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S. HRG. 109–65

THE NEED FOR COMPREHENSIVE IMMIGRATION REFORM: STRENGTHENING OUR NATIONAL SECURITY

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CITIZENSHIP

AND

SUBCOMMITTEE ON TERRORISM, TECHNOLOGY AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

MAY 17, 2005

Serial No. J–109–20

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
22–411 PDF WASHINGTON : 2005

For sale by the Superintendent of Documents, U.S. Government Printing Office
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THE NEED FOR COMPREHENSIVE IMMIGRATION REFORM: STRENGTHENING OUR NATIONAL SECURITY

TUESDAY, MAY 17, 2005

UNITED STATES SENATE,
SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CITIZENSHIP, AND THE SUBCOMMITTEE ON TERRORISM, TECHNOLOGY AND HOMELAND SECURITY, OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Subcommittees met, pursuant to notice, at 2:40 p.m., in room SD–226, Dirksen Senate Office Building, Hon. John Cornyn, Chairman of the Subcommittee on Immigration, Border Security and Citizenship, and Hon. Jon Kyl, Chairman of the Subcommittee on Terrorism, Technology and Homeland Security, presiding.

Present: Senators Cornyn, Kyl, Sessions, Coburn, Kennedy, and Feinstein.

Also Present: Senator McCain.

OPENING STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Chairman CORNYN. This joint hearing of the Senate Subcommittee on Immigration, Border Security and Citizenship and the Subcommittee on Terrorism, Technology and Homeland Security will come to order.

Let me please first advise our witnesses and everyone present who is interested in the hearing that we have a little bit of an erratic schedule because of votes, and so we may have to get started and then take a recess. So if you will just bear with us, we will plow on ahead, and we do want to hear what you have to say and be able to ask questions and get your responses to those questions on the subject matter of the hearing.

First let me say how much I appreciate Senator Specter for scheduling today's hearing. This is the first in a series of hearings to examine the need for comprehensive reform of our immigration system. I want to thank Senator Kyl, who chairs the Terrorism Subcommittee, for his hard work and leadership on these issues as well.

We announced a few weeks ago that he and I are working to identify and develop solutions for the critical problems that confront our immigration system. I want to also thank the Ranking Member of this Subcommittee, Senator Kennedy, as well as Senator Feinstein, the Ranking Member of the Terrorism Sub-

committee, as well as their respective staffs for working with our offices to make this hearing possible.

Any effort to reform and strengthen enforcement of our immigration system, to be successful in the Senate, must be bipartisan, and I look forward to working with both of them and all of our colleagues to that end.

Our Nation's immigration and border security system is badly broken. It leaves our borders unprotected, threatens our national security, and makes a mockery of the rule of law. The system, notwithstanding the efforts recently to try to improve the situation, has suffered unfortunately from years of neglect, and in a post-9/11 world, we cannot tolerate this situation any longer.

National security demands a comprehensive solution to our immigration system, and that means both a stronger enforcement and reasonable reform of our immigration laws. We must solve this problem, and we must solve it now.

For too long, the debate over immigration has divided Americans of good will into two camps: those who are angry and frustrated by our failure to enforce the rule of law, and those who are angry and frustrated that our immigration laws do not reflect reality. But both camps, in my view, are right. This is not an either/or proposition. We need stronger enforcement and reasonable reform of our immigration laws.

First, we must recognize that in the past we have simply not devoted adequate funds, resources, or manpower to enforce our immigration laws and to protect our borders. That must change and it will change. No discussion of comprehensive immigration reform is possible without a clear commitment to and a substantial and dramatic escalation of our efforts to enforce the law. That is why these two subcommittees have embarked on this series of hearings over the last 2 months devoted exclusively to the topic of strengthening enforcement of our Nation's immigration system, at the border, between the ports of entry, and in the interior of our Nation. These hearings have shown that the men and women who operate our immigration system work hard and do their best, and we appreciate their dedication.

But our border inspection and security system at the ports of entry is still full of holes. Our deployment of manpower and the use of technology to secure the border between the ports of entry is inadequate. And our deportation process is overlitigated and underequipped.

So we need stronger enforcement, but enforcement alone will not, in my view, get the job done. Nor will our immigration system be fixed by merely throwing money at the problem. Our laws must be reformed as well as enforced.

Any reform proposal must serve both our national security and our national economy. It must be both capable of securing our country and compatible with growing our economy. Our current broken system provides badly needed sources of labor but through illegal channels, posing a substantial and unacceptable risk to our national security. Yet simply closing our borders would secure our Nation only at the expense of our economy. Any comprehensive solution must, in my view, address both concerns.

Our hearing today will examine the national security justifications for immigration reforms. Of the more than 10 million people currently in our country without legal status and of the hundreds of thousands who enter each year undetected, some fraction of the population may harbor evil impulses toward our country. Yet it is a practical impossibility to separate the well-meaning from the ill-intentioned. We must focus our scarce resources on the highest risks.

Law enforcement and border security officials should focus their greatest energies on those who wish to do us harm, not those who wish only to help themselves and to provide for their families by working. We cannot have a population of more than 10 million people within which terrorists and their supporters can easily hide. And we cannot have that population afraid to cooperate with law enforcement and anti-terrorism efforts.

Next week, the Senate will examine the economic justifications for immigration reform. Our economy would badly suffer if we removed millions of workers from our national workforce, just as it would suffer if we eliminated entire stocks of natural resources from our national inventory. Our economy would be strengthened if all workers would simply come out of the shadows, register, pay taxes, and fully participate in our economy.

President Bush has taken the lead and articulated a vision for the comprehensive reform of our Nation's immigration laws in the interest of our Nation, our national security, our national economy, and the rule of law. I am heartened that in recent months we have seen growing recognition and consensus across the political spectrum that a comprehensive immigration solution is long overdue. Along these lines, Senator McCain and Senator Kennedy have introduced an immigration reform measure. I also understand that Senator Hagel will be introducing his proposal in the near future as well. And Senator Kyl and I recently announced on the Senate floor that we will introduce comprehensive legislation that will strengthen enforcement, control our borders, and reform our Nation's immigration laws.

I look forward to the critical role that these Subcommittees will play in the coming congressional debate on these various proposals, and as Chairman of this Subcommittee, I will work with the disparate voices together to attempt to craft a comprehensive consensus solution. This is a complex problem, and no one has a monopoly on good ideas.

I want to reiterate that solving our immigration and border security problems should not be an either/or proposition. We are a Nation of laws and a Nation of immigrants. We need an immigration system that serves our national security and our national economy as well as our national commitment to the rule of law. We must strengthen enforcement of the law, but we must also enact laws that are capable of that strong enforcement.

[The prepared statement of Senator Cornyn appears as a submission for the record.]

With that, I want to turn the floor over to Senator Kyl. Senator Kyl, I explained that we are in a series of votes here, so we are doing the best we can to move the hearing along. But we will, I am sure, have some coming and going, maybe a short recess. But

I will turn the floor over to Senator Kyl at this time, then to Senator Kennedy and Senator Feinstein when they arrive, for any introductory remarks they may have.

Senator Kyl?

OPENING STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM THE STATE OF ARIZONA

Chairman KYL. Thank you very much, Senator Cornyn.

The two Subcommittees that you see here represented of the Judiciary Committee are the two that primarily are concerned with the border security issues, the homeland security issues, terrorism as it might be associated with it, and generally immigration policy. The subject of the hearing today—The Need for Comprehensive Immigration Reform: Strengthening Our National Security—really could focus entirely on the national security requirements of good immigration laws.

Let me just mention one aspect that has not been fully reported on that illustrates the need for that, but I gather from the list of witnesses here that there will not be a great deal of discussion on that, except perhaps to some extent by Asa Hutchinson, but that we will be discussing different elements of an immigration policy.

In my State of Arizona, on the Barry M. Goldwater Gunnery Range, there is today a significant degradation of our military capability in especially the training missions of the Marine Corps and the Air Force because of illegal immigration. That range is the premier range for training of pilots—and I might mention all of our pilots in Afghanistan and Iraq today trained over that range—because of its similarity in terrain to much of the Middle East and also because it has wide open spaces for these aircraft to do their training missions.

Despite the Marine Corps' best efforts at controlling the western part of that gunnery range, going in to move out illegal immigrants who they detect in the area, over 1,100 hours last year of training time was lost, over 400 missions had to be aborted just on that part of the range because of the later discovery of illegal immigrants in the vicinity. Obviously, nobody wanted to pursue the mission with the possibility that someone could be injured.

That is very expensive when you have got planes gassed and loaded on the runways getting ready to perform their mission, or in the case of—there is actually film footage of planes going down to perform their mission, only to have the camera detect people running in the vicinity of where they are going to perform their missions, and the planes, of course, have to pull up and go around or simply go back to base.

Our ability to train our pilots that we are putting in harm's way in Iraq and Afghanistan is, therefore, being adversely impacted by illegal immigration. This is just one of the many ways in which illegal immigration imposes burdens upon our society. This cannot be allowed to stand, and it is one of the reasons why, I believe, that the first effort to move toward a broader immigration reform must be to gaining control of our borders. And this means a comprehensive effort to fund the personnel and technology on the border, putting more immigration investigators in the interior, funding their efforts as well, providing greater detention capacity, more legal

staff to represent the United States in administrative and judicial immigration proceedings, allocations to investigate and prosecute those that have engaged in fraud, funding to speed the immigration process of persons who have obeyed the law legally and want to enter the country. And I think that the experts have testified, and I am very interested to hear Mark Reed as an expert testify about this as well.

The Border Patrol Chief in the Tucson sector where over half of the illegal immigration in the country is occurring today has said that the border—he said, "Leave no doubt, the border can be controlled. It simply requires the allocation of resources to get the job done." And he said there is no magic bullet. We know what works. We simply need more of that in order to get the job done.

So I reject the notion that the border cannot be controlled, and we have simply got to live with the idea of inhibitions on military training, the possibility of terrorists, the 80,000 or so serious criminals that enter the country each year—well, those are the number apprehended. The number that enter may be well above that.

But we can create legal mechanisms to allow the labor in this country that we need and cannot fulfill from American citizens or other legal residents without doing damage to the rule of law. Indeed, we have got to do whatever hiring is done within the rule of law so we can benefit the American economy without harming U.S. workers, I believe, to provide opportunities for guest workers to do work in the United States that needs to be done. But I think there will only be an open mind to considering such legislation if the American people know that we are committed to enforcing the law—and that means all of the law—and I think it also means a greater effort on the part of the countries from whom these laborers will come to work with us in developing the processes for adequately documenting the people from their countries who come here to work and agreeing to the prompt return to those countries of people who have completed their temporary work in the United States.

That is a tall order, but, Mr. Chairman, I agree with you that this is something we have got to do before the end of this year. We have got to tackle it. There is much that can be done, and like you, I am interested in hearing the views of our witnesses here today.

Chairman CORNYN. Thank you, Senator Kyl.

We are pleased to have a distinguished panel with us today. I will introduce the panel, and I will ask each of them to give their opening statements.

Asa Hutchinson joins us today. Mr. Hutchinson is currently a partner at the Venable law firm here in Washington, D.C. Of course, prior to that, Mr. Hutchinson was confirmed as the Under Secretary of Homeland Security in January 2003, shortly after the Department was created.

At the Department of Homeland Security, he was responsible for managing and coordinating the overall security of U.S. borders and transportation systems, setting immigration enforcement policies and priorities, and developing and implementing visa security programs.

Before that, he headed the Drug Enforcement Administration and before that was elected to the United States Congress and be-

fore that served as a U.S. Attorney in Arkansas. He brings a wealth of experience to this hearing, and we are thankful for his appearance here today.

Joining Secretary Hutchinson is Professor Margaret Stock. Professor Stock is an assistant professor at the United States Military Academy at West Point, New York. Before joining the faculty there, she was in private practice where she specialized in the field of immigration law. She is also a member of the American Immigration Lawyers Association and a frequent speaker and consultant in the field of constitutional, military, national security, and comparative law. We welcome you as well, Professor.

Also joining us today is Mark Reed. Mr. Reed is founder of the consulting firm Border Management Strategies. Before creating this firm, Mr. Reed retired from the Immigration and Naturalization Service after a distinguished 27-year career. During his career he had the distinction of serving as the regional director in Dallas, Texas, supervising all districts and Border Patrol sector operations in 18 States. Before that, he held a number, of executive positions, including serving as a district director, a San Diego, California, deputy director of the El Paso Intelligence Center, and the regional director for anti-smuggling at San Pedro, California.

Welcome to all of you. We are privileged to have such a distinguished panel that brings such a broad base of practical experience in these issues. We would be happy now to hear your statements, and if you would please limit your statements to 5 minutes, then we will continue in a question-and-answer format and hopefully get to all the material.

With that, let me recognize Asa Hutchinson for his opening statement.

STATEMENT OF ASA HUTCHINSON, CHAIR OF THE HOMELAND SECURITY PRACTICE, VENABLE, LLP, FORMER UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, D.C.

Mr. HUTCHINSON. Thank you, Mr. Chairman, Senator Kyl. Thank you for your opening statements.

From the standpoint of someone who has worked on border issues over the last two decades, I cannot recall any time that our Nation has been so focused on border security. I think this is the result of the concerns raised by the 9/11 Commission, a continuous flow of medical reports on our borders, and, of course, the devastating attack on 9/11 itself. In addition, the President raising the level of debate by initiating his proposal has resulted in a national debate that is timely, that is very passionate, but it is also very necessary. The decisions we make now will have an impact on our border security for years to come.

You have to start with the proposition that in order to be effective in the war against terrorism, our Nation must be able to secure its borders. In fact, this proposition is the foundation of the Department of Homeland Security, and it is also the key founding principle of President Bush's reform proposal. Congress has appropriated over $1 billion in developing an effective entry-exit system for our foreign visitors in the last 3 years. This program is US–VISIT. Upon completion, it will be the most effective border system

in our history guarding against illegal entry at our ports of entry. But that investment will be undermined if we do not develop complementary strategies for controlling the illegal flow across our vast land borders. To do so would be similar to posting a watchman on the gangplank of a ship but ignoring those coming over the side of the ship.

The necessary elements to tackle this enormous problem effectively are: first of all, increasing the funding of technology and security personnel along the border; secondly, making it more difficult for illegal aliens to get jobs in this country; and, thirdly, providing a workable and practical means for migrant workers to have access to job opportunities in this country when these jobs cannot be filled otherwise. When and only when these security measures are established, then it is appropriate to have a conversation on providing a temporary legal status to the 8 million plus illegal workers already in this country. It is a significant vulnerability to allow such a large population to live and work anonymously in our communities, with no legal identities or other common connections to society. In fact, it is a terrorist's dream. Moreover, any legal status should be a temporary work permit with a point of return to the alien's home country.

So we must examine our immigration policy from a comprehensive perspective, as this Committee is doing. Without a credible enforcement plan along with the funding necessary to execute that plan, any temporary workforce initiative is bound to send the wrong message.

Let me elaborate on these elements.

It is impractical to discuss border security without putting an emphasis on emerging technologies. The Department of Homeland Security, for example, has emphasized and developed the America Shield Initiative that integrates new technologies with increased numbers of Border Patrol agents. This initiative is the right strategy for border security, and it is built upon the Arizona Border Control Initiative that resulted in a combination of unmanned aerial vehicles to sophisticated ground sensors, resulted in increased apprehension rates of 47 percent.

The Department is continuing to build on this successful strategy. Presently the 2005 budget provides $64 million for the America Shield Initiative, and the war supplemental provides additional agents. This is a good start, but in the long term it will have to be substantially increased. To make this effort successful in controlling our borders, there needs to be accelerated funding of the technologies and specific funding of an oversight program office within DHS similar to the US–VISIT program office that oversees the taxpayer's investment. Congress has acted with a sense of urgency in funding additional Border Patrol agents, but the technology tools for these agents are essential for accomplishing a long-term, cost-effective strategy.

The effort at border security must look beyond our borders. It does little good to apprehend illegal aliens if there is no sufficient detention space, and the detention costs will be excessive if there are not judges and attorneys to process the cases. And pressure needs to be applied to other nations to streamline the repatriation of the aliens. The opportunity for jobs in the United States is a

great incentive for those who consider illegal entry. If the economic opportunity is combined with ineffective enforcement and removal, then the magnet for illegal entry almost becomes too powerful to resist. A chief objective of any border control strategy must be to reduce the power of the magnet that draws illegal workers.

Any immigration reform proposal must include a greater investment in workplace enforcement. Employers must be abe to verify the legal status of job applicants; they should report to the Government the temporary workers they hire and advise the Government of any who leave employment. This system would allow a closer tracking of individuals in the system and will result in better enforcement of immigration laws. There are a number of existing systems that serve as a useful model that can be implemented in this fashion.

Another critical tool in border security is expanding the use of expedited removal in the circumstances where there are no issues of asylum or similar exceptional circumstances. This administration should be complimented and recognized for using expedited removal in the Tucson and Laredo sectors along the Southwest border, but more needs to be done. Budgetary constraints have limited the expansion of expedited removal along the border.

Let me conclude by just saying that the following factors have to be in place to be successful in reducing illegal entry.

First of all, the chance of apprehension has to be greater than two-thirds. There are indications that we are approaching this goal in some areas of the border.

Secondly, if apprehended, the removal to country of origin must be speedy with little chance of release pending a court hearing.

Thirdly, if the alien avoids apprehension and removal, then the chance of finding an employer that will accept your illegal status must be unlikely.

And, fourthly, there has to be a meaningful way to legally apply for temporary work authorization in the United States and for the family to go back and forth during that time of employment.

I have emphasized the need during my testimony of effective immigration enforcement, but obviously we have to continue the opportunity for immigrants in our society.

In Arkansas, I was fortunate as a Member of Congress to watch the growth of the immigrant population in our State. They have added greatly to the culture, economic growth, and values of my State. I was able to encourage the former INS to add an office in Fort Smith to better serve the immigrant population, but also an enforcement office in Fayetteville to more quickly respond to the needs of law enforcement. It takes both, and I am grateful for this Committee trying to achieve the right balance.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Hutchinson appears as a submission for the record.]

Chairman CORNYN. Thank you, Mr. Hutchinson. We appreciate your testimony as well as your service to the country in this important area, and we look forward to your continued assistance to us as we try to craft the right solutions to the problems.

Professor Stock, we would be glad to hear your opening statement.

STATEMENT OF MARGARET D. STOCK, AMERICAN IMMIGRATION LAWYERS ASSOCIATION, ASSOCIATE PROFESSOR OF LAW, DEPARTMENT OF LAW, U.S. MILITARY ACADEMY, WEST POINT, NEW YORK

Ms. STOCK. Senator Cornyn, my name is Margaret Stock, and as you know, I am an associate professor in the Department of Law at the United States Military Academy at West Point, New York. However, the opinions I am expressing today are my own and not the opinions of the Department of the Army, the United States Military Academy, or the Department of Defense.

These hearings are long overdue and much needed. Today's hearing could not be more important nor timely. We must acknowledge the connection between comprehensive immigration reform and our national security, and the fact that our national security depends on comprehensively reforming our immigration laws. Until now, we have focused on border and interior enforcement, but we simply cannot effectively reform our immigration laws or enhance our security with an enforcement-only approach. Neither can we ensure our security by focusing solely on a guest worker program. A guest worker approach by itself inadequately addresses the systemic problems with our immigration laws, and an enforcement-only approach is doomed to failure because it is unworkable and far too expensive for too little in return.

