximately 42 percent of the current 11 million illegal alien population entered the country with a valid visa, and simply overstayed that visa.

Budget increases for the investigation division under the Clinton Administration were modest by anyone's standards, and the net result was that no special agents were added. Zero.

Congress must strike a balance between enforcement on our borders and enforcement in the interior. Clearly, the disaster of September 11th demonstrated that a total focus on a first line of defense will not lead to victory. The number of INS special agents

and deportation officers is clearly inadequate, considering that this branch is the only INS law enforcement branch presence in large interior non-border States.

Due to the lack of interior resources and management apathy, INS special agents and deportation officers leave the Agency at an unprecedented rate. An informal inquiry in just one district, New York, indicates that in a 3-year period, 53 special agents have resigned from the INS to go to other Federal law enforcement agencies.

It is significant to note that the average pay grade level of an INS special agent was the lowest of all the agents in the Department of Justice, including FBI and DEA; although all of them are GS-1811 investigators. This is a relevant factor, since it affects the morale of all special agents.

In closing, on behalf of the Federal Law Enforcement Officers Association and of 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. And we implore you, on behalf of the men like John Macavoy of Ladder Three, New York City Fire Department; Donnie MacIntyre, police officer with the Port Authority Police Department; and James Ladley, a partner with Kantor Fitzgerald; and all those who died on 9/11; that the time has come for the talk to end, and for action to take place. Thank you, Mr. Chairman.

[The prepared statement of Mr. Gallo follows:]

PREPARED STATEMENT OF RICHARD J. GALLO

Good afternoon, Mr. Chairman, Ms. Ranking Member Jackson Lee and distinguished Members of the Subcommittee. Thank you for allowing FLEOA 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. That revitalization will be accomplished through passage of the recently introduced Immigration Reform and Accountability Act, H.R. 3231. FLEOA pledges to do everything possible to ensure swift and successful Congressional action.

I want to take a moment to comment on the INS's Restructuring Proposal. FLEOA supports the Administration's desire to improve the INS through restructuring. The INS proposed restructuring is a good effort toward reform, however it is FLEOA's concern that it may not solve the growing problem. Commissioner Ziglar has brought to the forefront that which FLEOA has been imploring be enacted for many years and we appreciate the job that he has done so far. It is not Commissioner Ziglar's fault for the fact that INS suffers from mission overload. We commend Commissioner Ziglar on the job that he has done this past year, for he has done more in this past year on restructuring than the previous 8 years. Still we urge to review the elements of HR 3231 to better enhance the INS Field level of operations. It is FLEOA's belief that HR 3231 will go further to improve the INS.

Many of the issues FLEOA has raised in the past are now receiving attention. Chairmen Sensenbrenner and Gekas, along with Misters Harold Rogers, Lamar Smith and Silvestre Reyes have been proponents of reform for years, while INS has languished. The restructuring of the INS MUST be carried out, in order to improve the INS. FLEOA supports H.R. 3231.

Based upon the tragic events of the past months and the recent negative media reports that highlight problems with leadership and accountability within the INS, such as the New Jersey "Bergen Record's" report in January that INS Headquarters brought in "a psychologist to troubleshoot a broad range of problems at its Newark Investigations Branch". The report described the office as dysfunctional and beset by frequent conflicts. It stated further, "many employees dread coming to work, and that they feel unsupported". The report concluded that many INS Special Agents reported "emotional and family problems, that they related to the job". There was "an almost unanimous belief that the branch's problems were due to leadership or lack thereof".

In March of this year, CBS' 60 Minutes broadcast a report in which it noted that "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.

It is our view that the INS has lost the confidence of the American people: this is not new to us. Back in 1991 a GAO report entitled "Immigration Management: Strong Leadership and Management Reforms Needed to Address Serious Problems," made the INS undertake an administrative reform in 1994, which was flawed. Again in 1997, the GAO issued another report, titled "Immigration Management, Follow-up on Selected Problems", this again prompted INS to reform itself in 1998. Does anyone here believe that the INS attempts to reform itself has worked? Since the GAO report in 1991, there has been a succession of negative and critical reports in regard to the INS by numerous other governmental and private entities. Based upon this, it is FLEOA's view that the INS can only reform itself if Congress plays a substantial and aggressive role.

As a National President 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 ever-increasingly dangerous line of work. In fact, in July of 1998, the first female Border Patrol agent was slain along with a male trainee Patrol agent while attempting to arrest a deranged murderer in San Benito, Texas. Ironically, the *INS has yet to implement* a key provision of the Immigration Act of 1990 that would provide general arrest authority to extend protection against legal liability to INS officers in such situations as this. That is correct, I said 1990! This tragic anecdote is not a mere criticism of the status quo but rather an indictment. I offer this by way of example of the total inefficiencies of that current bureaucracy. 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 INS remained stagnant, at best, and highly resistant to those very changes.

I read, with interest, the statements of former Senator Spencer Abraham in the New York Times on January 17, 1997. At that time, he outlined his priorities for the Senate Immigration Subcommittee when addressing the Cypress Semiconductor Corporation in San Jose, California. I could not agree more that it makes "little sense to have a single agency, the Immigration and Naturalization Service, responsible for keeping out illegal immigrants and, at the same time letting in legal immigrants and refugees". Furthermore, he then suggested splitting the INS into two agencies.

This statement came six years after the 1991 GAO report noted above in which the GAO noted 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.

On March 31, 1998, the Honorable Harold Rogers questioned then INS Commissioner Doris Meissner regarding the recommendations for restructuring by Booz-Allen, the INS Contractor, and stated, "Did you look at two different agencies within Justice to achieve on one hand, enforcement; on the other hand, service matters?" Mr. Rogers went on to point out the systemic formula for failure that even the Booz-Allen study would perpetuate when he stated, "There is an inherent conflict with having this all in one agency. . . . Even though you may have two separate chains of command, it eventually winds up on your desk."

The GAO noted in a 2000 report entitled, "Alien Smuggling: Management and Operational Improvements Needed to Address Growing Problem", that without im-

provements 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. It should be noted that within this report the GAO noted that organized crime groups contribute to alien smuggling and present a growing problem to the INS. The GAO noted further that these groups have taken advantage of the Visa Waiver Pilot Program as well as engaging in other types of visa fraud to gain entry into the United States for their clients.

The GAO noted in a report published in 2001, "Overview of management and Operational Improvements Needed to Address Growing Problems", that the INS mission involving the carrying out of two primary functions—enforcing immigration laws and providing services or benefits to eligible legal immigrants translated into competing priorities at the program level that needed to be balanced for effective program implementation. The GAO noted that too often the INS placed emphasis on one program over the other that resulted in ineffective enforcement or poor benefit delivery.

Representative Rogers captured the essence of the problem in stating, "The missions and jobs they're charged with are too big and too important to be botched, and that's what they've done, botched their job". 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 thereby successful.

Two separate bureaus within Justice for immigration enforcement and benefit disbursement, administered by a new Associate Attorney General for Immigration Affairs will provide the essential specialization to resolve, "mission overload." At the same time, enforcement and service will have the requisite communication and coordination through oversight by the Justice Department.

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 first and foremost, we are a nation that respects the rule of law above all else. As Robert F. Kennedy said "the fight against crime is in the last analysis that same as the fight . . . to preserve that quality of community which is at the root of our greatness". Immigration law enforcement should be looked upon as the safeguard for those who seek shelter and a better life in America. Effective immigration enforcement will lessen 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.

In the 1991 GAO Report, the GAO identified changes in the evolving INS enforcement mission. The report noted, "During this period INS saw its enforcement mission evolve from one aimed primarily at interdicting aliens at or near the border to one with increased emphasis on investigative work and drug interdiction." *GAO recommended the consolidation of ". . . all field enforcement functions, including Border Patrol and District enforcement functions under a single official within a geographic area."*

The consolidation of enforcement functions 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 variances in District Office policies relating to service functions should be greatly reduced when District Directors are relieved of the responsibility of carrying out simultaneous enforcement efforts.

Enforcement efforts will be more uniform in application, and the overlapping functions of the Border Patrol and Investigations can be substantially reduced or eliminated altogether. This can be accomplished through development of Enforcement Sectors and the integration of enforcement components within that structure.

The establishment of integrated sub-units at the field level would ensure an appropriate level of specialization while maintaining flexibility, and would facilitate a cooperative and balanced approach. Frankly, the establishment of a Chief Enforcement Officer who supervises all enforcement components in a particular field enforcement sector and reports to the Bureau of Immigration Enforcement Headquarters Director is an idea whose time has come! This concept begs for congressional attention. It is needed to overcome the inefficient and incredibly confusing status quo—or even the half-steps that are envisioned under an internal benefits-versus-enforcement split within INS.

The first component is the BORDER PATROL:

The Border Patrol is the largest enforcement component within INS, with considerable growth in the recent past to approximately 9,000 agents on duty. Under the new—immigration law enforcement bureau concept, a Deputy Chief for Border Patrol Operations would report to the Chief within a respective Enforcement Sector.

The next vital component is INVESTIGATIONS:

The Investigations Division is the general and criminal investigative arm of the "Enforcement Sector," and should be responsible for all complex, protracted investigative activities. It is FLEOA's recommendation that the Investigations component operate in a manner similar to that of most major federal investigative agencies and police detective bureaus. Furthermore, this component should adopt hiring, training and promotion standards similar to other federal investigative agencies. This division would be overseen by a Deputy Chief for Investigative operations, reporting to the Chief of the Enforcement Sector.

The Investigations Division employs approximately 1,800 special agents today for the entire interior of the United States. The Administration, itself, estimates that for every one alien apprehended by the Border Patrol, two get through and that approximately 42% of the current 11,000,000 illegal alien population entered the country with a valid visa and simply overstayed that visa. Budget increases for the Investigation Division under the Clinton Administration's were modest, by anyone's standards. *The net result, no Special Agents added, at all.*

While the Border Patrol has grown to over 9,000 Patrol Officers, the Investigation Division, by comparison, remains at approximately 1,800 Special Agents. The number of INS Special Agents is clearly inadequate, considering that the Investigations Branch is the only INS law enforcement presence in large interior, non-border areas such as New York, Boston, Washington, DC, Atlanta, Houston, Los Angeles and Chicago.

Furthermore, since September 11, INS agents have been asked to take on more responsibilities concerning matters of national security. The approximately 1,800 Special Agents have been asked to conduct investigations on suspected violations of the INA, including terrorism, alien smuggling, trafficking of aliens, apprehension of criminal aliens and numerous other criminal violations. The INS also has 127 Special Agents assigned to Organized Crime Drug Enforcement Task Force (OCDETF) in nearly 60 cities across the United States. With only 1,800 Special Agents throughout the United States, mission fulfillment is difficult at best.

Congress must begin to strike a balance between enforcement on our borders and enforcement in the interior. Clearly, the catastrophic attacks of September 11 demonstrated that a total focus on the first line of defense will not lead to victory. Word of mouth travels rapidly back to the source countries that one must merely make it across the border in order to attain this new form 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 U.S. interior through comprehensive immigration law enforcement.

DETENTION AND REMOVAL is another key component:

The Detention, Removal component is responsible for the care and custody of the alien population detained by the Enforcement Sector; it is responsible for managing the alien docket and bond control, and for arranging removal of aliens from the United States.

Since September 11, the duties of Officers assigned within this component have also become more sensitive, duties such as maintaining liaisons with foreign consulates and embassies, detaining individual illegal aliens with possible ties to terrorist organizations and assisting with locating over 300,000 aliens who have failed to depart the United States, have taken on a greater significance. The Deputy Chief for Detention and Removal Operations would oversee this unit, and would report to the Chief Enforcement Officer.

The final components of the Enforcement sector are INSPECTIONS and INTELLIGENCE:

The Inspections component is responsible for the inspection of applicants seeking admission to the United States at air, land and sea ports of entry. As with the others, the Deputy Chief for Inspection Operations would report to the Chief Enforcement Officer.

The Intelligence component within the Enforcement Sector should play an integral role in support of the other enforcement components. Intelligence officers should be integrated into each field enforcement component unit. The Deputy Chief for Intelligence and staff would be responsible for the collection of information, anal-

ysis of information, and reporting of intelligence product upward through the organization and outward to other components. The Deputy Chief for Intelligence Operations would report to the CEO.

Among INS Investigators and Deportation Officers, problems of status and morale emerge from the dual mandate requirements of the INS. Problems also surface in the areas of organizational relations, as well as notions about professionalism that affect recruitment, retention, training and worker expectations.

Due to the lack of interior resources and management apathy, INS Special Agents leave the agency at an unprecedented rate. An informal inquiry in just one District, New York City indicates that in a three-year period 53 Special Agents have resigned from the INS. Of the 53 Special Agents, 43 indicated that they were departing the INS to take employment with other federal agencies. Numerous others have been interviewed for other federal law enforcement positions. Furthermore, there is a general lack of recognition within INS of the importance and expertise that its own Special Agents and Deportation Officers bring to modern day law enforcement. It is significant to note that the average grade (pay) level of an INS Special Agent was the lowest of all agents in the Department of Justice, including the FBI and DEA agents, although all are GS-1811 investigators. This is a relevant factor, which affects the morale of all Special Agents.

In October 2001, INS Commissioner James Ziglar addressed Congress regarding recruitment and retention challenges facing the INS. Commissioner James Ziglar noted that "the INS has faced hiring and retention challenges over the last several years as it has been increasing its enforcement personnel". "This year alone, based upon anticipated congressional action on the President's FY 2002 budget request, the INS will hire and train between 3,000 and 3,500 new Border Patrol Agents and Immigration Inspectors". The Commissioner in his address stated that to increase the retention rate among Inspectors and Border Patrol Officers, he would request an increase in the pay level for both the Border Patrol and the Immigration Inspector positions. These same problems exist in the Investigations and Deportation Branch regarding retention and recruitment.

Mr. Chairman, I would respectfully submit that upon creation of the standalone enforcement bureau, it is not necessary to reinvent the wheel but merely adopt tried and true successful practices of modern day law enforcement entities.

Implementation of Enforcement Sectors 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. There are far too many casualties from September 11 to demand anything less.

The Main Justice bureaucracy must change at the same time that the independent immigration enforcement bureau is created through legislation. Specifically, there is no office at the Justice Department exclusively charged with immigration policy development. That must be rectified under the oversight of a new Associate Attorney General who would coordinate and facilitate communication between the various Justice components involved in this issue.

The Department of Justice clearly has the clout to serve as a major forum for immigration policy making, but it rarely exercises such authority. 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. FLEOA would further stress that *the individual selected for this position have prior demonstrated leadership abilities obtained from an established Federal Law Enforcement Agency, such as the FBI or the U.S. Attorney's Office.*

Mr. Chairman, FLEOA strongly urges Congress, through the appropriate Subcommittees, to adopt into legislation the already carefully considered recommendations of both chambers for a substantive and complete reorganization of the INS.

Without the creation of a distinct bureau for immigration law enforcement with the requisite federal law enforcement chain of command, it is unlikely that the legislative innovations against international terrorism passed by the 104th Congress in 1996 and the current Congress several weeks ago 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. I will be happy to answer any questions you may have. Thank you.

Chairman SENSENBRENNER. Come back at 10 tomorrow when the markup of the bill will take place.

Ms. Martin.

TESTIMONY OF SUSAN MARTIN, DIRECTOR, INSTITUTE FOR THE STUDY OF INTERNATIONAL MIGRATION, GEORGETOWN UNIVERSITY

Ms. MARTIN. Thank you, Mr. Chairman and Members of the Committee.

I think we can all agree on the same goal of our immigration policy and our immigration management: That it is to facilitate the beneficial movements of people, foreign nationals, into our country; while still guarding against the movements of people who haven't the authorization to either enter or to remain in this country. And those are two important goals of the immigration system which must each be treated extremely seriously.

Today there is probably the most urgent need that we have ever had for ensuring that our immigration system is capable of managing itself in a way that fulfills both goals. Since September 11th, I think public confidence in our immigration system and its ability to keep out terrorists and to keep functioning is at an all-time low.

Policies alone, even good management alone, will not solve a problem that is very much rooted as well in the structure of the Immigration Service itself. The Commission on Immigration Reform, which the Chair referenced, concluded that there were two major structural problems in our immigration system: The mission overload and confusion that has already been referenced; but also, a diffusion of responsibilities across a number of Federal agencies that too often leaves everyone responsible and no one accountable for ensuring that our policies are implemented properly.

We looked at various reforms for the immigration system—ranging from creation of a new cabinet-level department of immigration which would include all of the functions but at a much higher level, to the type of border management agency that the Office of Homeland Security right now is discussing—and concluded that those types of reforms were not really feasible because they involved, in effect, too many departments doing too many different functions; and that it was better to concentrate on the immigration functions themselves, with the separation of service and enforcement that would help to manage our immigration system most effectively.

We were not the first to call for a separation of enforcement and services. In fact, as early as 1931, the Wickersham Commission, that was looking at the enforcement of immigration laws, made the same observations that we did: That conflicting missions become impossible to resolve and to manage appropriately.

I very much support now the efforts in the Committee to effect a separation within the Justice Department itself of the INS functions, while still, I believe, needing to look at the other Federal agencies that are involved in immigration management.

The establishment of an associate Attorney General would be a great benefit to the system, by elevating the responsibility for immigration policy and its oversight to a very senior position within the Administration, reflective of the very serious and important nature of immigration itself.

That person would have policy oversight, and provide leadership to two major bureaus within the Justice Department: A bureau responsible for immigration enforcement, and a separate bureau responsible for immigrant services; both with a director that I would hope would be at the level of an Assistant Attorney General—again, elevating the stature and ability to provide leadership of the people heading those two important functions.

I also urge in my testimony that one part of the current Justice Department system be removed from this structure, and that is the Executive Office of Immigration Review. I think it is very important to ensure an independent appeals process, ensuring that the Justice Department, the Attorney General, and others who are responsible for implementing the law not also be responsible for the determinations as to whether those laws are being properly implemented in keeping with the legislative intent of Congress.

There are a number of advantages of the type of reform that is under consideration. In addition to providing stronger leadership, it also will make sure that agency missions are clearer; that they are managed and staffed properly; that field structures are in accordance with the missions of the two agencies; that there can be specialized recruitment and training, independent financial resources to be allocated to the two separate functions and not be mixed up, and processes for quality assurance, fraud investigations, and other functions necessary to ensure implementation at both the service and enforcement levels.

In addition to this type of restructuring, though, let me add just one other element that I think is extremely important if this new system is to function. And that pertains to the funding of immigration services. Immigration services are generally funded by user fees. At present, however, we do not have the services that should come with the imposition of fees.

It is important for the Congress to support efforts within the Administration to better identify what type of funding is needed each year, to provide flexibility so that the service agency is able to gear up and then back down as it needs to as these cycles of applications go up and down. Right now, we are seeing it almost totally up; but at some point, they may decline in the future. We need to have the flexibility to expand and contract, as necessary.

I hope this Committee will continue with its work of reform. I am very grateful that the recommendations of the Commission are getting such serious attention. I will be pleased to answer your questions.

[The prepared statement of Ms. Martin follows:]

PREPARED STATEMENT OF SUSAN MARTIN

Mr. Chairman, Members of the Committee, thank you for providing this opportunity to testify on the restructuring of the immigration system of the United States.

There is urgent need for legislation to improve the implementation of our immigration laws and policies, not least because of the events of September 11, 2001. The immigration system must restructure to improve its capacity to carry out the many enforcement and service functions required of it. The aim of immigration policy is to facilitate admissions that are beneficial to our national interests and consistent with our international obligations, while guarding against entry of those whose admission is unauthorized, particularly if they pose a threat to our national security. An effective immigration system requires both credible policy and sound manage-

ment. But, poor organizational structure will foil even the best-intended management and policies.

