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# COMPREHENSIVE IMMIGRATION REFORM

## HEARING

BEFORE THE

## COMMITTEE ON THE JUDICIARY
## UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

FEBRUARY 28, 2007

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# COMPREHENSIVE IMMIGRATION REFORM

**WEDNESDAY, FEBRUARY 28, 2007**

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
*Washington, D.C.*

The Committee met, pursuant to notice, at 10:08 a.m., in room SH–216, Hart Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Kennedy, Feinstein, Feingold, Durbin, Cardin, Whitehouse, Specter, Hatch, Grassley, Kyl, Sessions, Graham, Cornyn, and Coburn.

## OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Thank you very much for being here. We are actually conducting business here in the back. I want to thank the Secretaries, both Secretaries—Secretary Gutierrez and Secretary Chertoff—for agreeing to appear.

I also want to thank both of you gentlemen for the private meetings you have had with me and with a number of other Senators on both sides of the aisle on the issue of immigration. I have found them to be well worthwhile.

I am hoping that the fact that both of you are here today will demonstrate the President's wholehearted commitment to working with us to enact comprehensive immigration reform legislation this year, because if we do not have the President's wholehearted cooperation and support, I think it would probably suffer the same fate as it did last year.

We reported a comprehensive immigration reform bill. Senator Specter kept us practically around the clock until we did. But then we saw what happened. The Republican leadership decided that there would not be a House-Senate conference. Instead, they forced through a bill calling for billions to be wasted constructing a 700-mile fence along our 2,000-mile Southern border, sort of a Potemkin fence. And this year we have a renewed opportunity to do the right thing, and we should.

By their votes in the most recent elections, the American people have reaffirmed America's traditional place as a Nation of immigrants. We all are either immigrants, came here as immigrants, or have immigrant parents or grandparents. We are not anti-immigrant. We are not racist. We understand people seeking a better life for their children and grandchildren as naturally as we do. Americans understand that comprehensive immigration reform does not mean criminalizing the hard work of law-abiding people,

deporting millions of families who have lived here for years, or seeking to wall ourselves off from our neighbors and the world around us. Thankfully, the politics of fear did not succeed. Americans rejected the poisonous rhetoric of intolerance in favor of a more confident, realistic, and humane approach that finds strength in diversity and human dignity.

If we are going to reclaim America's promise, we need to keep our eyes on the core principles of comprehensive reform. To his credit—and I praise the President for this- -he has called for comprehensive legislation and "an immigration system worthy of America." We should all, Republicans and Democratic members alike, listen to the President's words on that. But he also has to demonstrate his commitment to those principles and lead Republicans toward achieving that goal, so that not as members of a political party, but as Americans, we can honor our history as a Nation of immigrants and strengthen our future and leadership in the world.

The President has said that no one element of immigration reform can succeed without a comprehensive approach. The Committee-reported bill last year took a comprehensive approach. The Senate-passed bill took a comprehensive approach. The House-generated bill that the President signed just before the election did not take a comprehensive approach.

Our broken system has fostered incongruities from coast to coast—from our biggest cities to our smallest towns, and from our factories to our farms. Reform is overdue. We have to be realistic about the millions of undocumented people in this country. We need to bring people out of the shadows. When we provide opportunity for people to be responsible, the vast majority will be, and we are all going to be better for it. We can and should do everything necessary to protect opportunities for our domestic workers. We need to reduce illegal immigration by reforming our temporary worker programs to allow more access to the unfilled jobs and unmet needs in our economy. These are not either/or propositions. We can do both.

I will give you one example, and I do not mean this to be parochial, but we could show similar examples in every one of our 50 States. In Vermont, dairying—dairy farms—is more than a job or an industry. It is a way of life. Our agricultural economy depends on the hundreds of millions of dollars dairy farmers bring to our State every year. But that way of life is threatened when family dairies cannot find help to milk cows, deliver calves, and keep up with chores. Finding help is becoming increasingly difficult for hundreds of Vermont farms, and they have turned to migrant workers from Mexico and Central America. Currently, that means an estimated 2,000 foreign workers. We know there is something wrong with this hodgepodge arrangement in my State, and other States could say the same. We need to do better. We need to bring order and common sense to a broken system. In my State, Vermont dairy farmers should not have to choose between saving their family farms or obeying the law.

The President has acknowledged that "you cannot deport 10 million people who have been here working." He said at the Southern border last August: "It's unrealistic. It may sound good in certain

circles and political circles. It's not going to work." He went on to outline what he called "the best plan" for those here illegally. He recommended saying to them, "If you have been paying your taxes and you have got a good criminal record, that you can pay a fine for being here illegally, and you can learn English, like the rest of us have done, and you can get in a citizenship line to apply for citizenship. You don't get to get in the front, you get to get in the back of the line." He called this as "reasonable way to treat people with respect and accomplish what we want to accomplish, which is to be a country of law and a country of decency and respect." I agree with President Bush, and those were precisely the elements we had in the Senate bill last year.

We have to create an immigration system for the 21st century that honors the great history and tradition of our nation and secures our future. What we must always remember is that immigrants are real people, they have families, they have hopes, they have dreams, the same way my grandparents did when they came here from Italy. In most cases, these are people who want to contribute, who work hard, who are striving to overcome the fortuitousness of where they were born. They contribute to our armed forces. They sacrifice and even die to protect the freedoms we have and that they hope to enjoy. They contribute to our economy, to our lifestyle, and they help with our most important responsibility when they raise America's children.

So as I said, as the grandson of immigrants to the United States, I will work to reaffirm the promise of America's lamp beside the golden door for the poor and oppressed.

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

Senator Specter, you showed iron will in moving this forward last year, and I will work again with you this year.

**STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA**

Senator SPECTER. Well, thank you, Mr. Chairman. I am pleased to see you schedule this hearing before February has elapsed. I thank you for the comment about iron will last year in moving the bipartisan bill out of the Committee. And there is no piece of legislation for the Congress to move on and move on quickly than a comprehensive immigration reform bill.

I am glad to see the two distinguished Secretaries who are involved in this issue—Secretary of Commerce Gutierrez and Secretary of Homeland Security Chertoff—here this morning to move this along. And I believe that we can maintain both objectives—the objective of rule of law and control of our borders—and at the same time maintain America as the beacon of hope for people who wish to come here to contribute and join in our democratic way of life.

We are a land of immigrants, and each of us has his or her own story to tell. Both of my parents were immigrants. My mother came here in 1906 with her father and mother and a younger brother. My father was 18 in Russia in 1911 when the czar was in control. The czar wanted to send him to Siberia. He did not want to go to Siberia. He heard it was cold there. He wanted to go to Kansas. It was a closed question, and he got to Kansas, where I was born.

We last year reported out on a bipartisan basis legislation which was comprehensive, which maintained the rule of law, and from the activities of the Congress last year and the work of the President's administration, there have been improvements made on border security. It is tighter now than it was a year ago, but not tight enough. And we need to have employer verification, but there has to be the Federal responsibility to provide fraud-proof identification so that with employers having the opportunity to verify citizenship, we can then be in a position to hold them accountable and responsible with tough sanctions.

We need a guest worker program. There was a commitment to that last year by President Bush and by then-Speaker of the House of Representatives Dennis Hastert. And we need to be able to deal with the 11 million undocumented immigrants so that we can identify those who have criminal records and take appropriate action as to them. But it is a practical impossibility to deport 11 million undocumented immigrants. And if someone has a better idea than the legislation which we passed out of the Senate last year, this Committee is open to those ideas. We are prepared to listen.

It is not amnesty to have legislation which imposes a fine, requires people to learn English, requires people to pay back taxes, puts them at the end of the line. It is not amnesty.

Just one word of caution. I think it is very important that this Committee proceeds on a bipartisan basis where all of us know what is going on. I have been concerned about reading what is happening behind the scenes in the newspapers, and my staff—Michael O'Neill, a very able chief of staff—had brought to my attention several weeks ago that our staffs were not being consulted. And I called that to the attention of Senator Kennedy, who did such outstanding work last year, and before, a long history of outstanding work in immigration. And we worked on the McCain-Kennedy bill as the take-off last year for the Chairman's mark, for my mark as Chairman.

But the staffs were not communicating, and I brought that to Senator Kennedy's attention again, and we had a meeting where we were told that staffs would communicate. And as of yesterday, we have not been consulted on the draft which Senator Kennedy's staff has being prepared. The old statement is if you want to be in at the landing, you have to be in at the take-off, and we have to have an exchange of information so that we are prepared to work with you. But we cannot segment this Committee. If we do, we are not going to have the kind of bipartisan cooperation which Senator Leahy and I were able to achieve last year for the betterment of the Committee and the betterment of the Senate and the betterment of the Congress.

So with that one word of caution and concern, I hope we can share information and find a way to have both sides of the aisle involved every step of the way so that we can get a bill which will have bipartisan support.

Again, I commend you, Mr. Chairman, for scheduling this hearing early, and I look forward to bipartisan cooperation with Senator Kennedy, who has been the leader for decades on this subject, and with you, Mr. Chairman. Thank you.

Chairman LEAHY. Over a hundred years with Senator Kennedy.

[Laughter.]

Chairman LEAHY. Gentlemen, could you please stand and raise your right hand? Do you swear that the testimony you are about to give before the Committee is the truth, the whole truth, and nothing but the truth, so help you God?

Secretary CHERTOFF. I do.

Secretary GUTIERREZ. I do.

Chairman LEAHY. We will go first with Secretary Gutierrez. He was sworn into office on February 7, 2005, as the 35th Secretary of the U.S. Department of Commerce. I have known many of those, but he is the first Secretary, I believe in any Department, who was born in Havana, Cuba, came to the United States with his family in 1960, joined Kellogg's as a sales representative in 1975—the year I came to the Senate. He rose to be president and chief executive officer in 1999, and I believe that made you the youngest CEO in that company's nearly 100-year history. In April 2000, he was named Chairman of the board of Kellogg. He studied business administration at the Monterrey Institute of Technology in—you are going to have to help me—Mexico.

Secretary Gutierrez. Queretaro.

Chairman LEAHY. Queretaro. Thank you.

Secretary Michael Chertoff has appeared many times before this Committee. On February 15, 2005, as a circuit court of appeals judge, he was sworn in—resigned from that and was sworn in as the second Secretary of the Department of Homeland Security. He had been on the Third Circuit Court of Appeals before. He was previously confirmed by the Senate, served in the Bush administration as Assistant Attorney General for the Criminal Division. Before joining the Bush administration, he was a partner in the law firm of Latham & Watkins. From 1994 to 1996, he served as Special Counsel to the U.S. Senate Whitewater Committee. Prior to that, he spent more than a decade as a Federal prosecutor, including service as a U.S. Attorney for the District of New Jersey, graduated magna cum laude from Harvard in 1975, magna cum laude from Harvard Law School in 1978, and from 1979 to 1980 served as a clerk to Supreme Court Justice William Brennan. He is a friend of many of us on this Committee.

So, Secretary Gutierrez, please.

## STATEMENT OF CARLOS M. GUTIERREZ, SECRETARY, DEPARTMENT OF COMMERCE, WASHINGTON, D.C.

Secretary GUTIERREZ. Thank you. Chairman Leahy, Ranking Member Specter, and members of the Committee, I am pleased to have this opportunity to discuss immigration reform with you, and I thank you for your leadership and your hard work on this important issue.

For several years, we have been in the midst of a vigorous debate about the role of immigration in our country. This is not the first time, of course, in our Nation's history that immigration has been a source of contention in the halls of Congress and communities across America.

One result of this passionate debate is that many words in our immigration discourse have lost their meaning, with people often just talking past each other. However, when you peel back the

rhetoric and actually have a conversation with members on both sides of the aisle and on all sides of the issue—as I have on dozens of occasions over the past year—you find that while there are some policy differences, we are much closer to common ground than one would expect.

Secretary Chertoff and I come before you today on behalf of the President with a very simple message. We believe that with some hard work a solution can be found, and we pledge to roll up our sleeves and work with you on a bipartisan basis to find a solution that serves our National interest.

We believe that there are three goals central to a successful immigration solution: the first is national security, two is economic growth, and the third is American unity.

First, we must have a focus on national security. We must secure our borders and implement a system that will enable us to know who enters our country and who is already here. In order to hold employers accountable, we need to give them new tools to verify the immigration status of workers. We must establish a tamper-proof biometric identity card for the temporary worker program which will enable us to verify, and also an employer verification data base, and I happened to bring with me a sample of a biometric card, very easy, the technology is very much available.

Second, economic growth is essential for our continued prosperity as a Nation, and we recognize that immigration has been a crucial part of our economic growth. Immigrants make up 15 percent of our labor force and account for about half of labor force growth since 1996. Even so, the reality is that there are thousands of jobs that aren't getting filled by Americans. There were 4.4 million job openings in December, and our unemployment stands at 4.6 percent. I have met with farmers from around the country whose fruit lay rotting in their orchards. Businesses across the Nation report difficulty filling jobs that are essential to their growth. Our immigration policy must recognize the reality of our labor needs by creating a temporary worker program.

The third goal of our comprehensive immigration policy is American unity. We are a society governed by the rule of law, and we should not reward unlawful behavior. And we must also find a solution that brings workers out of the shadows and into the mainstream without amnesty. We believe we can do that.

Many advanced economies face declining populations and struggle to assimilate immigrants. The U.S. can make immigration a competitive advantage because assimilation is a historic national strength. This can be an advantage for us 10, 20, 30, 40, 50 years down the road.

Assimilation also involves learning English. English is the language of custom and opportunity, and we do immigrants a great disservice if we do not urge them to learn English. In fact, one of the very best things that ever happened to me when I came to this country is that I was forced to learn English.

In the end, we must craft a solution that is viable and workable, one that will not have us back in this room debating the same issue in 10 years. Our solution should enable the future flow of immigration to be orderly, legal, and controlled. The good news is that all of the pieces necessary are on the table. The question, of course,

before us is: Do we have the political will to assemble them in a way that furthers the national interest?

Mr. Chairman, I believe we do, and I look forward to working with you on this important matter. Thank you, sir.

[The prepared statement of Secretary Gutierrez appears as a submission for the record.]

Chairman LEAHY. Thank you very much, Mr. Secretary.

Secretary Chertoff?

**STATEMENT OF MICHAEL CHERTOFF, SECRETARY, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, D.C.**

Secretary CHERTOFF. Thank you, Mr. Chairman, and thank you, Senator Specter, and other members of the Committee. I also appreciate the invitation to come and speak to you today about the need for immigration reform, and I appreciate the leadership that members of this Committee have shown in moving forward on this very important issue to the Nation. I fully associate myself, obviously, with the testimony of Secretary Gutierrez. I also submitted a full statement which I request be made part of the record and which I will spare you repeating now.

I would like to, however, very briefly touch on some of the highlights of progress that we have already made on some of the elements of a multi-pronged approach to immigration reform, including effective control of the border, building a tough interior enforcement program, and moving forward with respect to other dimensions of what will be a comprehensive solution to this issue.

Since we launched the Secure Border Initiative last year, we have made some significant progress in gaining control of the border. This does not mean that we are declaring victory. What it does mean, though, is that we have begun to turn the tide, and this ought to be a source of encouragement, and it also needs to increase our determination to get the job done.

We have increased the boots on the ground, adding new Border Patrol agents and enlisting the National Guard in Operation Jump Start. Importantly, we ended a pernicious practice called "catch and release" at the border, in which we used to release large numbers of non-Mexicans into the community. There was a story in the New York Times a few days ago that talked about how it was such a received wisdom that non-Mexicans would be released in order to disappear that people actually were told to turn themselves into the Border Patrol as soon as they crossed the border because it would mean that they could then make their way to the interior conveniently. We have reversed and ended that practice at the border, and this has begun to show some real results.

In the three quarters of the year that have passed since we put into effect Operation Jump Start, we have seen in each quarter a significant decline in the number of people that we are seeing crossing the border and an even more significant decline in the percentage of apprehensions that reflect non- Mexicans. Both the statistics and the anecdotes support the view that this is a direct reflection that deterrence works, if we are determined and tough about enforcing the rules at the border.

We have been equally tough enforcing the law at the work site in the interior. Last year, in fiscal year 2006, we arrested 716 indi-

viduals on criminal charges and more than 3,600 on administrative charges. The increase in criminal prosecutions reflects 7 times the number of arrests that we saw in 2002, and it is the most significant year of worksite enforcement in living memory. In fact, in the last couple of weeks, we saw ICE agents raiding and arresting senior executives at the Rosenbaum-Cunningham International company, which provides cleaning services at several national restaurants across the country. And, we saw some guilty pleas yesterday from individuals at the IFCO Corporation, which was the subject of a raid earlier last year.

Continuing our success in the area of tough enforcement at the border and the interior will require continued support from Congress. Among other important things that we have previously requested are additional sanctions for those individuals who dodge our checkpoints that we use in order to control the flow of illegal migrants or those who defy the orders of a DHS officer. We need to make it clear that not obeying the law will be criminally punishable.

We need to continue to move forward with tough sanctions for those employers who willfully violate the immigration laws by building their businesses on the premise that they will be getting illegal migrants to do jobs. That means we need to continue to build and roll out our Electronic Employment Verification System, which is one very useful tool in helping employers verify the status of their workers.

Finally, as the President has said, we have to create a lawful mechanism so that foreign workers can come into the United States and fill jobs that will otherwise go unfilled. Having a regulated channel for this kind of labor force is actually going to help our border enforcement. It is going to reduce the pressure on the border that is caused by the huge economic demand drawing the tens of thousands of migrants to cross the desert or cross the Rio Grande River to work in the United States. Bringing these people into a regulated, visible system will help our ability to promote national security.

Now, we have talked with a number of Members of Congress, you and your colleagues, over the past few weeks, and we will continue to do so to listen carefully to your views on the issue of how precisely to craft an approach to dealing with this longstanding, difficult, but very important issue. And, we hope to return to you soon so we can work together in a bipartisan way on sound and long overdue immigration reform.

But, let me conclude by making one point. What is critical to anything that Congress does is workability. Whatever measures are passed must work in the real world, and that seems to me to mean at least three general principles have to be followed.

First, we need to have clear and consistent standards that will protect applicants, guide those who have to review applications, and defend against fraud. The more confusing and complicated a process is, the more arbitrariness and error find their way into that process.

Second, we need to carefully design judicial review of application decisions to ensure that any temporary worker program that is put into effect treats applicants fairly but does not become a source of

never-ending litigation. As a result of the Immigration Reform and Control Act of 1986's judicial review provisions, cases continue to jam Federal courts 20 years later. We still have not litigated our way out of that measure after two decades.

Finally, there cannot be an amnesty, and that means we cannot give those who are here illegally because they have broken the law a leg up and an advantage over those who have played by the rules.

I think those general principles, which are consistent with what the President said last year, are important as we move forward on this issue. We look forward to working with the Committee and with Congress to build on what we have done at the border and to give the American people the immigration system that they have a right to expect.

Thank you.

[The prepared statement of Secretary Chertoff appears as a submission for the record.]

Chairman LEAHY. Thank you.

Secretary Gutierrez, last year when you testified, you spoke about the advantage people have if they learn different languages, and I agree we should do a lot more of that in our country. You also spoke of the advantage to immigrants learning English. I agree with you there. Both my mother and my wife had to learn English as their second language. But are you saying the administration would support making English the official or national language of the United States by law?

Secretary GUTIERREZ. The point I was making is that— and I go back to what the President said when he talked about immigration, that if you learn English, you can go from cleaning an office to managing an office.

Chairman LEAHY. But you are not asking the Congress to legislate in this area of language?

Secretary GUTIERREZ. No. We believe that there is a lot that we can do to ensure that immigrants understand that it is in their interest to learn English, to be part of society, and to be integrated.

Chairman LEAHY. There I absolutely agree. Again, my grandparents, my mother, my wife all learned English—I certainly understand that.

The President has also expressed support for a plan that includes bringing millions of undocumented people in the United States out of the shadows onto a path toward earned citizenship—not amnesty but earned citizenship. And I agree that we need a plan to realistically deal with this current situation.

Is the administration committed today to a path to citizenship as part of an overall comprehensive immigration reform? Is that both the President's and the administration's position?

Secretary GUTIERREZ. One of the principles that we have, Mr. Chairman, is to ensure that people who are working in the country today illegally come out and enable us to know who is here, because it is a national security concern. We do not know who is crossing. We do not know who is here. Once they have been identified, they would have to be given either legal status to work here or not.

In terms of a path to citizenship, that is something that we need to discuss, we need to think through. There is a path today to citizenship, so it is not as though we need to create a new path to citizenship.

Chairman LEAHY. But if you want these people to come out of the shadows, aren't you going to have to have some kind of a path to citizenship available to them? Otherwise, what is the incentive to come out of the shadows?

Secretary GUTIERREZ. That is a good question. I believe, Mr. Chairman—and it is hard to get a precise sense of this, but I believe that what people want first and foremost is to have legal status. And I am not sure that everyone wants to be a U.S. citizen. Many just want to be able to work, and if they can work legally, 1 day they would like to go back home. So, I do not think that citizenship is what will make them come out of the shadows. It is just the opportunity to have legal status so they do not have to be in the shadows.

Chairman LEAHY. Well, let's talk about this. Again, it is so easy to say amnesty, not amnesty. Will the administration and the President help us educate members of the public, actually educate Members of Congress that if you have comprehensive reform that consists of requirements to pay back taxes, fines, and makes it clear what your criminal history or lack of criminal history is, that that is not amnesty? Can we get some education from the administration to that effect? Or do you agree with that?

Secretary GUTIERREZ. Well, as I think about amnesty, for me it is unconditional pardon, and if we start there, we have to move away from that and ensure that our principles and our conditions fit the fact that the law was broken.

How we do that I think is a matter of debate, and I think we have to work that through, and that is part of the complexity.

Chairman LEAHY. But we are not going to really have a debate on it without the involvement of the administration. This cannot be done as a one-side or one-party piece of legislation.

I assume, Secretary Chertoff, that you could not realistically find, apprehend, and deport the millions of people who are here today. Some you could, but you could not begin to get anywhere near the majority of them. Is that correct?

Secretary CHERTOFF. I think it would be a gargantuan task to try to locate, detain, and deport 12 million people.

Chairman LEAHY. Then don't you have to have in a comprehensive immigration policy some way for most of them—if you are not going to get them out of here, to find some way of legal status? Now, as Secretary Gutierrez has just said, some do not want to be citizens. I mean, you have a lot of people who come here to work. They want to work here for a period of time, earn some money, and go back home. They do not want to have U.S. citizenship. Some are here as students and for other reasons. Some, however, their children are born here, they decide to go to school here, they are establishing roots here. They do want to become citizens.

Either way, don't you have to have a comprehensive plan to make their status here legal?

Secretary CHERTOFF. Well, I think what Secretary Gutierrez said is correct, that one needs to give people the inducement of getting

legal status in the country if they are going to come out of the shadows. That has got to be an element of immigration reform because brute force alone will not deal with the challenge that we have with all the undocumented workers in the country.

Chairman LEAHY. Thank you.

Senator Specter?

Senator SPECTER. Thank you, Mr. Chairman.

We have to move with dispatch on this very important matter. It is worth noting the prodigious efforts which were undertaken in the last Congress. We had six hearings at full Committee, six markups, with a total of 357 amendments being circulated and 60 votes taken at the Committee level. We were given a deadline by the Majority Leader, and we came back the day after a recess, convened early in the morning, worked about 10 hours, reported a bill out. On the Senate floor, there were 227 amendments filed, 37 roll call votes were held, 27 amendments were adopted, and the bill was finally passed by a margin of 62–36. And then we could not come to agreement with the House of Representatives, which wanted an enforcement bill only.

I review those prodigious efforts made last Congress to emphasize the kind of tough job we have ahead of us, and it is going to require cooperation by both the Congress and the administration to get there.

The big obstacle we faced last year was the issue of amnesty, and if someone has a better idea on how to handle these 11 million undocumented immigrants, we are open to suggestions. But this is what last year's bill provided: a criminal background check, a meaningful penalty, back taxes, stand in line, learn English, and having a job.

Secretary Gutierrez, is there anything more that can be done to impose sanctions and penalties than that to avoid the categorization of amnesty?

