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FAMILIES AND BUSINESSES IN LIMBO: THE DETRIMENTAL IMPACT OF THE IMMIGRATION BACKLOG

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

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CONTENTS

HEARING DATES

	Page
June 17, 2004	1
June 23, 2004	25

OPENING STATEMENT

JUNE 17, 2004

The Honorable John N. Hostettler, a Representative in Congress From the State of Indiana, and Chairman, Subcommittee on Immigration, Border Security, and Claims	1
The Honorable Sheila Jackson Lee, a Representative in Congress From the State of Texas, and Ranking Member, Subcommittee on Immigration, Border Security, and Claims	2
The Honorable Steve King, a Representative in Congress From the State of Iowa	4
The Honorable Zoe Lofgren, a Representative in Congress From the State of California	5
The Honorable Linda T. Sánchez, a Representative in Congress From the State of California	13

JUNE 23, 2004

The Honorable John N. Hostettler, a Representative in Congress From the State of Indiana, and Chairman, Subcommittee on Immigration, Border Security, and Claims	25
The Honorable Sheila Jackson Lee, a Representative in Congress From the State of Texas, and Ranking Member, Subcommittee on Immigration, Border Security, and Claims	50

WITNESSES

JUNE 17, 2004

The Honorable Eduardo Aguirre, Jr., Director, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security	
Oral Testimony	6
Prepared Statement	10

JUNE 23, 2004

The Honorable Prakash Khatri, Citizenship and Immigration Services Ombudsman, U.S. Department of Homeland Security	
Oral Testimony	27
Prepared Statement	30
Ms. Elizabeth Espin Stern, Managing Partner, Business Immigration Practice Group, Shaw Pittman, LLC	
Oral Testimony	32
Prepared Statement	34
Mr. Paul Zulkie, President, American Immigration Lawyers Association	
Oral Testimony	42
Prepared Statement	43

Page

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

JUNE 17, 2004

Backlog Elimination Plan submitted by U.S. Citizenship and Immigration Services 59
Prepared Statement of the Honorable Sheila Jackson Lee, a Representative in Congress From the State of Texas, and Ranking Member, Subcommittee on Immigration, Border Security, and Claims 74
Prepared Statement of the Honorable Zoe Lofgren, a Representative in Congress From the State of California 75
Letter to U.S. CIS Director Eduardo Aguirre submitted by the Honorable Zoe Lofgren 76
Prepared Statement of the Honorable Linda T. Sánchez, a Representative in Congress From the State of California 81
Letter to President George W. Bush and the Honorable Tom Ridge, Secretary, U.S. Department of Homeland Security, submitted by the Honorable Linda T. Sánchez 83
Letter to Robert Bonner, Commissioner, Bureau of Customs and Border Protection, U.S. Department of Homeland Security, submitted by the Honorable Linda T. Sánchez 86
Prepared Statement of the Honorable Steve King, a Representative in Congress From the State of Iowa 88

JUNE 23, 2004

Prepared Statement of the Honorable Sheila Jackson Lee, a Representative in Congress From the State of Texas, and Ranking Member, Subcommittee on Immigration, Border Security, and Claims 88
Letter from the American Immigration Lawyers Association (AILA), submitted by Paul Zulkie 90
Letter to the Honorable Eduardo Aguirre, Jr., Director, Bureau of Citizenship and Immigration Services (BCIS), submitted by Paul Zulkie 96
Response to Questions submitted by Rep. Anthony Weiner to the Honorable Prakash Khatri 99
Response to Questions submitted by Rep. Anthony Weiner to Ms. Elizabeth Stern 100
Response to Questions submitted by Rep. Anthony Weiner to Mr. Paul Zulkie 102

FAMILIES AND BUSINESSES IN LIMBO: THE DETRIMENTAL IMPACT OF THE IMMIGRATION BACKLOG

THURSDAY, JUNE 17, 2004

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

The Subcommittee met, pursuant to notice, at 1:07 p.m., in Room 2141, Rayburn House Office Building, Hon. John N. Hostettler (Chair of the Subcommittee) presiding.

Mr. HOSTETTLER. The Subcommittee will come to order.

"We applaud those immigrants who stand out, men and women who labored all their lives so that their children would be well-fed, families that went through great hardship yet kept their honor, their dignity, and their faith in God."

Those are the words of President Ronald Reagan, who the Nation bid farewell to last week. Today, the Subcommittee on Immigration, Border Security, and Claims will examine a quite different subject from our last oversight hearing. Instead of reviewing the tools needed to combat illegal human smuggling into the United States, we will examine the plight of those legal immigrants working through the immigration and petition process and those seeking to naturalize. Those aliens who follow the law and dutifully apply for immigration status with U.S. Citizenship and Immigration Services, or USCIS, should not be stranded in legal limbo while waiting for the 6.2 million petition backlog to be cleared. This is especially the case for those patiently waiting abroad for their legitimate immigration applications to be approved. Some families have been kept apart as alien relatives abroad have had to wait for USCIS to adjudicate the petition paperwork. In some cases, petitions sit in a pile for literally years, and applicants must periodically refile certain items, like fingerprints, as they expire. And when I talk about expiring, I mean the applications, not the applicants.

American companies have also suffered. American multinationals file papers with USCIS to bring employees from abroad or to hire graduates of American universities. One must ask what incentive there is for aliens abroad to make legal applications for entry only to wait lengthy periods in the backlog.

The immigration backlog also harms our national security. A recent General Accounting Office study describes how poor visa over-

stay tracking complicates efforts to ensure domestic security. Indeed, we have seen how 9/11 terrorists took advantage of backlogs, workload, and poor record checks to remain undetected and undisturbed in the U.S. A recent Nixon Center study indicates that the al Qaeda terrorist network has used and continues its strategies of using national immigration systems to place operatives. In fact, 7 percent of all applications processed result in an initial security or criminal hit of some sort. But if checks are not processed for years, dangerous aliens may roam free in our communities here in the United States.

We must continue to be ever vigilant and current in all immigration processing so that we have readily accessible information on foreign travelers and workers who are in the United States. While the immigration backlog was current in fiscal year 1994, various subsequent immigration programs, such as the 245(i) programs and the expedited naturalization Citizenship USA program, have helped create and increase the backlog to its current state of over 6 million petitions. Some argue that the backlog is only half that size because half of the petitions are completed within 6 months. Others point to the 77 percent increase in the number of petitions filed with USCIS from 1993 to 2001 and inadequate funding.

Many critics have placed the blame on USCIS tardiness in increasing fees to match requirements. Others point to bureaucratic and needless paper exercises, such as returns for evidence in the petition process. Still others point to "overfunded and underperforming" data systems to help manage work flow.

To solve these problems, the President has set a goal to reduce the backlog by fiscal year 2006 to a no-longer-than-6-months response time on immigration petitions.

Our primary guest today is the Director of the U.S. Citizenship and Immigration Services, the Honorable Eduardo Aguirre. He will be presenting the long-awaited USCIS plan to take control of adjudication backlogs. I appreciate the importance Mr. Aguirre has placed on this issue and eagerly look forward to his presentation today.

At this time the Chair recognizes the Ranking Member from Texas, Ms. Jackson Lee, for the purposes of an opening statement.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman, and I believe that everyone will give 100 percent acclamation and affirmation that this is a very important hearing.

The Honorable Barbara Jordan once said, "When they ask what do we want, the simple question is America's promise." The "we" can be anyone. It can certainly be those of us who have come to this country from different walks of life, recognizing Director Aguirre, who has had his own personal story to tell. There are any number of "we's" but the question is America's promise is embedded in democracy and fairness and clear procedures and transparency. And so I would simply say that today should be a pronouncement of our recommitment to democracy and fairness and certainly transparency.

As I look at a typical day at USCIS, I see 140,000 national security background checks, 80,000 calls at four national customer service centers, and maybe the ability to process 80,000—or 30,000 applications. But what this does not reflect is the enormous backlog

and frustration of families and those who are seeking legal access to legalization and status adjustment.

What we don't see is a young lady who I heard from just about 72 hours ago, who said, "I get about three or four letters, if you will, put out by computers, very smart computers, who continuously suggest, 'Your fingerprints are not in.'" Well, her fingerprints have been in. It has not yet been communicated to the computer, and she remains on the list of a very long, long list.

And so I would say that all of us have a very personal interest in eliminating the immigration benefits applications backlog because we want to see America's promise work every day. Houston's backlog on benefits applications is one of the longest in the country, longer than Boston, Los Angeles, and San Diego. Approximately 50,000 people in Houston, in the Houston area, are waiting for the processing of an immigration benefit application. For some, the wait has been as long as 5 years.

Bianca Springer has a graduate degree in conflict analysis and resolution. Last week, as she and her husband, Jerry, sat in an office of the U.S. Citizenship and Immigration Service, she said that she should have pursued a degree in bureaucracy. She has been trying unsuccessfully to resolve issues around her immigration application since moving to Houston from Miami 18 months ago, where she originally filed the paperwork. She sees no end in sight. She has not even been able to confirm that her files are at the Houston office.

Again, this reflection of bureaucracy, Mr. Chairman, and to the witness, Director Aguirre, is not a reflection on staff that works hard every day. It is a reflection on the system, and it is a reflection particularly on securing the homeland and our capability of doing so.

People also are experiencing difficulty in learning about the status of their applications. Mr. Al Rashid is a retired executive with Saudi Aramco, an energy company. In 2002, after taking an early retirement, he moved from Saudi Arabia to Houston with his wife, who is a U.S. citizen, and their infant son. Two years ago, more than $7,000 later, he still doesn't know his status. He has asked, "I want to start a business. Am I going to be approved or not? Shall I pack up my family and go or stay?"

New York is another place that is having serious backlog problems. The backlog of pending citizenship cases in New York exceeds 100,000 which is more than any other district in the country. A letter summoning Errol Taylor to be sworn in as a citizen on May 14 arrived at his Flatbush home more than a year after his interview and 2 years after he applied for citizenship. This was too late for Mr. Taylor, a hospital worker who had lived and worked in Brooklyn for decades after leaving Trinidad in 1975, because he had died in March.

The costs and consequences of the delays go beyond personal heartache. Businesses that rely on foreign professionals are facing logistical headaches and added legal costs to maintain their workforces. Some came to me just a few days ago about the inadequacy now of H1–B, another legal status visa. Family members sponsoring a relative have died while the process dragged on. Sen-

ior citizens, 70, 85, 82, 90 years old, who are seeking their citizenship status, are too being delayed, maybe beyond their life span.

Some immigrants have inadvertently lapsed into illegal illegality because work permits or other papers have expired. Part of the problem is that additional security checks have been implemented in reaction to 9/11. Before 9/11, the Government only ran security checks on some kinds of immigration applicants such as those seeking citizenship. Now every applicant must undergo security screening, which has caused the workload to bloom. Also, matches on FBI name checks cause substantial delays when paper files must be checked to determine whether benefits—whether the benefits applicant is a person in the FBI files. While name matches only occur in a small percentage of the applications, we've also seen a rise in the number of applications. FY 2001 was the peak year for the number of immigration and naturalization petitions filed, 7.8 million, but we've seen these numbers go up. I would only argue that this is a time now for a pronounced benefits package to be bipartisan, to be truly committed by—committed to by the Administration, and, of course, to be implemented as quickly as possible.

I realize that we are part, I hope, of the solution, meaning the United States Congress, and I realize, frankly, that we have a very large task. In the backdrop of the 9/11 hearings and the report that will be coming out, there's enough blame for all of us. The tragedy of that occurrence, the loss of life, and the inadequate procedures that we all have come to understand make this hearing, Mr. Chairman, one of the most important in this United States Congress. I believe in securing the homeland, but you've heard me say it before: Immigration does not equate to terrorism, and we are a Nation of immigrants and of laws.

Today, I hope that we will commit ourselves to those virtues, be able to secure the homeland, recognize the crisis, and address those who are in need of access to legalization with the human dignity and America's promise.

I yield back my time.

Mr. HOSTETTLER. Thank you, Ms. Jackson Lee.

The Chair now recognizes the gentleman from Iowa, Mr. King, for 5 minutes for purposes of an opening statement.

Mr. KING. Thank you, Mr. Chairman. I appreciate you holding this hearing today, and I look forward to Mr. Aguirre's testimony.

I would just make several points here in reflection on some of the opening remarks and in anticipation of the testimony and the questions that we'll bring forward, and that is that—two points that I'm concerned about, and one of them is that we want to honor and respect the people who honor and respect our laws, and that means we need to expedite their applications consistent with our laws. That's one way that we can encourage people to follow the legal path to come into the United States as opposed to the illegal path. We need to do that without jeopardizing our homeland security and our national defense. All nations are nations of immigrants. All nations need to control their borders. This process that we're looking at here today has that in mind as well, and I believe it's important for us to consider the issue of amnesty and how that affects the overtaxation of the system if that policy should move forward.

So those are the things I have in mind, and I think it's important that we—that we accelerate a legitimate, careful program of processing our people, and at the same time we can only do it at the rate that we can assimilate them into our society.

Thank you very much, Mr. Chairman. I yield back.

Mr. HOSTETTLER. Thank you, Mr. King.

The Chair recognizes the gentlelady from California, Ms. Lofgren, for 5 minutes for purposes of an opening statement.

Ms. LOFGREN. Thank you, Mr. Chairman and Ranking Member Jackson Lee, for holding this hearing, and I'd also like to thank the Director, Mr. Aguirre, for coming to join us today to go through the plan for the reduction of the backlog.

Since I have been a Member of this Subcommittee, which, unfortunately, now goes over many years, I have endeavored to work on this issue with a variety of Commissioners and now the Director, because the backlog is a serious problem for real people. Most recently, 44 Members of Congress, bipartisan Members of Congress, including Subcommittee Members, Congresswoman Blackburn and Congressman Flake and Congressman Hart and Mr. Berman and Ms. Sánchez, wrote to you, Mr. Aguirre, talking about the severity of the backlog program in—problem. And in my home State of California, I think it's quite severe, and it goes—it runs the gamut from family members separated from each other to Nobel Prize winners who are stuck, and we need them here.

So there are actual hardships that are being undertaken or experienced by American citizens, and also certainly our economy that is denied the best and brightest that are stuck outside the United States. I am frustrated that even today we are not fully implementing the technology that needs to be implemented. And I've said not only to you but to your predecessors that we can't just work harder, we need to work smarter in order to get ahead of this situation. I know that we are still issuing millions of paper I–94s. We should have a system that is entirely computerized, and I believe that you share that goal.

I can recall a number of years ago asking how much money would be necessary to implement this because we don't need necessarily to design new systems. We need to acquire them and deploy them.

So I am eager to hear your plan. We just got it this morning so I haven't had a chance to review it yet. But I'm eager to hear your comments and to pose any questions that your comments raise for us. And I would ask unanimous consent to submit my full statement for the record, Mr. Chairman.

Mr. HOSTETTLER. Without objection.

Ms. LOFGREN. I yield back.

Mr. HOSTETTLER. I thank the gentlelady.

Now the introduction of our panelist: Mr. Eduardo Aguirre became the Director of U.S. Citizenship and Immigration Services on August 15, 2003. Prior to his appointment, he served the Administration as Vice Chairman and Chief Operating Officer of the Export-Import Bank of the United States. In the private sector, he became president of International Private Banking for the Bank of America and ran a highly profitable unit.

Then-Governor Bush appointed Mr. Aguirre to the Board of Regents of the University of Houston System, and he served as its chairman from 1996 to 1998. Mr. Aguirre earned a bachelor of science degree from the College of Business Administration at Louisiana State University. He is a graduate of the American Bankers Association's National Commercial Lending Graduate School and was awarded an honorary doctorate at the University of Houston.

Director Aguirre, I ask that you now stand and raise your right hand.

[Witness sworn.]

Mr. HOSTETTLER. Thank you, Dr. Aguirre.

Please let the record reflect that the witness responded in the affirmative, and you are recognized.

TESTIMONY OF THE HONORABLE EDUARDO AGUIRRE, DIRECTOR, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. AGUIRRE. Good afternoon. Thank you, Mr. Chairman, Ranking Member Jackson Lee, and Members of the Subcommittee. Today I will report to you on the progress that the U.S. Citizenship and Immigration Service, USCIS, has made in its initial 15 months and the ambitious goals that we will reach in the months and years ahead. The Backlog Elimination Plan, which was submitted to Congress yesterday, reaffirms our commitment to eliminating the backlog while enhancing national security and improving customer service. This commitment is not just one of words, but one of action. Since my appointment and confirmation as the first ever Director of USCIS, I have tasked our leadership to immediately review our processes, identify opportunities for streamlining and further improvement, and begin to implement meaningful change.

To say that this has been a year of change for our agency would be an understatement of great proportions. In the past 15 months, USCIS brought together components of the former INS to create a new, energized, cohesive agency with a single vision: "To provide the right benefit to the right person in the right amount of time, and prevent the wrong person from accessing immigration benefits."

You see, Mr. Chairman, I understand the importance of this vision and of the changes that we're making as I am a product of the immigration system. I came to this country from Cuba at the age of 15 years as an unaccompanied minor and eventually became a naturalized citizen of this great country. I have a sense of the high responsibility entrusted to me and the daunting challenge of fundamentally transforming the delivery of services by the U.S. immigration system. I appreciate probably better than most that we must restore public confidence in the integrity of America's immigration services. It is this fundamental mission that guides USCIS as it faces the challenges of a new era.

Just as the backlog was created over time, there are no quick fixes. Only through our commitment and our perseverance will we be able to claim success.

Thankfully, we have the opportunity, the leadership, and the talent to make an impact. By the end of 2006, we will eliminate the application backlog and achieve the 6-month cycle time that was

promised by President Bush, while enhancing national security, and in so doing we will deliver on the President's vision of "welcoming immigrants with open arms . . . not endless lines."

Let me note some accomplishments to date. During the short time I have been honored to lead the 15,000 men and women of USCIS, we have accomplished a great deal. Let me just cite a few examples.

We have created a new Federal organization. We've naturalized over 650,000 new citizens. We have welcomed over 1 million new immigrants. We've conducted over 35 million background security checks. We've initiated on-line case status and processing status updates. We've initiated on-line filing for eight application forms which represent over 50 percent of the potential total volume of benefit applications. We've created and began deployment of InfoPass, a Web-based information appointment system, which is now implemented in Florida, Los Angeles, and Dallas, dramatically reducing and eliminating lines outside of our offices. We've established the Office of Fraud Detection and National Security, and this week, of course, we've delivered a Backlog Elimination Plan to Congress.

I'd like to bring up a slide of a typical day at USCIS. Let's see if the technology is up to speed. Here we go. Thank you.

As Congresswoman Jackson Lee was mentioning, a typical day at USCIS can be viewed in this slide, and I'll just touch on a few. We do 140,000 national security background checks on a typical day. We receive over 80,000 phone calls at four national customer service centers. We get over 100,000 hits at our website on a daily basis. And we welcome 190 refugees and so forth and so on.

The purpose of this slide is to make sure that we understand that on a daily basis our operation is very intensely involved with a huge amount of volume. We—I'm sorry. We have—we have a tremendous amount of business, and that is what we're trying to deal with as we implement our changes.

Okay. I'm sorry. The backlog of applications is a serious problem and, until recently, a growing problem.

Early in 2001. President Bush charged the INS, the old INS, with reducing the processing times for benefit applications to less than 6 months. He proposed funding of $500 million over 5 years to achieve and maintain this ambitious goal.

It is important to understand the magnitude of this challenge. Backlogs of immigration benefit applications began to grow during the 1990's. Overall, there was a 77 percent increase from fiscal year 1993 to fiscal year 2001. The primary factors contributing to the backlogs were a dramatic increase in applications received, delays in adjusting our fees, the time it takes to recruit, hire, and train adjudicators, and the lack of a comprehensive approach to monitoring, supporting, and maintaining timely processing.

Let me show you in a slide, the backlog picture. The Backlog Elimination Plan was drafted in response to the President's initiative. However, the tragic events of September 11, 2001, and the resulting focus on national security, including the NSEERS program and enhanced background checks on processing of all immigration benefit applications, posed additional challenges to achieving a 6-month cycle time standard for all applications.

From this slide, you can see how the backlog grew significantly and steadily after 9/11. However, you can also see that we have recently crested the peak and are now making headway in the backlog. USCIS is now on a trajectory to meet our backlog elimination goals. I'd like to note that since December of 2003, we have reduced the backlog by over 360,000 cases, and that's demonstrated on that slide.

Let me take a moment to clarify for you what is backlog. A case that is filed today is considered pending, not backlog. We have set target cycle times for our applications. For most cases, including naturalization and adjustment of status, the cycle time should be 6 months. For some others, such as the employment authorization card, the target cycle time should be 3 months. If a case is not adjudicated within the target cycle time, then it becomes part of the backlog.

USCIS calculates the current backlog to be approximately 3.7 million cases out of a total pending of about 6.1 million cases. Put another way, 60 percent of our pending cases are a backlog problem.

Our Backlog Elimination Plan focuses on three objectives: achieving a high level of performance by establishing clear, concrete milestones and actively monitoring and managing progress toward these milestones; two, transforming business practices by implementing significant information technology improvements and identifying processing improvement to transform the current way of doing business; and, three, ensuring integrity by instituting comprehensive quality assurance measures.

We fully realize that the increased funding requested in the budget alone will not be able—will not enable us to realize our goals. We must fundamentally change the way we conduct our business. We're aggressively working to modernize our systems and increase our capacity through the reengineering of processes, the development of implementation of new information technology systems, and the development of mechanisms to interact with customers in a more forward-reaching manner.

Given current data on the backlog, productivity, and workload, USCIS must achieve a 19.6% increase in production to achieve cycle time goals and eliminate the backlog by the end of 2006.

In order to achieve these productivity increases, USCIS is reengineering our processes and better utilizing technology to achieve greater efficiencies. We're updating policies and procedures to streamline adjudications and increasing the percentage of cases completed at initial review by an adjudicator. We're managing production against milestones, beginning with collaboratively setting goals, reporting progress, and identifying additional improvement opportunities. And we're working cooperatively with the Office of the Ombudsman to test alternative processing approaches and new applications of proven off-the-shelf technology.

I'd like to show a slide of reversing the trend. USCIS has already begun to show progress during the first 6 months of the fiscal year. Production is up. Pending and backlog figures are down. In this slide you can see the point in time when our completions began to exceed our receipts. This is fundamentally how we make headway in the backlog.

We have begun to institute the first of several good-government initiatives as part of our aggressive business redesign efforts. By the end of the month, we plan to publish a regulation to allow us to issue Employment Authorization Documents, known as EADs, for periods greater than 1 year. Over time this will enable us to eliminate the unnecessary repetition of applicants for renewed cards.

We're also expediting the adjudications of simple applications. With green card renewals, we will utilize technology to search databases to provide critical information, such as status verifications and background checks, so that in this way the adjudication is a simple yes or no based on the information before the adjudicator.

We're working to eliminate the need for unnecessary requests for evidence. For example, recently we issued guidance advising adjudicators that in most cases it's not necessary to request updates of financial information that was current at the time of filing. Other improvements requiring regulatory changes are being drafted. And many other improvements are coming.

Maintaining national security is paramount. Let me be perfectly clear about one thing. Productivity gains will not be at the expense of our national security responsibilities. USCIS clearly understands the responsibility to the Department of Homeland Security, the Congress, the President, and the American people.

From our point of view, compromising our national security is simply not an option.

In addition to enhanced security checks, USCIS has established the Office of Fraud Detection and National Security to work with the appropriate law enforcement agencies to respond to national security hits on aliens who pose a threat and for identifying systemic fraud in the application process.

This component will screen, identify, and refer cases involving suspected fraud and threats to public safety or national security to U.S. Immigration and Customs Enforcement—of course, known as ICE—for field investigation and enforcement action.

The next slide, please. I would like to think of our daunting task like climbing Mount Everest. It is a great challenge, but it can be done. It is also not a task for the naysayers. You need the right team and tools, a strong commitment, some patience, a lot of motivation, perseverance, and in my case, a healthy optimism. We have already reached our base camp and are well on our way. We have a clear vision of the top of the mountain and how we're going to get there.

During our first year, USCIS stood up an organization of which I am very proud. We have established accountability in our leadership team and improved many of our operational processes. We have submitted a Backlog Elimination Plan and continue to strive to make further improvements. We will be measuring against milestones and providing quarterly updates to Congress on our progress toward those milestones.

The progress that we have made and the reputation we have built over the past 15 months will provide the momentum for continued success in the months and years ahead.

With the last slide, I'll conclude my remarks. I'm confident that we will reach our goal of 6 months for every case type at every office without compromising national security.

Mr. Chairman, Ranking Member, this concludes my remarks, and thank you for the invitation to testify before this Committee, and I look forward to answering your questions. Thank you.

[The prepared statement of Mr. Aguirre follows:]

PREPARED STATEMENT OF EDUARDO AGUIRRE, JR.

Good afternoon Chairman Hostettler, Ranking Member Jackson Lee and Members of the Subcommittee. Today I will report to you the progress that U.S. Citizenship and Immigration Service (USCIS) has made in its initial fourteen months and the ambitious goals that we will reach in the months and years ahead. The Backlog Elimination Plan submitted to Congress this week reaffirms USCIS commitment to eliminating the backlog. This commitment is not just one of words, but one of action. Since my appointment and confirmation as the first-ever Director of USCIS, I have worked closely with the leaders in USCIS to immediately review our processes, identify opportunities for streamlining and further improvement, and begin to implement meaningful change.

To say that this has been a year of change for this agency would be an understatement of great proportions. In the past fourteen months, USCIS has brought together components of the former Immigration and Naturalization Service (INS) to create a new, energized, cohesive agency with a single vision:

> "Provide the right benefit to the right person in the right amount of time, and prevent the wrong person from accessing immigration benefits"

USCIS is committed to building and maintaining an organization that provides immigration information and benefits in a timely, accurate, consistent, courteous, and professional manner. It is this fundamental mission that guides USCIS as it faces the challenges of a new era.

The Backlog Elimination Plan focuses on three objectives:

- *Achieve a high-level of performance* by establishing clear, concrete milestones and actively monitoring progress towards these milestones;
- *Transform business practices* by implementing significant information technology improvements and identifying processing improvements to transform the current way of doing business; and,
- *Ensure integrity* by instituting comprehensive quality assurance measures.

USCIS will increase its focus on information technology to ensure that long-term Backlog Reduction is sustained, customer service is improved, new fee for service business models are enabled, and a technology environment is deployed to support new processes and workflow aligned with the DHS mission and Presidential mandate for eGov standards.

These objectives have started USCIS in the right direction and have begun to deliver improvements, but there is much more to be done. Just as the backlog was created over time, we must recognize that there is no quick fix to all our challenges—only through our commitment will we be able to claim success.

Thankfully, we have the opportunity, the leadership, and the talent to make an impact. By the end of 2006, we will eliminate the application backlog and achieve six-month cycle times, and in doing so will deliver on the President's vision of *"welcoming immigrants with open arms . . . not endless lines."*

ACCOMPLISHMENTS TO DATE

During the short time I have been honored to lead the men and women of USCIS, we have accomplished much. We have:

- Created a new organization and self-standing structure with a leadership team;
- Re-energized and redirected the legacy INS benefits workforce of 10,000 government and 5,000 contract employees:
- Created a customer-oriented culture incorporating Dignity, Respect and Ingenuity as core values;
- Established a new Office of Citizenship;
- Launched the USCIS Website;

- Established separate goals within the DHS strategic plan;
- Created a new Refugee Officer Corps;
- Streamlined the certificate of citizenship process for adopted children;
- Naturalized 670,000 new citizens;
- Welcomed over one million new immigrants;
- Initiated on-line case status and processing status updates;
- Initiated on-line filings for 8 applications forms, representing over 50% of the total volume of benefit applications annually;
- Created and began national implementation of a web-based information appointment system (InfoPass);
- Expanded the customer service line to overseas callers;
- Revised the fee schedule;
- Initiated four pilot projects aimed at improving customer service and reducing backlogs;
- Established the Office of Fraud Detection and National Security to be responsible for working with the appropriate law enforcement entities in responding to national security hits on aliens who pose a threat and for identifying systemic fraud in the application process; and,
- Revised the Backlog Elimination Plan that includes measurable milestones to gauge progress toward backlog elimination goals.