The INS grew rapidly in the 1990s, for the first time gaining resources more in keeping with the importance of its mandate. Even as resources increased, however, the demands on INS also grew, and the agency has been unable to keep up with the increasing size and complexity of its workload. It remains unable to carry out effectively either its service or its enforcement activities. Since September 11, public confidence in our immigration system has been seriously eroded by daily accounts of mismanagement at the Immigration and Naturalization Service (INS).

The critique I offer today of the current organizational structure of INS derives from more than twenty years of experience and analysis. As Director of the US Commission on Immigration Reform, I led a comprehensive examination of the operations of INS, as well as the other agencies involved in implementation of immigration policy, at both the headquarters and field level. The Commission identified weaknesses throughout the system. Although more fundamental reform of the overall immigration system along the lines of the proposals made by the Commission would be desirable, reorganization of INS's functions in particular remains urgently needed.

WHY IS REFORM NEEDED?

In its 1997 report to Congress, the Commission on Immigration Reform outlined two principal structural problems resulting from the current complex system for implementing immigration policy: mission overload and conflict at the Immigration and Naturalization Service and diffusion of responsibility across several federal agencies, particularly for legal immigration matters. The result is a lack of accountability for carrying out effectively and efficiently the major functions of the immigration system.

These problems have only worsened since the Commission's report. On the enforcement side, INS has made little headway in curbing unauthorized migration despite a major infusion of funds, particularly for border control. There are an estimated 8 million unauthorized foreigners in the US, up from 3.5 million in 1990, suggesting that the number increased an average 400,000 a year in the 1990s. Weaknesses in enforcement derive from a host of reasons—some institutional, but others related to the lack of political will to address the causes of unauthorized migration. Although the vast majority of unauthorized migrants come for work purposes and do not themselves pose a security threat, tolerance of their entry and presence in the country hampers efforts to close the back door of illegal migration—a backdoor that terrorists can too easily exploit for their own purposes. I emphasize this point because restructuring alone will not solve the problem of unauthorized migration—a new commitment on the part of Congress and the Administration to enforce immigration law must accompany any organizational changes.

Problems have also worsened with regard to immigration services. In some locations, it still takes over two years from application for naturalization to the swearing in of the new citizens. Gleaning information from federal agency data and reports from attorneys handling these cases, it appears that the waits for legal immigration status are even worse. Let's say your U.S. citizen son living in Houston, Texas marries the foreign student he met at university. It will take as much as three years for her to become a legal permanent resident, given current processing times for an I-130 petition and approval of an adjustment of status application. If you are an employer seeking permanent resident status for an employee, the processing times are equally problematic because of the delays in obtaining labor certification as well as INS approval of petitions and adjustment applications.

INS plays a key role, though hardly the only one, in implementing every aspect of immigration policy. Its mission is now too broad and complicated to manage properly. No one agency could have the capacity to accomplish all of the goals of immigration policy equally well. Immigration law enforcement requires staffing, training, resources, and a work culture that differs from what is required for effective adjudication of benefits. Each function requires serious attention from a senior executive who can be held fully accountable for the performance of the activities within his or her mandate.

Our Commission was not the first to recognize this point. As early as 1931, the Wickersham Commission, in its Report on the Enforcement of the Deportation Laws of the United States, noted the conflict arising when the same agency is responsible for adjudicating applications for benefits and deporting aliens. The Wickersham Commission found that "the confusion of functions limits the effective performance of each function involved" and recommended separating the functions. More recently, the Commission for the Study of International Migration and Cooperative

Economic Development also concluded that placing incompatible service and enforcement functions within one agency creates problems: competition for resources; lack of coordination and cooperation; and personnel practices that both encourage transfer between enforcement and service positions and create confusion regarding mission and responsibilities.

Separating enforcement and benefits functions will lead to more effective enforcement and improved service to the public.

WHAT TYPE OF REORGANIZATION IS NEEDED?

The Commission on Immigration Reform recommended a more comprehensive restructuring of the immigration system than is contained within most other proposals for reform. Under the Commission's proposal, the responsibility for immigration enforcement would remain within the Justice Department in a new Bureau for Immigration Enforcement. The responsibility for immigration services, now dispersed among the State, Justice and Labor Departments, would be consolidated into a new office for Citizenship, Immigration and Refugee Admissions. The Commission's recommendation has the advantage of dealing with both problems—mission overload/conflict and diffusion of responsibilities—found in the current system.

The Commission considered even more far-reaching proposals, including establishment of a cabinet-level Department of Immigration and the creation of a Border Management Agency—a proposal similar to the one under consideration by the office of Homeland Security. The Commission concluded that neither proposal was as readily accomplishable as the separation of enforcement and services. Both ideas require other cabinet departments to relinquish authority over activities that are integral to their operations. For example, removing the Customs Service from the Treasury Department may consolidate responsibility for border management in a new agency, but the Customs Service is also responsible for collection of duties on foreign-produced goods—a very different activity. Similarly, if consular functions were to move to a new Cabinet level department, State Department would lose a historically important office that is also responsible for protecting U.S. citizens overseas. Each of these agencies also reports to different authorizing and appropriating committees in Congress, requiring significant changes in Congressional authorities as well.

Although I continue to believe that the type of consolidation of immigration services outlined by the Commission is desirable, I see a more urgent need to address the organizational problems within the Justice Department. The internal restructuring plan at INS already recognizes the value of separating services and enforcement, and the planning team has addressed many of the operational issues that need to be addressed in effecting such separation at the field level. Creating co-equal agencies within the Justice Department, one responsible for immigration services and the other for immigration enforcement, under the direction of an Associate Attorney General, takes this concept further and in several directions that I believe will increase the ability of the federal government to carry out effectively its immigration-related responsibilities. I hope that consideration of other proposals, such as a border management agency, does not stop the Congress from taking action that is desperately needed right now.

The following structure within the Justice Department would help restore public confidence in the immigration system by elevating responsibility for these important functions and increasing accountability for both immigration services and immigration enforcement:

- *The Associate Attorney General* will give necessary policy guidance, leadership and coordination to the many immigration functions in the Department of Justice. The immigration-related policy making and coordination at the departmental level of Justice has tended to be ad hoc, understaffed and crisis-driven. In some administrations, the INS and the Executive Office for Immigration Review (EOIR) have reported to the Associate Attorney General and in others to the Deputy Attorney General, who generally serve as a clearing-house through which immigration-related concerns pass from the responsible agencies to the Attorney General. The Office of Special Counsel for Immigration-Related Unfair Employment Practices reported to the Assistant Attorney General for Civil Rights and the Office of Immigration Litigation reported to the Assistant Attorney General for the Civil Division. A newly created Associate Attorney General should have full responsibility for policy development and coordination of activities across all of the agencies responsible for implementing immigration policy (with the exception of the Executive Office of Immigration Review, as discussed below), giving these functions greater coherence. As an Associate Attorney General, this person should have the stature

and be well situated to coordinate with and access information and other resources under the management of other Justice Department agencies, particularly the Federal Bureau of Investigations that has often been unwilling to share needed intelligence with INS in a timely, effective manner.

- *The Bureau of Immigration Services and Adjudications*, headed by a Director at the level of Assistant Attorney General, will have sole responsibility for adjudication of immigration services, including nonimmigrant and immigrant visa petitions, naturalization petitions, asylum and refugee applications, and other services performed by INS. The Bureau should have the following offices:
 - Office of Immigration Services, which would focus on the adjudication of applications for immigrant and nonimmigrant admissions. The office would also be responsible for issuing work authorization, changes and adjustment of status, appropriate documentation to foreign nationals and other similar activities.
 - Office of Refugee Admissions and Asylum Affairs, which would be responsible for refugee resettlement admissions, asylum adjudications and other humanitarian admissions programs. The staff would have specialized expertise in domestic and international law related to refugees, torture victims and others deserving of humanitarian responses. Creation of the Asylum Office and its separation from other parts of the INS has been one of the only successful internal reforms undertaken by the agency, and it should be continued as such.
 - Office of Citizenship Services, which would focus on naturalization of immigrants eligible to become citizens of the United States.
 - Office of Quality Assurance, which would oversee records management, monitoring procedures, fraud investigations and internal review of adjudication decisions.
 - Ombudsman, who would be responsible for investigating complaints about the services provided by the Bureau.

The Bureau would have a field structure that supports its principal mission to facilitate admission/naturalization of bonafide applicants. Ideally, to avoid long lines and waits for service, there would be smaller offices in more locations than the current INS district offices, supported by processing centers that efficiently mobilize resources to conduct paper adjudications of applications.

- *The Bureau of Immigration Enforcement*, also headed by a Director at the level of Assistant Attorney General, will have sole responsibility for the functions now performed by the Border Patrol, inspections, detention and deportation program, intelligence program and investigations. The Bureau should be organized along the lines of other law enforcement agencies, with:
 - Uniformed Enforcement Officers (combining inspections and Border Patrol) who operate at land, sea and air ports of entry, between land ports on the border, and in the interior where uniformed officers are needed;
 - Investigators who identify and apprehend people who are residing or working illegally, deter and apprehend smuggling and trafficking operations, identifying, apprehending and carrying out removal of aliens with final orders of deportation, and other similar activities;
 - Intelligence officers who provide strategic assessments, training and expertise on fraud, information about smuggling networks and tactical support to other enforcement officers;
 - Pre- and post-trial “probation” officers and detention officers who oversee supervised release programs for aliens who are not detained and detention programs for those who are kept in custody; and
 - Trial attorneys/prosecutors who determine which cases to bring before the immigration court and represent the government in those proceedings.

The field structure should support these activities. The location of field offices should be driven by enforcement priorities.

ADVANTAGES OF THIS MODEL OF REFORM

This reorganization within the Justice Department has a number of advantages over the current system, as well as the internal reorganization proposed by INS:

- *The position of Associate Attorney General, to be filled by a very senior Senate confirmed appointee, will have the stature to give clear policy leadership to the*

immigration system and the capacity to coordinate with other divisions of the Justice Department as well as other Departments involved in the implementation of immigration policy.

- *Each agency will be led by a Director, at the level of Assistant Attorney General, who has had extensive management experience in his or her agency's area of competence.* Responsibility for each of the two principal functions—services and enforcement—rests with a Director with significant experience and the capacity to take on each of the applicable areas of responsibility. Under the current structure, the persons responsible for actual implementation of services and enforcement are several layers below the Commissioner of INS. By elevating the level of the persons accountable for immigration services and immigration enforcement, as well as requiring a substantial level of prior management experience, the proposed restructuring recognizes the national importance, size and scale of operations, and resources devoted to each function.
- *Each agency will have the opportunity to reorganize its field structure to ensure the most effective implementation of its responsibilities.* For example, the Bureau of Immigration Services and Adjudications could designate new offices, designed specifically with service delivery in mind. The Bureau for Immigration Enforcement would focus its offices in areas where serious violations of immigration law take place. In border communities, the new enforcement bureau could combine into one office, with one responsible official, what is now spread between the Border Patrol sectors and the INS district office enforcement activities. I would strongly recommend against the service and enforcement offices sharing space at the field level, however. Asking individuals requesting services or information to an enforcement office sends the wrong message about the purposes of U.S. immigration policy. Legislation should mandate that the new agencies report back to Congress on their proposed restructuring at the field level, and require the General Accounting Office to assess whether the proposed reforms address adequately problems in field implementation that now impede effective services and enforcement.
- *Each agency can concentrate on recruiting, training, deploying and promoting staff with the needed skills and experience to carry out its functions.* Staff undertaking law enforcement activities require significantly different skills, experience and outlook than do staff responsible for providing customer services. The Bureau of Immigration Services and Adjudications should look towards hiring, training and promoting persons committed to efficiently running large-scale benefits adjudication programs and establishing customer-friendly environments. The Bureau of Immigration Enforcement should look towards hiring, training and promoting persons with interest and experience in pursuing careers in law enforcement. In each case, the agency should provide a career ladder that permits it to retain and promote competent staff.
- *Each agency will have its own financial resources to carry out its functions and will be accountable for its activities.* For the most part, fees cover adjudication of applications for immigration services whereas appropriations from general revenues cover enforcement activities. Because so many support systems, facilities and data systems are shared, it is difficult to determine currently whether fees for services subsidize enforcement or vice versa. What we can say definitely, though, is that the clients paying for immigration services are not now receiving the services for which they pay. Separating the two functions means that each agency will be able to set its own budget, seek its own appropriation of general revenue funds and, where appropriate, set its own fee structures. Each agency will also be held accountable for its management of resources.
- *The Office of Quality Assurance would improve services while also providing significant resources devoted to ensuring that fraudulent applications for admission are quickly identified and appropriate actions taken,* something that does not occur sufficiently at present despite the potential for abuse of legal admissions.
- *The Ombudsman will help improve accountability and customer service.* At present, applicants for immigration benefits have nowhere to turn—except congressional offices—to complain or otherwise raise concerns when the government fails to provide effective services. In hearings throughout the country, the Commission on Immigration Reform repeatedly learned of egregious failures in customer service from US citizens and immigrants applying for immigration benefits as well as from congressional staff who investigated com-

plaints. In addition to helping individual applicants receive the services to which they are entitled, the information presented to the Ombudsman should prove invaluable in improving the overall systems used in processing and adjudicating applications.

WHAT ELSE NEEDS TO BE DONE?

Having described the advantages of splitting and elevating the immigration service and immigration enforcement functions, let me offer recommendations on four other management issues.

The first pertains to the *diffusion of responsibility for immigration services*. The reorganization of immigration functions at the Department of Justice should help address some of the backlogs and waiting times for receipt of immigration benefits, but it cannot on its own overcome the delays caused by the unwieldy system that requires largely sequential and sometimes duplicative actions on the parts of Justice, Labor and State Departments. I urge Congress to require the Attorney General, in consultation with the Secretary of State and the Secretary of Labor, to report to Congress on ways to streamline the adjudication of applications for immigration services, specifying actions that can be undertaken under existing statutory authority and recommending statutory changes where insufficient authority exists.

My second recommendation pertains to *policy development and oversight*. The Commission on Immigration Reform recommended developing more fully the capacity within the Executive Branch for policy development, planning, monitoring, evaluation and oversight of operations. In the absence of effective policy development and oversight, we can expect bad policymaking, poorly developed programs, inadequate coordination across agencies, and almost nonexistent program assessment and evaluation of outcomes. The appointment of an Associate Attorney General should help in this regard, but given the many other departments with immigration responsibilities, there is urgent need to improve policy development and monitoring across the federal government. The Congress should also make clear its expectation that the new offices responsible for both services and enforcement will undertake systematic evaluations, bringing unbiased outside resources to bear as necessary, so they will have the information needed to continue to improve the effectiveness of policies and their implementation.

The third recommendation pertains to *the independence of the administrative review of immigration-related decisions, particularly detention and removal*. The Commission on Immigration Reform recommended that the Executive Office of Immigration Review become an independent agency within the Executive Branch, a recommendation that I believe continues to merit serious consideration. A system of formal, independent administrative review of immigration-related decisions is indispensable to the integrity and operation of the immigration system. Such review guards against incorrect and arbitrary decisions and promotes fairness, accountability, legal integrity, uniform legal interpretations, and consistency in application of the law both in individual cases and across the system as a whole. The review works best when it is well-insulated from politics and the pressures exerted by the agencies whose decisions are under review. Maintaining the functions of the Executive Office of Immigration Review—the Immigration Court and the Board of Immigration Appeals—in the Justice Department reduces its ability to carry out independent review of the decisions ordered by officials within the same department. At present, the Attorney General can reverse any decisions made by the Board of Immigration Appeals, further reducing the possibilities of an independent review process. To ensure the greatest degree of independence, the decisions by the review agency should be subject to reversal or modification only as a result of judicial review by the federal courts or through congressional action.

The fourth recommendation pertains to the *funding of immigration services*. While I support the imposition of user fees to pay for most immigration services (not refugee and asylum services), it is important that Congress and the Administration take action to ensure that customers receive the services for which they are paying sometimes—substantial fees. Fees must reflect true costs; the agencies collecting the fees should retain and use them to cover the costs of the services for which the fees are levied. Agencies should also have maximum flexibility to expand or contract their services as expeditiously as possible as applications increase or decrease. At present, INS is unable to respond well to changes in applications, leading often to large backlogs and waiting times. The new Bureau for Services and Adjudication must have the authority to set, collect and utilize fees to reduce these backlogs and ensure that they do not reoccur.

Thank you again for providing the opportunity to present this testimony. I would be pleased to answer any questions you have.

Chairman SENSENBRENNER. Thank you, Ms. Martin.
Mr. Gonzalez.

TESTIMONY OF LAWRENCE GONZALEZ, WASHINGTON DIRECTOR, NATIONAL ASSOCIATION OF LATINO ELECTED AND APPOINTED OFFICIALS [NALEO] EDUCATIONAL FUND

Mr. GONZALEZ. Thank you, Mr. Chairman, Ranking Member Conyers, and distinguished Members of the Committee.

On behalf of Latino elected and appointed officials across our Nation, we are grateful for the opportunity to appear before this Committee again and share with you our community-based perspective on why we need to restructure the INS. In my testimony today, I would like to share with you some of the problems we have encountered in dealing with the bureaucracy of the INS, together with our recommendations for restructuring the agency's function.

Mr. Chairman, as part of our written testimony, I have attached a set of basic principles developed by our board of directors which, we believe, should guide any restructuring of the INS. And I would like to run through the four basic principles, very briefly.

First, Put Someone in Charge, and Give That Person Clout: The Federal Government needs to have one full-time, high-level person in charge of the nation's immigration functions. This we believe would improve accountability by fully integrating policy-making with policy implementation. It would ensure direct access to high-level officials within the Executive Branch and attract top-flight managerial talent. The new agency's local functions should be split, but the new agency's national leadership should not be.

Second, We Should Separate, But Coordinate the Enforcement and Adjudication Functions: We should establish separate immigration adjudication areas and enforcement sectors, and separate chains of command and career tracks for each set of functions. This will lead to greater clarity of mission and greater accountability from top to bottom within these distinct functions. In turn, this will also lead to more effective adjudications and more accountable enforcement. However, any reorganization also needs to require coordination between the two functions, to ensure efficient and consistent implementation of a unified immigration policy. Dividing service and enforcement benefits both, but cost efficiencies and necessary coordination are best served by a set of discrete, shared functions. For example, personnel should be able to access the same data bases, so that an adjudication officer does not approve an application for someone who has an outstanding order for deportation, or a deportation officer remove someone who is applying for political asylum.

Any New Agency Must Be a Unified One: All of our Nation's immigration functions are charged with implementing the same body of law. A unified agency could best ensure the development of coherent immigration policy and the effective coordination of enforcement and service operations. We believe creating two separate agencies runs counter to the call for greater consolidation of homeland security functions, streamlined information sharing, and command accountability.

Lastly, the Agency's Adjudications Functions Must Have the Resources Needed To Provide Quality Customer Service: Rising fees,

growing backlogs, and the need for more responsive customer service plague the adjudication function of the INS. In addition, congressional appropriations support enforcement activities, while INS adjudications are primarily funded from user fees. This unbalanced funding system has not provided the agency the resources it needs to address dramatic increases in the demand for its services or to make needed investments in infrastructure improvements or broad programmatic changes.

