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REVIEW OF INS POLICY ON RELEASING ILLEGAL ALIENS PENDING DEPORTATION

HEARING

BEFORE THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

NOVEMBER 13, 2001

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REVIEW OF INS POLICY ON RELEASING ILLEGAL ALIENS PENDING DEPORTATION

TUESDAY, NOVEMBER 13, 2001

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:30 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Carl Levin, Chairman of the Subcommittee, presiding.

Present: Senators Levin, Collins, and Carper.

Staff Present: Linda Gustitus, Chief Counsel and Staff Director; Mary D. Robertson, Chief Clerk; Ross Kirschner, Staff Assistant; Joe Bryan and Tara Andringa (Senator Levin); Kim Corthell, Republican Staff Director; and Eileen Fisher, Investigator to the Minority.

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Good morning, everybody. Today, the Permanent Subcommittee on Investigations will hear from current and past employees of the U.S. Border Patrol who have come forward to express their concern and dismay at the Immigration and Naturalization Service's practices, the INS practices, involving the release of persons arrested for trying to gain illegal entry into the United States. While the problems raised by the Border Patrol agents would be serious in normal circumstances, they carry particular weight since the attacks of September 11.

The U.S. Border Patrol is, according to its own description, the mobile, uniformed law-enforcement arm of the INS. It was officially established in 1924 and was given the responsibility of combating alien smuggling and illegal entries other than at ports of entry. While the Border Patrol itself has changed significantly over the years, its principal mission has remained the same. The area we will be focusing on in this hearing involves the illegal entry of persons into the United States, outside of normal ports of entry.

Ports of entry are the only places where people may legally enter the United States. They are locations such as airports, bridges and highways, where INS officers and Customs agents review persons, papers and luggage, to decide whether to allow someone into the United States. Today's hearing looks at illegal entries made at places other than these official ports.

While the statistics that we use to illustrate the problem may include people who have been in the country illegally for some time, what we are focusing on today are people who are arrested while

trying to slip across our Borders without subjecting themselves to inspection at a port of entry as required by law. Our witnesses today are from two sectors of the Border Patrol, and as you can see from this map, the Border Patrol is divided into 21 sectors, and the representatives that we will have testifying today are from the Detroit Sector, which covers four States, Michigan, Ohio, Indiana and Illinois, and the Blaine Sector, which covers Alaska, Oregon and the Western half of the State of Washington.[1]

When persons are arrested by the Border Patrol, the large majority voluntarily returns to their country of origin, usually Mexico or Canada. The others, perhaps as many as one-third of those arrested on the Northern Border, but just a small fraction arrested on the Southern Border, are scheduled to appear at a removal hearing. The Border Patrol decides whether those persons should be detained, released on bond or, as is most often the case, released on his or her own recognizance while awaiting the hearing. The removal hearing can take several months to occur. Detention decisions are not made by the Border Patrol alone. If the Border Patrol decides to detain a person or set a bond to help assure that a person shows up at a hearing, the INS deportation office can revise that decision and order the person released on a lower bond or on his or her own recognizance.

To be released on your own recognizance means that you are released on your promise that you will appear at the scheduled hearing. There is no bond. For a number of reasons that we will be discussing at this hearing, the Border Patrol and the INS release on their recognizance a significant number of people who are arrested for illegal entry, even though it is clear that most will not show up at their removal hearing. That means that most people who get caught and arrested for illegal entry, who do not voluntarily return to their country, are allowed to move at will in this country with no constraints, other than a written instruction to appear at a hearing that is likely to result in their removal from this country, and that is absurd.

Look at the statistics that we were able to obtain from the Detroit Sector.[1] In fiscal year 2001, the Detroit Sector of the Border Patrol arrested 2,106 people. A significant percentage of those were arrested while actually attempting to enter the country illegally. Now, we do not have that exact figure, but a significant percentage of the 2,106 were actually arrested in the process of entering the country or attempting to enter the country illegally. Of those 2,106, slightly less than two-thirds were voluntarily returned to their country of origin. That is 773 were issued notices to appear at a removal hearing. Pending their removal hearing and based on statistics provided by Border Patrol agents, we estimate that 85 percent of the 773 were released on their own recognizance, or about 650 people. The rest, about 116 people, were detained or released on bond. So that means, again, that about 650—or 657 on that chart—were released on their own recognizance.

Now, how many of those people who were released on their own recognizance that they would appear at a hearing—how many of

[1] See Exhibit No. 1 which appears in the Appendix on page 73.
[1] See Exhibit No. 6 which appears in the Appendix on page 79.

those people actually showed up for the hearing? The INS does not know. One former INS district director and Border Patrol chief told us that he thought that the percentage of persons arrested, again outside a port of entry, and released without bond, who do not show up for their hearing, was 90 percent. Our conclusion is that the vast majority of people arrested by the Border Patrol while attempting to enter the country illegally in the Detroit Sector, who do not voluntarily return to their country, are released on their own recognizance and do not show up for their removal hearings.

And, to add insult to that injury, the INS has told us that if a person does not appear at their hearing, little or no effort is made to find them. I view this to be a dysfunctional, absurd system. The INS must know, even without keeping statistics, that once a person is released after being arrested for illegal entry, they stand a very good chance of avoiding removal at all. So why then does the INS continue to release so many on their own recognizance? That is what we are going to explore this morning. We will hear this morning not only from Border Patrol officers on the front lines, we will also hear from the first panel of witnesses who represent INS and Border Patrol management.

Senator Collins.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you very much, Mr. Chairman, and thank you for calling this important hearing to review the Immigration and Naturalization Service's policy of releasing illegal aliens while they await their deportation hearings. We will hear that many of the individuals released never appear for their hearings, choosing instead to vanish into American society, and adding to the estimated 8 million illegal aliens currently in the United States.

Many of the 8 million illegal aliens in America entered our country legally, but overstayed their visas, others slipped undetected across our Borders. A significant number of others were apprehended by the Border Patrol, but released pending the scheduling of a hearing before an immigration judge. As Senator Levin indicated, according to one recently retired INS official, as many as 90 percent, or 22,000 of this group, do not show up for their hearings each year. The obvious question arises: Is the INS policy of releasing individuals before their deportation hearings take place in the best interest of our country's national security?

Last year, the Border Patrol arrested 1.2 million people who entered the United States without presenting themselves for inspection at a port of entry, as required by law. The vast majority of these individuals returned voluntarily to their country of origin after the Border Patrol collected information about them, including a fingerprint, that is put in the Immigration Service's automated fingerprint system, called IDENT. Thousands of others, perhaps 20,000 to 30,000 of those apprehended, are scheduled for a hearing before an immigration judge. The vast majority of those released, as we have indicated, failed to show up. Although the INS may send out a notice to these no-shows, INS agents are not routinely sent out to locate the illegal aliens who fail to appear.

This morning, we will hear disturbing testimony describing how INS agents would have difficulty locating these no-shows, even if they were going out to look for them, in part because the contact information the illegal aliens provide is not verified consistently. We will also hear how criminal and background checks are not routinely conducted prior to releasing the illegal alien, a policy that could result in felons or other dangerous individuals being released into American society.

The lack of detention space is another factor that may influence how many illegal aliens are detained. The policy of releasing illegal aliens pending deportation hearings is not limited to aliens who are apprehended by the Border Patrol when they try to enter the United States outside a port of entry. In September 2000, the General Accounting Office reported that it is the policy of the INS to release aliens seeking asylum, whom the agency has determined do not pose a flight risk.

In 1999, some INS district offices released nearly 80 percent of the asylum seekers pending their asylum hearings, yet as many as one-third of these individuals failed to appear for their asylum hearings. In fact, many of them never even bothered to file an application for asylum. A more recent report issued by the Department of Justice Office of Inspector General notes that more than 75 million individuals are inspected each year at U.S. airports for potential admission to the United States, some of whom are referred for secondary inspection. The report estimates that approximately 10,000 of the individuals subjected to a secondary inspection are ordered to gather additional documentation and report to an INS district office to complete the inspection.

Included among those whose inspections were deferred were individuals about whom lookouts had been placed on databases, as well as people with criminal records. The report indicates that at least 11 percent of those paroled failed to complete the inspection, and that 50 percent of these no-shows had criminal records or were on the lookout list. The Inspector General's report notes that the INS did not consistently track these inspections to completion and conducted little or no follow-up on the no-shows. Now, more than ever, we must ensure that we know who is being permitted to enter the United States.

I hope that this hearing will draw attention to the larger problem of securing our Nation's Borders, particularly our porous Northern Border, as it appears to be the entryway of choice for a number of terrorists, and this is an issue that I look forward to working with the Chairman on and have asked him to pursue. For example, in December 1999, Ahmed Ressam drove a car loaded with 130 pounds of explosives and timing devices from Canada to the State of Washington, with the intention of bombing the Los Angeles International Airport. Thankfully, he was apprehended by an alert U.S. Customs Agent as he attempted to enter through a port of entry.

Convicted in April on terrorism charges, Ressam awaits sentencing next year. There are other examples, as well. More recently, a reputed Bin Laden operative, wanted in connection with the attacks on the World Trade Center and the Pentagon, also chose to enter the United States from Canada. The Southern Bor-

der has long been a focus of INS resources, while the Northern Border consistently has been understaffed and underfunded. Only about 340 Border Patrol agents and about 500 INS inspectors watch a Border nearly 4,000 miles long in the continental United States alone, and staff 113 ports of entry. Prior to September 11, a number of these ports were not staffed and guarded 24 hours a day, and agents in Maine have told me that they feel extremely overworked and stressed in trying to fully staff these ports, 24 hours a day.

The comprehensive new anti-terrorism law, signed recently by the President, contains provisions to strengthen immigration enforcement and otherwise aid in the fight to detect and thwart terrorist activity. One important provision would authorize a tripling of the number of Border Patrol personnel, Customs service personnel and INS inspectors along the Northern Border. It also authorizes $100 million to improve INS and Customs Service technology, and additional equipment for monitoring the Northern Border. Swift implementation of these measures is critical to strengthening our homeland security.

I look forward to hearing the testimony from all our witnesses today, and again I commend the Chairman for chairing and holding this important hearing. As the President has said, we live in a very different world from the one we lived in on September 10. We need to adapt to that new reality by improving the methods by which we protect our Borders, our liberty and our lives.

Thank you, Mr. Chairman.

Senator LEVIN. Thank you, Senator Collins, and thank you for your good work in this area. Before I introduce our first panel, I want to just make a statement about our second panel. The second panel consists of two current employees of the U.S. Border Patrol, both of whom are senior agents and presidents of their local union, and one former employee who served at the time of retirement as a Deputy Chief Patrol Agent. The current employees are here today under subpoena, though both agents were willing to come on their own as well. I issued these subpoenas as Chairman of this Subcommittee in response to concerns against these agents of possible retaliation by the INS. Mark Hall has, within the past 2 months, been issued two proposals of punishment for speaking to the media without permission. The first proposal is for a 90-day suspension without pay; the second is for a 1-year demotion following the 90-day suspension.

I have fought, Senator Collins has fought, this Subcommittee and this Full Committee have fought for decades to protect the rights of whistleblowers in our Federal Government. I am very disturbed by what I have heard about this matter to date. I have asked the INS to provide this Subcommittee with all documents relating to Mark Hall's personnel actions over the last 2 months, and the Subcommittee staff has been directed to review them. We received some of the requested documents this morning and have been told that the rest will be forthcoming, and we expect nothing less. Of course, if there is any delay or resistance to turning over the documents, we will issue a subpoena for them.

It is not easy for career employees dedicated to their jobs and their agencies to come forward and to tell the American people

about serious problems in their programs. It is hard enough to swim against the tide without being punished for it financially and professionally. We will be reviewing these recent actions very closely. We will not tolerate any form or degree of retaliation for appropriately blowing the whistle on mismanagement.

Now, I am not going to take more of today's hearing to get the details of this personnel action, because the issue that we have before us is so important. But I will keep the Subcommittee involved and informed in overseeing developments in these personnel matters until I am satisfied that these employees are treated fairly and that these agents have not been subject to any inappropriate or retaliatory action by their employers.

Now I would like to welcome our first panel of witnesses this morning. We are pleased to have Michael Pearson, Executive Associate Commissioner of Field Operations of the U.S. Immigration and Naturalization Service, and he is accompanied by the Chief of the U.S. Border Patrol, Gustavo DeLaVina. Am I pronouncing your name correctly?

Mr. DELAVINA. That is correct.

Senator LEVIN. Gentlemen, we thank you for being here. We look forward to your testimony. Pursuant to Rule 6, all witnesses who testify before this Subcommittee are required to be sworn, and at this time, then, I would ask the witnesses to please stand and raise your right hand. Do you swear that the testimony that you will give before this Subcommittee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. PEARSON. I do.

Mr. DELAVINA. I do.

Senator LEVIN. We will be using a timing system today. Approximately 1 minute before the red light comes on, you will see the light change from green to yellow, which will then give you an opportunity to conclude your remarks. Your written testimony will be printed in the record in its entirety, but we would ask that you attempt to limit your oral testimony to 10 minutes. Again, we thank you both, and, Mr. Pearson, you may proceed.

TESTIMONY OF MICHAEL A. PEARSON,[1] EXECUTIVE ASSOCIATE COMMISSIONER FOR FIELD OPERATIONS, U.S. IMMIGRATION AND NATURALIZATION SERVICE; ACCOMPANIED BY GUSTAVO DELAVINA, CHIEF, U.S. BORDER PATROL

Mr. PEARSON. Mr. Chairman, Senator Collins, I am pleased to have the opportunity to talk to you today about the Immigration and Naturalization Service's role in processing aliens arrested for illegal entry into the United States between ports of entry. I am also pleased to be accompanied today by Gus DeLaVina, Chief of the U.S. Border Patrol. The INS is charged with both facilitating legal immigration and enforcing the Nation's laws to prevent illegal immigration. The horrific events of September 11 have underscored the far-reaching implications of this mission and the challenges the agency faces in carrying it out.

Nowhere are the challenges greater than along our land borders. Our border management strategy aims to facilitate the flow of legal

[1] The prepared statement of Mr. Pearson appears in the Appendix on page 49.

immigration while preventing the illegal entry of people and contraband. Responsibility for carrying out this strategy is shared by the Border Patrol and the Inspections program. Immigration Inspectors are assigned to the ports of entry and are charged with facilitating lawful entry and preventing unlawful entry. Border Patrol agents are charged primarily with detecting and preventing the unlawful entry across our land borders between ports of entry.

The Border Patrol is responsible for patrolling 8,000 miles of border, which includes 2,000 miles of the Southwest Border, 4,000 miles of the Northern Border and 2,000 miles of coastal area. In 1994, as threat and activity levels grew along the Southwest Border, the Border Patrol implemented a four-phase strategy to deter, detect and apprehend illegal entrants, smugglers and contraband. This strategy involves forward deployment of personnel, equipment and technology along the Southwest Border in phases one through three, and then along the Northern Border, Pacific and Gulf Coasts in phase four.

The strategy is currently in phase two, concentrating resources primarily in the area of highest illegal activity, the Southwest Border. We are experiencing a decline in apprehensions along the Southwest Border. Apprehensions for fiscal year 2001 show a 25-percent decline when compared to the same period the previous year. This decline is due in part to the success of our Border Enforcement Strategy. Measures of success along the Southwest Border over the last year include the arrest of 1.2 million aliens, almost 11,000 of whom were identified as criminal aliens, the seizure of 1.1 million pounds of marijuana, and the seizure of over 16,000 pounds of cocaine.

Along the Northern Border, in fiscal year 2000, the Border Patrol arrested 12,108 undocumented aliens and seized over 4,900 pounds of marijuana—57 percent of those arrested along the Northern Border initially entered through the Southwest Border. In fiscal year 2001, 12,338 undocumented aliens were arrested along the Northern Border; 60 percent of those were Mexican nationals and 20 percent were Canadian nationals. Most of those were voluntarily returned to their country of origin—61 percent of the Northern Border apprehensions enter initially through the Southwest Border. Also in fiscal year 2001, 13,000 aliens were arrested along the coastal areas.

The majority of illegal alien crossings and narcotic trafficking continues to occur along the Southwest Border. However, we know that there is a threat along the Northern Border and coastal areas, as well, and continue to reevaluate our enforcement strategies. In the last 3 years, we have increased the number of Border Patrol agents along our Northern and Coastal Sectors by 25 percent. Border Patrol agents assigned to the Northern Border are experienced. We have not assigned the newly-hired trainees to the Northern Border. Additionally, we plan on increasing the number of Border Patrol agents in our Northern Border this fiscal year, consistent with funding for fiscal year 2002 and the supplemental.

Now I would like to discuss the process by which Border Patrol agents arrest aliens who enter the United States illegally. Upon arresting an alien, the alien is charged under either Section 212 or Section 237 of the Immigration and Nationality Act. Aliens who

have entered the United States without inspection and arriving aliens are charged under Section 212, which describes the grounds for inadmissibility, while others may be subject to Section 237, which describes the grounds for deportability. The alien is either placed in removal proceedings or allowed to voluntarily return to his or her own country.

Border Patrol agents use the ENFORCE and IDENT computer systems for processing aliens. ENFORCE is a case management tracking system, and IDENT is a biometric, recidivist and lookout database. ENFORCE and IDENT are INS-wide programs that standardize the collection of data and generate INS forms used in the administrative or criminal processing of aliens for immigration-related violations. Within the Border Patrol, IDENT is deployed to all sectors. With the exception of two sectors, it is integrated with the ENFORCE system. ENFORCE will be deployed to Houlton, Maine, and Swanton, Vermont sectors this fiscal year.

Prior to determining the disposition of the alien, the alien's name and other identifying information are checked through ENFORCE and IDENT, in addition to various systems which may include, but are not limited to, the Central Index System, the National Crime Information Center and the Deportable Alien Control System. Based on the results of the criminal and administrative record checks I just described, the Border Patrol agent will determine the most effective and appropriate course of action. A supervisory Border Patrol agent then approves this determination.

Generally there are three possible courses of action: Voluntary departure; voluntary return; and issuing a warrant of arrest or notice to appear. Once the Border Patrol decides to proceed with the administrative or criminal processing of an alien, the detention process begins. There are three reasons INS detains an alien: Risk of flight; risk of danger to the community; and requirements of law, such as mandatory detention of certain aliens.

Once charged, those aliens detained by the INS are either in proceedings before an immigration judge to determine whether or not they are eligible to remain in the United States, or have final orders and are awaiting removal from the United States. If there is no significant risk of flight or danger to the community, an alien can also be paroled into the community, released on bond, or released on his or her own recognizance. Availability of detention space plays an important role in deciding whether or not to detain the alien.

The most common outcome of the removal proceeding is a final order of removal. In such instances, the immigration judge determines that an individual is ineligible for legal admission into the United States and must face removal. During the removal hearing process, an alien may be granted relief and/or asylum, may be permitted to withdraw his or her application for admission, or the case may be terminated outright if it is determined that the removal charge is not sustainable or evidence comes to light that the person is lawfully present. An alien who is then ordered removed may pursue an appeal of the immigration judge's decision.

The time it takes to proceed through the appellate process can be significant, and often places a burden on INS to provide long-term detention. Another avenue to effect removal is to reinstate a

prior final order of removal. When an alien previously removed from the United States reenters illegally, Section 241(A)(5) provides for the reinstatement of the removal order.

As you can see, the INS has established standardized procedures for processing persons arrested for illegal entry into the United States. We believe that these procedures allow us to remove these individuals as rapidly as possible within available resources, while meeting our statutory requirements and protecting the legal rights of those arrested. We are willing to work with Members of Congress on any proposal you may have for improving these procedures. This concludes my formal statement. I would like to thank the Subcommittee for the opportunity to appear. I look forward to your questions.

Senator LEVIN. Mr. DeLaVina.

Mr. DELAVINA. I have no oral statement, sir.

Senator LEVIN. Thank you. Reading the testimony of the senior agents and the former deputy Border Patrol chief, who will be testifying after you, Mr. Pearson, there is a very high degree of concern about INS practices with regard to illegal aliens who are arrested coming across the border outside of ports of entry. Now, they will testify that other than Canadians and Mexicans who are almost always returned to their own country, most of the persons who are arrested are released into this country on their own recognizance. Thousands never return for their hearing, and no one attempts to seek out and arrest people who fail to show up for their hearing.

And that is why one of the agents will testify that, as an example, when he recently caught a number of illegal aliens trying to walk through a railroad tunnel between Windsor and Detroit, when he shined his flashlight on them, they "simply continued to the exit and surrendered to the waiting agents," because they knew that a person stands an excellent chance of staying in the United States when he or she crosses the border illegally, outside of a port of entry. I would like to go through some of the data with you now.

You have said in your testimony that about 12,300 persons were arrested—this is on page three, and you also gave it in your oral statement—that about 12,300 persons were arrested for illegal entry on the Northern Border in 2001. Now, most of these, according to INS data, about 8,000 or two-thirds of those arrested, returned voluntarily. What I am interested in is talking about the 4,400 who did not return voluntarily. These are the people arrested for illegal entry just on the Northern Border alone—about 4,400 in 2001. So I want to ask you questions about that group of people, that 4,400 people.

They were given a notice to appear at a removal hearing. That hearing takes months, frequently, before it takes place, and the INS has to make a decision about these people pending that removal hearing, whether to detain them, whether to release them on bond or whether to release them on their own recognizance. Do you keep statistics about those 4,400 people that you told us about, as to how many were detained pending their hearing, how many were released on bond, and how many were released on their own recognizance?

Mr. PEARSON. Senator, I do not have statistics on those 4,400. I do, however, have the statistics on the Detroit Sector.

Senator LEVIN. All right. Well, I will get to the Detroit Sector in just one moment, but we have asked for those statistics now, and are you going to supply those? Do you keep them?

Mr. PEARSON. The people who do our stats for us, who look at the data in the computers and analyze them and provide us reports, are working on your request right now, but I do not have that with me.

Senator LEVIN. But that is not something that you publish in your annual reports?

Mr. PEARSON. I do not believe so.

Senator LEVIN. Now, of those released on their own recognizance, just based on a promise to show up, about how many actually showed up for a hearing?

Mr. PEARSON. According to the graphs provided by the Executive Office for Immigration Review, that is the court system that handles these, about 80 percent show up. They show, in 2001, 20–21 percent did not show up.

Senator LEVIN. Are you including those folks who are given notices to appear, for instance, who do not live up to the conditions of their visa?

Mr. PEARSON. I am talking about what comes directly off of their charts on all who appear in the EOIR system.

Senator LEVIN. Which includes all the notices to appear; is that correct?

Mr. PEARSON. Yes, Senator.

Senator LEVIN. I'm just talking about the people who are arrested by the Border Patrol.

Mr. PEARSON. I do not have that data.

Senator LEVIN. Do you keep that data?

Mr. PEARSON. I do not know. We have asked our statistics people to see what they could cull out and provide that.

Senator LEVIN. You do not provide that, though, in your annual report, do you?

Mr. PEARSON. Not that I recall.

Senator LEVIN. So that you do not know and you do not keep track of, yet, the people who are arrested by the Border Patrol, who are released on their own recognizance, who do not show up for their hearings. You do not have that today, and as far as you know, you do not have that in your files; is that correct?

Mr. PEARSON. Senator, I do not have the answer to that question. I do not have the data today.

Senator LEVIN. All right. I find that disturbing, to put it mildly, that we release thousands of people on their own recognizance who have been arrested by the Border Patrol, perhaps half arrested in the process of actually seeking to enter this country illegally. We do not know how many of those do not show up for a hearing. Now, we are going to hear testimony of agents that will indicate that a large percentage of the people who are arrested, released by the Border Patrol, released on their own recognizance, do not show up. We will come up with that statistic on our own, but we believe from the agents in the field that 85 percent of the people, again, arrested by the Border Patrol, which means not at a normal port

of entry, who are released on their own recognizance, do not show up for their hearing. So we are going to leave that figure out there, because you do not have a better one.

Now, let's go through the Detroit figure together.[1] Do you have the actual figures for the Detroit Sector? I would rather have your actual figures than our estimates. The two top numbers there are your figures, 2,106 arrested by the Border Patrol and 773 issued notice to appear. So we just took the difference, which is 1,333, which we then estimated were voluntary returns. We got that number from taking your two numbers, 2,106 arrested by the Border Patrol, 773 issued notices to appear, and took the difference as voluntary returns.

Then we looked at the 773 of those people which were issued notices to appear, and the estimate that we have, based on the testimony of the agents, is that about 116 of those, that is the 85 percent figure, were released. That is 657, and the 116 is the difference, which would be detained or released on bond. Those figures we are happy to have corrected by your actual figures, if you have them. The figure that we do not have yet, but we think it is in the area of 85 or 90 percent, again, are the percentage of those who are released on their own recognizance who fail to show for a hearing. You do not have that figure, you have already told us, but maybe you can give us then the actual figures above that. Do you want to start with that?

Mr. PEARSON. Thank you, Senator, I would. I spoke with the Chief Patrol Agent of the Detroit Sector and got these numbers. Your top number is correct, 2,106, 65 percent were voluntarily returned, that is about 1,365, pretty close to what you have there. Twenty percent of the number were either detained or were on a very high bond. That is approximately 420. Fifteen percent were either released on their own recognizance or a low enough bond that they could make the bond easily. That is approximately 315 people.

Senator LEVIN. And the rest?

Mr. PEARSON. That accounts for 100 percent of the people.

Senator LEVIN. It does. OK. Give me the two numbers that account then for the 773.

Mr. PEARSON. Notices to appear, 35 percent, and that would be pretty close.

Senator LEVIN. Seven hundred and seventy three were given notices to appear, OK.

Mr. PEARSON. Pretty close. My number above that is 1,365, so whatever the mathematical difference is.

Senator LEVIN. So you have about 740, roughly.

Mr. PEARSON. Roughly.

Senator LEVIN. Were given notices to appear. Now, give us the two numbers that make that up.

Mr. PEARSON. Sure, 20 percent of them were either detained or were on a high bond. That is approximately 420 people. The remaining 15 percent were on either their own recognizance or a low bond, one they could make; that is 315 people.

Senator LEVIN. Three hundred?

Mr. PEARSON. Fifteen percent, 315.

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[1] See Exhibit No. 6 which appears in the Appendix on page 79.

Senator LEVIN. So you have got a little under half then, under your figures, who were released on their own recognizance.

Mr. PEARSON. Yes, sir.

Senator LEVIN. A little under half of the people who were issued notices to appear, which is 740. So let's talk now about those 315 people. How many of those did not show up for a hearing?

Mr. PEARSON. I do not have the answer to that.

Senator LEVIN. You do not keep that record?

Mr. PEARSON. I do not have the answer to that.

Senator LEVIN. Do they keep the record in Detroit?

Mr. PEARSON. The Detroit Chief was not able to provide that to me.

Senator LEVIN. Don't you find that disturbing, that we release a significant number of people on their own recognizance, and your number is still a very significant number of people, and that we do not even keep records of those that do not show up? We do not know. Doesn't that trouble you?

Mr. PEARSON. Senator, I do not know that we do not have the information. I was not able to get that. I had to explain that. I do not have the answer here today, and I do find that troubling.

Senator LEVIN. We have asked for it. We cannot get it. We hope you can produce it. But, in any event, the fact that there are no records available that even tell us how many people who are released on their own recognizance fail to show up for a hearing, it seems to me, is a symptom of a very big problem. It is a large number. We should know it and we should do something about it. We do not know it and we are not doing much about it. I will come back to that on my second round.

Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman.

Mr. Pearson, you stated that the INS recognizes that there is a threat along the Northern Border and coastal areas and that you are, "reevaluating your current enforcement strategies to identify any gaps," and you also note that you are committed to deploying additional staff to the Northern Border now. The security of our Northern Border has long been a concern of mine, and I have pushed for some time for increased funding so that we can expand the agents and inspectors who are responsible for the security of our Northern Border. Can you tell us how many agents you feel the Northern Border needs in order to provide appropriate security and checks?

Mr. PEARSON. Senator, let me, if I may, first state that when I said we were evaluating, that was in response to the Border Strategy, with the four phases. As I explained, we were in phase two, but we continually reevaluate where we are, which is why over the last 3 years we have increased the Northern Border and coastal by 25 percent. It is not just sticking with that strategy. We have approximately 334 Border Patrol agents up on the Northern Border right now. Our goal, our expectation right now, is to increase that to roughly 1,000.

Senator COLLINS. How would that compare with the number of inspectors and agents that we have along the Southern Border?

Mr. PEARSON. Well, comparing it to the Border Patrol agents, we have about 8,000 along the Southwest Border right now. I would

just ask you to remember that 97 percent, 98 percent of our apprehensions are on the Southwest Border. There is more along the coastal area than there are along the Northern Border, but we recognize that any Border of the United States is a possible avenue for somebody to try to get in.

Senator COLLINS. Well, if you have 8,000 agents, you are obviously going to have more apprehensions than if you have only 340, or even 1,000.

Mr. PEARSON. That is true, but the volume of crossers is significantly higher on the Southwest Border. That is why we had 1.7 million arrests there last year.

Senator COLLINS. Some of the ports of entry prior to September 11 were actually not staffed during certain nighttime hours, along the Northern Border. Has that problem been remedied?

Mr. PEARSON. We have a number of ports of entry that were not 24-hour ports. They were convenience ports, ports that were not used at night, were only used during certain times of day because of local crossers, and we staffed it during the time the port was open. At night, while the port was closed, we would have other—or we would have the ability to monitor, in some cases through camera systems or through sensors, and we would be able to respond to that port if somebody crossed.

After the events of September 11, we have taken all our ports of entry, with the exception of the seasonal ones, and we have manned them 24-hours-a-day, 7-days-a-week, with two people at a time as a minimum. Those that are seasoned ports of entry—because there are some ports that close, just physically cannot be used—we have two of those right now that are closed, they are sealed. But, again, we have sensors and the ability to respond if we have the indication that somebody has tried to cross there.

Senator COLLINS. A concern that the INS inspectors have expressed to me in some of the smaller ports of entry in Northern and Western Maine is that at times there is only one person on duty. It may not actually even be an INS inspector. It may be a Customs inspector who has been deputized to act as an INS inspector. Did I understand you to say that that situation has been remedied now, so that there would be two people on duty at all times?

Mr. PEARSON. Yes, Senator, that is two people, 24-hours-a-day, 7-days-a-week. But it might be two Customs, two INS, or one INS and one Customs. That is a minimum of two.

Senator COLLINS. Thank you. I would now like to ask you to respond to a series of statements and concerns raised in the testimony of our next panel of witnesses. Does the INS have a policy mandating that any record checks must be completed on aliens who are apprehended?

Mr. PEARSON. Senator, I have a chart I would like to show you, if I may put this up. This chart,[1] I think, will help graphically show the process and answer your question. It certainly looks cumbersome, but it is really not. If we look at the diamond in the second row, an arrest—that the determination of alienage and nationality is made, certainly if it is a U.S. citizen, we have no authority over immigration offenses for the person. But the process is to en-

[1] See Exhibit No. 12 which appears in the Appendix on page 139.

roll the subject into ENFORCE and IDENT. As I explained in my oral testimony, those are the systems we use that tell us there is an immigration issue. ENFORCE is our case management tracking system that tells us who we have already had, who we are looking for, that type of stuff. The IDENT system is biometric. The advantage of biometrics, it does not matter what name the person gives us, tells us. Once we put them in the system, we can bring them back up to determine that we have had them in our custody before, and we have a lookout system in there.

The lookout system is designed to advise the agent or the apprehending officer that there may be a problem here, either because the person is dangerous, he has caused problems when arrested before, as well as Federal fugitives. We have taken the U.S. Marshals Service list of foreign-born fugitives and put them in our system, to include their fingerprints, so that if in the course of crossing the Border between the ports of entry, if the Border Patrol runs into this person, we can effect an apprehension. We have also worked with the FBI on entering foreign-born Federal fugitives. That is the requirement.

Then the Border Patrol agent has options—and there are a number of reasons for this—has the options of what they are going to do next. If they have the information, they want to run the person through NCIC, they may be able to do so. Ofttimes, with the Border Patrol, because they are working away from offices, buildings, they do not have a means to do an NCIC check on-site, but they have the opportunity to take the individual back to a station, back to a place where they could run NCIC or other indices checks.

Senator COLLINS. But, as a practical matter, isn't that a very cumbersome process? If, in fact, you have got all these different databases and the Border Patrol agent has to check each one of them, does that happen?

Mr. PEARSON. It certainly does happen, in many cases. But, you recall, I had talked about ENFORCE. ENFORCE is not completed. When it is done, it is designed to include all the INS indices, so that there would be a single check, and the IDENT system, we are currently working with the FBI, through the Department of Justice, to tie the IDENT system with the FBI's IAFIS system—that is an Integrated Automated Fingerprint Identification System—so that when it is completed, our IDENT system will be able to access FBI files to determine biometrically if a person is wanted.

Senator COLLINS. But, right now, does the INS have a policy mandating these record checks, particularly criminal background checks, or is it at the discretion of the Border Patrol agent?

Mr. PEARSON. The mandate is for IDENT and IAFIS, not for anything else.

Senator COLLINS. Now, as I understand it, from looking at Form I–213,[1] and as you have just explained, there are a number of databases. There is a central index system, a deportable alien control system, a non-immigrant information system, an operational activity special information system, a student-in-school system, and the National Crime Information Center. Do these databases interact with one another? Now, I realize the NCIC is not maintained by

[1] See Exhibits No. 4 and 5 which appear in the Appendix on pages 76 and 77.

the INS, but, as I understand it, the rest are. Do they cross-reference each one, or does the Border Patrol and the INS personnel have to individually check each database?

Mr. PEARSON. They do not interact automatically right now. The ENFORCE system is designed to do that. It is not completed yet.

Senator COLLINS. When do you anticipate that the ENFORCE system will be completed, so that these Border Patrol agents and INS agents, who are already overworked and strapped for time, do not have to check multiple databases?

Mr. PEARSON. Senator, I do not recall the timeline on that, but I would be glad to get that information to you. I know the DACS system should be up by the end of 2002 or in 2003. We are working on all of this systemically.

Senator COLLINS. Thank you, Mr. Chairman. I see my time has expired.

Senator LEVIN. Going back to IDENT and IAFIS, IDENT is not a criminal background checking system; is that correct?

Mr. PEARSON. That is correct.

Senator LEVIN. But the NCIC is?

Mr. PEARSON. The NCIC system run by the FBI has a number of components to it. It can have wants and warrants, which is a criminal system that lets you know who a warrant is listed for. The NCI Triple–I has criminal history, but NCIC also has a number of other things in there, list of stolen vehicles, list of missing people, list of stolen weapons, that type of stuff. NCIC is not one master database. That also combines different databases.

Senator LEVIN. And are Border Patrol agents required to run an NCIC check on every person whom they arrest?

