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THE SOUTHERN BORDER IN CRISIS: RESOURCES AND STRATEGIES TO IMPROVE 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

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THE SOUTHERN BORDER IN CRISIS: RESOURCES AND STRATEGIES TO IMPROVE NATIONAL SECURITY

TUESDAY, JUNE 7, 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 jointly, pursuant to notice, at 2:30 p.m., in Room SD–226, Dirksen Senate Office Building, Hon. Jon Kyl (Chairman of the Subcommittee on Terrorism, Technology and Homeland Security) presiding.

Present: Senators Kyl, Cornyn, and Sessions.

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

Chairman KYL. Good afternoon, ladies and gentlemen. This hearing of the Judiciary Committee Subcommittee on—well, we have two Subcommittees, one on Terrorism, Technology and Homeland Security, which I chair, and on Immigration, Border Security and Citizenship, which Senator Cornyn chairs.

As has been our practice of late, we are going to be conducting this hearing jointly with both of these Subcommittees since the subject matter of the hearing, "The Southern Border in Crisis: Resources and Strategies to Improve National Security," clearly falls within the ambit of both of our concerns. This hearing continues, as I say, a series of hearings that we both conducted on this general subject.

We are going to be talking today specifically about the widespread concern that most of us share about persons who threaten our national security and their ability to take advantage of the chaotic condition at our border with Mexico and enter the United States and stay in the United States illegally.

The hearing will also examine what resources the Department of Homeland Security may need to bring the Southern border under control so that terrorists and criminals are prevented from coming here and staying here.

Let me say at the outset that Senator Feinstein, who is the Ranking Member of the Terrorism Subcommittee, which I chair, is on the Intelligence Committee. They have a hearing that absolutely conflicted with this today. We tried everything to work out a way

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to resolve it. If at all possible, she will be here. But if she cannot be here, of course, her statement will be put in the record as well as any questions that she may have for the witnesses.

As many of you know who have followed my Subcommittee over the years—I should say our Subcommittee, because Senator Feinstein and I have worked in a really great bipartisan way on these issues and others, as well, and the fact that she is not here today, I know is not an expression of a lack of interest on her part but simply the fact that, as frequently is the case, we have to be in about four places all at the same time. So I know that she will continue to work with me and I am sure that Senator Kennedy will do the same with Senator Cornyn.

I am very pleased that we are going to combine two panels into one here today, with the permission of the panelists, and I think that works very well because of who is here. Our distinguished witnesses include David Aguilar, who has been before us, I think at least twice, offering valuable insights about the border. He is the Chief of the U.S. Border Patrol and we appreciate, Chief, your being with us here again today.

Wesley J. Lee, who is the Acting Director of the Office of Detention and Removal for the U.S. Immigration and Customs Enforcement, all of these acronyms, we will probably just say ICE from here on in, but that is, of course, within the Department of Homeland Security and we are very appreciative of your being here. Congratulations on your assignment to that post, Mr. Lee.

And Stewart Verdery, who is going to join this panel instead of being on a panel all by himself, served with distinction as the Assistant Secretary for Policy and Planning at DHS's Border and Transportation Security, is now a principal at Mehlman Vogel Castagnetti, Inc., and will be able to also offer insights into our subject today, and we appreciate your written statement, Mr. Verdery. It is a very thoughtful piece and I appreciate that.

Just to make a couple of preliminary comments here that help to set the stage for what we are talking about today, those of us who represent States along the border have long been concerned not only with the other aspects of the people who cross our border illegally, but also the potential for terrorists to smuggle themselves across the border. And this is a concern that has been shared by senior Department officials.

For example, on February 16 of this year, the former DHS Deputy Secretary Loy advised the Senate Intelligence Committee that, and I am quoting now, "that our recent information from ongoing investigations, detentions, and emerging threat streams strongly suggests that al Qaeda has considered using the Southwest border to infiltrate the United States. Several al Qaeda leaders believe operatives can pay their way into the country through Mexico and also believe that illegal entry is more advantageous than legal entry for operational security reasons."

Secretary of State Condoleezza Rice later commented that, and I am quoting again, "we have, from time to time, had reports about al Qaeda trying to use our Southern border. It is no secret that al Qaeda will try to get into this country by any means they possibly can. That is how they managed to do it before, and they will do everything they can to cross the borders."

I would note also that it is no longer possible for us to say that we are not aware of any situation in which a terrorist has crossed the Southern border because we now are.

And despite the concerns that have been expressed here and by many of us over the past several months, our government, we contend, has still not committed the resources necessary to secure the border, a fundamental task, of course, or responsibility of the United States Government. And as a result, our Southern border is in chaos, thousands of illegal aliens crossing into the United States each week.

Many of these aliens, incidentally, are not from Mexico, but they come from countries all over the world, usually flying into Mexico and then sneaking across the border on front. Many don't have authentic identity documents. Many don't carry documents at all. We don't even know who many of them are. We do not know whether they intend to simply find work or whether they plan to engage in acts of terror in the United States, or are here to commit crimes in our society.

This hearing is devoted in part to exploring what strategies DHS has in place to deal with these third-country nationals who are referred to as the "other than Mexicans," or OTMs. It is my understanding that the Department continues to engage in the practice of releasing OTMs into the United States because it lacks the detention facilities to hold them, and we need to know precisely what resources DHS needs to bring an end to that practice, which we believe is a great hazard to our national security and public safety.

And we want to know what, if anything, the Mexican government is doing to assist the United States in deterring the flow of these OTMs across our common border. I think many Americans have been surprised by the negative quality of recent statements of highly placed Mexican officials who appear at least to me to disparage our concerns about unchecked immigration at the border.

These and many other issues, including the expedited removal procedures and other resource issues, we will be getting into in this hearing, and as I say, we have an excellent panel to provide information to us in that regard.

Before we turn to the panel, let me turn to my Co-Chairman, Senator Cornyn from Texas.

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

Chairman CORNYN. Thank you, Senator Kyl, and I appreciate the opportunity to Co-Chair another one of these important series of hearings that we have been having leading to what I know we both hope will be comprehensive immigration reform in this Congress.

Senator Kyl and I have been working, along with our colleagues, the Ranking Member of the Immigration Subcommittee, Senator Kennedy, the Ranking Member of the Terrorism Subcommittee, Senator Feinstein, to try to develop information that we think will be useful, indeed essential, for members of the Senate to have, of this Congress to have, as we try to attack these problems.

We are, I think it is fair to say, conducting a top-to-bottom, or maybe I should say bottom-to-top, review of the nation's border security and enforcement efforts. That review has provided important

information that we have already used to draft at least Title I of the comprehensive immigration reform bill that Senator Kyl and I will coauthor and will drop in its entirety later this month. I look forward to continuing the work in this area as we move forward toward crafting that comprehensive immigration reform bill.

As we have said before and we will say again, our immigration and border security system is badly broken and has suffered from years of neglect. This leaves our borders unprotected, threatens our national security, and makes a mockery of the rule of law. We cannot continue to ignore our border security or at least fail to provide the resources necessary to let our hard-working men and women who are given that assignment and who have graciously accepted it to be successful, and it is going to take additional resources and additional commitment by the Congress to give them what they need in order to do the job we have asked them to do.

Today's hearing will illustrate the national security threat posed by aliens from countries other than Mexico, as Senator Kyl has said. In my State, which has 65 percent of our nation's common border with Mexico, we have seen a tremendous increase in the number of arrests of other-than-Mexican aliens. In fact, a majority of this year's OTM apprehensions have occurred in the Texas sectors. This year, the Border Patrol has apprehended approximately 96,000 OTMs. Ninety percent of these arrests have occurred at the Southwest border. And of the Southwest border arrests, more than 76,000 have occurred in the Texas sectors.

To make matters worse, as we have noted, because of lack of adequate detention facilities, the vast majority of these OTMs are simply given a notice to appear and released into our country. Obviously, the majority of them melt into the landscape and are never heard from again. Whether it is in Texas, Arizona, or California, or anywhere else in this country, this state of affairs is unacceptable and needs to change.

Senator Kyl has already mentioned the testimony of Admiral Loy, the Deputy Homeland Security Secretary, suggesting that the same routes available for economic immigrants are available for those who might want to come here to do us harm. And I will say from my travels on this most recent recess to the Balkans Peninsula, we have heard from our intelligence and national security personnel stationed in other parts of the world that they are very much concerned about the ability of aliens to transit, for example, in Turkey, to get into places like Greece, to then transit into the European Union, and then to smuggle themselves, with the aid of professional smugglers, into Mexico and thence into the United States. This is not just some pipe dream. This is not some fantasy. This is reality. That potential is there, and, in fact, those routes of travel are available for people who do want to do us harm.

And it is also important, in conclusion, to remember that the people who are engaged in human smuggling do so for money, the same reason that people who smuggle illegal drugs, who traffick in persons, and who would provide a means of ingress into this country for terrorists, they do so for money. They are, in essence, criminals who are looking to make a profit.

So the same way that people who want to come here to work come into the country illegally, that avenue is available for people

who want to come here to do us harm. We simply need to get control of the situation, and that is the goal of our hearings and of the legislation that Senator Kyl and I will file later on this month.

But I want to say thanks again to the panel, again to Chief Aguilar for his repeat performance here, and Mr. Lee and Mr. Verdery. Thank you for being here with us.

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

Chairman KYL. Thank you, Senator Cornyn.

Let me again thank our administration witnesses for agreeing to have a former administration witness on the panel with you. I know you all have worked together and I appreciate that spirit of cooperation.

What I would like to do is ask each of you to speak, and if you could limit your comments to about five minutes, we would appreciate that, and then we will simply begin our round of questioning. Your full statements, of course, will be put in the record.

For the audience, let me again introduce our panelists. David Aguilar is Chief of the Border Patrol, U.S. Customs and Border Protection of the Department of Homeland Security. And, by the way, I might say, the previous Tucson Sector Chief in the State of Arizona.

Wesley Lee is Acting Director of Detention and Removal Operations for the U.S. Immigration and Customs Enforcement, Department of Homeland Security.

And C. Stewart Verdery, Jr., is a principal of Mehlman Vogel Castagnetti, Inc., and an Adjunct Fellow of the Center for Strategic and International Studies here in Washington, D.C., and former administration official, as I indicated earlier.

With that, Chief Aguilar, the floor is yours.

STATEMENT OF DAVID AGUILAR, CHIEF, OFFICE OF BORDER PATROL, CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, D.C.

Mr. AGUILAR. Thank you, Senator. Good afternoon, Chairman Kyl and Chairman Cornyn. I am extremely pleased to be here this afternoon to give testimony on Border Patrol operations and the detention of other-than-Mexican aliens encountered, detained, and arrested by the United States Border Patrol along our nation's borders.

As you know, the Border Patrol operates exclusively between the ports of entry, but very importantly, also conducts what we refer to as in-depth enforcement operations in direct support of border enforcement as it relates to securing our nation's borders. Our agents conduct operations along our nation's borders with Mexico and Canada, over 6,000 miles of our Northern and Southern border, coastal, and Florida Gulf Coast area also, along with Puerto Rico.

Our recently revised Border Patrol National Strategy has six basic core elements to it: Securing the right combination of personnel, technology, and infrastructure; improving mobility and rapid response to quickly counter organized crime organization shifts gives us the ability to act on tactical intelligence; deploying defense in depth that makes full use of interior checkpoints and en-

forcement operations designed to deny illegal migration; partnerships—partnerships with other law enforcement organizations to achieve our goals and objectives; improving border awareness and intelligence; and strengthening the headquarters command structure.

The revised national strategy provides the road map for our organization's continued expansion efforts in bringing operational control to our nation's borders. Our centralized chain of command provides for a strategic application of existing and, very importantly, future resources and provides for the focused and long-term planning and evolution of our strategy based on risk management, threats, and vulnerabilities.

Our ability to focus efforts and resources magnifies the effect of our resources. An excellent example of this is the Arizona Border Control Initiative Phase 2, currently underway in our Tucson and Yuma sectors in Arizona. Because of our strategy, we were able to quickly identify and mobilize the resources that were necessary that we felt to apply as quickly as possible in Arizona. Two hundred Border Patrol agents were temporarily detailed and are still there. We literally doubled—more than doubled—the aerial platforms that were necessary to conduct patrol operations in Arizona to 54. We are currently in the process of permanently reassigning over 155 Border Patrol agents into Tucson and the Yuma sectors. Today as we speak, during the ABCI time period, arrests are down by 21 percent. Air support, the number of flights are up by 250 percent—or 200 percent, excuse me, as compared to the year before. Flight hours are up by over 250 percent.

Defense in depth, transportation hub, something that is absolutely critical to our operations, Sky Harbor Airport in Phoenix. We currently have control of that very important transportation hub to the smuggling organizations. As we speak, Senator, we apprehend less than one, on an average, less than one illegal alien at Phoenix Sky Harbor on a daily basis. This is not the picture that used to be there over two years ago. We have expanded our operations into some of the Greyhound Bus stations, Amtrak, and things of this nature, where our arrests in the last two months have only numbered 1,000. Now, we will continue to work on that to get those numbers down.

The Tohono O'odom Nation, arrests are down during the ABCI time period by nine percent. Although this number is not significant, the following number is. Sixty-one percent is the number that calls from other agencies are down within the Tohono O'odom Nation, to include the police department of the Tohono O'odom Nation, based on illegal immigration calls. That is significant.

Nationwide, fiscal year to date, the Border Patrol as a whole has apprehended over 800,000 illegal aliens, interdicted 886,000 pounds of marijuana, and over 7,400 pounds of cocaine. We have also arrested over 98,000 other than Mexicans. And as of September of last year, we have arrested 94,748 criminal aliens, identifying them by using the IDENT/IAFIS fully integrated system that has worked out tremendously for us.

Our objective is nothing less than a border under operational control. We recognize that the challenges that lie ahead and the need for a comprehensive enforcement approach needs to be com-

prehensive. Our national strategy gives us a means by which to achieve our ambitious goal.

CBP Border Patrol is tasked with a very complex, sensitive, and difficult job. The challenge is great, but it is also one that our men and women face every day with vigilance, dedication, and integrity as we work to strengthen national security, protect our nation's borders, and our citizens.

The Border Patrol Customs and Border Protection and its men and women are committed to assertively and aggressively expand our operations and continue to build on our nation's security. I thank the Subcommittee and look forward to any questions that you might have of me.

Chairman KYL. Thank you, Chief Aguilar. You were right on the button here.

Could I just ask you to reiterate three numbers, and give them to me from the time period. I am not sure I caught the time period. You said that there had been 98,000 OTMs apprehended since some—

Mr. AGUILAR. This is the fiscal year, sir.

Chairman KYL. During this fiscal year?

Mr. AGUILAR. Yes, sir.

Chairman KYL. Okay. And over 800,000 illegal immigrants total apprehended this fiscal year?

Mr. AGUILAR. Yes, sir, 812,000.

Chairman KYL. Eight-hundred-and-twelve thousand. And the number of wanted criminals?

Mr. AGUILAR. Ninety-four-thousand-seven-hundred-and-forty-eight.

Chairman KYL. Ninety-four-thousand-seven-hundred-and-forty-eight. Those are all this fiscal year?

Mr. AGUILAR. Yes, sir.

Chairman KYL. Great.

Mr. AGUILAR. That last figure is from September 1 of 2004, so it is a month—

Chairman KYL. So it is a month more.

Mr. AGUILAR. Yes.

Chairman KYL. Okay, great. Thank you very much.

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

Chairman KYL. Mr. Lee?

STATEMENT OF WESLEY LEE, ACTING DIRECTOR OF DETENTION AND REMOVAL OPERATIONS, IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, D.C.

Mr. LEE. Good afternoon, Chairman Kyl, Chairman Cornyn, and distinguished members of the Committee. My name is Wesley Lee and I am Acting Director of the Office of Detention and Removal Operations for the Immigration and Customs Enforcement. It is my privilege to appear before you today to discuss detention and removal operations in the enforcement mission.

Detention and Removal Operations' core mission is the apprehension, detention, and removal of removable aliens and the management of a non-detained docket. DRO employs a number of tools to

accomplish this mission. One of these tools, expedited removal, allows the Department of Homeland Security to quickly remove certain aliens who are either seeking entry or who have recently entered the U.S. illegally while ensuring appropriate protection for aliens with a well-founded fear of persecution.

But first, I would like to briefly share with you some benchmark numbers that show the direction in which we are moving and examples of initiatives we have implemented to achieve better enforcement results.

In fiscal year 2004, the Office of Detention and Removal Operations reached record levels in terms of removals, fugitive alien apprehensions, and management of detention bed space. Detention and Removal officers removed 160,000 aliens from the United States, including 85,000 aliens with criminal records. During fiscal year 2004, as of April 30, 2005, DRO removed over 75,500 aliens, including 45,000 criminal aliens. In addition, during 2004, ICE had 16 fugitive operations teams deployed across the country. These teams apprehended 11,000 fugitive aliens with final orders of removal, a 62 percent increase from the prior fiscal year. The year-to-date statistics for 2005 include apprehending over 7,784 fugitive aliens.

On September 13, 2004, the Department of Homeland Security began implementing expedited removal on a limited basis between ports of entry. This expanded expedited removal applies to aliens who have no valid entry document or who have fraudulent travel documents who are apprehended within 100 air miles of the border and who cannot demonstrate that they have been present in the United States for over 14 days following their illegals entry.

Expanded expedited removal has primarily been directed toward third-country nationals, nationals of a country other than Mexico and Canada, and to certain Mexican and Canadian nationals with criminal histories, involvement in alien smuggling, or a history of repeat immigration violations. The expanded ER authority has been implemented in the Tucson and Laredo Border Patrol sectors. As of May 16, 2005, 8,452 aliens had been placed in such ER proceedings, with 6,792 being removed.

The use of expedited removal orders, which prohibits reentry for a period of five years, can deter unlawful entry, and it also makes it possible to pursue criminal convictions against those aliens who continue to enter the United States in violation of the law.

The most important benefit of the expedited removal process is that it can accelerate the process of the inadmissible aliens because aliens in ER are generally not entitled to a hearing before an immigration judge nor are the aliens eligible for release on bond. On average, the detention time for third-country naturals in regular INA 240 removal proceedings takes 89 days, versus the ER average of 26 days for those third-country nationals not claiming credible fear. The overall length of stay for all expanded expedited removal cases is 32 days.

Expedited removal and detention can be excellent tools to deter illegal migration, but they must be carefully managed with the appropriate human resources and transportation requirements. Mandatory detention ensures measurable progress toward a 100 percent removal rate. Deterring future entries and accelerating re-

moval of aliens ordered removed will enhance DHS's ability to secure the border and to focus its resources on threats to public safety and national security.

Detention and Removal fully supports the principle of expedited removal, as it can deter foreign nationals from illegally entering the United States, ensures an expeditious removal of those entering the United States illegally, and reduces the growth of the absconder population. Expansion of the expedited removal program across the entire Southwest border would require a reallocation of DRO resources, including bed space, removal costs, and personnel to manage the removal of the increased number of aliens. The DHS immigration enforcement mission—as the DHS immigration enforcement mission evolves, it is imperative that DRO is positioned to assure success.

In conclusion, the ability to detain aliens while inadmissibility and identity is determined as well as to quickly remove aliens without protection claims is a necessity for national security and public safety. By aggressively enforcing our immigration laws, we seek to deter criminal and terrorist organizations who threaten our way of life, and we seek to strengthen the legal immigration process for worthy applicants.

I would like to thank you, Mr. Chairman and members of the Committee, for the opportunity to testify today on behalf of the men and women of the Detention Removal Operations program. I look forward to answering any questions you may have.

Chairman KYL. Thank you very much, Mr. Lee.

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

Chairman KYL. In connection with your testimony, I want to insert, and without objection will insert in the record at this point, an article that was prepared by Jerry Camer, who is an excellent reporter, has done some excellent reporting on this subject generally that deals, among other things, with the numbers from Brazil, which you referred to in your written testimony, Mr. Lee, and which I found very helpful.

Mr. Verdery, let me just say, your written statement is so lengthy and complete, if you need to take a few minutes beyond five to summarize the contents, you are sure welcome to do it, but I appreciate the written testimony.

STATEMENT OF C. STEWART VERDERY, JR., PRINCIPAL, MEHLMAN VOGEL CASTAGNETTI, INC., AND ADJUNCT FELLOW, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, WASHINGTON, D.C.

Mr. VERDERY. I will try to keep it around five minutes if I can, Senator. Chairman Kyl, Chairman Cornyn, thank you for having me back to the Committee to talk about critical issues about securing our nation's borders. As you mentioned, I am a principal at the consulting firm of Mehlman Vogel Castagnetti. I am also an Adjunct Fellow at the Center for Strategic and International Studies.