For example, there has not been much talk recently about the naturalization backlog, because the INS has made such good progress in reducing U.S. citizenship application processing times. However, recent INS data reveal a spike in application submission since the beginning of this fiscal year. Only 4 months into this fiscal year, 2002, the INS has already received more than half of the number of applications it received last fiscal year. Where once the "natz" backlog had been reduced to nearly half a million applications, it has risen again to nearly three-quarters of a million applications pending. Consequently, if this spike becomes a larger surge, the INS may need additional funding to prevent a recurrence of the 2-year delays in naturalization adjudications that once confronted our newcomers.

Mr. Chairman, we remain committed to the belief that homeland security and increased enforcement, which must be a top priority for the United States, must also be balanced with a commitment to serving those newcomers who have played by the rules and seek a share of the American dream.

Mr. Chairman, in this regard, I would like to take a moment to praise the leadership of INS Commissioner Jim Ziglar. Perhaps this is an unpopular position to take, but Mr. Ziglar has been under fire since the terrible tragedies of September 11th. However, we believe Commissioner Ziglar in just 7 months has moved his new administrative team into action toward creating an environment more conducive to positive change; one which emphasizes professionalism, accountability, and customer service. This culture has to be inculcated throughout the agency by its leadership, and we believe the Commissioner has tried to do that in a very short period of time, and under very trying times.

Thank you very much, and I will take any questions you may have.

[The prepared statement of Mr. Gonzalez follows:]

PREPARED STATEMENT OF LAWRENCE GONZALEZ

Chairman Gekas, Ranking Member Jackson Lee and distinguished members of the Committee: On behalf of the National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund we are grateful for the opportunity to appear before this committee again and share with you our perspectives on how the dysfunctional structure of the Immigration and Naturalization Service (INS) impedes the performance of its dual missions.

The NALEO Educational Fund is a non-profit, non-partisan organization that empowers Latinos to participate fully in the American political process, from citizenship to public service. We carry out this mission by developing and implementing programs that promote the integration of Latino immigrants into American society, developing future leaders among Latino youth, providing training and technical assistance to the nation's Latino elected officials, and conducting policy analysis and research on issues that are important to the Latino population. The NALEO Educational Fund's constituency includes the more than 5,400 Latino elected and appointed officials nationwide.

Now celebrating over twenty years of work, the NALEO Educational Fund has been at the forefront of promoting U.S. citizenship among Latino legal permanent residents and providing quality, accessible naturalization services throughout the nation. As part of its efforts, the NALEO Educational Fund has conducted community workshops in Southern California, Chicago, New York, Houston, and other communities, which together have assisted over 85,000 immigrants in becoming U.S. citizens. Our toll-free U.S. citizenship hotline has received over a half a million calls since the mid-1980's, and has provided basic information on U.S. citizenship to people from more than 85 countries of origin. Through our naturalization assistance activities, we have gained an understanding of the problems encountered by immigrants when they make the decision to become U.S. citizens. Additionally, we have been active participants in advisory and working groups on INS management issues, including the Coopers and Lybrand Naturalization Re-engineering Management Advisory Team, the PriceWaterhouseCoopers Restructuring Advisory Board, and the Naturalization Advisory Committee of the Los Angeles INS district.

In my testimony today, I would like to share with you some of the problems we have encountered in dealing with the bureaucracy of the INS, together with our recommendations for restructuring the agency's functions.

Millions of Americans can trace their family history to an immigrant. While images of immigrants arriving at Ellis Island with the Statue of Liberty behind them has been used as the preeminent symbol of immigration in America, today's newcomer experience is altogether different. What immigrants today find at the INS is inefficiency, complexity, huge backlogs and an institution that is confused because of its dueling missions of welcoming some immigrants while simultaneously preventing others from entering this nation. The INS has been justifiably criticized for not providing timely and consistent service for applicants, and for not developing a consistent and effective system for enforcing our immigration laws. However, Congress must also take responsibility for the unfunded, complicated and often-conflicting mandates it has placed on the agency. Since 1990, when the Commission on Immigration Reform recommended breaking up the INS, several reorganization proposals have been introduced in Congress. The efforts that have gained the most support and have the most credibility are those that have focused on the need to separate, but coordinate, the enforcement side and the service side of INS, put a high-level person responsible for developing and implementing a uniform immigration policy in charge, and provide adequate funding for adjudications.

In order to assess the various proposals put forth by policymakers, and utilizing our experiences with assisting immigrants and advocating for improvements in the naturalization process, the non-partisan Board of Directors of the NALEO Educational Fund articulated four basic principles that we believe should guide any restructuring of the INS. Mr. Chairman, we have attached the principles as part of our recorded testimony. In brief, our four principles are:

Put Someone in Charge and Give that Person Clout: The Federal government needs to have one full-time, high-level person in charge of the nation's immigration functions. Such authority vested in one person would improve accountability by fully integrating policy making with policy implementation, ensure direct access to high-level officials within the executive branch, and attract top-flight managerial talent. The new agency's local functions should be split, but the new agency's national leadership should not be.

Separate, but Coordinate, the Enforcement and Adjudication Functions: In restructuring the new immigration agency, we should establish separate immigrant adjudication areas and enforcement sectors, and separate chains of command and career tracks for each set of functions. This will lead to more clarity of mission and greater accountability from top to bottom within these distinct functions that, in turn, will lead to more effective adjudications and more accountable enforcement. However, any reorganization also needs to require coordination between the two functions to ensure the efficient and consistent implementation of a unified immigration policy. Dividing local adjudication and enforcement operations will benefit both, but cost efficiencies and necessary coordination are best served by a set of discrete shared functions. The most important of these is the need for shared information systems. For example, personnel should be able to access the same databases so that an adjudication officer does not approve an application for someone who has an outstanding order for deportation, or a deportation officer remove someone who is applying for political asylum.

Any new agency must be a unified one: All of our nation's immigration functions are charged with implementing the same body of law. A unified agency could best ensure the development of coherent immigration policy and the effective coordination of enforcement and service operations. Any structure which separates the agency's functions without providing for strong, centralized leadership furthers a lack of

accountability and creates the risk that agency personnel will give out conflicting messages on policy matters.

For those who say that a complete separation of enforcement and service operations is necessary in light of our nation's security needs after September 11th, we ask: Would a complete separation of those operations increase managerial and budget efficiencies? Or would it reverse progress already achieved through increased funding and reform initiatives? Would separating INS enforcement programs from service programs result in a "starved" service program that would be ineffectual and underfunded? We believe creating two agencies runs counter to the call for greater consolidation of homeland security functions, streamlined information-sharing and command accountability.

The Agency's Adjudications Functions Must Have the Resources Needed to Provide Quality Customer Service: Rising fees, growing backlogs, and the need for more responsive customer service plague the adjudication function of the INS. In addition, Congressional appropriations support enforcement activities, while INS adjudications are primarily funded from user fees. This funding system has not provided the agency the resources it needs to address dramatic increases in the demand for its services or to make needed investments in infrastructure improvements or broad programmatic changes. It has not provided the agency the flexibility it needs to shift resources when new needs arise. For example, there has not been much talk recently about the naturalization backlog, because the INS has made such good progress in reducing U.S. citizenship application processing times. However, recent INS naturalization data reveal a "spike" in application submissions since the beginning of this fiscal year (October 2001). Only four months into Fiscal Year 2002, the INS has already received more than half of the number of applications it received last fiscal year. Where once the naturalization backlog had been reduced to nearly half a million applications, it has risen again to nearly three-quarters of a million applications pending. Consequently, if this spike becomes a larger surge, the INS may need additional funding to prevent a recurrence of the two-year delays in naturalization adjudications that once confronted newcomers. Our current system of financing adjudications simply does not provide any new agency enough flexibility to deal with unforeseen surges in the demand for application services.

In order to provide the agency with a stable and well-managed system for financing adjudications, we make the following recommendations:

A) Examinations Fee Account money should not be used for any transition-related activity. This would only result in a diminution of services and perhaps even a fee increase during the transition period. We recommend the creation of a Transition Account, funded by appropriated monies, to manage the transition during INS restructuring.

B) There must be explicit prohibitions against using Examinations Fee Account money for purposes other than the cost of providing adjudication services to immigrants. Similarly, we propose that the statute establishing the Examinations Fee Account be amended to require that only the day-to-day routine costs of adjudications be funded from those fees. We are concerned that a failure to prevent funds deposited into the Examinations Fee account from being used for other, non adjudication-related purposes will starve the service side of the agency of needed resources and add to the massive backlogs that currently exist for a wide range of immigrant applications.

C) Funds earmarked by Congress for backlog reduction must be protected by placing them into the Immigration Services and Infrastructure Improvements Account established during the 106th Congress. Congress recognized the need to supplement user fee financing of immigration services by enacting the "Immigration Services and Infrastructure Improvements Act," to provide a special account for appropriated monies for backlog reduction and infrastructure improvements. However, Congressional appropriations for these purposes have never been placed into the account. Placing these appropriations into the account will trigger a number of reporting mechanisms that would require the new agency to provide detailed reports on how it intends to use the funding, and its progress in meeting its customer service goals. These accountability measures will help guarantee that the agency spends its resources efficiently and effectively.

D) Congress should consider separate appropriations for the adjudication of refugee and asylee applications. Applicants' fees for such services as naturalization and legal permanent residency essentially subsidize the adjudication of refugee and asylee applications. When the INS raised the naturalization application fee in 1999 to \$225, it estimated that \$35 of the fee was attributable to this subsidy. While we strongly believe that for humanitarian reasons, refugees and asylees should not have to pay application fees, it is also inequitable for these costs to be borne by other immigrant applicants. We recommend that the statute providing for the fund-

ing of refugee and asylee adjudications from the Examinations Fee Account be changed to authorize the appropriation of funds of those adjudications, and that the federal government appropriate adequate funding for refugee and asylee services. Examination Fee Account monies should only be used if those appropriations are not sufficient.

E) Any new restructured agency must have the ability to reprogram Examinations Fee Account and appropriated money in a timely manner. Although technically the INS is only required to “notify” Congress of the requests, as a practical matter, the INS and Congress treat this requirement as one mandating Congressional approval. To avoid delays, we suggest that any restructuring plan include authorization for reprogramming 15 days after proper Congressional notification, if it has not received formal Congressional disapproval. This will provide the new agency the flexibility to respond to funding needs that are urgent or result from unforeseen changes in the demand for immigrant services.

Mr. Chairman, we remain committed to the belief that the responsibility of paying for U.S. citizenship should be a partnership shared by immigrants who have played by the rules, and our federal government, which should provide appropriated monies for application processing. We must not allow the cost of naturalization to be beyond the reach of thousands of immigrants who are eager to become actively involved in our nation’s political and civic life. We also understand that providing any new agency with the fiscal resources it needs for its service operations is only one step toward making the fundamental changes that are required in our nation’s immigration functions. More funding will not guarantee competence and accountability in the implementation of our immigration policies.

Mr. Chairman, in this regard, I would like to take a moment to praise the leadership of INS Commissioner James Ziglar. Mr. Ziglar has been under fire since the terrible tragedies of September 11th. However, we believe Commissioner Ziglar, in just seven months, has moved his new administrative team into action toward creating an environment more conducive to positive change, one which emphasizes professionalism, accountability, and customer service. This culture must be inculcated throughout the agency by its leadership, and the Commissioner has tried to do that in a very short period of time and under very trying times.

In conclusion, we believe that INS reform is an idea whose time has come. We must seek to answers to what James Q. Wilson, professor of management and public policy at the University of California, cites in his book *“Bureaucracy, Why Government Agencies do what they do,”* as the most fundamental questions in any attempt at reform: What is the system supposed to do, and how should it be organized to do it? As we look around, we can see that the immigration challenges facing the nation have changed dramatically in recent years. The growth of the global economy, public policy debates, and new legislative mandates, particularly the sweeping 1996 immigration law—have made unprecedented enforcement and service demands on the INS. As history shows, the breadth of these changes, coupled with the agency’s explosive growth, demands a change in the INS structure to meet the challenges of the 21st century.

There is also an elementary principle of good management to which Professor Wilson refers that Congress should pay attention to: that bureaucracies tend to acquire the essence—and often the worst—of the behavioral characteristics of their leadership. This may be fine for those who would favor the elevation of our nation’s immigration enforcement priorities over its immigrant service priorities, and who would favor leadership with this type of mentality. An immigration agency, however, is much more than that: it is also about facilitating the entry of talented and hard-working newcomers who meet the various entry criteria; about delivering services to U.S. petitioners who have paid taxes and complied with our laws; and about naturalizing qualified immigrants who are eager to demonstrate their patriotism and commitment to this nation by becoming our newest Americans. If one has this more comprehensive perspective in mind, as many members of Congress and the Administration do, our path to reform may be easier to plot.

Finally, immigrants who wish to fully participate in America should not be stranded in a bureaucratic maze. However, unless we restructure our nation’s immigration functions, reform our mechanisms for financing immigration adjudications, and make fundamental changes in the institutional culture of our immigration agency, we will not be able to create an equitable, accessible, and expeditious system for providing services to our nation’s newcomers. We are pleased that through this hearing, you are seeking public input in creating the best public policy toward INS reform. Like you, we believe that now is the best time to make changes in the way naturalization policy is being implemented. We are confident that with your continued leadership on this issue, the future of the naturalization process in this

great nation will remain strong. These reforms can serve as an integral part of the renewal of our historic commitment to maintaining the vitality of our democracy. Thank you for allowing us the opportunity to speak before this committee today.



Educational Fund and National Association of Latino Elected and Appointed Officials

PRINCIPLES GUIDING RESTRUCTURING OF THE NATION'S IMMIGRATION FUNCTIONS

Adopted by the Boards of Directors of the NALEO Educational Fund and the
National Association of Latino Elected and Appointed Officials

A. The structure of immigration functions must further coherent and coordinated immigration policy development and implementation: All of our nation's immigration functions are charged with implementing the same body of law. A unified agency could best ensure the development of coherent immigration policy and the effective coordination of enforcement and service operations. Any structure which separates the agency's functions without providing for strong, centralized leadership furthers a lack of accountability and creates the risk that agency personnel will give out conflicting messages on policy matters.

B. Separate enforcement and service functions, and ensure that both have equal priority: Immigration service and enforcement functions should be implemented through separate chains of command and career tracks. The separation should extend from the field level up to immediately below the top leadership level, and the top leadership should be responsible for integrating immigration policy making and implementation. The separation of functions will help ensure that personnel clearly understand their mission with the organization, and that they possess the special expertise and qualifications necessary to administer their respective responsibilities effectively. It also will enhance accountability within both chains of command. Within the structure of both functions, there also should be efficient and accessible mechanisms to address customer complaints and resolve customer problems, particularly at the local level.

While the enforcement and service functions should be separated, the structure of the service functions and their location in the federal government should ensure that they have equal priority on our immigration policy agenda. If service functions rank lower than enforcement, they will not have the bureaucratic, political and financial resources required to make the substantial improvements in customer service that immigrant communities and other stakeholders need. Therefore, we do not support any structure that would diminish the priority of the service functions in the immigration agency, or would place them lower than enforcement.

Additionally, service and enforcement functions should share support services (such as some aspects of personnel training, information systems and record-keeping). The sharing of information systems and records is particularly important for the cost-effective coordination of activities between the two functions. If the service functions incur increased costs for support services as a result of inadequate coordination, those costs may result in rising fees for immigrant applications.

Principles Guiding Restructuring of the Nation's Immigration Functions - page 2

C. The immigration agency's leadership must be empowered to elevate immigration policy on the federal agenda: The agency's head should be able to integrate the development and administration of immigration policy by the agency's separate functions. This leader's position in the federal government should be sufficiently powerful (whether by virtue of reporting relationships or status within the federal bureaucracy) to advance the agency's agenda within the Executive Branch.

D. Restructuring is only one step toward fundamental reform of our nation's immigration system: While restructuring in accordance with the principles set forth above would address some of the problems of our immigration system, it must be accompanied by other fundamental policy and organizational changes. These include:

- The service functions must receive adequate resources for an equitable, accessible and effective system of immigration adjudications. The funding for those adjudications should be modified to eliminate the reliance on fee revenue and ensure that appropriated funds are used for expenses which are not related to the routine aspects of adjudications, such as one-time extraordinary expenses, infrastructure improvements, and comprehensive program changes. Similarly, the Examinations Fee Account should no longer solely bear the cost of refugee and asylee adjudications, and appropriated monies should provide some portion of the support for these operations.

Moreover, the system of requiring fee revenue to fully support the cost of adjudicating naturalization applications was established so that immigrants who receive a government "benefit" would bear the costs of application processing. However, this nation should recognize that greater naturalization not only benefits new U.S. citizens, but also enriches our democracy by making it more representative and vital. Consequently, encouraging naturalization is in the best interests of this nation, and high application fees should not place U.S. citizenship beyond the reach of our newcomers. Thus, there should be a partnership between immigrants and our government to pay for U.S. citizenship, and adequate funding for naturalization adjudications should be provided through a combination of appropriated monies and fee revenue.

- There must be a fundamental change in the "bureaucratic culture" of the immigration agency to one which emphasizes professionalism, accountability, and customer service. This culture must be inculcated throughout the agency by its leadership, and incorporated into the agency's training of its personnel and the performance objectives it establishes for them. The agency's personnel must also reflect the diversity of our nation's immigrant community.
- The immigration agency must recognize that organizations which work closely with immigrant communities have a deep understanding of the impact of immigration policies on the lives of the agency's customers, and should become key partners with the agency in the development and implementation of policies and procedures, on both the national and local level.

Chairman SENSENBRENNER. Thank you very much. And on behalf of the Committee, I would like to thank all of the witnesses for very good and very perceptive testimony.

The questioning will be under the 5-minute rule. And now that the staff has moved the table with the pile of GAO and Inspector General reports in front of Commissioner Ziglar, I will recognize myself for 5 minutes. [Laughter.]

Chairman SENSENBRENNER. This stack that is in front of you, Mr. Ziglar, are the General Accounting Office and Inspector General reports on the administration of the INS that have been completed since 1995. You can see that they are quite voluminous, and

all of them have looked into various deficiencies in how the INS performs its function. How many of those reports have you read?

Mr. ZIGLAR. I have reviewed a number of reports. I don't know how many of those. I have also reviewed summaries of those, most of the stuff that has been written about the INS. But I can't tell you that I have read all of those. I have read some of them.

Chairman SENSENBRENNER. Have you been able to implement any of the recommendations that have been contained in those reports?

Mr. ZIGLAR. Congressman, the restructuring plan that we developed when I first got there was based upon a number of the recommendations that had occurred over many years—not just these, but many years—of discussion about the INS, and in particular with respect to the service and enforcement division; as well as the issues that we have down in the field with respect to, for example, district directors who have both enforcement and service responsibilities; as well as the regional directors and the regional officers, and the misappropriation of allocations. Things like that.

Chairman SENSENBRENNER. Let me talk about a couple of the specific reports. The GAO issued a report last January on immigration benefit fraud. And they found that fraud is pervasive and significant in the INS. Now, what has been done to root out fraud and to make sure unscrupulous applicants are not getting the benefits that bona fide applicants deserve?

Mr. ZIGLAR. Congressman, I am glad you asked about that, because that is one of the reports I did read. Upon reading that report, I immediately got together the folks that were responsible for this, to try to figure out exactly what the dimensions of the problems are—I mean, I understand what the report said—and how we went about it. Now at the benefits level, we are doing considerably more in terms of investigation, checks on people, and that sort of thing.

Of course, one of the problems that we have at the benefits level is document fraud. We are using the forensic document lab, doing more training of people to recognize document fraud. And I have actually coming to me, I think it is the end of this week, what will be a plan to try to deal with the document fraud area. So it is something that I have taken seriously, and it happens to be one of the reports that I did read.