All this has been accomplished in the context of the work we do every day:

- Process 140,000 national security background checks;
- Receive 100,000 web hits;
- Take 50,000 calls at our Customer Service Centers;
- Adjudicate 30,000 applications for immigration benefits;
- See 25,000 visitors at 92 field offices;
- Issue 20,000 green cards; and
- Capture 8,000 sets of fingerprints and digital photos at 130 Application Support Centers; and,
- Receive 450 Freedom of Information Act requests.

BACKLOG ELIMINATION PLAN

The backlog of applications is a serious problem and until very recently, growing. Early in 2001, President Bush charged the INS with reducing the processing times for benefits applications to less than six months. The President proposed funding of $500 million to achieve and maintain this ambitious goal.

It is important to understand the magnitude of this challenge. Backlogs of immigration benefit applications began to grow during the 1990s. Overall, there was a 77% increase from FY 1993 to FY 2001. The primary factors contributing to the backlogs were a dramatic increase in the number of applications and petitions received, delays in adjusting our fees and filling positions to process this increasing number of applications, the lengthy amount of time it takes to recruit, hire and train adjudicators, and the lack of a comprehensive approach to monitoring, supporting and maintaining timely processing.

The original Backlog Elimination Plan drafted in response to the President's initiative was intended to serve as the foundation for a renewed backlog elimination effort. However, the tragic events of September 11, 2001 and the resulting focus on national security, including the National Security Entry Exit Registration System (NSEERS) Program and enhanced background checks on processing of all immigration benefits applications, posed additional challenges to achieving a six-month cycle time standard for all applications.

Nevertheless, the USCIS is on track to meet its goals to eliminate the backlog by the end of 2006. The Backlog Elimination Plan will:

- Report on the current size of the application backlog;
- Identify the next steps to eliminate the backlog and achieve a six-month or less cycle time target for all forms by the end of 2006;
- Establish annual production goals; and,
- Provide a plan to measure progress through quarterly reports and on-line information available on each district office and service center.

USCIS defines the backlog as the number of cases that exceed their cycle time. Naturalization and adjustment of status, for instance, have a 6-month cycle time while applications for nonimmigrant workers, change of status, and employment authorization have shorter 3-month cycle-time targets.

USCIS calculates the current backlog, based on cases exceeding these cycle times, to be approximately 3.4 million cases as of the end of 2003. The inclusion of Asylum Division cases raises the backlog to about 3.7 million cases out of a total pending of about 6.1 million cases.

THE WAY AHEAD

We fully realize that the increased funding requested in the budget alone will not enable us to realize our goals. We must fundamentally change the way we conduct our business. We are aggressively working to modernize our systems and increase our capacity through the reengineering of processes, the development and implementation of new information technology systems, and the development of mechanisms to interact with customers in a more forward-reaching manner.

Given current data on the backlog, productivity, and workload, USCIS must achieve a 19.6% increase in non-Asylum production to achieve cycle time goals and eliminate the backlog by the end of 2006. In addition, the Asylum Division must realize a 3% increase in production in order to achieve the same result.

In order to achieve these productivity increases, USCIS will:

- Reengineer processes and automate manual workflow processes to achieve greater efficiencies;
- Update policies and procedures to streamline adjudications and increase the percentage of cases completed at initial review by an adjudicator;
- Manage production against milestones—beginning with collaboratively setting goals, reporting progress, and identifying additional improvement opportunities; and,
- Work with the Office of the Ombudsman on pilot projects to test alternative processing approaches and new applications of proven off-the-shelf technology.

USCIS has already begun to show progress in this direction during the first six months of this fiscal year. Production is up, pending and backlog figures are down. We have begun to make progress by instituting the first of several Good Government Initiatives designed to reduce the number of times an application is handled, and through the efforts of every employee rededicating himself or herself to the task at hand.

USCIS has begun an aggressive process redesign effort in the following areas:

Card Issuance—By the end of the month we plan to publish an interim final rule to allow ourselves to issue Employment Authorization Documents (EADs) for periods greater than 1 year. Over time this will enable us to eliminate the unnecessary repetition of applications for renewed cards.

Expediting the adjudication of easy applications—With green card renewals we will utilize technology to search databases to provide critical information, i.e. status verifications and background checks, so that in this way the adjudication is a simple yes or no based on that information.

Requests For Evidence (RFEs)—Recognizing the costs, of both time and human capital in the processing of RFEs, we have been working to eliminate the need for unnecessary RFEs. Some of this improvement has been accomplished by memoranda, such as the recently issued memorandum advising adjudicators that in most cases it is not necessary to request updates of financial information that was current at the time of filing. Other improvement requires regulatory changes that are being drafted.

In the months ahead, USCIS will:

- Enhance data-sharing and inter-agency process improvements to eliminate steps in the processes that add little or no value;
- Modify regulations to clarify requirements for adjudicators and for applicants;
- Reduce pending Asylum cases that have been likely abandoned or overcome by other events;
- Use systems capabilities to run batch queries against data systems rather than spending time manually checking systems; and,
- Continue to manage production against targets.

But we have further to go. The weeks and months ahead are key to continuing this positive trend and making the successes we have realized become the new baseline for the bureau rather than temporary blips on a production chart.

USCIS will ensure that all customers are provided an opportunity to receive a decision within six months or less. However, we recognize that even after the backlog is eliminated, some cases may take longer than six months, such as those cases where security checks have indicated a possible significant terrorist risk or criminal activity.

MAINTAINING NATIONAL SECURITY

But let me be perfectly clear about one thing. Productivity gains will not be at the expense of our National Security responsibilities. USCIS clearly understands its responsibilities to the Department of Homeland Security, the Congress, the President and the American people. Compromising on National Security is not an option.

In addition to enhanced security checks, USCIS understands that maintaining national security and deterring fraud are critical elements of its mission. To process these workloads, USCIS has established the Office of Fraud Detection and National Security (FDNS) to be responsible for working with the appropriate law enforcement entities in responding to national security hits on aliens who pose a threat and for identifying systemic fraud in the application process.

This component, in cooperation with U.S. Immigration and Customs Enforcement (ICE), will screen, identify, and refer cases involving suspected fraud and threats to public safety or national security to ICE for field investigation and enforcement action. Anti-fraud efforts will include developing standard operating procedures to aid field Adjudications staffs in identifying suspected fraud. These initiatives will better enable USCIS to identify applications that may involve fraud, deny benefits to aliens who commit fraud, and place those aliens in removal proceedings.

CONCLUSION

USCIS is committed to this goal and will work cooperatively with our stakeholders, including Congress, to see it to its successful completion.

During our first year, USCIS stood up an organization of which we are very proud. We have established a leadership team, improved many of our operational processes, and continue to strive to make further improvements.

The progress that we have made and the reputation we hope we have built over the past fourteen months will provide the momentum for continued success in the months and years ahead.

This concludes my prepared remarks. I thank you for the invitation to testify before this subcommittee and I would be happy to answer any questions.

Mr. HOSTETTLER. Thank you, Director Aguirre.

At this point, out of order, without objection, the gentlelady from California, Ms. Sánchez will have 5 minutes for an opening statement.

Ms. SÁNCHEZ. Thank you, Chairman Hostettler, and also Ranking Member Jackson Lee, for today's hearing. The issue that we're examining today, the immigration backlog and its detrimental impacts is an issue that my Democratic colleagues and I have said over and over again is critical—is a critical component to fixing our broken immigration system. We made backlog reduction one of the top priorities in the SOLVE Act, H.R. 4262, that was introduced in May, on May 4th, and I urge the Chairman to follow this hearing on reducing the immigration backlog with a markup of the SOLVE Act so we can make immigration backlog reduction the law.

We need to reduce the backlog because the processing delays are keeping families apart for years and sometimes even decades. Thousands of immigrants follow the rules and submit their visa applications like they're supposed to, only to end up waiting for years to reunite with their spouses, children, or parents because of the backlog. One of the main reasons why immigrants come here illegally is to reunite with members of their family. And, simply put, the visa backlog is one of the main causes of illegal immigration in this country.

And what is the current Administration doing about the backlog problem? If you've read the papers lately, you'd think their solution was to perform random immigration sweeps. Last week, there were several newspaper reports that more than 200 immigrants were arrested in the Inland Empire in Southern California, close to my neck of the woods. According to reports, Federal agents were interrogating and arresting immigrants outside of supermarkets, restaurants, as they got off buses on their way to work, and even as they were stopping—they were even stopping cars at roadside checkpoints.

Any person of Hispanic appearance or descent was a target of the sweeps. The agents stopped a Pasadena City College student legally in the U.S. on a student visa and interrogated him on the street about his immigration papers. The agents then drove the student home and forced him to produce his student visa papers to prove he was legal.

In another incident, a Latino waitress named Lourdes Rangel, a U.S. citizen, witnessed men in white vans stopping cars and interrogating drivers. Some of the agents questioned her and demanded that she show them proof of her citizenship. These very extreme arrests do nothing to fix the current immigration system. The only thing that they serve to do is to create fear and panic in local communities.

A school in Pasadena reported that 30 percent of the students skipped school after the reports were made public. Restaurants, stores, and doctors' offices were empty last week, and my office continues to receive phone calls about that. And many said—many doctors said that they were inundated with calls asking if it was safe to come by and get medical care or even to go and buy simple necessities at the supermarket.

It's not really in question that the sweeps were based on racial profiling and not on any evidence that the particular arrestees were in the country illegally. The U.S. Bureau of Customs and Border Protection claims the sweeps were neither racial profiling nor an agency-wide policy. But I find it hard to believe that race didn't play a factor in the interrogations when 90 percent of the arrests were of Mexican nationals. Currently, MALDEF is investigating the sweeps to see if the sweeps violated the victims' due process rights or were unreasonable searches and seizures.

Constitutional violations and random race-based arrests are not the way to deal with illegal immigration in this country. The Administration's $500 million initiative to reduce the visa backlog to a 6-month processing time by 2006 is an excellent idea, and I urge the President and his Administration to make sure that this idea becomes, in fact, a reality. Likewise, I urge the President to give the same priority to backlog reduction that he does in the efforts to deport hard-working, law-abiding immigrants, and even citizens.

The last time Mr. Aguirre testified before this Subcommittee, we discussed how only $60 million in additional funds were proposed for the backlog reduction in the President's fiscal year 2005 budget proposal. This sum paled in comparison to the $281 million for enforcement programs in the President's budget proposal.

We need to make visa backlog reduction a much higher priority. There are 6 million visa applications waiting to be processed. That

equates to millions of separated families and the possibility for millions of immigrants to fall into illegal status.

Processing these applications in a timely way is just as important as enforcement efforts to fixing our immigration system and making our borders safe and secure. I hope that this time next year Mr. Aguirre is testifying before this Subcommittee and telling us how successful the reduction plan is, that the backlog has already been dropped by 50 percent and will be at zero in 2006.

I want to thank our witness for taking the time to come here and give us testimony before this Committee about what steps are being taken to produce a visa backlog program, and, Mr. Chairman, I'm also working on a letter to President Bush and Secretary Ridge expressing concern about the immigration sweeps in Los Angeles. The letter should be completed shortly, and I ask unanimous consent to submit that letter, as well as a letter from the Congressional Hispanic Caucus addressing the same issue, into the record for this Subcommittee hearing.

Mr. HOSTETTLER. Without objection.

Ms. SÁNCHEZ. Thank you. I yield back my remaining time.

Mr. HOSTETTLER. I thank the gentlelady. The panel will now go to questions on a 5-minute basis.

Director Aguirre, on your first day on the job as Director, what was the condition of the adjudication system you inherited? Would it be fair to say that it was dysfunctional?

Mr. AGUIRRE. Mr. Chairman, I'm not sure that I would use that word. I think it was contrary to efficiency because after 9/11, under the Immigration and—INS tenure, many of the adjudicators had to be redeployed to do tasks that were inherent toward national security, not toward the adjudication of cases. A case in point would be NSEERS program. A number—hundreds of our adjudicators were redeployed to handle the NSEERS situation.

Since I took over the operations, we worked our way to transfer the responsibility of the NSEERS program to ICE, and, therefore, we've been able to reclaim the adjudicators to do what they're supposed to do.

Additionally, I think it's worthy to note that post-9/11, there was a significant concern by our adjudicators to adjudicate, just somewhat of a paralysis of fear that a mistake might be made and that zero tolerance may be in effect. We have empowered our adjudicators to make sure that they follow the rules, but also use their extensive experience and managerial access to make sure that they continue to process the cases.

So dysfunctional, I don't think I would use that word, but inefficient, certainly I would. And I think our task has been to bring efficiency and effectiveness into the process without compromising the integrity of the system.

Mr. HOSTETTLER. Very good. Thank you. You've explained a lot about the backlog, but can you tell me more about the history of the backlog. Did not the backlog—was not the backlog created in large part as a result of new and large numbers of immigrant applications taking subsidiary of the 245 program to allow mainly out-of-status aliens a chance to get a green card?

Mr. AGUIRRE. Yes, Mr. Chairman. Of course, there is a cause and effect, as I think you're alluding to. There was a period of time a

number of years ago where an amnesty program was in effect that allowed a number of people to come into a green card and then ultimately citizenship status, which in itself then created a new availability for demand for some of the products that we offer. And then that has simply mushroomed into a very large operation.

What I think is significant to note is that before Congress decided to separate the responsibilities of service and enforcement, the typical Commissioner was faced with competing priorities, with allocation of human and monetary resources to either enforcement or service. Currently, we're able to focus and laser-focus our attention toward very basic services. We're here to reduce the backlog, improve customer service, and do it in an environment of national security. All of that is without being concerned with, as Congresswoman Sánchez was mentioning, the issue of enforcement. I'm sure she's directing her comments to the enforcement side of Homeland Security or the rest of the Nation because, of course, we do not have any enforcement authority or responsibility, other than if we identify a potential terrorist or somebody who is trying to defraud the system, we refer them to the enforcement side of the Government for appropriate action.

Mr. HOSTETTLER. And going along with that, does the backlog encourage aliens to file frivolous petitions? In other words, do legal aliens who want to stay permanently in the U.S. figure that it will take so long for CIS to adjudicate their case that they would find in some cases bogus claims to stay in the United States?

Mr. AGUIRRE. There is some of that, and we're trying to—through technology and otherwise, we're trying to identify frivolous applications so that they can be promptly adjudicated in the negative or, for that matter, low-risk applications to be adjudicated in the positive, as the case may be.

Indeed, I think you're very much aware of the fact that the Immigration and Nationality Act is perhaps the most complex set of laws that our Congress has bestowed upon our Nation. And, therefore, we understand that the complexity of that problem lends itself to a lot of litigation opportunities for unscrupulous as well as scrupulous lawyers.

Mr. HOSTETTLER. Director Aguirre, you are anything if not diplomatic in your relations with Congress when you refer to the complexity of the INA and what we have bestowed upon the American people.

At this the Chair recognizes the gentlelady from Texas, Ms. Jackson Lee, for 5 minutes.

Ms. JACKSON LEE. Thank you very much.

I know that sometimes we have something called "funny math," and I appreciate—I'm going to ask probably a funny math question. For a long time, we've been talking about 6 million backlog, and I would be concerned that we be as accurate as we can be in the numbers. And so one of my first questions will be—and I want to just pursue this discussion for a little bit. One of my first discussions will be is that this very—I think very neat day in USCIS, as it reflects the numbers that we've been working with now for almost a year, and I know that some numbers that have been cited is about a 3.2 million——

Mr. AGUIRRE. 3.7.

Ms. JACKSON LEE. 3.7 million backlog, but the numbers that we have been working with have been 6 million. And I think it is important that before we pursue a line of questioning, that this be established. Benefits is, of course, a question that impacts people accessing legalization. So it is part of the constitutional process of giving people the opportunity to seek citizenship. And for those who may be negative about immigrants or immigrant laws or too many immigrants, this is the wrong place to be, because what we're suggesting is that there is a process to deal with people who are seeking legalization. And when we hear the word "benefits," I know someone is somewhere looking at this and suggesting that there goes my job, there goes my opportunity. That is not the case.

In certain instances, the individuals trying to access legalization are, in fact, creating jobs. Some of them are going against the tide of what we abhor, some of us, something called "outsourcing," where jobs go overseas. Some of them are preventing those jobs from going overseas by being here and creating jobs or bringing the particular expertise here to the United States.

And so in the course of not being able to move these individuals quickly, we're, in fact, putting a knife in our economy to a certain extent; we're, in fact, dividing families, children; and certainly what we're doing is we're not in any way, I believe, meeting America's promise.

So my first question would be to the Director—and I thank you for your testimony—is about these numbers. The second question would be, if I may share this, is to hear more about the milestones that you're going to use to measure your progress in eliminating the benefits application backlog. I'm particularly interested in what you plan to do if these milestones are not achieved. And might you also include the question that my colleague raised, is I believe that this is going to take a sizable increase in funding. And the question is: Do we have not only the commitment that you have certainly offered with your expertise, but really the Administration prepared to bring forward a reasonable request that tracks this amount of change that you're expecting? And I guess my last point is you say that we're going to spend more time on what we call moderate to high risk. My concern is: Who's going to discern low and moderate, and are we really going to have a transparent and fair system when we begin to do that? And I thank you for listening to the litany questions, but I know that you're able and prepared.

Mr. AGUIRRE. Congresswoman, as I get older, my memory gets shorter, so I hope I'm not going to miss anything. I am sure you will remind me if I do. Let me go to the numbers, if I will.

If somebody files an application today, that's not part of the backlog. It doesn't become part of the backlog until 6 months and a day later when we are not processing it in an efficient and effective fashion. The President has set 6 months as the appropriate cycle time. Actually, with time, we hope to improve upon that. But, therefore, I'm distinguishing the pending file from the backlog file, and we're saying that in the pending file we have 6.1 million—6.1 million applications pending, whereas 3.7 of them, or approximately 60 percent, are beyond 6 months.

I think that's a very fundamental understanding. We cannot call—because, otherwise, we would never meet the backlog goal.

Every day we'd be behind any kind of a backlog establishment. So that's a fundamental difference, and, therefore, that's where we're working on both the backlog as well as the pending applications. Now——

Ms. JACKSON LEE. Milestones that you're going to use to measure your progress.

Mr. AGUIRRE. We have multiple milestones, and what we're doing is we're managing application by application, we're managing office by office, service center by service center, almost adjudicator by adjudicator. We have established management systems today that were just simply not in place before. And we're using some of our technology systems to allow us for timely assessment on where we are.

If we should miss any of our milestones—and, in fact, I predict that we will be missing milestones here and there—we're now in a position to redeploy our internal resources to address those shortcomings that may come up. In other words, if one particular city finds itself behind the eight ball in terms of milestones, it could be because it's a small city and people are on maternity leave or may have taken excused absence for a long period of time, bringing down the percent of the personnel. We are then looking to other offices where there is a certain amount of flexibility and redeploying human resources to be able to respond to that situation. So from a milestone standpoint, the most important thing for me is that it's a management tool that allows us to deal with the unexpected.

We will be reporting to Congress, as I mentioned in my comments, on a quarterly basis. Therefore, you'll be able to see whether or not, along with us, whether or not we're on target and what we're doing about it. And the money.

Ms. JACKSON LEE. The money and deciphering low risk from high risk.

Mr. AGUIRRE. Follow the money. Quite frankly, Congresswoman, I really do believe that our budget has been very carefully crafted, and that my challenge lies not in taking more money and figuring out what to do with it—it's more a challenge of making my staff working, as it was mentioned earlier by Congresswoman Lofgren, working smarter not harder. I am very, very comfortable that the budget that has been put forth is adequate to serve our needs. And if I felt otherwise, I would tell you.

Mr. HOSTETTLER. The gentlelady's time has expired.

The Chair recognizes the gentleman from Iowa, Mr. King, for 5 minutes.

Mr. KING. Thank you, Mr. Chairman, and recognizing we have a vote coming up across the street, I'll try to move through here quickly.

First of all, I would pose the question to Mr. Aguirre: Does the United States of America have any record or any history of inadvertently or not legally deporting U.S. citizens to other nations by mistake?

Mr. AGUIRRE. Congressman, I'm sorry. I'm just not equipped to answer that question. I'm not in the law enforcement business, so I wouldn't really know. I'd be happy to look into that and see if we can respond to you.

Mr. KING. But if that happened, wouldn't it be reasonable that those people would come back before you for readmittance?

Mr. AGUIRRE. Well, if someone was deported inappropriately, then I suppose it would come back to us to verify the naturalization of the individual, and we would then respond accordingly.

Mr. KING. Does that happen?

Mr. AGUIRRE. I just don't know, sir.

Mr. KING. Okay. And I never hear of that happening, and that is why I took the opportunity to ask that question. And what sparked the question was the testimony of Ms. Sánchez that there are people that don't show up for work or for medical care or for education because there's been activity on the part of the INS in the region, which concerns me if people don't show up, then it would indicate that either they were being unjustly adjudicated or maybe they were illegal. So I would just ask unanimous consent to submit a rebuttal to those opening remarks of Ms. Sánchez to the record and then make a point to Mr. Aguirre.

This is a complete document, and you've made your point very clear, and I appreciate that. I like it when I can understand it in black and white. And I hope we can come back and visit this maybe in a year and see how things are going, and then in 2 years and see that it's completed. But for 2006, does that mean the first day or the last day?

Mr. AGUIRRE. Congressman, the President's commitment and promise of the $500 million over 5 years ends on September 2006. And it is our focus and our goal to get to that date in eliminating the backlog on that day or before. And that's—that's what it is.

Mr. KING. The fiscal year. Thank you for that clarification, Mr. Aguirre, and your testimony. I appreciate it very much.

Mr. Chairman, I yield back.

Mr. AGUIRRE. Thank you, sir.

Mr. HOSTETTLER. I thank the gentleman.

The Chair will now recess the Subcommittee for a series of three votes. Director Aguirre, will you be able to hang around for about another half an hour for Members to come back?

Mr. AGUIRRE. Nothing could make me happier, sir. [Laughter.]

Mr. HOSTETTLER. Diplomacy. Diplomacy. Thank you.

We are recessed.

[Recess.]

Mr. HOSTETTLER. The Subcommittee will come to order.

Director Aguirre, I apologize for your wait. The half-hour was a little longer than a half-hour, and I apologize for that.

The Chair now recognizes the gentlelady from California, Ms. Lofgren, for 5 minutes for questions.

Ms. LOFGREN. Thank you, Mr. Chairman, and thank you, Director, for your testimony. And I was mentioning to Mr. Smith as we were walking back from the vote that I don't want you to take this personally because we have heard promises about backlogs many, many, many times, and it's engendered a certain skepticism on the parts of the Members of Congress, and it's not about you. It's just how many times can the football be taken away from Charlie Brown. So here are some questions I have.

Mr. AGUIRRE. I used that same metaphor the other day.

Ms. LOFGREN. Aha. I'm interested in some very specific issues that I think could help smooth processing in important ways, and I've mentioned this in the past. I actually believe that ultimately immigrants and nonimmigrants will have or should have their cases, both in the case of nonimmigrant applications or applications for permanent residents, be filed by whatever biometric is used because then you won't end up with duplications of names and it would save time.

It's my understanding that the agency is now electronically gathering signatures in most cases, which is a big improvement, and I want to give you credit for that, and that we are also electronically taking photographs, which is an improvement, and I want to acknowledge that.

However, I think we are still not retaining the fingerprints, and we are still—or if I'm wrong, you tell me, but we have had cases in my office where the fingerprints age-out. I don't dispute the need to get a new criminal review through the FBI. What I've never understood is why we need a new set of fingerprints, because the reason why we get the fingerprints is they're immutable.

I was led to believe that it's because the FBI does not have—explain—is what I've been told, is my understanding correct or incorrect on this?

Mr. AGUIRRE. Congresswoman, that was then, this is now.

Ms. LOFGREN. Okay.

Mr. AGUIRRE. We started storing and retaining the fingerprints a number of months ago. And, therefore, those who would have come before us before that date will have to continue to come back because fingerprints would have——

Ms. LOFGREN. I see. So we're going to see the tail end, but that's going to go away.

Mr. AGUIRRE. Absolutely.

Ms. LOFGREN. I see.

Mr. AGUIRRE. The issue was a storage capacity from a biometric standpoint. We have resolved that issue, and everything that we take in now is stored electronically in perpetuity.

Ms. LOFGREN. Very good. I have a question on your improvement initiatives. You're talking about precertification, and that's an interesting concept, and I think a promising one, on page 8. I'm interested if any progress has been made on precertification beyond the business sector. And I'm particularly interested in the science and academic sector. I think I mentioned this the last time you were here, and I know we did to Secretary Ridge and Secretary Powell. But we have very high-powered scientists, both doctoral students as well as professors, who travel frequently to scientific conferences, and if they can't go, they'll go to Oxford instead of Stanford. And we want those people, we want those hotshots here. Because whenever—if they're from a part of the world that we're suspicious about, they need to be cleared. None of them object to that, but the problem is that they have to be cleared every time they come in and out, and so it takes a long time. And I see a need of collaboration between the State Department, your agency, and Homeland Security, to make sure that, you know, once you've investigated somebody and you know it's okay, that we can somehow give preclearance and smooth that out for these scholars.

Do you think that could be examined?

Mr. AGUIRRE. It is being examined, Congresswoman, and let me just draw the distinction between the apple and the orange, if I could.

The precertification that you were referring to is a precertification of employers so that IBM doesn't have to demonstrate every time——

Ms. LOFGREN. Right. No, I understood that, but I grabbed the name to make my point.

Mr. AGUIRRE. I appreciate that. Perhaps you're making reference to people that are coming here as visitors and——

Ms. LOFGREN. Right, where they're students, where they're O's.

Mr. AGUIRRE. Okay. Well, the O's and the P's are quite different from those who are coming here for—on a nonimmigrant basis. The bottom line is that we recognize that this is a problem and that people are choosing not to come to our country because of the difficulty of coming here.

Ms. LOFGREN. Right.

Mr. AGUIRRE. And I'm participating with Secretary Ridge——

Ms. LOFGREN. Very good.

Mr. AGUIRRE.—who's inviting us to look for ways to make it better.

Ms. LOFGREN. If I could, just one final question. I know my time is up, but in looking at the backlogs, the elimination milestones, I noticed—sometimes I think if we just focused on a few things that cause problems when they don't work, it would give us time. And one of those, to wait 11 months for a reentry permit or 3 months for advanced parole is inevitably going to cause problems because you can't plan the funeral, I mean, or the death, and so then somebody gets stuck, and then their family calls the Congress Member and then we call you and you have to respond. If there were just a way to ease that, this whole mass of work would disappear. And I'm wondering if you've done that kind of functional analysis. You want to get all the backlog done, but the lack of some of these things just inevitably creates a whole mess of problems so that you might really get a bang for your buck on specific elements.

Have you done that kind of analysis?

Mr. AGUIRRE. Yes, ma'am, we have. I cannot respond to the particular one that you're referring to, but we have done extensive reengineering analysis to determine which are the processes that will give us the best bang for the buck, quickest bang for the buck, and compare them to something else and something else. I think you're absolutely right. We're not going to be able to do everything at once. We're going to have to take priorities, and we're doing just that, not to the exclusion of everything else but to the level of attention.

You know, I like to think we're smart, and we're trying to solve this problem one big chunk at a time, if possible, as opposed to just all little ones at a time. We have very, very good people working on this, and I think we have found the numbers to begin to work in our favor.

Ms. LOFGREN. I see my time has expired, and I don't want to abuse the Chairman's indulgence. I did have one question on the chief information officer. Have you filled that?

Mr. AGUIRRE. Ma'am, we have. We have always had a chief information officer. The previous one was on—I'm not sure of the technical terms—temporary or interim basis. We have Tarrazzia Martin who has come to us from the Chief Information Officer in the Department of Homeland Security, and she is now working full-time to address the issue of information.

Ms. LOFGREN. Thank you very much.

Thanks, Mr. Chairman.

Mr. HOSTETTLER. I thank the gentlelady.

The Chair now recognizes the Ranking Member, Ms. Jackson Lee, for a closing statement.

Ms. JACKSON LEE. I thank the Chairman very much. I want to thank Congresswoman Lofgren for some of the very pointed questions that she asked, and as well, Congressman Berman's office, his apologies, because he was scheduled to be at another meeting, and Congresswoman Sánchez as well offered a very important statement that I hope that we'll be working on.