As Assistant Secretary for Border and Transportation Security Policy until my resignation from Homeland Security in March, I was responsible for policy development within BTS. Our responsibilities covered immigration and visas, cargo security, transpor-

tation security, law enforcement, and were carried out in the field largely by ICE, by CDP, and by TSA.

I thank the Committee for its extremely important efforts to support the Department during my tenure and I am very pleased to be participating with my former colleagues and very much appreciate their flexibility on having me join this panel and not being a lone ranger afterwards. The accomplishments I talk about here would not have been possible without their leadership, as well as their other chain of command.

I am confident that the dissolution of INS and the assumption of INS responsibilities by DHS two years ago has fueled a great progress in fixing our immigration systems. From deployment of US–VISIT and the biometric visa program, to a valuable focus of our detention and removal systems on violent criminal aliens, to the Arizona Border Control Initiative, to significant reductions in the backlog in legal immigration applications, DHS has brought new integrity to our immigration systems.

It is now time to take the bold step of enacting a legislative package to legalize employment opportunities for the millions of undocumented workers who wish to remain in or travel to the United States to work and to secure the border against terrorists and criminals by deploying a new generation of legal tools, enforcement resources, and international cooperation at the border.

I will admit, when President Bush unveiled his immigration principles in January of 2004, I was somewhat skeptical. There were many commentators who presented the issue as a choice between a new worker program and border security. But two years in the trenches has convinced me that was wrong. It is the passage of a properly developed and properly funded guest worker program that will bring massive improvements to border security and thus homeland security.

Following the footsteps of millions before them, hundreds of thousands of undocumented aliens each year cross the border illegally in search of work who present no risk of terrorism or criminal activity. Border Patrol agents in the field, however, have no way of differentiating between the individuals that make up this flood of human migration and the small but crucial number of terrorists or criminals that attempt to blend into the masses. Providing those who want to work and have no prior criminal or terrorism record a means to enter the country legally through ports of entry will make it much more likely that the Border Patrol will be able to locate and arrest criminals and terrorists who will lose their cloak of invisibility that the current situation offers.

Now, those who are skeptical of this argument have understandable reasons for this view. For decades, enforcement tools to combat illegal immigration have gone underutilized, underfunded, or unsupported by the employer community, and while DHS has made substantial progress in enforcing the current regime, deploying a new guest worker program will take significant new resources for border and employment enforcement, for port of entry operations and facilities, development and issuance of tamper-proof identification documents, streamlining of legal regimes that adjudicate the status of border crossers and undocumented aliens, and new avenues of cooperation between the U.S. and Mexican governments.

All of these enhancements to our current enforcement posture should support a basic motto of any new legislation: Deter and reward. Those who are seeking to enter our country to work must be faced with the reality that crossing our borders illegally or attempting to work without proper certifications will be detected and punished with long-term consequences. In contrast, those who follow the rules on applying to work and pass a security check and cross the border legally through ports of entry should be rewarded with employment and retirement and travel privileges.

My written testimony discusses ten specific recommendations I would make in this regard, and I will focus on three, and these are all remarks: Expedited removal, US–VISIT, and our relationship with Mexico.

As you know, September of 2004, DHS expanded authority to place illegal migrants into expedited removal proceedings in two Border Patrol sectors in Laredo and Tucson, and our prior witnesses discussed how this works. It is a common sense means of removing migrants who have no legal right to enter the U.S. and deterring others from making the journey. It was not possible to detain tens of thousands of aliens as they went through an elaborate legal process, and most were served with appearance orders and released into the interior of the United States. Not surprisingly, a large percentage of them failed to appear for their hearings and vanished into our towns and communities.

The striking increase of the number of countries other than Mexico that you mentioned in your statement, Senator Kyl and Senator Cornyn, represents a massive new wave in migrants that brings significant concerns that nationals from countries with more terrorism activity than Mexico may be utilizing the Southern border to enter the U.S. By utilizing ER to hold all OTMs in ICE detention facilities, communities are spared that risk of having OTMs not appear for their deportation proceedings. As was mentioned, cutting the average length of detention from approximately 90 days to 26 days is the type of real reform we need.

ER will end the perception that we currently have a catch-and-release policy, and it is time for ER to be expanded to all Southern border sectors.

In terms of US–VISIT, the deployment to our vehicle lanes, to hundreds of lanes at ports of entry and exit represents an immense technical challenge. The country currently operations with the prior generation border crossing cards that were not designed for a biometric entry or exit check, and it makes sense to me, as we build out the entry-exit facilities and we are passing a temporary worker program, to utilize the fingerprint and vetting systems at the heart of US–VISIT to secure the new worker program. This would mean any applicant would submit ten fingerprints, go through a full IDENT and IAFIS check for terrorism and criminal history activity, and be required to obtain a unique biometrically-enhanced travel document that would also serve as an employment verification tool at their place of employment. It would also require Congress to fund US–VISIT aggressively, especially money designed for facilities improvements at our ports of entry.

My written statement goes into many areas of cooperation I would suggest with Mexico. I won't go into them here.

The basic other point I wanted to make is these proposals address the machinery by which new entrants, legal and illegal, should be handled. Of course, any new temporary worker program also has to be structured to allow existing undocumented aliens and workers to apply for employment. The security imperative for this class of aliens is that they undergo a vetting before they have continued employment in the U.S. for terrorism and criminal ties. But I see no reason why the security check cannot be conducted while the worker remains in the United States.

We have made a great deal of progress in less than two years to fix a broken immigration system. Building a system based on the principles of deter and reward will bring us to secure an effective border our economy needs and our security demands. I look forward to your questions.

Chairman KYL. Thank you very much.

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

Chairman KYL. All three statements are great, and I do want to put in the record at this point opening statements by both Senator Kennedy and Senator Feinstein, without objection.

For the benefit of folks that are not familiar with it, perhaps—and Mr. Lee, you may be the best person to start this off, but any of you can answer the question, I know—let us assume that Border Patrol comes across a group of 20 people, or a law enforcement entity calls Border Patrol and says, "We have 20 people here who claim to be illegal immigrants. Would you please come get them." And so Border Patrol shows up, or has these 20 people in custody, perhaps just one Border Patrol agent, and let us say that you are 20 miles from a border town.

Now, let us further assume that, as it turns out, half of these people are not from Mexico. They are OTMs. Let us further assume that a couple of these people are from what you call countries of interest, or countries of special interest, and that intermingled in this group are a couple who have criminal warrants out or a criminal background in the United States of America. So you have got kind of the whole mix of folks involved in this group of 20.

Now, what as a practical matter does the Border Patrol do with these 20 people? Kind of take it from the time, and maybe, Chief, you can start with, okay, now he has got these 20 people. They are all sitting on the ground. He has gotten them a jug of water and so they are all having a drink of water now. What does he do from that point? How do they get processed? How do they get checked? How do they get separated out, those of interest and not? How do they get returned to Mexico or not? How is the determination made for those who are eligible for expedited removal because they clearly have only been here a week, let us say, and it is within 100 miles of the border.

So how does that all work for these different cohorts to better understand exactly the issues? And let us further stipulate that there is no detention space available anywhere for the OTMs.

Mr. AGUILAR. Yes, sir. Given that we have got a whole array here of Mexican aliens, OTMs, special interest country aliens, criminal aliens, things of that nature, I will run you through the quick process on each one of them.

Basically, on the Mexican aliens that are apprehended, if they are, in fact, eligible for voluntary departure, which means that they have not committed a crime in the United States, are not wanted or anything of that nature, then they would be voluntarily returned, processed within a matter of minutes for each one of them, eight to ten minutes per, and they would be processed and returned back into Mexico.

Chairman KYL. And the processing would include what?

Mr. AGUILAR. The processing would include biometric information, IDENT/IAFIS. We would run through those checks. We would capture the information on our databases, which is in force—

Chairman KYL. Excuse me, that is ten fingerprints or—

Mr. AGUILAR. Yes, sir. IDENT/IAFIS is now a full ten set of fingerprints that gives us the data check on any kind of criminal background that may exist within those databases.

Chairman KYL. And no criminal background on eight or nine of these folks. Then what happens to them?

Mr. AGUILAR. If they are Mexican aliens, then they are set up for voluntary departure. The processing on that is pretty—doesn't take a lot of time. Within ten, 15 minutes or so—

Chairman KYL. And they are put in some kind of transportation to the nearest border town?

Mr. AGUILAR. Yes, sir. They are held for a very short amount of time at the Border Patrol stations awaiting for basically the buses or the vans to go back to the Mexican ports of entry for return into Mexico.

Chairman KYL. Got it. Now, let us say that the fingerprints find that you have got somebody that is wanted on a criminal charge, a felony charge in the United States. What happens to that person?

Mr. AGUILAR. At that point in time, we will make a determination as to whether the authority that has a wants or warrants on them will want to extradite or take custody of the individuals. If they do, we will hand them over to that authority for prosecutorial purposes. At that point, we will also place a hold, an immigration hold on these people to ensure that once they go through that prosecutorial process, at the end of that process, we in DHS take them back into the custody to continue with the administrative removal after having served the time due to the prosecution of the criminal wants or warrants.

Chairman KYL. And that is going to require some detention space for you all during the period of time before you transfer them over to the jurisdiction that has the warrant.

Mr. AGUILAR. Yes, sir. That will be a short amount of time. Typically in those criminal wants or warrants cases, the responding agency will be pretty timely in responding. Detention and Removal does assist us with holding them temporarily while we turn them over to those other prosecuting agencies.

Chairman KYL. Okay. Now, you have got some folks from, I will just cite two countries. One of the countries, let us say, is Brazil, a couple of folks from there, and a couple of folks from Saudi Arabia. What happens there?

Mr. AGUILAR. On the—let us start with the ones from Brazil. From Brazil, since they are not a special interest country, what we would do is again run them through all of our databases to make

sure that they are not criminally involved or have any kind of nexus to terrorism, even though they are not from a special interest country. We want to ensure that every individual, regardless of where they are coming from, have no, or pose no threat to the security of the United States.

After having verified that, then we will process them as other than Mexicans. At this point, we will make a determination as to whether, if ER is available to us, that they will be placed into expedited removal—

Chairman KYL. Now, ER or expedited removal is available right now in how many sectors along the border?

Mr. AGUILAR. Expedited removal for an OTM alien coming into the country is available in Tucson and Laredo.

Chairman KYL. Only two sectors out of how many?

Mr. AGUILAR. It is out of 20 sectors.

Chairman KYL. Okay.

Mr. AGUILAR. Nine are along our Southwest border with Mexico. In addition to that, Senator, it is important that I point out that in the remaining sectors which are within the Ninth Circuit Court of Appeals, which is San Diego, Central, and Yuma, we also have ER available to us if, in fact, that Brazilian had previously been in the United States, had previously been deported, and we can now—we used to be able to reinstate. Now we can't, because of an adverse decision by the Ninth Circuit Court of Appeals. So specific to that grouping, we can apply ER to that grouping. To where those people have been formally deported in the past, we can now apply ER.

Chairman KYL. Okay. So you haven't yet gotten to the person of special interest, but let us say that the two Brazilians, now, is Brazil a country that takes our aliens who are eligible for this process?

Mr. AGUILAR. For—

Chairman KYL. For expedited removal?

Mr. AGUILAR. Once they go into the expedited removal process—maybe it is easier if I explain it this way, sir. Once we place that person in expedited removal, the Border Patrol agent makes a determination that that person is not going to be claiming political asylum or has no credible fear, things of that nature. At that point, we hand off the alien once he is processed, he or she is processed, into Detention and Removal. Once that alien is placed in expedited removal, they are mandatory detention cases. In the case of Tucson and Laredo currently, we are detaining 100 percent of the people that we are placing in expedited removal.

Chairman KYL. And it takes an average of about a month to complete that process today. Now, before we get to the special interest cases, again, what is the situation with regard to countries that take aliens versus those who do not? Mr. Lee, do you want to talk about that for a minute?

Mr. LEE. Yes. Most countries—

Chairman KYL. Or easily take them.

Mr. LEE. Most countries do easily take their detainees back. Some of them, not as soon as we would like, but they have a process themselves. Some countries, you know, the nationals that enter the United States are fairly large, so just the presentation to the

foreign government to interview their national and issue a travel document is time consuming for them. But most will issue travel documents. It is just a process that you have to go through.

Of course, the ones that don't issue travel documents falls under that decision that if we can't remove them, if we can't remove them within 180 days, then we have to release them here in the United States.

Chairman KYL. Now, what does that mean, and how many countries or how many cases are there—I am sorry, I am over my five minutes. Let me just pursue this line of questioning and then turn it over.

So now let us say you have got a country, and I don't want to name a country, I think I can name one, but name one that it is difficult for us to get to take aliens back.

Mr. LEE. I would name Vietnam.

Chairman KYL. Okay.

Mr. LEE. In those cases, Vietnam won't take their nationals back. On very rare instances, will they take their nationals back.

Chairman KYL. So you have this person in detention. You have determined that the individual is Vietnamese, not here with an asylum case at all, and it is a country that doesn't easily take their folks back. So then what happens to the individual?

Mr. LEE. We can detain up to 180 days after removal and then if it is not reasonable that we are going to be able to remove them, we have to release them.

Chairman KYL. So you have to release them back into our society?

Mr. LEE. That is right.

Chairman KYL. Are they required to do anything, or are they supposed to do anything?

Mr. LEE. We have reporting requirements that we can place on them, but they can violate the reporting requirement, we can take them back into custody, but then we will have to release them again. There is—

Chairman KYL. So as a practical matter, if a country doesn't take their aliens back or their citizens back, these people end up in our society and whether or not they ever report is based upon their good faith?

Mr. LEE. Yes, that is true.

Chairman KYL. Do you have any idea of how many countries or how many people we are talking about per year in that category?

Mr. LEE. I don't have a number.

Chairman KYL. If you don't, maybe you can get that for the record.

Mr. LEE. I can.

Chairman KYL. Are there several countries that are pretty slow or reluctant to take their citizens back?

Mr. LEE. Well, there are four that we really can't remove to at all, very limited basis—

Chairman KYL. Can you name those countries?

Mr. LEE. We have Laos, we have Vietnam, we have Cuba that we can't release to, and Cambodia. Cambodia is starting to take back a little now. We are seeing some progress in that area. But those are basically the ones.

Chairman KYL. Okay. Now, let us go back, because we found that there are two of these folks from—and I am not—any particular country, I am just using for an example, but I believe that Saudi Arabia is a country of special interest—

Mr. LEE. Yes, sir.

Chairman KYL.—and if that is the case, what happens to, let us say, two of these folks from Saudi Arabia? What happens to them?

Mr. AGUILAR. At the point of apprehension?

Chairman KYL. Yes. You find out that they are from Saudi Arabia one way or another. I guess the fair question is, how might you find out if they are not really cooperative in telling you?

Mr. AGUILAR. Yes, sir. On the Saudi Arabians, on the OTMs that we suspect to be from a country of special interest, we would, of course, run them through all of our databases, all our data checks and everything else that we have. In the cases of special interest countries, we go the extra step, if you will, to make sure that not only our systems checks but also FBI, JTTF, the intelligence community to the degree possible is running all these checks.

At that point, once we are satisfied—and that satisfaction goes beyond just the database checks. It goes to the point to where the officer making the detention has to be fully satisfied that there is no threat to the United States. At that point, we continue the processing and basically try and hold them for removal from the United States, and that is a formal removal process whereby we will process them and hand them over to the Detention and Removal Office.

Chairman KYL. So if the determination is made that they are from a country of interest but that they themselves pose no threat, they are turned over to Detention, and at that point, the formal removal process is commenced, is that correct, Mr. Lee?

Mr. LEE. That is correct.

Chairman KYL. How many times does it occur that there is no space for these folks?

Mr. LEE. For the special interest countries—we have got about 2,500 beds that are discretionary beds right now. They are full, but they are not filled with mandatory cases. So the special interest cases, criminals, once we get to the criminal area, anybody that has ties to terrorists will come into detention and will remain in detention until, like these two that really had no interest there, they will request a bond determination. They will go in front of the IJ. They will present their case. The immigration judge in a lot of cases will either release on OR or grant small bonds.

Chairman KYL. Now, what is your experience when they are released on OR? How many folks show up?

Mr. LEE. It is not a good story. About 30 percent that are released actually show up for a hearing, and about 85 percent of those that show up for hearing actually show up if they are ordered removed.

Chairman KYL. Wait a minute. Say that again. I am sorry.

Mr. LEE. About 30 percent show up for a hearing. Of those 30 percent that show up for a hearing, about 85 percent of those don't show up, they become absconders if they are ordered removed.

Chairman KYL. So there are two different steps along the way. In the first instance, about 70 percent don't show up, and then for those who have been ordered removed, again, a percentage of them

don't show up for removal. And these are people from countries of interest?

Mr. LEE. These are just anybody that is released.

Chairman KYL. All right. I was referring to these people from countries of special interest, but you are giving me the total figures from people who have been in detention. Okay.

And my last question here, with regard to those—when there is no detention space available or you have to make room for a higher-priority case, can you give us some idea of the order of magnitude of the problem of lack of detention space and, therefore, the resources that might be necessary for us to ensure that there is adequate detention space?

Mr. LEE. Well, currently, like I say, currently, we have about 2,500 discretionary beds. So those beds are filled with OTM, non-criminal OTMs, really non-criminal cases. Most of those 2,500 beds are in support of the Border Patrol. There are a few of those beds that come from the airports through the inspection process and are non-criminals, but the majority of them right now support the Border Patrol. So if we get somebody who is a higher priority, a non-criminal OTM will go to the street.

Chairman KYL. I am sorry?

Mr. LEE. A non-criminal OTM will go to the street if they have somebody of a higher priority.

Chairman KYL. Will go to the street, meaning—

Mr. LEE. They will be released.

Chairman KYL. —released on their own recognizance, and a high percentage of them don't show up then again, is that correct?

Mr. LEE. That is right.

Chairman KYL. Okay. I have taken more time than appropriate. Go ahead, Senator Cornyn.

Chairman CORNYN. We earlier averted to the testimony of Admiral Loy, Deputy Director of the Department of Homeland Security, about the potential for terrorists to use the same means to come into the country that are currently used by other human smugglers and people who patronize those human smugglers.

I would like to ask, maybe starting with Chief Aguilar, assume that a person from Iraq or Afghanistan is able to leave that country, those countries and make their way, let us say, to Turkey, connect with a human smuggler of some kind, and then transit to, let us say, over to the Balkans Peninsula and then over, let us say, over to Italy, part of the European Union, and then obtain false identification indicating that they are a member of one of the countries—they are a citizen of one of the countries in the European Union, and they are then, by virtue of the human smuggler, they are then transited, let us say, to Mexico and then attempt to make their way into the United States.

When you apprehend that person and they have, let us say, what appear to be on their face documents which designate them as, let us say, an Italian citizen or some other member state of the European Union, how would you identify them? Would they be, even though they come from Afghanistan or Iraq, would they be designated as a person who comes from a country of special interest or not?

Mr. AGUILAR. Yes, sir, and one of the reasons is for the following. You ask a very good question. We have a listing of the special interest countries where persons coming from those special interest countries, of course, are designated as such and automatically there is a higher level of scrutiny. But in addition to that, within DHS, we have a means by which to identify persons originating out of that special interest country even if they are not from or traveling through that kicks them into that higher level of scrutiny. So even if he was, for example, an Italian, but traveled through one of those, originated his last flight out of a special interest country, that would automatically kick him or her into that grouping where that scrutiny would be at a much higher level.

So in addition to that, this hypothetical person that you just referred to with the counterfeit documents, fraudulent documents, things of that nature, in the case of the Border Patrol, if we encounter them, that means that probably they came between the ports of entry. So the investigative process, the interview process would probably give us that kind of information as to the true identity of this person.

If we encountered them in the interior at a checkpoint or at one of our defense in depth postures, such as Sky Harbor Airport, Las Vegas Airport, or something of that nature, the training that our officers receive in counterfeit and fraudulent documents would also come into play. And, of course, if there is any question on the documentation, we have our brother and sister CBP officers who are experts in those areas that we could also utilize. We also utilize the National Targeting Center, CBP National Targeting Center, to run those documents and probably do a good job of identifying those counterfeit or fraudulent documents.

Chairman CORNYN. Of course, that is if you are able to apprehend them.

Mr. AGUILAR. Yes, sir.