Chairman SENSENBRENNER. All right, that sounds good. Now, on Tuesday I sent a letter to you asking for copies of headquarters-issued policy and field instructions, as well as any documentation indexing those instructions. I know that might have been a tall order. I asked for it by Friday. And I am told that it is six and a half boxes, but there isn't an index. And that kind of disturbs me.

Given the fact that the guidance is in six and a half boxes of documentation, with no index, how can INS headquarters expect the agents in the field to be able to follow the headquarters instructions, if they don't know where to find the relevant parts without an index?

Mr. ZIGLAR. Congressman, the six boxes that we have—that we are discussing with your staff, because some of the materials in there are classified, as you know, and so we are trying to figure out a way to get it all to you in an orderly fashion—within those six

boxes are a number of manuals. For example, the administrative manual, I believe the inspections manual, and some of the manuals that have been completed on a project started several years ago, those do have references to indexes, as you call them, of where the stuff is.

Now, there are other field guidances and things that are not indexed. And I share your concern that we do not have an easily accessible system for everybody. Obviously, not every immigration inspector, Border Patrol agent, or investigator has to know what is in all six of those boxes. They have to know what is in their particular area.

And we do have a project ongoing that I am hoping by the end of this fiscal year will be about 85 percent finished, in terms of getting all of our guidances and other information into a more easily accessible format. But I share your concern that we do not have it all indexed.

Chairman SENSENBRENNER. I have one last curve ball for you.

Mr. ZIGLAR. I'm sorry, one last—?

Chairman SENSENBRENNER. Curve ball.

Mr. ZIGLAR. Oh, curve ball.

Chairman SENSENBRENNER. Yes. At the end of last month, the former INS Commissioner, Doris Meissner, stated that your restructuring proposal is the same as a proposal that President Clinton submitted 4 years ago. Do you agree with Ms. Meissner's statement?

Mr. ZIGLAR. Ms. Meissner's proposal is different than ours in some respects.

Chairman SENSENBRENNER. She said it was President Clinton's.

Mr. ZIGLAR. Well, I disagree, and I can give you a couple of examples of why it is not the same. But I will say that she did provide for a division of service and immigration, just as your bill. So there are things that are common to your bill and our proposal that are common to hers. And frankly, I mean, she recognized some of the basic issues of the INS. And just because a Democrat suggested it, doesn't mean it is a bad idea.

But for example, the reporting on the Border Patrol is a totally different situation. Under the Meissner plan, they would report to an enforcement area, as opposed to the chief. Ours would report to the chief. They do not provide for a CIO or a robust information technology project. It creates area directors; which we did not do, because we do not want to continue to have the problem that we have with district directors. It also did not deal with juveniles, which we are doing in ours.

There is a litany of things that are different, quite different, between those two plans. Fundamentally, though, it does have one agency with two bureaus. I mean, at its core, it is fundamentally the same in that respect.

Chairman SENSENBRENNER. Thank you, Mr. Ziglar.

The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you very much, Mr. Chairman.

Mr. Director, I wanted to thank you for the efficient way that former Ambassador Kunson of Ghana's wife's citizenship was processed. She became a citizen yesterday, and I thought I would convey to you their appreciation for the efficiency.

Now, here we are. There is probably not a soul in the land that does not agree that INS ought to be restructured. So the question is: How? We put ourselves in the place of the President, to find out that there is a Ziglar plan, a Ridge plan, a Sensenbrenner plan. And we are trying to figure out—Nobody knows which one he is going to gravitate towards.

The problem that many on the Committee are experiencing is that all, except the Sensenbrenner plan are administrative. That is to say that they are all handled in-house. And I am not sure—and if I am wrong, any witness can correct me—but most of the other witnesses do not think that the administrative route is going to cut it. Because, as the charts have shown, we have been doing the administrative tango for a long time with INS, and it just does not work. We are going to have to put this in legislation and put the imprimatur of the Congress behind a plan. And that is probably the most serious thing that we want to bring up.

Now, in addition, the Ridge plan does not call for the division to be within one organization. In other words, I think you and the Chairman all agree that there would be one central headquarters over both these divisions of enforcement and services. Is that not generally correct? [Looks at panelists] Nod here; nod here; nod here. Okay.

So what we would want to persuade you of is that it is best to do this legislatively this time, because that is the one thing we have never tried before. And I hope that we can lead all of you to join in our effort tomorrow morning to make sure that that happens.

Now, what advice would you give all of us as we get ready to get a good night's sleep and prepare for 10 in the morning? What should we remember that you last said that would be ringing in our ears?

Mr. ZIGLAR. Congressman, I have great reverence for the legislative process and for the Congress, having worked about 10 years up here on several occasions. And I believe that the judgment of the people, as reflected by the people's body, which is the Congress, is ultimately always going to be the right judgment. And we want to work with you legislatively.

On the other hand, the Executive Branch has a responsibility to manage the Executive Branch. And we saw a need to restructure this agency, and to do it through the processes that we have available to us administratively, and attempted to move along very quickly to do that.

But I can tell you that from my own perspective, the will of the Congress, whatever that is, is something that I would want to be supportive of and help carry out, whatever that is.

Mr. CONYERS. Well, you had better be worried inside the Administration. Ridge is making a grab for your jurisdiction, my man. Did you know that? [Laughter.]

Mr. ZIGLAR. Congressman—

Mr. CONYERS. Are you sensitive to that?

Mr. ZIGLAR. No, sir. As you know, I was asked to take this job, and I left a very nice job on Wall Street to come to Capitol Hill. And I'm not really particularly territorial about these sorts of things. I would prefer to have things done for the benefit of the

American people, and not for the benefit of me or any other person in public life.

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentleman from Pennsylvania, Mr. Gekas.

Mr. GEKAS. Yes. I thank the Chair.

Mr. Ziglar, under your administrative changes in the boxes, as you were referring to, the INS Commissioner, as we now know, remains in place, which is a distinct difference from what we plan to do in the legislation. What you are doing, are you not, aren't you relegating the INS Commissioner to the same position and competing with other functions of the Justice Department, like the FBI, the DEA, the marshals, etcetera?

If I correctly envision your plan, we have the INS Commissioner, the FBI, the DEA, and the marshals, for instance, in the same lineup, and all competing for the attention and direction of the Deputy Attorney General. Am I incorrect in that?

Mr. ZIGLAR. Congressman, I have never thought that I had a problem talking to the Attorney General or the Deputy Attorney General; and I have not. You know, immigration is an extraordinarily important issue, but I also think that the FBI, what it does is important; what DEA does is important; the civil rights division is important; the antitrust division is important. We are all at that same level. You know, I would not suggest that immigration is a more important issue than those other issues.

And the other fact—and it is a reality—and that is, an administrative restructuring is an administrative restructuring. We would not have the ability to create an Associate Attorney General. That is what the Congress does. So if you were doing an administrative restructuring, you would have to stay "Commissioner." You could not even change the name of it.

Mr. GEKAS. Well, then you would acknowledge that what we are attempting to do here is to put someone in authority right down the line of enforcement responsibilities in immigration and naturalization. Wouldn't you constitute that as an improvement? Because what we have done then is segregated your sets of powers from those of the FBI, DEA, and others, as they relate up to the higher authority.

Mr. ZIGLAR. Well, Congressman, actually, as you know, we have not offered comments on the bill. But there was one comment in our testimony that we wanted to point out. And that is that, under the structure of the bill as I understand it and as our lawyers understand it, the functions of the immigration functions in service and enforcement areas would be actually specifically granted to these directors of immigration services and immigration enforcement. The delegation authority of the Attorney General would be altered. And the Associate Attorney General would not appear to us to have anything other than maybe policy oversight and supervisory oversight of these agencies.

So if that is what you are trying to do, I am not sure legislatively where the chain of command from the Attorney General down is actually that clear. But that is what the lawyers tell me.

Mr. GEKAS. Assuming that we want to make it abundantly clear, which is what I am saying to you, doesn't that seem to put a sub-

stantial difference in the way we are outlining the authority and level of authority from your plan?

Mr. ZIGLAR. Well, if you were to revise it as you suggested, where it is clearly a delegation down from the Attorney General, it would be clear to me that if you had an Associate Attorney General in the chain of command, subject to that delegation, that you would have elevated the immigration issue. I think that is true. And that is a policy decision that the Congress, and the Congress only, can make.

Mr. GEKAS. Do you believe that 5 years of experience for one of these directors is adequate, as we are projecting it?

Mr. ZIGLAR. I think the bill has 10 years experience for the director of immigration services and enforcement.

Mr. GEKAS. I asked you five because it might change.

Mr. ZIGLAR. Oh. Well, Congressman, with respect to, for example, the service side, as I recall, the way it is written, it says something along the lines that they have to have had that much experience in adjudicating Federal benefits. What you are really doing if you do that is you are making it absolutely clear that you are going to have a civil servant, a career employee, in those roles. And that is certainly up to the Congress as to whether or not they want to do it that way.

Mr. GEKAS. Yes, it is up to us, and we are contemplating that. And we will let you know the result.

Mr. ZIGLAR. May I make one other comment about that question?

Mr. GEKAS. Certainly.

Mr. ZIGLAR. In the course of having legislation analyzed at the Department, there was a question raised about whether or not those kinds of qualifications in effect are an abridgement, if you will, of the President's appointment powers. I do not pretend to make a comment on that one way or the other, but that is a question that I think is addressed in the legislation.

Mr. GEKAS. I ask unanimous consent that I may have 1 minute, just to respond to that response, if I may. I ask that I have one additional minute. I notice that my time is out.

Chairman SENSENBRENNER. Well, without objection, so ordered. But I hope that does not set a precedent.

Mr. GEKAS. I promise I will not ask another one.

Chairman SENSENBRENNER. Because we are going to have some votes at the end, and I want to make sure that all of the Members who are present have a chance to ask questions. The gentleman is recognized.

Mr. GEKAS. We do not believe, Mr. Ziglar, that it is a wrongful delegation as we see it; and that it is constitutionally sound. Otherwise, we would not have the opportunity to have that strict delineation that we are talking about. We believe that it is constitutional. I have finished.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Chairman, one of my concerns has been that just reorganizing the Agency itself may not solve all of the problems. Let me ask a couple of questions to Mr. Ziglar.

In light of Mr. Ridge's comments, does the Administration have a position on the legislation?

Mr. ZIGLAR. No, Congressman. We have not taken a position on the legislation. And our comments on it have been limited to what is in the testimony.

Mr. SCOTT. Well, will you have specific amendments to improve the legislation tomorrow, with supporting documentation?

Mr. ZIGLAR. To my knowledge, we do not have any; certainly, not coming out of the INS.

Mr. SCOTT. So that we will not have any suggestions from the Administration on how the administrative reorganization can best be accomplished?

Mr. ZIGLAR. Well, Congressman, of course, the administrative reorganization is one that we have already laid out in some detail. The question of whether or not legislatively you do it is, of course, a different issue.

Mr. SCOTT. Well, I think it might help if you would participate in the legislative process by offering suggestions and what-not, but that is your decision.

Some things will not change by reorganization. The Florida situation, as I understand it, involved some private contractors who were involved in the process of issuing the visas. Will that change under reorganization?

Mr. ZIGLAR. Congressman, reorganization itself is not designed to address specific situations such as that. I mean, we will continue to use contractors.

Let me make one point about that particular situation. The contractor was not at fault. In fact, the paperwork process that caused that to occur had already been corrected, and was subject to a transition from an old contract to a new contract when those receipts or notices of the I-20's were sent out. And the reason they were sent out as late as they were was because the old contract required that they be held for 6 months before being mailed. I don't know why, but it is a contract that goes back way before my time. That contract was changed, actually, in October, subject to a transition.

Mr. SCOTT. Well, whatever has taken place, can we expect that to happen again?

Mr. ZIGLAR. Congressman, I sure hope not. And we are doing everything we can to stop that.

Mr. SCOTT. Well, procedurally, what has been done so that it will not happen again?

Mr. ZIGLAR. All of our documents are now being inspected one by one, to make sure that that does not occur.

In addition, in the whole technology area we are moving as quickly as we can to bring ourselves into the 20th century technology-wise, so that we will have a way of accessing the information about applications of whatever nature, so that we can in fact obviate that kind of problem ever occurring again.

Mr. SCOTT. Will you be able to negotiate this back and forth with private contractors? Or will you be using government employees to do the job?

Mr. ZIGLAR. Well, Congressman, we are using a contractor for a lot of this. They did not process the visas. The visas were issued last year in July, and they were actually issued by INS employees

back before September 11th. The processing of the paper and the data input are done by a contractor.

We actually, after this event occurred, sent employees down there to go through their processes with them and to go through and review all of those papers, to make sure that we don't have another situation like that. So it is being done with the contractors.

Mr. SCOTT. And that took 6 months?

Mr. ZIGLAR. Pardon me?

Mr. SCOTT. That took 6 months, from the time the visa was approved to the time it was sent out?

Mr. ZIGLAR. Well, Atta and Al-Shehhi were immediately notified that the visas had been issued. All that was done was that the I-20, which was the notice that went to the school, which is in effect a receipt, was data inputted and then held for 6 months before it was mailed, under an old contract.

Mr. SCOTT. I had another question I want to get in, and that is regarding the four Pakistanis who jumped ship in Norfolk. I understand that the Norfolk INS agent allowed the crew to leave the ship without seeking the approval from the district director or his assistant, and that was a new policy since September 11th.

There have been press reports that question whether or not the Hampton Roads INS office had been effectively notified of that procedure, and the response to the Chairman's question involving six boxes of information certainly lends credence to that allegation.

Now, I understand that the INS supervisor in Hampton Roads has been reassigned?

Mr. ZIGLAR. That is correct.

Mr. SCOTT. There are many people in Hampton Roads who have expressed support for him. And I can tell you that in my office, of all of the government officials that we have dealt with, he has been the most knowledgeable and most responsive of just about anybody we deal with. So I would hope that he would not be used as a scapegoat for problems higher up.

And I guess the question would be: Have you made any changes in procedures in notifying the district offices that would reduce the chances of that happening again? Now, I notice that my time has expired, and if you can answer very quickly?

Chairman SENSENBRENNER. Mr. Ziglar, could you please answer Mr. Scott's question?

Mr. ZIGLAR. Sure. Congressman, there is an investigation going on of all of the specifics of that case. I know a good number of the facts. I can assure you that I am not in the business of scapegoating anybody. I like to get to the bottom of these things, because only if we get to the bottom of them do we know how we correct the problems.

And the answer to your other question is that we have made it very clear that following field guidance, which was available in Norfolk at the time, there is no tolerance for, particularly supervisors, not making sure that our folks know about what they are supposed to do.

Chairman SENSENBRENNER. The time of the gentleman has expired.

The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman.

Good to have you all with us today. Mr. Ziglar, how can the INS get the attention it deserves within the Justice Department under your reorganization proposal, when it, as I understand it, remains the same agency at the same level? I believe that Chairman Sensenbrenner's proposal, I think endorsed by Mr. Conyers, would elevate certain positions. Levitation, if you will, in this town means power. Power at least attracts, if not respect, attention. How do you respond to that?

Mr. ZIGLAR. Well, Congressman, as I responded to, I believe it was Congressman Gekas, the issue of whether or not to elevate immigration as a subject matter area in the Department of Justice that has a stature perhaps higher than some others is really a policy question for the Congress to deal with. I certainly personally have not had any problem getting the attention of the Attorney General or the Deputy Attorney General when I have needed guidance, or help, or whatever.

Mr. COBLE. I thank you, sir.

Mr. Gonzalez, wouldn't you agree? Well, strike that; maybe you will not agree. Would you agree that having an independent service bureau, with its own policy maker, separate budget, that would focus only on service and not be tangled up with enforcement decision makers, would you agree that that would likely lead to better immigration services?

Mr. GONZALEZ. It could, but in one sense our fear, which I think is very well founded, is in that there would be more of a focus on the enforcement side, to the detriment of the service side, in terms of determinations being made by Congress and appropriators.

Mr. COBLE. Let me put a hypothetical to you.

Mr. GONZALEZ. Okay.

Mr. COBLE. Hypotheticals can come back to bite you from time to time.

Mr. GONZALEZ. Yes, I am aware of that.

Mr. COBLE. Either of the four. Who in the Justice Department do you believe is going to have more clout? An Associate Attorney General who handles nothing but immigration affairs, or the INS Commissioner?

Mr. GONZALEZ. My response to that would be an Associate Attorney General.

Mr. COBLE. Ms. Martin?

Ms. MARTIN. Yes, clearly, the Associate Attorney General will have more clout.

Mr. COBLE. Does anybody else want to—

Mr. GALLO. Clearly, sir.

Mr. COBLE. Pardon?

Mr. GALLO. Clearly.

Mr. COBLE. Commissioner?

Mr. ZIGLAR. Well, certainly, it is a higher title. And I suppose the answer in a vacuum would be, of course, yes.

Mr. COBLE. Thank you. I yield back, Mr. Chairman.

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman.

Commissioner, you said in answer to, I think, Mr. Conyers' questions that you had been very happy on Wall Street until asked to

take this job; so maybe we ought to take this time to thank you for taking the job. It is a miserable task that faces you, and a daunting one, and I appreciate that you are willing to try and make this better.

You know, as I look at trying to make sense of the competing plans, I have before me the testimony that you tried to give to the Immigration Subcommittee on November 15th of last year. On page 4 of that testimony, pages 4 and 5, you outline a plan. Is that essentially still the plan that you are proposing?

Mr. ZIGLAR. Yes, Congresswoman, it is.

Ms. LOFGREN. All right. So really, in contrast to the bill that we will be looking at tomorrow, we have got an Associate Attorney General with no real line authority, and really some dense changes within your proposal that would end the fiefdom of the district directors; bring some accountability internally within the Agency that I will say, since I have watched this Agency since 1971, it does desperately need.

I do not see any of that in the bill before us. Basically, it just changes the top reporting lines, but it does not do the dense changes that your proposal of November to us encompassed. Would that be a fair statement on my part? Would I be incorrect in that statement?

Mr. ZIGLAR. Congresswoman, as you know, we are not commenting on the bill, other than the question about the delegation for the Attorney General. But the bill does create two separate legal entities that are bureaus, and prescribes some things, sectors, and that sort of thing. And then, as I recall, it requires an implementation plan to be submitted by the Attorney General.

Ms. LOFGREN. Right.

Mr. ZIGLAR. Within the four corners of the bill, I would assume that those kinds of issues would get addressed in that context. But as it stands, it does not—

Ms. LOFGREN. It does not actually deal with any of the issues that you have attempted to deal with, or tried to deal with, last November with us.

You know, I am mindful of the late Congresswoman Barbara Jordan, who was a wonderful person and someone who I looked up to. I was on the staff when she was on the Judiciary Committee. And I think it is all right to think she was wonderful, but when she headed that Commission—and I checked on the Web last night—it was 1994. Mark Adrieson was in the Midwest, writing Mosaic. Jerry Yang was still in a dorm room at Stanford University. And “Yahoo” had not really been thought of.

There is really no technology component in the plan. And I think, to some extent, to be tied down to what an excellent person recommended 8 years ago might be a mistake, in terms of guiding our efforts at this point. So let me ask you this.

I know that there are internal problems; for example, the attrition level among the Border Patrol and the inspector corps, the need to fill key positions like your CIO position. What do you need from Congress? You tried to ask us for help last fall. What can we do to help you bring accountability and technology to this Agency so that it can perform?

Mr. ZIGLAR. Congresswoman, boy, that is a long question. Let me talk to you about some of the key things that are troubling me at the moment. The attrition rate out of the Border Patrol right now as we speak is about 15 percent. This fiscal year we are on our way to 20 percent, which represents about 1,900 agents. In the inspections ranks, we are at about 11 percent, on our way to 15 percent attrition rate. We also have high attrition rates among detention and enforcement officers and the criminal investigators; although they are not quite as big, but it is high. And Mr. Gallo just talked a few minutes ago about the pay structure problems.