Mr. PEARSON. No, sir, they are not required to do so.

Senator LEVIN. Why?

Mr. PEARSON. Well, there are a couple of reasons for it; primarily, as I talked about, a lot of times these arrests are made out where there is no system available; they are out on the Border. Particularly if you are going to do a voluntary removal in the numbers we have talked about, it stops you from bringing people back and running these checks that take a lot of time. I would ask you to remember that with 1.6 million arrests, or even 1.2 million for last year, these systems do take time to run. So there is no requirement, but the Border Patrol agent has the option, the opportunity to do so, based on their experience.

Senator LEVIN. Is everybody who is released on their own recognizance required first to have an NCIC check?

Mr. PEARSON. No, sir.

Senator LEVIN. Why?

Mr. PEARSON. For the same reason that I just talked about, and that is we leave it up to the agent's experience to make that determination. The requirement is to run IDENT and ENFORCE.

Senator LEVIN. But that is not a criminal background check?

Mr. PEARSON. That is correct.

Senator LEVIN. So you are releasing people on their own recognizance without a requirement for a criminal background check.

Mr. PEARSON. There is not a requirement right now.

Senator LEVIN. Does that trouble you?

Mr. PEARSON. The concept troubles me, Senator. When you get out in the field, as a practical matter, when you are talking with the over a million people we arrest, we have to rely a lot on the individual agent's judgment and the time it takes to do these things.

Senator LEVIN. Now, the huge percentage of those people are voluntarily returned; is that correct?

Mr. PEARSON. Of the 1.2 million, yes, sir.

Senator LEVIN. We are just talking now about the thousands that are arrested, not voluntarily returned, then released on their own recognizance. For those people, there is no requirement that there be a criminal background check; is that correct?

Mr. PEARSON. Senator, that is correct, there is no requirement. There is certainly no prohibition and the agent can run it, but we do not have a policy that requires that.

Senator LEVIN. Do you know in how many cases where people are released on their own recognizance, approximately, there is no criminal background check?

Mr. PEARSON. I do not know, Senator.

Senator LEVIN. Shouldn't we be troubled by it? I mean, these are people illegally entering the country. This is not the complicated question of how many people should we allow into the country; these are not the complicated questions whether people ought to be able to extend visas or not or change visas or not, or under what circumstances should people be granted visas; and this is not a matter of family reunification. These are people arrested by the Border Patrol for illegally entering the country, who are released on their own recognizance in the country, after they are arrested, that we do not even run a criminal background check on. I find that incredible. We are talking about that limited group. I am not talking about the million, most of whom are returned voluntarily. I am talking about the thousands who, after they are arrested—again, a significant number of whom are arrested actually trying to enter the country by the Border Patrol, are just released on their own recognizance without a criminal background check, without accessing data which could tell us whether or not they are on a watch list, for instance, or whether they have a criminal record. I find it absurd. It is not functional for that group of people.

I know there are a lot of complicated immigration questions out there, but I have got to tell you this one does not strike me as being complicated, when you arrest someone for illegally attempting to enter the country. Now, is that going to stay that way or are we going to change this?

Mr. PEARSON. Senator, we will certainly relook this.[1] When I said there is no requirement, it is because we do not have a policy that says they must do that. However, before a release is made, the agents are required to go through the process that I had talked about in my oral testimony; determine whether or not they are a flight risk; determine whether or not they are a danger to community; determine whether or not it is a mandatory detention. You are not going to do those three unless you do some type of indices

[1] See Dec. 20, 2001 Memorandum from Michael Pearson to INS Regional Directors (Exhibit No. 13) which appears in the Appendix on page 140.

check. So they should be done, but your direct question was is there a policy requiring this, and there is not.

Senator LEVIN. We do not know in what percentage of cases they are done?

Mr. PEARSON. I do not have that.

Senator LEVIN. We do not know what percentage—let's put the form up there.[1] Is this the I–213 form?

Mr. PEARSON. I–213, yes, sir.

Senator LEVIN. About the fifth line or so from the bottom, where it shows all of the information which could be accessed—we have got record checks completed, CIS, DACS, NCIC, NIIS, and OASIS. If those are useful, why shouldn't they all be accessed before somebody is released on their own recognizance?

Mr. PEARSON. The appropriate ones need to be checked to determine whether they are a mandatory detention, whether they are a flight risk or whether a danger to the community.

Senator LEVIN. Yet there is no requirement that they be checked?

Mr. PEARSON. There is not a requirement to do each and every one or any one.

Senator LEVIN. Where people are just simply released on their own recognizance, you do not know in what percentage of those cases that information is accessed?

Mr. PEARSON. I do not know.

Senator LEVIN. I think we ought to find out, we ought to change it and there ought to be some real energy behind that effort, because this, it seems to me, is a no-brainer. Now, why are people released on their own recognizance? Let's get to this point, where they are arrested for illegally entering the country and do not voluntarily return. Why they are released on their own recognizance is because we have a shortage of detention space while they are awaiting their hearing, whether it is a hearing for a removal or a hearing for asylum. Why aren't people detained pending that hearing if they are arrested for illegally entering the country—not at a port of entry? These are not folks who come into an airport or go through a bridge or tunnel. These are people who have either been caught in the act of entering the country at some point other than a port of entry, or are caught inside of the country, being here illegally. Why aren't they detained pending the hearing?

Mr. PEARSON. Well, there are two primary reasons. The first is, as you talked about—or one of the two reasons is the detention space. As I stated earlier, last year we arrested 1.2 million people in this country. We are funded for 19,700 bed spaces on a daily basis.

Senator LEVIN. Can we get back to that million figure, though? The vast majority of those voluntarily return, so that number is not the number we are talking about. We are talking about the people who do not voluntarily return, who then say, even though they are caught entering illegally here, they want a hearing, to which they are entitled. The question is why aren't they detained? Why do we not have enough spaces? Have we asked for more spaces and been

[1] See Exhibit No. 4 which appears in the Appendix on page 76.

denied those spaces by OMB? What is the scoop and how do we correct it?

Mr. PEARSON. Within the 19,700 bed spaces, we have spaces for those that are mandatory detention, under the INS. We also have space for criminal aliens that are not mandatory detentions. That leaves little space for the rest. So after the arrest is made, a determination is made on whether or not detention is appropriate. The second part of what I was talking about is the determination on whether or not the person is a flight risk or a danger to the community. If they are not, discretion can be used to release the person, and that is how a decision is made.

Senator LEVIN. Isn't everybody who is seeking to enter the country illegally, not at a port of entry, a flight risk?

Mr. PEARSON. Not necessarily.

Senator LEVIN. What percentage of people who seek to enter the country illegally, not at a port of entry, who are arrested, are not a flight risk?

Mr. PEARSON. I cannot give you a percentage, but we arrest people often who have ties to the community, have equities, have families, have a house, and they are not considered a flight risk.

Senator LEVIN. They are inside the country.

Mr. PEARSON. Yes, sir, but——

Senator LEVIN. Let's take the narrowest group, which may be half of the people who are arrested by the Border Patrol at the Border.

Mr. PEARSON. Senator, Detroit Sector arrested 2,100 people last year; only 103 of those were arrested at the Border upon entry.

Senator LEVIN. That is not what we were told by the Detroit Sector, but we will get that by the other testimony. But we have very different figures on the Detroit Sector than you do, but whatever that figure is, why are those people not automatically a flight risk? Whatever that number is, just for starters, just take that narrow case, aren't they automatically a flight risk?

Mr. PEARSON. I would not say that they are automatically a flight risk, no, sir.

Senator LEVIN. OK. Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman.

Mr. Pearson, one of our next witnesses will testify that, due to a lack of funding, many aliens who are apprehended along the Northern Border are instructed to leave the United States within 30 days. These individuals are then released, and according to this witness, there is no process for verifying whether or not they actually left within the 30 days. Is that accurate?

Mr. PEARSON. That is an accurate statement. When we do the voluntaries, the person is given a time period, either by INS or the judge, to remove themselves, or we can do a voluntary return under safeguards, where we keep them in custody and physically make sure they either cross the Border or get on a plane to return to their home country.

Senator COLLINS. If there is no system for checking to ensure that the individual actually has left within 30 days, as promised, isn't it likely that a lot of people are not leaving?

Mr. PEARSON. That certainly could be the case.

Senator COLLINS. Are some aliens released on bond or their own recognizance, despite the fact that the INS has not been able to establish positive identity, nor verify the legitimacy of the U.S. address or phone number contact information that they provided?

Mr. PEARSON. That certainly could be the case, Senator. In order to determine flight risk or determine danger to community, those checks should be done. As I said, we do it under ENFORCE and IDENT, and do the biometric checks, so we can try to make sure we know who they are.

Senator COLLINS. How often does someone have to be apprehended entering the United States illegally before that person is actually prosecuted?

Mr. PEARSON. There is not a set magic number. Each U.S. Attorney determines their own threshold for prosecution.

Senator COLLINS. Would you be surprised to learn that we have been told by some Border Agents and INS inspectors that an individual could cross illegally and be apprehended a dozen times before there was any prosecution?

Mr. PEARSON. That would not surprise me. I have spoken with U.S. Attorneys who have told me, that their threshold is higher than that, and they are the ones that make the decision, before they will take it to prosecution.

Senator COLLINS. What concerns me is that it seems like this whole system lacks safeguards, lacks checks to ensure that people really are leaving; that despite the fact that we have an enormous number of people who have been arrested, that we really do not have a very good system for checking records, for verifying that they are who they say they are, for ensuring that they do leave, for ensuring that they do show up for hearings. It just strikes me that the whole system is so porous and lacks so many safeguards that it is a serious threat to our national security.

I think it goes beyond the most egregious case that this hearing is focusing on, because it seems to me that the whole system is just too loose.

Mr. PEARSON. Senator, the only ways we have right now to make sure a person leaves is if we check with the country that they went to to make sure they are back, and we do that on occasion; if we get the automated I–94 that shows they got on a plane and left the country, or we detain them until we remove them across the Border, and this does apply to those voluntary removals. So we are back up to the 1.2 million. We simply do not have the detention space to detain everybody, to make sure that they are physically removed from the country.

Senator COLLINS. But if you are not doing the kinds of checks that would help you identify those who are most at risk for staying illegally in the United States, how are you going to get a handle on this problem? If you are not necessarily following up on contact information or necessarily doing a positive identity on the person, then how are you going to get a handle on the group that is most likely trying to enter illegally, perhaps to cause harm to our citizens?

Mr. PEARSON. Our focus is on the higher-risks. Remember, I did not say the checks were not done. I said there is not a requirement to do them. But we do check and we do follow up on the higher-

level categories, those that are aggravated felons, those where there is a want and warrant, those that are criminal aliens, but when you get below that level, it is a resource issue. It is truly a resource issue.

Senator COLLINS. Well, let me talk to you about one category that has come to our attention lately as a result of the attacks on our Nation. The previous administration's INS commissioner said that catching individuals who overstay the terms of their visas was a very low priority of the INS, and that she thought it should remain a low priority. Well, we know now that a number of the 19 terrorists responsible for the attacks on September 11 reportedly overstayed their visas, and, by law, they could have been deported. What is the current administration's view on visa violations, overstays, and what priority is now being given to pursuing individuals who overstay their visas?

Mr. PEARSON. Well, let me start by saying things have changed since September 11. Your quote of President Bush was exactly accurate. By our estimates, there are approximately between 5 and 6 million people in this country illegally—you had said 8 million in your opening statement—40 percent of whom are overstays. Of that group, the 5 to 6 million, our first priority right now is working with the Federal Bureau of Investigation, and we are working with the CIA, to see who are we looking for that might be involved in terrorist incidents. So that is our highest priority.

Now, the Border Patrol is on the Border, trying to secure the Border. On the interior, we have investigators looking for these people, but we have fewer than 2,000 criminal investigators in INS, and over half of those right now are working full-time, dedicated on the terrorist mission. When you then look at who else we have in this country, our priorities are aggravated felons, the criminal aliens, that type of stuff. So it is not that an overstay is not important—they are—but when you put it on a priority basis, if we do not have information of terrorist connection, terrorist ties, a suspect, or they are not a criminal alien or they are not an aggravated felon or they are not a mandatory detention, they do not raise to the level of where we can put many resources right now. It is certainly not that they are not important.

Senator COLLINS. Well, I think a lot of that also goes to the granting of visas in the first place and making sure that we have better sharing of information among law enforcement and intelligence agencies, so that we could stop some of these individuals from coming here in the first place. Just one final comment: The 8 million figure that I used as a U.S. census figure, I would suggest to you that we do not know how many illegal aliens we have in the United States, given how porous the system seems to be.

Thank you, Mr. Chairman.

Mr. PEARSON. Senator, if I may, we would agree with you. We do not know, but we have worked with the Census Bureau on where they got their number, and we are confident that ours is a much better number.

Senator LEVIN. Thank you. Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thank you, Mr. Chairman, and to our witnesses this morning, welcome. I regrettably missed your presentation. I have listened to some of the questions and some of your responses, both here and in the anteroom outside. You were talking there at the end with Senator Collins about numbers. I think she mentioned the Census Bureau number of 8 million, and that differs from your number. Can you just share with me your number?

Mr. PEARSON. Our number is somewhere between 5 and 6 million, and we do not have an exact number.

Senator CARPER. Fair enough. I am just going to come right to the nub of the issue here. What do we need to do? Not so much what you need to do, what do we need to do here in the Congress to help you do your job better?

Mr. PEARSON. There are a number of things. The Attorney General has been working with the administration on changes to the law. We have been working with the Department of Justice and will be coming to Congress, and we are working with OMB for additional resources. We all recognize—and the purpose of this hearing is to show that the Northern Border does not have enough assets. We need to increase that, and it is not just personnel. It is some of the systems we are talking about. We do need some assistance.

Senator CARPER. What kind of systems?

Mr. PEARSON. ISIS, for one. These are systems where we can have our cameras tied directly to sensors, so that if a sensor goes off, showing movement, we can have a camera check it immediately to determine if it is people or it is an elk or a moose or a deer that triggered it, so we do not have to take the limited resources we have and send them where they are not necessary. But they will also be able to tell us when people are crossing, either at a port of entry after it has closed or between ports of entry, and we can track and film and tape where these people are going, so that we can better utilize the resources we have to go effect the apprehension.

Senator CARPER. How many people are taken into custody each year by the Border Patrol?

Mr. PEARSON. Last year, it was 1.2 million. The year before, it was 1.6 million.

Senator CARPER. Do I understand that over half of them are returned voluntarily or involuntarily to the countries of their origin?

Mr. PEARSON. The majority of them are Mexicans. In fact, 98 percent are Mexicans. About 60 percent or so are returned voluntarily, just taken right back to the Border and turned over to authorities.

Senator CARPER. Why wouldn't that number be higher?

Mr. PEARSON. Because, in a number of cases, we are running our indices checks and we will take them into detention, either because they are wanted, they have been in our system before, we intend to prosecute for crossing illegally. It is those that do not raise the threshold that, I was talking about earlier, and we do not determine that either they are a flight risk or a danger to the community, and they are not a mandatory detention case, that we would effect a voluntary removal.

Senator CARPER. When someone is taken into custody and deemed to be in our country illegally and the intent is to return them to their own country, how are they actually returned, physically returned, to their country of origin?

Mr. PEARSON. We must first go to the country that we wish to return them to. Hopefully, it is their country of citizenship, but that is not always the case. We will work with that country to get travel orders. Now, this is assuming that any appeal, which is a ruling made by the immigration judge, will have a final order, either there is no appeal or, if there is an appeal, that is finished, then we will work with the country to get travel documents for the individual, and we will physically, if it is overseas, we will put them on a plane, sometimes under escort, sometimes not, to remove them from this country.

Senator CARPER. That is how 60 percent of the folks who are here illegally are returned?

Mr. PEARSON. Now, the majority of these are Canadians and Mexicans already at the border, and with the voluntary departure, we will just take them to the border and let them cross.

Senator CARPER. Do they come back in?

Mr. PEARSON. Many of them do. That is why the IDENT system was developed. It was initially a recidivist database, so we would know who was a repeat entry, in order to prosecute.

Senator CARPER. When people come in repeatedly, do we treat them differently than we do the first time that we detain them?

Mr. PEARSON. Well, I am not sure what you mean, treat them differently. If they have crossed often enough that they meet the threshold for prosecution by a U.S. Attorney, we will detain them for prosecution. If they do not meet that threshold, we may still detain them, based on whether or not they are a danger to the community or a mandatory detention. Other than that, we will generally return them voluntarily.

Senator CARPER. Let me just go back and see if I have these numbers right. You say 1.2 million are——

Mr. PEARSON. Were arrested by the Border Patrol last fiscal year.

Senator CARPER [continuing]. Coming in illegally, roughly 60 percent are returned.

Mr. PEARSON. My recollection is about 60 percent. The Chief here says he believes it is higher, but he does not have the exact number, either.

Senator CARPER. That leaves maybe 30 or 40 percent that stay in this country for a longer period of time. On average, the folks that are returned, how long do they stay in this country?

Mr. PEARSON. I cannot answer that question. Those that we have in detention, each country is different, depending on whether or not the individual appeals or how long it takes to go before the appellate process and how long we will keep them in detention.

Senator CARPER. Somebody just handed you a note.

Mr. PEARSON. That was to a different question, though. It did not answer your question directly. The 60 percent figure that I gave you is for the Northern Border, according to this note.

Senator CARPER. The folks that are detained here and eventually returned, when they are detained here, where do we keep them?

Mr. PEARSON. There are a number of places. We have our own detention facilities. We have nine of them nationwide. That does not cover anywhere near all our detention space. We have a few contract facilities, and we spend a lot of money contracting with locals, the county sheriff, for example, and using their detention, their bed space. That is where the majority are kept.

Senator CARPER. At any one time, any idea how much bed space you are using?

Mr. PEARSON. We are funded for 19,700 a day. So somebody that stays with us 6 months or a year counts every day. Those that are only here 3 or 4 days, that bed is used over again.

Senator CARPER. The folks who are not staying in one of those 19,700 beds, where are they?

Mr. PEARSON. I am sorry?

Senator CARPER. The folks who have come here illegally who have not yet been returned, but who are not taking up one of those 19,700 beds, where do they stay?

Mr. PEARSON. Well, some of those, as we talked about, are released. They are released on bond or they are released on their own recognizance, many of whom have equities to the community. They have families, they have a house, and they will stay at their house.

Senator CARPER. Are there often times when they do not, and when the time comes to find them, we cannot?

Mr. PEARSON. That is the case, yes, sir.

Senator CARPER. What do we need to do about that? When I say we, you and INS.

Mr. PEARSON. Yes, sir, I understand. The primary reason that we do not detain somebody is because of lack of detention space. If we know they are a mandatory detention, if we know they are a flight risk, if we know they are a danger to the community, we will do everything we can to detain them. Even if the Sector or the District does not have the space, we will go up to the Region and create some space somewhere. Ofttimes we have moved people five or six States away, just so we have a detention space. But those that do not meet the threshold, meaning they are not a mandatory detention, they are not a flight risk, they are not a danger to the community that we can establish, they would be released, either on bond or on their own recognizance. We require or ask that they give us an address where we can reach them, but there is nothing that requires them to stay at that address.

Senator CARPER. Mr. Chairman, thanks. Again, to our witnesses, thank you very much for your testimony and for your responses to our questions.

Senator LEVIN. Thank you, Senator Carper.

If there is a danger to the community, that is your No. 1 priority, and yet there is no requirement that you even do a criminal background check; is that correct?

Mr. PEARSON. There is no requirement that we do the criminal background check, that is correct, Senator.

Senator LEVIN. You do not know in what percentage of the cases where people are released on their own recognizance that there is a criminal background check?

Mr. PEARSON. Senator, I do not have that data. No, I do not know.

Senator LEVIN. Or you do not know if that data is even kept.

Mr. PEARSON. That is correct.

Senator LEVIN. That is not what I would call a priority, I have got to tell you. To say it is a priority, that people who are a danger to the community be detained, and yet there is no requirement that there be a criminal background check, you do not keep a record as to whether or not criminal background checks are kept on what percentage of the people who are released. It is not—in my definition of priority—coming close to being a priority. So it ought to be.

I think that a criminal background check ought to be done on anybody before they are released on their own recognizance. I am amazed that that is not a requirement. Let me ask Mr. DeLaVina, why don't we do a criminal background check on everybody before they are released on their own recognizance?

Mr. DELAVINA. Well, sir, the biggest safeguard for the Border Patrol, and I concur, the system is not perfect, the biggest safeguard——

Senator LEVIN. The system is what?

Mr. DELAVINA [continuing]. For us is the men and women that we are sending up North. These are seasoned agents; they are experienced. Even though it is not a requirement, I feel very confident that every Agent that is up North, if they come into contact with a person that they feel is a criminal or has some extenuating circumstances, they are going to run the checks, they are going to do everything they possibly can. The problem is a matter of funding or detention space.

Senator LEVIN. How many spaces do you need? How many have you asked for from OMB, for instance, this year?

Mr. DELAVINA. I would have to defer to Mr. Pearson on that.

Senator LEVIN. Do you know, Mr. Pearson?

Mr. PEARSON. I do not recall the number precisely this year, but I will certainly get it to you.

Senator LEVIN. Did you get what you asked for?

Mr. PEARSON. No, sir.

Senator LEVIN. Can you tell us what percentage less than you asked for, you got?

Mr. PEARSON. I do not recall the number, but I will be glad to get that information to you.

Senator LEVIN. A significant number?

Mr. PEARSON. Senator, I am not playing a game. I do not know how to define significant here. I do not recall the number.

Senator LEVIN. Going back now to the information systems which are available to you, is it—is that pronounced IBIS?

Mr. PEARSON. We call it IBIS. That is the Inter-Agency Border Information System. There is also ISIS; that is the one I was talking about with the camera systems tied to the sensors.

Senator LEVIN. On the IBIS system, that system is a system which has a lot of very significant information that is available to you; is that correct?

Mr. PEARSON. That is correct.

Senator LEVIN. That is accessed at the ports of entry?

Mr. PEARSON. At the ports of entry, yes, Senator.

Senator LEVIN. What does that tell us?

Mr. PEARSON. Well, that ties into the systems, that we can do an NCIC check, we can do a NIIS check. We can look for terrorists. We can look for wants. That is all tied into one system. We do not have that available for the Border Patrol yet.

Senator LEVIN. Well, before someone is released by a Border Patrol agent, can't they access the IBIS system?

Mr. PEARSON. In most parts of the country, they could take the individual to a port of entry and ask that it be accessed, yes, sir.

Senator LEVIN. Before we release someone on their own recognizance, why don't we do that?

Mr. PEARSON. Senator, I cannot answer the question this time any better than I could the other of couple times you asked.

Senator LEVIN. I did not ask that question before. This is the first time I have asked the question as to why we do not require, before someone is released on their own recognizance, who has attempted to enter the country illegally, we do not access the system which can tell us whether or not that person has a criminal record, whether they are on a terrorist watch list, and all the other information that somebody at a port of entry does routinely? Why don't we require that for someone who enters not at a port of entry?

Mr. PEARSON. Senator, I understand. We do not require it right now. We will relook at the policy.

Senator LEVIN. Mr. DeLaVina, why don't we do that?

Mr. DELAVINA. Well, sir, I think that is one of the problems that we need to take a look at.

Senator LEVIN. Part of the IBIS system, I think, is a National Automated Immigration Lookout System; is that correct? That is maintained by the INS?

Mr. PEARSON. Yes, Mr. Chairman.

Senator LEVIN. And that is called NAILS, too?

Mr. PEARSON. NAILS, yes.

Senator LEVIN. NAILS contains certain information on persons who may be removable from the United States for membership in terrorist organizations or other illegal activity. That information comes from classified State Department database or other sources. It is accessed, again, through IBIS. But you have already now told us you do not access IBIS, the Border Patrol does not do it; they do not take folks to the port of entry to do it. You are going to see if that should be changed. I will tell you it should be.

Tell us what you need to do to change it. It is not a change in law, that much I know. It is either resources or policy. Whatever it is, you tell us if we need to do anything, because it is absurd that people who try to enter not at a port of entry are not checked the same way that someone who enters at a port of entry is checked. I mean, it is counterintuitive to me. But, putting that aside, let's just now look at your own system. This is an INS system now. This is the National Automated Information Look System. Are people who are arrested by the Border Patrol, not at ports of entry, checked against that system?

Mr. PEARSON. That system is through IBIS, and not all Border Patrol are close enough to a port of entry to go use IBIS.

Mr. DELAVINA. That is correct.

Senator LEVIN. But I am not talking IBIS now. It is part of IBIS. It is entered into IBIS, but this is the INS system, NAILS, is that correct?

Mr. PEARSON. It is; yes, sir.

Senator LEVIN. This is an INS system. This is not the joint system, the combined system. This is just the INS' own system that you do not access for these folks who are arrested, other than at points of entry. Try that one on me.

Mr. DELAVINA. I am looking at the box here. Basically, we use the IDENT, and we use the ENFORCE.

Senator LEVIN. I know that, but why don't you use your own NAILS system?

Mr. PEARSON. Senator, I do not know where NAILS is accessible. I do know that it is through IBIS. Again, I can find that information. I will get back to you.

Senator LEVIN. OK. Now, the State Department maintains a system called Consular Lookout and Support System, that is called CLASS. It contains the names and biographical data on known and suspected terrorists. Consular officials are required by law to check the visa lookout system before they issue a visa in another country. INS agents are not required to check that system before someone is released on recognizance; is that correct?

Mr. PEARSON. It was not a matter of "not required;" we did not have availability for the system everywhere. We had been working with the State Department post-September 11 to be able to get that at our ports of entry.

Senator LEVIN. What about for Border Patrol folks between ports of entry? You are shaking your head, Mr. DeLaVina.

Mr. DELAVINA. We do not have it.

Senator LEVIN. You do not have it. Are you going to get it?

Mr. PEARSON. Senator, we fully intend to. We want all of this to be integrated. We are just not there yet.

Senator LEVIN. But it is in process, some of this, all of it?

Mr. PEARSON. For the CLASS to be at our ports of entry as the first step, yes, that is in process.

Senator LEVIN. But is it also a step for someone who is arrested other than at a port of entry, before they are released on their own recognizance, that this CLASS system must be—I do not want to call it a class system—this CLASS procedure be accessed? Is that in process?

Mr. PEARSON. Our intent is for ENFORCE to be able to tie all of those together so that a Border Patrol agent or an inspector can check one source and get all the information.

Senator LEVIN. OK. That is in process?

Mr. PEARSON. Yes, sir.

Senator LEVIN. When will that be done?

Mr. PEARSON. I do not have a date on that. I explained earlier, I can give you the timelines for ENFORCE. I do not know that we have talked about CLASS other than the ports of entry, but certainly it is the next logical step.

Senator LEVIN. Finally, I would like to put another chart on here.[1] This is the current system. This is a notice to appear. We

[1] See Exhibit No. 2 which appears in the Appendix on page 74.

have whited over the name of the respondent. This is a real case. This person here, where it says number, street, city, State and ZIP code, do you see that, under the redacted?

Mr. PEARSON. Yes, Senator, I see that.

Senator LEVIN. That person failed to provide any number, just failed to provide an address. He is deportable for the reasons below. He is not a citizen. He is a native of Bangladesh. He is admitted to New York on April 16 as a visitor, and it turns out that it was fraudulent, and now he is arrested. This guy is in our hands. We have got him. He procured his admission by willful misrepresentation, because he used the passport of somebody else. He is arrested by the Border Patrol, we have got him.

What is done? He is given a piece of paper. He is told to appear before a judge, and the time is to be set, and how is he supposed to be notified? This is a real notice to appear. How is this guy going to be notified? He is going to be notified at the address provided. He did not provide an address. He is given a piece of paper. He entered illegally, used a false passport. He is now arrested by a Border Patrol agent. He is given a piece of paper, saying "you will be notified of a time to appear" for a notice to remove you. Here is a guy sneaking in here illegally, but he is given a piece of paper, saying, "Here, we will notify you when the date and time of a removal hearing is, at the address above," and there is not even an address above. What in Heaven's name is going on?

How is it possible, with all these other gaps and holes, that this is a guy who is arrested by Border Patrol, who previously had used false documents, he is released on his own recognizance? Are you amazed at this or not? Is this so routine that you are just not even troubled by it, Mr. Pearson? I am trying to see if we cannot get you as involved in the cure of this problem as I think we are and I think the American people are, and maybe you are, but I have got to get a feeling, and I have not gotten it yet, that there is some real energy here.

Let's start with this: Does that amaze you?

Mr. PEARSON. Absolutely.

Senator LEVIN. It does.

Mr. PEARSON. It amazed the Chief Patrol Agent when I spoke with him about it, too. This clearly should not have happened.

Senator LEVIN. Do you think this is real rare?

Mr. PEARSON. I do not know how rare it is. I certainly hope it is real rare.

Senator LEVIN. I wish it were. We are going to hear from some Border Patrol agents on that subject.

Senator Collins.

Senator COLLINS. I have no further questions. Thank you.

Senator LEVIN. We thank you both for appearing, and we look forward to the information that you have indicated will be forthcoming, and, Mr. Pearson, I do not know whether you are involved in that personnel issue in any way or know anything about it, but if you do, then you have heard from me of our concern. If you are not, I know you will pass along to whomever would be responsible for looking into that matter what this concern is, so we can take care of that at another time, in another place. We are appreciative of your being here.

Mr. PEARSON. Well, having said that, may I respond to that, please?

Senator LEVIN. Of course.

Mr. PEARSON. I am basically aware of that case, but not of all the specifications and charges. I do know, and I do believe, that this is not any retribution or retaliation for appearing before this Committee.

Senator LEVIN. No, that is not the question. The question is for making a statement to the media and for talking to us, either/or. I am interested as to whether or not this is happening because somebody is blowing the whistle. That is the question here. This Committee has been involved in protecting whistleblowers. In any event, I do not want to——

Mr. PEARSON. I am very much involved in protecting whistleblowers. Mr. Hall and I have testified before, and he said the same things, his concern with the Northern Border, and he was right in that. So I will certainly—I will not get too close to this, because there is always the potential that it could come up to me on appeal. So I cannot get too close to this while the Chief and the Regional Director are making their decision on any proposal.

Senator LEVIN. I thought I was concluded, but I just remember there was one question. Do you happen to have your own statistical yearbook for the year 2000, by any chance, with you?

Mr. PEARSON. INS Statistical Yearbook for FY 2000 has not been published.

Senator LEVIN. You testified—used a figure that 21 percent failed to appear, at a certain point in your testimony.

Mr. PEARSON. That was EOIR's, their figures show 21 percent.

Senator LEVIN. The figure for the non-detained aliens, in that same book, by the way, is 37 percent, not 21 percent; 21 percent are overall failures to appear. That could be for either people who are not detained or for other reasons. So I think you should correct the record on that. But even the 37 percent, by the way, includes a lot of people other than those arrested by the Border Patrol, and the numbers which I used this morning were the estimates relative to Border Patrol arrests, and that number, even 37 percent, is way low, non-appearance, for people who have been issued notices to appear, because it includes a whole host of other people, including people who have overextended their visas and things like that, who have not been arrested by the Border Patrol.

So you and I have had a little difference on numbers here this morning, but if you will go back and take a look at your testimony, you may want to correct any impression that you left relative to that 21 percent, and tell us for the record, if you would, whether that 37 percent number, in fact, is the more accurate number for all people who are not detained, and then, if you would, get us the statistic for the percentage of people released on their own recognizance who do not appear. That is the key, vital figure that we are waiting for. We believe it is around 80 percent. Whatever the percent is, we await that statistic.

Mr. PEARSON. I will be glad to relook at that, Senator.

Senator LEVIN. Thank you. Thank you, both. If we could now call our second panel of witnesses: Mark Hall, Keith Olson, and Eugene Davis. Our second panel of witnesses this morning is comprised of

two current and one retired Agents of the Border Patrol. Mark Hall is appearing before us this morning as President of Local 2499 of the National Border Patrol Council. He is also a senior Border Patrol agent in Detroit. He works out of the Detroit Sector of the Border Patrol. Keith Olson is appearing before us this morning as President of Local 2913 of the National Border Patrol Council. Mr. Olson is also a senior Border Patrol agent, residing in Bellingham, Washington, and he works out of the Blaine Sector of the Border Patrol there. Eugene Davis is a retired Deputy Chief Patrol Agent of the U.S. Border Patrol in Blaine, Washington, and we are pleased to have all of you with us this morning. We look forward to your perspective on the status of INS policy as it relates to persons arrested for trying to enter the United States illegally.

As I indicated with our first panel, all witnesses who testify before the Subcommittee are required to be sworn, and at this time I would ask the witnesses to please stand and raise your right hands. Do you swear that the testimony you will give before this Subcommittee will be the truth, the whole truth and nothing but the truth, so help you, God?

Mr. HALL. I do.

Mr. OLSON. I do.

Mr. DAVIS. I do.

Senator LEVIN. We will have a timing system again today. It is a little black box in front of you. One minute before the red light comes on, you will see the light change from green to yellow, which will give you an opportunity then to conclude your remark, and your written testimony will be printed in the record in its entirety. So we would ask that you limit your oral testimony for up to 10 minutes.

Mr. Hall, I think we will start with you.

TESTIMONY OF MARK P. HALL,[1] PRESIDENT, LOCAL 2499, NATIONAL BORDER PATROL COUNCIL, AND SENIOR BORDER PATROL AGENT, U.S. BORDER PATROL, DETROIT, MICHIGAN

Mr. HALL. Good morning, Mr. Chairman, Members of the Subcommittee. My name is Mark Hall. I am the President of Local 2499 of the Border Patrol Council in Detroit. Our local represents Border Patrol agents who patrol the U.S.-Canadian Border in Michigan and Ohio. I have had the honor to proudly serve my country as a Border Patrol agent for over 17 years, the last 14 of them assigned to Detroit, Michigan. I want to thank you for the opportunity to testify on how the INS processes persons arrested for illegal entry into the United States, outside of ports of entry.

In the aftermath of the tragic attacks that occurred on September 11, there is a compelling need to re-examine how the INS processes aliens arrested entering the United States illegally. Unlike the U.S.-Mexico Border, where the overwhelming majority of illegal aliens who are apprehended are citizens of a contiguous country and can be returned there expeditiously, most of the illegal aliens apprehended on the Northern Border must be held for several days in order to secure the necessary travel documents and/or make arrangements to return them to their country of origin. In

[1] The prepared statement of Mr. Hall appears in the Appendix on page 61.

most of these locations, including Michigan, the INS does not have a facility to house such aliens, and must rely on available jail space with local agencies, which charge a high price for this space.