My testimony will emphasize the three things that are important and critical for necessary immigration reform. First, we need comprehensive immigration reform that addresses the situation of people living and working here by allowing them to earn the opportunity to obtain permanent status. The estimates vary on how many illegal immigrants there are present in the United States, but the figures run from 8 to 20 million. The vast majority are relatives of U.S. citizens or lawful residents or workers holding jobs that Americans do not want. Those people need an opportunity to come out of the shadows and regularize their status.

Second, immigration reform must include a break-the-mold worker program. Current laws do not meet the needs of our economy or workers. A break-the-mold program would allow the diminishment of illegal immigration by creating a legal avenue for people to enter the U.S. and return, as many wish, to their countries, communities, and families.

Immigration reform, third, must reunify families. Legal permanent residents often wait up to 20 years to reunite with their family members. Such long separations make no sense in our pro-family Nation.

Neither a simple guest worker program that includes an option to adjust nor a work and return program in and of themselves can be considered comprehensive reform. Both programs ignore the significant problems in the current system, namely, those who are residing now inside the United States but do not have lawful status, and families who must endure lengthy separations. It is unrealistic to assume that significant numbers of undocumented people, illegal immigrants, will step forward and register for a program with at the end of the day would force them to leave their families and their jobs and go back to a country for a very long and unknown period of time. A program that includes no real possibility for peo-

ple to earn permanent resident status will not generate full participation. People will simply choose not to participate or take the risk and go back into the shadows if the laws do not change before the time period of the program expires.

It is also unrealistic to assume that families will endure separation. To enhance our security, we need immigration laws that acknowledge the needs of American business, reunite families, and allow us to find out who is living in the United States. Both the guest worker program alone, with the possibility of adjustment, and a work and return type approach fail on those counts. Immigration reform that legalizes hard-working people already here and that creates a new worker program will help the U.S. Government focus resources on enhancing security, not on detaining hard-working people who are filling vacancies in the U.S. labor market or trying to reunite with close family members.

In addition, an earned adjustment program will encourage people to come out of the shadows and be scrutinized by our Government. A new worker visa program will create a legal flow through which people can enter and leave the United States. The legality that results from these initiatives will contribute to our national security by helping to focus resources on those who mean to do us harm. Such legality also will facilitate enforcement efforts. Enforcing a dysfunctional system only has led to more dysfunction, not better enforcement.

As I believe you are aware, a recent survey of likely voters in March 2005 showed that 75 percent of likely voters favor a proposal that includes the things I have just talked about.

The recently introduced Secure America and Orderly Immigration Act is a bipartisan comprehensive reform bill that would take a giant step toward reforming our immigration laws and enhancing our security.

Given the complexity of the law in this area, the broken status quo, and the fact that whatever reforms are enacted will impact on our security, proposals that are introduced in the future must reflect the kind of reform I have discussed.

In closing, I would like to emphasize a couple of things. In my written testimony, Senator, I have said there are a number of particular issues that should be looked at in legislation that shall be proposed. Our focus should be not merely on keeping people out—that is the wrong approach—but, rather, on letting the right people in. That is the key to our national security. If we do not have comprehensive reform, we will not be able to enhance our security and our enforcement initiatives will fail.

I want to end completely by focusing on one issue where we went the wrong way. The REAL ID Act recently enacted has ruled out the possibility of using State Department of Motor Vehicle databases as a source of information about the illegal or undocumented migrant population in the United States. Thus, REAL ID will make it harder to enforce our immigration laws, not easier, and I point out that the DMV databases have been enormously useful to ICE and other enforcement agencies in their efforts to enforce immigration law.

Comprehensive immigration reform that allows illegal immigrants to come out of the shadows and be identified will enhance

our security and improve the data on those who are present in the United States.

Thank you very much.

[The prepared statement of Ms. Stock appears as a submission for the record.]

Chairman CORNYN. Thank you very much, Professor Stock.

Mr. Reed, we will be glad to hear your opening statement.

STATEMENT OF MARK K. REED, BORDER MANAGEMENT STRATEGIES, LLC, TUCSON, ARIZONA

Mr. REED. Thank you. Thank you for inviting me to share some of my experiences over the past 30 years. I am here today to embrace the concept that comprehensive immigration enforcement strategy must be an essential component of our national—

Chairman CORNYN. Mr. Reed, I cannot tell whether your microphone is on. Is the light on?

Mr. REED. How about now?

Chairman CORNYN. Excellent. Thank you.

Mr. REED. I am here today to embrace the concept that a comprehensive immigration enforcement strategy must be an essential component of our national and economic security strategies. For the record, I believe that our borders can be secured with existing technology and resources. I am not talking about using the military. I am talking about integrating current capability and initiatives into a comprehensive and cohesive plan. Continued efforts to showcase a piece of the solution while ignoring other essential components of the problem will not work, is inherently dishonest, and in today's world, dangerous.

Over the decades, our border strategies, exacerbated by inadequate funding and conflicted policy, now provide great cover for anyone to unlawfully enter this country, remain here, and do us harm. The border is porous. Alien-smuggling networks are well established and prospering. Millions of people are in this country illegally with false identities. Identity fraud has exploded with the proliferation of document vendors in virtually every community. It is easy to enter this country unlawfully, gain a false identity, and move openly among us without threat of detection. It took us a long time to dig this hole, so let me drop back for a moment in time.

Almost 20 years ago, our first President Bush declared a war on drugs. I was present at a high-level strategy meeting regarding the urgency of sealing the Mexican border to stop drug smuggling by sending the military to the border. When DOD stated that they were capable of detecting and interdicting any intrusion but could not distinguish between groups of migrants from drug smugglers until interdiction, the dialogue became difficult. When DOD refused to entertain the idea that they should only detain drug smugglers upon interdiction and let everybody else go, the meeting was abruptly terminated. The safety valve that illegal immigration provided toward the stability of Mexico seemed to be a more compelling national security priority than drug smuggling.

This event clearly points to larger binational issues with our neighbors in Mexico and Canada. It also contains two other important messages about our Nation's historical lack of commitment toward border enforcement as part of the solution.

First, DOD said that they could provide the technology and resources to detect any intrusion along the Mexican border. Almost two decades later, the Border Patrol still cannot "see" most of the border. Detection is fundamental to any border security strategy.

Second, this call to arms to secure the borders occurred shortly after sweeping legislation to legalize millions of undocumented workers, coupled with a "strong" enforcement package that was not funded and not comprehensive.

Our current border strategy is based on terrain denial tactics. This strategy was designed to gain control of one part of the border at a time, adjust resources to maintain control, and then expand to another segment of the border.

Purportedly, the Government's original intent was a measured march from one end of the Mexican border to the other, one step at a time until the entire border was secure. The strategy also ha depth. It was supposed to be backed up by parallel efforts to attack alien-smuggling corridors and an aggressive worksite enforcement effort to attack the magnet of jobs. But it turned out to be a piecemeal effort. Resources to attack the corridor never materialized, and worksite enforcement resources dwindled into virtual non-existence. The marching strategy was abandoned. The strategy was modified to focus on quality-of-life issues at border communities and border safety without resources to address the gaps and flanks within and around existing operations. As a result, border crossers were forced into the clutches of alien smugglers because easy and safe passage through border communities had become difficult.

Alien smugglers, as part of a continuing enterprise, criminal enterprise, often pass smuggled aliens over to document vendors who are prepared to create false identities for the purpose of defeating employer verification procedures, which brings us to worksite enforcement, a key to our success. The great majority of people illegally entering this country are coming for jobs. When we remove the incentive to enter the country illegally, the overwhelming number of people crossing the border will drop. Enforcement capabilities will soar. Pressure on schools and hospitals will be relieved. And criminal populations in our jails will diminish.

But the Nation is conflicted. I refer you back to Operation Vanguard that was launched against the meat-packing plants in Nebraska a few years ago. The Government demonstrated the absolute ability to effectively bar employment of unauthorized workers in any sector in the country with minimal resources. Using the border strategy model of terrain denial, intent was declared to engage one entire industry every year until unauthorized employment was barred nationwide. Vanguard was shut down after 3,500 people fled the meat-packing industry during the first 30 days of the operation.

Similar accounts of detention and criminal alien enforcement vendors that would work but are not allowed to work, as well as conceptually valid models like Basic Pilot that could work but have never worked, are many and are provided in my written statement for the record. They are included because those programs are also an essential component of a comprehensive strategy.

Thank you.

[The prepared statement of Mr. Reed appears as a submission for the record.]

Chairman CORNYN. Thank you, Mr. Reed.

We have been joined by a number of our colleagues, and as I explained, our voting schedule may require some of us to come and go. But let me please give an opportunity to Senator Kennedy, as the Ranking Member of the Immigration Subcommittee, and then to Senator Feinstein, as Ranking Member of the Terrorism Subcommittee, to make any opening remarks they would like to make.

I have also invited Senator McCain, who expressed an interest in joining us today, to join our Subcommittee panel and participate to the extent he has time and an interest in doing so, and we are also glad we have Senator Coburn here.

Senator Kennedy, I will turn it to you.

STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY. Well, thank you very much, Mr. Chairman. And I thank you for the continuation of the series of hearings that you have been holding. They have been very comprehensive, looking at a variety of different kinds of challenges that we have been facing, the criminality issues which we had in the last set of hearings, other issues that are enormously important that we have to deal with. And I want to thank all of our witnesses, and I look forward to hearing from our colleagues.

I want to welcome back Asa Hutchinson. The last time I saw Asa Hutchinson, I revealed that I had been on the no-fly list. I had been on it in January. I think our hearing was in April. And I got more attention with that little kind of jewel and nugget from Massachusetts and around the country. I had more letters asking me why I wanted a special privilege, and that is, not to be on the list.

Eventually I got off the no-fly list, but I want you to know that we are still working on this issue for a number of our constituents. I know that you were involved and interested in it, but I came down yesterday from Boston with one of our leading researchers out at Mitre that has gotten on the list and is working his way through. And I have become sort of an expert in working that through. But it is nice to see you. I have always enjoyed being on the Human Resource Committee with your brother.

Let me just very quickly say I think for most of us what we are hearing time and again is that the system is broken and that we have to look at a new way of looking at our border that combines the latest in technology. I know Asa Hutchinson was interested in the latest technology. Others have spoken to it. But we have to try to, I think, come to grips with a system that is broken. I don't think there are enough resources in this country to put a fence all the way across the Southern border, 1,880 miles, or across the 4,200 miles of border with Canada or enough troops or enough money to be able to do it. And we have spent now $20 billion over the last 10 years in terms of constant expansion, and the numbers are still around 400,000, give or take.

I do believe that if we try—we have 5,000 legitimate individuals that could come under the immigration laws and enormous kinds

of demands economically. And we are facing serious kinds of questions of enforcement.

The idea that you have the best trained people, the border guard out there chasing gardeners and parking lot attendants when our borders are open in terms of real national security issues, smugglers, drug issues, I think is just a lesson we have to learn.

And I think it is a combination of tough and strict enforcement as well as regularizing the immigration provisions in ways that are responsive to our economic challenges, consistent with our immigration history, and also recognizing that we are not going to have an amnesty program, but we are going to try and find ways of regularizing our system. And this combination I think is at least worth a way of giving a different kind of approach, and this is something that Senator McCain has been a leader, and others have been enormously interested in it. And at some time after maybe Senator Feinstein makes her comment—I know Senator McCain—I will withhold my questions, but I appreciate the chance to say a brief word on it.

[The prepared statement of Senator Kennedy appears as a submission for the record.]

Chairman KYL. [Presiding.] In case Senator Cornyn did not mention it, the vote on the final passage of the highway bill is taking place right now, and I gather all the members here have voted on that.

I would like to call on Senator McCain, but, Senator Feinstein, you are up next. Would you like to go next or defer to Senator McCain?

Senator FEINSTEIN. If he has a time problem, I would be happy to defer.

Chairman KYL. If you could do that, I would appreciate that, and then I would call on you next.

STATEMENT OF HON. JOHN MCCAIN, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator MCCAIN. Thank you very much, Mr. Chairman. I thank you for the courtesy of my friend from California. I would like to be very brief because there are important witnesses before this hearing.

I first of all would like to thank Asa Hutchinson for the outstanding job that he performed as the deputy head of Homeland Security, but I would also like to associate my remarks with Mr. Reed that the system is broken, it has to be fixed. And I would like to relate one brief vignette that Senator Kyl is very familiar with.

When then-Director of Homeland Security Tom Ridge came to visit our border to see up close our problems, we went to Fort Huachuca, the Army base in Arizona, and we saw the UAVs that were in operation there. They are a tremendous force multiplier. Everybody was praising to the skies how important and valuable this was. Much to the astonishment of myself and Senator Kyl and everybody else, it was cancelled. It was cancelled for some budgetary conflict. And now we may have some ability to acquire a decision by next December.

We have to use high-tech equipment on the border. We must use high-tech equipment on the border. We will never have enough peo-

ple if we took the whole United States Army and stationed them across the 347-mile border of Arizona and Mexico. We need to have force multipliers, and we need high-tech equipment. And it is broken, and it needs to be fixed.

I would finally say, Mr. Chairman, I am glad that you and Senator Cornyn are heavily involved in this debate. It is understandable. But I think every Senator from every State in America has got to be concerned with this issue because they are not staying on the border or in the Southwest anymore. They are going to Massachusetts, they are going to New York. The largest increase in population in America in the South today is Hispanic people. And they are living in shadows. There are labor laws and other laws that are applicable to citizens and they are deprived of, and they are being abused as we speak. And it is a national security issue. Director Mueller has said that more people of "countries of interest" are crossing our Southern border than ever before.

But I would also suggest, sir, that we have two other problems. Very quickly, one is the 10 to 11 million people who are here illegally. That problem has to be addressed and it has to be addressed in a humane fashion—in a humane fashion, but one that does not mean amnesty nor does it mean reward for anybody who came here breaking our laws.

And, finally, of course, as the President has spoken in such articulate fashion, we need to match willing workers with willing employers. And I believe Senator Kennedy and I have come up with a proposal that it should be, I hope, a basis for us to all work together and come up with a reasonable solution.

And, finally, I suggest that Senator Kennedy be kept on the no-fly list as long as possible.

[Laughter.]

Senator MCCAIN. Thank you very much.

[The prepared statement of Senator McCain appears as a submission for the record.]

Chairman KYL. Except for the last comment, we welcome your statement, Senator McCain. Thank you very much.

Senator Feinstein?

STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. Thanks very much. Mr. Chairman, it has been my pleasure to work with you and with others on this Committee on the terrorism aspect of this. And I certainly agree that our system is broken. I also believe we can enforce our borders if we have the political will to do so and we should.

According to the 2003 Yearbook of Immigration Statistics, in 2000 along the Southwest border there was a record high of about a million six detained, yet in fiscal year 2003 that dropped to 905,000 people. At the same time, in 2000 the Border Patrol processed a record number of persons, a million six, but in 2003 processed only 900,000 people.

Now, could this be that we are seeing a decrease in the number of individuals seeking to enter the country legally and illegally? I don't think so. Since 2000 we have seen a drop in the number of aliens apprehended, while the number of aliens seeking to come

here has actually increased, where we have put more money, more resources, more Border Patrol.

In fiscal year 2003, the United States admitted a total of 27.8 million persons in non-immigrant admissions. Those are temporary admissions to work here, to attend school, or to visit as a tourist. And along our borders, nearly a million people, as I just said, were caught attempting to enter the country illegally. It is estimated that for every one person seeking to enter the United States illegally that is caught, three others are not caught. Therefore, the numbers could be as high as 3 to 4 million a year.

And while we know that we have in the United States 10 to 12 million illegal aliens, during fiscal year 1986 to 2003, the Border Patrol accounted for 90 to 97 percent of total apprehensions while interior agents accounted for only 3 to 10 percent of apprehensions. I know there has been a change in emphasis. To some extent, I really question that change.

This number to me also appears rather skewed, and it makes me question where our resources are going and why the number of apprehensions are going down while the numbers of illegals are increasing.

Now, one of my concerns has been the category of other than Mexicans, given the appellation OTMs, in the catch and release program. Along the Southwest border, in 2003 there were 30,147 other than Mexican intrusions. The following year, in 2004, there were 44,617. That is a 48-percent increase of those, again, caught.

In February of 2004, during a Judiciary Immigration Subcommittee hearing, Under Secretary for Border and Transportation Security Asa Hutchinson—who looks strangely like that gentleman sitting at the table—responded to questions by Senator Grassley regarding the catch and release policy for other than Mexicans as follows: His response, and I quote—and I think I have done this before, but I want to get his answer to this today—was, "At present, DHS has no specific policy regarding OTMs apprehended at the Southern border. While OTMs as well as Mexicans are permitted to withdraw their applications for admission and can be returned voluntarily to their country of nationality, as a practical matter this option is not readily available as it is for Mexicans whose government will accept them back. Thus, when apprehended, OTMs are routinely placed in removal proceedings under the Immigration and Nationality Act Section 240. It is not practical to detain all non-criminal OTMs during immigration proceedings and, thus, most are released."

I think that is a real problem, and I want to know if that problem still exists today.

It is also my understanding that a majority of OTMs later fail to appear for their immigration proceedings and simply disappear into the United States. We have looked at the statistics for each country and the so-called countries of concern—Syria, Iran, and Iraq. The number of penetrations by nationals of these countries throughout our Southwest border are rising. Clearly we are deficient in a mechanism to deal with these. Thus, it seems to me—and I have said this before, but if I were a terrorist, this is how I would look to come to the United States.

So I believe that we have much work ahead of us, and we need to address some of these serious issues. I look forward to the testimony, Mr. Chairman.

Chairman KYL. Thank you very much.

Senator Coburn?

STATEMENT OF HON. TOM COBURN, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator COBURN. Well, thank you, Senator Kyl and Senator Cornyn and our Ranking Members, for this Committee hearing. It is interesting. This past week I got a letter from a sheriff in Sequoyah County, Oklahoma. Oklahoma has a pseudoephedrine law where it is all placed behind the counter. Seventy-five percent of all the drug labs have been shut down in Oklahoma, yet the utilization of methamphetamine now is higher than what it was before, and it is higher because it is all coming in from Mexico. So it is not just our schools and our hospitals that are being impacted. It is our children that are being impacted by illegal drugs that are the most addictive, the cheapest, and yet we are harboring the very people through our policies that allow that process to continue.

This is the third hearing that the co-Chairmen have had on immigration, and we have heard what is not working. What we have not heard oftentimes is what do you need to make it work. Your testimonies today are excellent, and I will have several questions for you. But I think that Senator Feinstein mentioned probably one of the most important things. It seems to me that the political will has not been there to do what is necessary to have a humane immigration policy and at the same time enforce our laws, enforce our borders, and protect our families. And it is a national security issue. But it may not be terrorist in relationship. It may be the undermining of our very institutions because they are going to collapse under the weight of illegal aliens who are in this country.

We also had testimony that there are 450,000 convicted felons that are running free in this country today because we cannot house them in detention beds. We have 19,000 beds at $30,000 a year. We need 30,000 or 40,000 more beds just to keep up with what the flow is. That problem is only there because we are not enforcing our border.

And so I look forward to your testimony. I thank you for having the hearing, Mr. Chairman, and I await the opportunity to ask questions.

Chairman CORNYN. [Presiding.] Well, thank you, Senator Coburn.

We will now start a 5-minute round of questions, going back and forth. And, again, we appreciate your presence in this important hearing.

Your opening statements have been very helpful. I want to say, Mr. Hutchinson, as I acknowledged your great public service at the Department of Homeland Security, I know sometimes when you hear the criticisms that everyone has of where we are now, it is hard not to take them personally. But I assure you that we know it is people like you and others who have worked at the Department that have made things much better than they would be without your efforts. But we still have a long way to go.