We have that problem throughout the INS. For example, the journeymen inspectors and journeymen Border Patrol agents are at a GS-9; whereas most Federal agents are at a GS-11 or 12. And that is the journeyman level.

Our inspectors, who carry guns and who are in harm's way quite often, are not considered Federal law enforcement for purposes of section 6(c).

Those are things that are very difficult for us to deal with, because we are being picked off by all of the other Federal law enforcement agencies. They are going to sky marshals; going to U.S. Marshals; they are going all over the Government. We need some help on that.

Ms. LOFGREN. Could I interrupt, Commissioner? I don't want to be rude, but my time is going to run out.

Mr. ZIGLAR. I am sorry. I am sorry.

Ms. LOFGREN. So I am hearing we should adjust that?

Chairman SENSENBRENNER. The time of the gentlewoman has just expired.

Ms. LOFGREN. Well, perhaps we will have a second round, Mr. Chairman.

Chairman SENSENBRENNER. Well, we will see how long this goes.

Mr. ZIGLAR. Thank you, Congresswoman.

Chairman SENSENBRENNER. The gentleman from Texas, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Ziglar, it seems to me that the INS is like the proverbial stool that stands on three legs. And to be successful, the INS needs, first, better organization; second, good management; and third, an Administration willing to enforce the law.

In regard to better organization, that is one reason I support the bill introduced by Chairman Sensenbrenner and Chairman Gekas, because I think that will give us the requisite restructuring of the INS. In regard to good management, I think that is largely up to you. And it is simply too early to tell, though I certainly wish you well. In regard to an Administration willing to enforce the law, I am very hopeful about the current Administration.

It seems to me we have no choice other than to succeed. We have to protect the public safety, and that means stopping individuals who would come into the country for the wrong reason. At the same time, we have to expedite the immigration process for those individuals who would want to come in for the right reason.

And in that regard, I want to ask you several questions to start with, about initiatives that I think are absolutely essential to accomplish those goals. The first is—and you made a pronouncement

on this in the last couple of days—in regard to those individuals who are coming over on short-term visas—particularly, say, a tourist visa, to be here for 30 days—as you know, 40 percent of the people who are in the country illegally actually came in on legitimate visas, and then overstayed their visas and never returned home.

In order to know who those individuals are, and to do something about that situation, we are going to have to have some kind of an entry-exit system. When do you expect such a system to be implemented?

Mr. ZIGLAR. Congressman, can I make one point? It is not a 30-day tourist visa. The way the regulation reads is that——

Mr. SMITH. My point was just short-term.

Mr. ZIGLAR. Okay. But there has been some confusion about it. It is for the period you need for your trip.

We are in the process, as you know, of putting in place an entry-exit system. In fact, by October 1, our goal—and I think we are going to make the goal—is that we will have an entry-exit recording system for the visa waiver program at all of the airports and seaports in the country. By the end of 2004, we will have an entire entry-exit system up and running for the seaports and all of the land ports.

As you know, in the bill that you folks passed and that is pending over in the Senate, we also will be putting in a biometric indicator on it. So that we are moving as quickly as we can to put in that entry-exit system.

Mr. SMITH. But it is still apparently going to be 2 years before we will know who those individuals are who have come into the country and overstayed their visas?

Mr. ZIGLAR. Well, Congressman, of course, we have already an entry-exit system. Unfortunately, it is not foolproof. The fact is that we have information on all those 19 hijackers, and the reason we do is because we have this I-94 process that tracks. But it doesn't track effectively.

Mr. SMITH. And that is my point, though. It is going to be a couple of years, you think, before we will be able to track effectively those individuals?

Mr. ZIGLAR. Well, when I say that, we are going to start implementing it come this October, the first phase of it. And we will be moving it in. I mean, it is a practical problem of not only putting the technology into place but, for example, if you are going to have departure control, what you are going to need in order to track the exit, you are going to have to build the facilities just to catch the people.

Mr. SMITH. But it is going to be 2 years before that is fully implemented. That is my point, and that is what you just testified.

Mr. ZIGLAR. Fully implemented. That is the estimate.

Mr. SMITH. My second question goes to, frankly, something that we put into the 1996 immigration law, that says that we ought to track students, particularly those coming from terrorist countries. When do you expect that to be up and operating?

Mr. ZIGLAR. Congressman, I am a bit hard of hearing. That is why I——

Mr. SMITH. In 1996, we passed a law that mentioned a tracking system for students from foreign countries, particularly those who

might be coming from terrorist nations, so that we would know that they really did enroll full-time at the school they said they were going to. When will we be able to have a tracking system on those and other individuals?

Mr. ZIGLAR. That system will actually begin implementation in July of this year. It will be fully implemented, up and operational, by the end of this year. We will be giving a deadline for all schools to be in participation in that system early next year. And if they are not fully in participation, they will not be allowed to issue the I-20's or accept students.

Mr. SMITH. Mr. Ziglar, lastly and very quickly—

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. SMITH. All right. I will save it for the next round. Thank you, Mr. Ziglar.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman.

And I would first start by apologizing to the witness and to the Chairman for being in and out of the room. I had two hearings going on this afternoon, one on this important issue, and one in the Financial Services Committee on the important issue of how we set up a structure to hold corporations and accountants responsible in the wake of what happened with Enron. Both of those things are extremely important.

And it kind of strikes me, having been back and forth between both hearings this afternoon, that the approach that is being advanced on both fronts is very similar. That is, to attack the institution, rather than to try to get to either providing the increased resources or increased authority for somebody really to do a better job.

Over there we are talking about setting up a whole new super-agency within the Government to set standards for accountants; when we have an SEC who maybe, if we gave them the resources, they have the history and the authority to do that.

It strikes me that something similar is going on here. This bill, it seems to me, is not saved by putting Barbara Jordan's name on it. And it seems to me to run substantially counter to what we should be doing; which is bringing more coordination and consolidation to these services, rather than breaking them up and building more structures within our Government, all of which will be underfunded to do what we need to do.

About the most frustrating 2 years I have spent in Congress were the 2 years I spent as the Ranking Member of the Immigration and Claims Subcommittee. I found, as everybody else has found, that INS is perhaps the most inefficient Agency in Government. But I do not think that you take an inefficient Agency and break it into two or three or four different pieces. You will get three or four different inefficient agencies as a result.

And I am sure we have already been told, tomorrow when the markup comes, or whenever the markup comes, that nothing dealing with substance as opposed to organization is going to be in order in terms of an amendment. So what I found when I was the Ranking Member was that an agency which cried out for electronic assistance, to track people and to keep records and to maintain and

share information all across the country, was still keeping paper files like I used to keep in my law practice. And any time anything was going to need to get done, you needed to go and get the paper file from New York transferred to Houston or the West Coast. And I don't see anything in this bill that addresses that issue.

One of the few things that Representative Smith from Texas and I have worked rigorously on over the years together is this entry and exit system; which is anathema, apparently, to people along the northern border because they think it is fine for people along the southern border, but somehow the folks who leave the southern border and go around and come in and do mischief, that is okay.

So I just have some serious reservations. And I have not raised a question. My time is up. But I still have reservations about this bill.

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentlewoman from Pennsylvania, Ms. Hart.

Ms. HART. Thank you, Mr. Chairman.

I have a question, actually, for the other witnesses. And one of the concerns that needs to be addressed, I think even more than a restructuring, is how certain things are handled within the Agency. And what I would like to know from the other three witnesses is, do you think that the errors that occur now, or that have occurred in recent years, if any of them are as a result of the actual structure of the INS?

Do you believe, for example, that there should be physically separate agencies? And do you believe that part of the problem that they have is—as was, I guess, recorded in our earlier testimony—that they were caused as a result of too much on their plate, basically? I just need one-word answers first.

Mr. GALLO. I would like to answer that question, Congresswoman.

Ms. HART. Yes.

Mr. GALLO. Specialization can work. Sometimes you do have too much on your plate.

Ms. HART. Do you think that they do right now?

Mr. GALLO. They absolutely do.

Ms. HART. Okay.

Mr. GALLO. And specialization can work.

Ms. HART. And is that the case with all of the witnesses? I guess I need to know, Ms. Martin, do you believe that they do, as well?

Ms. MARTIN. Yes, they definitely have a real overload, in terms of their mission.

Ms. HART. And Mr. Gonzalez?

Mr. GONZALEZ. I believe they need more resources. But also, there is a real danger in a complete separation that there would be even less communication between agencies than there is now.

Ms. HART. Well, I don't know that that is true. I don't think you can assume that. Part of our problem, actually across the board, was the lack of communication among agencies. I don't think that you need to have them within the same agency for them to communicate.

That having been said, what I want to know now is, we have reached the point where most of us on the Committee believe that there ought to be a complete separation. Now, even if there is not,

it is certainly going to operate much more like there is a complete separation. Once that is accomplished, will there be better enforcement of things such as visas, people overstaying visas; people basically kind of abusing their privileges once they are here, of staying in this country? Do you think that that physical change will make a difference?

Ms. MARTIN. If I could say—?

Ms. HART. Sure.

Ms. MARTIN. If INS or this new Associate Attorney General and the two structures are committed to making the changes at the field level and from the very top down to the very bottom, in terms of having the staffing, the resources, the training, the data systems, that are consistent with their mission, this restructuring can do tremendous help to the immigration system being able to function properly.

I agree completely with the point that Congresswoman Lofgren raised, that without the field restructuring, if we just keep things the way they are going at the field, then it doesn't really matter what the boxes look like in Washington. We have to make sure that the new sense of what the priorities are, what the mission is, and the skills to do it, permeate through the entire system.

Ms. HART. Okay, that is fair. Anyone else on that point?

Mr. GALLO. The short answer would be, yes.

Ms. HART. Okay.

Mr. GALLO. It would be better enforcement.

Ms. HART. Mr. Gonzalez?

Mr. GONZALEZ. I would agree with that.

Ms. HART. Okay. And I want to go back to something you said I interrupted. And that was that you believe that they will not communicate. I want to hear why you think that is the case.

Mr. GONZALEZ. Well, I think, you know, there's a number of different types of situations that we have encountered in the past, in terms of a lack of communication. For instance, part of our role is to bring community-based organizations together with headquarters staff where policies are being developed. And there often has been a disconnect between what is going on at the top of the Agency here in Washington, D.C., with the regional directors and district directors. And so we need to have this separation, while also coordinating certain support services and other types of activities within the INS, or within any new agency.

Ms. HART. So then, your concern is not just communication as far as information among law enforcement. It is with the whole process?

Mr. GONZALEZ. That is correct.

Ms. HART. Oh, okay. I was going to say the whole law enforcement, information sharing issue is one that I guess no one can really deny.

Mr. GONZALEZ. Right.

Ms. HART. Having them be separate or in the same agency really should not matter as far as sharing information among law enforcement. And that is already being addressed.

As far as information sharing, I am really concerned about the student visa issue. Six hundred thousand, I think, people are in this country on student visas. I want to make sure that we con-

tinue to have student visas; but I also want to make sure that when there is any provision of that student visa that is violated, that that student is no longer here. Any suggestions, in particular for that particular area?

Chairman SENSENBRENNER. The gentlewoman's—

Ms. HART. Am I over? I have no time.

Chairman SENSENBRENNER [continuing]. Time has expired.

Ms. HART. Oh, well, maybe next round. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. Okay. The gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. I would ask that my opening statement be submitted into the record.

I want to thank all of the witnesses for their presence here. Each of them has been particularly instructive. This responsibility that we have as legislators is to coordinate with policymakers, thinkers, so that our legislation can make sense; and practitioners, which Mr. Gallo is, and the Commissioner. And I appreciate very much the thought processes that you have gone about in your testimony.

To the Commissioner, we realize that the previous hearing that we held here just a few weeks ago was particularly acrimonious. And I also would like to say on the record that I know a lot of what we are discussing is not the fault of Commissioner Ziglar. It is not the fault of the previous Commissioner.

This has been systemic with the INS. It has gone on through Republican and Democratic Administrations. And so I would like to take a small phrase from Martin King: If not now, then when? If not us—paraphrased—then who? Those are not precisely his words, but I believe we are challenged today, in light of September 11th, to really get going. I believe that we can craft an agency that is crafted with the understanding of law, the understanding of order, and the understanding of compassion. And that is where we have found fault.

I think also it is important to note, in light of September 11th, that there is a confusion here with the INS and homeland security. I think the INS has a very strong role to play in homeland security. It is not its only responsibility. As Mr. Gallo has said, he has internal investigations that are ongoing. We call upon him all the time. The special agents, the Border Patrol has responsibilities on the largest part of our border, which is the northern, and then the southern.

So I think the question that I would like to pose is to see how we can finally bring to an end a long series of changes that have been ineffective. I am holding up a sheet here that starts from 1979, down to 2001; a series of changes administratively that do not seem to have had all the impact that we would like.

I want to thank the Chairman of this Committee for having the wisdom to create a working relationship. I filed H.R. 1562, that created this sort of structure, these two entities with an Associate Attorney General. We are working toward that. And I thank him for that, and his interest in our issue on due process and taking note of the Ranking Member's comment about Haitians. All of this we need to look at; and particularly, the words of Congresswoman Lofgren as it relates to technology. I am not convinced that we can-

not include that. I am an advocate of that, and I encourage her efforts in that area.

But let me just say that we have got to do something now. And I challenge the Administration to do something with this. This bill has got to pass, and we have got to get it signed.

I would like to put in the record, Mr. Chairman, a CRS report that says that the United States—and I am sure if we talk to the man or woman on the street, they would have something else to say—between 1990 and 1999, has about 9 percent of the individuals in this country who are foreign-born. That compares to 42 percent in Israel; that compares to 60 percent in Kuwait; 17 percent in Canada. So we have got a misrepresentation here that we are being overrun by immigrants. We are a country of immigrants. Immigration does not equate to terrorism.

So what I would like to ask you, Commissioner, and I want to refute you, for a moment, suggesting that we are nullifying the President's appointment powers because an Associate Attorney General would be a presidential appointee. But, wouldn't it give some added measure of status to have an Associate Attorney General, two divided entities, of which that Associate Attorney General has the high-ranking status of that position? And then all of the suggestions that you have made that are structural, internally the fabric of what the Agency is, still could be implemented. What you were about to report to us in November of 2001 still could be under the structure. Because I want to encourage you to do that.

We have given you a body that will then allow you now, with a new mission, to begin to tear up those service centers in the Nation that are horrific, that cannot get their job done, that lose fingerprints, that cannot get green cards.

Can you answer the question for me, as my time wanes? Because I would like to get a question in to Susan Martin and Mr. Gallo. So if you could answer quickly, I would appreciate it.

Mr. ZIGLAR. Congresswoman, of course, anything that passes that would have two bureaus, you could build something inside it. But I might add that I believe the service centers are actually prescribed in the bill as continuing to exist. So you would not be able to tear those up unless you did it legislatively, as I recall.

Ms. JACKSON LEE. Well, the red light is on.

I would say they will exist, with reform. And the reform would come from that new structure.

Chairman SENSENBRENNER. The gentlewoman's time has expired.

The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman. I will be brief in my questioning.

Commissioner Ziglar, as you know, Congress is considering legislation which would extend 245(i) of the Immigration and Naturalization Act. Opponents of this legislation have asserted that extending section 245(i) could create a loophole which would allow suspected terrorists who are being held on visa violations to go free before the Government has an opportunity to fully review their cases.

How would you respond to that assertion? And wouldn't provisions in the recently enacted USA Patriot Act allow the Govern-

ment to continue to hold immigrants who are suspected of terrorist acts?

Mr. ZIGLAR. Congressman, the mere filing of a 245 application does not mean that somebody automatically gets admissibility to the United States. If you are otherwise inadmissible, based upon information about you, you are not going to get the green card based upon either a job offer or a family relationship. So there is nothing that I know about in the 245(i) legislation that would give some kind of special privilege to a terrorist. The information about them would deem them inadmissible.

And I believe you asked about the Patriot Act?

Mr. CHABOT. Yes.

Mr. ZIGLAR. The Patriot Act does have a provision that allows the Attorney General to detain individuals who he declares to be a national security threat.

Mr. CHABOT. Thank you very much. And I yield back the balance of my time, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. Yes, thank you, Mr. Chairman.

Welcome, Commissioner. And I think you might be aware of the fact that I have an interest in international adoption. And I want to thank you publicly for your personal attention in matters involving Cambodia and Vietnam. And I also want to make reference to Phyllis Covin, who has done a superb job and who is heading that joint taskforce with INS and the Department of State.

You get pretty good reviews here from your colleagues on the panel.

Mr. ZIGLAR. I didn't even pay them.

Mr. DELAHUNT. And you didn't pay them. That is particularly praiseworthy.

Let me ask you this. I don't serve on the particular Subcommittee, the Immigration Subcommittee, but you were talking about, I think it was, 1,800 to 2,000 enforcement agents dealing with a half a billion visitors, or visits, yearly. Is that correct? Did I get that?

Mr. ZIGLAR. Well, we have a half a billion people cross our borders. The inspectors that actually inspect them, there are 5,000 of those.

Mr. DELAHUNT. Five thousand. But on the enforcement side, it is about 2,000?

Mr. ZIGLAR. The enforcement side is roughly 2,000. Interior.

Mr. DELAHUNT. I mean, in terms of resources, do you have the resources?

Mr. ZIGLAR. Congressman——

Mr. DELAHUNT. If you go ahead and you implement your plan, or if legislation is adopted, realistically, that is a substantial ratio, if you will.

Mr. ZIGLAR. Congressman, depending on what number you take, whether it is eight million or 11 million in terms of the number of illegal aliens in the country, and even if you take that out, the number of folks that we know we need to be pursuing, 2,000 people do not go very far in terms of the priorities; particularly when

smuggling, criminal aliens, terrorism, or the priorities that we have to assign——

Mr. DELAHUNT. But you need more resources. I know you are being very careful——

Mr. ZIGLAR. Congressman, we are always happy when Congress gives us resources.

Mr. DELAHUNT. Right. If Congress provided them, you would accept them? And don't be shy, Commissioner.

Mr. ZIGLAR. Happily accept them, yes, sir.

Mr. DELAHUNT. Let me ask you this. You have a plan that you are implementing, and you have made some progress. You have initiated some actions this week, I understand. With the legislation that is before this Committee now, in terms of what you are doing, does the legislation provide you with authority that you feel you need now to implement your plan?

Mr. ZIGLAR. Congressman, thanks to the House Appropriations and Senate Appropriations Committees that gave us concurrence a couple of weeks ago, we are moving ahead with the administrative reorganization. However, let me make a point that I have made several times in hearings and otherwise. And that is, the initiatives that we are taking right now in no way can conflict with the FOSB and principles of that legislation. And that is to divide service and enforcement. In fact, if anything, it facilitates it.

Mr. DELAHUNT. Right. I guess what I am saying is, do you think that the legislation is needed for you to accomplish your goals of restructuring and reducing the backlog?

Mr. ZIGLAR. Congressman, I believe that we can restructure this organization effectively. We would definitely need help from the Congress on a number of issues: Personnel, technology, and other things like that. The question of whether or not the legislation passes that sets up a structure for the restructuring is really, like I said earlier, a policy goal for the Congress.

Mr. DELAHUNT. Right. But to do what you want to accomplish, you do not need additional authority from Congress? Is that right?

Mr. ZIGLAR. No, I wouldn't say that.

Mr. DELAHUNT. You might need more resources.

Mr. ZIGLAR. I need some help on personnel and a number of other issues, if I am going to be effective.