Therefore, aliens are often released into local communities on their recognizance in an effort by INS to save money and remain within the budget. This practice was commonplace before September 11 and has not changed since. Although it is expensive to detain and remove illegal aliens from our country, it is far more costly to release potential terrorists into our communities. Representatives of this union have often pleaded with local INS and Border Patrol management to reconsider this catch-and-release philosophy, but have been ignored. This policy, combined with a decided lack of attention to our Northern Border, has been an inviting beacon for illegal entry into our country.

The Canadian government allows citizens of more than 50 countries to enter Canada without a visa. The United States requires visas for citizens of more than 20 of the 50 countries for which Canada has waived the visa requirements. The Criminal Intelligence Service of Canada stated in a 1998 annual report that many illegal aliens use Canada as a transit point on their way to the United States. In many cases, their entry is facilitated by the fact that they do not need a visa to enter Canada.

Aliens attempting illegal entry into the United States from Canada have two basic choices when crossing our Border. They can either try to fraudulently entry through a port of entry or attempt to enter illegally between the ports of entry. The alien who attempts illegal entry by fraud or deceit at a port of entry will be interviewed by a U.S. immigration inspector or a U.S. Customs inspector. If caught, they can be held in the United States on criminal charges or refused entry and sent back to Canada. If they are sent back to Canada, they face possible removal to their country by Canadian authorities.

The other, less-risky option available to the alien is to cross nearly the 4,000 miles of sparsely-protected U.S.-Canadian Border between the ports of entry. An alien risks little chance of apprehension by one of the 334 Patrol Agents who patrol the Border with Canada. In the Detroit Sector, when agents arrest aliens entering illegally, they transport them back to their station and begin processing the alien for an immigration hearing. During the processing, it is the agents who decide which, if any, criminal checks they will run on the aliens. The INS has no policy mandating that any records check be completed on aliens who are arrested.

Even if an agent decides to run such checks, the accuracy there is greatly compromised by the fact that it is difficult to positively identify the aliens because they rarely carry a passport or other form of identification. Thus, agents must rely on the aliens who have consciously chosen to break our immigration laws to provide honest information about themselves. In many cases, it is impossible to verify such information, as there is no biometric record from any previous encounters. Prior to September 11, Border Patrol agents very seldom received terrorist lookout lists. In one case several years ago, I assisted the U.S. Coast Guard on the arrest of six Syrian nationals who attempted entry illegally into Detroit. Only at that point did I learn they, along with 14 others, were on

a terrorist lookout list. The Coast Guard had the list, but the Border Patrol never did.

As the processing continues, the agents have very little verified information in hand, serve the alien a form delineating the sections of the immigration law they are alleged to have violated, a box, marked "own recognizance" is usually checked, and the aliens are allowed to leave into our communities. Very seldom does the alien even provide a U.S. address or phone number before they vanish into our communities. We ask them to send the INS their address when they take up residence; of course, they rarely do.

Unfortunately, the practice of catching and releasing extends to criminal aliens at times. In one recent case, a Detroit Sector Border Patrol Agent tracked down and arrested an illegal alien who had been convicted of drug trafficking at least five times. When arrested, he had identifications and drivers licenses from seven different States. The agent naively thought the alien would be held without bond for his immigration hearing, as provided by law. The agent was wrong. The illegal alien felon was ordered released by local Border Patrol management over the strongest protest of the agent.

In 1996, Blaine, Washington Border Patrol Agents arrested terrorist Abu Mezer, not once, but three times entering the United States illegally. Even after his third arrest, Mezer was released. Several months later, Mezer was shot by New York City police, just hours before his planned attack on the New York subway system. Aliens and smugglers are well-aware of the practice of catch-and-release. This is demonstrated by one particular case at the freight train tunnel connecting Detroit, Michigan with Windsor, Ontario, Canada. The aliens, entering illegally, walked through the train tunnel from Canada and near the exit on the U.S. side. The agents illuminated them with their flashlights and identified themselves as Border Patrol agents. Instead of turning and running, the aliens simply continued to the exit and surrendered to the waiting agents. Clearly, there was little fear by the aliens of being held and deported, and, sure enough, they were right. The aliens were processed and released on their own recognizance within a few hours.

In some instances, aliens are arrested by Border Patrol agents and the determination is made to hold them pending the posting of a cash bond. The aliens are turned over to the INS Detention and Deportation Section. Frequently, though, the Deportation Section will rescind the bonds and release the aliens on their recognizance. This dangerous practice continues today. When illegal aliens are released, we send a disturbing message. The aliens quickly pass along the word about how easy it is to enter this country illegally and remain here. This practice is devastating to a sound Border Enforcement Strategy.

It has also negatively affected employee morale, leaving agents with little sense of accomplishment or job satisfaction. Rather than recognize and address any shortcomings, our local managers' response has been to threaten those who speak out. As a result of speaking to the press recently in my capacity as a union official, they have proposed to demote me for 1 year and suspend me without pay for 90 days. On a broader scale, some high-level Border Patrol managers support proposals to remove the Border Patrol from

the INS in the hopes that the union will be dismantled as result of such reorganization.

It is my hope the new INS commissioner will act quickly to redirect the energies of some of his subordinates in a more positive direction. I am encouraged by his support of the rank-and-file employees on such issues as pay structure of Border Patrol agents, in the hope that this will translate into a willingness to work with the union on other issues of mutual concern.

I am proud to be a member of the U.S. Border Patrol. As a member and officer of the union, I am constrained to voice my belief that local INS managers have not allowed us to protect this great Nation's sovereignty to the best of our ability. In fact, on September 11 and the following days, local Border Patrol managers emphasized that it was, "business as usual," despite the fact that acts of terrorism had been perpetrated against our country.

Without detention and removal, there is no deterrent to stem the flow of aliens, from whom seek to destroy the freedoms of the way of life that we cherish. I therefore urge the Members of this Subcommittee to aid us in performing our jobs by providing us with the resources and the direction to fully enforce our Nation's immigration laws.

Mr. Chairman and other Members of the Subcommittee, I thank you again for this opportunity to testify, and I will be pleased to answer any questions you might have.

Senator LEVIN. Thank you, Mr. Hall. Mr. Olson.

TESTIMONY OF KEITH M. OLSON,[1] PRESIDENT, LOCAL 2913, NATIONAL BORDER PATROL COUNCIL, AND SENIOR BORDER PATROL AGENT, U.S. BORDER PATROL, BELLINGHAM, WASHINGTON

Mr. OLSON. Chairman Levin, honorable Members of the Subcommittee, my name is Keith Olson. I thank you for providing me this opportunity to testify about my knowledge of Border Patrol operations. I have been a Border Patrol agent for nearly 14 years and deeply love my job in the organization. The Border Patrol was once a very proud, elite law-enforcement organization whose morale was very high. This changed a few years ago, and morale has been steadily deteriorating since that time. My fellow agents and I want to reverse that trend and restore the efficiency and pride of the U.S. Border Patrol.

Sadly, there are some managers in the Immigration and Naturalization Service and the Border Patrol who have been less than honest with our elected representatives and the public. Following the terrorist attacks of September 11, 2001, when asked if our Northern Border was secure, they tried to assure everyone that everything was under control. At that time there were only 324 Border Patrol agents on the Northern Border. To this day, that number has not increased. Not one additional Border Patrol agent has been assigned to the Northern Border since that fateful day. Instead, the agents have been working 12 hours a day, averaging 60 to 90 hours of work each week. All 100 of the Border Patrol agents temporarily assigned to the Northern Border under Operation

[1] The prepared statement of Mr. Olson appears in the Appendix on page 65.

Northern Shield are assisting with security at the ports of entry, where immigration inspectors and Customs inspectors work. None of them are assisting us in patrolling the 4,000 miles of Border between those ports of entry.

There are approximately 9,000 Border Patrol agents assigned to patrol the Southwest Border. That translates to one agent for every 1,300 feet on the Southern Border. In sharp contrast, there is only one agent for every 13 miles on the Northern Border. If you were a terrorist, where would you like to take your chances? The Border Patrol agents on the Northern Border appreciate the manpower increases mandated by the USA Patriot Act of 2001, and urge Congress to fund those vital positions and ensure that experienced agents are allowed to transfer there instead of utilizing new hires. It would require several years to properly train new hires, and help is desperately needed now. Moreover, depriving experienced agents of the opportunity to fill these desirable positions would further demoralize the workforce and increase attrition beyond its alarmingly high current levels.

Accountability needs to be restored to the INS and the Border Patrol. Committee oversight and investigations such as today's hearing are an important part of that process. Most of the illegal aliens from countries other than Mexico that are apprehended on the Northern Border are released on personal recognizance pending their deportation hearings before immigration judges. In other words, they merely sign a piece of paper promising to appear when given a court date. They provide an unverified address and then walk out the door. Thousands never return for their court dates, which usually results in an order of deportation being issued in absentia.

There are many thousands of unserved warrants of deportation languishing in INS file rooms across the country. Unfortunately, very little time is devoted to tracking down these law breakers. Occasionally, the Border Patrol intercepts aliens who have an outstanding warrant during its daily operations, but that is very rare. The INS investigations program has primary jurisdiction over these matters, but it is not a priority. In fact, in Washington State, where I have worked since 1994, I have never seen or even heard of an INS investigator attempting to seek out and arrest the subjects of these warrants. This, too, must change. The INS needs to be directed to focus more of its resources on this important task.

Interior enforcement has been neglected for too long and must become a priority for the INS. Because of lack of funding for removals, the Border Patrol also routinely fails to remove illegal aliens who are apprehended on the Northern Border. These aliens are given a Form I–210, instructing them to leave the United States within 30 days, and they are released. Again, there are no controls to verify if the alien ever actually leaves the United States. It is not uncommon to rearrest aliens who have never bothered to leave the United States as instructed. Hopefully, that time there is available jail space. If not, the process is repeated all over again. In my experience, criminal record checks are performed for most illegal aliens apprehended in my sector. This is not uniform throughout the 21 Border Patrol sectors, however. Most of the persons arrested for being in the United States illegally are never issued an alien

registration number. Millions of illegal aliens are merely processed on the INS alien arrest processing system, known as ENFORCE. All arrested aliens are supposed to be processed in this database.

After the arrested alien is processed in ENFORCE, the alien's right and left index fingers are entered into another database system, called IDENT. In theory, this biometric database tracks every immigration arrest of an individual. In practice, however, it is flawed. It is not always online, making it impossible to input data for all arrested aliens. It also sometimes yields unreliable arrests. I have personally seen it issue two different record numbers for the same person when, in theory, there should only be one arrest history number based on the same set of two fingerprints. This can happen for a variety of reasons, such as dirty fingerprints, severely scraped or cut or damaged fingerprints from manual labor, which alters the skin patterns.

I do not claim to be a fingerprint expert, but since the IDENT system is only based on two fingerprints, it appears to me that this small sampling contributes to the errors. It is important to note that the INS IDENT system does not interface with the FBI's fingerprint system, and vice versa. The FBI fingerprint system is based on all 10 fingerprints, not just two. Perhaps the biggest flaw in the IDENT system is limited amount of storage. Once it reaches a maximum memory, it deletes the oldest records in order to make room for newer entries. Obviously, all fingerprint data should be retained indefinitely.

If an agent suspects that an alien has a criminal record, the agent must take fingerprints the old-fashioned way, with cards and ink, and enlarge them to 200 percent on a photocopier, and then fax those copies to the FBI for analysis. Even with such an archaic method, we frequently get a match from the FBI. Taking advantage of the available technology would undoubtedly allow us to submit more fingerprints and increase the number of matches. The FBI fingerprint check is not a mandatory, required record check. It is performed solely at the discretion of the arresting agent.

The INS has a number of other record check subsystems, most of which do not interface with each other, much less with those of other law-enforcement agencies. There is a clear need for much more coordination and information sharing. Moreover, information on many non-immigrant visitors is not entered into any databases, diminishing their utility. Further complicating the difficult task of determining an arrested alien's criminal history is the fact that it is almost impossible to obtain criminal checks from other countries. The only foreign criminal checks that I have ever received were from Canada.

The low amount of bonds placed on criminal aliens is another major problem in the current system. For example, aliens who are arrested by the Border Patrol and determined to be a public safety or flight risk are generally given a bond amount of over $25,000. That figure is entered into the appropriate space on Form I–286, bond determination form, and the subject is turned over to the INS district detention facility. While at the detention facility, an INS deportation officer can redetermine the subject bond down to a figure as low as $500, or even a personal recognizance signature. For

the sake of the safety of our communities, this should not be allowed to happen.

Despite its flaws, the U.S. Border Patrol retains a fair degree of respect among Federal law-enforcement agencies. It would be greatly improved if we were free to make law-enforcement decisions based on the law instead of the political agenda of bureaucrats. These concerns are shared by labor and management alike. You will hear the same concerns voiced by my former Deputy Chief Patrol Agent, who is also here to testify today. I sincerely believe that these problems are not insurmountable and, in fact, I am heartened by the willingness of the new INS commissioner to take a fresh look at some of the problems in the organization. For example, he has recognized that the low pay structure of Border Patrol agent positions contributes greatly to the attrition problem, and is actively seeking funding for an upgrade. I am also hopeful that we can work with him to correct some of the problems that I have identified today.

We also need the assistance of Congress to obtain the resources and provide the mandate necessary for us to do our job. The brave men and women of the U.S. Border Patrol stand ready to secure our Nation's Borders and interior and enforce the immigration laws of the United States. As one of their union representatives, I stand ready to provide you with truthful answers to your questions.

Senator LEVIN. Mr. Olson, thank you very much. Mr. Davis.

TESTIMONY OF EUGENE R. DAVIS,[1] RETIRED DEPUTY CHIEF PATROL AGENT, BLAINE SECTOR, U.S. BORDER PATROL, BLAINE, WASHINGTON

Mr. DAVIS. Thank you, sir. Mr. Chairman and Members of the Subcommittee, my name is Eugene R. Davis. On January 1, 2000, I retired after spending 29 years with the Immigration and Naturalization Service. During my tenure with INS, I served as a Border Patrol agent, as an immigration inspector, as a special agent, as a Patrol Agent-in-charge, as an Assistant Chief Patrol Agent, and as the Deputy Chief of the Border Patrol at Blaine, Washington. During my years of service, I spent much time in the field, leading enforcement operations. Those operations included working jointly with special agents in the Seattle, Washington, Portland, Oregon, and Anchorage, Alaska district offices.

Because of the expertise and the knowledge I have gained over the many years of experience, I have testified before the U.S. House on two other occasions. I am honored to be here today and wish to express my sincere appreciation for giving me the privilege of testifying. I enjoyed very much my years of service. I can truly say that most of the field agents that I worked with in the Border Patrol, immigration inspections, and investigations were and continue to be dedicated government employees who simply want to do their jobs in the manner that they have taken an oath to do.

Since the horrible events that took place on September 11, 2001, I have encountered numerous INS employees who are having a very difficult time dealing with what has happened. The emotions of these INS employees mirror those of all other American citizens,

[1] The prepared statement of Mr. Davis appears in the Appendix on page 69.

but they go much deeper because of the sense of guilt, anger, and betrayal that they feel towards upper INS management. These dedicated INS employees feel that if they had been given the proper tools to do the job, and if they had been allowed to enforce the immigration laws in a manner that should have been done, that the events of September 11 may not have taken place. I also believe this to be the cause.

It is my opinion that most of the blame as to how the terrorists were able to come to our shores to perpetrator this act was because of the total breakdown of immigration policies and procedures in this country. If a building had collapsed because of faulty construction and almost 6,000 innocent people had lost their lives, accountability would be demanded. It is my sincere hope that the U.S. Congress will carefully examine the collapse of meaningful enforcement efforts within INS and demand accountability.

As various subcommittees go about their business of putting the INS under strict examination, I hope they will have the wisdom to reach out to the retired District Directors and the Chief Patrol Agents who are willing to come forth and testify. They are the real experts as to what has gone wrong in immigration enforcement. There are entire legions of retirees that are willing to come forward. I believe there are also huge numbers of INS employees willing to come forward if the gag order they are under would be lifted.

If accountability turns into culpability, I hope that Congress will see that those that were found derelict in their duties could be removed and those found to be criminally negligent or to have performed unlawful acts could be charged and prosecuted. Per the request of the Subcommittee, there are several things I would like to address that were concerns during my service with the Border Patrol. First, alien processing procedures and problems. During the last 10 years that I served in the Blaine sector, we encountered a great deal of difficulty in our efforts to effectively incarcerate and remove undocumented aliens. This included both the illegal aliens we encountered while doing interior enforcement operations and those we arrested coming across the International Border from Canada.

If our agents could establish that the apprehended alien had a serious criminal record, we could usually locate a facility to hold him. It was extremely difficult to locate any criminal record on third-country aliens entering the United States from Canada. Most had no identification at all, and we had nothing to go on at all but their word, which was usually highly suspect. Due to the fact that they had no identification and they were in the United States, it was impossible to remove them back to Canada. Lacking evidence of a criminal record and because of a severe shortage of funds and jail space, most of these aliens were given a notice to appear or a notice to show cause, and they were released on their own recognizance.

Before being released, the processing agent would ask the alien what his destination was and inform him he had a maximum of 30 days to report to the nearest INS office for a hearing. A file was then created and mailed to the INS district office, to where the alien said he was going. Over the years that this policy was in effect, there were literally hundreds of agents from the Blaine Sector,

but I think there were also literally thousands throughout the country that were released in this manner. Many of the undocumented aliens who are encountered—whom we encountered, who were already residing in the United States were given I–210 letters and told to depart the United States.

During the last several years I worked, we no longer had a problem dealing with undocumented aliens in the interior because we were no longer allowed to work in any interior enforcement operations. A check with any INS district office in the United States will reveal boxes and boxes of files belonging to those aliens who were told to report to the nearest office at their destination and who failed to appear. I would estimate that there has been no effort to locate 95 percent of those aliens. They have simply been allowed to disappear into the United States. No one knows whether a number of these missing persons are trained terrorists who will eventually emerge to perpetuate more acts of terrorism against innocent U.S. citizens.

It is not that the district offices have been derelict in trying to locate these people. Each of the INS district offices has one common major problem, a lack of manpower resources. Most offices are able to operate only on a limited, reactive basis. They cannot be proactive. It is common knowledge, for all intents and purposes, that there is no interior enforcement of immigration laws. In most cases, if you make it past the Border and are undetected or if you receive a temporary pass to make it to the interior, you are home free. The district offices do not have adequate numbers of enforcement staff to do what they have been tasked to do.

The situation in Seattle, Washington and Portland, Oregon districts have been placed under even greater burden over the last several years, when the Border Patrol was restricted from doing any interior enforcement operations that they had traditionally worked. This has created no-enforcement zones. It has also provided the delusions in the Blaine Sector that apprehensions have dropped for a positive reason. Final conclusions: In closing, I would like to enter into my own conclusions regarding the immigration mess that we as a country find ourselves in. For the past two decades, there has been a flood of uncontrolled illegal immigration that has taken place in the United States. This illegal immigration has occurred by people slipping across our Borders and coming here as visitors or students who have not gone home.

There has been a bipartisan neglect to not really address this problem. The common denominator in most of the instances which causes this flood is jobs. People slip across the Border 1 day, buy a fraudulent Social Security card on the second day, and by the third day they are gainfully employed. It is true that many of these people are doing jobs that many American citizens will not do, but it is also true that you cannot wink and look the other way as an undocumented migrant worker crosses the Border and, at the same time, screen out terrorists. Over the years, there has been no one more outspoken on the issue of putting additional resources on the Norther Border than I.

I testified before the House Judiciary Committee on this very subject. However, I would be the first to say that it will not solve the immigration problem by just putting additional agencies and

technologies on the Border. This is the equivalent of placing additional crewman and a global positioning system on the Titanic. The INS policy in this country is a flooded, sinking ship. In order for illegal immigration to come to a halt, Congress will have to shut off the job magnet. This will mean that Members of Congress will have to stand up to the pressure of special-interest groups that are dependent upon illegal aliens that slip across the Border.

As I made reference in my opening remarks, I believe that it is imperative that Congress address the issue of mismanagement at headquarters division of INS. If a Border Patrol agent under my supervision was negligent and lost a $200 pair of binoculars, he was held accountable. He was disciplined and forced to make restitution. If a headquarters manager allows millions of dollars to be squandered on a useless computer system that will not work, nothing is done to him. I am especially perplexed as I read reports that have come from both the present and the past Inspector General for the Department of Justice. Over the last decade, they have written and published many reports outlining mismanagement within INS, but nothing seems to change.

Please take time and effort to correct these problems and restore effective immigration policies. Again, thank you for the opportunity of being here, and I would welcome any questions that the Subcommittee may have.

Senator LEVIN. Thank you, Mr. Davis. Let me ask each of you to give us just an educated guess; what percentage of the people who are arrested attempting to cross the Border who are not returned voluntarily are released on their own recognizance, as compared to the percentage that is detained?

Mr. HALL. I will start out there. I would say that it is a very high number.

Senator LEVIN. That are released on their own recognizance?

Mr. HALL. Own recognizance. I heard you mention the percentage of 90 percent. I would say that is a fair number. The other thing we have to realize here is where the numbers game starts playing tricks on us, is where we have detained, and they may be detained without bond or on a high bond. Then they are turned over to the Deportation Section, and it occurred last week, as it is probably occurring this week, as well. The Deportation Section then rescinds the bond and releases them on their own recognizance (OR). Many times we call up the Deportation Section, saying we have two in custody, can we bring them down, and they will advise us "no," and they will go ahead and just cut them if they do not have the space.

Senator LEVIN. Say that again. Just cut them?

Mr. HALL. Cut them loose; in other words, release them on their own recognizance.

Senator LEVIN. Because there is no space?

Mr. HALL. No space.

Senator LEVIN. Is that without a criminal background check?

Mr. HALL. Sometimes that will play into effect, if they will hold them, but not normally, that usually does not make a difference. They will go ahead and release the criminals, as well.

Senator LEVIN. Just because there is no space.

Mr. HALL. There is no space, no money. So that number actually can be higher than what it looks, because some who are initially issued the bond or being held on a bond, can have the bond later rescinded within a couple of days, and then they are released OR, as well, own recognizance.

Senator LEVIN. Mr. Olson, do you want to comment?

Mr. OLSON. I would concur with Mr. Hall, probably the same figure in our area, Seattle, Blaine Sector. In our area, we have what we affectionately call the Three-card Monty. We put a bond on them and send them down to district, and district releases them, lowers the bond, and it will kick them out the back door, where we think the same way as he does, that they are in custody, when they are not. I have personally seen convicted, aggravated felons are the worst ones that we have, that have known criminal records, still kicked out. They are statutorily ineligible for a bond. Just for lack of jail space, they are released.

Senator LEVIN. Let's make clear what you mean by kicked out. You do not mean kicked out of the country; you mean kicked into the country.

Mr. OLSON. Yes, sir, released right back out onto the streets.

Senator LEVIN. Mr. Davis, do you want to comment?

Mr. DAVIS. I cannot comment on the last 2 years, because I have been retired for almost 2 years. But I would say that over the last decade that I worked, many, many people were released, and one of the things, sir, that Mr. Hall made reference to, the case with Abu Mezer; this was the individual that the New York City police shot in Brooklyn as he was getting ready to be a suicide bomber. We arrested this individual twice in 1996. When we ran record checks in Canada, it said there was no record. Subsequently, we learned there was two records there. But the thing that I found so troubling about this was when we sent him to Seattle, put a $25,000 bond on him the third time we got him—we got him two times within a week—we did not see him for 6 months. Six months later, we have got him in Bellingham putting two other people on a bus. But a $25,000 bond, sent him to Seattle; the bond was lowered to $5,000—but the thing that really blows my mind on this, that it was another illegal alien that went into the INS office and bonded this individual out. His status was not even checked.

Senator LEVIN. Now, did this man have a record?

Mr. DAVIS. Mr. Mezer?

Senator LEVIN. Yes.

Mr. DAVIS. Mr. Mezer had a record in Canada, subsequently we found, later on. The first two times we got him, when we ran checks in Canada, it came back negative. Because of a lack of jail space, we kicked him back to Canada; the Canadians would take him back. The third time we got him, we found that he had been convicted of possession of a stolen credit card. I think he had also been arrested for assault.

Senator LEVIN. In Canada.

Mr. DAVIS. In Canada.

Senator LEVIN. That was before you set that bond?

Mr. DAVIS. Yes. The third time we got him, he was putting two other people on a bus. At that time, sir, our guess was that he was involved in alien smuggling, and I think that he probably was in-

volved in alien smuggling, but unfortunately some of the aliens he was smuggling, I think, very well may have been also terrorists. But when we arrested him the third time, send him down, he was released 6 months later. He was shot by the New York City PD as he was getting ready—he actually, I understand, as they kicked in the door, actually went for the explosives, and because of that he was shot.

Senator LEVIN. But the third time that he entered, you knew that he had a Canadian record, and that is why a high bond was set?

Mr. DAVIS. Well, yes. But we were very suspicious because of the fact we got him 2 weeks in a row, but we were also concerned because there was a 6-month period there that we did not see him at all.

Senator LEVIN. Now, has the percentage of people who are released on their own recognizance changed since September 11? Can you tell yet, Mr. Hall?

Mr. HALL. Just within the past few days, since there have been rumblings of this Subcommittee starting an investigation, there has been detention, but prior to last week, no, it had not changed.

Senator LEVIN. Do you know, Mr. Olson? Was there any change since September 11 in your sector?

Mr. OLSON. Actually, it has gotten worse. All of our jail contracts that we have with the local authorities have expired and we have absolutely no jail space to hold these people. We are having to try and shuffle them around, and most are being released because we have no jail contracts. They expired.

Senator LEVIN. The INS, you have testified, the detention office can override the agent's decision, is that correct, on whether someone should be released, the amount of bond and so forth?

Mr. DAVIS. That is correct.

Senator LEVIN. Does that happen often?

Mr. OLSON. I would say probably with every case. I have yet to see one, a bond that we put on them, that bond be paid and maintained. It is always bargained down.

Senator LEVIN. At the INS——

Mr. OLSON. At the INS——

Senator LEVIN [continuing]. Detention facility?

Mr. OLSON [continuing]. Facility, right.

Senator LEVIN. Have they ever overridden your judgment in the opposite direction, in favor of detention instead of in favor of release? Does that happen?

Mr. OLSON. Not to my knowledge.

Senator LEVIN. Do you know, Mr. Hall?

Mr. HALL. In 17 years, I have seen it happen once.

Senator LEVIN. Do you know, Mr. Davis, if it is uncommon?

Mr. DAVIS. I have never seen it happen.

Senator LEVIN. Now, on the percentage of people who are released on their own recognizance, who do not show up for a hearing, I am not sure the two of you would be in a good position to know that, if you are, just let me know. But I think Mr. Davis may or may not be, from your perspective. Do you have a sense as to what percentage of people who are released on their own recognizance who do not show up for their hearing?

Mr. DAVIS. Back when I was working, it was very low. It was so ridiculous——

Senator LEVIN. Who do show up.

Mr. DAVIS. Very low, were very low, the ones that do show up; very high, the ones that do not show up.

Senator LEVIN. Do you have any sense of that, because you, obviously, are doing the arresting? You are not doing the following of who shows up and who does not, but do you have a sense of whether most people released on their own recognizance show up at the hearing that they are supposed to show up at? Do you have any sense of that?

Mr. OLSON. A small percentage show up, and you can tell by when they do not show up, in most cases they will issue a warrant of deportation in absentia, and there are literally thousands of those out there, but they are not in a database anywhere, absolutely none, like a records check.

Senator LEVIN. Those warrants for people who do not show up that are issued are not even put into a database?

Mr. OLSON. No. Like earlier they were testifying that the NCIC warrant system—we do not have a warrant system.

Senator LEVIN. Do you have anything on that, Mr. Hall, to add to what has been said already?

Mr. HALL. I think that is fair.

Senator LEVIN. Now, for those who do not show up, is there any effort made to arrest them?

Mr. HALL. We used to in Detroit, seek out some, especially cases that an officer had initiated.

Senator LEVIN. How long ago was that?

Mr. HALL. A year, 2 years ago, possibly; then the new policy came out of no interior enforcement, so we were not allowed to seek any individuals, no matter what the seriousness of their crimes, be there a criminal record or whatever. If they had a warrant of deportation at that point, we were told that we could not go out and seek them out.

Senator LEVIN. All right, and that is as of a year or two ago. Were you operating under the same policy, Mr. Olson, or does that differ from sector to sector?

Mr. OLSON. No, we have pretty much the same policy. We would be referred stacks of these deportation warrants, to go out and seek them.

Senator LEVIN. Up to a certain year?

Mr. OLSON. That stopped probably about 2 years ago, when they started this no interior enforcement so we can artificially decrease the apprehension rate.

Senator LEVIN. So we can artificially increase the apprehension—how does that increase the apprehension rate?

Mr. OLSON. Decrease it, sir.

Senator LEVIN. Decrease it, OK.

Mr. DAVIS. I would have to agree with Mr. Olson. I spent 20 years in the Blaine Sector as an agent, working my way up the ranks, and to me the last 2 years probably were one of the reasons, sir, that I really decided to retire. When we came up with this policy that an individual in Bellingham, Washington, might get information on the phone, but he has got 15 people working a mile from

the Border Patrol station and he gets information, he cannot work that because that is interior enforcement, that is criminal.

Senator LEVIN. Got you. OK. Now, on the issue of whether someone is detained or released, one of the grounds statutorily for detention is if they are a threat to the community, and then that presumably requires there be some kind of a criminal record check at that point. But apparently criminal record checks are not always made; is that correct? Mr. Hall.

Mr. HALL. It is not a mandate. It is left to the agent's discretion, but it is a mandate that we use the ENFORCE and the IDENT system. If these other systems were interfaced with IDENT, it would be simple. Everything else is in place if they were interfaced, but now they are asking us—I mean, with all these different systems, you would need the workweek to finish doing all the checks on everybody. So the systems desperately need to be interfaced. Some of these systems I had not even heard before this meeting.

Senator LEVIN. Before what?

Mr. HALL. Before this Subcommittee meeting, some of the systems I had not even heard of.

Senator LEVIN. OK. Mr. Olson.

Mr. OLSON. Like he says, IBIS, I have never heard of IBIS. I do not know where we are going with that. I have been in 14 years. It is the first time I have heard it today.

Senator LEVIN. People, though, are released if there is no space, I think you testified——

Mr. OLSON. That is correct.

Senator LEVIN [continuing]. Without a criminal background check.

Mr. OLSON. We are releasing people without a criminal background check. We are also releasing people with criminal background checks.

Senator LEVIN. Where there is a crime even shown in their check; is that correct?

Mr. OLSON. Yes, sir.

Senator LEVIN. There have been times when the crime is even identified and you still release them, or they are released?

Mr. OLSON. That is correct, and we frequently run into reoffenders, who are out on bond from INS. They are rearrested by the police department for other crimes and then sometimes convicted of them, sometimes they are out on bond again from that, turned back over to us, and we do what we call a bond redetermination, where we try and—say they are brought up on a $5,000 bond—we take them and try to increase that bond to $25,000, send them down to district INS, and they will kick them right back out on the street on the same exact bond that they had. It is an exercise in futility.

Senator LEVIN. Mr. Davis, do you have anything to add?

Mr. DAVIS. The only thing I would like to add is both of these agents talking about the horrendous problem as far as record systems, and this is one of the things I made reference to in my testimony, sir, is the fact that INS over the last 10 years, I would venture it is probably—I know it is in the hundreds and hundreds of millions of dollars, if not in the billions, that they have put into these record systems, for record systems you cannot interface,

record systems you cannot access, no accountability. They will spend millions and millions and millions of dollars on a system that does not work, and there seems to be absolutely no accountability, and I just think that is absolutely inexcusable.

I think that any agent in the field, I do not care where he is, there should be one system. He could run it one time, and it would run each of those systems. But it is criminal.

Senator LEVIN. I want to go back to a question which I had asked our first panel, that relative to an estimate as to the number of people who are arrested actually as they are entering. You also arrest people on occasion who have already entered.

Mr. HALL. Correct.

Senator LEVIN. What is your experience on that, just in the Detroit Sector? Of the people the Border Patrol arrests, what percentage—give us an estimate, a range, are arrested as they are entering the country?

Mr. HALL. I think prior to September 11 it was somewhere in the neighborhood of about 30 percent, a rough figure, and I believe now it is upwards of 50 percent.

Senator LEVIN. That are actually arrested——

Mr. HALL. As they are coming in the country.

Senator LEVIN. The figure that I think he said was about 10 percent. Did you hear that? Do you know where that figure—does that seem very low to you?

Mr. HALL. It is a pretty lowball number, I would say.

Senator LEVIN. I think you saw a chart, but maybe not. Maybe we will put up that chart where there was no local address that was put in, where people did not even provide an address, but who were released. Have you ever seen that?

Mr. HALL. He mentioned that he was shocked by that. That is absolute common practice for years in Detroit.

Senator LEVIN. That there is no address?

Mr. HALL. I would say over 90 percent of the people we arrest at entry, coming into the country illegally, they know that if they have a travel document there is a greater likelihood they will be held because we know where they are from. The Deportation Section does not have to secure a travel document for them, so there is a greater chance of removal to their home country. So, before entering the United States, they will get rid of everything that has any identification for them, so when they come in, we can run them through NCIC–3, we can run them through CIS, all the systems, but we are relying on this individual, who has already broken the law, to tell us their true name, tell us their true date of birth, and we do not even know what country they are from. We are relying on them to tell us what country they are from.

Senator LEVIN. In terms of giving you an address where they can be notified of the removal hearing, is it unusual that they will not give you an address? They will just say there is no address?

Mr. HALL. They will say they do not know anybody in the United States. They have no address. They do not know where they are going, "I know nothing."

Senator LEVIN. A lot of those folks are just simply released on their own recognizance?

Mr. HALL. I would say almost exclusively all of them.

Senator LEVIN. A lot of the people arrested who have no documents, no address that identifies where they are going, are still released on their own recognizance?

Mr. HALL. Yes.

Senator LEVIN. Is that true in Washington, too, or is that a Detroit incredibility?

Mr. OLSON. No, this is the same thing. It was also the same thing when I worked on the Southern Border. We frequently released them without addresses.

Senator LEVIN. Even those who were not voluntarily returned? I guess on the Southern Border, you have the vast majority who are just voluntarily returned; is that correct?

Mr. OLSON. That is correct.

Senator LEVIN. So the relatively small percentage that did not voluntarily return, that were then entitled to a hearing, you are saying you had the same situation, where there was no address in the United States but you still give a notice-to-appear document and tell them that they will be notified when and where to appear for the removal hearing? Is that typical in the South, too?

Mr. OLSON. Yes, sir. They know that anything you give them, you are going to use to hunt them down later, or so they suspect.

Senator LEVIN. Anything that they give you.