I wanted to congratulate you for the Ombudsman that you have. I hope and look forward to scheduling him because I think in the course of this new major effort, getting him to be seen and heard in places outside the Beltway may be very important inasmuch as he reflects on how your interagency—intra-agency is able to work more effectively together. And my point is—and if we can dialogue after this hearing in the next week and days as we look at this. I'm a little concerned about the money question because there is an increase of funds available for backlog reduction from the $100 million level, it was, to about $160 million. And it's about a 60 percent increase. But, frankly, we have a daunting job. I think it's important that if you're conveying messages, that you take back to the Administration and you will tell them, you know, get the convener or conveyor of the message, don't convey, or to destroy you, the messenger. But I think it's important when you come here that we be very honest with you. I don't think this is going to be enough money, particularly when you've been gracious enough to say that you are shipping people around and you may want to use Peter and Paul in different locations. I can, frankly, tell you that the Texas center is, you know, at a high peak and also probably at a very shrill point right now with overworked staff. And so let me just say, Mr. Chairman, I'm going to be looking at drafting a letter about funds. I think—I'm not sure if Congresswoman Sánchez, maybe joining her if that was her point and I may have missed it. But, in any event, I believe that we're going to have shortfalls, and I'm also going to be looking at this question of shifting, not in any way believing that there's not good intention. I just know that there's just so much that you can get out of in this instance a turnip, and I don't consider any of the employees such, but the metaphor just came to me.

So I'm very concerned about how much you can get out of those hard-working employees, and for those who are listening that represent employees, hard-working employees, I just want them to be able to have all the resources that they need.

And the last point, Mr. Chairman, is most of us come from arts cities, and if you've ever heard a shrill voice, it's the Houston Grand Opera or the New York Symphony, when they can't get

their talent here. And so we've been having a backlog on those J visas, and I would hope that when we talk about benefits that we sort of look at those in a keen manner, and I'm saying J. I meant to say P. But they've all got alphabet—I'm like you. I'll leave it on those visas that categorize professional, doctors, lawyers, entertainers, our wonderful violinists and operatic artists. This is a crisis, and we just got through dealing with the physician at the Texas Medical Center, one of many. So I would appreciate it, Mr. Chairman, if these points can be put on the Director's plate for a response and discussion.

I yield back. Thank you.

Mr. HOSTETTLER. I thank the gentlelady.

Before I bring the hearing to a close, I'd like to mention that this hearing is actually the first of two hearings. Next week at 4 p.m. on Wednesday, we will hear from the Department of Homeland Security Ombudsman to give his report on the backlog as required by the Homeland Security Act.

Director Aguirre, the Committee, the Subcommittee very much thanks you for being here today, for your insight, for your service, and that of the folks at CIS, and wants you to realize that we are here to help. And, finally, we apologize for the air-conditioning situation and keeping you too long today.

The Subcommittee's work being done, we are adjourned.

[Whereupon, at 3:04 p.m., the Subcommittee was adjourned.]

FAMILIES AND BUSINESSES IN LIMBO: THE DETRIMENTAL IMPACT OF THE IMMIGRATION BACKLOG

WEDNESDAY, JUNE 23, 2004

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

The Subcommittee met, pursuant to notice, at 4:50 p.m., in Room 2141, Rayburn House Office Building, Hon. John Hostettler (Chair of the Subcommittee) presiding.

Mr. HOSTETTLER. The Subcommittee will come to order.

Vania Carvalho contacted my office with the kind of problem I hear all too often—about someone who is trying to do the right thing and follow the law by filing the right papers, and getting caught in a bureaucratic nightmare. Vania came to the U.S. with her mother when she was 13 years old on a Portuguese passport, but when her mother married someone from my district, her family filed I–130 papers in February 2001 so she could become a permanent resident. She is still waiting for her green card.

This is why 2 years ago Congress created the Office of the Ombudsman in the Homeland Security Act—to make sure that someone is fighting to ensure that U.S. Citizenship and Immigration Services process immigration applications in a timely and fair manner.

As Members of this Committee mentioned at last week's hearing, legal immigration processing delays send the wrong message to everyone, especially when we are trying to combat illegal immigration. According to Congressional Research Service, 7.8 million immigration and naturalization applications were received in 2001, up from 5.9 million in 2000. The annual receipts since the 9/11 tragedy have stayed in the 7 million range. In the year since its creation, USCIS has begun to report progress in reducing the backlog. It is reported that 5.1 million immigration cases were pending in April 2003, and a year later, this April, the number was reduced to 4.8 million.

Last week, this Subcommittee received the USCIS's blueprint for further reducing the application backlog so all applications meet the President's target of a 6-month cycle by fiscal year 2006. No one wants USCIS to succeed more than the Members of this Subcommittee.

This week we will hear the DHS Ombudsman provide his reaction to USCIS's plan and his own ideas on backlog reduction. Further, we will hear from private sector attorneys representing both family and business clients on what they think of the plan and provide further suggestions on how to get the job done and reduce the backlog.

But before that, I have one observation from last week's hearing: For one, despite the difficulties of a large-scale merger comparable to joining together the largest corporations of America, it is apparent that USCIS is cutting into the application backlog created by its predecessor agency. In fact, I am happy to have received word it has reduced the immigration backlog by hundreds of thousands of petitions since the beginning of the year.

Although USCIS is a better and more efficient organization than its predecessor agency, it has inherited a backlog that has grown with each new immigration program passed by Congress, including the Nicaraguan and Central American Relief Act of 1997, the Haitian Refugee and Immigrant Fairness Act of 1998, the American Competitiveness and Workforce Improvement Act of 1998, and a similar law in 2000—both dramatically increased H–1B caps—and the LIFE Act of 2000, which provided for new and V and K visa categories, and multiple extensions of 245(i).

Another issue I was also interested to hear about was broached by our witness last week, USCIS Director Aguirre. He believed that fraudulent or bogus petitions were adding significantly to the backlog, and that immigration attorneys used bogus petitions to delay removals. Director Aguirre stated that USCIS is developing technology to inhibit such behavior.

His testimony also noted that the tragic events of September 11, 2001 forced USCIS to commit significant additional resources to national security checks on applicants. I am glad to hear that security concerns remain a top priority for USCIS when I hear of cases like that of Nuradin Abdi, who was charged last week with plotting to bomb a shopping mall in Columbus, Ohio, and with receiving asylum through a bogus but successful application.

The quarterly progress reports that USCIS has promised this Committee will ensure that we have an accurate picture of the Agency's progress in attacking the backlog. I am anxious to hear what ideas our witnesses have to reduce the backlog further.

Without objection, all Members' opening statements will be entered into the record, and the Chairman will reserve the right to recognize the Ranking Member for an opening statement when she arrives.

Without further delay, I want to introduce our witnesses today.

The Honorable Prakash Khatri was appointed by Secretary Tom Ridge in July 2003 to serve as the first U.S. Citizenship and Immigration Services Ombudsman at the Department of Homeland Security. He has extensive experience in the area of immigration law, having spent the past 20 years representing individuals and companies in immigration proceedings and related matters. In his 5 years as manager of immigration and visa processing for Walt Disney World in Florida, Mr. Khatri traveled to U.S. consular posts in more than 18 countries. At Disney, he developed and implemented an automated, high-volume visa processing system and other inno-

vations that reduced unnecessary paperwork and improved efficiencies relating to handling employee visa applications.

Mr. Khatri was admitted to the Florida State bar in 1984 and at the age of 22 was the youngest attorney in the State bar's history. He earned his bachelor's and juris doctor degrees from Stetson University.

Elizabeth Stern is managing partner of the Business Immigration Practice Group at Shaw Pittman, LLC. She represents clients in a variety of industry sectors in midsized businesses to Fortune 500 companies. Ms. Stern has previously testified before this Committee in 2001 on the restructuring of the Immigration and Naturalization Service.

Ms. Stern was selected as one of the 75 best lawyers in the District of Columbia by Washingtonian Magazine. She is also a board member of the Bar Association of the District of Columbia.

Ms. Stern graduated from the University of Virginia with juris doctor and bachelor degrees.

Paul Zulkie is the president of the American Immigration Lawyers Association. He is the author of Immigration Compliance in Employment and Business, which analyzes employer sanctions, enforcement and business-related visa issues. In addition, he is a regular lecturer at national legal education seminars and has published several articles in nationally distributed publications. He has been named a leading practitioner in the field of immigration law by The Best Lawyers in America. Mr. Zulkie is a 1977 graduate of the University of Illinois College of Law.

At this time before, we begin testimony, it is the practice of this Committee to administer the oath to all witnesses. Will you please stand and raise your right hand.

[Witnesses sworn.]

Mr. HOSTETTLER. Please let the record reflect that the witnesses responded in the affirmative.

Before the Chair recognizes Mr. Khatri for 5 minutes, I would like to recognize the fact that Mr. Khatri's family is here, and if they would like to stand, we would be glad to recognize them so you can be thoroughly embarrassed. Thank you for being here. Thank you for all your service.

Also we would like to note for the record that his report came to Congress one week earlier than required by statute, which is very good for Government work.

Mr. Khatri, you now have 5 minutes for an opening statement.

TESTIMONY OF THE HONORABLE PRAKASH KHATRI, CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. KHATRI. Thank you, Mr. Chairman. Good afternoon, Congressman King and Congresswoman Lofgren. My name is Prakash Khatri, and I have the honor of serving as the first Citizenship and Immigration Services Ombudsman at the United States Department of Homeland Security.

As a naturalized citizen myself, I have a deep appreciation for this Nation's immigration history. I believe that the United States still represents the "golden door" for people around the world who share the American dream and who want to contribute to the cul-

tural richness and economic strength of this country. I am truly honored to serve as the first Citizenship and Immigration Services Ombudsman and to have the opportunity to repay a small amount of the priceless gift that immigration has been to my family and me.

Since my appointment on July 28, 2003, I have worked closely with my fellow leaders at the Department of Homeland Security in identifying opportunities for recommending meaningful changes to the existing immigration services system. I have been encouraged in these efforts by the commitment of Secretary Tom Ridge and Deputy Secretary Jim Loy to solve many of the problems that have plagued the legal immigration system. In addition, I have worked with my colleagues at U.S. Citizenship and Immigration Services, USCIS, and they have embarked on a series of pilot programs to test some of the recommendations made by my office.

Before I go into detail about these recommendations, let me step back a moment and discuss the mission of my office. We have three primary functions as outlined in section 452 of the Homeland Security Act of 2002. First, the Ombudsman's Office assists individuals and employers in resolving problems with USCIS. In addition, we identify areas where individuals and employers are having problems in dealing with USCIS with an eye toward developing systemic changes that will benefit citizens and immigrants across the board. Finally, we propose changes in the administrative practices of USCIS in an effort to avoid and mitigate problems and hopefully to eliminate them once and for all.

In fulfilling the statutory mandate, I am committed to keeping an open mind with respect to innovative solutions, and I will not accept the status quo. The recommendations from my office will promote national security and the integrity of the legal immigration system; they will increase efficiencies in administering citizenship and immigration services; and they will primarily focus on welcoming immigrants while reducing the problems encountered by individuals and employers seeking legal benefits under our laws.

I approach this task in a holistic manner, identifying opportunities broadly, while assigning priorities in order to maximize significant, short-term results. In the first 10 months of my tenure, I have focused my efforts and recommendations primarily on changes to existing policies and procedures rather than on recommending new regulatory or statutory solutions. This approach has resulted in the rapid implementation by USCIS of pilot programs aimed at immediate and dramatic benefits. In the upcoming year, I will introduce additional recommendations of this nature, but will increasingly focus on formulating broader recommendations that will require more time-intensive regulatory, statutory and/or infrastructure modifications.

Let me outline the most pervasive and significant issues which I have identified to date: First, prolonged processing times or backlogs; second, limited availability of case status information to applicants and beneficiaries; third, immigration benefit fraud, which contributes to processing delays; fourth, insufficient standardization in processing among the different USCIS district offices and regional service centers; and last, inadequate technology and facilities.

Of the issues identified, clearly the most pervasive problem faced by USCIS is the prolonged processing times or backlogs. In the first few weeks I quickly realized that two-thirds of the volume of work generated from the six fee-based forms used in three key processes. Thus, I focused on these three areas, and I recommended three specific initiatives designed first to streamline family-based immigrant processing; second, to reengineer the green card replacement process; and three, to streamline employment-based immigrant processing.

I discussed these recommendations in depth in my first annual report to Congress, copies of which have been provided to the Subcommittee and have been submitted as my written testimony for the record.

In response to these recommendations from my office, USCIS has developed and implemented four corresponding pilot programs. My office is committed to monitoring these new programs to determine their effectiveness at solving the underlying problems, and we hope that the positive new practices can be expanded quickly to improve immigration services nationwide.

I would like to highlight one particular new and innovative pilot project being tested by USCIS in Dallas. The current process of adjudicating applications for green cards for immediate relatives of U.S. citizens is undergoing a dramatic transformation. The pilot project is testing one of my recommendations whereby a process that currently takes from 4 months in some jurisdictions to 3 or more years in others now will take less than 75 days from application to receipt of a green card.

This is quite significant. This will be accomplished in a way that will not only enhance security by reducing fraud, ineligible applicants and temporary interim documents, it will also increase efficiency by reducing the amount of time from a few hours of processing in some jurisdictions because of the extended backlogs to as little as 1 hour of processing time.

This is highly significant. It will dramatically increase customer service by reducing the waiting times and virtually eliminating all applications for interim benefits. This will be a substantial savings for many applicants. For many of these applicants, this program could result in lower total fees because many applicants would no longer have to pay for interim benefit applications such as employment authorization or travel permits.

The pilot program began in May, and we expect that as we celebrate our Independence Day on July 4 in a little over a week, the first immigrants will start receiving their green cards under this new program in Dallas. It is the commitment of Secretary Ridge and Deputy Secretary Loy to backlog reduction and the true spirit of cooperation exhibited by USCIS that needs to be recognized for this effort.

In addition to developing recommendations and preparing the first annual report to Congress, I faced the challenge of establishing a brand new office and laying the groundwork for its effectiveness in the future. After identifying office space, hiring and training our initial staff, our office created an information collection and processing system in the Ombudsman's Office. This system will provide automated data collection and tracking of cus-

tomer complaints and concerns, allowing for more efficient identification of the systemic changes needed for the efficient and secure delivery of immigration services.

I have devoted a substantial amount of time to meeting with key stakeholders. I have visited over 20 USCIS facilities around the country, encouraging input from local managers and staff. I have also met with a wide variety of nongovernmental stakeholders, including individuals, community-based organizations, business leaders, immigration advocates, and members of the bar.

Over the last 10 months as Ombudsman, I have kept in mind the sentiments of President Bush when he said "as a Nation that values immigration and depends on it, we should have immigration laws that work and make us proud." Although considerable progress has been made to that end during the course of the last year, much remains to be done. Continued diligence is required on the part of my office and USCIS. Our shared goal is the creation of a more efficient, secure and responsive method for providing immigration services that respect the dignity and value of individuals while simultaneously protecting us against those who seek to do us harm.

This concludes my prepared remarks. I thank you for the invitation to testify before this Subcommittee, and I would be happy to answer any questions. I also would like to thank Congresswoman Jackson Lee, the Ranking Member.

Mr. HOSTETTLER. Thank you, Mr. Khatri.

[The prepared statement of Mr. Khatri follows:]

PREPARED STATEMENT OF PRAKASH KHATRI

Good afternoon Chairman Hostettler, Ranking Member Jackson Lee, and Members of the Subcommittee. My name is Prakash Khatri, and I have the honor of serving as the first Citizenship and Immigration Services Ombudsman at the United States Department of Homeland Security.

As a naturalized citizen myself, I have a deep appreciation for this nation's immigration history. I believe that the United States still represents the "golden door" for people around the world who share the American Dream and who want to contribute to the cultural richness and economic strength of this country. I am truly honored to serve as the first Citizenship and Immigration Services Ombudsman and to have the opportunity to repay a small amount of the priceless gift that immigration has been to my family and me.

Since my appointment on July 28, 2003, I have worked closely with my fellow leaders at the Department of Homeland Security—DHS—in identifying opportunities for recommending meaningful changes to the existing immigration services system. I have been encouraged in these efforts by the commitment of Secretary Tom Ridge and Deputy Secretary Jim Loy to solve many of the problems that have plagued the legal immigration system. In addition, I have worked with my colleagues at U.S. Citizenship and Immigration Services, and they have embarked on a series of pilot programs to test some of the recommendations made by my office.

Before I go into more detail about these recommendations, let me step back a moment and discuss the mission of my office. We have three primary functions, outlined in Section 452 of the Homeland Security Act of 2002.

- First, the Ombudsman's office assists individuals and employers in resolving problems with USCIS—that is, U.S. Citizenship and Immigration Services.
- In addition, we identify areas where individuals and employers are having problems in dealing with USCIS, with an eye towards developing systemic changes that will benefit citizens and immigrants across the board.
- And finally, we propose changes in the administrative practices of USCIS in an effort to avoid and mitigate problems.

In fulfilling this statutory mandate, I am committed to keeping an open mind with respect to innovative solutions, and I will not accept the *status quo.* The rec-

ommendations from my office will promote national security and the integrity of the legal immigration system; they will increase efficiencies in administering citizenship and immigration services; and they will primarily focus on welcoming immigrants while reducing the problems encountered by individuals and employers seeking legal benefits under our laws.

I approach this task in a holistic manner, identifying opportunities broadly, while assigning priorities in order to maximize significant, short-term results. In the first 10 months of my tenure, I have focused my efforts and recommendations primarily on changes to existing policies and procedures rather than on recommending new regulatory or statutory solutions. This approach has resulted in the rapid implementation by USCIS of pilot programs aimed at immediate and dramatic benefits. In the upcoming year, I will introduce additional recommendations of this nature, but will increasingly focus on formulating broader recommendations that will require more time-intensive regulatory, statutory and/or infrastructure modifications and thus must be able to be implemented within the budgetary resources of USCIS.

Let me outline the most pervasive and significant issues that I have identified to date:

- prolonged processing times;
- limited availability of case status information to applicants and beneficiaries;
- immigration benefit fraud, which contributes to processing delays;
- insufficient standardization in processing among the different USCIS district offices and regional service centers; and
- inadequate technology and facilities.

Of the issues identified, clearly the most pervasive problem faced by USCIS is the prolonged processing times or "backlogs." In the first few weeks, I quickly realized that two-thirds of the volume of work is generated from the six fee-based forms used in three key processes. Thus I focused on these three areas and I recommended three specific initiatives designed to 1) streamline family-based immigrant processing, 2) reengineer the "green card" replacement process, and 3) streamline employment-based immigrant processing.

I discuss these recommendations in depth in my first annual report to Congress, copies of which have been provided to this subcommittee and have been submitted as my written testimony for the record.

In response to these recommendations from my office, USCIS has developed and implemented four corresponding pilot programs. My office is committed to monitoring these new programs to determine their effectiveness at solving the underlying problems, and we hope that the positive new practices can be expanded quickly to improve immigration services nationwide. I would like to highlight one particular new and innovative pilot project being tested by USCIS in Dallas. The current process of adjudicating applications for "green cards" for immediate relatives of United States Citizens is undergoing a dramatic transformation. The pilot project is testing one of my recommendations whereby a process that currently takes from four months in some jurisdictions to as much as three or more years in others, now will take less than 75 days from application to receipt of a "green card." This will be accomplished in a way that will:

- enhance security by reducing fraud, ineligible applicants and temporary interim documents,
- increase efficiency by reducing the amount of time from a few hours of processing in some jurisdictions to as little as one hour of processing time, and
- dramatically increase customer service by reducing the waiting times and virtually eliminating applications for interim benefits. For many applicants, this program could result in lower total fees because many applicants would no longer have to pay for interim benefit applications such as employment authorization or travel permits.

The pilot program began in May and we expect that as we celebrate our Independence Day in a little over a week, the first immigrants will start receiving their green cards under this new program in Dallas. It is the commitment of Secretary Ridge, Deputy Secretary Loy to backlog reduction and the true spirit of cooperation exhibited by USCIS that needs to be recognized for this effort.

In addition to developing recommendations and preparing the first annual report to Congress, I faced the challenge of establishing a brand new office and laying the groundwork for its effectiveness in the future. After identifying office space, hiring, and training our initial staff, our office created an information collection and processing system in the Ombudsman's office. This system will provide automated data

collection and tracking of customer complaints and concerns, allowing for more efficient identification of the systemic changes needed for the efficient and secure delivery of immigration services.

I have also devoted a substantial amount of time to meeting with key stakeholders. I have visited over 20 USCIS facilities around the country, encouraging input from local managers and staff. I have also met with a wide variety of nongovernmental stakeholders, including individuals, community-based organizations, business leaders, immigration advocates, and members of the bar.

During my tenure as CIS Ombudsman over the last 10 months, I have kept in mind the sentiments of President Bush when he said *"[a]s a nation that values immigration and depends on it, we should have immigration laws that work and make us proud."* Although considerable progress has been made to that end during the course of the last year, much remains to be done. Continued diligence is required on the part of my office and USCIS. Our shared goal is the creation of more efficient, secure and responsive methods for providing immigration services that respect the dignity and value of individuals while simultaneously protecting us against those who seek to do us harm.

This concludes my prepared remarks. I thank you for the invitation to testify before this subcommittee, and I would be happy to answer any questions.

Mr. HOSTETTLER. The Chair recognizes Ms. Stern for the purpose of an opening statement.

TESTIMONY OF ELIZABETH STERN, MANAGING PARTNER, BUSINESS IMMIGRATION PRACTICE GROUP, SHAW PITTMAN, LLC

Ms. STERN. Mr. Chairman, distinguished Members, last week before this Subcommittee, Director Aguirre introduced the backlog elimination plan, indicating that USCIS has at last crested the peak and expressing the Agency's commitment to attain a realistic time frame for immigration processing. I believe the plan is excellent, and focus my remarks today on building from this proposal and adding a commercial perspective.

The underlying problem is that the current time frames are completely devoid from the reality of the users' needs. In the business sector, we see many examples of the debilitating impact of these delays. A recent study by eight renowned associations indicate that visa delays alone are responsible for some $31 billion in lost dollars to U.S. businesses.

For backlog reduction to succeed, USCIS must infuse a commercially driven approach to the effort. As detailed in my statement, five key areas are essential: a clear mission with unambiguous adjudication standards; an effective communication and training program; application of IT and risk management to streamline processes; and uncompromising commitment to quality assurance and proper resource allocation.

The mission is now clear; the ambiguity lingers in the Agency's adjudication criteria. In recent years the field has increasingly implemented inconsistent standards. Companies and families have been subjected to RFEs requesting proof that is not required by the statute or the regulations.

Similarly troubling is the reliance on external sources for interpretation. Some field offices have routinely used Webster's dictionary to augment their definition of key standards. To fill the void, the Agency must establish explicit and transparent parameters for each immigration category. These national standards must then be communicated and enforced throughout the management chain and in all field offices. USCIS staff must be trained on

all categories and have electronic access to relevant guidance. Intra-agency communications and training are vital to counter the "deer in the headlights" syndrome that the field has exhibited since 9/11.

Only with ongoing and specific direction from the Agency's leadership and from the Ombudsman can this negative outlook be transformed so that the field can successfully surmount bureaucratic inefficiency and a daunting backlog.

External communications are equally necessary. The Agency's user database should be dynamic with usable milestone tracking as opposed to formalistic references to data processing times. E-mail communications of official decisions should augment paper notices in all cases, not just when a premium processing fee is paid.

In addition, the adjudication process must be reengineered to reduce cycle time while maximizing accuracy. Managers should perform basic triage by determining if incoming petitions warrant intensive scrutiny, or if the case should be handled more routinely.

IT enhancement is unquestionably a part of the solution. There is no reason why the Agency cannot maintain the type of smart software that allows express couriers like FedEx or DHL to track packages as they move point to point in the delivery process.

Furthermore, it is crucial to achieve quality control. Top-down management techniques, firm lines of authority, and clear allocation of responsibility are essential at each level in the Agency. Consistent adjudication must be the norm with required reporting to headquarters when backlogs exceed the stated time lines.

Measurable progress will reduce the need for the Agency to rely on the Agency's $1,000 premium processing fee, so this becomes a supplement, not a surrogate for timely processing.

And end-product review, an action item in the Agency's plan, is critical to ensure the field adjudicates cases fairly. Finally, as new immigration programs are launched, an analysis of whether current resources suffice to meet new demands is essential. Both HR and budgetary allocations must be addressed in advance.

In conclusion, our diversity has been the very lifeblood of this country. We must be conscious of the fact that the United States does not exercise a monopoly on the best and the brightest. We are already losing talent to our neighbors abroad. The commitment of Congress and the Administration to eliminating the backlog is essential to stem that tide. The Agency's plan recognizes that our country's immigration policy encompasses two overarching principles, facilitating entry of the eligible, and barring entry to those who pose a threat to our populace. Those two goals are inextricably linked. Security and service are components of the same machine. Neither can function unless the other one is working properly.

Bottom line, if we do not advance service, we cannot advance security. The former INS was dismantled to launch a separate agency fully dedicated to service. USCIS was empowered by Congress and the President to confirm America's promise to foreign nationals seeking residency and citizenship within our borders. A commercial goals-oriented approach is essential to success. With pragmatism, the goal articulated by Director Aguirre last week, "to provide the right benefit to the right person in the right amount of time," is attainable. I thank you.

Mr. HOSTETTLER. Thank you, Ms. Stern.
[The prepared statement of Ms. Stern follows:]

PREPARED STATEMENT OF ELIZABETH ESPIN STERN

Mr. Chairman, I thank you for inviting me to speak before the Subcommittee on the issue of immigration backlog and its effect on the business community. As managing partner of the business immigration group at Shaw Pittman LLP, I represent commercial clients in a variety of industries, including in particular the communications, information technology and financial services sectors. My clients range from mid-size businesses to Fortune 500 companies, with both regional and global operations.

I am testifying today because the adverse impact to U.S. businesses of the continuing immigration case backlog is potent. Thus in the past week alone, my experiences have included:

- hearing reports from officials from the Departments of Homeland Security and State citing visa delays as the primary cost of doing business for U.S.-based companies;
- participating in an international trade conference focused on the obstacles that the "new security paradigm" at the U.S. immigration agencies creates for American attraction of global talent; and
- receiving press inquiries about the estimated billions of dollars that U.S. companies lose because of ongoing delays and erroneous denials at various points in the visa process – from the adjudication of petitions at U.S. Citizenship and Immigration Service ("USCIS" or "the Agency") to the review of visa applications at the Department of State's worldwide consular posts to the port inspection process by Customs and Border Protection.

The urgent need for a comprehensive management program to streamline the immigration process is wholly visible. Last week, in testimony before this Subcommittee, Director Eduardo Aguirre introduced the USCIS Backlog Elimination Plan. I believe it to be an excellent initiative, and I focus my remarks today on building from this proposal and adding a commercial perspective to the plan for resolution of this most pressing issue.

I. THE DELAYS IN THE PROCESSING OF IMMIGRATION BENEFITS JEOPARDIZE COMMERCIAL OPERATIONS, IMPOSE UNDUE COSTS ON COMPANIES AND CANDIDATES AND COMPROMISE AMERICA'S ABILITY TO ATTRACT TOP TIER INTERNATIONAL TALENT.

A. The Nature of the Delays

The underlying problem our country faces is that the elongated timeframes for the processing of immigration benefits are completely divorced from the reality of the users' needs. The current system is inordinately burdensome to the user community both in terms of time and cost. At every point in the application and inspection process, businesses and families are encountering multiple-week, multiple-month and even multiple-year delays.

The queues at USCIS accumulated since the late 1990s under the predecessor agency, the Immigration & Naturalization Service ("INS"). Since that time, companies relying on global talent have lived with the reality of an ever-expanding backlog of immigration cases. These

companies face a constant challenge – they must explain to their employees why their visa cases are not progressing, why international travel is impeded and why they must wait an indefinite period for the approval of their cases. As weeks and months pass, these companies must watch as anxiety, demotivation and frustration affect the professional and personal lives of their workers.

Three examples in our current caseload illustrate how substantial the bottleneck has become.