Mr. DELAHUNT. Could you provide us with a list of what you need, in terms of authorizing language from Congress, to meet your goals?

Mr. ZIGLAR. Sure.

Ms. LOFGREN. Would the gentleman yield?

Mr. DELAHUNT. Just one final question. I don't have any more time. In terms of cooperating with local and State law enforcement agencies, I think in terms of the enforcement aspect of your mission much could be done if you had a protocol, if you will. Is there any attention being directed toward that particular initiative?

I understand just recently the Attorney General rescinded authority for local and State officials to enforce immigration laws?

Mr. ZIGLAR. Actually, it was just the opposite. The Office of Legal Counsel has presented to the Attorney General an opinion—which he has not released, and so I am not really at liberty to talk about

it, because it is his prerogative to release it—that actually expands that.

Now, we are negotiating an agreement with the State of Florida to train some of their officers and work with them on high-level immigration issues. It is a very proscribed, very carefully crafted idea that Governor Jeb Bush was very much behind and very interested in. And I think it would provide us with a force multiplier if we end up doing that deal, which I think we will.

Chairman SENSENBRENNER. The gentleman's time is expired.

The gentleman from Alabama, Mr. Bachus.

Mr. BACHUS. Thank you. I want to go over, first of all, talking about illegal aliens—the numbers of them, who they are, how many there are. And more important to me is, what is their impact on our country? And so I want to just throw some things out, and then maybe in writing you all can respond and say, “We disagree, or agree, with those figures.”

First of all, you said that there are eight to 11 million illegal immigrants in this country. Now, it is my understanding that of that number about a quarter of a million, or maybe one out of 40, is brought into court and sentenced to deportation. Is that right, about a quarter of a million?

Mr. ZIGLAR. I don't think it is quite that high.

Mr. BACHUS. Okay. So it may be, let's just say, lower than that. Now, even those that are brought in of this small number of the total number of 10 million, the small number that is brought in, once they are sentenced, I am told that they just simply walk away and disappear, that they really are not deported.

Mr. ZIGLAR. Congressman, the ones that are out on bond, the way the process works is that our district directors make recommendations on bond. It goes to an immigration judge, who usually, most of the time, reduces the amount—

Mr. BACHUS. You might just give me some numbers.

Mr. ZIGLAR. But those are the ones that we have a very high walk-away rate on.

Mr. BACHUS. Yes.

Mr. ZIGLAR. And obviously, those that we detain we are able to—

Mr. BACHUS. So even just very few are brought into court. And of those that are sentenced, a large number of those walk away and just simply disappear.

But let me say this. Let's just say most of the illegal aliens or residents, they are here to stay. Now, I have just looked at some figures, and I have seen this two or three places. I do not know how accurate this is. But the poverty rate for immigrants—these are these 8 to 10 million—is 50 percent higher than that of native U.S. citizens. So it is quite a bit higher, the poverty rate. They and their U.S.-born children account for 22 percent of all people living in poverty in the United States. So I mean, that has serious implications for our country. I mean, you all would agree with that?

Maybe a fourth of the people in poverty in the United States are immigrants. Education. Now, I just toured my district. That is obviously on everyone's mind. I have read that immigration accounts for essentially all the growth in public school population over the

past 20 years. Currently, 9 million children from immigrant families are enrolled in public education.

Now, of our immigrants arriving, a third of them do not have high school diplomas. You know, we talk about how we need to get the number of people being high school graduates up. That is three times the rate of natives. Now, you know, that has got to have some serious implications.

We debated health care in this Congress. Immigrants arriving in the last 10 years and their U.S.-born children account for 60 percent of the increase in the size of the uninsured population. I don't know how any of you all would respond to that. I mean, those are some serious numbers.

And this is the last one. I will close with this. Because we as Americans, we have to communicate with each other. John Jay said that was one of our strengths as a country, our common language, or what became it. The number of Americans who do not speak English has soared in the last 10 years. The number who do not speak English has increased by 60 percent since 1990. Twenty percent of American households do not speak English. In other words, in one out of five American homes today, English is not the language.

Doesn't that have some serious implications? These are illegal aliens. We are not deporting them. Yet there is a number of them in poverty. You know, they do not have health insurance. They do not speak English. How do they assimilate into the population? And until they do, what is the cost for us? What is the impact on Medicaid, Medicare, public education, our services to other people in poverty?

Mr. GONZALEZ. If I may, there is a quote that says, "There are three kinds of lies: lies, damn lies, and statistics." And I think it is important to note, because this is kind of what is going on in this country; that there is a broad brush stroke being sort of painted that all immigrants are illegal, they are a drain on our system—

Mr. BACHUS. No, now, I did not say that.

Mr. GONZALEZ. No, no, no—

Mr. BACHUS. No, I was talking about the—

Mr. GONZALEZ. But I just want to quickly get to a point, because I think it is important. And what it says is that I don't recall any immigrants, particularly in the history of this country, particularly at the turn of the 20th century, who came here with money. Many of them came with nothing, basically, on their backs. And so you are reading statistics from folks who like to use those statistics for their purposes—

Mr. BACHUS. No, no, I am not doing that. I am saying to you what—

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. BACHUS. Yes, I am just saying, if you disagree with me, then what is the basis?

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Frank.

Mr. FRANK. Mr. Chairman, I am afraid it is not going to help the gentleman from Alabama's point about the importance of a common language to have me be questioning the witnesses immediately after he did, because I think people listening to both of us

might in fact question whether there is a common language in America. [Laughter.]

Mr. FRANK. But I think there is probably substantial overlap between the way he talks and the way I talk, so that we have some—

Mr. BACHUS. Oh, I can understand you. I just don't always agree with you. [Laughter.]

Mr. FRANK. Well, that is interesting. Because I agree with you when I don't understand you. [Laughter.]

Mr. FRANK. I would concur with the gentleman that it is probably the case that when you are talking about people who choose to emigrate, on the whole, poorer people emigrate and leave their own country more than rich people do. And people who are poor when they emigrate rarely acquire great wealth on their way over here. So when they get here, they are still poor.

My guess is, if you looked at the statistics you would also see that immigrant groups are among those who do best in many ways at living what we call the American dream; namely, starting poor and working their way up. My guess is that—and this is a point that many of my conservative colleagues often make—poverty should be looked at not just at one point, but longitudinally, and you should be looking at the way people work themselves out. And I think, both in terms of language and in terms of money, generationally you would see that in fact there is a great improvement there.

I do want to say that I agreed with the emphasis that the gentleman from Texas gave to the question of the entry and exit. I mean, I am a strong supporter of immigration. I think, for instance, Alan Greenspan's argument that we would not have been able to grow as rapidly as we did with so little inflation during the '90's, without immigration, is a very important one. Immigrants added to the workforce were very helpful.

But it is precisely as a strong supporter of immigration that I regret our failure to keep track of people who come here with visas and then jump ship and overstay and abuse. They really are undercutting our ability to maintain a rational program.

And I think I would urge people in the immigrant community, in the immigrant advocacy community, please understand that people who come here and violate the terms of their visas are probably our major problem in trying to maintain support for a good program. And the visa waiver program, other programs, they are undercut when people are abusive. And people ought not to see that as something to be aided or abetted or tolerated.

And I understand, too, Mr. Ziglar, that we believe we have an entry and—

Chairman SENSENBRENNER. Will the gentleman yield? I would just like to reemphasize the point that the House has twice passed legislation to establish the entry-exist system and to provide the INS the budget authority to implement it. And in that legislation was also the student visa tracking implementation, as well as legislation that provides for the better integration of law enforcement data bases, so that both immigration inspectors and consular officials will have more information when someone either applies for a visa or shows up at the border.

We hope that the other body will persuade Senator Byrd to remove his hold on the bill so it can be sent to the President promptly and we can get on with doing something that, I think, everybody agrees is very important and necessary.

Mr. FRANK. Well, I would say, in the past I have probably looked a little more skeptically at some of the specifics in that area, and that I was supportive of this this time around. We have got to do more.

I mean, in fact, while we have tried to set up an entry and an exit system, we have an entry system. And as far as the rest of it is concerned, I think we have—Was is Sartre? Who wrote No Exit? But I think that is basically the description of the visa system. We cannot afford to have it entirely voluntary.

Having said that, let me say just in closing, Mr. Chairman, that I appreciate the work that you and the Ranking Member have done together to try and improve this piece of legislation. I also, as you know, feel very strongly that we have to also attack some of the substantive problems that are not only unfair, but I think add to the INS' problems.

So I am hopeful—and I appreciate having some of the conversations that we have been having—that we will be able to go forward with this bill on the structural, but that that will not be the end. And I am assured by what I have been told that that will not be the end; that we will then be able to get into some of the substantive issues; and that by the time we are through, we will have a package that is both dealing with the structure of the INS, but also will deal with some of the substantive problems that I think remain.

I think we have been too lax in some areas, and too harsh in others. And this is an effort to get rid of some of the undue laxity that comes from structural problems. I hope we will accompany that with an effort to undo some of the, I think, excessive harshness that has almost been a make-up: When you cannot do it well in one way, you overdo it in the other. I hope we can come to a better balance. So I thank you, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentleman from California, Mr. Gallegly.

Mr. GALLEGLY. Thank you very much, Mr. Chairman. I apologize for coming in a little late. I was en route from California, as I go back and forth every week and have for the last 16 years. And I am somewhat pleased that the security at the airport seemed to be a little bit more intense than they used to be. I don't mind being shaken down two or three times. And I would have been here earlier, but I couldn't find my shoes.

Mr. Ziglar, it is common knowledge that I have been critical of the INS service. And unfortunately, you kind of stepped into the breach when you came onboard. I think if "Superman/Clark Kent" were to have walked into the INS the day that you took over, he would have probably run out screaming. So it has been an issue that is not new.

I don't know what the answer is. I do know that over the years that I have served on this Committee that I have heard the word "restructure" mentioned probably as many times as I have heard anything else as it relates to the INS. Doris Meissner came in with

a great program to restructure. We had a lot of happy talk, and no results. Things have gone from bad to worse.

I listened very closely to Mr. Bachus; also, to our good friend, Barney Frank. And I think that one of the things that we tend to confuse when we start talking about the effect that immigrants have on this country is, we sometimes lose sight of legal and illegal.

We allow more people the legal right to emigrate to this country every year than all the rest of the countries in the world combined. And I think that that is wonderful. That is one of the things that is probably the primary basis for what America is all about. But we have folks that are wanting to close the front door because the back door is off the hinges.

Spencer Bachus asked questions about: What kind of effect is immigration having on the country? I do not want to put words in Spencer's mouth. Maybe he could clarify this.

I assume you were referring more to the illegal side than the legal side; were you not, Spencer?

Mr. BACHUS. Yes. The figures I was giving dealt with illegal immigrants.

Mr. GALLEGLY. Okay. In California, where I was born and raised, in the Los Angeles metropolitan area, education, health care, are major, major issues. In the area of education in the Los Angeles City school district, there was a report in the Los Angeles Times last year that evaluated all 48 high schools in the Los Angeles unified school district. Of the graduating seniors, these are the ones that get the diploma—many cannot read what it says, but they have the diploma—of the 48 high schools, only two of the 48 had 50 percent or more that were proficient in English when they graduated. How in the world—how in the world—can we assimilate, if we cannot communicate?

It is very frustrating. When we see hospitals closing every day because of unfunded liabilities: I had someone say, "Well, I don't care; you know, I've got plenty of insurance." But if you have got a hospital that closed and, heaven forbid, you have a heart attack, and it takes you a half-hour to get to a hospital instead of 5 minutes, it is going to have an effect on you, no matter how much money you have.

I heard Mr. Gonzalez make reference to, well, you know, the blaming of the immigrants, and so on and so forth. Illegal immigration in my State has had a profound effect on the quality of education, the quality of health care, and so on and so forth. And if we are not ready to federally fund the effects of illegal immigration, we should be enforcing our immigration laws. We have a responsibility, if we are going to not enforce our laws, to provide funding to fill the gap in education, health care, and so many of the other areas that are directly affected by illegal immigration.

It has gone beyond frustration for me. I do not know what the answers are.

I see my light has come on. I wanted to ask a couple of questions, but let me just ask you one quick question, because of the organization. And this may be just a little off track, but it does have to do with what is going on in the Agency and the issues that you have to deal with, that sometimes you might like to deal with them but

the Merit Board sometimes gets involved and makes your life, I am sure, more complicated. Can you tell me today where Walter Dan Cadman is?

Mr. ZIGLAR. Yes, sir. Mr. Cadman is the head of something called our "national security unit." And I know your concerns about Mr. Cadman. If you don't mind, let me just tell you where I am coming from on that one.

Mr. Cadman was involved in the matter in 1995 or '96 down at Krome. There were 14 of those individuals, I believe is the number. He was the only person who stepped forward and took responsibility for his actions in that, and he was demoted and punished for it. He then, instead of contesting it like the rest of them did—and most of them are still working for us—he went back, and he started over, in effect, in his career.

He was the person who came forward back in '96 and said, "You know, we are not focusing on the terrorism things." Mr. Cadman is a very smart guy, and he recommended that we create a counterterrorism unit in the INS. I have looked at this guy's record. He has built that unit. And I will tell you, when September 11th came—I did not know the guy at the time I got there—he and his unit absolutely were magnificent in their response to the September 11th situation.

I now know Mr. Cadman. He has done, I think, an exceptional job in the situation. And I believe in redemption and forgiveness, and I think this man has earned it.

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentleman from Arizona, Mr. Flake.

Mr. FLAKE. Thank you, Mr. Chairman.

Mr. Ziglar, in discussing the experience requirements for the directors of the service and enforcement bureaus in this bill that we will mark up tomorrow, you said that requirements placed by Congress "raise constitutional as well as prudential concerns." In particular, you assert that the requirement uniquely limits the President's appointment authority.

This seems to conflict a bit with your testimony, where you say a key element of the restructuring is to provide clarity of function by improving accountability and professionalism through a clear and understandable chain of command, with specific experience at all levels. Now, what do you mean here?

Do you mean that we ought to have requirements for middle managers and others throughout these agencies or bureaus; but for the director level that we should require no experience or no expertise? Is that what you mean?

Mr. ZIGLAR. Congressman, I talked about this a little bit earlier, but let me go back over it. In reviewing this legislation, the Office of Legal Counsel raised the question about several things in the legislation. And one of them was whether or not the experience requirements with respect to the Associate Attorney General and these directors would limit the President's appointment power, and raised that issue.

The other issue that was raised was a more practical issue, and particularly with respect to the directors, and particularly with respect to the service side director. And that is that if you have 10 years of required experience adjudicating government benefits pro-

grams, what you have done is you have said, "Okay, you are going to have to have a career bureaucrat in that job," because you are not going to be able to find anybody on the outside to do it. So it limits somewhat your ability to go out and hire people.

I was not suggesting in my testimony that Congress should prescribe the qualifications for every person in the organization at every level. I think that would be a disaster for a manager to try to manage to.

Mr. FLAKE. But you believe that the requirements ought to exist, either set by Congress or by the bureau director himself, or by the President who appoints those people?

Mr. ZIGLAR. Congressman, with respect to the two directors and the Associate Attorney General, I simply raised in the testimony the legal issue that had been raised with us with respect to the appointment powers of the President with respect to those individuals. I was not suggesting that Congress should prescribe—Maybe I don't understand your question, but I was not suggesting that Congress should prescribe qualifications for everybody in the organization.

Mr. FLAKE. I was kind of hit with full force last week with what has been wrong with the INS in general, when I took a tour of the border, the Arizona-Mexico border. And in the city of Nogales, they have had a particular problem over the years with illegal immigrants entering Nogales, the American side of Nogales, through these huge storm drains—20 feet high, 15 feet across. Some 800 a week, I believe, were coming, and exiting at about 80 exit points throughout Nogales.

Mr. ZIGLAR. I have been there. I have seen it.

Mr. FLAKE. And this continued until about 6 months ago, when somebody had the bright idea—and since you have just come on, perhaps you will claim credit for it, or can rightfully—to actually put gates there, with shear bolts that would be there until the floods came, and then the water would come and breach the gates; but with television cameras on the gates, or monitors at least, where people could tell if illegals were trying to breach them.

And the Border Patrol is rightfully patting themselves on the back for doing this. Until you realize, you know, this has been going on for a couple of decades. They have completely sealed off that part of entering, that part of illegal entry, and saved about \$20 million a year, they figure, because they don't have to put Border Patrol agents at every manhole cover throughout town, or try to catch people that way.

What is wrong with the culture and with the INS structure, where ideas like this don't come to the fore easier? The question is, what took them 30, 40 years to come up with that and to spend \$200,000 and fix it? What, in your own reform plan, would make it easier for things like that or ideas like that to come forward?

It just seems like within the INS we have a bigger problem than we do with other agencies, with ideas like that coming forward.

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. Ziglar, why don't you answer his question?

Mr. ZIGLAR. Thank you, sir.

Congressman, you are absolutely right. And one of the things I mentioned in my opening statement is that not only do you change

the management structures; you have got to change the culture of this organization. In my tours on the border and elsewhere, I have seen things that have been developed at the local level that make absolutely good sense for the whole organization, but they have not been shared. I came back, and we have had some real serious look-sees about how good ideas float up to the top.

Now, with respect to Nogales, of course, as you probably know, they had a system there with cameras and sirens and things like that that would go off. But they still got through, because they did not have the gates. And the problem with the gates was, of course, you have got floods. And the concern was that somebody would get caught in there and be killed. But they now have figured out a way to do the breakaways, and very creative.

The restructuring—and from my point of view, coming from a business that was a very creative business—the restructuring has got to build into it incentives for people to be creative, to find efficient ways to resolve problems. I mean, that has always been the way I have tried to do business. It is real hard to do it in the INS, because it is such a big, difficult organization. But I think it can be done.

Chairman SENSENBRENNER. The gentleman's time has expired.

The Chair will strike the last word. Does the gentlewoman from California wish to say anything? I yield to the gentlewoman.

Ms. LOFGREN. Thank you, Mr. Chairman. I wanted to ask just a couple of further questions, and I appreciate your courtesy in allowing me to do so.

We had discussed the necessity of Congress acting to give you some further tools to manage. And Mr. Delahunt was pursuing that same question. So here is the question. If you had the ability to hire additional people, without regard to Civil Service, or to out-source management services, for example, would that help you implement technology? For example, you don't have a CIO right now. That is a Civil Service position. You are competing with the high-tech sector. Would you like to be able to change the way that that is handled, from a personnel point of view?

Mr. ZIGLAR. Well, I would certainly like the flexibility to be able to go out and select people that I could talk into coming into the Agency from the private sector, even if I could get them for only a year or two.

I just went through a drill recently with a fellow who is just absolutely brilliant in the technology area, but I couldn't hire him. For one thing, it was financial. It would be nice to have an exempted kind of situation, where you could give some incentives to get people to come help you.

People talk about them as political appointees. I don't much believe in hiring political appointees to run an agency. I believe in hiring people that are qualified. And if that means they come in through outside of the Civil Service, that is fine. But I am not interested in having a bunch of campaign workers working for me. I am not a campaign worker by background, and I probably couldn't get along with them very well. But having more flexibility—

Ms. LOFGREN. It is called "management discretion employees."

Mr. ZIGLAR. Pardon me?

Ms. LOFGREN. "Management discretion employees."

Mr. ZIGLAR. Right.

Chairman SENSENBRENNER. Reclaiming my time, I yield to the gentlewoman from Texas.

Ms. JACKSON LEE. Are we sharing the time?

Chairman SENSENBRENNER. The time belongs to the Chair. I yield to the gentlewoman from Texas.

