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WHETHER THE ATTEMPTED IMPLEMENTATION OF THE REID-KENNEDY IMMIGRATION BILL WILL RESULT IN AN ADMINISTRATIVE AND NATIONAL SECURITY NIGHTMARE

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

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CONTENTS

JULY 27, 2006

OPENING STATEMENT

Page

The Honorable John N. Hostettler, a Representative in Congress from the State of Indiana, and Chairman, Subcommittee on Immigration, Border Security, and Claims 1

WITNESSES

Mr. Peter Gadiel, President, 9/11 Families for a Secure America
Oral Testimony 4
Prepared Statement 6
Mr. Michael Maxwell, former Director, Office of Security and Investigations, United States Citizenship and Immigration Services
Oral Testimony 8
Prepared Statement 11
Mr. Michael Cutler, former Examiner, Inspector, and Special Agent, Immigration and Naturalization Service
Oral Testimony 60
Prepared Statement 62
His Excellency Nicholas DiMarzio, Bishop of Brooklyn
Oral Testimony 65
Prepared Statement 66

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

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 93

Letter from the Honorable F. James Sensenbrenner, Jr., a Representative in Congress from the State of Wisconsin, and Chairman, Committee on the Judiciary; the Honorable Henry J. Hyde, a Representative in Congress from the State of Illinois, and Chairman, Committee on International Relations; and the Honorable Peter T. King, a Representative in Congress from the State of New York, and Chairman, Committee on Homeland Security to the U.S. Conference of Catholic Bishops 95

Report from the United States Government Accountability Office entitled "Immigration Benefits: Additional Controls and a Sanctions Strategy Could Enhance DHS' Ability to Control Benefit Fraud," submitted by Michael Cutler, Former Executive Examiner, Inspecter, and Special Agent; Immigration and Naturalization Service 97

Article entitled: "Irish in America Are 'Under Seige'," by Caitriona Palmer, submitted by the Honorable Sheila Jackson Lee, a Representative in Congress from the State of Texas and Ranking Member, Subcommittee on Immigration, Border Security, and Claims 154

Letter from the Essential Worker Immigration Coalition et al., submitted by the Honorable Sheila Jackson Lee, a Representative in Congress from the State of Texas, and Ranking Member, Subcommittee on Immigration, Border Security, and Claims 155

WHETHER THE ATTEMPTED IMPLEMENTATION OF THE REID-KENNEDY IMMIGRATION BILL WILL RESULT IN AN ADMINISTRATIVE AND NATIONAL SECURITY NIGHTMARE

THURSDAY, JULY 27, 2006

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

The Subcommittee met, pursuant to notice, at 12:49 p.m., in Room 2141, Rayburn House Office Building, the Honorable John Hostettler (Chairman of the Subcommittee) presiding.

Mr. HOSTETTLER. The Subcommittee will come to order.

This is the second in a series of hearings reviewing the Reid-Kennedy immigration bill, S. 2611.

The United States admits more permanent resident aliens than any other country, more than 1.12 million in fiscal year 2005, a year in which we also gave refuge and asylum to some 79,000 other aliens.

In December, the House passed a bill that would ensure that our generous immigration laws, written by both Republican and Democratic Congresses over 5 decades, would be enforced and not abused.

In the Reid-Kennedy bill, the Senate proposes to replace our current rational immigration process with a scheme to allow an unknown number of additional aliens who came here illegally to stay forever.

Many would have us adopt that bill without public review. I believe, however, that before we consider a new amnesty, we must examine that bill in the light of the lessons that we learned from the last amnesty in 1986.

As part of this assessment, the Subcommittee today will review the ability of U.S. Citizenship and Immigration Services to process the additional applications required by S. 2611 on the bill's extremely tight time schedule and the effects of granting those benefits on the national security.

Immigration adjudications were a mess in 2001 when President Bush set 6 months as the goal for processing immigration applications. Congress supported this goal with $500 million in funds and furthered that effort in 2002 when it split immigration benefits from enforcement, in part, to ensure aliens received the benefits they were due.

Those efforts have borne fruit. From a peak of 3.8 million, USCIS's backlog stands at 276,000 cases today.

Despite these gains, the USCIS ombudsman has found that the agency "has ongoing difficulties in providing timely service." An adjustment applicant must wait more than 1,000 days in Greer and naturalization takes more than 900 days in Charleston.

The ombudsman has cited aliens who have waited years for benefits. This is unacceptable.

S. 2611 would add an overwhelming burden to USCIS, as it struggles to provide timely services. To comprehend this burden, consider that in fiscal year 2005 USCIS completed just less than 7.5 million applications. S. 2611 would add 10 million to 20 million more amnesty applications, many with short processing times.

How could this added burden not detrimentally affect aliens waiting to immigrate lawfully?

Past experience is not encouraging. When the Clinton INS tried to process a large number of naturalization applications in time for the 1996 election under Citizenship USA, it made serious mistakes, naturalizing some 71,000 aliens with FBI rap sheets, 10,800 of whom had felony arrests. USCIS would face even greater challenges today.

Its ability to process the new amnesty applications under S. 2611 would be impeded, if not hobbled, by fraud. That fraud is best assessed in terms of the 1986 amnesty. Hundreds of thousands of aliens are estimated to have fraudulently received amnesty under the 1986 law.

What is worse, terrorists fraudulently abused the 1986 amnesty to remain in the United States. One, Mahmud Abu Halima, a leader of the 1993 World Trade Center bombing, received amnesty as an agricultural worker in the 1986 law, even though he really drove a cab.

Another, Mohammed Salameh, driver of the truck in that attack, also applied fraudulently for amnesty. To support his amnesty claim, Mir Kasi, who killed two in front of the CIA in 1993, presented leases, employment letters and a letter from a friend in Pakistan. The 9/11 Commission staff found that these documents were all typed from the same typewriter.

The drafters of S. 2611 did not make USCIS's job easier. Confidentiality bars, which hampered INS in investigating fraud in the 1986 amnesty, are not only replicated in this bill but they are raised, further frustrating fraud investigations.

Moreover, it is reasonable to assume that fraud under S. 2611 would be more pervasive and sophisticated than in the 1986 amnesty. There are now more illegal aliens and thanks to computers they have access to higher quality fraudulent documents. Even the most diligent agency would be hard-pressed to combat fraud under the scheme in the Senate bill.

USCIS's diligence in combating fraud under the crush of millions of future amnesty applications is questionable, however. Mike Maxwell, former chief of the Office of Security and Investigations at USCIS, who is with us today, has testified that the agency "is operating an immigration system designed not to aggressively deter or detect fraud but, first and foremost, to approve applications."

Given past terrorist abuse of amnesty, the rubber stamping of millions of amnesty applications would pose an unacceptable risk to our people and our nation. This risk is heightened by the fact that S. 2611 would give valid IDs to aliens who were never screened by a consular officer in their home countries and who were never inspected at a port of entry. A new name and a new ID would allow a terrorist, known by his real name to our Government, to pass through our society undetected.

We will review these issues with our witnesses today.

At this time, I would turn to identification of the witness panel. Without objection, all Members' opening statements will be made a part of the record.

Now I will introduce this panel of witnesses.

Peter Gadiel is a founder of 9/11 Families for a Secure America, an organization comprised of families of victims killed in the September 11 terrorist attacks and survivors of the attacks. His 23-year-old son James, an assistant trader for Cantor Fitzgerald, worked on the 103rd floor of the north tower of the World Trade Center.

Mr. Gadiel has volunteered full-time since early 2002 in the cause of securing U.S. borders against entry by terrorists. A graduate of Case Western Reserve School of Law, he is a member of the New Hampshire bar.

Mike Maxwell is an independent national security consultant with more than 15 years of experience in the law enforcement and security arenas. He is the former director of the Office of Security and Investigations within U.S. Citizenship and Immigration Services. As director, Mr. Maxwell was responsible for implementing and managing a comprehensive security program for USCIS.

Mr. Maxwell has conducted lectures and training sessions in security planning and management, law enforcement management and other fields for Federal agencies, like the FBI, the DEA, ICE and the Department of Defense. He holds a Masters degree from Cambridge College.

Michael Cutler is a retired senior special agent with the Immigration and Naturalization Service's New York district office. He received his Bachelor of Arts degree from Brooklyn College of the City University of New York in 1971 and that year joined the INS as an immigration inspector at JFK Airport. From 1973 until 1974, he was assigned as an examiner to the unit responsible for adjudicating petitions filed by United States citizens and lawful permanent resident aliens for their alien spouses.

In 1975, he became an INS criminal investigator. In this capacity, he rotated through all of the divisions in the New York district's investigations branch. In 1991, he was made a senior special agent and assigned to the Organized Crime Drug Enforcement Task Force.

Mr. Cutler has appeared as a witness at congressional hearings at the invitation of both Republican and Democratic Members. He is currently a fellow at the Center for Immigration Studies.

Bishop Nicholas DiMarzio was installed to lead the Roman Catholic Church's Brooklyn diocese in October 2003. He began his ministry to migrant communities in 1976 as the refugee resettlement director for the archdiocese of Newark. Then-Father DiMarzio

moved to Washington in 1985 when he was appointed the executive director of Migration and Refugee Services for the U.S. Catholic Conference.

He was elevated to the rank of Bishop by Pope John Paul II in 1996 and thereafter chaired the Migration Committee of the U.S. Conference of Catholic Bishops and the Catholic Legal Immigration Network, Incorporated. In 2000, Bishop DiMarzio was appointed a member of the Pontifical Council for the Pastoral Care of Migrants and Itinerant People.

Gentlemen, if you will please stand and raise your right to take the oath.

[Witnesses sworn.]

Mr. HOSTETTLER. Thank you very much. You may be seated.

And let the record show that the witnesses have responded in the affirmative.

Gentlemen, you will notice the set of lights before you. Without objection, your entire written testimony will be made a part of the record. We ask that if possible you summarize as close within the 5 minutes for your oral testimony.

Mr. Gadiel, you are recognized. And could you turn the microphone on there?

TESTIMONY OF PETER GADIEL, PRESIDENT, 9/11 FAMILIES FOR A SECURE AMERICA

Mr. GADIEL. Sorry.

Mr. HOSTETTLER. Thank you.

Mr. GADIEL. Mr. Chairman and Members of the Committee, thank you for the opportunity to speak on behalf of so many who are the victims of crimes committed by illegal aliens, crimes made possible because our Government failed to prevent terrorists and felons from crossing our nation's borders.

As president of 9/11 Families for a Secure America, I and my Members agree that S. 2611 would be an administrative and national security nightmare. But words such as "administrative" are bloodless, bureaucratic terms that don't adequately describe the devastation amnesty inflicts on Americans.

Speaking as the bereaved father of a young man killed by terrorists who were allowed into our country only because of the power and influence of the open borders lobby that now stands behind S. 2611, I will speak in plain English. Passing of this amnesty will result in Americans being murdered and subjected to other horrific crimes committed by the dangerous illegal aliens who would be permitted to legally remain in the United States.

We know this to be true because such crimes directly resulted from the 1986 amnesty.

This proposed amnesty is much larger and will cause crime on a much larger scale, yet that result is easily avoided if the House sticks to its guns and defeats S. 2611.

As you pointed out a few moments ago, the 9/11 Commission itself reported how many people involved in terrorist acts—the 1993 attack on the World Trade Center and the murders outside the CIA headquarters—were here thanks to the 1986 amnesty. It is interesting to note that the terrorist, Mir, the one who shot the people outside the CIA headquarters, had filed a fraudulent claim

and his claim is being litigated on his behalf by Catholic Social Services.

These are only a few of the long list of killers and would-be killers that we know about who were permitted to remain in the U.S. thanks to the 1986 amnesty. And we know of them only because their crimes and conspiracies made the headlines. We can never know how many other illegal aliens received amnesty that later went on to commit horrible crimes, and we will never know because their ordinary street crimes did not get front page attention.

Although we know that Americans were murdered and brutalized because of the 1986 amnesty, we don't know how large that number is. But since nearly one-third of Federal inmates are foreign born, we can be certain that the number of victims is quite large.

In the 4.5 years I have given in support of efforts to secure our borders, I have heard from hundreds who have been the victims of crimes committed by illegals. Without exception, they know that these crimes occurred because our Government failed to live up to its most basic obligation to its citizens: To protect us from foreign attack.

The 9/11 Commission staff put it in simple terms: "Terrorists cannot plan and carry out attacks in the United States if they are unable to enter the country." Yet with S. 2611, the Senate pretends that 9/11 and thousands of other crimes never happened.

In 2002, the first time I was invited to speak at a press conference for Members of Congress, I noted that independent polls consistently showed that over 70 percent of Americans want drastic immigration reform immediately. I said that this majority would soon waken to the fact that the big obstacles to secure borders were the Congress and President George W. Bush and his predecessor, Bill Clinton. I predicted that soon that majority would be fed up, turn on these politicians who have blocked the changes needed to protect another 9/11.

Recent changes have shown that that prediction is accurate. In the last month, nearly half the States and many cities and towns have passed laws to fight illegal immigration and its damaging effects on their economies and society.

Nevertheless, the U.S. Chamber of Commerce, La Raza, ACLU, the Catholic Church and the rest of the open borders lobby continue to show that for them the suffering and death endured by Americans is nothing but a cost of doing business, a cost of enlarging the membership. To its eternal shame, the Senate continues to do the bidding of that lobby and demands that our borders remain wide open to illegal aliens and the unknown criminals and terrorists among them.

Last year, the House forced passage of the Real ID Act over the opposition of the open borders lobby in the Senate. Real ID will keep future terrorists from obtaining driver's licenses that were the critical tool for the mass murders of 9/11.

Today, again, for the good of our country, the House must act in opposition to the Senate and defeat S. 2611.

My son, James, was not a statistic; he was a human being trapped with hundreds of his co-workers on the top floors of the World Trade Center while the building beneath them, forcing them

further and further up till they had no refuge. I love him today as much as I ever did. I miss him every second of every day. But I am just one of thousands who are forever deprived of the love and comfort of someone dear to them because Congress allowed illegal aliens to enter and remain in this country.

And there are many thousands more who, although they have survived their attacks, their lives are ruined by violent sexual acts, beatings, stabbings and other crimes, causing permanent physical and psychological damage.

How many more parents like me, how many children, siblings, husbands, wives of victims of illegal alien crime must you and the Congress hear from before you reject once and for all the demands of the open borders lobby?

And, last, a plea to President Bush. Mr. Bush, shortly after 9/11, you stood on the ruins of the World Trade Center and since my son's remains have never been recovered, that is the only tomb he will ever know. Mr. Bush, you said, "I hear you." Well, Mr. Bush, I don't think you did hear us, and the Senate hasn't heard us, and I think it is time you started to listen to us and enforce the laws of the United States and protect us from foreign invaders.

Thank you very much.

[The prepared statement of Mr. Gadiel follows:]

PREPARED STATEMENT OF PETER GADIEL

Mr. Chairman and members of the committee, thank you for the opportunity to speak on behalf of so many who have been the victims of crimes committed by illegal aliens; crimes that were made possible because our government failed to prevent terrorists and felons from crossing our Nation's borders. I am President of 9/11 Families for a Secure America (9/11FSA), an organization whose membership is comprised of family members of those killed in the terrorist attacks of September 11, 2001. For obvious reasons our members strongly oppose S2611 because it would facilitate entry of terrorists into our country.

We fully agree that S. 2611 would be an administrative and national security nightmare, but words such as "administrative" and "national security" are bloodless bureaucratic terms that fail to adequately describe the devastation amnesty inflicts on individual Americans. Speaking as the bereaved father of a young man killed by terrorists who were allowed into our country only because of the power and influence of the same Open Borders Lobby that is today promoting S. 2611, I will speak in plain English. Passing this amnesty will result in Americans being murdered, and subjected to other horrific crimes committed by the dangerous illegal aliens who would be permitted to legally remain in the United States. We know this to be true because this was the result of the 1986 amnesty. The amnesty proposed in S.2611 will be far larger than that of 1986, and thus will cause crime on a much larger scale. This is a disaster that can easily be avoided if the House sticks to its principles and defeats S.2611.

In 1986, Senator Edward Kennedy, then-Representative Charles Schumer, and other sponsors of amnesty claimed that 'only' one million illegal aliens would be eligible for amnesty. In fact, due to fraud in administration, and underestimation of the number of illegals in the United States, over three million illegals were actually granted amnesty.

The investment firm of Morgan Stanley recently estimated that there are over 20 million illegals in the United States. Yet, at a recent meeting with DHS officials, 9/11 FSA Vice-President Bruce DeCell and I were told that Administration statisticians had "worked the numbers" and "only seven million" illegals would apply. That is approximately one third the Morgan Stanley estimate, oddly enough, the same fraction used by sponsors of the amnesty of 1986. The track record of the promoters of the 1986 amnesty in predicting the number of illegals who would be eligible tends to confirm what appears to be common knowledge to nearly everyone in the country today: the 20 million figure is closer to the mark.

In 1986, sponsors of amnesty also assured us there would be safeguards to screen out those who were a danger to our country. Their failure to honor that promise is as clear as their inability to predict eligibility numbers.

The 9/11 Commission itself showed us that the 1986 amnesty resulted in dead and injured Americans. It noted that two of the conspirators (Mohammed Salameh and Mahmud Abouhalima, aka Mahmud the Red) in the 1993 attack on the World Trader Center were illegal aliens permitted to remain in the US because of the 1986 amnesty. A third plotter (Mohammed Abouhalima, aka Abo Halima) was permitted to stay in the US for six years until just before the attack when his application under the '86 amnesty was finally denied. Despite the denial he remained in the US to help carry out the plot he had helped plan during the period he was "legal."

Mir Aimal Kansi who shot five people outside CIA headquarters was an illegal alien also permitted to remain in the US thanks to the 1986 amnesty law. At the time of his 1993 attack his fraudulent claim was still being litigated by Catholic Social Services.

Former 9/11 Commission staff member, Janice Kephart, has documented a large list of foreign terrorists and their methods of entering the United States and embedding themselves here. (Her 2005 paper, Immigration and Terrorism, Moving Beyond the 9/11 Staff report on Terrorist Travel is available on the World Wide Web at *http://www.cis.org/articles/2005/kephart.html*)

Obviously, Ms. Kephart's list of terrorists and would-be terrorists includes only those who have been uncovered by law enforcement. Their involvement in terrorist activities resulted in the research which disclosed their grants of amnesty under the 1986 legislation. The FBI has stated that there are sleeper agents in the United States and of course since we do not know who they are we cannot know how many of them have been granted full access to our society through amnesty.

In addition, we can never know many other illegal aliens received amnesty and later went on to commit 'ordinary' violent street crimes which did not, because of the lack of a terrorist connection, result in exposure of their link to the 1986 amnesty.

We know that Americans were murdered and brutalized because of the 1986 amnesty. Although we don't know how large that number is, since nearly 1/3 of federal inmates are foreign born, we can be certain that the number of victims is very considerable. Because the agencies that will be assigned responsibility for screening applicants will not be able to do meaningful background checks on the 20 million illegals who would apply for amnesty under S. 2611, the opportunities for terrorists and 'ordinary' street criminals, are obvious.

In the four and a half years I've given in support of efforts to secure our borders, I have heard from hundreds who have been the victims of crimes committed by illegals. Without exception they know these crimes occurred because our government failed to live up to its most basic obligation to its citizens . . . to protect us from foreign attack. The 9/11 Commission staff put it in simple terms: "terrorists cannot plan and carry out attacks in the United States if they are unable to enter the country." Yet, with S.2611 the Senate pretends that 9/11 and thousands of other crimes never happened.

In 2002, the first time I spoke at a Congressional press conference I noted that independent polls consistently show 70% to 90% of Americans want drastic immigration reform immediately and that this majority would soon awaken to the fact that the biggest obstacles to secure borders were the Congress and Presidents George W. Bush and Bill Clinton. I predicted that soon this majority would be fed up and turn on those politicians who have blocked the changes needed to prevent another 9/11. Recent events have shown that prediction to be accurate, for in the past few months, nearly half the States and many cities and towns have passed laws to fight illegal immigration and its damaging effects on their economies and society. They have left the Congress in the dust while they act to preserve themselves.

Among the municipalities that have enacted legislation or policies to discourage illegal immigrants from remaining in their jurisdictions are: Suffolk County, N.Y., Avon Park, FL, Herndon, VA, Sandwich Mass., Maricopa County, AZ, Butler County, OH, Danbury CT, Lima, OH., Hazleton, PA,

States that have acted are: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Rhode Island, South Dakota, Tennessee, Texas, Virginia, Wisconsin, and Wyoming,

These actions have taken place despite well funded and coordinated opposition to any restrictions on illegal aliens by Catholic Charities, ACLU, LaRaza (the Race), Maldef, LULAC, US Chamber of Commerce, agribusiness, the travel industry, etc. It must be noted, for example that Catholic Charities, which receives 60% of its budget from governmental sources is among the most pervasive of open borders lobbying groups. 9/11 FSA members have encountered Catholic Charities lobbyists ac-

tive in the following issues in state legislatures: for legislation to grant drivers licenses to illegals, against legislation to make engaging in human trafficking a crime; for instate college tuition rates for illegal aliens.

In addition, the Mexican government, through its forty eight consulates and in violation of treaty obligations, lobbies city, county and state law making bodies throughout the nation in opposition to any legislation that would impede illegal immigration.

For these, the constituent members of the Open Borders Lobby, the suffering and death endured by Americans as a result of illegal immigration is just a cost of doing business. To its eternal shame, the Senate continues to do the bidding of that lobby, demanding that our borders remain wide open to illegal aliens and the criminals and terrorists among them. S.2611 exemplifies the Senate's mindless support of that destructive policy

Last year, the House forced passage of the REAL ID Act despite intense opposition from the Open Borders Lobby and the Senate. REAL ID will keep future terrorists from obtaining the drivers licenses that were critical to carrying out the mass murders of 9/11. Today again, for the good of our country, the House must act in opposition to the Senate and defeat S.2611

My son, James, was not a statistic. He was a human being. I loved him and I love him now as much as ever. I miss him every second of every day. There are many thousands more like me, who are forever deprived of the love and comfort of someone dear to them because Congress allowed illegal aliens to enter and remain in this country. And there are many thousands more whose lives are ruined by violent sexual acts, beatings, stabbings and other crimes causing permanent physical and psychological devastation.

How many more parents like me, and children, siblings, husbands and wives of victims of illegal alien crime must you in the Congress hear from before you reject once and for all the demands of the Open Borders Lobby.

Shortly after 9/11, Pres. Bush stood on the ruins of the World Trade Center, and because none of his remains have ever been found that was the only tomb my son will ever know. The President said: "I hear you." I believe he and the Senate did not hear us. I believe it is time he, and they, started.

Mr. HOSTETTLER. Thank you, Mr. Gadiel.

Mr. Maxwell.

TESTIMONY OF MICHAEL MAXWELL, FORMER DIRECTOR, OFFICE OF SECURITY AND INVESTIGATIONS, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES

Mr. MAXWELL. Mr. Chairman, Members of the Subcommittee, I am pleased to be here today to discuss the impact and implementation of S. 2611 by USCIS would have on national security.

As a former director of the Office of Security and Investigations, the only law enforcement component within USCIS, I must point out that the basic premise of this hearing and implementation of 2611 could create an administrative and national security nightmare that is faulty.

The fact is an administrative and national security nightmare already exists at USCIS under our current immigration policy.

Asking USCIS to implement a proposal as sweeping as 2611 without first addressing existing national security vulnerabilities in our immigration system would be irresponsible at best and could actually facilitate ongoing criminal enterprises.

I therefore agree with Director Gonzalez who said just this past Monday, at a naturalization ceremony in New Jersey, "If we had to institute a guest worker program today, then the system couldn't handle it."

I would go one step further, however, and suggest that USCIS could never implement 2611 without compromising this nation's security. The integrity of the underlying immigration system is simply too flawed.

Three overarching issues must, in my professional view, be addressed before any policy reform can be effective. The first is rampant corruption. When I last briefed this Subcommittee, the Office of Security and Investigations had a backlog of over 2,000 complaints against USCIS employees. Included among these were national security cases. I had no case management system and a grand total of four criminal investigators in the field.

Today, almost a year later, the backlog is well over 3,000 complaints. New complaints are still coming in at a rate of around 50 per week. OSI still has a grand total of four criminal investigators in the field and no case management system.

Despite four arrests and two convictions of USCIS employees in the past few months alone on charges including soliciting sex for citizenship, selling $1 million worth of green cards in a money laundering scheme, falsifying immigration documents and embezzlement, USCIS management continues, in writing, to insist that sufficient safeguards are built into the system to prevent immigration officers from illegally granting the benefits of their choosing, to the person of their choosing, at the time of their choosing, for the reason of their choosing.

The second issue is a prevailing customer service mentality that prioritizes reducing backlogs and moving benefits above all else. For example, USCIS has created an auto-adjudication system that can apparently process applications for work permits from start to finish without any employee actually examining the supporting documentation for signs of fraud. The system bypasses all but the initial IDA, security name check and therefore searches only the printed name of the applicant and not any spelling variation or aliases—hardly effective.

With a work permit in hand, an alien can obtain a Social Security number and, even under the Real ID Act, a driver's license, then open a bank account, perhaps obtain a fire arms license, board an aircraft, et cetera.

USCIS personnel, without the knowledge of the USCIS or DHS chief information officers, developed a computer system, embedded it into the DHS IT backbone, allowing for remote users to manually insert immigration files into the USCIS database in such a manner so that all security background checks were circumvented and immigration benefits were granted to aliens of their choosing.

Following an initial report from IT security staff, senior USCIS leadership quashed any further investigation, including criminal investigation, of the system and took actions to cover up its existence. It should be noted that official USCIS documents revealed this program was not a law enforcement program.

As of March 10, 2006, the USCIS headquarters Asylum Division had a backlog of 515 asylum cases involving applicants residing in the United States who have provided material support to a terrorist or terrorist organization. Their cases are on hold to give DHS time to develop procedures for considering whether the secretary of Homeland Security should exercise discretion to grant them a waiver of inadmissibility so they can stay permanently in the United States despite their terrorist ties.

The third issue is the ongoing failure to share critical law enforcement information within DHS or between DHS and other

agencies. As of August 2005, some 1,400 immigration applications that had generated national security hits on IBIS were sitting in limbo at USCIS headquarters because the adjudicators trying to process them were unable to obtain the national security information that caused them to be flagged from other agencies.

As of late September 2005, USCIS had a total backlog of more than 41,000 applications with IBIS hits, requiring further investigation. Because USCIS is not a law enforcement, the FBI does not permit USCIS personnel to conduct name checks on immigration applicants and as of May 2006, the FBI name check backlog had grown to almost 236,000.

As non law enforcement personnel, USCIS adjudicators are prohibited from routinely running criminal history checks on applicants.

In closing, Mr. Chairman, on June 20, Karl Rove told the National Federation of Independent Business, "Immigration is turning into a big problem. The more you look at it, the more clearer it is that every single part of the system is broken."

In medical parlance, we must stop the hemorrhage before we can treat the underlying condition. The proposed Senate bill and its associated timeline would overwhelm an already overburdened USCIS and put this nation at great peril.

Thank you, Mr. Chairman, Members of the Subcommittee. With that, I will be happy to answer any questions.

[The prepared statement of Mr. Maxwell follows:]

PREPARED STATEMENT OF MICHAEL J. MAXWELL

Testimony of

MICHAEL J. MAXWELL

on

Whether Attempted Implementation of the Senate Immigration Bill Will Result in an Administrative and National Security Nightmare

before

The Subcommittee on Immigration, Border Security, and Claims

Committee on the Judiciary

U.S. HOUSE OF REPRESENTATIVES

Thursday, July 27, 2006

National Security Nightmare

Mr. Chairman and Members of the Subcommittee,

I am pleased to be here today to discuss the impact that implementation of S. 2611 by US Citizenship and Immigration Services (USCIS) would have on national security. As the former Director of the Office of Security and Investigations (OSI), the only law enforcement component within USCIS, I must point out that the basic premise of this hearing—that implementation of S. 2611 could *create* an administrative and national security nightmare—is faulty. The fact is that an administrative and national security nightmare *already exists* at USCIS under our current immigration policy. Implementation of the Senate bill would codify the nightmare and ensure that the criminals, terrorists, and foreign intelligence operatives who have already gamed our immigration system are issued legal immigration documents and allowed to stay permanently.

Asking USCIS to implement a proposal as sweeping as S. 2611 without first addressing the existing national security vulnerabilities in our immigration system would be irresponsible, at best, and could actually facilitate ongoing criminal enterprises. I also agree with Director Gonzalez who, on at least three occasions, has stated that it would be impossible for USCIS to implement the Senate bill within the prescribed time frame. The agency has neither the personnel nor the infrastructure to process an additional 10 to 20 million applications. I would go one step further and suggest that USCIS could never implement S. 2611 without fully compromising national security. The entire underlying immigration system is simply too flawed.

Doctor Gonzalez was warned by me, and by others, both prior to his confirmation as Director and immediately following, that USCIS is a vipers nest of career federal employees willing to cover up faults in the system to advance their careers, to obstruct ranking political appointees—including the previous Director—at the cost of national security, and to institute policies, programs, and systems independent of Headquarters and Administration direction for their own gain. Since I last briefed this subcommittee in September of 2005, nothing has changed. In fact, recent news from USCIS only verifies the fact that we are seeing the beginning of the convergence I predicted at that briefing: the perfect immigration storm.

Building on a Faulty Foundation

Our current immigration system is broken. On this statement there is virtually universal agreement, even among administration officials:

- During his October 18, 2005 testimony before the Senate Judiciary Committee, DHS Secretary Michael Chertoff stated, "we recognize that the current [immigration] situation is in desperate need of repair." He went on to acknowledge, "Parts of the system have nearly collapsed under the weight of numbers."

- At an April 5, 2006, press conference to announce the creation of task forces to combat immigration and document fraud, Assistant Secretary for Immigration and Customs Enforcement (ICE) Julie Myers pointed out that terrorists have used legal immigration channels like asylum to embed in American society. She noted that "each year tens of thousands of applications for immigration benefits are denied because of fraud, and those are just the ones we find.
- On April 13, 2006, Janice Sposato, head of the newly created National Security and Records Verification Directorate at USCIS, was quoted in a UPI article as saying that USCIS adjudicators sometimes find themselves in a "difficult and ambiguous legal situation" when trying to weed out those who might pose a terrorist threat. "I'm not going to tell you I have all the tools I need" to deny citizenship and other immigration benefits to potential terrorists, she acknowledged.
- On June 11, 2006, ICE posted the following on its website:

  "ICE also participates in the interagency **Identity & Benefits Fraud Task Force**, which seeks to restore integrity to the immigration process and prevent terrorists and criminals from entering the United States. . . . **Operation Integrity** is a new **Identity & Benefits Fraud** Unit initiative to restore integrity to the immigration system and to address vulnerabilities in the system that terrorist or criminal organizations could exploit to gain entry to the country. Operation Integrity will support a nationwide system of "IBF Task Forces" to detect, deter, and disrupt criminal and terrorist organizations that attempt to exploit the immigration system"
- On June 20, Karl Rove told the National Federation of Independent Business "immigration is turning into a big problem. The more you look at it, the more clear it is that every single part of the system is broken."

  Here are just a few examples to support Mr. Rove's critical assessment:
- The DHS Inspector General recently reported that, from 2001 through the first half of 2005, 45,000 high risk aliens from state sponsors of terrorism and special interest countries have been released into American communities because of the inability of DHS to conduct a thorough background check on aliens.[1]
- An internal USCIS document reveals a backlog, as of late September 2005, of more than 41,000 immigration applications with IBIS hits requiring further investigation.[2]
- Senior-level USCIS staff have information indicating that suspected terrorists have established bogus educational institutions in multiple U.S. communities and used the student visa program to move recruits into the United States.

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[1] Attachment 1: *Detention and Removal of Illegal Aliens*, OIG-06-03, Office of the Inspector General, Department of Homeland Security, April 2006, p. 10.
[2] Attachment 2: "Draft—10/4/05 Initial Statement," p. 2.

- Recent USCIS immigration fraud assessments indicate that the incidence of fraud in some visa categories is as high as 33 percent.[3]
- Since 2004, at least 17 reports by the GAO and DHS OIG have revealed critical flaws in the way USCIS implements the immigration process. Annual reports by the Citizenship and Immigration Services Ombudsman identify additional problems.

Virtually every part of our immigration system is broken and needs to be reengineered. But there are three overarching issues that, in my professional view, must be addressed before any policy reforms can be effective. They are:

1. Rampant internal corruption;
2. A customer-service mentality that, despite vocal public denials by appointed official, invariably trumps national security concerns; and
3. A failure or refusal to share critical national security information even among the different component-agencies of the Department of Homeland Security (DHS), let alone with outside law enforcement or intelligence agencies.

Any one of these, individually, presents an opportunity for criminals, terrorists and foreign intelligence services to do this nation grave harm. Combined, these three issues present policy makers, law enforcement, the intelligence community and the American people, with the unenviable challenge we face today: managing the consequences of a failed immigration system. To continue forward, to build upon the existing foundation, is akin to building a house on a cracked foundation—it is only a matter of time before the foundation shifts and the house falls.

Rampant Internal Corruption

As the agency that hands out green cards, work permits, and citizenship, among other immigration benefits, the temptations for employees of USCIS to commit crime are constant. USCIS employees work in an atmosphere that permits—and often encourages—the waiving of rules. It is only a small step from granting a discretionary waiver of an eligibility rule to asking for a favor or a taking a bribe in exchange for granting that waiver. Once an employee learns he can get away with low-level corruption and still advance up the ranks, he or she becomes more brazen. The culture of corruption that permeated the old INS transferred intact to USCIS. This environment presents an easy target of opportunity for criminals, terrorists, and foreign intelligence operatives to ply their trade.

When I first briefed this Subcommittee on September 29, 2005, the Office of Security and Investigations had a backlog of 2,771 complaints against USCIS employees. The complaints alleged everything from overdue benefits and misuse of government property to bribery, undue influence of foreign governments, and espionage. Of the total backlog, 528 alleged

[3] *Immigration Benefits: Additional Controls and a Sanctions Strategy Could Enhance DHS's Ability to Control Benefits Fraud*, Government Accountability Office, March 2006, p. 16.

criminal violations. Included among these were national security cases, such as allegations that USCIS employees had provided material support to known terrorists or that they were being influenced by foreign intelligence services. Complaints with clear national security implications represented a small share of the total, but with these cases, even one is too many.

Allegedly corrupt employees ranged from mail clerks to top-level managers at headquarters and senior personnel in the field and overseas. Despite the fact that I had set aside money from OSI's budget to purchase a case management system to track these complaints, I was told that I could not purchase one, so we had no way to track our caseload or conduct link analyses. We had no way to investigate more than a small handful of criminal allegations since I was only permitted to hire six criminal investigators, despite the fact that I had been authorized in writing to hire 30. Since two of the six were assistant directors at OSI headquarters, I had a grand total of four investigators in the field.

Today, almost a year later, the backlog of misconduct complaints against USCIS employees is well over 3,000. This number does not include some 500 complaints that disappeared after Chief of Staff Paar and Deputy Director Divine took possession of all the complaints last winter and failed to return the same number they took.

Importantly this number also no longer includes service complaints (i.e., overdue immigration benefits), which are now separated and forwarded to the appropriate offices as they arrive. The total number of complaints, as well as the number that allege criminal violations, are unknown since OSI still has no case management system. New complaints are still coming in at a rate of around 50 per week, as was true when I was director. OSI still has a grand total of four criminal investigators in the field to handle all complaints. The two career special agents I had assigned to investigate espionage and terrorism-related allegations resigned in disgust, with one citing his desire to leave DHS to go "fight the war on terrorism."

While there are still multiple ongoing national security investigations and investigations against high-ranking USCIS personnel, there have been three high-profile arrests of USCIS employees in the past several months, along with one conviction.

- March 21, 2006— Eddie Romualdo Miranda, a USCIS adjudicator in Santa Ana, California, was arrested by local police on charges of attempted oral copulation and sexual battery under color of law for demanding sexual favors from a naturalization applicant in exchange for approving her application;
- March 22, 2006—Lisa Ann Gross, a contract employee of USCIS, was convicted of providing confidential law enforcement information to the target of a drug investigation after she gained unauthorized access to The Enforcement Communications System (TECS). This case represents the first criminal conviction in a case opened and investigated by OSI;
- June 7, 2006—Phillip A. Browne, a USCIS adjudicator in New York City, was arrested with his sister and 28 others and charged with arranging sham marriages, producing

fake documents, selling one million dollars worth of green cards, and laundering the proceeds over a period of more than four years. The FBI, ICE, and the DHS Office of the Inspector General (OIG) conducted the investigation and made the arrests.

- June 29, 2006—the FBI, arrested Robert T. Schofield, a former Deputy District Director in the Washington field office of USCIS, after a joint investigation with the OIG, for falsifying naturalization certificates for Asian immigrants. Allegations against Schofield for misconduct, including accepting bribes, unauthorized use of government credit cards, and falsifying immigration documents, date back at least 10 years. Arrested with Mr. Schofield was a Chinese national, Qiming Ye, referred to by authorities as an "immigration broker" for Chinese seeking immigration status in the United States.

I applaud the efforts of the local law enforcement officers and federal agents involved in the investigations listed above. Realistically, however, these cases represent the tip of the iceberg and numerous arrests should be forthcoming. At the time of my resignation as Director of OSI, the backlog of complaints included nearly 100 bribery allegations. Those allegations—which in March were intentionally under-reported by more than half to the DHS OIG by USCIS senior management—remain untouched, as do allegations of extortion, harboring illegal aliens, and structuring. Substantiated instances of foreign government influence and potential national security breeches by employees also have yet to be addressed, despite repeated warnings.

Yet USCIS still refuses to aggressively support the new Director of OSI and his staff with either a reasonable budget or a rational policy. As long as OSI remains woefully under funded, understaffed, and prohibited by management from carrying out its mission, rampant corruption will continue.

I warned both Chief of Staff Paar and then-Acting Deputy Director Divine on September 5, September 29, and October 5, 2005, that the lack of an Internal Audit Department at USCIS, capable of rooting out anomalies in the work product of supervisory immigration officers, presents a compelling national security threat. These warnings fell on deaf ears. In fact, I was ordered by both not to have direct contact or participate with the Joint Terrorism Task Force or the Intelligence Community.

USCIS staff at Headquarters continues to insist that sufficient safeguards are built into the system to prevent immigration officers from granting benefits to the wrong people for the wrong reasons. The recent arrests, along with the case of the Iraqi Asylum Officer that appeared in the Washington Times in April, belie their claims.[4] Consider the extent to which one immigration officer could compromise national security over the course of a thirty year career by granting immigration benefits at the behest of enemies of the state. When the nexus between foreign intelligence services and state sponsors of terrorism, such as Iran, is factored in with the lack of internal checks and balances at USCIS, and the temptations employees face,

[4] Attachment 3: Dinan, Stephen, "Iraq spy suspect oversaw U.S. asylum," Washington Times, April 6, 2007.

the result is a recipe for disaster—a disaster not in the making, but already upon us. At the time of my resignation, OSI had initiated more than ten national security preliminary inquires involving employees. Instead of monitoring the email of suspected corrupt employees, however, USCIS senior management is monitoring the email of potential whistleblowers and my own.

Only when employees face a serious risk of detection and prosecution will they begin to think twice about violating the law. In the meantime, the Senate bill represents new opportunities for corrupt employees and our adversaries. It would create a huge new pool of aliens willing to pay bribes or perform sexual favors in exchange for immigration benefits. Moreover, we know that both foreign intelligence service personnel and terrorists closely study our immigration system, the agencies that administer that system, and its personnel. Once the agency was thoroughly overwhelmed by its additional workload under S. 2611, the chance of detecting foreign intelligence service personnel or their proxies would be completely lost.

Overriding Customer-Service Mentality

USCIS is suffering from an identity crisis brought on by years of mismanagement and unwittingly encouraged by Congress. The central mission of USCIS is to execute the immigration laws enacted by Congress and to ensure that only those aliens who are eligible and who do not pose a risk to the United States or its residents are able to obtain permission to remain here. However, the agency sees itself as a "relocation facilitator" whose business is to serve aliens—the "customers"—wishing to reside here. The fact that the "customer" may be a violent criminal intending to victimize innocent Americans or a terrorist or spy intent on the destruction of the country is viewed as an acceptable risk. Historically, USCIS field offices have operated as fiefdoms and viewed headquarters as a necessary evil, worthy of lip service, but incapable of getting the job done. When policies were slow coming from inside the beltway, politically powerful Regional or District Directors would often implement their own policies and develop their own programs.

Despite vehement claims to the contrary by political appointees, USCIS is operating an immigration system designed not to aggressively deter or detect fraud, but first and foremost to approve applications. The desire to eliminate the backlog of benefit applications is so strong, for example, that USCIS management has redefined it at least three times in order to knock millions of pending applications off the list, including more than 235,000 that are awaiting an FBI name check.

USCIS senior leadership is much more concerned with reducing the backlog than with the integrity of the process. At one point, OSI opened a preliminary inquiry into allegations that over one million biometric files had disappeared from USCIS. Not long after we began investigating, we were assured that the biometrics had been found, though no one could quite explain what had happened. In another instance, allegations received by my office suggested that, since benefit applications are not counted toward the backlog until they are data entered,

boxes of A-files were being stacked and never entered into the computer systems so USCIS could report to Congress a reduction in the backlog.

The absolute lack of a national security perspective on the part of senior managers is clear in their responses to the following agency-wide issues that unmistakably jeopardize national security.

Auto-Adjudication System

A USCIS regulation (8 C.F.R. 274a.13) states that, if an application for adjustment to lawful permanent resident (LPR) status is not decided within 90 days, the applicant is entitled to an employment authorization document (EAD). As of May 2006, only five USCIS district offices were able to process all LPR applications within 90 days. Since none of the other district offices and none of the five service centers can meet this goal, virtually all applicants—whether they are eligible or not and whether they are lawfully present in the United States or not—are able to obtain a legitimate EAD.

According to the GAO and the Citizenship and Immigration Services Ombudsman, this regulation has led to widespread fraud. Illegal aliens can simply file a fraudulent application for adjustment to LPR status, wait 90 days, and then receive an EAD. Once they have the EAD, they can apply for a legitimate social security number and, even under the REAL ID Act, they can legally obtain a driver's license because they have an application for LPR status pending. With a social security number and a driver's license, they can get a job or a firearms license, board an aircraft, etc. The Citizenship and Immigration Services Ombudsman estimates that 325,569 EADs were issued to ineligible aliens between May 2004 and February 2006.[5]

Following my resignation, a tip I received from a USCIS/Fraud Detection and National Security (FDNS) Officer led to the discovery of an "auto-adjudication" system in use at the Texas Service Center. Additional whistleblowers stepped forward shortly thereafter and notified me that similar systems may be operating in other service centers. In order to address the demand for EADs as interim benefits, it appears that the Texas Service Center had developed a system that could process applications for EADs from start to finish without any human involvement at all. In other words, there is no point in the process when a USCIS employee actually examined the supporting documentation to look for signs of fraud. Instead, the EAD was approved automatically when the underlying application for LPR status had been pending for 90 days.