Chairman CORNYN. No matter whether they have valid or counterfeit documents, if you are unable to actually apprehend them as they are coming across due to lack of human resources or insufficient equipment, obviously, you are not able to run those kind of checks against those.

Mr. AGUILAR. Right.

Chairman CORNYN. Let me just make sure we all understand what we are talking about when you talk about running the names of these individuals against various databases. There isn't a database that has everybody's name in it, correct?

Mr. AGUILAR. That is correct.

Chairman CORNYN. It would just be if their name, assuming they give you a correct name, generates a negative hit on some database. Isn't that what we are talking about, primarily?

Mr. AGUILAR. By negative hit, I am assuming that you mean that information of interest is there?

Chairman CORNYN. For example, if you ran John Cornyn's name and your database did not have a record of a criminal conviction on it, then that wouldn't generate a hit, would it, if—

Mr. AGUILAR. That would not, yes, sir. That would not.

Chairman CORNYN. So it is only if you actually have a record of a negative information, either criminal record, they are on a watch list—

Mr. AGUILAR. Yes, sir.

Chairman CORNYN. —provided by the State Department, Department of Homeland Security, and the like. So if, let us say, this individual who comes across and you are checking their name and you have no record whatsoever of this individual, it would not generate a negative hit and you would not then treat them in this enhanced special status where you would have mandatory detention and the like, is that correct?

Mr. AGUILAR. If they are coming from a special interest country, the level of scrutiny would be much higher, especially in the area of anti-terrorist training that all of our CBP officers have now taken. That would delineate a certain level of questioning, if you will, line of questioning, things of this nature, where the enforcement officers will take that posture to the degree possible, absent any findings on databases, to make sure that we are doing everything we can to identify any potential ties. But yes, sir, it would be dependent on the officer at that point.

Chairman CORNYN. I appreciate that our officers, being professionals, are trained to try to root out individuals who they should be detaining, even though their name doesn't appear on the list, the watch list or the criminal convictions list, but I want to make sure we understand that absent an officer being able to identify that person, that identity would not necessarily be generated by one of the various databases that that name is run against.

Of course, there is—do you ever run into the problem where somebody gives you a false name?

Mr. AGUILAR. Yes, sir, all the time. Absolutely.

Chairman CORNYN. And if somebody gave you a false name, obviously, that would be less likely to generate a hit on the database check. In other words, it wouldn't reveal that that person's false name had been convicted of a crime or had made multiple attempts to enter the country illegally, or perhaps was even from a country of special interest. If someone gave you a false name, how would you be able to determine whether they fell into any of those categories that would likely guarantee higher scrutiny?

Mr. AGUILAR. Well, let me take that a piece at a time, sir. With any kind of prior criminal conviction, the biometric information that we would capture by way of the ten-print check would, in fact, overcome the false name, identity, if you will.

Chairman CORNYN. Even if there was no record in the database of who that person actually was?

Mr. AGUILAR. That is assuming a criminal background.

Chairman CORNYN. Okay, assuming the criminal background.

Mr. AGUILAR. Yes, sir. In the case of an individual of interest, for example, one of the cases that I can refer to as an example is a case in point where a person out of El Salvador involved in a homicide crossed the border into the United States. Because of the interest of that country, we were able to bring biometrics into our systems to where once we had that individual in custody, we ran the ten prints, even absent a criminal background, if you will. He

popped up because we were able to input that data on there. But again, we are dependent on the databases.

Other things that are taken into consideration, of course, is the fact that a lot of our operations are intel-driven, intel-driven in the sense that we conduct operations based on intelligence on people who originate in certain countries, means of travel, routes of travel, organizations utilized, risk factors associated with the person, such as age, things of this nature, associations and smuggling routes. Anything of that nature would come into play there.

Chairman CORNYN. Let me just, since my time on this first round is limited, ask Mr. Verdery. Mr. Verdery, you talked about how your opinion had changed somewhat based upon your experience at the Department of Homeland Security in terms of the practical ability of this country to adopt a temporary worker program along the lines of the principles that the President has articulated. I gather from what you said that you came to doubt whether an enforcement-only approach could be successful in addressing the massive illegal immigration and the lack of control we have of our borders, is that correct?

Mr. VERDERY. I think that is a fair way of putting it. The basic dilemma you have, hearing some of the numbers that were mentioned earlier, is you have got a massive tide of individuals, each one of which has to be evaluated on their own merits, and use whatever information you have, whether it is their country, their biographic information, their biometric information. But your odds of finding the literal needle in the haystack is a lot better if the haystack is a lot smaller. So, yes, that is why I think we need to do so much more on the physical enforcement at the border, but it is going to be difficult ever to reach that kind of goal that you want, to find those needles, with the current kind of numbers we are talking about.

And one thing, if I might just add, on the line of questioning you had for Chief Aguilar is it demonstrates the importance of information sharing and especially biometric information sharing with our foreign government partners. If we don't have negative information about somebody, we don't have negative information about them. And so if you pick them up, you are not going to know anything. You are probably not going to know to detain them or to do something with them. So having robust fingerprint information sharing with the E.U., with the U.K., with other partners, is absolutely essential to try to build out that universe of the people we would want to worry about when we pick them up.

Chairman CORNYN. So if I can summarize in conclusion, you are saying that if we weren't concerned with literally hundreds of thousands or maybe millions of people coming across our border, that is from a law enforcement perspective, but rather tens of thousands, that our law enforcement resources and intelligence resources could be focused with greater precision on that threat if there was a mechanism for people to come into the country, at least on a temporary basis, to be checked and to be able to work in a temporary time frame within some sort of legal framework.

Mr. VERDERY. You said it very well.

Chairman CORNYN. Thank you.

Chairman KYL. Senator Sessions?

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. I thank both of you Chairmen for your leadership on this issue and I value both of your judgment as we work through these issues.

I have believed we have been in a state of denial about how things have been operating on the border. It is worse than most people realize. Here is an article I would like for you to comment on. It is the Copley News Service, June 4, by Jerry Camer, dateline, McAllen, Texas.

"In the silvery blue light of dusk, 20 Brazilians glided across the Rio Grande in rubber rafts propelled by Mexican smugglers who leaned forward and breaststroked through the gentle current. Once on the U.S. side, the Brazilians scrambled ashore and started looking for the Border Patrol—started looking for them. Their quick and well-rehearsed surrender was part of a growing trend that is demoralizing the Border Patrol and beckoning a rising number of illegal immigrants from countries beyond Mexico."

"'We used to chase them. Now, they are chasing us,' said Border Patrol agent Gus Balderas as he frisked the Brazilians and collected their passports last month. What happened next explains this odd reversal. The group was detained overnight," I guess in McAllen, "given a court summons that allowed them to stay in the United States pending an immigration hearing. Then a Border Patrol agent drove them to the McAllen bus station, where they continued their journey into America. The formal term for the court summons is a 'Notice to Appear.' Border Patrol agents have another name for it. They call it a 'Notice to Disappear.'"

"Of the 8,908 Notices to Appear at the immigration court in nearby Harlingen issued last year to non-Mexicans, 8,676 failed to show up for their hearings, according to statistics compiled by the Justice Department's Executive Office for Immigration Review. That is a no-show rate of 98 percent," close quote.

Tell me, I guess, Mr. Aguilar. Your people are out there at some personal risk, working nights and long hours to try to enforce the law. How do they feel when they follow the rules and 98 percent of all they are doing is helping thousands of people further into the United States from which they disappear? Tell me how this can continue, or how it has occurred.

Mr. AGUILAR. One of the things that I think is important to point out, Senator, is the fact that, yes, agents are frustrated out there. One of the things that—and I just now have gleaned through this. I had not seen this article. I had heard about it. But I can tell you that the reason that this is happening again is because of the lack of detention space. So it is not a policy. It is not something that we prefer to do. But the reason that these individuals are NTA-ed and released on their own recognizance is because we have no place to put them.

Senator SESSIONS. All right. Now, let me follow that. Has anybody, to your knowledge, from the Border Patrol written and made a budgetary request for sufficient detention space to handle these individuals, and has anyone done an account for how much money it would cost to be able to detain them?

Mr. AGUILAR. Senator, the Border Patrol interdicts. We make the arrest, we process, and then we hand off to Detention and Removal.

Senator SESSIONS. Mr. Lee's job, I guess.

Mr. AGUILAR. Yes, sir. Now, I would like to give you some statistics that I think are very telling which go right in line with what you are describing there.

As an example, in McAllen, the highest number of apprehensions that occurs in the McAllen sector, which, by the way, is our highest-producing sector for OTMs in the nation, McAllen sector has apprehended, for example, through the end of May, 47,000 OTMs. Of those—

Senator SESSIONS. And OTMs is—

Mr. AGUILAR. Other than Mexicans.

Senator SESSIONS. And—

Mr. AGUILAR. Which includes that grouping of Brazilians. I don't have the exact number—

Senator SESSIONS. And the problem is, just for those who might be listening, is you can easily transport those who come from Mexico back into Mexico, but Mexico won't take somebody from Brazil—

Mr. AGUILAR. That is correct.

Senator SESSIONS.—so you have to get them all the way to Brazil.

Mr. AGUILAR. Yes, sir. That is correct. Now, you just touched on another challenge that we have. One of the problems that we have with Brazilians—now, this is specific to Brazilians—is that Mexico does not require a visa for Brazilians coming into Mexico, which, of course, now they use as a means to jump off into the United States illegally, and because of the challenges that we have with our lack of detention space, we have the situation that we are faced with.

Right now in McAllen, the rate of release on own recognizance is at about 90 percent of the people that we apprehend, other than Mexicans.

Senator SESSIONS. And 98 percent of those are not showing up as required, according to this article, at least.

Mr. AGUILAR. According to the article. That would have to be—

Senator SESSIONS. Mr. Lee, it seems to me in all of these matters, from my experience in prosecuting, it is just something I have come to believe and intuitively understand from nearly 20 years of prosecuting is that there is a tipping point where if the word is out that people know nobody is going to do anything to you if you sell drugs, they will sell drugs. Once it becomes a reality that something serious is going to occur to you if you sell drugs, drug selling will go down. It really will.

Tell me what we can do, and what it would cost, to create housing for some 8,000 people or so to give integrity to this process so that they are able to be deported to their home countries and detained long enough for that. What is the problem here? What do we need?

Mr. LEE. Well, detention, I think, is probably one of our most valuable tools, but there is more than detention. I mean, you can de-

tain somebody. If you don't have a removal order, you can't remove them. You can just put them in a bed.

Senator SESSIONS. What does it take—I mean, these cases—I know something about how cases move. It is just a question of getting them before a judge, is it not, an administrative hearing judge?

Mr. LEE. That is why I think expedited removal is so important, because getting them in front of the judge, as the statement I read—

Senator SESSIONS. Yes, I am—

Mr. LEE. —it takes about 89 days to put them in front of a judge versus about 26 days putting them in ER. So you can turn over more with less beds.

Senator SESSIONS. Well, is somebody working on this? That is all I am asking. I mean, is somebody in charge here?

Mr. LEE. Yes, we are—

Senator SESSIONS. Is somebody saying, we need to get the hearings done quickly? I don't see why they can't be done in a matter of days, literally. There is no reason these hearings can't be done within days. And then you have got to develop a system by which you can transport them back to their home country, which is expensive and burdensome, but that could be done, also. Where are we on this spectrum? Do you have a vision that would indicate that this utter failure would end and we will have a system that has integrity?

Mr. LEE. There is a vision and it has already started. Expedited removal is already in Laredo and Tucson sectors. It has been going on now since October—September.

Senator SESSIONS. Expedited—it works for Mexicans?

Mr. LEE. No, these are for OTMs.

Senator SESSIONS. OTMs?

Mr. LEE. Yes, other than Mexicans. In both of those sectors, all cases that—all OTMs that were placed in the ER, we have either removed them or they are still in detention. So expedited removal is working and we do have a plan to expand expedited removal.

Senator SESSIONS. Do you have an opinion about how many are detained pending expedited removal and how many are released on recognizance?

Mr. AGUILAR. Senator, if you don't mind, I will take part of that question. Since September, in those sectors where we have implemented expedited removal, we have placed over 20,000—20,000 people into expedited removal. Since we began this program, expedited removal is also mandatory detention when we place them into ER. Those have been detained and have either been removed or are in the process of being removed.

Senator SESSIONS. So if you are in the expedited removal program, you are detained until removed.

Mr. AGUILAR. Yes, sir. Right now, we are working very—

Senator SESSIONS. Is the problem that everybody is not in it bed space, hearing time? Where would resources need to be applied—

Mr. AGUILAR. And that is one of the things that we are working with very closely right now, with Detention and Removal Office, the CIS, Citizenship and Immigration Services because of their part within the credible enforcing of this, to ensure that the pro-

gram is carried out systematically and that we carry it out in such a way that once these people are placed into ER, they are mandatorily detained and removed, thereby reducing the amount of time that they need to spend in detention, therefore reducing the cost. Now, we are looking on that expansion of that program as we speak right now.

Senator SESSIONS. But you can't order hearing judges around, can you, Mr. Aguilar? They don't work for you, or do they? Are they a part of—

Mr. AGUILAR. No—

Senator SESSIONS. So somebody up high, up here, has got to tell everybody this system has got to get in sync and be more effective, don't they?

Mr. LEE. That is why we are using expedited removal. They don't have to go in front of a judge with expedited removal.

Senator SESSIONS. Oh.

Mr. LEE. An agent on the ground can order somebody removed, the Border Patrol agent.

Senator SESSIONS. Without a judge.

Mr. LEE. That is right.

Mr. AGUILAR. Yes, sir. Under ER, sir, basically, the agent on the ground will make that determination as to whether that person has any claim to be in the United States or right to be in the United States. Once that claim is in the negative, adjudicated in the negative, then they are formally removed after supervisory oversight and certain assurances in place to ensure that these people, if, in fact, they have a credible fear, claim for fear of persecution or things of this nature, it is built into this program. But once a determination is made, these people are rapidly removed out of the country without an immigration judge coming into play.

Senator SESSIONS. Do you know how long those are taking, from the time they are apprehended to the time they are removed?

Mr. LEE. Right now, the average is about 26 days.

Senator SESSIONS. Would it be possible to get that substantially less?

Mr. LEE. We are working on that. The issue—

Senator SESSIONS. Do you need money to make it less?

Mr. LEE. No. Actually, we need the foreign countries to issue travel documents faster, and we are always going to have the amount of time it takes to do country notification. You can't just put somebody on a plane and send them back without notifying them. So we have the country notification process and we schedule—the scheduling for removal. But we are trying to increase the rate of travel documents.

We are using VTEL now. We have made requests for the foreign governments—Honduras is on board. We are placing VTEL in their consulate offices and in our offices so they can interview without having to come out and do personal interviews. We made the request in numerous other countries and they haven't committed yet, but they are talking as if they are going to. So that will reduce the rate and actually have us turn over faster.

Senator SESSIONS. My time is expired. Give me a quick answer. What percentage of people are being handled under expedited removal and what percentage is handled in the traditional way?

Mr. AGUILAR. Let me answer that question in the following manner, sir. In Tucson and Laredo, OTMs that are eligible for expedited removal, about 95 to 98 percent of those are being placed in expedited removal within those two sectors. OTMs, in general, within the population of illegal aliens that we apprehend across our nation's borders, is 12 percent, through the end of May, 98,000. We have placed 20,700-and-some in expedited removal.

Now, I would like to say that ER and detention are key to creating deterrence. That is absolutely key to our successes.

Senator SESSIONS. I couldn't agree more.

Mr. AGUILAR. Yes, sir.

Chairman KYL. And if I could just follow directly up on that, there are two needs, at least. First, we need to extend the expedited removal process to all of the sectors instead of just two. And secondly, we need to make sure that there is detention space available. So as to the first point, what will it take to extend the expedited removal process to all 20-some sectors?

Mr. AGUILAR. We are actually going through that process right now, Senator. We are working, as I said, very closely with DRO, with CIS, to ensure that as we roll out, as we evolve this program, the integrity of the program is there.

Chairman KYL. What does it take? Does it take training of people? Does it take money? What does it take?

Mr. AGUILAR. Yes, sir. That takes training. We are, in fact, right now currently going through training of the remaining sectors along our nation's Southwest border to ensure that when this program is kicked off along, or evolved along our Southwest border, everybody is trained up and the integrity of the program is maintained.

Chairman KYL. Is the process to do it every two or three sectors, or to do them all at once, or what is the process and how long do you expect it to take to be completed?

Mr. AGUILAR. The end game we are looking for is across all of our sectors. We are going to take a look initially at all of our Southwest border sectors, the nine Southwest border sectors, Northern, and then coastal and waterway.

Chairman KYL. So we will have to deal with the others, as well. But just with respect to the Mexican border, how long do you think it will take before it is extended to all—to the entire—all of the sectors on the Mexican border?

Mr. AGUILAR. It is coming soon. It is coming soon, Senator.

Chairman KYL. Well, are we talking about a matter of months?

Mr. AGUILAR. I would feel comfortable with that. If DHS approves it and everything else, yes, sir.

Chairman KYL. So within a matter of months, then, all of the sectors will have the same kind of expedited removal that Tucson and Laredo have today?

Mr. AGUILAR. That is what we are working towards, yes, sir.

Chairman KYL. Do you need any other resources to make that happen?

Mr. AGUILAR. To make ER happen within the Border Patrol, I think we have the resources necessary. The resources that are going to have to be concurrent with that is the ability to detain—

Chairman KYL. Right.

Mr. AGUILAR. —those people that we place in ER.

Chairman KYL. Okay. And getting to the detention and anything else that DHS, beyond just the Border Patrol, would need, Mr. Lee, what do you think it needs, how long will it take, and then on a separate matter, how much more detention space is necessary?

Mr. LEE. I think the ER plan, like Mr. Aguilar said, is we are real close on the plan. I don't think that that is going to be an issue and we will get back to you on when that is going to be.

But the detention space, it is hard—like I say, it is hard to say how much detention space you need, because with ER, we can remove these people a lot faster. We are working on the travel document issue. We think we are going to be able to enhance that number.

So to put a bed number on it, we actually just opened—we haven't opened it yet. We have a facility out in Pearsall. It is in your neck of the woods down there. It is a little bit West of San Antonio, probably Southwest of San Antonio. It is 1,000 beds that we are going to dedicate specifically for these ER cases.

That may do it. It just depends on how many—the deterrent effect for expedited removal may be huge. The amount of—

Chairman KYL. But even if you had space temporarily to take care of the full need, you could cut back on that once the deterrent worked. How many OTMs do you release into the United States each year, or are released if you are not releasing?

Mr. AGUILAR. Currently, Senator, the Border Patrol nationwide is OR-ing approximately 70 percent of those OTMs that we apprehend.

Chairman KYL. And the number apprehended last year of OTMs was about, oh, just under 100,000?

Mr. AGUILAR. Last year, I believe, was 87, and I will get to you the exact number on that. But year-to-date, it is 94,684.

Chairman KYL. And what percent of those are released on their own recognizance?

Mr. AGUILAR. Nationwide, about 70 percent.

Chairman KYL. Seventy percent. So you are talking about somewhere in the neighborhood of 60,000-plus people that are released on their own recognizance and very few of those ever show up, is that correct?

Mr. AGUILAR. That is correct.

Chairman KYL. And you hope that you have captured the criminals in that group, captured the criminals so that they are not part of that group.

Mr. AGUILAR. Yes, sir.

Chairman KYL. How many criminals again? I have the number here of 94,700 criminals were apprehended in the last—or since September 1 in this fiscal year. Now, those are people that have criminal records and, therefore, regardless of what country they are from, they are also subject to this same removal process. In other words, Mexicans with a criminal record would be subject to the same removal process as an OTM, is that correct?

Mr. AGUILAR. That is correct, especially if they are criminals.

Chairman KYL. So you can have criminals released, then, on their own recognizance, not showing up, as well, is that correct?

Mr. AGUILAR. In the area of criminals, they are one of the priority detention cases. Now, not all of them are detained, but it depends on what level of criminal activity they were involved in. For example, an aggravated felon is, in fact, a mandatory detention.

Chairman KYL. And obviously anybody that is currently wanted is going to have a priority, as well, is that correct?

Mr. AGUILAR. That is correct.

Chairman KYL. Okay. So you don't know exactly how many criminals are released on their own recognizance, but some number are. I guess we can say in the thousands, would that be fair to say?

Mr. LEE. I think your criminal aliens are—like I say, we have about 2,500 discretionary beds right now, so your criminal aliens are going to be held in detention unless they get in front of the immigration judge and, based on due process and their ties, they may be low-bonded out by the immigration judge.