1. A software engineer in the Washington, D.C. area whose company sponsored him for residency in 2000 is still awaiting conclusion of his "green card" processing. Adjustment of status, the final phase of residency processing, alone is taking close to two and one-half years;

2. An outstanding researcher with a New Jersey telecommunications company that is developing leading-edge wireless solutions for global communications has been waiting since October 2002 for approval of the underlying immigrant petition required to establish his eligibility to ultimately be awarded the "green card";

3. The southwest operations center of a major financial services company is paying the $1,000 premium processing fee for even routine H-1B extensions for key members of its credit-related operations because normal processing for these extensions is taking close to six months.

Director Aguirre indicated in his testimony last week that the Agency has at last "crested the peak" of backlogs that have accumulated over the past decade. USCIS has committed to attaining a timeframe of three months for nonimmigrant petition processing and six months for residency, naturalization and other more long-term benefits, in accordance with the President's mandate to reduce the backlog. It is imperative that USCIS succeed in meeting these timeframes, if an ailing process is ever to achieve restored credibility and deliver its promise to applicants that have been kept waiting much too long.

B. The Costs to Business

In the business sector, the dynamism of project activities and an intensely competitive global market makes the types of delays outlined above unacceptable. A recent study by eight renowned business associations indicates that visa delays alone are responsible for some $31 billion in lost dollars to U.S. businesses since July 2002. See The Santangelo Group, "Do Visa Delays Hurt U.S. Businesses?" (June 2, 2004). The foundation of any commercial success is the organization's pool of people talent. In the technical and scientific fields in particular, international talent is essential to provide premier skills to our country's job base. Absent a fluid visa process, businesses are encouraged to launch operations offshore, rather than to expand their U.S. operations.

An example of the debilitating commercial impact of the ongoing delays in USCIS processing arises in the context of multinational employers seeking to expand U.S. operations. For instance, one of my clients is a well-known global provider of electronic manufacturing services to the telecommunications industry. Having reduced its U.S. operations during the

softening of the economy in 2000, the company is now aggressively working towards a strong recovery. Each time the company acquires a multi-million, multi-year contract in the United States, it requires an immediate ramp up of personnel to staff the job. To meet these evolving staffing needs, the company turns to its offices in Europe, Asia-Pacific or Latin America, expecting to transfer seasoned personnel to staff the project at its inception, while the U.S. business unit actively recruits American workers for the long term. The workers from abroad are critical to new contracts because they serve the dual purposes of immediately staffing services and training new U.S. workers as they join the operation. Although the L-1 category was designed for this very purpose, the company has consistently received significant queries, delays and even denials for the core group of foreign workers. These obstacles have created substantial costs, compromised deliverables on contracts and come dangerously close to causing our client to lose major contracts to offshore competitors.

Similar experiences by other clients have led them to consider launching their own offshore centers, rather than having to confront the U.S. visa process each time they seek to expand a U.S. project quickly. Predictability and cost containment are critical parameters in any commercial project plan, and businesses are becoming increasingly reluctant to undertake a process – the visa application – that has run counter to both.

At the same time, we have seen numerous reports over the past several years that American universities are capturing lower percentages of top-tier academic talent as the student visa process becomes more cumbersome. Thus, the extraordinary burden imposed by the U.S. visa process is a deterrent both to companies seeking to expand their work force and project base, and to the most coveted graduates of scientific and technical academic programs that are essential to those staffing needs.

II. TO ACHIEVE BACKLOG REDUCTION, USCIS NEEDS A COMMERCIAL MANAGEMENT APPROACH.

In launching a comprehensive Backlog Elimination Plan, USCIS has recognized the tremendous costs of the backlog and expressed its commitment to eradicate it. The challenges USCIS faces are substantial. The Agency is presented with relentless volume, in the context of a dynamic legislative environment. The immigration laws of this country have been reformed on a broad scale every other year since I began practicing law in 1986. New immigration programs are a fact of life, and USCIS has a limited pool of resources to address a demand that has now reached 6.1 million pending cases, 3.7 million of which the Agency has identified as being delayed past the mandates for adjudication established by the Administration.

To reduce the backlog and achieve accuracy in case decisions, USCIS must reengineer its adjudication processes by infusing a commercially-oriented approach to the effort. A clear mission with unambiguous standards and goals, an effective internal communications system and training program, application of technology and risk management to streamline processes and an uncompromising commitment to quality assurance are all essential elements of any successful commercial program. This type of approach will assist the Agency to surmount the paralysis for which the former INS was criticized. In establishing a smooth case adjudication process, USCIS will be best equipped not only to achieve the service mandate that is currently lacking, but to identify true security threats.

A. The Development of Clear Legal Standards and Policies

A primary cause of the current backlog is the historical failure to provide specific standards governing the issuance of immigration benefits. While USCIS' leadership has clearly articulated the mission to restore service and reduce the backlog, the Agency must develop precise adjudication standards. By clarifying what legal standards and policies mean in a real-world context, USCIS can avoid inconsistent adjudications. In so doing, USCIS also will address the reflexive and growing issuance of requests for evidence ("RFEs"). As noted by USCIS in its Backlog Elimination Plan, the RFE problem "not only increases cycle time, but it signifies that either applicants do not understand the eligibility requirements or there has been a shift in the way that adjudicators interpret those requirements." See USCIS Backlog Elimination Plan (June 16, 2004) at 7.

The failure in the past to articulate clear parameters has led Agency field offices to take increasing latitude in implementing differing standards for regulations. In this context, field office practices have created standards that deviate from the statutory mandate and raise the bar of eligibility without appropriate legislative or, at a minimum, regulatory changes. Our clients, for example, have been subjected to RFEs requesting proof of unavailability of American workers in H-1B cases, where the statutory and regulatory criteria require proof of degreed training in a specialty field and compliance with the U.S. wage system, not proof of a job market test. Similarly troubling is the reliance by some field offices on sources other than the Agency's regulations or policy memoranda for interpretation of eligibility standards (e.g., some field offices have routinely used Webster's dictionary to augment their definition of key standards).

The problem of inconsistent standards has been exacerbated by the lack of timely promulgation of regulations, including those necessary to accommodate comprehensive changes in statutes (e.g., the regulations corresponding to the American Competitiveness in the 21st Century Act have yet to be published). Although headquarters issues field guidance periodically, field offices fill the regulatory vacuum by launching their own policies. In one example, at various times since 2001, specific Service Centers have been reluctant to accept academic equivalency evaluations from reputable credentials agencies, while others have been comfortable with them. The clearest guidance from headquarters on the propriety of such evaluations dates back to 1995.

Without transparent national standards, field officers will continue to develop divergent – and mistaken – interpretations of the immigration laws. The result is an inconsistent application of key legal standards and an invitation for users to forum shop. In order to reduce case cycle time in a meaningful way, USCIS needs to devote its first line of resources – policy experts at headquarters and management representatives from key field offices – to develop specific standards for each key immigration benefit. These standards must then be approved by the Agency's leadership, and explicit guidance must be included regarding application of those standards to the real-world scenarios that field officers face daily. Additionally, USCIS should establish timelines that minimize the delay between statutory implementation and regulatory issuance.

B. Communication and Training

Once national standards are established, they must be communicated throughout the management chain and to all field offices. Headquarters will need to develop compliance metrics and training objectives. All USCIS adjudicators and customer service personnel must be trained on the key categories of immigration benefits. Training must include not only initial education on key categories, but also periodic instruction on current policies and trends. In addition, all staff must have electronic access to relevant statutory, regulatory and policy guidance, with a national library of samples for critical issues (e.g., legitimate bases for issuing RFEs).

Field managers will need to insure that line officers implement these standards. In this regard, field managers should establish a protocol for communications within each office and, in turn, each "business unit" within the operation. Weekly or bi-monthly staff meetings that provide a forum to discuss key policy trends, the application of governing standards and the allocation of staff for adjudication challenges should be implemented by each manager.

On-site visits from leaders at headquarters to field offices will also cement the message of what the Agency's mission is. Director Aguirre and senior members of his staff have engaged in these types of visits since the summer of 2003, and it is important that these meetings between the field and headquarters continue.

Intra-agency communications and training are vital to counter the "deer in the headlights" syndrome that field officers have exhibited since September 11. In the wake of that tragedy, the Agency's field officers became painfully mindful of the increased public scrutiny of their work, and of the consequences of error. Since then, these officers have witnessed the dismantling of the former INS. They have also received internal Agency directives advocating "zero tolerance" and warning in sweeping terms that mistakes will not be tolerated. Although the Agency has formally revised its directive to a more realistic message, the field has been hindered by a mindset that is at times fearful and cautious, at other times skeptical and even openly hostile to the applicants for benefits. Only with ongoing and specific direction from the Agency's leadership can this negative outlook be transformed so that the field can successfully attack bureaucratic inefficiency and a daunting backlog.

With regard to external communications, the Agency's user database should be dynamic. Improvements must be implemented periodically to facilitate further milestone tracking and provide current processing time information. E-mail communications should augment paper transfers of receipts, RFEs and approvals in all cases, not simply where a "premium processing" fee is paid. All changes in policy or processing requirements should be announced on the USCIS website, with a resource library that includes policy guidance organized by subject matter and that is equipped with full search capabilities.

C. Streamlining the System

The current system must be streamlined for the efficient processing of applications. The Backlog Elimination Plan already outlines several streamlining initiatives, such as the pre-certification program whereby an employer may bypass the requirement to repeatedly prove its

ability to pay workers the offered wage or salary. USCIS also has identified areas in which screening may be unnecessarily duplicative and is seeking to eliminate those occurrences.

In addition to these initiatives, there must be an underlying reengineering of the adjudication process so as to reduce cycle time while maximizing accuracy in decision-making. At the most fundamental level, headquarters should identify a process for field managers to perform basic triage on incoming cases. Field officers must assess incoming petitions at the outset to determine if they have the degree of complexity or risk to warrant intensive scrutiny. Alternatively, if the documentation evidences compliance with eligibility criteria, the case should be handled in a more routine manner. The Agency has alluded to such a streamlined approach when the case presents an extension request and the underlying terms of the petition have not changed materially since the initial adjudication. Similar treatment must be provided to cases that involve a request for initial classification where eligibility criteria are evident.

The need for technological enhancement also remains a priority. To build on existing efforts, USCIS databases should be consistently upgraded to facilitate web-enabled communications systems across offices. Electronically-scanned files should also be developed to avoid hard copy transfers in the event of queries that involve more than one office. Individual file data progress and tracking need to be maintained on a comprehensive database that may be checked across USCIS offices, with milestones and comments identified in the database. There is no reason why USCIS cannot maintain the type of "enterprise resource management" software that allows express couriers such as Federal Express and DHL to track the precise progress of packages as they move point to point in the delivery process.

D. Quality Control

By proposing quality initiatives in its Backlog Elimination Plan, USCIS has recognized the need for effective quality assurance. It is crucial that these quality control measures be implemented with a clear reporting structure and a specific chain of command. For each measure implemented by USCIS, there must be accountability both within field offices (from line officers to field managers) and between the field managers to headquarters. Moreover, as with any commercial enterprise, there must be specific measurements of progress.

Top-down management techniques need to be implemented. USCIS must establish firm lines of authority and communication, with clear allocation of roles and responsibility (i) between headquarters and the various Service Centers and District Offices, and (ii) at each level of staff in each field office. Managers must be available to review cases that line adjudicators identify as problematic. Supervisors also should conduct "spot checks" of case decisions, particularly those made by newly-hired officers.

Consistency in adjudication must be made the norm, with clear targets in timelines for processing and required reporting to headquarters when backlogs exceed the stated timeline, so that resources may be allocated to curtail the backlog before it becomes unmanageable. Field offices must be graded not only on the volume of cases acted upon, but on the pipeline of backlogged cases. Headquarters also needs to review the overall trends at field offices to gain a sense of when a pattern of inappropriate or redundant RFEs or decisions arises.

Measurable progress on the backlog will reduce the need for the user community to rely on the Agency's $1,000 per case "premium processing" program. Premium processing is a necessary and practical augmentation of the application process. Users, especially business users in a fast-paced environment, often have a legitimate need for the accelerated provision of services. If normal case processing accelerates to a reasonable timeframe, the expense of premium processing will act as a supplement, not a surrogate, for timely processing.

A final consideration is that timely adjudication, alone, is not enough. End product review is critical to insure that field officers are adjudicating cases based on the correct legal standards. Decisions thus must be measured against existing statutory and regulatory standards, with policy guidance being used only after it is vetted by the chain of decision-makers and formally adopted. The Backlog Elimination Plan identifies an action item for the development of such end product review, which is unquestionably a priority if the Agency's reengineering is to succeed.

E. Resource Allocation

As new immigration programs are launched, an analysis of the realistic ability of current resources to match the demand created by each program must be undertaken. If, for example, Congress passes legislation creating a new guest worker program, consideration must be given to the opening of special support centers or the redeployment of officers and staff. USCIS, which faces a formidable task in combating the existing backlog, should not be given added responsibilities without the necessary resources.

III. CONCLUSION

Our diversity has been the very lifeblood of this country – we have always been able to attract the best and the brightest. We must be conscious of the fact that the United States does not exercise a monopoly on Ph.D. recipients, Nobel Prize winners, or the world's leading scientists. We are already losing this talent to Canada, to Australia, to Europe and to Asia-Pacific. The commitment of Congress and the Administration to backlog elimination is essential to stem that tide.

USCIS' Backlog Elimination Plan recognizes that the immigration policy of the United States encompasses two overarching principles – facilitating entry of eligible foreign nationals, and barring entry of those who pose a threat to our populace. These two goals are inextricably linked. Security and service are converse components of the same machine; neither can function unless the other is working properly. For example, an ill-intentioned green card applicant may avoid in-depth security checks for years, while his green card application remains pending. It is, in short, impossible to advance national security without eliminating the Agency's unnecessary backlog. Bottom line, if we do not advance service, we cannot advance security.

The former INS was dismantled to launch a separate agency, one fully dedicated to the service component of U.S. immigration policy. USCIS was empowered by Congress and the President to confirm America's promise to foreign nationals seeking residency and citizenship within our borders. A commercial, goals-oriented approach is essential to the success of this mission of service. With this type of pragmatism, the goal articulated by Director Aguirre last week – to "provide the right benefit to the right person in the right amount of time, and prevent the wrong person from accessing immigration benefits" – is attainable.

Mr. HOSTETTLER. The Chair recognizes Mr. Zulkie for an opening statement.

TESTIMONY OF PAUL ZULKIE, PRESIDENT, AMERICAN IMMIGRATION LAWYERS ASSOCIATION

Mr. ZULKIE. Thank you, Mr. Chairman and distinguished Members of the Subcommittee.

I am Paul Zulkie, president of the American Immigration Lawyers Association, and I am honored to be here today representing AILA at this hearing. AILA is an immigration bar association of more than 8,000 attorneys who practice immigration law. The association applauds this Committee's interest in the effects of backlogs and your understanding of their importance.

Through no fault of their own, families remain separated, businesses cannot acquire the workers they need, and doctors with life-saving skills are stranded abroad. My written testimony contains numerous examples of how United States citizens, families, and American businesses have been hurt by these backlogs. I would like to highlight two of these cases for you this afternoon.

A woman from Rwanda who witnessed the torture and killing of her parents and siblings applied for asylum 7 years ago and has yet to be so much as scheduled for an interview. She suffers from post-traumatic stress disorder and lives in constant fear of being sent back to her native country. She was brought here from a refugee camp by a trafficker who attempted to enslave her into prostitution, but because she never received an interview and has been uncertain of her future here, she never went to the police with information about this sex trafficker. The evidence is now lost, and this perpetrator is still at large.

A second example, one of the top 10 U.S. medical centers had to lay off one of its best surgeons because USCIS was taking 5 months to renew his work authorization card even though the Agency's own regulations require that these cards be processed within 90 days. The hospital, the surgeon, and his patients all suffered from his forced unavailability.

These backlogs impact real people, real businesses. No one is immune. This is why the search for a solution must include an honest assessment of the magnitude of the problem as well as the remedies proposed by USCIS.

Let me begin with our definition of backlogs. The time that a case spends on the shelf with no review by an adjudicator is what we would term the "primary backlog," but there is also a "secondary," a hidden backlog.

A case becomes part of the secondary backlog when a security agency simply fails to respond to USCIS in a timely manner or when an adjudicator requests additional evidence. Any meaningful backlog reduction plan must address the secondary backlogs as well. AILA welcomes the efforts of Ombudsman Khatri to develop creative new approaches to the processing of benefit applications, and we do look forward to working with him in the future.

Unfortunately, not all recent USCIS initiatives have served to decrease the backlogs. In fact, some have been setbacks. USCIS recently announced a new initiative called Decision At First Review, addressing the proliferation of complex demands for documentation

issued by its own personnel. Frequently, the documentation requested was already provided, was not relevant to the application at hand, or was necessitated by the sheer length of time the application has sat on the shelf. The new Agency guidance encourages summary denials of the application in lieu of request for documentation. This does, in our opinion, no more than shift parts of the primary backlog from where it is counted to an office where it will not be counted, the Administrative Appeals Office. That is not backlog reduction, that is hiding the backlog.

Mr. Chairman, AILA believes the time has come to acknowledge the 800-pound gorilla in the room. No matter how many initiatives and innovations USCIS undertakes, in the end it is all about resources. The Administration believes that with a little more ingenuity and a little better management, the backlogs can be brought under control. This Agency needs more money to do its job, and the funding needs to come from direct congressional appropriations, not increased user fees.

A myth has developed that immigration processing should be entirely funded by filing fees. The truth is fee-based funding is nothing more than a giant Government-endorsed pyramid scheme always on the brink of collapsing under its own weight. The Agency is in the constant situation of using new filing fees to pay for the adjudication of applications filed in previous years.

In conclusion, Mr. Chairman, AILA believes that a fresh look should be taken at what resources are really needed, and that money be authorized and appropriated by Congress to do the job right. Thank you.

Mr. HOSTETTLER. Thank you, Mr. Zulkie.

[The prepared statement of Mr. Zulkie follows:]

PREPARED STATEMENT OF PAUL ZULKIE

Mr. Chairman and distinguished Members of the Subcommittee, I am Paul Zulkie, President of the American Immigration Lawyers Association (AILA). I am honored to be here today representing AILA to testify on "Families and Businesses in Limbo: the Detrimental Impact of the Immigration Backlog."

AILA is the immigration bar association of more than 8,000 attorneys who practice immigration law. Founded in 1946, the association is a nonpartisan, nonprofit organization and is an affiliated organization of the American Bar Association (ABA). AILA takes a very broad view on immigration matters because our member attorneys represent tens of thousands of U.S. families who have applied for permanent residence for their spouses, children, and other close relatives to lawfully enter and reside in the United States. AILA members also represent thousands of U.S. businesses and industries that sponsor highly skilled foreign professionals seeking to enter the United States on a temporary basis or, having proved the unavailability of U.S. workers, on a permanent basis. Our members also represent asylum seekers, often on a pro bono basis, as well as athletes, entertainers, and foreign students.

Each day, AILA members confront the many problems that result from the backlogs. These problems are of major concern to families, businesses and communities nationwide. Through no fault of their own, families remain separated, businesses cannot acquire the workers they need, doctors with life saving skills are prevented from entering the country, skilled professionals who are sought by American business to create American jobs remain stranded abroad . . . and these examples could go on and on.

Backlogs not only harm the people directly caught in their web, they undermine public trust in the immigration system. AILA applauds this subcommittee's interest in the effects of backlogs and its understanding of their importance.

I hope in my testimony to document the problem and propose solutions that require the commitment of both the United States Citizenship and Immigration Services (USCIS) and Congress.

WHAT IS THE BACKLOG?

Before we discuss the impact of backlogs and lengthy processing times, or how to best address them, we need to define them. Director Aguirre of the USCIS has provided one definition, based on cycle times. That is a valid view from a government operations perspective. But we need to look at this issue from the user's viewpoint. A processing time is the time from when the application arrives at the agency until a final decision is reached and the benefit is either granted or denied. For the sake of this discussion, we will treat multi-step processes as though they were separate applications.

For example, the current processing time for an adjustment of status application—the final step in the green card application process—is 26 to 29 months at the service centers. This does not mean that an adjudicator spends 26 months reviewing and considering a case. Indeed, that process is measured in minutes or hours. Instead, it means that the case sits on a shelf for 26 months until an adjudicator picks it up and begins to consider it.

The time that that case spends on the shelf with no review by an adjudicator is what we would term the "primary backlog."

However, the story does not end when the adjudicator picks up the case and begins to consider it. Security checks first must be performed.[1] Depending on the type of check, most can be cleared within 72 hours. However, in enough cases to be noticeable, a "hit" occurs or the security agency simply fails to get back to USCIS in a timely manner. Usually, the "hit" is caused by the person's name being similar to the name of someone with a problem (this is a particular problem with some common names), and eventually will be cleared. These cases become part of a "secondary backlog," which we also refer to as the "hidden backlog" because the agency usually does not account for this delay in its processing time reports.

A case also becomes part of the secondary or hidden backlog when the adjudicator requests additional evidence. If the adjudicator does not reach a decision when initially reviewing the case, but instead asks for more documentation, additional time is added to the process. Depending upon how much documentation is requested (a request asking for 45 different items of sometimes obscure documentation has not been uncommon), this exchange can add considerable time to the process.

The secondary backlog also includes the little-discussed but increasingly important Administrative Appeals Office ("AAO"). For reasons that I will detail later, an unintended consequence of one of USCIS' initiatives may be to shift more cases to an already-bursting AAO. While the AAO's backlog is rarely counted in evaluating USCIS performance, its increasing importance requires attention to its already critical backlog.

Any meaningful backlog reduction plan must address the secondary backlogs as well as the primary ones, or public confidence in the system will continue to erode.

WHAT IS THE IMPACT OF THE BACKLOGS?

The U.S. immigration system allows long-term, work-authorized statuses in two situations: compassionate circumstances where we might be literally saving a person's life by offering the protection of our borders, or circumstances in which an American citizen or permanent resident with a family or business interest in a person petitions on that person's behalf. Examples abound of where the purposes underlying this system are undermined or even defeated by the backlogs. For instance:

- A Rwandan woman who witnessed the torture and killing of her parents and siblings applied for asylum seven years ago, and has yet to be so much as scheduled for an interview. She suffers from post-traumatic stress disorder, and lives in constant fear of being sent back to Rwanda. She had been brought here from a refugee camp by a trafficker who attempted to enslave her into prostitution. But because she never received an interview and has been uncertain of her future here, she never went to the police with information about this sex trafficker. The evidence is now lost, and this perpetrator is still at large.
- A Sales & Marketing Vice President for a U.S. owned Fortune 500 company is in charge of Latin American accounts, and oversees multi-millions of dollars in exports from the United States to that region. He has had an application for adjustment of status to permanent residence pending since April

[1] AILA supports security checks as an important tool to enable our government to identify and pursue the tiny handful of intending immigrants and visitors who wish to do us harm, and separate them from the overwhelming majority who wish only to contribute to this country and build a better life for themselves and their families.

2002, and must regularly renew simple travel permissions in order to travel to perform his job. In 2003, when processing times for the travel permissions slipped to seven months, he had to cancel many trips, thus interfering with his company's export pipeline. For this year, he filed over five months ago, and still has six weeks left on his travel permit, but his company is worried that he may not receive his new permit in time. Between the backlog on the permanent residence application and the backlog on travel permissions while his permanent residence application is pending, his company is at constant risk of disruption of its international trade.

- One of the top ten U.S. medical centers had to lay off one of its best surgeons because the USCIS was taking 5 months to renew his work authorization card, even though USCIS' own regulations require that these cards be processed within 90 days. The hospital, the surgeon and his patients all suffered from his forced unavailability.
- More than two years ago, a specialty cook in Manhattan was granted permanent residence by an immigration judge. Even though the gentleman is, by law, a permanent resident, DHS has been unable—despite extensive efforts by his attorney—to provide him with a green card or other evidence of his status. He lost his job, and is unable to find another, because he does not have evidence of his status.
- A Brazilian married to a United States citizen had an approved immigrant petition (the first stage of the green card process), and filed an application to adjust status to permanent residence in New York some two years ago. Like so many Americans, she and her husband moved during this waiting period. She dutifully submitted a change of address to the official address for such changes, and also sent two confirming letters to the New York office of what was then INS. She inquired at the USCIS customer service 800 number, but on her third inquiry was told that she had "used up" her maximum allowance of two inquiries, and would not be able to inquire again. Unfortunately, while she was prohibited from inquiring, she received a notice denying her case due to failure to appear for an interview. Her failure resulted from the agency sending her appointment notice to her old address, notwithstanding her efforts to notify the agency of her change of address. She is attempting to reopen her case, but now is in a position in which she would be barred from reentry if she were to travel, and she has a sick parent in Brazil.
- A Canadian applicant for permanent residence, after already waiting seven months for a simple travel permission, learned that his brother had fallen ill. Although, to their credit, the local USCIS office made every effort to persuade the service center to issue the permission, it did not come until 2½ weeks later. Unfortunately, the brother had died in the meantime and this gentleman missed not only seeing his brother one last time, but also missed his funeral.
- A highly-rated nephrologist has been waiting outside the U.S. since December 2002 for a decision on his application for a waiver of a foreign residence requirement, notwithstanding his specialization—much-needed in the United States—in a field with unusually high mortality rates.
- A young nurse from Mexico works for a Massachusetts family with a severely handicapped child. The child's doctors have been amazed at the child's progress under this young woman's care. For example, she has made it her mission to teach the child to walk when doctors thought this never would be possible. The family sponsored the nurse's permanent residence in December 2000, and due to the length of waiting times at Department of Labor and USCIS, she has now fallen out of status. The family worries constantly that they will lose the caregiver who has become their child's salvation.
- Sometimes the problem involves simply getting a document into someone's hands. An employment-based immigrant petition was approved some months ago, but the approval notice was never received by the employer or employee. They are now being told that they must file an application for a replacement document. The processing time for applications for replacement documents is two years, which renders meaningless the approval of the initial petition.
- The backlogs have lead to still other negative consequences:
  - Many college scholarships are available only to permanent residents or U.S. citizens. A group of Kakuma "lost boys" from the Sudan currently residing in South Dakota have progressed rapidly in the United States. They could attend college, but for their lack of resources. They are unable to receive scholarships because of their current immigration status. They may

lose the opportunity altogether to attend college because their permanent residence applications are trapped in the backlog.

- Some states grant drivers licenses for only as long as a person's non-immigrant status is valid. When a person applies to extend their non-immigrant status, USCIS often goes beyond the expiration date of the previous status in processing the extension. The result is that the applicant loses his ability to drive.
- Backlogs have negative impacts beyond the processing of applications. The Social Security Administration will not issue a social security number until the Department of Homeland Security (DHS) verifies an individual's immigration status. People have waited months for their verifications to come through. This delay complicates not only their ability to get on payroll, but also some states (like my own state of Illinois) will not give them a driver's license until they can show a social security number. Thus, everyday acts of living are barred by backlogs at DHS.

Clearly, the backlogs are having negative consequences for individuals, families and businesses throughout the country. No one supports these backlogs, but they now commonly occur and have grown exponentially over the years. The pressing issue is what efforts has the USCIS undertaken to eliminate these backlogs, and what can Congress do to facilitate their elimination.