Further investigation led to additional whistleblower communications indicating that senior management had failed to inform the Chief Information Officer of the development of these systems and that they are not secure systems. In fact, they are completely unprotected against cyber intrusion, sabotage, and manipulation, like much of the IT system at USCIS.

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[5] *Annual Report to Congress*, Citizenship and Immigration Services Ombudsman, Department of Homeland Security, June 2006, p. 20.

[Earlier this year, late on the day of a planned cyber-attack test of the USCIS IT system, the ICE Computer Security Incident Response Center, which was charged with detecting the intrusion, called USCIS IT Security personnel to ask if the test had been called off. Instead, they were informed that the attack had been launched as planned and the intrusion had been occurring undetected for the past eight hours.]

This auto-adjudication system only processes EADs that are linked to an application for adjustment to lawful permanent residence, which means that the initial, automated IBIS name check of the applicant is conducted when the underlying application is data entered. However, this initial IBIS name check searches only on the name of the applicant as clerical staff entered it into the computer system. It does not look for spelling variations or for aliases, and so is by no means a conclusive security check. By the time this system approves an EAD, it is likely that no one has actually looked at the application since the clerical staff received it from the applicant and verified only that it contained the proper fee and a signature. It seems apparent that the designers of this system gave no thought to fraud or national security, but instead were focused on convenience.

Remote Adjudication System

Another adjudication system identified during the same review that uncovered the auto-adjudication system is even more troubling. Staff at the National Benefits Center in Lee's Summit, Missouri, acknowledged that there is a program embedded in CLAIMS3, the backbone of the ICE/USCIS IT system, without the knowledge or approval of the USCIS or DHS Chief Information Officers. This rogue system, as it was referred to by IT Security personnel, allows a remote user to bypass the normal data-entry process and manually insert any number of immigration files (what appear to be fully adjudicated applications for EADs and replacement green cards) into the computer system so that all standard application screening processes, including the "Lock Box function," which accounts for the receipt of immigration processing fees, and ALL background checks, including the initial, automated IBIS check, are circumvented.

IT security staff intended to conduct a thorough investigation into this remote system, but after they submitted their initial report, they were prohibited from accessing CLAIMS3 to proceed with the investigation and were told to rewrite the report.[6] There are, apparently, two subsequent versions of this report, both of which have been sanitized to varying degrees. I have been told by a whistleblower that he was specifically told not to mention the existence of this remote adjudication system to OSI criminal investigators. Further, the Director of Adjudications at the National Benefits Center claimed to have no knowledge of any process allowing manual insertion of files into the system. Only the IT staff at the Center admitted knowledge of its existence.

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[6] Attachment 4: *National Benefits Center Adjudication Process Review*, Office of the Chief Information Officer, March 23, 2006.

When I first mentioned the existence of this system during an April 2006 hearing before the Subcommittee on International Terrorism and Nonproliferation of the House International Relations Committee, USCIS claimed that only EAD applications from Mariel Cubans, documents submitted in response to Requests for Evidence, and applications that have been terminated by other Service Centers can be manually entered into CLAIMS3 at the National Benefits Center. However, this claim is not supported by the fact that the system is operated remotely from USCIS Headquarters in Washington, DC. Nor is it supported by the fact that the system is operated by a well-connected contract employee, or someone using his screen name, at Headquarters, and utilizes a post office box in Washington that comes back to the following address:

> Library of Congress, Cataloging Distribution Service, CDS/MU, PO Box 75840, Washington, DC 20013.

Finally, the attached screen scrape from the remote adjudication system shows that applications for both EADs (I-785s) and replacement green cards (I-90s) are being processed for aliens from a variety of countries other than Cuba, including China, Colombia, Germany, Mexico, Pakistan, Russia, and South Africa.[7] According to IT security experts, someone in Washington, DC, not in Lee's Summit, Missouri, is creating records indicating that benefits have been approved, even though no processing fee has been received by USCIS.

One would assume that if it were a legitimate system, the investigating IT staff would have been informed of its purpose and assured that it was being audited, rather than being forbidden from investigating further and forced to rewrite a report to remove potentially embarrassing information. Additionally, if it were a legitimate system, USCIS would be required to make it comply with the Federal Information Security and Management Act (FISMA), as is required for all DHS IT systems. Of course, certain agencies are allowed to manipulate immigration data in order to mount law enforcement sensitive operations. The large volume of records being created, among other things, argues against this explanation. If it is a law enforcement system, however, a poorly designed audit trail lifted the veil.

IBIS Checks on Aliens

The Enforcement Communications System (TECS), which is managed by Customs and Border Protection, is essentially a gateway to the Interagency Border Inspection System (IBIS), which consolidates the records of some two dozen Federal law enforcement and intelligence agencies—including the Federal Bureau of Investigation, the Drug Enforcement Agency, the Bureau of Alcohol, Tobacco and Firearms, and the intelligence community—and provides access to state criminal and motor vehicle records. Through TECS, authorized adjudicators can run a name through IBIS to find outstanding warrants, terrorist connections, immigration violations, and other information necessary for deciding whether an alien should be permitted to remain in the United States.

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[7] Attachment 5: Screen scrape of applications processed remotely in one 30-day period, along with an edited version that shows more clearly the countries of origin of beneficiaries of the remote processing system.

National Security Nightmare

On October 5, 2005, before the Acting Deputy Director and others, the USCIS Director of Fraud Detection and National Security, Louis "Don" Crocetti, explained the four categories of TECS records as follows:

- Level 1 records are those from the user's own agency (Level 1 USCIS users would have access only to USCIS records plus TIPOFF);
- Level 2 records include a sizeable share of the criminal records from the other law enforcement agencies (i.e., Level 2 USCIS users would have access to USCIS records, TIPOFF, plus certain records from CBP, the FBI, the DEA, and so on);
- Level 3 records include national security records, terrorist watch lists, threats to public safety, and information about on-going investigations from two dozen agencies; and
- Level 4 records include case notes, grand jury testimony, and other highly sensitive data that are provided only on a need-to-know basis.

When DHS was created in January 2003, CBP, as the manager of TECS, entered into an agreement with USCIS that required USCIS employees to undergo full background investigations (BIs) before they may be granted Level 3 TECS access. Because of the sensitive nature of some of these records, including on-going national security cases, it was and is important that access to Level 3 records be restricted to adjudicators who themselves have been thoroughly vetted.

The agreement included a two-year grandfather period during which legacy Immigration and Naturalization Service (INS) personnel that had had access to Level 3 TECS records at the INS would continue to have access so that USCIS would have time to complete BIs on new employees and upgrade those on legacy employees when necessary.

USCIS leadership, however, decided not to spend the money to require full BIs on new personnel or to upgrade the BIs on legacy personnel. Thus, when the grandfather period ended in January 2005, CBP began restricting access by USCIS adjudicators with only limited BIs, so that these adjudicators could access only Level 1 records or, in some cases, Level 2 records through TECS. They could not access the national security, public safety, or terrorist records they needed to adjudicate applications.

Other than a few sporadic meetings among USCIS senior staff and, once in a while, with some CBP officials, to talk about how many adjudicators might have restricted access, USCIS leadership largely ignored the problem during the first nine months of 2005, despite complaints from the field and warnings from OSI and certain FDNS personnel. Backlog elimination was the top priority of the agency, so adjudicators were pressured to keep pumping out the benefits applications, regardless of whether they had the ability to determine if an applicant was a known terrorist or presented some other threat to national security or public safety.

Internal documents make the problem abundantly clear:

> " Without access to higher level extra-agency TECS records, USCIS employees with background check responsibilities may miss information that is critical to the adjudicative process. In the absence of this information, USCIS could grant an immigration benefit to someone who poses a threat to national security or public safety."[8]

When I first briefed this Subcommittee on September 29 of last year, I noted that roughly 1,700 USCIS adjudicators lacked sufficient access to TECS to determine whether an applicant has known terrorist connections or is a threat to public safety. About 80 percent of all applications filed with USCIS are processed through a batch system that automatically runs the proper level background check on each applicant. The other 20 percent, however, are handled individually and an adjudicator must conduct the background check in TECS. This tiered system was discussed in great detail at a meeting of senior leadership on October 5th 2005.

The purpose of the meeting was to prepare for a briefing that ADD Divine and CoS Paar would provide Secretary Chertoff on both internal corruption at USCIS and TECS access—or lack thereof—on October 7, 2005. Then-Acting Deputy Director Robert Divine, Chief of Staff Tom Paar, Chief Counsel Dea Carpenter, Director of FDNS Don Crocetti, then-Deputy Director of Domestic Operations Janice Sposato, and I were all present, as were a handful of other senior staff.

Director Crocetti and his staff presented the results of a test they had conducted on TECS. According to conclusive documentation from his National Security Chief of Staff, adjudicators with only TECS Level 1 or Level 2 access were totally missing national security and public safety information about applicants. In essence, they were operating blind.

We discussed the fact that, if background checks on 20 percent of the 7.3 million applications adjudicated by USCIS in FY 2005 were handled manually, that would mean that somewhere around 628,000 applications were likely processed by the 1,700 adjudicators who lacked Level 3 access to TECS. This figure did not take into account the fact that adjudicators without Level 3 access may be able to process cases faster because they get fewer background check "hits" to resolve.

The obvious conclusion was that all USCIS adjudicators needed access to Level 3 TECS records in order to properly vet applicants for immigration benefits and to ensure that known terrorists and others who present a threat to national security or public safety are not able to obtain immigration benefits. The only short-term solution would mean re-engineering the USCIS business process and slowing down adjudications by allowing only adjudicators with Level 3 access to conduct manual background checks. The long-term solution was to spend upwards of $10 million to upgrade security clearances for USCIS adjudicators. Of course, neither solution pleased top management.

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[8] Attachment 6: *USCIS TECS Users Report*, Office of Fraud Detection and National Security, US Citizenship and Immigration Services, July 25, 2005, p. 6.

At that point, ADD Divine announced that we had reached a core question: Whether immigration to the United States is a right or a privilege. He then asserted that it has always been the position of INS and now USCIS that immigration is a right, rather than a privilege. Chief Counsel Carpenter concurred.

Thus, it is no surprise that, in the wake of this meeting, USCIS chose neither the short-term solution nor the long-term solution. Instead, since mid-October of 2005, senior USCIS managers have been meeting with CBP officials and trying to convince them to extend the grandfather period, to restore and/or upgrade TECS access to those adjudicators who have been cut off or restricted, and to waive in without the required background investigations contract workers hired to eliminate the application backlog. [Granting contract workers who have not been vetted access to national security records would itself result in a significant security breach, since it could put sensitive national security information in the wrong hands.]

To date, not one adjudicator with a deficient background investigation has been scheduled for an upgrade and, while it does appear that CBP has extended the grandfather period, no memorandum of understanding between the two agencies has been signed. In fact, just four days ago (July 24), an adjudicator in the Midwest confirmed that he still has Level 2 TECS access, more than nine months after USCIS leadership was shown conclusively that adjudicators must have Level 3 access to ensure national security.

Background Investigations of Employees

My former office is tasked with adjudicating the background investigations of USCIS employees once the Office of Personnel Management gathers the information. Shortly after OSI was created, in the fall of 2004, we inherited a backlog of 11,000 pending BIs on USCIS employees. In light of the fact that I had a total of six personnel security specialists to adjudicate BIs, it is remarkable that we managed to reduce the backlog to about 7,000 by the time I resigned in February 2006. Because of the hiring frenzy driven by backlog elimination, however, OPM was sending new BIs at a rate of 3.5 for every one that OSI cleared.

I submitted at least eight proposals to increase the number of personnel security specialists to address this backlog, but they all were denied by senior management. Finally, in January 2006, CoS Paar approved 15 additional positions for OSI, but told me to prioritize internal affairs and indicated that five additional personnel security specialists to adjudicate background investigations should be sufficient. That is a total of 11 people to adjudicate the 7,000 backlogged BIs, plus the BIs for new adjudicators hired to eliminate the backlog, plus up to 4,000 upgraded BIs on current adjudicators whose access to TECS was or could be restricted.

Asylum Seekers with Terrorist Ties

As of March 10, 2006, the USCIS Headquarters Asylum Division had a segregated backlog of almost 900 asylum cases that it had not reported to Congress except as part of the overall backlog. This particular backlog includes two groups of asylum cases, both of which raise serious national security questions:

1. 369 cases in which the applicants claim that they have been falsely accused by their home government of engaging in terrorist activity; and
2. 515 cases in which the applicants have provided material support to a terrorist or a terrorist organization.

These asylum applicants are in the United States right now; some have been here since November 2004. Their cases are on hold because DHS and USCIS counsel, along with the Justice Department's Office of Immigration Litigation, asked the Asylum Division to refrain from denying asylum in cases like these—even though the applicants are inadmissible as terrorists or terrorist supporters—in order to give DHS time to develop procedures for considering whether the Secretary of Homeland Security should exercise his non-reviewable discretion to grant them a waiver of inadmissibility, so that they can stay permanently in the United States, despite their terrorist ties. DHS has established a working group to propose the procedures.

Failure to Share Information

National Security Hits on IBIS

As of August 2005, some 1,400 immigration applications, most for U.S. citizenship, that had generated national security hits on IBIS were sitting in limbo at USCIS headquarters because the adjudicators trying to process them were unable to obtain the national security information that caused them to be flagged.

If a government agency (e.g., FBI, CIA, DEA, ATF) has national security information about an alien, or when an agency has an ongoing investigation that involves an alien, the USCIS employee who runs a name check in TECS will see only a statement indicating that the particular agency has national security information regarding the alien. (This is assuming that the employee has Level 3 TECS access; without such access, the employee will get no indication at all that national security information exists.) Adjudicators are not permitted to deny an application "just" because there is national security information or a record with another law enforcement agency. Instead, the adjudicator must request, acquire, and assess the information to see if it makes the alien statutorily ineligible for the immigration status or document being sought, or inadmissible or deportable. However, whether or not an adjudicator can acquire the national security information, in order to assess it, depends on at least two things:

1. The level of background investigation the adjudicator has undergone, which determines the types of information he or she is lawfully permitted to access; and
2. The nature of the national security information, which determines the willingness or ability of the agency with the information to share it with non-law enforcement personnel (all USCIS employees, including those in the Fraud Detection and National Security unit, are non-law enforcement except for the 1811 criminal investigators and some of the 0080 security specialists who work in OSI).

National Security Nightmare

The more sensitive the national security information, the less likely that a non-law enforcement employee will be able to get it. This is the genesis of the cases that are referred to what used to be called the "FOCUS group," but has been renamed the National Security and Records Verification Directorate (NSRV): adjudicators see that there is national security information on the alien, but they are unable to obtain the information to assess it.

The most troubling of these cases are applications for naturalization because 8 U.S.C. 1447(b) requires USCIS to make a final decision within 120 days of interviewing the applicant. Once that 120-day window closes, the applicant can petition a court, and the court can either grant or approve the application, or it can order USCIS to issue a decision, regardless of whether a national security hit has been resolved. [The law also prohibits USCIS from scheduling the interview before the results of the background checks are returned, but, until recently, USCIS was ignoring this prohibition since it impeded backlog reduction.]

USCIS set up a group of adjudicators in Headquarters—formerly called FOCUS; currently, the NSRV—to review these applications and either advise field adjudicators or simply issue the final decisions. However, as non-law enforcement personnel, they may have no better access to the relevant law enforcement information than the original adjudicator who referred the application to Headquarters in the first place. OSI, whose law enforcement personnel have the security clearances and the contacts necessary to obtain the pertinent information, offered to assist adjudicators with these applications. Rather than utilizing OSI, however, USCIS leadership instructed adjudicators to contact only FDNS. Since FDNS lacks law enforcement personnel, it, too, has been unable to obtain the necessary information from these outside agencies in some cases.

In documented instances, FDNS has instructed adjudicators to proceed with processing an application for U.S. citizenship, even though neither FDNS nor the adjudicator knew why the alien had generated a national security indicator.[9] Despite the fact that my staff was willing and able to assist in obtaining the national security information that was otherwise unavailable to USCIS, I was ordered directly by Acting Deputy Director Divine to remove myself and my staff from any involvement with these cases and to cease any communication with the FBI and the intelligence community. I was told repeatedly that FDNS was the official liaison and so I was to have no further contact with any law enforcement or intelligence agencies or participate in any information sharing, either within USCIS or outside USCIS. I have been told that my successor is working under the same constraints.

The result is that adjudicators are faced with a choice between approving an application for U.S. citizenship with limited information about what raised a national security flag versus denying the application, perhaps wrongly, or asking someone at OSI to violate the direct order of the Deputy Director and the Chief of Staff in order to share critical information with them.

In a November 2005 report on Alien Security Checks by DHS-OIG, USCIS told the IG investigator "FDNS has resolved all national-security related IBIS hits since March 2005.

[9] Attachments 7 and 8: FOCUS emails.

FDNS's Background Check Analysis Unit reviews, tracks, analyzes, and resolves all name-vetted hits related to national security" [emphasis added].[10] Technically, this statement is true, but only because the former head of Domestic Operations redefined the word "resolution." In a memo dated March 29, 2005, Bill Yates writes in a footnote:

> *"Resolution is accomplished when all available information from the agency that posted the lookout(s) is obtained. A resolution is not always a finite product. Law enforcement agencies may refuse to give details surrounding an investigation; they may also request that an adjudication be placed in abeyance during an ongoing investigation, as there is often a concern that either an approval or a denial may jeopardize the investigation itself" [emphasis added].*[11]

In other words, USCIS immigration officers can "resolve" a national security hit and grant a benefit simply by asking the agency holding the information to turn it over, regardless of whether the adjudicator is actually able to obtain the data necessary to decide the application appropriately. One of the first lessons adjudicators are taught is that they must grant the benefit unless they can find a statutory reason to deny it. Without the national security information from the law enforcement agency, the adjudicator must grant the benefit unless there is another ground on which to deny it, even where the applicant may present a serious threat to national security.

Amazingly, other DHS component agencies have stated that they will not share threat information with USCIS regarding TECS-related inquiries:

> *"CBP has advised on many occasions that it considers USCIS to be a Third Party Agency and that it will not provide details surrounding records it has placed in TECS. . .This creates an impossible situation for USCIS employees conducting background check resolution activities, as ports-of-entry note they may not release information, and the National Targeting Center, CBP's operational center, states categorically that it will not provide any assistance to USCIS callers who have encountered a CBP hit. Unless there is JTTF involvement, USCIS will not receive derogatory input from CBP beyond a TECS record."*[12]

Likewise, according to a recent GAO report, ICE officials told GAO investigators that they "opposed allowing FDNS access to sensitive case management information. They said that there was a need to segregate sensitive law enforcement data about ongoing cases from non-law enforcement agencies like FDNS."[13]

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[10] *A Review of US Citizenship and Immigration Services' Alien Security Checks*, OIG-06-06, Office of Inspector General, DHS, November 2005, p. 37.
[11] Attachment 9: Yates memo, March 29, 2005.
[12] See Attachment 6: *USCIS TECS Users Report*, Office of Fraud Detection and National Security, US Citizenship and Immigration Services, July 25, 2005, p. 7.
[13] *Immigration Benefits: Additional Controls and a Sanctions Strategy Could Enhance DHS's Ability to Control Benefits Fraud*, Government Accountability Office, March 2006, p. 33.

Other Alien Background Checks

Because USCIS is not a law enforcement agency, unlike its predecessor, the Immigration and Naturalization Service, it faces unnecessary obstacles when it comes to conducting certain kinds of background checks:

- The FBI does not permit non-law enforcement personnel to conduct name checks, so USCIS must submit to the FBI the name of every alien for whom a name check is required (applicants for lawful permanent residence, naturalization, asylum, and cancellation of removal make up the bulk of these) and then wait for the FBI to return the results of the check. USCIS also has to pay the FBI for each name check that is conducted. Because the FBI devotes insufficient manpower to the task of running these name checks, it has a growing backlog of checks that have been requested but not run.

  When I briefed the Subcommittee last September, the FBI's name check backlog stood at about 170,000. As of May 2006, the backlog had grown to almost 236,000. USCIS reported that about 65 percent of these had been pending for more than 90 days, while the other 35 percent had been pending for more than one year.

  Since adjudicators are not supposed to grant an immigration benefit until all required background checks are completed, this backlog can cause major delays in processing times. It also presents a major national security risk for two reasons: (1) the alien is already in the United States waiting for the benefit application to be adjudicated, so this delay could provide a terrorist all the time he needs to plan and carry out his attack; and (2) as long as all required background checks have been initiated, an immigration court can order USCIS to grant an immigration benefit, even though the FBI name check is still pending. This latter situation could easily result in the granting of U.S. citizenship or permanent residence to a known terrorist.

- USCIS adjudicators cannot routinely run criminal history checks on alien applicants. Because they are not law enforcement personnel, adjudicators are only allowed to routinely search for active arrest warrants for applicants. Only if an adjudicator has reason to believe that an alien has a criminal history may he request a criminal history check.[14] Adjudicators learn about convictions that occurred prior to the filing of an application for lawful permanent residence, naturalization, asylum, cancellation of removal, and certain categories of nonimmigrant status through the FBI fingerprint check, assuming that the convicting authority has reported the conviction to the FBI.

  However, if an alien is applying for a benefit that does not require an FBI fingerprint check or if the alien is convicted of a crime after he files an application and the FBI fingerprint check is done but before the application is adjudicated, the adjudicator may approve the application without ever knowing about the conviction.

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[14] See Attachment 2: "Draft—10/4/05 Initial Statement," p. 4.

Outdated IT Systems

The IT systems at USCIS are antiquated, making it difficult or impossible even to share information from one district office to another. One IT professional at the agency told me recently that USCIS IT systems "could have been designed by a high school kid."

Director Gonzalez was asked during his October 18, 2005, confirmation hearing about USCIS' ability to implement a new guest worker program. His reply was, "I know the systems that exist right now wouldn't be able to handle it." He was right. At least three reports from the DHS IG and one from the GAO in the past year alone point to the urgent need for USCIS to modernize and secure its IT systems and to move away from the current paper-based system—though not to the auto-adjudication system the Texas Service Center has been testing. After spending millions of dollars of appropriated funds to modernize the IT system, in late 2005, USCIS scrapped two years of planning, program design and implementation, and started over. In the IT security realm, despite assuring the DHS IG that IT security would be a priority and despite specific IT threat data available to senior management, the IT security budget for USCIS in FY 06 stands at only $70,000.

When I attempted to spend 1.1 million dollars of my pre-approved budget on IT security related services, software, hardware and personnel, my request was denied. Michael Aytes, head of Domestic Operations, stated "if you test our IT systems, you will find something wrong and we will have to pay to fix it." My response was "better that my office find the problem than our adversaries, don't you think?"

Susceptibility to external manipulation of biographic immigration data, destruction of biometric data, and corruption of large data files is simply a reality at USCIS. Since February 2006 multiple personnel have spoken with me on the condition of anonymity regarding the potential security threats the IT systems at USCIS present. Due to the lack of a national security perspective, USCIS has an on-going problem with the mishandling of sensitive IT systems and information. Just last week, the personnel files of every full-time employee at USCIS (some 8,500 in all) were uplinked to the DHS intranet and emailed to some 135 individual email accounts via an unsecured route because management in the USCIS Budget Office failed to train a new employee in how to handle sensitive personnel files before ordering her to work with them. The files include employee names, social security numbers, dates of birth, home addresses, salaries, grades, and positions, among other things.

In a typical reaction to such an incident being exposed, management sought to scapegoat the new hire, rather than taking responsibility for their actions. Investigators were able to determine that at least 16 individuals accessed the files on the intranet, but because of the outdated system, they cannot determine who these individuals are. This breech of privacy is not only a security policy violation it may present personal security ramifications for certain federal employees working at USCIS.

Additional systems vulnerabilities are commonplace, including the downloading and placement of TECS terrorism-related files on desktop computers accessible both via the network and the internet.

Conclusion

The Senate bill acknowledges, at least implicitly, that we do not have control of our borders, that we have no interior enforcement to speak of, that background checks on legal applicants cannot determine who is or is not a terrorist, and that fraud has reached epidemic proportions. Then it proposes that we as much as triple legal immigration levels, institute a brand new temporary worker program that is not actually temporary, and give legal status to 10 to 20 million individuals who have broken our laws.

Secretary Chertoff recognized in his testimony before the Senate last fall that "parts of the system have nearly collapsed under the weight of numbers." I would argue that our whole immigration system has already collapsed under the weight of the current numbers. As we have seen over the past five months of debate, there is consensus that the entire immigration system needs to be redesigned. It defies logic, then, to build upon a foundation that has failed us, as the Senate bill would do.

Current immigration policy is an abject failure. As a leader in the global war on terrorism, we cannot afford to continue to ignore this fact. H.R. 4437 is a good first step toward the goal of addressing national security through both border security and interior enforcement. Additionally, it aggressively targets internal corruption and fraud at USCIS. S. 2611, on the other hand, ignores national security and proposes building a whole new immigration structure on top of a collapsed foundation.

Table 6
OTMs Apprehended and Released by DRO From SIC and SST
(FY 2001 thru March 31, 2005)

Fiscal Year	SIC[10] Apprehensions	SST Apprehensions	Total SIC and SST Apprehension	Total Released From SIC and SST	Percent SIC and SST Aliens Apprehended and Released
2001	9,419	6,233	15,652	7,499	48%
2002	11,962	6,574	18,536	8,807	48%
2003	24,102	8,718	32,820	19,319	59%
2004	8,078	7,717	15,795	6,099	39%
2005[11]	3,824	4,889	8,713	3,284	38%
Total	**57,385**	**34,131**	**91,516**	**45,008**	**49%**

Source: DRO

[10] Excludes OTM aliens apprehended from SIC countries that are also classified as state sponsors of terrorism (Iran, Libya, Sudan, Syria)
[11] First six months of FY 2005

[Note: This document was compiled through a team effort that included staff from the Chief Counsel's office, Public Affairs, Congressional Relations, and others.]

Draft – 10/4/05

Initial Statement

Recent press articles, particularly those appearing this week in the Washington Times, suggest that some U.S. Citizenship and Immigration Services (CIS) adjudicators lack access to certain law enforcement data bases when adjudicating benefit applications, and that CIS has a backlog of approximately 2500 cases involving allegations of employee misconduct.

Before providing more detailed information regarding these concerns, it is important to emphasize that CIS' highest priority is preserving and protecting the integrity of the legal immigration system. While delivering timely, accurate and effective services is critical, CIS maintains an unwavering commitment to promoting national security and public safety. Toward that end, CIS conducts law enforcement checks on all applications and petitions before adjudicating them, and completes approximately 35 million background checks each year. CIS has in effect a strict policy requiring the resolution of all law enforcement checks prior to the approval of any related immigration application. Obtaining necessary information from a range of law enforcement and intelligence agencies is vital to this effort.

CIS is also places paramount importance on employee integrity. Allegations of misconduct are investigated thoroughly and, if substantiated, addressed with appropriate disciplinary action. With regard to the number of alleged misconduct cases mentioned in recent press reports (an estimated 2600) historical experience indicates that approximately 90% are likely to be either unsubstantiated or administrative in nature. CIS has worked hard to devote additional resources to our Office of Security and Investigations (OSI) to review and resolve outstanding cases, but it will take some time to mobilize these resources and eliminate backlogged allegations. CIS is committed to completing the backlog of internal investigations fully, fairly and expeditiously.

Does CIS Have Full Access to All Necessary Law Enforcement Data Bases?

[Here we need to fashion 2-3 sentences basically saying No, we do not have FULL access and state the reasons why. We then need to emphasize how even without full access, we ensure that no application is approved without resolution of all national security and other safety concerns. IF we had more complete access – here is what it would look like (the fix) and here is how it would render far more efficient and productive our day-to-day operations…]

CIS conducts computerized law enforcement background checks related to all applications and petitions. For some application types, the agency conducts several different kinds of law enforcement checks. If the results of any given check reveal the existence of derogatory information, CIS removes the case from normal processing, and seeks clarification and/or additional guidance from whichever law enforcement agency posted the background check information. Most often, that posting agency is Immigration and Customs Enforcement (ICE), or the Federal Bureau of Investigation (FBI), though other federal, state or local agencies may also be involved. **When CIS obtains sufficient information to adjudicate a case, it does so. No case is adjudicated without sufficient information either to deny the application, or to resolve any identified security or safety concern.**

CIS at times utilizes background check processes to alert ICE about pending applications filed by, or on behalf of, aliens deemed to be national security risk. We have in place protections to ensure that adjudications do not proceed in the face of unresolved law enforcement information.

We recognize that law enforcement information can and should be obtained at various stages in the adjudications process, not just immediately after filing but also at later stages of adjudication. **To ensure that security checks are completed and resolved prior to any final adjudication, CIS conducts regular quality assurance reviews. Recently the DHS Office of the Inspector General completed an evaluation of CIS security processes that resulted in the identification of no significant lapses.**

The standard law enforcement check performed by CIS on all applications is called an Inter Agency Border Inspection System (IBIS) check. The database at the heart of IBIS is the Treasury Enforcement Communication System (TECS). Since the formation of the DHS, some transition issues have arisen involving access by CIS adjudicators to TECS. These issues are predicated upon a very legitimate debate about the level of employee background checks that should be conducted prior to qualifying for TECS access. Negotiations about this issue are ongoing, with the Fraud Detection and National Security (FDNS) Unit representing CIS.

Related questions exist concerning the specific level of access to TECS information CIS adjudicators and FDNS staff should be given. *[Here we should describe each level and what it implies – Alice and/or Nick can you help?]* These implicate the law enforcement "need to know" requirement, and the level of personnel security clearances of employees seeking access. FDNS is likewise responsible for representing CIS in these negotiations.

With respect to the FBI's NCICIII database, CIS is encountering direct access difficulties, though not with regard to fingerprint checks *[add a sentence explaining why]*. Access issues do arise when we want to submit a name rather than fingerprint check. The CIS Office of the Chief Counsel has made numerous attempts to obtain fuller access to NCICIII for agency personnel.

[Here we need to explain in clear terms how Section 403 of the Patriot Act did not clearly provide for the use of FBI criminal history information in adjudications involving aliens already in and admitted to the U.S. We should further emphasize our support of an amendment to Section 104 of the Immigration and Nationality Act that would ensure that those charged with determining whether aliens will have temporary or permanent access to the U.S. through a grant of a visa, immigration benefit, or citizenship, are equipped with the same informational tools as law enforcement agencies, as their function is no less important in the war on terrorism. The FBI has provided direct access to NCICIII (via IBIS) to immigration inspectors at ports of entry for purposes of ensuring that aliens who seek to enter the U.S. are admissible (i.e. an immigration purpose or benefit), yet is has resisted providing that same access to CIS personnel adjudicating immigration benefit applications in the U.S. Attached is a comprehensive summary of both the access to criminal history information problem CIS confronts and the proposed remedial amendment.]

How Does CIS Identify Fraud and Potential Threats to National Security?

To strengthen national security and ensure the integrity of the legal immigration system while simultaneously administering immigration benefits in a timely and effective manner, CIS established a Fraud Detection and National Security (FDNS) Unit whose primary responsibilities are to:

- Detect, pursue, and deter immigration benefit fraud,
- Ensure background checks are conducted on all persons seeking benefits before benefits are granted,
- Identify systemic vulnerabilities and other weaknesses that compromise the integrity of the legal immigration system, and
- Perform as USCIS' primary conduit to/from law enforcement and intelligence agencies.

The headquarters (HQ)-based FDNS consists of four branches: 1) Fraud Detection, 2) Operations, 3) National Security, and 4) Administration/Support Services. A Background Check Analysis Unit (HQ-BCAU) within the National Security Branch receives and reviews all National Security Notifications (NSNs) resulting from IBIS hits. These NSNs, and the subsequent case resolution information in the form of a Case Resolution Record (CRR) are reviewed by the HQ-BCAU. All CRRs must be approved by the HQ-BCAU before a case may be released for adjudication. Sensitive national security-related cases are forward to the CIS Office of Field Operations' FOCUS [spell out] Unit, which provides adjudications-related advice and guidance. HQ BCAU's primary responsibilities include performing system checks and gathering information.

FDNS staff is also assigned to each of the five CIS Production or Service Centers and operate in the form of Fraud Detection Units (FDUs). Each FDU is engaged in anti-fraud activities and "Top 5" IBIS background check operations: all IBIS hits that involve 1) National Security, 2) Public Safety, 3) Wants/Warrants, 4) Interpol, or 5) Absconders are forwarded to FDUs from Production Center IBIS Triage Units. The FDUs performs referral and/or resolution activities, and return information to adjudicators. Production Center IBIS Triage Units resolve non-"Top 5" IBIS hits.

Many CIS District Offices have an on-site local FDNS Immigration Officer (IO) to assist in anti-fraud efforts and IBIS National Security-related hit resolutions. These IOs are organized across the three CIS Regions, and guided by Regional FDNS Supervisors. Local IBIS units under CIS Field Service Operations are responsible for resolving non-National Security-related IBIS hits.

CIS conducts approximately 35 million IBIS checks each year. FDNS is responsible for processing all "TOP 5" IBIS hits through Production Center staff and National Security IBIS hits through District IOs.

As of September 24, 2005, the pending IBIS FDU workload consisted of 13,815 cases, including all National Security cases. Roughly 90% of the National Security IBIS workload is carried by the FDUs. The number of public safety cases referred from all Regions, including the Asylum Division and Production Centers totaled 11,997 for the ten-month period from September 2004 through June 2005.

[NOTE: The current IBIS backlog for the Center Triage units, which resolves other than "Top 5" hits, is approximately 26,000 cases]

In March 2005, CIS began requiring all of its offices to report National Security-related hits to the HQ-BCAU before commencing resolution activity. Since April 2005, an estimated 2000 NSNs have been submitted to the HQ-BCAU. Over this same six-month period, approximately 650 final resolutions were completed by FDNS staff and approved by the HQ-BCAU for release to adjudications or referral to FOCUS. Presently roughly 1350 resolutions are pending completion.

[Here we need to add a paragraph explaining how FDNS interfaces with OSI to identify fraud and potential threats to national security. Ideally this would include numbers of cases sent from OSI to FDNS and the course of such referrals. Point is that we are trying in a variety of ways to identify, isolate and resolve instances of fraud and national security risks.]

How Effectively Do CIS and ICE Share Law Enforcement and intelligence Information?

Presently CIS is seeking access to ICE's TECS Case Management System that includes information on past and present investigations and targets to compliment and reinforce our anti-fraud program. [Tom P. prefers that we try to present as united a front as possible vis a vis other DHS components as opposed to appearing in conflict with them] Obtaining details regarding watch-listed persons is part of a larger information sharing issue confronting various DHS components, the FBI, and other agencies upon whom CIS relies for background check protocol information. However, CIS typically encounters little difficulty isolating through watch lists and FBI name checks individual national security concerns *[why?]*. CIS also routinely shares information with other intelligence and investigative agencies, including ICE.

Is it True that up to 1300 CIS Adjudicators Have Been Shut out of TECS?

In January 2005, Customs and Border Protection (CBP) placed approximately 1300 of CIS' 8,642 employees into a "restricted profile." In general, these individuals either never had access to TECS, or had let such access lapse. Since then, CBP has moved virtually all of these individuals out of a restricted profile and designated them with Level 2 or 3 access depending on their background investigation level. Level 2 access pertains to all CIS-posted information as well as information any other posting agencies have relegated to Level 2. Level 3 access pertains to all CIS look outs as well as look outs established by other agencies. Other individuals who have since January 2005 lapsed into archive status may currently be in the restricted profile category. Administrative control over CIS users remains an open issue with CBP for all persons placed in the restricted profile. FDNS is currently negotiating with ICE and CBP regarding CIS access levels and associated background investigations, which is the greater agency issue as regards TECS.

What Is CIS FOCUS and What Does it Aim to Achieve?

FOCUS *[not an acronym so no longer translation]* is a group of seasoned adjudicators in the Office of Field Service Operations that was established to provide special attention and technical expertise in cases involving national security or public safety concerns. Until now the group has consisted largely of field adjudicators detailed from positions in the field, although permanent positions for FOCUS have been advertised and are in the process of being filled. While FOCUS adjudicators have the authority to decide cases directly, their strong preference is to provide field adjudicators with resources, information and advice to perform their duties in the best possible way.

Because FOCUS cases derive from the field, there is no set number or limit of FOCUS cases. This year FOCUS began its work by assisting the CIS Office of Chief Counsel with regard to the over 100 pending mandamus cases filed in federal court that implicate national security or significant public safety issues. FOCUS does not intend to limit its work, however, to helping resolve mandamus cases.

What Is the CIS Office of Special Investigations and How Many Potential Misconduct Cases Does it Have?

The CIS Office of Security & Investigations (OSI) was established in May 2004 to protect and promote agency-wide physical security standards and to prevent, detect and investigate allegations of CIS employee misconduct. Presently OSI employs six investigators, four of whom are assigned criminal cases, the remaining two investigators are in the process of developing OSI's infrastructure, policies and procedures. The four agents are actively investigating 8 cases, deemed priority cases, and have closed two cases administratively. OSI has received funding for, and will hire, six additional staff to serve as 1811 Criminal Investigators within 30 days.

Between October 2004 and September 2005, OSI received and reviewed approximately 1500 complaints that had been pending with the former Immigration and Naturalization Service (INS) and Immigrations and Customs Enforcement. Over that same period OSI has received an additional 1100 cases from a variety of sources including the DHS Office of Inspector General, the US State Department, the Drug Enforcement Administration. Although the OSI presently lacks a database to track and/or inventory all allegations, its Director estimates that about 500 of the total 2700 in-house complaints involve alleged criminal conduct.

Historically, What Was the Role of the INS Office of Internal Audit and Does It Differ from CIS OSI?

The Internal Investigations Branch, within Legacy INS Office of Internal Audit, managed the processes by which allegations of Service employee misconduct were reported, resolved and acted upon. It also conducted and oversaw the conduct of investigations and inquiries. The workload received within the Investigations Branch is attached, with a breakdown of how each allegation was handled.

An explanation of the categories to include an **8-year average (1995 – 2002)**[1] is as follows:

- ✓ Investigated by the DOJ OIG – Generally criminal in nature or the allegation was against a GS-15 or above. Note that OIA did not have the authority to conduct criminal investigations. **8.9%**
- ✓ Investigated by other, which was usually the DOJ Civil Rights Division. Such investigations involved abuse. **.5%**
- ✓ Investigated by the OIA – Administrative investigation involving a serious allegation of misconduct. Many times the OIG would try to get a US Attorney to take the case, but when this would not happen, the matter was referred to the OIA for investigation. **11.1%**
- ✓ Management Inquiry by field – These involved less serious matters that could be reviewed by the field management. **39.8%**
- ✓ Referral to management as information – Something management should be aware of but not enough information within the allegation on which to investigate or look into. **29.5%**
- ✓ File no/action. **4.7%**
- ✓ Other. **5.4%**

Although information was available in the OIA case management system as to what occupation codes were subjects of misconduct allegations, that information is currently not available. However, during the months after the creation of DHS, analysis had been done as to the percentage of allegations that related to adjudication and asylum officers, and the results showed between 10-15%.

The type of allegations reported in the OIA annual reports is attached.

Without a database to inventory the allegations received by CIS OSI, it is difficult to compare the work of this new internal investigations division with that performed by legacy INS OIA. Clearly, however, with regard to OSI allegations related to administrative or criminal misconduct, most appear related to what the legacy INS OIA would have also categorized as misconduct with the exception of an unknown number of customer service complaints received by the OSI concerning the time it takes to adjudicate immigration benefit applications. OSI does not yet track the latter type of correspondence.

Although approximately 50 CIS employees have been trained to investigate management inquiries, almost 40% of the legacy INS OIA caseload, this process has not been implemented by OSI because it lacks a database to track the allegations through resolution, a major point of concern for USCIS field leadership who stated the legacy process was "lacking and inefficient".

Of the Reported 50 Allegations Received Each Week by the OSI, Are These New Cases or Cases Filed in the Past That Are Only Now Being Forwarded to OSI from Other DHS Components? Has the DHS IG Reviewed and Referred Each of the 50 Cases to the OSI?

- Allegations referred to OSI by the DHS OIG are primarily new although a small number represent repeat allegations against one or more persons. As mentioned previously, OSI does receive allegations directly from ICE, CBP, US State Department and others. These allegations received directly by OSI must be sent to the DHS OIG for review. The OIG may accept the case, choose to investigate the case jointly with OSI, or refer the case back to OSI who will investigate the case unilaterally. Per an MOU with OIG, the OIG shall determine within one business day of the OSI referral whether to investigate the allegation or refer it back to CIS.

Attachments:

Overview of history of agency's request to receive legislative authority to access NCIC III.

Categories of Allegations within Legacy INS OIA

Attachment 1

Access to Criminal History Information. Section 403 of the USA PATRIOT Act amended section 105 of the Immigration and Nationality Act to provide for the use of FBI criminal history information for the purpose of determining admissibility to the United States in the visa or inspections context. However, after two years of work implementing section 403, DHS and DOS have found that this section needs several improvements. These amendments have been coordinated between DHS and DOS to meet the goals of both Departments.

[1] The total number of allegations for this 8 year period was 28,722.

In the case of DHS, section 403 did not clearly provide for the use of this important information in adjudications involving aliens already admitted to the United States. These benefit adjudications within the United States may be equally important to protecting the country from terrorism. For example, several of the September 11 hijackers applied to change their nonimmigrant status. This amendment clarifies that criminal history information shall be provided for use in immigration adjudication cases on the same terms as for visas and initial admission to the United States. Relatedly, it provides that immigration adjudications shall be considered a law enforcement purpose in order to ensure full access to FBI criminal history information.

In the case of DOS, the Department has received extracts from the FBI that contain only biographical information, but do not include information pertaining to the criminal offense or disposition. The information pertaining to the criminal offense or disposition is essential for the consular officer to access for determining the alien's eligibility for a visa and admissibility to the United States. The FBI contends that the National Crime Prevention and Privacy Compact, a statutory authority, prevents it from providing information on the extract pertaining to the crime or disposition without a fingerprint match (for positive identification). The FBI maintains that positive identification is required because consular officers are not law enforcement officials or serving a law enforcement purpose. The proposed amendments to the INA frame the consular visa adjudication function as serving a criminal justice purpose and grant consular officials direct access to NCIC records. Direct access would facilitate a more effective and efficient screening of legitimate travelers and travelers who are persons of interest.

Department of State personnel who adjudicate visas abroad act as the nation's first line of defense against terrorists and criminals who seek to enter the United States. Since the events of September 11, 2001, legislation has mandated interagency datashare. In light of the level of information shared and the coordination and cooperation with law enforcement and intelligence agencies in identifying persons of interest, the Department of State consular officer serves a criminal justice purpose and should be granted direct access to criminal history record information. This access would enhance the efficiency with which a consular officer is able to identify legitimate travelers from persons who may pose a threat if admitted to the U.S. Without direct access, consular officers must submit an applicant's fingerprints to the FBI causing significant delays and attendant adverse economic impact. The majority of submitted prints are returned as "no match" or the crime does not have impact on the individual's eligibility for a visa. The current procedures impose significant costs on the operational efficiency of consular sections. Direct consular access to the NCIC system is necessary for consular officers to meet the national security mandates imposed after 9/11. The statutory language suggested used the term Department of State personnel rather than consular officers as Visa or Passport personnel may be involved in rendering advisory opinions in visa cases or the decision to issue a passport.