One of the questions I have for you is: Should the U.S. Government as a condition of participation in a guest worker program require that participating countries agree to certain terms and conditions? In other words, we know, for example, that the second largest source of annual revenue to Mexico comes from remittances of the immigrants who work here in the United States and send money home. We also know that they are eager for us to address this migration problem, as they call it, which we call immigration reform, in a way that does allow more of their people to work legally in the United States. But given the fact that due to Federal mandate any hospital emergency room in America must open up to any person who comes in, regardless of ability to pay, and regardless of citizenship, that children born of people who are not lawfully present in the United States are American citizens and obviously entitled to be educated in our schools and the like, what kind of commitments should we expect from countries who would like to participate in some sort of guest worker or temporary worker program with regard to some of these expenses for, let's say, medical care the like?

Mr. HUTCHINSON. Thank you, Mr. Chairman. And, first of all, I think we should use access to the temporary worker program as leverage to accomplish our broader objectives and to solicit their cooperation in reducing the illegal flow into our country.

I do believe the Government of Mexico needs to take a greater responsibility in discouraging a very dangerous trek across the border. I think they have taken some important steps, but still, the fundamental belief in Mexico seems to be that this is a right that they have to cross the border and enter the United States, with or without legal permission. And that needs to be discouraged. That message needs to go out.

Secondly, in the Central American countries particularly, we need to have greater cooperation in terms of the process of removing those that we apprehend coming across our border illegally. The paperwork, before we can send them back, they have to agree to receive those. They fly back. We have to have the paperwork processed. The consular offices have to appear. They have got to put more personnel, and we need to use the leverage to get that done more quickly.

Chairman CORNYN. Professor Stock, you mentioned in your comments, which I thought were very thoughtful, the problems with an enforcement-only approach. Some people would argue that we have not tried that yet, which is an overstatement. But there is a lot of frustration at our unwillingness, either lack of political will or lack of willingness to invest in the resources necessary to provide border security and interior enforcement. But would you agree that—and I think you said this, but let me just ask you to confirm what I think I heard—it is that we need both? We need both laws that can be enforced and the political will to enforce those laws, but then we also need to deal with the issues that you addressed, that is, how do we get people to identify themselves and come forward and to sign up for any program that might be available without dealing with their desire not to be deported once they report?

Ms. STOCK. That is correct, Senator. You have summarized my testimony very nicely, and I fully agree with everything that you have said.

I do want to emphasize that one of the big problems right now is our dysfunctional laws. Most Americans think that illegal migrants should go and apply for status and get legal. The problem is they cannot. There are millions of people in the United States right now who are married to Americans, working for American companies, doing things that benefit our economy, who cannot get legal. There are even young people who would like to join our military services right now who cannot do so because they do not have papers. Even though they have lived in the United States since they were small children, they are physically fit, they speak English perfectly, and they would make great members of our armed forces, they cannot join because they are not legal. And I have seen an estimate of 780,000 of those folks floating around in the United States.

It would be of tremendous benefit to our national security if many of these folks could come out of the shadows and participate openly in our communities. They would not be exploited. We would not be empowering some of the criminal gangs who make it a business now to get these folks in and out of the country on a regular basis.

Thank you.

Chairman CORNYN. Thank you very much.

We are going to be able to have several rounds, I anticipate, so I will turn the floor over to Senator Kennedy.

Senator KENNEDY. On that issue, Professor Stock, I find that my office in Boston is just overrun now with trying to adjust papers by the recruiting officers that are going through a number of the different communities, in Lowell and Lawrence, and getting many of these young people in order to meet their particular needs. I don't know if you are aware whether this is increasingly a phenomenon. Do you know? Are you familiar with this sort of effort?

Ms. STOCK. Yes, Senator. I cannot speak—of course, I am speaking of my personal opinion only and not on behalf of the Department of Defense, but I know that folks who have come to the United States from other countries and have adopted this country as their own often feel very patriotic and have a sense that they need to serve their adopted country, particularly in wartime. And many of them are legal and are able to openly go and join the military services, and they have signed up, and we have had a number of them. Some who are illegal have managed to get into the military and have served honorably and have earned their citizenship and even died in combat fighting for the United States. But there are hundreds of thousands of young people who are out there potentially available to serve the country that they have lived in since they have been small children. They have been educated here. Many of them are terrific recruits but for the fact that they don't have papers.

Senator KENNEDY. Let me just get the reaction of the panel to this point that the Chairman raised about other countries doing their bit. I think this is—we are never going to get this right—if we can get it right, it is enormously complex—unless we are going

to get Mexico to do its share, and the other countries in Central America. And we have been sort of an outlet for Mexico in terms of, I think—this is my personal view—trying to deal with some of the social dynamite in terms of its society. But we have to expect that they are going to do a good deal more.

Part of the remittances, as I understand, are being used to provide some initiatives in terms of development. I don't know whether you are familiar with those efforts. Is this is an area that can be expanded? Should we expect that this is an area that at least we can try—if we are trying to get them to do more, what do you suggest that we ask them to do besides just probably a tougher border patrols, tougher policing? Since we know, as all of you have pointed out, this is the economic magnet in terms of employment, what can we get them to do? And what suggestions do you have? Professor Stock, do you want to take a crack at that?

Ms. STOCK. Sure, I would be happy to, Senator. First, I want to emphasize that it is very beneficial to the United States that we have Mexican citizens sending remittances home because that money helps to stabilize Mexico, which is of benefit to us. If the folks are coming here legally, though, we also gain the added benefit of having potentially fee income to the United States Government, more taxes collected, the possibility of people paying for health insurance, which will relieve the problems with hospitals have to pay for illegal migrant health care. If people are buying health insurance, that is less of a problem.

With regard to cooperation with Mexico, I think there are enormous opportunities there. We could have cross-border cooperation with law enforcement. We could have cross-border cooperation on checking the backgrounds of people who are coming in, checking the validity of documentation, identifying people.

Senator KENNEDY. Those are not in process now to the extent that—

Ms. STOCK. They are in process now, but I suspect that if we have a program that benefits Mexico and ourselves that allows for the legal and orderly migration of people back and forth—and a lot of the folks from Mexico do not want to live here permanently. They just want to come here, earn money, go back eventually to Michoacan or wherever they came from in Mexico, having earned enough money to support themselves back in Mexico again. So we need to recognize that there is a cyclical flow as well.

Some of those programs are in place, but I expect they will be enforced or they will be stronger and better if the flow is legalized.

Senator KENNEDY. I have just two final questions. My time is running out. One is for Asa Hutchinson who has supported a temporary program, but also supported that at the end of the time these individuals would be required to return to their home of origin, whether he thinks that that requirement of returning home, whether that—these individuals know it, whether that would serve as a disincentive. And then I would like to ask Mr. Reed, and any of you could comment, in terms of the newer kinds of technologies, one of the things we have heard from Senator McCain, at least one particular program that was cancelled that might have been from a technological point of view advantageous. But do you have other suggestions that we ought to be thinking about?

Mr. HUTCHINSON. First, Senator, I do think that there would be an incentive for those living here illegally to get a temporary worker status because they don't like the shadowy lives that they have. There would be a percent that would have no desire to return, and that would be an impediment, and they would not pursue that temporary worker permit because of that. I hope that that would be a smaller percent. But if you have 8 million illegals in the country at the present time and a temporary worker status would decrease that number by two-thirds, well, that is a huge security benefit because of that effort.

In reference to technology, there is a lot you look at. You mentioned Mexico. They need to invest in better criminal databases. They have people arrested in Mexico that we cannot verify through our background checks just because they do not have the capacity to give us a record of all of the criminals that have been convicted in Mexico with any sense of accuracy. On the United States side, we have to invest in technology through workers that can actually online identify the workers here in this country who are here under visas or work permits and know when they move or are out of status.

Senator KENNEDY. Mr. Reed, would you make any comments? Do you have anything to add?

Mr. REED. I think we can ask a lot of Mexico, but I think we need to construct our dialogue with them so that it is something that they have a vested interest in pursuing. I think we can ask Mexico to control their southern border. I think we can ask Mexico to work hard to not be a transit country for people trying to go from a third country through their country to our borders. I think that is something that they could embrace. I think that is something that we could help them develop. And I think that is something that would help us out tremendously in terms of dealing with the real threat of terrorists entering the country through Mexico.

In terms of some of the other dialogue, I think that a lot of the things that we want to legislate are not legislative issues. With Mexico, the dialogue should be how do we create an environment where as people, labor is working temporarily in the United States, we are actually developing incentives, not necessarily a law or legislation but incentives for people to work here and leave their family home and to build their homes in Mexico, to invest in Mexico, build streets, schools, and hospitals in Mexico while a principal worker may be up here in a temporary status.

I think those are the kinds of things that we should be talking to Mexico about, and I think a lot of these things are set forth in, I think, a 22-point plan that was set up as a binational dialogue quite some time ago.

But in terms of technology on the border, there is so much technology out there that could detect anything coming across. I do not think it is a question of—that is there. It is available. It is a matter of reaching out and grabbing it and putting it there and using it.

Chairman CORNYN. Senator Coburn?

Senator COBURN. Thank you, Senator.

Colonel, I want to thank you for your service at West Point. I appreciate that. I have a question. One of your statements troubles me, and I am somewhat curious about it. In your statement you

claim that people who are already living here, who work hard and pay taxes, should be allowed the opportunity to earn their permanent residence. Why should they be allowed to earn the opportunity for permanent residence if they came here illegally? And what does that say to the people who came here legally who are working hard and paying taxes?

Ms. STOCK. Thank you, Senator. That is a very good question.

I think what has gone on here since 1996, when we attempted to reform the immigration laws, is we have actually created a worse situation than we expected. We have trapped many people here in the United States. It has become apparent now that there are hundreds of thousands of folks who are here in the United States who cannot leave because if they leave, they will never be able to get back in. This is because of the 3-year bar, the 10-year bar, the permanent bar.

It is important to allow folks who have established families here, partially as a result of our laws, to have the opportunity to stay here in the United States with their families.

Now, Mr. Reed correctly mentioned that there is a cyclical flow and that is what we want to encourage, but since 1996 we have actually gone the opposite direction. We have encouraged people to stay here because of our laws. They have not been able to leave to go back home because it has become more difficult to come back in, so they are trapped here in the United States due to a combination of laws and stronger border enforcement.

Because many of these folks have been here so long, they have established families and ties in the community. And while it sounds good to enforce the laws, on the one hand, we are enforcing laws that make no sense when you are talking about a family unit. We say let's enforce the laws, but enforcing the law may involve the breadwinner of the family going back to a foreign country for 10 years, 20 years, leaving the family that is part of the United States community, the American citizen spouse and kids, here to apply for welfare. That does not help our security.

It sounds good to enforce, but it makes more sense in the long run to let those folks stay here.

Senator COBURN. But what percentage of people are you talking about? Are you talking about somebody that overstays a visa, who has a legal visa, and then because they have overstayed it they have a penalty not to come back in? Or are you talking about people who came here illegally and never had a visa in the first place?

Ms. STOCK. Well, we do not have good numbers on that, Senator, that is the problem.

Senator COBURN. But we do know the people who are here on visas who have not gone home. We have a list of them. We just cannot find them. So which laws are you talking about changing? Are you talking about changing the visa laws, the immigration laws? What specifically arcane laws are you recommending that we change so that we do not entrap people here?

Ms. STOCK. One very specific recommendation I have would be to get rid of the 3-year, 10-year and permanent bars which are currently trapping the spouses of American citizens and their kids here in the country. They cannot leave because if they leave they do not get back in, they do not get a waiver to come back in. And

people know that because they know other people who have left and tried to apply for a visa overseas in order to fix their status, and they have been told, "You cannot come back in. We are not letting you back in."

Senator COBURN. So I want to follow this logic for a minute. Because people have broken the law, violated our immigration laws, and because they have now established a family under that illegal act, we are going to change the laws to benefit them rather than to benefit the people who came here legally under our laws and followed our laws? Is that what you are telling me?

Ms. STOCK. Senator, I think, obviously, the people who have managed to follow our laws, I have actually run into very few of them. Because our immigration laws are so complicated, I am willing to place a bet here that I can find an immigration violation in just about any person who is here in the United States. We have laws that are so complicated even the Department of Homeland Security does not understand them. They call them a mystery and a mastery of obfuscation.

Senator COBURN. I understand that, but I want to get an answer to my logical question. What you are proposing is that regardless of the laws that we have today, that if somebody came here illegally and established a family, and because it is important to get them to travel back and forth, we should get rid of all the sanctions on those people who are violating—who may have even come here legally under a visa. You are proposing to me to rationalize those laws? And what laws would you put forward that would change that? How would you change that specifically and still have enforcement in terms of any meaningful enforcement on a visa application to coming into our country?

Ms. STOCK. I think what you have to do is have a combination of things. You have to have some kind of guest worker program that allows the people who want to go back cyclically—and there are a lot of them—to do that, without establishing ties here so that they can contribute to their home community, maybe move back there eventually, buy the soccer field in Michoacan.

However, you have to recognize that we have a substantial population of people who have now set down roots. It does not make sense to keep them in the shadows. If you say we are simply going to enforce, enforce, enforce, those millions of people are going to remain in the shadows, they are not going to be benefitting our country, they are not going to come forward.

I am not in favor of legalizing everybody in America. I am sure there are going to be some people who come forward who turn out to have very serious criminal records. One of the benefits of having people come forward is they get fingerprinted, we get to check them through our system, we get to figure out whether they have to pay a fine or not for having overstayed a visa. We get to make a judgment call as to whether this is somebody who should be allowed to contribute to our community or somebody who should be deported. That is a potential benefit of a program that allows for legalization.

I do not think anybody is proposing allowing everybody who is here in the United States to suddenly one day get legal. They are talking about an orderly process for people to apply, to come for-

ward, to show their character, their criminal background, get their fingerprints checked, and the Government of the United States making a decision whether to let them stay or not.

Senator COBURN. I think we did that in 1986.

Chairman CORNYN. Senator Feinstein.

Senator FEINSTEIN. Thanks very much, Mr. Chairman.

I wanted to ask, Mr. Hutchinson, a couple of questions if I might. I recall talking to you on the subject of waiver of deportation sometime ago, when you have someone who is here illegally, who works hard, who has not broken the law, who has American children who are doing very well. And I have submitted a few private bills to try to reconcile these people, and increasingly, I found in California that the Immigration Service was going out to pick them up and deport them. And then when I looked at the numbers on the waiver of deportation, I think there were 10,000 people that are eligible a year for a waiver of deportation, and only 4,000 had been filled.

Do you have any recollection as to why that was the case? Because I was going to expand it. And then I found, haven't come to the halfway point of fulfilling the allotment that is in the law already. Do you know why that is?

Mr. HUTCHINSON. I would assume there would be some criteria for obtaining that waiver of deportation, and I know that—and I am not saying it would apply in the circumstances that you mention, but there are certain requirements that if they have criminal offenses, that under the immigration reform bills that could not be waived, so that might be a factor in some of the individuals that are considered and request waivers.

Senator FEINSTEIN. Well, maybe one thing we might do, and I am going to take a look at it, is look at the criteria and lay them out more clearly in law so that everybody knows who is eligible for that and who is not. I think that is one thing.

Last month the Chairman had a dialogue with Mr. Cerda. Mr. Cerda—let me see, who is he—

Mr. HUTCHINSON. Victor Cerda?

Senator FEINSTEIN. Mr. Cerda, was the Acting Director of Detention and Removal Operations for Immigration and Customs Enforcement. And one of the things that came out of that dialogue was that there are 465,000 fugitives today from the catch and release program, of which 80,000 are criminal absconders.

I was wondering if you can shed any—I think the Chairman probably remembers that discussion, I have the transcript—and to me this is an unacceptable figure. I guess my question is, what do we do about this?

Mr. HUTCHINSON. It is totally an unacceptable figure. You are absolutely correct. I think it comes down to a couple of things. One of them is particularly detention space. Whenever you look at apprehensions and the, for example, the war supplemental increase, I think it was 500 border patrol agents, and I think you all did increase some the detention space as well, but the detention space is the key ingredient to avoiding the release—you mentioned the OTMs—other than Mexican nationals, it is a key to discouraging immigration, someone from packing up their bags in El Salvador and coming to the United States, first to evaluate what is the chance of getting caught? Secondly, if I get caught what is the

chance of being incarcerated, quickly removed, or am I going to get released in the United States? Right now they are evaluating that and saying the chances are, I will get released.

So the detention space is the key to discouraging that flow, that person in El Salvador not picking up their bags and coming to the United States. That is obviously the reason we have over 400,000 absconders here in the United States.

Senator FEINSTEIN. I think you have made a very good point. I think it is very clear that we need more detention space and that we really should address it.

Senator KENNEDY. Could the Senator yield just for a quick comment?

Senator FEINSTEIN. Yes, certainly.

Senator KENNEDY. Do you have or does anybody have the countries? I mean if we cannot send the criminals back to the countries, do we have a list of those countries?

Senator FEINSTEIN. I have them all right here with the numbers and the increases.

Senator KENNEDY. Okay, thank you. The ones that do not permit us to repatriate? I do not want to take up your time.

Senator FEINSTEIN. These are other than Mexicans by country as of June 30th of '03, but I cannot comment on repatriation.

Senator KENNEDY. My question is the countries that will not accept repatriation. Maybe we have that.

Mr. HUTCHINSON. That is very important information though because when they do not accept repatriation, we either have to release them or we keep them incarcerated which fills up the detention space.

Chairman CORNYN. Mr. Reed, I believe you indicated you had a response to Senator Feinstein's question?

Mr. REED. Yes. I was chomping at the bit to try to get in here. This detention space issue is much larger than just beds. I had the misfortune of testifying before another subcommittee a few years ago, where the central region had set up a program that was going to expedite the removal of a lot of people so that we could free up beds. The other misfortune is we decided to call it the Hub Site Program, which had some sort of a connotation that was not acceptable to the community.

But at any rate, what we had done was decided that detaining people all over the countryside and trying to figure out how to get them the counsel and everything else was the major factor why people were not getting to hearings and were not getting an order. So we decided we would put them all in the same place where you had immediate access to counsel, to consulates, to transportation, to detention space, everything you needed to have a process go real quickly because—and I bet it is still ongoing today although I do not know—the number of continuances that take place before a person actually gets a decision from an administrative judge is extraordinary. And during that time the detention space becomes so critical that you have to release people in order to take people in the front room. So the agency cannot win.

But the other piece of that which I really found that really struck me, and the lesson learned on that, is if we went out and picked up all those criminals that we are so concerned about right now

and sent them home, from an international global strategy we end up with a bigger problem. A lot of these countries it is not just the people who will not accept people, it is do the countries have the ability to absorb that increase in the criminal element coming back in to a country that may destabilize the country?

I am certain in my mind that the reason the Hub Site Program was shut down is because we were about to send thousands of criminals back to countries that were not in a position to absorb that impact.

Senator FEINSTEIN. I think that is a very good point. One of the problems for my State, California, is that murderers, people who have killed deputy sheriffs, law enforcement officers, go over the border to Mexico and Mexico will not extradite back to California. My view, very frankly is, Mexico also will not cooperate in enforcing the northern border, despite all of the problems we may have. It is hard for me to feel sympathetic under those conditions.