Mr. OLSON. Any information, such as addresses, phone numbers, relatives, so that is why they will not give it——

Senator LEVIN. That they give you.

Mr. OLSON. That is correct.

Senator LEVIN. So then where do you send the hearing notice? In this kind of case, where is the hearing notice sent?

Mr. HALL. We do not send one. We provide them with another form, that is EOIR–33 form. We give that form to the alien as they are walking out the door, and where it says alien registration number on the right side of that form, I will fill that number in and then ask them, when they get an address in the United States, to please mail that to INS so we know where to look for them or where to send them their address. Normally, that form does not make it out of our parking lot. They normally throw that on the ground as they are walking out.

Senator LEVIN. It is a common thing to issue a form like that?

Mr. HALL. Everyone that we release on their own recognizance that fails to provide an address, we give them that form in hopes that they will return it to INS with their address once they take up residence in the United States.

Senator LEVIN. Do we have any idea what percentage of those forms are returned? Do you have any idea? Does anyone know?

Mr. DAVIS. I have no idea.

Mr. HALL. It is probably less than the people that show up for their hearings, I imagine, or somewhere thereabouts, about the same number.

Senator LEVIN. What does the term B&B stand for?

Mr. HALL. Bag and baggage.

Senator LEVIN. What does that mean?

Mr. HALL. That means they have an order of deport and they are ready to go, get their bag and baggage and ship them.

Senator LEVIN. Is that the warrant that you were referring to?

Mr. HALL. That would be a warrant of deportation.

Senator LEVIN. Those are the ones that you have got boxes of, just boxes of those documents in your office?

Mr. DAVIS. Yes, sir—not in our office; the district INS maintains all records.

Mr. DAVIS. I might say I verified that just last week at a conference. I was talking to an individual from where the district office is, and he said oh, yes, they have got boxes of those things, but again there is nobody to go out and look for them.

Senator LEVIN. Prior to September 11, the Border Patrol was staffing I think only two of three shifts, at least in some sectors of the Northern Border; is that correct?

Mr. HALL. In most of our stations in Detroit, we staff only one of three shifts.

Senator LEVIN. Now, still?

Mr. HALL. Now they are staffing two 12-hour shifts.

Senator LEVIN. But before September 11, there was only one of the three shifts?

Mr. HALL. Some of the stations—we have five stations, at least two, if not three, of the stations only worked one shift.

Senator LEVIN. One shift. Mr. Olson, what was the situation?

Mr. OLSON. We had a day shift and an afternoon swing shift. We did not have an evening graveyard shift. We are currently working the people that we have now 12-hour shifts in order to cover this additional shift that was uncovered, but without any additional people.

Senator LEVIN. But that was before September 11, the so-called graveyard shift was not covered.

Mr. OLSON. Wide-open.

Senator LEVIN. That would be from midnight to 8 o'clock in the morning, roughly?

Mr. OLSON. Yes, sir.

Senator LEVIN. We have heard a little bit his morning and before this morning about a watch list, which is supposed to be maintained for possible terrorists. Is there a watch list that you access?

Mr. HALL. Yes, we receive it in Detroit over our internal mail, the E-mail. We started receiving that shortly after September 11.

Senator LEVIN. Before September 11, no watch list, and do you know whose watch list that is? Is that an FBI watch list? Is that an INS watch list?

Mr. HALL. I think it is an INS departure prevention watch list, or people we are not supposed to let leave the country.

Senator LEVIN. Let leave the country?

Mr. HALL. That is the one that I have seen. It is a departure prevention list.

Senator LEVIN. OK. Mr. Olson, do you know what that is?

Mr. OLSON. I do not know who authors it. I have seen the list, there was one and then one revision since September 11. I have never seen one before that.

Senator LEVIN. Is there currently a requirement that you look at a watch list?

Mr. OLSON. No, there is absolutely no requirement, but everyone in my station and my sector that I know of is, of course, very interested in what has happened and doing our best to maintain that

if we come into contact with someone who could possibly be on the list, that their name is compared against the people on the list.

Senator LEVIN. This is names, photographs?

Mr. OLSON. No photographs, just names, last known addresses, possible birth dates or Social Security numbers.

Senator LEVIN. But, again, you think it is an INS watch list? Is that your understanding, or you do not know?

Mr. OLSON. I do not know who issued it.

Senator LEVIN. Are you required to look at a watch list with every person?

Mr. HALL. I do not think there is any requirement, sir, but I believe most of the agents do, when we encounter someone that is a suspect.

Senator LEVIN. How many people are on this watch list, roughly?

Mr. HALL. It started out, I think, at 100, and I do not know if it has grown to 200 or 300.

Senator LEVIN. Does that sound about right, Mr. Olson?

Mr. OLSON. At least.

Senator LEVIN. Well, let me close by thanking each of you for taking the time and having the courage to come and tell us what is happening at our borders. It is not easy to do what you have done, and we are proud of you for doing it. The Subcommittee is going to closely monitor any personnel actions to make sure that there is no act of retaliation taken against any of you for testifying before us.

It is utterly amazing to me that for persons who are arrested for illegally entering this country outside of a port of entry, who are released on their own recognizance, that there is not a criminal background check required, that the IBIS system is not required to be checked, that there is not a requirement of the State Department list, the Class 2 list, as it is called. These are people who cannot get a visa to come to this country, to whom our consuls do not give visas, and yet that information is not made available to our Border Patrol agents for people whom they have arrested for illegally entering the country. We do not require an address for people who are released. For those few who maybe can make out a case that, even though they have been arrested for illegally entering the country, that they still ought to be somehow or other released on their own recognizance, we do not even require an address for them.

Now, there are a lot of complex, difficult questions in the immigration field. What is the proper level of legal immigration? How do you deal with the large number of illegal immigrants who are already here, who have established homes here, who have jobs here? How do you deal with them? What do we do about temporary work permits? Should we have a larger system of temporary work permits? How do you prioritize green cards and visas? There is just a whole host of complicated questions.

But I do not think the subject that we have looked at this morning is complicated or difficult. What we are looking at this morning is why in Heaven's name are we releasing people after they have been arrested for attempting to enter the country illegally, on their own recognizance, their own statement that they will show up at a hearing? Although we do not have the numbers, because the INS

does not keep them, somewhere probably around half of those are people who were actually arrested as they were entering the country.

We had, I think, your testimony, Mr. Hall, today that since September 11 that may be 50 percent, but we are not sure what that number is, but it could be half of the people. We had a much lower number by our first panel, which differs from the number you gave us, but nonetheless a significant number of people arrested as they are entering the country illegally are released on their recognizance. They are sneaking in. These are the people we are talking about this morning who are not arrested at a port of entry. We are talking about people here who are arrested other than at a port of entry.

It seems to me that that is a totally absurd policy, and that the only reason that we are following that policy, apparently, is that there is a lack of places to put these people, there is a lack of detention facilities. We have got to, it seems to me, take steps to make sure that people who are arrested for illegally entering this country, if they do not seek asylum are subject to criminal background checks and detained where appropriate. But to just simply hand somebody whom you have arrested for sneaking into the country a piece of paper saying "Let us know what your address is, will you, so we can notify you of a place to come to a hearing, so that you can be removed from the country," is not credible. That is the theater of the absurd to me and it has got to be changed.

Now, we have looked at one segment of this problem this morning. We have not looked at all the other segments. I want to emphasize that. We have looked at one segment. This is what the Border Patrol faces. These are the folks who arrest people other than at ports of entry, and when our agents arrest people for illegally entering the country and then see a huge percentage of those folks who do not return voluntarily, a huge percentage just simply released into this country, that is absolutely almost a useless job at that point. It is exactly the wrong message we are sending to people. The message that that policy sends to people is if you enter the country other than at a port of entry and you are arrested, you are going to be released into this country. That is what the odds are. You are just going to be released into the country, and you will just be told, "Hey, let us know what your address is, would you, so we can notify you where you can come to a hearing which is going to lead to your removal." Well, if they were going to do that, they would not be sneaking into the country to begin with.

So I just do not know how much more dysfunctional a policy can be than that. That is the bottom line for me, and so we are going to be asking the INS, the Border Patrol, to report back to this Subcommittee in 30 days on what they are going to do about this particular problem and what steps are going to be taken to solve it, and that includes a lot of aspects, including all these information systems which are not made available to our Border Patrol that give critically-important information about people whom they arrest. This information is in the hands of the State Department or in the hands of some other agency, but is not available to the Border Patrol agents who are arresting the folks who are attempting to enter this country illegally.

The events of September 11 are so horrendous that the wake-up call that they have given to us, it seems to me, is so loud that we can expect the INS and the Congress to respond, and we are going to do just that. We thank you all, and the hearing is adjourned.

[Whereupon, at 12:18 p.m., the Subcommittee was adjourned.]

APPENDIX

Statement of

Michael A. Pearson
Executive Associate Commissioner, Field Operations
Immigration and Naturalization Service

Before the

Committee on Governmental Affairs
Permanent Subcommittee on Investigations
United States Senate

Regarding

Processing Persons Arrested for Illegal Entry
into the United States Between Ports of Entry

November 13, 2001
9:30am
342 Dirksen Senate Office Building

Mr. Chairman, Senator Collins, and Members of the Subcommittee, I am pleased to have the opportunity to talk to you today about the Immigration and Naturalization Service's (INS) role in processing aliens arrested for illegal entry into the United States between ports of entry. I am also pleased to be accompanied today by Gus De La Viña, Chief of the United States Border Patrol.

The INS is charged with both facilitating legal immigration and enforcing the nation's laws to prevent illegal immigration. The horrific events of September 11 have underscored the far-reaching implications of this mission and the challenges the agency faces in carrying it out. Nowhere are the challenges greater than along our land borders.

Our border management strategy aims to facilitate the flow of legal immigration while preventing the illegal entry of people and contraband. Responsibility for carrying out this strategy is shared by the Border Patrol and the Inspections program. Immigration Inspectors are assigned to the ports of entry and are charged with preventing the unlawful entry of aliens. Border Patrol Agents are charged primarily with detecting and preventing the unlawful entry across our land borders between ports of entry.

The Border Patrol is responsible for patrolling 8,000 miles of border, which includes 2,000 miles of Southwest border, 4,000 miles of Northern border, and 2,000 miles of coastal border. In 1994, as threat and activity levels grew along the Southwest border, the Border Patrol implemented a four-phased strategy to deter, detect and apprehend illegal entrants, smugglers and contraband. The strategy involves forward

deployment of personnel, equipment and technology along the Southwest Border (Phases I – III) and then along the Northern Border, Pacific and Gulf Coasts (Phase IV). The strategy is currently in Phase II, concentrating resources primarily in the areas of highest illegal activity, the Southwest border.

The effectiveness of the strategy is seen through a 25% drop in apprehensions in FY 2001 in the Southwest border corridors targeted by the strategy. In addition to the drop in apprehensions, other measures of success along the Southwest border over the last fiscal year include the:

- Arrest of 1.2 million aliens, almost 11,000 of whom were identified as criminal aliens;
- Seizure of 1.1 million pounds of marijuana; and
- Seizure of over 16,000 pounds of cocaine.

Along the Northern Border in FY 2000, the Border Patrol arrested 12,108 undocumented aliens, and seized over 4,900 pounds of marijuana. Fifty-seven percent of those arrested initially entered through the Southwest Border. In FY 2001, 12,338 undocumented aliens were arrested; 7,444 were Mexican nationals, 2,505 were Canadian nationals. Most of those were voluntarily returned to their country of origin. Sixty-one percent of Northern Border apprehensions entered initially through the Southwest Border. Additionally, 13,000 aliens were arrested along the coastal areas in FY 2001.

The majority of illegal alien crossings and narcotic trafficking continues to occur along the Southwest Border. However, we recognize that there is a threat along the Northern Border and coastal areas as well, and we are reevaluating our current enforcement strategies to address any gaps identified. In addition, we are committed to deploying additional staff to the Northern Border now.

Expedited Removal

Before I discuss the procedures followed by Border Patrol Agents when arresting and processing aliens, I would like to discuss one of the key differences in the options used for the processing of inadmissible aliens at ports of entry and the processing of aliens who have entered the United States illegally by crossing at a place other than a port of entry—expedited removal. In April 1997, the INS implemented the expedited removal program as required by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Aliens placed in expedited removal are required by statute to be detained until their removal unless they are able to establish to an asylum officer that they have a credible fear of persecution or torture. Once an alien is found to have a credible fear, continued detention is discretionary. IIRIRA authorizes immigration officers without a further hearing or review to order the removal of certain aliens who attempt entry without proper documents or by fraud or misrepresentation. Those aliens subject to expedited removal are described in the legislation as "arriving aliens." IIRIRA does not define the term "arriving alien," but it makes clear that arriving aliens are a subset of the broader category of applicants for admission. This broader category consists of all aliens within the borders of the United States who have not been admitted. Several sections of

IIRIRA, such as those amending sections 212(a)(9), 240B, and 241 of the Immigration and Nationality Act (INA), refer to arriving aliens, even though this term is not defined in the statute. After carefully considering these references, the Department determined that the statute seemed to differentiate between applicants for admission at ports of entry and those encountered elsewhere in the United States. Accordingly, the Department's implementing regulations specifically defined "arriving alien" as an alien coming or attempting to come into the United States at a designated port of entry, or an alien interdicted at sea and brought into the United States.

While *requiring* the INS to apply the expedited removal provisions to "arriving aliens" who are inadmissible for certain grounds, the statute also *permits* the Attorney General to apply the expedited removal provisions to other applicants for admission who do not arrive at a port of entry, unless the applicant for admission can demonstrate that he or she has been in the United States for at least two years. In its implementing regulations, the Department of Justice announced that it would apply the provisions only to "arriving aliens," recognizing that application of the expedited removal provisions to aliens already in the United States would involve more complex determinations of fact and would be more difficult to manage, and that the Department it wished to gain insight and experience by initially applying these new provisions on a more limited and controlled basis. In the regulation published in the *Federal Register* about arriving aliens the Department reserved the right to apply the expedited removal procedures to additional classes of aliens within the limits set by the statute, if, in the Commissioner's discretion, such action were is warranted operationally. The Department emphasized that a

proposed expansion of the expedited removal procedures may occur at any time and may be driven either by specific situations such as a sudden influx of illegal aliens motivated by political or economic unrest, or by other events.

The INS has gained a great deal of experience in the application of expedited removal over the past 4 ½ years. Last year, the INS removed 69,309 persons under the program. INS headquarters closely monitors the program through its Expedited Removal Working Group. This working group reviews expedited removal files on a regular basis, conducts site visits and training at ports of entry, and reviews and makes recommendations on policy and procedural issues that periodically arise. This internal monitoring has enabled the INS to gain valuable insight to help ensure the operation of a fair process. The INS values the insight gained from the comments and observations of outside organizations such as the General Accounting Office, the United Nations High Commissioner for Refugees, and various non-governmental organizations. The INS has implemented the expedited removal program in a careful manner, taking steps beyond required by statute, to ensure that persons seeking asylum protection have a fair and meaningful opportunity to have their claim heard. These steps include mandatory supervisory review of all expedited removal orders and the development of a sworn statement that includes mandatory questions concerning any fear of harm the applicant may have upon return to his or her home country.

In considering whether to expand the scope of expedited removal, the INS would have to take account of several practical considerations. First, it is not clear whether the

application of expedited removal to persons apprehended between the ports of entry, especially on the Southwest Border, would create a meaningful deterrent to illegal entry attempts. Second, expedited removal procedures would actually create burdensome administrative procedures in those cases where the apprehended aliens would otherwise be allowed voluntarily to depart immediately from the United States. Third, as noted in the implementing regulations, expedited removal between the ports of entry involves more complex factual questions, since it requires a determination that the alien has been in the United States for less than two years. Finally, an expansion of expedited removal to other programs within the INS, such as the Border Patrol, would require a massive training and monitoring effort in order to ensure a fair process. In short, the costs of expanding expedited removal must be carefully weighed against any potential benefit.

Border Patrol Procedures

Now, I would like to discuss the process used by Border Patrol agents for the arrest of aliens who enter the United States illegally. Upon determining alienage and arresting an alien, the alien is charged under either Section 212 or Section 237 of the INA. Aliens who have entered the United States without inspection and arriving aliens are charged under Section 212, which describes the grounds of inadmissibility, while others may be subject to Section 237, which describes the grounds for deportability. The alien is either placed in removal proceedings or is allowed to voluntarily return to his or her own country.

Border Patrol Agents use the ENFORCE and IDENT computer systems for processing of aliens. ENFORCE is a case management system and IDENT is a biometric (fingerprint) recidivist and lookout database. ENFORCE and IDENT are INS-wide programs that standardize the collection of data and generate INS forms used in the administrative or criminal processing of aliens for immigration-related violations. Within the Border Patrol, IDENT is deployed to all sectors. With the exception of two sectors, it is integrated with the ENFORCE system. ENFORCE will be deployed to the Houlton, Maine and Swanton, Vermont sectors this fiscal year.

Prior to determining the disposition of the alien, the alien's name and other identifying information are checked through various systems in addition to ENFORCE and IDENT, which may include, but are not limited to the Central Index System (CIS), the National Crime Information Center (NCIC), and the Deportable Alien Control System (DACS).

Based on the results of the criminal and administrative record checks I just described, the Border Patrol agent will determine the most effective and appropriate course of action. Generally, there are three possible courses of action: Voluntary Departure, Voluntary Return, Issuing a Warrant of Arrest/Notice to Appear.

Voluntary Departure – Voluntary Departure allows an alien to make his or her own arrangements to return to his or her country of origin within a specified time frame. It can be granted by a District Director or an Immigration Judge. Immigration Judges are

part of the Executive Office for Immigration Review (EOIR) a separate administrative agency of the Department of Justice. Voluntary Departure can be granted pre-hearing or post-hearing, failure to comply with departure may result in initiation of removal proceedings, or an alternate order of removal coming into effect (in the case of Voluntary Departure ordered by an Immigration Judge).

Voluntary Return - Voluntary Return allows the alien to return to his or her country of origin under safeguard without criminal or administrative charges. On the Southwest Border if the alien is a Mexican citizen, return is immediate, as is the case on the Northern Border if the alien is a Canadian citizen. The INS can also voluntarily return a Mexican national from the Northern Border.

Warrant of Arrest/Notice to Appear - A Warrant of Arrest/Notice to Appear (WA/NTA) formally charges an alien with a violation of immigration law. Aliens issued a WA/NTA are placed in removal proceedings and may be detained by INS o eleased on bond or an Order of Recognizance. This release may be authorized by District Directors, Chief Patrol Agents or an Immigration Judge.

Detention & Removal

Once the Border Patrol has decided to proceed with the administrative or criminal processing of an alien, the detention process begins. There are three reasons INS detains an alien: risk of flight, risk of danger to the community, and requirement of law (such as mandatory detention of certain aliens). Once charged, those aliens detained by the INS

are either in proceedings before an Immigration Judge to determine whether or not they are eligible to remain in the United States or they have final removal orders and are awaiting removal from the United States.

Once detention is ordered, an alien must be transported from the point of arrest to a processing center or District Office to be processed into custody. If there is no significant risk of flight or danger to the community, an alien can also be released on his or her own recognizance, bonded out, or paroled into the community. Aliens who are eligible for a bond are also eligible for a bond redetermination hearing before an Immigration Judge. It must be emphasized that availability of detention space plays an important role in deciding whether or not to detain an alien.

Immigration Hearings and Removal

When an apprehended alien decides to exercise his or her right to a hearing, the alien must await proceedings before an Immigration Judge. This process takes place under the auspices of the EOIR. There are a number of potential outcomes to these hearings. If the alien is eligible for a bond redetermination hearing, that will be held first. Once a decision on the bond is made, another hearing is typically held to consider the removal charge. The most common outcome of the removal proceeding is a final order of removal. In such instances, the Immigration Judge determines that an individual is ineligible for legal admission into the United States and must face removal.

During the removal hearing process, an alien may also be granted relief and/or asylum as a result of the facts presented at his or her hearing, may be permitted to withdraw his or her application for admission, or the case may be terminated outright if it is determined that the removal charge is not sustainable or evidence comes to light that the alien is lawfully present.

An alien who has been ordered removed may pursue an appeal of the Immigration Judge's decision. Appeals of immigration hearings are the jurisdiction of the EOIR Board of Immigration Appeals (BIA). BIA decisions may be appealed by the aliens to the United States Courts of Appeals; thus moving from the administrative law process in the Executive Branch to the United States Courts for a final decision. The final authority for immigration appeals is the United States Supreme Court. The time it takes to proceed through the appellate process can be significant and often places a burden on INS to provide long-term detention.

Another avenue for effecting an alien's removal is by reinstating a prior final order of removal. When an alien previously removed from the United States re-enters illegally, Sec. 241(a)(5) provides for reinstatement of the removal order.

Conclusion

As you can see, the INS has established standardized procedures for processing persons arrested for illegal entry into the United States. We believe that these procedures allow us to remove these individuals as rapidly as possible within available resources,

while meeting our statutory requirements and protecting the legal rights of those arrested. We are willing to work with Members of Congress on any proposal you may have for improving these procedures.

This concludes my formal statement. I would like to thank the Subcommittee for the opportunity to appear. I look forward to your questions.

STATEMENT

OF

MARK P. HALL

PRESIDENT

LOCAL 2499

(MICHIGAN AND OHIO)

NATIONAL BORDER PATROL COUNCIL

OF THE

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

AFL-CIO

HOW THE IMMIGRATION AND NATURALIZATION SERVICE PROCESSES PERSONS ARRESTED FOR ILLEGAL ENTRY INTO THE UNITED STATES OUTSIDE PORTS OF ENTRY

BEFORE THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

TUESDAY, NOVEMBER 13, 2001

DIRKSEN SENATE OFFICE BUILDING

ROOM 342

9:30 AM

Mr. Chairman and members of the Subcommittee, my name is Mark Hall. I am the President of Local 2499 of the National Border Patrol Council in Detroit, Michigan. My local union represents U.S. Border Patrol agents assigned to patrol the U.S.-Canada border throughout Michigan and Ohio. I have had the honor to proudly serve my country as a U.S. Border Patrol agent for over 17 years, 14 of them in Detroit, Michigan. I want to thank you for this opportunity to testify on how the Immigration and Naturalization Service (I&NS) processes persons arrested for illegal entry into the United States outside ports of entry.

In the aftermath of the tragic attacks that occurred on September 11, 2001, there is a compelling need to re-examine how the I&NS processes aliens arrested entering the United States illegally.

Unlike the U.S.-Mexico border, where the overwhelming majority of the illegal aliens who are apprehended are citizens of the contiguous country and can be returned there expeditiously, most of the illegal aliens apprehended on the northern border must be held for several days in order to secure the necessary travel documents and/or make travel arrangements to return them to their country of origin. In most of these locations, including Michigan, the I&NS does not have facilities to house such aliens, and must rely on available jail space with local agencies, which charge a high price for this space. Therefore, aliens are often released into local communities on their own recognizance in an effort by the I&NS to save money and remain within their budget.

This practice was commonplace before September 11th and has not changed since. Although it is expensive to detain and remove illegal aliens from our country, it is far more costly to release potential terrorists into our communities. Representatives of this union have often pleaded with local I&NS and Border Patrol management to reconsider this "catch and release" philosophy, but have been ignored. This policy, combined with a decided lack of attention to our northern border, has been an inviting beacon for illegal entry into our country.

The Canadian government allows citizens of more than 50 countries to enter Canada without a visa. The United States requires a visa for citizens of more than 20 of the 50 counties for which Canada has waived the visa requirements. The Criminal Intelligence Service of Canada stated in its 1998 annual report that many illegal aliens use Canada as a transit point on their way to the United States. In many cases, their entry is facilitated by the fact they do not need a visa to enter Canada.

Aliens attempting illegal entry into the United States from Canada have two basic choices when crossing our border. They can either try to fraudulently enter through a port of entry or attempt to enter illegally between ports of entry.

Aliens who attempt illegal entry by fraud or deceit at a port of entry will be interviewed by a U.S. Immigration Inspector or a U.S. Customs Inspector. If caught, they can be held in the United States on criminal charges or refused entry and sent back to Canada. If they are sent back to Canada, they face possible removal to their country by Canadian authorities.

The other, less risky, option available to the alien is to cross the nearly 4,000 miles of sparsely protected U.S.-Canadian border between the ports of entry. An alien risks little chance of apprehension by one of the 334 Border Patrol agents who patrol the border with Canada. In the Detroit Sector, when

agents arrest aliens entering illegally, they transport the aliens back to their station and begin processing the aliens for an immigration hearing.

During the processing, it is the agents who decide which, if any, criminal checks they will run on the aliens. The I&NS has no policy mandating that any records checks must be completed on aliens who are arrested. Even if an agent decides to run such checks, the accuracy thereof is greatly compromised by the fact that it is difficult to positively identify aliens because they rarely carry a passport or other form of identification. Thus, agents must rely on aliens who have consciously chosen to break our immigration laws to provide honest information about themselves. In many cases, it is impossible to verify such information, as there is no biometric record from any previous encounters.

Prior to September 11th, Border Patrol agents very seldom received terrorist look-out lists. In one case several years ago, I assisted the U.S. Coast Guard in the arrest of six Syrians who attempted entry illegally into Detroit. Only at that point did I learn that they, along with 14 others, were on a suspected terrorist look-out list. The Coast Guard had the list, but the Border Patrol did not.

As the processing continues, the agents, who have little verified information in hand, serve the aliens a form delineating the section(s) of the immigration law they are alleged to have violated. A box marked "own recognizance" is usually checked, and the aliens are then allowed to walk out the door into our communities. Very seldom does the alien even provide a U.S. address or phone number. Before they vanish into our communities, they are asked to send the I&NS their U.S. address when they take up residence. Of course, they rarely do.

Unfortunately, the practice of "catching and releasing" even extends to criminal aliens at times. In one recent case, a Detroit Sector Border Patrol agent tracked down and arrested an illegal alien who had been convicted of drug trafficking at least five times. When arrested, he had identifications and driver's licenses from seven different states. The agent naively thought the alien would be held without bond for his immigration hearing, as provided by law. The agent was wrong. The illegal alien felon was ordered released by local Border Patrol management over the strong protests of the arresting agent.

In 1996, Blaine, Washington Border Patrol agents arrested terrorist Abu Mezer not once, but three times entering the U.S. illegally. Even after his third arrest, Mezer was released. Several months later Mezer was shot by New York City Police just hours before his planned attack on the New York subway system.

Aliens and smugglers are well aware of the practice of "catch and release." This is demonstrated by one particular case at the freight train tunnel connecting Detroit, Michigan and Windsor, Ontario, Canada. The aliens, entering illegally, walked through the tunnel from Canada and neared the exit on the U.S. side. The agents illuminated them with their flashlights and identified themselves as Border Patrol agents. Instead of turning and running, the aliens simply continued to the exit and surrendered to the waiting agents. Clearly there was little if any fear by the aliens of being held and deported. Sure enough, the aliens were processed and released on their own recognizance within a few hours.

In some instances, aliens are arrested by Border Patrol agents and a determination is made to hold them pending the posting of a cash bond. The aliens are then turned over to the I&NS' Detention

and Deportation Section. Frequently though, the Deportation Section will rescind these bonds and release the aliens on their own recognizance. This dangerous practice continues today.

When illegal aliens are released, we send a disturbing message. The aliens quickly pass along the word about how easy it is to enter this country illegally and remain here. This practice is devastating to a sound border enforcement strategy. It has also negatively affected employee morale, leaving agents with little sense of accomplishment and job satisfaction.

Rather than recognize and address any shortcomings, our local managers' response has been to threaten those who speak out. As a result of speaking to the press recently in my capacity as a Union official, they have proposed to demote me for one year and suspend me without pay for 90 days. On a broader scale, some high-level Border Patrol managers support proposals to remove the Border Patrol from the I&NS in the hope that the union will be dismantled as a result of such reorganization. It is my hope that the new I&NS Commissioner will act quickly to redirect the energies of some of his subordinates in more positive directions. I am encouraged by his support of rank-and-file employees on such issues as the pay structure of Border Patrol agents, and hope that this will translate into a willingness to work with the union on other issues of mutual concern.

I am proud to be a member of the United States Border Patrol. As a member and officer of this union, I am constrained to voice my belief that local I&NS managers have not allowed us to protect this great nation's sovereignty to the best of our abilities. In fact, on September 11th and the following days, local Border Patrol managers emphasized that it was "business as usual" despite the fact that acts of terror had been perpetrated against our country.

Without detention and removal, there is no deterrent to stem the flow of aliens, some of whom seek to destroy the freedoms and way of life that we cherish. I therefore urge the members of this Subcommittee to aid us in performing our job by providing us with the resources and direction to fully enforce our nation's immigration laws.

Mr. Chairman and members of the Subcommittee, I thank you again for this opportunity to testify, and will be pleased to answer any questions that you might have.

# # #

STATEMENT

OF

KEITH M. OLSON

PRESIDENT

LOCAL 2913

(WASHINGTON, IDAHO AND MONTANA)

NATIONAL BORDER PATROL COUNCIL

OF THE

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

AFL-CIO

HOW THE IMMIGRATION AND NATURALIZATION SERVICE PROCESSES PERSONS ARRESTED FOR ILLEGAL ENTRY INTO THE UNITED STATES OUTSIDE PORTS OF ENTRY

BEFORE THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

TUESDAY, NOVEMBER 13, 2001

DIRKSEN SENATE OFFICE BUILDING

ROOM 342

9:30 AM

Chairman Levin and honorable members of the Subcommittee, I thank you for providing me with this opportunity to testify about my knowledge of Border Patrol operations. I have been a Border Patrol agent for nearly 14 years, and deeply love my job and the organization. The Border Patrol was once a very proud, elite law enforcement organization whose morale was very high. This changed a few years ago, and morale has been steadily deteriorating since that time. My fellow agents and I want to reverse that trend and restore the efficiency and pride of the United States Border Patrol.

Sadly, there are some managers in the Immigration and Naturalization Service (I&NS) and Border Patrol who have been less than honest with our elected representatives and the public. Following the terrorist attacks of September 11, 2001, when asked if our northern border was secure, they tried to assure everyone that everything was under control. At that time, there were only 324 border patrol agents on the northern border. To this day, that number has not increased. Not one additional Border Patrol agent has been assigned to the northern border since that fateful day. Instead, the agents here have been working 12 hours a day, averaging from 68 to 90 hours of work each week. All 100 of the Border Patrol agents temporarily assigned to the northern border under Operation Northern Shield are assisting with security at the ports of entry where Immigration Inspectors and Customs Inspectors work. None of them are assisting us in patrolling the 4,000 miles of border between those ports of entry. There are approximately 9,000 Border Patrol agents assigned to patrol the southwest border. That translates to one agent for every 1,300 feet on the southern border. In sharp contrast, there is only one agent for every 13 miles on the northern border. If you were a terrorist, where would you take your chances?

The Border Patrol agents on the northern border appreciate the manpower increases mandated by the USA PATRIOT Act of 2001, and urge Congress to fund these vital positions and ensure that experienced agents are allowed to transfer there instead of utilizing new-hires. It would require several years to properly train new-hires, and help is desperately needed now. Moreover, depriving experienced agents of the opportunity to fill these desirable positions would further demoralize the workforce and increase attrition beyond its alarmingly high current levels.

Accountability needs to be restored to the I&NS and Border Patrol. Committee oversight and investigations such as today's hearing are an important part of that process.

Most of the illegal aliens from countries other than Mexico that are apprehended on the northern border are released on personal recognizance pending their deportation hearings before immigration judges. In other words, they merely sign a piece of paper promising to appear when given a court date. They provide an unverified address and then walk out the door. Thousands never return for their court dates, which usually results in an order of deportation being issued *in absentia*. There are many thousands of un-served warrants of deportation languishing in I&NS file rooms across the country. Unfortunately, very little time is devoted to tracking down these law-breakers. Occasionally, the Border Patrol intercepts aliens who have an outstanding warrant during its daily operations, but that is very rare. The I&NS Investigations Program has primary jurisdiction over these matters, but it is not a priority. In fact, in the area of Washington State where I have worked since 1994, I have never seen or even heard of an I&NS investigator attempting to seek out and arrest the subjects of these warrants. This too must change. The I&NS needs to be directed to focus more of its resources on this important task. Interior enforcement has been neglected for too long, and must become a priority for the I&NS.

Because of a lack of funding for removals, the Border Patrol also routinely fails to remove illegal aliens who are apprehended on the northern border. These aliens are given a form I-210, instructing them to leave the United States within 30 days, and are released. Again, there are no controls to verify if the alien ever actually leaves the United States. It is not uncommon to re-arrest aliens who never bothered to leave the United States as instructed. Hopefully, that time there is available jail space. If not, the process is repeated all over again.

In my experience, criminal records checks are performed for most illegal aliens apprehended in my Sector. This is not uniform throughout the 21 Border Patrol Sectors, however. Most of the persons arrested for being in the United States illegally are never issued an alien registration number. Millions of illegal aliens are merely processed on the INS' alien arrest processing system known as ENFORCE. All arrested aliens are supposed to be processed in this database. After the arrested alien is processed in ENFORCE, the alien's right and left index fingerprints are entered into another database system called IDENT. In theory, this biometric database tracks every immigration arrest of an individual. In practice, however, it is flawed. It is not always on-line, making it impossible to input data for all arrested aliens. It also sometimes yields unreliable results. I have personally seen it issue two different record numbers for the same person when in theory there should only be one arrest history number based on the same set of two fingerprints. This can happen for a variety of reasons, such as dirty fingerprints, severely scraped or cut and damaged fingerprints from manual labor, which alters the skin patterns. I don't claim to be a fingerprint expert, but since the IDENT system is based on only two fingerprints, it appears to me that this small sampling contributes to the errors. It is important to note that the I&NS IDENT system does not interface with the FBI's fingerprint system and vice versa. The FBI fingerprint system is based on all ten fingerprints, not just two. Perhaps the biggest flaw in the IDENT system is its limited amount of storage. Once it reaches its maximum memory, it deletes the oldest records in order to make room for newer entries. Obviously, all fingerprint data should be retained indefinitely.

If an agent suspects that an alien has a criminal record, the agent must take fingerprints the old-fashioned way with cards and ink, enlarge them to 200% on a photocopier and then fax those copies to the FBI for analysis. Even with such an archaic method, we frequently get a match from the FBI. Taking advantage of the available technology would undoubtedly allow us to submit more fingerprints and increase the number of matches. The FBI fingerprint check is not a mandatory required record check. It is performed solely at the discretion of the arresting agent.

The I&NS has a number of other record check subsystems, most of which do not even interface with each other, much less with those of other law enforcement agencies. There is clearly a need for much more coordination and information sharing. Moreover, information on many non-immigrant visitors is not entered into any databases, diminishing their utility.