Ms. JACKSON LEE. Mr. Chairman, I had asked originally for you to allow me to put into the record a statement from the Congressional Research Service.

Chairman SENSENBRENNER. Without objection, the material will be put in the record.

Ms. JACKSON LEE. Thank you very much.

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

Ms. JACKSON LEE. Just to Mr. Gallo, we just had in Houston, Texas, the invasion of the home of some Palestinians who were considered to be deportable, but they had a 9-year-old citizen; meaning one of their children was a citizen. I raise that to say that we have sometimes inconsistent policies in the INS.

My question to you is, what would have helped with respect to the Pakistani situation, the ship-jumpers that just happened in Virginia? What would have helped your team? And when I say "your team," the enforcement, the special agents, the inspectors. What would have helped them not have that happen?

Mr. GALLO. Not knowing the staffing of that particular port, in reference to the inspections branch of immigration, the criminal investigators: additional staff, Congresswoman.

Ms. JACKSON LEE. If you can speculate, would it have been the same thing maybe for the inspectors?

Chairman SENSENBRENNER. Reclaiming my time, the question that I asked to Commissioner Ziglar, which maybe you can address, Mr. Gallo, was the lack of an index to the various edicts and "ukases" from headquarters, so that people in the field would be better able to reference them when a situation like this came up. Do you think that there really is a crying need for an index where you can find out precisely in what book and on what page a regulation is?

Mr. GALLO. Yes, sir.

Chairman SENSENBRENNER. Okay. The gentleman from Pennsylvania?

Mr. GEKAS. Yes, Mr. Chairman. I ask unanimous consent to insert into the record a statement compiled by John Fonte, a senior fellow of Hudson Institute.

Chairman SENSENBRENNER. Without objection.

[The information of Mr. Gekas follows in the Appendix]

Chairman SENSENBRENNER. Well, this concludes our hearing.

Ms. JACKSON LEE. Mr. Chairman? Mr. Chairman, let me make an inquiry, please?

Chairman SENSENBRENNER. State your inquiry.

Ms. JACKSON LEE. The inquiry is, I never got to ask Mr. Gonzalez. He did have excellent testimony, and Ms. Martin had excellent testimony. Let me pose a question they can offer in writing. We are getting ready to mark up tomorrow, and I would appreciate

it if maybe they could get the Committee something by tomorrow morning.

Chairman SENSENBRENNER. The gentlewoman will state the question, and the responses in writing will be included as a part of the record.

Ms. JACKSON LEE. Thank you. I think both of them eloquently spoke about the service end, and the commitment to make changes. I would appreciate it if they would comment on whether the present structure of the present proposed legislation gives enough latitude to the new structure—the Associate Attorney General, the two policy heads—to really have an impact on the service centers and the district offices. That is where the rubber hits the road. And I would love your commentary, however you wish to give it to me—we said in writing—so that we can have that tomorrow.

Chairman SENSENBRENNER. Okay.

Ms. JACKSON LEE. Thank you very much.

I thank the Chairman.

Chairman SENSENBRENNER. Let me thank all four of our witnesses for a very informative and useful hearing. As I stated at the beginning of the hearing, the time for talk on this subject is over with. The time for action is at hand.

I would encourage the Members to be prompt, because we will start at 10 tomorrow marking up the legislation. See you all tomorrow. And the hearing is adjourned.

[Whereupon, at 5:17 p.m., the Committee was adjourned.]

APPENDIX

STATEMENTS SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE ZOE LOFGREN, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman. I want to thank you for having this hearing on the performance of the Immigration and Naturalization Service (INS). You have dedicated Judiciary Committee time and resources to address problems within the INS and I sincerely appreciate your interest in reforming the agency. I hope you'll understand that while I may disagree strongly with the details of your proposal, I have a great deal of respect for your willingness to tackle this problem.

As you all know well, I am no apologist for the INS. Most of you here know my views on the INS pretty well. I've always felt that INS stands for Inevitably No Service.

Over the past eight years, I have been one of the INS' harshest critics. Ask the INS staff in the San Francisco and San Jose offices. Talk to the DC based INS Congressional staff. My criticism stems from personal experience and observations of the agency since 1971.

I am a Democrat. Yet I never held my fire with former Commissioner Doris Meissner about the dismal performance of the agency during her tenure. I am a Democrat. Nevertheless, I have reached out to INS Commissioner Ziglar. A Republican.

That's because INS Reform is not about being a Democrat or Republican. It is not about personalities. It is not about scoring political points off the opposition. It's not about payback.

INS Reform is about America's national security. It's about making America's immigration agency work. More than anything, for my constituents in San Jose and Americans from California to New Jersey, I want this agency to work efficiently, and I want it to work efficiently quickly.

That is why I reached out to Commissioner Ziglar soon after he was named to head the agency, in order to ask about his ideas for how the agency should be run. Had Commissioner Ziglar been allowed to testify on November 15, 2001, and clearly outline his vision for the agency, all of the Members of this Committee would have a much better idea of what the problems are and what assistance the Commissioner requires.

So, what are the problems at the INS?

We know that the technology and database systems don't work well. How do we know this? Well, we found out when the INS sent out approval notices for dead terrorists on the six-month anniversary of the World Trade Center attacks. We know we have backlogs in adjudicating petitions in INS offices across America for the past several years. We know this agency couldn't track H-1B visas a few years ago, and that its managers constantly lose files. We know this agency deals with one fire, by pulling personnel off other crises. And we know this agency makes promises it's never been able to deliver.

So what do we need to do?

I believe we need strong accountable management and effectively deployed technology. I also believe that we don't have a lot of time in which to accomplish this. As we fight the war against terrorism overseas, we must ensure a strong line of defense at home.

That begins with a powerful head of the immigration agency.

That is why Congress must work with Commissioner Ziglar to provide the necessary authority to accomplish this goal. We'll stop progress dead in its tracks if we pass legislation that strips the Commissioner of any real authority to set the nation's immigration enforcement and services agenda.

Rather, we must pass language that devises an effective plan to overhaul the INS technology-outsourcing management where needed-streamline procurement rules-and

authorize Commissioner Ziglar to remove dead wood from management. His office must be allowed to terminate management employees, not just reshuffle those who do not meet expectations.

Dividing up the agency, as the Chairman's bill proposes, would not help. It would only exacerbate one of the agency's greatest weaknesses—its extraordinary inability to cooperate with itself by sharing information. Under even the most benign outcome, such a move would be no better than rearranging deck chairs on the good ship INS Titanic.

Without solid management, shuffling the lines of authority won't be enough.

On the contrary—Reorganization must empower the INS leadership to take effective action, so that the INS can begin to achieve effective results.

As this Committee discovered on the six-month anniversary of the World Trade Center attack—the strength of our security depends on the success of our INS reorganization efforts today.

I look forward to hearing what all of you have to say.

PREPARED STATEMENT OF THE HONORABLE JOHN LINDER, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF GEORGIA

Every year, more than one million people settle in the United States. However, there are two very distinct populations within this group: those who come legally and those who enter illegally. The differences between these two populations are dramatic, and it makes little sense to have a single agency managing service for the former and enforcement of the latter.

The Immigration and Naturalization Service (INS) has tried to manage these two competing interests, and the results have been ineffective at best and catastrophic at worst. Countless reports by the General Accounting Office (GAO) have highlighted the many and various problems at the INS, including an increasing conflict between its two primary functions. The GAO concluded that these two priorities were competing for the INS' time and resources, resulting in both ineffective enforcement and poor benefit delivery.

For years, we have seen evidence of the INS' failures in both of these areas, however, the events of September 11th have increased our awareness of and concern related to the particular problems of enforcement. Every single one of the September 11th hijackers was able to enter the United States legally, and while three overstayed their visas, the INS did not have and continues to not have the capacity to track, find, and deport visa violators. Further, in the wake of the tragedies, we discovered that immigration programs that were supposed to be closely monitored by the INS, such as student education programs, were contributing to our immigration failures. In fact, the INS and FBI could not locate more than 1,000 foreign students, largely from Arab nations, for interviews after the terrorist attacks.

It is clear that immigration has national security implications. While most foreign nationals come to the United States to experience the American democracy first-hand or live the American dream, we must ensure that we have the capacity to root out and prevent others with less benign intentions from ever entering the U.S. That is why I believe H.R. 3231, the "Immigration Reform and Accountability Act," is vital to our well-being, and I offer my strongest endorsement of this legislation.

H.R. 3231

The INS has attempted administrative reforms in the past, however, these efforts have not substantially altered the INS and may have contributed to the development of the current inefficient, ineffective, and incapable agency. It is time to undertake decisive action that clarifies the distinct enforcement and service components of our immigration policy.

The "Immigration Reform and Accountability Act" accomplishes this by creating the Agency for Immigration Affairs, which would consist of two equal bureaus: the Bureau of Immigration Enforcement and the Bureau of Immigration Services and Adjudications. It also creates a position titled the "Associate Attorney General for Immigration Affairs" and requires that this official have 10 years of experience in managing a large and complex organization.

As a nation of immigrants, it is imperative that the U.S. continues to allow legal immigration; however, we must maintain control of our borders and determine who can be admitted and under what circumstances. The Bureau of Immigration Services and Adjudications will have a vital role in this process. The U.S. receives more than 5 million immigration applications annually. Unfortunately, reports by the GAO have found that 20 to 30 percent of applications are fraudulent in some loca-

tions. A review of petitions for one visa category found that 90 percent of the 5,000 petitions were fraudulent.

The INS does not have the resources or desire to adequately detect noncompliance and fraud in immigration benefit applications. By establishing a Bureau of Immigration Services and Adjudications, we will reverse this trend because we will require that the bureau make the processing of immigration applications, including verification and security and background checks, its primary function. This will enable the U.S. to deter and reject fraudulent applications, as well as those that threaten our national security. Furthermore, immigration service reform will likely result in more timely consideration of applications for individuals who abide by our laws and thus apply through one of the domestic immigration servicing centers.

The Bureau of Immigration Enforcement will have an equally important role in protecting our national security, as it will be charged with deterring those who wish to enter or stay in the U.S. illegally and removing those that enter or stay regardless. As I mentioned previously, we currently do not have the capacity to monitor foreign visitors and students who overstay their visas. This is a tremendous problem, as approximately 40 percent of illegal immigrants come to the U.S. on legal and temporary visas. In addition, reports estimate that as many as 400,000 individuals who have been ordered deported are still living in the United States. By establishing a single agency with the sole mission of enforcing our immigration laws, we can correct many of these problems and provide a greater level of security to our nation and its citizens.

Through a two-fold approach to immigration, we will establish two distinct groups of immigrants and treat each group differently. Individuals who choose to respect our laws and abide by our immigration procedures will be rewarded by the Service Bureau's improved and expedited consideration of applications. However, illegal immigrants who seek to ignore and violate our laws will be sought by the Enforcement Bureau, which will recognize that benefits will not be conferred on individuals who have little respect for the laws of this nation.

It is only through such a two-pronged approach to immigration that we can serve both the American population, as well as our immigrant population, and ensure that our national priorities and security are protected. I urge swift passage of this bill, and I thank the Judiciary Committee for offering this significant compromise legislation.

“Don’t Forget about Citizenship When Overhauling the Federal Immigration Agency”

Statement by
John Fonte, Ph.D.
Senior Fellow
Hudson Institute
April 9, 2002

Six and a half years ago on September 11, 1995, the *New York Times* published an important article by Congresswoman Barbara Jordan entitled, “The Americanization Ideal.” At that time, Barbara Jordan wrote:

“Congress is considering legislation to curb illegal immigration and set priorities for legal admissions.... Reform is need....Legitimate concern about weaknesses in our immigration policy should not, however, obfuscate what remains the essential point: the United States has been and should continue to be a nation of immigrants. A well-regulated system of legal immigration is in our national interest.”

She continues:

“The United States has united immigrants and their descendants around a commitment to democratic ideals and constitutional principles. People from an extraordinary range of ethnic and religious backgrounds have embraced these ideals.”

“There is word for this process—Americanization. The word earned a bad reputation in the 1920s when it was stolen by racists and xenophobes. But it is our word and we are taking it back. Americanization means becoming part of the polity—becoming one of us. But that does not mean conformity,” because she explains, “We are more than a melting pot. We are a kaleidoscope, where every turn of history refracts new light on the old promise.”

Furthermore, Jordan declares that:

“Immigration imposes mutual obligations. Those who choose to come here must embrace the common core of American civic culture. We must assist them in learning our common language: American English. We must renew

civic education in the teaching of American history for all Americans. We must vigorously enforce the laws against hate crimes and discrimination. We must remind ourselves as we illustrate for newcomers what makes us America.”

What Barbara Jordan wrote six and half years ago is true today. Citizenship and the civic or patriotic assimilation of newcomers into the mainstream of American life is a vital mission of the INS or its successor agency. On the other hand, we keep hearing that the “dual mission” of the immigration agency is “services” and enforcement or “adjudications” and enforcement.

Thus, the INS’s own restructuring plan describes the “dual mission” of the INS as one of “services” and “enforcement,” and discusses the “competing requirements” of the INS as “effective customer service and effective enforcement.”

But this “dual mission” view is incomplete. The immigration agency has a third vital mission that has been ignored in the INS’s own plan—and that mission is citizenship. “Naturalization,” after all means that foreign citizens become American citizens. Hence, the triple mission of the immigration agency includes first of all, strengthened border security and then improved citizenship assimilation and improved efficiency.

Our core immigration law the Immigration and Nationality Act has emphasizes citizenship along with enforcement.

The Immigration and Nationality Act (INA) explicitly emphasizes the clear mission of facilitating civic integration, providing for citizenship training, and ensuring applicants’ knowledge of their civic obligations. For example, Title III/ Chapter 2 Section 312 (8 U.S.C. 1423) states that no person shall be naturalized as a citizen of the United States “who can not demonstrate: (1) an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language...(2) a knowledge and understanding of the history, and of the principles and form of government of the United States.” What is the purpose of this section of the law and (in this regard) what is the mission of the INS? Clearly, it is to promote the civic integration or assimilation of new citizens into the mainstream of American democracy. Thus, naturalized citizens are required by law to understand basic English and learn about our history and

government in order that they can become full and equal American citizens.

The law (8 U.S.C. 1443) designates that the Attorney-General (i.e., the Justice Department) is authorized to prescribe an “examination of applicants for naturalization as to their admissibility to citizenship.” This examination “shall be limited to inquiry concerning the applicant’s residence, physical presence in the United States, good moral character, understanding of and attachment to the fundamental principles of the Constitution of the United States, ability to read, write and speak English, and other qualifications as required by law, and shall be uniform throughout the United States.” It is significant that the law requires an **attachment** to the fundamental principles of the Constitution of the United States, not simply a neutral “understanding” of those principles.

Certainly, it is the mission of the INS or its successor agency to foster this “attachment” or moral commitment to our fundamental principles. Indeed, further in same section of the law under “Instruction in citizenship,” the Justice Department is “authorized to promote instruction and training in citizenship responsibilities of applicants for naturalization including the sending of names of candidates for naturalization to the public schools, preparing and distributing monthly an immigration and naturalization bulletin and securing the aid of and cooperating with official State and national organizations, including those concerned with vocational education.”

Moreover, Title III/ Chapter 2 Section 337 (8 U.S.C. 1448) the “Oath of Renunciation and Allegiance” requires that “a person who has applied for naturalization shall, in order to be and before being admitted to citizenship, take in a public ceremony... an oath.” The statutory language of this officially named “Oath of Renunciation and Allegiance” is rich with the language of “responsibilities” rather than “rights” and of “obligations” rather than “benefits.” Thus, according to the law, the applicant for citizenship (among other civic obligations) promises to: “absolutely and entirely renounce” all “allegiance and fidelity” to any foreign...state or sovereignty;” to “support and defend the Constitution and laws of the United States against all enemies, foreign and domestic”; and to “bear arms on behalf of the United States when required by law.”

Furthermore, Section 1448, subsection (d) gives the Justice Department the authority “to prescribe rules and procedures to ensure that the ceremonies

conducted...for the administration of oaths of allegiance...are public, conducted frequently and at regular intervals, and are in keeping with the dignity of the occasion.”

All of the sections of the Immigration and Nationality Act mentioned are at the core mission of the INS. These include:

- the civic integration of immigrants;
- citizenship training for our newest citizens; and
- the significance for newcomers of civic obligations.

Treating immigrants, who hope to become American citizens, with real respect means seeing them as future fellow citizens (*i.e.* as “candidates for citizenship”), not as “customers” waiting for the delivery of a “service” or “product” called “American citizenship.” Every American knows—or should know—that being a “candidate” for citizenship—for full and equal membership—in our democratic republic is a qualitatively different status of infinitely greater significance and dignity than being a “customer.”

How Can Restructuring the Immigration Agency be Strengthened?

Restructuring can be strengthened, first, by emphasizing the core civic mission of the INS consistent with the Immigration and Nationality Act. Plans should be outlined to implement civic integration, citizenship training, and civic obligations as outlined in Public Law No. 82-414. This imperative is highlighted in sections of the law that discuss the responsibilities and obligations of American citizenship including: learning English; understanding basic American history and the form of government and fundamental principles of the United States, as well as gaining attachment to the fundamental principles of the Constitution; and taking of a solemn oath pledging allegiance to the Constitution of the United States and renouncing all previous political allegiances.

Those of us who are fortunate enough to have been born in this country should welcome immigrants into the status of “candidates for citizenship” by being serious about American citizenship ourselves. This is truly the first step in respecting immigrants. Creating a unit within the Federal Immigration Agency to strengthen the civic assimilation of immigrants tells

all Americans, old and new, that we take our democratic citizenship seriously.

As they go through the naturalization process, the candidates for citizenship, our future fellow citizens, should “feel in their bones” that they are making a serious moral commitment in joining American democracy; they should not feel as if they are picking up some “papers” or “documents” from the customer service bureau of the Department of Motor Vehicles.

This concept of civic or patriotic assimilation, that immigrants make a serious moral commitment by leaving their old political system and joining American democracy as free and equal fellow citizens has been articulated by American leaders from George Washington to Barbara Jordan.

This is in the spirit of George Washington when he wrote to John Adams that he envisioned immigrants getting “assimilated to our customs, measures, laws,” and because of this, Washington believed, native-born citizens and immigrants would “soon become one people.”

This is in the spirit of Abraham Lincoln when he wrote that immigrants from all over the world adopt America’s civic heritage, “as though they were the blood of the blood and the flesh of the flesh of the men who wrote the Declaration [of Independence] and so they are.”

This is in the spirit of Theodore Roosevelt when he wrote, “the immigrant who comes here in good faith [and] becomes an American and assimilates himself to us... shall be treated on an exact equality with everyone else, for it is an outrage to discriminate against any such man because of creed or birthplace or origin. But that is predicated upon the man’s becoming an American and nothing but an American...”

This is in the spirit of Woodrow Wilson when he wrote, “I certainly would not be one even to suggest that a man cease to love the home of his birth and the nation of his origin—these things are very sacred and ought not to be put out of our hearts—but it is one thing love the place where you were born and it is another to dedicate yourself to the place to which you go. You cannot dedicate yourself to America unless you become...with every purpose of your will thoroughly Americans...”

And finally this is in the spirit of Barbara Jordan when she wrote shortly before her death. “We are a nation of immigrants, dedicated to the rule of law. This our history—and it is our challenge to ourselves...It is literally a matter of who we are as a nation and who we become as a people. *E Pluribus Unum*. Out of many one. One people. The American people.”