It seems to me that Mexico ought to help us enforce the northern border, particularly if Mexico wants a more liberal acceptance policy of people that cross the border. It is as if there is no real understanding for the American dilemma of such large numbers coming across the border at a given time, that there is not the infrastructure to accommodate them. What has worried me, and particularly in California, this is what develops a backlash, and this is what develop propositions that go on the ballot that pass overwhelmingly. So there has to be structure in this, and there has to be numbers that are absorbable in everything we do. It seems to me that the lack of cooperation of Mexico to achieve that goal is really a significant one.

Chairman CORNYN. Thank you, Senator Feinstein.

Senator Kyl.

Chairman KYL. Thank you, Senator Cornyn.

At least two of you testified in your written statement—incidentally, I forgot to include in the record the statement that Senator McCain made, if I could make that request.

Chairman CORNYN. Certainly, without objection.

Senator KENNEDY. Could I just include also Senators Leahy and Feingold?

Chairman CORNYN. Without objection.

Senator KENNEDY. Thank you very much.

Chairman KYL. For example, Mr. Reed, you talked about worksite enforcement and you harken it back to the enforcement initiative called Vanguard, which when implemented became so successful that—well, it was too successful and therefore was disbanded because it was identifying too many people who were employed illegally. Then you noted another program that I gather is not working as well, the Basic Pilot for employers, part of it dealing with lack of funding, part data integrity issues. And then Asa Hutchinson, you also talked about the greater investment workplace enforcement as a requirement for a new program that employers have to verify the legal status of job applicants and so on.

My question is this. What kind of employer verification system would you envisage as both necessary and workable, which would provide good documentation and verification of the appropriate status for employment that could be easily used by employers? And

how would it tie into Social Security? Would it apply to all Americans as opposed to just different categories of temporary workers? And if so, how would you make that work? Let me leave it at that for right now. And identify, if you could, what you think such kinds of systems would cost and what time it would take to put them into effect. That has to do with the comment that one of you made about past amnesties not working, and I think, Mr. Reed, you made that point.

I am a little concerned about providing a temporary worker program until we have the capability of clearly enforcing the program, which would include having in place not only the people but also the machinery that might be necessary for that.

Mr. REED. A couple of things. Regarding the temporary worker program, I think there is all sorts of things that could happen beyond the Government infrastructure to make that work. Basic Pilot, you should know that besides working on technology and trying to help DHS figure out better ways of doing business, I am also engaged by the private sector. One of my very best and favorite clients is Tyson Foods, who went through a very troubling time, and basically brought us in because they never wanted to go through it again, and I have worked with other employers in similar situations. I now see what the employer sees from the other side.

I was very concerned about Basic Pilot when I was on the inside because many times the people, the very people that we wanted to go after and prosecute, were enrolled in Basic Pilot. So I had a heck of a time trying to sort out how somebody on Basic Pilot could be the people that we are going after because they have got all the undocumented workers.

So we launched Vanguard. I do not mean to hark back on that, but I think Vanguard shows that with very little money, less resources really, you can do a much, much better job. All we did with Vanguard was make Basic Pilot work. We looked at the document statement were submitted from the I9 information. We subpoenaed that information and said, let us take a look at it, and then we compared it against databases to figure out if there were other Mark Reeds working at other places, and were there inconsistencies in that information?

That is something that Social Security is doing now with no match letters. It is a very tepid type of approach, but they could do much better. Social Security could tell you very quickly as to whether there is two people out there using that same Social Security card or not. They do not.

I can tell you that when I go into Tyson Foods and suggest that they may have a problem with unauthorized workers, they do a lot of staring at me, asking me how to explain how it is that I think that they have got unauthorized workers, when the Government, through Basic Pilot, has provided them a document stating that that person is authorized to work in the United States.

Somehow Basic Pilot is being beat. I suspect it is because it was designed to be beat, but I probably just went over the board a little bit with that statement. But it can be fixed and it does not take a lot. I had 10 agents in a room who fixed it for Vanguard. We are not talking about a major increase in resources. We are just talking about making things work that should work.

Mr. HUTCHINSON. Let me just add, one, I think in reference to a temporary worker program, a prerequisite for that is to satisfy the American public we are capable of securing our border, and it will not be in this fix again. So that is sort of a criteria that we have to reach before we move forward on that.

In terms of the Basic Pilot program, and I appreciate Mr. Reed's comments, because that is sort of the ground floor analysis of it from a policymaking standpoint. One, the problem with the Basic Pilot program is that it is voluntary, it is not mandatory, and it needs to be expanded so that it could be used in problem industry particularly. Secondly, it is dependent upon the information that is in the system. If you are going to verify Social Security status—and our Social Security Commissioner, I have met with her, and really is security minded, so I think she is willing to take steps that can improve the system.

The other side is the immigration status. I do not know that they are verifying that they are here legally as much as there is not any adverse information in the system. But my information is that it would be very expensive to expand that program because I ask about, you know, how can we have a program to expand Basic Pilot into a more mandatory system, and the costs were very, very significant, primarily in the response capability of the Government for the multiple inquiries that come in. Mr. Reed might have different information on that.

Then finally, I just think that you look at our SEVIS program that monitors international students that come in, it is a very effective program online, technology driven, confirming attendance in class. This is the kind of system that we have to develop for employers. Whenever you are looking at temporary workers or workers with a visa that is coming in, obviously not U.S. citizens, but the temporary workers. That is the type of system we do not have now, we have got to move toward.

Mr. REED. I agree very much. In terms of expense I agree that it will take a significant amount of money to expand it. I would suggest that I believe that most employers would contribute towards helping build that system that would work so that they could get a response back that they could believe in that would reduce their vulnerability. So I do believe the Government's got a responsibility to move forward with it. I do also believe that private industry would like to partner with the Government to help build a system that would work.

Chairman CORNYN. Senator Sessions, I know you have been otherwise occupied and were just able to join us. We have each had a chance to ask a couple of rounds, and Senator Feinstein has graciously agreed to let us do two questions on our side before we go back to the other side of the aisle. If you have any questions, go ahead.

Senator SESSIONS. I do, and I thank you for having this hearing, and I apologize for not being here. You have a good panel on a very important subject. I once described this effort of being successful, and immigration enforcement is like building a bridge that was 8 feet long to get across a 10-foot gap, and if we just do a little more and really get our minds straight, this thing could begin to work.

Mr. Reed, Mr. Hutchinson, do you think with existing resources there may be a little more—we are really not as far away as most people think in making this system work?

Mr. HUTCHINSON. I do not think a little more will do it. I think it has to be substantially more.

Senator SESSIONS. How much substantial in a percentage basis maybe?

Mr. HUTCHINSON. My judgment is that in terms of the personnel you are moving at a fairly substantial rate. I think it was 500 new border patrol agents in the War Supplemental. I think it is on the technology side that we are creeping along too slowly. For example, US VISIT—

Senator SESSIONS. Technology is sort of a one-time expense. Yes, it will be expensive and it will be somewhat expensive to operate, but once you are successful in breaking what you suggest is a two-thirds certainty of being apprehended, once you get over that, all of a sudden people start complying with the law, do they not?

Mr. HUTCHINSON. Absolutely. It is a dynamic out there that we can reach. I fundamentally agree with you that we can do it. It is going to take a significant investment in detention space, some court personnel, as well as some of the technology. We can get there very quickly with an increased investment.

Senator SESSIONS. Mr. Reed, would you comment on that? Based on your experience—a witness at the last panel, Mr. Chairman, if you remember, I think his last comment was—he had been with INS for sometime—he said: I am not sure that our people understand what the policy of the Government is. I think that was a honest, low-key stated statement of a real problem.

If the Government had as its policy, clearly to enforce the laws and stop the illegal crossings and entries, and to therefore move people to the legal system of entry into the country, how far are we from getting that done, Mr. Reed? Is that impossible?

Mr. REED. I have to be careful with terms like "little" and "a lot." I believe this can be solved, and it can be solved on the back of what we already have in place. It is going to take some significant investments in some technology. But if you compare that to the monies that are actually going to be saved in the long run, I regard that as a small investment for a great return. I think that part of it is very solvable. I think we have off-the-shelf technology that is available out there. You have some very smart people in the right positions in DHS right now. The Government is poised to move forward.

I am not sure I could say the same for the politics, and that is going to take a major, a lot of increase or investment.

Senator SESSIONS. One reason we have a political problem, I am going to tell you, is that I believe a large percentage of our Senators think it is pretty hopeless to create a system, a legal entry and exit system that actually works, but it is not in my view.

You mentioned, Mr. Hutchinson, in your four suggestions, just wonderful simple suggestions, your first one is that the chance of apprehension must be greater than two-thirds. As a former prosecutor myself like you were, I think there is a lot of truth in that. Would you explain—is that the tipping point you are looking for?

Mr. HUTCHINSON. I believe it is. And of course, we are talking about mass migration. Two-thirds is not enough when you are dealing with terrorists, but if you can reduce the mass migration you can concentrate on those who pose a risk to our country. But if I think about the individual in Costa Rica thinking about coming to the United States. What is the risk of getting caught? Two-thirds is pretty substantial. If you get caught, then what are the chances that you are going to be immediately returned back to Costa Rica or sit in custody for some time? That is a factor they are going to consider. And then even if somehow you, by the slimmest of margins, snuck through and got out, what are the chances of an employer hiring you because of your illegal status?

All of those, if they are going to sit there and say minimal chance in all of those categories, they are not going to come because it is not going to be worth the investment of paying $5,000 to a smuggler when the chances are not very good.

Senator SESSIONS. How would you evaluate that, Mr. Reed?

Mr. REED. I think that is fairly accurate. I am not smart enough to understand two-thirds versus three-quarters. I think that there should be an absolute certainty of detection. I think there should absolutely be consequential deterrence in place that discourages people from behaving inappropriately. It is fundamental, straightforward law enforcement, and when you lose that, you really do not have anything to work with. And we have lost it.

Senator SESSIONS. I spent a lot of years in law enforcement and I absolutely believe that the professionals statements that it is the likelihood of getting caught, more than the amount of punishment, that deters criminal activity. I have always believed that to be an accurate thing. If we could, with a strong will and some new technology and new expenditures, creating a system that would actually work, I believe you could—all of a sudden you would see a drop in the people trying to come illegally, an increase in the number of people coming legally, and all of a sudden the cost of the system could actually begin to go down.

Anyway, Mr. Chairman, you have given such thoughtful leadership to this, I can tell you how much I appreciate it. It is not always a task that is filled with glory and appreciation, but it is important, and thank you for your working at it.

Chairman CORNYN. Thank you, Senator Sessions.

Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman. I want to just have an informal discussion. I have been on this Subcommittee now for 12 years, and we go round and round and round, and we all know the system is broken, and we do not know what to do to fix it. We know that our country is the largest immigration magnet in the world. And people want to come here from everywhere in large numbers all of the time, year in, year out. So we know there has to be some system of order.

We know that as a country we take more people legally than all of the other industrialized countries together do in a given year. We have been a very open and—I do not want to use the word "generous" because I do not think that is the right word—but we have been a Nation of immigrants and we have always respected

newcomers coming to this country. We also know that employer sanctions do not really work. The use has dropped.

So it seems to me that there is only one way to go. we have to enforce the borders and we have to have a logical system. Whether it means taking a look at the quotas for legal immigration, making some adjustments in them, because I believe, for example, Mexico, people have to wait a very long time to come in legally. Maybe we should look at the quota system and see if it really meets the need the way it is. I think we have to finish the border fence. I think we have to staff the border. I think we have to have it technically as advanced as possible.

And I think we have got to have a real disincentive to illegal immigration. I think that amnesties create an incentive, so that is not the answer as far as I am concerned.

I also do not believe guest worker programs are the answer either, because the people who come to California—and we do not have a big H2A program—but people who come for other kinds of labor do not go home. They bring their families and they stay.

Let me begin with you, Asa, because you know, now you have hindsight, which is much better. How would you change the system? Specifically what would you do?

Mr. HUTCHINSON. Well, I me an I think first of all, you are right that the border enforcement is critical. I also agree in terms of having to look at where we are allowing people, our quotas, and I think that is a fair debate to have.

I do think that the employer side is very, very critical to reducing the power of that magnet, and it is not just a matter of sanctions, although the enforcement side is important, but it is also the tools that you give the employers that we have talked about today.

So I went in and I did focus on the border side, did not have all of the tools that we needed, moved forward as quickly as we can, but I also recognize that that employer part of the equation is critical to success overall.

Senator FEINSTEIN. So you believe we should keep employer sanctions but do what? Because they are not working now.

Mr. HUTCHINSON. I think you have to give them tools, expand the Basic Pilot program, make it more comprehensive so they can verify—they have to be able to verify they are not hiring an illegal worker. You have to give them the tools to do that. Secondly, once you do that, you have to be able to have enforcement there.

Senator FEINSTEIN. Can I understand something? You mean the A9 number?

Mr. HUTCHINSON. The I9s, yes.

Senator FEINSTEIN. Excuse me, I9 number. When you say they cannot verify it, what exactly do you mean?

Mr. HUTCHINSON. Well, the employer is required to take certain documents, but unless they are a part of the Basic Pilot program, there is not any requirement for them to verify the authenticity of those documents, whether it is a valid Social Security number or a valid driver's license, or that they really have a citizenship in this country. So the employers are in compliance—

Senator FEINSTEIN. Can they not verify by the I9 number?

Mr. HUTCHINSON. Well, they could, but there is not any requirement to do so, and that is the problem. There is not any requirement to do so.

Senator FEINSTEIN. Then maybe we ought to make it a requirement that they take that I9 number on a card and verify it, and set up a system to be able to do the verification.

Mr. HUTCHINSON. That is the direction that I believe we need to go.

Senator FEINSTEIN. Anybody else on this point?

Mr. REED. Yes. I work with a company that is on Basic Pilot. What you will see that will happen when you take an employer that moves from non-Basic Pilot to Basic Pilot, and before they had a workforce that was traditionally immigrants, when you go to Basic Pilot all of a sudden everybody turns into a United States citizen. The reason that happens is because they will go out and buy an identity that will defeat the checks that Basic Pilot runs in terms of determining as to whether or not those people are actually lawfully entitled to work in the United States.

Senator FEINSTEIN. I am not thinking of a pilot. I am thinking if, you know, you have these documents that people present. It seems to me there is a way of verifying whether the documents are real or not.

Mr. REED. I was not clear in my response. This program that we are talking about actually requires people to collect document and to collect information, and send that information to the Government so the Government can make a determination as to whether or not that person is authorized to work in the United States. Once the Government makes that determination they send back a notice to the employer indicating either the employment is authorized or there needs to be further inquiry made.

Senator FEINSTEIN. Can you not just do that with a phone call? I mean if it is a fraudulent document it is going to have a made-up I9 number.

Mr. REED. I totally agree. Let me back up a little bit. I believe that there is an answer to this. If there is a legal worker in every job the incentives to enter this country are going to go away. So if there is a way to approach this in terms of a comprehensive program, once we put a legal worker in every job that is available in the United States, the masses of people entering the country is going to dry up, and that makes everything else work. All of a sudden all the numbers become manageable.

But the problem that we have right now is we have set up a system to check that type of information that does not work.

Senator FEINSTEIN. It is paper based.

Mr. REED. I think it could work. Pardon me?

Senator FEINSTEIN. If we change it from paper based to providing a service where people call—

Mr. REED. I think it can be done electronically.

Senator FEINSTEIN. Or electronically.

Mr. REED. I think this can all work, and I do not think—this is not rocket science. Social Security, I believe if they ran more than just a cursory review of the numbers, that they would be able to detect if there was some sort of a discrepancy with the information

that that worker provide to that employer, especially if it was based upon fraudulent documents. I think that this can happen.

Senator FEINSTEIN. See, that is way of carrying out the employer sanction. In other words, we require that they would have to check the documents if they could do it electronically, and if they do not do that and they hire somebody that is not valid, then you have got—it seems to me you have it right there. Am I wrong?

Mr. REED. Well, there are all sorts of issues surrounding this in terms of—I think the Government needs to accept that responsibility. What you say has great merit, and I think it would require a little bit more dialogue. It is ironic that the employers are afraid of this because there is also a law out there that says you can only ask a couple of questions, and if you ask one too many questions, there is another element of the Government that will come out and hurt you.

So I think it goes back to the Government needs to make this a coherent system. They can do it. I think the employers are ready to accept it.

Senator FEINSTEIN. Very interesting. Thank you.

Chairman CORNYN. This has been great. I know that I have at least one more round, and maybe a couple more if you all will hang in there with us.

I am struck, Professor Stock, the more I look into immigration-related issues, at what bad information we have about the size of the problem. I think you mentioned between 8 and 20 million people, and the Congressional Research Service told us last year it was about 10, with about 6 million in the workforce, but here again it may be just about anybody's guess. And then we make blanket statements about the characteristics of this immigrant worker population as if they were all the same, they all had the same intentions and motives. Some people say, well, if you create a temporary worker program, no one will come forward, or no one will ever leave once here, all of which strike me as overstatements because we just do not know and we are making blanket statements without really having good data to back it up.

But one thing that your testimony discusses is something I wanted to focus on, and that is circularity of worker flow. You indicated earlier that we may have actually done ourselves a disservice by erecting stricter border enforcement without doing other things, because people who were here, who would like to go home are afraid to go back home because they might not be able to get back. Based on that statement, it strikes me that we perhaps overstate the case when we say that everyone wants to stay here.

My point is that people who are immigrating do so for a number of reasons, including economic reasons. People who have no hope and no opportunity where they live want to come where they can provide for their family. We all understand on a very basic human level why that is so, and presumably each of us would do the same thing under similar circumstances.

But do you see the possibility of enacting what I would call a work and return program as part of this solution that would in fact take advantage of this characteristic of circularity of worker flow that would be perhaps one piece of a solution to this problem?

Ms. STOCK. Yes, Senator Cornyn, I definitely think that part of the solution is to have a program that makes it relatively easy for people who would like to come work here temporarily, who have an employer who is willing to hire them, no American willing to take the job, just as President Bush has discussed, that should be part of the program. It cannot be the whole program though because there are other pieces of it necessary to have a full and comprehensive program, and we have not tried this before. That is important to point out.

In the 1980s, the amnesty that took place in the 1980s, this was not a comprehensive reform that tackled the cyclical issue, the issues of circularity. It was kind of a one-time program with specific data cutoffs, and that does not address the problem of the historical flows from Mexico back and forth.

Chairman CORNYN. Again, looking at immigration-related issues, it seems like every time you address one issue you kick over a stone, revealing another problem. But when I think about our trade policies, I recall that I was struck when I went to Guatemala about a year ago, a gentleman I had lunch with, arguing in favor of our ratification of the Central American Free Trade Agreement. He said, "We want to export goods and services, not people," which to me very concisely made the case that it is in our best interest to help Central American countries, Mexico, and other countries that do not have the opportunity that is available here, to create that opportunity back home for immigrants, or else what else would we expect but they would leave and come here to work.

So that helped nail the case for me on CAFTA, which we will debate here before long.

But how do we deal with the issue of bad information or inadequate information when we say to people who are here, who have been here for a while, that they can only work temporarily and have to go home, that they are not going to come forward? Asa Hutchinson mentioned, well, some people will just so they will not have to work in the shadows, so they will self identify. It strikes me that there are some single workers who do not have the family and community ties that might be willing to take advantage of that, and I believe you made the case that if we could eliminate a large percentage of people, that would make our job a lot easier.

I wonder how do we deal with that lack of good solid information in making general laws that apply to everybody? Mr. Hutchinson, do you have a comment or a response to that?

Mr. HUTCHINSON. To me the rule probably is let us improve the present circumstances, not make it worse. You make it worse by not doing anything. You make it better by reducing, one, making sure we secure the borders, but secondly, addressing the problem of the illegal population here in the United States, and if you can decrease that by providing some incentives for them to return home, that is a good thing.