Proposed Language:

(a) Section 104 of the Immigration and Nationality Act, 8 U.S.C. 1104, is amended by adding a new subsection (f) reading—

'(f) Notwithstanding any other provision of law, the powers, duties and functions conferred upon Department of State personnel relating to the granting or refusal of visas or passports may include activities that serve a criminal justice purpose.'

(b) Section 105 of the Immigration and Nationality Act, 8 U.S.C. 1105, is amended by-

(1) Amending paragraph (b)(1) to read—

'(b)(1) Notwithstanding any other provision of law, the Attorney General and the Director of the Federal Bureau of Investigation shall provide to the Department of Homeland Security and the Department of State access to the criminal history record information contained in the National Crime Information Center's Interstate Identification Index (NCIC-III), Wanted Persons File, and to any other files maintained by the National Crime Information Center, for the purpose of determining whether an applicant or petitioner for a visa, admission, or any benefit, relief or status under the immigration laws, or any beneficiary of an application or petition under the immigration laws, has a criminal history record indexed in any such file.';

(2) Amending paragraph (b)(2) to read—

'(b)(2) The Secretary of Homeland Security and Secretary of State shall have direct access, without any fee or charge, to the information described in paragraph (1) of this subsection to conduct name-based searches, file number searches and any other searches that any criminal justice or other law enforcement officials are entitled to conduct, and may contribute to the records maintained in the NCIC system. The Secretary of Homeland Security shall also receive, upon his request, access to such information by means of extracts of the records for placement in the appropriate database without any fee or charge.';

(c) Striking paragraphs (b)(3) and (b)(4); and

(d) Amending paragraph (c) to read –

'(c) Notwithstanding any other law, adjudication of eligibility for benefits under the immigration laws, and other purposes relating to citizenship and immigration services, shall be considered to be criminal justice or law enforcement purposes with respect to access to or use of any information maintained by the National Crime Information Center or other criminal history information or records.'

FBI Objection:

The Department of Justice strongly opposes section 502 of the State Department s draft Authorization bill. That draft section seeks to eliminate certain provisions of Section 403 of the PATRIOT Act concerning the means of access by the Department of State and the INS (now DHS) to criminal history records maintained in the FBI s National Crime Information Center s Interstate Identification Index (NCIC-III) for purposes of determining whether a visa applicant or applicant for admission has a criminal history record in the III. Section 502 seeks to provide direct, unrestricted name-check access to the fingerprint-based criminal history records in the III to State and DHS *without* any requirement for fingerprints, and *without* a fee, for the purpose of granting a broad array of benefits to both aliens seeking entry in the United States and aliens already present in the United States. The proposal seeks to avoid the fingerprint requirement imposed by the National Crime Prevention and Privacy Compact for non-criminal justice criminal history background checks of the III by defining immigration and visa decisions as having a criminal justice purpose. By avoiding any fee for these checks, this proposal also places the cost of these incomplete name checks squarely on American taxpayers.

The Department of Justice opposes this proposal and believes that the issues it raises should be resolved through the interagency process because of all the Departmental equities involved. A legislative change of this nature should not go forward absent an interagency consensus.

The Department of Justice does not concur in this proposal for the following reasons:

(1) Using Names Instead of Positive, Biometric Identification: This change is being proposed when there are still significant outstanding issues the Administration is trying to resolve about the implementation by the Department of Justice, the State Department, and DHS of the other, related provisions of section 403 of the PATRIOT Act regarding establishing and adopting a biometric technology standard and a fully integrated system that can be used to confirm the identity of persons applying for a United States visa or such persons seeking to enter the United States pursuant to a visa. There is general agreement by all Departments involved that a check of criminal history records is essential to processing applications for visa and immigration benefits. The Department of Justice, however, has, from the outset, argued that a fingerprint-based check for these purposes is both feasible and the most effective and reliable way to determine whether a relevant record exists on an applicant for a visa or a change in immigration status. While DHS and State have argued that full criminal history checks using fingerprints are too hard, take too long, and are too expensive, the security argument should trump these operational hardship arguments, especially since the operational hardship is a temporary condition under the control of DOS, DHS, and DOJ policymakers. Had a solution for the Congressional-tasking for biometric interoperability under section 403 been agreed upon by now, there would be no need to seek to broaden section 403's authority to do name-checks using extracts.

The FBI has pressed forward on this issue, but absent any DHS cooperation or requirements to drive funding for system modifications/ upgrades, the FBI can only make so much progress.

Currently, the FBI CJIS Division is running 5 ongoing pilots with Consular posts in Mexico and El Salvador and may be expanding to the UK shortly. The FBI's new flat transaction will make collection easier and less expensive and should be in place this Spring. In addition, the Homeland Security Counsel is currently working to produce the first cost estimates for 10-flat print checks at time of visa enrollment that are based on actual DHS-supplied transaction volume data. The statement in the sectional analysis of section 502 that the cost is not worth the benefit should not be accepted without considering this additional information now being developed. Given all of this, it is, at best, premature to consider negating the requirement for positive identification, particularly through a legislative mandate, by giving unrestricted, direct name-check access to III to State and DHS for these purposes.

(2) The inherent unreliability of name checks. The proposal ignores the steps that are needed to be taken in order to secure our borders. The focus should not be on expanding the name-based background check capabilities of State and DHS, but rather on moving those agencies, as quickly as possible, to a fingerprint-based background check system. Name checks are not reliable and present problems of both security gaps from false negatives and unfairness to applicants from false positives. A draft 15-month study by State and the FBI under Section 403(b) doesn't support decision-making without positive identification. In fact, the data shows that without positive identification:

- False Negative Problem - After a negative name check, the Consular Officer has no way of knowing whether the applicant who clears the name check is known in the criminal files under a different name. In these cases, an applicant might be issued a US Visa good for up to 10 years. This situation poses highest risk in countries that use different alphabets or highly variable spellings of the same name.

- False Positive Problem - After a positive name check, the consular officer will have no way of knowing that the returned criminal history information associates to the applicant. The draft PATRIOT Act 403(b) study showed that False Positives occurred 2 out of 3 times over a 15 month study period. In these cases, an applicant might be denied a US visa based on irrelevant information

In addition, the 1999 DOJ Name Check Efficacy Study showed that 11.7 percent of applicants with criminal history records in the study were not discovered by name checks. Moreover, the fact that the great majority of fingerprint-based background checks come back with a no record response is true of all applicant checks. That is not a reason to excuse the use of fingerprints for aliens seeking admission to or immigration benefits from the U.S., any more than it is to excuse fingerprints that are required of U.S. citizens in the many employment and licensing contexts involving background checks for criminal history using III information.

(3) Eliminating the Requirement for Follow-up Fingerprints. Under the interim extract approach, there is a requirement that fingerprints be submitted whenever there is a hit by a name check in order to get the full criminal history record. This requirement is totally missing in this proposal. Given the fact that applicants can wait for a decision on the visa or immigration benefits while fingerprints are run when there is a hit on a name, there is no reason to totally dispense with the followup fingerprint requirement during the interim name-check regiment under Section 403 of the PATRIOT Act, even if a way can be found of providing State and DHS with the ability to check names against the full III database, instead of the extract database (which is a subset of III). Moreover, as noted above, the proposal still ignores the fact that fingerprints are only submitted when the alien's name matches a name with a criminal history record. As a result, an alien with a hard to detect false ID would be able to receive a visa even though he or she may have criminal history record information under another name.

(4) Apparent Inconsistency with the National Crime Prevention and Privacy Compact. The proposal□s attempt to redefine the processing of applications for visas or immigration benefits as including a criminal justice purpose creates an apparent contradiction or inconsistency with the terms of the National Crime Prevention and Privacy Compact which requires that checks of the III for non-criminal justice purposes be supported by fingerprints. The Compact was enacted by Congress and has been adopted by 22 states. It could undermine the integrity of the Compact to enact legislation declaring an activity to have a criminal justice purpose simply because Congress says it does, regardless of whether the declaration is consistent with how that language is used in the Compact and has been applied in practice. The Compact□s fingerprint requirement was enacted for the same policy reasons discussed above regarding the unreliability of name-checks and the importance of using positive identification when a person is applying for benefits from the government where the security and protection of the public is at stake.

(5) No Consideration of the Budgetary Impact. This proposal fails to consider the budgetary impact of allowing DHS and State to have unrestricted administrative name-check use of and access to III criminal history records in processing alien applications for visas or for admission or adjustment of immigration status. U.S. civil applicants for employment or licensing or for positions of trust are required to submit fingerprints and pay a fee when a criminal history check of the III is required and authorized by law. Applicant fees typically include a surcharge that is used to support the operation the national fingerprint-based criminal history record system. If visa or immigration benefits can be processed without submitting fingerprints and a fee, not only will those benefits be granted without the greater security and accuracy of positive identification, the funds from the fingerprint fees will no longer be available to support the CJIS Division□s record system. The lost funds will have to be made up through appropriations and perhaps otherwise subsidized through an increase in the surcharge in the applicant fees paid by U.S. citizens. There will also be a significant budgetary impact on the FBI CJIS Division that must be considered □ approximately 20 percent of the non-criminal justice fingerprint submissions are from DHS and State and their elimination definitely affect CJIS□s West Virginia workforce.

(6) Access to Non-fingerprint Based NCIC Records Does Not Require this Change: The proposal□s reference to access to name-based files in the NCIC, such as the wanted persons file, does not require this legislation. If desired, arrangements for access by State and DHS to such records can be made outside of the extract process under existing law.

Summary: In sum, whenever name-based searches are conducted utilizing the III for immigration and visa matters, such searches should be immediately followed up by the submission of fingerprints when a match occurs. More importantly, *all* aliens seeking a visa or an immigration benefit should have fingerprints taken of all ten fingers and have those fingerprints run against the III -- not just those aliens whose names happen to match. Aliens seeking these benefits should be required to bear the cost of processing the prints for the background check. These requirements are critical to ensure that immigration and visa decisions are based on accurate information. In addition, the collection of fingerprints would "freeze" an alien's identification -- preventing the alien from trying to use a different name at a later time. The collection of 10-fingerprints also would allow for the fingerprint's to be run against the FBI's latent fingerprint file. That file contains latent fingerprints taken from crime scenes and other locations of interest, such as scenes of terrorist activities.

USCIS Response to FBI Objection:

Since 9/11 (if not before) Congress has repeatedly emphasized and mandated the breaking down of artificial barriers to the sharing of relevant information between agencies. E.g, USA PATRIOT Act and Enhanced Border Security Act. At the highest levels, the Department of Justice (DOJ) has promoted this goal as well. See, e.g., Testimony of FBI Director Mueller before Senate Select Committee on Intelligence, Feb. 16, 2005 at 19 ("The FBI's Information Sharing Policy Group . . . brings together the FBI entities that generate and disseminate law enforcement information and intelligence to implement the FBI's goal of sharing as much as possible consistent with security and privacy protections."). DOJ's objections to this proposal are entirely inconsistent with this overarching Administration, DOJ and Congressional policy, and perpetuate the roadblocks to information sharing that prevent government agencies from communicating effectively with one another to prevent terrorism.

What this proposal seeks to do, in short, is no more than to ensure that those charged with the critical function of determining whether aliens will have temporary or permanent access to the United States through a grant of a visa, immigration benefit, or citizenship, are equipped with the same informational tools as law enforcement agencies, as their function is no less important in the war on terrorism. The FBI has provided direct access to NCIC III (via IBIS) to immigration inspectors at ports for purposes of ensuring that aliens who seek to enter the U.S. (i.e. an immigration purpose and benefit) are admissible, yet it has resisted providing that same access to USCIS personnel providing immigration benefits within the United States. This distinction is capricious, since the inspection and adjudication function are analogous to each other and of equal potential importance in fighting terrorism. DHS seeks to ensure the same type of direct access to determine whether aliens who file applications that can lead to their obtaining travel and entry documents (and work authorization) are also admissible, and if they are in the U.S., that they are not deportable due to disqualifying criminal records. DOS seeks the same direct NCIC III access in order to make determinations on aliens seeking visas to enter this country. The rationale for permitting direct access to immigration inspectors who have responsibility for approving an alien for the immigration benefit of admission to the U.S. applies equally to DHS adjudicators and DOS consular officers who have responsibility for approving aliens for the immigration benefits and documents that allow them to enter (and remain in) the U.S.

DHS does take and submit ten fingerprints to the FBI for criminal history checks on aliens seeking many forms of immigration benefits (e.g. naturalization, adjustment to permanent residency, asylum, temporary protected status, among others). DHS is also expanding the categories of applicants and petitioners for immigration benefits and documents who will be required to submit full sets of fingerprints as rapidly as resources and available technology permit. However, direct access to NCIC III would greatly facilitate DHS' ability to identify, via name checks, those individuals who have a disqualifying criminal history record, but who might otherwise be missed while routine ten printing is being expanded. Direct name access to NCIC III will also assist DHS in identifying those individuals who may have positive "hits" that require further verification of the alien's identity through fingerprint submission. At the moment, criminal history "hits" are often received on aliens in the NCIC "wants and warrants" files and other NCIC files to which the FBI currently does permit DHS direct access, but the information is not necessarily disqualifying for the particular immigration benefit (e.g. certain misdemeanors). With direct NCIC III access, DHS could "triage" its benefit cases and focus enforcement efforts on those cases where the "hit" was of a type likely to disqualify the person for the application or petition at issue. If it received such a "hit" via a name check of NCIC III, DHS or DOS could follow up by requesting fingerprints of the individual for further verification of identity so as not to deny a benefit to the wrong individual. Finally, direct access to NCIC III would assist DHS adjudicators in determining what may have happened in terms of conviction, acquittal or other follow-up activity in the case of an individual for whom DHS has received a "hit", or an FBI name check "hit" from the FBI's investigative records for which the FBI does not require DHS to submit fingerprints.

No one would dispute that fully fingerprint-based checks are more reliable to determine identity than name checks, but DOJ's position that name-check access should not be provided at all because print-based checks for all should be done is, essentially, rejecting a substantial improvement because it does not result in perfection. Indeed, the same argument suggests that law enforcement use of NCIC information without full prints is equally flawed, yet law enforcement agencies, in matters where liberty is at stake, are authorized to use the system. Furthermore DOJ's position that name checks are "not reliable" is contradicted by its own stated position to Congress; in a draft letter to Chairman Sensenbrenner circulated interagency in early March, DOJ took the position that a match between a visa applicant's identifying information (e.g., name, date of birth, place of birth, country of citizenship) and a record in the terrorist watchlist by itself provides reasonable ground to believe that the alien is inadmissible, and thus that the visa must be denied. How can DOJ take this position on the one hand, while on the other argue that the Department of State should not be permitted to do name-checks of criminal history information for the purpose of determining visa eligibility because of their "inherent unreliability"?

DOJ's opposition cites budget concerns. In essence the DOJ argument is this: DHS should be required to submit fingerprints rather than have name-check access, so that the FBI can continue to collect fees to pay the salaries of the people who look at the fingerprints. We do not believe that this argument is a credible reason not to share information, and it is thoroughly inconsistent with the repeated public statements of DOJ and the FBI that their goal is to remove barriers to interagency information-sharing.

The Washington Times
www.washingtontimes.com

Iraq spy suspect oversaw U.S. asylum

By Stephen Dinan

THE WASHINGTON TIMES

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An Iraqi-born U.S. citizen suspected of being a foreign intelligence agent was employed by U.S. Citizenship and Immigration Services to rule on asylum applications, including those from unfriendly Middle Eastern nations, according to documents obtained from Congress by The Washington Times.

Michael J. Maxwell, the former head of the Office of Security and Investigations at USCIS, is expected to testify about the Iraqi case and other breakdowns at the agency to a House subcommittee today.

Mr. Maxwell will tell legislators that the immigration system is being used by enemy governments to place agents in the United States.

The suspected agent, whose name has not been released, judged 180 asylum applications while at USCIS, the agency that also rules on green cards, citizenship and employment authorization.

A database check during Mr. Maxwell's investigation turned up national-security questions about nearly two dozen of those cases.

Mr. Maxwell will also tell the panel about criminal accusations pending against USCIS workers and that top USCIS officials have deceived Congress and obstructed the duties of his office, the agency's internal affairs division.

"The immigration system as a whole is so broken that our adversaries can game it," Mr. Maxwell told The Times when asked about the documents this week. "I can assure you they're using it against us; they can with impunity."

His testimony comes as the Senate debates whether to enact a guest-worker program that would allow current illegal aliens and future foreign workers a new path to citizenship.

An opponent of a guest-worker program, Rep. Ed Royce, chairman of the House International Relations subcommittee on terrorism and nonproliferation, which is holding the hearing, said USCIS is "deeply flawed" and focuses too much on processing applications and not enough on security, according to his prepared statement.

The House immigration-enforcement bill passed in December included an amendment by Mr. Royce, California Republican, that puts law enforcement at the top of USCIS' priorities.

Emilio Gonzalez, the agency's new director, told reporters last month that he has made national security the top priority.

"The minute I walked through these doors here, I let it be known – under my watch, it's all about security," he said.

Mr. Gonzalez said the lack of access to databases for some adjudicators -- another subject Mr. Maxwell is expected to testify about -- hasn't hurt the agency because other agencies can do those checks and share information.

USCIS officials said they will wait to see Mr. Maxwell's testimony to respond specifically, but Angelica Alfonso-Royals, a USCIS spokeswoman, said, "We take any allegations of potential misconduct seriously and are investigating them fully."

Mr. Maxwell now works as an independent consultant on security matters, and a client is Numbers USA, which lobbies for stricter immigration controls and against a guest-worker program. He said this week that the Iraq case was not an isolated case.

"We know the asylum process is in shambles. We know fraud is rampant," he said, adding that documents show top officials know this and refuse to do anything about it.

In the case of the suspected agent, whose name was blacked out in the documents The Times obtained, Mr. Maxwell said there were many red flags.

"There are indicators throughout this entire case that I saw, professionals within the FBI and the intelligence community saw, that all pointed one way -- we were dealing with an individual who was a member of a foreign intelligence agency that had been working within CIS," Mr. Maxwell said.

"The danger was that he was granting asylum to anybody that he wanted to, with impunity, at a time of his choosing. Who was he letting into this country?"

The man was in demand at USCIS because of his language skills. He was able to do interviews without the need for a translator. At the time, that seemed to be a big benefit to the speed of the process, but in retrospect, Mr. Maxwell said, it posed a security risk.

Mr. Maxwell said they first became suspicious of the man when, while on a yearlong assignment to the Defense Department in Iraq, he walked outside the Green Zone in Baghdad and disappeared. According to documents, authorities first thought he had been taken hostage but concluded he had left of his own accord.

Mr. Maxwell began an investigation that found that the man had been hired by USCIS even though negative "national security information" in his background check caused other federal agencies to pass on him.

A national security polygraph showed repeated deception on his part, and in interviews with Mr. Maxwell, he denied having traveled to Iran, Syria and Jordan while he worked for USCIS, even though electronic databases showed he had made the trips.

The man also made "persistent requests" that Mr. Maxwell help him achieve secret or top-secret clearance so he could go back to work for the Defense Department. Mr. Maxwell said that request was weird because Defense would have had to do its own background check anyway.

The man has since left USCIS and the United States so Mr. Maxwell closed his investigation. But Mr. Maxwell said that despite his findings, USCIS doesn't even have the ability to go back and see whether any of the 180 cases the former employee approved should be revoked.

"With no internal audit function at CIS, we don't know who we let into this country," Mr. Maxwell said.

Attachment 4

National Benefits Center Adjudication Process Review

OFFICE OF THE CHIEF INFORMATION OFFICER
UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES

March 23, 2006

DEPARTMENT OF HOMELAND SECURITY

Summary

USCIS OCIO contract personnel (Total Systems Technologies Corporation, TSTC) were tasked with investigating allegations that an auto-adjudicate function was being used at the National Benefits Center which allowed processing of I-485 (Adjustment of Status) applications without appropriate adjudicator review.

Based upon the initial review, consisting of documentation reviews, interviews and an initial review of CLAIMS 3 soft data, it does not appear that there is any means for "auto adjudication" to take place with I-485 applications being processed at the National Benefits Center. These interviews included discussions with Information Technology staff, Director of Adjudication, Director of the Fraud Detection Unit, and the Director of Records. There does appear, however that there is a little – known manual data entry process that provides the ability to insert a benefits application into the CLAIMS3 database without using the established lockbox or e-File input methods.

Findings

According to IT Department personnel, an unknown number of benefits applications are processed manually at the National Benefits Center. After a full review of the C3 Database a final number of manually processed applications will be known. The National Benefits Center has only one person with access privileges to manually enter these benefits applications and OCIO Security could not assess the number of applications processed in the fashion. OCIO Security will ascertain the validity of this statement once the C3 Database has be fully reviewed. The IT staff could conceivably make direct changes to the Claims 3 database. The Director of Adjudication was not aware of any method of accepting application other than the Lock Box submissions from Los Angeles and Chicago.

Once the benefits application information is entered (either manually, by the aforementioned person with access privileges, or electronically via the Lock Box function) it is uploaded to C3 and this initiates the Interagency Border Inspection System (IBIS) screening of the applicant. IBIS is a Mainframe application owned by the Department of Treasury and it provides access to the FBI's National Crime Information Center (NCIC) and allows its users to interface with all fifty states via the National Law Enforcement Telecommunications Systems (NLETS) for the purpose of reviewing records of wanted persons and/or criminal histories.

All applications receive an IBIS check within the first ten/fifteen days of arrival at the National Benefits Center and if a benefits application is idle for more than 90 days an additional IBIS check is run. The current I-485 process requires a great deal of manual interaction using 2 computer applications (a GUI based application and a text based application) running on NBC workstations. The I-765 and I-90 are often filed at the same time as the I-485. In the event they are not filed at the same time, they must be linked to a current I-485 before they are processed. The adjudication of the I-485 includes IBIS checks, biometrics capture for FBI finger print check, FBI name checks, and a personal

interview. While using the 2 adjudication applications, all adjudicator's actions inputs or changes to records are logged in a database and can be audited.

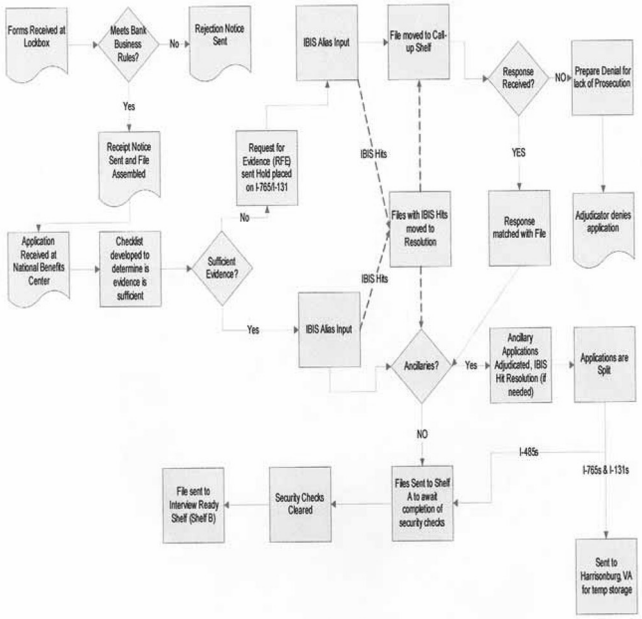
The one item that can be generated without the involvement of an adjudicator is the I-765. This is due to the fact that 8 CFR §274a.13 states the following:

> *The district director shall adjudicate the application within 90 days from the date of receipt of the application by the INS, except in the case of an initial application for employment authorization under § 274a.12(c)(8), which is governed by paragraph (a)(2) of this section, and § 274a.12(c)(9) in so far as it is governed by § § 245.13(j) and 245.15(n) of this chapter. Failure to complete the adjudication within 90 days will result in the grant of an employment authorization document for a period not to exceed 240 days. Such authorization shall be subject to any conditions noted on the employment authorization document. However, if the director adjudicates the application prior to the expiration date of the interim employment authorization and denies the individual's employment authorization application, the interim employment authorization granted under this section shall automatically terminate as of the date of the director's adjudication and denial. (Amended 7/1/94; 59 FR 33903) (Amended 1/4/95; 59 FR 62284) (Amended effective 6/22/98; 63 FR 27823) (Corrected 7/21/98; 63 FR 39121) (Amended effective 6/11/99; 64 FR 25756) (Amended 3/24/00; 65 FR 15835).*

IT staff identified an application I-765 SQA that was developed by the Texas Service Center (TSC), it is currently being tested and has not been incorporated at the National Benefits Center. This modification/application does have an auto-adjudication aspect to it but a detailed code review is required to fully understand the functionality. This will be completed by OCIO Security in the coming weeks. NBC IT staff stated that the auto-adjudication function of the I765 SQA application had failed tests at NBC and was not currently in use though it was being used at other service centers (Dallas).

On the last day of the NBC visit, the focus of the review became the benefits application process flow and the CLAIMS 3 uploads. The review staff focused on the input and output of the benefits processing by the National Benefits Center. It was determined that an unknown number of authenticated users were able to submit adjudicated applications that appear to have circumvented the established adjudication process as described in the following process flow diagram.

Process Flow



Conclusion

USCIS OCIO is in the process of conducting a thorough analysis of CLAIMS 3 data to determine the identity of the users that are able to process benefits applications without following the normal adjudication process and also to determine the number of applications that are currently processed in that fashion. This analysis will also provide the ability to determine the individual applications that were processed through the lock box/e-File processes, or by alternative methods. Based on these initial findings it appears that a full CLAIMS 3 process and code review are warranted. This process and code review will be conducted by OCIO Security once database access has been granted. The results of the review will be provided to the appropriate DHS personnel upon completion.

Attachment 6

U.S. Citizenship and Immigration Services
Office of Fraud Detection and National Security
USCIS TECS Users Report
July 25, 2005

U.S. Citizenship and Immigration Services
Office of Fraud Detection and National Security
USCIS TECS USERS Report
July 25, 2005

PURPOSE: TECS access and information availability is of critical importance to USCIS' background check protocols. Four topics of concern are listed in brief below and analyzed within this document:

1) **TECS Access Levels for USCIS Users:** Examines the access level required for USCIS to carry out its background check protocols; the connection between background investigation levels and authorized TECS access; and the 1993 agreement between legacy INS and the legacy US Customs Service, which stipulates that a Full Background Investigation (Full BI) is necessary to access extra-agency lookout records above "Level 1."
2) **USCIS Loss of Administrative Control Over a USCIS TECS User Group:** Examines circumstances surrounding the removal by Customs and Border Protection (CBP) of a group of USCIS TECS users from USCIS administrative control, and implications to the USCIS background check mission.
3) **Creation of a USCIS agency profile/code by CBP:** Examines the history and creation of a distinct, restrictive agency code by CBP for USCIS, and its current status.
4) **Designation of USCIS as a "Third Party Agency" by CBP for Purposes of Sharing Information in the TECS system.** Examines the impact of this incongruent policy on the USCIS background check mission.

BACKGROUND: USICS access to lookout information from other agencies through TECS is dictated by a 1993[1] agreement between legacy INS and US Customs. The 1993 agreement lays out three background investigation types, which generally determine a user's access to TECS functions and data. With a *National Crime Information Center* (NCIC, AKA Type 1) background investigation, a user will have access only to their own agency's records. In the TECS user profile, the "BI Level" code is represented as "1." Employees with a *National Agency Check with Inquiries* background investigation (NACI, AKA Type 2) are authorized access to data from other agencies, but only records coded as Level 1 records in TECS; the TECS user profile displays this as "BI Level" "2." A *Full Background Investigation* (AKA Type 3) is required for access to records from other agencies coded higher than Level 1; the TECS user profile shows this as "BI Level" "3."

Issues with USCIS TECS access derive from modifications to the system and agency profiles by Customs and Border Protection (CBP), its current owner. On December 31, 2004, CBP migrated into the Treasury Enforcement Communication System (TECS) data from two Department of Justice databases upon which USCIS has relied heavily for information. As part of the migration process, both the Nonimmigrant Information System (NIIS) and the National Automated Immigration Lookout System (NAILS) were eliminated, requiring USCIS personnel who had not previously had access to TECS to obtain such access. At the same time, CBP removed USCIS from the TECS administrative framework that had been established for the Immigration and Naturalization Service (INS) in 1993, and created a separate National System Control Officer and hierarchy for USCIS.

Concomitant with this effort, CBP undertook to create a distinct USCIS agency user profile that would severely limit the access USCIS employees would have to records in TECS, *regardless of each user's*

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[1] *Memorandum of Understanding Between the U.S. Custom's Service and the Immigration and Naturalization Service for the use of the Treasury Enforcement Communications System (TECS);* April 12, 1993; Michael H. Lane (Deputy Commissioner, USCS) and Michael T. Lempres (Executive Commissioner, US INS), signatories.

background investigation level. This USCIS user profile—coded B16—would not provide access to level 2,3, or 4 records from any agency outside USCIS, and would severely limit the number of agencies whose Level 1 records could be viewed. For example, USCIS would have no access to records from ICE, the Secret Service, DEA, and Interpol. Indeed, the only extra-agency records to which USCIS would have access under the B-16 profile were to be those from TIPOFF and the Department of State, with a limited number available from CBP, but even these would be at no higher than Level 1.[2] As established, the B-16 profile would have afforded USCIS users access even less than that established for a NACI, or Type 2 background investigation (BI), under the 1993 agreement. Recall that a NACI, or Type 2 BI, authorizes access to Level 1 records for all agencies, and that a Full BI authorizes access to extra-agency records above that level.

It was the intention of CBP to assign all USCIS users to the new "B16" profile. The plan was brought to the attention of USCIS leadership, which advised officials at CBP responsible for the proposal that the 1993 Memorandum of Understanding (MOU) authorized access to records owned by other agencies as long as employees met the Background Investigation (BI) levels stipulated in the agreement. CBP was persuaded to abort the restrictive aspects of the profile; but to date no retraction of the proposed profile description has been provided to USCIS. This is unsettling because CBP has begun coding USCIS users as B16.[3]

Aside from the general agency B16 coding issue, CBP did in fact manage to restrict TECS access for those USCIS employees in PICS who did not have access to TECS (including those who had allowed their access to lapse) at the time of the data migration in December 2004. Moreover, unlike all other employees within the USCIS TECS structure, USCIS is unable to make changes to access profiles within this group (coded as "XNNI"[4]), regardless of the background investigation level of an employee. It is suspected that a number of people in this group probably already had a full background investigation on record, but because they did not have access to TECS at the time of the data migration, they were, regardless, relegated by CBP to the XNNI profile once access was requested and granted by the system. Since January 2005, USCIS has been unable to reclaim administrative control over the TECS users in this group. At issue has been the demand by CBP to forward background check level information for USCIS employees. While USCIS has been willing to convey this information, there has been to date no agreement on the mechanism for delivering the information.

CBP placed no restriction on future employees, however. After establishing PICS identification for any new employee, USCIS can establish appropriate TECS access.

In fact, as part of the 1993 agreement, legacy INS had administrative control over its users, and was responsible for assigning access in TECS to each user commensurate with their background investigation type. There was, apparently, no mechanism for an automatic conveyance of background investigation level into TECS for assignment of access. Each System Control Officer filled the "BI Level" field themselves, based upon their knowledge of the process, the user's background investigation type, and any standing managerial limitations on use. While there are some USCIS employees outside of the administrative control of USCIS at the present time, USCIS does assign TECS access by associated BI Level to most of its employees. Twelve years have passed since the agreement was signed; in the interim. INS was dissolved and the U.S. Customs Service reorganized. In accordance with the 1993 MOU, and because of recent concern by USCIS over agency access, the accuracy of the "BI Level" entries into each user's profile by their respective System Control Officer raises three critical questions: 1) Are there USCIS employees that have greater TECS access than their background check level seemingly authorizes? 2) Are there USCIS employees that do not have the access to which they are entitled by

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[2] "USCIS TECS Subject Access," December 17, 2004; conveyed to USCIS by Beverley Davidson, OIT Enforcement Systems Branch, CBP.

[3] TECS user profile records show some USCIS employees with B16 agency codes, some with B01 (described as "INS On-line").

[4] The XNNI profile allows access only to data in TECS identified as having derived from NIIS or NAILS, and is therefore not sufficient to complete background check protocols.

virtue of their background investigation level? 3) Is it reasonable, at this point in time, and considering the extraordinary information needs and budget constraints faced by the entire Department of Homeland Security, for CBP to impose a requirement for a "Full BI" on DHS employees with a "need to know"?

OBJECTIVE: With CBP's removal of USCIS from the legacy INS TECS administrative structure, its establishment of a distinct TECS hierarchy for USCIS, its attempt to restrict USCIS access to TECS, and its subsequent creation of a user group with limited TECS access that is also outside of our agency's administrative control, FDNS recognized two urgent needs: the first to determine current TECS access levels for all USCIS employees; and the second, to analyze the relationship between each employee's TECS access level and their background investigation category of record.

Ultimately, USCIS staff must possess a TECS access level necessary to ensure the retrieval of mission-critical national security and public safety information. Collective INS needs were addressed and met in 1993 with the access authorized by a Full Background Investigation (Full BI) and an agency profile not otherwise restricted. Certainly the events of 9/11 and the evolution of USCIS' background check protocols dictate that this agency must maintain access commensurate with what was afforded under INS. Information related to national security and public safety addresses our agency's greatest vulnerability. USCIS must prevent the extension of benefits to individuals not so entitled, and identify all risks to national security and public safety to do so.

This report presents the following data: a summary of TECS Access Levels for all USCIS users; a summary of actual USCIS Background Investigation levels for those USCIS users whose TECS profiles show they have had a full background investigation (BI Level 3), whether or not they have had the required Full BI; and a summary of the Background Investigation Levels for USCIS users assigned by CBP to the XNNI restricted profile (which is outside of USCIS TECS administrative control).

FINDINGS: Chart A, directly below, shows the USCIS TECS user community at 6,572 persons. Of this total, 4,950, or 75% have access at the level authorized only by a full background investigation. This is represented in TECS as "BI LVL 3." Around 16%, or 1,073 people, are noted with "BI LVL2" access. Some 515 people have been assigned by CBP with the very restricted XNNI profile—essentially receiving only information migrated into TECS from NAILS and NIIS and USCIS data. The XNNI profile cannot be changed by USCIS, and is without regard to the BI level the employee may have.

Chart A

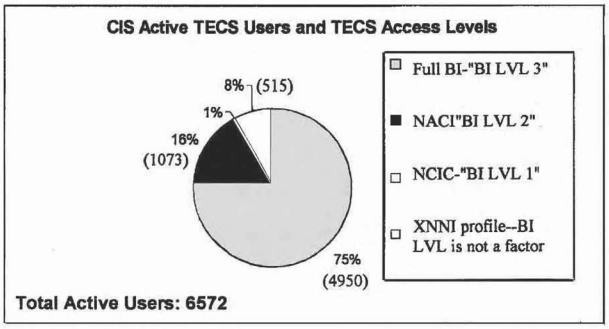


Chart B, below, examines the 75% of USCIS users (4,950 people) with "BI Level 3" access. Of this total, 49% are registered in PICS as having had the required Full Background Investigation. Another 51% are registered as having had only a Limited Background Investigation. This may be due to an SCO granting an incorrect access level or failing to down-grade an employee whose subsequent background investigations were limited in scope.

Chart B

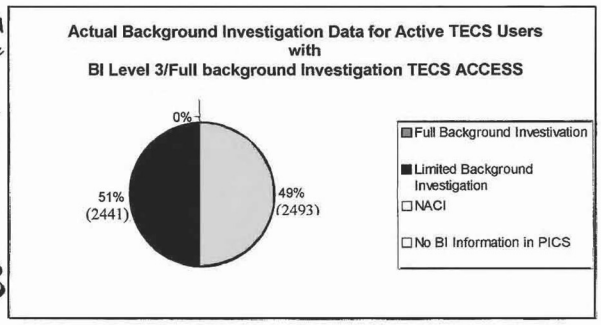
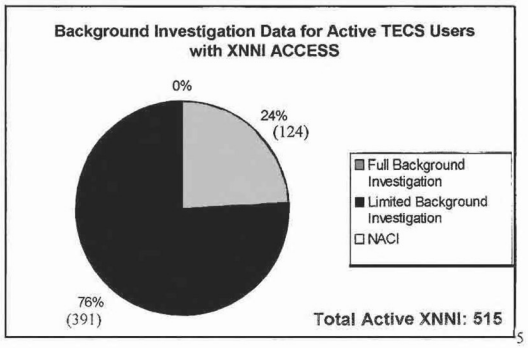


Chart C, below, examines the 8% of USCIS users (515 people) with the severely restricted XNNI profile. Of this total, 24% are registered in PICS as having had a Full Background Investigation. They are entitled, therefore, to access afforded by a Full BI—BI Level 3. Another 76% are registered as having had only a Limited Background Investigation, which, according to the 1993 MOU certainly does authorize at least Level 1 access to other agency records, which far exceeds the information returned with an XNNI Access.

Chart C



5

SUMMARY AND RECOMMENDATIONS: Without access to higher level extra-agency TECS records, USCIS employees with background check responsibilities may miss information that is critical to the adjudicative process. In the absence of this information, USCIS could grant an immigration benefit to someone who poses a threat to national security or public safety. Notwithstanding the partial unilateral abrogation of the 1993 MOU by CBP at the end of 2004, USCIS employees are entitled to full TECS access with a *completed* full background investigation.

Recommendation #1. *USCIS should examine means to conduct, complete, and maintain full field investigations for all employees with background check responsibilities.* This summary does not identify individuals in USCIS with background check responsibilities; for purposes of this analysis, all persons with access to TECS were presumed to be engaged in background check activity. The following summary and analysis approximates the maximum number of persons for whom a full background investigation may need to be conducted by USCIS, as of June, 2005:

1) **75% of all USCIS users (4,950 of 6,572) have BI Level 3 access:**
   - BUT, 51% of these users DO NOT have the required full background investigation for this access. It is possible that these persons had an initial full BI, but subsequent investigations were not conducted at the same level. Their access in TECS, however, was never downgraded. This equates to **2,441** additional full background investigations.

2) **25% of all USCIS users (1,643 of 6,572) have less than BI Level 3 access.**
   - 68% of these users are under the administrative control of USCIS; once a full BI is completed for them, USCIS can upgrade their TECS access level.
   - 32% of these 1,643 employees were removed from USCIS administrative control by CBP. Despite the fact that 124 of these users have the required Full BI, USCIS cannot upgrade their TECS access. These 124 should not require a new full BI.[5]
   - In this subgroup, then, **1,478** additional full background investigations may be required

The total number of persons identified in 1) and 2) above for whom a full field investigation may need to be conducted in order for those employees to gain full access to TECS is *3,919*. Because some employees with current access to TECS functions may not be engaged in background check activity, the total number of required investigations will likely be smaller.

Recommendation #2. *USCIS must regain administrative control over the user group coded "XNNI"—without the requirement of transmitting background investigation information to CBP.* CBP's compartmentalization and removal from USCIS administrative control of those employees who did not have TECS access at the time of the data migration is contrary to the 1993 MOU and the 2004 establishment by CBP of a USCIS TECS hierarchy. The 1993 MOU requires the user agency to coordinate and designate TECS access for its employees.

Recommendation #3. *USCIS must be guaranteed that there are no restrictive aspects to the B16 agency code. We also need to know why some of our employees are coded as B16, and others are still B01.* CBP must advise USCIS of the meaning of the agency code set for USCIS—B16—as this code originally implied not only an agency identifier but a restricted profile for all USCIS users, regardless of background investigation level. As noted earlier, CBP has not conveyed the information, though the agency has indeed moved personnel in USCIS from the B01 agency code to the B16.

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[5] The total number of persons outside of USCIS' administrative control may be slightly larger than 515, because only Active TECS users were counted. Some USCIS employees who were assigned to the XNNI group stopped using TECS, because their access was insufficient. Their accounts became inactive.

Recommendation #4. *USCIS must work to eliminate the information bias demonstrated by CBP against this agency.* CBP has advised on many occasions that it considers USCIS to be a "Third Party Agency," and that it will not provide details surrounding records it has placed in TECS. This assertion has been made by upper management, despite the fact that CBP's own TECS training module states that all organizational elements under DHS are considered part of a single agency, and that information can be shared simply by establishing that a DHS employee has a "need to know." This creates an impossible situation for USCIS employees conducting background check resolution activities, as ports-of-entry note they may not release information, and the National Targeting Center, CBP's operational center, states categorically that it will not provide any assistance to USCIS callers who have encountered a CBP hit. While some of the hits involve the JTTF and can be accessed by employing the assistance of the TSC, unless there is a JTTF involvement, USCIS will not receive derogatory input from CBP beyond a TECS record.

Attachment 7

From: Nolin, Patricia
Sent: Friday, September 09, 2005 8:45 AM
To: Mullin, Geoffrey M
Subject: [redacted] (PDOB: Somalia; 02/10/1968) [redacted]

Importance: High
Sensitivity: Confidential

Geoff, Not sure if I should be making this request, but I'll take a chance. The above-referenced individual has filed a Mandamus against the Service relating to his unadjudicated N400 application. The Name Check Process returned a POSITIVE RESULT and the FBI LHM and FDNS follow-up provides FOCUS with no details, other than the individual is the subject of an ongoing investigation with national security implications. According to FDNS, in order to maintain 'case integrity' the FBI did not provide specifics of the case, but the case should be placed in Abeyance. I was wondering if you would be able to obtain more detailed information regarding the investigation along to assist FOCUS with this case and information that could be used in open court before the judge to explain the need for placing the case in Abeyance. Thanks for your help, Pat

Attachment 8

From: Haas, Dennis
Sent: Thursday, September 15, 2005 1:40 PM
To: Miner, Lloyd W; Berglund, John M; Mullin, Geoffrey M
Subject: FW: Interview Notes

Sensitivity: Confidential

Geoff:

See below traffic.

-----Original Message-----
From: Sposato, Janis A
Sent: Thursday, September 15, 2005 1:28 PM
To: Maxwell, Michael J
Cc: Aytes, Michael; Yates, William R; Paar, Tom; Haas, Dennis
Subject: RE: Interview Notes
Sensitivity: Confidential

Thank you Michael. You and your staff have been very responsive to me and to Focus, and I appreciate that.
Janis

----Original Message-----
om: Maxwell, Michael J
sent: Thursday, September 15, 2005 1:26 PM
To: Sposato, Janis A
Cc: Aytes, Michael; Yates, William R; Paar, Tom; Haas, Dennis
Subject: RE: Interview Notes
Importance: High
Sensitivity: Confidential

Janis,

I have spoken with Tom Paar on this particular case. I need to make my position clear to all parties. With the approval of the Chief of Staff, in this case only, we can finish the job and share the information. However, in the future, I have been directed to cease OSI participation in the FOCUS initiative and, as seen in the email below, had already directed my staff that OSI shall not be involved in future FOCUS initiatives unless approved by Bill, the COS, and ADD.

I will have Geoff Mullin contact Pat to close the loop and then must withdraw from the process.