Chairman KYL. But if there are 94,700 criminals and you have got 2,000-plus beds and you are detaining a lot of other folks, as well, including OTMs, pretty clearly, you don't have enough bed space for everybody.

Mr. LEE. Most of those criminals are going to be Mexican criminals and not OTMs. I mean, the OTM number is going to be small.

Chairman KYL. Okay, but the Mexican criminals are dealt with in what way? In the Tucson sector, how are they dealt with? Aren't they dealt with in an expedited removal manner?

Mr. AGUILAR. I am sorry, Senator—

Chairman KYL. Let us say that you have a Mexican criminal. How is that individual dealt with in terms of detention and release? Are they expedited removal candidates?

Mr. AGUILAR. Yes, sir, they can be, but preferably, the removal is going to be a formal removal. In either case, either by ER or by formal removal in front of an immigration judge, when and if they come back again, they are now eligible for prosecution.

Chairman KYL. Right. But I guess my point is, if you have got 94,700—and the year isn't even up yet, so—

Mr. AGUILAR. That is correct.

Chairman KYL. —you are going to be looking at least 100,000 criminals, criminal aliens, and many of those are going to be Mexicans, some are not.

Mr. AGUILAR. Yes, sir.

Chairman KYL. But the bottom line is that when you count all of the OTMs, and part of that is subsumed in this number, but in this number of 100,000 criminals, you can't possibly have enough detention space. We are trying to get a handle on how much is necessary. I will say that under the bill that Senator Cornyn and I have, we not only add money as needed for more detention space, but we also, recognizing that we are only talking about the informal process here, and Mr. Lee, you alluded to the formal removal process requiring the administrative judge, as Senator Sessions talked about, that we also have money in here for the judges and for the rest of the criminal justice system that is required to deal with all of these cases, since we recognize that court space, judges, clerks, lawyers, all of that is going to be necessary for these number of cases.

But it would be helpful to us if we could get a little bit better handle on what the cost of this is going to be, what the size of the problem is so that we can fold that into our appropriation requests.

Mr. VERDERY. Could I just jump in on that?

Chairman KYL. Sure, you bet.

Mr. VERDERY. One of the things that I enjoyed about your draft legislation was it recognizes that this—if you think of this as almost a business process, you unfortunately have a lot of customers that are being picked up and have to be processed in some way, and it is a very convoluted process involving different agencies, asylum claims, especially for individuals who go through a formal proceeding. I saw a chart when I was at DHS with the various options of how the legal process can work and it made the famous Clinton health care chart look simple. It is an unbelievably elaborate process and it has to be streamlined as part of this review, things like bond, things like ER, and the like.

The other thing, I will say what these gentlemen are not allowed to say, I think. This is not going to take some kind of plus-up or shuffling money around. If you want to build out an expansive system that can handle the influx, it is going to take a massive new amount of money. Now, hopefully, reducing the caseload will solve part of that by giving people a chance who want to come in to work an organized place to do that, an organized way to do that. But this is going to take a good bit of money, whether it is coming from fees or fines or the general revenue fund. It is not simply a plus-up.

Chairman KYL. And let me just say that we recognize that this is probably a proposition where, temporarily, we are going to have to increase assets significantly, but because of all the things that we are working on, hopefully, that peak will be reached relatively soon and the number of cases will fall off and the detention space, for example, can go back to other uses. The judges that we have had to bring on for this purpose can go on to doing other things and so forth.

But I will say that Senator Gregg, the Chairman of the Budget Committee and Appropriations Committee, has indicated a willingness to put sums of money in to authorize, for example, for detention space.

Let me just ask both Mr. Lee and Chief Aguilar, please get something to us on the record that would enable us to be able to make the case to Senator Gregg and others to be a little bit more precise about what these requirements are so they can plug that into their calculations in determining exactly what to authorize and eventually what to appropriate here. It will make our job a lot easier.

I guess the summary here is that we are going to need more of all of these things. It could be substantial in the short run. But in the long run, we all hope that by going this route, we can bring the long-term costs down dramatically. Would that be a fair summary?

Mr. AGUILAR. Yes, sir.

Chairman KYL. Go ahead, Senator.

Chairman CORNYN. Mr. Lee, we have been asking questions about people who are coming across the border and who are being detained and the priorities that the Department of Homeland Security has for who is detained and who is released on their own re-

cognizance and the like. But it is correct, is it not, sir, to say that there are many, many more individuals who are illegally in the United States and who are currently resident in State and county jails or prisons, isn't that right?

Mr. LEE. Yes, sir.

Chairman CORNYN. So if you look at the Federal Government's responsibilities as opposed to the State and local governments' responsibilities in terms of people who commit Federal crimes, albeit those by which they illegally enter the country having a criminal record or committing other crimes. The numbers we have been talking about in terms of detention space to deal with the border intrusion issue is really pretty small, isn't that right?

Mr. LEE. Correct.

Chairman CORNYN. For example, I have been advised that in Los Angeles County Jail, where there are approximately 25,000 inmates, that one estimate is between 30 and 40 percent of those inmates are in the United States illegally, but nevertheless have been accused of committing crimes and thus are incarcerated within a county facility. Those numbers wouldn't surprise you, would they?

Mr. LEE. No.

Chairman CORNYN. And that, of course, would likely be repeated, those numbers higher or lower depending on whether you are in a metropolitan area close to the border in Texas, Arizona, and other parts of the country. The truth is, while we are talking about 20,000 detention beds that the Department of Homeland Security for people who come across the border illegally and need to be detained, that that just represents a fraction of the bed space that is being occupied by people who have not only come into the country illegally, but have committed crimes while they are here. Would you agree with that? Or at least alleged to have committed crimes. I guess we ought to give them the presumption of innocence.

Mr. LEE. Most of our bed space right now is filled with individuals that came out of county jails, Federal prisons, State prisons. That is most of our population. The discretionary beds that we have now are the ones that we are using to support Border Patrol. So, yes, most of our beds are full of criminals.

Chairman CORNYN. Well, what resources would you need to take into custody, pending their removal, all criminal aliens in the United States, including identifying and removing those who are currently incarcerated in State and county jails?

Mr. LEE. I couldn't begin to tell you. Actually, we got some—in 2005, we got some enhancements for institutional removal program and we are actually just now hiring those up and we are going to concentrate in New York and California. But traditionally, the program is with the Office of Investigations and I would really hate to speak to the numbers and what they are.

Chairman CORNYN. Let me quick to say I feel a little bit bad for some of the witnesses and the people particularly like those of you who are serving our nation in this very difficult position, because we are not being critical of you but we are using this opportunity to help educate not only members of these Committees, but the Congress and the American people about this long-ignored problem

that, fortunately, our government post-9/11 is finally starting to come to grips with.

But the reason why we are trying to pin you down on some of these numbers is because my own impression is, as I think Senator Sessions has said, this nation is in denial about the size of the problem and about how much it will take in the way of Federal resources to deal with it. Right now, a lot of these are dealt with on the local level in border States particularly, where, for example, health care services are provided free of charge to people who have come into the country illegally and it is paid for by local taxpayers, not the Federal Government. When it comes to law enforcement, detention facilities, jails and prisons, those are paid for by State and local taxpayers, not by the Federal Government, when, in fact, the Federal border, the international border is a Federal responsibility that the Federal Government has simply not lived up to its responsibilities to deal with.

So I just want to make sure it is clear that we are not picking on you or any of the witnesses here. We—

Mr. LEE. And it is not an area that we are ignoring. Obviously, it is cherry picking. They are already in custody and we are in the process now of putting officers in those jails. Like I say, we did get positions in 2005. We are just now getting them to the academy and trained. But if you can identify a criminal, and in most cases, a lot of cases, you can do an administrative removal. They don't have to see a judge. It is basically the same process as expedited removal. We can get a quick order. We can get it while they still are serving their time and we can get them removed without putting them in that bed and then starting the whole process.

So it is an area that we are targeting. Like I say, our program did get money in 2005 for it. We just haven't been able to get them hired up and on, so—

Chairman CORNYN. I appreciate you working on it, but the point I am trying to make, and this is the only point I am trying to make, is that if Los Angeles County Jail has 30 to 40 percent of their population of 25,000 inmates are here illegally in the country, if you multiply that by the county jails and State prisons that have undocumented or illegal immigrants in the country who have committed or are at least charged with committing crimes, that those—that is going to take a substantial additional investment by the Federal Government to deal with that problem. Would you agree with that, Mr. Lee?

Mr. LEE. Yes, but I wouldn't agree that they are all here illegally in the country. The stats that I have seen, they identify them as foreign-born, and you can be foreign-born and still not be here illegally in the country. So, like I say, I just don't know if the stats are right. I hate to speak to the Office of Investigations programs.

Chairman CORNYN. No, I understand. I thought you agreed with me, though, that between 30 and 40 percent of the inmates at Los Angeles County Jail, it wouldn't surprise you if 30 to 40 percent of those at the Los Angeles County Jail were illegally in the United States.

Mr. LEE. Or foreign born.

Chairman CORNYN. Do you want to qualify that now?

Mr. LEE. Yes. You can be a lawful permanent resident and commit a misdemeanor and be in the L.A. County Jail, but you are not removable. Once you have served your time, you will be released just like the United States citizen will.

Chairman CORNYN. Okay. I don't want to quibble with you over it. So you want to qualify your answer now that you would not agree that—it would surprise you if 30 to 40 percent of the inmates at the Los Angeles County Jail were here illegally?

Mr. LEE. Yes.

Chairman CORNYN. Okay. Mr. Verdery, let me ask you about what it is that the United States Government ought to be able to expect from our neighbors like Mexico and those countries that would perhaps benefit from a temporary worker program. I believe you indicated that we should seek to obtain commitments from the Mexican government to redouble efforts to secure their Southern border, and we have heard some of the problems about a porous Southern Mexican border which makes that available to people from Central America and South America, assisting with anti-smuggling and document fraud investigations and operations.

What kind of obligations do you think we should ask for a country that will benefit from a temporary worker program allowing their citizens to work for a time in the United States, what kind of obligations should we expect them to accept in terms of working with us on these sorts of matters?

Mr. VERDERY. I think the key word is, I think was in my testimony, is redouble. I wouldn't want to leave the impression that this is some kind of relationship that is just on the front end. There is so much good work being done between the U.S. and Mexico, especially with ICE attaches overseas in Mexico City and the likewise. So it is a question of kind of expanding those efforts.

You can think of it in a couple different camps. One, as you mentioned, is trying to secure the exterior Mexican border against OTMs or others coming to Mexico and using that as a pipeline to the U.S. So that is people literally coming across a land border, their Southern border, or people coming in via air or sea, and that is hwy the robust information sharing agreements that were talked about in the, I forget what it stands for, but the SPP that the President and President Fox announced a couple months ago on information sharing is so critical.

On the kind of the border itself, we need just to heighten and expand and more regularize the intel flow to break up the smuggling rings, and I think the ICE investigation folks would say that the cooperation is getting better. It needs to improve even more.

The third thing I would mention is just a deterrence by the Mexican government at their own border of their people crossing illegally. We saw an impressive show of force by the Mexican government during the recent months during the Minuteman project era, if you want to call it that, which I think led to a massive drop in crossings during that period. Having a similar commitment all the time, trying to police their border, would be very helpful.

And that is just a few things, and my testimony goes into a number of others.

Chairman CORNYN. Let me ask—I want to ask you about US–VISIT. Would you give us your opinion on how do you think the

US–VISIT program has functioned so far and what time period do you see as a realistic expectation that US–VISIT will be—before it will be a fully functioning system where it will be the centerpiece for tracking visitors who enter the United States?

Mr. VERDERY. I think it is functioning extremely well. If you had told me where we have gotten to by this point when I walked into DHS two years ago, it would have seemed impossible to actually deploy a working system at our airports and seaports that functions without interfering with traffic and has found, I think it is up to 600 bad folks, people with good forged documents and the like. It is working extremely well in that environment.

The land border situation is about the toughest task I have ever seen the government take on, to try to vet literally millions of people coming through without backing up lines, as you know so well, both of you, at your ports of entry. It is going to require a lot of private sector expertise, and especially if we are going to make US–VISIT the backbone for the employment-based system that any type of temporary worker program would need to have to function.

Essentially, as much as I support, and I do support the enhancements on the Border Patrol and number of agents—I think that has been great—at some point, it would almost be better to turn and find 500 smart guys to go design the IT systems and the like that will allow that insta-check for employment systems to work. If Visa or MasterCard can build up where you can swipe your card at millions of locations and it works in three seconds, we ought to be able to have a similar capability at our places of employment.

So I think it is working well, but the deployment at the land borders is going to be very tough. We are going to need a lot of cooperation from the Mexican government especially to get people accustomed to coming through the ports of entry, to retrofit those travel documents to allow for the biometric capture via RFID and a lot of outreach to those communities. I would think that you all would be part of that.

Chairman CORNYN. I have to say that, as you and I have discussed in your previous life at the Department of Homeland Security, I was very pleased, as were a number of our border communities in Texas, with the care and thoughtfulness with which the Department of Homeland Security implemented US–VISIT at the land-based points of entry. I know there was a lot of apprehension that it would back things up, but due to a lot of conversations, a lot of hard work by an awful lot of people and a lot of collaboration, that proved not to be the case. As you say, it has been successful in identifying bad people with good forged documents, as you say.

Mr. VERDERY. It was always designed to be an incremental system and I would have to single out, since we are in Washington, that the Washington Post story that ran last week critical of US–VISIT, which I think completely missed the point of the program, did not understand it is being built in increments, and we obviously have the toughest one left to do, which is building out an entry and exit at the land border. But again, it is working great so far and we need that technological solution to be able to move people in and out and find the needles in the haystack moving forward.

Chairman CORNYN. Thank you very much.

Chairman KYL. Let me see if I can make this the last round here. Real quickly, first of all, Chief Aguilar, can you inform us on the status of the memorandum of understanding that Border Patrol is attempting to arrange with the Tohono O'odom Nation in Arizona as part of the effort to gain access to interior lands?

Mr. AGUILAR. The ongoing efforts of the Tohono O'odom Nation will include both a formal and informal understanding, if you will. At the current time, the Tohono O'odom Nation recognizes the importance of things such as drive-through barriers, now that they have seen the successes over in the Organ Pipe and those areas out there. So they have agreed to work with us in working towards the application of tactical infrastructure, the application of applying some of the rescue beacons, for example, remote video surveillance systems, and things of this nature.

One of the main successes we have had with the Tohono O'odom Nation has been the multi-use facility that is now, in fact, in use. I was just there last week, working out tremendously. So we are moving towards those memorandums of understanding and the informal agreements that would allow us to place the infrastructure and technology that we feel is necessary to bring the level of control to the nation out there.

Chairman KYL. Good. I would appreciate being kept up to date on that, and particularly as we get into the appropriation process. There have been some requests for funding. We want to make sure that everything is coordinated there.

Mr. Lee, do you know how many nationalities are represented in the removals of the OTM program, approximately?

Mr. LEE. A lot of nationalities.

Chairman KYL. How many different countries or nationalities?

Mr. LEE. There are over 100.

Chairman KYL. Okay. Now, let me go back to the question that Senator Cornyn asked. Maybe this is another way to look at it. As you know, the SCAAP program, or State Criminal Alien Assistance Program, provides Federal funding to help to make up for the cost that the States incur in housing the illegal immigrants who are convicted of crimes in the States and imprisoned there, right?

Mr. LEE. I am familiar with a little bit. It is not really under my program, but—

Chairman KYL. Okay. Well, maybe then you are—that program, in very rough terms, would cost about $2 billion to compensate the States for their incarceration costs and that is for, as I understand it, for criminal aliens. In other words, these are not people who are lawful residents but foreign-born. You can't comment on that, though, is that right?

Mr. LEE. No, but I can sure pass it on to the right division.

Chairman KYL. We can get the answer to that. The bottom line is that while there may be some foreign-born legal residents in the United States who are criminals and thus using some of these detention beds, a very high percentage are criminal aliens, is that not correct?

Mr. LEE. I believe so.

Chairman KYL. Okay. Mr. Verdery, my last couple of questions relate to some of the testimony that you presented having to do with integrating a new guest worker program with the other efforts

to control illegal immigration by controlling the border, by controlling the interior, and this element is by controlling or by enforcing the law at the workplace. Senator Cornyn and I have focused on all three in our legislation. We believe that there has to be a balance between controlling the border, controlling interior enforcement, and workplace enforcement, all three.

With regard to the workplace enforcement, you identified at least one of the critical components, and that is a biometric identification system that can verify the appropriateness to issue some kind of legal document to someone who has been in the country illegally but who presumably poses no threat, is not a criminal, and who would, therefore, be eligible for a legal program, a document that would be required to be verified prior to employment, right?

Mr. VERDERY. That is right.

Chairman KYL. It would take something to have a system for issuing such documents, first of all, for verifying the data necessary to issue the document, for issuing the document, and then for having in place both the employer verification system and the enforcement mechanism. It would take something to have all of those things in place were we to be able to get past a temporary worker program along the lines that you have heard described in different pieces of legislation, right?

Mr. VERDERY. That is right. You need to build out this capability which exists only on biographic information on a voluntary basis now.

Chairman KYL. Right. Can you talk a little bit to us about what some of the things are that you think would be necessary to put that in place, what you would have to have in place before you actually commenced the process, any estimates of cost? In other words, just to give folks some magnitude information about what we are talking about here in implementing an enforceable temporary worker program that would include people who have come here illegally.

Mr. VERDERY. Well, in terms of tasks, there is the task list and how much it would cost, and that cost can fall partially on the employee, partially the employer, and partially probably on the government.

I do believe the employer community is willing to pay if they can have a reliable source of labor, especially if it includes the labor that they have already hired and is already developing skills and community ties and the like.

The cost of the biometric card itself is not astounding. We issue biometric issues and biometric border crossing cards all the time. So that is not the problem. The problem is, how do you get it in the hands of the person and feel comfortable that it is who they say they are? In kind of corresponding levels of security, you could essentially have the employer do it. They could send in applications and you send back the card. I think that is probably the weakest. You could have them go to a government facility, an ICE or CIS office, and be fingerprinted and have that background check. Or, as some have suggested, you could have them leave the country and essentially apply for a visa overseas.

It strikes me that the middle ground is probably the place to go. You want to lock down that person's biometrics. You want to make

sure that it is not a forgery. You want to have the faith of the government having taken those prints and then you can kind of build out the credibility on top of that.

I wouldn't want to venture a guess as to how much the instacheck system would cost to build out, you know, the phone lines and the IT information to link into Wal-Mart and 7–Eleven and every other employer around the country. I know it will be a good amount, but—

Chairman KYL. Let me just interrupt on a couple of things there.

Mr. VERDERY. Sure.

Chairman KYL. First of all, there are two key pieces of information that you want in this card, are there not? First, the biometric data that tells you that the person standing in front of you is the person whose card you have. In other words, the person is who he or she claims to be.

Mr. VERDERY. That is right.

Chairman KYL. So you get the match on identity. And secondly, the basic data that you need to make the decision that you are making, in this case, an employment decision. You need to know that the person is not a criminal, is in the country legally one way or another, a citizen, a green card holder, a blue card holder, a student who is qualified to be employed, or whatever. That information is only as good as the inputted information, which means that you have to have either good breeder documents or a good system to check the information as it is presented, which kind of obviates the first type of verification system that you identified. It pretty much would require some kind of interview process with presentation of documents that can be checked, would it not?

Mr. VERDERY. Presumably, the employer is going to have to demonstrate that they either have advertised the position and can't find an American worker or have already filled the position where the job was unlikely to be filled with an American citizen, so—

Chairman KYL. Excuse me—

Mr. VERDERY. Sure.

Chairman KYL. —but that is a different issue. What I am getting at is that the person who you are about to offer the employment to, whose card you are going to swipe through the machine, is, in fact, entitled to participate in this particular program, in this employment.

Mr. VERDERY. That is right. I mean, the company will have to get a certification from whoever this is assigned to, the Labor Department, the Social Security Administration, DHS perhaps, that they are entitled to work or continue to work.

Chairman KYL. So somehow or other, for them to do that certification, somebody is going to have to present some documents to them and those documents, to one degree or another, need to be verified.

Mr. VERDERY. That is right, and that is the underlying rub, is how secure those documents are, with drivers' licenses and the right.

Chairman KYL. So the breeder documents and the verification process is probably the long pole in this tent. At least, that has been my view.

With regard to the machinery itself, on the laser visas, for example, from Mexico, the machines are relatively inexpensive, and that is with having produced only a few. We did an estimate. If you just take the $2,000 cost per machine and you put one in every post office in the country, it is only $64,000. I think that that part of the process could be relatively inexpensive, and as you point out, the technology is there. Do you have any disagreement with that?