Further complicating the difficult task of determining an arrested alien's criminal history is the fact that it is almost impossible to obtain criminal checks from other countries. The only foreign criminal records that I have ever received were from Canada.

The low amount of bonds placed on criminal aliens is another major problem in the current system. For example, aliens who are arrested by the Border Patrol and determined to be a public safety or flight risk are generally given a bond amount of over $25,000. That figure is entered into the

appropriate space on the form I-286, Bond Determination form, and the subject is turned over to the I&NS District detention facility. While at the detention facility, an I&NS deportation officer can re-determine the subject's bond down to a figure as low as $500.00 or even a personal recognizance signature. For the sake of the safety of our communities, this should not be allowed to happen.

Despite its flaws, the U.S. Border Patrol retains a fair degree of respect among federal law enforcement agencies. It would be greatly improved if it were free to make enforcement decisions based on the law instead of the political agenda of bureaucrats. These concerns are shared by labor and management alike. You will hear the same concerns voiced by my former Deputy Chief Patrol Agent who is also here to testify today.

I sincerely believe that these problems are not insurmountable, and in fact I am heartened by the willingness of the new I&NS Commissioner to take a fresh look at some of the problems in the organization. For example, he has recognized that the low pay structure of the Border Patrol agent position contributes greatly to the attrition problem, and is actively seeking funding for an upgrade. I am also hopeful that we can work with him to correct some of the problems that I have identified today.

We also need the assistance of Congress to obtain the resources and provide the mandate necessary for us to do our job. The brave men and women of the U.S. Border Patrol stand ready to secure our nation's borders and interior areas and enforce the immigration laws of the United States. As one of their union representatives, I stand ready to provide you with truthful answers to your questions.

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STATEMENT
OF

EUGENE R. DAVIS

RETIRED DEPUTY CHIEF PATROL AGENT
U.S.BORDER PATROL
BLAINE SECTOR
BLAINE, WASHINGTON

REGARDING

ALIEN PROCESSING PROCEDURES AND PROBLEMS

FAILURE TO APPEAR FOR HEARINGS BY RELEASED ALIENS

LACK OF RESOUCES AND INABILITY OF ANY INTERIOR INS OFFICE TO PERFORM
ANY SIGNIFIGANT IMMIGRATION LAW ENFORCEMENT FUNCTION

BEFORE

THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
UNITED STATES SENATE
NOVEMBER 13, 2001

Mr. Chairman and members of the Subcommittee. My name is Eugene R. Davis. On January 1, 2000, I retired after spending 29 years with the Immigration and Naturalization Service. During my tenure with the INS I served as a Border Patrol Agent, Immigration Inspector, Special Agent, Patrol Agent in Charge with the Border Patrol, Assistant Chief Patrol Agent, and as the Deputy Chief Patrol Agent for the Blaine Sector at Blaine, Washington. During my years of service I spent much of the time in the field leading enforcement operations. Those operations included working jointly with Special Agents in the Seattle, Washington; Portland, Oregon; and Anchorage, Alaska District offices. Because of the expertise and knowledge that I gained over my many years of experience I have testified before the U.S. House of Representatives on two previous occasions.

I am honored to be here today and wish to express my sincere appreciation for giving me the privilege of testifying. I enjoyed very much my years of service. I can truly say that most of the field agents that I worked with in the Border Patrol, Immigration Inspections, and Investigations were, and continue to be, dedicated government employees who simply want to do their jobs in the manner that they have taken an oath to do.

Since the horrible events that took place on September 11, 2001, I have encountered numerous INS employees who are having a very difficult time dealing with what happened. The emotions of these INS employees mirror those of all other American citizens, but they go much deeper because of the sense of guilt, anger, and betrayal that they feel towards upper INS management. These dedicated INS employees feel that if they had been given the proper tools to do their jobs, and if they had been allowed to enforce immigrations laws in the manner that should have been done that the events of September 11 may not have taken place.

I also believe this to be the case. It is my opinion that most of the blame as to how these terrorists were able to come to our shores to perpetrate these evils acts was because of a total breakdown of the Immigration policies and procedures in this country. If a building had collapsed because of faulty construction and almost 6000 innocent people had lost their lives accountability would be demanded. It is my sincere hope that the United States Congress will carefully examine the collapse of meaningful enforcement efforts within INS and will demand accountability. As various Subcommittees go about their business of putting the INS under strict examination I hope that they will have the wisdom to reach out to the retired District Directors and Chief Patrol Agents who will be willing to come forward and testify. They are the real experts as to what has gone wrong in Immigration enforcement. There are entire legions of retirees that are willing to come forward. I believe there are also huge numbers of present INS employees willing to come forward if the gag order they are under would be lifted. As accountability turns into culpability I hope that Congress will see that those found to be derelict in their duties could be removed and those found to be criminally negligent or to have performed unlawful acts could be charged and prosecuted.

Per the request of the Subcommittee there are several things that I would like to address that were areas of concern during my service with the Border Patrol.

ALIEN PROCESSING PROCEDURES AND PROBLEMS

During the last ten years that I served in the Blaine Sector we encountered a great deal of difficulty in our efforts to effectively incarcerate and remove undocumented aliens. This included both illegal aliens that we encountered while doing interior enforcement operations and those whom we arrested coming across the international border from Canada. If our agents could establish that the apprehended alien had a serious criminal record we could usually locate a correction facility to hold him. It was extremely difficult to locate any criminal record on third country aliens entering the United States from Canada. Most had no identification at all, and we had nothing to go on but their word, which was usually highly suspect. Due to the fact that they had no identification and they were in the United States, it was impossible to remove them to Canada. Lacking evidence of a criminal record and because of a severe shortage of funds and jail space,

most of these arrested aliens were given a "notice to appear" or "an order to show cause," and they were released on their own recognizance. Before being released the processing agent would ask the alien what his destination was and inform him that he had a maximum of 30 days to report to the nearest INS office for a hearing. A file was then created and mailed to the INS District closest to where the alien said he was going. Over the years that this policy was in effect there were literally hundreds of aliens from many countries who were released in this manner. Many of the undocumented aliens whom we encountered who were already residing in the country were given I-210 letters and told to depart the United States. During the last several years that I worked, we no longer had a problem dealing with undocumented aliens in the interior because we were no longer allowed to work on any interior enforcement operations.

FAILURE TO APPEAR FOR HEARINGS BY RELEASED ALIENS

A check with any INS District Office in the United States will reveal boxes and boxes of files belonging to those aliens who were told to report to the nearest office at their destination and who failed to appear. I would estimate that there has been no effort to locate 95% of these aliens. They have been allowed to simply disappear into the United States. No one knows whether a number of these missing persons are trained terrorists who will eventually emerge to perpetuate more acts of terrorism against innocent United States citizens.

LACK OF INTERIOR ENFORCEMENT

It is not that District Offices have been derelict in trying to locate these people. Each of the INS District Offices has one common major problem -- a lack of manpower resources. Most District INS Offices are able to operate on strictly a limited reactive basis. They cannot be proactive. It is common knowledge that for all intents and purposes there is no interior enforcement of immigration laws. In most cases if you make it past the border and are undetected or if you receive a temporary pass to make it to the interior you are home free. The District Offices do not have adequate numbers of enforcement staff to do what they have been tasked to do. The situation in the Seattle, Washington and Portland, Oregon Districts has been placed under even greater burden over the last several years when the Border Patrol was restricted from doing any interior enforcement operations in areas that they had traditionally worked. This has created "no enforcement zones" and has also provided the delusion that apprehensions in the Blaine Sector have dropped for a positive reason.

FINAL CONCLUSONS

In closing I would like to enter into the record my own conclusions regarding the immigration mess that we as a country find ourselves in. For over the past two decades there has been a flood of uncontrolled illegal immigration taking place in the United States. This illegal immigration has occurred by people slipping across our borders and

by people coming here as visitors or students who have not gone back home. There has been a bi-partisan neglect to really address this problem. The common denominator in most instances, which causes this flood of immigrants is jobs. People slip across the border one day, buy a fraudulent Social Security number on the second day, and by the third day they are gainfully employed. It is true that many of these people are doing jobs that many American citizens will not do, but it is also true that you cannot wink and look the other way as an undocumented migrant worker illegally crosses the border and at the same time screen out terrorists. Over the years there has been no one more outspoken than I on the issue of putting additional resources along the border. On April 14, 1999, I testified before the House Judiciary Committee on this very subject. However, I will also be the first to say that it will not solve our immigration problems by just putting additional agents and technology along our borders. This is equivalent to placing additional crewmen and a global positional system on the Titanic. INS policy in this country is a flooded, sinking ship. In order for illegal immigration to come to a halt Congress will have to shut off the job magnet. This will mean Members of Congress will have to stand up to the pressure of special interest groups that are dependent on illegal aliens that slip across the borders.

As I made reference to in my opening remarks I believe that it is imperative that Congress addresses the issue of mismanagement in the headquarters division at INS. If a Border Patrol Agent under my supervision were negligent and lost a pair of $200.00 binoculars, he was held accountable. He was disciplined and was forced to make restitution. If a headquarters manager allows millions of dollars to be squandered on a worthless computer system that will not work there is nothing done to him. I believe that in most instances he is given millions of additional dollars to try again.

I am especially perplexed as I read reports that have come forth from the office of both the present and past Inspector General for the Department of Justice. Over the last decade they have written and published many reports outlining the mismanagement within INS but nothing seems to change.

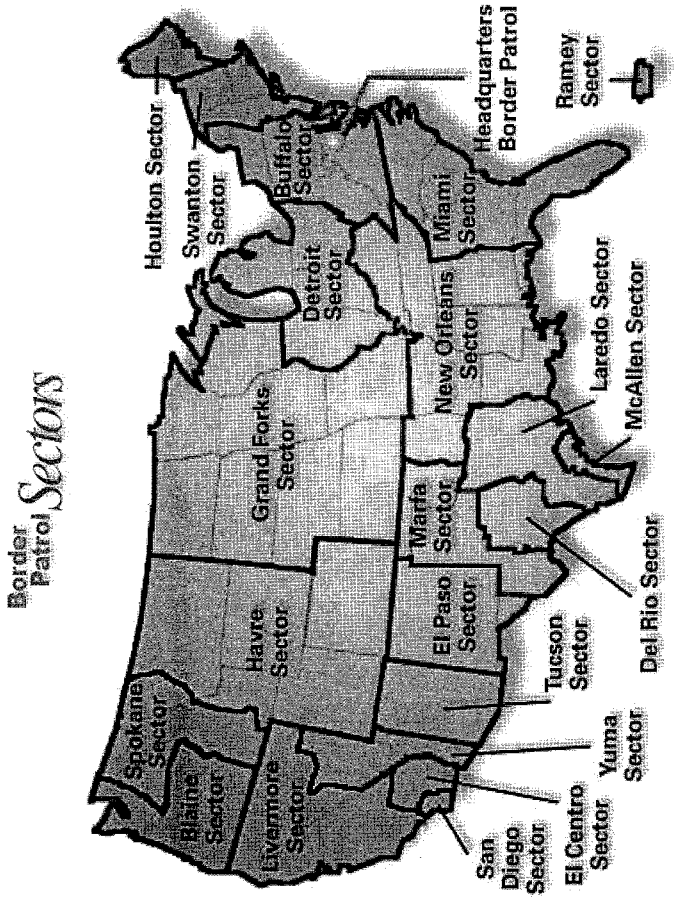
Over the past two months since the terrorist attacks Congress and the media have done their utmost to examine the Taliban and the outside influences that caused September 11th to happen. It is now time for Congress and the media to turn their attention inward to look at the root causes that allow terroristd to arrive here. The majority of the system's breakdowns that have allowed this to happen lie within the framework of the Immigration and Naturalization Service.

Please take the time and effort to correct these problems and restore effective immigration policy.

Again thank you for the opportunity of being here. I would welcome any questions that the Subcommittee may have.

#

Senate Permanent Subcommittee
On Investigations
EXHIBIT # 1



Senate Permanent Subcommittee
On Investigations
EXHIBIT # 2

U.S. Department of Justice
Immigration and Naturalization Service

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

File No: REDACTED

In the Matter of:

Respondent: REDACTED

Failed To Provide

(Number, street, city, state and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.
☐ 2. You are an alien present in the United States who has not been admitted or paroled.
☒ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of Bangladesh and a citizen of Bangladesh;
3. You were admitted to the United States at New York, New York on or about April 16, 2001 as a visitor;
4. You procured your admission, visa, other documentation or benefit by fraud or by willfully misrepresenting a material fact, to wit: You used the passport of another person from India.

RECEIVED
U.S. DEPARTMENT OF JUSTICE
01 JUN 21 PM 12:54
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or adjustment of status, you w within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who seek to procure or have sough procure, or who have procured a visa, other documentation, or entry into the United States, or other benefit provided under the Act, by fraud or by willfully misrepresenting a material fact, under section 212(a)(6)(C)(i) of the Act.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8 CFR 208.30(f)(2) ☐ 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: 1155 Brewery Park, Suite 450, Detroit, Michigan 48207 at a time and date to be set. Respondent will be notified at the address provided.
(Complete Address of Immigration Court, Including Room Number, if any)

on _____ (Date) at _____ (Time) to show why you should not be removed from the United States based on the charge(s) set forth above.

REDACTED
(Signature and Title of Issuing Officer)

Date: April 25, 2001

Detroit, Michigan
(City and State)

See reverse for important information

EXHIBIT ___
Marked For Identification ☒
Admitted ☒

Senate Permanent Subcommittee
On Investigations
EXHIBIT # 3

Form Approved:
OMB No. 1105-0051-

CHANGE OF ADDRESS FORM

You are required to notify the Executive Office for Immigration Review (EOIR) of any change of address and telephone number within five days of moving. You will receive notification as to the time, date and place of hearing or other official correspondence at the address provided by you. Failure to appear at any hearing before an Immigration Judge, when notice of that hearing or other official correspondence was personally served on you or sent to the address you provided, may result in one or more of the following actions:

1. If you are not already detained, you may be taken into custody by the INS and held for further action.

2. If you are in deportation proceedings, your hearing may be held in your absence under Section 242(b) of the Immigration and Nationality Act, and an order of deportation may be entered against you. Furthermore you may be ineligible for the following forms of relief from deportation:

   a. Voluntary departure as provided for in Section 242(b) of the Immigration and Nationality Act;
   b. Suspension of deportation or voluntary departure as provided for in Section 244 of the Immigration and Nationality Act.
   c. Adjustment of status or change of status as provided for in Section(s) 245, 248, or 249 of the Immigration and Nationality Act.

3. If you are in exclusion proceedings;

   a. Your application for admission to the United States may be considered withdrawn, and
   b. Your hearing may be held in your absence and an order of exclusion of deportation entered against you.

Change of Address Instructions
(complete the Change of Address Form below)
Note: See the mailing instructions on the back of this form.

This is to notify you that my address or phone number has changed.

Name _____ *Alien Registration Number* _____

Old Address _____

New Number, Street, Apt. _____

City, State, Zip Code, or Country if other than U.S. _____

In Care Of: _____
Appropriate person, if any

Date of Address Change _____ New Telephone Number _____

Signature _____ Form EOIR - 33

Senate Permanent Subcommittee
On Investigations
EXHIBIT # 4

U.S. Department of Justice
Immigration and Naturalization

Record of Deportable/Excludable Alien

CONTROL Name (Last, First, Middle)

Aliases

Birthdate | Age | Marital Status ☐ Single ☐ Separated ☐ Widowed ☐ Married ☐ Divorced | File Number

Name of Last/Current U.S. Employer

Sex | Hair | Eyes | Complexion | Height | Weight | Scars or Marks

Address of U.S. Employer

U.S. Address/Mail (Number) (Street) (City) (State) (ZIP CODE)

Type of Employment

Alien's Telephone # | Date of Action | Location Code

Salary ____ hr. | From: | To:

City, Province (State) and Country of Birth | Country of Citizenship

Passport Number and Country of Issue

Date, Place, Time, and Manner of Last Entry/Attempted Entry | Status at Entry

Length of Time Illegally in U.S. | Status When Found

Foreign Address/Residence (Number, Street, City, Province (State), Country)

Arrived From/Boarded At

Method of Location/Apprehension | (At/Near) | Date & Hour

Apprehended by

Visa # ____ ☐ NIV ☐ IMM ☐ None | Date of Visa Iss./Loc. | Name on Social Security Card

Social Security No.

Name, Address, and Nationality of Spouse (Maiden Name, if appropriate)

Number & Nationality of minor Children

Father's Name, and Nationality and Address, if Known

Mother's Present and Maiden Names, Nationality, and Address, if Known

Monies Due/Property in U.S. Not in immediate possession: ☐ None Claimed ☐ See Form I-43

Record Checks Completed: ☐ None ☐ Other (specify) ____ ☐ CIS ☐ DACS ☐ NCIC ☐ NBS ☐ OASIS ☐ TSC

F.B.I. No.

Deportation Charge(s)
241 (a) ( ) ( ) ( ) ; 241 (a) ( ) ( ) ( ) ; 241 (a) ( ) ( ) ( )

Exclusion Ground(s)
212 (a) ( ) ( ) ( ) ; 212 (a) ( ) ( ) ( )

Place a check on the appropriate box(es) if any of the following actions were completed:
☐ Doc Lifted (No.) ☐ Fingerprinted ☐ Photographed ☐ I-217 Executed

DACS Citation(s)

Special Programs: ☐ OCDETF ☐ Sanctions ☐ Grandfathered Alien ☐ SAVE

Fraudulent Documents: ☐ Sanctions ☐ Other

Criminal Record: ☐ Yes ☐ No ☐ CA ☐ CO ☐ SR ☐ AF

Immigration Record: ☐ Yes ☐ No ☐ Prior Deport. ☐ Prior VR

Smuggled Alien: ☐ Claimed ☐ Verified ☐ Land ☐ Water ☐ Aircraft

Assistance in Apprehension: ☐ Sensors ☐ Observation Aircraft ☐ K-9 Patrol ☐ Horse Patrol ☐ All Terrain Vehicle ☐ Other Observation Device (specify)

Contraband: ☐ Narcotics ☐ Currency ☐ Weapons ☐ Other

Funds in Possession | Alien Initial | Date

A list of free legal services has been provided: ☐ Yes ☐ No (formal proceedings were not instituted)

Alien has been advised of communication privileges pursuant to 8 CFR 242.2(g). ____ Initial ____ Date

Narrative: Include details not shown above and whether or not eligible for special status program (e.g., TPS, etc.)

☐ Continued on attached continuation page

(Signature and Title)

DISTRIBUTION

Received (subject and documents) (report of interview) from

Officer: ____

____ 19 ____ at ____

Disposition ____

(Receiving Officer) ____

Form I-213 (Rev. 5/14/92) N

Senate Permanent Subcommittee
On Investigations
EXHIBIT # 5

Records Checks Listed on Form I-213

National Crime Information Center (**NCIC**)	FBI	Contains extensive federal, state and local criminal history information on more than 32 million individuals. Is searched by name and at least one other identifier (i.e. birth date, social security number). NCIC 2000 can be searched by fingerprint.
Central Index System (**CIS**)	INS	Not a criminal background check system. Records management system that collects and distributes automated biographical information on aliens.
Deportable Alien Control System (**DACS**)	INS	Not a criminal background check system. Tracking system for illegal aliens under removal proceedings.
Non-Immigrant Information System (**NIIS**)	INS	Not a criminal background check system. Provides information on alien arrivals and departures.
Operational Activities Special Information Systems (**OASIS**)	INS	Tracks known and suspected immigration violators. Includes information about smuggling, fraud, narcotics, and terrorism, among other offenses.
Student and Schools System (**STSC**)	INS	Not a criminal background check system. Tracks aliens entering the U.S. for the purpose of attending accredited and approved schools.

Other Background Check Databases

Automated Biometric Identification System (**IDENT**)	INS	Biometric system housing photographs and fingerprints of arrested aliens. Compares fingerprints against an INS "lookout" database containing information on recidivist immigration violators.
Interagency Border Inspection System (**IBIS**)	Customs & INS	Links with databases of various agencies. Includes names and birth dates of potentially inadmissable aliens including terrorists, drug traffickers, and international criminals. Agency interfaces include: • Immigration and Naturalization Service (**NAILS**) • Treasury Department/Customs Service • State Department • U.S. Drug Enforcement Agency • Federal Bureau of Investigation • INTERPOL
Automated Integrated Fingerprint Identification System (**AIFIS**)	FBI	Fingerprint based criminal background check system. Can provide positive identification by comparing fingerprint with database of 34 million FBI fingerprints.

Senate Permanent Subcommittee
On Investigations
EXHIBIT #___6___

FY 2001
ARRESTS
BY BORDER PATROL
IN DETROIT SECTOR

2106	ARRESTED BY BORDER PATROL
-1333	VOLUNTARILY RETURNED
773	ISSUED NOTICES TO APPEAR
-116	DETAINED OR RELEASED ON BOND (EST.)
657	RELEASED ON OWN RECOGNIZANCE (EST.)
?	FAILED TO SHOW FOR HEARING

Senate Permanent Subcommittee
On Investigations
EXHIBIT #___7___

STATEMENT FOR THE RECORD

Testimony Before the Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate

United States General Accounting Office

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss Immigration and Naturalization Service's (INS) processes for handling aliens who attempt to enter the county illegally. The tragic events of September 11, 2001, under score the importance of effectively controlling the legal and illegal entry of aliens into the United States.

Aliens enter the United States legally or illegally. Generally, legal entry requires aliens to first obtain visas at a U.S. consulate and appropriate travel documents, such as passports, from their own country.[1] They then present themselves for INS inspection at a U.S. port of entry. Aliens may enter legally as "immigrants" or "nonimmigrants." Immigrants enter for purposes of becoming lawful permanent residents. Nonimmigrants are admitted for a specified period of time for a specific purpose, such as tourism, business, or schooling. Under certain conditions, nonimmigrants in the United States may apply to INS to have their status changed to that of immigrant.

Aliens enter illegally by evading INS inspections. They might enter at a port of entry and present fraudulent documents or cross the U.S. border between ports of entry.

My testimony today draws on our prior reports and focuses mainly on INS' processes for denying aliens entry at land and airports of entry, including the expedited removal and credible fear processes.[2]

Changes in the Process of Denying Aliens Entry Into the United States

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (the 1996 Act), which amended the Immigration and Nationality

[1] Citizens of some countries do not have to obtain a visa.

[2] *Illegal Aliens: Changes in the Process of Denying Aliens Entry Into the United States* (GAO/GGD-98-81, Mar. 31, 1998) and *Illegal Aliens: Opportunities Exist to Improve the Expedited Removal Process*, (GAO/GGD-00-176, Sep.1, 2000).

Act (INA),[3] as amended, was enacted September 30, 1996 (P.L. 104-208). Among other things, the 1996 Act included a new provision, which is called expedited removal, for dealing with aliens who attempt to enter the United States by engaging in fraud or misrepresentation (e.g., falsely claiming to be a U.S. citizen or misrepresenting a material fact) or who arrive with fraudulent, improper, or no documents (e.g., visa or passport). The expedited removal provision, which went into effect on April 1, 1997, reduces an alien's right to seek review of a determination of inadmissibility decision.

In the years preceding the passage of the 1996 Act, concerns were raised about the difficulty of preventing illegal aliens from entering the United States and the difficulty of identifying and removing the illegal aliens once they entered this country. The expedited removal process was designed to prevent aliens who attempt to enter the United States by engaging in fraud or misrepresentation or who arrive without proper documents from entering this country at our ports of entry.

The 1996 Act also allows expedited removal orders to be issued to aliens who have entered the United States without being inspected or paroled at a port of entry.[4] INS determined that it would not apply the expedited removal process to aliens who attempted to enter the United States between ports of entry or without inspection or parole.[5]

INS and immigration judges have roles in implementing the provisions of the 1996 Act relating to the expedited removal of aliens. INS' responsibilities include (1) inspecting aliens to determine their admissibility and (2) reviewing the basis and credibility of aliens who are subject to expedited removal but who claim a fear of persecution if returned to their home country or country of last

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[3] 8 U.S.C. 1101, et seq.

[4] The 1996 Act only permits INS to issue expedited removal orders against aliens who have been in the United States for less than 2 years.

[5] Parole is a procedure used to permit an alien temporary entry into the United States, for emergency reasons or when in the public interest.

[6] For this testimony, we use the term "home country" in referring to the aliens'

residence.[6] Aliens can request that immigration judges review INS' negative credible fear determinations. Immigration judges, who report to the Chief Immigration Judge, are in the Executive Office for Immigration Review (EOIR), within the Department of Justice. The immigration judges are located in immigration courts throughout the country.

Before the 1996 Act, aliens who wanted to be admitted to the United States at a port of entry were required to establish admissibility to an inspector. This requirement remains applicable under the 1996 Act. Generally, aliens provide inspectors with documents that show they are authorized to enter this country. At this primary inspection, the INS inspector either permits the aliens to enter or sends the aliens for a more detailed review of their documents or further questioning by another INS inspector. The more detailed review is called secondary inspection. In deciding whether to admit the alien, the INS inspector is to review the alien's documents for accuracy and validity and check INS' and other agencies' databases for any information that could affect the alien's admissibility. After reviewing the alien's documents and interviewing the alien at the secondary inspection, the inspector may either admit or deny admission to the alien or take other discretionary action. INS can prohibit aliens from entering the United States for a number of reasons (e.g., criminal activity or failing to have a valid visa, passport, or other required documents). Inspectors have discretion to permit aliens to withdraw their applications for admission and depart.

Exclusion Process Before Implementation of the 1996 Act

Before the April 1, 1997, enactment of the expedited removal process, the INA authorized the Attorney General to exclude certain aliens from admission into the United States. Aliens whom inspectors determined to be excludable from this country generally were allowed either to (1) withdraw their application for admission and return to the country from which they came or (2) appear for an exclusion hearing before an immigration judge. During this hearing, aliens who said they had a fear of persecution if they were returned to their home country could file an application for asylum. The immigration judges' decisions could be appealed to EOIR's Board of Immigration Appeals, which is a

home country or their country of last residence.

quasijudicial body that hears appeals of INS' and immigration judges' decisions. Furthermore, the alien could appeal Board's decision through the federal court system. The scope of the federal court's review was limited to whether the government followed established procedures. Aliens who were excluded from entering the United States under this process generally were barred from reentering this country for 1 year.

Expedited Removal Process After the Implementation of the 1996 Act

Under the 1996 Act, an INS inspector with supervisory approval, instead of an immigration judge, can issue an expedited removal order to aliens who (1) are denied admission to the United States because they engage in fraud or misrepresentation or arrive without proper documents when attempting to enter this country and (2) do not express a fear of returning to their home country. INS is to remove the alien from this country.[7] Aliens who are issued an expedited removal order are barred from reentering this country for a minimum of 5 years, which is the same sanction that would be imposed by an immigration judge.

The expedited removal provision also established a new process for aliens who express a fear of being returned to their home country and who are subject to expedited removal. Inspectors are to refer such aliens to INS asylum officers for an interview to determine whether the aliens have a credible fear of persecution or harm if returned to their home country. This is called a credible fear interview. The term "credible fear of persecution" is defined by statute as "a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim

[7] There are other reasons why INS may find an alien inadmissible (e.g., criminal activity). However, expedited removal orders can only be issued to aliens whom INS finds inadmissible because the aliens attempted to enter the United States by engaging in fraud or misrepresentation or arrived without proper documents at the U.S. ports of entry. If INS includes any other charge against an alien, the alien cannot be processed under expedited removal procedures. INS is not required to charge an alien with all of the grounds under which it finds the alien inadmissible. With its new authority under the 1996 Act to issue expedited removal orders, INS' guidance to its inspectors states that, generally, if aliens are inadmissible because they attempted to enter the United States by engaging in fraud or misrepresentation or arrived without proper documents, additional charges should not be brought, and the alien should be placed in the expedited removal process.

and such other facts as are known to the officer, that the alien could establish eligibility for asylum under Section 208" of the INA.

Generally, the 1996 Act requires INS to detain aliens who are subject to expedited removal and who express a fear of persecution or torture until they are removed from the country or permitted to remain in the country.[8] These aliens are initially detained at the port of entry during the inspection process and then transported to a detention facility to await an interview by an asylum officer, unless release[9] is required to meet a medical emergency or legitimate law enforcement objectives. If an asylum officer determines that the alien has a credible fear of persecution or torture, detention is no longer mandatory. The INS district director, chief patrol agent, or officer in charge has the discretion to release such aliens for whom an asylum officer determined that a credible fear existed, provided there is a determination by an INS district officer that the alien is likely to appear for the removal hearing and does not pose a risk to the community.

INS Was Generally in Compliance With the Requirements of the 1996 Act

In our September 2000 report, we stated that our review of documentation in the case files of aliens who had been processed for expedited removal indicated that INS inspectors were complying with the requirements of the expedited removal process in almost all cases at Los Angeles, John Fitzgerald Kennedy, and Miami airports and the San Ysidro port of entry. These requirements include the inspectors' taking aliens' sworn statements and asking aliens if they had a fear of returning to their home country, supervisory oversight, and having the aliens sign their sworn statements. We identified some cases where the supervisors did not sign removal orders, but documentation indicated that supervisors' concurrence was obtained by telephone, which is consistent

[8] Generally, aliens who are subject to expedited removal and do not express a fear of persecution or torture are to be detained until they are removed from the country.

[9] This is parole of aliens into the country either on bond or on their own recognizance.

with INS policy.

In addition, we reported that our review of internal controls at INS' Los Angeles, Miami, and New York Asylum Offices revealed that asylum officers generally complied with requirements, including documenting that mandatory paragraphs were read to the aliens during the interview process and that documentation in the aliens' files indicated that supervisors' review took place. We also found that the asylum officers we surveyed were satisfied with the required training INS provided. Finally, our review showed that the headquarters quality assurance team responsible for reviewing all negative (as well as some positive) determinations was performing these reviews and providing feedback to the asylum offices on their results.

INS Released Many Aliens, and Many of Them Did Not Appear for Their Hearing

INS has the discretion to release from detention aliens for whom an asylum officer determined that a credible fear existed. Its policy favors releasing such aliens provided it determines the aliens are likely to appear for the removal hearing and do not pose a risk to the community. In our September 2000 report, we pointed out that in response to our survey, 29 of 33 INS district offices reported that in fiscal year 1999, an estimated 78 percent of such aliens were released to await their hearing before an immigration judge, although some differences existed in district office detention practices. Subsequent to our review, INS issued guidance to promote more consistent decisions about releasing aliens among district offices.

INS' Policy Favors Releasing Credible Fear Aliens Provided They Meet Certain Conditions

Once an asylum officer determines that aliens have a credible fear of persecution or torture, INS' October 1998 Detention Use Policy favors releasing of such aliens after the district director or certain other INS officials determine that the aliens will likely appear for their removal hearing and will not pose a danger to the community. INS district offices reported to us that in fiscal year 1999, 3,432 (or 78 percent) such aliens were released. In responding to our survey, nearly all district offices told

us that they considered the alien's criminal history and/or community ties as important factors in making the decision to release or detain the alien. Subsequent to our review, INS issued regulations to clarify that headquarters and regional managers have authority to make detention decisions.

INS' October 1998 national detention policy and priority system has four categories of aliens for the purpose of making detention decisions.

Category 1 includes aliens who are for the most part required to be detained (e.g., aliens chargeable as terrorists or aliens convicted of aggravated felonies).
Category 2 includes aliens who are removable because of national concerns or having engaged in alien smuggling.
Category 3 includes aliens whom INS apprehended at a work site and had committed fraud in obtaining employment.
Category 4 includes aliens in cases when asylum officers determined that they had a credible fear of persecution or torture and as a result were referred to immigration judges for full removal proceedings.

Under INS' detention policy, the categories are sequentially prioritized (i.e., aliens in category 2 generally should be detained before aliens in category 3). INS requires aliens who express a fear of persecution or torture to an INS inspector at a port of entry to be detained unless release is required to meet a medical emergency or legitimate law enforcement objectives, such as serving as a witness. If an asylum officer determines that the alien has a credible fear of persecution or torture, the alien is to be placed in removal proceedings before an immigration judge where he or she may present a claim for asylum. At this point, the alien is placed in category 4 and can be released at the discretion of the district director or certain other INS officials.

Under this priority system, these INS officials have discretion in their implementation of the detention policy. INS requires the reasons for the detention decision to be clearly documented in writing and placed in the alien's file if a custody determination is not in keeping with its policy. INS' policy favors releasing aliens in cases when an asylum officer determined those aliens to have a credible fear of persecution or torture, provided that the aliens do not pose a risk of flight or danger to the community.

Guidance for making a release decision is found in regulations. In part, the regulations state that the district director may require reasonable assurances that the alien will appear at all hearings. They also state that

the aliens do not have to meet all the factors listed in the regulations to be released. The factors to ensure appearance include the alien posting a bond, having community ties, or having to meet such conditions as periodically reporting to INS their whereabouts. The guidance concludes by stating that the district director should apply reasonable discretion in making detention decisions.

In responding to our survey, district offices identified several factors that they considered in making release or detention decisions regarding aliens in cases when an asylum officer determined those aliens to have a credible fear of persecution or torture. They are required to determine if the aliens are likely to appear for their removal hearings before an immigration judge and are not a danger to the community. However, one district office reported only considering the aliens' family ties or sponsorship, whereas officials at another district office said that they considered eight different factors in making the decision to release or detain.

While indicating compliance with INS' detention guidance, 28 district offices in our survey reported other factors they considered when making release or detention decisions. These factors included community ties, such as evidence of family or friends in the United States or sponsorship of religious or charitable groups, and criminal history check against law enforcement databases. One district office reported that since asylum officers were determining that aliens had a credible fear of persecution or torture 99 percent of the time, it did not consider the asylum officers' findings to be a viable prescreening process or useful in making detention decisions. A port director made a similar comment. Another district responded that they deferred to the determination made by the asylum officer (i.e., the district office released the alien if the asylum officer determined that the alien had a credible fear of persecution or torture).

A Significant Number of Released Aliens Are Not Appearing for Their Removal Hearings

In those cases when an asylum officer determines that an alien has a credible fear of persecution or torture and the alien is released from INS custody, the alien is required to appear at removal hearings before an immigration judge. At the removal hearings, aliens are to present their claims for asylum, and the immigration judge is to rule on the merits of the claim. Those aliens whose claims are denied are to be removed from the country and returned to their home country. In using a joint INS and

EOIR database, we found that 7,947 aliens were found to have a credible fear of persecution or torture between April 1, 1997, and September 30, 1999. As of February 22, 2000, of the 7,947 aliens, 5,320 aliens were released from INS custody. Of these 5,320 aliens, 2,351 aliens received an immigration judge's decision. Of the 2,351 aliens, 1,000 aliens (or 42 percent) did not appear for their removal hearing before an immigration judge. In all 1,000 cases in which the alien did not appear for their removal hearing, immigration judges ordered them removed from this country in absentia.