Secretary GUTIERREZ. I think the other thing I would just add to that is to ensure that they do not have an advantage, that somehow they do not have an advantage because they happened to come to the country illegally, and that would add to your list.

Senator SPECTER. Well, we have provided that by requiring they go to the end of the lines.

Secretary GUTIERREZ. That is right.

Senator SPECTER. If somebody can come up with a tougher line, we are open to suggestions. But it seems to me that that is not amnesty, and I think to be successful in getting this bill passed, we have to persuade first the House of Representatives—or perhaps first the American people and then the House of Representatives that it is not amnesty.

You came to this country from foreign shores. You are Exhibit A. My parents are Exhibits B and C. We have lots of exhibits. But how do we persuade the American people that this is as much as can be done in dealing with the 11 million undocumented immigrants? We will deport those with criminal records where they are not qualified. That is manageable. But you cannot deport 11 million people.

What more can be done, Secretary Chertoff, on that subject to deal with the critical issue of amnesty at the outset?

Secretary CHERTOFF. Obviously, Senator, things like penalties, as Secretary Gutierrez said, making sure that there is no advantage to people who came here illegally, requirements like learning English, and things of that sort. Those are certainly measures which I think would demonstrate to a lot of people that the individuals are getting right with the law.

Now, you are going to get differences of opinion about what kind of penalty is appropriate, as you do in almost every other area. But, it seems to me this is—

Senator SPECTER. Mr. Secretary, I have to interrupt you. I want to ask one more question before my time expires, and I want to observe the time meticulously.

I would appreciate it if both of you would think through this amnesty issue and find the best arguments we have or what else can be done to eliminate this argument, because it is an impediment in dealing with the 11 million undocumented immigrants.

I think we need to focus on the advantages which we derive from having talented people come to this country. And other countries frequently complain about the brain drain which comes to this country. Bill Gates of Microsoft, an enormously successful entrepreneur, wrote just last Sunday in the Washington Post, on the need to expand the number of H–1B visas to improve the number of people who can come to this country, who want to come to this country to meet our changing scientific and technological industrial needs, with only 65,000 temporary visas now.

Secretary Chertoff, what do you think we ought to do on that issue?

Secretary CHERTOFF. Well, I do know—and I know that Secretary Gutierrez can talk about this, too—this competitiveness issue is a big deal. Obviously, this is a little bit different than the issue of the illegal migrants who are coming to pick lettuce or work in hotels, because we are talking about knowledge-based workers. Nevertheless, obviously, Congress is going to want to probably look generally at how we deal with the visa issue, recognizing that first and foremost our immigration policy should be one that serves the United States. That is our No. 1 priority here.

Senator SPECTER. Thank you very much.

Thank you, Mr. Chairman.

Chairman LEAHY. Senator Kennedy?

Senator KENNEDY. Thank you, Mr. Chairman. And thank you, Judge Chertoff, Mr. Gutierrez. Thank you very much for being here.

I think we have just had a review about what the word "amnesty" means and also what is in the legislation. In this legislation there is no special treatment. There is no free pass. There is no jumping of the line. There is no total forgiveness. There is no unconditional pardon.

Senator Specter has pointed out the requirements that were in the legislation the last time. I imagine it will be included in this legislation.

Let me mention just one of the requirements, and that is learning English. Secretary Gutierrez, at the present time we have 18,000 people in my city of Boston, Massachusetts, who are in line trying to learn English at the present time, and there is not ade-

quate funding for that program. And I think we have to try, if we are going to make this a requirement—which I support—we have to be able to give the kind of opportunities for people to learn if they desire to do so. We can talk about that at another time, but I make the point now. If you want to make a brief comment, I really want to get on to other things.

Secretary GUTIERREZ. I think it is a great point, and learning English is job No. 1, and it opens up vast opportunities.

Senator KENNEDY. Now, let me ask you, Mr. Chertoff, we understand that the President is going to be involved in a comprehensive legislative effort. Am I correct in that understanding?

Secretary CHERTOFF. As the President said last year, he is interested in being very engaged with Congress in immigration reform across the board.

Senator KENNEDY. And he wants to work with us to get that passed.

Secretary CHERTOFF. That is correct.

Senator KENNEDY. In the Senate. And he will also work with us to get it passed in the House of Representatives.

Secretary CHERTOFF. That is correct.

Senator KENNEDY. He believes that this is in our national interest to get this job done.

Let me ask you, from your own review, what it takes in terms of these elements to develop the—you have outlined in the legislation this very detailed program of what is necessary in terms of border security. What is your own best estimate of the time it is going to take to develop the tamper-proof card, both in terms of availability in country, and also in terms of enforcement here?

Secretary CHERTOFF. Well, of course, as we currently stand right now, there is no legislative mandate or appropriation to have a tamper-proof card in this area. But, we do have other similar mandates in other areas.

The technology exists. The business processes exist. We are in the process of using them now in a variety of different areas. Once Congress passes a measure that actually lays out the dimensions of the requirement, it is simply a question of scaling up the technology and funding the technology in order to make sure you can distribute the card. But, the technology exists. I think that Secretary Gutierrez has a display card. So, it is not a new technology.

Senator KENNEDY. Well, can you give us at least a ball park timeframe? The technology is out there. The resources have to be made available. But then we are talking about what period of time? Are we talking about 12 months? Are you talking about 18 months? Are you talking 2 years? What is generally the estimate of the administration?

Secretary CHERTOFF. Again, since we do not have an actual piece of legislation to work off of, it is hard to give an estimate. I can give you examples from other kinds of measures we have now. We have a Western Hemisphere Travel Initiative measure to get a secure card. We have a transportation workers measure. We have a REAL ID measure. These are looking to take anywhere between a year, maybe 18 months, and 2 years. Of course, that requires that everybody be aggressive and disciplined in moving forward with these efforts.

Senator KENNEDY. My time is moving along. I would be interested also in your estimates of what it will take in terms of the adjustment of status or the earned legalization, what your sense of timing would be on those.

In this legislation, we crack down on passport fraud, visa fraud, document fraud, illegal entry, smuggling, gang activities, firearms offenses, drunk driving, money laundering, all of those activities.

As a former judge, don't you agree that we must ensure that all the people in our system are going to have at least an opportunity to be heard before an impartial adjudicator or not—

Secretary CHERTOFF. Well, I agree everybody—

Senator KENNEDY. I just want to mention that if you get a speeding ticket, you have that kind of opportunity. We are talking about more serious issues here. How are we going to make sure that we are not going to catch Americans, legitimate Americans, up in this whole process and that their rights are going to be preserved?

Secretary CHERTOFF. I do agree we ought to preserve people's rights, but I do have to caution this: Right now, when people outside the United States apply for adjustment of status, if they are refused entry, with very rare exceptions, they do not get access to a lot of litigation. And, the one thing I will say to you is that you have to be very careful that creating a lot of process, a lot of judicial review, could break any system of immigration reform. I can tell you, having been a judge, frankly, and having sat on cases involving immigration review, they are time-consuming. If we wound up with millions of people challenging every determination in the Federal courts, I think the judges would be unhappy, and I think you would see a very, very serious practical problem.

Senator KENNEDY. My time is up, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Kennedy.

Senator Hatch?

Senator HATCH. Thank you, Mr. Chairman.

I was interested in your comment, Secretary Gutierrez, that many of these folks, these approximately 12 million people, probably do not want to be citizens. They just want to support their families. They want to be able to work. And they may very well be willing to, if the approach is reasonable, become guest workers.

Do you have any idea of approximately how many of them would not choose to be citizens if they had their—

Secretary GUTIERREZ. I do not have a number, and I heard Secretary Chertoff use some statistics about a previous experience we have had.

Senator HATCH. Well, maybe you want to give that. That is on the Simpson-Mazzoli bill, I guess.

Secretary GUTIERREZ. Anecdotally, and just what I have read, it is that many people would like to go back home, after having worked in the U.S., and perhaps live the rest of their life there. But today we do not know that because they are not coming out because—

Senator HATCH. Well, they are afraid to come out right now. I suspect that is true. When the Simpson-Mazzoli came up and was passed in 1986, I voted against it because I thought that it did give blanket amnesty. But do you have any statistics, Secretary Chertoff, on how many of them actually became citizens under the

amnesty approach? They at least called it amnesty back then. We have not done it in the Senate bill. We have not called it "amnesty."

Secretary CHERTOFF. The statistics that I have been given indicate about a little over a third applied to become citizens. So, the majority, a significant majority, did not choose to become citizens.

Senator HATCH. That is interesting. On the biometric cards that you raised, if we are going to have some absolute way of identification so that our businesses are not called to the law enforcement aspects of this, but have a way of figuring out who is and who is not illegal, then biometric cards may be the way we are going to have to go. But we did pass REAL ID in the—I think it was the supplemental appropriations bill last year. Or was it in the 2005 appropriations bill? But, we are finding in Utah that they believe it is an unfunded mandate that puts a tremendous burden on the States. And it is estimated that it would cost about $11 billion overall to implement that program and then an ongoing set of costs thereafter.

I do believe we have got to go to that, but we cannot just saddle the States with that type of billions of dollars. I think in Utah it would cost about $5 million right off the bat, and probably an equivalent amount of money to keep it going thereafter. What do you have to say about that?

Secretary CHERTOFF. I am going to have more to say tomorrow because we are going to issue a proposed rulemaking, which I think will answer some of the questions and relieve some of the anxiety about this. But, I do need to make this point: Secured driver's licenses were maybe the top recommendation made by the 9/11 Commission. It is not only critical for national security and homeland security, it also happens to be a very big step forward in protecting privacy.

So, while we want to work with the States to have a disciplined but reasonable approach to implementation and we are going to see if there are some ways we can give some financial assistance, at the end of the day, this is a very, very important 9/11 Commission recommendation that we are committed to seeing put into effect.

Senator HATCH. I like what I am hearing from both of you today in large measure because you are making it very clear that you do not want this to be an amnesty program. There are some tough cases, though: people who have been here decades, are good members of the community, religious people, hard workers, family oriented. We are going to have to resolve those, and how we can resolve them—I think the current system is in such a shambles that it is pathetic.

So the more we can reform the current system, and back to H–1B, the Chinese are educating 300,000 engineers a year. We educate 60,000, and half of them are foreigners, and many of whom then go home to their countries and educate their people in competition with us, where they would love to stay here and work as maybe not citizens but at least as people who have the credentials to work. I think Bill Gates is absolutely right on that, and we need to up those figures. But every time we try to up the figures on the H–1B Ph.D. engineers and scientists and others that are going to be crucial to keep our country moving ahead, we then have the

other side coming out and saying, well, you are being unfair because you are taking care of them but you are not taking care of the average person.

How are we going to balance that? Because I personally believe we have got to expand the H–1B program, as Bill Gates and almost everybody in the high-tech world believes, and then, of course, at the same time do some reasonable things without granting amnesty and having people earn their right to citizenship the way you have been talking here today. I would be happy to hear your point of view. I would not mind having you talk about the basic pilot program, too, and what is working and what is not.

Secretary GUTIERREZ. Senator, just on the issue of high-skilled workers, what I hear very often from businesses in the high-tech field and other fields is they cannot fill their high-skilled engineering, science-based jobs as quickly or as readily as they would like. We have students come over from the world—India and China primarily. They get the best education money can buy, and then they have to go back home. They cannot stay here and apply their skills. We believe that we should be able to do better than that in order to serve our competitiveness needs as a Nation.

Secretary CHERTOFF. With respect to Basic Pilot, Senator, let me just say that has been a successful program. It needs to scale up. What it enables employers to do is to check online to see if they are getting a bogus Social Security number or one that does not match the name.

I do have to make it clear that it is not a total solution. When people have outright identity theft, where they steal a real name and a real number, it is not picked up by Basic Pilot. For that reason, I believe there is legislation pending now in the Senate to lift the current restriction that prevents the Social Security Administration from advising us when they detect cases where identity theft appears to be going on because the same number and name are appearing in multiple locations.

Senator HATCH. Well, thank you both. I appreciate you being here.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Hatch.

It is interesting when you talk about the unfunded mandate on the States for driver's licenses. It is a problem with mine. Would the administration, if they are going to push for this driver's license, would they agree to propose in the President's budget to fund it?

Secretary CHERTOFF. I think, Mr. Chairman, you have the President's budget. It has been submitted, and I think there is some funding. But, certainly I do not think the budget proposes to pick up the entirety of the cost.

I will say that I have spoken to a number of Governors and States that actually are in the middle of doing an overhaul of their license process, and they welcome moving forward with this. What they are looking for are uniform standards, and we expect to provide those in the next couple of days.

Chairman LEAHY. OK. The Republican Governor of Vermont disagrees with that.

We will set the clock back. Senator Feinstein?

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

Thank you both very much for being here today. I come from the State, as you know, which has the largest number of people, newcomers coming into the State and generally staying in the State. I am now of the opinion that we may have reached too far in the comprehensive bill and that we ought to take a look at doing this in tranches. We have passed the first tranche, which was the border security. The second tranche, it seems to me, are two things:

The ag jobs bill, because it is a system for legalization that is not an amnesty in an industry that depends on the undocumented worker. And it would essentially provide a path to legalization for 5 million people who are willing to work in agriculture for up to 3 years. It has also passed out of this Committee.

The second act would be the Dream Act, which has also passed out of this Committee.

My own view of the last bill now was that the visa expansion was too wide, too deep, and that the tranche Hagel-Martinez compromise subjects itself to fraud and was problematic, and that the guest worker program was too big. It is my view that if we are able to find a path to legalization for the 11 million people that are here, the guest worker program as such, outside of H–2A and ag jobs, is not really mandatory or necessary.

The question I wanted to ask you both, in looking at how the 11 million people could be handled to avoid the amnesty claim and to create a structure, the thought occurs as to whether we could use a point system. In other words, an individual would be accorded points—points for length of time in the country, for education, for language, for children who might be legal, for community service, for the absence of a felony record—so that those with the most points would come first. As you know, Canada uses a point system with respect to legal entries.

My question would be: Have you looked at this as a possible methodology for a structure to be able to handle the 11 million?

Secretary CHERTOFF. We are aware that people have suggested something of that sort, and we know that other countries have that. You know, one question is: Are you talking about a point system for those who are admitted into the program in the first instance for temporary work or for those who would at some point be eligible for citizenship?

Senator FEINSTEIN. For those who are already here in undocumented status, the 11 million, Secretary Chertoff, that you responded to, large in number, difficult to handle.

Secretary CHERTOFF. I think I would say that what needs to be considered in addressing that approach—which certainly, you know, in principle there are some interesting elements and some attractive elements—is first of all, whether you are going to create an incentive, at least in the first instance, to bring those 11 million into a regulated system, because that is ultimately at the end of the day what we have to do to manage that problem.

Senator FEINSTEIN. The answer would be yes.

Secretary CHERTOFF. And second, is whatever system is put in place cannot have so many different variables that it becomes difficult to adjudicate. It is one thing to say, for example, that lack of criminal record has to be adjudicated. We all agree on that.

When you talk about length of time in the U.S., what kind of documents and proof will establish length of time? Is it going to be a complicated process? Will we accept testimony? Will we accept affidavits? And then, whatever the answers to those are, you have to multiply it by 11 million.

So, without suggesting that it is an absolutely great idea or an absolutely difficult idea, it is certainly something worth exploring as long as we keep workability and practicality very much in the forefront of how we look at.

Senator FEINSTEIN. Thank you.

Secretary Gutierrez?

Secretary GUTIERREZ. Yes, I agree with Secretary Chertoff. There are some interesting aspects to it. It really comes down to can we execute it, can we implement it, because simplicity I think is going to be our best friend here. And as we add variables, it is going to make it more complex and more difficult to execute. So for me it would be an issue of workability.

Senator FEINSTEIN. I would like to work with you to try to see if we cannot come up with something that would be acceptable. The task is so daunting because what you are saying is if it is complicated, we cannot handle it because there are so many people. Well, if there isn't a structure to it, if there are not requirements, it becomes in the lexicon of some an amnesty. And that is really not what we are talking about. We are talking about people who have been here, who have worked, who have families here, who are not going to go home. And it seems to me that there should be a methodology that we can work out to avoid the amnesty, to do it with some order, and to have some understanding of what it is that we are doing.

Secretary CHERTOFF. I think we agree with that, and I think that, again, the devil is always in the details, as they say, on the practical side.

Senator FEINSTEIN. Thank you.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator.

Senator Grassley?

Senator GRASSLEY. Thank you, Mr. Chairman. I am going to ask my questions of Secretary Chertoff.

I monitor fairly regularly the actions of the U.S. Citizen and Immigration Service. The Director is committed to preventing fraud. We have seen some improvement. There are still some major problems with the processing of immigration benefits. This agency cannot handle amnesty for 12 to 30 million people when it cannot even handle its current caseload. The agency is 99 percent funded by fees. But how does the agency plan to use fees to implement an amnesty program, one? Two, given the President's request of $30 million for fiscal year 2008 which would go toward an employment verification system, do you really think it is feasible to implement a temporary worker program this year? And three, and last, what are you doing to prepare for the inevitable mess that an amnesty program would create?

Secretary CHERTOFF. Well, first of all, I am going to differ by saying I think the President has been crystal clear that he does not want to have an amnesty program. So—

Senator GRASSLEY. But my answer to that is if it walks like a duck and quacks like a duck, it is a duck. But go ahead and I will accept your—

Secretary CHERTOFF. Well, I am going to respectfully disagree with this being applied to what the President has been talking about.

Senator GRASSLEY. OK. Go ahead.

Secretary CHERTOFF. In terms of the issue of our ability to manage the caseload, I would note, for example, that we have essentially eliminated the backlog over the last few years, which is what the President promised when he came into office. There is no doubt that if we were going to need to assimilate and get secure identification for the people who are in this country illegally and also any temporary workers, there would need to be at least a significant initial investment in money and time to design and fund the system. The hope is the money would be recouped through fees, so I think net we would not be out of pocket, but I think we have to be completely candid that there would need to be some significant resources applied to this over the period of time it takes to implement it.

Senator GRASSLEY. OK. The next point is in regard to getting a briefing. My staff has asked for a briefing on Robert Schofield, an immigration official who accepted bribes in return for approving citizenship for aliens who were not qualified. Since Mr. Schofield pled guilty months ago and his case is no longer pending, I would like some answers. Would you commit to helping my staff get a briefing from your Department?

Secretary CHERTOFF. Yes.

Senator GRASSLEY. OK. Thank you.

The next one is—I would like to have an answer in writing, but would you listen, please, and not answer now, because I have got some other questions. We met over a month ago—you were kind enough to do that—to discuss the worksite enforcement against Swift, including the need to improve the Basic Pilot Program. One of my concerns has been the hiring of illegal aliens in critical infrastructure sites. Every other weeks it seems we are hearing about illegal aliens working on military bases. A response to my question that day, the day we previously met, is that the Department of Defense is not even using the Basic Program.

A few weeks ago, the Senate unanimously passed a measure to prohibit the companies from Government contracts if they are found to hire illegals. It would encourage companies to use the Basic Pilot Program then. But we would not need this measure if the Federal Government was requiring contractors to use the Basic Program. In other words, we do not need to pass a law.

It cannot be done today. The Department of Defense, for example—or, in other words, it can be done today. We do not even have to pass a law to do it. The Department of Defense, for example, should have a policy in place that requires contractors to use this program, airports and power plants as well. I want to know if it is going to be done and to what extent.

Then a question on employer verifications, and I would like a very short answer on this. It is likely that Congress will mandate the use of an electronic employment verification system for all busi-

nesses in the United States. Can you confirm for us today that your Department is ready and willing to implement a mandatory system for all employers?

Secretary CHERTOFF. We have doubled our capacity, and I think, although we will need some lead time, we will be in a position in the near future to be able to offer that.

Senator GRASSLEY. Your Department has been working to implement the national standards for driver's licenses mandated under the REAL ID Act. I am told that about seven States are close to complying. One of those States is my State of Iowa. What would a delay in the REAL ID Act mean for the States that are ready to go? And what incentive would other States have to be compliant?

Secretary CHERTOFF. I think a delay for States ready to go would actually create more uncertainty and difficulty for them. That is why what we are going to propose to do is to, under the law, provide extensions for States that need them but continue to move forward for the States that are poised and ready to implement the law.

Senator GRASSLEY. Mr. Chairman, I see three lights on, so how much time do I have left?

Chairman LEAHY. Well, you are 38 seconds over your time. Do you have another question you wanted to ask? I will certainly—

Senator GRASSLEY. It would be one on visa revocation. Could I go ahead?

Chairman LEAHY. Go ahead, and we will give an equal amount of time to Senator Feingold.

Senator GRASSLEY. OK. I have been pushing to change the law when it comes to revoking visas of people in our country that have suspected terrorism or criminal conduct. Normally, a consular officer has the full authority to deny a visa on such grounds. However, if a visa was revoked today for someone on U.S. soil, the decision could be taken to court.

Can you tell us why the Department wants to change to a law that would prohibit the judicial review of revoked visas?

Secretary CHERTOFF. I think for precisely the reason that you just indicated, the fact that we can prevent someone who is coming in as a guest. Basically, we can say you cannot come in from overseas, but once they come in, if they abuse the terms and conditions of their coming in, we have to go through a cumbersome process. That strikes me as not particularly sensible.

People who are admitted as guests, like guests in my house, if the guest misbehaves, I just tell them to leave. They do not get to go to court over it.

Senator GRASSLEY. Thank you very much.

Chairman LEAHY. Thank you very much.

Senator Feingold?

Senator FEINGOLD. Thanks very much, Mr. Chairman. I am pleased that the Committee is once again taking up the critical issue of comprehensive immigration reform. This issue is too significant to put off, too important to our national security, to our economy, and, most importantly, to the millions of people whose lives will be affected. We need to secure our borders, we need to fix our broken immigration laws, and we need to deal with the fact

that there are millions of undocumented individuals in this country, and we need to do it now.

We also need tough enforcement mechanisms, but we can be strict while still providing individuals with the type of basic due process and judicial review that is consistent with the rule of law and our constitutional system of Government. I do sincerely look forward to working with the Committee to report to the Senate floor a bill that takes a pragmatic and realistic approach to immigration reform, and I appreciate the support of Secretary Chertoff and Secretary Gutierrez for comprehensive immigration reform.

Secretary Chertoff, good to see you again. I want to raise the issue of the material support bar in the immigration law and, in particular, how it relates to the Hmong population. As you are well aware, many of the Hmong who fought with or supported the United States in the Vietnam War will potentially face denials or lengthy delays of their applications to become refugees or to adjust their immigration status here in the U.S., and the reason for this is the very same reason they are eligible to be resettled into the United States, that they fought with or supported the United States in the Vietnam War. Their applications are put in jeopardy because of changes made to immigration laws by the passage of the REAL ID Act, which defined the term "terrorist activity" so broadly that it basically covers anyone who has ever used a firearm.

Are you planning to apply a waiver to the Hmong population, either to those in the United States who are found ineligible for adjustment of status because of the material support bar provisions or to those outside of the United States who are filing for refugee status?

Secretary CHERTOFF. I believe I signed a number of waivers in the last few weeks. I have to confess I do not particularly remember whether the Hmong were included, but I can get you the answer to that.

Senator FEINGOLD. Thank you. Please do, because this is a problem that has been around for several years, and I am concerned that the Department thus far has applied a very limited number of waivers to the material support bar. Can you give me a sense of what your timeframe would be for determining waiver eligibility for the Hmong?

Secretary CHERTOFF. I think I may have done it. The reason I am hesitant is I think may have done it already, but I cannot specifically recall. So if it is done, it is done.

Senator FEINGOLD. My understanding from my staff is it does not include the Hmong at this point.

Secretary CHERTOFF. All right. I will have to look and find out. It needs to be analyzed. It should not take a very long time.

Senator FEINGOLD. Well, I was all over my State last week, and this came up a great deal. It is a matter of great concern. And let me just say also, to the degree this problem is statutory, if it is, then—

Secretary CHERTOFF. No, I think we can deal with this. I think the statute gives us the flexibility, and as I say, I have signed a number of waivers recently, and I think we can deal with this under the existing law.