Vr,

Michael

-----Original Message-----
From: Sposato, Janis A
Sent: Thursday, September 15, 2005 1:03 PM
Maxwell, Michael J
Cc: Aytes, Michael; Yates, William R
Subject: FW: Interview Notes
Importance: High

Maxwell, Michael J

From: Sposato, Janis A
Sent: Thursday, September 15, 2005 1:03 PM
o: Maxwell, Michael J
Cc: Aytes, Michael; Yates, William R
Subject: FW: Interview Notes

Importance: High
Sensitivity: Confidential

Michael
I don't want to interfere with whatever instructions you got from Robert, but one of our FOCUS mandamus cases seems to have gotten caught in the middle. I understand that your staff had contacted Secret Service and obtained adverse information for us about the applicant, but that they now feel constrained to share it. Can you see your way clear to allow your staff to share what they have? Or would you rather I ask Robert for permission? I apologize for putting you on the spot.
Janis

-----Original Message-----
From: Nolin, Patricia
Sent: Thursday, September 15, 2005 9:20 AM
To: Sposato, Janis A
Cc: Mulrean, Mary C; Leclair, Kellie
Subject: FW: Interview Notes
Importance: High
Sensitivity: Confidential

Janis, FOCUS was hoping to use information that OSI (Office of Security and investigation) was going to provide in support of this N400 case. According to information previously provided by OSI, this individual is involved in moving large sums of money, and under current investigation by the Secret Service. According to the information FDNS provided FOCUS, there was no derogatory information and we should proceed with adjudication. FOCUS needs the information available to OSI in order to render an appropriate decision in this case. Thanks, Pat

-----Original Message-----
From: Leclair, Kellie
Sent: Thursday, September 15, 2005 9:08 AM
To: Nolin, Patricia
Subject: FW: Interview Notes
Importance: High
Sensitivity: Confidential

Pat,
This is regarding the [redacted] mandamus case.
Thanks,
Kellie

-----Original Message-----
From: Mullin, Geoffrey M
Sent: Wednesday, September 14, 2005 6:48 PM
To: Leclair, Kellie
Cc: 'john.berglund@dhs.gov'
Subject: Interview Notes

Kellie,
Recvd your message ref reviewing the interview notes you have just been forwarded. I would like to assist but I have been instructed that I will be directly defying the Acting

Deputy Directors order if I do. You may ask Pat to ask her boss to talk with Director Maxwell as I know he is receptive to our doing whatever we can to help you guys. Hoipe this can be resolved in time!
Geoff

`ent from my BlackBerry Wireless Handheld

U.S. Department of Homeland Security
Washington, DC 20258

U.S. Citizenship
and Immigration
Services

HQ 70/2.1

Interoffice Memorandum

To: Asylum Directors
Regional Directors
District Directors
Service Center Directors
National Benefits Center Director

From: William R. Yates
Associate Director of Operations

for Joseph Cuddihy
Associate Director, Office of Refugee, Asylum, and International Relations

Date: March 29, 2005

Subject: CLARIFICATION and MODIFICATION of New Resolution Process for IBIS National Security/Terrorism-Related Positive Results

This memorandum provides clarification and modification to some of the procedures described in the November 29, 2004 memorandum entitled *"New Resolution Process for IBIS National Security/Terrorism-Related Positive Results."*

Background

USCIS, as an integral part of the Department of Homeland Security, conducts many millions of background checks on persons seeking to obtain or receive benefits under the INA each year. Our ongoing effort to maintain and enhance National Security and Public Safety demands constant resolve and cooperation. In order to achieve the highest level of success, the office of Fraud Detection and National Security (FDNS) was created; its first priority is to identify persons who pose a threat to national security or public safety. To accomplish this mission, the FDNS develops and oversees background check policy and procedures.

I. Modifications to the November 29, 2004 IBIS National Security Resolution Process

A. Procedural Change for all National Security Notifications (NSN)
In order for the FDNS to appropriately oversee the IBIS National Security/Terrorism-related hit resolution process, and also acquire significant data relevant to the background check process, it has been determined that HQ FDNS should receive notification on all National Security/Terrorism- related IBIS hits, and review all notifications before USCIS offices proceed with resolution.

Effective immediately, all offices, through the FDU or FDNS Immigration Officer, will complete and e-mail the form *IBIS-National Security Notification (NSN)* to HQ FDNS at **FDNS-IBIS@dhs.gov** whenever an IBIS National Security/Terrorism-related hit is encountered.[1] Use the revised NSN form posted on the FDNS website. After the encountering office forwards an NSN to HQ FDNS, it must wait for confirmation from HQ FDNS before proceeding with resolution—HQ FDNS will review every NSN for completeness, and inform the submitting office if the NSN must be revised and resubmitted. Once the form is deemed complete by HQ FDNS, the submitting office will be notified either to proceed with the resolution locally or to await a resolution by HQ FDNS.[2] (While most resolutions will still be performed by submitting offices, some cases will be selected for resolution at HQ FDNS.)

B. **Procedural Change for all National Security Case Resolution Records**
HQ FDNS will also review and analyze all USCIS national security resolutions, requiring the following modification to the November 29, 2004 memorandum: Effective immediately, all national security case resolutions must be emailed to HQ FDNS at **FDNS-IBIS@dhs.gov** (use the form *IBIS-National Security Case Resolution Record*, released with the November 29, 2004 memorandum).[3] ALL further action on these cases must be suspended until they are cleared for adjudication by either the HQ FDNS Background Check Analysis Unit (BCAU)[4] or FOCUS[5], as described in the process that follows.

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[1] A modification was made to the original NSN form released on November 29, 2004; a new box—"IBIS HIT (Notification Only)"—has been added. A copy of the revised form accompanies this memorandum (it is still a fillable Word document). It will also be distributed and available on the FDNS website.

[2] *Resolution* is accomplished when all available information from the agency that posted the lookout(s) is obtained. A resolution is not always a finite product. Law enforcement agencies may refuse to give details surrounding an investigation; they may also request that an adjudication be placed in abeyance during an ongoing investigation, as there is often a concern that either an approval or a denial may jeopardize the investigation itself.

[3] It is critical to remember to use only the FDNS forms created specifically for the NSN process. See the FDNS website.

[4] The division of the National Security branch within HQ FDNS that is devoted to background check resolution and policy formation is the Background Check Analysis Unit (BCAU).

[5] To assist adjudications in utilizing information obtained through background check resolution processes, USCIS recently created FOCUS, a headquarters review board within Field Service Operations. USCIS offices may refer cases to FOCUS for adjudication guidance at any time following the receipt of background check resolutions. HQ FDNS will refer some cases directly to FOCUS. The Office of Refugees, Asylum and International Operations (ORAIO) will not participate in the FOCUS review process. Field Service Operations will release further FOCUS details at a later date.

C. Clearance Process for Adjudication—How BCAU Interacts with FOCUS

Once an IBIS National Security Case Resolution Record is received at HQ FDNS, it will be reviewed for completeness; the submitting office will be informed if it must be revised and resubmitted. After the Case Resolution Record has been deemed complete by the BCAU, the BCAU will notify the submitting office either that it may forward the case to adjudications, OR that the case has been referred to FOCUS by BCAU[6].

When cases are referred to FOCUS, the submitting office must not release the case for adjudication until it is cleared by FOCUS. During the period of review by FOCUS, any follow-up by the submitting office should be made directly with FOCUS. Once FOCUS has completed its impact assessment, FOCUS will contact the FDU or IO holding the case file directly. At this point, after receiving a response from FOCUS, the FDU/IO will forward the case file containing both the IBIS national security resolution and the FOCUS impact assessment to adjudications.

II. Other FDNS Clarifications and Modifications

A. The role of the Regional FDNS Immigration Officer in IBIS National Security Resolution

As part of the overall effort to streamline the National Security/Terrorism IBIS resolution process, it has been recognized that offices lacking an FDNS Immigration Officer (IO) may not be best positioned to resolve National Security/Terrorism-related IBIS hits. Superseding the November 29, 2004 memorandum, and effective immediately, adjudicators in Field offices without an FDNS Immigration Officer will no longer resolve National Security/Terrorism-related IBIS hits. Instead, adjudicators will e-mail their National Security IBIS hits for resolution (via the form IBIS-National Security Case Resolution Request, released with the November 29, 2004 memorandum) to their corresponding Regional FDNS Immigration officer for resolution. It will also be the responsibility of the designated FDNS IO to review each submission, e-mail an NSN to HQ-FDNS, and e-mail the resolution record to HQ-FDNS once complete.

As indicated in the November 29, 2004 memorandum, the Regional FDNS IO also functions as the regional coordinator for the resolution of IBIS National Security/Terrorism-related positive hits for their respective field offices. The Regional FDNS IO is available to assist field FDNS Immigration Officers with general questions and resolution issues. The Regional IO will, in turn, seek the general assistance of HQ FDNS, or request HQ FDNS assume certain resolutions.[7]

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[6] The Office of Refugees, Asylum and International Operations (ORAIO) will not participate in the FOCUS review process. The BCAU will refer all National Security Case Resolutions deemed complete to the HQ Asylum Quality Assurance unit. During the period of review by HQ Asylum QA any follow-up meetings by the submitting office should be made directly with HQ Asylum QA

[7] *The Regional IOs are 1) Central: Jeff T. Boyd; 2) Eastern: Robert M Salyer; 3) Western: Kenneth N. Takeda*

B. Instructions Regarding Pending IBIS "SIR" Cases
Until further notice, no USCIS office is to perform resolution on any pending "SIR" Remember the "SIR" process terminated with the November 29, 2004 memorandum; all outstanding "SIRS" are now part of the backlog of "SIR" cases at the National Security and Threat Protection unit (NSTP—the component of ICE that assumed national security IBIS resolution activity from the INS National Security Unit). The ONLY National Security/Terrorism-related IBIS resolutions to be conducted by USCIS offices are those associated with the National Security Notification (NSN) process created with the November 29, 2004 memorandum. When confronted with litigation, an office with a pending "SIR" should contact the FDNS for assistance. FDNS will request expedited processing from the NSTP for those cases ONLY.

C. Contact with the Central Intelligence Agency (CIA)
All contact with the CIA will be coordinated by HQ FDNS. Should any background check require contact with the CIA, request the assistance of HQ FDNS through the **FDNS-IBIS@dhs.gov** mailbox.

FDNS will be conducting FDU and field regional teleconferences to discuss these new procedures. We ask that any questions be directed through the appropriate chain of command to the National Security Branch staff at **FDNS-IBIS@dhs.gov**.

cc: Don Crocetti
Director, Fraud Detection and National Security

Terrance O'Reilly
Director, Field Service Operations

Fujie Ohata
Director, Service Center Operations

Joseph Langlois
Director, Asylum

Mr. HOSTETTLER. Thank you, Mr. Maxwell.

Mr. Cutler, you are recognized.

TESTIMONY OF MICHAEL CUTLER, FORMER EXAMINER, INSPECTOR, AND SPECIAL AGENT, IMMIGRATION AND NATURALIZATION SERVICE

Mr. CUTLER. Thank you, Mr. Chairman.

Chairman Hostettler, Ranking Member Jackson Lee, Members of the Subcommittee, ladies and gentlemen, it is an honor to come before this Subcommittee hearing to offer testimony on an issue that is one of the most challenging and important issues our nation faces today.

I commend Chairman Hostettler and Members of this Subcommittee for demonstrating true leadership at a time that our nation is in need of true leadership.

The principle by which most responsible and sensible people live their lives could be summed up by the phrase, "Safety first." Yet this fundamental and common sense approach is clearly lacking among all too many of the senators of our nation. They voted for a bill that utterly ignores the findings and recommendations of the 9/11 Commission at a time when our nation is threatened by acts of terrorism.

Nearly every week we read news accounts of suspected terrorists being arrested in countries around the world as well as within the borders of our own country. We see compelling coverage of bombings of trains in Spain, England and most recently India. One of this country's closest allies, Israel, has been forced to take military action to defend itself against terrorism in the Middle East, and yet inexplicably there are senators and others, including the president of the United States who insist on pushing forward to implement the GuestWorker Amnesty Program that would be utterly disastrous for national security.

USCIS is unable to cope with all of its responsibilities as we speak. The GAO issued a report in March of this year that makes it clear that USCIS is unable to carry out its vital missions today without the added burden that the GuestWorker Amnesty Program would undeniably bring to bear against that overworked, underfunded and, in general, inept agency.

I would recommend a copy of this report be reviewed by the Members, not only of this Subcommittee but by all members of our Government who favor a GuestWorker Amnesty Program.

Mr. HOSTETTLER. Mr. Cutler, if I could just interrupt. Without objection——

Mr. CUTLER. Sure.

Mr. HOSTETTLER. I will submit into the record the March 2006 report that you reference, "Immigration Benefits: Additional Controls and a Sanction Strategy Could Enhance DHS' Ability to Control Benefit Fraud." Thank you.

[The report follows in the Appendix]

Mr. CUTLER. That is the report, and I appreciate that you do that.

Thank you, Mr. Chairman. Sure.

My fear is that because we are dealing with millions of illegal aliens who, in the parlance of the open borders advocates, are un-

documented that means they have no verifiable means of proving their true identities. This means that if the program were to be enacted under S. 2611 that it will be a simple matter for illegal aliens, including terrorists or criminals, to walk into an immigration office, along with millions of other illegal aliens, and produce a false name and then get an official identity document from our Government bureaucrats.

These documents would then enable them to circumvent the various no-fly and terror watch lists. They would be able to use these documents as breeder documents, get driver's licenses, Social Security cards, open bank accounts, even library cards, all the while staying under the radar and obscuring and concealing their true identity, and all of this at a time when the citizens of our country have witnessed an erosion of many of the freedoms that we have come to take for granted in the name of national security.

I have heard the President often state that if our nation allowed aliens who simply wanted to work to do so, that law enforcement could then focus on the terrorists. I have to respectfully disagree with this optimistic but extremely naive assessment.

Awhile back, Robert Mueller, the director of the FBI, testified before the Senate Intelligence Committee about his concerns about so-called sleeper agents. As you know, a sleeper agent is a terrorist, spy or enemy combatant who one way or another succeeds in gaining entry into the United States to carry out an attack or other hostile act against our country.

But while awaiting his instructions, however, such individuals do whatever they have to do to not call attention to themselves. Many, as we have seen, get low-profile [jobs], such as driving an ice cream truck, a taxicab, work in a used car lot, or attend school. Often the job that they take provides them with mobility to move freely among us as they conduct clandestine meetings, surveillance or other preparatory functions till the day that they are called into action.

A few days before a terrorist carries out an attack, he is in fact likely to hide in plain sight by going to his job. If our Government makes it that much easier for a terrorist to legally get a job under an assumed identity, then Al Qaida should give the people in our Government who make this possible the MVP award.

The GuestWorker Amnesty Program will undoubtedly entice ever-increasing numbers of illegal aliens to head for our country, because this program will convince people throughout the world that in the United States not only will you be permitted to break the law and get away with it, but that we are actually willing to reward you for breaking the law by even providing you with Social Security benefits when you commit identity theft and use somebody else's Social Security number, even as law enforcement agencies across our country are increasingly turning to asset forfeiture strategies to combat a wide variety of crimes on the city, State and Federal level.

Moreover, there is no door that could be shut so there is no way to keep the millions more illegal aliens from gaining access to our country. The confidentiality provisions would also hobble efforts by law enforcement officials to make certain that criminal and ter-

rorist aliens have their applications properly scrutinized, inviting more fraud.

The avalanche of applications will further erode any effort to restore integrity to the benefit system, meaning that fraud will become even more attractive to criminal and terrorist aliens, furthering encouraging more of them to seek to enter the United States, making it easier for them to game the system, and then we wind up with a vicious cycle where we have more aliens filing more applications, and quality will continue to erode as more applications are filed.

And, meanwhile, decent people who file applications for benefits will be put on the back of this line because the overflowing system won't be able to deal with their applications. That was one of the lessons of the 1986 amnesty, in fact.

Additionally, a meaningful effort needs to be made, not only to deny applications where fraud is involved but to prosecute people who become involved in fraud and to remove aliens who are identified as being the beneficiaries of fraud applications. Right now they file an application with little fear of either criminal charges being brought or administrative deportation actions being initiated.

So if you consider all of this and you realize that the bill of 1986 is essentially a reworked version that we are looking at now, it makes no sense to continue along this path. S. 2611, at a time that we are in now, facing terrorism, facing growing problems with narcotics and gang activities in the United States, makes no sense, and any kind of amnesty program must not be considered at this time.

I look forward to your questions.

[The prepared statement of Mr. Cutler follows:]

PREPARED STATEMENT OF MICHAEL W. CUTLER

Chairman Hostettler, Ranking Member Jackson Lee, members of the subcommittee, ladies and gentlemen, it is an honor to come before this subcommittee hearing to offer testimony on an issue is that one of the most challenging and important issues our nation faces today. I commend Chairman Hostettler and members of this subcommittee for demonstrating true leadership at a time when our nation is in need of true leadership.

The principle by which most responsible and sensible people live their lives can be summed up by the phrase, "Safety first." We instill this principle in our children as soon as they are old enough to understand the words. Yet, this fundamental and commonsense approach is clearly lacking among all too many of the senators of our nation. They voted for a bill that utterly ignores the findings and recommendations of the 911 Commission at a time when our nation is threatened by acts of terrorism. Nearly every week we read news accounts of suspected terrorists being arrested in countries around the world as well as within the borders of our own country. We see compelling coverage of bombings of trains in Spain, England and India, most recently. One of this country's closest allies, Israel, has been forced to take military action to defend itself against terrorism in the Middle East. Yet inexplicably, there are senators and others who insist on pushing forward to implement a guest worker amnesty program that would be utterly disastrous for national security.

USCIS, United States Citizenship and Immigration Services, the agency that would be responsible for administering the proposed guest worker amnesty program, is unable to cope with all of its responsibilities as we speak. The GAO issued a report in March of this year, makes it clear that USCIS is unable to carry out its vital missions today, without the added burden that the guest worker amnesty program would undeniably bring to bear against that overworked, under funded and in general, inept agency. The report is entitled, "Immigration Benefits: Additional Controls and a Sanctions Strategy Could Enhance DHS's Ability to Control Benefit Fraud" and can be found at the following link:

http://judiciary.house.gov/media/pdfs/gaoimmbenefits31006.pdf

I would recommend that a copy of this report be reviewed by the members of not only this subcommittee, but by all members of our government who favor a guest worker amnesty program.

My fear is that because we are dealing with millions of illegal aliens who, in the parlance of the open borders advocates, are undocumented, have no verifiable means of proving their true identities. This means that if this program were enacted, these millions of illegal aliens would be able to go to an immigration office, assume any identity they found convenient and receive official identity documents from our government. It would be a simple matter for a terrorist or criminal, to walk into such an office, provide a false name to the over-worked bureaucrat at USCIS who will probably be given only a minute or two at most to interview each applicant. The terrorist would then receive a guest-worker identity document in that new identity that would permit him to circumvent the various terrorist watch lists or so called, "No fly" lists and thereby embed himself in our country and gain access to what are supposed to be secure venues. Undoubtedly, these identity documents will become the most valued breeder document enabling the bearer to receive driver's licenses, credit cards, Social Security numbers and even library cards in a false name, completing the process of creating new false identities at grave risk to national security, at a time that the citizens of our country have witnessed an erosion of many of the freedoms we have come to take for granted.

I have heard the President often state that if our nation allowed aliens who simply wanted to work, to do so, that law enforcement could then focus on the terrorists. I have to respectfully disagree with this optimistic but extremely naíve assessment. Awhile back, Robert S. Mueller, the Director of the FBI testified before the Senate Intelligence Committee about his concerns about so-called "sleeper" agents. As you know, a sleeper agent is a terrorist, spy or enemy combatant, who one way or the other succeeds in gaining entry into our country awaiting instructions to carry out a terrorist attack or other hostile act against our country. While awaiting his instructions, such individuals do whatever they have to do in order to not call attention to themselves. Many, as we have seen, get a low-profile job such as driving an ice cream truck or a taxi cab, work at a used car lot or attend school. Often the job they take provides them with the mobility to move freely among us as they conduct clandestine meetings, surveillance or other preparatory functions for the day they are called into action. A few days before a terrorist carries out an attack he is, in fact, likely to hide in plain sight by going to his job.

If our government makes it that much easier for a terrorist to legally get a job under an assumed identity, then Al Qaeda should give the people in our government who make this possible, the "MVP Award." When we see commercials on television or ads in the newspapers for various goods or services, the ad usually concludes with a disclaimer by the provider of that product or service that details the potential negative impact that the product may have on the consumer. With all of the high-pressure sales pitches we have been bombarded with by members of the United States Senate in attempting to sell their bill, S. 2611, they have neglected to provide a disclaimer, so I will do it for them.

If we provide illegal aliens with guest worker amnesty that differentiates how we treat aliens based on how long they have been here, it will be virtually impossible to make certain that this, along with all of the other provisions, will have integrity, just as it will be impossible to make certain that many more illegal aliens don't run our borders, stow away on ships or gain entry through ports of entry, claiming that they have been here for the 5 years that would virtually provide them with the "keys to the kingdom." There would be no way to force these millions of illegal aliens to leave our country because we cannot enforce their departure today. The guest worker amnesty program will undoubtedly entice ever increasing numbers of illegal aliens to head for our country because this program will convince people throughout the world that in the United States, not only will you be permitted to break the law and get away with it, we are willing to reward you for breaking the law by even providing you with Social Security benefits if you commit identity theft and work, or claim to have worked, under someone else's Social Security number, even as law enforcement agencies across our nation are increasingly turning to asset forfeiture strategies to combat a wide variety of crimes on the city, state and federal level. Moreover, there is no door that can be shut, so there is no way to keep millions of more illegal aliens from gaining access to our country. The confidentiality provisions would also hobble efforts by law enforcement officials to make certain that criminal and terrorist aliens have their applications properly scrutinized. The avalanche of applications will further erode any effort to restore integrity to the benefits system meaning that fraud will become even more attractive to criminal and

terrorist aliens, further encouraging more of them to seek to enter the United States and making it easier for them to game the system to enable them to embed themselves within our country and hide in plain sight. As it is, each year the director of USCIS and his subordinates promise to reduce the backlog of pending applications for a wide variety of immigration benefits including the granting of resident alien status and the conferring of United States citizenship upon aliens. It is common knowledge that there is an inverse proportion between quantity and quality. The more work you try to do in a limited period of time, the more that the quality of the work you are doing suffers. By having USCIS make the reduction of the backlog of pending applications the priority, more fraud escapes detection. Consequently more aliens get away with committing fraud, emboldening still more aliens to file more fraudulent applications for benefits, further eroding any efforts at quality control and fraud detection. This creates an ever-increasing backlog and an ever-increasing spiral of fraud. In order to break this dangerous cycle, we need to establish a clear priority of combating fraud where those who perpetrate fraud can expect that they may well be discovered and prosecuted. Additionally, a meaningful effort needs to be made to locate, arrest and deport alien beneficiaries of fraudulent applications.

Because of the current pressure to move the applications, much of the fraud escapes detection and only a relatively infinitesimal number of aliens are ever prosecuted or deported because they were involved in immigration benefit fraud. A guest worker amnesty program that has the potential of dumping millions of more applications into the hopper at USCIS would be absolutely disastrous for any effort at combating immigration benefit fraud and restoring even a modicum of integrity to the immigration system and would fly in the face of recommendations of the 911 Commission.

As all of this is going on, our valiant soldiers are fighting in far off lands to help protect our nation against terrorists while some of our politicians at home are seemingly unwilling to secure our nation against the scourge of terrorism in the name of free trade and a desire to keep our nation's borders wide open. They use deceptive language to obfuscate the issue and, quite frankly so has the President of the United States. I have often heard the President say that he wanted to legalize immigrants. I am, as you know, a former INS special agent. This combination of words, "legalizing immigrants," has confounded me. Language is important and so I think it is important to make this point. To offer to make immigrants legal is about as meaningful as offering to make water wet. Water is wet and immigrants, by legal definition, are already legal. In fact, an immigrant is defined as an alien who has been lawfully admitted for permanent residence. An immigrant has a so-called "green card" and is able to travel freely around our country and across our nation's borders. An Immigrant has the right to work at any job he is qualified to do. An immigrant has the right to petition the government to have his spouse join him in the United States as an immigrant and may also do this for his (her) minor children. Indeed, an immigrant is on the path to United States citizenship. How much more legal would the President want to make an immigrant?

I believe that just as the members of the Senate who voted for S. 2611 and other pro illegal alien advocates are not likely to provide a disclaimer for their remedy to the immigration crisis confronting our nation today, this improper and misleading use of the term immigrant falls under the heading of "deceptive business practices." By eliminating the distinction between illegal aliens and immigrants, it becomes a simple matter to keep hammering away at the concept that America is the land of immigrants and that immigrants have made immeasurable contributions to our nation over the years. I am a strong advocate for the recognition of the contributions of immigrants to our nation, indeed, I am the son of an immigrant; however, there is a world of difference between an immigrant and an illegal alien.

There is scant difference between the bill the Senate recently passed and the disastrous Amnesty of 1986, notwithstanding the protestations of the members of the Senate who would take issue with my position. But, if they do not want to learn the lesson of relatively recent history where the Amnesty of 1986 is concerned, then I would recommend that they study much more distant history and study the strategy behind the "Trojan Horse." Only a fool would permit strangers into his home without knowing their true identity or purpose for seeking to enter. Yet, this is precisely what S. 2611 facilitates. In these perilous times, this is not acceptable and must not be allowed.

In support of my concerns about the failings of USCIS I respectfully request that a copy of the GAO report I cited previously be attached to this testimony along with a press release prepared by USCIS dated June 29, 2006, entitled, "A Day in the Life of USCIS" that details the myriad tasks that are performed on a daily basis now, before they might have to deal with the onslaught of millions of amnesty applica-

tions that the Senate bill would cause. I have attached a copy of that press release to my prepared testimony and believe it provides ample evidence of just how USCIS is over-extended, even without the guest worker amnesty program it would be mandated to administer under the provisions of S. 2611. It may be found at the following website:

http://judiciary.house.gov/media/pdfs/gaoimmbenefits31006.pdf

Simply stated, a guest worker amnesty program would not only attract even more illegal aliens into our country enabling terrorists and criminals to more easily blend into our country, it would also provide unknown aliens with official identity documents in assumed identities that would enable the terrorists and criminals with an easy means of creating new identities they could use to travel freely across our borders, around our nation and gain access to secure venues and embed themselves in our country. This would, I fear, create a grave risk to our nation's security.

I look forward to your questions.

Mr. HOSTETTLER. Thank you, Mr. Cutler.

Bishop DiMarzio, you are recognized.

TESTIMONY OF NICHOLAS DiMARZIO, BISHOP OF BROOKLYN

Bishop DIMARZIO. Thank you, Mr. Chairman and Members, for this opportunity to testify today.

I have to disagree with one of my former panelists, because I don't think the Catholic Church is part of the open border lobby. I do agree with another who said that we already have a nightmare here, a security nightmare, because we have an untold number of undocumented aliens in this country. That is a grave security problem.

The Catholic Church has long experience in working with immigrant populations. In our Catholic Legal Immigration Network, we have 158 agencies that do offer legal services. They are all BIA accredited. And so we, too, wish to make people legal in this country, and we respect the immigration laws, and we also respect the right of nations to protect their borders.

There is no question that we have not done a good of protecting our borders, but I would contend that the problem, as well as being a border issue, is a labor market issue. The problem is in the labor market as much as it is at the border.

We need to deal with it in a comprehensive way to deal with all of the issues so that we can have security. It is obviously our goal, and background checks, as we have heard already, are critical. I think with the new information technology we have, if we have a will to find a way to make background checks better, I am sure we can do that.

We must be sure also to give adequate resources to implement the program. In the last amnesty, of which I think I am a survivor, I was here in 1986, worked with Congress, was running the Catholic Church's implementation program, we needed to have perhaps a better relationship with the Immigration Service at the time.

I hope that USCIS in this time, if we are able to bring some program of legalization around, will have a better relationship with us called, the qualified designated agencies, which helped the Immigration Service at that time to process all these applications.

Obviously, fraud is a major concern. The Catholic Church does not stand for fraud. We, in our application process, made very effort to make sure that any application process by us was certainly legal and had the proper documentation. That is where the quali-

fied entities can be of great assistance to the Immigration Service in doing that work.

I think also, as we look to the—there are certain qualifications that we need in a program as we are finding it. In order to deal with the security issue, we have to be in a comprehensive approach to dealing with all of the factors that influence undocumented immigration.

I just finished a term as the commissioner for the Global Commission International Migration, a U.N.-inspired body, that will bring its report to the United Nations this September. What is clear in the many hearings we had around the world that undocumented migration is an international problem.

But only with international cooperation can we ever hope to resolve this problem. We need to work with the nations from which these people come to deal with the issue in an upfront and enlightened manner so that we can stem the flow of unregulated migration, which is good neither for the people nor for the countries from which they come or to which they come. We are clear that that is our policy.

I think also we need to look at the opportunities that this presents. This program characterizes that amnesty is probably more a legalization program. There are rather onerous burdens that have to be passed in order for this to happen. I urge the House to work with the Senate to improve the bill so that it is something that is comprehensive, something that will aim at security, which is a paramount question in our society today so that we can have an immigration system that works.

We need immigrants in our country. It seems our labor market needs them, but we have to find a way we can bring them here legally without any of the external problems that have plagued us in the past. If the law is broken, we must fix it. And, certainly, when we fix it, we must do it in the right way, and I am sure that with the expertise of Congress that this can be done.

So thank you for this opportunity to speak today.

[The prepared statement of Bishop DiMarzio follows:]

PREPARED STATEMENT OF MOST REVEREND NICHOLAS DIMARZIO

I am Bishop Nicholas DiMarzio, bishop of Brooklyn, chairman of the Catholic Legal Immigration Network, Inc. (CLINIC), and a consultant to the U.S. Conference of Catholic Bishops' (USCCB) Committee on Migration. I would like to thank subcommittee Chairman John Hostetler (R-IN) and Ranking Member Sheila Jackson Lee (D-TX) for having me today to testify before the subcommittee.

Today, I would like to concentrate my testimony in the following areas:

- elements necessary to correct inefficiencies which occurred in implementing the 1986 Immigration Reform and Control Act (IRCA)—the last legalization program—and to ensure efficient processing of applications for any legalization enacted this year;
- the value of a comprehensive approach to immigration reform as an antidote to the immigration crisis we face in our country today, including how such an approach is consistent with, and beneficial to, national security goals; and
- elements of H.R. 4437 which we find problematic because they harm legal immigrants, refugees, and asylum-seekers.

THE ROLE OF THE CATHOLIC CHURCH IN IMMIGRATION REFORM

The Catholic Church has a long history of involvement in the immigration issue, both in the advocacy arena and in welcoming and assimilating waves of immigrants and refugees who have helped build our nation throughout her history. Many Catho-

lic immigration programs were involved in the implementation of IRCA in the 1980s and continue to work with immigrants today. In fact, the U.S. Conference of Catholic Bishops (USCCB) was a national coordinating agency for the implementation of IRCA. We have a strong working relationship with the Department of Homeland Security (DHS) and with U.S. Citizenship and Immigration Services (USCIS), the agency that would be largely responsible for implementing any new legalization and temporary worker programs. There are currently 158 Catholic immigration programs throughout the country under the auspices of the U.S. bishops.

Our experience in working with immigrants throughout the years compels us to speak out on the issue of immigration reform, which we believe is a moral issue which impacts the human rights and human life of the person. The Church's work in assisting migrants stems from the belief that every person is created in God's image. In the Old Testament, God calls upon his people to care for the alien because of their own alien experience; "So, you, too, must befriend the alien, for you were once aliens yourselves in the land of Egypt" (Deut. 10:17–19). In the New Testament, the image of the migrants is grounded in the life and teachings of Jesus Christ. In his own life and work, Jesus identified himself with newcomers and with other marginalized persons in a special way; "I was a stranger and you welcomed me" (Mt. 25:35). Jesus himself was an itinerant preacher without a home of his own as well as a refugee fleeing the terror of Herod. (Mt. 2:15).

In modern times, popes over the last hundred years have developed the Church's teaching on migration. Pope Pius XII reaffirmed the Church's commitment to caring for pilgrims, aliens, exiles, and migrants of every kind, affirming that all people have the right to conditions worthy of human life and, if these conditions are not present, the right to migrate.[1] Pope John Paul II stated that there is a need to balance the rights of nations to control their borders with basic human rights, including the right to work; "Interdependence must be transformed into solidarity based upon the principle that the goods of creation are meant for all."[2] In his pastoral statement, *Ecclesia in America,* John Paul II reaffirmed the rights of migrants and their families and the need for respecting human dignity, "even in cases of unauthorized migration."[3]

In an address to the faithful on June 5, 2005, His Holiness Pope Benedict XVI referenced migration and migrant families; ". . . my thoughts go to those who are far from their homeland and often also from their families; I hope that they will always meet receptive friends and hearts on their path who are capable of supporting them in the difficulties of the day."

In the pastoral letter *Strangers No Longer: Together on the Journey of Hope,* the United States and Mexican bishops point out why we speak on the migration issue; "As pastors, we witness the consequences of a failed system every day in the eyes of migrants who come to our parish doors in search of assistance. We are shepherds to communities, both along the border and in the interior of the nation, which are impacted by immigration. Most tragically, we witness the loss of life at points along our southern border when migrants, desperate to find employment to support themselves and their families, perish in the desert."[4]

For these reasons, the Catholic Church holds a strong interest in the welfare of immigrants and how our nation welcomes newcomers from all lands. The current immigration system, which can lead to family separation, suffering, and even death, is morally unacceptable and must be reformed.

IMPLEMENTATION OF COMPREHENSIVE IMMIGRATION REFORM

As the then Director of the U.S. Catholic Conference's Migration and Refugee Services (MRS), I oversaw the Catholic Church's participation in programs to assist the millions of aliens who applied for immigration benefits under IRCA. Since that time, I was appointed a bishop by the Holy Father, where I now head the diocese of Brooklyn, one of the largest and most diverse dioceses in the country.

From my position as a bishop, not only do I minister to a diocese that has within it many immigrants, I also serve as Chairman of Board of Directors for the Catholic Legal Immigration Network, Inc. (CLINIC), which advises and provides immigration services for dioceses all around the country.

My time with MRS, my experience as a bishop, and the research that the Church has conducted over the last several decades lead me to conclude that it is possible to establish a program to permit deserving undocumented aliens to apply for earned

[1] Pope Pius XII, *Exsul Familia (On the Spiritual Care of Migrants)* September, 1952.
[2] Pope John Paul II, *Sollicitudo Rel Socialis (On Social Concern)* No. 39.
[3] Pope John Paul II, *Ecclesia in America (The Church in America)* January 22, 1999, No. 65.
[4] *Strangers No Longer: Together on the Journey of Hope.* A Pastoral Letter Concerning Migration from the Catholic Bishops of Mexico and the United States. January 23, 2003, No. 57.

legalization without crippling the process of adjudicating other applicants for immigration benefits or jeopardizing our national security. In order to do this, however, Congress will have to provide a number of things:

- Adequate Resources
- Proper Planning Before Implementation
- Establishment of a Separate Entity within USCIS to Implement the Bill
- The Use of Qualified Designated Entities
- Rigorous Background Checks

These five elements are a subset of a larger list of necessities that I outline later in my testimony. However, because the subject of today's hearing is the question of the adequacy of an already over-burdened USCIS to process applications for legalization, I will set out those factors at this point in my testimony.

ADEQUATE RESOURCES

It will be essential that Congress provide adequate resources for DHS to implement and execute any earned adjustment program. As passed by the Senate, the Comprehensive Immigration Reform Act (CIRA) of 2006 anticipates this by establishing fees that will generate approximately 66 billion dollars of revenue dedicated to processing applications for earned adjustment.

The fee-generated funds, alone, will not be adequate, however. Congress will also need to directly appropriate funds to get the program started. And it will need to be vigilant to ensure that fee-generated funds are not diverted for other purposes, as has often been done in the past

While some may quarrel with the use of appropriated funds for this purpose, I would suggest that the alternative would likely require the expenditure of far more funds and yield a less desirable result. Imagine how much it would cost to apprehend, detain, and deport the estimated 12 million aliens who are in the United States illegally? The cost of properly implementing an earned adjustment program is tiny when compared to the cost of the alternative approach.

Mr. Chairman, we believe that any comprehensive legislation can be implemented through reasonable fees imposed on applicants and with some supplemental funding appropriated by Congress. Fees should not be imposed, however, which place the program out of the reach of qualified applicants.

Proper Planning Before Implementation/Reasonable Enactment Period: Sufficient time should be given between enactment and implementation so that regulations, procedures, and infrastructure are in place. Deportations of prospective applicants who qualify should be suspended between the two dates. However, Congress should mandate an expedited rulemaking process so that the program is not delayed significantly. If key issues are not resolved at the program's outset, inefficiencies and litigation will occur. The application period for the program should last at least one year so that all qualified applicants can raise the application fee and apply for the program.

Rigorous Background Checks and Security Clearance Procedures: Given the terrorist threat, any program will lack credibility and support if it does not a "good moral character" requirement and rigorous identity and security clearance procedures. Steps must be taken, however, that persons are not denied eligibility based on appearance or demeanor, and that sufficient checks and balances are in place to ensure that no one who qualifies is unjustly denied from the program.

Establishment of a Separate Entity within USCIS to implement the bill: A separate entity, similar to the asylum corps, should be created within USCIS to implement legislation; such an entity should be adequately funded through appropriations. A program that attempted to operate through existing systems would worsen the backlog and customer service problems that have plagued DHS in the past.

The Use of Qualified Designated Entities: Qualified designated entities (QDEs) which are Board of Immigration Appeals (BIA)—recognized should be created to assist in implementation of any new program. QDEs play a crucial role in public education, outreach, convincing applicants to come forward, preparing strong applications, and liaising with the government.

Mr. Chairman, these elements are crucial to the successful implementation of comprehensive immigration reform legislation. Other important elements should also be included in any final measure:

Operational Terms: Operational terms in the bill, such as "continuous residence," "known to the government," and other important eligibility criteria should

be specifically defined to avoid delays and to eliminate confusion. The lack of a precise definition of these terms caused many cases to languish in 1986.

Generous Evidentiary Standards: Evidentiary standards should be based upon "preponderance of evidence" and should include a wide range of proof, since migrants do not often create a paper trail. This would allow the maximum number of persons to participate in the program.

Broad Humanitarian Waiver: A broad humanitarian waiver of bars to admissibility, such as unlawful presence, fraud, or other minor offenses is necessary. See refugee waiver (INA 209c) or NACARA waiver.

Confidentiality: Applicants for either the legalization program or temporary worker program should be extended confidentiality and not be subjected to deportation or arrest if they do not qualify. Such confidentiality should be preserved unless criminal issues are raised that are not associated with undocumented status. Without this assurance, it is likely that many persons would not come forward and the goals of the program would not be achieved.

Derivative Benefits: Immediate family members should receive the same benefits under legalization/temporary worker program as the worker. This would keep families together and minimize fraudulent applications from family members desperate to remain with their loved one.

THE NEED FOR COMPREHENSIVE IMMIGRATION REFORM

Mr. Chairman, we believe that the best way to secure our borders and to ensure that our immigration laws are just and humane is to enact comprehensive immigration reform legislation.

Since 1993, when the U.S. Border Patrol initiated a series of enforcement initiatives along our southern border to stem the flow of undocumented migrants, Congress has appropriated and the federal government spent about $25 billion on border enforcement, tripling the number of Border Patrol agents and introducing technology and fencing along the border. During the same period, as Congress has enacted one enforcement-only measure after another, the number of undocumented in the country has more than doubled and, tragically, nearly 3,000 migrants have perished in the desert of the United States. It is clear that another approach is necessary.

Mr. Chairman, the U.S. Catholic bishops believe that any comprehensive immigration reform bill should contain the following elements:

- policies which address the root causes of migration, such as the lack of sustainable development in sending nations;
- a legalization program which gives migrant workers and their families an opportunity to earn legal permanent residency;
- a temporary worker program which protects the labor rights of both U.S. and foreign workers;
- reform of our family-based immigration system to reduce waiting times for family reunification; and
- restoration of due process protections for immigrants.

As you know, the U.S. Senate passed the Comprehensive Immigration Reform Act (CIRA) of 2006, which contains many of the elements the Catholic Bishops believe are necessary to comprehensively reform our flawed immigration system. Although it does not contain all the elements the U.S. bishops would like to see in legislation, it is the right approach and direction our country should be taking in tackling the problem of illegal immigration. In our view, an enforcement-only approach to immigration reform will not address the need for legal avenues for future flows of immigrants to come to the United States to work or join family members, nor would it address the plight of 11–12 million undocumented in the nation. We encourage you to work with your Senate colleagues to produce a bill which encompasses the elements outlined above.

I would like to say upfront, Mr. Chairman, that we are wary of recent suggestions that the Senate-passed bill's legalization, temporary worker, or immigrant visa provisions be modified in a way that would delay their implementation or subject them to subjective "triggers." We believe that any bill which Congress enacts should not only be comprehensive in nature, but must be implemented in a carefully calibrated manner. Indeed, we note that the Senate-passed already contains a number of mechanisms designed to ensure proper implementation of the legislation. We firmly believe, however, that Congress should not enact into law a scheme that would require further congressional action before implementation of the legalization, temporary worker, or immigrant visa provisions or subject those provisions to "triggers"

that are vulnerable to the vicissitudes of political pressures, rather than objective measurements of what is necessary in order to properly implement the legislation.

Mr. Chairman, I would like to concentrate at this point in my testimony on how the enactment of comprehensive immigration reform would enhance, not undermine, our ability to protect the nation from terrorist threats. The overriding principle which supports this view is that by enacting comprehensive immigration reform, we would better be able to identify who is already in the country and to identify and control who enters it. By enacting a program which provides an earned path to citizenship, for example, a far greater portion of the 11–12 million undocumented persons in the nation likely would emerge "from the shadows" and identify themselves to the government. The establishment of additional employment and family-based visas for low-skilled workers and their families would provide legal avenues for those seeking to enter the United States, helping to better ensure that the government knows who is entering the country and for what purpose. The current reality is that our government is unaware of the identities of the overwhelming majority of the 11–12 million undocumented who are in the United States and unable to monitor efficiently those who cross the border illegally.

Mr. Chairman, I am not alone in this assessment. I would like to submit for the record, with your permission, a statement from nine former Department of Homeland Security (DHS) officials who agree that the best way to secure our borders is to enact comprehensive immigration reform legislation. In their letter, they write, ". . . enforcement alone will not do the job of securing our borders. Enforcement at the border will only be successful in the long-term if it is coupled with a more sensible approach to the 10–12 million illegal aliens in the country today and the many more who will attempt to migrate to the United States for economic reasons."

In addition, the Catholic Legal Immigration Network, Inc. (CLINIC) recently completed a study on national security and immigration policy. As part of that study, CLINIC staff interviewed a wide range of counter-terrorism experts in order to examine what the United States must do to reduce the threat of terrorism and how immigration policy and U.S. immigration system fits into an overall security strategy. The study provided several policy recommendations to enhance national security through the U.S. immigration system, including the enactment of comprehensive immigration reform.