I know that it is hard to get good data, but the information that I have, and belief, is that when someone first comes here, you know, they have their family ties back. That is why they do the going back, they go back for the holidays. It has been more difficult because we have tightened the borders, but they have that desire to go back. The longer they stay here in the United States, the ties

get deeper, and so that is where you are not going to have them probably come forward, but those that have been here fewer years I think it would be likely that they would come forward.

Chairman CORNYN. Mr. Reed, did you have a comment on that?

Mr. REED. I think there is a way to deal with this. If the Government chooses, they can engage in industry—I do not think this should ever be across the board type stuff, it needs to be a major balanced approach—but from an enforcement standpoint the Government does have the capability to go into an industry and bar employment of unauthorized workers. So when it comes down to a decision point for the worker as to whether or not they want to come forward, their decision is based on, do I want to keep my job here, or do I want to leave this job and go find a job someplace else, and knowing that in due time they are coming to that industry too.

So the Government—the enforcement has got to be a key in terms of putting the right kind of motivation in place. The Government can do it. If you want to stay here, come forward. If you do not, you had better move on someplace else.

Chairman CORNYN. Let me just ask one last question and have each of you comment briefly on it, and then we will turn to Senator Kyl. We have a number of proposals that have already been made, including a bill that I filed last year. Senator Kyl and I are working on something that we view as comprehensive immigration reform.

I would just like for you to comment on whether you believe that comprehensive immigration reform should include these four elements. The first would be enhanced border security. The second would be improved interior enforcement. The third would be employer accountability. And the fourth would be some guest worker program that would allow employers to hire people now for the jobs that they cannot find American workers to fill, and for which there seems to be an endless supply.

Mr. Hutchinson?

Mr. HUTCHINSON. I would agree with those four principles. I think the order is important. I do not think you can start with a guest worker program and get to border security last. I think you have to get to border security and then move through each of those, and I agree with those principles.

Chairman CORNYN. Thank you.

Professor Stock?

Ms. STOCK. Senator, I think you have to add some kind of earned adjustment for the people that are here in the United States and something to reunify the families. So I think that is the big barrier to getting this problem under control right now.

Chairman CORNYN. Thank you very much.

Mr. Reed?

Mr. REED. I would embrace those principles. I would probably rephrase them just a little bit. One is to encourage lawful entry, lawful immigration in the country. Second is discourage it, and I think we are starting talking about packages, but that is definitely a border-oriented type thing. And the other thing is put a lawful worker in every job. And I think if you do that, I think you end up with a very comprehensive, workable and manageable plan.

Chairman CORNYN. Thank you very much.

Senator Kyl.

Chairman KYL. Thank you, Mr. Chairman.

There are so many things I want to ask here, but I am going to go back to something that I talked about just a little bit before to see if I can get a little bit more detail.

Would all of the panelists agree with the proposition that for a guest worker program to work, it is critical that the documentation of the guest worker both clearly identify the individual properly, and demonstrate the work status of the individual, and that it not be counterfeitable easily?

Mr. HUTCHINSON. Yes.

Mr. REED. Yes.

Chairman KYL. So none of the panelists disagree with that proposition. Now, one suggestion has been a so-called biometric identifier, which can be fingerprints, a digital facial scan, an iris scan. Would you all agree that that is a form of identification that is not easily counterfeited and might be workable in this kind of a situation?

Mr. HUTCHINSON. I do, and I think biometrics should be a part of the identification requirements.

Chairman KYL. Professor Stock?

Ms. STOCK. I think some form of biometric is typically said to be a good way to identify anybody.

Chairman KYL. Mr. Reed?

Mr. REED. I agree with that and I think that that should be incorporated into the US VISIT program.

Chairman KYL. Okay. With respect to the documentation, it could be of course a new Social Security card, it could be some other kind of identification. It could be a status card like, for example, people are aware of the green card today for legal permanent residents. Perhaps there could be a different color card for temporary residents or whatever.

Let me ask you each about the process for verifying the breeder documents or the data that goes into this document, and how concerned you might be that without valid data in, what you are likely to get out is an invalid status, but now with the imprimatur of authority because it has been granted as a legal document. Could you address that issue?

Mr. HUTCHINSON. Of course we are looking at a temporary worker type document, so you first start with a foreign worker. If they are already here in the United States and getting one of these documents, it is still perhaps a little bit easier to protect the breeder documents. I am a little bit more concerned, and I think the Congress has made good progress in REAL ID requirement, some other movements toward more secure identification. We can address that here in the United States, and I would encourage you to give some flexibility. The Department is really trying to coordinate all of these registered travelers into some organized system, and they probably need some flexibility on that.

Our greatest concern would be identifying people overseas and making sure that we have got the right identification, a good background, and that is going to take some pressure on some other governments to help us on that.

Chairman KYL. Mr. Reed or Professor Stock?

Ms. STOCK. I think you are going to have to cooperate with other countries instead of systems, but other countries do have systems in place to identify their citizens. In fact, the U.S. is one of the worst countries as far as that goes. We do not have any national database of U.S. citizens, and we have bad problems with breeder documents here in the United States because of the different variety of birth certificates and things, many of which cannot be verified.

Other countries though do have national birth registers and ways that we could identify their nationals if we have the systems in place to cooperate with their governments.

Chairman KYL. Mr. Reed, before I call on you. So it would be important for us then, if we are focused on people who are asking to come forward as having previously entered the country illegally, who wish to avail themselves of one of these temporary worker programs, that they provide us real documentation with supporting documents from their own country to provide them the new documents to replace the old ones that they were using that were clearly invalid, that would be a necessary part of this program then, I gather; is that right?

Ms. STOCK. I think that is true, but I have had good success as a private attorney in getting people to admit who they really are and come forward with their false documents. And when there is a system in place and people know that if they admit what they have done in the past, they might be forgiven for it, there is a remarkable ability of people to come forward and confess to things like that and admit to their true identity.

Chairman KYL. Which would make it easier then to make this applicable to them, right, okay.

Mr. Reed?

Mr. REED. I think the biggest issue here is that once we establish their identify, that is their identity forevermore, and that is done with biometrics. And there will be all sorts of opportunities to take another look at that identity any time they encounter social service, employer stuff, whatever, just like the rest of us. I think getting documents from other countries is going to be difficult. It should definitely be a requirement, but as long as we run them through our own internal databases, criminal databases and terrorist watch lists, and we are convinced that they are not one of them, I think we should take whatever identity we get and start from there.

Chairman KYL. Thank you very much.

Chairman CORNYN. Senator Coburn.

Senator COBURN. Thank you.

Congressman, you have not been called that in a while.

Mr. HUTCHINSON. I have not.

Senator COBURN. It is good to see you. I want to tell you, I picked up from you during these conversations an ordered sequence of priority, that I think at least people from the southern part of this country understand is that you cannot do any of these other things unless you are going to have border security first, and I am glad to see that.

Are you aware of any transfer of knowledge between the IRS and DHS on the 9 million false W–2s that are filed every year, and

whether there was any communication between the Internal Revenue Service on those and given to Homeland Security? Are you aware of any communication between those two departments while you were there?

Mr. HUTCHINSON. No, I am not. That does not mean that is all encompassing knowledge, but I am not aware of that.

Senator COBURN. I just think, for the record, it is known that 8 to 9 million false W–2s are filed by employers every year, and there is a penalty for filing a false W–2, which is a great source of information on where undocumented workers are. Many of those are used two, three and four times. None of them have to do with any one individual, there are four or five individuals doing it, and it goes back to the false area.

Mr. Reed, we had Mr. Evans testify alongside the head of the Border Patrol I think our last hearing before we had a break. And we were talking about technology. I heard you say earlier that the technology is out there, that if we could implement the technology that is available today, we could utilize it, whether it be unmanned vehicles or sensors or whatever. Is that a true statement? Is the technology available in this country to help secure this border today?

Mr. REED. I believe it is. The reason I believe it is is because I am working with a team of corporations that are trying to solve that problem in the pursuit of the America Shield Initiative. I have seen what they have to offer, and I have been able to make my own assessment as to what that would provide for the Border Patrol specifically in terms of being able to do their job.

Senator COBURN. So it is your testimony before us today that that technology has been perfected, maybe not available, but is perfected?

Mr. REED. I am sure the technology gets better and better every day and there is probably something else that somebody would want on down the road, but this is just simply a matter of detecting a target, assessing the threat, tracking and responding to it. That is it. So if you give the Government, i.e., give the Border Patrol that capability, the Border Patrol will be much more capable today than they have ever been.

Senator COBURN. Mr. Chairman, I think it is interesting to note that when I asked that same question of Mr. Evans, his response was opposite of that, that technology was not available today. I think that is part of our problem, it is not just about resources, it is about whether or not we are going to apply the technology that is out there today and do it in a sequential fashion.

That is all the questions I have. I want to thank each of you for testifying. I know it is not necessarily fun to come here and do it, and then also wait on us on votes. So I appreciate you coming, and thank you for your testimony.

Chairman CORNYN. I too would like to thank all of you for being here and hanging in there with us. You can tell by the participation of the Subcommittees how important we think this subject is and how much we value your testimony, what you have to offer, your expertise. So we hope you will allow us to continue to stay in communication with you.

We also will, of course, leave the record open until 5:00 p.m. next Tuesday on May the 24th for members to submit any additional documents into the record or to ask questions in writing of any of the witnesses.

I know, Senator Kyl, you agree with me that this has been a very productive panel, and we look forward to working with these witnesses more as we go forward.

Chairman KYL. Indeed it has, and in fact, I would just like to close by indicating there are so many other details that I really would like to get into that will help us to formulate our approach to this, and all of you have been very, very helpful, and I hope we can call on you in the future. And as you see us come out with ideas, feel free to comment to us about them. We really appreciate your being here today very much. Thank you.

Chairman CORNYN. This hearing is adjourned.

[Whereupon, at 4:46 p.m., the Joint Subcommittee was adjourned.]

[Submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

U.S. Senate Judiciary Subcommittee on Immigration, Border Security and Citizenship
U.S. Senator John Cornyn (R-TX), Chairman

"The Need for Comprehensive Immigration Reform: Strengthening Our National Security"

Tuesday, May 17, 2005, 2:30 p.m., Dirksen Senate Office Building Room 226

OPENING STATEMENT OF U.S. SENATOR JOHN CORNYN

This joint hearing of the Senate Subcommittee on Immigration, Border Security and Citizenship and the Subcommittee on Terrorism, Technology and Homeland Security shall come to order.

I want to thank Chairman Specter for scheduling today's hearing.

This hearing is the first in a series of hearings to examine the need for comprehensive reform of our immigration system.

I want to thank Senator Kyl for his hard work and for his leadership. As we announced a few weeks ago, he and I are working together to identify and develop solutions to the critical problems in our immigration system. I also want to thank the ranking member of this subcommittee, Senator Kennedy, as well as Senator Feinstein, the ranking member of the Terrorism subcommittee, and their respective staffs for working with my office to make this hearing possible. Any effort to reform and to strengthen enforcement of our immigration system, to be successful in the Senate, must be bipartisan, and I look forward to working with them both.

Our nation's immigration and border security system is badly broken. It leaves our borders unprotected, threatens our national security, and makes a mockery of the rule of law. The system has suffered from years of neglect, and in a post-9/11 world, we cannot tolerate this situation any longer. National security demands a comprehensive solution to our immigration system – and that means *both* stronger enforcement and reasonable reform of our immigration laws. We must solve this problem – and solve it now.

For far too long, the debate over immigration has divided Americans of good will into one of two camps – those who are angry and frustrated by our failure to enforce the rule of law, and those who are angry and frustrated that our immigration laws do not reflect reality.

But both camps are right. This is not an either/or proposition. We need stronger enforcement *and* reasonable reform of our immigration laws.

First, we must recognize that, in the past, we simply have not devoted the funds, resources, and manpower to enforce our immigration laws and protect our borders. That must change – and will change. No discussion of comprehensive immigration reform is possible without a clear commitment to, and a substantial and dramatic escalation of, our efforts to enforce the law.

That is why these two sub-committees have embarked on a series of hearings over the past two months, devoted exclusively to the topic of strengthening enforcement throughout our nation's immigration system – at the border, between the ports of entry, and within the interior of our nation. These hearings have shown that the men and women who operate our immigration system work hard and do their best, and we appreciate their dedication. But our border inspection and security system at the ports of entry is full of holes. Our deployment of manpower and use of technology to secure the border between the ports of entry is inadequate. And our deportation process is over-litigated and under-equipped.

So we need stronger enforcement. But enforcement alone will not get the job done. Nor will our immigration system be fixed merely by throwing money at the problem. Our laws must be reformed as well as enforced.

Any reform proposal must serve *both* our national security *and* our national economy. It must be both capable of securing our country and compatible with growing our economy. Our current broken system provides badly needed sources of labor, but through illegal channels – posing a substantial and unacceptable risk to our national security. Yet simply closing our borders would secure our nation only by weakening our economy. Any comprehensive solution must address both concerns.

Our hearing today will examine the national security justifications for immigration reform. Of the over 10 million people currently in our country without legal status, and of the hundreds of thousands who enter every year undetected, some fraction of the population may harbor evil impulses towards our country. Yet it is a practical impossibility to separate the well-meaning from the ill-intentioned. We must focus our scarce resources on the highest risks. Law enforcement and border security officials should focus their greatest energies on those who wish to do us harm – not those who wish only to help themselves and their families through work. We cannot have a population of more than 10 million within which terrorists and their supporters can easily hide. And we cannot have that population afraid to cooperate with our law enforcement and anti-terrorism efforts.

Next week, the Senate will examine the economic justifications for immigration reform. Our economy would badly suffer if we removed millions of workers from our national workforce – just as it would suffer if we eliminated entire stocks of natural resources from our national inventory. Our economy would be strengthened if all workers could simply come out of the shadows, register, pay taxes, and participate fully in our economy.

President Bush has taken the lead and articulated a vision for the comprehensive reform of our nation's immigration laws – in the interests of our nation, our national security, our national economy, and the rule of law. I am heartened that in recent months we have seen a growing recognition and consensus, across the political spectrum, that a comprehensive immigration solution is long overdue.

Along these lines, Senators McCain and Kennedy have introduced an immigration reform measure. I also understand that Senator Hagel will be introducing his comprehensive proposal in the near future as well. And Senator Kyl and I recently announced on the Senate floor that we

will introduce comprehensive legislation which will strengthen enforcement, control our borders and reform our nation's immigration laws.

I look forward to the critical role that this subcommittee will play in the coming Congressional debate on these various proposals and, as Chairman of this sub-committee, I will work to bring the disparate voices together to craft a comprehensive solution. This is a complex problem, and no one has a monopoly on good ideas.

I want to reiterate that solving our immigration and border security problems should not be an either-or proposition. We are a nation of laws *and* a nation of immigrants. We need an immigration system that serves our national security *and* our national economy, as well as our national commitment to the rule of law. We must strengthen enforcement of law, but we must also enact laws that are capable of strong enforcement.

And with that, I will turn the floor over to Senator Kyl, and then to Senator Kennedy and Senator Feinstein, for any introductory remarks that they each may have.

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Statement of U.S. Senator Russ Feingold

At the Senate Judiciary Joint Subcommittee Hearing
On "The Need for Comprehensive Immigration Reform:
Strengthening Our National Security"

May 17, 2005

I want to thank the chairmen of these two subcommittees for holding a joint hearing on the critically important topic of comprehensive immigration reform.

I strongly support efforts to curb illegal immigration and to prevent terrorists from entering our country to do harm. But as we work to protect our nation from future terrorist attacks, I have been, and will continue to be, vigilant to ensure that our federal government strikes the proper balance between securing our borders on the one hand, and respecting the need for foreign workers, family members, students, businesspeople, visitors, refugees and others who wish to come to our nation legally, on the other.

Today, millions of undocumented workers live in and contribute to our communities and economy, in Wisconsin and across the country. But while they work hard and contribute in many ways, these immigrants live in fear, each and every day, of deportation and sometimes even fear of exploitation by unscrupulous employers. For our nation's security and to be true to our nation's values of fairness and justice, we should bring these workers out of the shadows. We will all be better off if we create a realistic immigration system that recognizes our country's need for these workers, that allows them to come into the United States legally, and that ensures our government knows who is entering the country.

We need to reform the nation's immigration laws to provide a new temporary worker program and to reunite families, as well as to create an earned legalization program for undocumented workers already in the country. Our laws should reflect the fact that American businesses need access to foreign workers for jobs they cannot fill with American workers. We must also recognize that foreign workers who have paid their dues should be treated fairly and deserve the protections of all working Americans. And

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if we permit these workers to enter the country legally, our border agents can focus their efforts on terrorists and others who pose a serious threat to this nation.

There is bipartisan agreement in the country that our immigration policies need to be updated. Just last week, a bipartisan bill was introduced by Senators Kennedy and McCain to improve border security and reform our immigration system. I commend them for their efforts, and I urge President Bush to work with Congress to enact comprehensive, sensible immigration reform.

Testimony

of

Asa Hutchinson

before the

Senate Judiciary Committee's

Subcommittee on

Immigration, Border Security and Citizenship

Tuesday, May 17, 2005

Mr. Chairman, Senator Kennedy members of the committee, I am pleased to testify today in regard to an issue of growing national concern, the security of our borders.

From the standpoint of someone who has worked on border issues over the last two decades, I cannot recall any time that our nation's attention has been so focused on border security. This is the result of the concerns raised by the 9-11 Commission Report, a continuous flow of media stories on our borders, and of course the devastating attack against our country on September 11, 2001, by terrorists who were able to exploit vulnerabilities in our border security.. In addition, the President's Temporary Worker Initiative, as well as various immigration reform proposals in Congress, has resulted in a national debate that is timely, passionate and necessary. The decisions made in the next year on this topic will impact our ability to secure our borders from those who wish us harm and from those who diminish the integrity of our rule of law.

You have to start with the proposition that in order to be effective in the war against terrorism our nation must be able to secure its borders. In fact, this proposition is the foundation for the Department of Homeland Security. President Bush also made this clear in his statement of principles for immigration reform. Congress has appropriated over 1 billion dollars in developing an effective entry-exit system for our foreign visitors in the last three years. This program is U.S.-VISIT, and it was one of my priority programs as Undersecretary of Transportation and Border Security. Upon completion it will be the most effective border system in our history guarding against illegal entry at our ports of entry. But that investment will be undermined if we do not develop complementary strategies for controlling the illegal flow across our vast land borers. To do so would be similar to posting a watchman on the gang plank of a ship but ignoring those coming over the side of the ship.

The necessary elements to tackle this enormous problem effectively are: (1) Increasing the funding of technology and security personnel along the border, (2) Making it more difficult for illegal aliens to get jobs in this country, and (3) providing a workable and practical means for migrant workers to meet the job needs in this country when those jobs cannot be filled otherwise. When, and only when, these security measures are established then it is appropriate to begin a conversation on providing a temporary legal status to the 8 million illegal workers already in this country. It is a significant security vulnerability to allow such a large population live and work anonymously in our communities, with no legal identities or other common connections to society. It is, in fact, a terrorist's dream. Moreover, any legal status should be a temporary work permit with a point of return to the alien's home country.

So we must examine our immigration policy from a comprehensive perspective. Without a credible strategic enforcement plan, along with the funding necessary to execute that plan, any temporary workforce initiative is bound to send the wrong message.