Senator FEINGOLD. Well, I am pleased to hear that. If that is true, that is great. If there is some statutory problem, please let me know immediately. But I appreciate your commitment to work on this matter.

Mr. Secretary, the last time you were before the Committee discussing immigration reform, we talked about the fact that opening more channels for workers to legally enter this country would allow us to focus our enforcement efforts on those persons who actually pose the greatest threat to our National security. You said then, "I believe the effectiveness of our border security and enforcement initiatives is tied to creating legal channels for workers our economy needs to continue growing." And a 2005 Cato Institute study supports your statements.

The study found that the probability of stopping an undocumented immigrant has fallen over the past two decades from 33 percent to 5 percent, despite the fact that we have tripled the number of border agents and increased the enforcement budget tenfold.

Do you continue to believe, as I do, that effective border security is dependent on creating more channels for legal immigration?

Secretary CHERTOFF. I do agree with the sentiment I expressed last year. I do not want to agree with the Cato study, which I am not in a position to associate myself with and, I have to say, I think a 5-percent capture rate sounds like it is a really incorrect estimate. But, the general principle I agree with.

Senator FEINGOLD. Let me just reinforce that by pointing out that President Bush in his State of the Union last month said that providing realistic legal immigration channels would mean that immigrants looking for jobs "won't have to try to sneak in, and that will leave border agents free to chase down drug smugglers and criminals and terrorists."

I agree with the President on this. This is one reason why immigration reform is really so important.

Secretary Chertoff, I would like to talk just a bit about border enforcement. We are in agreement that border security is an absolutely critical part of immigration reform. I think we also agree that the methods we employ should be as effective and as cost efficient as possible. I understand the Department is implementing some promising new technologies to help secure the border.

I would like to have you tell us a little bit about the high-tech components of the Department's SBInet program.

Secretary CHERTOFF. We are currently in the process of rolling out the first 28-mile stretch of SBInet, and in the area of high technology, I was at the border a week ago and saw ground-based radar that we have currently deployed in Arizona that allows us to actually scan 20 kilometers from a single fixed point and immediately hone in with a camera on illegal migrants so that we can intercept them.

In fact, if I am not mistaken, I have a recollection that in the last few weeks we have actually apprehended a murderer coming across the border using this kind of technology.

There is no question that in many parts of the border the most cost-effective and most efficient way to detect and intercept illegal migrants is high-tech things like radar.

Senator FEINGOLD. I am encouraged to hear that. Would you specifically say that in many border areas those types of technologies will be both more effective and less expensive than building hundreds of miles of fencing, which has an estimated cost of $3 million to $4 million per mile?

Secretary CHERTOFF. I would agree with that. Fencing does have its place, however, in some areas. And, in some areas the high-tech is more effective.

Senator FEINGOLD. Thank you, Mr. Secretary.

Thanks very much, Mr. Chairman.

Chairman LEAHY. Thank you.

Senator Kyl?

Senator KYL. Thank you, Mr. Chairman.

First of all, to Secretary Chertoff, I am just reading some clips from the Arizona newspapers of this morning. Arizona Republic headline: "Another chief of police slain along the border." This is in the Sonoran town of Agua Prieta, which is right across the border from Douglas, one of the chief areas of smuggling. Police Chief Ramon Tacho Verdugo, 40 bullets hit him in an ambush, which officials say is almost certainly involved in control of the smuggling routes into Arizona. Rival organizations are vying for control of these lucrative corridors. His death followed a number of related killings in the area. In fact, at least 12 lawmen have died in the past year, including the chiefs in Tijuana and Nuevo Laredo.

The newspaper goes on to say, "The killings have many police thinking twice about taking the top post. The Sonoran town of Naco, for example, has had 12 police chiefs in the past 3 years. The last one to resign was Tacho's brother," the fellow that was just killed.

There are reasons to secure our border other than simply to stop illegal immigration. Is that not true? And, in fact, could you tell us what percentage of people apprehended coming across the border last year actually were criminals or people wanted or who had criminal records?

Secretary CHERTOFF. I vigorously agree. In fact, the principal reason to secure the border is to keep drug dealers and criminals and dangerous people out of the country. One of the reasons we have talked about a legal channel for migration is so that we are not hunting down the housekeepers and the construction workers and we are focused on the drug dealers.

I do not recall exactly what the figure is, but I think it is a significant percentage, around 20 percent or so.

Senator KYL. Yes, it was somewhere between 10 and 15 percent on average. In some areas it was greater than that.

Secretary CHERTOFF. Yes, that are criminals.

Senator KYL. One of the things that you said in your testimony—well, before I ask you that, you talked about the ending of catch and release. There is still some unfinished business with respect to catch and release, however, with regard to people who are here illegally and we are having difficulty returning to their home. You talked about this in your written testimony. Could you expand on that orally just a little bit?

Secretary CHERTOFF. Yes. The key to all of our deportation, whether it is people we catch at the border and detain or people

in the interior, is once they are removable, the home country has to take them back. We have worked with many of our allies in actually having a very efficient system. I can tell you, however, for example, the Chinese are still very slow to take their removable migrants back. As a consequence, if you look at the whole country, including the interior, we have got, I think, over 40,000 Chinese who have been declared removable. They are done with their court process, but we have difficulty getting the Chinese to take them back, and we are going to have to push on that.

Senator KYL. And those people are not all in detention. In fact, probably the majority of them are not. Isn't that correct?

Secretary CHERTOFF. Correct. Because they are in the interior, the vast majority are bailed out, or by law we have to release them after a certain period of time.

Senator KYL. And it is not even certain that we could find them all if we wanted to.

Secretary CHERTOFF. Well, obviously once they are released, there is a risk of flight.

Senator KYL. Right. Now, you also talked about the need for greater sharing of information. This is reminiscent of a post-9/11 discussion of our intelligence and law enforcement. But to get a handle on who is here and entitled to be legally employed and whether or not someone might be seeking employment fraudulently, you have a variety of recommendations for statutory change, one of which had to do with sharing of data, having the Social Security Administration share data with DHS.

What specifically would you like to see shared? What would be necessary for us to do in order to provide that authority?

Secretary CHERTOFF. Right now, the law prohibits information which can be described as taxpayer information, like your Social Security data, to be shared except through a very cumbersome process. If Michael Chertoff with my number appears to be filing in six different places across the country, I mean, there might be a reasonable explanation, but likely not.

If we could have Social Security identify that and let us have that, that would give us an opportunity to be able to look to see whether we have got an identity theft problem. And, by the way, it would also help the innocent victim, the real Michael Chertoff, get help.

So, this is a tool which I think there is legislation that is now seeking to address it.

Senator KYL. And this would not involve a violation of people's privacy. In fact, to the contrary, it would actually assist people in protecting their privacy.

Secretary CHERTOFF. Absolutely. This protects their privacy.

Senator KYL. Wouldn't the same thing apply for sharing of information, for example, from IRS with respect to the death of a person so that his Social Security number would not continue to be used?

Secretary CHERTOFF. Correct. These would be actually privacy protective.

Senator KYL. And is there any problem in—I mean, isn't it true that we already have algorithms and so on that can run those programs against the data base so that it should not be difficult to do this, it is simply a matter of authorizing it?

Secretary CHERTOFF. Yes, I mean, I am sure there will be some adjustments to the IT system, but all you are doing is comparing to see if in the same time period the same name and number have been filed in different places. It is a legal obstacle to sharing with us that I think is the real problem.

Senator KYL. And, finally, isn't it important that the Social Security data base be cleaned up and operated in an accurate fashion from now on if, A, we are going to have a valid Social Security system, B, we are going to eliminate document fraud and identity theft, and, C, if we are going to be able to have an employer-employee verification system under immigration reform?

Secretary CHERTOFF. Yes.

Senator KYL. Thank you.

Mr. Chairman, that red light means I am out of time?

Chairman LEAHY. It does.

Senator KYL. Thank you, Mr. Chairman.

Chairman LEAHY. Did you want to ask another question?

Senator KYL. No, sir.

Chairman LEAHY. OK.

Senator Cardin?

Senator CARDIN. Thank you very much, Mr. Chairman, and

I thank you for holding these hearings on immigration reform.

It seems to me that we need to evaluate any proposal based upon several factors, the most important, of course, being the security issues. And we have had discussions here about the security issues, but we also need to know the economic impact on our country. We need to be concerned about the humanitarian aspects and just basic fairness. And when you look at basic fairness, I think the point that Senator Feinstein raised about amnesty is one that we have to be cautious about. People have waited in line to become citizens of America, and we need to make sure that that is respected.

On the humanitarian front, it is very important to me to give people the protection of law, so I think it is important that we have some way that we can identify the people that are in this country. On the economic front, I can tell you that the guest worker program is critical to the seafood industry in Maryland, so there are economic issues here that are important to our country. But let me, if I might, concentrate on the security issue because I think that is the issue that is perhaps the most perplexing and the one that is the most critically important.

Last year, the Senate passed a comprehensive immigration reform bill. The House passed a bill that criminalized the activities of those who are undocumented in the United States and those who help people who are not properly documented. So if you look at it from a security point of view, based upon the current circumstances, the current law, versus the approach taken by the Senate last year, versus the approach taken by the House, I would welcome your thoughts that for the security of this country, what is the best approach to take? Because no action is action. If we do not do anything, we have the current law. So is the current law safer for America than the bill that passed the Senate from your perspective or the bill that passed the House of Representatives last year? I welcome your thoughts.

Secretary CHERTOFF. I think the current situation is not a particularly good situation. I think what we need to do is to come up with an approach that addresses all elements of the problem, that does so in a way that adds additional teeth to the enforcement side, that is simple and workable, and that is something that can be done in real time.

Senator CARDIN. Now, the House took a rather limited approach. They did deal with a security wall, but they also dealt with criminalization, making it a felony conviction for those who cooperate or help or counsel, in addition to the people who are undocumented. Would you comment on that approach?

Secretary CHERTOFF. I do not think I am in a position to go back and revive my memory about the individual pluses and minuses of each of the bills. I think we're starting with a clean slate here, I think the principles which the President outlined last year are pretty straightforward—you know, tough enforcement and a workable temporary worker program, including one that addresses and brings into a regulated system the undocumented workers who are here already.

Senator CARDIN. Well, do you need additional tools in order to enforce our laws?

Secretary CHERTOFF. Sure. Some of the things we have talked about are, for example, sanctions for those who run checkpoints or disobey DHS officers, tougher sanctions for employers, administrative sanctions so that the systematic violation of the law does not become a cost of doing business, and also, equally importantly, if not more importantly, not weighing down the process with a lot of different complicated adjudications and determinations that in real life would sabotage the program.

Senator CARDIN. I think that is a fair analysis so that you are being targeted in what you need; whereas, the approach taken by the House last year would have made another maybe 10, 12, 14, 15, 16 million targets, potential targets of criminal investigations. Certainly it seems to me to weigh down the ability to really go after the people that are the ones that we need to in order to make sure we have an enforceable system.

Secretary CHERTOFF. Well, I do not know that I want to characterize any of the legislation that was there last year. I am looking forward. I do not see much profit in looking backward. And, looking forward, I think we have outlined what it is that we need.

Senator CARDIN. I thank you.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Senator Sessions? At least that was my understanding was Senator Cornyn here first?

Senator SESSIONS. I believe he was.

Chairman LEAHY. If that is correct, then I—

Senator SESSIONS. I believe maybe Senator Coburn was ahead of me.

Chairman LEAHY. I am sorry. I was going by—well, which order, gentlemen? You were all here before the witnesses started their testimony. So if you want to yield to Senator Cornyn to go first, that is fine.

Senator CORNYN. You go first.

Chairman LEAHY. I am going to be here for the whole hearing.

Senator SESSIONS. Well, I will just take my time, and we have probably wasted time already.

Chairman LEAHY. OK.

Senator SESSIONS. Thank you. I do not know exactly how you calculate your rule there, but I know it is objective and fair.

Secretary Gutierrez, it is great to have you with us, and congratulations on helping us with our revenue deficit. The economy has grown. We had revenues up 15 percent in 2005, 12 percent in 2006, and I hear you are hoping to have a 10-percent increase in revenues to the U.S. Treasury without increasing taxes, and that is good news. Thank you for that.

And, Secretary Chertoff, I admire you and your leadership. You have got a very, very difficult job. I think I told you when you took it, I am not sure anybody could succeed in it, but you are doing about as well as could be expected under the circumstances.

I would just say with regard to my chairman's comments about the border barriers, that bill passed, one vote 83–16 and I think the other vote was about 94–3 to do that. And it complied with your request to build barriers in a way that would be helpful, as they have proven to be helpful in San Diego. And, frankly, without some barriers, I do not think we are serious about what we mean to do here.

I share Senator Specter's concerns about work going on behind closed doors. Last year, we had this matter basically sprung on us. They tired to pass it without any amendments. Senator Frist pulled the bill down, and we eventually did have amendments and a discussion. But it would be better if we had a much more open process.

Let me raise some fundamental questions. This is what I think is concerning the American people. If there are two applicants who want to emigrate to the United States and both are from Guatemala, one is the valedictorian of his or her high school class, speaks fluent English, and has had a year or two of college or technical training, but no relatives in the United States, another did not finish high school, does not speak English, has had no additional training or skills, and they apply to come to this country, who has the clear advantage, Secretary Chertoff, under the current law?

Secretary CHERTOFF. Right now, the advantage goes to the person with the rather distant family relationship. Under the current visa allocation, I think, last year approximately 120,000 family members got green cards. I do not mean spouses or minor children. I mean married siblings coming in, and that is apparently a legacy of a fairly longstanding system.

Senator SESSIONS. In fact, the way our system works, 58 percent of the people we admit come in based on a family connection; whereas, Canada in its system that Senator Feinstein referred to, which allocates points based on skills that they bring, 60 percent come in on merit, or at least based on the skills that Canada felt are necessary.

Secretary Gutierrez, couldn't we do a better job of recognizing everybody cannot come to the country, and having a skill set factor here that would be more beneficial to our economy?

Secretary GUTIERREZ. Especially for the high-skilled portion of this, skills is what makes the difference. And we have traditionally sourced a lot of our scientists from overseas, and I believe we need to do that in the future.

In terms of low-skilled, it really comes down to the job and what is needed for that specific job, and if it is an agricultural job, obviously the person with the skills would be overqualified, and they probably would not be interested in that.

So part of this is being able to get the skills we need on the high end and then also being able to fill the jobs that we need to fill on the low end.

Senator SESSIONS. With regard to that, I think there should be a distinction between those who want to work here in a low-skilled capacity who may not want to be citizens and those who actually apply to be full legal permanent residents or citizens, and I think that is what we need to be discussing. One of my fundamental criticisms of the bill we passed last year, there was no discussion of this in any serious way.

Professor George Borjas, a professor of economics and social policy at the Kennedy School of Government at Harvard, recommends that we as policymakers answer this question before writing any laws: "What policy goals does the U.S. want to advance through its immigration rules?" Fair enough. You nod. I guess you would agree with that.

The question is: What interests should be served, the interests of poor people or those around the world who— maybe billions would benefit from living here if they could come. Or shouldn't it be the interests of the United States, the long-term, legitimate, just interests of our country?

Professor Borjas testified before the HELP Committee last year, the Labor Committee; he explained that the economic interests of the United States are not being best served by current laws. And, of course, Secretary Gutierrez, he also came from Cuba as a young man, so he is an immigrant himself. He said this: "Many more people want to come to the United States than the country is willing to admit. So because of this the immigration policy needs to specify a set of rules to pick and choose from the many, many applicants. Those rules could stress family ties, as is done now. It could stress national origin, the way it used to do. Or it could stress economic values, the way Canada does. Or it could even be completely random, the way the lottery system does for 50,000 visas. The crucial question that is really at the core of the immigration debate is: Which set of rules should the United States have if it wants to improve its economic well-being of its population?"

Do you think that is a fair analysis of some of the thoughts we should give to this matter?

Secretary GUTIERREZ. Sure. In fact, Senator, I would say that the three goals that we are using to set our comprehensive plan is, one, national security; two is economic growth; and three is national unity, improving national unity and making a contribution to society. And those three goals should be met.

Senator SESSIONS. My time is up. Thank you.

Chairman LEAHY. Senator Graham?

Senator GRAHAM. Thank you, Mr. Chairman. I want to compliment you, too, for having this hearing. I think this is something we actually could accomplish as a Congress with the administration if we had the will to do it. So that is good news for the American people.

The goal is to be safe and free, and I do not think you can be safe and free without being responsible. So we have a problem on our hands, gentlemen, of 11-plus million people who have come here illegally, what to do, how to do it, what value system we should embrace. I think we should embrace our self-interest, and we should embrace American values. And what are American values? Hard work, obeying the law, getting right with the law when you are out of touch with the law, and making sure at the end of the day you have justice.

The rule of law, if it means anything, brings about a just result. So we are going to have some hard decisions to make because there are some families here that have been here decades that have done nothing but work hard. And I hope we can find a just result living within the rule of law, but if it is not justice, it does not push any value.

What is the biggest mistake we made in 1986 in our last attempt to solve this problem, Secretary Chertoff?

Secretary CHERTOFF. I think the biggest mistake was we were not tough about the enforcement side of the law. Additionally I think that not only did it fail to meet the expectations of Congress, but I think it created a real sense of skepticism, if not cynicism, among the American people.

Senator GRAHAM. Do you agree with that, Secretary Gutierrez?

Secretary GUTIERREZ. Yes. I would just add the concept of workability and ability to execute whatever we passed in 1986.

Senator GRAHAM. What percentage of the illegal immigrant population did not come across the border?

Secretary GUTIERREZ. My understanding today is that approximately 40 percent—and these are approximate numbers- -are visa overstays.

Senator GRAHAM. That never came across the border?

Secretary GUTIERREZ. So they would come in through other means, perhaps an airport or—

Senator GRAHAM. So we have got to build a fence, I understand that, and we have got to have a virtual fence and secure the border, and that makes perfect sense to me. That is why I voted for it. But if we did that and we said job done, mission complete, we would be wrong. Is that true?

Secretary CHERTOFF. That is correct. We need to address all the elements of the problem.

Senator GRAHAM. As a matter of fact, if you do not get to the root cause of—what is the root cause of illegal immigration, Secretary Gutierrez?

Secretary GUTIERREZ. I would say, Senator, it is that our economy is growing. We need labor to keep it growing, and that demand needs to be supplied.

Senator GRAHAM. Being a proud Republican, 4.6 percent unemployment is historically low. Is that correct?

Secretary GUTIERREZ. That is correct.

Senator GRAHAM. So to make the argument that illegal immigration is costing American jobs just does not quite make sense, does it?

Secretary GUTIERREZ. Unemployment is below the average of the past four decades.

Senator GRAHAM. As a matter of fact, there are so many segments of our economy starving for labor, if we do not deal with that, our economy is going to go backward, not forward. Is that true?

Secretary GUTIERREZ. That is correct.

Senator GRAHAM. When it comes to the security side, Secretary Chertoff, at the end of the day, if we cannot identify this work force, this illegal immigrant population, we will never be safe. Is that correct?

Secretary CHERTOFF. Correct.

Senator GRAHAM. And the only way we are ever going to deal with this problem is to control employment. People come to get jobs. You can make more in 1 day here than you can maybe in a whole week or month other places. We need workers. They need a job—on our terms, not theirs. So when it comes to the future flow, temporary worker program, isn't part of the solution that you have to advertise, before you can hire an immigrant that no native American, native-born American will take the job? Is that part of the solution?

Secretary CHERTOFF. I think that has been the past practice, and I think in the discussions in the past, all the proposals had some similar requirement.

Senator GRAHAM. OK. Do you recommend that we have that in this package?

Secretary CHERTOFF. I think you need to have some assurance to the public—I do not want to commit to a specific approach about advertising—that assures people that you are not taking a job from a willing American worker.

Senator GRAHAM. Do you believe it is possible in the next couple of years, if Congress gave you the right tools, the right amount of money, the right authorization, to create a system so every employer in America would have a chance to regularize their work force?

Secretary CHERTOFF. Yes.

Senator GRAHAM. And do you believe it would be fair to give them that chance because the current state of law is almost impossible to comply with?

Secretary CHERTOFF. I would not agree that the current state of law is impossible to comply with. I would say it is difficult. It is more difficult than it needs to be to comply with.

Senator GRAHAM. Could I get a Social Security card illegally by midnight tonight?

Secretary CHERTOFF. I do not know if you could, but I think probably—

[Laughter.]

Secretary CHERTOFF. I think probably an illegal immigrant can.

Senator GRAHAM. Don't sell me short. Could you?

Secretary CHERTOFF. I do not think I could either, probably. Not with my Secret Service detail.

Senator GRAHAM. Do you know anybody that could?

Secretary CHERTOFF. I think if your point is that it is easy to get false identification, the answer to that is yes, and that is a security vulnerability as well as an immigration vulnerability.

Senator GRAHAM. It is not easy. It is ridiculously easy. Now, what America needs to come to grips with is that we do not really have any way to track who is here and why, and we need workers. And we are not going to put 11 million people in jail, nor should we. We can make people right with the law without destroying families, which we should. And we can have a work force that brings out the best in this country.

You know, I want to make sure Bill Gates' needs are met, but the most impressive person I have ever met in my life never went to college, worked hard all their life, and that was my father. So I do not put value on people by the title they have, but what is in their heart. And there are millions of people here who could make great Americans if they got right with the law. So let's get this right and get it behind us.

Thank you for coming.

Chairman LEAHY. Thank you. I guarantee you if I did not worry about the legality of it, I could find your Social Security, find mine, and numerous others, and probably get— I might not be able to do it by midnight, but certainly by the end of the week get a fake Social Security number. I am not suggesting people do, but I have watched how it is done, as I am sure you have, and it is pretty scary.

Senator Kennedy?

Senator KENNEDY. Thank you, Mr. Chairman.

I do not know, Mr. Secretary, whether you saw this morning on the front page of the New York Times, "Low pay and broken promises greet guest workers in the United States." It is a rather extensive story, and in the story, with which I think all of us are very familiar, it points out, I would say, a substantial majority of U.S. guest workers experience abuses with their paycheck, and it goes through the examples.

We have provisions, or at least we had the last time in the comprehensive program, protections for monitoring these kinds of labor recruiters so that this kind of abuse we would be able to address. But in the existing law, we know that in H–1B, the highly skilled, they can be petitioned for and they can become citizens.

We are going to be, if we get this legislation, in a temporary program, have temporary workers in here. Why shouldn't it be possible for employers to have the same kind of provisions so that those individuals that come in here following a procedure which we outlined, will they also be able to be petitioned for so that they can get on the road to citizenship as well?

Secretary CHERTOFF. I assume you are talking about unskilled workers as opposed to—

Senator KENNEDY. Yes.

Secretary CHERTOFF. Well, I think, you know, inevitably, as Congress considers this issue and considers what the end game, so to speak, is with respect to temporary workers, some of the sentiment I have heard here today suggests looking at the current categories and asking whether those categories ought to be reconfigured. You

could certainly consider whether you want to create a category for unskilled workers where you have an employer who has a case to be made that that person ought to come in.

Senator KENNEDY. Well, we are talking about the temporary worker program. That was in the legislation last year where they could be petitioned for, and they could get on the pathway for citizenship as well. And just to get the administration's position on that, if you want to get it to us—

Secretary CHERTOFF. Again, I am reluctant to take positions on past pieces of legislation. I think that as we work with Congress—

Senator KENNEDY. Well, what is your position now with regard to the temporary worker?

Secretary CHERTOFF. I think we need to have a temporary worker program that addresses labor needs, that addresses the fact that we have 11 to 12 million undocumented workers and we have to bring them into a regulated system that is fair but that does not advantage those workers over those who have followed the law. Those seem to me to be basic principles the President has outlined.

Senator KENNEDY. Thank you.

Chairman LEAHY. Thank you.

Senator Cornyn? We have had some concern on the early bird rule, which I do want to follow here. Senator Specter is going to take on the chore of keeping track of his side, and I will rely on his count of who gets here first, and I will keep track on this side, and we will try to alternate sides. I apologize for the confusion to both Senator Cornyn and Senator Coburn earlier.