- First, in our view and the view of these experts, national security should not simply be equated with protection from physical attack. It also entails protecting our economic and political interests; immigration policies should not deny us access to the global economy. Policies which attempt to prosecute, jail, and deport 7.2 million undocumented workers—five percent of the U.S. workforce—do not protect our economic security and weaken us. Policies which would separate 10 percent of U.S. families by deporting their undocumented family members undermine our values.
- Second, we should better assess the effectiveness of immigration policies as a deterrent to terrorists. Does a certain immigration policy relate to a legitimate national security goal? For example, we do not believe that the summary return of asylum-seekers, the indefinite detention of immigrants, or the removal of due process protections necessarily make us safer, but they certainly have the effect of impinging on civil rights and undermining the fairness of our laws.
- Third, our immigration policies should help our relationship with immigration communities, not alienate them. The United States should be able to identify and run background checks on non-citizens, but is unable to do so if these non-citizens feel safer underground. Enabling state and local law enforcement to enforce immigration laws also has the effect of alienating major immigrant communities and reducing our ability to identify and prosecute smugglers, traffickers, and would-be terrorists.
- Fourth, comprehensive immigration reform should make our nation safer, not less safe. By bringing 11–12 million undocumented persons "out of the shadows," we can identify who they are, where they live, and with whom they may be affiliated. By creating legal avenues for migration, we are better able to control who is coming into the country and for what purpose.
- Finally, we must implement a policy of assimilation of immigrants to make us more secure. As we have seen in other nations, such as France and England, the lack of integration policies have led to violence and unrest. We also need to assimilate in order to ensure our economic stability, so that new workers may advance and develop in their skills.

Mr. Chairman, it is clear that national security is not just about keeping those who harm us out of our country, but about keeping those who help us in and allowing others who want to help us to enter. Comprehensive immigration reform will help us achieve this goal

THE IMMIGRATION REFORM DEBATE AND H.R. 4437

As you know, in December 2005, the House of Representatives passed H.R. 4437, the Border Security, Anti-Terrorism, and Illegal Immigration Control Act of 2005. While the U.S. bishops appreciate the need to secure the nation's borders and believe that passage of a House bill was a necessary first step to begin the immigration debate, the USCCB opposes H.R. 4437 because we believe it is overly punitive, too narrowly focused and would cause harm to legal immigrants, asylum-seekers, refugees, and the nation. We strongly believe that an enforcement-only approach will not solve the problem of illegal immigration, but could exacerbate it by driving migrants further underground and into the hands of unscrupulous smugglers. Mr. Chairman, with your permission I would like to submit a copy of correspondence opposing the legislation, dated December 14, 2005, to all members of the House of Representatives from Most Reverend Gerald R. Barnes, bishop of San Bernardino and chairman of the USCCB Committee on Migration.

Mr. Chairman, let me say that, despite the opposition of the USCCB to H.R. 4437, we are not opposed to all aspects of the bill. Steps taken in Title I, for example, to increase resources for border security are necessary to ensure security for our country. We also appreciate the leadership of the House of Representatives in launching the immigration debate, which, although contentious, is necessary for the betterment of our communities.

Mr. Chairman, I would like to highlight some of the major provisions of H.R. 4437 which we find problematic and which we believe would undermine the fairness of our immigration laws without necessarily making our nation safer.

Criminalization of Undocumented Presence. As you know, Mr. Chairman, Section 203 of H.R. 4437 would make undocumented presence in the country a criminal offense and a felony, subject to at least one year of jail time. While the authors of H.R. 4437 have indicated their willingness to reduce the nature of the offense to a misdemeanor rather than a felony, we believe that this provision would unjustly and unwisely make undocumented immigrants—especially those who are here presently—criminals and would not serve the best interests of our nation. It is well established that the large majority of immigrants who come to this nation do so to work to support themselves and their families. Indeed, over eighty percent of the undocumented population in this nation is involved in either a part-time or full-time employment. They benefit our nation in terms of the taxes they pay and the work they perform. Instead of criminalizing these persons, we should permit those who are deserving to earn a legal status so they can come forward and contribute to our nation without fear.

Criminalization of those who "assist" undocumented persons. Section 202 of H.R. 4437 would expose to felony prosecution anyone who "assists" an undocumented person or provides assistance that permits an undocumented alien to "remain in the United States," knowingly or in reckless disregard to whether a person was in the country illegally. In our view, Section 202 goes well beyond the scope of addressing alien smuggling and has the great potential to implicate many good Samaritans under the broadened definition of smuggling, including church personnel. For example, under Section 202, a church group or priest that provides food aid, shelter, emergency medical care or other forms of assistance to an individual could be imprisoned and risk forfeiture of their assets for "assisting" an undocumented person. Certainly alien smuggling and trafficking for profit or commercial gain are activities that need to be sanctioned. Existing law already provides for harsh penalties for such behavior. However, H.R. 4437 goes far beyond increasing penalties for these heinous activities. Instead, it would jeopardize millions of Americans—neighbors, family members, faith institutions, and others—who live and work with undocumented immigrants.

Criminalization of Passport or Visa Fraud. Section 213 would make a variety of forms of passport, visa, and immigration fraud criminal offenses, making even one such instance punishable by more than a year in prison, and, thus, making them aggravated felonies that would render persons so convicted inadmissible and ineligible for any immigration benefit. Although no one supports passport or visa fraud, distinctions should be made for those who engage in it for nefarious purposes and desperate refugees who are fleeing persecution. Often times, refugees must fabricate documents to escape persecution because they cannot obtain valid ones from the authorities persecuting them. Not only would this section render legitimate refugees

ineligible for relief because of the means they had to use to escape their persecutors, it also would jeopardize battered women and children acting under the direction, force, or coercion of a parent, guardian, smuggler, or trafficker.

Mandatory Detention for Undocumented Aliens Apprehended at or Between Ports of Entry. Section 401 would require the mandatory detention of an alien apprehended at a U.S. port of entry or along an international land or maritime border of the United States. We are concerned that this provision is so overly broad that persons who are in the country legally and vulnerable populations will be harmed, such as U.S. citizens without proper documentation, legal permanent residents, asylum-seekers who are not in expedited removal and have a credible fear of persecution, unaccompanied children, and trafficking victims. It also would add additional stress to our overly burdened detention system, leading to increased use of local jails and the commingling of non-violent offenders with violent ones as well as the separation of families.

Enforcement of Federal Immigration Laws by State and Local Authorities. Sections 220–222 would grant broad authorization to state and local law enforcement authorities to enforce federal immigration laws. We reject the premise in these sections that all persons suspected of being undocumented immigrants should be rounded up by state and local police agents. State and local law enforcement authorities have many serious concerns on their hands, such as protecting our communities from violent criminals. If these provisions are enacted into law, we fear that immigrant communities would no longer trust local police to protect them or to share with them important information about crime in their neighborhoods. We also are fearful that massive-scale enforcement of civil immigration laws by ill-trained state and local police officials will result in inadvertent deprivations of even citizens' and lawful permanent residents' civil and constitutional rights.

Expedited Removal. Section 407 would expand and mandate the use of expedited removal with respect suspected illegal aliens who are not nationals of Canada, Mexico, or Cuba and who are apprehended within 100 miles of a U.S. international land border, within 14 days of entry. We are concerned that bona fide asylum seekers would be harmed by this provision, since in many instances Border Patrol agents, untrained in the finer details of asylum law, will be making life and death decisions for individuals.

Indefinite Detention of Individuals who cannot be returned to their country. Section 602 would permit the indefinite detention of certain aliens who cannot be removed to their country of nationality. As you know, the U.S. Supreme Court has stated that a person can only be held for a period reasonably necessary to effectuate removal, and found six months to be reasonable. Holding a person longer than the period of their penalty violates basic human rights.

Creation of 700 miles of Fencing. H.R. 4437 would mandate the construction of 700 miles of fencing along the U.S.-Mexico border. We do not believe that the erection of such a wall would address the underlying causes of migration and would not deter desperate migrants from attempting to enter the nation. It could lead, however, to an increase in smuggling networks and to more dangerous attempts to enter the country, increasing the number of migrant deaths. As I explained earlier in my testimony, Mr. Chairman, we believe that the adoption of comprehensive immigration reform will help ease the pressure along our southern border.

Elimination of Diversity Visa Program. Section 1102 would eliminate the Diversity Visa program, created in 1990 to give foreign nationals of nations without a high volume of immigrants an opportunity to immigrate to the United States. This program has been successful in bringing in a diverse number of individuals who have at least a high school education and some job training. Given the new security checks for those entering the country, we see no justification for the elimination of this program.

Mr. Chairman, these are some of the provisions in H.R. 4437 which cause us grave concern, although they do not represent the totality of our concerns. We hope we can work with you and your staff in the days and months ahead to ameliorate these provisions and work toward a just comprehensive immigration reform package.

CONCLUSION

Mr. Chairman, I would like to thank you for inviting me to testify before your subcommittee today. Our nation stands at an important time in her history, when we need to remain vigilant against outside threats without sacrificing values which we hold dear—justice, fairness, and opportunity. We must honor and continue our history as an open and democratic society which values hard work and the contributions of immigrants. As soon as possible, I ask that you work with your Senate col-

leagues to fashion a comprehensive immigration bill which is just, humane, and provides for the security needs of our country.

Mr. HOSTETTLER. Thank you, Bishop.

At this time, we will turn to questions from Members of the Subcommittee.

First of all, Mr. Gadiel, you concluded your statement that we must enforce our immigration laws. Is it your understanding, having studied, I am sure very closely, the work of the 9/11 Commission, is it your understanding that if immigration laws that were in place prior to September 11, 2001 would have been aggressively enforced, that the plan that led to the tragic events of September 11 could have been derailed?

Mr. GADIEL. I think there is no doubt of that. The 9/11 Commission report, in great detail, described how the consular officials in Saudi Arabia granted visas to people who were clearly ineligible and should have had secondary inspection and their applications were defective on their face or had missing answers. And every one of them is a young, single male from terror-sponsoring nations, and not one of them was eligible, not one.

But the reason the State Department issued these visas was because they are pressured by the open borders lobby to let more people in. The travel industry wants to sell more airline tickets, the college industry wants to sell more seats, and the high-tech industry wants more cheap labor. And so there is this enormous pressure, and that is why we don't enforce their laws.

Mr. HOSTETTLER. Thank you.

Supporters of the Senate's amnesty bill have argued that the bill will actually enhance our national security by bringing illegal aliens out of the shadow, as they say. Do you agree with that?

Mr. GADIEL. Well, Mohamed Atta had a driver's license and he was out of the shadows, and I don't know what good that did us on 9/11. And what this does is it allows people who are terrorists to, when they get their American citizenship, to adopt a new name, which, in effect, wipes them off of the terrorist watch list. They can adopt a new name. They go back to their own country they are not even known by that name anymore.

It gives the veneer of legitimacy to anybody no matter how dangerous that person is. If we had given—we almost did give citizenship, in a sense, because of the open access and process in this country, but if we had given him citizenship, it would have been even more of a privilege for him.

Mr. HOSTETTLER. Thank you.

Mr. Maxwell, in your testimony, you state that USCIS has "a customer service mentality that invariably trumps national security concerns." You also state that high-ranking immigration officials have termed immigration "a right rather than a privilege."

What effect would these attitudes that are there today have on USCIS's ability to screen applications under S. 2611 for national security risks?

Mr. MAXWELL. This attitude is really a carryover from the INS days. It simply transferred from INS into CIS as DHS was created. And despite calls from Director Gonzalez that national security is the forefront for his agency, once you leave Washington, D.C., the pressure of backlog elimination that currently exists within USCIS

simply forces managers in the field to push applications forward at the expense of national security. They have to meet the mandate of backlog elimination.

S. 2611 will just continue to put pressure on the managers in the field. And so what they will do is they will continue to develop programs in the field despite calls from senior leadership at headquarters so that they can meet the mandate of Congress, and national security will suffer. They will simply cheat the system so that they can push benefits through the system.

Mr. HOSTETTLER. Thank you.

Mr. Cutler, you are a former INS examiner. How difficult would it be to verify that an illegal alien has resided in the United States for a given period of time, say, 5 years?

Mr. CUTLER. It would be difficult with the resources that are there, because we keep hearing about background checks. A background check is not the same thing as a field investigation. All a background check means is you run fingerprints and a name that the person put on their application. A proper investigation would require agents to go out, knock on doors, show photographs, interview people. It is an arduous task. It might take days per application.

If you are dealing with millions of applications and you are dealing with a workforce of a couple of thousand agents, the numbers don't add up. It would take many, many years to even begin to get a handle on it, and meanwhile with the open borders that we have and with the Visa Waiver Program that we have, we are being inundated by aliens on a daily basis and we would be getting inundated with applications.

In fact, I think in 1986 the original estimate was that there would be about a million to a million and a half aliens applying for amnesty. When the final numbers were in, I believe the actual number of applications that had been approved was more than 3.5 million. Partially, they may have been undercounting, but I also believe that we had aliens who entered the United States after the program actually began to give amnesty and people successfully claimed to have been here for the requisite number of years in order to qualify.

And I think that with the lack of resources and the much greater number of potential applicants today, there is just absolutely no way that this system would have even a shred of integrity.

Mr. HOSTETTLER. Thank you.

Mr. Maxwell, how many contract workers does USCIS currently have?

Mr. MAXWELL. They have approximately 7,500 contractor workers on the books now.

Mr. HOSTETTLER. Will USCIS need to hire additional contract workers to adjudicate the applications under S. 2611?

Mr. MAXWELL. They would have to hire more contract workers. Just prior to my resignation in February, discussions were they would hire between 7,500 and 10,000 additional employees, most of that outsourced to contract employees.

Mr. HOSTETTLER. For just——

Mr. MAXWELL. Just to handle what at that point was called the Temporary Worker Program.

Mr. HOSTETTLER. Very good.

What would be the ramifications for national security and public safety by allowing contract workers to adjudicate amnesty applications?

Mr. MAXWELL. Really, the answer to that is a two-pronged answer, and it really raises some grave concerns for national security. At the time, I was involved in planning for the Temporary Worker Program, as it was called then. There was discussion that the contract employees would not undergo a full background investigation and would still be given access to sensitive law enforcement databases to vet the alien applicants, which raised some grave concerns, because at the same time we had just convicted a contract employee for accessing those sensitive law enforcement databases and releasing sensitive law enforcement information to a criminal who was being investigated by the Drug Enforcement Administration.

So without thoroughly vetting those contract employees and giving them access to terrorist watch list, obviously connect the dots, we are not sure who we are giving access to these terrorist databases and can they be co-opted by foreign intelligence, by terrorist groups, by criminal organizations? Absolutely.

Mr. HOSTETTLER. Can they be planted?

Mr. MAXWELL. Can they be planted? Absolutely. That was one concern that we raised, and our recommendation was that all contract employees, all Federal employees undergo a full background investigation which would be at great expense, obviously, before they be given access to these sensitive law enforcement databases.

The second part of the equation was hiring this second workforce for USCIS to conduct background investigations on the alien applicants, that the background investigation process itself is flawed.

As the inspector general recently reported, 45,000 aliens from high-risk nations, state sponsors of terrorism, have been released into the general population since 2001 because the background check process itself is flawed.

We simply cannot verify the backgrounds, the identities, the countries of origins of everybody who comes through the system. We just don't know who they are. We are essentially giving these people new identities, releasing them into the country even though they are coming to us from countries that sponsor terrorism. So it really does present a grave national security risk.

Mr. HOSTETTLER. Thank you.

The Chair recognizes the gentlelady from Texas, Ms. Jackson Lee, for questions.

Ms. JACKSON LEE. I thank the Chairman very much.

In a better day, I would like to be in a conference right now really ironing out, I think, the concerns that have been articulately expressed really over and over again by so many. I do want to acknowledge that we appreciate the witnesses who are here and the very diverse testimony that comes forward.

And I do want to acknowledge and express again the sympathy to Mr. Gadiel and also raise a question with you.

If we are trying to fix what is a broken system, and might I say that it is broken both in terms of the legal system and an undocumented system, we have to fix both, along with border security, one

of the elements that has been crucial is to get the men and women on the front lines well prepared.

I believe you had an opportunity to review H.R. 4044 that talked about my legislation giving equipment to the Border Patrol, border security. Is that a good place to start along with some of the other issues that we are discussing and to include the northern border where we provide the night goggles, the power boats, the computers, the training, technology for trained Border Patrol agents?

We know statistically that Border Patrol agents, by the few numbers that they have now, have stopped about $1.7 million from coming across the border. Just imagine if they had the equipment and the staffing, training the kind of effective tool they would be.

Is that an important step for Congress to make and fund to its maximum what they need to provide those kinds of resources?

Mr. GADIEL. Absolutely, without question. I think it is quite obvious and logical that the more people that are on the borders, patrolling the borders and the better equipment they have, the more people we will stop. And, certainly, the northern border is not something that can be ignored at all. I agree with you 100 percent on that.

Ms. JACKSON LEE. Well, I appreciate your support of my legislation, and I look forward to trying to pursue this very point.

I do want to go to Bishop DiMarzio and thank you so very much, because before us we have just recently announced the Pence-Hutchison bill, and I take to heart Mr. Maxwell's comments. I think it would be an outright outrage to talk about, if you will, contracting out security data.

But one of the failures of the IRCA, and if you might share why we failed at IRCA, because you were actively involved in helping or hoping to make it work. We failed in IRCA, [one], because we shortchanged the funding, we shortchanged the partnership, we didn't do employer sanctions. But here you are today.

We are all recognizing that we have 12 million undocumented, hardworking, taxpaying individuals who simply want an economic opportunity. And the Pence-Hutchison bill that talks about report to deport is frivolous and foolish.

So tell us how we can make IRCA work and how nonprofits who understand that we do have a system of laws and a system of immigrants, and we don't want to violate laws, we want to deal with the large humanity that we have and really stop ignoring the challenges before us. And that is, of course, to gain control of the border, to conduct workforce enforcement and certainly not skimp on the dollars.

How can we make this an effective implementation, say, for example, of a conference report that would take a large part from the Senate bill?

Bishop DIMARZIO. I think again from the experience of the last time, there were failures, but there were a lot of successes. An overwhelming amount of good citizens have been added to this country, and I think that is what we have to look at, the success that has happened there.

I think the paradigm has to be changed. I think in the past we had an adversarial relationship between the INS and the entities that were designated by Congress to assist them. They knew that

they could not do the job by themselves. They need to set up, obviously, USCIS, a separate unit, and they could never add it to the present unit. And I think we have got to look at in the past IRCA was talked about as kind of a tripod, looking at enforcement, the legalization issue and the workplace enforcement, the border enforcement and workforce enforcement. I think those same elements still need to be addressed.

The workforce enforcement, talking about employer sanctions, isn't sufficient, because most employers are on it. They check what they are given and it is not adequate. We need to have a secure way in which employers can be sure that they are hiring workers that are authorized for employment. And that is something that needs to go contemporaneously with securing the border, while at the same time giving legalization to the people that are already here.

Ms. JACKSON LEE. And how can nonprofits be helpful in this process, short of the component of the Pence bill, which is to contract out Government's work? But you can be effective in helping to make sure this actually works properly.

Bishop DIMARZIO. I think there is a network across the country of nonprofits that are looking to assist people, assist the Government, assist the country in making sure that the legalization process is legal and that it is expeditiously carried out. So I think the network is available.

I think we are a self-correcting system in our country; we can improve things. If we see that something is wrong, that is our greatest asset. We have been able to change and to improve, and think what we have learned from the past, and there has been several analyses. We can make sure that those problems don't reoccur and that we design a system that is even more effective.

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

The Chair recognizes the gentleman from Iowa for 5 minutes for questions.

Mr. KING. Thank you, Mr. Chairman.

I would like to thank the witnesses as well, and I appreciate your continued involvement in this issue.

To sit here and listen, one of the things that occurs to me, and I think I direct my first question to Mr. Maxwell, is that the concept of processing millions of people through a background check or background test and the first foundation of that would be, what information, what identification documents would they bring to the table for that background check?

And let's presume that since the majority are from Mexico, let's just talk specifically of Mexicans as a standard, do you know what percentage of Mexican citizens have a legitimate document that identifies who they are? What percentage gets birth certificates at birth and that tracks them through life, for example?

Mr. MAXWELL. I don't know specifically, sir, what percentage have legitimate documents. I do know, however, that the Castorena cartel in Mexico is the largest organized crime family dealing specifically in counterfeit documents in Mexico, operates in 50 cities in the United States. It is a $300 million a year counterfeit document trade here in the United States. They can produce counterfeit docu-

ments with embedded biometrics, documents that can fool law enforcement upon visual inspection.

Mr. KING. So if you were going to verify, you would have to go back and verify at the place of birth.

Mr. MAXWELL. Absolutely.

Mr. KING. And that is the only way that one could actually do that legitimately.

Mr. MAXWELL. Absolutely.

Mr. KING. And that concurs with a constituent I have when I asked him that question, and he is from Mexico and a good legal resident and a good business person in my district, his answer was, "I don't know what the percentage is but I can buy whatever I want—driver's license, birth certificate—easily purchasable on the market.

I see Mr. Cutler leaning ahead.

Do you care to comment, Mr. Cutler?

Mr. CUTLER. Yes. Thank you, Congressman King. Good to see you.

You know, even the way our process has worked has been very disturbing to me. I recall that for years when the old INS would replace lost alien cards, because of the crush of time, the idea of moving it quickly, we were replacing our own alien cards without reviewing the immigration file. And then you would get a hold of the file and you would see where that person had gotten 8 or 9 or 10 cards, and when you saw the photographs, they were all obviously of different people.

Mr. KING. Thank you.

And let me, again, direct a question back to Mr. Maxwell first, and that is just slightly off topic, but if there were Ellis Island centers established through legislation that is proposed in this Congress and that would be in various countries around the world, in fact any country around the world but the closest proximity, again, would be Mexico, as a former employee of USCIS, how could a private company possibly conduct background checks faster than USCIS? How would they pass and lap USCIS in their efforts to do so within a week turnaround for 10 million or 12 million?

Mr. MAXWELL. Well, Congressman King, based on my knowledge of the Castorena family, I would have grave concerns about operating or establishing an Ellis Island center privately owned in Mexico and thinking that it would be operated by anybody but that family in Mexico and thinking that you are going to get legitimate documents coming into the United States. I don't think it is going to happen.

Mr. KING. Even aside from that, which is a profound and legitimate point, aside from that, can you imagine a legitimate company being able to do background checks faster than or in cooperation with CIS as accelerating the process that currently exists with USCIS?

Mr. MAXWELL. In tandem with USCIS? I don't believe they could.

Mr. KING. And wouldn't they have to rely upon USCIS in order to have a legitimate background check?

Mr. MAXWELL. Absolutely.

Mr. KING. And so they are already limited by Government in a private sector there would just be injected into the middle of this

would just be another layer of bureaucracy still limited by the bureaucracy that would be over the top of it.

Mr. MAXWELL. If there is going to be some level of integrity in the system, there is always going to have to be a Government check somewhere along the line to ensure that the information the Government is getting is accurate.

Mr. KING. Not the hirings of law breakers.

Mr. MAXWELL. Correct.

Mr. KING. Thank you.

And then I would turn to Bishop DiMarzio, and I appreciate your testimony, Bishop, sincerely, and the level and the tone that you bring to this and the commitment that you have made.

I just have a series of questions, and I know I will run out of time before we get this explored as far as I would like, but does the Church draw a distinction between legal and illegal with regard to the migrants that you referenced in your testimony?

Bishop DIMARZIO. Obviously, the distinction is there, that we don't say persons are illegal but their status may be illegal, and we do make the distinction. Obviously, when we speak about it and what we have said right along, our testimony has been longstanding, that there obviously are people who break the law.

Mr. KING. And I would yield my time back after thanking the witnesses, but I would be one who would support a second round, Mr. Chairman.

Mr. HOSTETTLER. The gentleman is instructed there will be a second round of questions.

The Chair now recognizes the gentlelady from Texas out of order, without objection, for 5 minutes for questions.

Ms. JACKSON LEE. I thank the Chairman very much.

And I think we have in this Committee attempted to find common ground, but I would be remiss if I did not express the frustration I have in holding these hearings when we have two legislative initiatives, one vote on by the House, which you may agree or disagree with, and one voted on by the Senate. Regular order requires that we, right now, be in conference trying to resolve this matter for the American people.

Mr. Maxwell, you have shared with us a litany of issues, and we had great interest in the issues that you offered to us. In fact, my commitment to you is that we are going to fix some of these insurmountable mountains that you have indicated. We don't need corruption. We don't need to have a system that is broken. We need to fix it so that people who are impacted negatively can, in essence, have the right route to go. And I don't think that you are here speaking about us not fixing the system. You want it to be fixed.

And so I, again, say that we are here, we haven't gained control of the border, we haven't done a good job of workforce enforcement, and the Republicans have missed any number of opportunities to fund the dollars. I mean, look at the 9/11 Commission report, D's and F's in terms of the work that we are supposed to do.

I am going to put into the record a statement, I am not sure of the date, Mr. Chairman. I ask unanimous consent. It is from the Irish Echo, "Irish and America Under Siege." And I will read this quote: "If the Irish antecedents of Andrew Jackson, John F. Kennedy and Ronald Reagan are trying to enter the United States

today, they would have to do so illegally." And so I would ask unanimous consent to put this in the record.

Mr. HOSTETTLER. Without objection.

Ms. JACKSON LEE. The reason why I do so is because I want the question of immigration to be the face of America. Every single person has an immigrant background except for our Native Americans. And so rather than throwing darts, we need to be trying to fix this broken system.

Mr. Maxwell, just if you would just briefly say, would more funding and more oversight help in some of the issues that you would raised with USCIS?

Mr. MAXWELL. I think it would help, ma'am, but also I think there needs to be a paradigm shift. The workforce is horribly demoralized. There needs to be a shift in management, a shift in leadership. There needs to be accountability. We recognize the immigration system itself is flawed. There is no integrity in the immigration system. It needs to be changed. So let's change it. Let's get to the business at hand and just get it done.

Ms. JACKSON LEE. Let's get it done. Let's give you what your rules are and what you are supposed to enforce, how you are supposed to enforce it and the tools to do it.

Mr. MAXWELL. Absolutely.

Ms. JACKSON LEE. And let management know that those who are working need to be rewarded, need to know what the ifs, ands and don'ts are, they need to know the yeses and the noes; is that correct?

Mr. MAXWELL. Absolutely.

Ms. JACKSON LEE. And that is what reform is all about.

Mr. Cutler, you worked—and let me thank you for your leadership and your service.

Mr. CUTLER. Thank you.

Ms. JACKSON LEE. One of the issues is fraudulent documents. We have got legislation making its way, trying to fix this whole issue of getting rid of these fraudulent documents. As you well, I have legislation to set up a task force. How much of an element is that and us getting to work on dealing with the massive fraudulent documents?

Mr. CUTLER. Well, I thank you for your leadership as well, and I think it is a very important issue. The only question that sticks in my mind is what resources would the Administration allocate, because that always seems to be the problem. I have been here for hearings where we have discussed where the Congress would authorize hiring many more people for both the Border Patrol and ICE and the Administration was willing to hire.

But it is also a matter of providing the training for the field agents. Right now they are not getting training in the identification of fraudulent documents at ICE. They are still not getting the foreign language training so that they can do meaningful field investigations and interviews. And these issues have been going on for years now.

And we also need to go after the fraud schemes as well as the fraud documents, and I believe your task force addressed that also. Because no matter what we do on the border, if we don't have integrity to the immigration benefits program, it is kind of like secur-

ing your house with good strong locks and then handing out the keys to anybody who walks by.

Ms. JACKSON LEE. Absolutely. Absolutely.

Mr. CUTLER. So this is very important, and I do appreciate what you are trying to accomplish with that.

Ms. JACKSON LEE. More resources, more focus and more training.

Bishop DiMarzio, if you would just—you were very good in at least saying to us that we don't have to be failures in this process, do we? And the immigrants that you meet, undocumented maybe, I don't know your range of those who you come in contact with, if we just separate the fact that we have got to secure our borders and we are all in the war on terror, we are not ignoring that, the immigrants that you meet, the immigrants that may come through the Catholic diocese all over America, the economic immigrants, what are they wanting and how can we fix their particular situation?

Bishop DIMARZIO. I think most immigrants, if you ask them, they come because they want a better life for themselves and their children, and that is clearly the motivation that lets them leave their home countries.

If the situation in many of these countries were better, they would opt to stay. No one particularly wants to be a migrant. Necessity dictates that this happen. I think, again, in a comprehensive approach, we would look to some of the sending countries and try to work with them to see if we can do something that will deter some of the migrants coming, especially those who come obviously in an undocumented manner.

Irregular migration is a worldwide problem. It is not only a north-south problem, it is a south-south problem, in many places in Africa, we had a hearing there in South Africa, and we see that even in Africa there is a large migration of people.

The issue comes down to you have to have international cooperation. You need to work in that way. I think the success of most people that come here is clear. Migrants come with the idea they want to succeed, they want to work, they want to make a better life, and the vast majority do so. I think we have got to look at that issue as part of the heritage of our country and at the same time not ignore the security issue, which is overwhelming today.

Ms. JACKSON LEE. Mr. Chairman, I close by simply saying, if I have gotten anything from all four of the witnesses, all of them, it is that we need to roll up our sleeves, we need to get to work, we need to provide the kind of funding, targeting, training and most of all we need not spend our time on additional hearings that would thwart us getting into a conference and doing the heavy lifting that American people require.

I thank the gentlemen, I thank the Chairman. I yield back, and I ask unanimous consent for my statement to be placed in the record.

Mr. HOSTETTLER. Without objection.

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

Ms. JACKSON LEE. Thank you.

Mr. HOSTETTLER. Bishop DiMarzio, we are discussing S. 2611. Can you tell me if the U.S. Conference of Catholic Bishops officially

supports S. 2611 or any of the Committees, say, the Committee on Migration?

Bishop DIMARZIO. I think we have had some support of various elements. I don't think we have given a blanket support for the whole bill, but there are certain things that we would agree with.

Mr. HOSTETTLER. Could you elaborate on some of those provisions?

Bishop DIMARZIO. Right now, I think I would not be able to do that off the top of my head.

Mr. HOSTETTLER. Could you offer that for the record at a later time?

Bishop DIMARZIO. Sure, we will. We could do that.

Mr. HOSTETTLER. Thank you very much.

Mr. Gadiel, it has been argued that the legalization provisions in S. 2611 did not constitute an amnesty. How do you respond to that argument?

Mr. GADIEL. Well, in a way, I agree. It is not an amnesty; it is something more. An amnesty is you commit a crime, amnesty means that you are restored to your civil rights as they were before you committed the crime. This one amounts to saying that—it is comparable to saying, "You rob a bank, you stay clean for a couple of years, and we will give you $1 million at the end." In this case, the $1 million is the citizenship.

What we are saying to people is, you have broken the law, pay few bucks in taxes, don't get in trouble for a couple of years and then you get the big prize, which is what they wanted originally.

So this is not amnesty. This is something far, far, far beyond amnesty. I can't find a word for it. "Earned legalization" is a good way of concealing that it is something other than amnesty.

Mr. HOSTETTLER. Thank you.

Mr. Cutler, as a former special agent, how difficult would it be—you referred to undocumented aliens, and there is a lot of discussion about undocumented aliens.

Mr. CUTLER. Right.

Mr. HOSTETTLER. How difficult would it be for an illegal alien to obtain documents that showed he had worked or resided in the United States for a given period of time?

Mr. CUTLER. Well, it would be very, very simple. It is a cottage industry. There are document vendors everywhere willing to sell you identity documents claiming you are anybody or anything you want to be.

But I also want to quickly take this opportunity to make a point that I think is important. We are indeed a nation of immigrants. My background is one of immigrants. My mother came here fleeing the oppression of Eastern Europe. My grandma died in the Holocaust; I am named for her. So when we talk about illegal aliens we are not talking about immigrants.

We have to get back to the language. Section 101 of the Immigration and Nationality Act talks about the terms. If we don't have a clear understanding of what we are dealing with, it becomes hard or impossible to have a meaningful conversation.

An alien is a term that has fallen from disuse, but an alien is not a pejorative. The term, "alien," by law, is defined as any person who is not a citizen or a national of the United States. And I think

we need to make a clear distinction between someone who is here as an immigrant, meaning they have been lawfully admitted, and someone who is here as an illegal alien.

And when people hear, "Well, we want to do things for immigrants," well, that is right, because these are folks who have been lawfully admitted. To want to legalize an immigrant is like offering to make water wet. An immigrant already is legal.

So we need to draw a clear distinction, and I think so much of the discussion has to been to obfuscate the distinction between what it is to be an alien who has been lawfully admitted and an alien who either entered the United States through a port of entry and then violated the terms of their admission, committed a crime and so forth, or an alien who ran the border and snuck in in the dead of night.

So documentation, going to your question, is very simple to come by, but I think we really need to remain focused, if you would forgive me for the suggestion, on having clear nomenclature so that we all understand precisely what we are trying to achieve and what we are really talking about.

Mr. HOSTETTLER. Very good. Very good. I appreciate that.

And in fact, today, many of the individuals who are referred to as undocumented aliens are not undocumented. Don't they have documents?

Mr. CUTLER. Yes. Many of them have in fact entered the United States, in fact I recently testified at a different Subcommittee hearing about the fact that 40 percent of the illegal alien population is believed to have in fact entered the United States through ports of entry, and it is important to make the point that the 19 terrorists who attacked our nation on September 11, 2001 all entered our country through ports of entry. They were not undocumented. They were aliens who either got visas through fraud or otherwise entered the country by gaming the system, and they have become very adept at gaming the system.

Mr. HOSTETTLER. And even individuals who came into the country illegally, in many cases, are documented. They are fraudulent documents.

Mr. CUTLER. Oh, absolutely. They are fraudulent, these documents, and they do it for two reasons. And this is, again, why we have got to be careful. You know, the road to Hell is paved with good intentions. Yes, many of the people who come here are economic refugees, and I think what the bishop said is right, we do need to go after the sending countries and perhaps tell countries like Mexico, "If you want a trade agreement, clean your own house. Provide a situation where your most valuable export aren't your own people." And I think that is very important. It is important for the well being of these folks and for America's security.

But among these people, it is almost like a Trojan Horse, and I refer to that in my testimony, is that we are letting people that we don't know who they are. We are not letting them in, the come in in the dead of night in some cases, and they are here to do harm to us. And these are the sleepers that I spoke about.

And when someone is working at a job and you don't know what they are up to, whether they are driving taxis and so forth, they are hiding in plain sight. And every time you will see where a ter-

rorist suspect is arrested, it is rare to see where it says that they were unemployed. They always have a job listed after their names. And they have identity documents. And they are either getting real documents by concealing their true identities and applying for "lost" driver's license, lost passports, lost whatever, or they are getting counterfeit documents. Those are the two basic types of documents.

That is why the lynchpin that holds immigration enforcement together are these documents, which is why this is one of the critical areas of vulnerability, and it is still not being addressed.

And listening to Mr. Maxwell's testimony, coupled with my own experience, it makes it very difficult to sleep at night. Peter is a good friend. I wish I didn't know him, because I know him because of the loss of his son on 9/11. And my neighbors, many of them lost family.

What we are trying to do, Mr. Chairman, is to prevent another 9/11. We live in a perilous world, as you well know, and our concern is that, for whatever reason, when you look at 2611, it is almost as though there was no 9/11 Commission report. The whole point, I thought, to the Commission and their report was so that the legislators of our country and the president of our country could take the advice and the findings of that commission that was convened specifically to find where the loopholes were and then do something about it.

And when I read 2611, it is almost as though there had been no 9/11 Commission report. I recently testified before the Senate Judiciary Committee, and the whole focus was on the economics of immigration, but nothing was done to discuss the 9/11 Commission findings. I was the only witness who raised the issue, and nobody wanted to discuss that component of that problem.

So if we don't address the security issues, nothing else we do matters. And that is why I am pleased to be here today, and that is why I am very happy with your leadership, because I think it is critical for Congress and for that American people to understand that the Senate bill almost utterly ignores the fact that there even was a 9/11 Commission. It is incredible to me.

Mr. HOSTETTLER. Thank you, Mr. Cutler.

The Chair recognizes the gentlelady from California for 5 minutes for questions.

Ms. WATERS. Thank you very much, Mr. Chairman. I, too, would like to register a concern that we are proceeding with these hearings in a most unusual way.

We have two bills that have been passed, one on the House side and one on the Senate side, that should be in conference and we should be seriously working in conference to resolve the differences and to make changes and come up with a realistic immigration reform bill.

And there are those who would say that these hearings that are being held here and the ones that will be held all during the month of August are somewhat political and that it simply is an attempt to get those people who are opposed to any immigration reform in a sensible way all stirred up in order to maybe pass one version of the bill rather than working out the differences in the bill.

However, I decided to come back to the hearing and I have decided, perhaps, to even participate in some that will be held during the recess, particularly in the San Diego area. Because I do think, as it has been alluded to today, that we owe it to America to work hard at this and to do our very, very best to do the right thing about immigration reform.

And so I have come today to ask a simple question that I have been asking over and over again. We have 11 million to 13 million undocumented immigrants, illegal immigrants, no matter how you try and define, as was attempted just a moment ago, what is the correct language to use.

I do not use illegal alien. I have found it to be unacceptable and disliked by many legal immigrants, just as the word, "refugee," that was applied to many people after Katrina was used, and they objected to that definition of who they were. And I just kind of respect how people generally feel about what they are called. And so I shall refer to them as undocumented workers or illegal immigrants.

Now, I would ask those who are here today, Mr. Gadiel and perhaps Mr. Cutler, the House bill that you said is being discussed here does not talk about what you do with 11 million to 13 million illegal immigrants or undocumented workers. What would you do? They are here.

The Senate bill talked about a path to legalization, recognizing that if you have not been here for 2 years or more, that perhaps you should be returned. You should be returned. If you have been here 2 to 5 years, then you have to pay taxes, you [have] to learn English, you have to do all these things, you have to get in line. They talk about, they give us a way by which to deal with the fact that they are here, 11 million to 13 million. What would you do with them?

Mr. GADIEL. My answer is attrition. Deprive people of the rights that they do not deserve. Deprive people of the ability to get jobs, deprive people of the ability to finance mortgages, deprive them of Government-backed mortgages, make sure they are not voting, make sure that they are not obtaining any benefits like in-State tuition, driver's licenses. Mike has a wonderful analogy. He said, nobody would break into an amusement park if they couldn't get on the rides. Well, once they are in the amusement park, if you shut down the rides, people will leave because they have no benefits.

Ms. WATERS. I am going to interrupt you, not because I want to be disrespectful to you but I just want to pinpoint a few things. Undocumented worker, illegal immigrant, in the country for 20 years, own a house, two children, they are legal, the undocumented grandmother not legal; she doesn't know any other place. This is home, 20, 30 years. What do you do with her?

Mr. GADIEL. I repeat: attrition, attrition, attrition. It is not a matter of a luxury that we can offer to people from around the world to be here illegally. The 9/11 terrorists were able to function in this country because they had an ocean in which they could operate in plain sight.

Ms. WATERS. No, no, no, no. I go along with that. I do. And, look, I want this country to be secure, and I want us to have good immigration reform.

What do you do with the 20-, 30-year illegal immigrant here who has no other place to go? They don't know anything about any place in Mexico or any place else. They have two children and a grandchild. What do you do with them?

Mr. GADIEL. Let me point out that when a person comes here from a foreign land, they know nothing about this country.

Ms. WATERS. What do you do—excuse me, reclaiming my time. Do you have any better——

Mr. CUTLER. I do.

Ms. WATERS. Yes.

Mr. CUTLER. Thank you, Congresswoman Waters. Look, there are two things here. Number one, when we talk about someone who has been here for 2 years or less, there is no illegal alien who is going to walk into an immigration office and admit to being here less than 2 years.

Ms. WATERS. Okay. Well, let's take that off the table.

Mr. CUTLER. All right. But let me——

Ms. WATERS. Reclaiming my time, let's take that one off the table. Answer my question about this 20-to 30-year-old——

Mr. CUTLER. There is a provision where an alien who can show hardship, who can make the case that you are making can apply for suspension of deportation or the equivalent, revocation of removal. But the bottom line is, that is a small percentage. The bulk of the people we are talking about aren't what you are describing. The majority, in my experience, as an agent, are people that have been here for 3 or 4 years and——

Ms. WATERS. Yes, but you don't have any—you don't have that documentation here with you. You cannot tell me——

Mr. CUTLER. But my point is——

Ms. WATERS. That you know how many people have been here 30, 20, 15, 10 years——

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

Ms. WATERS. Unanimous consent for him to try and answer the question.

Mr. CUTLER. I will do it in 30 seconds, Mr. Chairman.

Mr. HOSTETTLER. Is the hypothetical situation that the gentlelady suggests covered by current law, and is that individual——

Mr. CUTLER. There are legal remedies for someone that is here for 30 years, but the problem is really identifying how long they are here. We have heard so much today about how easy it is to falsify data as to who you are as well as how long you have been here.

Mr. HOSTETTLER. And that individual is subject to deportation today under the immigration laws today.

Mr. CUTLER. Yes.

Mr. HOSTETTLER. Thank you very much.

The Chair recognizes the gentleman from California, Mr. Issa, for questions.

Mr. ISSA. Thank you, Mr. Chairman. And I was more than happy to just be a spectator and listen to this. I come from San Diego, have 2 secondary checkpoints in my district, and so I think more

than most districts I see every day the good and the bad that comes from legal and illegal immigration.

I want to just make a couple of quick points. One, I guess, is that I was in San Diego in 1986, and between 1986 and 1989, basically, we had a huge amnesty. So if you were here for 30 years, my arithmetic says that is 1976, and so those who were here for 30 years or 25 years were already eligible in the last go-round.

But I do think there was a point made, and I think Mr.—I am going to get your name right—Gadiel?

Mr. GADIEL. Gadiel.

Mr. ISSA. I think you, sort of, made it, and I think it is a very important point that we get on the record. People who come to the United States from Mexico, because Mexico is not really good at—or Guatemala—teaching English at a primary level, they generally come with very little knowledge of the United States. They generally come basically and start from square one.

So the argument that people who have been here for a substantial period of time are somehow alienated because they are going to be strangers in a strange land, isn't that the definition of what every immigrant deals with.

Mr. GADIEL. Yes, that is the definition, plus the fact that since so many illegal aliens today are not assimilating, they retain the culture and language of their home country so that the ability to re-assimilate in their home countries is going to be, in most cases, a simple matter.

Mr. ISSA. And I have the greatest respect for the gentlelady from California. She and I serve a State that sees every day very similar problems. But I do kind of have one odd difference with her—not odd by I think predictable—that the difference between the House version and the Senate version is not a difference between Republicans and Democrats, it is a difference between the vision of two bodies that if I read it correctly is irreconcilable unless one body makes major concessions that are presently, publicly unwilling to make.

Then with all due respect to the gentlelady from California, going out and holding a series of field hearings, having Members of the House reach out to the public and be reached out to by the public couldn't be [more] appropriate. And, again, I don't think we defined partisan as the difference between the House and the Senate. And these field hearings, including from this Committee and Subcommittee, I guess I have a hard time understanding, they may be bicameral if there is a term for that.

John McCain has led the charge for a very different vision than Darrell Issa, and I think that finding a way to come together, which I support, is going to require making sure we have the pulse of America.

Is there anyone that sees somehow that I am wrong, that you just have to dot an I between the House vision and the Senate vision, both of which are bipartisan?