It should be noted that many of the 5,320 cases involved aliens who had appeared for their initial removal hearing and were scheduled for subsequent hearings to determine if they should be granted relief from removal (e.g., granted asylum). EOIR officials told us that as more of these cases are completed over time, a greater percentage of aliens will appear for their hearing, which will result in a lower in absentia rate. They estimated that when all the cases are completed, the failure-to-appear rate would fall from 42 percent to as low as 25 percent.

Many Aliens Who Changed Removal Hearing Location Were Not Appearing for Their Hearings

In those cases when an asylum officer determined an alien to have a credible fear of persecution or torture and the alien was subsequently released, the alien can ask an immigration judge for a change in removal hearing location. According to an EOIR official, immigration judges' decisions to grant aliens' requests for a change in the hearing location are done on a case-by-case basis. Further, according to the Chief Immigration Judge, before a change of location may be granted, an address where the alien will reside must be provided to the immigration judge.

We reported in September 2000 that many aliens who requested a change in removal hearing location failed to appear at their hearing. Our analysis of the INS and EOIR data from April 1, 1997, through fiscal year 1999 showed that 3,695 of the 5,320 aliens who were released received a change of location for their removal hearing. Of those 3,695 aliens, 1,467 aliens had a decision made by an immigration judge. Of the 1,467 aliens, 557 aliens (or 38 percent) were ordered removed in absentia because they failed to appear for their removal hearings. During our discussion with immigration judges in New York City, they said that the

records of some aliens who received a change of hearing location to New York from Los Angeles contained incorrect information, such as nonexistent addresses as their residences.

Many Aliens Are Not Filing Asylum Applications

To determine whether or not aliens who claimed to have a fear of persecution or torture pursued their claim of asylum, we reviewed the rate by which claimants failed to file applications for asylum. Generally, these aliens have 1 year from their arrival to file an application showing their intent to request asylum.

Our analysis of the joint INS and EOIR database showed that since the inception of the expedited removal program on April 1, 1997, through fiscal year 1999, 7,947 aliens were determined to have a credible fear of persecution or torture. Of these 7,947 aliens, 3,140 aliens had not filed for asylum, as of February 22, 2000. Of the 3,140 aliens who had not filed, 1,338 (or 43 percent) aliens missed the 1-year required filing deadline and as a result, generally may not be able to file for asylum. In addition, 1,239 of the 3,140 aliens who did not file an asylum application were subsequently ordered removed by an immigration judge.

In our September 2000 report, we concluded that many aliens may be using the credible fear process to illegally remain in the United States. In addition, our analysis showed that aliens who requested and received a change of location of their removal hearing did not appear for their hearings. Accordingly, we recommended that the INS reevaluate its policy for when to release aliens who have a credible fear of persecution or torture, and that INS and EOIR work together to establish a system to provide better information from the aliens when they request a change of venue of their removal hearing. The Department of Justice agreed with our recommendations and said that it is are studying how to address our recommendations.

INS' Processes for Denying Aliens Entry Between Ports of Entry and Without Inspection

As previously mentioned, INS decided not to subject aliens who attempt

to enter the country between ports of entry or without inspection to the expedited removal process. Instead, once an alien is apprehended, generally by the Border Patrol, INS usually takes one of three courses of action—voluntary return, voluntary departure, or removal proceedings. Under each action, INS conducts a background check of the alien at the time of apprehension. INS decides which action to take on a case-by-case basis and would permit the alien to voluntarily return or depart if, for example, the alien had no criminal record or history of illegal attempts to enter the country.

Under the first course of action, an apprehended alien can request INS to permit him or her to voluntarily return to their country. By permitting the alien to voluntarily return to their country, the alien would not be subject to any penalty or fine. But if they want to return to the United States their subsequent visa applications may note that they had previously entered the country without permission. Voluntary return is to take place immediately after the alien's background is checked, and the alien is to remain in INS custody until returned.

Under the second course of action, INS may permit an alien to voluntarily depart the United States within a period not to exceed 120 days following apprehension. An alien granted voluntary departure is not kept in INS custody. The alien is responsible for making his or her own departure arrangements. The alien is to provide documentation confirming their departure. If INS does not receive such documentation, it can initiate enforcement actions. Further, failure to comply can result in penalties to the alien.[10]

Under the third course of action, INS can place aliens in a removal hearing before an immigration judge. This action could result in a penalty that would limit the alien's ability to reenter the country in the future. During removal hearings, aliens can apply for relief from their removal (e.g., apply for asylum). INS can detain aliens during the removal hearing process or release the aliens on bond or on their on recognizance. In deciding whether or not to detain the aliens, INS considers such factors as the likelihood that the aliens will appear for their removal hearing or whether aliens present a danger to the community.

[10] Section 240B of the INA, 8 U.S.C. 1229 c.

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

Contact and Acknowledgment

For further information regarding this testimony, please contact Richard M. Stana at (202) 512-8777. James M. Blume made key contribution to this testimony.

(440099)

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COMMITTEES:
ARMED SERVICES
GOVERNMENTAL AFFAIRS
SMALL BUSINESS

Senate Permanent Subcommittee On Investigations
EXHIBIT #___8___

October 19, 2001

Ms. Brenna Neinast
Assistant Chief Patrol Agent
United States Border Patrol
Detroit Sector
fax 810-307-2171

Dear Assistant Chief Neinast:

Thank you for taking time out to meet with us. Your assistance has been helpful. As we discussed this morning, Senator Levin would like to obtain the following information (see attachment) pertaining to recent Border Patrol arrests in Michigan. We appreciate your offer to provide the information to us regarding arrests from September 1, 2001 until October 18, 2001 by Monday, October 22, 2001. We understand that you will need to make a request to Border Patrol's regional headquarters to provide assistance in gathering this information for all Michigan Border Patrol arrests during fiscal year 2001, and that you will advise us before Monday, October 22, 2001 if a more formal request for this information is required.

Please don't hesitate to call Cassandra Woods (313-226-6020) or me (202-224-9104 or 202-544-6835), if you need further information regarding this request. Again, we appreciate your cooperation.

Sincerely,

Joe Bryan
Legislative Assistant
Senator Carl Levin

STATE OFFICES

ALPENA
FEDERAL BLDG., RM. 102
145 WEST5TH STREET
ALPENA, MI 49707
(517) 354-5523

DETROIT
477 MICHIGAN AVE.
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DETROIT, MI 48226
(313) 226-6020

ESCANABA
620 LUDINGTON
SUITE 203B
ESCANABA, MI 49829
(906) 789-0052

GRAND RAPIDS
FEDERAL BUILDING
110 MICHIGAN AVE., N.W.
GRAND RAPIDS, MI 49503
(616) 456-2531

LANSING
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124 WEST ALLEGAN
LANSING, MI 48933
(517) 377-1508

SAGINAW
COMMERCE CENTER
301 E. GENESEE
SAGINAW, MI 48607
(517) 754-2494

SOUTHGATE
15100 NORTHLINE RD.
ROOM 107
SOUTHGATE, MI 48195
(313) 285-0596

TRAVERSE CITY
207 GRANDVIEW PARKWAY
SUITE 10A, P.O. BOX 4440
TRAVERSE CITY, MI 49684
(231) 947-9559

WARREN
30500 VAN DYKE
SUITE 206
WARREN, MI 48093
(810) 573-9145

Border Patrol Arrest Data

1. Number of individuals arrested by Border Parol in Michigan in FY2001

2. For each arrest

   Date of arrest
   Location (station)

3. Prisoner information

   Age (approximate)
   Sex
   Nationality
   Offense charged
   Criminal history

4. Disposition of arrest
   Voluntary return to Canada
   Voluntary return to Mexico
   Notice to appear, released on recognizance
   Notice to appear, with bond (bond level)

U.S. Department of Justice
Immigration and Naturalization Service
U.S. Border Patrol
Detroit Sector Headquarters

P. O. Box 450040
Selfridge ANGB, MI 48045-0040

October 22, 2001

Ms. Cassandra Woods
State Director
477 Michigan Ave., Room 1860
Detroit, MI 48226

Dear Ms. Woods,

Attached are the statistics you have requested from September 1, 2001 through October 18, 2001.

Some of the abbreviations used in the document are explained below.

CHARGES

PWA – present without admission for an alien who illegally entered.
Overstay- an alien who entered with documents and did not leave as scheduled.
Criminal- an immigrant who has violated status through a serious criminal conviction.

DISPOSITION

V/R – voluntary return to country of origin
O/R – released on own recognizance
No Bond – alien held without bond or who is ineligible for bond

CRIMINAL HISTORY

OUIL – operating under the influence of liquor
CSC – criminal sexual conduct
CCW- carrying a concealed weapon

I hope this information is of assistance to you. Do not hesitate to call if you have questions.

Sincerely,

Brenna D. Neinast
Assistant Chief Patrol Agent
Detroit Sector

DETROIT STATION

9/1	29	M	MEXICO	PWA	V/R	ASSAULT
9/2	34	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/2	30	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/3	27	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/3	34	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/3	32	M	MEXICO	PWA	NO BOND	NO CRIMINAL HISTORY FOUND
9/4	40	M	UKRAINE	OVERSTAY	O/R	NO CRIMINAL HISTORY FOUND
9/6	26	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/6	47	F	CANADA	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/6	49	M	CANADA	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/8	45	M	COSTARICA	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/8	21	M	GUATEMALA	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/9	26	M	ECUADOR	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/9	39	M	GUATEMALA	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/9	18	M	COSTARICA	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/9	30	M	COSTARICA	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/10	20	M	MEXICO	PWA	V/R	TRAFFIC VIOL.
9/10	29	M	GUATEMALA	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/15	22	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/15	26	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/17	29	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/17	24	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/17	27	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/20	25	M	ALBANIA	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/25	26	F	ALBANIA	PWA	O/R	NO CRIMINAL HISTORY FOUND
10/1	33	M	CANADA	PWA	V/R	TOT CANADA-WARRANT
10/1	20	M	MEXICO	PWA	O/R	HIT & RUN DISMISSED [1]
10/1	20	M	MEXICO	PWA	O/R	HIT & RUN DISMISSED [2]
10/6	23	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
10/7	38	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
10/13	22	M	INDIA	PWA	O/R	NO CRIMINAL HISTORY FOUND
10/13	39	F	INDIA	PWA	O/R	NO CRIMINAL HISTORY FOUND
10/13	42	M	INDIA	PWA	O/R	NO CRIMINAL HISTORY FOUND
10/13	19	M	INDIA	PWA	O/R	NO CRIMINAL HISTORY FOUND
10/13	32	M	ROMANIA	PWA	O/R	NO CRIMINAL HISTORY FOUND
10/13	32	M	LEBANON	OVERSTAY	$10,000	FEDERAL PROS. 8 USC 1324
10/15	25	M	LEBANON	PWA	$10,000	FEDERAL PROS. 8 USC 1324
10/17	21	M	CANADA	PWA	V/R	NO CRIMINAL HISTORY FOUND

GRAND RAPIDS STATION

9/1	21	M	MEXICO	PWA	V/R	TRAFFIC VIOL.
9/1	26	M	MEXICO	PWA	O/R	TRAFFIC VIOL.
9/1	21	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/2	25	M	NICARAGUA	PWA	O/R	PENDING OUIL CHARGES
9/2	42	M	MEXICO	PWA	V/R	TRAFFIC VIOL.
9/3	31	M	CAMBODIA	CRIMINAL	NO BOND	AGG. FELON, ROBBERY, FELONY ASSAULT
9/3	32	M	MEXICO	PWA	NO BOND	AGG. FELON- FEDERAL FROS. PENDING 1326
9/5	50	M	MEXICO	PWA	NO BOND	DOMESTIC VIOLENCE
9/5	27	M	MEXICO	PWA	V/R	TRAFFIC VIOL.
9/5	24	M	MEXICO	PWA	V/R	OPEN CONTAINER
9/6	34	M	MEXICO	PWA	V/R	PENDING ASSAULT CHARGES
9/7	32	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/7	26	M	GUATEMALA	PWA	NO BOND	TRAFFIC VIOL.
9/8	39	M	MEXICO	PWA	V/R	OUIL
9/9	20	M	MEXICO	PWA	NO BOND	OUIL
9/10	19	M	MEXICO	PWA	O/R	PENDING OUIL
9/10	25	M	MEXICO	PWA	V/R	TRAFFIC VIOL.
9/10	49	M	MEXICO	PWA	NO BOND	TRAFFIC VIOL.
9/11	24	M	MEXICO	PWA	V/R	POSS/SALE MARIJUANA DISMISSED
9/11	24	M	MEXICO	PWA	V/R	OUIL
9/12	29	M	MEXICO	PWA	V/R	OUIL
9/12	28	M	MEXICO	PWA	V/R	TRAFFIC VIOL.
9/13	26	M	MEXICO	PWA	NO BOND	DOMESTIC VIOLENCE
9/13	22	M	MEXICO	PWA	V/R	OPEN INTOX.
9/13	21	M	MEXICO	PWA	V/R	OPEN INTOX.
9/13	28	M	MEXICO	PWA	V/R	PENDING OUIL
9/13	22	M	MEXICO	PWA	V/R	PENDING OPEN INTOX
9/14	23	M	MEXICO	PWA	V/R	OUIL
9/14	29	M	MEXICO	PWA	V/R	TRAFFIC VIOL.
9/15	21	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/15	24	M	MEXICO	PWA	V/R	OUIL
9/15	20	F	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/17	28	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/17	41	M	MEXICO	PWA	O/R	PENDING OUIL
9/17	21	M	MEXICO	PWA	O/R	PENDING OUIL
9/19	18	M	MEXICO	PWA	V/R	TRAFFIC VIOL.
9/19	24	M	MEXICO	PWA	V/R	PENDING OUIL
9/19	20	M	MEXICO	PWA	O/R	OUIL
9/19	18	M	MEXICO	PWA	O/R	PENDING ASSAULT
9/20	19	M	MEXICO	PWA	NO BOND	CSC 3RD
9/21	20	M	MEXICO	PWA	V/R	PENDING OUIL
9/21	20	M	MEXICO	PWA	V/R	PENDING OUIL
9/22	19	M	MEXICO	PWA	V/R	MISDEMEANOR LARCENY
9/24	25	F	MEXICO	PWA	O/R	RETAIL FRAUD
9/26	24	M	GUATEMALA	PWA	O/R	PENDING OUIL
9/27	2[illegible]	M	MEXICO	PWA	O/R	DISORDERLY
9/27	22	M	MEXICO	PWA	O/R	OUIL
9/28	32	F	PERU	OVERSTAY	O/R	NO CRIMINAL HISTORY FOUND
9/28	38	M	PERU	OVERSTAY	O/R	NO CRIMINAL HISTORY FOUND
9/28	3	M	PERU	OVERSTAY	O/R	
9/29	21	M	MEXICO	PWA	O/R	UNLAWFUL ENTRY DISMISSED
9/29	20	M	MEXICO	PWA	O/R	PENDING CSC 3RD
9/29	30	M	MEXICO	PWA	O/R	TRAFFIC VIOL.
9/29	39	M	MEXICO	CRIMINAL	NO BOND	POSS/SALE COCAINE

10/2	23	M	MEXICO	PWA	O/R	ASSAULT
10/2	27	M	GUATEMALA	PWA	NO BOND	CSC 4TH W/MINOR
10/2	24	M	MEXICO	PWA	O/R	OUIL
10/3	60	M	MEXICO	PWA	O/R	DISORDERLY
10/3	25	M	MEXICO	PWA	O/R	OUIL
10/4	18	M	MEXICO	PWA	O/R	MINOR IN POSSESSION/ALCOHOL
10/5	22	M	MEXICO	PWA	O/R	OUIL
10/7	22	M	MEXICO	PWA	V/R	TRAFFIC VIOL.
10/7	37	M	MEXICO	PWA	NO BOND	8 USC 1325 CONVICTION
10/9	28	M	MEXICO	PWA	NO BOND	AGG. FELON- FED. PROS. 1326
10/9	23	M	MEXICO	PWA	O/R	OUIL
10/9	27	M	MEXICO	PWA	NO BOND	AGG. FELON-FED PROS. 1326
10/10	24	M	MEXICO	PWA	V/R	TRAFFIC VIOL.
10/10	30	M	MEXICO	PWA	V/R	TRAFFIC CHARGES DISMISSED
10/11	28	M	MEXICO	PWA	O/R	TRAFFIC VIOL.
10/12	26	M	MEXICO	PWA	V/R	PENDING OUIL
10/13	19	M	MEXICO	PWA	NO BOND	DOMESTIC VIOLENCE
10/14	23	M	MEXICO	PWA	NO BOND	AGG. FELON-FED. PROS. 1326
10/15	28	M	MEXICO	PWA	O/R	OUIL
10/17	27	M	MEXICO	PWA	O/R	OUIL
10/17	32	M	MEXICO	PWA	NO BOND	OUIL
10/17	20	M	MEXICO	PWA	NO BOND	CSC 2ND
10/18	29	M	MEXICO	PWA	O/R	CSC/DOMESTIC VIOL. DISMISSED

PORT HURON STATION

9/2	26	M	MEXICO	PWA	O/R	PENDING OUTL
9/2	23	M	MEXICO	OVERSTAY	O/R	NO CRIMINAL HISTORY FOUND
9/3	23	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/3	20	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/3	22	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/3	19	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/4	24	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/5	40	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/5	32	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/5	23	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/5	26	M	MEXICO	PWA	NO BOND	NO CRIMINAL HISTORY FOUND
9/5	26	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/5	25	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/5	37	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/6	22	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/6	23	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/6	42	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/6	38	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/6	31	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/6	34	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/6	40	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/6	33	F	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/6	58	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/6	29	M	MEXICO	PWA	NO BOND	8 USC 1325 CONVICTION
9/7	26	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/7	24	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/7	21	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/7	24	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/7	18	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/7	24	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/7	22	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/9	25	M	GUATEMALA	PWA	NO BOND	NO CRIMINAL HISTORY FOUND
9/10	25	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/10	27	F	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/11	19	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/11	32	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/11	19	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/11	27	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/16	20	M	MEXICO	PWA	O/R	TRAFFIC VIOL.
9/17	24	M	MEXICO	PWA	NO BOND	CCW, OPEN INTOX DISMISSED
9/19	23	M	YUGOSLAVIA	OVERSTAY	V/R	TRAFFIC VIOL, KIDNAP-DISMISS
9/21	32	M	YEMEN	OVERSTAY	O/R	NO CRIMINAL HISTORY FOUND
9/21	25	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/23	31	F	CANADA	PWA	V/R	THEFT-CANADA
9/23	31	M	MEXICO	PWA	NO BOND	OPEN INTOX.
10/2	53	F	RUSSIA	OVERSTAY	O/R	NO CRIMINAL HISTORY FOUND
10/8	21	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
10/9	23	M	MEXICO	PWA	NO BOND	TRAFFIC VIOL.
10/9	19	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
10/11	64	M	ELSALVADOR	OVERSTAY	O/R	NO CRIMINAL HISTORY FOUND
10/11	33	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
10/17	45	M	MEXICO	PWA	V/R	TRAFFIC VIOL. DISMISSED
10/17	22	M	GUATEMALA	PWA	O/R	NO CRIMINAL HISTORY FOUND
10/17	19	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND

SAULT STE MARIE STATION

9/6	25	M	MEXICO	PWA	V/R	OUIL
9/5	22	M	MEXICO	PWA	V/R	OUIL
9/9	25	M	MEXICO	PWA	V/R	OUIL
10/17	24	M	CANADA	PWA	NO BOND	BURGLARY, NARCOTICS

TRENTON STATION

9/1	14	F	BULGARIA	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/1	22	M	MEXICO	PWA	V/R	SHOPLIFTING-DISMISSED
9/1	24	M	MEXICO	PWA	V/R	TRAFFIC VIOL.
9/1	39	M	MEXICO	PWA	V/R	ASSAULT-DISMISSED
9/2	36	M	INDIA	OVERSTAY	O/R	OUIL
9/4	19	M	MEXICO	PWA	V/R	TRAFFIC VIOL.
9/4	28	M	MEXICO	PWA	V/R	TRAFFIC VIOL.
9/7	29	M	HONDURAS	PWA	O/R	DOMESTIC VIOLENCE
9/8	23	M	MEXICO	PWA	NO BOND	AGG. FELON FED. PROS 1326
9/8	25	M	MEXICO	PWA	NO BOND	AGG. FELON FED. PROS 1326
9/10	23	M	MEXICO	PWA	NO BOND	OPEN CONTAINER
9/10	40	M	MEXICO	PWA	V/R	OUIL
9/10	29	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/15	21	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
9/15	21	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/15	26	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/15	28	F	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/17	44	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/17	27	F	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/17	47	F	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/17	19	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/17	21	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/17	28	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
9/17	36	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
10/2	25	M	MEXICO	PWA	O/R	OUIL
10/3	41	M	LITHUANIA	OVERSTAY	$5,000	DISORDERLY CONDUCT
10/4	18	M	MEXICO	PWA	O/R	MINOR IN POSSESSION/ALCOHOL
10/8	25	M	MEXICO	PWA	V/R	TRAFFIC VIOL.
10/8	19	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
10/8	27	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
10/8	21	M	MEXICO	PWA	V/R	NO CRIMINAL HISTORY FOUND
10/9	42	M	ISRAEL	OVERSTAY	NO BOND	KIDNAP & CRIMES OF VIOLENCE
10/15	16	M	MEXICO	PWA	O/R	NO CRIMINAL HISTORY FOUND
10/16	35	M	RUSSIA	OVERSTAY	O/R	DUI
10/18	17	M	MEXICO	PWA	O/R	POSS. COCAINE DISMISSED

LOCATION: **SUMMARY OF ALL DETROIT SECTOR OFFICES: FY 2000 Data**

		Oct. 1999	Nov. 1999	Dec. 1999	Jan. 2000	Feb. 2000	Mar. 2000	Apr. 2000	May 2000	Jun. 2000	July 2000	Aug. 2000	Sep. 2000	TOTAL FY 2000
A.	Number of apprehensions 1/	218	161	208	204	190	238	177	156	144	172	141	162	2,171
	Total													
1.	Deportable	213	145	191	190	183	227	169	146	138	165	130	160	2,057
2.	Non-Deportable	5	16	17	14	7	11	8	10	6	7	11	2	114
3a.	Criminal Alien Program	70	83	54	53	60	71	80	56	58	55	69	49	748
3b.	Criminals aliens 2/	12	5	4	2	19	12	19	12	9	7	17	25	143
	By Sex (Deportable only)													
4.	Total	213	145	191	190	183	227	169	146	138	165	130	160	2,057
5.	Male	211	141	162	175	166	219	160	134	130	146	122	153	1,919
6.	Female 3/	2	4	29	15	17	8	9	12	8	19	8	7	138
	By Age (Deportable only)													
7.	Adult	209	142	182	185	178	224	162	142	134	159	125	156	1,998
8.	Minor (14 & under)	4	3	9	5	5	3	7	4	4	6	5	4	59
9.	*By Nationality (Deportable Only)*	213	145	191	190	183	227	169	146	138	165	130	160	2,057
a.	Albania				1		2							3
b.	Australia													-
c.	Bahamas				1									1
d.	Bangladesh						-							-
e.	Belgium													-
f.	Bolivia									1				1
g.	Bulgaria													-
h.	Cambodia													-
i.	Canada	13	7	11	11	21	14	6	14	17	35	23	9	181
j.	Chile		1											1
k.	China (Mainland)	5	7	17	8	2	4	8	2	1			2	56
l.	Colombia													-
m.	Costa Rica													-
n.	Cyprus		1											1
o.	Czeh Repiublic							1		1		1	2	5
p.	Dominican Republic	1												1
q.	Ecuador		1										3	4
r.	El Salvador	3	1	2	1	1	2		4	1	2		2	19
s.	Ethiopia							1						1
t.	Finland					1								1
u.	France										1			1
v.	Georgia		1	1										2
w.	Germany				1				1					2
x.	Ghana													-
y.	Guatemala	9	3	3	14	1	5	4	8	3	10	2	1	63
z.	Guinea							2		1				3
aa.	Honduras	2	1		1		1	3		1	1	1	2	13
ab.	Hungary											2		2
ac.	India	1												1
ad.	Iraq						1				1		1	3

LOCATION: **SUMMARY OF ALL DETROIT SECTOR OFFICES: FY 2000 Data**

		Oct. 1999	Nov. 1999	Dec. 1999	Jan. 2000	Feb. 2000	Mar. 2000	Apr. 2000	May 2000	Jun. 2000	July 2000	Aug. 2000	Sep. 2000	TOTAL FY 2000
9.	*By Nationality (Deportable Only): continued*													
ae.	Ivory Coast													-
af.	Jamaica					1								1
ag.	Jordan													-
ah.	Kampuchea													-
ai.	Korea, South													-
aj.	Laos						1							1
ak.	Lebanon													-
al.	Libya		1											1
am.	Lithuania					1								1
an.	Malawi										1			1
ao.	Mali							2						2
ap.	Mexico	179	120	148	142	150	192	142	105	110	111	99	136	1,634
aq.	Micronesia, Federated													-
ar.	Moldova													-
as.	Mongolia												2	2
at.	Morocco													-
au.	Netherlands													-
av.	Nicaragua				1	1	1							3
aw.	Nigeria					1	2							3
ax.	Pakistan													-
ay.	Palestine													-
az.	Peru													-
ba.	Philippines				2									2
bb.	Poland				1									1
bc.	Romania					1	2					1		4
bd	Russia													-
be.	Senegal													-
bf.	Slovakia				1									1
bg.	Somalia										1			1
bh.	South Korea			5	2				3					10
bi.	Sudan													-
bj.	Switzerland									1				1
bk.	Tunisia					1								1
bl.	Ukraine			3										3
bm.	United Kingdom					1					1	1		3
bn.	Uzbekistan				1									1
bo.	Venezuela		1	1										2
bp.	Vietnam								9					9
bq.	Yemen													-
br.	Yugoslavia				2					1	1			4
B.	**Processing actions**													
1.	*Released on recognizance 4/*	-	-	-	-	-	-	-	-	-	-	-	-	-
2.	*NTA's issued*	170	111	114	150	69	75	37	27	20	49	50	57	929
3.	*Warrants of arrests issued 4/*	-	-	-	-	-	-	-	-	-	-	-	-	-
4.	*Voluntary returns 4/*	-	-	-	-	-	-	-	-	-	-	-	-	-

Footnotes:

LOCATION: SUMMARY OF ALL DETROIT SECTOR OFFICES: FY 2000 Data

Oct. 1999	Nov. 1999	Dec. 1999	Jan. 2000	Feb. 2000	Mar. 2000	Apr. 2000	May 2000	Jun. 2000	July 2000	Aug. 2000	Sep. 2000	TOTAL FY 2000

1/ Identifies apprehensions -- no specific "arrests" definition.
2/ Criminals as defined by the INA.
3/ Data is captured for **adult** females.
4/ Data is recorded at District not Sector for cases apprehended by the Sector.

DETROIT SECTOR: FY 2000 DATA

MONTH	DESCRIPTION	Deportable Aliens Apprehended	Dep. Aliens: Minors	Dep. Aliens: Females 1/	Dep. Aliens: NTAs
Oct. 1999	CANADA	13	-	1	-
Oct. 1999	CHINA PEOPLES REPUBLIC OF	5	-	-	3
Oct. 1999	DOMINICAN REPUBLIC	1	-	-	1
Oct. 1999	EL SALVADOR	3	-	-	2
Oct. 1999	GUATEMALA	9	-	-	8
Oct. 1999	HONDURAS	2	-	-	2
Oct. 1999	INDIA	1	-	-	1
Oct. 1999	MEXICO	179	4	1	153
Oct-99 Total		213	4	2	170
Nov. 1999	CANADA	7	-	-	-
Nov. 1999	CHILE	1	-	1	-
Nov. 1999	CHINA PEOPLES REPUBLIC OF	7	-	-	5
Nov. 1999	CYPRUS	1	-	-	1
Nov. 1999	ECUADOR	1	-	-	-
Nov. 1999	EL SALVADOR	1	-	-	1
Nov. 1999	GEORGIA	1	-	-	-
Nov. 1999	GUATEMALA	3	-	-	3
Nov. 1999	HONDURAS	1	-	-	1
Nov. 1999	LIBYA	1	-	-	-
Nov. 1999	MEXICO	120	3	3	100
Nov. 1999	VENEZUELA	1	-	-	-
Nov-99 Total		145	3	4	111
Dec. 1999	CANADA	11	-	3	-
Dec. 1999	CHINA PEOPLES REPUBLIC OF	17	4	6	16
Dec. 1999	EL SALVADOR	2	-	-	1
Dec. 1999	GEORGIA	1	-	-	1
Dec. 1999	GUATEMALA	3	-	1	2
Dec. 1999	MEXICO	148	3	15	86
Dec. 1999	SOUTH KOREA	5	2	3	5
Dec. 1999	UKRAINE	3	-	1	3
Dec. 1999	VENEZUELA	1	-	-	-
Dec-99 Total		191	9	29	114
Jan. 2000	ALBANIA	1	-	-	1
Jan. 2000	BAHAMAS	1	-	-	1
Jan. 2000	CANADA	11	-	-	-
Jan. 2000	CHINA PEOPLES REPUBLIC OF	8	-	3	5
Jan. 2000	EL SALVADOR	1	-	-	1
Jan. 2000	GERMANY	1	-	-	-
Jan. 2000	GUATEMALA	14	-	2	11
Jan. 2000	HONDURAS	1	-	-	1
Jan. 2000	MEXICO	142	5	9	123
Jan. 2000	NICARAGUA	1	-	-	-
Jan. 2000	PHILIPPINES	2	-	1	2

DETROIT SECTOR: FY 2000 DATA

MONTH	DESCRIPTION	Deportable Aliens Apprehended	Dep. Aliens: Minors	Dep. Aliens: Females 1/	Dep. Aliens: NTAs
Jan. 2000	POLAND	1	-	-	1
Jan. 2000	SLOVAKIA	1	-	-	1
Jan. 2000	SOUTH KOREA	2	-	-	2
Jan. 2000	UZBEKISTAN	1	-	-	1
Jan. 2000	YUGOSLAVIA	2	-	-	-
Jan-00 Total		190	5	15	150
Feb. 2000	CANADA	21	-	2	-
Feb. 2000	CHINA PEOPLES REPUBLIC OF	2	1	2	2
Feb. 2000	EL SALVADOR	1	-	-	-
Feb. 2000	FINLAND	1	-	-	1
Feb. 2000	GUATEMALA	1	-	-	1
Feb. 2000	JAMAICA	1	-	-	1
Feb. 2000	LITHUANIA	1	-	-	1
Feb. 2000	MEXICO	150	4	11	60
Feb. 2000	NICARAGUA	1	-	-	-
Feb. 2000	NIGERIA	1	-	-	-
Feb. 2000	RUSSIA	1	-	1	1
Feb. 2000	TUNISIA	1	-	-	1
Feb. 2000	UNITED KINGDOM	1	-	1	1
Feb-00 Total		183	5	17	69
March 2000	ALBANIA	2	-	-	2
March 2000	CANADA	14	-	-	-
March 2000	CHINA PEOPLES REPUBLIC OF	4	-	1	4
March 2000	EL SALVADOR	2	-	-	2
March 2000	GUATEMALA	5	-	-	5
March 2000	HONDURAS	1	-	-	1
March 2000	IRAQ	1	-	-	1
March 2000	LAOS	1	-	-	-
March 2000	MEXICO	192	3	7	57
March 2000	NICARAGUA	1	-	-	-
March 2000	NIGERIA	2	-	-	2
March 2000	ROMANIA	2	-	-	1
Mar-00 Total		227	3	8	75
April 2000	CANADA	6	-	1	-
April 2000	CHINA PEOPLES REPUBLIC OF	8	-	1	8
April 2000	CZECH REPUBLIC	1	-	-	-
April 2000	ETHIOPIA	1	-	-	1
April 2000	GUATEMALA	4	-	-	3
April 2000	GUINEA	2	-	-	2
April 2000	HONDURAS	3	-	-	1
April 2000	MALI	2	-	-	1
April 2000	MEXICO	142	7	7	21
Apr-00 Total		169	7	9	37

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Prepared by: RODAC

DETROIT SECTOR: FY 2000 DATA

MONTH	DESCRIPTION	Deportable Aliens Apprehended	Dep. Aliens: Minors	Dep. Aliens: Females 1/	Dep. Aliens: NTAs
May 2000	CANADA	14	-	2	-
May 2000	CHINA PEOPLES REPUBLIC OF	2	-	-	2
May 2000	EL SALVADOR	4	-	-	3
May 2000	GERMANY	1	-	1	-
May 2000	GUATEMALA	8	-	-	8
May 2000	MEXICO	105	4	1	11
May 2000	SOUTH KOREA	3	-	3	3
May 2000	VIETNAM	9	-	5	-
May-00 Total		146	4	12	27
June 2000	BOLIVIA	1	-	-	1
June 2000	CANADA	17	-	3	1
June 2000	CHINA PEOPLES REPUBLIC OF	1	-	-	1
June 2000	CZECH REPUBLIC	1	-	-	1
June 2000	EL SALVADOR	1	-	-	1
June 2000	GUATEMALA	3	-	-	3
June 2000	GUINEA	1	-	-	1
June 2000	HONDURAS	1	-	-	-
June 2000	MEXICO	110	4	4	10
June 2000	SWITZERLAND	1	-	1	1
June 2000	YUGOSLAVIA	1	-	-	-
Jun-00 Total		138	4	8	20
July 2000	CANADA	35	2	8	2
July 2000	EL SALVADOR	2	1	-	2
July 2000	FRANCE	1	-	-	1
July 2000	GUATEMALA	10	-	-	9
July 2000	HONDURAS	1	-	-	1
July 2000	IRAQ	1	-	-	-
July 2000	MALAWI	1	-	-	1
July 2000	MEXICO	111	3	11	32
July 2000	SOMALIA	1	-	-	1
July 2000	UNITED KINGDOM	1	-	-	-
July 2000	YUGOSLAVIA	1	-	-	-
Jul-00 Total		165	6	19	49
Aug. 2000	CANADA	23	2	5	2
Aug. 2000	CZECH REPUBLIC	1	-	1	-
Aug. 2000	EL SALVADOR	-	-	-	-
Aug. 2000	GUATEMALA	2	-	-	1
Aug. 2000	HONDURAS	1	-	-	1
Aug. 2000	HUNGARY	2	-	-	-
Aug. 2000	MEXICO	99	3	2	45
Aug. 2000	ROMANIA	1	-	-	1
Aug. 2000	UNITED KINGDOM	1	-	-	-
Aug-00 Total		130	5	8	50

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Prepared by: RODAC

DETROIT SECTOR: FY 2000 DATA

MONTH	DESCRIPTION	Deportable Aliens Apprehended	Dep. Aliens: Minors	Dep. Aliens: Females 1/	Dep. Aliens: NTAs
Sept. 2000	CANADA	9	1	1	-
Sept. 2000	CHINA PEOPLES REPUBLIC OF	2	-	-	1
Sept. 2000	CZECH REPUBLIC	2	-	1	2
Sept. 2000	ECUADOR	3	-	-	3
Sept. 2000	EL SALVADOR	2	-	-	1
Sept. 2000	GUATEMALA	1	-	-	1
Sept. 2000	HONDURAS	2	-	-	2
Sept. 2000	IRAQ	1	-	-	-
Sept. 2000	MEXICO	136	3	5	45
Sept. 2000	MONGOLIA	2	-	-	2
Sep-00 Total		160	4	7	57
Grand Total: Detroit Sector		2,057	59	138	929
Total FY 2000	ALBANIA	3	-	-	3
Total FY 2000	BAHAMAS	1	-	-	1
Total FY 2000	BOLIVIA	1	-	-	1
Total FY 2000	CANADA	181	5	26	5
Total FY 2000	CHILE	1	-	1	-
Total FY 2000	CHINA PEOPLES REPUBLIC OF	56	5	13	47
Total FY 2000	CYPRUS	1	-	-	1
Total FY 2000	CZECH REPUBLIC	5	-	2	3
Total FY 2000	DOMINICAN REPUBLIC	1	-	-	1
Total FY 2000	ECUADOR	4	-	-	3
Total FY 2000	EL SALVADOR	19	1	-	14
Total FY 2000	ETHIOPIA	1	-	-	1
Total FY 2000	FINLAND	1	-	-	1
Total FY 2000	FRANCE		-	-	1
Total FY 2000	GEORGIA	2	-	-	1
Total FY 2000	GERMANY	2	-	1	-
Total FY 2000	GUATEMALA	63	-	3	55
Total FY 2000	GUINEA	3	-	-	3
Total FY 2000	HONDURAS	13	-	-	10
Total FY 2000	HUNGARY	2	-	-	-
Total FY 2000	INDIA	1	-	-	1
Total FY 2000	IRAQ	3	-	-	1
Total FY 2000	JAMAICA	1	-	-	1
Total FY 2000	LAOS	1	-	-	-
Total FY 2000	LIBYA	1	-	-	-
Total FY 2000	LITHUANIA	1	-	-	1
Total FY 2000	MALAWI	1	-	-	1
Total FY 2000	MALI	2	-	-	1
Total FY 2000	MEXICO	1,634	46	76	743
Total FY 2000	MONGOLIA	2	-	-	2

DETROIT SECTOR: FY 2000 DATA

MONTH	DESCRIPTION	Deportable Aliens Apprehended	Dep. Aliens: Minors	Dep. Aliens: Females 1/	Dep. Aliens: NTAs
Total FY 2000	NICARAGUA	3	-	-	-
Total FY 2000	NIGERIA	3	-	-	2
Total FY 2000	PHILIPPINES	2	-	1	2
Total FY 2000	POLAND	1	-	-	1
Total FY 2000	ROMANIA	3	-	-	2
Total FY 2000	RUSSIA	1	-	1	1
Total FY 2000	SLOVAKIA	1	-	-	1
Total FY 2000	SOMALIA	1	-	-	1
Total FY 2000	SOUTH KOREA	10	2	6	10
Total FY 2000	SWITZERLAND	1	-	1	1
Total FY 2000	TUNISIA	1	-	-	1
Total FY 2000	UKRAINE	3	-	1	3
Total FY 2000	UNITED KINGDOM	3	-	1	1
Total FY 2000	UZBEKISTAN	1	-	-	1
Total FY 2000	VENEZUELA	2	-	-	-
Total FY 2000	VIETNAM	9	-	5	-
Total FY 2000	YUGOSLAVIA	4	-	-	-

1/ Data is captured for adult females.