Let me elaborate on these elements:

It is impractical to discuss border security without putting an emphasis on emerging technologies. The Department of Homeland Security, for example, has developed the America Shield Initiative that integrates new technologies with increased numbers of border patrol agents. This initiative is the right strategy for border security, and it builds upon the integrated enforcement action taken in Arizona known as the Arizona Border Control Initiative. When we launched the Arizona Border Control Initiative, we combined over 200 new agents with a variety of new technologies -- from Unmanned Aerial Vehicles to sophisticated ground sensors. This initiative resulted in a **47% increase** in apprehensions of illegal aliens over a 1 year period.

The Department is continuing to build on this successful strategy. Presently the 2005 budget provides $64 million for ASI and the War Supplemental adds $51.8 million in new agents and technologies. This is a good start but in the long-term, it will have to be substantially increased. To make this effort successful in controlling our borders there needs to be accelerated funding of the technologies and specific funding of an oversight program office within DHS similar to the US VISIT program office that can oversee the taxpayer's investment. Congress has acted with a sense of urgency in funding additional border patrol agents but the technology tools for these agents are essential for accomplishing a long term, cost-effective strategy.

The effort at border security, however, must look beyond the borders. It does little good to apprehend illegal aliens if there is not sufficient detention space; and the detention costs will be excessive if there are not judges and attorneys to process the cases, and pressure needs to be applied to other nations to streamline the repatriation of the aliens. The opportunity for jobs in the United States is a great incentive to those who consider illegal entry. If the economic opportunity is combined with ineffective enforcement and removal then the magnate for illegal entry almost becomes too powerful to resist. A chief objective of any border control strategy must be to reduce the power of the magnate that draws illegal workers.

Any immigration reform proposal must include a greater investment in workplace enforcement. Employers must be able to verify the legal status of job applicants; they should report to the government the temporary workers they hire, and advise the government of any who leave employment. This system would allow a closer tracking of individuals in the system and will result in better enforcement of our immigration laws. There are a number of existing systems that could serve as a useful model for this new system including on line verification systems such as SEVIS, Student and Exchange Visitor Information System.

Another critical tool in border security is expanding the use of expedited removal in the circumstances where there are no issues of asylum or similar exceptional circumstances. The administration should be recognized for expanding the use of expedited removal in the Tucson and Laredo Sectors along the Southwest border but more needs to be done. Budgetary constraints have stalled the expansion to additional

problem areas and I am convinced that comprehensive use of expedited removal along with timely removal will work as a disincentive to discourage illegal migration..

Illegal entry will be greatly reduced when the following factors are in place:

1. The chance of apprehension is greater than two thirds. There are indications that we are approaching this goal in some parts of the border because of increased enforcement efforts.

2. If apprehended the removal to country of origin is speedy with little chance of release pending a court hearing.

3. If the alien avoids apprehension and removal then the chance of finding an employer that will accept your illegal status is unlikely.

4. There is a meaningful way to legally apply for temporary work authorization in the U.S. and to go back and forth between family and employment during the time of employment.

Although the focus of my testimony has been the increased need for effective immigration enforcement, I would add that the continued opportunity for immigrants in our nation is vital to our economic future and to the very essence of all that is American.

In Arkansas, I was fortunate as a member of Congress to watch the growth of the immigrant population in our state. They have added greatly to the culture, economic growth and values of my state. I was able to encourage the former INS to add an office in Fort Smith to better serve our immigrant population and also and an enforcement office to more quickly respond to the concerns of local law enforcement. It takes both and I am grateful for this Committee trying to achieve the right balance.

Thank you.

from the office of

Senator Edward M. Kennedy

of Massachusetts

FOR IMMEDIATE RELEASE
May 17, 2005

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SENATOR EDWARD M. KENNEDY ADDRESSES THE NEED FOR COMPREHENSIVE IMMIGRATION REFORM TO STRENGHTEN OUR BORDERS

Washington, DC. Today in a joint Immigration and Terrorism Subcommittee Hearing, Senator Edward M. Kennedy discussed the need for comprehensive reform to secure our borders and strengthen our national security. The bipartisan McCain-Kennedy bill, "Secure America and Orderly Immigration Act" was introduced on Thursday and is co-sponsored by Senators Brownback, Lieberman, Graham, Salazar and Representatives Kolbe, Flake and Gutierrez.

Senator Kennedy spoke about his common sense strategy that will modernize a broken immigration system to meet the challenges of the 21st Century. His bill will strengthen border protection and enforcement while reflecting our best values as a nation -- of fairness, equal opportunity, and respect for the law.

"In the last 10 years, the government has spent more than $20 billion to enforce our immigration laws. Yet, none of our efforts have been adequate," Senator Kennedy said. "Americans want and deserve realistic solutions. They don't want open borders, and they don't want closed borders. They want smart borders."

The McCain-Kennedy legislations directs the Secretary of Homeland Security to develop and implement a National Strategy for Border Security to coordinate the efforts of federal, state, local, and tribal authorities on border management and security. The Strategy will identify the areas most in need of enforcement and propose cost-effective ways to defend the border, including better ways of technology, improved intelligence-sharing and coordination. It also includes plans to combat human smuggling.

To further improve border enforcement, the bill improves the security of Mexico's southern border and assesses the needs of Central American governments in securing their borders. It provides a framework for better management, communication, coordination, and immigration control for all our governments, and encourages other governments to control alien smuggling and trafficking, prevent the use and manufacture of fraudulent travel documents, and share relevant information.

Below is Senator Kennedy's full statement in today's hearing, as prepared for delivery. Also below is description of all the provisions of the bill.

STATEMENT BY SENATOR EDWARD M. KENNEDY ON COMPREHENSIVE IMMIGRATION REFORM AND STRENGTHENING NATIONAL SECUITY

Mr. Chairman, thank you for calling this important hearing on the need for comprehensive immigration reform.

Current enforcement policies are not effective, but harsh immigration restrictions won't work either. We can't seal our borders to the millions of tourists, students, and business men and women who come to the United States each year, and we can't deport the millions of illegal workers here in the United States without crippling our economy.

In the last 10 years, the government has spent more than $20 billion to enforce our immigration laws. Yet, none of our efforts have been adequate. We've tripled the number of border patrol agents, improved surveillance technology, and installed other controls to strengthen border enforcement. Yet, illegal immigration continues. The proof is in the numbers. The number in the nation is now estimated at nearly 11 million, and it increases by almost 500,000 a year. Those already here are not leaving, and new immigrants keep coming in.

The solution is an immigration reform that is comprehensive. Enhancing enforcement or border security alone won't solve the problem. Without comprehensive reform, the status quo will continue and our immigration and border security system will remain dangerously flawed.

Last week, Senators McCain, Brownback, Lieberman, Graham, Salazar, and I introduced bipartisan legislation to modernize our broken immigration system to meet the challenges of the 21st century. Our bill will make our immigration policies more realistic and enforceable, restore legality as the prevailing norm, and make it easier for immigrants to cooperate with local authorities.

It will protect the labor rights of all workers, and create a level playing field for employers. It will strengthen our economy, restore control of our borders, and improve national security. The bill reflects the basic values of family unity, fundamental fairness, and opportunity that are at the heart of our heritage as a nation of immigrants. I look forward to working with Senator Cornyn and our colleagues on both sides of the aisle to enact it into law.

I firmly believe that we need to legalize the flow of people at our borders in order to strengthen our security and reduce threats from terrorists. Temporary worker

proposals that would require the worker to go home after a period of time won't do the job.

We know what will happen. Undocumented workers will not come out of the shadows and sign up for a temporary worker program. They've spent years in this country, working hard, paying taxes, and raising their children. They contribute significantly to the strength of our economy. Registering for employment now to be deported tomorrow is unfair. It won't work, it won't reduce the size of the illegal population, and it won't free up resources to target suspected terrorists and criminals.

We need an earned legalization program that will encourage undocumented workers to come forward and report to the authorities, enabling our government to properly screen and document them. Reducing the size of the undocumented population reduces the ability of terrorists to hide.

A genuine earned legalization program for undocumented workers, plus a revised temporary worker program with protections for both U.S. and foreign workers, a realistic path to citizenship for all deserving immigrants, a way to unite immigrant families, and strong border security provisions all make up critical components of comprehensive and effective immigration reform.

We know that these reforms are long overdue. The illegal workers here today are not leaving, and new ones continue to come in. A significant part of the workforce in many sectors of the economy is undocumented. Massive deportations are unrealistic as policy, impractical to carryout, and unacceptable to businesses that rely heavily on their labor. Americans want and deserve realistic solutions. They don't want open borders, and they don't want closed borders. They want smart borders.

We must replace the illegal flow with regulated, legal immigration. Detractors of this concept distort it as an amnesty proposal, but it is not an amnesty. Our goal is to bring the underground economy, above ground, and recognizing the reality of immigrants in our workplace.

I thank our witnesses at today's hearing, and I look forward to their insights on these important challenges.

SECURE AMERICA AND ORDERLY IMMIGRATION ACT
at a Glance
5/12/2005

Title I: Border Security

- Requires the development of various plans and reports evaluating information-sharing, international and federal-state-local coordination, technology, anti-smuggling, and other border security initiatives

- Establishes a Border Security Advisory Committee made up of various stakeholders in the border region to provide recommendations to the Department of Homeland Security regarding border enforcement
- Encourages the development of multilateral partnerships to establish a North American security perimeter and improve border security south of Mexico

Title II: State Criminal Alien Assistance

- Reauthorizes the State Criminal Alien Assistance Program that provides reimbursement to state and local governments for incarcerating undocumented aliens convicted of crimes
- Allows for funding to pay for additional criminal justice costs associated with undocumented immigrants charged or convicted of crimes

Title III: Essential Worker Visa Program

- Creates a new temporary visa to allow foreign workers to enter and fill available jobs that require few or no skills (the H-5A visa)
- Applicants must show that they have a job waiting in the U.S., pay a fee of $500 in addition to application fees, and clear all security, medical, and other checks
- Requires updating of America's Job Bank to make sure job opportunities are seen first by American workers
- Initial cap on H-5A visas is set at 400,000, but the annual limit will be gradually adjusted up or down based on demand in subsequent years
- Visa is valid for three years, and can be renewed one time for a total of 6 years; at the end of the visa period the worker either has to return home or be in the pipeline for a green card
- Visa is portable, but if the worker loses his job he has to find another one within 60 days or return home
- Ensures that employers hiring temporary workers abide by Federal, state and local labor, employment and tax laws
- Prohibits the hiring of temporary workers as independent contractors
- Protects temporary workers from abuse by foreign labor contractors or employers.
- Gives temporary workers and U.S. workers remedies for violations of their rights
- An employer can sponsor the H-5A visa holder for a green card, or after accumulating four years of work in H-5A status, the worker can apply to adjust status on his/her own
- Sets up a task force to evaluate the H-5A program and recommend improvements

Title IV: Enforcement

- Creates a new electronic work authorization system that will ultimately replace the paper-based, fraud-prone I-9 system, to be phased in gradually
- When operational, the system will be applied universally and cannot be used to discriminate against job applicants
- Individuals will have the right to review and correct their own records; data privacy protections are in place
- Immigration-related documents and US-VISIT will be upgraded to require biometric verification of travelers

- The Department of Labor will have new authority to conduct random audits of employers and ensure compliance with labor laws; also includes new worker protections and enhanced fines for illegal employment practices

TITLE V: Promoting Circular Migration Patterns

- Requires foreign countries to enter into migration agreements with the U.S. that help control the flow of their citizens to jobs in the U.S., with emphasis on encouraging the re-integration of citizens returning home
- Encourages the U.S. government to partner with Mexico to promote economic opportunity back home and reduce the pressure to immigrate to the U.S.
- Encourages the U.S. government to partner with Mexico on health care access so that the U.S. is not unfairly impacted with the costs of administering health care to Mexican nationals

Title VI: Family Unity and Backlog Reduction

- Immediate relatives of U.S. citizens are not counted against the 480,000 annual cap on family-sponsored green cards, thereby providing additional visas to the family preference categories
- The current per-country limit on green cards is raised slightly to clear up backlogs
- Income requirements for sponsoring a family member for a green card are changed from 125% of the federal poverty guidelines to 100%, and other obstacles are removed to ensure fairness
- The employment-based categories are revised to provide additional visas for employers who need to hire permanent workers, and the annual cap is raised from 140,000 to 290,000
- Immigrant visas lost due to processing delays are recaptured for future allotments

Title VII: Adjustment of Status for H-5B Non-Immigrants

- Undocumented immigrants in the U.S. on date of introduction can register for a temporary visa (H-5B), valid for six years
- Applicants have to show work history, clean criminal record, and that they are not a security problem to be eligible for a temporary visa
- They will receive work and travel authorization
- Their spouses and children are also eligible
- In order to qualify for permanent status, workers will have to meet a future work requirement, clear additional security/background checks, pay substantial fines and application fees ($2000 or more per adult) as well as back taxes, and meet English/civics requirements

Title VIII: Protection Against Immigration Fraud

- Attempts to eliminate the exploitation of immigrants by *notarios* or other unlicensed immigration law practitioners by imposing new legal requirements on such individuals
- Allows immigrants defrauded by unauthorized legal representatives to file actions against their perpetrators

Title IX: Civics Integration

- Creates a public-private foundation under the USCIS Office of Citizenship to support programs that promote citizenship and to fund civics and English language instruction for immigrants
- Provides for new money to fund civic and English language instruction for immigrants

Title X: Promoting Access to Health Care

- Extends the authorization of federal reimbursements for hospitals that provide emergency care to undocumented immigrants; includes H-5A and H-5B workers in the program

Title XI: Miscellaneous

- Distributes the fees and fines paid by H-5A and H-5B workers among the DHS and DOS for processing, DHS for border security efforts, DOL for enforcement of labor laws, SSA for development of the employment eligibility confirmation system, hospitals to pay for uncompensated health care, and the USCIS Office of Citizenship for civic integration and English classes
- Requires the dissemination of information related to the provisions of this legislation
- Includes anti-discrimination protections that cover all workers, including H-5A and H-5B visa holders

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Statement of Senator Patrick Leahy
Joint Subcommittee Hearing on "The Need for Comprehensive Immigration Reform: Strengthening Our National Security"
May 17, 2005

Today's Committee hearing title aptly frames the issue of immigration reform – there is widespread agreement that our immigration laws need to be reformed and that doing so will strengthen our security. Of course, there is ample disagreement about *how* our laws should be reformed, and we can and should have extensive debate on this important issue in the current Congress.

Most experts estimate that there are more than 10 million people currently in the United States illegally. The vast majority of those people have come here to pursue economic opportunities that will make for a better life for themselves and their families. Many of them perform jobs that are crucial to our economy, and if every undocumented alien suddenly left the country tomorrow our economic security would be harmed severely.

I do not think that most people believe that more than a tiny handful of the undocumented aliens in the United States wish us harm. Nonetheless, we would all agree that we must be vigilant in our efforts to isolate and apprehend those individuals, and we should be alert to the possibility that our vast borders provide an inviting opportunity for terrorists to enter illegally.

Perhaps the best way to isolate those who wish us harm would be to offer undocumented aliens an incentive to come forward, announce their presence, and have their backgrounds checked. A successful program could eliminate the need to search for a few needles in a haystack of 10 million people or more. This is of course a tricky issue. Because these people are here illegally, they will not come forward if deportation is the sure consequence. On the other hand, we cannot overlook the fact that many foreign nationals have waited patiently for the opportunity to emigrate legally. We have an obligation to treat those people fairly and not give an unfair advantage to those who came here without authorization.

Senators McCain and Kennedy have introduced comprehensive reform legislation that seeks to protect our security by providing incentives to the illegal population to come forward and legalize their status on a temporary basis, while also speeding the process for those outside the country who played by all the rules in their efforts to come to the United States. This bipartisan legislation should form the foundation for our discussions in this committee.

It is past time to address the issue of illegal immigration – our system is broken and no quick fix is going to work. Even if we were willing to accept the potentially disastrous impact on our economy, it is simply impossible to imagine our government tracking down and removing upwards of 10 million people. We have to make some difficult choices, and the longer we wait to make them, the harder it will be to solve this problem. That is why we should be focusing on immigration reform, and other critical issues that affect the American people, rather than an endless and unproductive debate on a small handful of extremist judicial nominees.

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Statement of Senator John McCain
Before the Judiciary Committee Subcommittees on
Immigration, Border Security and Citizenship
and
Terrorism, Technology, and Homeland Security
on
"The Need for Comprehensive Immigration Reform: Strengthening our National Security"
May 17, 2005

Thank you, Senator Cornyn and Senator Kyl. I greatly appreciate the opportunity to join you to discuss one of the most important issues facing our nation: the need for comprehensive immigration reform. As the members of your Subcommittees know far too well, immigration is a national security issue for all Americans and a matter of life and death for many living along our borders.

For a number of years now, we have invested large sums of money along the border, deploying more federal agents and technology and, although those efforts must be expanded and improved, they will never be enough to truly solve this problem. It must be addressed comprehensively. As long as people are desperate to provide for their families and there are U.S. employers in need of low-skilled workers, people will find a way in.

As this Committee has heard a number of times, a dangerous state of lawlessness along the Southwestern border has become increasingly volatile. The federal government's inability to stem the illegal traffic flowing across the border has shifted substantial financial and social burdens to residents of the border region. Recent actions by Minutemen along the Arizona border provided the nation with an image of the frustration felt by many Americans. Too many citizens residing near the border now believe they have been all but abandoned by the federal government.

Like the Subcommittee Chairmen who represent border states suffering from the immediate and downstream problems associated with illegal immigration, I know first hand the urgent need for reform. Immigration has long been a polarizing and politically divisive issue in this country. However, the difficulty this issue poses should not allow for an excuse to delay reform. Immigration reform must come from the center and it must be addressed in a reasoned and bi-partisan manner.

I would like to mention some startling statistics that demonstrate the critical need for immigration reform. I think the numbers speak for themselves:

- Over 300 people died last year trying to cross the border – about 200 of those deaths occurred in Arizona's desert.
- Last year 1.1 million illegal immigrants were caught by the Border Patrol in 2004.

51% of those were caught in Arizona.

- The Border Patrol is currently apprehending over 1,000 undocumented immigrants a day in Arizona.
- According to the FBI, an increasing number of these individuals are OTMs (Other Than Mexicans) from "countries of interest."

Enforcement, both at the border and in the interior, must be a top priority for our country, but without comprehensive immigration reform, those efforts will never fully succeed. With a 6,000 mile land border, the task of "sealing" the U.S. border is herculean – unrealistic and impossible. During the 1990s, the federal government increased the number of Border Patrol agents from 3,600 to approximately 10,000 agents. Instead of decreasing, illegal immigration increased by an estimated 5.5 million migrants. While border infrastructure and technology improvements must continue, these efforts alone are not enough.

Some will argue that the rule of law must prevail – that existing laws need to be enforced, not changed. While I agree that enforcement is essential, enforcement of out-dated and inadequate laws simply will not work. Systematically rounding up and estimated 11 million workers from family farms, local restaurants, and construction sites around the country, if it were even remotely possible, would ground the U.S. economy to a halt.

Comprehensive immigration reform must address this reality. It is in our national interest to provide a process to bring those individuals out of the shadows and to provide adequate legal channels for future temporary workers to fill jobs that American workers won't. The current system has failed because it does not adequately address the labor needs of this country or the reality that as long as there are jobs in the United States that represent better opportunities than those in other countries, people will migrate to this country, and they will risk their lives to do so.