Mr. GADIEL. I think you are right. They are irreconcilable. They are two entirely different philosophies. One is to reward illegal behavior, and the other is to—and put our country at risk and the other is to punish illegal behavior and preserve our security.

Mr. ISSA. Thank you. And I will limit time because I know time is short.

I appreciate the opportunity to, sort of, clear up a couple of areas, Mr. Chairman. I yield back.

Mr. HOSTETTLER. Thank you.

The Chair recognizes the gentleman from Iowa for purposes of a second round of questions.

Mr. KING. Thank you, Mr. Chairman.

Kind of, in a way, picking up where I left off in the previous round, I direct my question to Bishop DiMarzio, and that is we have existing laws today, and I would ask, do the American bishops, and I believe you are here to testify on behalf of American bishops, do they support enforcement of existing law?

Bishop DIMARZIO. Yes, we do.

Mr. KING. And then that includes the deportation that is part of the existing law for violation of immigration laws?

Bishop DIMARZIO. Obviously, when the law can be enforced, we would say, "Enforce it." But I think what we are dealing with here is an issue that we can enforce the deportation of 10 million to 12 million people. I don't think it is practical. I think when we look at a law that is broken, that is not effective, it is time to change it.

Mr. KING. Bishop, that is a judgment call, and we have heard testimony here on more of the attrition effect. I don't think there is anybody on this panel, I don't know of anybody in this Congress that has advocated that we round up 12 million people and deport them, although we often hear that as the rebuttal as to why we can't enforce our existing laws.

So we could go down this path of enforcing a law wherever people come in contact with the law and be deported back to their home country, and the Church is consistent with—supports that then, I understand.

Bishop DIMARZIO. That is true. We also have programs in the countries in which they come and are supported by the bishops in those countries to help these deportees to find a new life in those countries so that we see that that is a reality and we are working with that.

Mr. KING. And that is something I very much support and appreciate that.

Then with regard to the labor supply in this country and the statement that we need immigrants and we can bring them here legally, that is a judgment call, I think, that the American people are in the process of debating right now.

But if there are 12 million illegals in America and the testimony this Committee has received is that perhaps out of that 12 million, 7 million that are working. And of those 7 million, they represent about 5 percent of the workforce, 5 percent of about 140 million workers in America, doing about 2.2 percent of the productivity because they are generally the lower-educated.

So if that all stopped and if it couldn't stop and wouldn't stop all at once under anybody's scenario, but it would be a gradual transition, we have in this country 77.5 million non-working Americans. And of those, there are at least 61.1 million that are in a prime working age, between 20 and 65, another 9.3 million between the

ages of 16 and 19 that aren't in the workforce in any way whatsoever that are missing and they are unskilled. And they are missing their opportunities to get into this economy.

So I raise this because I think that there is a lot yet to be learned about whether America needs a lot of unskilled labor or not, given that we have got so many people that are not working in America.

But I would like to take this discussion a little bit further and that is the last published population of Mexico was 104 million and 46 percent want to come to the United States. And the people that would come to the United States would be first the young men but the people that were young, the younger they are, I guess, from an age of maturity standpoint, from there on they are more likely to come because they have more to gain and less to lose.

And so if 46 percent want to come to the United States and the more than come here the more that are likely to follow, then it is an easy scenario to see where Mexico could perhaps not be 104 million but maybe 52 million or 50 million or less in a matter of a generation. And then that great vacuum that is created there, who is there to rebuild Mexico and what kind of disservice would the United States be doing to this nation of Mexico if we opened our borders in that fashion?

I would point out something our founding fathers put right in the Declaration of Independence: "Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes. And, accordingly, all experience hath shown that mankind are more disposed to suffer while evils are sufferable than to right themselves by abolishing the forms to which they are accustomed."

Those forms to which the Mexican people have become accustomed will never change as long as the United States of America is a relief valve for the human suffering south of us. And I would submit that we are doing a grave disservice to the Government and the people south of our border if we are going to believe that we are the relief valve for all human suffering that might want to come to the United States.

And the point that I would make at the conclusion of this is that the question that never gets asked, I will say seldom gets asked and never answered is, is there such a thing as too much immigration, legal and illegal, and if so, how much?

And I would submit that to Bishop DiMarzio, please.

Bishop DIMARZIO. You don't ask easy questions, do you? Obviously, population is another whole question. Are there ever too many people of the world? We haven't got there yet.

One of the great economists that recently died, Julian Simon said, "The ultimate resource is people. People create other resources." Again, everything has to be limited. I think from the Catholic Church's point of view, we talk about the common good, and we have to have our laws that deal with immigration and population, that deal with the common good.

Again, one of the issues you brought up is the labor market. We don't have control over the labor market in the United States. We don't understand it very well. We have got various views of what the labor market is and displacement that is caused by undocu-

mented workers or documented aliens. We have no consensus. We have on both sides of the issue great disagreement. Now, that is part of the problem we are having, to come to some kind of a decision with Congress. You have got conflicting information, and I think some of the information is correct and some of it is incorrect, if you want my opinion. But you need to look at that very carefully.

I think a restrictionist point of view, just because we fear people coming to this country, that is the only basis of it, obviously can't be held on any tenable way.

Mr. KING. And I thank the Bishop. And I would just point out that Congress does have to answer that question.

I appreciate your testimony and all of your testimony, and I would yield back to the Chairman. Thank you.

Mr. HOSTETTLER. I thank the gentleman.

The questions of the Subcommittee being completed, I want to thank members of the panel, witnesses that have appeared today, your contribution to the record.

Gentleman from Texas want questions?

Mr. GOHMERT. If I could ask a few.

Mr. HOSTETTLER. Oh, I am sorry.

Mr. GOHMERT. I am sorry.

Mr. HOSTETTLER. No, no. The gentleman from Texas, Mr. Gohmert, is recognized for 5 minutes.

Mr. GOHMERT. Thank you, Mr. Chairman.

My friend from Iowa has pointed out some interesting things and asked some interesting questions, and he doesn't ask easy questions, but I would like to go one past a point he made about 46 percent people in Mexico being interested in coming to the United States and go through that.

You know, those of you that have been to Mexico, you are familiar with it, you deal with people, Mexican nationals in this country, you know they have some really smart people. I would submit that the United States citizenry, on the average, is not smarter than those in Mexico, that, on the average, we do not have harder working people than those in Mexico. Mexico has incredible, vast resources.

So the question I come to, what over the U.S. history and the Mexican history has caused the United States and Mexico to come to the point that nearly half of their people want to leave and come here? Anybody got any insights into that? Because if we can answer that question, then we could really get to the heart of dealing with this issue, I would think.

Bishop DIMARZIO. I think you are living in a globalized world, and when our neighbors to the south have a different economy, different opportunities, you just have to look at your TV sets, they don't have to go too far.

Mr. GOHMERT. Okay. But that begs the question: What has caused that different economy?

Bishop DIMARZIO. Well, it is an inequality between the economic development of nations, underdevelopment in certain countries and superdevelopment in others, so that the equalization of this is a macro issue.

Mr. GOHMERT. But the expression has been used over the years, "Capital is a coward." Money flows into places where it is at least

risk. So why has the capital not gone to Mexico to develop that country where half of America wants to go to Mexico? What has made the difference? Why has that economy flourished here and not flourished there? That is what I would like to get to the heart of.

Bishop DIMARZIO. Obviously, capital also wants to be safe, and if they don't feel that they are secure, if there is an unstable government or government that has taken advantage of the investment of capital, that is a problem. But, again, the trade agreements that we are trying to negotiate, have negotiated with many of these Latin American countries do hold some hope if we recognize that it is not only good——

Mr. GOHMERT. Yes, but that is talking about where do we go from here. I would like to get to the heart, if anybody else has an answer.

Mr. GADIEL. Perhaps it is the corruption that is so endemic in Mexico and the fact that perhaps property is not secure and that there is an oligarchy that—and I can't give you any deep thing, but I know the country is highly corrupt and there is an oligarchy, and that is not conducive to a middle class. And then, naturally, it is going to cause people to want to come to this country.

Mr. GOHMERT. Yes, sir?

Mr. CUTLER. Yes. I think Peter is on the right path. I think it is a matter of much of the GNP is enjoyed by a very small percent of the Mexican economic elite so that wages are depressed, working and living conditions are horrific for anybody except for those at the very top of the economic food chain in Mexico. Whereas, in the United States I think there are greater opportunities for a much broader spectrum of our citizens.

And I think that because of that, there are greater economic opportunities in the United States, better standard of living in the United States, as compared with what Mexico is experiencing.

Mr. GOHMERT. Mr. Maxwell, do you have any comment?

Mr. MAXWELL. Yes. There is one important point here is they can come here and do it simply, under the radar and send money back, and that is a very important piece of the puzzle.

Mr. GOHMERT. Yes, but that doesn't answer my question, why they can come here and make more money than they can, why they don't have a thriving economy in Mexico. And I hated to cut the Bishop off but I really want to get to this because I think it is at the heart of all of this we are discussing. If we can figure out and point our finger to why they are not as successful or more so in Mexico, then we get to the heart of the problem, then we deal with why people want to come here instead of stay in their own beautiful, wonderful country.

And my time is running out, so I would just propose this to you: It has been mentioned that perhaps there is a great deal of corruption and oligarchy. The GNP is enjoyed by a very small number of people. I would submit to you that that means that they are not a nation of laws. They don't follow the law. It is dictated by whomever happens to be in charge.

And that, apparently, from what some of you have said, the difference is, in this country, for most of our history, we have done a far better job of following the law and applying it across the

board and even though there is unfairness, we do a better job of applying it across the board and enforcing it than Mexico has.

And so how ironic that we would be asked to ignore our law, the very thing that has made us more successful, potentially, than Mexico, and we are being asked to ignore our law, which would make us like the country 46 percent apparently want to leave.

Thank you, Mr. Chairman.

Mr. HOSTETTLER. I thank the gentleman.

Once again, I want to thank the members of the panel for your testimony and your contribution to the record. It has been highly valuable.

All Members will have 5 legislative days to make additions to the record.

We have noticed the markup of two private immigration bills and a private claims resolution. Currently, we do not have a working quorum of six Members, so, therefore, without objection, the Chair will recess the Subcommittee, subject to the call of the Chair later this afternoon when we are able to get a working quorum.

We are recessed.

[Whereupon, at 2:20 p.m., the Subcommittee was adjourned subject to the call of the Chair.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

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

At the hearing today, we will hear testimony on whether implementation of the Senate's Comprehensive Immigration Reform Act of 2006, S. 2611, would result in an administrative and national security nightmare. We also will hear testimony on the possibility that criminals and terrorists will be able to slip through the security clearances and that they will create new identities for themselves that will be recognized by the U.S. government.

We have had extensive experience with legalization programs. We have implemented seven of them in the last 20 years. This includes the Immigration and Reform Control Act (IRCA), the Nicaraguan Adjustment and Central American Relief Act (NACARA), the Haitian Refugee Immigration Fairness Act (HRIFA), and the Legal Immigration and Family Equity Act (LIFE Act). The experience with IRCA, however, is the only one that has involved millions of applications.

In implementing the IRCA legalization programs, INS worked closely with other federal agencies; leased additional office space at 109 locations; hired and trained approximately 2,000 additional employees, including a large number of retired former federal employees; and obtained assistance from volunteer agencies.

IRCA specified that application fees would have to be high enough to cover program expenses. In addition to the filing fee, applicants were required to pay for services performed in connection with the application, such as fingerprints, photographs, and medical examinations.

INS permitted applicants to file their applications with community organizations, which were called "Qualified Designated Entities" (QDEs), instead of applying directly to INS. Approximately 980 QDEs participated in the program.

INS was able to process 3 million applications. This included 1.7 million people in the regular legalization program and another 1.3 million in the program for special agricultural workers.

The primary issue with regard to S. 2611 is whether U.S. Citizenship and Immigration Services (USCIS) would be able to process millions of additional benefits applications. Emilio Gonzalez, the director of USCIS, has acknowledged that if USCIS had to institute a guest-worker program today, the system could not handle it. He went on to explain, however, that USCIS is undergoing a complete overhaul, which includes everything from upgrading immigration facilities to computerizing the paper files that currently must be mailed across the country when an applicant changes addresses. USCIS expects to be able to handle the increased case load if S. 2611 is enacted.

INS was able to process 3 million applications 20 years ago, and we have two advantages now that INS did not have in 1986. First, we have the benefit of experience with seven large legalization programs, including IRCA. Second, technology has improved dramatically in the last 20 years. When the IRCA legalization applications were being processed, information was still being disseminated in mailings and by telephone, and computer capability was primitive compared to what computers can do today.

The second issue is whether terrorists and criminals would be able to slip through the background checks that would be performed as part of that application process. This is not a situation in which we are trying to prevent terrorists and criminals from entering the United States. The undocumented immigrants who would be able to apply for legalization under S. 2611 are already in the United States. Moreover, legalization applicants would receive the same security checks that are performed on other aliens who are seeking residence in the United States. If the security

checks are inadequate, they are inadequate for all applicants, not just legalization applicants.

Another issue is whether terrorists and criminals would be able to use fraudulent documents to create new identities. We are much better at dealing with document fraud now than we were 20 years ago when the IRCA applications were processed. It also is worth noting that the 9/11 terrorists used their own identities when they entered the United States as nonimmigrant visitors. They did not need false identities to enter or to remain in the United States. We cannot deal with terrorists unless we know who they are, which is an intelligence issue, not an immigration issue.

LETTER FROM THE HONORABLE F. JAMES SENSENBRENNER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY; THE HONORABLE HENRY J. HYDE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS, AND CHAIRMAN, COMMITTEE ON INTERNATIONAL RELATIONS; AND THE HONORABLE PETER T. KING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, AND CHAIRMAN, COMMITTEE ON HOMELAND SECURITY TO THE U.S. CONFERENCE OF CATHOLIC BISHOPS

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

April 5, 2006

U.S. Conference of Catholic Bishops
3211 Fourth Street, NE
Washington, D.C. 20017-1194

Your Eminences and Excellencies:

We have worked closely with the U.S. Conference of Catholic Bishops (USCCB) on scores of issues for many years and look forward to continuing this relationship. Last November, many Members met with various USCCB members to discuss immigration reform. We renew the promise to keep communication open as Congress considers this complex and difficult issue.

We know you share both our frustration with the current immigration system and our interest in fixing this system in a fair and compassionate manner. Doing so will not be easy, particularly with many passionate and polarized viewpoints on this issue. Clearly, a thoughtful and respectful dialogue is needed on the issue if Congress and the public are to arrive at a consensus and implement a workable solution.

We supported the House border security legislation (H.R. 4437) in December because it would prevent illegal immigration, help our law enforcement agents gain control of our borders, and re-establish respect for our immigration laws. Though this legislation represents a solid first step in an effort to fix a broken immigration system, it will not be the final product on this issue.

Many of the most heinous atrocities occurring along the border involve human trafficking. We wholeheartedly concur with the USCCB's statement that:

- Human trafficking is a modern-day form of slavery. Victims of human trafficking are subjected to force, fraud, or coercion, for the purpose of sexual exploitation or forced labor. Examples of recent cases of human trafficking in the U.S. include adolescent Mexican girls trafficked to the U.S. for forced prostitution, Indian men trafficked for forced labor, and African women and children trafficked for domestic servitude, among others. The U.S. government estimates that approximately 600,000 to 800,000 people are trafficked across international borders each year; about 14,500-17,500 of them into the United States. Of those trafficked into the United States, it is estimated one-third are children. (Source: http://www.usccb.org/news/index.shtml)

Unfortunately, our current alien-smuggling laws are inadequate in the fight against these sophisticated coyotes and snake-heads who rape, rob, beat, and abandon their human "cargo," and also poison our communities through drug trafficking. Thus, border-area U.S. Attorneys -- who every day prosecute these horrific crimes against humanity -- have asked for the tools in H.R. 4437 to aid them in their fight against alien smuggling.

Since the House bill's passage, many have misconstrued the House's good-faith effort to bring

human traffickers to justice as a way to criminalize humanitarian assistance efforts. The House bill does no such thing, nor did it intend to.

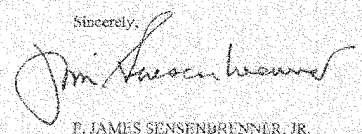
We can assure you, just as under current law, religious organizations would not have to "card" people at soup kitchens and homeless shelters under the House bill's anti-smuggling provisions. Prosecutors would no sooner prosecute good Samaritans for "assisting" illegal immigrants to remain in the U.S. under the House bill than they would prosecute such persons for "encouraging" illegal immigrants to remain in the U.S. under current law, which has existed for nearly 20 years.

Nonetheless, we stand willing to work with you and other persons of good will to ensure humanitarian assistance efforts are not mistakenly ensnared in this moral effort to end suffering at the hands of human traffickers. We remain optimistic this goal can be achieved.

Lastly, we know many of you are concerned about the House bill's provision making illegal presence a felony. We share that concern. As you should know, during the House debate, Chairman Sensenbrenner offered an amendment to reduce the bill's penalty for illegal presence from a felony to a misdemeanor. Unfortunately, this amendment was unsuccessful, primarily because all but eight of our Democratic colleagues decided to play political games by voting to make all illegal immigrants felons. A felony penalty is neither appropriate nor workable. We remain committed to reducing this penalty and working with you to this end.

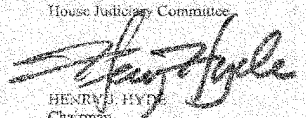
We take seriously the moral values legislators must demonstrate when discharging their public responsibilities. We sincerely hope we can work together in a cooperative manner for meaningful immigration reform that is fair, compassionate, and reflective of our shared values.

Sincerely,



F. JAMES SENSENBRENNER, JR.
Chairman
House Judiciary Committee

PETER T. KING
Chairman
House Homeland Security Committee



HENRY J. HYDE
Chairman
House International Relations Committee

REPORT FROM THE UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE ENTITLED "IMMIGRATION BENEFITS: ADDITIONAL CONTROLS AND A SANCTIONS STRATEGY COULD ENHANCE DHS' ABILITY TO CONTROL BENEFIT FRAUD," SUBMITTED BY MICHAEL CUTLER, FORMER EXECUTIVE EXAMINER, INSPECTER, AND SPECIAL AGENT; IMMIGRATION AND NATURALIZATION SERVICE

United States Government Accountability Office

GAO

Report to Congressional Requesters

March 2006

IMMIGRATION BENEFITS

Additional Controls and a Sanctions Strategy Could Enhance DHS's Ability to Control Benefit Fraud

GAO-06-259

GAO
Accountability/Integrity/Reliability

Highlights

Highlights of GAO-06-259, a report to congressional requesters

Why GAO Did This Study

In 2002, GAO reported that immigration benefit fraud was pervasive and significant and the approach to controlling it was fragmented. Experts believe that individuals ineligible for these benefits, including terrorists and criminals, could use fraudulent means to enter or remain in the U.S. You asked that GAO evaluate U.S. Citizenship and Immigration Service's (USCIS) anti-fraud efforts. This report addresses the questions: (1) What do available data and information indicate regarding the nature and extent of fraud? (2) What actions has USCIS taken to improve its ability to detect fraud? (3) What actions does the Department of Homeland Security (DHS) take to sanction those who commit fraud?

What GAO Recommends

To enhance DHS's efforts to control benefit fraud, GAO recommends that USCIS implement additional internal controls and best practices to strengthen its fraud control environment and that DHS develop a strategy for implementing a sanctions program that includes a mechanism for assessing their effectiveness and that considers the costs and benefits of sanctions, including their deterrence value.

DHS generally agreed with 4 of the 6 recommendations but cited actions indicating it has addressed GAO's other 2 recommendations. GAO believes that additional actions are needed.

www.gao.gov/cgi-bin/getrpt?GAO-06-259

To view the full product, including the scope and methodology, click on the link above. For more information, contact Paul L. Jones at (202) 512-8777 or jonespl@gao.gov.

March 2006

IMMIGRATION BENEFITS

Additional Controls and a Sanctions Strategy Could Enhance DHS's Ability to Control Benefit Fraud

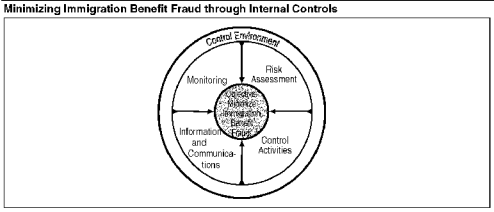
What GAO Found

Although the full extent of benefit fraud is unknown, available evidence suggests that it is a serious problem. Several high-profile immigration benefit fraud cases shed light on aspects of its nature—particularly that it is accomplished by submitting fraudulent documents and can be facilitated by white collar and other criminals, with the potential for large profits. USCIS staff denied about 20,000 applications for fraud in fiscal year 2005.

USCIS has established a focal point for immigration fraud, outlined a fraud control strategy that relies on the use of automation to detect fraud, and is performing risk assessments to identify the extent and nature of fraud for certain benefits. However, USCIS has not implemented important aspects of internal control standards established by GAO and fraud control best practices identified by leading audit organizations—particularly a comprehensive risk management approach, a mechanism to ensure ongoing monitoring during the course of normal activities, clear communication regarding how to balance multiple objectives, mechanisms to help ensure that staff have access to key information, and performance goals for fraud prevention.

DHS does not have a strategy for sanctioning fraud. Best practices advise that a credible sanctions program, which includes a mechanism for evaluating effectiveness, is an integral part of fraud control. Because most immigration benefit fraud is not prosecuted criminally, the principal means of sanctioning it would be administrative penalties. Although immigration law gives DHS the authority to levy administrative penalties, the component of DHS that administers them does not consider them to be cost-effective and does not routinely impose them. However, DHS has not evaluated the costs and benefits of sanctions, including the value of potential deterrence. Without a credible sanctions program, DHS's efforts to deter fraud may be less effective, when applicants perceive little threat of punishment.

Minimizing Immigration Benefit Fraud through Internal Controls



Source: GAO.

Contents

Letter		1
	Results in Brief	4
	Background	8
	Fraud Is A Serious Problem, But Its Full Extent Is Unknown	13
	Although USCIS Has Taken Steps to promote Fraud Control, Additional Controls and Best Practices Could Improve Its Ability to Detect Fraud	19
	Most Benefit Fraud Is Not Criminally Prosecuted, but DHS Does Not Have an Administrative Sanctions Program	35
	Conclusions	38
	Recommendations for Executive Action	40
	Agency Comments and Our Evaluation	41
Appendix I	**Scope and Methodology**	45
Appendix II	**Comments from the Department of Homeland Security**	47
Appendix III	**GAO Contact and Staff Acknowledgments**	52
Figures		
	Figure 1: USCIS Applications Completed in Fiscal Year 2005	9
	Figure 2: Immigration Benefit Fraud Detection and Referral Process	12
	Figure 3: Internal Control Environment	20

Abbreviations

AICPA	American Institute of Certified Public Accountants
BFU	Benefit Fraud Unit
CBP	Customs and Border Protection
CFR	Code of Federal Regulations
CIS	Citizenship and Immigration Services
DHS	Department of Homeland Security
DOL	Department of Labor
FDNS	Office of Fraud Detection and National Security
FDU	Fraud Detection Unit
ICE	Immigration and Customs Enforcement
INA	Immigration and Nationality Act
INS	Immigration and Naturalization Service
NAO	National Audit Office of the United Kingdom
PAS	Performance Analysis System
TECS	Treasury Enforcement Communication System
USCIS	United States Citizenship and Immigration Services

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United States Government Accountability Office
Washington, DC 20548

March 10, 2006

The Honorable John N. Hostettler
Chairman
Subcommittee on Immigration, Border Security, and Claims
Committee on the Judiciary
House of Representatives

The Honorable Charles E. Grassley
Chairman
Committee on Finance
United States Senate

In fiscal year 2005, over 6 million applications were filed by those seeking an immigration benefit—the ability of an alien to live and in some cases work in the United States either permanently or on a temporary basis. Most immigration benefits can be classified into two major categories—family-based and employment-based. Family-based applications are filed by U.S. citizens or permanent resident aliens to establish their relationships to certain alien relatives such as a spouse, parent, or minor child who wish to immigrate to the United States. Employment-based applications include applications filed by employers for aliens to come to the United States temporarily to work or receive training or for alien workers to work permanently in the United States. Other immigration benefits include granting citizenship to resident aliens (called naturalization), offering asylum to aliens who fear persecution in their home countries, and authorizing international students to study in the United States.

U.S. Citizenship and Immigration Services (USCIS) within the Department of Homeland Security (DHS) is the agency primarily responsible for processing applications for immigration benefits. The former Immigration and Naturalization Service (INS) previously had this responsibility, which USCIS assumed when DHS was created in March 2003. USCIS's staff of adjudicators process immigration benefits in 4 service centers and 33 district offices around the country. In some cases, applicants may try to

obtain a benefit illegally through fraud.[1] USCIS adjudicators who suspect fraud are to refer suspicious applications and supporting evidence to USCIS's Office of Fraud Detection and National Security (FDNS), created in 2003. FDNS staff are responsible for reviewing these potential fraud cases and determining whether to forward them to DHS's Immigration and Customs Enforcement (ICE)—which, among other things, is responsible for investigating violations of immigration law, including immigration benefit fraud. ICE may or may not decide to initiate a criminal investigation, depending on the facts in the referral and on workloads and priorities of its field offices.

DHS, terrorism experts, and federal law enforcement officials familiar with immigration benefit fraud believe that individuals ineligible for immigration benefits, including terrorists and criminals, could use fraudulent means to enter or remain in the United States. In 2002, we reported that immigration benefit fraud was pervasive and significant and that INS's approach to immigration benefit fraud was fragmented and unfocused.[2] A 2005 study by a former 9/11 Commission counsel found that of the 94 foreign-born terrorists known to operate in the United States between the early 1990s and 2004, 59 or two-thirds committed immigration fraud including 6 of the September 11th hijackers.[3] To determine what actions have been taken since our 2002 report to address immigration benefit fraud, you asked that we evaluate current anti-fraud efforts. This report addresses the following questions:

(1) What do available data and information indicate regarding the nature and extent of immigration benefit fraud?

(2) What actions has USCIS taken to improve its ability to detect immigration benefit fraud?

[1] Immigration benefit fraud refers to the willful misrepresentation of material fact to gain an immigration benefit. It is often facilitated by document fraud (use of forged, counterfeit, altered or falsely made documents) and identity fraud (fraudulent use of valid documents or information belonging to others).

[2] GAO, *Immigration Benefit Fraud: Focused Approach Is Needed to Address Problems*, GAO-02-66 (Washington, D.C.: Jan. 31, 2002).

[3] See also testimony of Janice Kephart, former counsel, The National Commission on Terrorist Attacks Upon the United States, before the Subcommittee on Immigration, Border Security, and Citizenship and the Subcommittee on Terrorism, Technology, and Homeland Security, Senate Judiciary Committee, Mar. 14, 2005.

(3) What actions does DHS take to sanction those who commit benefit fraud?

To address these questions, we interviewed responsible officials at and reviewed relevant documentation obtained from DHS and the Departments of State, Justice, and Labor. Regarding the nature and extent of immigration benefit fraud, we analyzed USCIS management data contained in its Performance Analysis System (PAS), results from two fraud assessments USCIS had completed before December 2005, information reported by DHS and the U.S. Attorneys Offices based on investigations and prosecutions of immigration benefit fraud, and information in fraud bulletins prepared by one USCIS Service Center. We evaluated the methodology used in USCIS's fraud assessments and determined that it provided a reasonable basis for projecting the frequency with which fraud was committed within the time period from which the samples were drawn. We assessed the data derived from PAS and determined that these data were sufficiently reliable for the purposes of this review. Because we selected investigations and prosecutions to review based upon information that was available, the information obtained from them is not necessarily representative or exhaustive of all immigration benefits cases nationwide. Similarly, information contained in the fraud bulletins is not necessarily representative of immigration benefit fraud nationwide. To determine how USCIS detects fraud during the adjudications process and to evaluate these efforts, we interviewed USCIS headquarters officials and USCIS's FDNS staff. We also interviewed 59 adjudicators at the 4 USCIS Service Centers and 2 USCIS district offices with responsibility for and familiarity with adjudicating different types of applications in a group setting, which allowed us to identify points of consensus among these adjudicators. In addition we interviewed ICE Office of Investigations officials from four ICE field offices. As we did not select probability samples of adjudicators and ICE Office of Investigations staff to interview, the results of these interviews may not be projected to the views of all USCIS adjudicators and ICE Office of Investigations field staff nationwide. Further, we compared the practices in place to the Standards for Internal Control in the Federal Government[4] and to guidance from internationally recognized, leading organizations in fraud control, including the American Institute of Certified Public Accountants and the United Kingdom's National Audit Office. To determine what measures

[4] GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999).

DHS has taken to sanction those who commit immigration fraud, we interviewed knowledgeable officials at USCIS and ICE, examined fraud investigation and prosecution statistics, and analyzed USCIS statistics about the amount of fraud identified by its adjudicators. We conducted our work from October 2004 to December 2005 in accordance with generally accepted government auditing standards. Appendix I presents more details about our objectives, scope, and methodology.

Results in Brief

Our review of several high-profile immigration benefit fraud cases sheds light on some aspects of the nature of immigration benefit fraud—particularly that it is accomplished by submitting fraudulent documents, that it can be facilitated by white collar and other criminals, and that it has the potential to result in large profits. Although the full extent of benefit fraud is not known, available evidence suggests that it is an ongoing and serious problem. Fraudulent documents submitted included but were not limited to marriage and birth certificates, financial statements, business plans, organizational charts, fictitious employee resumes, and college transcripts. White-collar and other criminals can facilitate immigration benefit fraud. Individuals who pose a threat to national security and public safety may seek to enter the United States by fraudulently obtaining immigration benefits. Moreover, those facilitating immigration benefit fraud, in some cases, have reaped large profits from aliens willing to pay thousands of dollars to fraudulently obtain an immigration benefit. In fiscal year 2005, USCIS denied about 20,000 applications due to fraud. In addition, in 2005, USCIS's new fraud detection office conducted the first two in a series of planned fraud assessments—reviews of applications for religious worker and replacement permanent resident card benefits. Based on the results of the completed religious worker assessment, which estimated that 33 percent of all religious worker applications were potentially fraudulent, we project that about 660 applications—one-third of religious worker applications submitted over a 6-month period in 2004—may have contained fraudulent information. Some findings of the religious worker assessment and facts uncovered during criminal investigations and prosecutions demonstrate that USCIS adjudicators do not always detect fraud during the adjudications process, thus allowing applicants to receive benefits for which they were not eligible. Moreover, USCIS's policy of issuing temporary work authorization within 90 days to those applicants waiting for their applications for permanent residency to be decided, although intended to allow bonafide applicants to work as soon as possible, can be exploited by aliens filing fraudulent applications with the intent of receiving the temporary work authorization for which they would otherwise be ineligible. These aliens can then use the

temporary work authorization to obtain other official documents, such as drivers' licenses. Based on an estimate from the DHS Office of Immigration Statistics that about 85 percent of applicants who apply for permanent residency also apply for temporary work authorization, the Citizenship and Immigration Services Ombudsman contends that many aliens who filed a fraudulent claim for permanent residency may have received temporary work authorization.

To help it detect immigration benefit fraud, USCIS established FDNS as its focal point for dealing with immigration benefit fraud, outlined a strategy for detecting immigration benefit fraud, and is undertaking a series of risk assessments to identify the extent and nature of fraud for certain immigration benefits. However, USCIS has not yet implemented some aspects of internal control standards established by GAO and fraud control best practices identified by leading audit organizations that could further enhance its ability to detect fraud. Specifically, USCIS's new fraud detection office is in the initial stages of implementing a fraud assessment program, which examines the extent and nature of fraud associated with the immigration category being assessed. However, this program, as currently implemented, does not provide a basis for the type of comprehensive risk analysis we advocate. First, USCIS current assessment plan does not include risk assessment of the majority of major immigration benefit categories—for example, temporary work authorization. Additionally, it focuses primarily on determining the fraud rate for selected immigration applications and identifying procedural vulnerabilities, for example, not routinely verifying the existence of churches associated with religious work applications. It does not draw on all available sources of strategic threat information to assess threats, such as ICE's Office of Intelligence, nor does it assess the consequences of granting a benefit to the wrong person—for example some benefits facilitate access to critical infrastructure while others do not. More comprehensive information about vulnerabilities, threats, and consequences as part of its fraud assessments would allow USCIS to identify those benefits that represent the highest risk and practice risk-based decision making in its efforts to balance fraud detection with other organizational priorities like reducing backlogs and improving customer service. In addition, USCIS also lacks a mechanism to help ensure that information gathered during the course of its normal operations and those of related operations—including criminal investigations and prosecutions—inform decisions about whether and what actions, including changes to policies, procedures, or programmatic activities, might improve the ability to detect fraud. Moreover, adjudicators we interviewed reported that communication from management did not

clearly communicate to them the importance of fraud control; rather, it emphasized meeting production goals, designed to reduce the backlog of applications, almost exclusively. These adjudicators shared, for example, memos from different parts of the agency, which they told us sent conflicting messages about how they were to balance, during the course of their duties, fraud-prevention objectives with service-related objectives. USCIS headquarters operations management told us that the adjudications operations is a "high-pressure" production environment and that they are seeking to increase production, but it was not their intention that this should come at the expense of making incorrect adjudication decisions. Also, our interviews with adjudicators indicated that they have limited access to some tools that could support their fraud detection ability such as external databases for verifying applicant information. Interviews with USCIS staff also indicated that adjudicators may not always receive relevant information that could support their efforts to detect fraud, and although some information is provided, it is not always provided in a form that adjudicators can reasonably manage as, for example, in an electronic database. Finally, USCIS has not established performance goals—measures and targets—to assess its benefit fraud activities.

DHS does not have a strategy for sanctioning fraud or for evaluating the effectiveness of sanctions. Best practice guidance issued by the United Kingdom's National Audit Office, for example, suggests that a strategy for sanctioning fraud, along with a mechanism for evaluating the effectiveness of sanctions is central to a good fraud control environment. Data provided by USCIS indicates that in fiscal year 2005 most immigration fraud detected by USCIS did not result in ICE criminal investigations and subsequent prosecutions. Since most fraud is not criminally prosecuted, the principal means of sanctioning it would be administrative penalties. The Immigration and Nationality Act does provide the authority to levy administrative penalties; however, DHS does not currently use this authority. This is largely because a 1998 federal court ruling enjoined INS from implementing certain administrative penalties for document fraud until it revised certain forms to provide adequate notice to aliens of the immigration consequences of waiving the opportunity to challenge document fraud fines. Although DHS has not conducted a formal cost-benefit analysis, according to ICE officials responsible for pursuing administrative penalties, these penalties are not cost-effective because the fines are less than the costs to impose them when a hearing is requested. Accordingly, DHS has not made updating the forms to allow sanctions to be administered in compliance with the court ruling a priority. Nevertheless, according to USCIS officials, an effective administrative sanctions program is important to its fraud deterrence efforts. The lack of

a clear strategy for how and when to punish fraud perpetrators, which considers the nonfinancial benefit of deterrence and includes a mechanism for evaluating effectiveness, limits DHS's ability to project a convincing message that those who commit fraud face a credible threat of punishment in one form or another.

In order to enhance USCIS's ability to detect immigration benefit fraud, we are recommending that the Secretary of Homeland Security direct the Director of USCIS to adopt additional internal controls and best practices to strengthen USCIS's fraud control environment, particularly by (1) expanding the scope of its current fraud assessment program and using a more comprehensive risk management approach; (2) establishing a mechanism to ensure that information uncovered during USCIS's and related agencies' normal operations feeds back into evaluations of USCIS's policies, procedures, and operations; (3) clearly communicating to adjudications staff the importance of both fraud prevention-related and service-related objectives, and how these objectives are to be balanced by adjudicators as they carry out their duties; (4) providing USCIS staff with access to information and tools from relevant internal and external sources; and (5) establishing outcome and output based performance goals that reflect the status of fraud control efforts. In addition, in order to enhance DHS's ability to sanction immigration benefit fraud, we recommend that the Secretary of Homeland Security direct the Director of USCIS and the Assistant Secretary of ICE to develop a strategy for sanctioning immigration benefit fraud that takes into account the value of deterrence and establishes a mechanism for evaluating effectiveness.

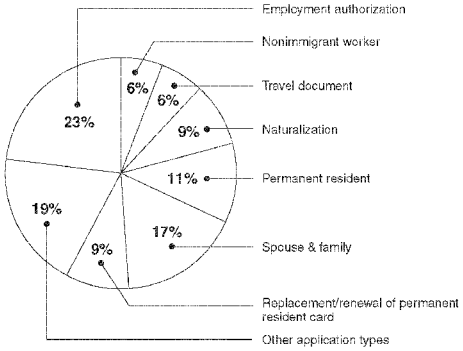
We presented a draft of this report to DHS and the Departments of State, Justice, and Labor. State, Justice, and Labor had no comments on our report. DHS stated that our report generally provided a good overview of the complexities associated with pursing immigration benefit fraud and the need to have a program in place that proactively assesses vulnerabilities within the myriad of immigration processes. However, DHS stated that our report did not fully portray USCIS's efforts to address immigration benefit fraud and provided other examples of efforts USCIS has undertaken or plans to undertake. Where appropriate, we revised the draft report to recognize these additional efforts by USCIS. DHS generally agreed with and plans to take action to implement four of our six recommendations and cited actions it has already taken to address our other two recommendations. DHS agreed on the need to expand its fraud assessment program, provide USCIS staff access to information from internal and external sources, and establish outcome and output performance based goals. DHS agreed that goals were needed but did not

specify what action(s) it was planning to take. DHS agreed to study the costs and benefits of an administrative sanctions program. DHS stated that a mechanism to ensure that information uncovered during USCIS's and related agencies normal operations feeds back into evaluations of USCIS's policies, procedures, and operations already exists. DHS cited examples of how FDNS shares information with other agencies, participates in inter-agency anti-fraud effort efforts, and has recommended changes to how USCIS adjudicates religious worker applications as evidence that such feedback takes place. Although these are all positive efforts, USCIS does not yet have policies and procedures that specify how information about fraud vulnerabilities uncovered during the course of normal operations—by USCIS and related agencies—is to be gathered—from which internal and external sources—and the process for evaluating this information and making decisions about appropriate corrective actions. Therefore, we continue to believe that USCIS needs to institutionalize through policies and procedures a feedback mechanism. With respect to communicating clearly the importance of USCIS's fraud prevention objectives, DHS stated that USCIS leadership clearly advocates balancing objectives related to timely and quality processing of immigration benefits, and cited the creation of FDNS as evidence that USCIS senior leadership believes national security and fraud detection are a high priority. However, our interviews with adjudicators indicate that this message may not be reaching USCIS adjudications staff. DHS disagreed with our recommendation that USCIS and ICE establish a mechanism for the sharing of information related to the status and outcomes of USCIS fraud referrals to ICE. DHS provided us a February 2006 memorandum of agreement between ICE and USCIS that establishes a mechanism for the sharing of information related to the status and outcomes of fraud referrals; therefore, we withdrew this recommendation.

Background

USCIS is responsible for processing millions of immigration benefit applications received each year for various types of immigration benefits, determining whether applicants are eligible to receive immigration benefits, and detecting suspicious information and evidence to refer for fraud investigation and possible sanctioning by other components or agencies. USCIS processes applications for about 50 types of immigration benefits. In fiscal year 2005, USCIS received about 6.3 million applications and adjudicated about 7.5 million applications. Figure 1 shows the percentage of applications completed by type of application in fiscal year 2005.

Figure 1: USCIS Applications Completed in Fiscal Year 2005



Source: GAO analysis of USCIS Performance Analysis System (PAS) data.

To process these immigration benefit applications, in fiscal year 2005 USCIS had a staff of about 3,000 permanent adjudicators located in 4 service centers, where most applications are processed, and 33 district offices.[5] In fiscal year 2004, for example, service centers adjudicated about 67 percent of all applications, and districts about 33 percent. In general, service centers adjudicate applications that do not require an interview with the applicant, using the evidence submitted with the applications. District offices generally adjudicate applications where USCIS requires an interview with the applicant (e.g., naturalization). USCIS also has eight offices that process applications for asylum in the United States. In fiscal year 2005, USCIS's budget amounted to just under $1.8 billion, of which about $1.6 billion was expected from service fees and $160 million from congressionally appropriated funds.

[5] USCIS also employed an additional 1,475 adjudicators on a temporary basis to support its backlog reductions efforts.

In fiscal year 2004, USCIS had a backlog of several million applications and has developed a plan to eliminate it by the end of fiscal year 2006.[6] In June 2004, USCIS reported that it would have to increase production by about 20 percent to achieve its goal of adjudicating all applications within 6 months or less by the end of fiscal year 2005. At that time, it estimated that it would have to increase current annual processing from about 6 million to 7.2 million applications. Since USCIS did not plan for further increases in staffing levels, reaching its backlog goal would require some reduction in average application processing times, overtime hours, and adjudicator reassignments.

With the creation of DHS in 2003, the immigration services and enforcement functions of the former INS transitioned to different organizations within DHS. USCIS assumed the immigration benefit functions and ICE assumed INS's investigative and detention and removal of aliens functions. Within ICE's Office of Investigations, the Identity and Benefit Fraud unit now conducts immigration benefit fraud criminal investigations and ICE's Office of Detention and Removal Operations is responsible for identifying and removing aliens illegally in the United States.

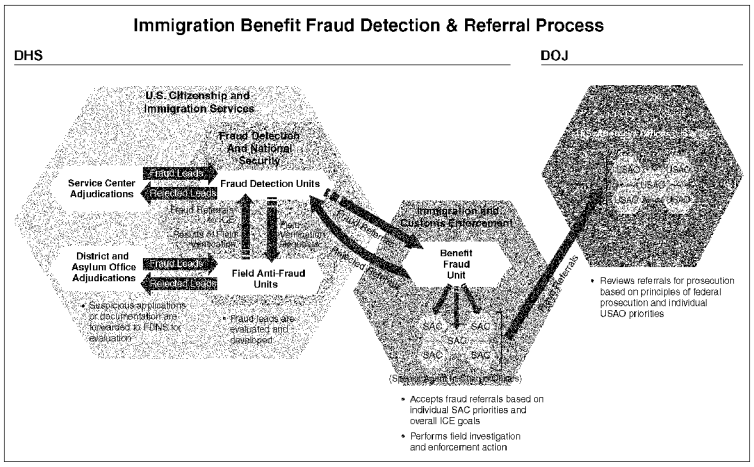
Because the immigration service and enforcement functions are now handled by separate DHS components, these components created two new units to, among other things, help coordinate the referral of suspected immigration benefit fraud uncovered by adjudicators to ICE's Office of Investigations. First, USCIS created FDNS in 2003 to, among other things, receive fraud leads from adjudicators and determine which leads should be referred to ICE's Office of Investigations. To accomplish this task, FDNS has Fraud Detection Units (FDU) at all four USCIS service centers and the National Benefits Center.[7] When fraud is suspected, the applications are to be referred FDUs. The FDUs, comprised of Intelligence Research Specialists and assistants, are responsible for further developing suspected immigration fraud referrals to decide which leads should be referred to ICE for possible investigation. FDU staff are also to refer to

[6] See GAO, *Immigration Benefits: Improvements Needed to Address Backlogs and Ensure Quality of Adjudications*, GAO-06-20 (Washington D.C.: November 2005).