LOCATION: SUMMARY OF ALL DETROIT SECTOR OFFICES

		Oct. 2000	Nov. 2000	Dec. 2000	Jan. 2001	Feb. 2001	Mar. 2001	Apr. 2001	May 2001	Jun. 2001	July 2001	Aug. 2001	Sep. 2001 5/	TOTAL FY 2001
A.	**Number of apprehensions** 1/	140	150	117	206	204	172	161	157	177	196	354	151	2,185
	Total													
1.	Deportable	132	139	107	195	182	167	157	156	177	195	349	150	2,106
2.	Non-Deportable	8	11	10	11	22	5	4	1	-	1	5	1	79
3a.	Criminal Alien Program	35	39	44	25	18	20	25	42	54	58	37	43	440
3b.	Criminals aliens 2/	12	9	10	16	7	7	4	7	11	17	9	8	117
	By Sex (Deportable only)													
4.	Total	132	139	107	195	182	167	157	156	177	195	349	150	2,106
5.	Male	130	134	100	189	163	157	149	156	173	192	335	144	2,022
6.	Female 3/	2	5	7	6	19	10	8	-	4	3	14	6	84
	By Age (Deportable only)													
7.	Adult	127	138	103	191	179	157	148	155	176	191	345	149	2,059
8.	Minor (14 & under)	5	1	4	4	3	10	9	1	1	4	4	1	47
9.	*By Nationality (Deportable Only)*	132	139	107	195	182	167	157	156	177	195	349	150	2,106
a.	Albania	-	1	1	1	1	2	-	-	-	-	-	2	8
b.	Australia	-	1	-	-	-	-	-	-	-	-	-	-	1
c.	Bangladesh	-	-	-	-	-	-	1	-	-	-	-	-	1
d.	Belgium	-	-	-	-	-	-	-	-	-	1	-	-	1
e.	Bolivia	-	-	-	-	-	-	-	-	-	-	2	-	2
f.	Bulgaria	-	2	1	-	-	-	-	-	-	-	1	1	3
g.	Cambodia	-	-	-	-	-	-	-	-	-	-	1	-	1
h.	Canada	1	4	1	3	1	2	1	1	10	29	36	3	92
i.	China (Mainland)	7	3	-	1	-	4	4	3	-	1	13	-	36
j.	Colombia	-	-	-	2	-	-	-	-	1	-	-	-	3
k.	Costa Rica	-	-	-	-	-	1	1	-	-	1	2	3	8
l.	Czech Republic	-	1	-	-	-	-	-	-	-	-	-	-	1
m.	Ecuador	-	-	-	-	1	-	-	-	-	-	2	1	4
n.	El Salvador	4	1	-	2	1	3	2	2	-	1	2	-	18
o.	France	-	-	-	-	-	-	-	1	-	-	-	-	1
p.	Georgia	-	-	-	-	-	1	-	-	-	-	-	-	1
q.	Germany	-	-	-	-	-	-	-	-	1	-	-	-	1
r.	Ghana	-	-	-	-	-	-	-	-	1	-	-	-	1
s.	Guatemala	1	2	7	3	3	3	-	8	7	4	13	4	55
t.	Guinea	-	-	-	-	-	-	-	-	1	-	-	-	1
u.	Honduras	3	-	-	4	2	1	1	1	-	2	2	1	17
v.	India	-	-	-	-	-	5	-	-	-	3	-	-	8
w.	Ivory Coast	-	-	-	-	-	-	-	-	1	-	-	-	1
x.	Jamaica	-	-	-	1	-	2	1	-	-	-	-	-	4
y.	Jordan	-	-	-	-	-	-	-	-	1	-	-	-	1
9.	*By Nationality (Deportable Only): continued*													
z.	Kampuchea	-	-	-	-	-	-	-	-	-	-	-	1	1

LOCATION: **SUMMARY OF ALL DETROIT SECTOR OFFICES**

		Oct. 2000	Nov. 2000	Dec. 2000	Jan. 2001	Feb. 2001	Mar. 2001	Apr. 2001	May 2001	Jun. 2001	July 2001	Aug. 2001	Sep. 2001 5/	TOTAL FY 2001
aa.	Korea, South	-	-	6	-	-	-	-	-	-	-	-	-	6
ab.	Laos	-	-	-	1	-	-	-	-	-	-	-	-	1
ac.	Lebanon	-	-	-	1	-	2	-	-	-	-	1	-	4
ad.	Lithuania	-	-	3	-	-	-	-	-	-	-	3	-	6
ae.	Mali	-	-	-	1	-	-	-	-	-	-	-	-	1
af.	Mexico	113	125	84	172	172	139	145	138	147	149	261	127	1,772
ag.	Micronesia, Federated	-	-	-	-	-	-	-	-	1	-	-	-	1
ah.	Moldova	-	-	2	-	-	-	-	1	-	-	-	-	3
ai.	Morocco	-	-	1	-	-	-	-	-	-	-	-	-	1
aj.	Netherlands	1	-	-	-	-	-	-	-	-	-	-	-	1
ak.	Nicaragua	-	-	-	-	-	-	-	-	-	-	2	1	3
al.	Pakistan	-	-	-	-	-	-	-	-	2	4	-	-	6
am.	Palestine	-	-	-	-	-	-	-	-	-	-	1	-	1
an.	Peru	-	-	-	-	-	-	-	-	-	-	-	3	3
ao.	Poland	-	-	-	-	-	-	-	-	3	-	3	-	6
ap.	Romania	-	-	-	3	-	1	-	-	1	-	-	-	5
aq.	Russia	2	-	-	-	-	-	-	-	-	-	1	-	3
ar.	Senegal	-	-	-	-	-	-	-	1	-	-	1	-	2
as.	Slovakia	-	-	-	-	-	-	-	-	-	-	1	-	1
at.	Sudan	-	-	-	-	-	1	-	-	-	-	-	-	1
au.	Tunisia	-	-	1	-	-	-	-	-	-	-	-	-	1
av.	Ukraine	-	1	-	-	-	-	-	-	-	-	1	1	3
aw.	United Kingdom	-	-	-	-	1	-	-	-	-	-	-	-	1
ax.	Venezuela	-	-	-	-	-	-	1	-	-	-	-	-	1
ay.	Yemen	-	-	-	-	-	-	-	-	-	-	-	1	1
az.	Yugoslavia	-	-	-	-	-	-	-	-	-	-	-	1	1

B. Processing actions

1.	*Released on recognizance 4/*	-	-	-	-	-	-	-	-	-	-	-	-	-
2.	*NTA's issued*	53	45	55	66	52	68	73	59	62	70	108	62	773
3.	*Warrants of arrests issued 4/*	-	-	-	-	-	-	-	-	-	-	-	-	-
4.	*Voluntary returns 4/*	-	-	-	-	-	-	-	-	-	-	-	-	-

Footnotes:

1/ Identifies apprehensions -- no specific "arrests" definition.
2/ Criminals as defined by the INA.
3/ Data is captured for **adult** females.
4/ Data is recorded at District not Sector for cases apprehended by the Sector.
5/ Preliminary September 2001 data.

LOCATION: **Detroit Station**

		Oct. 2000	Nov. 2000	Dec. 2000	Jan. 2001	Feb. 2001	Mar. 2001	Apr. 2001	May 2001	Jun. 2001	July 2001	Aug. 2001	Sep. 2001 5/	TOTAL FY 2001
A.	**Number of apprehensions** 1/	22	71	28	87	71	53	24	33	52	37	76	27	581
	Total													
1.	Deportable	21	62	23	82	62	52	20	32	52	36	75	26	543
2.	Non-Deportable	1	9	5	5	9	1	4	1	-	1	1	1	38
3a.	Criminal Alien Program	2	5	6	6	3	3	1	7	6	6	3	1	49
3b.	Criminals aliens 2/	-	1	3	6	3	2	-	-	2	1	-	-	18
	By Sex (Deportable only)													
4.	Total	21	62	23	82	62	52	20	32	52	36	75	26	543
5.	Male	21	61	23	80	61	51	19	32	49	35	72	25	529
6.	Female 3/		1		2	1	1	1		3	1	3	1	14
	By Age (Deportable only)													
7.	Adult	21	62	23	81	61	47	20	32	52	35	74	26	534
8.	Minor (14 & under)	-	-	-	1	1	5	-	-	-	1	1	-	9
9.	*By Nationality (Deportable Only)*	21	62	23	82	62	52	20	32	52	36	75	26	543
a.	Albania		1	1	1		2						2	7
b.	Australia													-
c.	Bangladesh							1						1
d.	Belgium													-
e.	Bolivia													-
f.	Bulgaria													-
g.	Cambodia													-
h.	Canada		3		1	1	1	1		8	3	21	2	41
i.	China (Mainland)		2								1	13		16
j.	Colombia				2									2
k.	Costa Rica						1	1			1	2	3	8
l.	Czech Republic													-
m.	Ecuador					1							1	2
n.	El Salvador				1	1	2	1	1		1			7
o.	France													-
p.	Georgia						1							1
q.	Germany													-
r.	Ghana													-
s.	Guatemala		1	1		3				3	2	3	2	15
t.	Guinea									1				1
u.	Honduras	2			2	2	1					1		8
v.	India						5				3			8
w.	Ivory Coast									1				1
x.	Jamaica						2	1						3
y.	Jordan													-
9.	*By Nationality (Deportable Only): continued*													
z.	Kampuchea													-
aa.	Korea, South													-

LOCATION: Detroit Station

		Oct. 2000	Nov. 2000	Dec. 2000	Jan. 2001	Feb. 2001	Mar. 2001	Apr. 2001	May 2001	Jun. 2001	July 2001	Aug. 2001	Sep. 2001 5/	TOTAL FY 2001
ab.	Laos				1									1
ac.	Lebanon						1							1
ad.	Lithuania													-
ae.	Mali													-
af.	Mexico	18	54	18	74	54	35	15	29	36	21	30	15	399
ag.	Micronesia, Federated													-
ah.	Moldova			2					1					3
ai.	Morocco			1										1
aj.	Netherlands													-
ak.	Nicaragua											1		1
al.	Pakistan									2	4			6
am.	Palestine													-
an.	Peru													-
ao.	Poland											3		3
ap.	Romania						1			1				2
aq.	Russia	1												1
ar.	Senegal								1			1		2
as.	Slovakia													-
at.	Sudan													-
au.	Tunisia													-
av.	Ukraine		1										1	2
aw.	United Kingdom													-
ax.	Venezuela													-
ay.	Yemen													-
az.	Yugoslavia													-
B.	**Processing actions**													
1.	*Released on recognizance 4/*	-	-	-	-	-	-	-	-	-	-	-	-	-
2.	*NTA's issued*	9	4	4	8	9	17	3	5	11	11	25	9	115
3.	*Warrants of arrests issued 4/*	-	-	-	-	-	-	-	-	-	-	-	-	-
4.	*Voluntary returns 4/*	-	-	-	-	-	-	-	-	-	-	-	-	-

Footnotes:

1/ Identifies apprehensions -- no specific "arrests" definition.
2/ Criminals as defined by the INA.
3/ Data is captured for **adult** females.
4/ Data is recorded at District not Sector for cases apprehended by the Sector.
5/ Preliminary September 2001 data.

LOCATION: **Grand Rapids Station**

		Oct. 2000	Nov. 2000	Dec. 2000	Jan. 2001	Feb. 2001	Mar. 2001	Apr. 2001	May 2001	Jun. 2001	July 2001	Aug. 2001	Sep. 2001 5/	TOTAL FY 2001
A.	**Number of apprehensions** 1/	35	35	37	36	55	40	38	52	46	56	58	54	542
	Total													
1.	Deportable	35	35	37	36	55	40	38	52	46	56	58	54	542
2.	Non-Deportable	-	-	-	-	-	-	-	-	-	-	-	-	-
3a.	Criminal Alien Program	20	19	21	15	3	10	14	22	33	33	23	30	243
3b.	Criminals aliens 2/	5	3	4	8	1	2	1	6	9	14	8	6	67
	By Sex (Deportable only)													
4.	Total	35	35	37	36	55	40	38	52	46	56	58	54	542
5.	Male	35	32	34	35	38	36	36	52	46	54	56	53	507
6.	Female 3/	-	3	3	1	17	4	2	-	-	2	2	1	35
	By Age (Deportable only)													
7.	Adult	35	34	34	35	53	38	35	51	46	54	57	53	525
8.	Minor (14 & under)	-	1	3	1	2	2	3	1	-	2	1	1	17
9.	*By Nationality (Deportable Only)*	35	35	37	36	55	40	38	52	46	56	58	54	542
a.	Albania													-
b.	Australia													-
c.	Bangladesh													-
d.	Belgium										1			1
e.	Bolivia													-
f.	Bulgaria													-
g.	Cambodia											1		1
h.	Canada													-
i.	China (Mainland)								2					2
j.	Colombia													-
k.	Costa Rica													-
l.	Czech Republic													-
m.	Ecuador													-
n.	El Salvador	1	1		1		1	1	1			1		7
o.	France													-
p.	Georgia													-
q.	Germany													-
r.	Ghana													-
s.	Guatemala	1	1	6	1		1		8	4	1	6	1	30
t.	Guinea													-
u.	Honduras	1										1		2
v.	India													-
w.	Ivory Coast													-
x.	Jamaica													-
y.	Jordan													-
9.	*By Nationality (Deportable Only): continued*													
z.	Kampuchea												1	1
aa.	Korea, South													-

LOCATION: **Grand Rapids Station**

		Oct. 2000	Nov. 2000	Dec. 2000	Jan. 2001	Feb. 2001	Mar. 2001	Apr. 2001	May 2001	Jun. 2001	July 2001	Aug. 2001	Sep. 2001 5/	TOTAL FY 2001
ab.	Laos													-
ac.	Lebanon				1									1
ad.	Lithuania													-
ae.	Mali													-
af.	Mexico	31	33	30	33	55	38	37	41	39	54	48	48	487
ag.	Micronesia, Federated													-
ah.	Moldova													-
ai.	Morocco													-
aj.	Netherlands	1												1
ak.	Nicaragua												1	1
al.	Pakistan													-
am.	Palestine											1		1
an.	Peru												3	3
ao.	Poland									3				3
ap.	Romania													-
aq.	Russia													-
ar.	Senegal													-
as.	Slovakia													-
at.	Sudan													-
au.	Tunisia			1										1
av.	Ukraine						-							-
aw.	United Kingdom													-
ax.	Venezuela													-
ay.	Yemen													-
az.	Yugoslavia													-
B.	**Processing actions**													
1.	*Released on recognizance 4/*	-	-	-	-	-	-	-	-	-	-	-	-	-
2.	*NTA's issued*	20	27	28	28	24	19	18	31	21	28	24	23	291
3.	*Warrants of arrests issued 4/*	-	-	-	-	-	-	-	-	-	-	-	-	-
4.	*Voluntary returns 4/*	-	-	-	-	-	-	-	-	-	-	-	-	-

Footnotes:

1/ Identifies apprehensions -- no specific "arrests" definition.
2/ Criminals as defined by the INA.
3/ Data is captured for **adult** females.
4/ Data is recorded at District not Sector for cases apprehended by the Sector.
5/ Preliminary September 2001 data.

LOCATION: **Port Huron Station**

		Oct. 2000	Nov. 2000	Dec. 2000	Jan. 2001	Feb. 2001	Mar. 2001	Apr. 2001	May 2001	Jun. 2001	July 2001	Aug. 2001	Sep. 2001 5/	TOTAL FY 2001
A.	**Number of apprehensions** 1/	39	30	20	23	18	43	64	36	39	55	159	45	571
	Total													
1.	Deportable	38	30	20	23	18	43	64	36	39	55	156	45	567
2.	Non-Deportable	1	-	-	-	-	-	-	-	-	-	3	-	4
3a.	Criminal Alien Program	2	6	-	-	1	1	-	1	5	1	2	4	23
3b.	Criminals aliens 2/	-	1	-	-	-	-	-	-	-	-	-	-	1
	By Sex (Deportable only)													
4.	Total	38	30	20	23	18	43	64	36	39	55	156	45	567
5.	Male	36	29	16	22	17	39	61	36	38	55	149	44	542
6.	Female 3/	2	1	4	1	1	4	3	-	1	-	7	1	25
	By Age (Deportable only)													
7.	Adult	33	30	19	22	18	41	59	36	38	54	155	45	550
8.	Minor (14 & under)	5	-	1	1	-	2	5	-	1	1	1	-	17
9.	*By Nationality (Deportable Only)*	38	30	20	23	18	43	64	36	39	55	156	45	567
a.	Albania													-
b.	Australia													-
c.	Bangladesh													-
d.	Belgium													-
e.	Bolivia											2		2
f.	Bulgaria													-
g.	Cambodia													-
h.	Canada				1					1	11	15	1	29
i.	China (Mainland)	7					4	4						15
j.	Colombia													-
k.	Costa Rica													-
l.	Czeh Republic		1											1
m.	Ecuador											2		2
n.	El Salvador	3										1		4
o.	France													-
p.	Georgia													-
q.	Germany									1				1
r.	Ghana													-
s.	Guatemala											4	1	5
t.	Guinea													-
u.	Honduras													-
v.	India													-
w.	Ivory Coast													-
x.	Jamaica													-
y.	Jordan									1				1
9.	*By Nationality (Deportable Only): continued*													
z.	Kampuchea													-
aa.	Korea, South			6										6

LOCATION: Port Huron Station

		Oct. 2000	Nov. 2000	Dec. 2000	Jan. 2001	Feb. 2001	Mar. 2001	Apr. 2001	May 2001	Jun. 2001	July 2001	Aug. 2001	Sep. 2001 5/	TOTAL FY 2001
ab.	Laos													-
ac.	Lebanon													-
ad.	Lithuania													-
ae.	Mali													-
af.	Mexico	28	29	14	22	17	38	60	36	35	44	130	41	494
ag.	Micronesia, Federated									1				1
ah.	Moldova													-
ai.	Morocco													-
aj.	Netherlands													-
ak.	Nicaragua											1		1
al.	Pakistan													-
am.	Palestine													-
an.	Peru													-
ao.	Poland													-
ap.	Romania													-
aq.	Russia											1		1
ar.	Senegal													-
as.	Slovakia													-
at.	Sudan						1							1
au.	Tunisia													-
av.	Ukraine													-
aw.	United Kingdom					1								1
ax.	Venezuela													-
ay.	Yemen												1	1
az.	Yugoslavia												1	1
B.	**Processing actions**													
1.	*Released on recognizance 4/*	-	-	-	-	-	-	-	-	-	-	-	-	-
2.	*NTA's issued*	20	13	15	22	10	23	47	18	25	23	45	26	287
3.	*Warrants of arrests issued 4/*	-	-	-	-	-	-	-	-	-	-	-	-	-
4.	*Voluntary returns 4/*	-	-	-	-	-	-	-	-	-	-	-	-	-

Footnotes:

1/ Identifies apprehensions -- no specific "arrests" definition.
2/ Criminals as defined by the INA.
3/ Data is captured for **adult** females.
4/ Data is recorded at District not Sector for cases apprehended by the Sector.
5/ Preliminary September 2001 data.

LOCATION: **Sault Ste. Marie Station**

		Oct. 2000	Nov. 2000	Dec. 2000	Jan. 2001	Feb. 2001	Mar. 2001	Apr. 2001	May 2001	Jun. 2001	July 2001	Aug. 2001	Sep. 2001 5/	TOTAL FY 2001
A.	**Number of apprehensions** 1/	1	2	7	5	1	6	5	8	13	19	34	3	104
	Total													
1.	Deportable	1	2	7	5	1	6	5	8	13	19	34	3	104
2.	Non-Deportable	-	-	-	-	-	-	-	-	-	-	-	-	-
3a.	Criminal Alien Program	1	2	6	1	-	-	1	3	3	3	3	1	23
3b.	Criminals aliens 2/	-	-	1	1	-	-	-	-	-	2	1	-	5
	By Sex (Deportable only)													
4.	Total	1	2	7	5	1	6	5	8	13	19	34	3	104
5.	Male	1	2	7	5	1	5	5	8	13	19	32	3	101
6.	Female 3/	-	-	-	-	-	1	-	-	-	-	2	-	3
	By Age (Deportable only)													
7.	Adult	1	2	7	5	1	6	5	8	13	19	33	3	103
8.	Minor (14 & under)	-	-	-	-	-	-	-	-	-	-	1	-	1
9.	*By Nationality (Deportable Only)*	1	2	7	5	1	6	5	8	13	19	34	3	104
a.	Albania													-
b.	Australia													-
c.	Bangladesh													-
d.	Belgium													-
e.	Bolivia													-
f.	Bulgaria													-
g.	Cambodia													-
h.	Canada			1	1		1			1	15			19
i.	China (Mainland)								1					1
j.	Colombia													-
k.	Costa Rica													-
l.	Czech Rpplublic													-
m.	Ecuador													-
n.	El Salvador													-
o.	France													-
p.	Georgia													-
q.	Germany													-
r.	Ghana									1				1
s.	Guatemala						2							2
t.	Guinea													-
u.	Honduras													-
v.	India													-
w.	Ivory Coast													-
x.	Jamaica				1									1
y.	Jordan													-
9.	*By Nationality (Deportable Only): continued*													
z.	Kampuchea													-
aa.	Korea, South													-

LOCATION: **Sault Ste. Marie Station**

		Oct. 2000	Nov. 2000	Dec. 2000	Jan. 2001	Feb. 2001	Mar. 2001	Apr. 2001	May 2001	Jun. 2001	July 2001	Aug. 2001	Sep. 2001 5/	TOTAL FY 2001
ab.	Laos													-
ac.	Lebanon													-
ad.	Lithuania			3										3
ae.	Mali													-
af.	Mexico	1	2	3	3	1	3	5	7	11	4	34	3	77
ag.	Micronesia, Federated													-
ah.	Moldova													-
ai.	Morocco													-
aj.	Netherlands													-
ak.	Nicaragua													-
al.	Pakistan													-
am.	Palestine													-
an.	Peru													-
ao.	Poland													-
ap.	Romania													-
aq.	Russia													-
ar.	Senegal													-
as.	Slovakia													-
at.	Sudan													-
au.	Tunisia													-
av.	Ukraine													-
aw.	United Kingdom													-
ax.	Venezuela													-
ay.	Yemen													-
az.	Yugoslavia													-
B.	**Processing actions**													
1.	*Released on recognizance 4/*	-	-		-	-	-	-	-	-	-			-
2.	*NTA's issued*	-	-	3	1	-	1	1	1	1	2	5	-	15
3.	*Warrants of arrests issued 4/*	-	-		-	-	-	-	-	-				-
4.	*Voluntary returns 4/*	-	-	-	-	-	-	-	-	-	-	-	-	-

Footnotes:

1/ Identifies apprehensions -- no specific "arrests" definition.
2/ Criminals as defined by the INA.
3/ Data is captured for **adult** females.
4/ Data is recorded at District not Sector for cases apprehended by the Sector.
5/ Preliminary September 2001 data.

LOCATION: **Trenton Station**

		Oct. 2000	Nov. 2000	Dec. 2000	Jan. 2001	Feb. 2001	Mar. 2001	Apr. 2001	May 2001	Jun. 2001	July 2001	Aug. 2001	Sep. 2001 5/	TOTAL FY 2001
A.	**Number of apprehensions** 1/	43	12	25	55	59	30	30	28	27	29	27	22	387
	Total													
1.	Deportable	37	10	20	49	46	26	30	28	27	29	26	22	350
2.	Non-Deportable	6	2	5	6	13	4	-	-	-	-	1	-	37
3a.	Criminal Alien Program	11	7	11	3	11	6	9	9	7	15	6	7	102
3b.	Criminals aliens 2/	7	4	2	1	3	3	3	1	-	-	-	2	26
	By Sex (Deportable only)													
4.	Total	37	10	20	49	46	26	30	28	27	29	26	22	350
5.	Male	37	10	20	47	46	26	28	28	27	29	26	19	343
6.	Female 3/	-	-	-	2	-	-	2	-	-	-	-	3	7
	By Age (Deportable only)													
7.	Adult	37	10	20	48	46	25	29	28	27	29	26	22	347
8.	Minor (14 & under)	-	-	-	1	-	1	1	-	-	-	-	-	3
9.	*By Nationality (Deportable Only)*	37	10	20	49	46	26	30	28	27	29	26	22	350
a.	Albania					1								1
b.	Australia		1											1
c.	Bangladesh													-
d.	Belgium													-
e.	Bolivia													-
f.	Bulgaria			1								1	1	3
g.	Cambodia													-
h.	Canada	1	1						1					3
i.	China (Mainland)		1		1									2
j.	Colombia									1				1
k.	Costa Rica													-
l.	Czeh Republic													-
m.	Ecuador													-
n.	El Salvador													-
o.	France								1					1
p.	Georgia													-
q.	Germany													-
r.	Ghana													-
s.	Guatemala				2						1			3
t.	Guinea													-
u.	Honduras				2			1	1		2		1	7
v.	India													-
w.	Ivory Coast													-
x.	Jamaica													-
y.	Jordan													-
9.	*By Nationality (Deportable Only): continued*													
z.	Kampuchea													-
aa.	Korea, South													-

LOCATION: Trenton Station

		Oct. 2000	Nov. 2000	Dec. 2000	Jan. 2001	Feb. 2001	Mar. 2001	Apr. 2001	May 2001	Jun. 2001	July 2001	Aug. 2001	Sep. 2001 5/	TOTAL FY 2001
ab.	Laos													-
ac.	Lebanon						1					1		2
ad.	Lithuania											3		3
ae.	Mali				1									1
af.	Mexico	35	7	19	40	45	25	28	25	26	26	19	20	315
ag.	Micronesia, Federated													-
ah.	Moldova													-
ai.	Morocco													-
aj.	Netherlands													-
ak.	Nicaragua													-
al.	Pakistan													-
am.	Palestine													-
an.	Peru													-
ao.	Poland													-
ap.	Romania				3									3
aq.	Russia	1												1
ar.	Senegal													-
as.	Slovakia											1		1
at.	Sudan													-
au.	Tunisia													-
av.	Ukraine						-					1		1
aw.	United Kingdom													-
ax.	Venezuela							1						1
ay.	Yemen													-
az.	Yugoslavia													-

B.	Processing actions													
1.	*Released on recognizance 4/*	-	-	-	-	-	-	-	-	-	-	-	-	-
2.	*NTA's issued*	4	1	5	7	9	8	4	4	4	6	9	4	65
3.	*Warrants of arrests issued 4/*	-	-	-	-	-	-	-	-	-	-	-	-	-
4.	*Voluntary returns 4/*	-	-	-	-	-	-	-	-	-	-	-	-	-

Footnotes:

1/ Identifies apprehensions -- no specific "arrests" definition.
2/ Criminals as defined by the INA.
3/ Data is captured for **adult** females.
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5/ Preliminary September 2001 data.

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Senate Permanent Subcommittee
On Investigations
EXHIBIT #___9___

United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

October 23, 2001

The Honorable James Ziglar
Commissioner
U.S. Immigration and Naturalization Service
Washington, D.C.

Dear Commissioner Ziglar:

The Permanent Subcommittee on Investigations is currently reviewing the activities of the U.S. Border Patrol. We are particularly interested in understanding how persons who are arrested between points of entry for illegally entering the United States are processed. In that regard, please provide answers to the following questions no later than Friday, November 2, 2001.

1. For each of the last two fiscal years (or calendar years, if that is more readily available) please provide by Border Patrol sector:

   A. the number of individuals (by age, sex and nation of origin if available) arrested by the Border Patrol for entering the U.S. illegally between points of entry;

      i. the number of such individuals who were immediately returned to either Canada or Mexico;

      ii. the number of such individuals who were served with a notice to appear at a hearing;

      iii. the number of such individuals who had criminal records;

   B. of those included in A (ii), the number who, pending a hearing, were released on bond, were released on their own recognizance, and were placed in detention. For each classification, please provide the number of individuals who failed to appear at the scheduled hearing date.

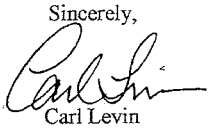
2. Please provide to the Subcommittee copies of the regulations and guidelines used by the Border Patrol and the INS when processing aliens arrested between points of entry for entering the U.S. illegally. Please include regulations and guidelines with respect to arrest, release, detention, and hearings.

The Honorable James Ziglar
Page Two
October 23, 2001

3. Please explain any differences in the procedures followed by the Border Patrol and the INS with respect to the treatment of individuals trying to gain illegal entry into the U.S. at points of entry and the treatment of individuals trying to gain illegal entry into the U.S. outside points of entry. Please identify the statutory and regulatory basis for any difference in treatment.

If you or your staff have any questions with respect to this request, please contact Linda Gustitus, Chief of Staff, at (202) 363-3928 (home) or (202) 224-0573 (office). Thank you for your cooperation.