IMPROVING POLICIES AND PROCESSES

Steps in the Right Direction: USCIS recently has made some changes that are distinct steps in the right direction, and that we anticipate will help to decrease the backlogs. However, taken alone, or even together, they will not "get us there" but they certainly get us headed down the right road. These steps include:

- *No readjudication of established facts.* Recent guidance to adjudicators instructed that, in extensions of status where no facts or law have changed and there was not a material error or fraud in the previous adjudication, deference should be given to the prior adjudication. This is an important step forward, as it complies with existing regulations that do not require review of extensive documentation in these circumstances and prevents adjudicators from slowing the process by demanding additional documentation where none is needed. It is an effective form of risk management.
- *Storage of biometrics.* For too long, every time a card needed a biometric, the alien would have to return to the agency to provide it, thus requiring the alien to travel often long distances and using up agency resources that would be unnecessary if the biometrics could have been kept on file. The agency now has the capability to keep these biometrics on file. This is particularly important for naturalization and permanent residence applications. In order to have the necessary security checks performed, the alien must provide fingerprints of all ten fingers, which are then run through the FBI database. These checks are valid only for 15 months. In all too many instances, the fingerprints must be taken and re-taken two or three times while the naturalization or permanent residence application is pending. If these fingerprints are stored, then the alien will not have to return to be re-printed every time, thus saving resources on both sides. While the elimination of the need for re-fingerprinting is not in effect yet, we look forward to the day in the near future when it does take effect.
- *Infopass.* We congratulate Director Aguirre on looking to his field for ideas to improve service. Some of the best innovations come from the USCIS staff in the field who face the everyday challenges of moving volumes of applications through the system, and often come up with practical ideas to work around the problems that they encounter. Infopass was one such innovation. Already implemented in three of USCIS' busiest districts, this on-line appointment system has, after a few of the inevitable start-up glitches, proven to be almost revolutionary in getting lines and appointments under control. We look forward to its rollout to other offices in the coming months.
- *Case status on-line.* One of the best innovations USCIS has implemented has been the feature that allows applicants to check the status of their cases using the internet. This has undoubtedly cut the number of calls and inquiries to USCIS exponentially, freeing staff for other duties.
- *Employment authorization documents.* We understand that, very shortly, the USCIS will publish a regulation that will allow the agency to issue work authorization cards for validity periods that are more in line with the actual

time needed, rather than the current lock-step one-year period. This change will significantly reduce the number of applications that must be processed, freeing personnel to process other application types.

We urge USCIS to take this initiative one step further, and apply the extended validity period to travel permissions, generally known as advance paroles. Ideally, the requirement of an advance parole should be eliminated for persons holding valid nonimmigrant visas. For those who otherwise would require such permission, the permission document should be valid for as long as is necessary to see the individual through the underlying adjustment of status process and, better yet, should be on the employment authorization card, thus necessitating only one document and being contained on a more tamper-resistant document.

- *Pilot programs.* USCIS has, in conjunction with its Ombudsman, initiated some pilot programs that could elicit information about processes that would be particularly useful in keeping further backlogs from developing. We look forward to learning the results of these programs and to the implementation of the ideas that could emerge from them.

Changes that Have Not Helped or that Have Hurt Backlog Reduction Efforts: Unfortunately, not all of USCIS' initiatives have helped decrease the backlogs. In fact, some have been setbacks. While we congratulate the agency for experimenting with a variety of initiatives, we hope that it will recognize when a reform has failed or when one needs further work, and either abandon the idea or make the necessary changes. Some initiatives that need revisiting include:

- *Electronic filing.* The movement to e-government is admirable, but care must be taken to ensure that it is not an empty shell that provides no meaningful improvements. Unfortunately, most aspects of the USCIS e-filing initiative have had a negligible impact on the backlog and, and, with one exception, show little prospect of enhancing efficiency in the two-year time period in which this agency strives to bring its backlogs under control. Under e-filing, forms are filed electronically, but the required supporting documentation must be mailed in separately and then matched with the file, itself creating an additional piece of work. And, more importantly, the process is just e-filing, not e-adjudication: the adjudication process is manual, providing no efficiencies on the processing end where it is most needed.

  The one possible exception lies in a pilot project in California. The agency here is experimenting with green card replacement applications filed electronically serving as a conduit for direct production of the new card. We urge USCIS to find other similar ways in which the electronic filing can be used meaningfully, such as capturing data for the adjudicator's use.

- *Decision at first review.* Here is a prime example of a good idea gone bad. AILA and other stakeholders have long urged USCIS and its predecessor to get under control its ever-proliferating volume of Requests for Evidence (RFEs), which are too often multi-page, multi-item demands for documentation that often were either already provided, were not relevant to the application at hand, or were necessitated by the sheer length of time the application had sat on the shelf. The volume of RFEs has grown in recent years as adjudicators, nervous about whether they might be criticized for a decision, became increasingly paralyzed and chose to make a show of demanding further documentation before they would approve an approvable case.

  USCIS finally addressed these RFEs in a recent guidance to the field. However, this guidance unfortunately may make the situation worse instead of better. Failing to tell adjudicators that they can go ahead and approve a case if the documentation is complete, the memo instructs adjudicators to deny cases that previously would have received an RFE. While this instruction will make cases move faster initially, it really does no more than shift parts of the primary backlog to a part of the secondary backlog: the AAO. The AAO already has a backlog measurable in years for some case types, and USCIS is not including AAO in its backlog reduction initiative. Thus, the effect of the "decision at first review" initiative is to simply shift some of the backlog from where it is counted to an office where it will not be counted. That is not backlog reduction: that is hiding the backlog.

- *National Customer Service Center.* This 800 number for customer service must have seemed like a good idea at the time. Give people a toll-free number that they can actually get through on, and improved customer service will result. Unfortunately, it has not worked out that way, particularly with respect to solving problems on applications already on file and with respect to pro-

viding misguided and ultimately harmful advice to members of the public. To its credit, USCIS has acknowledged that the 800 number is not a workable means to resolve problems on cases already on file, and has indicated that they are working on a solution that would put the problem-solving process back in the hands of the USCIS-employed Immigration Information Officers who have access to the files and knowledge of the system. We eagerly await this solution.

- *Outsourcing the Immigration Information Officer Function.* But, a current Administration initiative may serve to undermine this planned solution. It is important to note that the 800 number is answered by an outside contractor, and that many of the problems that have developed are inherent in the fact that an outside contractor is not fully trained in immigration, is not fully accountable for performance, and does not have access to case files. We understand that the agency is soliciting bids from contractors to privatize the Immigration Information Officer function. If this initiative is successful, the reform of the 800 number may be rendered meaningless, as these functions will again be placed in the hands of contractors who lack the knowledge and information to provide the service on a fully-informed basis. AILA believes that both the 800 number system and the IIO function are inherently governmental activities and should not be contracted out.

  We also urge USCIS to replicate what it did with respect to Infopass by looking to its own field for innovative solutions. In order to provide effective problem-solving on already-filed applications, the California Service Center of USCIS put in place an additional operational division, known as Division XII, designed solely to address problems raised by people with applications and petitions pending at that office. It contains the right mix of people, expertise and systems to deliver one of the most effective customer service solutions in the field. We urge Director Aguirre to look at implementing a similar approach in other offices.

Policies that Punish Applicants for the Backlogs: Immigration statutes are complex and often leave areas open to agency interpretation. USCIS has been interpreting some statutes restrictively when a broad interpretation was equally possible or even the better interpretation. While USCIS is working toward its backlog reduction goals, it needs to re-think these policies so that the public is not punished for its own slowness. At the risk of oversimplification, here are three examples where other reasonable readings of the law would ameliorate the impact of the agency's own delays:

- It is too often the case that an individual will apply for a change or extension of a nonimmigrant status, and the initial status expires while she is awaiting action on the application. After the status expires, but before the application is processed, life happens, and the person, for instance, gets another job offer or decides to start school, requiring yet another application. But, because her initial status expired, through no fault of her own, the USCIS has been taking the position since April 2003 that the second application can be denied because the first application was not approved before it was filed. This punishes the applicant for the agency's own slowness in processing the first application.
- The USCIS has recently changed its view and taken the position that if, during the years that it takes for an adjustment of status to permanent residence application to be adjudicated, the applicant's work authorization lapses, the applicant is no longer eligible for adjustment to permanent residence if he works during the lapse. This despite the fact that the lapse is usually due to the USCIS' slowness in processing the work authorization application.
- In October 2000, Congress enacted the American Competitiveness in the Twenty-First Century Act ("AC21") in order to ameliorate some of the effects of the backlogs that existed even then. As no regulations have been issued, USCIS offices have been interpreting this legislation on their own. Some offices have followed policies that essentially eviscerate the ameliorative provisions of this legislation, essentially rendering them useless in the face of backlogs that have only worsened since the statute's enactment.

OTHER PROBLEMS AND SOLUTIONS

In addition to the initiatives that have been announced, AILA suggests that USCIS look at some other areas that have contributed to the problems and implement some additional reforms.

Guidance and Training: We have discussed elsewhere the problem of adjudicator paralysis. There has been a similar paralysis with respect to providing adjudicators with adequate guidance and training. Not a single regulation on a substantive issue has been promulgated since the advent of the Department of Homeland Security. Yet, legislation dating back to 1996 and 2000 have yet to be the subject of even a proposed regulation. There have been some guidances to field, but they do not begin to touch on all of the issues involved in the body of immigration law that adjudicators must apply.

Because of this lack of guidance, adjudicators are forced to come up with their own interpretations that they often develop in a vacuum. Because of their uncertainty about the law, Requests for Evidence have proliferated and cases are being put aside while further guidance is sought. The USCIS needs to overcome its policy-making paralysis, and issue regulations and guidance, to help its adjudicators overcome their decision-making paralysis.

Secondary backlogs: USCIS *must* integrate into its backlog reduction efforts a plan to address the secondary backlogs previously addressed. As long as innocent applicants see their applications delayed for months or years beyond even the regular backlogged processing times, as long as RFE waits are not counted in the overall processing times, and as long as policies send more and more cases into a badly backlogged AAO, the public will view any claims of success in backlog reduction as disingenuous or misleading.

All of these secondary backlogs are important, but the delays in the security checks are probably the most important. As Director Aguirre demonstrated last week, the then-INS was making progress in backlog reduction until September 11 brought home the utter necessity of implementing a strict regimen of background checks. Now that the checks are in place, it is vital that the agencies through which the checks are processed appreciate the importance of a prompt and thorough response. This is critical not only to ensure a timely and legitimate immigration process, but to enable security and law enforcement agencies to act immediately when a person is identified who could be a danger to our security. These lengthy delays are beneficial to no one: not to the impacted individuals, not to the agency, and not to our nation's security interests.

Improve coordination: Since the formation of DHS, a number of issues have arisen that straddle the lines between USCIS and its sister bureaus, Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP). We have seen in recent months some improvement in selected areas, such as the development of processes by USCIS and CBP to correct erroneous entry documents. We urge the bureaus to continue and intensify these efforts.

RESOURCES

There is an 800-pound gorilla sitting in this room. Let's talk about it. No matter how many initiatives and innovations USCIS undertakes, in the end it's all about resources. Immigration petitions and applications are individual cases that require a thoughtful human being to consider the merits and reach a decision. No amount of management systems can, in the end, eliminate that factor. And the fact is, there simply are not enough of those human beings in place to accomplish the job. AILA has watched as INS Commissioner after INS Commissioner has been harshly criticized over the backlogs (and, indeed, we have done more than our fair share of the criticizing). We now see a USCIS Director undergo the same experience. Surely not all, or even a majority of, these smart, well-meaning people have been incompetent. Indeed, AILA has seen the opposite—competence and even brilliance—in these offices. But, somehow the backlogs continue.

Perhaps it is time to see, as Julius Caesar pointed out to Brutus, that the fault lies not in the stars, but in ourselves. Or, as a more modern hero, Pogo, said, "we have seen the enemy and he is us." We have long pretended that with a little more ingenuity and a little better management, the backlogs can be brought under control. Let's end the pretence here and now: This agency needs more money to do its job. And this funding needs to come from direct Congressional appropriations, not increased user fees.

Over the past couple of decades, the myth has developed that immigration processing should be entirely funded by filing fees. The truth is, fee-based funding is nothing more than a giant, government-endorsed pyramid scheme, always on the brink of collapsing under its own weight. Let me give just a few examples of the weaknesses inherent in relying on user fees to fund the USCIS.

- Because of the backlogs, the agency is in the constant situation of using new filing fees to pay for adjudication of applications filed in previous years. Es-

sentially, the agency is using new sales to purchase old inventory, with no visible means to pay for the new inventory that continues to come in.

- The Administration has requested a backlog reduction budget of $140 million for the next fiscal year, ostensibly to pay for this old inventory. However, this budget request is illusory. In previous years, directly appropriated funds paid for USCIS' overhead (fixed expenses such as file maintenance, payroll functions, etc.). This amount, which this fiscal year totals $155 million, is now to be paid out of the fee account. Thus, far from getting an appropriations "shot in the arm" to help the backlogs, USCIS will be losing at least $15 million if the budget is passed as proposed.
- Paying overhead out of the fee account is a particularly dangerous action and could be the factor that finally causes the pyramid to fall. Overhead does not rise and fall with the number of applications: it remains fixed whether the agency gets one application or one million. But if, as has happened in the first part of this year, the volume of applications decreases,[2] so does the income generated from fees. And there is no reliable stream of income to continue to maintain the fixed expenses. Overhead is an amount that must come from directly appropriated funds.

Other resource issues also plague USCIS. DHS currently is reportedly under a hiring freeze. Thus USCIS cannot bring in the new personnel needed to address the backlog. It takes considerably longer to bring a new agency employee on board than would be conceivable in the private sector or even in Congress, so the substantial lead time needed is being lost. And we cannot look to getting extra help from existing personnel, as overtime within USCIS has been severely capped for the year.

Some offices of USCIS also face an imminent personnel crisis. Many of the adjudication positions within the agency are "term" positions—in other words, temporary positions, generally available only for four years. Many of these terms are now expiring—with the backlog no further in hand—and these experienced and trained personnel are departing at a rapid rate as they find steadier employment. Congress needs to act immediately to extend these terms or, better yet, convert the jobs to permanent.

Finally, we cannot ignore another false solution that has been proposed: the outsourcing of the Immigration Information Officer ("IIO") function. One need only look at the deeply flawed, contractor operated, National Customer Service Center to see that outside contractors do not have the knowledge, training or accountability necessary to deliver effective information on the complexities of immigration to the public. Also, the outsourcing proposal ignores an important role of the IIOs in many offices: they act as junior adjudicators, reviewing and deciding on cases. To outsource this function would be to further starve an already resource-deprived operation.

It is well past time that Congress and the Administration gave this agency the resources it needs to do its job. AILA urges that a second look be taken at what resources are really needed, and the money be once and for all authorized and appropriated to do the job right.

Mr. HOSTETTLER. The Chair now recognizes the gentlewoman from Texas for the purposes of an opening statement.

Ms. JACKSON LEE. I thank the distinguished Chairman, and I will take this time to be very brief. Let me, first of all, ask unanimous consent that my entire statement be placed into the record.

Mr. HOSTETTLER. Without objection.

Ms. JACKSON LEE. And let me do a minor bit of housekeeping on behalf of Mr. Weiner, a Member of the full Committee. Mr. Weiner asks these questions—

Number one: How many additional employees would it take to completely reduce the backlog?

Number two: How much would this cost?

Number three: Are there bureaucratic obstacles to hiring these employees?

Number four: Why have past plans for backlog reduction failed?

[2] There was an increase in filing volume in April, but this was due to applicants rushing to get their filings in before a large fee increase took effect at the beginning of May.

I ask unanimous consent for a response by witnesses.

Mr. HOSTETTLER. Without objection.

Ms. JACKSON LEE. Let me thank the witnesses. Each have a unique and special perspective to add. This has been long in coming. We spent time last week with Director Aguirre, and I know that Members could account for any number of times that they have been confronted with stories such as that that Mr. Zulkie has indicated occurred with the tragic situation of the woman in Rwanda.

Right now in Houston I have two individuals who are presently being detained. I would suggest that their plight has come about because of the extensive backlog. One had been a law enforcement officer for 19 years attempting to access the process, but got awry, and finds himself in a difficult predicament. My point is that he worked in law enforcement for 19 years, and so he is a contributing individual to this community and would like to remain here, but, of course, because of the backlog and delay of accessing the situation, he finds himself in this predicament.

Another individual has received three degrees in this country and now has a 3-week-old on life support, and he, too, serving as a paralegal got awry because of the backlog and inability to access the system. There are painful stories to be told.

What my concern is as we move toward this process of unclogging the backlog are questions of due process and fairness. One, if we are to unclog the backlog, and that means we will not waste time trying to secure lost fingerprints and other materials without kicking it up to the next level, is that a fair process, because once you kick it up to the next level, then you are in an appeal process, which is a slower process, as most realize. I am concerned that we will then ignore the second call to get the fingerprints and simply kick that incomplete file up to the next level, which makes it a more difficult hurdle to overcome.

The other point I would like to make, and I will put my complete statement into the record, is the simple process of calling in numbers. I know our distinguished Ombudsman Mr. Khatri will be able to respond in kind to these, but I am told that 800-number operators can transfer calls to what we call the second tier, but I have also heard claims that the second tier officers frequently just tell callers to write a letter to the service center.

Mr. Chairman, we have a lot of hard-working Federal employees but you can be assured when you get kicked up to the service centers in some of our regions, and I might mention that need more resources, you are going to be on a long, long haul trying to get through or trying to get your letter through.

Mr. Chairman, I think we have found ourselves through these 2 years circling around issues of agreement that your constituents, who are clearly of a different perspective than mine, would tend to agree with, and that is we have done some things in the past, and this one I hope has some common degree of agreement, and that is that the backlog must be approached head on, we must do it in a bipartisan way, and we must not yield to any prisoners, if you will, and we must not take no for an answer. And we must gear ourselves to fixing this system because we all are better off if the

system of Government works better so individuals who are accessing the rules of citizenship and legalization can do so in a fair way.

I yield back my time.

Mr. HOSTETTLER. I thank the gentlewoman.

The Subcommittee will now turn to questions of the witnesses.

Mr. Khatri, as you know, the Homeland Security Act requires that you send your report as Ombudsman to us "without any prior comment or amendment from any officer of the Department of Homeland Security or the Office of Management and Budget."

Did you have to clear your report with any other party at DHS before sending it officially to Congress today, or the OMB?

Mr. KHATRI. No, Mr. Chairman.

Mr. HOSTETTLER. That must have been why it was here a week earlier, as well as your stellar work.

I am glad that your testimony mentions your recommendations will "promote national security and the integrity of the legal immigration system."

Can you expand on that as to how you believe the recommendations that you have made would do those two things?

Mr. KHATRI. Let me continue with the example that I cited of the Dallas pilot project. In that particular project, the pilot really seeks to eliminate the need for the interim benefits, the employment authorization cards, the travel documentation that individuals need when there is an extended period of processing.

What my recommendations have done is basically taken what used to be a very, very long process and basically turned it upside down. By that I mean what USCIS is doing in the pilot in Dallas is basically on the day an individual files, an officer actually looks at the documentation and determines whether or not the person has filed appropriately so we do not get the RFEs and the additional documentation requests in the future, but, more importantly, on the same day the individual and their petitioning spouse or parent are interviewed and a determination is made as to whether or not they appear to have eligibility, which then leaves simply the security checks and the records checks.

At the end of that process, what ends up happening is in 60 days or so, most people clear security checks. Upwards of 90 percent clear security checks within the 60-day process, the four different security checks that are conducted. At the end of that, the individual will receive their green card. What this does is it eliminates the EADs, the employment authorization documents, which today, from my background at Disney, I can tell you there are numerous instances where we used to see these documents which had been fraudulently created because they are old 1980's technology which basically involves a Polaroid camera picture. So those types of documents will forever not be required for most of the individuals. And for those few that may get stuck in the process, they will actually receive a better, more enhanced secure card and will be able to be processed. But in the meantime, the bulk or the majority of the people will have been processed, and that, I suggest, will substantially reduce first and foremost fraudulent applications that might have been filed for the purpose of obtaining these interim benefits. These people will no longer be able to do that. So we will be able to process people faster, more efficiently, and more securely.

Mr. HOSTETTLER. Ms. Stern and Mr. Zulkie, could you comment on that? It sounds like the suggestion of turning the process on its head may significantly reduce if not the backlog as it exists today, then for future applicants. Can you comment on what Mr. Khatri has suggested?

Ms. STERN. Yes, thank you.

In the commercial sector, any process that becomes more efficient reduces the margin of error. When there is a focused attention to what the project is, there is less of an aptitude for there to be errors, in this instance, in the Agency context, for there to be fraud. There is more an ability on the part of the adjudicator in this instance to be able to give thoughtful attention to each file if they are not overburdened.

So if these projects are implemented with attention to how the field handles what is given to them, then they can be quite effective in deterring both fraud and eliminating the security threat.

What I think cannot be forgotten is there are human beings who are line officers who will be handling these files, and they have to be trained adequately so that whatever technological help they are given, whatever new programs are rolled out from headquarters, are implemented in the appropriate fashion so there is accuracy. Thank you.

Mr. ZULKIE. Mr. Chairman, my association has worked with Mr. Khatri on brainstorming, if you will, on developing some of these pilot programs, and they are very interesting, and I think they do offer some promise for the future.

Two points to remember, the pilot programs, and even if they spread, will not address the pending backlog, the millions in the pipeline. And one thing that many Congress Members may be concerned about is starting to hear from constituents who are in the backlog and not eligible to participate in these pilot programs. They will feel very shortchanged by this process, and it is something that the Administration needs to address through the subject of this hearing, the broader backlog reduction plan.

Mr. HOSTETTLER. Thank you.

The Chair recognizes Congresswoman Jackson Lee for 5 minutes.

Ms. JACKSON LEE. Mr. Khatri, the very fact that you are there is a breath of fresh air. I think in time the evidence of your work will show itself. But let me restate some of the frustration that occurs beyond Members' offices here in Congress, but just in terms of families trying to reunite, families trying to get information.

I think the uniqueness of this hearing is we are talking about individuals who are trying to access legalization who are in line, and we can account for thousands. And as Director Aguirre said last week, he counts 3 million, and we have been using the number 6 million. That number is still looming large, the 6 million.

Mr. Zulkie, one of the issues that you comment on in your report is limited case status information. That piques our frustration. What will be your role with respect to ensuring that people have a better access to case status information?

And this goes from the most minute simple question which it seems like someone can get to a more complicated one. I imagine the billable hours Mr. Zulkie's organization spent on phone lines calling for a simple inquiry to make his great clients think it is

good to have counsel because finally I have gotten an answer. What are we doing to eliminate the frustration and wrongness of not being able to access your own information?

And I will also raise this question: Last week I posed a question which I intend to pose which is whether or not we need more resources. I know you did not come here as a legislator or appropriator, but in the vastness of your knowledge and Members' knowledge across the country in reaching out to various resources, and when I say resources, service centers and local offices, would you think that we could solve this backlog with what seems to be the present level of funding? Or would you believe in order to reorder what we are doing, possibly to secure new staffing or training, that we would need new resources?

And I throw another question in, and then I will yield. Are you satisfied with the present regional structuring of where we place centers so that someone, as I understand it, in New Orleans may have to travel to get to an office or central office? Obviously, those of us in Houston are traveling somewhere. Are you satisfied with that? And I yield to the distinguished gentleman for his questions.

Mr. KHATRI. Thank you, Ms. Jackson Lee.

In addressing your concern regarding the access and the ability to find out about the case status, obviously that is an important issue, and we are really concerned. We are as concerned as everyone else is about the 800 line and its inabilities to answer the questions of individuals. Our office has taken a keen interest in that.

We will hopefully in the coming weeks come up with some very specific recommendations, and we are hoping that USCIS, as they have done for our other three recommendations, will take them seriously and will give due consideration and implement hopefully right away because that may not require a pilot.

Mr. ZULKIE. Thank you, Ms. Jackson Lee. The first question in the list for me is the determination of whether or not the resources the Administration proposes to allocate are adequate. In our opinion they are not. A recently published study by the Government Accounting Office on USCIS backlogs made a finding that USCIS does not really know what it costs them to process an individual application or petition, and USCIS agreed with that finding.

So now we have a situation where there is a plan laid out there, but there has been no analysis of how many people hours will it take to reduce this backlog within the time frame that Director Aguirre says it can be done. The Director suggests there will be some interesting and helpful information technology improvements. We would certainly welcome them. Again, there has been no real analysis that we have seen as to what that will cost or where the money will come from.

Respectfully, what we would suggest perhaps is that this Committee mandate the Government Accounting Office to do a follow-up study: What does it cost the USCIS to process all of its applications and petitions today? What do they think or project it will cost to process those applications and petitions 1 year from now, 2 years from now when a number of efficiencies and the pilot programs are more widespread? What will the new information technology cost?

And a related issue, and this relates to the questions you read into the record earlier from your colleague on the Committee, are

there obstacles to hiring new people? What is it going to take to get new people on board?

Well, there are a couple of obstacles. First of all, we have seen media reports that there is a hiring freeze at the Department of Homeland Security. I don't think that has been officially confirmed by the Department. I am only going on the media reports, but if there is, that makes it difficult to add more people to process cases.

There is the other problem of background checks that are performed on Federal employees. We have heard anecdotally from managers in offices that it is taking 6 to 12 months and in some cases more than a year to get the appropriate background clearances before an individual can be hired. It seems to me that is going to make it fairly difficult to get quality people to take those jobs.

Back to the issue of case status and accessing information, the 800 number, while it seemed like a good idea when they rolled it out, unfortunately has not worked out very well. We believe the principal reason it has not worked out is because the system was contracted out to a nongovernmental entity; and, unfortunately, the individuals who performed this job just are not trained in immigration law, and the system is really not set up to deal with pending cases. It works well if you are calling to get a form number or an address of what office to send it to, but it does not work well to get information on cases.

We have suggested with pending cases there be an automatic referral to the service center where a trained Immigration Information Officer can answer the question. They have access to the file, and they are trained. Yet, in my final statement on this, the Administration has proposed to outsource or contract out the Immigration Information Officer position, which I believe the House voted against the other day. In our opinion, philosophies aside, it just will not work sending it out to a private contractor. It has been a failure with the 800 number, and the IIO function, if it is contracted out, will reinforce that failure.

Ms. JACKSON LEE. If I might be indulged an additional 30 seconds, Chairman, I think, will allow me to say we voted together in opposition to that position of outsourcing, and we might be able to join with each other on the idea that you have now suggested maybe about an additional review about cost. We may ultimately disagree on whether we should move forward. I would say we should; the Chairman may say not. But I think the facts would be helpful to him and this Committee as to what the cost actually is, an independent assessment of what the cost is, because we are all in agreement that a backlog does not help anyone.

Certainly whatever position you happen to take on this question you might want to provide me in writing unless you have one sentence to answer about the way we have this system set up, like the centers that I mentioned in Memphis and Texas. And I will close on this note just to thank you, Mr. Zulkie, for the excellent staff that you have visiting with us all the time. I can assure you that they are both informed and bipartisan. We look forward to working with you.

Mr. ZULKIE. Thank you. That is very kind of you.

Mr. HOSTETTLER. The Chair recognizes Mr. King of Iowa for 5 minutes.

Mr. KING. Thank you, Mr. Chairman. I thank the witnesses for their testimony today.

Ms. Stern, I point out in your testimony words to the general effect of ensuring timely processing for legals and then this quote, "barring those who pose a threat to our populace." Would you entertain amending that to "barring those who would not have legal access"?

Ms. STERN. Absolutely. Obviously folks who are not eligible for benefits also should be denied benefits.

Mr. KING. Thank you. Just a little cleanup thing that lingered in my mind.

Mr. Zulkie, the President gave a speech on January 6 calling for a program that would expand the number of guest workers, was the term he used, and the public has used a far different term to define that program. There are varying estimates, between 8 and 14 million illegals in this country, some of whom would be processed if that program were approved. We sit here with a significant backlog which we have significant concern about. Should there be a program, a guest worker program, approved that may be legalized in some fashion or another, 8 million of those workers? What do you think the impact of that would be to the backlog?

[5:45 p.m.]

Mr. ZULKIE. Thank you, Congressman. If the Congress were to pass such legislation and it was signed by the White House, I think it is obvious to everyone that the existing resources provided to USCIS could not possibly take that on. Realistically, the Congress would have to appropriate funds either for additional resources for USCIS to handle it, or perhaps as occurred in 1986, there was a freestanding separate unit or units around the country that just processed what was called the amnesty applications outside the then-INS benefit processing system

Mr. KING. If we had a freestanding organization like that, do you believe that could be funded by employers and guest workers?

Mr. ZULKIE. That is a decision for Congress to decide. Potentially, yes, it could; or it could also be a unit that is separate from USCIS, or under its auspices, but unique and freestanding.

Mr. KING. Then with regard to national security, do you think that that type of a program could risk lowering the bar for national security?