Senator SPECTER. Well, thank you, Mr. Chairman. We will keep track on this side, and we do want to observe the early bird rule because that is the motivation for people to come early. And I think we agree that everybody is entitled to a first round before anybody gets a second round.

Chairman LEAHY. Yes, I made a mistake on that. I apologize. So people understand, we will follow the early bird rule. We will alternate sides until everybody has had their first round, and I will leave it to the Republicans— basically what we did when you were Chairman. I kept track of the Democratic side, and I will expect you to keep track of the Republican side.

Senator Cornyn?

Senator CORNYN. Thank you, Mr. Chairman.

Secretary Gutierrez and Secretary Chertoff, let me express my gratitude for the hard work that both of you have put into this issue. I have been working on this issue since I came to the Senate in 2002, and, frankly, I think we have gone through some tough times, but we are getting to a good place. And I think a lot of the thought that has gone into coming up with a workable bill has been very constructive. And I think if we are successful, then that hard work will have been rewarded. And you both are entitled to a lot of credit.

Secretary Chertoff, when someone asked you earlier about the reason the 1986 amnesty was a failure, I agree with your assessment that there was no real commitment to enforcement of the law. And so, what the American people saw was an amnesty with the tradeoff being worksite sanctions against employers who cheat and enforcement, and they felt like they had been scammed. And

I think a lot of this profound skepticism that I hear from my constituents, and I think that we hear across America, has to do with the loss of trust that the Federal Government has sustained because the American people remember what happened in 1986.

So I think a lot of what we are doing here is trying to regain credibility. I think that is an important function and I want to congratulate both of you for such an emphasis on workability. If we do not come up with something that will work, then I think we will find ourselves in the embarrassing position that our predecessors did in 1986 of scamming the American people. And we should not do that, and I know you do not want to do that either. So thank you for that emphasis on workability.

In that connection, we talked a little bit about the Basic Pilot Program. As you know, there has been a lot of concern surrounding this program and we have had this conversation about the Swift meatpacking plant raids by ICE. Now, I congratulate you and your office, Secretary Chertoff, for your attempts to vigorously enforce the law. But my concern really has to do with the Federal Government's failure to provide good corporate citizens the means to determine whether, in fact, people can legally work on their premises. And as you know, Swift complied with the Basic Pilot Program, a voluntary program, but it could not tell—and you alluded to this earlier—whether or not the worker actually had been guilty of identity theft by claiming to be somebody else and had a Social Security number that was not theirs.

As a result, this company has sustained, it estimates, about $30 million of business disruption, even though they are protected by virtue of their use of Basic Pilot from further sanctions.

But is it your testimony, Secretary Chertoff, that if we were able to implement an effective system of worksite verification, the kind of biometric tamper-proof identification card that Secretary Gutierrez was displaying earlier, that such measures would be a good solution to that problem?

Secretary CHERTOFF. It would be a very good solution.

Senator CORNYN. We also know—and you have alluded to this as well—that since 9/11 we have learned that one of the ways that we have made America safer is to remove the stovepipes that have prevented information sharing between law enforcement and the intelligence community. But as you suggest in your testimony, there are numerous stovepipes in place, legal barriers passed by Congress and signed into law, that prevent you from getting information that would be useful for you to enforce our immigration laws.

I believe Senator Allard has an amendment pending on the 9/11 bill that we are taking up this week that would eliminate those barriers and provide you the kind of information necessary to enforce our immigration laws.

Do you support such measures?

Secretary CHERTOFF. We do support removing stovepipes and, in particular, if it is what I am thinking you are referring to, which is on the Social Security issue, I think we even asked last year to have help to remove that bar, which means we would finally be able to get a heads up if there is identity theft going on.

Senator CORNYN. And, finally, let me just express my gratitude to you again for your willingness to meet with Texas border mayors and business leaders, both here in Washington and in Laredo just last week. I felt like those discussions were very productive. It certainly, I think, gave my constituents the sense that the Federal Government and particularly people in the President's Cabinet care a lot about their situation there on the ground. I also think the meeting provided useful information to you and others at the Department of Homeland Security about how best to accomplish our goals. Perhaps not with a one-size-fits-all mentality that Congress and Washington sometimes have a tendency to dictate, but with an approach that is responsive to their needs and best designed to achieve results.

So thank you for that.

Secretary CHERTOFF. Thanks to you and Senator Hutchison for arranging those meetings.

Senator CORNYN. Thank you, Mr. Chairman.

Chairman LEAHY. Are you going to invite me down for some of those, John?

Senator CORNYN. I beg your pardon, Mr. Chairman?

Chairman LEAHY. Are you going to invite me down to visit some of the—

Senator CORNYN. We would love to have you in Laredo, Texas, anytime you want to come. They have great food.

Chairman LEAHY. I used to go to one Texas city fairly often when my youngest son and his wife were living there, but they are back in Vermont.

Senator CORNYN. In El Paso, yes.

Chairman LEAHY. You have a good memory. They are back in Vermont now. It is easier to visit.

Senator Coburn? And then it will be Senator Whitehouse and then Senator Durbin.

Senator COBURN. Thank you, Mr. Chairman.

First of all, my thanks to both of you for your service to our country. Tough times that we face and tough issues in front of you.

Secretary Chertoff, you talked about increased internal enforcement, increased border security over the last 9 months, decreased number of people, decreased percentage of non-Mexicans. What have you seen in terms of increased egress out of the country?

Secretary CHERTOFF. You know, we are not in a position to monitor egress through the land border and certainly not if people return between the borders. So, I cannot at this point tell you that there are a large number of people who are leaving as a consequence of interior enforcement.

There was some anecdotal stuff in the paper suggesting that there were people who were now beginning to leave because they were getting worried about these enforcement rates.

Senator COBURN. I noticed, Secretary Gutierrez, that we are very proud of the unemployment rate, and that is great, but that is a measure of the people that are seeking jobs. There are still people unemployed out there who are not seeking, so it is a measure of those actively seeking jobs, not those that are not seeking. And I note that if you—you talked about 4.4 million jobs that are out there and available right now, and we have got 9 or 10 million peo-

ple that are looking for a job. That is about a 2½:1 ratio of people who do not have a job to jobs that are available. And other than the geographical disbursements or the ag differential in terms of regionalization, why do we need to have a large number of a worker program when we have 2½ times as many people unemployed in this country as we have jobs? Why do we need to suppress that?

And then the followup portion to that question is: If that is really the case and what we have seen is the big problem in this last recovery, economic recovery, is that the low- and lower-middle-income salaries have not risen, and one of the reasons that they—what are the reasons why they have not risen in terms of real wages? Part of it health care, I understand that, but compared to other times. And why does it make sense to have an influx of an additional work force when we have 10 million Americans that are not employed today and real wages for those people at those entry level jobs are not rising?

Secretary GUTIERREZ. I think there are three questions there, Senator. The labor rate participation, the percent of the population that is in the labor market, has remained pretty stable. On wages, this last year we saw actually a real increase of about 2.1 percent in real wages. The broadest measure of compensation that we have is disposable income, average disposable income, which would take into account wages, benefits, take-home pay, reduction in taxes. That number is up about 9.5 percent in real terms since the President took office.

The other thing I would say about the labor and the unemployment is that the type of jobs that we are talking about here, I believe that in general terms a lot of our population has moved on. A lot of our young students, a lot of our children are not necessarily looking to fill jobs that perhaps they would have filled 30 or 40 years ago. And I think that suggests that as a population, as a society, we are moving forward. People's expectations of a job, their skill levels, are a lot higher than they were before. And many of the jobs today that do not require skills are not the types of jobs that our people are looking for. And that is why we have these vacancies in the lower-skill levels.

Senator COBURN. Just to clarify that, 9.5 percent, 7.2 percent of that is health care costs. So it is really 2.3 percent in terms of real wages or disposable income. And if you fractionize that out to the lower-middle income or to the low income, it is not even that great.

Again, I question the wisdom. If we really believe in markets, why would we undermine the market forces that would raise the wages of the lowest income earners in this country by diluting the work force with people coming in under a jobs program? I do not understand that. Why would we not want to make it more competitive and let markets raise the cost? I actually believe we need to have more legal immigration because I think that diversity is one of the great strengths of our country. I am not against it. But I do not understand the policy of why we would not want the market forces to actually raise the wage rates of the lowest dollar employed people in this country.

Secretary GUTIERREZ. The point you are making that I think is a good one is how much and what is the level of immigration that

we need, and to your point, we believe that the market should determine that.

The great thing about comprehensive reform is that it will regulate the supply. Today the supply is whatever can get in. If we determine what supply we want, who gets a card, who gets a temporary worker's permit, how many people are in the country, that will force us to limit the number of immigrants who come in. And then over time we can let the market decide whether that is too little or too much.

Senator COBURN. All right. Thank you. I am out of time. I will wait for the second round.

Chairman LEAHY. Thank you.

Senator Whitehouse?

Senator WHITEHOUSE. Thank you, Chairman. Gentlemen, welcome. I appreciate your service.

First a political question, and then an enforcement question. Looking back at the last session, we saw two things. We saw an extreme divergence of views among the President and his party in Congress. And we also saw immigration reform founder here at a time when Congress was controlled by the President's party. And in light of those facts, as we go forward to try to put together immigration reform in this Congress, I am interested to hear what sort of signals you all are hearing about the extent to which this administration is willing to do the political legwork of herding the cats, if you will, on its side of the aisle so that there can, in fact, be a proposal that people agree on.

I think the divergence of views among the Democrats is relatively narrow and consistent with the way people tend to ordinarily disagree with each other on major pieces of legislation around here. It seems to me that within the President's party, the divergence of views is so extreme that it is going to really take a considerable effort to get anything that is acceptable. And if there is not a really serious and sincere effort to get there, then this is all a lot of talk.

Secretary GUTIERREZ. Senator, I know that the President has been committed to this from his first day in office, and it goes back to when he was Governor of Texas. So the one constant here is the commitment from the President to get something done.

I think what we learned last year is that this is such a complicated issue, it is so complex that it is going to require compromise on all sides of the aisle to get a good, solid bill. And I think we are going to see that, that it is not just one side of the aisle that needs to compromise. I think we all need to compromise in order to get a bill that serves our National interest. And that is what we are here for, and we are committed to doing that.

Secretary CHERTOFF. I would add one thing. I think it was important over the last year to put a lot of effort and resources into tough enforcement. Frankly, there was a lot of public skepticism built up over 20 or 30 years of what many people in the public view as lip service. And, I think we're changing the momentum—and, again, I want to emphasize we are not done—we are moving in the right direction. I think it is beginning to earn some credibility with the public, and keeping that up is going to be an important element of being successful.

Senator WHITEHOUSE. Well, that is a perfect segue to my second question, which had to do with enforcement actions against corporate violators. I do not have the numbers in front of me, but I seem to recall last year the statistics were that it went from an average of about 400 successful actions a year down to about 4. I think it was a 99-percent reduction.

Secretary CHERTOFF. That is actually the exact opposite. It went up to 716 criminal cases. The prior year I think it had been like 120 or 130. And, if you go back to 2002, it was one-seventh.

What did happen is we moved from slap-on-the-wrist actions, where you pay a fine that is a cost of doing business, to criminal actions, which resulted in things like the guilty pleas we got yesterday, which have real teeth. And, we are going to continue to do that, as we demonstrated last year.

Senator WHITEHOUSE. Well, I am pretty confident with my figures, and I will double-check to specify exactly what the area of enforcement was. It was against corporations. I am not sure if it was fines or convictions. But there was a documented 99-percent reduction from about 400 per year to about 4, if I remember correctly—

Secretary CHERTOFF. I think what you—

Senator WHITEHOUSE.—between administrations, and I would like to see that turned back around.

Secretary CHERTOFF. I think what you are seeing is we moved away from civil administrative slap-on-the-wrist parking tickets to criminal felonies. You are right, we are not going to waste time doing a big investigation to fine a company $250. It is a waste of time and effort on the part of the agents. Just like when I was a prosecutor, we do not do little penny-ante offenses. We go after big violators. When we get them, we have real teeth. And, I think that if you look at the reaction you have seen in the press as well as what I have heard privately, the grumbling, frankly, from the corporate community, I think that is a pretty good metric of the fact that we are rougher and tougher than anybody has ever been.

Senator WHITEHOUSE. Mr. Chairman, I would followup on that in writing, and I look forward to that opportunity, Secretary Chertoff. Thank you.

Chairman LEAHY. Thank you very much, Senator Whitehouse.

Senator Specter?

Senator SPECTER. Well, thank you very much, Mr. Chairman, and thank you, Secretary Gutierrez and Secretary Chertoff. Your testimony is very helpful.

We will push ahead in the Committee to produce a bill as promptly as we can. I believe the Committee will be committed to a comprehensive bill. We need to articulate the strong case we have that it is not amnesty. We need to tell the American people that the protection of the borders is serious and that employer verification will be done and that the Government will provide the technical assistance so that employers can know who is legal and who is not so that they can be held accountable with tough employer sanctions and that we will look for a guest worker program which will be responsive to the needs of specific industries. If there are American workers available, we will not bring guest workers in. We will have guest workers only where American workers are not available to do the job. And with respect to the 11 million un-

documented aliens, we will structure a bill which will seek to identify those who have criminal records and do not deserve to stay here from those who do have roots and who are making a contribution.

But I am convinced that we can maintain the rule of law, protect our borders, at the same time accommodate in a guest worker program the needs of American industry and have a realistic program to put on a citizenship track those who deserve it at the end of the line. But, again, I say if anybody has a better idea, we are ready to listen.

But we do appreciate the outstanding work you both have done, and we will work with you and we will work with the House to try to structure a bill which will come out of conference.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much.

Senator Graham, did you have anything further?

Senator GRAHAM. Just very briefly, if I may.

Chairman LEAHY. Certainly.

Senator GRAHAM. It is important to start with a clean sheet of paper, but I think the point we are trying to make is that we need to understand our past work product and how close to the sweet spot we are.

Would either one of you consider last year's provisions or the bill that passed the Senate, the provisions regarding punishment to be amnesty—the fines, learn English, go through a criminal background check? What the Senate did last year, would you consider that to be a grant of amnesty?

Secretary GUTIERREZ. I do not have the specific provisions in my mind, but if it is a punishment, then I do not think it can be amnesty. So, you know—

Senator GRAHAM. Well, with all due respect, I am not asking for recall, but there was a lot of attention paid to this, and I would think both of you during last year's debate would have come to the conclusion as individuals whether or not the Senate is repeating the mistakes of 1986.

Secretary Chertoff, did you think we were doing that?

Secretary CHERTOFF. You know, I agree with Secretary Gutierrez that when there are penalties, if the penalties are enforced, it is not an amnesty. But, I also have to say it is not just a question of convincing us. It is a question of what do the American people think, and I think that what has to—

Senator GRAHAM. Well, the American people need to hear from their leaders, and the American people are dying to be led in a lot of areas, and the American people are very open-minded to solutions. Two out of three are open-minded to assimilating people without throwing over the rule of law.

What is the violation for illegal border crossing? Is it a felony or misdemeanor under our current law?

Secretary CHERTOFF. I think it is currently a misdemeanor. Although, I think if you have been—I am subject to being corrected, I am working from memory—removed and then you come back again, I think it can be done as a felony.

Senator GRAHAM. But the initial violation is a misdemeanor.

Secretary CHERTOFF. I believe, if that, yes.

Senator GRAHAM. As a judge, do you believe in proportionality of punishment—

Secretary CHERTOFF. Sure.

Senator GRAHAM.—that the sentence needs to fit the crime?

Secretary CHERTOFF. Sure.

Senator GRAHAM. OK. Well, anyway, at the end of the day, this amnesty question, as Senator Specter and Chairman Leahy have indicated, will dominate this debate, and we need to come to grips with what the term "amnesty" means in terms of the law. And you have been a judge, and I have looked at the punishments available under the law for someone who is caught crossing the border illegally. I think they are more severe than if you were caught doing drugs the first time in terms of paying fines and having to wait 11 years before you could ever get back into the back of the line.

I would encourage both of you that when we come up with whatever comprehensive view of the problem that we agree upon, that you stress to the American people you are not getting away with this. You can only stay on our terms. And if you committed a violation of the law, you are not even eligible to be considered. And you have to make yourself right with the law.

And the last comment would be that we have got to convince the American people that until you know who is here and why, we will fail again. And the ID card controlling employment is to me the wall that works. And please stress as we go forward the importance to the American people that we give employers notice of what they should do and we hold them accountable when they fail, and this ID card is the key to solving this problem.

I look forward to working with you. We can do this.

Chairman LEAHY. Senator Sessions, do you have another question?

Senator SESSIONS. I will be brief, Mr. Chairman.

Chairman LEAHY. I would certainly appreciate that.

Senator SESSIONS. You know, our hearts go out to the whole world. Professor Borjas pointed out that with regard to the 50,000 lottery slots that we have in this country where you submit your name and your name is drawn, that of that 50,000, 5 million applied. You know, nine-tenths of the world economically would benefit if they came to the United States. We have to know that, and we have to ask ourselves if everybody cannot come, are we going to think like Canada or other European countries that are revising their laws and choose people, allow those to become on a path to citizenship that are most likely to be successful here and also benefit the United States.

I would ask either one of you if you know these statistics. In 1997, the National Academy of Sciences told us in their study, "The New Americans," that the key to success in the United States and the ability to contribute to the United States is an education level. And this is the National Academy of Sciences, not something I came up with. Those who did not have a high school diploma would cost the Treasury of the United States $89,000. In other words, they would draw out more in welfare and benefits than they would pay in over their lifetime. Those with high school diplomas would draw out $31,000. But those with any college, just some advanced

education, would pay $105,000 more in a lifetime in taxes than they are going to take out.

Now, is this something that—is this an immoral thing for us to think about? Let's just put it that way. Is that immoral for the United States to think like Canada and Australia and other nations are, that they need to think about how this person is likely to fare in the country and focus more on the skills and educational levels that they bring?

Secretary CHERTOFF. Well, I think, you know, this is a complicated issue, but I think one principle is very clear. Whatever we do should be that which benefits the United States. That is what we are here to do, to benefit the United States first. And while we might debate about what the best way to maximize that benefit is, I do not think there is anything immoral—I think, in fact, we have an obligation to put American interests at the top of the list by a country mile.

Secretary GUTIERREZ. This has to be the national interest, first and foremost. The one issue that we have to wrestle with is the fact that the jobs that are available happen to be low-skilled jobs because American citizens are improving their education, and they are not filling those jobs, and we do not want those jobs to go overseas. And that becomes the reality that we have to confront.

Senator SESSIONS. Well, I would just suggest again— and I think we could maybe reach some bipartisan ground on this. If we have a real temporary worker program for people more focused on low-skilled workers or seasonal workers and things of that kind—and those people could also apply in another track for citizenship based on a competitive—maybe they learn English while they are in the United States, maybe they would take college courses at night, and they become very competitive in the application process, and then have an application process for citizenship based on a more meritorious basis than we have today. Is that something that is conceivable in your mind, Secretary Gutierrez?

Secretary GUTIERREZ. Well, I think the important thing is when we have a temporary workers program that we be able to explain to you why we call it "temporary." And it is always in the country's interest to have anyone who is working here improve their skills and grow and contribute to society. So, yes, we want everyone to grow and to improve their skills.

Senator SESSIONS. Secretary Chertoff?

Secretary CHERTOFF. I agree. I think that we ought to look at ways to maximize the benefit to the country in terms of how we ultimately admit people to permanent status.

Senator SESSIONS. Well, Robert Rector of the Heritage Foundation said it is a myth that if by legalizing the 11 million people here now about 50 percent do not have a high school diploma, that it is going to help our Medicare, our Social Security, our long-term financial threats that are out there; in fact, it is going to exacerbate them. And he is absolutely firm in that view, and he has studied it quite in depth.

So I think we do have a right to ask what is in our national interest, and as we go forward, I hope that some of those of us who have not been involved in this process of writing a bill that will

soon be foisted upon us will at least have an opportunity to read it and to maybe make some amendments.

Chairman LEAHY. Thank you.

A high school diploma should not be the only criteria. I am sure you are not suggesting that. My father was one of the leading business people in Montpelier, employed a lot of people in a printing business that is still there bearing our name. He never had a high school diploma, nor did my Italian grandfather who also employed an awful lot of people in his stone shed.

Senator Coburn?

Senator COBURN. Mr. Chairman, unanimous consent to submit additional questions for the record.

Chairman LEAHY. Of course. And we will keep the record open.

Senator COBURN. If you all would respond to those.

Chairman LEAHY. We will keep the record open for all members for that.

Senator COBURN. I wanted to make a comment about what Secretary Chertoff has said, and I think it is dead accurate. The American people do not trust this Government on immigration. They do not trust the Republicans or the Democrats because we have not earned their trust on this issue. And I think it is very important that the process of now starting to secure our borders becomes more visible to the American public, starting to enhance internal enforcement becomes—and I also will tell the Chairman that I think any bill that goes through the Senate that doesn't have the Isakson amendment in it is doomed for failure. It is doomed for rejection by the American people, and it will not work.

We have to re-establish confidence before we address the issue of the 11 million people that are here, and I would hope that the administration would take that position. Since they are going to be the one negotiating with the majority, it is obvious that the Republicans are not. That Isakson amendment that says that we will start addressing these other issues in a humanitarian way is once we have certified that we have a secure border, and not until then. And that is what the American people expect, and that is what they deserve.

A couple other questions, and you do not have to answer them other than short, and I will make them in long—I would love to know about the exit portion of the US-VISIT program, because I know we are not functioning at a level there. We cannot—from both homeland security where you have testified and here, Secretary Chertoff, that is a gaping hole for us right now. We know who comes in. We have no idea who leaves, which means we do not know whether people are actually violating their visas or not.

Secretary CHERTOFF. We are on track to doing an air and sea port exit system. The land port is complicated, and this is going to be near and dear to the Chairman's heart because—

Chairman LEAHY. We have had some long discussions about this, Senator.

Secretary CHERTOFF. We have never built infrastructure monitoring people who leave the country. Now, one solution might be to work with the Canadians and the Mexicans and get their information about who enters, which would, of course, achieve the same

thing. And, we are talking to them about the possibility of pursuing that.

Senator COBURN. All right. The other thing—and I will submit this—just in terms of ICE agents and administrative apprehensions and the number of ICE agents and the ratio of that and whether or not we will be efficient with that, I would appreciate you answering that by letter.

Then I have one final question. It strikes me, as I go around the country, that when—and, Secretary Gutierrez, I certainly do not mean to embarrass you with this question, or Secretary Chertoff. When you were asked by the Chairman about English as an official language of this country, and we do not embrace that. And, you know, I find it rather ironic. I can be on call at my hospital and deliver an Hispanic woman who cannot speak English, but her medical record is all in English. The official record of our being there, the business record is in English. It is not in Spanish. And my poor Spanish is enough to coach me through delivering her baby. But why would we not embrace that, whether we have to help people come to the level of English education or English as a second language, but why wouldn't we embrace that the official language of this country is English? It is what we operate our law under. It is what we operate—why do we not embrace that? Why does the administration not embrace that? Why does my colleague from Vermont not embrace that, when, in fact, the commonality of our English is the thing that keeps us together and united as a country?

Secretary GUTIERREZ. Well, I will say two things. I think you are asking a legal question, but I will give you my two points of view.

One is we have to do everything we possibly can to send the message out that everyone needs to learn English, and we do a great disservice to immigrants if we insinuate that it is not that necessary. That is the first thing I will say.

Once we have all learned English, I think we all owe it to our country to learn a second language.

Senator COBURN. I agree with you.

Secretary GUTIERREZ. And I would hate to give anyone the impression that we think a second language is a bad thing. The first thing is English first, English plus, which I believe is a term that other people have used. I think we can embrace those two, and I do not think there is any confusion regarding those two. I think there is a great deal of clarity.

Secretary CHERTOFF. I agree, and I think the President has made it clear that ultimately, as we deal with this issue of immigration, assimilation, being part of the culture of the United States, becomes a critical element of the policy. I think people look with alarm at what is going on in other parts of the world where there are large groups of immigrants who never actually become part of the fabric of society. And, we are now seeing some of the unfortunate harvest of that.