Mr. VERDERY. I don't, and especially if, again, the theory is that many of these individuals are going to want to travel back and forth and, therefore, they are going to need some type of retrofitted document that can be read wirelessly.

Chairman KYL. Right.

Mr. VERDERY. So they are going to have to have a new document anyway to allow for that travel.

Chairman KYL. Right. So I think that the key expense is going to be in this verification of status and making sure that the breeder documents and that initial determination are valid. But your view is that this process better be pretty well in place before we start it—well, I guess, instead of assuming the answer, let me ask it.

Mr. VERDERY. I think—

Chairman KYL. Go ahead.

Mr. VERDERY. I think you could have essentially a bifurcated system that treats people who are already here somewhat differently for a time being as opposed to new people who want to come in, and eventually, you want a merged kind of system. But I can see a transition phase where folks who are here are treated somewhat differently for a period of time as opposed to people who are coming in from overseas. And again, the temporary worker program is not just aimed at Mexico. You could be coming in from anywhere under the theory the President has espoused and others. But you need that transition piece to make it work.

Chairman KYL. And it has got to be ready to go before the system begins, that is to say, before the person can be legally employed, you are going to have to have the documents checked, issued, the machinery in place, employer verification process ready to go.

Mr. VERDERY. I would suggest that for new entrants to the country, that definitely should be a prerequisite, that you have a check in place. For existing workers, I think that is going to take time to build out. So you could have a situation where employers wanting to bring in new labor are the first in line, and then people who are using existing labor come on afterwards, if you can't build it all at once.

Chairman KYL. With Senator Cornyn's concurrence, let me ask one last question here. Are you not also going to have to have some identification for American citizens or green card holders or other lawful residents of the United States to avoid the problem of discrimination when an employer asks for the proper documentation from someone who informs that prospective employer that he doesn't need proper documentation because while he may look like he is not American or have some kind of an accent, he is very much an American citizen or other lawful resident? So there is going to have to be some documentation there, too, isn't there?

Mr. VERDERY. The Social Security Administration is going to have a tough job, yes.

Chairman KYL. Okay.

Mr. VERDERY. When you think of the number of workers that need to be vetted and the error rate that would be acceptable to our economy, it is a tough, tough business. And that is why I suggest again that you might not want to deploy it kind of all at once to every employer around the country at once. You may want to have a tiered or a phased system that catches new entrants first and then catches up with the existing ones.

Chairman KYL. And the only comment I would have on that is that we are trying to do this in a very skeptical atmosphere, let us put it that way, where at least my constituents have said, we want to make sure you are going to enforce this new law before you pass it, because in the past, you haven't and it has resulted in amnesty. Okay, that is fair. I think that puts a burden on us, however, to make sure that everything is in place for that enforcement, the resources, the commitment, and the ability to do so before we begin the process or there is going to be a high degree of skepticism. So this is part of what we are going to have to try to identify in terms of our needs and requirements before actually beginning to implement such a program.

And while I don't reject the idea of some kind of calibrated enforcement that may well be necessary, by the same token, folks are not going to want to have to rely upon a lot of good faith there because they have seen the government fail them in the past.

Mr. VERDERY. A series of hard dates might be the kind of middle ground that might work.

Chairman KYL. I appreciate your expertise on this and I will make that my last question and turn to Senator Cornyn.

Chairman CORNYN. I just have a couple more questions. First of all, I am just curious, Chief, this dramatic increase in the number of OTMs being apprehended, and as you noted, a large percentage of those coming in through the McAllen sector in South Texas. What do you attribute the dramatic increase in the number of other than Mexican individuals who are being apprehended this year as opposed to previous years?

Mr. AGUILAR. One of the obvious things, Senator, is the rate at which we are releasing on own recognizance. The other one, specifically to Brazilians, is the lack of requirement of a visa into Mexico that just facilitates that entry into the United States. Last year, for 2004, the OTM release rate nationwide was about 47 percent. It is now up to 70. Last year in McAllen, it was about 61 percent. It is now at 91 percent. The bulk, majority of those, are Brazilians. So a combination of those things, but definitely detention would, in fact, equal deterrence, and that is one of the things that I think we are all in agreement in.

Chairman CORNYN. Thank you very much.

Mr. Verdery, let me ask you, just to follow up on the question Senator Kyl had, and he propounded to you a very practical concern that we have, that is namely identifying people who can legally work in the United States and providing a mechanism for a prospective employer to determine that relatively easily. But then, how do we deal with a means to basically require some sort of iden-

tification by everybody rather than have employers ask people for identification based on the way they look or based on their accent, which has obvious problems with it.

Is there any way to accomplish all of these goals while avoiding the objection by those who would vigorously oppose a national ID card?

Mr. VERDERY. That is a very tough question, and as I have talked to employers, it is one of the things that they complain about, is that the government has essentially put them in an impossible situation where they can't ask the questions that they would need to ask to ascertain legitimacy of a would-be employee, even if they wanted to do the right thing.

I do think, though, as you come into a generation of better drivers' licenses with the recent action by the Congress and then the States implementing this over the next few years, better Social Security cards and better linkages amongst those databases, you could have a situation where an employee or a would-be employee walks into a place of employment and is given a form saying, you need to provide one of the following so we can vet your appropriateness for employment: A drivers' license that is properly secured, a Social Security card that can't be issued to somebody who is not allowed to work, or this new guest worker card or other appropriate visa. Each of those documents has to be secure. But I think we are moving in that direction. It is just a question of how fast.

Chairman CORNYN. I appreciate that answer. Of course, I think the sort of—the reason why I believe, and I think Senator Kyl would agree with me, why comprehensive reform is important rather than the sort of rifle shot or piecemeal approach is we need to, I think, take advantage of every means available to us to try to begin to apply a pincer movement, so to speak, on the problem rather than just deal with one aspect of it, let us say a temporary worker program, and try to say that, well, we are going to deal with all of our immigration-related and economic immigrant sort of problems through that mechanism.

What we are proposing is we not only enhance that border security to deal with people as they come across illegally, including the detention space, we are also going to provide resources for interior enforcement, which we do next to nothing about now. And then we are also going to deal with a workable mechanism for prospective employers to deal with prospective employees to determine who can legally work in the country.

I think through these mechanisms, through this at least three-prong approach, that we will have a much better chance of dealing with a problem that right now is essentially out of control.

I want to just say, in conclusion, thank you again to each of you for your willingness to appear here today and to answer tough questions and to help us hopefully come up with some meaningful solutions. Thank you, Mr. Chairman.

Chairman KYL. Thank you, and I want to conclude by indicating that any of the members of the Subcommittees who wish to submit statements, their statements will be taken for the record. We should probably allow a couple of days for submission of any written questions to our panelists, and I would appreciate your co-

operation. I have just got a couple about—well, basically the statistics that I asked you for, if you can get them to me.

We really do appreciate your testimony, as Senator Cornyn said, and the really good ideas about how to constructively deal with the problems. We started the hearing out talking about the problems, the fact that we have got far too many people who are released on their own recognizance who don't show up, not enough detention space. We have an expedited removal process that is working very well that actually deters violation, but we need to expand that to the entirety of the border.

All of these items need to be calculated, basically, for us to determine what we need to do in our legislation and what the costs of that will be, because Senator Cornyn and I very much want to end up here with a constructive piece of legislation that provides a maximum control of the border, provides maximum enforcement in the interior, and provides the most workable and enforceable workplace program, as well.

With a combination of all of those, we obviously hope to eventually end this problem of illegal immigration while satisfying all of the requirements that our immigration laws generally seek to meet, including providing enough workers in our country. It is not going to be easy, but with the help of people like yourself, we can make it happen. So again, we thank you very much for your testimony today.

The hearing is adjourned.

[Whereupon, at 4:30 p.m., the Subcommittees were adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Immigration and Terrorism Joint Subcommittee Hearing:
"The Southern Border in Crisis:
Resources and Strategies to Improve National Security"
June 7, 2005

Written Questions for the Record
Senator Jeff Sessions

I. Interior Sweeps By Border Patrol Criticized and Stopped

1) Were you in command at the time of these arrests?

ANSWER: No, the operation concluded on June 5, 2004 and I took command as Chief of the Border Patrol on July 1, 2004.

2) Was this criticism from the Department acceptable to you?

ANSWER: Customs and Border Protection's National Border Patrol Strategy includes a substantial defense-in-depth component out of recognition that control of the border cannot be achieved strictly by enforcement at the line. Full control of the border can be realized only by demonstrating that any attempt to enter the United States illegally would be futile in the first instance. For that reason, some enforcement actions must necessarily occur away from the physical border, at interior checkpoints. The Department of Homeland Security supports the National Border Patrol Strategy.

3) Why were the border patrol sweeps – all conducted within 100 miles of the border – stopped? Weren't your agents simply doing their jobs?

ANSWER: To ascertain the best allocation of its finite resources, the Office of Border Patrol (OBP) uses intelligence to dictate where manpower is best served for current and future operations.

4) Does the border patrol currently have the authority to perform these types of investigative actions and arrests?

ANSWER: Yes, Border Patrol Agents have statutory authority to perform these arrests under Section 287 of the Immigration and Nationality Act.

5) To do an effective job as federal officers, wouldn't it be helpful if it was clear border patrol agents have the authority to enforce all immigration law violations both at the border any beyond?

ANSWER: The authority of Border Patrol Agents is clearly defined and Agents have a comprehensive understanding of the scope of their

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authority. CBP Office of Border Patrol is constantly evaluating our use of our resources.

6) With the limited interior resources and agents that exist, aren't these kind of arrests imperative to effective immigration enforcement?

ANSWER: A multi-layered approach is critical to effective immigration enforcement. OBP Agents in Temecula and San Clemente conduct immigration enforcement at and around the checkpoints every day.

II. Agent Fear of Retribution

It is well known that many agents fear retribution when they criticize their chain of command. In the fall of 2004, new policies went into place that allow DHS to fire agents more easily. While this is a good thing for efficient government, it has the potential to jeopardize the job security of agents who talk to the press. I can assure you I will not stand for retaliatory action taken against agents who do their jobs to their fullest capacity and who tell us where our faults are in securing the border.

7) How many border patrol agents have been fired since the new personnel policies went into effect?

ANSWER: From the beginning of the fiscal year 2005 until June 11, 2005, 203 Agents separated from the Office of Border Patrol. This number does not reflect Agents that retired or transferred to a different position within CBP.

8) How many border patrol agents have resigned since the new personnel policies went into effect?

ANSWER: OBP does not currently break down the separations any further at this time. (i.e. resignations, terminations).

9) Were any of the agents involved in the 420 arrests in Southern California last summer (I believe there were 12) fired for any reason?

ANSWER: No.

10) Have any of the agents involved in the 420 arrests in Southern California last summer (I believe there were 12) resigned for any reason?

ANSWER: No.

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III. Minutemen / Border Patrol Memo – Purposeful Reduction of Apprehension Numbers

Many of us here in DC followed the efforts of the Minutemen in April as they sat watch along our southern border. I truly hope that DHS is not doing anything to purposely undermine the effect their presence may have had to deter illegal crossings while they were there. The Washington Times recently reported that border patrol agents were told to "stand down" the month following the departure of the Minutemen so that arrests would not increase. Specifically, my office has heard reports from border agents that they were read a memo on or about May 1st that told them "not to apprehend more illegal aliens in May than were apprehended in April" because a spike in the numbers would prove that the presence of the Minutemen on the border did in fact have a deterrent effect on illegal border crossings in April.

11) Please acquire the memo read by Field Operations Supervisor Tom McCall of the Naco Station to fax on or about 5-1-05 concerning the forward deployment of agents in an effort to reduce apprehensions of aliens in the Naco corridor and supply it to the Committee as a response to this question.

ANSWER: Agents were not told to stand down at any point. The following message to reduce apprehensions was sent from management of the Naco Station:

"With the end of the Minutemen Project, our numbers are expected to escalate. In a review of the operations, I think we can maintain these #'s and lower them (level of control in the area). This can be accomplished with closer supervision and more agents in deterrence positions. Presence equals deterrence, consequently assign more agents to deterrence positions and with close supervision insure they stay there, they should only leave their position to work groups that go north and coordinate with the Tactical units. Again Supervisors should be directing these operations and deterrence positions should turn any sign or tracks to the tactical units and not go too far north."

12) What is the number of border patrol agents currently working out of the Douglas and Naco stations?

ANSWER: The latest staffing report reflects 457 agents assigned to Douglas Station and 381 to Naco Station.

13) What was the number of border patrol agents working out of the Douglas and Naco stations in the month of April of this year?

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ANSWER: At the end of Fiscal year 2004, Douglas Station had 449 agents and Naco Station had 386 agents.

14) Is it true that just as the peak season for illegal crossings of our border began in early May, that there were major deployments of Border Patrol assets and personnel to the western desert, between Nogales and Yuma, AZ?

ANSWER: March and April are typically the peak season for illegal crossings and the highest monthly arrests occur during this period, not early May. Additional agents are deployed to the west desert, where extreme temperatures are of greatest concern, at the beginning of summer to reduce the levels of illegal activity.

15) Is it true that the horse patrol has been re-deployed to the western desert?

ANSWER: OBP has deployed horses to the west desert.

16) Where are the USBP helicopters now operating mostly, isn't that also the western desert?

ANSWER: OBP has similarly redeployed more than twenty helicopters to the west desert.

17) If your intention is to have an effective deterrent force in that sector wouldn't you agree that redeploying these assets of the Border Patrol out of a known and preferred crossing area for illegal aliens and drug traffickers at a time of the year when smuggling traffic is known to increase is not the best use of these assets?

ANSWER: While deterrence is an important part of CBP's National Strategy, the Office of Border Patrol disagrees with this characterization of the use of its assets. For the Tucson Sector, the Tucson Station – which has a portion of the "west desert" in their area of responsibility – has seen the greatest increase in alien arrests this year. As of July 12, 2005, the Naco and Douglas Stations have each seen a reduction in arrests by approximately 30 percent for this fiscal year.

III. Deployment Posture of the Border Patrol

Traveling north through eastern Arizona is a preferred route for smugglers. In southern Arizona, I hear it is well know that if you can reach pavement, you are home free. This is one reason I advocate so strongly for increased *interior* enforcement resources. The border patrol can not do it all and we must have "backup" inside our borders – on our "pavements" – to catch the 4 out of 5 illegal aliens that make it past the border patrol.

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18) Since many of the agents have been forward deployed very near the border, describe the resources in place to back them up, should smugglers manage to get around them?

ANSWER: CBP's Office of Border Patrol uses a tiered enforcement system and practices a defense-in-depth posture to increase control at the border. Under the tiered system, static positions are used for heavily trafficked crossing areas in urban environments; mobile units include checkpoints and agents working transportation hubs.

19) Is their a current deployment policy of "sitting agents on X's"?*(being assigned to a specific and visible physical location – primarily for the purpose of deterrence.)*

ANSWER: CBP does practice forward deployment, especially in urban operations. Some work assignments have limited mobility due to bus stations and housing units in close proximity to the border. Agents are rotated through these assignments and they understand their value.

20) Doesn't the policy of "sitting on X's" reduce the effectiveness of our agents by making them sitting ducks for snipers and other threats? (*Washington Times Article "Snipers Target Border Agents." Feb. 3, 2005)*

ANSWER: Officer safety is CBP's number one concern. Line watch positions are an important piece of CBP's forward deployment posture. Although there has been an increase of violence on the border, CBP agents are not "sitting ducks." Rather, the Border Patrol uses intelligence to drive its operations. Agents take part in a daily "muster," a daily meeting held at the beginning of each shift in order to stay informed of the most recent activity and officer safety issues.

IV. The Need for Permanent Checkpoints and *Unpredictable* Temporary Checkpoints in Southern Arizona

21) What is the status of the checkpoints in southern Arizona?

ANSWER: There are currently no permanent checkpoints operated in southern Arizona. Since 1999, Appropriations language has prevented the establishment of permanent checkpoint locations in the Tucson Sector, which includes much of the international border in southern Arizona. During this fiscal year, Border Patrol has operated temporary checkpoints on I-19, and State Routes 85 and 90 on a regular basis. A temporary checkpoint located on State Route 191 has operated on an intermittent basis during this fiscal year.

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22) How many are permanent, how many are temporary?

ANSWER: The Office of Border Patrol operates permanent and tactical checkpoints. Permanent checkpoints include physical structures at a permanent location. Tactical checkpoints do not include any permanent physical structures, but in accordance with case law are operated at the same pre-selected location. Tactical checkpoints have been historically referred to as temporary or mobile checkpoints; the term tactical checkpoint was adopted in 2003 to more accurately describe these operations. OBP has Arizona Department of Transportation (AZDOT) approved temporary checkpoint sites on Interstate 19, and State Routes 90, 80, 191, 80 East, 82, and 83 in southern Arizona. The Tucson Sector does not have any permanent checkpoints.

23) Isn't it true that temporary checkpoints are only effective if coyotes and smugglers cannot predict where and when they will be set up?

ANSWER: The purpose of permanent checkpoints is to deny smugglers access to main roads and highways leading away from the border. By restricting smugglers access to routes of egress from the border, a deterrence effect is created to the initial illegal entry or illegal activity. Checkpoints are strategically placed to optimize enforcement benefits while minimizing the impact on legitimate traffic. Terrorists, smugglers, or any illegal entrants that insist on attempting an entry and movement into the interior of the United States are forced to use less traveled routes where it is more difficult for them to blend with local traffic and are therefore more readily identifiable to law enforcement personnel.

Tactical checkpoints are most effective when they compliment permanent checkpoint facilities.

24) Checkpoints that go up and down on a regular schedule make it easy for smugglers to plan their route and time schedules. Are the checkpoints on Hwy 90, Hwy 80 and Hwy 191 temporary or permanent? Are they put up and taken down according to a routine schedule or do move at random intervals to new locations? *(Referring specifically to checkpoints on Hwy 90, Hwy 80, and Hwy 191 in Cochise County)*

ANSWER: Permanent checkpoints render significant enforcement benefits by providing an avenue to legally screen all traffic leaving the border region without any individualized suspicion. This greatly increases our detection capabilities of radiation, narcotics, and humans. At a permanent checkpoint, any enforcement action taken is based upon the reasonableness of the checkpoint. As stated previously, all of the aforementioned checkpoints operated in southern Arizona are tactical

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checkpoints with no permanent physical structures. The location of operation, though, remains the same. With the exception of Interstate 19, where it is safe and operationally sound to conduct a checkpoint, all of the highways discussed above have only one AZDOT-approved location.

25) Under who's authority is the current temporary checkpoint policy in Cochise County being implemented?

ANSWER: The Chief Patrol Agent of the Tucson Sector maintains operational control of Cochise County. OCP works with the Arizona Department of Transportation to ensure that the *Manual of Uniformed Traffic Control Devices* is followed when deploying a checkpoint.

26) How are interior checkpoints deployed in other border states? Are they permanent or temporary?

ANSWER: Border Patrol has established thirty-three strategically placed permanent checkpoints in eight of its nine sectors along the southwest border, supported by tactical checkpoints.

27) Please provide the committee with the practices, policy, regulations, or laws that govern when and how temporary checkpoints are moved?

ANSWER: With the exception of Tucson Sector, permanent checkpoints may operate twenty-four hours a day, seven days a week. At these locations, physical infrastructure supports: access to computers and technology; detention facilities; shade and water for canines; paved shoulder areas with sufficient space for vehicle lift equipment essential to inspecting underneath vehicles; and the space required for gamma-ray machines if available. The number and location of tactical checkpoints can change on a daily basis, depending on available resources and intelligence. In the Tucson Sector, movement and operation is currently dictated largely by legislative language, which currently requires that checkpoints in the Tucson Sector be moved, on average, every fourteen days. The 2006 House Appropriations bill contains language that places greater restraints and states that Tucson Sector checkpoints must be relocated every seven days and that it may not return to that location until at least seven days after relocation.

28) To be effective, should temporary checkpoints be moved at random to unpredictable locations and able to stay in the same location for longer than two weeks if needed?