[7] The National Benefits Center serves as a hub for applications adjudicated at USCIS field offices. Among other things, the center performs initial evidence review and conducts background checks before sending the file to the appropriate district office for adjudication.

ICE or other federal agencies applicants who may pose a threat to national security or public safety or who are potentially deportable. FDUs are responsible for following up on potential national security risks identified during background checks of immigration benefit applicants. FDUs also perform intelligence analysis to identify immigration fraud patterns and major fraud schemes. In addition to establishing FDUs, in January 2005 FDNS assigned 100 new Immigration Officers to USCIS district offices, service centers, and asylum offices to work directly with adjudicators to handle fraud referrals and conduct limited field inquiries. Second, ICE's Office of Investigations created four new Benefit Fraud Units (BFU) in Vermont, Texas, Nebraska, and California located either at or near the four USCIS service centers. The ICE BFUs are responsible for reviewing, assessing, developing, and when appropriate, referring to ICE field offices for possible investigation immigration fraud leads and other public safety leads received from the FDUs and elsewhere. Specifically, the ICE BFUs are intended to identify those referrals that they believe warrant investigation, such as organizations and facilitators engaged in large-scale schemes or individuals who pose a threat to national security or public safety, and refer them to ICE field offices. In turn, ICE field offices will investigate and refer those cases they believe warrant prosecution to the U.S. Attorneys Offices. Figure 2 illustrates the typical immigration benefit fraud referral and coordination process.

Figure 2: Immigration Benefit Fraud Detection and Referral Process



Source: USCIS.

The Homeland Security Act of 2002 created the office of the Citizenship and Immigration Services Ombudsman. The ombudsman's primary function is to: assist individuals and employers in resolving problems with USCIS; identify areas in which individuals and employers have problems in dealing with USCIS; and propose changes in the administrative practices of USCIS in an effort to mitigate problems. The ombudsman has issued two annual reports that have highlighted issues related to prolonged processing times, limited case status information, immigration benefit fraud, insufficient standardization in processing, and inadequate information technology and facilities.

Other federal agencies also play important roles in the immigration benefit application process. The Department of State is responsible for approving

and issuing a visa allowing an alien to travel to the United States. The Department of Labor's (DOL) Division of Foreign Labor Certification provides national leadership and policy guidance to carry out the responsibilities of the Secretary of Labor under the Immigration and Nationality Act (INA) concerning foreign workers seeking admission to the United States for employment. DOL provides certifications for foreign workers to work in the United States, on a permanent or temporary basis, when there are insufficient qualified U.S. workers available to perform the work at wages that meet or exceed the prevailing wage for the occupation in the area of intended employment. The DOL Office of the Inspector General's Office of Labor Racketeering and Fraud Investigations is responsible for investigating fraud related to these labor certifications.

Fraud Is A Serious Problem, But Its Full Extent Is Unknown

Fraudulent schemes used in several high-profile immigration benefit fraud cases sheds light on some aspects of the nature of immigration benefit fraud—particularly that it is accomplished by submitting fraudulent documents, that it can be committed by organized white-collar and other criminals, and that it has the potential to result in large profits for these criminals. The benefit fraud cases we reviewed involved individuals attempting to obtain benefits for which they were not eligible by submitting fraudulent documents or making false claims as evidence to support their applications. Fraudulent documents submitted included but were not limited to birth and marriage certificates, tax returns, financial statements, business plans, organizational charts, fictitious employee resumes, and college transcripts. For example, in what ICE characterized as one of the largest marriage fraud investigations ever undertaken, 44 individuals were indicted in November 2005 for their alleged role in an elaborate scheme to obtain fraudulent immigrant visas for hundreds of Chinese and Vietnamese nationals. According to a USCIS fraud bulletin, this scheme may have been ongoing for 10 years. Another major investigation revealed evidence that an attorney had filed about 350 applications on behalf of aliens seeking permanent employment as religious workers at religious institutions in the United States. Investigators found evidence that most of these aliens were unskilled laborers who were not pastors or other religious workers and had little or no previous affiliation with the religious institution. According to this investigation, some religious institutions appeared to specialize in obtaining legal status for aliens in the country who were not eligible for religious worker immigration benefits. In another investigation involving at least 2,800 apparently fraudulent marriage and fiancée applications identified in 2002 and investigated through 2004, a U.S. citizen appeared to have submitted multiple applications with as many as 11 different spouses.

One USCIS Service Center prepared fraud bulletins using information from various State Department Consular posts overseas describing immigration fraud uncovered by these posts. Our analysis of the bulletins issued from July 2004 through December 2004 prepared by USCIS's California Service Center revealed that aliens from 23 different countries were believed to have sought a variety of immigration benefits fraudulently. For example, individuals apparently sought to enter the United States through fraud by falsely claiming they were: (1) legitimately married to or a fiancé of a U.S. citizen; (2) a religious worker; (3) a performer in an entertainment group; (4) a person with extraordinary abilities, such as an artist, race car driver, or award winning photographer; (5) an executive with a foreign company; (6) a child or other relative of a citizen or permanent resident; or (7) a domestic employee of an alien legally in the United States, such as a diplomat or business executive. According to one of the bulletins, in one case State Department consular officers suspected illegal aliens were entering the United States under the guise of membership in a band. According to another bulletin, two individuals were suspected of smuggling children into the United States. In this case, the alleged parents submitted a non-immigrant visa application for their "daughter," and provided a fraudulent birth certificate and passport for her. The "parents" eventually admitted to taking children to the United States as their own to reunite them with their illegally working family members.

Some individuals seeking immigration benefits pose a threat to national security and public safety, and white collar and other criminals sometimes facilitate immigration benefit fraud. For example, according to FDNS, each year about 5,200 immigration benefit applicants are identified as potential national security risks, because their personal information matches information contained in U.S. Customs and Border Protection's Interagency Border Inspection System, a database of immigration law violators and people of national security interest. Additionally, according to federal prosecutors, immigration benefit fraud may involve other criminal activity, such as income tax evasion, money laundering, production of fraudulent documents, and conspiracy. Also, organized crime groups have used sophisticated immigration fraud schemes, such as creating shell companies, to bring in aliens ostensibly as employees of these companies. In addition, a number of individuals linked to a hostile foreign power's intelligence service were found to have been employed as temporary alien workers on military research.

Investigations have revealed that perpetrating fraud on behalf of aliens can be a profitable enterprise. For instance, in 2003 and 2004, one USCIS service center identified about 2,800 apparently fraudulent marriage

applications between low-income U.S. citizens and foreign nationals from an Asian country. The U.S. citizens appeared to have been paid between $5,000 and $10,000 for participating in the marriage fraud scheme. In another example from an investigation by DOL's Inspector General, to fraudulently obtain the labor certifications needed to work in the United States, at least 900 aliens allegedly paid a recruitment firm an average of $35,000, with some aliens paying as much as $90,000, resulting in at least $31 million in revenue for this firm. In one of the largest labor certification fraud schemes ever uncovered, federal investigators found evidence that a prominent immigration attorney in the Washington, D.C., area submitted at least 1,436 and perhaps as many as 2,700 fraudulent employment applications between 1998 and 2002. According to the sworn testimony of a DOL special agent, this attorney and his associates are alleged to have made at least $11.4 million for the 1,400 applications that the agent reviewed, in all of which he found evidence of fraud, and perhaps as much as $21.6 million if all 2,700 applications were fraudulent, as he strongly suspected. In another case, an attorney allegedly charged aliens between $8,000 and $30,000 to fraudulently obtain employment-based visas to work in more than 200 businesses that included pizza parlors, auto parts stores, and medical clinics.

Although the full extent of immigration benefit fraud is unknown, available USCIS data indicate that it is a serious problem. According to USCIS PAS data, in fiscal year 2005, USCIS denied just over 20,000 applications because USCIS staff detected fraudulent application information or supporting evidence during the course of adjudicating the benefit request. Three application categories accounted for more than three-quarters of the fraud denials: temporary work authorization (36 percent), application for permanent residency (30 percent), and application for a spouse to immigrate (14 percent). These three application types also accounted for almost half of all applications adjudicated by USCIS in fiscal year 2005. Moreover, in fiscal year 2005, USCIS denied approximately 800,000 applications for other reasons, such as ineligibility for the benefit sought or failure to respond to information requests. USCIS adjudications staff and officials told us that it is likely that some of these applications denied for other reasons also involved fraud.

Information provided by State Department and DOL officials also indicates that fraud is a serious problem. Once USCIS approves a sponsor's application on behalf of an alien to immigrate, the application is sent to the State Department's National Visa Center, which forwards the application to the appropriate State Department overseas consulate post, which then interviews the alien to determine whether a visa should be

issued. According to National Visa Center officials, out of 2,400 applications returned on average each month to USCIS by the National Visa Center, that are denied or withdrawn for various reasons, about 900 involve fraud or suspected fraud as determined by consular officers overseas. When the DOL Inspector General audited labor certification applications filed in 2001, it also found indications of a significant amount of fraud. According to the Inspector General, of the approximate 214,000 applications filed from January 1, 2001, through April 30, 2001, and not subsequently cancelled or withdrawn, 54 percent (about 130,000) contained false—possibly fraudulent—information.[8]

In June 2005, the FDNS completed the first in a series of fraud assessments. The results from this assessment of religious worker applications indicate that about 33 percent of the 220 sampled applications resulted in a preliminary finding of potential fraud.[9] Based on a 33 percent rate, we estimate that, during the 6-month period of fiscal year 2004 from which the sample was drawn, about 660 out of approximately 2,000 applications may have been fraudulent.[10] Of the 72 potential fraud cases discovered in the fraud assessment, about 54-percent (39 cases) showed evidence of tampering or fabrication of supporting documents; 44-percent (32 cases) of the petitioners' addresses did not reveal a bona fide religious institution; about 42-percent (30 cases) may have misrepresented the beneficiaries' qualifications; and 28-percent (20 cases) did not provide the salary noted in the application. The assessment also uncovered one case where law enforcement had identified an applicant as a suspected terrorist.

Information from other investigations and prosecutions of benefit fraud also reveal that, in some cases, applicants may have submitted fraudulent

[8] DOL Inspector General, *Restoring Section 245(i) of the Immigration Nationality Act Created a Flood of Poor Quality Foreign Labor Certification Applications Predominantly for Aliens Without Legal Work Status*, Report No: 6-04-001-03-321 (Washington, D.C. : Sept. 30, 2004).

[9] USCIS reviewed applications submitted on behalf of religious workers—such as ministers, or other individuals who work in a professional capacity in a religious vocation or occupation—seeking an immigrant visa in order to work in the United States. FDNS chose this application because based upon past experience FDNS believed there was a high prevalence of fraud. According to FDNS, most of the fraud involved religious institutions that were not affiliated with a major religious organization.

[10] However, with a sampling margin of error of 5 percent, the fraud rate could be between 28 percent and 38 percent.

documents and made false statements that were not detected before the applicant obtained an immigration benefit. For example, while investigating one fraud scheme, investigators identified more than 2,000 apparently fraudulent applications where there was evidence that some aliens, fraudulently claiming to be managers and executives of foreign companies with U.S. affiliates, acquired benefits that granted them the ability to work in the United States. To execute this scheme, organizers allegedly prepared application packages that included fraudulent business and employee related documents including financial statements, business plans, organizational charts, and fictitious employee resumes.

One joint law enforcement investigation, previously mentioned, uncovered evidence that an attorney and his associate had filed at least 1,436 applications on behalf of legitimate companies—mostly local restaurants—that did not actually request these workers. In this case there was evidence that they forged the signatures of company management on the applications. Another investigation involving marriage fraud found evidence that U.S. citizens were recruited and paid to marry Vietnamese nationals. The fraud organizers appeared to have assisted the U.S. citizens in obtaining their passports, scheduled travel arrangements, and escorted them to Vietnam where they arranged introductions with Vietnamese nationals whom the citizens then married. These citizens then filed applications that facilitated these Vietnamese nationals' entry into the United States as spouses even though it appeared that they did not intend to live together as husband and wife.

Even when adjudicators rejected applications based on fraud, some of these applicants had already received interim benefits while their applications were pending final adjudication allowing them to live and work in the United States, and in some cases obtain other official documents, such as a driver's license. Under current USCIS policy, for example, if USCIS cannot adjudicate an application for permanent residency and the accompanying application for work authorization within 90 days, the applicant is entitled to an interim work authorization, an interim benefit designed to let applicants work while awaiting a decision regarding permanent residency.[11] According to the Citizenship and Immigration Services Ombudsman's fiscal year 2004 and 2005 annual

[11] 8 C.F.R. § 274a.13(d). 8 CFR § 274a.12(c) states that USCIS has the discretion to establish a specific validity period for an employment authorization document, and 8 C.F.R. § 274a.13(d) provides that such period shall not exceed 240 days in the case of an interim authorization.

reports and our discussion with him, for many individuals the primary goal is to obtain temporary work authorization regardless of the validity of their application for permanent residency. That is, aliens can apply for temporary work authorization, knowing that they do not qualify for permanent residency, with the intent of exploiting the system to gain work authorization under false pretenses.

Once a temporary work authorization is fraudulently obtained, an alien can use it to obtain other valid identity documents such as a temporary social security card and a driver's license, thus facilitating their living and working in the United States. According to the FDNS Director, once such fraud scheme involved at least 2,500 individuals in Florida who allegedly filed frivolous applications for employment authorization and then used the receipt, showing they had filed an application, to obtain Florida State driver's licenses or identification cards.[12] ICE agents we interviewed also said that they suspected that many individuals apply for permanent residency fraudulently simply to obtain a valid temporary work authorization document. The interim benefit remains valid until it expires or until it is revoked by USCIS.

In his 2005 report, the Ombudsman cites a DHS Office of Immigration Statistics estimate—which the ombudsman's office confirmed with USCIS's division of performance management—that about 85 percent of applicants for permanent residency also apply for temporary work authorization. As a result, according to the ombudsman, many aliens have received temporary work authorizations, for which they were later found to be ineligible. Our analysis of PAS data shows, for example, that from fiscal year 2000 through 2004, USCIS denied 26,745 applications due to fraud out of the approximately 3 million applications received for permanent residency. These data illustrate that, if aliens that filed fraudulent applications for permanent residency also requested temporary work authorization at a rate consistent with the 85 percent cited by the Office of Immigration Statistics, then thousands of aliens received temporary work authorization based on their fraudulent claims for permanent residency during fiscal year 2000 through 2004.

[12] USCIS subsequently informed Florida's Department of Highway Safety and Motor Vehicles, and the American Association of Motor Vehicles Administration issued a national advisory notifying other state motor vehicle departments that they should not accept the application receipt as evidence of lawful immigration status.

Although USCIS Has Taken Steps to promote Fraud Control, Additional Controls and Best Practices Could Improve Its Ability to Detect Fraud

To help it detect immigration benefit fraud, USCIS has taken some important actions consistent with activities prescribed by the Standards for Internal Control in the Federal Government and with recognized best practices in fraud control. Specifically, it has established an internal unit to act as its focal point for addressing immigration benefit fraud, outlined a strategy for detecting immigration benefit fraud, and is undertaking a series of fraud assessments to identify the extent and nature of fraud for certain immigration benefits. However, USCIS has not applied some aspects of internal control standards and fraud control best practices that could further enhance its ability to detect fraud.

Internal Control Standards and Other Guidance Provide Direction for Establishing Good Fraud Control Practices

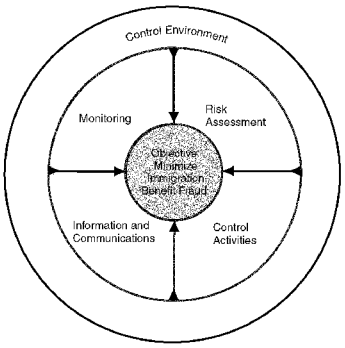
The Standards for Internal Control in the Federal Government provide an overall framework to identify and address, among other things fraud, waste, abuse, and mismanagement. Implementing good internal control activities and establishing a positive control environment is central to an agency's efforts to detect and deter immigration benefit fraud. The standards address various aspects of internal control that should be continuous, built-in components of organizational operations, including the control environment, risk assessment, control activities, information and communications, and monitoring.

As with work we have previously published related to managing improper payments, fraud control would typically require a continual interaction among these components in keeping with an agency's various objectives.[18] For example, internal controls that promote ongoing monitoring work together with risk assessment controls to provide a foundation for decision making. Also, as internal control standards advise, a precondition to risk assessment is the establishment of clear, consistent agency objectives. Once established, risk assessment controls must also work together with information and communication controls to ensure that that every level of the agency is cognizant of the commitment and approach to both controlling fraud and meeting other agency objectives. Similarly, conditions governing risk change frequently, and periodic updates are required to ensure that risk information—including threats, vulnerabilities, and consequences—stays current and relevant. Information collected

[18] GAO, *Strategies to Manage Improper Payments, Learning from Private Sector Organizations*, GAO-02-69G (Washington, D.C.: October 2001).

through periodic assessment, as well as daily operations can inform the assessment, and particularly, the analysis of risk. As shown in figure 3, the control environment surrounds and reinforces the other components, but all components work in concert toward a central objective, which, in this case, is to minimize immigration benefit fraud.

Figure 3: Internal Control Environment



Source: GAO.

Other audit organizations have published guidance that includes discussion of sound management practices for controlling fraud that complement the internal control standards. Among these are the American Institute of Certified Public Accountants (AICPA) guidance on management of antifraud programs and controls to help prevent and deter fraud[14] and a fraud control practices guide developed by the United Kingdom's National Audit Office (NAO) entitled "Good Practices in Tackling External Fraud." The NAO guidance outlines a risk-based

[14] Excerpt from Statement on Auditing Standards, No. 99, *Considerations of Fraud in a Financial Statement Audit.*

strategic approach to combating fraud that also includes evaluating the effectiveness of sanctions.

Consistent with Internal Control Standards and Fraud Control Best Practices, USCIS Has Established a Fraud Focal Point, Related Strategies, and a Fraud Assessment Program

According to internal control standards, factors leading to a positive control environment include clearly defining key areas of authority and responsibility, establishing appropriate lines of reporting, and appropriately delegating authority and responsibility for operating activities. Similarly, the NAO fraud control guidance advises agencies to develop specific strategies to coordinate their fraud control efforts and to ensure that someone is fully responsible for implementing the plans in the way intended and that sufficient resources are in place. Consistent with internal control and best practice guidance, USCIS established the FDNS office to enhance its fraud control efforts by serving as its focal point for addressing immigration benefit fraud.

Established in 2003, FDNS is intended to combat fraud and foster a positive control environment by pursuing the following objectives:

- develop, coordinate, and lead the national antifraud operations for USCIS;
- oversee and enhance policies and procedures pertaining to the enforcement of law enforcement background checks on those applying for immigration benefits;
- identify and evaluate vulnerabilities in the various policies, practices and procedures that threaten the legal immigration process;
- recommend solutions and internal controls to address these vulnerabilities; and
- act as the primary USCIS conduit and liaison with ICE, U.S. Customs and Border Protection (CBP), and other members of the law enforcement and intelligence community.

In September 2003, in support of its objectives, FDNS outlined a strategy for detecting immigration benefit fraud in USCIS's National Benefit Fraud Strategy. According to the strategy, because most immigration benefit fraud begins with the filing of an application, a sound approach to fraud prevention begins at the earliest point in the process—the time an application is received. Accordingly, USCIS established FDNS Fraud Detection Units (FDU) in each of the service centers in order to help identify potential fraud and process adjudicator referrals. Subsequently, FDNS appointed staff to serve as Immigration Officers working directly with adjudicators at the service centers and district offices to identify potential fraud and, to some extent, verify fraud through administrative

inquiries—once it was determined that ICE had declined to investigate a referral—in order to assist adjudicators in making eligibility determinations.

The strategy also discusses various technological tools to help the FDUs detect fraud early in the process—in particular, by enabling FDNS staff to check databases to confirm applicant information and by developing new automated tools to analyze application system data using known fraud indicators and patterns to help identify potential cases of fraud. USCIS has hired a contractor to develop for FDNS an automated capability to screen incoming applications against known fraud indicators, such as multiple applications received from the same person. According to FDNS, it plans to deploy an initial data analysis capability by the third quarter of fiscal year 2006 and release additional data analyses capabilities at later dates, but could not predict when these latter capabilities would be achieved. However, according to an FDNS operations manager, the near and midterm plans are not aimed at providing a full data mining capability. In the long term, USCIS plans to integrate these data analyses tools for fraud detection into a new application management system being developed as part of USCIS's efforts to transform its business processes for adjudicating immigration benefits, which includes developing the information technology needed to support these business processes. Also, in the long term, according to the FDNS Director, a new USCIS application management system would ideally include fraud filters to screen applications and remove suspicious applications from the processing stream before they are seen by adjudicators.

FDNS has adopted as one of its objectives the identification and evaluation of vulnerabilities in USCIS policies, practices, and procedures that threaten the immigration benefit process. Consistent with this objective and good internal control practices, in February 2005, FDNS began to conduct a series of fraud assessments aimed at determining the extent and nature (i.e., how it is committed) of fraud for several immigration benefits that FDNS staff determined, based on past studies and experience, benefit fraud may be a problem. To conduct these assessments, FDNS first selected a statistically valid sample of applications. [15] FDNS field staff then attempted to verify whether key

[15]For each of assessment, USCIS plans to review a sample of applications designed to achieve a 95 percent confidence interval. Reviews will be conducted by Immigration Officers in district offices.

information on the applications was true. They did this by doing such things as comparing information contained in benefit applications with information in USCIS data systems and law enforcement and commercial databases, conducting interviews with applicants, and, in some cases, visiting locations to verify, for example, whether a business actually existed. As of December 2005, FDNS had completed its assessment of the religious worker application and replacement of permanent resident card applications, and was in the process of completing the assessment of two immigrant worker application subcategories.[16] As of December 2005, FDNS planned to initiate two other assessments in January 2006 and another at a later time.[17]

Additional Internal Controls and Use of Other Best Practices Could Further Improve USCIS's Ability to Detect Benefit Fraud

Although USCIS has taken some important steps consistent with internal control standards and other good fraud control practices, it has not yet implemented some aspects of internal control standards and fraud control best practices that could further enhance its ability to detect fraud. Specifically, it lacks (1) a comprehensive approach for managing risk, (2) a monitoring mechanism to ensure that knowledge arising from routine operations informs the assessment of policies and procedures, (3) clear communication regarding how to balance multiple agency objectives, (4) a mechanism to help ensure that adjudicators staff have access to important information, and (5) performance goals related to fraud prevention.

USCIS Has Not Adopted a Comprehensive Risk Management Approach to Help Guide Its Fraud Control Efforts

Although FDNS has initiated a fraud assessment program that identifies vulnerabilities for the specific benefit being assessed, it does not employ a comprehensive risk management approach to help guide its fraud control efforts. That is, FDNS has not (1) developed a plan for assessing the majority of benefits that USCIS administers, (2) fully incorporated threat and consequence information as part of the assessment process, and (3) applied a risk-based approach to evaluating alternatives for mitigating identified vulnerabilities.

[16] For the religious worker assessment, USCIS staff reviewed a sample of 220 cases that were randomly selected from a 6-month period of April 1, 2004, to September 30, 2004. For the replacement of permanent resident card assessment, USCIS staff reviewed a sample of 245 cases that were selected from a 6-month period of May 1, 2004, to October 31, 2004. Cases selected included pending and completed cases.

[17] USCIS asked that we not divulge the specific benefit types planned for future assessments because of concerns that publishing this information could jeopardize the validity of these future assessments.

A central component of the Standards for Internal Control in the Federal Government is risk assessment, which includes identifying and analyzing risks that agencies face from internal and external sources and deciding what actions should be taken to manage these risks. NAO's fraud control guide also advises that in the fraud context, risk assessment involves such things as assessing the size of the threat from external fraud, the areas most vulnerable to fraud, and the characteristics of those who commit fraud. Moreover, we have consistently advocated a model of risk management that takes place in the context of clearly articulated goals and objectives and includes comprehensive assessments of threats, vulnerabilities, and consequences to help agencies evaluate and select among alternatives for mitigating risk in light of the potential for a given activity to be effective, the related cost of implementing the activity, and other relevant management concerns (including its impact on other agency objectives). [18]

FDNS fraud assessments are an initial step toward adopting a risk management approach. However, FDNS has no specific plans to assess the majority of the benefit types that it administers. FDNS's current plan calls for assessing benefit types that represent only about 25 percent of the applications USCIS received in fiscal year 2004, for example, and do not include benefits like temporary work authorization which accounted for almost 30 percent of applications received in 2004, and which the CIS Ombudsman suspects may be a high risk for fraud, and for which PAS data show a high denial rate for fraud. FDNS officials told us that, although the fraud assessments have been valuable, they have taken more time and effort than originally planned. Likewise, FDNS has not established a strategy and methodology for prioritizing any future fraud assessments. Until it extends the assessments to additional benefit types, the fraud assessments offer only limited information about vulnerabilities to the immigration benefits system

Moreover, the approach to risk management that we advocate calls for the assessment of threats and consequences, in addition to the vulnerability information provided by the current approach to fraud assessment. Currently, the fraud assessments do not incorporate a comprehensive

[18] See, for example, GAO, *Homeland Security: A Risk Management Approach Can Guide Preparedness Efforts*, GAO-02-208T (Washington, D.C.: October 2001); and GAO, *Risk Management: Further Refinements Needed to Assess Risks and Prioritize Protective Measures at Ports and Other Critical Infrastructure*, GAO-06-91 (Washington, D.C.: December 2005).

threat assessment—that is, they do not draw on all available sources of threat information—for example, information that might be available from such sources as ICE's Office of Intelligence and other DHS intelligence gathering efforts. Threat assessment might help FDNS identify, for example, whether terrorists might be more likely to try to exploit certain immigration benefits. Neither do the fraud assessments include an assessment of the consequences of granting a particular benefit to a fraudulent filer. Such an assessment might help USCIS determine the relative harm that granting such a benefit might pose to the United States and its immigration benefit system. Although ultimately any benefit obtained under false pretenses undermines the system established by U.S. immigration law, consideration of whether, for example, granting a specific benefit may also facilitate easier access for potential terrorists to critical infrastructure or pose a greater detriment to the U.S. economy could inform sound risk-based decision making.

Equipped with a more comprehensive understanding of the risks it faces—particularly which benefits represent the highest risk, USCIS management would then be in a better position to select appropriate risk mitigation strategies and actions, particularly in situations where it is necessary to make resource trade-offs or to balance multiple agency objectives. For example, an obvious vulnerability to the immigration benefit system is the submission of false eligibility evidence. Currently, however, USCIS procedures do not include the verification of any eligibility evidence for any benefit, despite its potential to help mitigate vulnerability to fraud.[19] Verification of such evidence—by comparing it to other information in USCIS databases, by checking it against external sources of information, or by interviewing applicants—is the most direct and effective strategy for mitigating this vulnerability. Employer wage data reported to state labor agencies, for example, could be a useful source of information to help determine if an employer has paid prevailing wages. Data from state motor vehicle departments can be used to verify that the two individuals claiming to be married live at the same address. We previously reported that USCIS could benefit from verifying employer related information with the

[19] According to the Adjudicator's Field Manual, adjudicators are to try to adjudicate the application based only on their review of the evidence submitted. The field manual further states that only when an adjudicator cannot decide whether to grant an immigration benefit based on the evidence submitted, are they to consider taking additional steps such as conducting internal research, requesting additional evidence, interviewing individuals, or requesting a site visit.

Internal Revenue Service.[20] USCIS adjudicators told us that access to commercial databases that provide identification and credential verification would be helpful in verifying information contained in benefit applications. Additionally, district office adjudicators told us that it was often only during interviews that fraud became evident, even when their earlier review had not raised suspicions.[21] A successful State Department effort offers further evidence that the practice of verifying key information can be an effective mitigation strategy. Due to a high incidence of fraud in a program that allows foreign companies to bring executives into the United States, one State Department consular post in Latin America began verifying with local authorities two key pieces of evidence that applicants were required to submit. According to the post, it subsequently noticed a decrease in the number of potentially fraudulent applications for this benefit.

On the other hand, verifying any applicant-submitted evidence in pursuit of its fraud-prevention objectives represents a resource commitment for USCIS and a potential trade-off with its production and customer service-related objectives. In fiscal year 2004, USCIS had a backlog of several million applications and has developed a plan to eliminate it by the end of fiscal year 2006.[22] In June 2004, USCIS reported that it would have to increase monthly production by about 20 percent to achieve its legislatively mandated goal of adjudicating all applications within 6 months or less by the end of fiscal year 2006. According to USCIS, because it does not plan to increase its current overall staffing level, meeting its backlog reduction goal will require some combination of reductions in the standard processing time for various applications, overtime hours, and adjudicator reassignments. It would be impossible for USCIS to verify all of the key information or interview all individuals related to the millions of applications it adjudicates each year—approximately 7.5 million applications in fiscal year 2005—without seriously compromising its service-related objectives. Identifying situations and benefits that represent the highest risk to USCIS could help its management determine whether and under what circumstances verification is so vital to

[20] See GAO, *Taxpayer Information: Options Exist to Enable Data Sharing between IRS and USCIS but Each Presents Challenges*, GAO-05-190 (Washington, D.C.: Oct. 11, 2005).

[21] Currently, personal interviews are conducted only for certain applications and only in USCIS's district offices.

[22] See GAO, *Improvements Needed to Address Backlogs and Ensure Quality of Adjudications*, GAO-06-20 (Washington D.C.: November 2005).

maintaining the integrity of the immigration benefits system that it outweighs any potential increase in processing time and costs. In this example, such an approach to risk management would inform selection among alternative verification strategies by considering (1) the risk of failing to detect fraud based on information provided by assessments of vulnerabilities, threats, and consequences, (2) the cost of conducting the verification (including its effect on other organizational objectives like service), and (3) the potential for the verification activities, given the current tools and information available, to actually detect fraud.

In addition to procedural vulnerabilities like the verification example, a risk management approach could also guide USCIS in the evaluation of policies that strike a balance between two or more agency objectives and organizational priorities. For example, as previously discussed, USCIS's policy of granting interim employment authorization documents to applicants whose adjustment of status applications have not been adjudicated within 90 days can be exploited by aliens seeking to gain work authorization under false pretenses and to use work authorization to obtain valid identity documents such as temporary social security cards and drivers licenses. In his 2004 and 2005 annual reports, the CIS Ombudsman identified this policy as a significant vulnerability in the immigration benefits process, because he contends that for many individuals the primary goal is to obtain temporary work authorization regardless of the validity of their applications for permanent residency. On the other hand, as we have previously reported, the reason for issuing temporary work authorization is to allow legitimate applicants to work as soon as possible, which according to USCIS, can serve to reduce the negative effects of delay on applicants and their families.[24] Using more comprehensive risk information to evaluate policies that represent trade-offs between fraud control and other agency objectives may help USCIS management determine whether and to what extent unintended policy consequences like in this example place the integrity of the immigration benefits system at risk. This kind of risk management approach also would provide USCIS management an opportunity to evaluate and select among various approaches to balancing fraud control with other agency objectives. In the temporary work authorization example, USCIS could evaluate a variety of alternative strategies and select among them on the basis of all available information, including risk. These strategies might

[24] See GAO, *Immigration Benefits: Several Factors Impede Timeliness of Application Process*, GAO-01-488 (Washington D.C.: May 2001).

include: (1) maintaining the current policy if it is found to pose a tolerable level of risk, (2) seeking applicable regulatory changes, or (3) applying the policy disparately, to the extent allowed by law, across benefit types based on the level of risk each represents. In commenting on a draft of this report, DHS stated that a proposed regulatory change would clarify USCIS's ability to withhold the adjudication of an application for employment authorization pending an ongoing investigation.

USCIS Lacks a Mechanism to Ensure That Ongoing Monitoring Occurs in the Course of Normal Operations

Internal control standards advise that controls should be generally designed to ensure that ongoing monitoring occurs in the course of normal operations and is ingrained in the agency's operations. FDNS's fraud assessment program provides some information about how fraud is committed in the form of concentrated periodic assessments. However, currently USCIS does not have a mechanism to ensure routine feedback to FDNS about vulnerabilities identified during the course of normal operations and to incorporate it into adjudication policies and procedures.

Besides information about vulnerabilities obtained from its operational experience adjudicating applications, additional information might be available to FDNS from external entities that also have responsibility for some aspect of controlling benefit fraud. One external source of fraud information that might inform USCIS operations is the U.S. Attorneys Office, which prosecutes immigration benefit fraud cases. For example, one U.S. Attorney, based on cases his office has prosecuted, has issued memoranda showing how underlying regulatory and adjudication processes have invited abuse of the immigration system. A March 2005 memorandum prepared by this office explained how a recent investigation revealed significant weaknesses in the asylum process that allowed ineligible aliens to obtain asylum, and made suggestions for reforming the process. The memorandum stated that these suggestions were intended to start a discussion among federal agencies with immigration responsibilities that could lead to needed reforms. In commenting on a draft of this report, DHS stated that USCIS is developing a plan of action to work with other DHS entities and the Executive Office of Immigration Review within the Department of Justice to respond to specific recommendations made by the U.S. Attorney that prepared the memorandum on asylum program weaknesses.

Another source of information available to USCIS about fraud vulnerabilities are the criminal investigations conducted by ICE, DOL, and

the DHS Office of Inspector General,[24] which could reveal such information as the characteristics of those who commit fraud and how these individuals exploited weaknesses in the immigration benefit process to obtain benefits illegally. USCIS's National Benefit Fraud Strategy does not mention incorporating lessons learned from investigative and prosecutorial activities into its fraud control efforts—specifically, how the knowledge ICE, DOL, and DHS investigators and U.S. Attorneys gained during the course of investigations and prosecutions could be collected and analyzed in order to become aware of opportunities to reduce fraud vulnerabilities.[25] A mechanism to help ensure that information from these and related sources results in appropriate refinements to policies and procedures could enhance USCIS's efforts to address fraud vulnerabilities.

DOL, which plays an important role in the benefits process for some permanent employment benefits, has used external information to refine its procedures in this way. Specifically, it analyzed the results of major criminal investigations and prosecutions to evaluate and establish new procedures that require verifying key application information, such as the existence of a business. DOL found it was necessary to change its permanent labor certification procedures to require verification of basic application information in order to mitigate the risk of mistakenly approving permanent labor certification applications, and protect the fundamental integrity of the labor certification process from blatant abuse.[26]

[24] Among other things, this office investigates criminal allegations of USCIS employee involvement in immigration benefit fraud. The DHS Office of Inspector General provides the results of such investigations to USCIS's Office of Security and Investigations.

[25] A February 2006 memorandum of agreement between USICS and ICE requires ICE to submit a report to USCIS on the findings of investigations resulting from referrals from USCIS. However, the memorandum does not require ICE to report the findings from benefit fraud investigations resulting from leads from other sources, such as other ICE investigations or other agencies.

[26] For permanent employment immigration, petitioners are required to obtain labor certifications from the Department of Labor. The DOL is required to certify that there are not sufficient U. S. workers who are able, willing, qualified, and available and that at least the prevailing wage will be paid. The labor certification is then submitted to USCIS along with an application for an alien worker using an I-140 immigration form. USCIS's responsibility is to then ensure that the prospective employee has the necessary qualifications for the job.

USCIS May Not Clearly Communicate the Importance of Fraud Control and How Adjudicators Are to Balance It with Other Objectives

Internal control standards advise that for agencies to manage their operations, they must have relevant, reliable, and timely communications. Furthermore, establishing a positive fraud control environment is central to an agency's efforts to detect and deter immigration benefit fraud. The NAO guidance also advises management to ensure that all levels of the organization are made to share a concern about fraud. It is the stated mission of USCIS to provide the right benefit, to the right person, at the right time, and no benefit to the wrong person. Specifically, it aims to adjudicate all benefit requests within 6 months of receipt, without compromising the integrity of the process, nor significantly increasing staff. These objectives—speed, quality, and cost—are inherently in tension with one another. Therefore, it is particularly important, given USCIS's multiple objectives, that it clearly communicates the importance of each of the objectives at every level of the organization, and provides clear guidance to adjudicators about how to balance them in the course of their daily duties.

Although USCIS's backlog elimination plan acknowledges the need to balance its focus on reducing the backlog with efforts to ensure adjudicative quality, some USCIS adjudicators we interviewed indicated that it was not clear to them how the agency expected them to balance fraud detection efforts and production goals during the course of their duties. Adjudicators we spoke with said that communications from management emphasized meeting production backlog goals almost exclusively. They said that management's focused attention on reducing the backlog placed additional pressure on them to process applications faster, thereby increasing the risk of making incorrect decisions, including approving potentially fraudulent applications. For example, adjudicators at all four service centers we spoke with told us that operations management seemed to be almost exclusively focused on reducing the backlog in order to meet production goals.[37] USCIS headquarters operations management responsible for overseeing adjudications at service centers and district offices told us that the adjudications operation is a "high-pressure" production environment and that they are seeking to increase production, but it was not their intention that this should come at the expense of making incorrect adjudication decisions.

[37] At one service center the union representing adjudicators filed a grievance in June 2005 claiming that proposed new performance standards for adjudicators were unrealistic and would compromise the quality of adjudication decisions.

The FDNS Director told us that he had also discussed with operations management the need to strike a more balanced approach to meeting production goals and ensuring that the right eligibility decision is made. He acknowledged that until FDNS establishes an ability to proactively identify fraud through its automated analysis tools, adjudicators will continue to play a primary role in detecting fraud. Therefore, he acknowledged the importance of clear and balanced communications from operations management to adjudicators in support of USCIS's new fraud detection process and the shared responsibilities in this regard.

Nevertheless, adjudicators we interviewed told us that they have received guidance from different parts of the agency regarding the lengths to which they should go in confirming suspected fraud that they were uncertain how to interpret. For example, in December 2004, the FDNS Director issued guidance stating that adjudicators should obtain the evidence needed to support their suspicions of fraud before making a referral, including, if necessary, requesting additional evidence from applicants. According to adjudicators and FDU staff we interviewed, this guidance appears to conflict with a subsequent January 2005 memorandum, issued by the Director of Service Center Operations, which states that adjudicator requests for information should not be used as a device simply to "investigate" suspected fraud. Adjudicators we interviewed at one service center said that whenever operations management communicated with them about practicing more discretion in issuing requests for additional evidence, they believed it was primarily intended to put more pressure on them to process applications faster, which in turn they said puts additional pressure on them to not to request additional evidence when making eligibility decisions. Consequently, they were concerned about having to approve applications with less confidence in the correctness of their determinations. An FDNS Immigration Officer working in a service center echoed the adjudicators concerns about seemingly conflicting guidance, saying that interpreting such guidance from management made the job of adjudicators more difficult. However, he said that adjudicators and local managers would more likely heed the direction of USCIS operations management, their direct supervisors, rather than FDNS. Clear communications about the importance of both fraud prevention-related and service-related objectives and how they are to be balanced may help adjudicators ensure that they are appropriately supporting USCIS's multiple objectives as they carry out their duties. In commenting on a draft of this report, DHS stated that the USCIS Director moved FDNS to a new directorate that reports directly to the USCIS Deputy Director. This will allow FDNS to provide focus and guidance to all USCIS operations.

Adjudicators and FDNS Staff Lack Access to Important Information and Information Tools

USCIS does not have a mechanism to help ensure that adjudicators have access to information related to detecting fraud they may need to carry out their responsibilities. Information regarding fraud trends can be provided in various forms including e-mails, intranet Web pages, and bulletin board notices. The adjudicators at the service centers and district offices we visited received some fraud-related information or training subsequent to their initial hire. [28] Our interviews indicated, however, that the frequency and method for distributing ongoing information about fraud detection is not uniform across the service centers and district offices we visited; some adjudicators reported that more information or a more centralized information management system would better prepare them to detect fraud. At two service centers, adjudicators we interviewed told us that, after their initial training, they were provided with some information regarding fraud trends via e-mail. However, these adjudicators also reported difficulty with managing the information in this format. They said that providing this information through a different means—either through a Web-based system or through a training course that would summarize new knowledge related to fraud trends—would be easier and quicker to use. One of the service centers provided adjudicators with operating manuals—developed for specific benefit application types—that included information regarding typical fraud trends encountered by the service center, which adjudicators said they found useful in their efforts to detect fraud.

At two other service centers, adjudicators we interviewed told us that they were not provided any fraud e-mail updates but received some limited information about fraud during general group meetings. Adjudicators at these two centers told us that receiving more specific and detailed information about fraud trends and practices would enhance their ability to detect fraud. At one service center, adjudicators suggested that having a method by which to incorporate the knowledge and lessons learned from experienced adjudicators would also help them to better detect fraud. Additionally, one of the district offices we visited provided an additional 2-day training course that included techniques for detecting fraud during an interview. Adjudicators we interviewed at this district office told us that the course helped prepare them to better detect fraud. USCIS headquarters officials responsible for field operations told us that there is

[28] USCIS initial adjudicator training provides approximately 4 hours of fraud-related training that focuses primarily on detecting fraudulent documents during 6 weeks of training.

no standard training regarding fraud trends and that fraud-related training varied across field offices.

In addition to calling for relevant information to be shared internally, internal control standards require that management ensure that there are adequate means of communicating with and obtaining from external stakeholders information that may have a significant impact on achieving agency goals. During our audit work, USCIS and ICE, had not yet established a feedback mechanism for the timely sharing of information related to the status and outcomes of fraud referrals that is essential to the fraud referral process shared by USCIS and ICE. According to FDNS field staff we interviewed, information from ICE field offices on the status of USCIS referrals—for example, whether ICE has initiated an investigation in response to a referral—was sporadic and incomplete in some cases and non-existent in other cases. In addition, when ICE fails to accept a referral, FDNS may initiate an administrative inquiry to resolve an adjudicator's suspicions of fraud. However, because ICE did not routinely provide information about its investigative decisions, it was difficult for FDNS to know when to initiate such inquiries or to plan for the staff time needed to conduct them. Moreover, according to FDNS staff and adjudicators we interviewed, without timely feedback about the investigative status of their referrals, adjudicators lacked the information needed to make more timely eligibility determinations, whether or not an investigation is opened by ICE. In November 2005, ICE and USCIS officials told us that ICE investigators were recently assigned to each of the FDUs, which may help increase communication and information sharing between USCIS and ICE.

Additionally, according to the FDNS Director, having direct access to information stored in ICE's case management information system, the Treasury Enforcement Communication System (TECS) maintained by Customs and Border Protection (CBP), would allow FDNS staff to determine with greater certainty whether someone who has filed for an immigration benefit is connected to any ongoing ICE criminal investigation. However, ICE officials told us they opposed allowing FDNS access to sensitive case management information. They said that there was a need to segregate sensitive law enforcement data about ongoing cases from non-law enforcement agencies like FDNS.

In commenting on a draft of this report, DHS provided us with a February 14, 2006, memorandum of agreement between ICE and USCIS that established a mechanism for the sharing of information related to the status and outcomes of fraud referrals. In addition the agreement provides USCIS staff with access to TECS data so USCIS can determine whether

someone who has filed for an immigration benefit is connected to any ongoing ICE criminal investigation. If properly implemented, this agreement should resolve USCIS's concerns regarding the status and outcome of fraud referrals to ICE and access to TECS data.