The really good news in this country is we have, traditionally, without necessarily being legally coercive, built a system that encourages people to assimilate. We need to make sure whatever we do, we continue to push this issue of becoming part of the fabric of America as a critical cornerstone of our policy.

Senator COBURN. Do you see some danger with having a guest worker program that we would have a persistent underclass, underpaid worker class, who does not assimilate, and because we have a guest worker program, rather than welcoming them as Americans, helping them get a greater education, have them climb the ladder, rather than create a guest worker program that says you are in a slot that you are not going to become an American, we are just going to use you as an underclass to supplement what we do not want to do?

Secretary CHERTOFF. I think what we have now is an underclass—

Senator COBURN. I do, too.

Secretary CHERTOFF.—because I think when you have an invisible, fearful group of people who are, nevertheless, here, that is the most likely to produce an underclass. I think when you give them legal status and, therefore, they get certain basic legal protections, I think that actually decreases the element of an underclass.

And then as somebody said earlier, to the extent that people when they are here legally get educations and move to better themselves, you know, there may be opportunities for them under existing programs. But, I think this is an area where—as the Secretary said starting out—there is far greater agreement, I actually believe, on where we need to get. The disagreement tends to be on what the best way is to get there. And, I think that gives me hope that we can actually solve this problem.

I know if we do not do it now, we are leaving the American people in a very difficult situation.

Senator COBURN. All right. Thank you very much.

Thank you for your indulgence, Mr. Chairman.

Chairman LEAHY. Of course. You have asked important questions, and I appreciate it.

I did see a certain smile on Secretary Chertoff's face when you talked about going either way across our borders. We had had a discussion of what happens if this WHTI is implemented fully, and Americans leave, for example, going into Canada, Canada says fine, come on through, and then an American citizen is denied entry to their own country because they do not have a passport or whatever kind of thing we do.

I think that that is more than just an exercise in thinking. I think it is a reality, and I think it is one thing we have to really look at because you could actually have this—it would become a cause celebre in this country. Americans go across the border to Canada or Mexico, an American citizen, born and raised here, no question of citizenship. And then the do not have the proper papers and are not allowed back into the United States. Get a few thousand of those, I can almost write the headlines. But we have discussed that, and we will discuss it further.

Do either of you believe that Americans are being denied jobs because of foreign workers?

Secretary GUTIERREZ. No. In general terms, no. No.

Chairman LEAHY. And, Secretary Chertoff?

Secretary CHERTOFF. I agree with Secretary Gutierrez.

Chairman LEAHY. And if our immigration system is reformed to accommodate the needs of agriculture and other industries, can we do this and make sure that Americans are accommodated there?

Secretary GUTIERREZ. Yes, Mr. Chairman. I believe we can.

Chairman LEAHY. Thank you.

Well, I appreciate you both being here. We have been longer than I think we probably told you we would be, but I wanted to make sure everybody had a chance to ask questions.

This is going to be a long process. It is not going to be an easy process. I am committed to getting a comprehensive bill through. I believe everybody will say they would be committed to getting a comprehensive bill through. The question is we have different definitions perhaps of what is comprehensive. But I think that the most important point in this whole thing is where the President is going to be and where he is going to be publicly on this.

In the last meeting I had with him last year on this subject, I was extremely impressed with his commitment to it, with all the other things on his plate, his knowledge of the proposals being made, his reference to his own experience in Texas. But we are going to need that publicly, and we are going to need very public support of leaders of both the Republican and Democratic parties in both bodies.

I believe it can be done. I believe if it is not done, we have a problem in this country that will actually hurt us. It will hurt us in being the kind of great country we are, and we will lose the chance to have the kind of diversity we need in America, which has made us strong throughout the years.

So I thank you both very much for being here.

[Whereupon, at 12:31 p.m., the Committee was adjourned.]

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

# QUESTIONS AND ANSWERS

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| **Question#:** | 1 |
| **Topic:** | AGJOBS |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Patrick J. Leahy |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** As you know, Senators Craig and Feinstein have introduced a bill, which I cosponsored, that makes reforms to the way American farmers can hire willing foreign workers to fill vacant jobs. Part of our bipartisan AgJobs bill, would set up a program of "blue cards", allowing foreign farm workers currently in the United States in an undocumented status to obtain legal status to work in agriculture. This bill also contains a reform of the H-2A program that would make it easier for agricultural employers to legally hire workers, and set special provisions for dairy farmers, which are much needed in dairy producing States.

Why doesn't the President's plan for comprehensive immigration reform mention agricultural workers? Do you and the President recognize the need for reform and the special needs in the area of agricultural employment?

Do you and the President support the approach taken by our AgJobs bill? If not, why not?

Does the Administration's support for a temporary worker program include support for reforms tailored to the needs of American farmers?

**Answer:** We continue to work with Congress on passing immigration reform legislation. We are committed to working with Congress to make sure such legislation properly reflects the important interests of the agricultural community.

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| **Question#:** | 2 |
| **Topic:** | Temporary Workers |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Patrick J. Leahy |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** Your testimony discussed the President's plan for a temporary worker program, and noted that such a program should not be a method by which temporary workers stay in the United States indefinitely.

Is the Administration opposed to any temporary worker program that provides a possible opportunity for temporary workers to adjust their status?

**Answer:** The Temporary Worker Program should create a lawful, orderly mechanism to enable foreign workers to enter the United States on a temporary basis to fill jobs for which U.S. workers cannot be found. We should make sure that this program is temporary in nature. Foreign guest workers who elect to participate in the program should not be precluded from adjustment of status that would otherwise be open to them, but the Temporary Worker Program should not provide them with either an automatic right or a fast track to adjust their status.

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| **Question#:** | 3 |
| **Topic:** | Border Fence |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Patrick J. Leahy |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** You have said in the past that your Department could use authority to build 300 miles of fence along the Southern border. As you know, the Republican Congress passed, and the President signed, a bill authorizing 700 miles of fence along the border.

Given that DHS's other initiatives for border security and your previous statements on the matter, do you feel 700 miles of border fence are necessary?

Does the Administration truly support a 700 mile border fence?

What precisely is the Administration's position on a border fence?

**Answer:** DHS is diligently working to ensure that its fencing efforts satisfy the statutory requirements and are strategic, cost-effective, and geographically appropriate. However, securing our Nation's borders is not limited to border fencing alone. We must be sensitive to geographical considerations (like terrain variances) and the social concerns of local communities impacted by a border fence. The concept of border fencing must be expanded to encompass a border security paradigm or model that includes a component of the Secure Border Initiative, SBI*net*. The SBI*net* framework applies a comprehensive technological, infrastructural, and staffing approach to address fencing issues, as it leverages net efficiencies and ensures that effective border security best practices are implemented and that fencing is laid out in the most cost-effective manner. The Administration recognizes the need for a coordinated, comprehensive approach to this issue and is committed to the construction of a border fence as an effective means to deter illegal immigration and to help secure the border.

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| **Question#:** | 4 |
| **Topic:** | ICE Detention Standards |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Patrick J. Leahy |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** The INS developed detention standards in November 2000 to ensure the "safe, secure, and humane treatment of individuals" detained by the government, now under the authority of Immigration and Customs Enforcement, or ICE. These standards also state that immigrants have a right to access counsel and provide for legal orientation programs and phone service so that detainees can identify and contact a lawyer. The standards define important protections, but they do not carry the force of law.

Do you support codifying the standards into law?

On January 16 of this year, the DHS Inspector General issued a report that was highly critical of the conditions at five detention facilities operated by or under contract to ICE. Each of the five facilities was noncompliant with the ICE Detention Standards in one way or another. For example, many detainees were not screened for health conditions, including infectious disease, and four of the five investigated facilities failed to respond to requests from detainees for medical treatment. When this report was released in January, ICE claimed that it disagreed with the OIG's methodology. However, given what we saw after September 11 — including the physical and verbal abuse of immigration detainees documented by the Inspector General of the Justice Department, and the use of dogs against prisoners, as reported by National Public Radio in November 2004 — I believe that these problems persist in many locations.

What steps are you taking, and how have you directed the leadership of ICE, to ensure humane treatment of detainees in immigration custody?

Immigrants who are deprived of their liberty by the U.S. government have the right to an attorney but do not receive court-appointed counsel. The January 2007 DHS OIG report detailed practices that prevented detainees from communicating with their attorneys. The OIG report showed that detainees were often not provided access to working telephones and that in many instances the toll free numbers that should have connected detainees to free or low cost legal service providers did not work. OIG described one example in which the jail facility "took at least 16 business days to grant a detainee's request to call an attorney as opposed to the 24-hour time limit required by the [detention] standard." Julie Myers, the Assistant Secretary of Homeland Security for Immigration and Customs Enforcement, has stated that, "When an alien is represented by counsel, it benefits both the alien and the government."

Do you agree?

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| **Question#:** | 4 |
| **Topic:** | ICE Detention Standards |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Patrick J. Leahy |
| **Committee:** | JUDICIARY (SENATE) |

What steps will you take to improve detainee access to legal service providers?

**Answer:** The current structure of the ICE National Detention Standards (NDS) allows ICE the necessary flexibility to enforce standards that ensure appropriate conditions of confinement. The NDS employed by ICE are also consistent with industry standards, such as those established and promoted by the American Correctional Association (ACA), among other groups that specialize in detainee care and treatment. In addition, the facilities are governed by existing Federal, State, and local regulations and policies applicable to their jurisdiction's correctional/detention programs.

ICE negotiates with local service providers, conducts regular meetings with various non-governmental organizations (NGOs) and maintains its own robust inspection requirements in order to ensure compliance with these standards.

**Question:** What steps are you taking, and how have you directed the leadership of ICE, to ensure humane treatment of detainees in immigration custody?

**Answer:** The OIG Report published in January 2007 identified individual instances of non-compliance or "exceptions to the norm." ICE staff accompanied OIG auditors on several site visits and took immediate actions to identify and correct the source of the problems found. Primarily, these problems were attributable to individual lapses in service provider compliance with the NDS. These lapses did not represent systemic failures at the facilities or within ICE's detention inspection program.

The OIG found that ICE facilities were generally in compliance with the NDS. ICE facilities managed, in cooperation with our service provider partners, to ensure safe, secure, and appropriate conditions of confinement for the detained population. ICE is improving its NDS program by, among other things:

- creating a Detention Facilities Inspection Group (DFIG) within the ICE Office of Professional Responsibility (OPR). The DFIG independently validates detention inspections conducted by ICE's Office of Detention and Removal Operations (DRO) by performing quality assurance over the review process, ensuring consistency in application of the NDS, and verifying corrective actions. This additional layer of OPR oversight will complement the current ICE DRO Detention Standards Compliance Program and ensure detention facilities are safe and secure and provide appropriate conditions of confinement.

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| **Question#:** | 4 |
| **Topic:** | ICE Detention Standards |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Patrick J. Leahy |
| **Committee:** | JUDICIARY (SENATE) |

- converting the ICE NDS into a performance-based format, consistent with the new approach used by the ACA. The revised standards, practices, and outcome measures will enable ICE not to only monitor activities but also to measure outcomes over time.

- maintaining a positive relationship with NGOs interested in immigration enforcement issues. ICE uses existing relationships to specifically engage interested NGO representatives on matters relating to the Detention Standards Compliance Program. Through a series of structured meetings, ICE seeks their constructive ideas for program improvement and transparency.

- developing a system of management indicators for ICE's detention program. The Detention Management Indicator System (DMIS) will require DRO field offices to track and report key detention information relating to current conditions of confinement. The information will be collected nationally via an automated system. ICE management can use this information to identify and address potential problems.

- reviewing ICE's juvenile standards and developing formal family detention standards. As ICE's detention population grows, it also increases in demographic complexity. Certain populations (e.g., juveniles and families) within ICE custody require unique standards in order to meet their special needs. ICE will ensure that the needs of these special populations are appropriately addressed.

**Question:** Immigrants who are deprived of their liberty by the U.S. government have the right to an attorney but do not receive court-appointed counsel. The January 2006 DHS OIG report detailed practices that prevented detainees from communicating with their attorneys. The OIG report showed that detainees were often not provided access to working telephones and that in many instances the toll free numbers that should connect detainees to free or low cost legal service providers did not work. OIG described one example in which the jail facility "took at least 16 business days to grant a detainee's request to call an attorney as opposed to the 24 hour time limit required by the [detention] standard." Julie Myers, the Assistant Secretary of Homeland Security for Immigration and Customs Enforcement, has stated that, "When an alien is represented by counsel, it benefits both the alien and the government."

Do you agree?

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| **Question#:** | 4 |
| **Topic:** | ICE Detention Standards |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Patrick J. Leahy |
| **Committee:** | JUDICIARY (SENATE) |

**Answer:** DRO promotes detainee access to early and accurate legal information. ICE has programs on legal visitation, group legal rights presentations, free access calls to community based pro-bono legal service providers, and is working with the Executive Office of Immigration Review's Legal Orientation Program. These programs and efforts will facilitate access to legal counsel to increase the efficiency of immigration court proceedings, decrease the duration of detention, and increase an individual's ability to make a timely decision about his or her immigration case.

**Question:** What steps will you take to improve detainee access to legal service providers?

**Answer:** The ICE National Detention Standards (NDS) mandate that ICE detention facilities ensure detainees have access to attorneys, via telephones and on-site visitation, as well as access to legal research material.

The NDS Telephone Access Standard requires detention facilities to provide reasonable and equitable access to telephones and allows detainees free access calls to their consulate offices, community-based free legal service organizations, and the Office of Inspector General. To facilitate these toll-free access calls, ICE has contracted with PCS telecommunication services to maintain the free "Pro-bono Platform." This "platform" allows ICE detainees to make free calls by using a toll-free 1-800 number or preprogrammed speed dial numbers.

ICE has enhanced the delivery of free access calls for detainees and:

- ICE is drafting a directive to all Field Offices requiring weekly serviceability checks of all telephones in every facility utilized to house ICE detainees. This directive will require Field Offices to maintain a record of serviceability checks and subsequent corrective actions, to verify compliance and document efforts to correct service problems.

- ICE is developing a web-based work request system to report phone service problems. The system will reduce "down time" when phone service problems are identified by providing real-time reporting capabilities to phone service providers and to ICE oversight staff. The web-based system will also provide trend analysis of phone problems to identify trouble areas or technical equipment problems.

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| **Question#:** | 4 |
| **Topic:** | ICE Detention Standards |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Patrick J. Leahy |
| **Committee:** | JUDICIARY (SENATE) |

- ICE is designating Area Technical Representatives (ATRs) to provide "eyes and ears" on the ground for the Contracting Officer. ATRs will monitor phone service within their areas of responsibility, and reporting issues to the Contracting Officer and the service provider through the web-based system.

The NDS Visitation Standard permits authorized persons to visit detainees, within security and operational constraints. ICE requires detention facilities to allow detainees to meet privately with their current or prospective legal representatives and legal assistants, as well as with their consular officials.

The Access to Legal Material Standard requires detainees to have access to a law library and ensures that facilities provide legal materials, equipment and document copying privileges, as well as opportunities and appropriate space to prepare legal documents.

To further assist detainees, ICE allows group legal rights presentations and allows presentations to groups of detainees on U.S. immigration law and procedures. ICE encourages such presentations, which instruct detainees about the immigration system and their rights and options. ICE requires that all facilities fully cooperate with these presentations.

ICE is also working with the Executive Office of Immigration Review's Legal Orientation Program to facilitate these presentations. Presentations may include: group orientations; individual orientations; self-help workshops; dissemination of legal orientation materials; and programs to promote and facilitate pro bono representation for detained aliens who seek legal assistance through the legal orientation program.

Presentations are performed by on-site presenters, who must either be a licensed attorney, Board of Immigration Appeals (BIA) Accredited Representative or legal assistant/paralegal, law student, law school graduate, or other trained volunteer working under the direct supervision of such licensed attorneys or accredited representatives.

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| **Question#:** | 5 |
| **Topic:** | Family Detention |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Patrick J. Leahy |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** The New York Times recently reported about the Don Hutto family detention facility in Texas where ICE is holding immigrant families and asylum seekers. Even though these immigrants are held in civil (not criminal) custody, they live in a jail-like setting, with some families detained up to two years. According to recent reports from human rights groups, the detention facility is sadly lacking in humane treatment of detainees: pregnant women did not receive adequate medical care; at night, children were separated from parents; and children received only one hour of schooling per day. Some of the people being held there are asylum seekers.

I understand that the government is trying to end the so called "catch and release" policy, but I wonder what it says about us when we are incarcerating children and those who seek our help and protection. It has also been reported that the government is paying $2.8 million per month to a private contractor to operate this facility.

Is the Department aware of these reports detailing inadequate conditions for women and children? What steps, if any, is the Department taking to improve conditions at this facility and others like it?

Is the Department considering alternative methods of monitoring individuals awaiting court proceedings?

**Answer:** Through modifications to the physical plant, incorporation of special programs for residents, and the operation of the center as a "non-secure" residential facility, ICE ensures an appropriate and safe environment is provided. The Hutto Residential Center is a facility that meets or exceeds community standards for the provision of care and services for its residents. The Hutto Residential Center was opened to maintain family unity. ICE evaluates the day-to-day operations of the facility to provide for the safety and welfare of all residents and staff.

In recognition of the challenges of alien juvenile and family custody management, ICE recently created the Juvenile and Family Residential Management Unit (JFRMU) on March 30, 2007. This unit reports directly to senior DRO leadership, has direct management authority of conditions of care at ICE's family facilities, and brings new oversight of juvenile and family residential management.

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| **Question#:** | 5 |
| **Topic:** | Family Detention |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Patrick J. Leahy |
| **Committee:** | JUDICIARY (SENATE) |

The Department considers on a case-by-case basis eligibility for release under the Intensive Supervision Appearance Program (ISAP), release on bond or parole.

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| **Question#:** | 6 |
| **Topic:** | U.S. Commission on International Religious Freedom |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Patrick J. Leahy |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** The bipartisan U.S. Commission on International Religious Freedom released a report in 2005 on the treatment of asylum seekers under expedited removal practices. This report revealed that asylum seekers are often detained by DHS in harsh maximum security correctional facilities, and are frequently housed in the same cellblocks — or even in the same cells — as convicted criminals. It has been more than two years since the Commission released its report, but DHS has not responded formally to the report and recommendations. The Commission recently issued a score card on the Department's performance. It criticized the government for its failure to ensure that asylum seekers are protected and given an opportunity to seek refuge in the United States.

When is DHS going to respond to the Commission?

Do you believe the conditions of confinement should be improved for non-criminal asylum seekers?

According to the Commission's February 2007 score card, DHS made no effort to ensure that detained asylum seekers have access to legal service providers. This was despite the fact that the Commission found back in 2005 that asylum seekers who were able to obtain counsel had significantly higher rates of winning asylum in the United States.

Will you take steps to improve upon this record, and assist asylum seekers obtain access to counsel?

The USCIRF recommended that DHS issue regulations to ensure that asylum seekers are released from detention by local officials when they meet the official parole criteria.

Do you support this recommendation?

Do you support the wider use of alternatives to detention for this population?

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| **Question#:** | 6 |
| **Topic:** | U.S. Commission on International Religious Freedom |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Patrick J. Leahy |
| **Committee:** | JUDICIARY (SENATE) |

**Answer:** The Department of Homeland Security (DHS) will provide a report to the Commission about the fair treatment of asylum seekers who are subject to expedited removal, including measures taken in response to the Report's recommendations.

DHS is examining the use of detention facilities for asylum seekers and whether there is a need for additional detention standards for non-criminal asylum seekers. The Immigration and Customs Enforcement (ICE) National Detention Standards, designed to meet the needs of all alien detainees, were carefully crafted with the assistance of nongovernmental organizations (NGOs) to ensure that detention facilities provide humane conditions for all detainees.

The ICE National Detention Standards include the Access to Legal Material Standard, ensuring that all detainees have access to a library with relevant legal reference material and document copying privileges for the preparation of legal documents. In implementing the Group Legal Rights National Detention Standard, ICE facilitates "know your rights" presentations. Facilities holding ICE detainees will permit presentations to groups of detainees about U.S. immigration law and procedures. DHS collaborates with the Executive Office for Immigration Review (EOIR) on EOIR's expanded Legal Orientation Program and pro bono programs. See www.usdoj.gov/eoir/probono/probono.htm.

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| **Question#:** | 7 |
| **Topic:** | Unlawfully Employing Immigrants |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Sheldon Whitehouse |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** According to a June 2006 Washington Post article, the number of employers prosecuted for unlawfully employing immigrants dropped from 182 in 1999 to four in 2003. This represents a 98 percent drop. The fines collected also dropped from $3.6 million to $212,000. In 1999, the United States initiated fines against 417 companies. In 2004, it issued fine notices to only three. This represents a 99 percent drop.

Why was there such a significant decrease in prosecutions?

What is the Administration doing to reverse this downward trend?

**Answer:** ICE has enhanced its efforts to combat the unlawful employment of illegal aliens in the United States through worksite enforcement (WSE) investigations, as well as through the prosecution of those employers who knowingly hire unauthorized workers. Criminal arrests have increased from 25 in fiscal year (FY) 2002 to 716 during FY 2006, which included the arrests of corporate officers, employers, managers, contractors, and facilitators.

ICE also conducts parallel financial investigations to seek criminal and/or civil forfeiture against business/individual assets belonging to such violators. In FY 2005, ICE collected $6,500 in administrative fines. During the same time period, ICE completed "Operation Rollback," which resulted in the payment of $15,000,000 in civil fines. The success of this operation alone is greater than the sum of administrative fines collected in the previous seven years. Administrative fines in FY 2001 totaled $1,095,734, while FY 2002, 2003, and 2004 netted $72,585, $37,514, and $45,480, respectively. During FY 2006, ICE initiated 1,205 WSE investigations and seized property and assets valued at approximately $1,700,000 at the time of the initial enforcement operation. During this same time period, criminal fines, forfeitures, and payments in lieu of forfeiture yielded $233,044.

ICE is committed to robust worksite enforcement.

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| **Question#:** | 8 |
| **Topic:** | Immigration Levels |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable John Cornyn |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** Does DHS have a firm recommendation on the actual number of family-based and employment-based immigrant visas that should be made available annually?

Does DHS have any views about targeted legislation for high-skilled labor?

Does DHS support a direct increase in the number of H-1B visas? If yes, what level would you recommend?

**Answer:** We should ensure that our immigration system, including the balance between family-based and employment-based immigration visas, is structured in a way that benefits the American economy while honoring our commitment to family and humanitarian immigration. We would look forward to working with Members of Congress on the issue of what precise numerical allocation of family-based and employment-based immigrant visas would be most advantageous. As a part of this dialogue, we would look forward to discussing such questions as the issue of targeted legislation for high-skilled labor and the desirability of a direct increase in the number of H-1B visas. We should also examine the experience of other immigrant nations, which rely much more heavily than the United States on an assessment of the skills, investments, and other contributions a prospective immigrant may make to the nation.

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| **Question#:** | 9 |
| **Topic:** | Detention and Removal |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable John Cornyn |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** What is the current status of the Orantes litigation?

When do you anticipate a decision on the Government's request to dissolve the 1988 injunction?

**Answer:** On June 6, 2007, United States District Court Judge Margaret M. Morrow issued a 74 page order denying the government's motion to dissolve the *Orantes* Injunction. Judge Morrow stated in her decision that "the court concludes the government has not established that promulgation of the ICE detention standards and the end of the Salvadoran civil war constitute sufficiently changed circumstances that all provisions of the *Orantes* injunction related to detention conditions should be dissolved."

The court dissolved only limited injunction provisions regarding administrative segregation of detainees and the access to group legal presentations in ICE detention facilities.

On October 11, 2006, Judge Morrow issued an order regarding facial conflicts between the *Orantes* Injunction and the Expedited Removal (ER) statute. In the order, the judge modified the injunction to permit the ER of Salvadorans without requiring removal hearings before Immigration Judges. The court's June 6, 2007, order does not change the previous modification of the injunction that allowed for ER.

**Question:** What do the S.Ct. court's rulings in Zadvydas and Clark-Martinez mean in terms of DHS' current authority to detain and remove aliens?