Comprehensive immigration reform must recognize the very real labor shortage faced by many sectors of our nation's economy, and must provide a workable, market-based system without arbitrary numerical limitations. Such a system must be flexible enough to address market fluctuations and changes in the American economy, meeting the demands of the U.S. labor market. If jobs go unfilled in the U.S., and no American worker chooses to fill them, those jobs should be opened to legal foreign workers. This system should be electronic, accessible, and easy to navigate for both employers and potential workers.

Along with such opportunity, temporary workers would need to do their part. They must be required to undergo thorough security and criminal background checks and carry a secure form of identification.

Let me be clear, amnesty will not work. We tried amnesty in 1986 and it did not work. Rather than reducing the flow of undocumented immigrants into this country, it only *encouraged* illegal migration.

However, it is simply not practical to expect that these 11 million people will come forward only to be forced to leave later. As I see it, the only way to address this problem is to incentivize the undocumented to come forward, pay fines for breaking the law, undergo security and criminal background checks, pay back taxes, learn English, and prove themselves to be law-abiding individuals. After sufficient time, such individuals should be able to adjust their status.

Last year, President Bush helped to bring the immigration debate to the forefront. His principles for comprehensive immigration reform represent a very meaningful starting point from which we should work to build a national consensus. President Bush proposed a market-based system which would pair willing workers with willing employers. His leadership and support will be essential to bringing this problem to a resolution and rallying a consensus in a much divided Congress.

Last week Senator Kennedy and I introduced the **Secure America and Orderly Immigration Act**, S.1033, to provide a comprehensive solution to fix our nation's broken immigration laws – largely based upon the principals outlined by President Bush least year. I also understand that both Chairmen are also working to draft immigration reform legislation. Although we may approach this problem with differing philosophies and solutions, our recognition of the failures of the current system moves the debate forward. I look forward to testifying at future Committee hearings to discuss specific legislative proposals.

We will never be able to please the political extremists on either side of this issue. However, in the interest of national security, we must pursue a carefully balanced compromise. I hope we can work together to put rhetoric aside and enact meaningful comprehensive immigration reform.

Thank you, Mr. Chairmen.

May 13, 2005

The Honorable John Cornyn
Chairman, Subcommittee on Immigration,
Border Security and Citizenship
Committee on the Judiciary
United States Senate
517 Hart Office Building
Washington, D.C. 20510

Dear Mr. Chairman,

As former Commissioners of the Immigration and Naturalization Service, we are writing to commend and encourage you in your effort to bring about fundamental reform of our immigration laws, policies, and practices. We represent a bipartisan view that fundamental change is required if we are to better protect the American people from the threat of terrorism from abroad while preserving our legacy as a nation that continues to draw much of its strength and vitality from the energy and dreams of immigrants.

The tragic events of September 11, 2001 focused public attention on something that we knew already—our system of entry into this country has not been adequate to protect against those who would do us harm, or from those who are determined to come here, notwithstanding our laws. Since September 11 we have made some, but not enough, progress in addressing this challenge. The popularly espoused, but ultimately ineffective, remedy is to build more fences and detention facilities, deploy more Border Patrol agents, effectively close our borders to those escaping oppression, and spend inordinate amounts of money to solve a problem that cannot be addressed solely through enforcement measures. Nor do we believe that a guestworker program, standing alone, will solve the problem of illegal entry. We oppose any kind of general amnesty that is not linked inextricably with holistic reform of our immigration system.

We believe that the failure, for many decades, of Congress, and both Republican and Democratic Administrations, to provide adequate support to the former INS, and particularly the Congress' propensity to micromanage that agency, contributed significantly to the problems that have been identified in our immigration system. It does no good to dwell on that history except to learn from it. What we do going forward is what will count. Providing adequate resources and common sense laws and policies, as well as the leadership and sustained attention necessary for their implementation, will allow for the repair of our immigration system.

We have such a large population of illegal immigrants among us because our quota and preference systems do not reflect the realities of our supply and demand economy. Nor do they reflect the reality of having neighbors, particularly on our southern border, with populations that dream of a better life in America. Our laws have not always created unrealistic barriers to entry by our neighbors to the south, as they do

now. We must re-create reasonable paths to legal entry if we are to stop the rapidly growing tide of migrants attempting to enter without legal admission. A comprehensive strategy, including overhaul of our basic immigration laws, to combat illegal immigration and to secure our borders against terrorists and criminals must be implemented and fully funded by the Congress as soon as possible.

Most undocumented immigrants attempt to enter this country to build a better life for themselves and their families. Unfortunately, we also know that the routes used by those with benign intent also are exploited by those engaged in criminal and terrorist enterprises. Any comprehensive reform should fashion a clear, compassionate, fair, and reasonable opportunity for those desiring to enter our country to better their lives, or to find freedom from oppression. Conversely, it also should provide the tools to detect, deter and eliminate threats from those who would do us harm. We know personally, and beyond a shadow of a doubt, that the men and women on the front lines of securing our borders are passionate in their dedication to protecting our country from all threats. Given the necessary tools, they can meet and exceed the expectations of the American people.

Mr. Chairman, the historical intersection of September 11, and the obvious powerful draw of our free society and strong economy to those seeking a better life, provides an unprecedented opportunity for the Congress and the Administration to take bold actions to protect our national security and to enhance our country's legacy. It is not only an opportunity, it is an imperative.

Thanks to the efforts of the President and legislators such as you, the deficiencies in our immigration policies, practices and procedures are part of the national agenda and consciousness. The findings of the September 11 Commission, and many studies produced by the GAO, various Inspectors General, and independent commissions, support the need for fundamental reform of our immigration system. We urge you to seize the moment. You have our support in this endeavor.

Sincerely,

Gene McNary Doris Meissner James W. Ziglar, Sr

Statement of

Mark K. Reed
Border Management Strategies, LLC
Tucson, AZ

Regarding:
The Need for Comprehensive Immigration Reform and
Strengthening Our National Security

Before:
The Senate Judiciary Committee

Subcommittee on Immigration, Border Security, and Citizenship
and the
Subcommittee on Terrorism, Technology and Homeland Security

May 17, 2005
Washington DC

Senator Cornyn and Senator Kyl and distinguished Members of the Subcommittees, my name is Mark Reed.

Thank you for inviting me to share some of my experiences as a former senior executive immigration officer and now, as the CEO and President of an immigration and border security consulting firm in Tucson Arizona.

For purposes of grounding my remarks, you should be aware that my firm is participating through BAE Systems on the Raytheon Team pursuing the American Shield Initiative and that we have been engaged by Tyson Foods for approximately two years to help them turn suspect hiring practices into a model for the nation. I am also a member of Board of Directors for the Border Trade Alliance where I serve as the Vice-Chairman of their Immigration Committee.

This statement is built around anecdotal information for the purpose of illustrating that a comprehensive immigration law enforcement strategy must be part of our national security strategy. I will also suggest that our borders can be secured with the resources and organizational structure that is in place today. I am not talking about using the military. I am talking about implementing capability and initiatives readily available today into a comprehensive and cohesive plan. Continued efforts to concentrate on a piece of the solution while ignoring other essential components of the problem will not work; is inherently dishonest; and in today's world, dangerous.

Today our border policies, exacerbated by inadequate funding and conflicted policy have created great cover for anyone to unlawfully enter this country, remain here, and do us harm. The border is porous. Alien smuggling organizations and networks are well established and prospering. Millions of people are in this country illegally with false identities. Identity fraud has exploded with the proliferation of document vendors in virtually every community. It is easy to enter this country unlawfully, gain a false identity and move openly among us without threat of detection. It took us a long time to dig this hole.

Almost twenty years ago President Bush declared the War on Drugs. I was present at a high level strategy meeting between representatives of Federal Law Enforcement, DOD, and the State Department regarding the urgency of sealing the Mexican border to stop drug smuggling. When DOD stated that they were capable of detecting and interdicting any intrusion, but could not distinguish between groups of migrants from drug smugglers until interdiction, the dialogue became difficult. When DOD refused to entertain the idea that they should only detain drug smugglers upon interdiction, the meeting was abruptly terminated. The safety valve that illegal immigration provided toward the stability of Mexico seemed to be a more compelling national security priority than drug smuggling.

I bring this meeting to your attention not only because it points larger bi-national issues with our neighbors in Mexico and Canada, but it also contains two other important messages. First, DOD stated that they could provide the technology and resources to detect any intrusion along the Mexican border. Almost two decades later, the Border Patrol still cannot "see" most of the border. Detection is a fundamental enabler of any border security strategy. Acquisition of that ability cannot languish any longer. Second, and even more disconcerting, I ask you to remember that this "Call to Arms" to secure our borders occurred shortly after the completion of sweeping legislation to legalize millions of undocumented workers in our country coupled with a "strong" enforcement package to stop further illegal immigration. Semantics aside, I suggest that this part of history could be valuable to discussions about temporary workers today.

Almost ten years ago, the Border Patrol launched a highly visible terrain denial operation called "Gatekeeper" to stop an invasion of thousands of illegal border crossers from Mexico every night between the ports of entry just south of San Diego. As the Border Patrol became more effective, the ports of entry became holes in the fence. The ports of entry came under siege as the point of least resistance. You may remember news coverage a few years ago of people running across the border through the port of entry into oncoming traffic on the I-5 Freeway near San Diego. As the government aggressively engaged to stop those incursions, more pressure was placed back on the Border Patrol. Eventually, a coordinated balanced operational plan was developed and their efforts prevailed.

Gatekeeper was part of a larger border strategy that was designed to gain control of one part of the border at a time, adjust resources to maintain control, and then expand to another segment of the border. It was the government's original intent to "march" from one end of the Mexican border to the other. The strategy was to be backed up by collateral efforts to attack smuggling corridors used by alien smugglers and an aggressive worksite enforcement effort to attack the "magnet". It seemed to be a very measured balanced approach to border enforcement - and still does. Wherever the tactics were deployed, entries were deterred. But, it turned out to be a piecemeal effort. Resources to attack the corridors never materialized and worksite enforcement resources actually dwindled. The "marching strategy" was abandoned. The Border Strategy became focused on quality of life issues for border communities and border safety without resources to address the gaps and flanks within and around existing operations. As a result, most border crossers were forced into the clutches of alien smugglers because easy and safe passage through border communities had become difficult.

Criminal Aliens. Around that same time, the government also launched a pilot program to better address locating and identifying deportable aliens incarcerated in jails throughout the country. Resources were minimal and the task to monitor foreign nationals booked into jails was overwhelming. To maximize capabilities of existing personnel, efforts were made to establish pilot operation centers with electronic and teleconferencing connectivity 24/7 with all jails within geographic areas for the purpose of identifying removable aliens and initiating proceedings at the earliest point in time. The project was very successful, but became embroiled in County, State, and Federal agency discussions regarding the financial responsibility for incarceration. The program faded away.

Detention. About 6 years ago, shortages of detention space became a crisis. A quick analysis of process strongly indicated there was no need for additional space. Instead, there needed to be a simple reconfiguration of process and logistics to eliminate egregious continuations of administrative hearings. Detaining people at locations that enabled immediate access to attorneys, judges, consulates, and transportation would have allowed the process function at a much higher level with less detention space. What became known as the "Hub Site Program" never saw the light of day. When it became apparent that the government could actually start removing large numbers of criminal aliens to countries not prepared to absorb them, further consideration of that proposal were stopped.

Worksite Enforcement. A few years ago, the government launched a worksite enforcement initiative called Vanguard. Vanguard came about through intense congressional concern over a growing influx of undocumented people into the states of Nebraska and Iowa and the effect that that was having on their schools, hospitals and rising crime rates. It was agreed that the one of the primary factors for the influx of the undocumented were jobs available at meatpacking plants.

To attack that aspect of the problem, a new approach to worksite enforcement was designed that was intended to target that industry in Nebraska first, then Iowa, and then expand nation-wide within a year. If successful, another industry would be targeted and then another and another. It was tremendously successful. Within the first 30 days over 3500 hundred undocumented workers fled the meatpacking industry in Nebraska. Vanguard demonstrated an efficient and effective capability to bar unauthorized workers from employment in any given sector. When that capability was realized, it was stopped as well. In reality, the implementation of Vanguard was not good government. It is clear that meatpacking plants have become a critical component of the economy for many communities. Depriving these plants the ability to remain competitive was a major threat to the livelihood of everyone in the community. The enforcement tactics developed for Vanguard are still used today, but carefully contained to very specific employers identified as being part of our nation's critical infrastructure. Our food chain apparently did not make the cut as critical infrastructure.

Today, as I mentioned earlier, my firm has been engaged by employers on the other end of the spear. I have learned a lot. I still believe that a job is the primary magnet that draws the great majority of illegal immigration to this country. But my suspicion and disposition about the intent of many employers has changed. Without speaking to motives, it is clear to me that industry leadership view conflicted immigration policy as a real vulnerability and threat to the bottom line. Most large corporations are looking for ways to work with the government to build more effective compliance and are not scheming about ways to beat the system.

The SAVE program, to include Basic Pilot for employers, should be part of that solution. But, today it is not ready to play such a critical role. Part of the problem is the lack of funding that has been allocated to maintain the system. Another part of the problem is data integrity issues. But probably the biggest issue is that it does not work. I was suspicious of the program when I was still in the government because employers that hired unauthorized workers were using Basic Pilot. There is a very clear trend that the government has all but ignored with Basic Pilot. As Basic Pilot expands into segments of industry that have traditionally been populated by large numbers of immigrant labor, the profile of the immigrant worker changes from immigrant to United States Citizen, which seems to effectively beat the system. There are too many "citizens" out there gaining employment with a recently issued ID and Social Security card who have little or no residence, education, or employment history in this country. You should see the look on employers' faces when we suggest that some of their workers may be unauthorized even though they have a documented response from the government through Basic Pilot stating that "employment is authorized".

In summary, all the pieces that you need to meet the challenges of national security as they relate to border security are out there. But you have to grab them all and build them into an integrated approach to protect this nation. Please do it now.

Thank you for your interest in this compelling national security issue.

Statement of

Margaret D. Stock
American Immigration Lawyers Association
Associate Professor of Law, Department of Law,
US Military Academy, West Point, NY

On

The Need for Comprehensive Immigration Reform: Strengthening Our National Security

Before the

Senate Judiciary Committee

Subcommittee on Immigration, Border Security, and Citizenship

and the

Subcommittee on Terrorism, Technology and Homeland Security

May 17, 2005

Washington, D.C.

Senator Cornyn and Senator Kyl and distinguished Members of the Subcommittees, my name is Margaret Stock. I am honored to be here in two capacities: on behalf of the American Immigration Lawyers Association (AILA) and as an expert in the field of constitutional, military, national security, and comparative law. I am an Associate Professor in the Department of Law at the United States Military Academy at West Point, New York. The statements, opinions, and views expressed herein are my own, and do not represent the views of the United States Military Academy, the Department of the Army, or the Department of Defense.

AILA is the immigration bar association with more than 8,900 members who practice immigration law. Founded in 1946, the association is a nonpartisan, nonprofit organization and is an affiliated organization of the American Bar Association (ABA). AILA members represent tens of thousands of American families who have applied for permanent residence for their spouses, children, and other close relatives to lawfully enter and reside in the United States; U.S. businesses, universities, colleges, and industries that sponsor highly skilled foreign professionals seeking to enter the United States on a temporary basis or, having proved the unavailability of U.S. workers when required, on a permanent basis; and healthcare workers, asylum seekers, often on a pro bono basis, as well as athletes, entertainers, exchange visitors, artists, and foreign students. AILA members have assisted in contributing ideas for increased port of entry inspection efficiencies and continue to work through their national liaison activities with federal agencies engaged in the administration and enforcement of our immigration laws to identify ways to improve adjudicative processes and procedures.

As I mentioned previously, I am an Associate Professor at the United States Military Academy at West Point, New York, where I teach National Security Law, Constitutional Law, Military Law, Comparative Law, and International Law to future military officers. As an attorney and a graduate of the Harvard Law School, I have practiced in the area of immigration law for more than ten years, and have written and spoken extensively on the issue of immigration and national security. I am also a lieutenant colonel in the Military Police Corps, United States Army Reserve. Over the years, I have represented hundreds of businesses, immigrants, and citizens seeking to navigate the difficult maze of U.S. immigration law.

I am honored to be appearing before you this afternoon to discuss comprehensive immigration reform and its relationship to our national security. I congratulate Senators Cornyn and Kyl for holding this hearing, along with the earlier hearings that focused on the following important areas: the need for better training for border inspectors; ensuring document security and integrity; finding and closing gaps in the visa system; interior enforcement, including detention and deportation; border security between authorized ports of entry; and the use of technology to protect the borders.

These hearings are long overdue and much needed. Today's hearing on "The Need for Comprehensive Immigration Reform: Strengthening Our National Security" could not be more important or timely. We must acknowledge the connection between comprehensive immigration reform and our national security and the fact that enhancing

our national security depends on comprehensively reforming our immigration laws. Until now, many have focused on border and interior enforcement, but we simply cannot effectively reform our immigration laws or enhance our security with an "immigration enforcement-only" approach. Neither can we ensure our security by focusing solely on a guestworker program. A guest-worker approach by itself inadequately addresses the systemic problems with our immigration laws and an enforcement-only approach is doomed to failure because it is unworkable and far too expensive for too little in return. My testimony will emphasize the kind of immigration reform necessary to fix our system and enhance our security

Before I focus on the issues of comprehensive immigration reform and its relationship to national security, however, I want to reiterate two points I made during an earlier appearance before the Immigration, Border Security, and Citizenship Subcommittee:

- **We best enhance our security by enhancing our intelligence capacity**. National security is most effectively enhanced by improving the mechanisms for identifying actual terrorists, not by implementing harsher immigration laws or blindly treating all foreigners as potential terrorists. Policies and practices that fail to properly distinguish between terrorists and legitimate foreign travelers are ineffective security tools that waste limited resources, damage the U.S. economy, alienate those groups whose cooperation the U.S. government needs to prevent terrorism, and foster a false sense of security by promoting the illusion that we are reducing the threat of terrorism. Reforming our immigration laws will help us to identify those who seek to enter our country or are already residing here.

- **We need to make our borders our last line of defense.** The physical borders of the United States should be our last line of defense because terrorism does not spring up at our borders. In fact, we need to re-conceptualize how we think about our "borders," because in our modern world they really start at our consulates abroad.

The Necessary Components of Comprehensive Immigration Reform

Reforming our immigration system is a key component, along with enhancing our intelligence capacity and reframing our understanding of the border, to making our nation safer. While many emphasize that such reform must be "comprehensive," there may not be consensus on what constitutes comprehensive reform. I believe the following core components constitute needed "comprehensive" reform.

- Comprehensive Immigration Reform Must Address the Situation of People Living and Working Here by Allowing Them to Earn the Opportunity to Obtain Permanent Status: Estimates are that there are more than 10 million illegal or out-of-status immigrants here in the United States. The vast majority are relatives of U.S. citizens and lawful residents or workers holding jobs that Americans do not want. People already living here and who are no threat to our security but who work hard, pay taxes, and are learning English should be allowed the opportunity to earn their permanent residence. These people are not the problem; rather, they are a symptom of

the problem: our broken immigration system. Reforming the system to include these people is necessary and realistic: necessary because it would allow our government to know who resides in our country; realistic because this nation will not deport the millions of illegal immigrants living and working here. Those who suggest that these people do not want to be part of America because they have not fixed their immigration status do not understand that no current law exists to allow them to do so. Also, the public understands that we will not deport all of these undocumented individuals, and is calling out for a constructive solution. Allowing people to earn the opportunity to adjust their status is that solution.