DHS Lacks Performance Goals for USCIS's Antifraud Efforts

Internal control standards call for agencies to establish performance measures to monitor performance related to agency objectives. Measuring performance allows an organization to track progress made toward achieving its objectives and provides managers with crucial information on which to base management decisions. The Government Performance and Results Act (GPRA) of 1993 also requires that agencies establish long-term strategic and annual goals, measure performance against these goals, and report on the progress made toward meeting their missions and objectives. It calls for agencies to assess specific outcomes related to their missions and objectives, in addition to designing output measures to describe attributes of the goods and services produced by the agencies' programs.

USCIS's 2005 Strategic Plan includes both a prevention theme—ensuring the integrity of the system, and a service theme—providing efficient and customer oriented services, along with related goals and objectives. However, DHS and USCIS have not established specific performance goals to assess benefit fraud activities. In fiscal year 2004 USCIS reported performance goals related to naturalization, legal permanent residency, and temporary residency to DHS for its annual Performance and Accountability Report. The objective for each of these three performance goals was to "provide information and benefits in a timely, accurate, consistent, courteous, and professional manner; and prevent ineligible individuals from receiving" the benefit. Although the objective includes preventing ineligible individuals from receiving the benefit, the related measure—achieve and maintain a 6-month cycle time goal—does not.

There is no discussion in the strategic plan of how to balance its prevention objectives with its service objectives. Instead, USCIS's long-term strategic approach appears to rely heavily on the development of an enhanced case management system, new fraud databases and data analyses tools, and automated information services to overcome the inherent tension between these prevention and services themes as they relate to the prevention of benefit fraud and reducing the backlog of immigration applications. Establishing output measures—for example, the number of cases referred to and accepted by FDNS—and outcome measures—for example, the percentage of fraudulent applications detected relative to targets established using baseline data from fraud

assessments—could provide USCIS with more complete information about the effectiveness of its fraud control efforts in meeting its strategic goal objective to ensure the security and integrity of the immigration system.

FDNS officials told us that they are now participating in USCIS's Office of Policy and Strategy Performance Measurement Team's efforts to develop performance metrics, and that FDNS is leading an effort to develop metrics related to USCIS's strategic goal to ensure the security and integrity of the immigration system by increasing the detection of attempted immigration benefit fraud. However, specific DHS metrics regarding USCIS's antifraud efforts have yet to be developed and approved by DHS.

Most Benefit Fraud Is Not Criminally Prosecuted, but DHS Does Not Have an Administrative Sanctions Program

Although best practice guidance suggests that sanctions for those who commit benefit fraud are central to a strong fraud control environment, and the INA provides for criminal and administrative sanctioning, DHS does not currently actively use the administrative sanctions available to it. Fraud control best practices advise that a credible sanctions program, which incorporates a mechanism for evaluating its effectiveness, including the wider value of deterrence, is an integral part of fraud control. According to the AICPA's fraud guidance, the way an entity reacts to fraud can send a strong message that helps reduce the number of future occurrences. Therefore, taking appropriate and consistent actions against violators is an important element of fraud control and deterrence. The guide further advises that a strong emphasis on fraud deterrence has the effect of persuading individuals that they should not commit fraud because of the likelihood of punishment. Similarly, the NAO guide states that a key element of a good fraud control program is to impose penalties and sanctions on those who commit fraud in order to penalize those who commit fraud and deter others from carrying out similar types of fraud.

Data provided by USCIS indicates that most benefit fraud it uncovers and refers to ICE is not prosecuted. In fiscal year 2005, USCIS referred 2,289 immigration benefit fraud cases to ICE BFUs. However, 598, about 26 percent were accepted by the BFUs. Neither USCIS nor ICE provided us with information about which of the FDNS referrals accepted by the BFUs resulted in an ICE investigation. However, ICE officials said that the majority of ICE's immigration benefit fraud investigations do not originate with USCIS referrals, but from other investigative sources. Given limits on its resources, ICE officials told us that they generally prioritize their investigative resources and assign them to cases involving individuals who

are filing large numbers of fraudulent applications for profit, because these cases generally have a greater probability of being prosecuted by the U.S. Attorneys Offices. Therefore, the principal means of imposing sanctions on most immigration benefit fraud would be through administrative penalties.

The INA provides both criminal and administrative sanctions for those who commit immigration benefit fraud.[29] The act's criminal provisions provide for fines and/or imprisonment for up to 5 years for a person who fails to disclose that they have, for a fee, assisted in preparing an application for an immigration benefit that was falsely made, and monetary fines and/or imprisonment for up to 15 years for a second such conviction. The act also provides for administrative penalties for applicants who make false statements or submit a fraudulent document to obtain an immigration benefit or enter into a marriage solely to obtain an immigration benefit.[30] For document fraud committed after 1999, it provides monetary fines ranging from $275 to $2,200 per document subject to a violation for a first offense and from $2,200 to $5,500 per document for those who have previously been fined. Monetary penalties collected are to be deposited into the Immigration Enforcement Account within the Department of the Treasury. Funds from this account can be used for activities that enhance enforcement of provisions of the INA including: (1) the identification, investigation, apprehension, detention, and removal of criminal aliens; (2) the maintenance and updating of a system to identify and track criminal aliens, deportable aliens, inadmissible aliens, and aliens illegally entering the United States; and (3) for the repair, maintenance, or construction of border facilities to deter illegal entry along the border. In addition, under certain circumstances, individuals determined through the adjudication process to have committed fraud, are deemed inadmissible should they later try to file another immigration application. In some cases, aliens who are determined in a formal hearing to have committed fraud can be removed from the United States and be barred from entering in the future.

DHS does not currently have a clear and comprehensive strategy for imposing sanctions or evaluating their effectiveness and is not actively enforcing the administrative penalties provided for by the INA. This is largely due to a 1998 federal appeals court ruling upholding a nationwide

[29] Immigration fraud can also be criminally prosecuted under other federal statutes.

[30] 8 U.S.C. §§ 1324c(a), (d); 1154(c).

permanent injunction against the procedures used by INS to institute civil document fraud charges under the INA.[31] The court found that INS provided insufficient notice to aliens regarding their right to request a hearing on the imposition of monetary fines and the immigration consequences of failing to do so, and that until proper notifications were included on the fine and hearing waiver forms, INS was enjoined from implementing civil penalties for document fraud. According to the Director of Field Operations for ICE's Office of Principal Legal Advisor, after the court ruling, the government's cost to investigate and prosecute an immigration fraud case administratively, including appeals costs, would not be offset by the monetary sum that might be obtained. Moreover, the director stated that even if successful, there was no guarantee that the government could collect its fine from the alien. Therefore, according to the director, ICE does not consider implementing the administrative penalties for document fraud to be cost-effective. Accordingly, DHS has not made updating the forms in response to the ruling a priority. Similarly, another USCIS attorney told us that the provision of INA that pertains to marriage fraud is rarely used because, due to the significant commitment of resources necessary to establish a finding of fraud, enforcing it might not be cost-effective. However, DHS has not conducted a formal analysis, which includes an attempt to value the benefit of deterrence, to determine the total costs and benefits of imposing sanctions.

Senior USCIS officials we spoke with, however, told us that administrative sanctions are important to their fraud control efforts. According to the FDNS Director, without the credible threat of a penalty, individuals have no fear of filing future fraudulent applications. In this regard, he said that FDNS administrative investigations of fraud referrals not investigated by ICE are critical, and, in his estimation, the resulting denial of a benefit and potential removal of an alien offer an effective deterrent to immigration benefit fraud. However, the director said that although an alien who commits immigration benefit fraud might be removable from the United States and, therefore, has some disincentive to commit fraud, U.S. citizens, if they are not prosecuted criminally, have little disincentive because without the enforcement of administrative sanctions they are not likely to be penalized, even if their violations are detected. Additionally, according to the Chief of Staff for USCIS, a strategy for administratively sanctioning those who commit fraud is necessary for controlling and deterring fraud.

[31] Walters v. Reno, 145 F.3d 1032 (9th Cir. 1998).

Although DHS does not actively use its authorities to impose administrative penalties, Congress has continued to support the concept in legislation. In particular, the Real ID Act of 2005 allows the Secretary of Homeland Security, after notice and an opportunity for a hearing, to impose an administrative fine of up to $10,000 per violation on an employer for a substantial failure to meet any of the conditions of a petition for certain non-immigrant workers or a willful misrepresentation of a material fact in such a petition, and allows the secretary to deny petitions filed with respect to that employer for at least 1 year and not more than 5 years.[32] However, without a strategy that includes a mechanism for assessing the effectiveness of sanctions and considers both the monetary value of fines collected and the value of deterrence, DHS will not be able to determine how and under what circumstances to best use the authority provided by the INA and other legislation to promote a credible threat of punishment in order to deter fraudulent filers.

Although it lacks a strategy for imposing criminal and administrative sanctions, DHS, along with DOL, has proposed administrative rule changes that will help sanction those who commit fraud. Among other things, DHS has proposed that USCIS be able to deny, for a period of time, all applications from employers that DOL or DHS has found, respectively, to have submitted false information about meeting regulatory requirements or provided statements in their applications that were inaccurate, fraudulent or misrepresented a material fact. Final rules have not yet been published.

Conclusions

In light of competing organizational priorities, institutionalizing fraud detection—so that it is a built-in part of the adjudications process and always a central part of USCIS's planning, procedures, and methods—is vital to USCIS's ability to accomplish its goals and objectives, particularly protecting the integrity of the immigration benefit system. USCIS has taken some important steps to implement internal controls, primarily through the activities of the Office of Fraud Detection and National Security. By strengthening existing controls and implementing additional fraud control practices, USCIS could enhance its ability to detect benefit fraud and gain greater assurance that its operations are designed to protect the integrity of the system, even as it strives to enhance service and meet its backlog reduction goals. Specifically, expanding the types of

[32] Pub. L. No. 109-13, div. B, § 404(a), 119 Stat. 302, 319-20 (amending 8 U.S.C. § 1184(c)).

benefits it assesses, including assessments of consequence, and drawing on all available sources of threat information to develop current fraud assessment activities into a more comprehensive risk management approach would provide additional knowledge about fraud risks and put the agency in a better position to make risk-based evaluations of its policies, procedures, and programmatic activities. Also, a mechanism to ensure that information uncovered during the course of normal operations—in USCIS and related agencies—feeds back into USCIS policies and procedures would help to ensure that it addresses loopholes and procedural weaknesses. In addition, clear communication of the importance of fraud prevention-related objectives and how they are to be balanced, in practice, with service-related objectives would help USCIS adjudicators to ensure that they are supporting the agency's multiple objectives as they carry out their duties. Moreover, the provision of the tools and the relevant information that its adjudicators need to help them detect fraud could help them make eligibility determinations with greater confidence of their accuracy. Finally, performance goals—that include output and outcome measures, along with associated targets—reflecting the status of fraud control efforts would provide valuable information for USCIS management to evaluate its various policies, procedures, and programmatic activities and a better understanding of both the progress made and areas requiring more focused management attention to enhance fraud prevention.

By demonstrating sufficiently adverse consequences for individuals who perpetrate fraud, sanctions serve to discourage future fraudulent filings, as individuals observe that the potential costs of engaging in fraud are likely to outweigh the potential gains. It is important to any program that encounters fraud to have a credible sanctions program to penalize those who engage in fraud and deter others from doing so. Currently, DHS's sanctions program for immigration fraud is not a threat to most perpetrators because relatively few are prosecuted criminally and administrative sanctions are not actively being used. Although DHS officials told us that administrative sanctions are not cost-effective, comparing only the costs of administering sanctions with the potential return from the collection of fines may undervalue their potential deterrent effects. Although developing a sound methodology to establish and determine the value of deterrence provided by sanctions will require effort, best practices call for cost-effective sanctions, and consideration of the full range of costs and benefits, financial and nonfinancial, is central to making a valid determination of cost-effectiveness. Developing and implementing a strategy for imposing sanctions that includes a mechanism for assessing effectiveness and that more fully evaluates costs and

benefits, including nonfinancial benefits like the value of deterrence, could give DHS a better indication of how and under what circumstances administrative sanctions should be employed to enhance USCIS's fraud deterrence efforts.

Recommendations for Executive Action

In order to enhance USCIS's overall immigration benefit fraud control environment, we recommend that the Secretary of Homeland Security direct the Director of USCIS to take the following five actions, which are consistent with internal control standards and best practices in the area of fraud control:

- Enhance its risk management approach by (1) expanding its fraud assessment program to cover more immigration application types; (2) fully incorporating threat and consequence assessments into its fraud assessment activities; and (3) using risk analysis to evaluate management alternatives to mitigate identified vulnerabilities.
- Implement a mechanism to help USCIS ensure that information about fraud vulnerabilities uncovered during the course of normal operations—by USCIS and related agencies—feeds back into and contributes to changes in policies and procedures when needed to ensure that identified vulnerabilities result in appropriate corrective actions.
- Communicate clearly to USCIS adjudicators the importance USCIS's fraud-prevention objectives and how they are to be balanced with service-oriented objectives to help adjudicators ensure that both objectives are supported as they carry out their duties.
- Provide USCIS's adjudicator staff with access to relevant internal and external information that bears on their ability to detect fraud, make correct eligibility determinations, and support the new fraud referral process—particularly ongoing updates regarding fraud trends and other information related to fraud detection.
- Establish output and outcome based performance goals—along with associated measures and targets—to assess the effectiveness of fraud control efforts and provide more complete performance information to guide management decisions about the need for any corrective action to improve the ability to detect fraud.

In addition, in order to enhance DHS's ability to sanction immigration benefit fraud, we recommend the Secretary of Homeland Security direct the Director of USCIS and the Assistant Secretary of ICE to:

- Develop a strategy for implementing a sanctions program that includes mechanisms for assessing its effectiveness and for determining its associated costs and benefits, including its deterrence value.

Agency Comments and Our Evaluation

We provided a draft of this report to the Departments of Homeland Security, State, Justice, and Labor for review. On March 1, 2006, we received written comments on the draft report from the Department of Homeland Security, which are reproduced in full in appendix II. The Departments of State, Justice, and Labor had no comments on our draft report. In its written comments, DHS stated that our report generally provided a good overview of the complexities associated with pursuing immigration benefit fraud and the need to have a program in place that proactively assesses vulnerabilities within the myriad of immigration processes. However, DHS stated that our report did not fully portray USCIS's efforts to address immigration benefit fraud and provided other examples of efforts USCIS has undertaken or plans to undertake. Where appropriate, we revised the draft report to recognize these additional efforts by USCIS to address immigration benefit fraud. DHS noted that USCIS used GAO's 2002 report on immigration benefit fraud as the foundation to build its antifraud program and believes that USCIS is on the right track to creating an effective antifraud program. We believe that USCIS is moving in the right direction and recognize that FDNS is in the beginning stages of developing and implementing a new antifraud program for USCIS.

Overall, DHS agreed with and plans to take action to implement four of our six recommendations, and cited actions it has already taken to indicate that aspects of our other two recommendations are already in place. Specifically, regarding our recommendation that DHS enhance its risk management approach, DHS agreed that USCIS can enhance its risk management approach by expanding its fraud assessment program to cover more application types and plans to do so. DHS stated that its initial fraud assessments focused on benefits that were high risk, but that given existing resources it was not possible to conduct assessments on all benefit types within the first years of operation. DHS stated that USCIS believes that the benefit fraud assessments currently underway do provide a comprehensive risk analysis to identify vulnerabilities and measures to mitigate such vulnerabilities. DHS cites FDNS involvement in interagency anti-fraud efforts and that FDNS staff are assigned to various intelligence

units as support that its fraud assessments draws on sources of strategic threat information. However, DHS did not provide evidence or explain how, if at all, these efforts systematically incorporated threat and consequences into its fraud assessment process. In addition, DHS did not explain or provide us with evidence of how USCIS will use the results of the fraud assessments as part of a continuous, built-in component of its operations to evaluate and adjust, as necessary, policies and procedures.

Regarding our recommendation that DHS provide USCIS adjudicator staff relevant information, DHS agreed that it needs to provide USCIS staff access to relevant internal and external information and is initiating training for supervisory adjudication officers and is planning to provide adjudicators selective access to the State Department's Consolidated Consular Database and other open source databases.

Regarding our recommendation that DHS establish performance goals to assess the effectiveness of fraud control efforts, DHS stated that FDNS has created performance goals for the number of benefit fraud assessments conducted during the year and the number of recommended policy, procedural and regulatory changes. DHS agreed that additional output and outcome based performance goals and measures are needed but did not specify what action(s) they were planning to take.

Regarding our recommendation that DHS develop a strategy for implementing a sanctions program, DHS agreed to study the costs and benefits of an administrative sanctions program though DHS believes that the process it has established to place aliens determined to have committed immigration fraud in removal proceedings is an effective deterrent. While this process may deter aliens from committing immigration fraud, this process does not impact citizens who may commit fraud and therefore a sanctions strategy for citizens is still needed.

DHS stated that with regard to two of our recommendations, it has already take actions that are consistent with these two recommendations. Regarding our recommendation that USCIS implement a mechanism to feed back information uncovered during the course of its normal operations and those of related agencies about fraud vulnerabilities, DHS stated that it believes such a feedback loop already exists within the process. DHS stated that FDNS is currently developing its back-end processes, which include sharing information/lessons learned from routine operations and addressing shortcomings. For all major conspiracy cases, a report is to be prepared summarizing among other things, factors that lead to fraudulent applications being approved. USCIS also stated that based

upon meetings that FDNS leadership had with a U.S. Attorneys Office regarding vulnerabilities in the asylum process, USCIS is developing a plan of action to respond to the recommendations made by the U.S. Attorney's office. DHS also stated that USCIS is developing regulatory changes to mitigate vulnerabilities identified during the religious worker fraud assessment. Although these are all positive efforts, USCIS does not yet have policies and procedures that specify how information about fraud vulnerabilities uncovered during the course of normal operations—by USCIS and related agencies—is to be gathered—from which internal and external sources—and the process for evaluating this information and making decisions about appropriate corrective actions. Therefore, we continue to believe that USCIS needs to institutionalize through policies and procedures a feedback mechanism.

Regarding our recommendation that USCIS clearly communicate the importance of USCIS' fraud-prevention activities, DHS stated USCIS leadership clearly advocates balancing objectives related to timely and quality processing of immigration benefits. DHS stated that creation of FDNS and the recent move of FDNS to a new directorate that reports directly to the Deputy Director of USCIS allowing FDNS to provide focus and guidance to all USCIS operations as support that USCIS is focused on the integrity of USCIS's data and processes. Although USCIS management believes these efforts demonstrate the importance of fraud prevention, our interviews with adjudicators in service centers and district offices indicate that this message may not be reaching USCIS's adjudications staff. Therefore, we continue to believe that more is needed to clearly communicate the importance of fraud prevention and more specific guidance on how USCIS staff are to balance the fraud prevention and service oriented objectives. DHS disagreed with our recommendation that USCIS and ICE establish a mechanism for the sharing of information related to the status and outcomes of USCIS fraud referrals to ICE. DHS provided us a February 2006 memorandum of agreement between ICE and USCIS that establishes a mechanism for the sharing of information related to the status and outcomes of fraud referrals; therefore, we withdrew this recommendation.

We are sending copies of this report to the Secretaries of Homeland Security, State, and Labor; the Attorney General; and other interested congressional committees. We will also make copies available to others upon request. In addition, the report will be available at no charge on GAO's Web site at http://www.gao.gov.

If you or your staff have any questions concerning this report, please contact me at (202) 512-8777 or Jonespl@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix III.

Paul L. Jones
Director, Homeland Security
and Justice Issues

Appendix I: Scope and Methodology

To examine the extent and nature of immigration fraud, we reviewed the results of the Office of Fraud Detection and National Security's (FDNS) ongoing fraud assessments. Regarding the fraud assessments, we interviewed the FDNS managers responsible for administering the assessment, reviewed documentation outlining the assessment's design, implementation and initial results from two fraud assessments. To better understand the nature of immigration benefit fraud and to identify common fraud patterns, we analyzed examples of fraud case histories for several petition types planned to be assessed by FDNS. In addition, we analyzed information contained in fraud bulletins prepared by U.S. Citizen Immigration Services' (USCIS) California Service Center that contained reports by various State Department overseas consular posts on immigration fraud these posts had uncovered. We also analyzed USCIS's Performance Analysis System (PAS) data to determine trends in the volume of applications being processed, approved, and denied. We assessed the data derived from PAS and determined that these data were sufficiently reliable for the purposes of this review. We interviewed adjudications staff and field managers to evaluate the extent to which internal controls and practices for detecting fraud were incorporated into USCIS policies, procedures, and tools. We met with headquarters officials from USCIS operations and FDNS, as well as officials from the Departments of Labor and State responsible for fraud detection efforts. We conducted site visits or contacted staff at all four USCIS services centers—we visited three USCIS service centers in Laguna Niguel, California; Dallas, Texas; and St. Albans, Vermont; and conducted telephone interviews with USCIS staff at the Lincoln, Nebraska, service center. We also interviewed 59 adjudicators at the four USCIS service centers and two USCIS district offices with responsibility for and familiarity with adjudicating different types of applications in a group setting, which allowed us to identify points of consensus among the adjudicators. We also visited USCIS district offices in Dallas and Boston responsible for coordinating their fraud referrals with two of the four service centers we visited. USCIS service center and district office officials selected the adjudicators we interviewed based upon our request that we meet with adjudicators that had responsibility for and familiarity with adjudicating different types of applications. We also interviewed FDNS staff assigned to work with the four service centers and two district offices we visited or contacted. We also interviewed staff from Immigration and Custom Enforcement's (ICE) Identity and Benefit Fraud Unit in Washington, D.C., and those agents assigned to Benefit Fraud Units (BFU) in California, Texas, and Vermont. As we did not select a probability sample of USCIS staff and ICE Office of Investigations agents to interview, the results of these interviews cannot be projected to all USCIS staff and

ICE Office of Investigations officials nationwide. In addition, we reviewed efforts by the Department of Labor's Inspector General to determine the extent of immigration fraud in the Permanent Labor Certification Program. We also met with the CIS Ombudsman to discuss his fiscal year 2004 and fiscal year 2005 reports.

To determine what actions USCIS has taken to improve its ability to detect immigration benefit fraud, we reviewed USCIS's efforts to improve its fraud detection capabilities, including resources devoted specifically to detecting fraud by FDNS. We also reviewed USCIS's policies, adjudication procedures, and fraud detection processes as well as the tools used by adjudicators to detect fraudulent immigration benefit applications. To determine what actions have been taken to sanction those who commit fraud, we interviewed USCIS and ICE attorneys, identified the investigative resources that ICE had made available for immigration fraud investigations, and determined how USCIS and ICE coordinate the investigation of potential fraud. In addition, we examined fraud investigation and prosecution statistics, and analyzed USCIS statistics about the amount of fraud identified by its adjudicators. We also determined how ICE investigative efforts are coordinated with the U.S. Attorneys Offices and how their priorities affect the investigation and prosecution of immigration benefit fraud schemes of various types. For this portion of our review, we met with headquarters officials from ICE, and interviewed agents in four ICE field offices based in Boston, Dallas, Los Angeles, and San Antonio. We also interviewed representatives from the U.S. Attorneys Office for the Eastern District of Virginia and the Executive Office of the U.S. Attorneys within the Department of Justice. Finally, we examined the current sanctions for those who commit immigration benefit fraud and reviewed proposed fraud regulatory changes. To evaluate DHS efforts to detect and sanction immigration benefit fraud, we used the Standards for Internal Control in the Federal Government and with best practices advocated by the American Institute of Certified Public Accountants (AICPA) and by the United Kingdom's National Audit Office (NAO).

We conducted our work between October 2004 and December 2005 in accordance with generally accepted government auditing standards.

Appendix II: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

March 1, 2006

Mr. Paul L. Jones
Director
Homeland Security and Justice Issues
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Jones:

We appreciate the opportunity to comment on the Government Accountability Office's (GAO) draft report entitled *"Immigration Benefits: Additional Controls and a Sanctions Strategy Could Enhance DHS's Ability to Control Benefit Fraud"* GAO-06-259. It generally provides a good overview of the complexities associated with pursuing immigration benefit fraud and the need to have a program in place that proactively assesses vulnerabilities within the myriad of immigration processes. However, the report does not fully portray how the Department of Homeland Security (DHS) has been addressing anti-fraud since its inception on March 1, 2003.

U.S. Citizenship and Immigration Services (USCIS) used the GAO Report, *Immigration Benefit Fraud: Focused Approach is Needed to Address Problems*, GAO-02-66, January 31, 2002, as the foundation to build its anti-fraud effort with the establishment of the Office of Fraud Detection and National Security (FDNS). Development of this program started in 2003. FDNS was officially created in May 2004 and FDNS Immigration Officers were deployed to the field in January 2005. Although it is still a new and developing program, USCIS is on the right track with respect to creating an effective anti-fraud program. To date, it has established a joint benefit fraud strategy with U.S. Immigration and Customs Enforcement (ICE), created the necessary organizational crosswalks, developed policies and procedures, and implemented a strategy for conducting benefit fraud assessments.

The GAO found the establishment of FDNS as a focal point for dealing with immigration benefit fraud, a strategy for detecting immigration benefit fraud and the initiation of a series of benefit risk assessment were good starts for an effective anti-fraud program. However, the GAO concluded that USCIS needed to address some aspects of internal control standards and fraud control best practices identified by leading audit organizations. For example, the GAO found the program does not provide a basis for the type of comprehensive risk analysis advocated in the *GAO Standards for Internal Control in the Federal Government*. USCIS believes that benefit fraud assessments currently underway do provide a comprehensive risk analysis to identify vulnerabilities and measures to mitigate such vulnerabilities. No such assessments have ever before been conducted of the immigration benefit processes. The GAO suggests that FDNS' assessments do not draw on all available sources of strategic threat information. FDNS performs systems checks in all available enforcement systems, and deconflicts suspected fraud targets with ICE. To facilitate this, ICE has a supervisory special agent collocated with headquarters FDNS and a senior special agent at each Service Center Fraud Detection Unit. FDNS also meets regularly with ICE's Identity and Benefit Fraud Unit; has an Intelligence Research Specialist

www.uscis.gov

2

detailed to ICE's Office of Intelligence, DHS's Operations Center, and the Terrorist Screening Center. The FDNS Director sits on the DHS Assistant Secretary of Intelligence and Analysis Intelligence Council. FDNS' Chief of the National Security Branch sits on DHS's Homeland Security Terrorist Threat Intelligence Group, along with other agency chiefs and assistant directors. FDNS also has ongoing communication with ICE's National Security Threat Protection Unit, and is about to implement a joint religious worker fraud initiative focused on identifying systemic flaws/national security risks in the Religious Worker Program. These interagency anti-fraud and national security efforts are also unprecedented.

In addition, the ongoing benefit fraud assessments are addressing benefit types considered "high risk." They were chosen because the application/petition either provided evidence of permanent resident status, were the basis for applying to obtain permanent resident status, or provided long-term employment based non-immigrant visas. In addition, these benefit types were selected because the 9/11 Commission Report identified marriage fraud as a major target of terrorists aimed at embedding themselves in the United States, and because GAO, in separate reports, documented the existence of significant fraud among religious workers and intra-company transferees. Given existing resources, it is not possible to conduct assessments on all benefit types within the first years of operation. However, FDNS intends to conduct assessments on an ongoing basis and will expand them to include additional benefit types.

The GAO suggests that USCIS is not effectively addressing temporary work authorizations provided to applicants who have to wait more than 90 days for their applications to be processed. This is not a simple issue. Applications for employment authorization are typically ancillary applications tied to a "parent" application – for example, they are filed in conjunction with an application for adjustment of status based on an employment based petition. The fraud is not typically found on the application for employment authorization – rather, it is based in the underlying "parent" application/petition. Therefore, the best course of action is to address the problem at the source – i.e. the petition. Addressing the problem at the employment authorization application stage would not adequately address the problem. Further, the interim employment authorization is necessary because it is not possible to detect fraud and resolve all background check processes in all cases based on existing technology in 90 days. However, there is a proposed regulatory change that would clarify USCIS' ability to withhold the adjudication of an application for employment authorization pending an ongoing investigation.

The GAO also found that USCIS lacks a mechanism to help ensure that information gathered during the course of its normal operations and those of related operations – including criminal investigations and prosecutions – inform decisions about whether and what actions, including changes to policies, procedures or programmatic activities, might improve the ability to detect fraud. FDNS is currently developing its back-end processes, which include sharing information/lessons learned from routine operations and addressing shortcomings. For example, all fraud leads are entered into the FDNS-Data System. That information will be compared against incoming receipts in order to identify any new applications/petitions filed by individuals or companies who have previously filed fraudulent applications/petitions. In addition, current policy requires an "after action" report to be completed for all major conspiracy cases. This report summarizes the results and findings of the case, including information such as statistics on how many people were denied benefits due to fraud, which factors led to approvals of some cases, how the information can be used in the future to identify fraudulent files, and best practices learned during the process. Finally, FDNS is actively engaged with ICE and the Departments of Labor and State on the formation of inter-agency benefit fraud task forces. One

of the purposes of such is to share information, including systems access, lessons learned; decide on joint operations, etc.

The GAO further concluded that ICE and USCIS lacked a mechanism to share information related to the status of fraud investigation referrals from USCIS. Per a February 14, 2006, Memorandum of Agreement, ICE will accept or decline a referral from USCIS within 60 days. If the case is accepted for criminal investigation, ICE is required to provide a status report if and when the investigation is approaching one year. The Memorandum of Agreement requires ICE to provide USCIS with a case closure report upon completion of the investigation. USCIS is in the process of developing an ICE tab in the FDNS-Data System, which ICE will use to provide information regarding pending referrals/investigations.

To support its finding that USCIS also lacked a mechanism to share information with other external entities, GAO cited a recent memorandum from the U.S. Attorney of the Eastern District of Virginia. This memorandum referenced weaknesses in the asylum process that allowed ineligible aliens to obtain asylum and recommended procedural improvements to the asylum process. USCIS' Asylum Division and the Arlington Asylum Office worked closely with FDNS and the U.S. Attorney's Office throughout this investigative process, which ultimately yielded 26 criminal indictments. As partners in the investigative process, USCIS also learned a number of lessons in that case, and is developing a plan-of-action to work with other DHS entities and the Executive Office for Immigration Review to respond to the U.S. Attorney's specific recommendations. In fact, USCIS had already begun to implement several of the recommendations prior to the investigation. USCIS senior leadership, which included the Director, FDNS, and the Acting Chief Counsel, met with the Assistant U.S. Attorney to discuss lessons learned during this and other recent prosecutions. Guidance to USCIS officers will result from this meeting. FDNS is also a member of the inter-agency Immigration Benefits Fraud Task Force led by this U.S. Attorney's Office. The San Francisco Asylum Task Force, the Los Angeles Asylum Fraud Working Group, and the New York-New Jersey Asylum Anti-Fraud Task Force also include in their membership USCIS Asylum Offices, FDNS and U.S. Attorney's Offices in those respective regions. All four task forces have demonstrated success in sharing information and otherwise collaborating to prevent asylum fraud.

Finally, the GAO concluded that DHS should develop a strategy for sanctioning fraud as well as evaluating the effectiveness of administrative type sanctions. Although DHS will explore this as part of its overall prevention strategy in detecting, deterring and mitigating threats to our homeland, we believe the process established by USCIS and ICE creates an effective deterrent. Once fraud is validated, the application/petition is denied for fraud, the case is entered into the FDNS-Data System to be compared against incoming receipts to identify any and all future applications or petitions that may be filed, a look-out is posted in law enforcement systems and the alien is placed in removal proceedings.

The GAO recommended the Secretary of Homeland Security direct the Director of USCIS to implement additional internal controls and best practices to strengthen its fraud control environment. We have addressed each of the five specific recommendations as follows:

Enhance its risk management approach by (1) expanding its fraud assessment program to cover more immigration application types; (2) fully incorporating threat and consequence assessment into its fraud assessment activities; and (3) using risk analysis to evaluate management alternatives to mitigating identified vulnerabilities.

As discussed above, USCIS plans to expand the benefit fraud assessment to incorporate more immigration benefit types and will continue to incorporate threat and consequence assessments into its analysis. Such assessments and analyses will be used to mitigate vulnerabilities found.

Implement a mechanism to help USCIS ensure that information about fraud vulnerabilities uncovered during the course of normal operations – by USCIS and related agencies – feeds back into and contributes to changes in policies and procedures when needed to ensure that identified vulnerabilities result in appropriate corrective actions.

Such a feedback loop is already within the process. For example, from the benefit fraud assessment of religious worker petitions, FDNS recommended a site check be conducted for all petitions. In addition, USCIS is developing regulatory changes to mitigate vulnerabilities in the process. Further cooperation with the U.S. Attorney discussed above is another example of this ongoing process.

Communicate clearly the importance of USCIS' fraud-prevention objectives and how they are to be balanced with service-oriented objectives to help adjudicators ensure that both objectives are supported as they carry out their duties.

USCIS leadership clearly advocates balancing objectives related to timely and quality processing of immigration benefits with emphasis on national security. FDNS would not have been created if senior leadership did not believe national security and fraud detection were a high priority. USCIS adjudicators now have a chain of command in place within USCIS to use when fraud is suspected. In November 2005, FDNS hosted a national conference for all immigration officers and intelligence research specialists to address key objectives and priorities, lessons learned during the first year of operations, needed adjustments, and mid- to long-term plans. Finally, to ensure continued focus on national security, the new USCIS Director moved FDNS from Domestic Operations, where it had been organizationally situated and placed it in a third directorate focused on integrity of USCIS data and processes, that reports directly to the Deputy Director. This allows FDNS to provide focus and guidance to all USCIS operations.

Provide USCIS staff with access to relevant internal and external information that bears on their ability to detect fraud, make correct eligibility determinations, and support the new fraud referral process – particularly the status of fraud referrals to ICE and ongoing updates regarding fraud trends and other information related to fraud detection.

FDNS has created a website that includes relevant policy memos, standard operating procedures, success stories relating to prosecutions, fraud trends, lessons learned and a number of other tools to aid officers in the performance of their duties. The website lists an email address which employees can use to seek and/or report information to FDNS. The Fraud Detection Unit at the National Benefits Center created a website which contains information regarding recent fraud patterns involving legalization applications. USCIS has incorporated FDNS in its Basic and Journeyman level adjudicator training at the Immigration Officer Academy and is initiating training for non-FDNS supervisory adjudication officers. Finally, USCIS is planning to provide selective access to the Department of State's Consolidated Consular Database and other open source databases; however, this policy needs to be based on an approach that balances productivity with integrity.

5

Establish output and outcome based performance goals – along with associated measures and targets – to assess the effectiveness of fraud control efforts and provide more complete performance information to guide management decisions about the need for any corrective action to improve the ability to detect fraud.

FDNS has created performance goals for the number of benefit fraud assessments conducted during the fiscal year and the number of recommended policy, procedural, and regulatory changes that resulted from the findings. FDNS agrees additional output and outcome based performance goals and measures are needed.

The GAO also recommended the Secretary of Homeland Security direct the Director of USCIS and the Assistant Secretary of ICE to develop a strategy for implementing a sanctions program that includes mechanisms for assessing its potential effectiveness and associated cost and benefit, including deterrence values. As discussed above, DHS believes the current process creates a more effective deterrent than an administrative sanctions program. In some cases, FDNS' administrative approach is even more of a deterrent than criminal prosecution. However, DHS will study the costs and benefits for an administrative sanctions program related to immigration benefit fraud.

We thank you again for the opportunity to provide comments on this draft report and look forward to working with you on future homeland security issues.

Sincerely,

Steven J. Pecinovsky

Steven J. Pecinovsky
Director
Departmental GAO/OIG Liaison Office

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact	Paul L. Jones (202) 512-8777
Staff Acknowledgements	In addition to the above, Joel Aldape, David Alexander, Jenny Chanley, Frances Cook, Michael P. Dino, Nancy Finley, Carlos Garcia, Kathryn Godfrey, Larry Harrell, and David Nicholson were key contributors to this report.

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ARTICLE ENTITLED: "IRISH IN AMERICA ARE 'UNDER SEIGE'," BY CAITRIONA PALMER, SUBMITTED BY THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND RANKING MEMBER, SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

IRISH IN AMERICA ARE 'UNDER SIEGE'

BY CAITRIONA PALMER

WASHINGTON D.C.—Irish immigration activists warned U.S. lawmakers last week that the future of the Irish community in America is at risk if comprehensive immigration reform is not passed.

"The facts are clear to us," said Niall O'Dowd, chairman of the Irish Lobby for Immigration Reform. "Without immigration reform, the Irish-born community in the United States will no longer exist and one of the greatest contributors to the success of this nation will be no more."

Speaking as a witness before the U.S. Senate's Judiciary Committee hearing on immigration, O'Dowd said that the Irish undocumented community in the U.S. was "under siege" and that America would be the "big loser" should Irish immigrants have to return home.

"Our neighborhoods are disappearing, our community organizations are in steep decline. Our sporting and cultural organizations are deeply affected by the lack of legal emigration," he said.

"The sad reality is that there is simply no way for the overwhelming majority of Irish people to come to the United States legally at present."

Testifying before a sparsely attended committee that included Democratic Senator Ted Kennedy, an avid supporter of the ILIR, O'Dowd told the hearing that current immigration law would have prevented Kennedy's ancestors from entering the country.

"If the Irish antecedents of Andrew Jackson, John F. Kennedy and Ronald Reagan were trying to enter the United States today they would have to do so illegally," he said.

Praising the ILIR for their efforts, Kennedy said that prior immigration reform in the U.S. had unintentionally penalized the Irish.

"The way that the legislation was developed worked in a very dramatic and significant way against the Irish," Kennedy said.

The hearing was the first opportunity for the ILIR, a New York-based grassroots organization that has dramatically raised the profile of the undocumented Irish community in the U.S., to provide a formal presentation to senior U.S. lawmakers about the effects that living in the shadows has had on the community.

"Their driver's licenses will not be renewed which means mothers cannot drive their children to school. The day-to-day struggle of living illegally in America has taken a heavy personal toll on them. I submit that they deserve better," O'Dowd said.

Under the glare of bright lights and against the whirr of digital cameras, O'Dowd sat at a long rectangular table in front of the imposing horseshoe-shaped committee table. A large clock with bright red numbers kept track of the five-minute speaking time allotted to each witness.

Scattered behind O'Dowd in the packed committee room on Capitol Hill were dozens of supporters, many of whom were undocumented, wearing the now-familiar green and white "Legalize the Irish" t-shirts.

They listened as other witnesses including Commerce Secretary Carlos Guitierrez, a native of Cuba and a naturalized citizen, testified that immigration was to the key to America's future economic health.

"I have lost many things in my life—my wallet, my keys," Guitierrez told the committee. "But I have never lost my passport. It is my most prized possession."

Sitting in the back row of the room listening intently to the testimony was Bruce Decell, whose 28-year-old son-in-law, Mark Petrocelli, died in the north tower of the World Trade Center on Sept. 11, 2001. Wearing a photograph of his son-in-law on the lapel of his suit and holding a large framed photo of the twin towers, Decell had come to Washington D.C. to protest comprehensive immigration reform.

"If they're going to amnesty in millions more illegal aliens, Americans are going to die. And I'm against it," he said, offering a view held by many opponents of the Senate-backed bill.

One expert told the committee that illegal immigration jeopardized U.S. national security and that terrorists could exploit what he called a lax legal framework.

"When the United States provides an alien with resident alien status or when we naturalize an alien, we are providing him with the 'keys to the kingdom,'" said Michael W. Cutler, a fellow with the Center for Immigration Studies.

But Steve McSweeney, a 32-year-old undocumented contractor from Ireland, said that he and other undocumented Irish had labored for years in America and that they were only asking for legal status.

"I believe I've given my fair share to America," said McSweeney, who has lived illegally in the U.S. for nine years.

"I was one of the first respondents to Ground Zero. I spent nearly two weeks in hospital afterwards where I had a serious arm operation because I cut my arm back there," he said.

The Senate Judiciary Committee hearing was the latest in a series of hearings called by the House of Representatives and Senate amid fierce debate over how to address illegal immigration.

At stake is an immigration bill agreed by the U.S. Senate and backed by President George W. Bush that would provide a path to citizenship for the more than 11 million illegal immigrants currently living in the U.S. Senate lawmakers are under intense pressure to reach a compromise between this bill and a competing House bill that stresses strict border security.

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LETTER FROM THE ESSENTIAL WORKER IMMIGRATION COALITION ET AL., SUBMITTED BY THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND RANKING MEMBER, SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

July 27, 2006
Rep. John Hostettler, Chairman
Subcommittee on Immigration, Border Security, and Claims
House Committee on Judiciary
Washington, DC 20510

Re: Submission for the Record—Hearing July 27, Subcommittee on Immigration, Border Security and Claims: "Whether Attempted Implementation of the Senate Immigration Bill Will Result in an Administrative and National Security Nightmare"

Dear Chairman Hostettler:

The undersigned broad coalition of organizations writes to echo its support and commitment to comprehensive immigration reform. Collectively we call on Congressional leaders to focus on the substance of the issue and on the economic and national security needs of our nation. As evidenced by the calls to action made by the American people, business and labor communities, unions, religious organizations, immigrant rights groups and others, the time to act and repair our broken immigration system is now and the way to do it is comprehensive in nature. Republicans and Democrats from both Chambers of Congress should work together towards a practical compromise that is responsive to our country's needs. Moreover, we urge leaders to remain committed to finding a procedural path that will result in a piece of legislation that addresses the real issues and realities.

We recognize that the House and Senate approach this debate from different perspectives and come to the table with two very different pieces of legislation. Undeniably, negotiations during a conference committee will be difficult. However, it is imperative that this process continue to move forward and not be derailed by partisanship or politics. The undersigned groups remain committed to the comprehensive reform principles below and stand ready to work with Members of Congress to address these issues:

- Improve national security through smart and targeted enforcement, combined with workable and realistic immigration reform measures that would create disincentives for illegal immigration;
- The implementation of an efficient, practical and accurate employee verification system. This system should be rolled out in a reasonable manner so as not overly burden employers or employees either financially or functionally;
- A future guest worker program that will help to meet the employment needs of our economyµ when U.S. workers are not available and ensures appropriate workplace and wage protections while providing these contributing members of society the opportunity to earn legalization and citizenship; and

- A path to earned legalization and citizenship for undocumented workers who meet qualifying criteria. This program should include also a fix to the employment and family based immigrant visa process and numerical limitations.

The opportunity before us is a unique one. We must all work together to reform our immigration policies so that we can enhance our security, protect our economy, and continue our heritage as a country of immigrants. The alternative, to do nothing or worse, to do more harm, is not and should not be an option. We urge you to work with leadership towards a solution that Congress and the American people can be proud of.

Sincerely,

Essential Worker Immigration Coalition
U.S. Chamber of Commerce
National Restaurant Association
American Immigration Lawyers Association
National Immigration Forum
Tamar Jacoby, Senior Fellow at the Manhattan Institute
National Council of La Raza
Asian American Justice Center
Service Employees International Union
New American Opportunity Campaign
American Nursery and Landscape Association
Esperanza USA
Grover Norquist, President of Americans for Tax Reform
Coalition for Immigration Security

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