Mr. ZULKIE. Quite the contrary. I think it would enhance our national security, because we do not believe—with the number of people that you cite who are possibly here who are not documented, it is much better we know who is here. Every one of these individuals would be subject to a FBI, CIA background clearance and no doubt some people would not pass muster. And I think we would rather know who is here and give them identity, let them come forward and do the jobs that we need them to do, take care of our grandmothers in the nursing homes and take care of our children, and our security is much better off knowing who they are.

Mr. KING. Aside from the concern that if we set up a separate entity to deal with this, you still have to have the background checks that would have to grow, then, our FBI and security people

to do those background security checks. Once again we end up with an administrative problem that is compounded by this issue.

I will just address the issue of the bogus petitions that was testified to by Mr. Aguirre last week; that the bogus petitions, maybe as many as 40 percent of them—of the petitions are bogus. Do you believe that we can streamline this process if we could increase the punishment on bogus petitions and clean them out of the system and disincent those in the process?

Mr. ZULKIE. Director Aguirre's testimony to that effect is the first time that we have ever heard any USCIS official use a number like that. And we find it fairly hard to believe that 40 percent of the petitions are fraudulent, particularly given the small level of enforcement or prosecutions undertaken by the Government. Let me add that simply because a petition is pending before USCIS, that in no way precludes the relevant law enforcement agencies from either pursuing criminal prosecution or removal of an individual from the United States.

Mr. KING. Thank you. And time moving along here, I turn to Mr. Khatri; and that is, there has been a request made here for more money and more resources, not from fees, but from the general fund presumably. And I know that Mr. Aguirre testified last week that he had enough resources, he needed to use more innovation and more ideas and streamline that. And I am asking this softball question today, because you brought your family along and I think I will take it a little easy on you. So could you answer that question before time runs out?

Mr. KHATRI. As regards the USCIS funding issue, I believe Director Aguirre is the word on that. If he stated, as he clearly did, that they do have sufficient funding, I believe they do and we should give them a chance to show that they do. I cannot dispute that. I don't run his organization. He has access to all of the records and I believe he did testify that he does have sufficient funds.

Mr. KING. And some of the innovation that you brought forward here today is some of the innovation he was referencing?

Mr. KHATRI. Yes. That will assist in helping. Now, obviously one of the things that some of our recommendations will do is clearly reduce substantially the number of filings that are required for interim benefits, and that will be a reduction in the fees. And this is where I think we will have to work with Congress to figure out if there is a better way. Maybe there is a way to fund the system much like a private entity. If we are expecting USCIS to run like a private entity from its own fees, I would think that we may want to consider, as we do for any organization coming out of bankruptcy or from a reorganization, as you will, that we do provide funding and maybe we do create a pool of money for USCIS to draw from, so that they don't have to be in a constant position of predicting how many applications are going to come, especially with the innovations and the resources that we are bringing to the table where we are actually, hopefully, going to eliminate many of the applications that are required and thus will cause a shortfall in the permanent funding of USCIS.

So, long term, yes, I do believe that Congress will have to work with USCIS in finding—maybe, you know, the best thing would be a replenishable fund that can be replenished annually.

Mr. KING. I thank the witnesses and the Chairman, and I yield back.

Mr. HOSTETTLER. I thank the gentleman.

The Chair reminds Members that we have 7 legislative days to make entries into the record.

I want to thank Members of the panel for your insightful testimony. It will be very helpful in this process. And this Subcommittee will take your testimony to heart as well as apply it to our future actions.

Before I adjourn the Subcommittee, in keeping with the theme of embarrassing attendees, I just discovered that Vlad Cerga, who is our Committee's technical aide in the left corner of the room here, has passed his naturalization exam today. So we commend you. I am happy to announce that the Subcommittee is doing all we can to help reduce the backlog.

[Whereupon, at 5:50 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

BACKLOG ELIMINATION PLAN SUBMITTED BY U.S. CITIZENSHIP AND IMMIGRATION SERVICES

U.S. Citizenship and Immigration Services

Backlog Elimination Plan

Update: June 16, 2004

U.S. Citizenship and Immigration Services

Prepared for the United States Congress

The Honorable James Sensenbrenner
Chairman, House Judiciary Committee

The Honorable John Conyers
Ranking Member, House Judiciary Committee

The Honorable John Hostettler
Chairman, Subcommittee on Immigration, Border Security and Claims
House Judiciary Committee

The Honorable Sheila Jackson Lee
Ranking Member, Subcommittee on Immigration, Border Security and
Claims, House Judiciary Committee

The Honorable Ted Stevens
Chairman, Senate Appropriations Committee

The Honorable Robert Byrd
Ranking Member, Senate Appropriations Committee

The Honorable Thad Cochran
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Subcommittee on Homeland Security

The Honorable Orrin Hatch
Chairman, Senate Judiciary Committee

The Honorable Patrick Leahy
Ranking Member, Senate Judiciary Committee

The Honorable Saxby Chambliss
Chairman, Subcommittee on Immigration, Border Security and
Citizenship, Senate Judiciary Committee

The Honorable Edward Kennedy
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The Honorable C.W. Bill Young
Chairman, House Appropriations Committee

The Honorable David Obey
Ranking Member, House Appropriations Committee

The Honorable Harold Rogers
Chairman, Subcommittee on Homeland Security
House Appropriations Committee

The Honorable Martin Olav Sabo
Ranking Member, Subcommittee on Homeland Security
House Appropriations Committee

The Honorable Chris Cox
Chair, House Select Committee on Homeland Security

The Honorable Jim Turner
Ranking Member, House Select Committee on Homeland Security

Message from the Director

Two years ago the Immigration and Naturalization Service (INS) laid out a comprehensive Backlog Elimination Plan focused on achieving a six-month national average cycle time goal for all applications. The Backlog Elimination Plan was to represent the foundation of a renewed Backlog Elimination effort; however, soon after its release this nation's immigration professionals were faced with the effects of September 11, 2001, an event that would significantly challenge their ability to realize this goal.

This update to the original Backlog Elimination Plan affirms the newly formed U.S. Citizenship and Immigration Services' (USCIS) commitment to eliminating the backlog. This commitment is not just one of words, but one of action. Since my appointment and confirmation as Director of USCIS, I have worked closely with the leaders in USCIS to immediately review our processes, identify opportunities for streamlining and further improvement, and begin to implement meaningful change.

USCIS will increase its focus on information technology to ensure that long-term Backlog Reduction is sustained, customer service is improved, new fee for service business models are enabled, and a technology environment is deployed to support new processes and workflow aligned with the DHS mission and Presidential mandate for eGov standards.

These improvement efforts have started USCIS in the right direction and have begun to deliver upon their potential, but there is much more to be done. Just as the backlog was created over time, we must recognize that there is no quick fix to all our challenges – only through our commitment will we be able to claim success.

Thankfully we have the opportunity, the leadership, and the talent to make an impact. By the end of 2006, we will eliminate the application backlog and achieve six-month cycle times, and in doing so will deliver on the President's vision of "welcoming immigrants with open arms… not endless lines."

Eduardo Aguirre

Director
U.S. Citizenship and Immigration Services

Table of Contents

Executive Summary.....1

Background.....2

Our Commitment.....2

New Challenges.....3

Updating the Plan.....3

Understanding the Backlog.....4

Backlog vs. Pending.....4

Productivity Improvements.....6

Improvement Initiatives.....7

Pilot Initiatives.....7

Streamlining Process.....7

Quality Initiative.....8

Fraud Assessment and Deterrence Initiatives.....9

Refugee Corps.....9

Information Technology.....8

Milestones and Reporting.....10

Backlog Elimination Milestones.....10

Production Monitoring.....10

Reports.....10

Conclusion.....11

Executive Summary

Throughout the past decade, the Immigration and Naturalization Service (INS) committed itself to reducing the backlog while simultaneously improving processing integrity. In support of this commitment, INS developed an aggressive five-year strategy for eliminating the backlog and achieving a six-month or less cycle time for all applications. This strategy, outlined in the original Immigration and Naturalization Service (INS) Backlog Elimination Plan (March 2002) consisted of three key objectives: achieve a high-level of performance, transform business practices, and ensure integrity.

The Backlog Elimination Plan was intended to serve as the foundation for a renewed backlog elimination effort; however, the events of September 11, 2001 and the resulting focus on national security posed additional challenges to achieving a six-month cycle time standard for all applications.

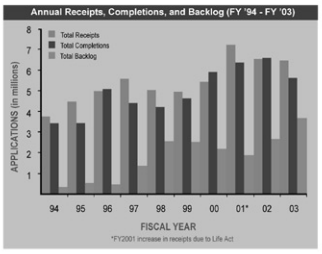
Nevertheless, the U. S. Citizenship and Immigration Services (USCIS) will meet its goals to eliminate the backlog by the end of 2006. In order to accomplish this, USCIS has updated the original Backlog Elimination Plan, which is intended to:

- Report on the current size of the application backlog;
- Identify the next steps to eliminate the backlog and achieve a six-month or less cycle time target for all forms by the end of 2006;
- Establish annual production goals; and
- Provide a plan to measure progress through quarterly reports and on-line information available on each district office and service center.

Analysis shows an application backlog that is both serious and until very recently, growing. USCIS calculates the current backlog to be approximately 3.4 million cases as of the end of 2003. The inclusion of Asylum Division cases raises the backlog to about 3.7 million cases out of a total pending of about 6.1 million cases. Given current estimates of backlog, USCIS must streamline and reengineer its business to achieve a 19.6% increase in productivity to achieve its cycle time goals and eliminate the backlog by the end of 2006. The Asylum Division, which is measured separately, will need to realize a 3.4% increase in efficiency to attain the same result.

USCIS has redefined the way in which backlog is calculated by basing the figure on receipts rather than completions. This definition of backlog better reflects the idea that as long as USCIS is processing its receipts within the designated target cycle time, there is no backlog for those applications as the pending count only reflects cases within target cycle time.

The figure below shows annual receipts, completions, and the backlogs from 1994 - 2003.



In order to increase productivity, USCIS will:

- Reengineer processes and automate manual workflow processes to achieve greater efficiencies;
- Update policies and procedures to streamline adjudications and increase the percentage of cases completed at initial review by an adjudicator;
- Manage production against milestones – beginning with collaboratively setting goals, reporting progress, and identifying additional improvement opportunities; and
- Work with the Office of the Ombudsman on pilot projects to test alternative processing approaches and new applications of proven off-the-shelf technology.

Again, by the end of 2006, USCIS will successfully meet the President's stated objective to eliminate the application backlog and achieve a cycle time of six-months or less while continuing to meet its national security responsibilities. As a part of this effort during the months ahead, USCIS will also place a renewed emphasis on customer service. Our customers are the center of our business and we must dramatically improve this relationship. In addition, USCIS is also developing ways to enhance anti-fraud efforts to ensure that it provides the right benefit to the right person in the right amount of time.

Our Commitment

USCIS is committed to building and maintaining an organization that provides immigration information and benefits in a timely, accurate, consistent, courteous, and professional manner. It is this fundamental mission that guides USCIS as it faces the challenges of a new era.

This commitment is not one of words, but of action. Throughout the past decade the INS has initiated several efforts aimed at reducing the application backlog while simultaneously improving processing integrity. USCIS has enhanced these initiatives. Efforts such as the creation of the Performance Management Division (PMD), the implementation of Naturalization Quality Procedures (NQP), the opening of more than 120 Application Support Centers (ASCs), electronic filing of certain applications, and the process of criminal background checks have contributed to USCIS' focus on either reducing the application backlog or improving processing integrity.

To demonstrate support for this commitment, the INS developed an aggressive initial five-year strategy to eliminate the backlog. The original Backlog Elimination Plan challenged the INS to reach a national average cycle time of six-months or less for all applications by the end of 2003. The remaining years, 2004 - 2006, would then be used to further reduce cycle time targets for selected applications and to improve information technology and business processes to prevent backlogs from reoccurring.

As part of the original Backlog Elimination Plan, INS focused on three objectives:

1. **Achieve a high-level of performance by establishing clear, concrete milestones and actively monitoring progress towards these milestones;**
2. **Transform business practices by implementing significant information technology improvements and identifying processing improvements to transform the current way of doing business; and**
3. **Ensure integrity by instituting comprehensive quality assurance measures.**

Guided by these objectives, and with the support of the Administration, INS was prepared to eliminate the existing application backlog. However, unforeseen events and resulting challenges changed INS' focus and ability to eliminate the backlog. Despite those events, USCIS has continued to be guided by the three overarching objectives mentioned above: achieve a high-level of performance, transform business practices, and ensure integrity.

The 2002 Backlog Elimination Plan challenged INS to reach a national average cycle time of six months or less for all applicati ons

Background

New Challenges

The tragic events of September 11, 2001 not only changed the nation, but also increased Immigration Services' role in enhancing national security.

After 9/11, USCIS temporarily assumed a couple of new national security responsibilities that have since shifted to the Immigration and Customs Enforcement (ICE) bureau within DHS. The table to the right identifies these additional responsibilities.

These responsibilities had one-time effects on USCIS production that have since been regained (e.g., NSEERS registration). After 9/11, USCIS also implemented additional name-based security checks to include all applications and were valid for only 35 days to enhance national security. Applications not adjudicated within the time frame were required to have new security checks completed. This permanent change to business processes also affected USCIS production.

USCIS used resources to support national security activities - including NSEERS registration and implementation of the SEVIS program.

Post September 11, 2001 Responsibilities and Status

Responsibilities	Status
NSEERS (National Security Entry Exit Registration System): Required the registration and fingerprinting of nationals already living in the U.S. from countries identified as potential threats.	Transferred to ICE. All individuals living in the U.S. prior to NSEERS implementation have registered. Re-registration requirement for individuals already in the U.S. has been suspended.
SEVIS (Student and Exchange Visitor Information System): Replacement of the student immigrant tracking system included re-certification of schools and increased oversight of the program.	Program administration has been transferred to ICE.

Updating the Plan

Soon after a successful transition to DHS and the establishment of USCIS on March 1, 2003, USCIS leadership, led by Director Aguirre, gathered to examine the USCIS business processing and identify opportunities for transforming processing while improving customer service and continuing to enhance national security. As a result, we have updated the original Backlog Elimination Plan that is intended to:

- Report on the current size of the application backlog;
- Identify the next steps to eliminate the backlog and achieve a six-month or less cycle time target for all forms by the end of 2006;
- Establish annual production goals; and
- Provide a plan to measure progress through quarterly reports and on-line information available on each district office and service center.

The transition to DHS clarified the mission of USCIS and brought all of its individual benefits sections together to form one cohesive organization. For that reason, it is appropriate that this update to the Backlog Elimination Plan include a discussion and plan for elimination of all USCIS backlogs, including those in the Asylum Division that have not previously been included in the plan.

This updated Backlog Elimination Plan also meets the requirement specified in Section 459(a) of the Homeland Security Act of 2002 (Public Law 107-296) which calls for a plan to be submitted to Congress detailing how USCIS will complete "efficiently, fairly, and within a reasonable time" the adjudication of non-immigrant, immigrant, naturalization, and Asylum/Refugee applications and petitions.

Understanding the Backlog

Backlog vs. Pending

Pending cases are defined as cases that have been received, but not yet adjudicated. Pending cases that are older than their target cycle time are considered to be backlog.

The initial Backlog Elimination Plan defined backlog as a function of time, and was based on a measure of completions. In other words, if an application type had a processing time (a measure of cycle time based on completion figures) of twelve months and a target processing time of three months, the backlog would be defined as nine months. (**Backlog = (Current Month Pending/Average Last 12 Months' Completions) – Processing time targets**). This definition did not accurately quantify the number of applications that were considered to be a part of the backlog.

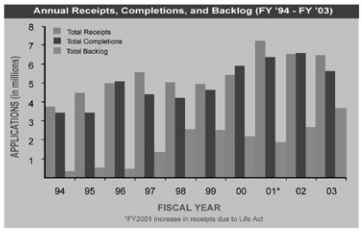
The new definition, in this Updated Plan, quantifies the backlog by basing the figure on the number of receipts during the previous number of months that corresponds with target cycle time (usually six) and the current pending count for a given application type. This calculated amount can then be used to assess and determine concrete production targets for backlogged application types and the resources necessary to meet those targets. Therefore, backlog is defined as the difference between pending and receipts for the number of months of target cycle time. (**Backlog = Pending – Last Six Months' receipts**).

This new definition of backlog better reflects the idea that as long as USCIS is processing its receipts within the designated target cycle time, there is no backlog for those applications as the pending count only reflects cases within our target cycle time.

This understanding of the differences between backlog and pending allows USCIS to estimate the size of the backlog. USCIS calculates the current backlog to be approximately 3.4 million cases as of the end of 2003. The inclusion of Asylum Division cases raises the backlog to about 3.7 million cases out of a total pending of about 6.1 million cases.

The figure in the upper right shows annual receipts, completions and the backlogs from 1994 - 2003. After leveling off in 1998 and decreasing between 1999 and 2001, the backlog has been increasing steadily since 2001.

As a result of the 1995 Asylum reforms, which established new strict timelines for Asylum Division adjudication, removed incentives for fraud and abuse of the system, and streamlined the Asylum process, Asylum Division applications are adjudicated in a regulatory context that is different from those governing other benefit applications in USCIS. Consequently, unlike in other USCIS workloads, priority must be placed on timely completion of new incoming Asylum Division applications over those applications filed prior to the reforms. The Asylum Division has worked cooperatively with the Department of Justice's Executive Office for Immigration Review (EOIR) to ensure that post-reform affirmative Asylum applications are completed in a timely manner. In order to meet this goal, the Asylum Division manages its resources such that at least 75% of the cases referred to the EOIR were filed less than sixty days prior to referral.



The term **backlog** has often been used interchangeable with the term **pending**. This led to an overstated, and often confusing understanding of the backlog.

The backlog is only that portion of the pending volume that is older than the target cycle time for the application (currently set at six months for most applications).

Since the 1995 reforms, the Asylum Division has been successful in keeping current with new Asylum receipts on a consistent basis, completing the vast majority of new Asylum applications within 60 days of receipt. By the end of 2003, most of the program's 262,118 pending Asylum applications consisted of old applications that have been pending since before the reforms were implemented. Moreover, the Asylum Division's productivity has increased 60% since 1999, enabling the program not only to keep pace with new receipts, but also to significantly reduce its pending caseload each year. The Asylum Division has decreased its pending caseload from 464,121 cases in 1995 to 262,118 at the end of 2003 – a 44% reduction. The Asylum Division projects that it will nearly complete its pending caseload by the end of 2006, in conformance with the timeline of the overall USCIS backlog elimination plan.

Understanding the Backlog

The following table indicates the percentage of a given application type's Pending count that is comprised of backlog cases (those cases that are above the cycle time goal). As indicated in the table, almost all application types have a backlog and the percentage of Pending that these backlog cases represent varies significantly from 20% to 83% with the Service-wide backlog comprising 61% of the Pending count. The higher the calculated percentage, the higher the number of backlog cases within a given form type's pending count, which serves as an indicator of problematic areas that management needs to target.

USCIS will ensure that all customers are provided an opportunity to receive a decision within six months or less. However, USCIS recognizes that even after the backlog is eliminated some cases may take longer than the target cycle time due to case specific issues. For example, USCIS has information that the applicant may be a threat to national security, danger to public safety, or participating in fraudulent activities; or USCIS is unable to determine statutory eligibility for a benefit because an applicant fails to act promptly to further the application process (e.g., submission of documents, appearance at interviews).

Backlog by Form (2003)

Form No.	Form Name	FY '03 End Pending	Backlog	Backlog as % of End Pending	FY '03 Average Cycle Time (months)	March '04 Average Cycle Time (months)	FY '06 Target Cycle Time (months)
I-90	Application to Replace Permanent Resident Card	764,939	411,156	54%	13	11	6
I-129	Petition for Nonimmigrant Worker	75,058	14,999	20%	2	2	2
I-130	Immigration Petition for Alien Relative	1,874,911	1,514,473	81%	31	35	6
I-131	Application for Travel Document - Advance Parole	79,624	2,497	3%	3	4	3
I-131	Application for Travel Document - Reentry Permit	137,950	99,055	72%	10	11	3
I-140	Immigration Petition for Alien Worker	67,581	20,840	31%	8	11	6
I-485	Application to Adjust Status	1,234,812	760,210	62%	22	23	6
I-539	Application to Extend/Change Status	146,295	65,418	45%	5	4	3
I-751	Petition to Remove Conditions on Residence	176,768	91,876	52%	15	15	6
I-765	Application for Employment Authorization	430,660	-	0%	2	2	3
I-821	Application for Temporary Protected Status	120,116	99,042	82%	28	15	6
N-400	Application for Naturalization	627,270	358,590	57%	14	14	6
N-600/N-643	Application for Certificate of Citizenship	43,284	11,212	26%	9	7	6
I-589	Asylum Application	262,118	217,800	83%	35[1]	35	6
I-881	NACARA 203 Application	47,923	32,852	69%	23	23	6
I-867	Credible Fear Referral	102	-	0%	15 days	15 days	15 days
TOTAL		**6,089,411**	**3,700,020**	**61%**			

Sources: USCIS Performance Analysis System (PAS), Refugee, Asylum and Parole System (RAPS), and Asylum Pre-Screening System (AAPS)

[1] This cycle time for asylum applications applies largely to cases in the backlog. New receipts have priority processing, and the majority of new asylum applications are processed within 60 days of receipt.

Understanding the Backlog

Productivity Improvements

Given current data on the backlog, productivity, and workload, USCIS must achieve a 19.6% increase in non-Asylum production to achieve cycle time goals and eliminate the backlog by the end of 2006. In addition, the Asylum Division must realize a 3.4% increase in production in order to achieve the same result. In order to achieve these productivity increases, USCIS will continue to:

- Reengineer processes and automate manual workflow processes wherever possible to achieve greater efficiencies;
- Update policies and procedures to streamline adjudications and increase the percentage of cases completed at initial review by an adjudicator;
- Manage production against milestones – beginning with collaboratively setting goals, reporting progress, and identifying additional improvement opportunities; and
- Work with the Office of the Ombudsman on pilot projects to test alternative processing approaches and new applications of proven off-the-shelf technology.

The following table illustrates the number of projected additional completions and the increase in production required to eliminate the backlog. The table below indicates the increase in productivity that USCIS needs to realize in order to fully eliminate the backlog.

As shown below, USCIS needs an overall increase in non-Asylum production capacity of approximately 19.6% to eliminate the backlog by the end of 2006 while the Asylum Division needs to increase its production by approximately 3.4%. USCIS believes the appropriate mechanism to achieve these productivity increases is through business process reengineering - not throwing additional staff at a broken process.

Additional Completions Needed to Eliminate the Backlog by 2006[1]

Form	Current Pending (FY '03)	Average Annual Receipts (FY '04 - '06)	Average Completions Needed Per Year	Additional Completions Needed Per Year Above Current Processing	Total Completions Needed a Month	Target Pending (FY '06)	Revised % Change in Monthly Completions
Non-Asylum	6,089,411	5,973,758	7,221,257	1,266,405	601,771	2,346,915	19.6%
Asylum	310,143	45,000	128,478	4,224	10,707	64,315	3.4%

[1] Includes non-Backlog Elimination Plan applications.

Improvement Initiatives

Significant gains need to be realized in productivity in order to meet the cycle-time targets discussed earlier in this plan. USCIS believes that it has a history of process improvements and that its leadership and talented workforce can meet these challenges with substantive process improvements that improve customer service, shorten cycle times and improve national security while adhering to a high level of quality. USCIS recognizes that continuing to perform business as usual will not result in success, so it has launched several initiatives to change the way in which it conducts business.

Below are six categories of initiatives aimed at eliminating backlogs, improving customer service, and enhancing national security.

Pilot Initiatives

Section 451 of the Homeland Security Act of 2002 authorizes the Director of USCIS to design and implement pilot initiatives for backlog elimination.

In addition, as authorized in Section 452 of the Homeland Security Act of 2002 USCIS is working with the Office of the Ombudsman to identify additional solutions, both Information Technology and workflow related, to improve customer service and reduce the backlog. The Ombudsman brings a new and unique perspective to improving processes and has been valuable in generating ideas for backlog elimination.

In February, USCIS began planning for several pilot projects that will reduce cycle time to the extent that interim benefits would not need to be issued. These pilots will be phased in during the third quarter of 2004 with the first scheduled to begin March 26, 2004. Successful pilots and subsequent national implementation will significantly reduce the amount of interim benefits USCIS would be required to issue, enabling a portion of the workforce to be redirected toward other backlog elimination activity.

Streamlining Process

Through process redesign efforts USCIS can dramatically decrease the cycle time on certain high-volume forms while ensuring the same level of integrity in the adjudicative process. Below are several process-reengineering efforts that will streamline existing procedures.

- **Risk Assessment.** USCIS believes that through the use of risk assessment, quality assurance and fraud indicators, significant progress can be made in a short period of time to realign our workforce such that those cases that truly require adjudicative attention can be more fully scrutinized, and those that meet certain eligibility criteria can be handled in a more streamlined manner.

- **Form I-90.** USCIS is reengineering the adjudicative process for cases that do not actually provide a new benefit or status to the applicant. For example, the Application to Replace Permanent Resident Card (Form I-90) merely serves to replace evidence of a status already provided. USCIS sees this adjudicative process as a verification of identity and status. Since identity is verified at the time of filing, the largest segment of the cycle time currently experienced is the time spent waiting for an available officer to review the application and verify status in the system.

  USCIS plans to use its electronic systems to call out those pending cases where permanent resident status is not recorded and focus its adjudicative resources on those cases. USCIS believes that reducing the time spent on the low or no-risk cases and focusing resources on the moderate to high-risk cases will strengthen adjudicative integrity. USCIS will implement this initiative with the support of the anti-fraud and quality components. If successful, this initiative would dramatically streamline the processing for nearly 1,000,000 applications annually.

- **Request for Evidence.** USCIS is currently in the process of analyzing and targeting for redesign the impediments to faster cycle times. For example, stakeholders have urged USCIS to review the frequency with which it requests additional evidence on certain case-types. USCIS has assembled an Action Team to determine where policies or regulations need to be clarified or modified to streamline adjudicative issues and ensure consistency. For example, applications that have historically experienced a 20-25% request for evidence rate have seen rates climb to 40% and sometimes over 50%. This not only increases cycle time, but it signifies that either applicants do not understand the eligibility requirements or there has been a shift in the way that adjudicators interpret those requirements.

  Through a two-pronged campaign aimed at clarifying requirements for adjudicators and providing information to prospective applicants, USCIS believes that it can substantially reduce the frequency with which its officers need to request additional evidence. USCIS anticipates that this effort will streamline processing for another 100,000 cases.

Improvement Initiatives

- **Form I-130.** USCIS has formed an Action Team to streamline the immigration process for eligible family members of United States citizens and permanent residents. The long-standing process first requires adjudication of a Petition for Alien Relative (Form I-130) to determine if a relationship exists that comports with the statute. Once that petition is approved, the applicant either files for adjustment of status to permanent resident in the United States or files for an immigrant visa abroad at a United States Embassy or Consulate, where the relationship issue is again adjudicated. USCIS is exploring ways in which to eliminate the duplicative effort that the current process mandates.

- **Pre-Certification.** USCIS is also developing a pre-certification program for employers of large numbers of temporary alien workers. Pre-certifying an employer would eliminate the need for USCIS to conduct background investigations on the employer's business viability and ability to pay the proffered wage every time that employer filed a petition for an immigrant or nonimmigrant worker. USCIS anticipates that several hundred large and mid-size companies will take advantage of this program in the first year alone.

- **Asylum.** In addition, USCIS has launched a pilot to expeditiously resolve a potentially significant number of cases in its pending Asylum caseload by determining whether certain applicants who are already eligible to apply for adjustment to lawful permanent resident (LPR) under special legislation still wish to pursue their Asylum applications. By identifying and efficiently closing applications filed by individuals who no longer wish to pursue their Asylum claims, USCIS can devote its resources to adjudicating new incoming applications or pending applications filed by individuals who are still interested in pursuing their Asylum claims.

These initiatives and others will provide USCIS the innovation it needs to ensure that cycle time goals are met. USCIS recognizes that any productivity enhancements must be carefully planned and monitored to ensure that process integrity and national security issues are not compromised in any way. Further, USCIS believes that these efforts to reduce cycle times and eliminate backlogs will actually further national security efforts.