Sincerely,



Carl Levin
Chairman
Permanent Subcommittee on Investigations

CL:ljg

BORDER PATROL ARRESTS FOR FISCAL YEARS 2000 AND 2001
AT THE NORTHERN & SOUTHERN BORDER
BY SECTOR AND ARREST CATEGORY

			FISCAL YEAR		
BORDER	SECTOR	CATEGORIES	2000	2001	Grand Total
Northern Border	BLAINE WA BPSH	Total Arrests	2,581	2,089	4,670
		Total NTAs	886	777	1,663
		Adult Females	360	302	662
		Adult Males	2,071	1,678	3,749
		Minors	150	109	259
	BUFFALO NY BPSH	Total Arrests	1,570	1,434	3,004
		Total NTAs	642	935	1,577
		Adult Females	130	177	307
		Adult Males	1,386	1,166	2,552
		Minors	54	91	145
	DETROIT MI BPSH	Total Arrests	2,057	2,106	4,163
		Total NTAs	929	773	1,702
		Adult Females	138	84	222
		Adult Males	1,860	1,975	3,835
		Minors	59	47	106
	GRAND FORKS ND BPSH	Total Arrests	562	921	1,483
		Total NTAs	138	202	340
		Adult Females	57	73	130
		Adult Males	478	825	1,303
		Minors	27	23	50
	HAVRE MT BPSH	Total Arrests	1,568	1,305	2,873
		Total NTAs	270	164	434
		Adult Females	162	62	224
		Adult Males	1,346	1,216	2,562
		Minors	60	27	87
	HOULTON ME BPSH	Total Arrests	489	685	1,174
		Total NTAs	155	259	414
		Adult Females	82	105	187
		Adult Males	391	558	949
		Minors	16	22	38
	SPOKANE WA BPSH	Total Arrests	1,324	1,335	2,659
		Total NTAs	376	498	874
		Adult Females	56	50	106
		Adult Males	1,251	1,251	2,502
		Minors	17	34	51
	SWANTON VT BPSH	Total Arrests	1,957	2,463	4,420
		Total NTAs	864	846	1,710
		Adult Females	496	740	1,236
		Adult Males	1,250	1,423	2,673
		Minors	211	300	511
Northern Border	Total Arrests		12,108	12,338	24,446
Northern Border	Total NTAs		4,260	4,454	8,714
Northern Border	Adult Females		1,481	1,593	3,074
Northern Border	Adult Males		10,033	10,092	20,125
Northern Border	Minors		594	653	1,247
Southern Border	DEL RIO TX BPSH	Total Arrests	157,178	104,875	262,053
		Total NTAs	8,103	6,244	14,347
		Adult Females	16,043	9,712	25,755
		Adult Males	136,410	92,378	228,788
		Minors	4,725	2,785	7,510
	EL CENTRO CA BPSH	Total Arrests	238,126	172,852	410,978
		Total NTAs	2,523	2,063	4,586
		Adult Females	33,032	23,939	56,971

BORDER PATROL ARRESTS FOR FISCAL YEARS 2000 AND 2001
AT THE NORTHERN & SOUTHERN BORDER
BY SECTOR AND ARREST CATEGORY

			FISCAL YEAR		
BORDER	SECTOR	CATEGORIES	2000	2001	Grand Total
		Adult Males	201,536	146,319	347,855
		Minors	3,558	2,594	6,152
	EL PASO TX BPSH	Total Arrests	115,696	112,857	228,553
		Total NTAs	4,329	5,523	9,852
		Adult Females	17,134	17,445	34,579
		Adult Males	90,733	87,349	178,082
		Minors	7,829	8,063	15,892
	LAREDO TX BPSH	Total Arrests	108,973	87,068	196,041
		Total NTAs	4,278	6,381	10,659
		Adult Females	12,014	9,668	21,682
		Adult Males	92,276	75,212	167,488
		Minors	4,683	2,188	6,871
	MARFA TX BPSH	Total Arrests	13,689	12,087	25,776
		Total NTAs	1,666	1,921	3,587
		Adult Females	1,562	1,469	3,031
		Adult Males	11,263	9,971	21,234
		Minors	864	647	1,511
	MCALLEN TX BPSH	Total Arrests	133,243	107,843	241,086
		Total NTAs	14,429	14,808	29,237
		Adult Females	22,705	18,694	41,399
		Adult Males	101,766	81,585	183,351
		Minors	8,772	7,564	16,336
	SAN DIEGO CA BPSH	Total Arrests	151,681	110,075	261,756
		Total NTAs	1,901	1,800	3,701
		Adult Females	17,941	13,179	31,120
		Adult Males	131,905	95,634	227,539
		Minors	1,835	1,262	3,097
	TUCSON AZ BPSH	Total Arrests	616,346	449,675	1,066,021
		Total NTAs	6,378	9,382	15,760
		Adult Females	88,893	65,472	154,365
		Adult Males	507,442	370,856	878,298
		Minors	20,011	13,347	33,358
	YUMA AZ BPSH	Total Arrests	108,747	78,385	187,132
		Total NTAs	1,063	3,474	4,537
		Adult Females	11,709	7,353	19,062
		Adult Males	95,241	69,788	165,029
		Minors	1,797	1,244	3,041
Southern Border	Total Arrests		1,643,679	1,235,717	2,879,396
Southern Border	Total NTAs		44,670	51,596	96,266
Southern Border	Adult Females		221,033	166,931	387,964
Southern Border	Adult Males		1,368,572	1,029,092	2,397,664
Southern Border	Minors		54,074	39,694	93,768
Grand Total Arrests			1,655,787	1,248,055	2,903,842
Grand Total NTAs			48,930	56,050	104,980
Grand Total Adult Females			222,514	168,524	391,038
Grand Total Adult Males			1,378,605	1,039,184	2,417,789
Grand Total Minors			54,668	40,347	95,015

Apprehensions at the Northern and Southern Borders by the Border Patrol
By Sector, Country of Apprehendee, and Notice to Appear (NTA)

FY	Sector	Canada Apprehensions	Canada NTAs	Canada % NTAs	Mexico Apprehensions	Mexico NTAs	Mexico % NTAs	Other Countries Apprehensions	Other Countries NTAs	Other Countries % NTAs	Total Apprehensions	Total NTAs	Total % NTAs
	Northern Border												
2000	BLAINE WA BPSH	359	96	27%	1,560	384	25%	662	406	61%	2,581	886	34%
2001	BLAINE WA BPSH	282	72	26%	1,214	400	33%	593	305	51%	2,089	777	37%
2000	BUFFALO NY BPSH	176	10	6%	978	365	37%	416	267	64%	1,570	642	41%
2001	BUFFALO NY BPSH	165	15	9%	850	587	69%	419	333	79%	1,434	935	65%
2000	DETROIT MI BPSH	181	5	3%	1,634	743	45%	242	181	75%	2,057	929	45%
2001	DETROIT MI BPSH	92	4	4%	1,772	575	32%	242	194	80%	2,106	773	37%
2000	GRAND FORKS ND BPSH	87	4	5%	373	65	17%	102	69	68%	562	138	25%
2001	GRAND FORKS ND BPSH	57	5	9%	755	123	16%	109	74	68%	921	202	22%
2000	HAVRE MT BPSH	55	6	11%	1,375	185	13%	138	79	57%	1,568	270	17%
2001	HAVRE MT BPSH	48	10	21%	1,153	110	10%	104	44	42%	1,305	164	13%
2000	HOULTON ME BPSH	276	7	3%	135	95	70%	78	53	68%	489	155	32%
2001	HOULTON ME BPSH	293	13	4%	300	210	70%	92	36	39%	685	259	38%
2000	SPOKANE WA BPSH	60	19	32%	1,205	308	26%	59	49	83%	1,324	376	28%
2001	SPOKANE WA BPSH	25	4	16%	1,252	446	36%	58	48	83%	1,335	498	37%
2000	SWANTON VT BPSH	982	43	4%	102	93	91%	873	728	83%	1,957	864	44%
2001	SWANTON VT BPSH	1,543	79	5%	148	143	97%	772	624	81%	2,463	846	34%
2000	Total	2,176	190	9%	7,362	2,238	30%	2,570	1,832	71%	12,108	4,260	35%
2001	Total	2,505	202	8%	7,444	2,594	35%	2,389	1,658	69%	12,338	4,454	36%
	Southern Border												
2000	DEL RIO TX BPSH	2	1	50%	150,467	1,555	1%	6,709	6,547	98%	157,178	8,103	5%
2001	DEL RIO TX BPSH	1	1	100%	100,265	1,833	2%	4,609	4,410	96%	104,875	6,244	6%
2000	EL CENTRO CA BPSH	-	-		236,346	1,050	0%	1,780	1,473	83%	238,126	2,523	1%
2001	EL CENTRO CA BPSH	1	1	100%	171,866	1,099	1%	985	963	98%	172,852	2,063	1%
2000	EL PASO TX BPSH	5	5	100%	114,299	2,964	3%	1,392	1,360	98%	115,696	4,329	4%
2001	EL PASO TX BPSH	7	3	43%	110,679	3,376	3%	2,171	2,144	99%	112,857	5,523	5%
2000	LAREDO TX BPSH	2	1	50%	105,637	957	1%	3,334	3,320	100%	108,973	4,278	4%
2001	LAREDO TX BPSH	1	1	100%	82,460	1,783	2%	4,607	4,597	100%	87,068	6,381	7%
2000	MARFA TX BPSH	4	3	75%	12,851	1,144	9%	834	519	62%	13,689	1,666	12%
2001	MARFA TX BPSH	5	3	60%	11,107	1,204	11%	975	714	73%	12,087	1,921	16%
2000	MCALLEN TX BPSH	-	-		122,501	3,734	3%	10,742	10,695	100%	133,243	14,429	11%
2001	MCALLEN TX BPSH	3	3	100%	95,286	2,308	2%	12,554	12,497	100%	107,843	14,808	14%
2000	SAN DIEGO CA BPSH	1	-	0%	150,599	1,305	1%	1,081	596	55%	151,681	1,901	1%
2001	SAN DIEGO CA BPSH	1	-	0%	109,281	1,408	1%	793	392	49%	110,075	1,800	2%
2000	TUCSON AZ BPSH	3	2	67%	614,145	4,518	1%	2,198	1,858	85%	616,346	6,378	1%
2001	TUCSON AZ BPSH	-	-		446,471	6,212	1%	3,204	3,170	99%	449,675	9,382	2%
2000	YUMA AZ BPSH	1	1	100%	108,236	619	1%	510	443	87%	108,747	1,063	1%
2001	YUMA AZ BPSH	1	1	100%	77,974	3,082	4%	410	391	95%	78,385	3,474	4%
2000	Total	18	13	72%	1,615,081	17,846	1%	28,580	26,811	94%	1,643,679	44,670	3%
2001	Total	20	13	65%	1,205,389	22,305	2%	30,308	29,278	97%	1,235,717	51,596	4%
2000	Grand Total	2,194	203	9%	1,622,443	20,084	1%	31,150	28,643	92%	1,655,787	48,930	3%
2001	Grand Total	2,525	215	9%	1,212,833	24,899	2%	32,697	30,936	95%	1,248,055	56,050	4%

INS VOLUNTARY DEPARTURES VERIFIED AND VOLUNTARY RETURNS UNDER SAFEGUARD BY FISCAL YEAR, BORDER, AND DISTRICT

		FISCAL YEAR		
BORDER	DISTRICTS	2000	2001	Grand Total
Northern Border	ANCHORAGE AK	78	20	98
	BUFFALO NY	365	373	738
	DETROIT MI	940	1,207	2,147
	HELENA MT	1,474	1,386	2,860
	PORTLAND ME	2,368	2,965	5,333
	SEATTLE WA	2,236	2,154	4,390
	ST PAUL MN	380	348	728
Northern Border	Total	7,841	8,453	16,294
Other	ATLANTA GA	215	125	340
	BALTIMORE MD	51	36	87
	BOSTON MA	81	57	138
	CHICAGO IL	414	472	886
	CLEVELAND OH	271	333	604
	DALLAS TX	8,662	4,493	13,155
	DENVER CO	1,823	1,039	2,862
	HONOLULU HI	60	85	145
	HOUSTON TX	1,632	1,330	2,962
	KANSAS CITY MO	383	620	1,003
	LOS ANGELES CA	3,085	3,017	6,102
	MIAMI FL	1,321	2,573	3,894
	NEW ORLEANS LA	439	460	899
	NEW YORK NY	674	359	1,033
	NEWARK NJ	235	214	449
	OMAHA NE	2,204	1,833	4,037
	PHILADELPHI PA	237	107	344
	PORTLAND OR	478	280	758
	SAN FRAN. CA	5,612	4,528	10,140
	SAN JUAN PR	1,703	2,198	3,901
	WASHINGTON DC	109	69	178
Other	Total	29,689	24,228	53,917
Southern Border	EL PASO TX	127,539	121,333	248,872
	HARLINGEN TX	126,436	99,184	225,620
	PHOENIX AZ	737,402	534,654	1,272,056
	SAN ANTONIO TX	257,683	182,526	440,209
	SAN DIEGO CA	385,365	279,150	664,515
Southern Border	Total	1,634,425	1,216,847	2,851,272
Grand Total		1,671,955	1,249,528	2,921,483

FY	BORDER_CODE	BORDER	DISTRICT	DIS_DESC	Voluntary Departures
2000	1	Northern Border	ANC	ANCHORAGE AK	78
2000	1	Northern Border	BUF	BUFFALO NY	365
2000	1	Northern Border	DET	DETROIT MI	940
2000	1	Northern Border	HEL	HELENA MT	1474
2000	1	Northern Border	POM	PORTLAND ME	2368
2000	1	Northern Border	SEA	SEATTLE WA	2236
2000	1	Northern Border	SPM	ST PAUL MN	380
2000	2	Southern Border	ELP	EL PASO TX	127539
2000	2	Southern Border	HLG	HARLINGEN TX	126436
2000	2	Southern Border	PHO	PHOENIX AZ	737402
2000	2	Southern Border	SNA	SAN ANTONIO TX	257683
2000	2	Southern Border	SND	SAN DIEGO CA	385365
2000	7	Other	ATL	ATLANTA GA	215
2000	7	Other	BAL	BALTIMORE MD	51
2000	7	Other	BOS	BOSTON MA	81
2000	7	Other	CHI	CHICAGO IL	414
2000	7	Other	CLE	CLEVELAND OH	271
2000	7	Other	DAL	DALLAS TX	8662
2000	7	Other	DEN	DENVER CO	1823
2000	7	Other	HHW	HONOLULU HI	60
2000	7	Other	HOU	HOUSTON TX	1632
2000	7	Other	KAN	KANSAS CITY MO	383
2000	7	Other	LOS	LOS ANGELES CA	3085
2000	7	Other	MIA	MIAMI FL	1321
2000	7	Other	NEW	NEWARK NJ	235
2000	7	Other	NOL	NEW ORLEANS LA	439
2000	7	Other	NYC	NEW YORK NY	674
2000	7	Other	OMA	OMAHA NE	2204
2000	7	Other	PHI	PHILADELPHI PA	237
2000	7	Other	POO	PORTLAND OR	478
2000	7	Other	SAJ	SAN JUAN PR	1703
2000	7	Other	SFR	SAN FRAN. CA	5612
2000	7	Other	WAS	WASHINGTON DC	109
2001	1	Northern Border	ANC	ANCHORAGE AK	20
2001	1	Northern Border	BUF	BUFFALO NY	373
2001	1	Northern Border	DET	DETROIT MI	1207
2001	1	Northern Border	HEL	HELENA MT	1386
2001	1	Northern Border	POM	PORTLAND ME	2965
2001	1	Northern Border	SEA	SEATTLE WA	2154
2001	1	Northern Border	SPM	ST PAUL MN	348
2001	2	Southern Border	ELP	EL PASO TX	121333
2001	2	Southern Border	HLG	HARLINGEN TX	99184
2001	2	Southern Border	PHO	PHOENIX AZ	534654
2001	2	Southern Border	SNA	SAN ANTONIO TX	182526
2001	2	Southern Border	SND	SAN DIEGO CA	279150
2001	7	Other	ATL	ATLANTA GA	125
2001	7	Other	BAL	BALTIMORE MD	36
2001	7	Other	BOS	BOSTON MA	57
2001	7	Other	CHI	CHICAGO IL	472
2001	7	Other	CLE	CLEVELAND OH	333
2001	7	Other	DAL	DALLAS TX	4493
2001	7	Other	DEN	DENVER CO	1039
2001	7	Other	HHW	HONOLULU HI	85
2001	7	Other	HOU	HOUSTON TX	1330
2001	7	Other	KAN	KANSAS CITY MO	620
2001	7	Other	LOS	LOS ANGELES CA	3017
2001	7	Other	MIA	MIAMI FL	2573
2001	7	Other	NEW	NEWARK NJ	214
2001	7	Other	NOL	NEW ORLEANS LA	460
2001	7	Other	NYC	NEW YORK NY	359
2001	7	Other	OMA	OMAHA NE	1833
2001	7	Other	PHI	PHILADELPHI PA	107
2001	7	Other	POO	PORTLAND OR	280
2001	7	Other	SAJ	SAN JUAN PR	2198
2001	7	Other	SFR	SAN FRAN. CA	4528
2001	7	Other	WAS	WASHINGTON DC	69

Expedited Removal

One of the key differences in the options used for processing of inadmissible aliens at ports of entry and the processing of aliens who have entered the United States illegally by crossing at a place other than a port of entry—expedited removal. In April 1997, the INS implemented the expedited removal program as required by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Aliens placed in expedited removal are required by statute to be detained until their removal unless they are able to establish to an asylum officer that they have a credible fear of persecution or torture. Once an alien is found to have a credible fear, continued detention is discretionary. IIRIRA authorizes immigration officers without further hearing or review to order the removal of certain aliens who attempt entry without proper documents or by fraud or misrepresentation. Those aliens subject to expedited removal are described in the legislation as "arriving aliens." IIRIRA does not define the term "arriving alien," but it makes clear that arriving aliens are a subset of the broader category of applicants for admission. This broader category consists of all aliens within the borders of the United States who have not been admitted. Several sections of IIRIRA, such as those amending sections 212(a)(9), 240B, and 241 of the Immigration and Nationality Act, refer to arriving aliens, even though this term is not defined in statute. After carefully considering these references, the Department determined that the statute seemed to differentiate between applicants for admission at ports of entry and those encountered elsewhere in the United States. Accordingly, the Department's implementing regulations specifically defined "arriving alien" as an alien coming or attempting to come into the United States at a designated port of entry, or an alien interdicted at sea and brought into the United States.

While *requiring* the INS to apply the expedited removal provisions to "arriving aliens" who are inadmissible for certain grounds, the statute also *permits* the Attorney General to apply the expedited removal provisions to other applicants for admission who do not arrive at a port of entry, unless the applicant for admission can demonstrate that he or she has been in the United States for at least two years. In its implementing regulations, the Department of Justice announced that it would apply the provisions only to "arriving aliens," recognizing that application of the expedited removal provisions to aliens already in the United States would involve more complex determinations of fact and would be more difficult to manage, and that it wished to gain insight and experience by initially applying these new provisions on a more limited and controlled basis. In its Federal Register publication, the Department reserved the right to apply the expedited removal procedures to additional classes of aliens within the limits set by the statute, if, in the Commissioner's discretion, such action is operationally warranted. The Department emphasized that a proposed expansion of the expedited removal procedures may occur at any time and may be driven either by specific situations such as a sudden influx of illegal aliens motivated by political or economic unrest or other events.

The INS has gained a great deal of experience in the application of expedited removal over the past 4 ½ years. Last year, the INS removed 69,309 persons under the program. INS headquarters closely monitors the program through its Expedited Removal Working Group. This working group reviews expedited removal files on a regular basis, conducts site visits and training at ports of entry, and reviews and makes recommendations on policy and procedural issues that periodically arise. This internal monitoring has enabled the INS to gain valuable insight to help ensure the operation of a fair process. The INS values the insight gained from the comments and observations of outside organizations such as the General Accounting Office, the United Nations High Commissioner for Refugees, and various non-governmental organizations. The INS has implemented the expedited removal program in a careful manner, taking steps not required by statute, to ensure that persons seeking asylum protection have a fair and meaningful opportunity to have their claim heard. These steps include mandatory supervisory review of all expedited removal orders and the development of a sworn statement that includes mandatory questions concerning any fear of harm the applicant may have upon return to his or her home country.

In considering whether to expand the scope of expedited removal, the INS would have to take account of several practical considerations. First, it is not clear whether the application of expedited removal to persons apprehended between the ports of entry, especially on the southern border, would create a meaningful deterrent to illegal entry attempts. Second, expedited removal procedures would actually create burdensome administrative procedures in those cases where the apprehended aliens would otherwise be allowed voluntarily to depart immediately from the United States. Third, as noted in the implementing regulations, expedited removal between the ports of entry involves more complex factual questions, since it requires a determination that the alien has been in the United States for less than two years. Finally, an expansion of expedited removal to other programs within the INS, such as the Border Patrol, would require a massive training and monitoring effort in order to ensure a fair process. In short, the costs of expanding expedited removal must be carefully weighed against any potential benefit.

Senate Permanent Subcommittee
On Investigations
EXHIBIT # 10

U.S. Department of Justice
Immigration and Naturalization Service

CO 703.1513

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

The Honorable Carl Levin
Chairman
Permanent Subcommittee on Investigations
Committee on Governmental Relations
United States Senate
Washington, DC 20510

DEC 20 2001

Dear Mr. Chairman:

This is in response to your request during the hearing of November 13 on the Immigration and Naturalization Service's (INS) policy regarding the apprehension of aliens between Ports-of-Entry before the Permanent Subcommittee on Investigations. You requested that the INS report back within 30 days regarding any new actions taken to address issues raised during the hearing.

We would like to provide answers to questions asked during the hearing as well as provide clarification on certain points in Mr. Pearson's testimony and the testimony of the second panel.

Issues you raised:

Does the INS track those aliens that do not show up for their hearings before Immigration Judges?

The Executive Office for Immigration Review (EOIR) is the appropriate agency to track this information. The EOIR's current statistical yearbook contains information on "Failures to Appear" (to Immigration Courts). The INS does not track those statistics.

The Subcommittee had received some statistics from the Detroit Border Patrol Sector. Since the INS provided some different statistics, you asked that the INS re-examine the number/statistics that we provided in the testimony.

Both the INS and the Subcommittee received statistics from the Detroit Sector. The Sector Chief provided Mr. Pearson with percentages from which he extrapolated the numbers he presented during the hearing. Some of the numbers were anecdotal from the Chief, and not officially maintained. After the hearing we asked the Detroit Sector to do a thorough recheck of its statistics. As discussed with your staff, we determined that two of the figures first provided by the Detroit Sector, "Arrested by Border Patrol – 2,106" and "Issued Notices to Appear (NTA) – 773," were verified correct. In addition, the Detroit Sector has provided the numbers below:

1,255 Voluntarily Returned
256 Detained
595 Released on Own Recognizance (OR)
2,106

It should be noted that the detained plus OR numbers add up to more than 773 NTAs, because in some instances individuals simply had a deportation order reinstated but were not issued a new NTA.

Did we get what we asked for from OMB for detention beds? How many beds did we ask for?

For Fiscal Year (FY) 2001, the INS requested an increase of 3,500 bed spaces over the previous Fiscal Year. The President's budget request included an additional 1,120 bed spaces over FY 2001. For FY 2002, we requested 1,607 additional bed spaces, and the President's budget request also included the full requested amount of 1,607 additional bed spaces. The Department of Justice must weigh competing needs with fiscal realities. These decisions are based on overall Department of Justice and Administration-wide budget priorities.

Issues raised by Senator Collins:

Does INS have a policy mandating record checks?

The INS is finalizing a clarification to our field staff regarding record checks for aliens formally charged with violating immigration law. This clarification will help ensure that all aliens placed in INS removal proceedings, including aliens who have been served with a Notice to Appear and who are released on their own recognizance, will be checked against criminal history indices, including, at a minimum, National Criminal Information Center (NCIC), INS Biometric Identification System (IDENT), Central Index System (CIS), National Automated Information Lookout System (NAILS) prior to release from INS custody. We will provide a copy of this memorandum to the Subcommittee staff as soon as it is finalized.

What are the timeframes for ENFORCE?

The dates on the following timeline are approximate and assume additional funding will be available in FY 2003 and FY 2004.

ENFORCE will replace the following systems:

Worksite Enforcement Case Information System (LYNX)	- FY 2003
Deportable Alien Control System (DACS)	- end of FY 2003
Criminal Alien Investigation System (CAIS)	- FY 2004.

ENFORCE will subsume the following systems:

Criminal Investigations Reporting System (CIRS)	- FY 2002
Law Enforcement Analysis Data System (LEADS)	- FY 2003

ENFORCE will interface with the following external databases and data sources:

National Crime Information Center (NCIC)	- FY 2002
External sources of intelligence information (i.e., Choice Point)	- FY 2003
National Automated Immigration Lookout System (NAILS)	- FY 2003
Computer-Linked Application Information Management System (CLAIMS), and Refugee, Asylum, and Parole System (RAPS), and other benefit systems	- FY 2003

Clarifications:

NAILS Access

Mr. Pearson stated that Border Patrol Agents can access the NAILS system via the IBIS system at Ports-of-Entry. The NAILS system is also available to Border Patrol Agents through the INS mainframe system, through which the Central Index System (CIS) and other INS systems are accessed. The NAILS system is interfaced with CIS.

IDENT Capacity

Regarding the IDENT system, Mr. Keith M. Olsen, a witness on the second panel, asserted (see official hearing transcript page 84) that old data is simply deleted when there isn't room for new data. We would like to offer the following background information to clarify this issue.

In 1996 when the IDENT national system came on line, the IDENT project team imported as much of the old data that was useable at the time. Only records that were confirmed, valid records were imported. Approximately 63,000 records were imported and became the first records in the national database. The process whereby records were confirmed and validated was necessary to ensure the integrity of the database.

In 1998, an unanticipated increase in usage created such a demand on the system that it nearly caused an unacceptable slowdown of the system. At the same time, many records were found to be either duplicates or were missing mandatory fields. To remedy these problems, the INS archived about 367,000 old records. Old records were defined as those with only one encounter that occurred at least 15 months earlier. This was a one-time activity and has not been repeated. Since 1998, the IDENT project has maintained adequate capacity as part of its basic Operations and Maintenance activities.

Detention and Deportation Policy and Operations

We would like to offer the following background information to clarify INS' detention and deportation policy and operations.

The INS Headquarters allocates resources to secure detention beds to each of the three INS regions, based on the needs of the INS' enforcement components and the Service's Detention Priorities and Guidelines. Detention guidelines were set in October 1998, and took into consideration legislative mandates as well as special national or regional enforcement initiatives. The regions allocate funding for detention to districts and sectors based on INS priorities, enforcement activities, and special requirements as specified by the Regional Directors with the concurrence from Headquarters. The Detention and Removal Program operates nine Service Processing Centers (SPCs), uses seven contract detention facilities, and uses several hundred local jails throughout the country to house almost 20,000 aliens on a daily basis.

The detention guidelines direct the field to work towards utilizing 80 percent of the bed space for mandatory detention cases. Mandatory detention cases include those arriving aliens at Ports-of-Entry who are inadmissible to the United States and therefore subject to expedited removal proceedings. It also includes aliens who are chargeable as terrorists, and virtually all aliens who are chargeable as criminals, upon their release from criminal incarceration or custody. Additionally, INS is required to detain any alien convicted of an aggravated felony and who is placed in removal proceedings under section 212 of the Immigration and Nationality Act (INA).

The remaining detention beds are to be filled with other aliens based on their priority category, such as aliens who are removable on security or other related grounds, other criminal aliens, aliens who are a danger to the community or a flight risk, aliens whose detention is essential for border enforcement, or aliens engaged in alien smuggling. Aliens in lower priority categories are also detained if appropriate detention space is available and funded. The guidelines provide discretion and exceptions to account for special needs and enforcement efforts.

Criminal History Checks

The INS is finalizing a clarification to our field staff regarding record checks for aliens formally charged with violating immigration law. This clarification will help ensure that all aliens placed in INS removal proceedings, including aliens who have been served with a Notice to Appear and who are released on their own recognizance, will be checked against criminal history indices, including, at a minimum, National Criminal Information Center (NCIC), INS Biometric Identification System (IDENT), Central Index System (CIS), National Automated Information Lookout System (NAILS) prior to release from INS custody. We will provide a copy of this memorandum to the Subcommittee staff as soon as it is finalized.

Conclusion

We appreciate the opportunity to clarify these issues for the official hearing record and look forward to working with the Subcommittee as the INS moves forward in combating illegal immigration.

We hope the information provided is useful. If we may be of assistance in the future, please let us know.

Sincerely,

FOR THE COMMISSIONER

Joseph Kapinski
Director
Congressional Relations and Public Affairs

Enclosure

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JOYCE A. RECHTSCHAFFEN, STAFF DIRECTOR AND COUNSEL
HANNAH S. SISTARE, MINORITY STAFF DIRECTOR AND COUNSEL

Senate Permanent Subcommittee On Investigations
EXHIBIT # 11

United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

January 8, 2001

Kevin D. Rooney
Director, Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041

Dear Mr. Rooney:

On November 13, 2001, the Permanent Subcommittee on Investigations, which I chair, held a hearing on illegal entry into the United States outside ports of entry. At that time I asked the Immigration and Naturalization Service (INS) how many of the persons arrested by the Border Patrol while in the process of illegally entering the U.S. outside ports of entry who were released from custody and served with a notice to appear at a removal hearing actually showed up for their hearing. In a subsequent reply letter, the INS said that your office, the Executive Office for Immigration Review (EOIR), was the appropriate agency to track this information.

While I am aware that EOIR's statistical yearbook contains some information on "Failures to Appear," I would like to know whether EOIR keeps statistics specifically on the number of aliens who are arrested by the Border Patrol while in the process of illegally entering the U.S. outside ports of entry who are released from custody with a notice to appear at a removal hearing, who fail to appear at the hearing. If you do not keep these exact statistics, please describe the types of statistics you do keep that most closely address the information I am seeking.

Your response by January 18, 2002, would be appreciated. If you have any questions regarding this request, please contact Joe Bryan (224-9104) of my staff. Thank you for your attention to this matter.

Sincerely,

Carl Levin
Chairman
Permanent Subcommittee on Investigations

CL/jmb

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 1, 2002

Honorable Carl Levin
Chairman
Permanent Subcommittee on Investigations
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This letter is in response to your recent correspondence to Executive Office for Immigration Review (EOIR) Director Kevin Rooney. In your letter, you asked whether EOIR keeps statistics on the number of aliens arrested by the Border Patrol while in the process of illegally entering the U.S. outside ports of entry who are released from custody with a Notice to Appear (NTA) at a removal hearing, and who subsequently fail to appear at the hearing.

In most cases, EOIR is not able to determine which division of the Immigration and Naturalization Service (INS) made the arrest. EOIR's data system, the Automated Nationwide System for Immigration Review (ANSIR), does, however, track the charges listed on the NTA. Some of these charges may reflect an illegal entry. Of the aliens charged with illegal entry violations, EOIR is able to determine the number who were released from custody, and the number who were subsequently ordered removed in absentia. We have enclosed for your information a chart reflecting these figures.

I regret that we are unable to provide the exact data your letter requested, but I trust that you will find the information provided above helpful. Please do not hesitate to contact this office if you need further information.

Sincerely,

Daniel J. Bryant
Assistant Attorney General

Enclosure

Enclosure

Of the cases completed by the Immigration Courts in FY 2001, and charged with a violation of:

- INA Section 237(a)(1)(B), present in U.S. in violation of law (without proper INS documents or with expired documents); or
- INA Section 241(a)(1)(B) (effective 3/91 to 3/97), entered without inspection by INS (entered illegally between ports of entry); or
- INA Section 241(a)(2) (effective before 3/91), entered without inspection by INS (entered illegally between ports of entry):

Custody Status	Cases Completed	Ordered Removed In Absentia
Not detained during proceedings	23,585	3,824
Released from custody at some time during proceedings	2,968	293
Detained throughout proceedings	2,474	17
Total	29,027	4,134

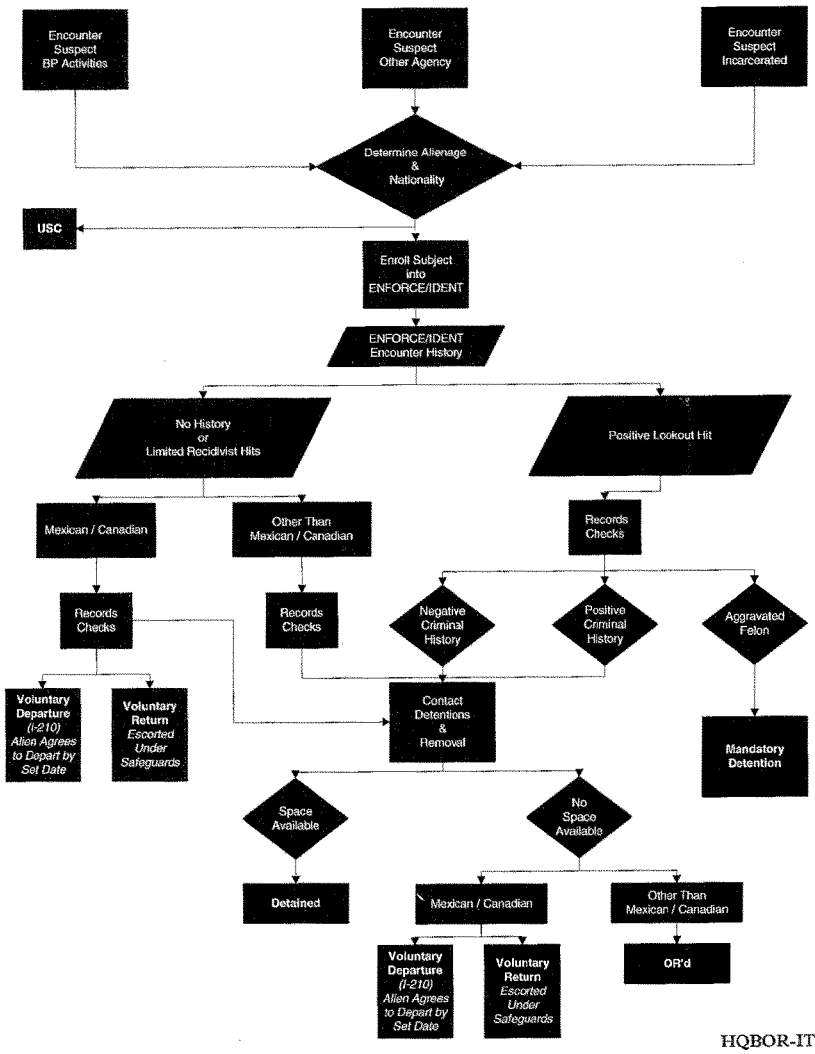
Notes:

(1) There is no specific charge in the current version of the Immigration and Nationality Act (INA) for "illegally entering the U.S. outside of ports of entry". For this query, we have selected charges from the current and previous versions of the statute which seem most appropriate. For the purposes of this estimate, we have assumed that the Border Patrol would be more likely to use a removal charge or a deportation charge; thus, we have not included any exclusion or inadmissibility charges in this exercise.

(2) Aliens charged with one of the illegal entry charges indicated above may also have been charged with other violations of the INA.

Senate Permanent Subcommittee
On Investigations
EXHIBIT # 12

U.S. Border Patrol Suspect Processing



HQBOR-ITU

Senate Permanent Subcommittee
On Investigations
EXHIBIT # 13

U.S. Department of Justice
Immigration and Naturalization Service

HQOPS-50/10

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

DEC 20 2001

MEMORANDUM FOR REGIONAL DIRECTORS

FROM: Michael A. Pearson
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Criminal Indices Checks

Earlier this fall, I testified in front of the Senate's Permanent Subcommittee on Investigations, Committee on Governmental Relations. In preparation for that hearing it became clear to me that there was confusion regarding criminal indices checks on aliens placed in removal proceedings. The purpose of this memorandum is to clarify the requirement to conduct records checks on all aliens placed in Immigration and Naturalization Service (INS) removal proceedings.

All aliens placed in INS removal proceedings, including aliens who have been served with a Notice to Appear and who are released on bond or on their own recognizance, shall be checked against criminal indices, including, *at a minimum*, National Crime Information Center (NCIC), criminal history, INS Biometric-Identification System (IDENT), Central Index System (CIS), and National Automated Information Lookout System (NAILS) prior to release from INS custody. These checks are an important part in determining whether or not the subject must or should be detained. Officers should use any and all systems available to them in order to ensure their safety and that of the community.