PREPARED STATEMENT OF DAN STEIN

INTRODUCTION

Thank you, Mr. Chairman, for the opportunity to present the views of the Federation for American Immigration Reform (FAIR) on your legislation, H.R. 3231, to replace the Immigration and Naturalization Service with the Agency for Immigration Affairs. My name is Dan Stein, and I am FAIR's executive director.

FAIR is a national, non-profit organization of concerned citizens nationwide promoting better immigration controls and an immigration time-out to insure that today's policies serve the current and future best interests of the American people. Since its founding more than twenty years ago, FAIR has insisted on the need to improve America's immigration system in the national interest. FAIR does not receive any federal grants, contracts or subcontracts.

The tragic events of September 11, 2001 brought home to Americans the fact that we must have better control over our borders and the immigration process that determines who will be admitted to our country and under what conditions. That message has been underscored by the sorry spectacle of student visa notifications for two of the terrorist pilots surfacing six months after that national calamity. It was further underscored when Attorney General Ashcroft acknowledged that the FBI and INS in cooperation with local law enforcement authorities had been unable to locate more than 1,000 foreign students from Arab and Moslem countries (about one in five of those sought) for interviews related to the terrorist attack.

The sad fact is that we don't know how many foreigners, from what countries, or for what purposes are in our country at any given time. It took the 2000 Census and an estimate by the Census Bureau to reveal that INS estimates of the magnitude of the illegal resident alien population were woefully understated. It is patently obvious to the American people that the immigration reforms of 1996 did not go far enough, just as it became painfully clear last September that our lax enforcement of our immigration laws can no longer be tolerated while this country is under attack from international terrorists.

The American people are trusting in their elected leaders to display the wisdom and initiative to adopt all appropriate measures that will offer them greater protection from a repetition of the September 11 attacks. FAIR has outlined a broad array of measures that would advance that objective. We believe that increasing the operational effectiveness of immigration law enforcement is vital to that objective.

FAIR'S ANALYSIS OF H.R.3231

The legislation before this committee, H.R.3231, wisely recognizes two fundamental problems with the current administration of our immigration law. First is the fact that this function is too important to continue to leave it relegated to an afterthought of the structure of the Department of Justice. Authority over and responsibility for the actions and lapses in immigration law enforcement and its service operations must be more clearly lodged under the Attorney General. Just as the nation's safety and well-being are poorly served by any shortcoming in our determination to enforce immigration laws, the hopes and aspirations of those seeking to join our society through legal means are poorly served by unacceptable processing delays. This bill addresses these issues by establishing an Associate Attorney General to assume full responsibility. Second, is the fact that both the law enforcement functions and the immigration services operations are both sufficiently important in their own right that they each must have their own clear-cut line of authority and resources. This bill does that by separating the two functions under separate managers and with separate budgets.

There is a third corollary to those two fundamental principles that should be kept in mind, i.e., that the service operations provided to immigrants and nonimmigrants and to sponsors of immigrants and nonimmigrants is inextricably linked to enforcement operations. The process of preventing the entry of would-be terrorists, other undesirable aliens or intruders into our country must be able to recognize those who should be speedily admitted or readmitted into the country. This would suffer a major setback if there were an effort to cleave those two functions entirely apart. In other words, the data on who has been admitted for legal residence or as a visitor must be as readily available to the port of entry inspector or Border Patrol officer or immigration investigator as data on who must not be admitted or must be removed from our country. This bill recognizes and maintains those lines of communication between the two functions.

CONSOLIDATED BORDER MANAGEMENT

Mr. Chairman, as you are well aware, the current renewed public discussion of the creation of a consolidated border management agency or department is a resurfacing of a proposal that dates back to the 1970s. The fact that it has persisted for so long is indication enough that serious observers of the current confusing and bifurcated border management system continue to come back to this proposal as a needed reform. At the same time, the fact that the proposal has fared no better is a tribute to the ability of strong leaders with cabinet portfolios to fend off raids on their turf. However, since September 11 we are facing a new day, one in which border management is highlighted as an urgent need. President Bush explicitly recognized the need for improving coordination among the various departments and agencies that share border management responsibilities by the appointment of Gov. Ridge to his staff. Gov. Ridge, for his part, quickly discovered that his inability to order cooperation among bureaucrats who were not under his command was a serious drawback.

We are now seeing movement, with the apparent support of the President, toward adoption of the first steps towards consolidating border management functions by bringing together the primary border control agencies: the INS, with its Border Patrol and inspectors, and the Customs Service, which shares the inspection function at the nation's ports of entry. We at FAIR see this tentative first step toward consolidation as a step in the right direction, although we believe it does not go far enough. We think that homeland security has been demonstrated by the tragic attack on our country to be so vital to the national interest that it merits cabinet rank status and needs to encompass all of the border management functions.

Mr. Chairman, the cleavage between service and enforcement operations of today's INS, as addressed in this legislation, will continue to be needed regardless of whether it is done by itself or as part of a larger reorganization of the Executive Branch of government. In calling your attention to the proposal for a larger restructuring of government responsibilities, we do not intend to detract from the proposal in this bill. We believe that there is no inconsistency between this bill and consolidated border management. We would encourage you, Mr. Chairman, and members of this committee to consider the possibility of amending this bill to include a larger reorganization.

While it is true that the Administration has not taken the lead in proposing a cabinet level position to manage border security operations, it clearly is an issue that is well understood by the public and one on which thoughtful initiative would be well received.

We in no way wish to slow down this proposal to replace the Immigration and Naturalization Service with the Agency for Immigration Affairs by suggesting that it await reform of the Executive Branch to enhance national security. Swift action is vitally important. However, we believe that this is not a time for half measures. The issues at stake—the lives and well-being of our people—are too important to be satisfied with partial measures.

CONCLUDING CONSIDERATIONS

Whatever route that this committee chooses to take, Mr. Chairman, we would be negligent if we did not share with you our concern that during the process of institutional change contemplated either by the creation of an Agency for Immigration Affairs or by a new cabinet level Department of Homeland Affairs the operational capabilities of the new entity will be severely strained. You will appreciate that the transition to a new, more responsive and more responsible operation will take time. During the transition, if nothing else changes, today's inadequate performance will be further degraded. Yet, this is not a time when we can afford to let down our guard. Accordingly, we hope that you and the members of the committee will reserve a place in your efforts to consider legislation that will temporarily reduce the strains on the institutional capabilities of the newly restructured organization. Not only should the immigration bureaucracy be spared any new burdens, and administration of INA Section 245(i) would be such a burden, but also measures to reduce the burden during the transitional period, such as a moratorium on all but core priority immigration such as immediate relatives and refugees, should be enacted.

Mr. Chairman, in addition to these suggestions, that we think would enhance the achievement of the objectives of this bill in much wider measure, we have offered to your staff some additional perfecting suggestions that we hope you will consider as you move forward on this legislation.

Thank you for the opportunity to share with you the views of the Federation for American Immigration Reform. On behalf of our members we congratulate you for addressing the important need to improve both the delivery of the services that as-

sure a smooth operation of our system of immigration and the incorporation of newcomers into our society as well as the means to better protect our people against dangerous and undesirable intruders.

Summary: FAIR supports the intent of the legislation to elevate the level of authority over, and responsibility for, immigration law enforcement and service operations, and to clearly separate those two functions in order to enhance both enforcement and service delivery. It also suggests consideration of how this reorganization may relate to the parallel study of establishing a consolidated border management department.

MATERIAL SUBMITTED FOR THE HEARING RECORD

Native population	246,859,000
Foreign-Born population	25,831,000
Total:	272,790,000

25,831,000 divided by 272,790,000 EQUALS 9.469 percent foreign-born population

U.S. 2002 SOURCE: BUREAU OF THE CENSUS
 [In thousands, except percent (150,216 represents 150,216,000). Data are based on a sample from the census; for details, see text, this section. See source for sampling variability.]

Year	Native population						Foreign born		
	Total population	Total	Born in state of residence	Born in other states	State of birth not reported	Born in outlying areas	Born abroad or at sea of American parents	Number	Percent of total population
1950	150,216	139,869	102,788	35,284	1,370	330	86	10,347	6.9
1960	178,467	168,806	118,802	44,284	4,526	617	397	9,881	5.4
1970	203,194	193,464	131,296	51,869	8,682	873	744	9,740	4.8
1980	226,546	212,466	144,871	65,452	(NA)	1,088	1,088	14,090	6.2
1990	248,710	228,945	153,685	72,011	(NA)	1,382	1,564	19,767	7.9

NA Not available. 1950, includes Alaska and Hawaii. Includes Puerto Rico.

Source: U.S. Census Bureau, 1970 Census of Population, Vol. II, PC(2)-2A; and 1990 Census of Population Listing (1990CPH-L-121).

No. 43. Native and Foreign-Born Populations by Age, Sex, Race, and Hispanic Origin: 1990 to 1999

[In thousands (228,945 represents 228,945,000), except as indicated. As of July, except 1990 as of April. Foreign-born residents are those people born outside the United States to noncitizen parents, while native residents are those people born inside the United States or born abroad to U.S. citizen parents. One notable difference between the two populations concern children. Any child born to foreign-born parents after entering the United States, by definition, becomes part of the native population. The foreign-born child population, therefore, is quite small, while the native child population (and the overall native population) are inflated by births to foreign-born parents after migrating to the United States. Data are consistent with the 1990 population estimates base.]

Characteristic	Native population			Foreign-born population			Percent distribution, 1999	
	1990	1995	1999	1990	1995	1999	Native	Foreign born
Total	228,945	239,826	246,859	19,948	22,978	25,837	100.0	100.0
Under 5 years old	18,495	19,372	18,788	270	180	176	7.6	1.4
5 to 9 years old	17,555	18,580	19,481	488	517	488	7.9	2.5
10 to 14 years old	16,334	18,031	18,945	733	852	904	7.8	3.7
15 to 19 years old	16,687	18,686	19,317	1,208	1,317	1,431	7.4	6.1
20 to 24 years old	17,280	18,148	18,077	1,883	1,837	1,949	6.5	9.5
25 to 29 years old	19,077	18,586	18,627	2,259	2,338	2,382	6.4	11.4
30 to 34 years old	19,583	19,103	18,832	2,255	2,723	2,895	6.8	11.4
35 to 39 years old	17,862	18,719	19,524	1,989	2,577	3,021	7.9	10.0
40 to 44 years old	15,865	18,031	19,554	1,729	2,228	2,714	7.9	6.7
45 to 49 years old	12,400	15,607	17,117	1,347	1,851	2,239	6.9	6.8
50 to 54 years old	10,166	12,207	14,614	1,150	1,435	1,832	5.9	5.8
55 to 59 years old	9,547	9,877	11,432	942	1,209	1,423	4.8	4.7
60 to 64 years old	9,763	9,059	9,320	864	988	1,194	3.9	4.4
65 to 69 years old	9,278	8,050	8,483	789	878	964	3.4	4.0
70 to 74 years old	7,452	8,095	7,975	529	756	796	3.2	2.7
75 to 79 years old	5,577	6,226	6,700	527	474	629	2.7	2.7
80 to 84 years old	3,479	4,052	4,483	431	396	354	1.8	2.2
85 to 89 years old	1,740	2,068	2,367	236	264	258	1.0	1.5
90 to 94 years old	628	889	1,007	121	149	140	0.4	0.6
95 to 99 years old	188	224	289	36	44	54	0.1	0.2
100 years old and over	30	39	48	8	9	11	-	-
5 to 13 years old	30,783	33,027	34,452	1,056	1,168	1,151	14.0	5.3
14 to 17 years old	12,557	13,898	14,657	788	930	897	5.9	4.0
18 to 24 years old	24,498	22,888	23,411	2,465	2,425	2,601	9.5	12.4
25 years old and over	28,351	30,872	31,394	2,733	2,947	3,206	12.7	13.8
65 years old and over	2,565	3,220	3,712	457	465	483	1.5	2.3
Female	117,396	122,705	126,055	10,109	11,805	13,380	51.1	50.9
Male	111,547	117,121	120,805	9,737	11,173	12,472	48.9	49.1
White	195,313	203,083	208,035	18,428	14,930	16,575	84.3	67.7
Black	28,812	30,999	32,348	1,705	2,117	2,517	13.1	8.6
American Indian, Eskimo, and Aleut	1,981	2,136	2,247	86	120	150	0.9	0.4
Asian and Pacific Islander	2,840	3,597	4,231	4,627	5,811	6,589	1.7	23.3
Hispanic origin	14,381	17,571	20,234	7,997	9,532	11,103	8.2	40.3
White, not Hispanic	182,131	188,983	189,502	6,184	6,335	6,547	76.9	31.2
Black, not Hispanic	28,098	30,096	31,288	1,208	1,494	1,806	12.7	6.1
American Indian, Eskimo, and Aleut, not Hispanic	1,771	1,897	1,982	26	35	43	0.8	0.1
Asian and Pacific Islander, not Hispanic	2,586	3,284	3,853	4,431	5,582	6,333	1.6	22.3

- Represents or rounds to zero.

Source: U.S. Census Bureau, "National Population Estimates by Nativity", published 25 April 2000; <http://148.129.129.31:80/population/www/estimates/usnativity.html>.

44 Population

U.S. Census Bureau, Statistical Abstract of the United States: 2001



STEVE YOUNG
PRESIDENT

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JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

9 April 2002

The Honorable F. James Sensenbrenner
Chairman, Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

Imm

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Immigration and Customs

Dear Mr. Chairman:

I am writing on behalf of the membership of the Fraternal Order of Police regarding today's Committee hearing on "Restructuring the INS-How the Agency's Dysfunctional Structure Impedes the Performance of its Dual Mission," and respectfully request that these comments be included in the record.

The Fraternal Order of Police does not oppose the recent reform proposals put forward by Congress and the Administration to divide the current Immigration and Naturalization Service into two separate entities—one to provide immigration services, the other for immigration enforcement. We are concerned, however, that as the law enforcement functions are transferred from the INS to the newly created bureau, that the rights of current employees—including their collective bargaining rights—are protected. We hope that as part of any restructuring measure, the Committee will work to ensure that these existing rights are not infringed upon.

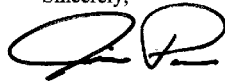
A second issue of concern relates to the ability of a new immigration law enforcement entity to maintain adequate staffing levels to enable them to complete their important mission. For this law enforcement component to be successful, the head of that agency must have the ability to recruit and retain fully trained and qualified law enforcement officers. One way to accomplish this goal is to authorize the expansion of "law enforcement officer" retirement status to include Immigration Inspectors and all employees of the new immigration enforcement component performing law enforcement duties.

The expansion of this enhanced retirement system to those Federal law enforcement officers who are currently denied coverage is a priority for our organization. Under current law and the regulations of the Office of Personnel Management, thousands of law enforcement personnel with a role in homeland security, and who are responsible for protecting Federal employees and facilities, are placed on an unequal footing with their Federal law enforcement colleagues. This disparity in who does and does not qualify for

law enforcement retirement coverage is not based on the duties these men and women are asked to perform, and has an enormous impact on the recruitment and retention of qualified personnel. By expanding this retirement coverage to Immigration Inspectors and other law enforcement employees, the agency will be provided with the tools they need to ensure that they can recruit and retain these invaluable employees and, in the process, improve homeland security.

On behalf of the more than 300,000 members of the Fraternal Order of Police, I would like to thank you in advance for your attention to our concerns. Please do not hesitate to contact me if we can provide you with any additional information or assistance.

Sincerely,



Jim Pasco
Executive Director

CC: Members, Committee on the Judiciary, U.S. House of Representatives

Scheduled Hearing on H.R. 3231

TO REPLACE THE IMMIGRATION AND NATURALIZATION SERVICE WITH THE AGENCY FOR IMMIGRATION AFFAIRS, AND FOR OTHER PURPOSES

THURSDAY, NOVEMBER 15, 2002

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

The Subcommittee met, pursuant to call, at 2 p.m., in Room 2237, Rayburn House Office Building, Hon. George W. Gekas [Chairman of the Subcommittee] presiding.

Mr. GEKAS. The hour of 2 o'clock having arrived, the Committee will come to order. Regretfully within a few moments the Chair will adjourn this meeting and cancel the proposed testimony that was to be offered. We had relied very heavily on counting on the requirements of the Committee for testimony that was to be offered at this hearing to be proffered to the Committee sufficiently in advance per requirement so that Members of the Committee would have the likelihood of being able to analyze fully the contents of the proposed testimonies so that they could prepare questions and other inquiries that might flow from the testimony. This is not just a happenstance requirement. It is vital to the Committee process and one which we take very seriously, and we have precedent many, many times in the Judiciary Committee and in the Sub-

committees thereof where cancellation of a hearing was obliged by reason of the failure of submission of testimony in time.

Therefore, noting that a hearing quorum is present, I want to acknowledge the presence of a lady from California, the gentleman from California, and the Chairman of the full Committee. The Chair recognizes Chairman Sensenbrenner.

Chairman SENSENBRENNER. Mr. Chairman, let me say very briefly that I fully support the decision that has been made by the Chairman to cancel this hearing. The request that was made of all of the witnesses was that they have their testimony submitted no later than the close of business on Tuesday. We did not receive the testimony of INS Commissioner Ziglar until noon today and that provided an inadequate time for the Committee Members and staff to be able to review that testimony and to analyze it and draft intelligent questions of the Commissioner. I think that the Chairman made this decision for the protection of all of the Members.

This is a very complicated issue. It is one that the Members have to be fully apprised of. The Immigration and Naturalization Service did not accommodate the practice of this Committee for as long as I have been on it to have testimony submitted in advance. It is my hope that the Chairman at some time when the INS gets its act together and submits testimony on time that we can reconvene this hearing to get Mr. Ziglar's testimony.

Let me also state that the general counsel of this Committee, Phillip Kiko, reminded Mr. Karpinski, who is the Legislative Affairs Chief of the INS, of this requirement on Monday when we were together in San Diego, and I advised David Hobbs of the White House when I talked with him on Friday that we wanted to have this testimony in on time. So I would hope that next time when the Immigration Service gets a letter requesting testimony by a specific time that they either comply with the request of the Committee or at least have the courtesy to call and ask for an extension, which did not occur this time.

Thank you, Mr. Chairman.

Mr. GEKAS. The Chair concludes——

Ms. LOFGREN. Mr. Chairman?

Mr. GEKAS. The lady from California.

Ms. LOFGREN. I realize this is a decision that the Chair makes but I would hope that we could at least hear the testimony that is available to be offered to us today. Certainly the Commissioner is only one of four witnesses, and there are witnesses who have come from across the country to testify, and I think it would be prudent and appropriate for us to hear that testimony.

And I would note it is always disappointing when an agency does not meet time lines, but this is not the first time that testimony has been proffered late to the Judiciary Committee and I can't recall another time when we have canceled a hearing because of such a failure.

So I would just like to note I would prefer to proceed, Mr. Chairman. I thank you for recognizing me.

Mr. GEKAS. We thank the lady. The gentleman from California.

Mr. ISSA. I guess just in a very quick sense I would like to support the Chair on this decision. This is not just a hearing. This is a fairly substantive change of the INS, and from quickly looking

through this, we are talking about an agency that has been called dysfunctional repeatedly in hearings here by everyone on the left, right, middle on this subject, and now we are talking about not bifurcating it into two agencies that might be less overwhelming but adding to it substantial other Federal entities, and I for one want more time to look at this and review it and have those substantive questions because I am very concerned that we are going exactly the opposite of what the conventional wisdom is.

Thank you, Mr. Chairman.

Mr. GEKAS. We thank the gentleman from California, which is a good segue of announcing that there will be a follow-up hearing to be regularly scheduled with the requirements of testimony and all of the other rules to be obliged.

This Committee stands adjourned.

[Whereupon, at 2:05 p.m., the Subcommittee was adjourned.]