Quality Initiatives

USCIS believes that the elimination of the backlog must come largely through enhanced processes rather than additional resources. It is imperative that the integrity of the benefits process not be compromised in the effort to stimulate additional productivity. Efforts to benchmark and assure quality are at the heart of every production initiative.

The USCIS quality program includes several key components:

- National Standard Operating Procedures (SOPs) for all major case-types and training for new and experienced officers have been promulgated as procedures are updated;

- The Naturalization Quality Procedures program (NQP), previously directed solely at ensuring integrity in the naturalization process, has been expanded to include all major form types, where processes are similar;

- USCIS continually works to update field manuals and has expanded access to an electronic library of immigration statutes, regulations, policies, and procedures;

- USCIS is piloting an end product review process at Service Centers to determine decision quality;

- USCIS continues its efforts to measure adherence to national standards in the Quality Assurance (QA) program in the naturalization process and has expanded this QA effort to include the adjustment of status process; and,

- USCIS has redesigned its internal communication procedures to ensure that all employees are provided with key information quickly and efficiently.

Additionally, USCIS has established a Headquarters component to oversee and coordinate quality assurance efforts and monitor the overall performance of operational components. By doing so, USCIS has consolidated quality initiatives and is poised to provide the direction necessary to aggressively expand quality assurance and improvement efforts nationwide.

Improvement Initiatives

Fraud Assessment and Deterrence Initiatives

USCIS understands that maintaining national security and deterring fraud are critical elements of its mission. To process these workloads, USCIS has established a Headquarters component responsible for working with the appropriate law enforcement entities in responding to national security hits on aliens who pose a threat to national security or public safety, and for identifying systemic fraud in the application process.

This component, in cooperation with U.S. Immigration and Customs Enforcement (ICE), will screen, identify, and refer cases involving suspected fraud and threats to public safety or national security to ICE for field investigation and enforcement action.

Anti-fraud efforts include developing standard operating procedures to aid field Adjudications staffs in identifying suspected fraud. These initiatives will better enable USCIS to identify applications that may involve fraud, deny benefits to aliens who commit fraud, and place those aliens in removal proceedings.

Refugee Corps

Currently, the Office of Refugee Operations (ORO) has neither the workforce nor the management structure needed to meet the processing challenges facing us overseas, particularly in the wake of the September 11, 2001, terrorist attacks and the resulting security mandates. ORO relies on temporary duty personnel borrowed from other USCIS programs, in particular the Asylum Program, to meet virtually all its processing responsibilities. However, processing widespread at-risk populations with the limited flexibility and resources provided by other programs with equally critical missions makes it increasingly difficult to meet our U.S. Refugee Program (USRP) responsibilities and admission goals.

The establishment of a Refugee Corps in 2004 with an expanded management support structure will provide a strong and effective overseas refugee processing program that will more efficiently identify inadmissible persons and those who are of national security interest without compromising the USRP's humanitarian objectives. A Refugee Corps will ensure responsiveness to USRP commitments and goals, while eliminating, except in exceptional circumstances, the need to draw on scarce domestic program resources. It will also ensure the quality and consistency of refugee adjudications and improve the detection of refugee application fraud and the identification of security concerns relating to refugee admissions.

Information Technology

Currently, USCIS uses multiple, disparate information systems with limited capabilities. The case processing systems are forms-driven, and reside on various hardware and software platforms that are not easily integrated. The use of multiple systems (both national and local) requires duplicate input of information, inhibits a consolidated view of a customer, and can deliver redundant and contradictory information. While the national and local systems may support one or more aspects of case processing in the USCIS, none support all of the operations associated with case processing.

Business process changes already identified to support long-term process efficiency will require a comprehensive upgrade to the USCIS computer systems, along with online training and education methods, and new IT investment strategies including public/ private partnerships.

USCIS has commenced the design phase of a new system, The Tracking Applications for Benefits System (TABS) that will remedy these shortfalls by delivering a repository of consolidated, end-to-end information for immigration applications. Centralized application information will allow USCIS to identify potential bottlenecks and more effectively plan resource allocation.

Additionally, the establishment of the Office of the Chief Information Officer (OCIO) will ensure that USCIS enterprise network infrastructure and strategies are aligned with that of the DHS Office of the CIO to ensure interoperability and compatibility of business applications while meeting USCIS mission and customer service objectives.

Milestones and Reporting

Backlog Elimination Milestones

The following table presents fiscal year backlog elimination milestones for each of the selected immigration benefit applications. USCIS will use these milestones to measure its performance.

Backlog Elimination Milestones							
Form No.	Form Name	FY '04 Completion Target	FY '05 Completion Target	FY '06 Completion Target	FY '04 Projected Cycle Time (months)	FY '05 Projected Cycle Time (months)	FY '06 Projected Cycle Time (months)
I-90	Application to Replace Permanent Resident Card	894,184	681,725	681,725	10	8	6
I-129	Petition for Nonimmigrant Worker	330,515	341,844	341,844	2	2	2
I-130	Immigration Petition for Alien Relative	883,517	1,503,957	1,272,579	30	16	6
I-131	Application for Travel Document - Advance Parole	315,936	305,835	305,835	3	3	3
I-131	Application for Travel Document - Reentry Permit	162,388	174,567	183,295	11	7	3
I-140	Immigration Petition for Alien Worker	98,160	105,227	105, 268	8	7	6
I-485	Application to Adjust Status	752,173	936,164	1,154,635	20	15	6
I-539	Application to Extend/Change Status	209,003	290,594	290,998	5	4	3
I-751	Petition to Remove Conditions on Residence	147,308	175,556	197,361	15	11	6
I-765	Application for Employment Authorization	1,701,947	1,770,000	1,770,000	3	3	3
I-821	Application for Temporary Protected Status	127,323	12,000	12,000	6	6	6
N-400	Application for Naturalization	587,671	666,667	666,667	14	10	6
N-600/N-643	Application for Certificate of Citizenship	63,850	69,947	69,947	8	7	6
I-589	Asylum Application	94,000	97,000	110,815	23	14	6
I-881	NACARA 203 Application	25,000	25,000	18,620	16	9	6
I-867	Credible Fear Referral	5,000	5,000	5,000	15 days	15 days	15 days
TOTAL		6,397,975	7,161,083	7,186,578			

Production Monitoring

USCIS will use its backlog elimination milestones to work with offices and service centers to establish production plans. USCIS will use these plans both to monitor office and service center progress toward the backlog elimination milestones and to plan for future activities. By tracking individual office production, USCIS can identify and resolve obstacles to increased production.

By regularly reviewing productivity factors and adjusting resource allocation and business processes, USCIS will ensure increased efficiency.

Reports

USCIS will provide Congress with quarterly progress reports on its Backlog Elimination achievements. The reports will show Bureau-wide, District Office and Service Center progress against the Backlog Elimination milestones for each of the forms identified in the report tables. The initial report will provide production data and show progress covering the first nine months of FY 2004, and will be provided to Congress during the fourth quarter of FY 2004. Reports will follow each quarter to provide updates to the Congress on progress made during the preceding three-month period.

Conclusion

To meet cycle time commitments by the end for 2006, USCIS will rely on reengineering processes, increasing the use of Information Technology to achieve greater efficiencies, updating policies and procedures to increase completion rates, managing against milestones, and working cooperatively with stakeholders to identify other means of improvement. USCIS will meet the President's goals no later than the end of 2006. This will include a focus on eliminating the backlog, improving customer service, and ensuring national security. USCIS also will intensify its anti-fraud efforts, enhance its quality program, and modernize its Information Technology systems that will be the backbone of reengineered business processes. The combination of these efforts and the dedication of its leadership and staff will ensure that USCIS provides the right benefit to the right person in the right amount of time.

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND RANKING MEMBER, SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

I have a personal interest in eliminating the immigration benefits applications backlog. Houston's backlog on benefits applications is one of the longest in the country, longer than in Boston, Los Angeles, and San Diego. Approximately 50,000 people in the Houston area are waiting for the processing of an immigration benefits application. For some, the wait has been as long as five years.

Bianca Springer has a graduate degree in conflict analysis and resolution. Last week, as she and her husband, Jerry, sat in an office of the U.S. Citizenship and Immigration Services (USCIS), she said that she should have pursued a degree in bureaucracy. She has been trying unsuccessfully to resolve issues around her immigration application since moving to Houston from Miami 18 months ago, where she originally filed the paperwork. She sees no end in sight. She has not even been able to confirm that her files are at the Houston office.

People also are experiencing difficulty in learning about the status of their applications. Suliman Al-Rasheed is a retired executive with Saudi Aramco, an energy company. In 2002, after taking an early retirement, he moved from Saudi Arabia to Houston with his wife, who is a U.S. citizen, and their infant son. Two years and more than $7,000 later, he still doesn't know his status. He has asked, "I want to start a business, am I going to be approved or not? Shall I pack up my family and go, or stay?"

New York is another place that is having serious backlog problems. The backlog of pending citizenship cases in New York exceeds 100,000, which is more than in any other district in the country.

A letter summoning Errol Taylor to be sworn in as a citizen on May 14 arrived at his Flatbush home more than a year after his interview and two years after he had applied for citizenship. This was too late for Mr. Taylor, a hospital worker who lived and worked in Brooklyn for decades after leaving Trinidad in 1975. He died in March.

The costs and consequences of the delays go beyond personal heartache. Businesses that rely on foreign professionals are facing logistical headaches and added legal costs to maintain their workforces. Family members sponsoring a relative have died while the process dragged on. Some immigrants have inadvertently lapsed into illegality because work permits or other papers have expired.

Part of the problem is that additional security checks have been implemented in reaction to 9/11. Before 9/11, the government only ran security checks on some kinds of immigration applicants, such as those seeking citizenship. Now, every applicant must undergo security screening, which has caused the workload to balloon. Also, matches on FBI name checks cause substantial delays when paper files must be checked to determine whether the benefits applicant is the person in the FBI files. While name matches only occur in a small percentage of the applications, the total number of affected cases is substantial.

We also have seen a rise in the number of applications. FY2001 was the peak year for the number of immigration and naturalization petitions filed (7.8 million). Although the numbers have dropped somewhat in FY2002 and FY2003, the 7 million petitions filed during each of these periods exceed the levels of the late 1990s. For the current year, as of April 2004, a total of 3.5 million immigration and naturalization petitions have been filed.

I am optimistic that lengthy processing delays will soon be a thing of the past. Under the leadership of Director Eduardo Aguirre, Jr., USCIS has developed a plan for reducing the backlog and bringing processing times down to no more than 6 months. Mr. Aguirre is aggressively working to modernize the processing system so that it can process benefits applications more quickly without compromising national security, and he has pledged to see that USCIS personnel treat everyone with dignity and respect. This is not surprising in view of the fact that he came to the United States as an immigrant himself. He has first hand knowledge of the difficulties that immigrants can face in our country. I am anxious to hear his statement on the details of the plan that he has developed to achieve these objectives. Thank you.

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

Chairman Hostettler and Ranking Member Jackson Lee, thank you for holding this very important hearing to discuss a serious problem that affects our constituents all across the country. I would also like to thank Citizenship and Immigration (CIS) Services Director Eduardo Aguirre for joining us today to help us understand the petition backlog problem that has long plagued the former Immigration and Naturalization Services (INS) and now the CIS.

Since I became a member of the Subcommittee on Immigration, I have tried in many ways to work with the former INS and now with the CIS to find ways to eliminate the backlog and create a system that could seamlessly adjudicate immigration petitions in a timely fashion. Each time, I have run into what appears to be unnecessary roadblocks.

In my latest attempt, 44 bipartisan Members of Congress from 18 states, including my colleagues in the Subcommittee on Immigration, Representatives Blackburn, Flake, Hart, Berman and Sanchez wrote to you, Director Aguirre, indicating the severity of this backlog problem.

In my home state of California, United States citizens have been separated from their spouses, parents, and even their children for at least a year just because of the backlog. It's worse in Nebraska and Texas where the wait is at least one and half years. United States companies seeking individuals with extraordinary ability have to wait between one to two years. These are scientists and researches with Nobel Prizes who will invent the cure for cancer or develop the next new technology to help our country lead in areas of research, science, and technology.

We have reached the twenty-first century, but our immigration services are still functioning in the twentieth century. CIS is operating on a paper-based system that is completely inefficient. Yet, the technology is available *today* to bring our immigration systems up to speed with the rest of this country. We continue to issue millions of paper I-94's making it virtually impossible to enter that information in appropriate databases. We have no biometric standard to help us secure the identification of immigrants and to provide a much more accurate system of cataloging immigration petitions. We have not been able to consolidate our databases to eliminate duplication, inefficiency, and more importantly, to help us identify those that seek to do us harm.

You can imagine my frustration with this inept system. Fixing immigration services must not only be a priority, it *must* be accomplished. As you know, each one of these backlogged petitions represents a United States citizen simply asking our government to allow them to be near their loved family member, or a United States company trying to bring in highly-qualified researchers, scholars, and other necessary employees. Every day that goes by with this backlog is another day lost with a loved one or another day where a United States business is unable to have a complete workforce that enables a strong American economy.

I look forward to this hearing and hope that this will finally be the turning point towards efficient, accurate, and secure immigration services.

LETTER TO U.S. CIS DIRECTOR EDUARDO AGUIRRE SUBMITTED BY THE HONORABLE ZOE LOFGREN

Congress of the United States
Washington, DC 20515

June 15, 2004

Director Eduardo Aguirre, Jr.
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
Washington, D.C.

Dear Director Aguirre:

In a recent hearing before the House Subcommittee on Immigration, you stated that you are currently developing a new plan to eliminate the growing immigration petition backlog. The Los Angeles Times also reported that the plan will shortly be completed and sent to Congress. We write to you today to express our anticipation for that report and, more importantly, a report on any progress you have made in reducing and eventually eliminating the backlog.

As you know, CIS recently reported that more than 6 million immigration petitions awaited processing in 2003. This is a 90% increase over the backlog in 1997 and almost a 20% increase from 2002. In addition, the Los Angeles Times reported that processing times have doubled and tripled for "green cards," naturalization, and employer petitions between 2001 and 2003. The processing time for a "green card" was almost three years in 2003.

We understand that the President initiated a five-year plan in 2001 to eliminate the backlog and reach a six-month processing goal by 2006. We also understand the difficult consequences of increased security screening due to 9/11 and the recent transition of immigration services to the Department of Homeland Security (DHS). We thus recognize that the five-year backlog reduction initiative developed before 9/11 needs to be revised.

Unfortunately, more than two years after 9/11 we have, as of yet, to see a new and/or revised plan of action on the backlog. Instead, all we see are increasing backlogs. Thus, we ask that you provide us with the details of such a plan, your new deadlines for reaching the six-month goal for processing petitions, and any progress you have made on that plan.

We look forward to working with you on this very important issue. As you know, each one of these backlogged petitions represent a citizen, U.S. employer, or legal permanent resident waiting years for a response from their government on behalf of a family member or employee. Our constituents shouldn't have to wait any longer.

Sincerely,

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Jan Schakowsky | Gene Green
Dennis Moore | Joe Baca
Jeff Flake | Peter DeFazio
Robert Wexler | Anna Eshoo
Hal Rogers | Patrick J. Tiberi
Mac Collins | Ed Case
Hilda L. Solis | Michael Honda
Melissa Hart | Karen McCarthy
Michael E. Capuano | Loretta Sanchez

Jim Moran

Howard L. Berman

George Miller

Lynn C. Woolsey

Juan V. Gutierrez

Howard Coble

Bob Filner

David Price

Mike Ferguson

Diane E. Watson

Sam Farr

Betty McCollum

Tony Beilenson

Stephanie Tubbs Jones

Lincoln D. Stark

Jim McDermott Ellen O. Tauscher

Grace F. Napolitano Linda Sánchez

William D. Delahunt Jerry Nadler

Key to Signatures of Members of Congress:

Page 1:

Zoe Lofgren (CA –16)
Marsha Blackburn (TN – 07)

Page 2:

Jan Schakowsky (IL-09)
Dennis Moore (KS – 03)
Jeff Flake (AZ – 06)
Robert Wexler (FL –19)
Lloyd Doggett (TX –10)
Mark Udall (CO – 02)
Hilda Solis (CA –32)
Melissa Hart (PA – 04)
Michael E. Capuano (MA – 08)
Adam B. Schiff (CA – 29)
Joe Baca (CA –43)
Pete Stark (CA – 13)
Anna Eshoo (CA –14)
Patrick J. Tiberi (OH – 12)
Ed Case (HI – 02)
Michael M. Honda (CA – 15)
Karen McCarthy (MO – 05)
Loretta Sanchez (CA – 47)

Page 3:

Jim Moran (VA – 08)
Jerry Kleczka (WI – 04)
Henry A. Waxman (CA – 30)
Lynn Woolsey (CA – 06)
Howard Coble (NC – 06)
David Price (NC – 04)
Diane E. Watson (CA –33)
Betty McCollum (MN – 04)
Stephanie Tubbs Jones (OH – 11)
Edolphus Towns (NY – 10)
Howard L. Berman (CA – 28)
George Miller (CA – 07)
Luis V. Gutierrez (IL – 04)
Bob Filner (CA – 51)
Martin Frost (TX – 24)
Sam Farr (CA – 17)
Tammy Baldwin (WI – 02)
Linda T. Sanchez (CA – 39)

Page 4:

Jim McDermott (WA – 07)
Grace F. Napolitano (CA – 38)
William Delahunt (MA – 10)
Ellen O. Tauscher (CA – 10)
Ciro D. Rodriguez (TX – 28)
Jim Turner (TX – 02)

PREPARED STATEMENT OF THE HONORABLE LINDA T. SÁNCHEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

INTRODUCTION

I'd like to thank Chairman Hostettler and also Ranking Member Jackson Lee for today's hearing. The issue that we are examining today, the immigration backlog and its detrimental impacts, is an issue that my Democratic colleagues and I have said over and over again it critical to fixing our broken immigration system.

We made backlog reduction one of the top priorities of the SOLVE Act (H.R. 4262), that we introduced on May 4th. And I urge the Chairman will follow up this hearing on reducing the immigration backlog with a markup of the SOLVE Act, so we can make immigration backlog reduction the law.

We need to reduce the immigration backlog because the processing delays are keeping immigrant families apart for years, sometimes decades. Thousands of immigrants follow the rules and submit their visa applications like they're supposed to, only to end up waiting for years to reunite with their spouses, children, or parents because of the backlog. One of the main reasons why immigrants come here illegally is to reunite with members of their family. Simply put, the visa backlog is one of the main causes of illegal immigration in this country.

And what is the Administration doing about the backlog problem? If you've read the papers lately, you'd think their solution was to perform random immigration sweeps.

STORIES ABOUT SWEEPS

Last week, there were several newspaper reports that more than 200 immigrants were arrested in the Inland Empire in Southern California. According to reports federal agents were interrogating and arresting immigrants outside supermarkets, outside restaurants, as they got off buses on their way to work, and they were even stopping cars at roadside checkpoints.

Any person of Hispanic appearance or descent was a target of the sweeps. The agents stopped a Pasadena City College student, legally in the U.S. on a student visa, and interrogated him on the street about his immigration papers. The agents then drove the student to his home and forced him to produce his student visa papers to prove he was legal. In another incident, a latina waitress named Lourdes Rangel, a U.S. citizen, witnessed men in white vans stopping cars and interrogating drivers. Some of the agents questioned her and demanded she show them proof of her citizenship.

These extreme and senseless arrests do nothing to fix our immigration system. The only thing they do is to create fear and panic in our local communities. A school in Pasadena reported that 30% of the students skipped school. Restaurants, stores, and doctors offices were empty last week. Many said they were inundated with calls asking if it was safe to come and buy food and clothes or get medical care.

The sweeps were obviously based on racial profiling and not on any evidence that the victims were in the country illegally. The U.S. Bureau of Customs and Border Protection claims the sweeps were neither racial profiling nor an agency-wide policy. But I find it hard to believe race didn't play a factor in the interrogations when 90% of the arrests were of Mexican nationals. MALDEF is investigating the sweeps to see if the sweeps violated the victims due process rights or were unreasonable searches and seizures.

FAILED ADMINISTRATION EFFORTS TO REDUCE THE BACKLOG

Constitutional violations and random race-based arrests are not the way to deal with illegal immigration. The Administration's $500 million initiative to reduce the visa backlog to 6-month processing time by 2006 is an excellent idea, and I urge the President and his Administration to make sure this idea becomes a reality.

Likewise I urge the President to give the same priority to backlog reduction as he does to efforts to deport hard-working, law-abiding immigrants. The last time Mr. Aguirre testified before this Subcommittee we discussed how only $60 million in additional funds were proposed for backlog reduction in the President's DHS FY 2005 budget proposal. This sum paled by comparison to the $281 million for "enforcement" programs in the President's budget proposal.

We need to make visa backlog reduction a much higher priority. There are 6 million visa applications waiting to be processed. That equates to millions of separated families, and the possibility for millions of immigrants to fall into illegal status. Processing these applications in a timely way is just as important as enforcement efforts to fixing our immigration system and making our borders safe and secure.

I hope that this time next year, Mr. Aguirre is testifying before this Subcommittee and telling us how successful the reduction plan is, that the backlog has already been dropped by 50%, and will be at zero in 2006.

CONCLUSION

Again, I thank the Chairman and Ranking Member for convening this hearing. I also thank our witnesses for taking the time to come here and give us their testimony about how to fix the visa backlog problem.

Mr. Chairman, I am working on a letter to President Bush and Secretary Ridge expressing concern about the immigration sweeps in Los Angeles. The letter will be completed shortly and I ask unanimous consent to submit that letter, as well as a letter from the Congressional Hispanic Caucus addressing the same issue, into the record for this Subcommittee hearing.

Thank you and I yield back.

LETTER TO PRESIDENT GEORGE W. BUSH AND THE HONORABLE TOM RIDGE, SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY, SUBMITTED BY THE HONORABLE LINDA T. SÁNCHEZ

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ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
LINDA T. SÁNCHEZ, California

June 18, 2004

President George W. Bush
The White House
Washington, D.C. 20500

The Honorable Tom Ridge
Secretary
U.S. Department of Homeland Security
Nebraska Avenue Complex
Washington D.C., 20393

Dear President Bush and Secretary Ridge:

As Members of the House Committee on the Judiciary, we write to express our serious concerns with the recent disruptive enforcement actions the Border Patrol has undertaken in the California counties of Los Angeles, Riverside and San Bernardino, and urge their immediate halt.

Border Patrol agents reportedly have questioned pedestrians in crowded residential communities and places of work and, to date, detained 410 people. These actions, which have caused chaos and fear to spread throughout immigrant communities, reportedly are based on Secretary Bonner's ill-considered decision to override an August 8, 2003 memo issued by the San Diego Border Patrol chief William Veal. This memo had reaffirmed a "long standing agency policy" that prevented Border Patrol agents from conducting sweeps near residential areas and places of employment.

Given the negative impacts these enforcement actions are having and the many uncertainties and questions they raise, please address the following issues:

- What is the legal authority for the Border Patrol undertaking these interior sweeps?
- What are the goals of these sweeps?
- How do agents identify people who are targets of these sweeps? The settings of these questions lead to the inevitable conclusion that people have been targeted based on ethnic profiling.

President George W. Bush
The Honorable Tom Ridge
Page Two
June 18, 2004

- Patrol officials have said that all arrests were based on "consensual conversations." How and when were the targets advised that they had the right not to consent to these "conversations?"

- How long does the Border Patrol plan to undertake these interior sweeps? Are there plans to expand this initiative to other parts of the country?

- Given the Border Patrol's limited resources, how can you justify taking agents away from the border?

- Why are our precious resources being used against immigrant families who you said "bring to America the values of faith in God, love of family, hard work and self reliance" rather than on high-risk individuals who mean to do us harm?

The Border Patrol initiatives in Southern California appear to return our nation to problematic enforcement actions that occurred regularly in the late 1970s and 1980s. However, we live today in different times which demand different solutions. Instead of implementing problematic initiatives, we urge your Administration to work with us to reform our immigration laws. Most now agree that our immigration system is broken and needs to be fixed and that enforcing dysfunctional laws leads only to more dysfunction.

President Bush, in your January 7 statement on the need to reform our immigration laws you emphasized that "As a nation that values immigration and depends on immigration, we should have immigration laws that work and make us proud. Yet today we do not." The Border Patrol's recent enforcement actions take our nation even further from having immigration laws that " work and make us proud."

We urge you to immediately halt these ill-considered enforcement actions and work with us on undertaking those reforms of our immigration system that our nation so badly needs.

Sincerely,

Linda T. Sánchez

John Conyers, Jr.

Howard Berman

Sheila Jackson Lee

President George W. Bush
The Honorable Tom Ridge
Page Three
June 18, 2004

Maxine Waters

Robert Wexler

Adam B. Schiff

cc: Honorable F. James Sensenbrenner, Jr.

The Honorable Asa Hutchinson
Undersecretary
Border and Transportation Security

The Honorable Robert Bonner
Commissioner
Bureau of Customs and Border Protection

LETTER TO ROBERT BONNER, COMMISSIONER, BUREAU OF CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY, SUBMITTED BY THE HONORABLE LINDA T. SÁNCHEZ

Congress of the United States
House of Representatives
Washington, DC 20515

June 15, 2004

Mr. Robert Bonner
Commissioner
Bureau of Customs and Border Protection
Department of Homeland Security
1300 Pennsylvania Avenue, NW
Washington, DC 20229

Dear Commissioner Bonner:

As Members of the Congressional Hispanic Caucus, we write to express our serious concern with your department's expansion of jurisdiction from enforcement of civil immigration law at the border to interior enforcement in Hispanic residential and commercial neighborhoods well outside of the border region.

Last weekend, the San Diego office of the Bureau of Customs and Border Protection (BCBP) conducted sweeps in the Inland Empire. A number of agents engaged pedestrians on the street and drivers at checkpoints to question them about their immigration status. Hundreds of people, including U.S. citizens, were asked to produce their documents and as a result, approximately 150 local residents were arrested. While national security priorities are cited as the necessary reason to allow border patrol to move into neighborhoods, it is worthy to note that none of the arrests were related to national security concerns or terrorism. We request that you meet with the Caucus at the earliest available time to explain the changes in policy that led to this troubling enforcement tactic.

It is our understanding that the origin of these new policies were outlined in a letter dated August 15, 2003, wherein you authorized Border Patrol agents in San Diego to question people on city streets and workplaces about their immigration status. Your decision overrides an August 8, 2003, memo issued by San Diego Border Patrol chief William Veal which reaffirmed a "long standing agency policy" preventing Border Patrol agents from conducting sweeps near residential areas and places of employment. We are deeply troubled by the reversal of the longstanding Veal directive that is sensibly based on legal precedent supporting community safety and just access to social services.

The result of expanded jurisdiction will be that communities are less likely to interact positively with law enforcement officials. The sweep in Ontario led to rumors of checkpoints all over Southern California, and that in turn led to parents not sending their children to school, people refusing to go to work, and people not tending to medical emergencies. The human costs of terrifying and targeting minority and immigrant communities far outweigh the need for your agents to find new roles in the enforcement of civil immigration law. Therefore, we request that your enforcement actions, at a minimum, maintain constitutional standards, not endanger safety in the community, and not prevent access to legitimate commerce or social services.

Thank you in advance for taking these views into consideration. We expect a timely written response to the issues and requests addressed in this letter.

Sincerely,

CIRO RODRIGUEZ
Chairman, Congressional Hispanic Caucus

LUIS GUTIERREZ
Chair, Immigration Task Force

JOE BACA
Member of Congress

PRINTED ON RECYCLED PAPER

Ed Pastor

Robert Menendez

Hilda L. Solis

Raúl M. Grijalva

Lucille Roybal-Allard

Rubén Hinojosa

Tony Cárdenas

PREPARED STATEMENT OF THE HONORABLE STEVE KING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

I make these remarks in response to the opening statement of the gentle lady from California, Ms. Sánchez, in the Subcommittee on Immigration, Border Security, and Claims Hearing on Immigration Backlog on June 16, 2004.

I wholly support an immigration policy designed to enhance the economic, social and cultural well-being of the United States of America. Immigrants have made, and will continue to make, a valuable contribution to our nation. The values shared by our civilization, founded on a heritage of western civilization religious freedom and free enterprise capitalism, serve immigrants and native-born alike.