- Immigration Reform Must Include a "Break-the-Mold" Worker Program: Current immigration laws do not meet the needs of our economy or workers. A "break-the-mold" program would provide visas, family unity, full labor rights, the ability to change jobs, and a path to permanent residence over time for those who would not displace U.S. workers. It also would diminish illegal immigration significantly by creating a legal avenue for people to enter the U.S. and return, as many wish, to their countries, communities, and families.

- Immigration Reform Must Reunify Families: Legal permanent residents often wait up to 20 years to reunite with their spouses and children. Such long separations make no sense in our pro-family nation, reflect poorly on us, and ultimately encourage illegal immigration. It simply makes no sense for this country to have an immigration policy in which legal immigration from Mexico ends in June or July of every year because of per-country limits.

Guest-Worker and Work and Return Programs

The three initiatives outlined above together would go a long way toward addressing the current systemic dysfunctions in our immigration system. Furthermore, all three are necessary and would help create a system of laws that is, in fact, enforceable. Neither a guest-worker program alone (that includes the possibility of an adjustment to a permanent status), nor a variation in the form of a pure "work and return program," would constitute the kind of reform necessary to bring about an orderly, controlled and fair immigration system—a system that would, in turn, help us to enhance our security.

The U.S. already has two kinds of guest worker programs, one official and the other unofficial. The official program is the H-2B program, which is difficult to use and has an annual cap of 66,000. This cap was reached after only three months into the current fiscal year, necessitating an emergency short term fix that recently became law. The unofficial program is more commonly known as illegal immigration. In the past, many illegal migrants would work for short periods of time in the United States and return home again. Because of the enhanced efforts to secure our borders, illegal migrants are more likely than ever to remain in the United States. Thus, the illegal "guest-worker program" is now more of a "work and *not*-return" program because immigrants feel they must remain in the U.S. or risk losing any chance of ever returning to the United States.

It is important that we legalize this flow by creating a new temporary worker program that would give workers the opportunity to work where they are needed, and employers experiencing shortages the legal workforce they need. Such a program would provide legal visas, family unity, full labor rights, labor mobility and, if the worker so desires (and assuming he or she would not displace a U.S. worker), permanent residence and citizenship over time. Such a program also would diminish significantly future illegal immigration by providing people with a legal way to enter the U.S. and return, as many wish, to their home countries, communities, and families. This kind of program would allow our government to know who is in the United States, and better focus resources on those who mean to do us harm. This program would also reduce the power of the criminal gangs and networks that are currently profiting off our failure to legalize migrant flows. A properly designed guest-worker program would re-create the circularity that has characterized the foreign worker flow for decades. Workers would come to the U.S. and return to their home countries when they finished their work assignments (unless they seek permanent residency here and would not displace a U.S. worker). Our reinforced borders have dramatically changed that traditional migratory pattern as undocumented workers are now deciding to stay in the U.S. rather than risk death by crossing the borders through increasingly hostile terrain.

A viable temporary worker program would help us secure our borders by allowing our government to focus on the people who mean to do us harm, not on those who are filling our labor market needs and trying to reunite with their family members. Such a program must include the option to adjust to permanent status if no American worker would be displaced. Because a pure "work and return" program would not include that option, employers would be prohibited from retaining a valued worker on a more permanent basis.

Neither a simple guest-worker program that includes an option to adjust, nor a work and return program, in and of themselves, can be considered comprehensive reform, as both programs ignore the significant problem in the current system—namely, those who are residing now in the U.S. but who do not have lawful status, and families who must endure lengthy separations. It is unrealistic to assume that significant numbers of undocumented people will step forward and register for a program which, at the end of the day, would force them to leave their jobs and families. A program that includes no real possibility for people to earn permanent resident status will not generate full participation. People will simply chose not to participate, or take the risk and go back into the shadows if the laws do not change before the time period of the program expires. It also is unrealistic to assume that families will endure decades of separation. To enhance our security, we need immigration laws that acknowledge the needs of American business, reunite families, and allow us to find out who is living in the United States. Both a guest-worker program alone (with the possibility of adjustment) and a work and return-type approach simply fail on these counts.

Immigration reform that legalizes hard-working people already here and that creates a new worker program will help the U.S. government focus resources on enhancing

security, not on detaining hard-working people who are filling vacancies in the U.S. labor market or seeking to reunite with their close family members. In addition, an earned adjustment program will encourage people to come out of the shadows and be scrutinized by our government, and a new worker visa program will create a legal flow through which people can enter and leave the U.S. The legality that results from these initiatives will contribute to our national security by helping to focus resources on those who mean to do us harm. Such legality also will facilitate enforcement efforts. Enforcing a dysfunctional system only has led to more dysfunction, not better enforcement.

Likely Voters Support Comprehensive, Bipartisan Reform

A recent survey of "likely" voters[1] reinforces support for the kind of comprehensive reform set forth in the recently introduced Secure America and Orderly Immigration Act (S. 1033/H.R. 2330)—one that is bipartisan and that would combine toughness with fairness, provide a path to citizenship with reasonable requirements, implement an effective guest worker program, and reunite families. This survey tells us that voters want a system that rewards immigrants who come here to work hard, pay taxes, and learn English. In fact, 75% of likely voters favor a proposal that has the following components:

- Registers undocumented workers as temporary guest workers,
- Provides temporary work visas for seasonal and temporary workers,
- Provides newly registered workers with a multi-year process for legal residency and eventual citizenship,
- Provides newly registered workers with no preferential treatment for citizenship,
- Provides tougher penalties for workers or employers who violate these laws, and
- Puts a priority on reuniting close family members.

In response to other questions in this survey, more than three-in-four likely voters agree on these statements framing the immigration reform debate:

- "The immigration system is broken and needs to be fixed."
- "If an immigrant has been in this country working, paying taxes, and learning English, there should be a way for them to become a citizen."
- "Fixing our immigration system to make it safe, legal, and orderly will make us more secure from terrorists."

Additionally, the survey also found that 73% agreed that "deporting all 10 million undocumented immigrants currently in the United States is unrealistic."

Congressional Efforts

The recently introduced Secure America and Orderly Immigration Act (S.1033 /H.R. 2330) is a bipartisan comprehensive reform bill that would take a giant step toward

[1] A National Survey of Voter Attitudes on Immigration, The Tarrance Group and Lake, Snell, Perry, Mermin, March 2005.

reforming our laws and enhancing our national security. I applaud Senators McCain and Kennedy and Representatives Kolbe, Flake, and Gutierrez for their work on this important effort. This bill reflects the following important facts: the federal government must step up to the plate and reform our current immigration laws; this nation cannot have border security unless we undertake such reform; fixing our immigration system to make it safe, legal and orderly will make us more secure; we need a controlled immigration system that would replace an illegal flow with a legal immigration flow; and, finally, we need an immigration system that is consistent with the basic American values of fairness and equal treatment under the law.

Members of Congress, along with the Bush Administration, must work together to fix our broken immigration system. Given the complexity of the law in this area, the broken status quo, and the fact that whatever reforms are enacted will impact on our security, proposals that are introduced in the future must reflect the kind of reform I have discussed above. Such reform is necessary, especially in a post-September 11 world in which enhanced security is central, and yet we must understand that our security depends on maintaining our economic power by allowing the continued flow of people and goods across our borders. Our current system is characterized by families being separated for long periods of time and U.S. employers unable to bring in needed workers. People are forced to live an underground existence, hiding from the government for fear of being separated from their families and jobs. The current enforcement system fails to prevent illegal immigration, and precious resources that should be spent on enhancing our security are wasted on stopping hard-working people from filling job vacancies in the U.S. Our immigration system must be reformed so that legality is the norm, and immigration is legal, safe, orderly, and reflective of the needs of American families, businesses, and national security.

Comprehensive reform is essential to both enhance our security and make our enforcement efforts more effective. Addressing the situation of people here would encourage these people to come out of the shadows and be scrutinized by our government. This initiative is even more important now that the REAL ID Act has become law, because REAL ID mandates that illegal migrants can no longer be part of our state and local driver's license law enforcement databases, and they will thus be even harder to find than ever before.

Security and Enforcement Focus

Our current immigration system is an obstacle to enhancing our security because it is dysfunctional and unenforceable. We currently allocate massive resources in a futile attempt to enforce a system that simply does not work. Continuing to enforce our currently dysfunctional system will only lead to more dysfunction and a waste of resources. On the other hand, comprehensively reforming our laws will shrink the haystack of people so that we separate those who are here to be with their families or work from those who aim to do us harm. Our enforcement efforts would be far more effective if our laws made sense. In considering reforms to those laws, what are the questions we need to ask and answer?

1. **What security measures are most effective in preventing attacks?** In the hours following the deadly terrorist attacks of September 11, 2001, the United States government took the extraordinary step of sealing U.S. borders to traffic and trade by grounding all aircraft flying into or out of the country and imposing a lock-down on the networks of transportation and commerce that are the lifeblood of our economy and society. Given the uncertainty over what might happen next, these emergency procedures were a necessary and appropriate short-term response to the attacks. In the long run, however, a siege mentality and the construction of a fortress America are ineffective and unrealistic responses to the dangers we face.

   If we are to succeed in reducing our vulnerability to further terrorist attacks, we must focus our attention and resources on the gaps in intelligence gathering and information sharing that allowed nineteen terrorists to enter the United States. National security is most effectively enhanced by improving the mechanisms for identifying actual terrorists, not by implementing harsher immigration laws or blindly treating all foreigners as potential terrorists. Policies and practices that fail to properly distinguish between terrorists and legitimate foreign travelers take us down the wrong path as ineffective security tools that do more harm than good. Comprehensively reforming our immigration laws is an essential tool to help us distinguish between those who mean to do us harm and those who are here to fill our labor market needs and reunite with close family members.

   As Asa Hutchinson rightly stated when he appeared before this committee last year, "Illegal entry across our borders makes more difficult the urgent task of securing the homeland. Our homeland will be more secure when we can better account for those who enter our country, instead of the current situation in which millions of people are unknown."

   If we are going to take seriously our responsibility to defend the homeland, we must make hard choices and do what is needed to know who is here, who is entering, and why. In pursuit of answers to these questions, DHS has developed several programs, some in conjunction with other departments. Some of these initiatives include:

   - The National Targeting Center, which provides around the clock tactical targeting and analytical research support for anti-terrorism efforts. The NTC staff consists of CBP officers and field analysis specialists who are experts in identifying high-risks targets from raw intelligence, trade, travel, and law enforcement data;

   - The Human Smuggling and Trafficking Center, a joint DHS, DOS, and DOJ venture that analyzes and disseminates information to enforcement, intelligent and other entities that take action against threats of human smuggling, trafficking and against criminal support for terrorist travel; and

   - Threat Analysis Section (TAS), an ICE-run program that identifies and addresses potential vulnerabilities to the United States. The TAS establishes associations

between the individuals or groups linked to potential national security threats, develops profiles based upon relevant investigative and intelligence reporting, and produces actionable leads for field office.

I hope that one of the main questions the Senate asks as a result of this hearing is how comprehensive immigration reform would help these anti-terrorism programs be more effective? The answer is clear. By bringing the people that are here out of the shadows, and creating an orderly mechanism for identifying and documenting the low-risk individuals who travel to this country to work, and by curbing policies such as separating families that entice otherwise low-risk individuals to cross the border illegally, a comprehensive immigration reform plan would help these initiatives better focus on those who have come here to do us harm. Quite simply, only an immigration reform program that deals with the current problem in its entirety would have such a positive effect. A program that fails to identify the reasons for illegal-crossings or one that inadequately deals with the undocumented population would not help these initiatives protect our citizens.

The recent enactment of the REAL ID Act makes these efforts more important than ever. REAL ID forces states to stop putting data provided by illegal immigrants into the largest law enforcement database in the country—the driver's license database. When only American citizens and legal aliens are in this database, border security and interior enforcement will be harder than ever to accomplish. Comprehensive immigration reform is thus also necessary to counteract the security vulnerability the REAL ID Act has created.

2. **What is the role of our "borders" in enhancing security? What and where are our borders?** When people refer to our "borders," they usually mean the geographic boundaries that separate the United States from Canada and Mexico. Yet to enhance our security we must make our physical borders the last line of defense against terrorism, not the first. We must pursue initiatives including multilateral strategies with Canada and Mexico and increase the use of pre-clearance and pre-inspection programs that provide U.S. officials the opportunity to check passengers for admission before those passengers board a flight to the United States (while including safeguards to allow asylum protection for those who truly deserve it).

   Our government has been touting the United States Visitor and Immigrant Status Indicator Technology program (US-VISIT) as a tool that will help to make us safer by identifying terrorists. While US-VISIT can help to identify people, its utility as a security tool is unclear. This new automated entry/exit system is being implemented at our nation's ports of entry and is designed to collect and share information on foreign nationals traveling to the United States (including travel details and biometric identifiers), confirm identity, measure security risks, and assess the legitimacy of travel in an effort to determine who is welcome and who is not. The program is also intended to help speed traffic flow. The overall plan for the implementation of US-VISIT calls for the collection of personal data, photos, and fingerprints at U.S. consular offices abroad and at our ports of entry, as well as broad database and

information sharing. The system also is intended to track changes in foreign nationals' immigration status and make updates and adjustments accordingly. Ultimately, the Department of Homeland Security (DHS) plans to make available information captured through US-VISIT at all ports of entry and throughout the entire immigration enforcement system.

Will US-VISIT help to enhance our security? While the jury is still out, serious questions need to be addressed as to US-VISIT's achievable mission. A June 1998 Senate Judiciary Committee Report (Senate Judiciary Report 105-197 on S. 1360, the Border Improvement and Immigration Act of 1998, June 1, 1998) makes the following apt comment:

> *The Committee is keenly aware that implementing an automated entry/exit control system* ***has absolutely nothing to do*** *with countering drug trafficking, and halting the entry of terrorists into the United States, or with any other illegal activity near the borders. An automated entry/exit control system will at best provide information only on those who have overstayed their visas. Even if a vast database of millions of visa overstayers could be developed, this database will in no way provide information as to which individuals might be engaging in other unlawful activity. It will accordingly provide* ***no assistance in identifying terrorists, drug traffickers, or other criminals.*** (emphasis added)

With regard to tracking visa overstayers, the report further states:

> *Even if a list of names and passport numbers of visa overstayers would be available, there would be no information as to where the individuals could be located. Even if there was information at the time of entry as to where an alien was expecting to go in the United States, it cannot be expected that 6 or more months later the alien would be at the same location. Particularly, if an alien were intending to overstay, it is likely that the alien would have provided only a temporary or false location as to where the alien was intending to go.*

Notwithstanding these concerns, to enhance our security and allow the flow of people and goods to support our economy, US-VISIT must be adequately funded. The U.S. government needs to appropriate billions of dollars to purchase real estate, upgrade facilities, develop an infrastructure and technological capabilities, and hire inspectors to manage the program. This cost includes neither the millions of dollars needed to fully address current staffing shortages of inspectors at ports of entry nor the money now needed to supply all ports with basic technology such as document readers. With a preliminary estimated price tag of billions of dollars, recent appropriations have been grossly insufficient to fund the program's expansion. Without sufficient funding to support a fully operational program, delays could result in the entry and exits at our nation's ports, particularly land ports. Such delays would undermine the entire effort to maintain an efficient border, and efficiency is a vital component of increased security.

In addition, as the number of enrollees into US-VISIT increases, it is incumbent upon the Department of Homeland Security to ensure that information input into the database is

accurate and reliable. This includes integrating into US-VISIT the databases from the three immigration bureaus. Unless these databases are integrated with US-VISIT, visitors who have applied for visa extensions might be detained for overstaying their visas, when in reality, they had maintained proper visa status. Having complete and correct information will make the difference between having a workable secure system or a discredited inefficient one.

While US-VISIT is still in its infancy, database studies and reports should be completed on the feasibility of every aspect of the program. The Administration and Congress should use that information to develop a comprehensive plan that takes into account adequate funding levels, resources and obtainable deadlines.

3. **How do we balance the flow of people and goods with securing our borders?** The United States has over 300 ports of entry through which authorized travelers and commercial goods enter the country. In 2001, over 510 million people (63% of whom were foreign nationals) and over $1.35 trillion in imports entered the U.S. through these ports. If the inspection of each of these entrants took even a little longer than it currently does, the flow of goods and people (particularly at land ports) would come to a grinding halt. The Department of Homeland Security thus has the challenge of streamlining current border procedures and evaluating future initiatives so that the border crossing processes are both more secure and efficient. Otherwise, security measures that do not take into account travel and trade could cripple our nation's economic viability. As we think about our security needs, we must remember that we need a strong economy to pay for our national security.

   Our economic prosperity depends on the free movement of people and goods. We must be careful not to create an environment conducive to terrorists and criminals at our ports-of-entry as we seek to secure our borders in a way that does not trump cross-border facilitation. We need to adopt a "virtual border" approach that recognizes the importance of the continued flow of people and goods, and underscores that effective border management needs to take place away from our physical borders. I would only add that comprehensively reforming our immigration laws is the other component that is necessary for our borders to work and work well because such reform helps identify the people who present themselves at our ports-of-entry, thereby making legality the norm.

4. **What is the role of immigration in the post-September 11 world?** Because all nineteen of the September 11th terrorists were foreigners, some observers have been quick to blame our vulnerability to terrorist attacks on lax immigration laws. While such a response was predictable, it was misguided and has inevitably resulted in overreaction. Calls to impose a "moratorium" on immigration, halt the issuance of student visas, close the borders with Canada and Mexico, eliminate the Diversity Lottery visa program, draft harsher immigration laws, and similar types of proposals reflect a serious misunderstanding of the relationship between immigration policy and national security.

Although the attacks of September 11th revealed serious management and resource deficiencies in the bureaucracies that administer our borders, U.S. immigration laws in and of themselves did not increase our vulnerability to attack. In fact, U.S. immigration laws already are among the toughest in the world and have long provided the federal government with broad powers to prevent anti-American terrorists from entering or residing in the United States. A careful analysis of the September 11th attacks reveals that deficiencies in U.S. intelligence collection and information sharing, not immigration laws, prevented the terrorists' plans from being discovered.

5. **The Use of Technology:** Technology is not a magic bullet. The best way to identify terrorists is an approach that capitalizes on human intelligence, using technology only to enhance our ability to use human intelligence. Our greatest successes in preventing terrorist attacks have come not from technology identifying terrorists, but from human intelligence we have gathered about terrorists. Over-reliance on technological solutions to the detriment of creating a strong human intelligence program is a recipe for disaster.

6. **Proper Use of Databases:** In creating and relying on ever-larger computer databases, we must be aware of the limitations of such databases and the potential security vulnerabilities that we are creating. In some cases, we are planning to rely heavily on the use of databases for purposes for which they were not intended. For example, the use of the NCIC database to track civil immigration violations presents difficulties in that immigration status is a moving target. A person can be legal one day, illegal the next; or legal one day, illegal the next, and legal again the following day. Using the NCIC database to track such violations is likely to make that database much less useful to law enforcement officials because there will be more inaccurate data in the system than there is already. The REAL ID Act has ruled out the possibility of using state DMV databases as a source of information about the illegal or undocumented migrant population in the United States. Thus, REAL ID will make it harder to enforce immigration laws, not easier. Comprehensive immigration reform that allows illegal immigrants to come out of the shadows and be identified will enhance our security and improve government data on who is present in the United States.

7. **Is it important to move ahead on comprehensive immigration reform to secure our borders**? Yes, absolutely. Our nation has no choice but to move ahead on comprehensive immigration reform if we are to secure our borders, enhance our security, and create a safe, legal, orderly and controlled immigration system.

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