ANSWER: For maximum enforcement effectiveness, permanent checkpoints have demonstrated a long-term deterrence to illegal smuggling, directly supporting line watch operations by denying major

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routes of egress. Established permanent locations provide the infrastructure necessary to adequately provide for traffic control, effective inspections, processing and detention. This adds substantially to the effectiveness of operations and safety for both agents and the driving public. In *U.S. v* Maxwell, 565 F.2d 596 (9th Cir. 1977), the court held that a checkpoint location should be fixed at a particular site selected in advance by supervisors. The court elaborated by stating that the checkpoint should be operated at the same location every time and should not be moved up and down a particular stretch of roadway. Doing so may be ruled to be more like a roving patrol stop, and, therefore, reasonable suspicion would be required to justify any vehicle stop. This would effectively eliminate the enforcement benefits of that checkpoint by removing the authority to stop and question occupants of vehicles with no individualized suspicion. Traffic checkpoints operated within these judicial boundaries provide a level of authority that is not replicated in any other enforcement tool.

Tactical checkpoints are most effective when used in support of permanent checkpoints on minor highways and routes of egress away from the border. Based upon available resources and intelligence, tactical checkpoints can operate in a manor which is unpredictable to smugglers.

V. Entry of Biometric Information Obtained from Apprehended Illegal Aliens and Absconders

27. Please describe, in as much detail as possible what fingerprints are taken from each type of the following classes of illegal aliens apprehended at the border.
    a. Mexican Nationals
    b. Other Than Mexican Nationals (OTMs) from non-special interest countries.
    c. Other Than Mexican Nationals (OTMs) from special interest countries.

    ANSWER:

ANSWER: The Office of Border Patrol uses two, integrated data systems – IDENT and IAFIS – to simultaneously check criminal and immigration records. During the routine processing of all persons arrested over the age of fourteen, fingerprints are taken of all ten fingers, without distinguishing nationality. IDENT gathers recidivism and prior removal/immigration data from two-print (left and right index fingers) information. Ten-print information is routed to IAFIS, which is linked to the FBI's criminal master file. The FBI's IAFIS 2000 System provides rapid identification of individuals with outstanding criminal warrants by electronically comparing a live-scanned fingerprint against a nationwide database of previously captured fingerprints. There, the prints are checked for criminal

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history through the FBI and wants/warrants. IAFIS stores approximately forty-seven million records of criminal offenders' ten-print biometric information; records date back to the 1920's. After a positive response is received from IDENT/IAFIS, a shift supervisor is responsible for ensuring that all criminal and administrative records checks are run on all IAFIS hits, including, but not limited to: ENFORCE; the Central Index System; the Deportable Alien Control System; the National Crime Information Center; the National Alien immigration Lookout System; and the Treasury Enforcement Communication System.

28. For each of the below categories, please list each database these fingerprints are scanned against for criminal records or arrest warrants.
    a. Mexican Nationals
    b. Other Than Mexican Nationals (OTMs) from non-special interest countries.
    c. Other Than Mexican Nationals (OTMs) from special interest countries.

    ANSWER: For all aforementioned categories, prints are simultaneously entered into the IDENT and IAFIS databases. As noted above, IDENT is the DHS Automated Biometric Identification System. The System Administrators will maintain the ten-print scanners and ensure that all information needed for the metrics data is properly captured. The data collected must include all aliens that are fingerprinted in IDENT and IAFIS. The information, which is tracked for metrics collection and collected in ENFORCE, includes, but not limited to, the following: name; A-number, FIN, and FNU; charge(s) (the criminal charges that are amendable by letter of the law); indication of whether this is a DHS detention (yes/no); indication as to whether the fingerprints have been verified by the fingerprint examiner (positive or negative in Records Check section); disposition and indication as to whether the criminal charges meet prosecutorial guidelines according to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. This must be included in the Charges section of ENFORCE.

    After a positive response is received from IDENT/IAFIS, a shift supervisor is responsible for ensuring that all criminal and administrative records checks are run on all IAFIS hits, including, but not limited to, ENFORCE, the Central Index System, the Deportable Alien Control System, the National Crime Information Center, the National Alien immigration Lookout System, and the Treasury Enforcement Communication System.

29. For each of the below categories, please describe what database(s) the fingerprints collected at the time of apprehension are entered into. Please list the additional databases that are then linked electronically to the

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database(s) of original entry. For example, if the fingerprints are entered into IDENT and IDENT links with both IAFIS and the NCIC -- that link should be described in detail.

a. Mexican Nationals
b. Other Than Mexican Nationals (OTMs) from non-special interest countries.
c. Other Than Mexican Nationals (OTMs) from special interest countries.

ANSWER: The FBI's IAFIS 2000 System provides rapid identification of individuals with outstanding criminal warrants by electronically comparing a live-scanned fingerprint against a nationwide database of previously captured fingerprints. IAFIS is linked to the FBI's criminal master file. The systems are integrated for use by Border Patrol to check criminal and immigration records simultaneously. IAFIS stores approximately 47 million records of criminal offenders' ten-print biometric information; records date back to the 1920's.

In addition, Special Interest Aliens are interviewed by the JTTF and ICE. This information is checked through the National Targeting Center and the Commissioner's situation room is contacted.

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SUBMISSIONS FOR THE RECORD

STATEMENT OF

DAVID AGUILAR
CHIEF
OFFICE OF BORDER PATROL
U.S. CUSTOMS AND BORDER PROTECTION
DEPARTMENT OF HOMELAND SECURITY

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON TERRORISM, TECHNOLOGY, AND HOMELAND SECURITY
and SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY & CITIZENSHIP

REGARDING

THE SOUTHERN BORDER IN CRISIS: RESOURCES AND STRATEGIES TO IMPROVE NATIONAL SECURITY
TUESDAY, JUNE 7, 2005
2:30 PM
ROOM 226, DIRKSEN SENATE OFFICE BUILDING

CHAIRMAN KYL, CHAIRMAN CORNYN AND DISTINGUISHED COMMITTEE MEMBERS, it is my honor to have the opportunity to appear before you today to discuss the successes and challenges of border security and the implementation of the Expedited Removal program, as demonstrated by the operations and law enforcement initiatives of the Office of Border Patrol, a component of U.S. Customs and Border Protection (CBP). My name is David Aguilar, and I am the Chief of Border Patrol. I would like to begin by giving you a brief overview of our agency and mission.

CBP, as the guardian of the Nation's borders, safeguards the homeland—foremost, by protecting the American public against terrorists and the instruments of terrorism; while at the same time enforcing the laws of the United States and fostering the Nation's economic security through lawful travel and trade. Contributing to all this is the Border Patrol's time-honored duty of interdicting illegal aliens and drugs and those who attempt to smuggle them across our borders between the Ports of Entry. We are concerned that illegal human smuggling routes may be exploited by terrorists to conduct attacks against the U.S. homeland. Reducing illegal migration across our borders may help in disrupting possible attempts by terrorists to enter our country.

CBP Border Patrol's National Strategy has made a centralized chain of command a priority and has increased the effectiveness of our agents by using intelligence driven operations to deploy our resources. The Strategy recognizes that border awareness and cooperation with our law enforcement partners is critical. Partnerships with Immigration and Customs Enforcement (ICE), Department of the Interior, DEA, FBI,

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Department of Transportation, other interagency partners, state, local, and tribal law enforcement agencies and state Homeland Security offices play a vital role in having and disseminating information and tactical intelligence that assists in a quick and nimble response, which is essential to mission success.

Recognizing that we cannot control our borders by merely enforcing at the "line," our strategy incorporates a "defense in depth" component, to include transportation checks away from the physical border. Checkpoints are critical to our patrol efforts, for they deny major routes of egress from the borders to smugglers intent on delivering people, drugs, and other contraband into the interior of the United States. Permanent checkpoints allow CBP Border Patrol to establish an important second layer of defense and help deter illegal entries through improved enforcement.

CBP Border Patrol will continue to assess, develop, and deploy the appropriate mix of technology, personnel, and information sources to gain, maintain, and expand coverage of the border in an effort to use our resources in the most efficient fashion. As an example, the use of technology including, the expansion of camera systems, biometrics, sensors, air assets, and improving communications systems can provide the force multiplier that CBP Border Patrol needs to be more effective.

Historically, major CBP Border Patrol initiatives, such as *Operation Hold the Line*, *Operation Gatekeeper*, and *Operation Rio Grande* in our El Paso, San Diego, and McAllen Sectors, respectively, have had great border enforcement impact on illegal

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migration patterns along the southwest border, proving that a measure of control is possible. Together, they have laid the foundation for newer strategies and enforcement objectives and an ambitious goal to gain control of our Nation's borders, particularly our border with Mexico.

These initiatives will significantly affect illegal migration as we seek to bring the proper balance of personnel, equipment, technology, and infrastructure into areas experiencing the greatest level of cross-border illegal activity along our Nation's borders between the Ports of Entry. An example of one of these initiatives is the Arizona Border Control Initiative, currently in Phase Two. In this effort, CBP as the operational lead for ABCI partners with other DHS agencies and other federal, state, local, and tribal law enforcement agencies, bringing together resources and fused intelligence into a geographical area that has been heavily impacted by illicit smuggling activity. Our current efforts include building on partnerships with the Government of Mexico to create a safer and more secure border through the Border Safety Initiative and special repatriation programs. In doing so, we continue to make a significant positive effect towards fighting terrorism, illegal migration, and crime in that border area.

Another example is the partnership between DHS and the Department of Justice to develop the IDENT/IAFIS integrated workstation, which captures a single set of fingerprints and submits them simultaneously to DHS' Automated Biometric Identification System (IDENT) and DOJ's Integrated Automated Fingerprint Identification System (IAFIS) for identity checks. These integrated systems were deployed to all

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Border Patrol stations in 2004, nearly three months ahead of the schedule set by former Secretary Tom Ridge. With immediate access to IAFIS, these sites have identified hundreds of egregious offenders, including murderers, rapists, kidnappers, and drug traffickers, which otherwise may have gone undetected. It has demonstrated significant steps towards improving national security and greatly enhancing our ability to secure our nation's borders.

The U.S. continues to experience a rising influx of other than Mexican nationals (OTMs) illegally entering the country. Apprehensions are running at a rate of 175% for FY05 over FY 04's record number of OTM apprehensions on the southwest border, and 131% over the record national FY 04 OTM apprehension figure of 75,371. The exponential growth in the apprehension of OTM illegal entrant aliens and, in most cases, their subsequent release is becoming a major source of clogging and friction for the removal process. Currently, Border Patrol places most of these apprehensions in INA 240 removal proceedings before an Immigration Judge. All OTMs subject to mandatory detention are detained pending completion of removal proceedings (Special Interest aliens that require additional investigation for terrorism and Aggravated Felons). OTMs not subject to mandatory detention are released on their own recognizance or a bond. To help streamline the removal process, DHS expanded the use of Expedited Removal proceedings (ER) for OTMs in the Tucson and Laredo sectors. ER proceedings when contrasted with traditional 240 proceedings, shorten the duration of time spent in detention facilities and the practical elimination of time spent getting ready for and appearing before immigration courts and judges.

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Both the Laredo and Tucson Sectors are currently utilizing ER to streamline the removal process. The deterrence effect of the ER process on OTM illegal entry may clearly be seen when comparing these two sectors with sectors without this removal process. The reducing impact of ER on OTM apprehension rates, as compared with those of sectors experiencing the systematic Own Recognizance (OR) release of apprehended OTMs, is clear. This is especially dramatic with Brazilian OTMs. In both the Laredo and Tucson Sectors, this drop in rates of apprehension for OTMs may be seen by comparing apprehension rates for the period just previous to the implementation of ER with those for the period just after.

Operational outcomes in sectors using ER show a trend of attenuated rates of OTM apprehension. DHS has implemented the use of ER beyond the Tucson and Laredo Sectors, to sectors most affected by the Ninth Circuit ruling prohibiting reinstatement: Yuma, El Centro, and San Diego. The application of this process is limited by policy for these sectors, to only those aliens who have illegally reentered the United States while subject to a prior Order of Exclusion, Removal, or Deportation and meet all other criteria for ER.

Nationally, CBP Border Patrol is tasked with a very complex, sensitive, and difficult job, which historically has presented immense challenges. We face these challenges every day with vigilance, dedication to service, and integrity as we work to strengthen national security and protect America and its citizens. I would like to thank the Chairman, and

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the Subcommittee, for the opportunity to present this testimony today and for your support of CBP and DHS. I would be pleased to respond to any questions that you might have at this time.

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Statement
United States Senate Committee on the Judiciary
The Southern Border in Crisis: Resources and Strategies to Improve National Security
June 7, 2005

The Honorable John Cornyn
United States Senator , Texas

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

"The Southern Border in Crisis: Resources and Strategies to Improve National Security."

Tuesday, June 7, 2005, 2:30 p.m., Dirksen Senate Office Building Room 226

Thank you Mr. Chairman for holding today's hearing. I know that both you and Senator Feinstein have spent significant time working on the issues associated with our southern border and I appreciate your staffs taking the lead on setting up this hearing. I look forward to working with the both of you to provide better security along for our nation's borders.

I also want to thank the ranking member of the Immigration subcommittee, Senator Kennedy, for working with me to bring about several productive immigration hearings this year. I look forward to working with Senator Kennedy and the rest of our Senate colleagues as we now move towards comprehensive immigration reform.

Senator Kyl and I have been working together to identify and develop solutions to the critical problems plaguing our immigration system. We are conducting a top to bottom review of our nation's border security and enforcement efforts. That review has provided important information that we have used to draft the proposed enforcement provisions that will better secure our nation. I look forward to continuing our work in this area as we move towards crafting a comprehensive immigration reform bill.

Our immigration and border security system is badly broken and has suffered from years of neglect. This leaves our borders unprotected, threatens our national security, and makes a mockery of the rule of law. We cannot continue to ignore our border security in a post-9/11 world.
Today's hearing will illustrate the national security threat posed by aliens from countries other than Mexico, or OTMs, who illegally cross our southern border. Arrests of OTMs at the southern border are reaching record levels. And some of these aliens are from special interest countries; that is a country who is a state sponsor of terrorism.

Additionally, my state, which has 65% of our nation's common border with Mexico, has seen an increase in the number of OTM arrests. In fact, a majority of this year's OTM apprehensions have occurred in the Texas sectors. This year the border patrol has apprehended approximately 96,000 OTMs, 90 % of these arrests have occurred at the southwest border. And, of the southwest border arrests more than 76,000 have been made in the Texas sectors.
To make matters worse, the vast majority of these OTMs are simply given a notice to appear letter and released into our country because we lack the facilities to hold them. Whether in Texas, Arizona, California or anywhere else in our country, this state of affairs is unacceptable and needs to change.

These examples highlight the concerns raised by former Deputy Homeland Security Secretary James Loy when he testified that intelligence information suggests that al Qaeda believes that illegally

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crossing the southwest border through Mexico "is more advantageous than legal entry for operational security reasons."

Accordingly, as Congress debates various proposals to both enforce and reform our immigration laws, we must all remember: Undetected border crossings by unknown individuals from suspect nations pose a clear threat to the national security of the United States, and any comprehensive solution to our immigration problems must deal with that threat.

I look forward to hearing from our witnesses today about what we should do to confront this problem and ways in which we can further strengthen and enforce our borders. I also look forward to continuing our hearings and working to provide effective comprehensive immigration reform that better serves our national security, our national economy, and our national commitment to the rule of law.

Thank you Mr. Chairman.

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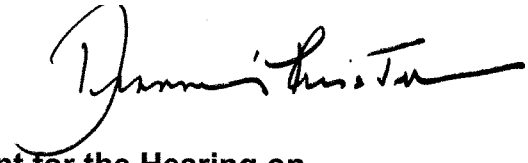

Statement for the Hearing on
"The Southern Border in Crisis: Resources and Strategies to Improve National Security"

Thank you Mr. Chairman. I would like to start by welcoming our panelists to today's hearing on the state of our Southern border with Mexico.

The nearly 2,000 miles that are covered by California, Arizona, New Mexico and Texas are, I believe, in a state of crisis.

Over the years we have spent millions of dollars to deter illegal immigration and improve the flow of legal immigration. Yet the numbers of illegal aliens crossing the Southern border into the United States continue to increase, even after the reforms that we have implemented following 9/11.

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True, it's an enormous responsibility considering that there are approximately 300 ports of entry in the United States and the total number of nonimmigrant admissions in 2003 numbered 27.8 million legal visitors. But I think for the security of our nation, much more needs to be done, especially along the border with Mexico.

Numbers of Illegal Aliens and the Southern Border

To put things into perspective, I'd like to start by providing the Committee with some statistics from a recent CRS Report for Congress entitled "Border Security: The Role of the U.S. Border Patrol":

- In fiscal **year 2004**, **apprehensions along the Southwest border increased by 26% over the previous year to 1.15 million.** One very sobering statistic is that if the number of illegal aliens caught is 1 for every 3 that seek entry, as is commonly quoted, then we are looking at nearly 3.5 million illegal aliens

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having actually entered last year and who are now living here.

- Over the last 7 years, **97 percent of all illegal alien apprehensions were made along the Southwest border.**

- The U.S. **Border Patrol deploys over 90 percent of its roughly 10,000 agents along the Southwest border** (as of July 10, 2004, the U.S. Border Patrol had 10,752 agents and pilots).

- In the San Diego sector, where **Operation Gatekeeper** began in October 1994, the **numbers of apprehensions** ~~has~~ have **decreased** from a high of nearly 550,000 thousand in 1992 to a little over 100,000 last year.

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- In fact, the San Diego and El Paso sectors used to account for two out of every three apprehensions along the Southwest border in fiscal year 1993. That percentage dropped to 50 percent of the total in 1995 and was approximately 22 percent in fiscal year 2003. Operations Gatekeeper and Hold-the-Line, both of which began in 1994 and 1993 respectively, lead me to believe that **the border fence, and strong enforcement programs, work in controlling the flow of illegal immigration across our border**.

  (*Source: 2003 Yearbook of Immigration Statistics, Department of Homeland Security*).

So I'm of the opinion that the border can be controlled. But to do so you have to put people there and adequate resources such as equipment, the use of advanced technology, appropriate detention space and support personnel.

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It is my hope that today we will begin to understand why the Southern border is in crisis and what can be done about that.

At the same time, it would be helpful if Chief Aguilar would update us on the condition of the border fence, including any needed repairs or improvements. I'd also like to hear from him on the status of the completion of the border fence at Smuggler's Gulch in California.

Terrorism and the Southern Border

Now that I've shared these statistics with the Committee, I'd like to say that a big concern of mine is the possibility that terrorists are crossing into our country illegally along our Southern border.

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During an open Senate Intelligence hearing earlier this year, entitled "The World Threat to the United States," -- Admiral Loy of the Department of Homeland Security stated in his written testimony that:

> "....entrenched human smuggling networks and corruption in areas beyond our borders can be exploited by terrorist organizations. Recent information from ongoing investigations, detentions and emerging threat streams strongly suggests **that al-Qaida has considered using the Southwest Border to infiltrate the United States**."

The statement goes on to say the al-Qaida leaders believe their operatives can pay their way into the country through Mexico and that it is more advantageous to cross the Southern border illegally than legally.

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I just find it incredible that such a statement could be made and that efforts are not being made to gain full control of our Southern border.

I'd like to hear from our panelists about what they believe it will take to fully secure our Southern border from illegal immigration.

OTMs and the Southern Border

Another area of concern along our Southern border is the Department of Homeland Security's "catch and release" program for non-Mexican nationals (OTMs).

With respect to the southern border, from October 2004 to June 2nd of this year, there were **90,055 Other Than Mexicans – or OTM – intrusions.**

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That is **more than double what that figure was for last year**, when from October 2003 to June 2004, there were 41,742 OTM intrusions.

And the previous year, from October 2002 to June 2003, there were 27,429 OTMs apprehended for entering the country illegally along the southern border. (*Source: Department of Homeland Security*).

What is going on here?

The policy to "catch and release" these individuals provides a wide loophole for terrorists and it has to stop.

For the past two years, based on the figures just stated, we saw the number of OTM apprehensions double, which means either that our border patrol agents are getting better at apprehending illegal aliens, or, that the number of aliens seeking to enter the country illegal is increasing. I hope it's the former and not the latter.

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Regardless, we have a huge number of individuals apprehended by federal officials within the United States. And rather than returning them to their home countries or where appropriate, detaining them, we are setting them free with only a promise to appear at a future court date.

This is just unacceptable to me.

In February of 2004, during a Judiciary Immigration Subcommittee hearing, then Under Secretary for Border and Transportation Security Asa Hutchinson, responded to questions by Senator Grassley regarding the "catch and release" policy for OTMs. His response was, and I quote:

"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 for them, as*

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it is for Mexicans, whose government will accept them back into the Mexican territory.

Thus, when apprehended, OTMs are routinely placed in removal proceedings…. It is not practical to detain all non-criminal OTMs during immigration proceedings. And thus, most are released."

It is my understanding that **30 percent of OTMs later fail to appear for their immigration court date** and simply disappear into the United States.