As a sovereign nation, we must control our borders. We must ensure that terrorists do not infiltrate the United States. We must tighten and strengthen border control efforts so that illegal aliens do not enter our country. Perhaps most our important, yet most neglected duty is the enforcement of our immigration laws in the interior of our country.

Ms. Sánchez stated that, after a recent immigration sweep in which over 200 illegal aliens were arrested, the supermarkets, restaurants, and doctors offices were empty, and that thirty percent of students in a school in Pasadena were absent from school. I must admit, I am a bit baffled about the point of Ms. Sánchez's story. If people are in our country legally and have the proper, required documentation, they should have no fear of immigration law enforcement efforts. If, by chance, they are improperly deported, as Director Aguirre explained, they would be the first allowed to reenter. In reality, however, we all know how long deportation proceedings last and how many opportunities a legal immigrant would have to prove his or her legal status before being deported.

Ms. Sánchez set forth the argument that recent interior enforcement in her home state of California has been based solely on racial profiling, not on any evidence that those who are stopped were in the country illegally. Here is how I see this situation: Our immigration policy exists to distinguish between those who are American citizens or those who are in our country legally and those who are not. Asking those who are or appear to be of another nationality to prove their legal status is not racial profiling—it's smart law enforcement and it protects our nation's security.

In order for our immigration laws to have any effect, illegal aliens must know, in no uncertain terms, that we intend to enforce those laws. If caught, no matter how, they will be deported as soon as possible. Legal immigrants who have the proper documentation have nothing to fear from our system.

I hope that this Congress will be vigilant in our oversight of the enforcement of existing immigration laws and make necessary changes to existing laws. Thank you.

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND RANKING MEMBER, SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

We had a hearing on the backlog of immigration benefits applications last week at which the Director of the U.S. Citizenship and Immigration Services (USCIS), Eduardo Aguirre, Jr., presented a Backlog Elimination Plan. Today, we will hear about how the backlog affects people who are waiting for applications to be processed, and we will hear views on the Backlog Elimination Plan. Also, the Citizenship and Immigration Services Ombudsman, Prakash Khatri, will present the first Ombudsman's Annual Report. His office is a separate entity within the Department of Homeland Security (DHS). The benefits applications backlog is one of many issues that his office addresses.

As of the end of 2003, USCIS had more than 6 million benefits applications. It would not be appropriate to consider all of these applications backlog cases. USCIS defines "backlog cases" as applications that have exceed their cycle time. A "cycle time" is the number of months that an application should take to process. The cycle time for a naturalization application or an application for adjustment of status is 6 months. Other applications have shorter cycle times, but none has a cycle time that is longer than 6 months. Using this definition, USCIS calculated that the backlog at the end of 2003 was approximately 3.7 million cases.

In order to eliminate this backlog, USCIS plans to re-engineer and automate workflow processes to achieve greater efficiencies; update policies and procedures to streamline adjudications and increase the percentage of cases completed at initial review by an adjudicator; manage production against milestones; and, work with the Office of the Ombudsman on pilot projects to test alternative processing approaches and new applications of proven off-the-shelf technology. According to Director Aguirre, USCIS will eliminate the backlog by the end of FY2006.

Director Aguirre has assured us that he will include quality controls in implementing the Backlog Elimination Plan. I think that it is particularly important to ensure that the increased attention to production rates does not adversely affect the quality of initial level decision-making. I would not like to see an increased need for appellate review on account of hastily rendered initial decisions.

The milestone system is one of the most important parts of this plan. USCIS will set these production goals for measuring its progress and issue quarterly reports on whether the goals are being achieved. I am hopeful that these evaluations will be effective in keeping the plan on track. I have some concerns, however, about what USCIS will do if the milestones are not reached. It takes time to obtain additional resources. For instance, if USCIS needs additional personnel, it will have to recruit and train new personnel before they can help in eliminating the backlog.

I also am concerned about the difficulty that people are having in getting information about their benefits applications. Prior to June 9, 2003, calls could be made to immigration officers at Service Centers to ask questions about the status of cases, to clarify and correct problems, and to inquire about filing procedures. Now, inquiries are made through an 1–800 number system. This system does not provide a meaningful source of information. As outside contractors, the 800 number operators usually are unfamiliar with immigration laws and procedures. They are given very basic scripts from which to field calls, and they only have access to information already provided on the USCIS website's case status inquiry pages.

The 800 number operators can transfer calls to a Second Tier information officer, but the operators are restricted as to the types of cases that they can refer to the Second Tier. Also, I have heard claims that the Second Tier officers frequently just tell callers to write a letter to the Service Center.

I urge USCIS to work with the Ombudsman, Mr. Khatri, to develop other solutions. For instance, my office has heard considerable praise for a division within the California Service Center that is devoted exclusively to answering public inquiries about pending cases and helping to resolve problems.

Thank you.

LETTER FROM THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION (AILA), SUBMITTED BY PAUL ZULKIE

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

June 16, 2004

Dear Representatives:

The American Immigration Lawyers Association urges you to support an amendment that Representative Lucille Roybal-Allard will introduce to H.R. 4567, the FY05 Department of Homeland Security Appropriations Act. This narrowly crafted amendment would prevent the ill-conceived contracting out of positions that are inherently governmental at the Bureau of Citizenship and Immigration Services (CIS) of the Department of Homeland Security (DHS). Specifically, the amendment would prohibit the use of appropriated funds to process or approve a competitive sourcing action under OMB Circular A-76 for a function provided as of January 1, 2004 by employees who are Immigration Information Officers (IIOs), Contact Representatives, or Investigative Assistants.

Contracting out these functions is an idea whose time has not come. The attached letter from a broad range of groups that strongly oppose contracting out the IIO function underscores the serious issues of sufficiency of knowledge, accountability and efficiency raised by outsourcing these functions. We urge you to oppose such contracting out because:

- **These functions are inherently governmental**: The workload of Immigration Information Officers (IIOs), Contact Representatives, or Investigative Assistants are inherently governmental and therefore must be performed by federal employees;

- **Immigration is very complicated and inadequate knowledge can led to dire consequences:** Immigration law is very complicated and contractors do not have the requisite knowledge and training. Such knowledge cannot be taught through lists and scripts. And the consequences can be severe if inaccurate or incomplete information is given.

- **Past experiences with contracting out have been problematic**. Contracting out the 1-800 number system has resulted in problems that have ranged from the frustrating to truly damaging.

- **Contracting out these functions raises security concerns**: Immigration officers review applications, conduct criminal background checks, and search for fraud. They are on the front line to make sure we are safe. As such, these positions must be filled by federal employees who are clearly accountable to the agency within which they work.

- **Contracting out will damage backlog reduction efforts:** In many immigration offices, IIOs also perform basic adjudications functions, freeing adjudicators to handle more complex cases while giving the IIOs background in how the functions are performed. Contractors cannot

perform adjudications. Thus, this important supplement to the adjudications workforce would be lost, further hampering backlog reduction efforts.

- **Contracting out has led to neither efficiencies nor cost savings**: The only way contracting out could produce cost savings is if the agency could thereby provide less service. In fact, past and current contracting out has lead to increases in inefficiencies and increased costs that have required the Service Centers to allocate personnel to deal with contractors' errors and, in many instances, redo the contractors' work. Supervisors often have had to spend more time monitoring contracted employees, "shadowing" them to try and make sure they do not make errors. And when they do make errors, these errors ripple through the entire system, often forcing additional, unnecessary work and often negative consequences for individuals who should be able to expect some adequate level of service.

We strongly urge you to support the Roybal-Allard amendment. Please contact Judith Golub at 202-216-2403 with any questions. Thank you.

Sincerely,

Jeanne Butterfield
Executive Director

Judith Golub
Senior Director, Advocacy and Public Affairs

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September 4, 2003

The Honorable Tom Ridge
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

The Honorable Eduardo Aguirre, Jr.
Director
Bureau of Citizenship and Immigration Services
U.S. Department of Homeland Security
425 Eye St. NW
Washington, DC 20536

Dear Messrs. Ridge and Aguirre:

The undersigned organizations strongly urge you not to outsource the BCIS Immigration Information Officer (IIO) function. To do so would raise serious issues of sufficiency of knowledge, accountability, and efficiency. Clearly, the problem-laden immigration benefits system is badly in need of change. However, outsourcing IIOs will only worsen the situation for individual applicants and ultimately affect the public accountability of BCIS. Instead, we urge you to review the information function's internal structure and resource allocation, rather than take the seemingly easy, but ultimately harmful, step of outsourcing this key operation.

Problems with Contractors: Two examples of the current use of outside contractors bode ill for expanding this practice to the IIO function. First, service centers now use contractors to provide intake of filings. Contracting out this function has led to filings being rejected because contractors do not understand immigration rules, erroneous entry of data because the contractors do not understand the nature of what is being entered---data that then haunts the case throughout the process, and separation or removal of documents in the mail room because the contractors do not understand the nature of the documents.

Recent experience with the BCIS' National Customer Service Center (NCSC) offers another example of the negative impacts of contracting out immigration functions, and the differences that result from using an outside contractor rather than a trained BCIS employee. Until just a few months ago, BCIS-employed IIOs at the service centers handled inquiries about problems encountered with individual cases. In June, all such telephone access was cut off, with all inquirers instructed to call the NCSC's 800 number. The contrast has been profound, with resulting problems ranging from the frustrating and time-wasting to truly damaging errors. Before the June changeover, IIOs readily solved the majority of these problems. Operators who now answer the calls know nothing about the subject of the call and rarely provide assistance. These operators work from scripts, frequently cannot even identify which script they should be using, and are rarely able to provide meaningful assistance. In fact, they often provide answers that convey a clear misunderstanding of the subject matter with which they are dealing.

Knowledge: Because the vast majority of those who file applications with BCIS are unrepresented, most must find their own way through an astonishingly complex system, with their first, and often only, contact being the Information Officer who provides them with the appropriate forms and advice on how to navigate the process. These officers are trained in immigration, and are supported by others who provide information when needed. In contrast, in those instances in which INS/BCIS has used contractors, they have received inadequate training or, perhaps more importantly, lack substantive back-up and support. While direct employees, like everyone, also can make errors, the volume and severity of the errors tend to be lower when the employee is trained and supervised by persons with knowledge in the field.

Knowledge of immigration is important: even determining what form to dispense involves understanding the person's immigration situation and what is needed to resolve the situation. This knowledge cannot be taught through lists and scripts: officers must understand the myriad of situations with which they are daily presented, and have a line of command that can help resolve the situation.

People's lives depend on accurate information from government agencies, especially when immigration is involved. Using a contractor for the very function by which this information is disseminated will affect BCIS' credibility in all reaches of this society.

Accountability: Contracted personnel do not possess this knowledge. Nor, given past practice, will they be held accountable for the quality of their work. Rather, they will be held accountable only for the number of inquiries answered each day. Currently, because service center intake contractors do not report to the service center managers, the BCIS managers are unable to direct the contractors' day-to-day work, and the contractors' managers have no immigration background. The result is that contractors are accountable to BCIS management only for production output quotas, and not for work content. Such a situation is irrational when the very essence of the job is the subject matter of the agency.

This lack of accountability has created enough problems with work that does not require immigration knowledge: opening mail and inputting initial data at the service centers, the work of the current contractors. By contrast, IIO work involves almost 100% knowledge of immigration.

Again, we have already seen this problem manifested in the 800 number. Many callers are abruptly cut short or hung up on before their problem can be addressed, undoubtedly because operators are more concerned with meeting production quotas, the area for which they are held accountable, than with providing accurate information -- an area for which it is nearly impossible to make an outside contractor accountable.

Efficiency And Cost Savings: Past use of outsourcing immigration service functions has not led to efficiencies or cost savings because service centers have had to respond to contractors' errors in inputting data by requiring their own employees to check their work and, in many instances, re-do it. Because employees with the requisite knowledge and accountability have had to perform part of the contractor's work, a significant proportion of the anticipated savings from using contractors has been lost because direct employees have had to "shadow" that work. Such shadowing often has not reflected in the studies of cost savings from outsourcing, yet reflects a significant agency cost.

Outsourcing is not the solution: Much needs to be done to improve the BCIS' customer service operation, but the use of outsourcing is plainly not the solution. As noted above, we urge you to look at the internal structure and resource allocation for the information function.

Sincerely,

National Organizations

American-Arab Anti-Discrimination Committee (ADC)
American Friends Service Committee
American Immigration Lawyers Association
Arab American Institute
Asian Law Caucus
Episcopal Migration Ministries
Hebrew Immigrant Aid Society (HIAS)
Immigrant Legal Resource Center
Immigration and Refugee Services of America/U.S. Committee for Refugees
League of United Latin American Citizens (LULAC)
Lesbian and Gay Immigration Rights Task Force
Lutheran Immigration and Refugee Service (LIRS)
National Asian Pacific American Legal Consortium
National Council of La Raza
National Immigration Forum
United Jewish Communities
World Relief

Local Organizations

Alivio Medical Center (Chicago, IL)
Arab-American Family Support Center, Inc. (Brooklyn, NY)
Arab Community Center for Economic & Social Services (ACCESS) (Dearborn, MI)
Asian Pacific American Legal Center of Southern California
Association of the Jews from the FSU (Milwaukee, WI)
Brazilian Immigrant Center (Allston, MA)
Center for Hispanic Policy & Advocacy, CHisPA (Providence, RI)
Centro Presente, Inc. (Cambridge, MA)
Centro Salvadoreno (Hempstead, NY)
Florida Immigrant Advocacy Center, Inc. (Miami, FL)
Hispanic Chamber of Commerce of Minnesota
Hispanic Democrats (Mecklenburg County, NC)
Illinois Coalition for Immigrant and Refugee Rights (Chicago, IL)
Immigrant Rights Network of Iowa and Nebraska
Independent Monitoring Board (Chicago, IL)
International Institute of New Jersey (Jersey City, NJ)
Jewish Family Services (Milwaukee, WI)
La Esperanza, Inc. (Georgetown, DE)
Labor Council for Latin American Advancement, Massachusetts Chapter
Latin American Community Center (Wilmington, DE)
Maine Rural Workers Coalition
Massachusetts Immigrant and Refugee Advocacy Coalition (MIRA)

Massachusetts Law Reform Institute (Boston, MA)
Milwaukee Jewish Council (Milwaukee, WI)
Na Loio - Immigrant Rights and Public Interest Legal Center (Honolulu, HI)
Nebraska Mexican American Commission (Lincoln, NE)
Nevada Hispanic Services, Inc.
New Immigrant Community Empowerment (NICE) (Jackson Heights, NY)
Northwest Immigrant Rights Project
PROGRESO HISPANO (Alexandria, VA)
Rhode Island Coalition for Immigrants and Refugees
St Francis House (Boston, MA)
Shorefront YM-YWHA of Brighton-Manhattan Beach, Inc. (Brooklyn, NY)
Southeast Asian Mutual Assistance Associations Coalition (Philadelphia, PA)
Southwest Iowa Latino Resource Center (Red Oak, IA)
Voces de la Frontera: Workers Center (Milwaukee, WI)
Washington Defender Association's Immigration Project (Seattle, WA)

28dhs3017A

LETTER TO THE HONORABLE EDUARDO AGUIRRE, JR., DIRECTOR, BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES (BCIS), SUBMITTED BY PAUL ZULKIE

September 4, 2003

The Honorable Eduardo Aguirre, Jr.
Director
Bureau of Citizenship and Immigration Services
Department of Homeland Security
425 I Street, N.W.
Washington, D.C. 20536

Dear Mr. Aguirre:

The undersigned organizations write to urge you to restore direct telephone access to the Bureau of Citizenship and Immigration Services (BCIS) Service Centers and discontinue the recent policy change that prohibits this access and contracts out much of this function.

The prompt adjudication of applications and petitions is critical for American business, for families awaiting reunification, and, most importantly, for our national security. In doing away with direct telephone access to the Service Centers, the BCIS has exacerbated already lengthy processing delays and made it much more difficult to obtain accurate, timely information. And contracting out this function has lead to problems that range from the frustrating to the tragic. Moreover, Congressional offices are being forced to fill the information void, as individuals resort to contacting their elected officials with their case-processing and informational requests.

As you are aware, until June 9, 2003, the general public and attorneys could contact representatives at the legacy INS/BCIS Service Centers to ask questions about the status of their cases, clarify and correct problems, and inquire about filing procedures. While this system was infamous for the length of time required to get through to an Immigration Information Officer (IIO), nevertheless, once connected with an IIO, problems and questions, including emergency case problems, were addressed. Beginning on June 9, the BCIS cut off direct phone access to the Service Centers and mandated that callers (both the general public and attorneys) make inquiries through a 1-800 number system.

As structured, the new system does not provide a meaningful way to resolve problems. As outside contractors, the 800 number operators are unfamiliar with immigration. They are given very basic "scripts" from which to field calls, and have access only to information already provided on the BCIS website's case status inquiry system. In other words, they cannot tell callers anything more than what callers can see on-line.

While the new system allows 800 number operators to transfer calls to a "Second Tier" information officer, a BCIS employee who is familiar with immigration issues, or can take information from callers in order to refer the inquiry to the appropriate Service Center, these options have not helped to address problems and do not allow immediate action on emergency cases, such as an aging-out child. Operators are restricted as to the types of cases that they can refer to the Service Centers or to Tier 2, and often direct callers to write a letter to the Service Center after informing them that there isn't anything the operator can do. However, letters to Service Centers often go unanswered or, at best, languish for months before a response is received. In the event that a caller's request falls within the designated types of problems that can be referred, the caller is then told to wait for 30 days. If no response is received within that time frame, the caller is directed to call the 800 number again. In many cases, no response is received, or the response is non-informative.

The 800 number system also cannot correct inaccurate information on an approval notice. In the past, individuals could call the Service Center to request that such errors be corrected, and a new approval notice could be issued the same day or within just a few days. (Individuals who must apply for visas at U.S. Consulates or travel abroad and return to the United States must have approval notices that are, for security reasons, 100% accurate.)

Finally, 800 number operators have given inaccurate information to callers (which could severely damage the foreign national's immigration status) and many people have complained that operators are rude and hung up on them.

The 800 number system is a failure. We urge you to restore direct telephone access to the Service Centers so that individuals can gain the information they need and resolve case processing problems directly with a knowledgeable Immigration Information Officer (IIO).

Respectfully,

National Organizations

American-Arab Anti-Discrimination Committee (ADC)
American Friends Service Committee
American Immigration Lawyers Association
Asian Law Caucus
Episcopal Migration Ministries
Hebrew Immigrant Aid Society (HIAS)
Immigrant Legal Resource Center
Immigration and Refugee Services of America/U.S. Committee for Refugees
Labor Council for Latin American Advancement
League of United Latin American Citizens (LULAC)
Lesbian and Gay Immigration Rights Task Force
Lutheran Immigration and Refugee Service (LIRS)
National Asian Pacific American Legal Consortium
National Council of La Raza
National Immigration Forum
Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC (UNITE)
United Jewish Communities
World Relief

Local Organizations

Alivio Medical Center (Chicago, IL)
Arab-American Family Support Center, Inc. (Brooklyn, NY)
Arab Community Center for Economic & Social Services (ACCESS) (Dearborn, Michigan)
Asian Pacific American Legal Center of Southern California
Association House of Chicago
Association of the Jews from the FSU (Milwaukee, WI)
Carlos Rosario Career Center and Public Charter School (Washington, DC)

Center for Hispanic Policy & Advocacy, CHisPA (Providence, RI)
Center for Training and Careers/WorkNET (San Jose, CA)
Centro Campesino Farmworker Center, Inc. (Florida City, FL)
Centro Presente, Inc. (Cambridge, MA)
Centro Salvadoreno (Hempstead, NY)
Conexión Américas (Nashville, TN)
El Pueblo, Inc. (NC)
Florida Immigrant Advocacy Center, Inc. (Miami, FL)
Friendly House, Inc. (AZ)
Hispanic American Council (Kalamazoo, MI)
Hispanic Chamber of Commerce of Minnesota
Hispanic Democrats (Mecklenburg County, NC)
Illinois Coalition for Immigrant and Refugee Rights (Chicago, IL)
Immigrant Rights Network of Iowa and Nebraska
Independent Monitoring Board (Chicago, IL)
International Institute of New Jersey (Jersey City, NJ)
Jewish Family Services (Milwaukee, WI)
La Causa, Inc. (Milwaukee, WI)
La Esperanza, Inc. (Georgetown, DE)
Latin American Community Center (Wilmington, DE)
Latino Health and Community Services Inc. (South Portland, ME)
Latino Leadership, Inc. (Orlando, FL)
Little Village Community Development Corporation (Chicago, IL)
Maine Rural Workers Coalition
Massachusetts Immigrant and Refugee Advocacy Coalition (MIRA)
Massachusetts Law Reform Institute (Boston, MA)
Milwaukee Jewish Council (Milwaukee, WI)
Na Loio - Immigrant Rights and Public Interest Legal Center (Honolulu, HI)
Nebraska Mexican American Commission (Lincoln, NE)
Nevada Hispanic Services, Inc.
New Immigrant Community Empowerment (NICE) (Jackson Heights, NY)
Northwest Immigrant Rights Project
PROGRESO HISPANO (Alexandria, VA)
Rhode Island Coalition for Immigrants and Refugees
SW Creations Collaborative (Albuquerque, NM)
St. Francis House (Boston, MA)
Shorefront YM-YWHA of Brighton-Manhattan Beach, Inc. (Brooklyn, NY)
Southeast Asian Mutual Assistance Associations Coalition (Philadelphia, PA)
Southwest Iowa Latino Resource Center (Red Oak, IA)
United Hispanic-Americans, Inc. (Fort Wayne, IN)
Voces de la Frontera: Workers Center (Milwaukee, WI)
Washington Defender Association's Immigration Project (Seattle, WA)

RESPONSE TO QUESTIONS SUBMITTED BY REP. ANTHONY WEINER TO THE HONORABLE PRAKASH KHATRI

QUESTIONS FOR THE RECORD
From: Rep. Anthony D. Weiner (8th NY)

1) How many additional employees would it take to completely reduce the backlog?

   Response: USCIS Director Aguirre addressed this issue in his Backlog Reduction Report and testified to this matter in the previous week. As the USCIS Director he has the requisite managerial information regarding the resources necessary to completely reduce the backlog.

2) How much would it cost?

   Response: USCIS Director Aguirre addressed this issue in his Backlog Reduction Report and testified to this matter in the previous week. As the USCIS Director he has the requisite managerial information regarding the resources necessary to completely reduce the backlog

3) Are there bureaucratic obstacles to hiring these employees?

   Response: My office does not have the requisite information to answer this question. I respectfully suggest this question be addressed to USCIS Director Aguirre.

4) Why have past plans for backlog reduction failed?

   Response: My office has not conducted an historical analysis of Legacy INS and USCIS past backlog reduction initiatives. In my first year as Ombudsman, my focus, as indicated within my Annual Report, has been to introduce recommendations which primarily involve changes to existing policies and procedures. I respectfully suggest this question be addressed to USCIS Director Aguirre.

RESPONSE TO QUESTIONS SUBMITTED BY REP. ANTHONY WEINER TO MS. ELIZABETH STERN

ShawPittman LLP
A Limited Liability Partnership Including Professional Corporations

MEMORANDUM

TO: The Honorable Anthony D. Weiner
U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Immigration, Border Security and Claims

FROM: Elizabeth Espin Stern

DATE: July 13, 2004

RE: Questions Related to June 23 Hearing on Reduction of the Immigration Case Backlog

.Questions:

- How many additional employees would it take to completely reduce the backlog?
- How much would this cost?
- Are there bureaucratic obstacles to hiring these employees?
- Why have past plans for backlog reduction failed?

Response:

To assess the effectiveness of the Backlog Elimination Plan, U.S. Citizenship & Immigration Services ("USCIS") needs to develop a system to assess accomplishment of milestones toward the six-month (and, for nonimmigrant cases, three-month) target processing periods. In order to determine what additional resources may be necessary to eliminate the backlog, such ongoing measurement of case productivity will be essential. The initial focus should be on insuring the current USCIS work force maximizes its productivity, and generates accurate and fair decisions. With the "house in order," USCIS can then measure whether additional resources are needed to enhance productivity. The costs of the additional resources can then be measured with accuracy.

Any new special immigration program legislation should include an assessment of the person hours and resources required to process those cases, and allow USCIS to establish Application Support Centers to process those cases, typically for the limited window of time allowed for the programs' applications to be made.

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Northern Virginia
New York
Los Angeles
London

If USCIS were to determine that additional workers are required, either generally or for special programs, the agency will need a mandate from Congress that facilitates new hiring. Our understanding is that the agency is currently under a hiring freeze for most positions.

With regard to the chances of success, this Backlog Elimination Plan is distinguishable from prior programs by the predecessor agency, the Immigration & Naturalization Service ("INS"). In the past, the INS was handicapped by an approach where it focused its resources on one priority at a time. The INS shuffled staff at various times as it "chased" the most dramatic backlogs -- e.g., naturalization cases in 1999, adjustment of status cases in 2001. The approach of shifting priorities led to unprecedented backlogs in areas that traditionally were always current, such as nonimmigrant work visas. Although clearly attempting to identify solutions to the increasingly overwhelming case load, the previous plans resulted in "band-aid fixes" to single areas rather than an overall management plan to keep all adjudication areas consistently moving. In contrast, the current USCIS backlog reduction program is addressing a comprehensive solution that impacts all areas of immigration benefits programs.

The USCIS plan thus has the greatest possibility of success, provided the agency and Congress monitor the progress on the plan between now and the Fall of 2006. It will be essential that the agency measure progress of each new pilot program, and that the field be made accountable for the quality and the timeliness of case processing.

We remain available to advise regarding ongoing progress on the backlog reduction effort, and thank the distinguished Members of the Subcommittee for inviting our firm to provide feedback from the business community.

RESPONSE TO QUESTIONS SUBMITTED BY REP. ANTHONY WEINER TO MR. PAUL ZULKIE

Responses to Questions Raised by Representative Weiner
Paul Zulkie, President
American Immigration Lawyers Association
June 23, 2004 Hearing before the Subcommittee on Immigration, Border Security and Claims

1. **How many additional employees would it take to completely reduce the backlog?**

Clearly no one knows the answer to this question except to say that more employees are needed. However, it is imperative that the number of employees that it would take to eliminate the backlog be clearly ascertained once and for all. As the GAO found in its January 5, 2004 study, the USCIS "does not know the current full cost to process a new application received or to complete the processing of a pending application..." A major portion of this cost is the personnel devoted to seeing an application through intake, adjudication, and decision (not to mention file maintenance, communication with State Dept. and numerous other steps). This analysis has never been conducted. AILA recommends that GAO conduct a follow-up study to ascertain the agency's true personnel needs.

2. **How much would this cost?**

As the GAO indicated, insufficient analysis has been conducted to ascertain the costs. The recommended GAO follow-up study should address costs as well as personnel.

3. **Are there bureaucratic obstacles to hiring these employees?**

A government personnel officer could better answer this question, but one major obstacle is the amount of time that it takes to complete a background check on a potential employee. Many private sector employers require such checks, but they usually take days or weeks, rather than the months or even years that government employment requires. A study of how these checks are conducted should be made. Surely, all agencies would benefit from learning how to cut down on processing time. Too many of the best and the brightest are lost to the government simply because they cannot wait the months that it takes to be approved before they can start working for the government.

4. **Why have past plans for backlog reduction failed?**

Every backlog reduction attempt has failed for the same two interconnected reasons: unanticipated events and inadequate funding. Whether the event was as horrific as September 11 (thus triggering the very necessary additional security checks) or a natural disaster like Hurricane Mitch that threw thousands of additional TPS applications into INS' hands at once, or a myriad of other unplanned-for situations, the result is the same. Resources had to be shifted from key elements of the backlog reduction plan to address the unexpected event. History tells us that any effective plan to address the backlogs must anticipate the unanticipated, and build in allowance for unexpected needs. Congress could go a long way toward helping meet these needs by appropriating funds for these kinds of unfunded mandates.

However, Congress needs to recognize that our backlog problems will not be solved until it restructures the USCIS's sources of funding. AILA long has held that to prevent backlogs and provide efficient, fair and effective services, the agency needs direct appropriations to supplement user fees.

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