**Answer:** Section 241 of the Immigration and Nationality Act, 8 U.S.C. § 1231, provides DHS a 90-day period to remove an alien who is subject to an administratively final order of removal. After 90 days the alien receives a custody review. DRO releases certain aliens if it finds that there is insufficient evidence to believe that they are a flight risk or a danger to the community or that removal is imminent. For certain classes of aliens, however, the statute allows for continued detention even after the 90-day removal period.

However, all aliens detained pursuant to section 241 of the INA are subject to the Supreme Court's decisions in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and *Clark v. Martinez*, 543 U.S. 371 (2005). These decisions interpret the statutory authority of DHS under INA § 241 to detain an alien subject to an administratively final order of removal beyond the 90-day removal period, as being limited to the period of time that is reasonably necessary to bring about that alien's removal from the United States. The

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| **Question#:** | 9 |
| **Topic:** | Detention and Removal |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable John Cornyn |
| **Committee:** | JUDICIARY (SENATE) |

Court held that six months is a "presumptively reasonable" period of time for the government to effect removal. After this presumptively reasonable period of time has expired, the alien must be released, with some exceptions, unless the government is able to show, when challenged, that the alien's removal is significantly likely in the reasonably foreseeable future.

Under the regulations promulgated post-*Zadvydas*, there are exceptions to the general rule that the alien must be released after 180 days if there is no significant likelihood of removal in the reasonably foreseeable future: when the alien fails to cooperate in his removal; when there is a stay of removal; or when the alien is designated a special circumstances case under 8 C.F.R. § 241.14.

**Question:** In light of 8/06 announcement ending "Catch and Release", does DHS still need authority to detain aliens until removal proceedings are concluded?

**Answer:** Yes. Authority to detain aliens is essential to avoid a return to "catch and release." In order to effectively enforce the nation's immigration laws, DHS implemented the Secure Border Initiative (SBI). As part of this initiative, DRO was charged with ending the practice of "catch and release," whereby significant numbers of aliens apprehended at or near the border were issued a Notice to Appear (Form I-862) in immigration court and then released on their own recognizance or on bail. Many of those aliens failed to appear in immigration court as required and simply disappeared from the immigration system altogether.

**Question:** What type of background checks and screening occurs for aliens who are placed in proceedings?

**Answer:** An electronic criminal background investigation is performed for all aliens appearing in immigration court. DHS conducts both biometric and biographic checks. Using an alien's name and date of birth, the Interagency Border Inspection System (IBIS) queries various law enforcement databases, including the Treasury Enforcement Communications System (TECS), and various DHS-maintained databases, including the Central Index System (CIS), Deportable Alien Control System (DACS), and the National Automated Immigration Lookout System (NAILS). IBIS also includes Department of State lookout records, as well as records from various law enforcement agencies. Combined, these databases and lookout records include information on wanted persons, stolen vehicles, criminal histories, and alien status. These databases also contain records of suspected terrorists and international criminal organizations. Generally, these checks are completed at the time of arrest; however, rechecks may be conducted at various points until the alien is ultimately removed from the United States.

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| **Question#:** | 9 |
| **Topic:** | Detention and Removal |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable John Cornyn |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** Does DHS have difficulty with using classified information in removal proceedings as well as adjudications of benefits? If yes, do you have any specific recommendations to change the law that will resolve the problem?

**Answer:** ICE has the authority to use classified evidence in removal proceedings in opposition to the alien's admission to the United States or to an application by the alien for discretionary relief. However, in practice the use of this type of evidence has been problematic and, consequently, is only used in rare circumstances.

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| **Question#:** | 10 |
| **Topic:** | Return of Deported Aliens |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable John Cornyn |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** Which countries currently refuse to accept return of their deported nationals?

Do you have any statistics on the number of aliens that have had to be released in the past 5 fiscal years because of an inability to repatriate them?

Has DHS, in conjunction with State Department, taken any recent steps to resolve this problem?

**Answer:** There are several foreign countries—such as China, India, Vietnam, Laos, Iran, Somalia, and Cuba—whose practices with respect to issuance of travel documents and readmission of their removable nationals are concerning.

During the last five fiscal years, approximately 4,130 aliens were released in accordance with the Supreme Court's decisions in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and *Clark v. Martinez,* 543 U.S. 371 (2005). The statutory authority of DHS to detain an alien subject to a final order of removal beyond the 90-day removal period is limited to the period of time that is reasonably necessary to bring about that alien's removal from the United States. After that reasonable period of time has expired, the alien must be released absent special circumstances, such as a national security threat or when there is probative evidence that the alien is a danger to himself or others. The Supreme Court held that six months, or 180 days, is a "presumptively reasonable" period of time.

ICE works closely with the Department of State (DOS) to encourage governments to accept their nationals in a timely manner. DHS, ICE, and DOS have also met with various embassy and Ministry of Foreign Affairs officials in the United States and abroad to resolve these issues. During the last year ICE has seen some success from these efforts and has secured an increase in cooperation from the governments of both Haiti and Ethiopia in the repatriation of their nationals.

In an effort to ensure the timely removal of aliens subject to removal from the U.S., ICE has acquired additional aircraft, increased the use of the Electronic Travel Document system, which shortens processing and detention times, and has also increased the use of Video Teleconferencing, which reduces the time it takes to schedule an interview with Consular officers and reduces travel delays.

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| **Question#:** | 11 |
| **Topic:** | Administrative and Judicial Review |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable John Cornyn |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** Should aliens who are denied temporary worker status or, if enacted, adjustment of status be provided multiple levels of administrative and judicial review?

Should judicial review be eliminated in its entirety, similar to the doctrine of consular nonreviewability?

**Answer:** DHS looks forward to working with Congress towards passing immigration reform legislation, including with respect to judicial review. Efforts to reform immigration should limit judicial review of decisions on application to ensure that applications do not become a source of never-ending litigation. DHS is still litigating issues related to past comprehensive immigration reform, and Congress should avoid repeating the mistake of providing unlimited judicial review. Additionally, Congress should enact immigration legislation with clear eligibility standards, so as to ensure that DHS adjudicators make their decisions in a fair and uniform manner based on clear and consistent application standards. The judicial review process should not unduly delay necessary enforcement actions.

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| **Question#:** | 12 |
| **Topic:** | Confidentiality Provisions |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable John Cornyn |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** If an alien is denied status, should DHS deport them?

Should DHS be allowed to use the information submitted with an application to be used for a removal action?

If DHS does intend to remove such aliens, how would this affect participation in any guest worker program?

**Answer:** If DHS denies an alien's application for Z nonimmigrant status, under the proposed immigration bill S. 1348, then DHS will be able to use information furnished in and derived from the application for any purpose permitted by the provisions governing the disclosure of such information.

Under the provisions of S. 1348, the general confidentiality rules for Z applicants would prohibit, with certain limited exceptions, the release of information furnished by the applicant for purposes other than to examine individual applications that have been filed. These confidentiality provisions would not apply to an alien whose application has been denied because the alien is inadmissible on criminal or security grounds, for alien smuggling or for certain frauds; is deportable for criminal or security grounds, for alien smuggling, or marriage fraud; or physically was removed and is subject to reinstatement. The confidentiality rules also would not apply to an alien who has been convicted of a serious criminal offense, an aggravated felony, a felony, or three or more misdemeanors. The confidentiality rules would not apply in other circumstances, including for aliens who have participated in the persecution of others.

In circumstances where the confidentiality rules would not apply – such as those above – DHS would be able to use the information furnished in or derived from the application for removal purposes. DHS considers affecting such removals a critical component of immigration reform and promoting public safety.

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| **Question#:** | 13 |
| **Topic:** | Secure Documents |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable John Cornyn |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** What are DHS' views on creation of a single identification and employment authorization document?

Should such a document be required for aliens and U.S. citizens?

How long would it take for DHS to have systems in place to verify information on such a card?

In addition to SSA and IRS are there any other Federal, State, and local entities DHS would need to cooperate with for relevant information?

**Answer:** We are looking forward to working with Members of Congress to explore all options open to prevent new forms of worksite fraud, such as identity theft.

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| **Question#:** | 14 |
| **Topic:** | Information Sharing |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable John Cornyn |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** Does DHS currently have MOUs in place to improve information sharing between DHS and SSA and IRS?

What additional authority does DHS need to improve such information sharing?

**Answer:** DHS does not have an MOU with the Social Security Administration (SSA) or the Internal Revenue Service (IRS) for the Employment Eligibility Verification Program (EEVP). DHS does have an MOU with SSA for its participation in the Systematic Alien Verification for Entitlements (SAVE) program for issuing Social Security cards to noncitizens and checking the immigration status of noncitizen applicants for benefits. DHS and SSA have had Interagency Agreements that outline roles and responsibilities concerning the administration of the EEVP, formerly known as the Basic Pilot program. An agreement for Fiscal 2007 is nearing completion. This agreement does not outline methods for improved information sharing, but covers issues related to compensation for SSA's services and significant effort required for activities in the EEVP. Additional data sharing of employee information between IRS and SSA with DHS could require statutory changes.

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| **Question#:** | 15 |
| **Topic:** | Worksite Enforcement |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable John Cornyn |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** Should employers and business groups have a role in drafting legislation addressing worksite enforcement?

How often has DHS met with these stakeholders to hear their concerns?

Should employers be given some protection from civil and criminal penalties?

What are DHS views on compensating employers and aliens for any errors in employment verification that result in job loss or economic loss to the business?

**Answer:** ICE worksite enforcement efforts will be workable and effective if the right tools available are in place for both law enforcement officials and employers who want to comply with the immigration laws of the United States. ICE is working closely with the private sector. In addition, U.S. Citizenship and Immigration Services (USCIS) operates the Basic Pilot Program, a Web-based application that employers can use to verify the employment eligibility of newly hired workers. The Basic Pilot Program is currently available nationwide and a significant number of employers are already participating. Given the successes of the program, DHS would like to make it mandatory for employers to use this system to confirm that new hires are U.S. citizens or aliens authorized to work in the United States. DHS has also recently introduced the ICE Mutual Agreement between Government and Employers (IMAGE) program. The program assists private employers to develop a more secure and stable workforce and to improve awareness of fraudulent documents. In addition to the insights DHS is gaining through the IMAGE program, the Department's Office of Private Sector has also been engaged in frequent contacts with business groups to hear their concerns and views with respect to worksite enforcement.

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| **Question#:** | 16 |
| **Topic:** | Appropriations and Implementation |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable John Cornyn |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** Does DHS still required delayed implementation timeframe and if yes, what are the recommended times?

Has DHS' estimates on the amount of appropriated funds needed changed?

**Answer:** The answer to both of these questions will depend on the immigration reform legislation that Congress enacts, and we are committed to working with Members of Congress towards that goal.

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| **Question#:** | 17 |
| **Topic:** | USVISIT Program |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Tom A. Coburn M.D. |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** In your testimony there was no mention of the exit portion of the US-VISIT program and the importance of its full implementation for immigration integrity. As you know, Senator Feinstein chaired a very informative hearing on the subject and witnesses from your Department stated that to date there have been no exit pilots at land-ports. This is unacceptable. How do you respond?

Also, DHS was required to have a plan for the full implementation of the program and report to Congress by June 15, 2005 – when can we expect this plan, as we still have not received it?

**Answer:** DHS has conducted extensive testing regarding Radio Frequency Identification (RFID) technology at the land borders, with the completion of a 15-month proof of concept (POC) at five land border crossings utilizing RFID for entry and exit purposes. While the POC identified challenges such as less-than-positive read rates using RFID in the exit environment, it did provide lessons learned that will inform the roll-out of the land portion of the Western Hemisphere Travel Initiative (WHTI). The POC also demonstrated that first-generation RFID technology is not appropriate for the land exit solution as tested; however, RFID is still a developing technology, and subsequent generations of RFID may hold promise.

The US-VISIT Strategic Plan has been integrated into the US-VISIT FY 2007 Expenditure Plan, which was presented to Congressional appropriators on March 20. The Strategic Plan will also be presented to Congressional authorizers as part of the Automated Biometric Entry and Exit Data System Status Report required by Section 7208(c) of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108-458.

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| **Question#:** | 18 |
| **Topic:** | Policy |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Tom A. Coburn M.D. |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** Can you discuss how a policy that encourages personal responsibility could be constructed and applied to make sure that those entering and leaving our country have the appropriate identification and check in and out correctly?

Also, what are the areas of border enforcement where policies could be implemented that encourage greater personal responsibility, both for citizens and visitors?

**Answer:** To meet the goal of ensuring that individuals entering and leaving our country have the appropriate identification and follow correct check-in and check-out procedures, we need to continue building a well-functioning and technologically sound entry-exit system. Such a system would facilitate legitimate entry into the U.S. while detecting an improper entry. This system would allow for better authentication of travel documents through the use of biometrics, such as photographs and fingerprints. US-VISIT's existing biometric program serves this important function of protecting the American people by keeping terrorists and other criminals out of the country while facilitating visits from legitimate travelers. It should be a responsibility of each traveler – from United States citizens to foreign visitors – to ensure that they carry and present correct and proper identification when entering and leaving the United States.

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| **Question#:** | 19 |
| **Topic:** | Administrative Apprehensions |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Tom A. Coburn M.D. |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** In your testimony you positively cite the increase in the number of administrative apprehensions between 2002 and 2006. For 2002 you cite 485 Administrative Apprehensions and in 2006, there were 3,667. In your testimony you estimate, as is commonly accepted that there are about 12 million illegal aliens already in the country – presumably working.

Thus, in 2002, your Administrative Apprehensions[1] were only .0040% of the illegal population and in 2006 your Administrative Apprehensions were only .030% of the illegal population. Can you explain why this number is so low?

**Answer:** In March of 2006, ICE/DRO had 18 operational Fugitive Operations Teams (FOTs) deployed. By March of 2007, 35 additional teams had been deployed, bringing the total number of deployed FOTs to 53 and thereby nearly tripling the number of FOTs in just one year. ICE/DRO is funded for a total of 75 FOTs and, during the remainder of this fiscal year, will be deploying the remaining 22 teams. As a result, FY 2008 will be the first full fiscal year when all FOTs will be operational.

In FY 2006, the National Fugitive Operations Program (NFOP) conducted 23,536 fugitive enforcement activities, resulting in the removal of 12,422 fugitive aliens, according to the DRO Deportable Alien Control System (DACS). In addition, during this same period, the NFOP arrested, or otherwise closed the cases of, an additional 7,494 non-fugitive aliens, resulting in the removal of an additional 5,079 illegal aliens. Fugitive and non-fugitive enforcement activities have increased as the NFOP has grown. Specifically, for each of the last four fiscal years (FY 2003, FY 2004, FY 2005, and FY 2006), the NFOP conducted 4,067, 13,357, 15,223, and 31,030 enforcement activities, respectively. To date, in FY 2007, the NFOP has conducted 37,921 total enforcement activities, further reducing the illegal alien population.

Between 2003 and 2007 the NFOP has assisted in the removal of approximately 1 percent of over 12 million illegal alien population and approximately 13 percent of the over 600,000 fugitive alien population.

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[1] An administrative arrest is an arrest where an officer observes behavior that is contrary to administrative provisions of law, or reasonably believes the individual has engaged in such behavior. Arrests are made in such a manner that it is reasonable under the circumstances for the person to believe he or she is not free to leave.

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| **Question#:** | 19 |
| **Topic:** | Administrative Apprehensions |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Tom A. Coburn M.D. |
| **Committee:** | JUDICIARY (SENATE) |

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| **Question#:** | 20 |
| **Topic:** | Administrative Apprehensions |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Tom A. Coburn M.D. |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** How many ICE agents do you have and how many work on Administrative Apprehensions?

**Answer:** The ICE Office of Detention and Removal Operations (DRO) has approximately 2,036 funded Deportation Officers and 3,273 funded Immigration Enforcement Agents. All Deportation Officers and Immigration Enforcement Agents are authorized to make administrative arrests. However, DRO's Fugitive Operation Program, consisting of 61 seven member teams, accounts for the majority of administrative arrests made by DRO.

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****** Law Enforcement Sensitive Begin******

The ICE Office of Investigations (OI) has approximately 5,517 Special Agents. OI does not assign separate budgets to its different investigative program areas as each Special Agent in Charge (SAC) allocates resources based on the threat within their area of responsibility. Administrative arrests are captured as an enforcement statistic, however, case hours are not collected.

****** Law Enforcement Sensitive End******

ICE agents target criminal violators in all ICE programmatic areas and strive to levy criminal charges whenever possible in order to send a strong message of deterrence. In many instances, administrative arrests occur concurrently with the criminal arrests.

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| **Question#:** | 21 |
| **Topic:** | Worksite Enforcement |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Charles E. Grassley |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** We met over a month ago to discuss the worksite enforcement actions against Swift & Company, and the need to improve the basic pilot program. One of my concerns has been the hiring of illegal aliens in critical infrastructure sites. Every other week, it seems, we are hearing about illegal aliens working on military bases. A response to my question that day is that DOD isn't even using the basic pilot.

A few weeks ago, the Senate unanimously passed a measure to prohibit companies from government contracts if they are found to hire illegals. It would encourage companies to use the basic pilot program.

But, we wouldn't need this measure if the federal government was requiring contractors to use the basic pilot. We don't need to pass a law to do that. It can be done today. The Department of Defense, for example, should have a policy in place that requires contractors to use this program. Airports and power plants should be using it, too. I want to know if it's being done, and to what extent.

**Answer:** As of May 11, 2007, there are over 16,700 participants (including private employers and government agencies) enrolled in the Employment Eligibility Verification Program (EEVP), and USCIS continues to talk to both the private sector and other government agencies about using the EEVP. The program currently includes both Department of Homeland Security (DHS) as well as other government entity participation.

As of May 2007, there are 405 federal agencies that participate in the EEVP, including most Congressional offices, and 574 State and local government agencies (including the District of Columbia and the Virgin Islands) representing 36 States.

USCIS is developing an outreach and marketing plan that will target federal entities and is meeting with U.S. Army Corps of Engineers (USACE) Contractor Industrial Relations representatives to showcase the EEVP. The USACE contacted the EEVP specifically to request a presentation for their field staff because of their concerns about undocumented immigrant contract employees working on military bases.

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| **Question#:** | 22 |
| **Topic:** | Back of the Line |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Charles E. Grassley |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** When you and others say that a legalization program needs to make sure that illegal aliens on U.S. soil are going to the back of the line, how do you envision this working?

It sounds convincing, but I'm not sure it's intellectually honest or feasible. There are legal immigrants currently navigating the system, and there are people here that have waited almost ten years to adjust their status.

How can you promise that illegal aliens will go to the "back of the line?"

**Answer:** We would like to work with Congress on finding the best way to ensure that illegal aliens go to the back of the line, behind those who played by the rules and sought to come to the United States through legal means.

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| **Question#:** | 23 |
| **Topic:** | Border Security |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Charles E. Grassley |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** I understand that the Department has signed a contract with Boeing and is moving ahead with the Secure Border Initiative. The mission of this program is to secure our borders and reduce illegal immigration. The Department plans to spend $7.6 billion for fiscal years 2007 through 2011. I applaud the Department's goal of having operational control over the border by 2011, but we need to make sure that our dollars are well spent. How do you plan to reduce the performance problems, and cost and schedule overruns as predicted by the Government Accountability Office? (Report was from February 2007).

**Answer:** CBP believes that the GAO's report suggested useful improvements in SBI*net* program management and contract execution. The recommendations have been, and will continue to be, addressed as part of the Program Management Office's efforts to balance quality, cost, schedule, and accountability for program commitments. CBP recognizes that attention to detail on activities, milestones, and costs is the key to program management and a successful program. The SBI*net* program is based on a disciplined systems engineering approach, which depends on functional definition and baselining of requirements; analysis of alternatives to meet those requirements; and controlled, evolutionary design and testing to meet those requirements. If requirements are changed, or additional constraints (such as new missions, proscribed tactical infrastructure solutions, or schedule changes) are added, costs grow and schedules stretch. However, the program office, not the contractor, drives and controls the requirements process through a disciplined configuration management process. Furthermore, SBI*net* is structured into well-defined, executable projects with a cost and schedule baseline, each with an accountable Project Manager. Effective program execution is made possible by sound planning, estimating, and accountability conducted by these Project Managers.

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| **Question#:** | 24 |
| **Topic:** | Workplace Safety |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Russell D. Feingold |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** Thank you for your responses last year to questions I raised about a 2005 incident in which ICE officials impersonated OSHA officials under the guise of conducting mandatory workplace safety training at a North Carolina Air Force base, and subsequently arrested 48 undocumented workers who attended what they thought was a safety training session. In response, you have stated that "the use of ruses involving health and safety programs administered by a private entity or a Federal, State, or local government agency (such as OSHA), for the purpose of immigration worksite enforcement, is prohibited." The guidance issued by ICE in March 2006 also states: "All other ICE investigative enforcement actions requiring the use of a health or safety-based ruse must be pre-approved by the Assistant Secretary of ICE ...."

What other types of "health or safety-based ruses" might ICE employ in its immigration enforcement actions?

Has ICE, in fact, used any such "health or safety-based ruses"?

**Answer:** The ICE Office of Investigations ("OI") has discontinued the use of ruses involving health and safety programs administered by a private entity or a federal, state, or local government agency, such as the Occupational Safety and Health Administration (OSHA), for the purpose of immigration worksite enforcement. Currently, any other investigative enforcement action requiring the use of a health or safety-based ruse requires the approval of the Assistant Secretary.

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| **Question#:** | 25 |
| **Topic:** | Low-skilled Workers |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Russell D. Feingold |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** The United States only has available about 5,000 employment-based immigrant visas designated exclusively for low-skilled workers. We have an estimated 12 million undocumented migrants in this country, many of whom have come here to fill low-skilled jobs. Do you believe that part of the reason we have such a large undocumented population is because so few immigrant visas are available to low-skilled workers?

**Answer:** The unskilled worker category that you appear to be referring to is the Employment Third Preference "Other Worker," as amended by Congress in Section 1(e) of Pub. L. 105-139. This provides that once the Employment Third Preference Other Worker (EW) cut-off date has reached the priority date of the latest EW petition approved prior to November 19, 1997, the 10,000 EW numbers available for a fiscal year are to be reduced by up to 5,000 annually beginning in the following fiscal year. This reduction is to be made for as long as necessary to offset adjustments under the Nicaraguan Adjustment and Central American Relief Act (NACARA) program. Since the EW cut-off date reached November 19, 1997 during Fiscal Year 2001, the reduction in the EW annual limit to 5,000 began in Fiscal Year 2002.

In addition to EW visas, however, the H2A agricultural worker program and H2B seasonal unskilled categories do not require any special educational requirement; in FY2005, 118,000 of these visas were issued by the Department of State.

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| **Question#:** | 26 |
| **Topic:** | Secure Fence |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Russell D. Feingold |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** During the hearing you stated, are there no question in many parts of the border the most cost-effective and most efficient way to detect and intercept illegal migrants is high tech, things like radar. You indicated that high tech solutions are in some areas more effective than fencing, The Secure Fence Act of 2006 (P.L. 109-367) requires construction of more than 700 miles of fencing along the U.S.-Mexico border. Estimates are that each mile of fencing would cost at least $3 million to $4 million, making the construction of a 700-plus-mile fence a very serious financial obligation, especially if it is not the most effective means of securing our border.

Is a full 700 miles of fencing the most cost-efficient means of protecting the Southern border?

**Answer:** Tactical infrastructure, such as fencing and vehicle barriers, is a critical part of the DHS strategy to gain effective control of our nation's borders. However, neither fencing nor technology alone will provide the most effective or cost-efficient means of securing the border. One of the core elements of the DHS strategy is obtaining and deploying the right combination of personnel, technology, and infrastructure at the border. Achieving this strategy requires having the appropriate mix of highly trained and well-equipped CBP agents and officers, integrated detection and sensor technology and air, ground, and marine assets, and strategically placed tactical infrastructure.

Through SBI*net*, DHS will also deploy an integrated, optimized solution, including tactical infrastructure, technology, and response platforms. This solution may include ground sensors, cameras, radars, roads, barriers and fences-all integrated to provide maximum security. Developing and fielding the appropriate combination of technology and tactical infrastructure will depend on the requirements and needs of the selected areas of deployment, which encompass several geographically diverse border locations. Designed to provide the most efficient and cost-effective solution to securing the borders, SBI*net* will result in more controlled miles, which will be achieved more quickly at a lower cost.