I've looked at the statistics for each country. And the so-called countries of concern -- Syria, Iran and Iraq -- the numbers are up for penetrations through our southwest border. Clearly we are deficient in a mechanism to deal with these.

It seems to me, that if I were a terrorist, this is the first place I would consider when making travel plans.

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Conclusion

So these three areas – completion of the border fence, the threat of terrorism along our Southern border and OTMs – are the areas I would like to explore during this hearing.

Again, thank you Mr. Chairman for holding this hearing. I look forward to a discussion on these issues today.

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Edward M. Kennedy Statement
Joint Hearing before the Senate Judiciary
Subcommittees on Immigration and Terrorism
"The Southern Border in Crisis: Resources and Strategies to Improve National Security"
June 7, 2005

Mr. Chairman, thank you for calling this important hearing on resources and strategies to improve national security by dealing more responsibly with our immigration and border protection laws.

The current system is clearly broken, and reforms are more urgent than ever in light of the obvious dangers that exist for our national security. Americans don't want open borders or closed borders - they want *smart* borders.

The current system leaves us unacceptably vulnerable. The government needs to be able to distinguish between peaceful immigrants seeking a better life for themselves and their families and violent terrorists who come seeking to harm us.

In the last 10 years, the federal government has spent more than $20 billion to enforce our immigration laws. We've tripled the number of border patrol officers. We've improved technologies for border surveillance and adopted other controls to strengthen border enforcement, especially along the southwest border. But, these strategies have failed to prevent illegal immigration. Hundreds of thousands continue to enter the U.S. illegally every year. We have no idea who is coming in, or who is already here.

We need reforms that protect the American people, protect our borders, and protect American workers.

Last month, Senators, McCain, Brownback,.Lieberman, Graham, Salazar, and I introduced bipartisan legislation to modernize our immigration laws to meet these challenges. Our bill will crack down on the smugglers, document forgers, and unscrupulous employers eager to supply and hire illegal immigrants as employees. It legalizes the flow of people at our borders, and enable us to spend more resources on those who mean to do us harm.

These are complex issues and we can't let the war on terrorism turn into a war on immigrants. I look forward to hearing from our witnesses today. I'm particularly interested in the calls for expanding the expedited removal process, and in how asylum seekers can be assured that they will not be turned away and denied the protection they deserve.

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Statement of Senator Patrick Leahy
Joint Subcommittee Hearing
"The Southern Border in Crisis: Resources and Strategies to Improve National Security"
June 7, 2005

I understand and sympathize with the concerns of those Senators who represent States along our Southwest border, and I have done my best to help them address those concerns. For example, I have worked with Senator Feinstein and Senator Kyl to reauthorize the State Criminal Alien Assistance Program (SCAAP), a program that provides little benefit to my State of Vermont but that I know is of great importance to law enforcement and corrections officials in the Southwest. I know that the migration of people over our Southwest border carries great economic costs, including for hospitals and schools, and will continue to help in efforts to share those costs more equally.

That being said, I believe we also need to pay closer attention to the Northern border of the United States. For many years before the 9/11 attacks, the Northern border was virtually ignored as we lavished resources on the Southwest border. That has changed to a degree since the attacks, as Border Patrol staffing on the Northern border has tripled in accordance with the provisions that I authored in the USA PATRIOT Act. Nonetheless, the immigration subcommittee heard just two weeks ago from a witness who stated that a terrorist would be more likely to use the still understaffed Northern border to cross into the United States. It would most definitely not serve our national security to return to the days where we focus exclusively on the Southern border.

Finally, the only way we will truly get a handle on our borders is to adopt an immigration system that acknowledges the economic realities faced by Mexicans and others who desperately want to come to the United States to earn money to support their families, while also protecting the interest of American workers. As I have said before, I believe the McCain-Kennedy bill, the Secure America and Orderly Immigration Act (S. 1033), takes the right approach to immigration reform. It will make it easier for willing workers who have abided by the rules to come to the United States, while also giving the more than 10 million aliens already here illegally an incentive to come forward and announce themselves. I hope that we will have a hearing focused specifically on that legislation.

I look forward to reviewing the testimony of today's witnesses, and I thank them for taking the time to offer this committee their views.

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U.S. Immigration and Customs Enforcement

STATEMENT

OF

WESLEY LEE
ACTING DIRECTOR OF DETENTION AND REMOVAL OPERATIONS

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE)
DEPARTMENT OF HOMELAND SECURITY

BEFORE

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON TERRORISM, TECHNOLOGY, AND HOMELAND SECURITY AND SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY & CITIZENSHIP

"THE SOUTHERN BORDER IN CRISIS: RESOURCES AND STRATEGIES TO IMPROVE NATIONAL SECURITY"

Tuesday, June 7, 2005
2:30 p.m.
Room 226 Dirksen Senate Office Building

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INTRODUCTION

Good afternoon, Chairman Kyl, Chairman Cornyn, and distinguished Members of the Committee. My name is Wesley Lee, and I am the Acting Director of the Office of Detention and Removal Operations at U.S. Immigration and Customs Enforcement (ICE). It is my privilege to appear before you to discuss Detention and Removal Operations' (DRO) enforcement mission. The DRO mission is to promote public safety and national security by ensuring the departure from the United States of all removable aliens through the fair enforcement of the nation's immigration laws.

DRO's core mission is the apprehension, detention and removal of removable aliens, the management of non-detained aliens as their cases progress through immigration proceedings and the enforcement of orders of removal. DRO employs a number of tools to accomplish this mission. Expedited removal (ER) is one of those tools. ER provides greater flexibility than traditional removal proceedings and allows DHS to quickly remove certain classes of aliens who are either seeking entry or who have recently entered the U.S. illegally while ensuring appropriate protection for aliens with a well-founded fear of persecution. The Department of Homeland Security (DHS) has focused on the need to improve the security and safety of the nation's land borders by expanding expedited removal between ports of entry in support of the Arizona Border Control Initiative.

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First I would like to share with you some benchmark numbers that show the direction in which we are moving and examples of initiatives we have implemented to achieve better enforcement results.

In Fiscal Year (FY) 2004, DRO reached record levels in terms of removals, fugitive alien apprehensions, and managing DHS bed space resources. DRO officers removed 160,000 aliens from the United States including over 85,000 aliens with criminal records. As of April 30, 2005, DRO removed over 75,510 aliens, of which 45,138 were criminal aliens. In addition, ICE had 16 Fugitive Operations teams deployed across the country, which apprehended over 11,000 fugitive aliens with final orders of removal during FY 2004, a 62 percent increase from the prior fiscal year. The year to date statistics for FY 2005 includes apprehending over 7,784 fugitive aliens.

As part of our law enforcement mission, DRO is responsible for managing the bed space resources for detaining aliens. DRO has maintained 100 percent capacity for the past two fiscal years. The Department detained an average of more than 21,700 aliens per day during FY 2004 including Bureau of Prisons and HHS juvenile beds. Through FY 2004, DRO managed a record 213,440 initial alien admissions and detained a record total of 235,000 aliens.

The Department of Homeland Security also relies on the Department of State and the Department of Justice as key stakeholders in the arena of immigration enforcement. DRO has been working with foreign government officials, with the support of the

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Department of State, to expedite the issuance of travel documents for aliens who are awaiting repatriation. Timely travel document issuance is critical because DRO cannot remove the aliens without travel documents. One way DRO is improving the repatriation process is through greater utilizing of video teleconferencing (VTEL) with the Embassies for interviews of their nationals from detention centers around the country.

On September 13, 2004, the Department of Homeland Security began implementing expedited removal (ER) on a limited basis between ports of entry. This expanded ER applies to aliens who have no valid entry documents or who have fraudulent travel documents who are apprehended within 100 air miles of the border, and who cannot demonstrate that they have been present in the U.S. for over 14 days following their illegal entry. Expanded ER has primarily been directed towards third-country nationals (nationals of countries other than Mexico and Canada) and to certain Mexican and Canadian nationals with criminal histories, involvement in alien smuggling or a history of repeated immigration violations. The expanded ER authority has been implemented in the Tucson and Laredo Border Patrol Sectors. As of May 16, 2005, 8,452 aliens have been placed in such ER proceedings, with 6,792 being removed.

The use of ER orders, which prohibit re-entry for a period of five years, can deter unlawful entry, and make it possible to pursue future criminal prosecution against those aliens who continue to enter the United States in violation of the law. The most important benefit of the ER process is that it will accelerate the processing of inadmissible aliens because aliens in ER are (with limited exceptions) generally not

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entitled to a hearing before an immigration judge, nor are the aliens eligible for release on bond. On average, the detention time for third-country nationals in regular INA 240 removal proceedings takes 89 days versus the average length of detention of 26 days for those third country nationals in ER not claiming credible fear. The overall length of stay for all expanded ER cases is approximately 32 days. ER and detention are excellent tools to deter illegal migration, but they must be carefully managed with the appropriate human resources and transportation requirements. Mandatory detention ensures measurable progress toward a 100 percent removal rate. Deterring future entries and accelerating removal of aliens ordered removed will enhance DHS's ability to secure the border, and to focus its resources on threats to public safety and to national security.

Expedited removal between ports of entry has provided DHS with another tool for enforcing our immigration laws. DRO fully supports the principle of expedited removal as it can deter foreign nationals from illegally entering the United States, ensures an expeditious removal of those that enter the United States illegally and reduces the growth of the absconder population.

CONCLUSION

In conclusion, the ability to detain aliens while admissibility and identity is determined, as well as to quickly remove aliens without protection claims, is a necessity for national security and public safety. By aggressively enforcing our immigration laws, we seek to deter criminal and terrorist organizations who threaten our way of life, and we seek to strengthen the legal immigration process for worthy applicants.

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I would like to thank you, Mr. Chairmen and Members of the Committee, for the opportunity to testify today on behalf of the men and women of DRO, and I look forward to answering any questions you may have.

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Prepared Testimony by C. Stewart Verdery, Jr.
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Adjunct Fellow, Center for Strategic and International Studies

U.S. Senate Committee on the Judiciary
Subcommittee on Terrorism, Technology and Homeland Security and
Subcommittee on Immigration, Border Security and Citizenship

"The Southern Border in Crisis: Resources and Strategies to Improve National Security"

Washington, D.C.
June 7, 2005

INTRODUCTION

Chairman Kyl, Chairman Cornyn, Ranking Member Feinstein, and Ranking Member Kennedy, thank you for the opportunity to return to your committee to discuss critical issues related to securing our nation's borders. I am currently a principal at the consulting firm Mehlman Vogel Castagnetti, Inc. I also serve as an Adjunct Fellow at the Center for Strategic and International Studies, although the views in this testimony are my own and do not represent CSIS which does not take policy positions. I am also a member of the Independent Task Force on Immigration Reform and America's Future which is chaired by former Senator Spencer Abraham and former Congressman Lee Hamilton and managed by the Migration Policy Institute.

As you know, following confirmation by the Senate in 2003, I served as Assistant Secretary for Border and Transportation Security Policy and Planning until my resignation from the Department of Homeland Security in March of this year. In this capacity, I was responsible for policy development within the Border and Transportation Security Directorate, reporting to Under Secretary Asa Hutchinson and Secretary Tom Ridge. BTS was created to coordinate policy development and operational activities in the fields of immigration and visas, transportation security, law enforcement, and cargo security which largely were carried out in the field by BTS agencies – U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and the Transportation Security Administration.

Before discussing the specific topics which are the subject of this important hearing, I would be remiss if I did not thank this Committee for its extremely important efforts to support DHS during my tenure at the Department. Among other accomplishments in this regard were the intelligence reform bill enacted last year, which included significant sections on border security, and day-to-day oversight of our activities which helped focus our priorities and responsiveness to the American people.

In addition, I am pleased to be participating in this hearing with my former colleagues from U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs

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Enforcement (ICE). During my tenure at DHS, the BTS Directorate established very effective relationships with CBP and the Border Patrol and with ICE and the Office of Detention and Removal. The accomplishments noted herein would not have been possible without the leadership at CBP – Commissioner Robert Bonner, Deputy Commissioner Deb Spero, former Deputy Commissioner Doug Browning, Chief David Aguilar, former Border Patrol Chief Gus De La Vina, and many others – and at ICE – Assistant Secretary Mike Garcia, Deputy Assistant Secretary John Clark, former Directors of Detention and Removal David Venturella and Victor Cerda, and many others. Perhaps even more importantly, the frontline personnel of CBP and ICE who risk their lives each day, and unfortunately sacrifice those lives on rare but all-too-often occasions, deserve all of our support as they struggle to control the unique border that connects the United States and Mexico.

As a last introductory point, to the extent that legitimate analysis finds fault with the border security measures implemented by DHS over the past two years, I accept my share of responsibility for those shortcomings. I am proud of the efforts the first leadership of the Department under Secretary Tom Ridge. I strongly believe our initiatives have reduced the vulnerability of our country to terrorist attacks, but I also recognize that the country is still at the front end of a lengthy effort to craft policies and develop operational capabilities before we might be able to declare victory in this fight.

Immigration, as it has been throughout the American experience, remains a vexing problem for policymakers. An already combustible mix of business needs, ethnic group politics, budget and social impacts, and law enforcement concerns is now superheated by the terrorism threat we face from abroad. While today's setting is not an appropriate one to survey the entire landscape of immigration policy, I am confident that the dissolution of the Immigration and Naturalization Service (INS) and assumption of INS' responsibilities by the Department of Homeland Security two years ago has yielded great progress in fixing our broken immigration systems. This testimony details some of the achievements DHS has achieved over the past two years. While there is obviously more, much more, to be done, through a combination of resolve, technology, cooperation, and leadership, we can now see the light at the end of the tunnel.

As discussion of a new temporary worker program has intensified since President Bush's 2004 request that Congress enact such a program in line with his immigration principles, some commentators have presented the issue as a choice between a new worker program and enhanced border security. Such analysis is wrong. It is the passage of a properly developed guest worker program that will bring massive improvements in border security and thus homeland security. Following the footsteps of millions before them, hundreds of thousands of undocumented aliens each year cross the border illegally in search of work who present no risk of terrorism or organized criminal activity. Border Patrol agents in the field, however, have no way to differentiate between the individuals that make up this flood of human migration and the small but crucial number of potential terrorists or criminals that attempt to blend into the masses. Providing those who want to work and have no prior criminal or terrorist record a means to enter the country legally through ports of entry will make it much more likely that the Border Patrol will be able to

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locate and arrest the criminals and terrorists who will lose their cloak of invisibility that the current situation offers.

Focusing on the Southern border, this testimony will first highlight the key problems that DHS inherited from the Department of Justice and INS that INS did not have the design or the ability to resolve and explain how DHS is working to solve each of those problems, and then make recommendations on new policies, including recommendations for key components of any new guest worker program should include, to better secure the border and facilitate robust international travel and commerce.

IMMIGRATION ENFORCEMENT AT DHS

During my tenure at DHS, I was responsible for developing policy initiatives to ensure that the DHS agencies are able to fulfill their responsibilities, including immigration enforcement. Any effective immigration system must provide government officials with the tools to evaluate the eligibility of potential visitors both at the time of the issuance of a visa and upon admission, must encourage and allow qualified visitors to enter the country legally with minimal delay, and must deter and detect those who attempt to enter the country illegally. I had an inside look at how DHS has gone about the business of correcting some of the chronic problems that dogged the old INS. I can tell you with great confidence that DHS, working with other agencies and the White House, has made tremendous progress in bringing integrity back to the immigration system. In fact, the 9/11 Commission report, and the bill that Congress passed subsequently to enact the recommendations, agreed largely with our programs, urging only that we speed them up.

PROBLEMS AT INS AND THE DHS RESPONSE

Problem 1: Incompatible Missions and Poor Command Structure

The first problem with INS was that it was responsible for performing two disparate and incompatible tasks: it was expected to both enforce the immigration laws in the role of police officer, and at the same time to distribute immigration benefits as a service provider.

On the enforcement side, INS' efforts were reactive, slow-moving, and inconsistent. The agency lacked a clearly defined chain of command from headquarters to the field. Without leadership, the isolated efforts of field offices to combat serious and emerging problems, such as alien smuggling, were disjointed and ineffective. Some senior law enforcement officers were obliged to report to intermediary directors, some of whom had no law enforcement background.

In its role as provider of immigration services and benefits, INS faced severe criticism from immigrants and employers seeking to hire foreign labor. Processing of applications for citizenship, for work authorization, and for changes of status was extremely slow: it often took 3 or more years for INS to complete applications. Individuals seeking even simple information, such as the progress of their applications, were obliged to wait in

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long lines outside of INS offices or wait futilely on INS telephone service centers. By 2002, some 4 million applications were backlogged at INS. Worse, INS did little to combat fraudulent applications for asylum and for adjustment of status. Allegations of unprofessional conduct, and a number of scandals – including the hurried naturalization of thousands of criminal aliens before the 1996 elections – added to the public perception that INS was a dysfunctional federal agency.

The agency's troubled history and the terrorist attacks of September 11, 2001 prompted Congress to transfer INS' functions to DHS. On March 1, 2003, DHS replaced INS as the immigration authority in the United States. Ever since that day, when people complain to me about the INS, I start my response by reminding them, there is no such thing anymore.

The long-awaited split in INS' functions was achieved in the new DHS between ICE, CBP and U.S. Citizenship and Immigration Services (CIS). The DHS bureaus responsible for immigration are able to operate in a semi-autonomous fashion, which allows them to better focus on their areas of expertise and to develop and achieve their own goals. The new command structure provides a direct line of authority to the Department's headquarters and given homeland security employees clear missions. It is worth noting that the division of authority has created some difficulties in crafting immigration policies that cross between services and enforcement areas, necessitating the robust policy office discussed later in this testimony.

Problem 2: Screening and Tracking Visitors

Visa Policy

The second problem that INS was unable to resolve was the screening and tracking of visitors to the United States. Like any host, we require some basic information about our guests. Who are they? When are they coming? And when will they depart? Our ability to accurately answer these questions says a lot about our national security and the integrity of the immigration system.

Prior to the September 11 attacks, obtaining a visa for travel to the United States was altogether too informal a process. Intending visitors were usually able to get their visas from the State Department through the mail, and without making a personal appearance before a consular officer. The Administration moved quickly after 9/11 to change the process. The Homeland Security Act assigned DHS lead responsibility for visa policy and oversight, and my office negotiated the memorandum of understanding with State Department effecting that transfer. New regulations were put in place to require the majority of visitors to appear at a consular office for a personal interview. The new screening process requires visa applicants to submit two fingerscans along with their biographic data. Their identities are then screened directly against terrorist-related databases. DHS has stationed employees in high-risk areas to assist consular officers in evaluating visas, and we have increased the number of special security checks performed

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by State and the Department of Justice for visa applicants from certain countries and high-risk fields.

Visa policy at DHS is principally developed in my former office and the CIS' Office of Policy and Strategy. I met with interested businesses, school administrators, researchers, and students about how we can continue to bring the best and brightest, clients, and tourists to the United States, with the appropriate security checks we absolutely must do. Throughout 2004 we were able to speed up processing times and minimize delays, and have gotten praise from top universities, research institutions, tourism industries, international businesses and their associations for our efforts.

US-VISIT

And even as INS celebrated the millennium, we lacked an automated entry and exit system that would allow us to know when foreign visitors arrived and when they departed. Following the bombing of the first World Trade Center in 1993, Congress demanded that an entry and exit system be installed at our ports of entry, but it did not happen, and none was in place on 9/11. Remarkably, on that date INS continued to rely on a paper system, and employees literally hand-keyed in departure information into a database weeks after the fact. With no exit system, and only a minimal, unreliable entry system, our entry and exit data was spotty at best, and criminals were able to come and go across our border, some of them dozens of times under different aliases, without detection.

But in 2004, DHS rolled out the entry-exit system known as "US-VISIT". We improved on the Congressional plan by adding a biometric requirement to the system. To capture biometrics, US-VISIT electronically scans a visitor's index fingers and takes a digital photograph at a kiosk – all in the space of seconds. The biometrics captured by US-VISIT allow consular and immigration officials to confidently tie travelers to the visas and passports they are carrying, and permit the development of an internationally uniform standard for identifying travelers.

As of May 31, 2005, DHS has enrolled 28,169,895 travelers in US-VISIT, with each watchlist check taking an average of 6 seconds. US-VISIT has allowed DHS to unravel the assumed identities of hundreds of foreign nationals attempting to unlawfully enter the United States. For example, an individual sought admission after flying into Newark International Airport. Everything appeared normal until his fingerprints were scanned. It turns out that the man was traveling under an alias and was in fact a convicted rapist. He had previously been deported from the United States, and had a traveled here before, using 9 different aliases and 4 dates of birth. US-VISIT has helped us to identify and to reject approximately 632 other undesirable individuals. It's not possible to know how many terrorists or criminals have been frightened away from attempting to enter our country because of US-VISIT, but I have no doubt that the number is substantial.