By the end of calendar year 2008, DHS will also fulfill the President's commitment to add 6,000 Border Patrol agents. The increased agent staffing is integral to the deployment of SBI*net* best-value solutions.

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| **Question#:** | 27 |
| **Topic:** | Citizenship |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Russell D. Feingold |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** A recent USCIS proposal to raise immigration application fees nearly triples the cost to file for permanent residence and nearly doubles the cost to file for naturalization. Consequently, some individuals will have to wait longer to save enough money to apply for permanent residence and for citizenship. In Secretary Gutierrez' testimony, he said America's "ability to assimilate new immigrants has been a tremendous national strength" that "can be an enormous competitive advantage."

Do you agree with Secretary Gutierrez' comments?

**Answer:** Yes, as I stated in my testimony, "[W]e . . . cannot ignore the presence in our country of about 12 million illegal aliens. Many of them have been living in the United States for a long time, doing jobs that our economy needs to have filled. As Secretary Gutierrez stated, it is simply not in our interest to have a population of this size remain in the shadows of our economy and often beyond the reach of law enforcement. We should seek to bring these people out of the shadows and under the rule of American law. That process must also involve acknowledgment and atonement for those who have broken our immigration laws."

The Department of Homeland Security (DHS) is committed to the President's vision of immigration reform based on five main pillars: (1) gaining effective control of the border; (2) building a robust interior enforcement program; (3) establishing a Temporary Worker Program (TWP); (4) bringing illegal aliens who are now in the U.S. out of the shadows; and (5) promoting assimilation of new immigrants into our society.

**Question:** If so, how does tripling the cost to file for permanent residence and doubling the cost to apply for citizenship contribute to our competitive advantage or to our national strength?

**Answer:** I can assure you that the Department advanced the USCIS fee proposal only after careful consideration of the results of a comprehensive fee review launched early in 2006. There is no data that suggests a correlation between fee increases and the demand for immigration benefits.

The proposed increases will ensure adequate funding to fully meet the USCIS goals to improve customer service and delivery of benefits, ensure national security and public safety, and meet business modernization needs. The agency will also merge fees for certain applications so that applicants will pay a single fee rather than paying several fees for related services.

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| **Question#:** | 27 |
| **Topic:** | Citizenship |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Russell D. Feingold |
| **Committee:** | JUDICIARY (SENATE) |

Importantly, the proposal will exempt applicants for humanitarian reasons from paying a fee for certain benefits including T-Nonimmigrant Status (I-914) – Victims of Human Trafficking and applicants seeking immigrant classification under the Violence Against Women Act. USCIS' current procedure of waiving fees for various classes of applicants, for example those filing for asylum, and members of the U.S. Armed Forces filing for naturalization, will continue.

**Question:** Asylees are generally exempt from the "public charge" requirement for permanent residence. Nevertheless, under the Department's proposed rule, asylees are no longer eligible for a waiver of the new increased fees. Why does the proposed rule prevent asylees from applying for individual fee waivers for I-485 applications for adjustment?

**Answer:** The Department is considering whether asylees should be eligible to apply for individual fee waivers for I-485 applications for adjustment of status. A decision has not been made.

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| **Question#:** | 28 |
| **Topic:** | IRTPA |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Charles E. Schumer |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** Under the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), you are required to increase the number of USBP agents assigned to the northern border by 20% of the USBP's overall staff increase in each fiscal year from 2006 through 2010. However, the Congressional Research Service reports that DHS actually decreased the number of USBP officers on the northern border in FY 2006, despite the fact that 1,061 agents were added to the USBP force overall.

Explain your justification, if any, for disregarding IRTPA's mandate to provide adequate USBP staff at the northern border.

**Answer:** While the IRTPA required that 20% of overall Border Patrol agent staffing increases were to be directed to the Northern border, CBP did not receive the funding necessary to make personnel moves for those additional positions. However, CBP has now authorized the relocation of approximately 100 agents, which is consistent with the 1,000-agent increase mandated in the FY 2006 Supplemental Appropriations Act. Additionally language included in the FY 2007 Appropriations Act funds 1,500 new positions and indicates Congress's intent to place 10% of this staffing increase on the Northern border. Accordingly, CBP will deploy 150 additional agents to the Northern border by the end of calendar year 2007. In FY 2008, CBP intends to deploy approximately 800 additional Border Patrol agents along the Northern border, contingent upon operational requirements and adequate funding.

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| **Question#:** | 29 |
| **Topic:** | USA-PATRIOT Act |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Charles E. Schumer |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** Your written testimony states that you plan to increase the number of United States Border Patrol agents (USBP) to 14,819 in 2007 and to 17, 819 in 2008. Please describe what specific steps, if any, you are taking to ensure that these recruiting goals are met.

**Answer:** CBP continues to aggressively pursue qualified candidates across the country to meet its mission goals. We are planning an expansive advertising campaign and utilizing various recruiting strategies as force-multipliers to attract the number of applicants necessary to meet our hiring targets. Among the strategies currently being deployed by CBP are expedited hiring venues held throughout the country-most recently in Tucson, San Antonio, and Detroit-which yield higher test show rates and pass rates than many of our traditional recruiting efforts. Additionally, we are launching a campaign to increase the number of locations at which applicants can apply and complete pre-employment processing to reduce the overall time it takes to bring an agent onboard.

CBP is exploring the design of an incentive program to attract quality applicants; this may include scholarships for two-year college students and recruitment and retention bonuses. CBP is also expanding the use of hiring events, as well as national media sources such as the Internet, TV, and public service announcements, to recruit additional applicants.

**Question:** The USA-PATRIOT Act required DHS to triple the number of Customs and Border Protection (CBP) officers deployed to the northern border. According to data obtained from CBP, as of November 2006, DHS had not fulfilled this goal. In fact, the number of CBP officers on the northern border has declined since FY 2005.

Please describe what specific steps, if any, you are taking to ensure that CBP is staffed at the required level.

**Answer:** The Border Patrol is currently moving approximately 100 agents to the Northern border, with an additional 150 to be deployed by the end of calendar year 2007. In addition, in FY 2008, an estimated 800 additional agents will be deployed to the Northern border, contingent upon operational requirements and the requested funding level.

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| **Question#:** | 29 |
| **Topic:** | USA-PATRIOT Act |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Charles E. Schumer |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** Can you commit to a date by which the required number of CBP officers will be deployed to the northern border?

**Answer:** CBP is currently taking steps to deploy additional Border Patrol agents to the Northern border, as detailed above. With the projected FY 2008 deployment of an estimated 800 additional agents, personnel strength on the Northern Border will be nearly 2,000 agents, an increase of more than 500% over pre-9/11 levels.

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| **Question#:** | 30 |
| **Topic:** | Northern Border |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Charles E. Schumer |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** I have received anecdotal reports that CBP offices on the northern border are experiencing high attrition rates that affect their ability to maintain needed staffing levels.

In FY 2006, how many officers, in total, left the employment of the CBP? What percentage of the CBP officer workforce does this number represent?

**Answer:** In FY 2006, 1,069 CBP officers left the employment of CBP. This represents approximately 6.1% of the workforce. *(Numbers represent Full-time Permanent CBP officers in the Office of Field Operations.)*

**Question:** In FY 2006, how many officers, in total, left the employment of the CBP in order to take a position with another federal law enforcement service? What percentage of the CBP officer workforce does this number represent?

**Answer:** CBP lost 279 CBP officers to positions with Law Enforcement Officer (LEO) status (approximately 1.6%) in FY 2006 and projects another 350 losses in 2007 for a total of 629 (approximately 3.6%). *(Numbers represent Full-time Permanent CBP officers in the Office of Field Operations.)*

**Question:** What is the average length of time that an incoming CBP officer stays with the agency?

**Answer:** The average length of service of a current CBP officer is 11.12 years. There has been tremendous growth in this occupation in the past four years.

**Question:** Do you think that the lack of federal law enforcement retirement benefits for CBP officers is a factor in attrition from CBP employment?

**Answer:** We have anecdotal evidence that indicates that the lack of law enforcement status may be a factor in the attrition of CBP officers. However, there are other factors that may come into play. For example, many of the officers leaving are legacy INS. Also, Human Resources says the newer appointments come in at the GS-5, -7, and 9 levels, but can go elsewhere and get GS-11 and 12 job grades.

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| **Question#:** | 30 |
| **Topic:** | Northern Border |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Charles E. Schumer |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** In your view, what other factors, if any, are affecting rates of attrition from CBP employment or affecting CBP's ability to recruit the officers its mission requires?

**Answer:** From a recruiting perspective, attrition at the Border Patrol Academy and the extensive pre-employment screening make a significant impact on the number of qualified applicants we successfully recruit to fill the Border Patrol agent positions. We continue to monitor our progress on a weekly basis. After subtracting losses to positions with LEO status, the attrition rate for CBP officers in FY 2006 was approximately 4.5%. This rate is not unduly high for a large organization, particularly where the working environment can be significantly stressful at times.

**Question:** What is the average number of overtime hours worked per CBP officer, per week, at ports of entry on the northern border? What is the average number of overtime hours worked per CBP officer, per week, at the Buffalo, NY border crossings?

**Answer:** The average number of overtime hours worked per CBP officer, per week, at the Buffalo, NY border crossings is three hours.

Overtime assignment is fully dependent upon port operational needs. These needs vary between individual ports of entry and are influenced by seasonality, workload, national threat alert level, enforcement actions, and staffing levels. Therefore, it is impossible to obtain a valid or meaningful average of overtime hours worked per CBP officer at Northern border ports. Many of these ports are only open a portion of the year, and this fact alone would skew the average dramatically.

CBP officers at ports of entry work overtime in accordance with functional requirements. Employees perform work on an overtime basis depending on operational requirements, staffing levels at a particular location, and changes to the national threat alert level. Therefore, it is impossible to predict whether there will be an increase, decrease or average in overtime for any given officer or location.

**Question:** What specific steps, if any, are you taking to improve retention of experienced CBP and Border Patrol officers deployed on the Northern border?

**Answer:** CBP analyzes data on a quarterly basis to identify areas that have high instances of attrition and is using an exit survey to assess the reasons why those CBP officers who leave do so. CBP is also currently looking at various ways to recruit and retain officers, such as retention bonuses, special salary rates for high-cost areas, and targeting recruitment for high-cost or remote areas.

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| **Question#:** | 30 |
| **Topic:** | Northern Border |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Charles E. Schumer |
| **Committee:** | JUDICIARY (SENATE) |

The Border Patrol does not historically have difficulty retaining experienced agents on the Northern border. Typically, agents do not leave CBP employ; instead, they are promoted and/or relocated within CBP or they retire from service. Since 9/11, the number of Border Patrol agents deployed to the Northern border has actually increased three-fold and by the end of 2008, there will be nearly 2000 agents on the Northern border. This is approximately 6 times that of pre-9/11 levels. We are utilizing the recently authorized and funded Voluntary Relocation Program to facilitate moves to the Northern border.

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| **Question#:** | 31 |
| **Topic:** | Voluntary Relocation Opportunity |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Charles E. Schumer |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** The CBPs Border Patrol initiated a Nationwide Voluntary Relocation Opportunity as a system to bring additional agents with field experience to the Northern border.

Please describe the status, progress, and results of the Nationwide Voluntary Relocation Opportunity.

**Answer:** The Voluntary Relocation Program was reinstated by the General Services Administration (GSA) on November 20, 2006, and the test program went into effect after a 30-day notification period to Congress. Since December 21, 2006, CBP has authorized 109 Voluntary Relocations of Border Patrol agents to Northern border locations. The Border Patrol plans to relocate an estimated 150 additional agents to the Northern border under the Voluntary Relocation Program before the end of the current fiscal year.

**Question:** Please state how many experienced Border Patrol agents have been deployed on the northern border as a result of this program.

**Answer:** The initial Voluntary Relocation Program was approved for a two-year period, beginning in FY 2004. During that time, the program was used for priority moves into the Arizona border Sectors of Tucson and Yuma as part of the Arizona Border Control Initiative. The initial program ended in September 2005 and was not reauthorized in FY 2006. As discussed above, the program was reinstated in FY 2007, beginning on December 21, 2006, with the goal of increasing Northern border staffing. Since that date, CBP has authorized the relocation of 109 experienced Border Patrol agents to the Northern border.

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| **Question#:** | 32 |
| **Topic:** | WHTI |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Charles E. Schumer |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** As you know, under Section 7209 of the Intelligence Reform and Terrorism Prevention Act, you are required to make several certifications to Congress at least three months prior to implementing the border security plan known as the Western Hemisphere Travel Initiative (WHTI). These certifications address important issues such as the security of your proposed technology, the availability of documents to the public, the procedures to govern border crossings, and your Department's preparation for implementing any new rules. You have announced publicly that you plan to implement WHTI at land and sea borders as early as January 2008, although you are not required to implement these rules until June 1, 2009. In order to meet the Departments announced deadline, you would therefore need to provide certifications by October 1, 2007. Please provide a specific timeline listing the dates prior to October 1, 2007, on which you expect to complete each of the tasks for which a certification to Congress is required.

**Answer:** DHS is working diligently to address each of the items listed in the DHS Appropriations Act for FY 2007.

DHS and DOS have been in extensive discussions with the National Institute of Standards and Technology (NIST) regarding the Institute's role under the statute, and DHS has been sharing information regarding WHTI implementation with the Governments of Canada and Mexico.

DHS, DOS and, NIST are working collaboratively to meet the Congressional mandate that NIST certify that the card architecture selected meets or exceeds ISO security standards and meets or exceeds best available practices for the protection of personal identification documents. NIST expects that this certification will be done simultaneously with the release of the DOS Passport Card Request for Proposal or shortly thereafter.

On February 22, 2007, DHS announced its intention to propose flexibility for U.S. and Canadian children and groups of children entering the U.S. at land and sea ports of entry in the upcoming NPRM.

As soon as the master schedule is refined, it will be shared as part of our WHTI Quarterly Report.

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| **Question#:** | 33 |
| **Topic:** | Northern Border |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Charles E. Schumer |
| **Committee:** | JUDICIARY (SENATE) |

**Question: Please** describe the status, progress, and next steps for each of the following planned DHS efforts to improve security along the northern border:

Re-deployment of analog sensors from the southern border to the northern border;

Upgrades to communications systems from analog to the P-25 Digital standard in the sectors of Blaine, Havre, Detroit, Buffalo, Swanton, and Houlton;

Deployment of Border Security Evaluation Teams in each northern border sector to establish baseline security levels in remote areas that were not previously monitored; and

Deployment of additional sensors and detection technologies in a variety of environments across the northern border.

**Answer:** The redeployment of analog sensors from the Southern to the Northern border is a three phase plan:

Phase 1: In the first phase, recently procured ground sensors that comply with the National Telecommunications Information Administration's (NTIA) narrowband mandate are being deployed to the Tucson, Yuma and El Paso Sectors, bringing those Sectors to an enhanced level of detection capability. This phase is in its final stages.

Phase 2: Ground sensors that are not NTIA-compliant in the Tucson, Yuma and El Paso Sectors will be recovered and replaced with NTIA-compliant ones. Noncompliant equipment will be shipped to a maintenance depot. This task will be conducted while maintaining the established target levels of sensors at each Sector. This phase is expected to begin in April 2007.

Phase 3: Ground sensors that are not NTIA-compliant will be assessed by technicians. Equipment that does not pass this technical assessment and is determined to be substandard will not be redeployed. Those ground sensors that pass inspection will be redeployed to the Northern border to enhance their level of detection capability. This phase is expected to begin in April 2007.

U.S. Customs and Border Protection (CBP) is currently heavily engaged in the modernization and upgrade of the communications network supporting the Tucson and Yuma Sectors along the Southwest border. The El Paso Sector will be the next area of

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| **Topic:** | Northern Border |
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focus in this area of operation (AOR) aligned with the Secure Border Initiative (SBI) Program Office objectives. Concurrently, we have been replacing analog radios with digital P-25 equipment along the Northern border, and CBP is developing a strategy for accelerating our progress in Northern border areas. It should be noted that the Northern border presents a significant challenge in the area of spectrum (radio frequency) coordination and management with the Canadian Government. The unique approval process and established guidelines for usage of spectrum along the Northern border are expected to place projects at risk with respect to schedule and cost performance.

Current Status:

Blaine, Washington - DHS is currently engaged with the Departments of Justice (DOJ) and the Treasury Department in a joint partnership in support of the Integrated Wireless Network (IWN) in the Seattle/Blaine area. The system is a fifteen-site narrow-band digital P-25 trunking system that was installed as a result of a multi-year effort by the Joint Program Office (DOJ, DHS, and Treasury). The Seattle/Blaine system will need to be expanded to meet the communications needs of CBP users as well as other DHS components. Follow-on projects to accomplish this goal have been planned and agreed upon. CBP has recognized the importance of capitalizing on the current investment in this area and is in the process of identifying funding to move this capability forward. This will ultimately result in the transition of DHS users to this system.
Havre, Montana -- CBP has installed a basic narrow-band digital P-25 radio system in Montana and replaced subscribers; there is a need for future expansion of this system to meet the total user requirements.
Detroit, Michigan -- Significant refresh of analog to digital P-25 equipment is currently underway in this geographic area
Buffalo, NY -- The CBP radio system has recently been upgraded to a narrow-band digital P-25 compliant system.
Swanton, Vermont -- This area has been transitioned from analog to digital P-25 capable equipment; future system enhancements are needed but are not yet scheduled.
Houlton, Maine – We have only accomplished basic first aid on the Houlton communications system. The project team has prioritized Houlton for a complete "hot-swap" LMR refresh and will provide dates as soon as the project deployment schedule is finalized. As mentioned above, spectrum coordination with Industry Canada is expected to introduce a significant amount of schedule risk to the Houlton Sector upgrade.

Border Security Evaluation Teams (BSETs) have been established at all Northern border Sectors to assess baseline security levels. They provide a snapshot of a current "as is" assessment and are especially useful in providing baseline assessments of areas previously unmonitored. The Border Patrol Operational Requirements Based Budget

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| **Topic:** | Northern Border |
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Planning (ORBBP) process defines five different levels of tactical control and the continued use of BSETs assists in assessing which of those levels of tactical control exist in any given section of border at that precise time. The border zone evaluations that the BSETs continue to produce are also a valuable tool used by field managers to better deploy personnel and other assets in relation to changing traffic patterns and/or intelligence.

Northern border technologies were and remain a part of the developmental baseline for SBI*net*. The challenges include radar and distributed sensor systems for forest and woodland areas, as well as sensor suites for the Great Lakes regions. The DHS Directorate for Science and Technology (S&T) is working with SBI*net* to further develop the radar and distributed sensor systems technologies.

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| **Question#:** | 34 |
| **Topic:** | Illegal Aliens |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Edward M. Kennedy |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** On March 6, Federal authorities led by Immigration and Customs Enforcement agents executed a search warrant at the New Bedford, Massachusetts business Michael Bianco, Inc (MBI). The owner of the company and three managers were arrested on charges in connection with alleged hiring of illegal aliens and several hundred suspected undocumented workers were arrested. I support strong worksite enforcement of immigration laws, but am concerned about reports that dozens of young children were left stranded after their parents were rounded up by federal authorities. I am also concerned that immigrants arrested because of their undocumented status were sent to detention centers far away from Massachusetts, thus making it difficult for them to contact family members and legal counsel.

How many children were stranded and for how long? What provisions were made for their care? How many of the children are American citizens? Shouldn't the children's welfare call for their parents not to be detained but to be released with orders to report back for hearings? What provisions were made for workers arrested for immigration violations to have access to legal counsel?

**Answer:** ICE fully anticipated encountering illegal aliens during the execution of the criminal search warrant, including those with minor children. For this reason, ICE took steps immediately after the arrests to determine if arrestees had minor dependents and to ensure that children were not separated from primary caregivers. ICE also worked with the Massachusetts Department of Social Services ("DSS") before the operation and assigned a liaison officer to work with DSS before, during and after the operation to ensure that any information DSS obtained relating to children separated from a sole caregiver could immediately be acted upon by employing DSS' existing relationships with schools, social service providers, and the community. Additionally, ICE also provided detainees a notice, in English and Spanish, containing DSS contact information. Detainees were also given numerous opportunities to advise ICE agents of unattended dependents or other humanitarian issues prior to their transportation to detention facilities. Prior to the operation, ICE created a 24-hour toll-free hotline for family members of the illegal aliens who had been arrested to field questions about their locations and about the removal process.

ICE used its discretion and released more than 60 aliens for humanitarian reasons after administrative processing. Over the past several weeks, ICE's ongoing cooperation with DSS has resulted in the release of additional arrestees for humanitarian reasons.

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| **Question#:** | 34 |
| **Topic:** | Illegal Aliens |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Edward M. Kennedy |
| **Committee:** | JUDICIARY (SENATE) |

Moreover, phones were made available for use by the aliens at the arrest location, processing center, and detention facilities.

All illegal aliens apprehended in the enforcement operation were informed of their right to a hearing before an Immigration Judge and their right to communicate with consular or diplomatic officers from their country. Special efforts were made to ensure detainees could communicate with counsel. Detainees were allowed attorney visits, and were provided with a listing of pro bono legal representatives in the geographic areas of Boston, Massachusetts, San Antonio, Texas and El Paso, Texas. In addition, attorneys from ICE's Office of the Principal Legal Advisor were present at the processing center around the clock to coordinate with detainees' legal representatives.

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| **Question#:** | 35 |
| **Topic:** | Unidentified People |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Edward M. Kennedy |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** We cannot close our eyes to the reality that we have millions of unidentified people living and working in the shadows of our country today. From a national security point of view, I believe that is a dangerous proposition. Instead of closing our eyes and hoping they will all go away, it seems to me the only realistic solution to unauthorized immigration is a registration and vetting of the undocumented population, weeding out the people who don't qualify for immigration status, and modernizing our immigration laws—including enforcement—to avoid this situation for the future.

Don't you agree that from a security stand-point, registration and vetting of unauthorized workers makes much more sense than encouraging an underground population, as in the status quo?

**Answer:** Yes, and for these reasons and others, the Administration supports a comprehensive approach to immigration.

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| **Question#:** | 36 |
| **Topic:** | Asylum Seekers |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Edward M. Kennedy |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** The U.S. Commission on International Religious Freedom a study in February of 2005 which reported that (1) asylum seekers were being detained improperly and under inappropriate (prison and prison-like) conditions; and (2) numerous procedures developed by DHS to ensure against inappropriate treatment of asylum seekers were frequently ignored by DHS personnel.

What actions are you taking to develop standards to improve the conditions of asylum seekers? Do you plan to put parole criteria in regulations and ensure that Customs and Border Protection take additional steps to ensure inspectors are following correct procedures and not returning asylum seekers?

**Answer:** The Department of Homeland Security (DHS) is examining the use of detention facilities for asylum seekers and whether there is a need for additional detention standards for non-criminal asylum seekers. The U.S Immigration and Customs Enforcement (ICE) National Detention Standards, designed to meet the needs of all alien detainees, were carefully crafted with the assistance of nongovernmental organizations to ensure that detention facilities provide humane conditions for all detainees.

Working with NGOs, ICE is developing a policy to standardize parole criteria nationally. It will include the examples of acceptable documents to verify an asylum seeker's identification and ensure the policy reinforcement that all parole decisions are given in writing using a single internal form. ICE, with the aid of NGOs, will also create a form designed to inform an asylum seeker of the parole application process. In addition, ICE, in collaboration with U.S. Citizenship and Immigration Services (USCIS), and other DHS offices, is developing a national standard for when and in what form an asylum seeker with a credible fear of persecution or torture is to be informed of the parole application process.

Actions that have been taken by DHS and its U.S. Customs and Border Protection (CBP) include:

- DHS confirmed that the field guidance manuals for CBP officers and Border Patrol agents on the proper identification of applicants who possess a fear of persecution or torture are consistent with DHS guidelines.