The application of our general visa policy to our relationship to Mexico is often overlooked because many people do not equate the Border Crossing Card that most

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Mexicans use to travel to the U.S. with a visa, but in fact the BCC is essentially a visa with more limited visitation privileges that a normal visa. US-VISIT was recently deployed to secondary processing areas of the 50 busiest ports of entry on our land borders. Thus, for Mexicans traveling to the U.S. with a normal visa or utilizing the BCC as a visa, the benefits of the broader visa policy are now applicable to Mexican visitors as well. As discussed later in this testimony, as US-VISIT is deployed to the primary lanes of our Southern border ports of entry, beginning with pilots this year, those same benefits will apply to the millions of entries by BCC holders as well.

Since the expansion of US-VISIT to our land ports of entry is a key element of securing the country against illegal entry and facilitating the transit of legitimate travelers, the success of the program to date and the plans for expansion must be evaluated carefully. However, certain analyses of the program, including a major piece in May 23's *Washington Post*, have misunderstood the program and the decisions that led to its staged deployment.

The article insinuates that key decisions made concerning US-VISIT were made by a handful of program officials and government contractors. In contrast, nearly all aspects of the program have undergone exacting scrutiny from the White House Office of Management and Budget and the Homeland Security Council, following robust debate and interaction with other key departments including Justice, State, and Commerce. During my tenure at DHS, Secretary Tom Ridge, Under Secretary Asa Hutchinson, Customs and Border Protection Commissioner Robert Bonner, and many others were intimately involved in developing policy guidance, interacting with other federal agencies and foreign governments, and supervising operations. The US-VISIT program team, led by Director Jim Williams, deserves great credit for effectively managing the program but they have done so under tight direction from the DHS leadership.

Perhaps the most confusing part of the *Post* story relates to the decision by DHS to rely on the IDENT fingerprint database. DHS was able to structure the capture of foreign visitors' biometrics at ports of entry so that a positive or negative response could be provided to the border inspector within seconds, avoiding a massive disruption of international travel. The inspector can also compare pictures and biometrics against those provided to the State Department when the person applied for a visa. The FBI's IAFIS system, in contrast, was not designed to run on a real-time basis, meaning it could not serve as the platform for an entry-exit system. DHS requested fingerprints held in IAFIS to load into IDENT and has received slow but significant cooperation from DOJ in this regard, but it is critical to remember that the overwhelming majority of IAFIS prints are of U.S. citizens who do not register with US-VISIT. In short, it is no exaggeration to state that if the government had relied on IAFIS to support a biometric entry-exit system, it would not exist today. It is also important to remember that when it announced the initial reliance on two-print fingerprint collection, DHS also announced it would move to a system of reviewing a full ten-print slate when such collection was feasible at consular posts and ports of entry.

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The deployment of US-VISIT to the vehicle lanes at our hundreds of land ports of entry and exit represents an immense technical challenge. The country currently operates only with the prior generation Border Crossing Cards which are not designed to provide a biometric check of an individual entering across the Mexican border. It will take the best technological and systems expertise that the private sector has to offer to allow for the millions of Mexican BCC holders to be vetted without creating unacceptable delays for cross-border traffic, and pilots are due to begin later this summer. However, DHS and other government officials will have the final say in how the program will be structured to facilitate free trade, identify criminals and terrorists, and interact with any new temporary worker program Congress might enact.

The 9/11 Commission took a hard look at the US-VISIT and basically said that DHS was on the right track, just to deploy the system more quickly. As the program tackles difficult increments ahead, the public should know that its public servants have, despite immense technological and political challenges, deployed a system that truly has enhanced our security without destroying the attractiveness of the United States as a place to study, conduct research or business, or see friends or family. In short, US-VISIT is a government program that actually works.

SEVIS

Among the millions of travelers who arrive in the United States each year are nearly 1 million students and exchange visitors who come to attend school and to experience the American way of life. INS traditionally did very little to track them. Data on foreign students was not automated or centralized, and remained in paper form with the schools. INS had little idea whether those entering on student visas actually attended school or remained in status. When Congress learned following the 1993 bombing of the World Trade Center that one of the bombers had legal status as a student – a pattern that would unfortunately be repeated with several of the 9/11 terrorists – it directed that INS develop an automated system, but it took 9/11 and the creation of DHS to fully realize development of the Student and Exchange Visitor Information System, known as "SEVIS." DHS put SEVIS to work for the first time in 2003. It has enhanced homeland security by allowing ICE real-time access to data on all foreign students and exchange visitors in the country, including those from Mexico and other Central American countries. It has permitted ICE to ensure that only legitimate students are admitted, and to better track their entry and exit. In addition, ICE has made some 560 arrests of foreigners who violated their student immigration status.

Problem 3: Securing the Border

The third problem that DHS inherited from the old INS was a porous and increasingly violent southern border, which thousands of aliens from all over the world illegally cross each week. INS made great progress in deterring illegal border crossings in distinct metropolitan areas like San Diego, El Paso, and Nogales, but that also pushed illegal migrants out into more remote regions where enforcement was not as thorough. DHS has

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designed a variety of initiatives and policy changes to try to restore order on the southern border.

Arizona Border Control Initiative

In the spring of 2004, DHS announced the Arizona Border Control (ABC) Initiative. We initiated the ABC because we were concerned about the amount of violent crime and illegal migration in Arizona, and wanted to intercept terrorists, smugglers, and drug traffickers. The Initiative represents a departure from the old mode of going it alone in border enforcement efforts and instead relied on an unprecedented number of partnerships with other federal agencies, and State, local, and tribal authorities to accomplish the mission.

The ABC Initiative was well timed and successful in terms of apprehensions, deportations and arrests. For the first time, we relied on Unmanned Aerial Vehicles (UAVs) to quickly investigate ground sensors activated by passing groups of aliens. ABC has hit the drug trade very hard: CBP has captured record-setting amounts of marijuana, cocaine, and heroin destined for the United States' interior. A key part of the initiative is Operation ICE Storm, which has successfully targeted alien smuggling operations in Phoenix, and dramatically reduced the number of homicides and kidnappings in that area. ICE Storm is a good example of how DHS is better equipped than INS was to carry out complex law enforcement operations, where we are able to go after the money in a way that INS could not, and we rapidly take apart the financial infrastructure of smuggling groups by seizing vehicles, safe houses, and bank accounts.

Expedited Removal

DHS has also not been shy in using the legal tools are their disposal. For example, in September of 2004 DHS expanded its authority to place illegal migrants into expedited removal proceedings in two Border Patrol sectors in Laredo and Tucson. When an alien is caught illegally crossing the border, the alien is detained until travel documents are secured, and then promptly deported to his country of origin. This is a commonsense means of removing migrants who have no legal right to enter the United States, and in deterring others from making the journey. For a variety of reasons, INS never took full advantage of the expedited removal powers granted it by Congress, and limited its use to the official ports of entry on the border. Migrants apprehended crossing between the ports who could not be immediately removed were placed into regular deportation proceedings, including a hearing before an Immigration Judge, an opportunity to appeal that decision to the Board of Immigration Appeals, and a further right of appeal to the federal courts, a process that could take years. It was not possible to detain tens of thousands of aliens as they went through the process, and most were served with orders directing them to appear for their immigration hearings at a later date, and then released into the interior of the United States. Not surprisingly, a large percentage of them failed to appear for their hearings, and vanished into our country. DHS' goal in expanding expedited removal is to end this "catch and release" practice, and to help bring the border back under control.

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I will discuss the need to expand expedited removal later in this testimony.

Problem 4: Removing Threats, Criminals, and Absconders

The fourth problem with INS was that it was unable or unwilling to dedicate adequate resources to enforce the immigration laws in the interior of the United States. Under Assistant Secretary Michael Garcia's leadership, ICE has engaged in variety of critical law enforcement operations since the creation of DHS.

National Fugitive Operations Program

ICE has dedicated significant resources to the National Fugitive Operations Program. The Program is part of a 10-year strategic national initiative aimed at locating aliens who have been ordered removed from the United States, but who have failed to surrender or to comply with their removal orders. It is estimated that there are well over 400,000 aliens in the United States who have never complied with their removal orders. These are rather astonishing numbers. They not only demonstrate an historic failure on the part of the immigration authorities to enforce the law: they have also conveyed a message to the American public, and to the world, that the immigration system in the United States was not to be taken seriously. It is worth noting that each of these 400,000 aliens was offered a significant measure of administrative and judicial due process, but failed to depart when ordered to do so. The remarkably elaborate and expensive immigration system failed to deliver on its implied promise that individuals who had no right to remain in the United States would be sent home. We essentially had an honor system applied in an environment where a little more skepticism was probably in order.

ICE has made the removal of such aliens a priority and reported that it had removed over 157,000 criminal and other illegal aliens from the United States in fiscal year 2004, the highest number in our history, including over 85,000 criminal aliens. Another troubling criminal statistic is the number of foreign national pedophiles and human traffickers who prey on children in the United States. ICE has specifically targeted these predators, and arrested more than 4,900 of them nationwide.

CBP Access to IAFIS

Even systems designed to help sometimes were the problem. Even thought they were both DOJ agencies, DOJ allowed inoperable fingerprint systems to be built in the 1990's. Thus, Border Patrol agents enrolling aliens in the IDENT database were unable to determine an illegal migrant's true identity or whether he or she had a prior criminal record in the FBI's IAFIS system. Under DHS leadership, this loophole is closing. CBP officers patrolling the land borders recently obtained access to IAFIS which allows them to quickly search criminal fingerprint databases maintained by the FBI. Like their counterparts at the airports, CBP officers on the border are reaping enormous benefits from biometrics. In just the first months of this capability, CBP officers have learned

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from IAFIS that over 13,000 of the aliens they captured crossing the border were criminals, including 138 homicide suspects and 236 sexual assault suspects.

Problem 5: Improving Immigration Services

Under the leadership of Director Eduardo Aguirre, USCIS is making great strides in reducing the backlog for processing immigration benefits like naturalization, permanent residency, and work authorization. This is extremely important for legal immigrants to the United States, some of whom have been waiting for years to have their status normalized. Such delays prove not only unnerving to immigrants, but slow their assimilation into our culture.

CIS has dramatically reduced its backlog, which was at a high of almost 4 million cases in early 2004 and now stands at less than 1.5 million. CIS has also worked to improve its customer service. It has created an internet website where applicants can complete a number of the most common forms online, and may also visit the site to check on the status of their applications. In addition, CIS has introduced an internet-based appointment system known as InfoPass in 4 large cities. Unless we make it convenient for people to try to follow the rules, we can't be surprised that many are unwilling to even try.

NEXT STEPS TO SECURE THE SOUTHERN BORDER

As outlined above, it is the passage of a properly developed guest worker program that will bring massive improvements in border security and thus homeland security. However, those who are skeptical of this argument have understandable reasons for this view. For decades, enforcement tools to combat illegal immigration went underutilized, underfunded, or unsupported by the employer community. While DHS has made substantial progress in enforcing the current regime, deploying a new guest worker program will require significant new resources for border and employer enforcement and for port of entry operations and facilities, development and issuance of tamper-proof identification documents, streamlining of the legal regimes that adjudicate the status of border crossers and undocumented aliens, and new avenues of cooperation between the U.S. and Mexican government.

All of these enhancements to our current enforcement posture should support a basic motto of any new legislation: "deter and reward." Those who are seeking to enter our country to work must be faced with a reality that crossing our borders illegally or attempting to work without proper certifications will be detected and punished with long-term consequences for violations. In contrast, those that follow the rules on applying for work, passing a security check, and crossing the border legally should be rewarded with employment and retirement and travel privileges.

The presence of millions of undocumented aliens in the U.S. presents very difficult transition problems but the first test of any temporary worker program is whether future

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workers truly will chose to use the program and be deterred from illegal entry and employment.

Ten specific recommendations I would like to provide the Committee concerning the proposed temporary worker program are the following:

► Interview and Criminal History Background Checks: Any new applicant should be required to submit ten fingerprints for a IDENT and IAFIS review to demonstrate, in addition to any employment criteria designed to ensure that the entrant's employment is not likely to be filled by a U.S. worker, that he or she has no ties to terrorism or history of prior criminal behavior other than non-violent illegal entry to the U.S.;
► Use of Biometrically-Enhanced Identification Documents: Any new entrant should be required to obtain a unique, biometrically-enhanced identification document that can serve as a document for entry under US-VISIT at a port of entry and as an employment verification document;
► Access to U.S. Legal System: For new entrants, any rejection of a visa application or application for entry to the U.S. should be non-reviewable in the U.S. and the burden of contesting any revocation of a visa or equivalent travel privileges due to evidence of fraud or other disqualifying information should fall on the entrant;
► Zero Tolerance for Accomplices to Fraud: New and tough penalties, including debarment from further involvement in the program or future applications, should be applied to employers, attorneys, agents, or others who are found to have supplied false application information, assisted with developing or procuring fake identification documents, or other methods to subvert the program;
► Confidentiality: Enforcement agencies should have full access to all application information, and no applicant should have a right to any confidentiality in that process;
► Employment "Insta-check": Employers should only be able to hire new temporary workers from outside the U.S. after DHS and fellow agencies have developed and deployed a "insta-check" system pulling biometric information off travel documents to verify eligibility for employment and reviewing Social Security and driver's license numbers from new workers asserting U.S. citizenship;
► Expedited Removal: This policy should be expanded to cover the entire Southern Border as described below.
► US-VISIT: Congress should aggressively fund US-VISIT and especially money designed to conduct a biometric entry-exit system at primary lanes of entry and exit at land ports of entry;
► America's Shield Initiative: Congress should aggressively fund the ASI, a combination of force-multiplier technologies such as UAV's, sensors, video, interoperable communications, lighting, and similar capabilities to leverage the enhanced number of Border Patrol agents appropriated funding by the Congress;
► Bilateral relationship with the Mexican government: Building on a strong record of achievement under the 2002 Smart Border Accord and commitments made during the announcement of the Security and Prosperity Partnership of North America in March of this year, the Administration should seek to obtain commitments from the Mexican government to redouble efforts in a number of areas: securing their southern border; assisting with anti-smuggling and document fraud investigations and operations;

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harmonizing visa and asylum policies; continuing assistance with interior repatriation operations; developing robust information-sharing agreements; developing of common standards for vetting of incoming foreign visitors and cargo; and discouraging illegal entries to the U.S. These topics are often complex and may require difficult negotiations, and the provision of U.S. technical assistance. It should also be noted that while the focus of this issue is on our relationship with Mexico, other countries whose nationals will benefit from a new guest worker program should be approached by the U.S. Government to develop enhanced security and facilitation measures as well.

These proposals address the machinery by which new entrants, legal and illegal, should be handled. Of course, any new temporary worker program also must be structured to allow existing undocumented workers to apply for employment. The security imperative for this class of aliens is that they undergo a vetting for ties to terrorism and criminal behavior before they are authorized for further employment in the U.S. Understanding that a principal reason for the program is to continue an adequate supply of workers for current jobs, there is no reason that this security review cannot be conducted while the worker remains in the U.S. However, just as one of our bedrock principals of our overseas visa process is collection of biometrics by a trained U.S. government official to ensure that the applicant is not an imposter, consideration should be given to requiring provision of biometrics by this population to a U.S. government official, especially if the resulting document will be utilized for international travel.

EXPEDITED REMOVAL

One absolutely critical tool for building public confidence in any new guest worker program and steering potential job-seekers to the program is sure and swift response to illegal border crossing. The expedited removal (ER) tool in use today in several border sectors is exactly the program that the public expects and that is necessary to stretch enforcement resources.

Statistics compiled by CBP show a striking increase in the number of nationals from countries other than Mexico (so-called OTM's) apprehended on the Southern border, with FY05 figures running nearly double FY04's record number. With national OTM apprehensions totaling over 75,000 in FY04, this population represents a massive new wave in migrants that brings significant concern that nationals from countries with more terrorism activity than Mexico may be utilizing the Southern border to enter the U.S. At the same time, the President's Temporary Worker principals apply to nationals from any country, not just Mexico, meaning that qualified applicants would have an approved alternative route to legitimate employment.

By utilizing ER to hold all OTM's in ICE detention facilities until a repatriation flight home can be arranged, usually within a matter of weeks, communities in sectors where ER is operational are spared the risk of having OTM's released into the community on the hope, often unrealized, that they will appear for their deportation proceedings. Cutting the average length of detention from approximately 90 days to approximately 26 days represents the type of real reform we need.

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It is worth noting that precision with which DHS has applied ER in that it is only approved for use on aliens with no valid travel documents present in the U.S. for less than two weeks who are apprehended within 100 miles of the border. It is time for ER to be expanded to all Southern Border sectors under the same terms, and I encourage the Administration and the Congress to identify resources to allow this common sense program to be deployed as broadly as possible.

The supply of Detention and Removal beds within ICE is not inexhaustible, however. As more and more beds are occupied by ER cases or by aliens with criminal records or with final orders of removal, even with skillful use of bedspace by ICE there are less beds available for Mexican nationals to go through formal deportation proceedings. ICE has been at or above 100% of their bed capacity for the past two years. A universal and well-publicized use of ER should both deter a significant portion of would-be entrants, especially with a legal work entry alternative, and allow for a much enhanced use of existing bed resources.

One aspect of an ER proceeding is a five-year bar against legal re-entry to the U.S. This provision must be well publicized during the kickoff of a new worker program as one of the main reasons to utilize the new procedures.

In a last point concerning ER, normally the sole exception to a swift return to one's home country is demonstrating a credible asylum fear. Allowing this avenue for relief is a necessary requirement under our international treaty obligations and as a humane country. Providing proper training to Border Patrol agents and CIS adjudicators were key parts of the ER deployment, and I am heartened to see that internal and external reviews of the asylum process largely have concluded that DHS has handled this subset of cases appropriately.

In short, a broad expansion of expedited removal is necessary and the type of proven enforcement that will both bring substantive enhancements in security and demonstrate to skeptics that the government is serious in deterring illegal entry into the United States.

POLICY-MAKING AT DHS

The breakup of INS has in the main been a positive, but it is resulted in immigration agencies whose equities often collide due to their differing missions and budgets. For the first two years of DHS, these situations were managed on a somewhat ad hoc basis with engagement from DHS leadership and good personal relationships between CIS and BTS and its components. However, over the long haul, DHS needs a robust entity able to weigh immigration issues that have both an enforcement and service side, as most do. When dealing with external bodies, such as executive branch interagency policy meetings, the department should have a single policy to advocate, and not be placed in the position of having to send two dueling agendas to the same meeting.

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The need for a department-level office for formulate department-wide immigration and visa policy is one of the most significant reasons I hope and expect that DHS will establish a robust policy and planning office that will be the heart of long term strategic thinking about homeland security issues. The current structure of DHS has only a small and non-publicized policy arm reporting to the Secretary, although it has been staffed by many excellent public servants. My former policy office situated in BTS has more staff, visibility and official responsibilities but lacked authority to force coordination between BTS agencies and other parts of the department such as CIS, the Coast Guard and the Science and Technology Directorate. And very little policy development has been incorporated into long-term budgeting or strategic planning.

The obvious solution to this shortcoming is a robust policy and planning office operating under expansive authority of the Secretary to resolve disputes between parts of the department, to identify departmental budget and policy priorities, and to integrate interaction with foreign governments and international organizations into policy development. Many commentators have associated this concept with the "DHS 2.0" paper authored by the Heritage Foundation and CSIS in 2004, but for those of us who labored under difficult resource and structural limitations after the creation of DHS, this office was a "no-brainer" from the start. I believe I speak for the entire former leadership team – including Secretary Ridge and Deputy Secretary Loy – in this regard and am extremely hopeful that this new office will emerge soon from Secretary Chertoff's "Second Stage Review" underway to develop improved structures and clear priorities for DHS.

CONCLUSION

As you can see, DHS has both the structure and the will necessary to effect significant positive changes to the immigration system. We have made a great deal of progress in a span of less than two years, and I firmly believe that we are well on the way to "fixing" a broken immigration system. Building an immigration system based on the principals of "deter and reward" will bring us the secure and effective border our economy needs and security demands.

I congratulate the Committee and Subcommittee for its continued cooperation with and oversight of DHS and its component agencies. I thank you for the opportunity to appear before you today and look forward to your questions.

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