- To ensure that officers adhere to the guidance and to prevent any future failure to refer such applicants for a credible fear interview, CBP has initiated a number of actions including emphasizing I-867 compliance in the training program,

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| **Question#:** | 36 |
| **Topic:** | Asylum Seekers |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Edward M. Kennedy |
| **Committee:** | JUDICIARY (SENATE) |

conducting "field musters" to remind officers of the proper procedures, centralizing its expedited removal training program, and establishing a Policy Compliance Team to evaluate problems involving compliance with policies and field guidance.

- In addition to CBP's robust management and review process, other measures provide a means of assessing the treatment of asylum seekers in the expedited removal process. They include monitoring activities of expedited removal between ports of entry by the DHS Office for Civil Rights and Civil Liberties and the visits by the U.N. High Commissioner for Refugees, the U.S. Government Accountability Office and the DHS Office of Inspector General.

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| **Question#:** | 37 |
| **Topic:** | Proposed Rule |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Edward M. Kennedy |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** ICE issued a proposed rule last June that would change existing regulations regarding how employers respond to mismatch letters from the Social Security Administration ("SSA") or the Department of Homeland Security ("DHS"). The proposed rule modifies the regulations by expanding the list of scenarios that may lead to a finding by the agency that the employer had "constructive knowledge" that an employee was not authorized to work and consequently, by continuing to hire the employee, subject the employer to criminal and civil penalties.

Do you agree that implementing this rule without comprehensively addressing the reason why there is a large undocumented workforce in our country will only drive people further underground, encourage employers to pay more people off the books and overall lead to more illegality?

**Answer:** DHS proposed to amend the immigration regulations relating to the unlawful hiring or continued employment of unauthorized aliens. 71 FR 34281 (June 14, 2006). A sixty-day public comment period ended on August 14, 2006. The proposed rule describes an employer's current obligations under immigration laws, and its options, after receiving a letter from either SSA or DHS indicating that the employer's submitted records do not match the records for that individual that are on file with the SSA or DHS, respectively. The regulation would specify step by step actions that can be taken by the employer that will be considered by DHS to be a reasonable response to receiving a no-match letter — a response that will eliminate the possibility that the no-match letter will be used as any part of an allegation that an employer had constructive knowledge that it was employing an alien not authorized to work in the United States, in violation of section 274A(a)(2) of the Immigration and Nationality Act (INA), 8 U.S.C. 1324a(a)(2). DHS is considering the comments received and is formulating the next step in the regulatory process.

DHS does not believe that implementing this rule without comprehensively addressing the reasons why there is a large undocumented workforce in our country will drive people further underground and encourage employers to hire and compensate illegal aliens.

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| **Question#:** | 38 |
| **Topic:** | Undocumented Workers |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Edward M. Kennedy |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** The President says that undocumented workers who paid taxes, have a good criminal record, pay a fine, and learn English should be able to apply for citizenship.

What procedures will you put in place to fairly, expeditiously, and accurately process for legal status the many undocumented immigrants currently in the country?

**Answer:** We need to have clear and consistent application standards that will protect undocumented workers applying to legalize their status, guide those adjudicating the applications, and defend against fraud. We look forward to working with Members of Congress to ensure that the requirements for applicants are fair, simple and straightforward. We also believe it to be important for the success of the program that the Executive Branch be given necessary flexibility in implementing and managing the program for currently undocumented aliens.

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| **Question#:** | 39 |
| **Topic:** | Immigration Reform |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Edward M. Kennedy |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** In August of last year, the President said that immigration reform will not succeed unless several elements -- including increased enforcement and border security, addressing the status of undocumented workers, and creating a temporary worker program – are working together.

Can you elaborate on how these elements are interrelated? Why must we do all of them?

**Answer:** While DHS recognizes that unauthorized employment is the magnet that draws many undocumented workers to the United States each year, there is a continuum of immigration crimes, such as the smuggling and trafficking organizations that facilitate and effect the illegal entry of aliens, the document vendors and benefit fraud facilitators who provide documentation to the illegal aliens, and the employers who knowingly or unwittingly hire unauthorized workers. Solving the problem of illegal immigration will require a comprehensive approach that addresses the entire spectrum of illegal immigration. We believe that any approach that focuses on just one aspect of illegal immigration will be unsuccessful.

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| **Question#:** | 40 |
| **Topic:** | Immigration Reform |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Edward M. Kennedy |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** The White House has stated that Comprehensive Immigration Reform must include creation of a new, tamper-proof identification card for every legal foreign worker so that businesses can verify the legal status of their employees. I believe that a fair, workable employment verification system is key to successful immigration reform.

How do you foresee a successful employment verification system working in practice? How would you prevent employment discrimination against American citizens who might appear "foreign" but would not have a card?

**Answer:** One of the goals of the Employment Eligibility Verification Program (EEVP) is to reduce the incidence of employment discrimination through employer verification. Employers would have to verify the work authorization status of all new hires through the EEVP. This, therefore, should decrease employer discrimination pre-hire for an immigrant or someone who might appear "foreign." The EEVP mandates that employers verify all new hires, regardless of appearance. After an offer of employment has been extended, and up until three days after the new employee has actually begun working, the employer must verify the new employee's employment status using EEVP. A recent evaluation of the EEVP found that the percentage of employers using EEVP that were more willing to hire immigrant workers was greater than those that were less willing.

**Answer:** The Department recognizes that the ability of U.S. workers to work, and support their families, is of fundamental importance.

Current immigration law prohibits employers from discriminating against U.S. citizens who may appear "foreign" to the employer during the employment eligibility verification process. *See* 8 USC 1324b. Further, recognizing that employers are not trained immigration officers, current law requires merely that employers review employment documentation from new hires to determine whether it reasonably appears to be genuine and to relate to the individual.

Finally, the Department is working to ensure that a mandatory electronic employment verification system contains appropriate due process safeguards for legal workers, including U.S. citizens. No U.S. worker should be denied employment or fired because of a faulty database, an inability to communicate effectively with the Department or the

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| **Question#:** | 40 |
| **Topic:** | Immigration Reform |
| **Hearing:** | Comprehensive Immigration Reform |
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Social Security Administration, or employer misconduct. Safeguards will include clear and straightforward instructions and procedures for employers and workers, education of employers and workers so that they understand their rights and responsibilities.

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| **Question#:** | 41 |
| **Topic:** | Immigration Reform |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Edward M. Kennedy |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** I agree with the President that helping immigrants learn English and the history and traditions of the United States is important to the success of immigration reform.

Will you need additional funding for new or existing programs to encourage assimilation?

**Answer:** The Office of Citizenship has developed several educational materials to assist immigrants in their assimilation to life in the U.S. in recent years. These materials can be found on the USCIS website at www.uscis.gov. In addition, USCIS plans to continue these efforts and has included $2.2 million dedicated to developing new and improved educational materials for immigrants and new citizens in the FY2008 budget.

**Question:** Aren't the recent immigration filing fee increases a significant barrier to immigrants who want to become citizens? Would you favor Citizenship and Immigration Services being funded through appropriations in order for these fees to be reduced to a more reasonable level?

**Answer:** I respectfully disagree and can assure you that the USCIS fee proposal is being made only after careful consideration of the results of a comprehensive fee review launched early in 2006. There is no data that suggests a correlation between fee increases and the demand for immigration benefits.

Part of the funding problem USCIS has faced recently has been a reliance on temporary funding sources, including appropriated funding. This new fee schedule will establish a more stable source of funding, and will allow USCIS to respond to workload fluctuations without sacrificing customer service. Currently, USCIS does not recover the full cost of adjudicating immigration applications and benefits. If USCIS continues to charge fees at rates that do not cover operational costs, the agency will not be able to properly address fraud and national security issues or maintain its current level of operations. As a result, significant backlogs will develop, posing a risk to both the public and our national security as applicants remain in the U.S. unscreened while their applications are pending.

Congress created a user fee account for the former INS in 1988, transforming it into a fee-based agency. As a fee-based agency, USCIS uses revenue from application fees rather than appropriated funds to pay for the administration of the nation's immigration laws, processing of applications, and the infrastructure needed to support these activities.

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| **Question#:** | 41 |
| **Topic:** | Immigration Reform |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Edward M. Kennedy |
| **Committee:** | JUDICIARY (SENATE) |

We believe that full cost recovery through fees on customers is the right way to fund USCIS operations.

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| **Question#:** | 42 |
| **Topic:** | Secure Fence |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Edward M. Kennedy |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** In previous testimony, you said that DHS does not need a fence across the entire border in order to secure the border. You said that there are places where vehicle barriers or fencing or sensors make a difference in terms of being able to deploy Border Patrol agents rapidly. But you thought that in other places deploying surveillance technology would be a better use of resources.

In what parts of the border is surveillance technology most appropriate? It what parts do you need fencing?

**Answer:** Technology and tactical infrastructure, such as fencing and vehicle barriers, are critical parts of the DHS strategy to gain effective control of our nation's borders. However, neither fencing nor technology alone will provide the most effective means of securing the border. One of the core elements of the DHS strategy is obtaining and deploying the right combination of personnel, technology, and infrastructure that is appropriate for the environment.

Deployment of the SBI*net* technology solution is conducted on a threat-based approach that considers a number of factors, including traffic volume, threat, vulnerability, consequence, and intelligence. Each environment requires area-specific technology and infrastructure determined by the conditions, terrain, and threat. For example, technology and infrastructure effective in an urban environment may not be the most effective means to bring control to a rural environment, where vehicle barriers are more successful, and vice-versa.

SBI*net* incorporates the most cost-effective combination of tools, e.g., technology and infrastructure, along the geographically diverse areas of the border. In general, technology is the first component embedded in an area selected for deployment of SBI*net*. Depending on the area, technology may be all that is required for effective control of the surrounding border. In cases where the technology is not enough to deter illegal incursions, the next step may be to install vehicle barriers. If necessary, pedestrian fences may be constructed in situations where required by the environment and threat. The exact combination of technology and tactical infrastructure depends heavily on the requirements and needs of the selected area of deployment.

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| **Question#:** | 43 |
| **Topic:** | Employment Eligibility Program |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Edward M. Kennedy |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** U.S. Citizenship and Immigration Services has the key responsibility of running the Employment Eligibility Program.

Do other parts of DHS, the federal government, or state and local governments draw on data collected by this program? Do they reimburse USCIS for access or information?

**Answer:** No, other components of DHS, the federal government, or state and local governments do not draw on data collected by the Employment Eligibility Verification Program (EEVP). The EEVP is not a federal database where information is shared, extracted or exchanged, but is a program that provides employment status information to participating users of the program. The EEVP uses a web-based system, known as the Verification Information System (VIS) that matches data submitted to EEVP against other federal databases, such as the Social Security Administration's Numident database. Federal and local governments that participate in EEVP are able to submit data collected from the Form I-9 (such as social security numbers, names, alien numbers) from all of their new hires and access the VIS to verify the information submitted. No participants, including federal and local governments, currently pay a fee. By statute, the EEVP is a voluntary program and fees may not be collected to cover the operational costs of the program.

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| **Question#:** | 44 |
| **Topic:** | Iraqi Employees |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Edward M. Kennedy |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** I am very concerned that Iraqis who are associated with the United States are being persecuted by sectarian militias and terrorists. Iraqi employees of the U.S. government have been assassinated or kidnapped. Others have been threatened and forced to flee their homes. Iraqi and Afghan translators can get U.S. immigrant visas if they have worked for the U.S. military, served a year with distinction, and are recommended by a general or flag officer. Only 50 of these visas can be issued per year but more than 300 persons are on the waiting list.

Given that thousands of Iraqis work for U.S. military and civilian agencies in a variety of occupations, would you support a significant expansion of this program to include more agencies, more occupations, and greater numbers?

**Answer:** As of May 11, 2007, USCIS has received a total of 630 petitions: 497 approved, 15 denied, and 118 pending a final decision. USCIS reports that it receives an average of 40 new filings each month.

In addition, the U.S. Refugee Program is currently expanding its capacity to process Iraqi refugees for resettlement in the United States, and Iraqis determined to be qualified for resettlement consideration will be given access to an interview with a USCIS officer who will make a final determination regarding their eligibility. In addition, we are working with the Department of State to find sites where we can safely process refugees to ensure our officer's safety and to avoid creating a magnet affect within the region.

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| **Question#:** | 45 |
| **Topic:** | Immigration and Naturalization |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Edward M. Kennedy |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** My constituents frequently write to me with concerns over lengthy times for immigration and naturalization processing. This leaves families separated for months. It also means that thousands of elderly and disabled refugees lose subsistence benefits because they cannot complete naturalization within the seven years for which they are able to receive SSI. I understand that background and other security checks are a big cause of the backlog.

Could you describe the background and security check process? What are you doing to speed it up?

**Answer:** USCIS requests FBI background checks on all applicants applying for adjustment of status and naturalization and conducts an Interagency Border Inspection System (IBIS) name check on all applicants and petitioners applying for any immigration benefit; thus, approximately 28-30 million background checks are conducted each year which include the following:

FBI Fingerprint Check - Applicants are scheduled at one of the USCIS Application Support Centers (ASC) where full, 10-print fingerprints are taken and electronically forwarded to the FBI. The response to the FBI fingerprint check is usually returned within 24 hours after the fingerprints are taken. In fiscal year 2007, USCIS expects to request more than 2.6 million fingerprint checks from the FBI. There are 129 Application Support Centers (ASCs) nationwide where fingerprints are taken; 44 are co-located within a USCIS district or sub-office and 85 are stand-alone facilities.

FBI Name Check - This check, based on the applicant's name and date of birth, is conducted to determine whether the FBI has information related to the applicant. The FBI database is searched to determine whether an individual has been encountered by the FBI in connection with an investigation of criminal, security, or other activities that might render him or her ineligible for benefits. Such information may have an impact on the final adjudication of the case. Approximately 80 percent of the name check requests are resolved after a few weeks, and 99 percent are resolved within six months.

Interagency Border Inspection System (IBIS) Name Check - IBIS resides on the Treasury Enforcement Communication System (TECS) and is operated by U.S. Customs and Border Protection (CBP). IBIS houses multi-agency data that includes information relating to national security, narcotics trafficking, other law enforcement violations, and persons who may be of interest to the government or local law enforcement agencies.

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| **Question#:** | 45 |
| **Topic:** | Immigration and Naturalization |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Edward M. Kennedy |
| **Committee:** | JUDICIARY (SENATE) |

The additional funding generated by the proposed fee increase will improve the timeliness of background checks by expanding current name check resolution capacity, establishing co-located name check resolution capacity, and funding the new FBI fees for background checks. Additionally, USCIS is working closely with the FBI to address the name check backlog. Both parties are committed to enhancing the current process and working to eliminate the backlogs and discussions to flesh out program specifics are currently underway. The Department remains steadfast in its commitment to ensure that all necessary security checks are conducted and that no one will receive an immigration benefit or service until all background checks are fully resolved.

**Question:** Could you describe how the background and security check process is carried out for the various applications and petitions adjudicated by USCIS?

**Answer:** Please see previous response.

**Question:** What role does the FBI play in this process, especially in the name check process? What is the role of USCIS?

**Answer:** Please see previous response to the answer provided in the first part to QFR 45 above.

**Question:** How many name checks are outstanding?

**Answer:** As of May 4, 2007, 329,160 name checks are pending with the FBI. Of that number, 155,592 have been pending for more than 6 months.

**Question:** What happens to people who have very common names?

**Answer:** The FBI Name Check is based on the name and date of birth of the individual and is conducted to determine if an individual has been encountered by the FBI in connection with an investigation of criminal, security, or other activities that might render him or her ineligible for benefits. The name of the individual, all name variations and aliases are submitted for review. Very common names may result in a "false" hit. If there is a match, an analyst must review the information and determine whether it relates to the individual in question.

Approximately 80 percent of the name check responses are resolved within a few weeks and 99 percent are resolved in less than six months. Less than one percent of cases require further review by the FBI that may result in lengthy delays.

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| **Question#:** | 45 |
| **Topic:** | Immigration and Naturalization |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Edward M. Kennedy |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** What process exists for expediting completion of the name check process in appropriate cases?

**Answer:** USCIS requests an expedited FBI name check if the case meets one of the following approved criteria, including:

1. Military deployment,
2. Age-out cases not covered under the *Child Status Protection Act*, and applications affected by sunset provisions such as diversity visas,
3. Significant and compelling reasons, such as critical medical conditions, and
4. Loss of social security benefits or other subsistence at the discretion of the USCIS District Director.

**Question:** What criteria does USCIS use to evaluate when it is appropriate to expedite the adjudication of a case that is in the security review process if the case is at USCIS, or to ask that the case be expedited if it is at the FBI?

**Answer:** See previous response.

**Question:** What kinds of changes would you recommend that we make to the current clearance process to allow greater efficiency?

**Answer:** As outlined in the previous response, USCIS is currently working with the FBI to develop a plan that could increase the rate at which the FBI resolves the cases that have been pending for a significant period of time. USCIS is also working closely with the FBI to develop initiatives to increase personnel dedicated to processing and resolving name check responses.

Lastly, USCIS is preparing to roll out a new system called the Background Check Service (BCS), a central repository for all background checks conducted by USCIS. BCS will allow USCIS to effectively manage the process by which name check requests are submitted to and responses returned from the FBI. BCS includes a reporting feature that provides the ability to analyze the activity of the name check process and identify any systemic problems so USCIS management can proactively address these issues.

**Question:** What kinds of changes would you recommend that we make to the current clearance process to allow greater transparency?

**Answer:** Please see previous response.

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| **Question#:** | 45 |
| **Topic:** | Immigration and Naturalization |
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**Question:** How many times has USCIS been sued in the past year over petitions or applications that have been delayed because of name check delays? What is the comparable figure for the previous year? How many such suits are projected for the coming year?

**Answer:** In FY 2006, USCIS received approximately 220 new litigation cases per month, with a steady increase throughout the year. Approximately 40 to 50 percent of those cases involved complaints about a delay in the completion of the background checks. In 2006, USCIS operational staff and attorneys worked with Department of Justice attorneys on approximately 100 federal district court cases per month related to background check delays. USCIS paid approximately $60,000 in fees to opposing counsel from awards under the Equal Access to Justice Act (EAJA) or in settlement made in lieu of litigating the EAJA issue in these cases.

In the first quarter of FY 2007, USCIS continued to see a significant increase in federal court litigation, with the average monthly case filings increasing from 220 to approximately 440 monthly. Of these 440 monthly cases, at least 60 percent were filed, in part, citing delays due to background checks. USCIS operational staff and attorneys are now working with Department of Justice attorneys on more than 250 federal district court cases per month related to background check delays. Also, since the beginning of FY 2007, USCIS has paid approximately $75,000 in fees to opposing counsel from awards under EAJA or in settlement made in lieu of litigating the EAJA issue in these cases.

**Question:** How much money did USCIS pay out in attorney fees last year under the Equal Access to Justice Act in connection with lawsuits over cases delayed by name checks? What is the comparable figure for the previous year? What figure is projected for the coming year?

**Answer:** Traditionally, USCIS incurs approximately $500,000 in EAJA fees each year. Due to the significant increase in federal court litigation, the majority of which is driven by delays in the background check process, USCIS anticipates that costs related to litigation will increase proportionally. Because the volume of litigation has increased so quickly within the past 12 months, and appears to be increasing each month, USCIS is unable to predict at this time what those costs or expenditures will be in the upcoming year.

ICE would not face EAJA decisions for cases involving name-check delays. However, for immigration litigation ICE has paid the following amounts for either adverse

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| **Question#:** | 45 |
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| **Hearing:** | Comprehensive Immigration Reform |
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decisions or settlements of EAJA fees:

FY 2005: $71,606.87 for attorneys' fees

$6,571.80 for costs paid by Treasury

FY 2006: $1,276,874.41 for attorneys' fees

$602.00 for costs paid by Treasury

FY 2007: $152,140.84 (does not include approximately $250,000 in fees requested in three pending cases).

CBP's typical annual EAJA fee payments total about $100,000, which do not relate to fees incurred as a result of name check delays.

**Question:** Are EAJA fee payments part of the basis for the proposed USCIS fee increase? If EAJA fee payments increase next year, how will that affect USCIS's fee structure?

**Answer:** No, EAJA fee payments are not part of the basis for the proposed fee increase.

**Question:** With both national security and records verification (which we understand to involve the basic pilot program for verifying employment eligibility) combined in a single directorate within USCIS, does this place sufficient focus on national security and risk management issues? Would national security processes within USCIS receive more effective managerial focus if these two critical functions were separated organizationally?

**Answer:** Sharpening the focus on national security priorities, U.S. Citizenship and Immigration Services (USCIS) Director Emilio T. Gonzalez established in Spring 2006 a new operational Directorate, National Security and Records Verification in order to bring Fraud Detection and National Security (FDNS), Records, and Verification components under one roof.

FDNS functions as USCIS' law enforcement liaison and handles all USCIS intelligence work, fraud detection and, as part of the new Directorate, the national security cases previously handled in Domestic Operations. The Records Division has diverse responsibilities, primary among them the storage and retrieval of nearly 100 million immigration records, the majority of which are paper-based. The new Verification Division now encompasses the Employment Eligibility Verification Program (EEVP),

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| **Question#:** | 45 |
| **Topic:** | Immigration and Naturalization |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Edward M. Kennedy |
| **Committee:** | JUDICIARY (SENATE) |

formerly known as Basic Pilot, and SAVE volunteer employment and status verification programs, which allows participating employers to confirm employment eligibility of all newly hired employees.

As USCIS' National Security functions continue to increase in both complexity and visibility, they need to be strategically positioned to deliver services both internally and externally. The merger of Records, FDNS and Verification into the National Security and Records Verification Directorate will enhance the security of our immigration system and stamp out fraud and abuse, through improved operational efficiency.

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| **Question#:** | 46 |
| **Topic:** | Waiver for Aliens |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Edward M. Kennedy |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** You recently exercised your discretionary authority to provide a waiver for aliens who provided material support under duress to terrorist organizations described under section 212 (a)(3)(B)(vi)(III) of the Immigration and Nationality Act and are otherwise qualified for entry into the United States.

Why have you not yet provided such a waiver for aliens who provided material support under duress to terrorist organizations described under sections 212 (a)(3)(B)(vi)(I) and 212 (a)(3)(B)(vi)(II)? Are not victims of coercion entitled to refugee and asylum protection regardless of the designation status of the terrorist organization coercing them?

**Answer:** On February 20, 2007, Secretary Chertoff exercised his discretionary authority not to apply the material support provisions to certain individuals who provided material support to one of the following eight groups: 1) Karen National Union/Karen National Liberation Army (KNU/KNLA), 2) Chin National Front/Chin National Army (CNF/CNA), 3) Chin National League for Democracy (CNLD), 4) Kayan New Land Party (KNLP), 5) Arakan Liberation Party (ALP), 6) Tibetan Mustangs, 7) Cuban Alzados, or 8) Karenni National Progressive Party (KNPP).

In addition, on February 26, 2007, Secretary Chertoff exercised his discretionary authority not to apply the material support provisions to certain individuals who provided material support under duress to non-designated organizations (often referred to as "Tier III"), if a totality of the circumstances justifies the exemption. Shortly after, on April 27, 2007, the Secretary, after consultation with the Secretary of State and the Attorney General, extended the exemption to include individuals who provided material support under duress to certain designated terrorist groups (Tier I/Tier II). These exemptions may be applied to individuals seeking immigration benefits, including, but not limited to, asylum, refugee status, adjustment of status, and following to join petitions.

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| **Question#:** | 47 |
| **Topic:** | Parole |
| **Hearing:** | Comprehensive Immigration Reform |
| **Primary:** | The Honorable Edward M. Kennedy |
| **Committee:** | JUDICIARY (SENATE) |

**Question:** I understand that you as the Secretary of the Department of Homeland Security may, in your discretion, parole into the United States aliens for humanitarian reasons, including medical emergencies or other compelling reasons. Currently, applications for parole are handled by Immigration and Customs Enforcement.

Isn't this more appropriately an immigration service or benefit? Should this function be moved to U.S. Citizenship and Immigration Services?

**Answer:** This matter is currently being discussed within the Department.

**UNITED STATES SENATE**
**COMMITTEE ON THE JUDICIARY**
**HEARING ON**

**"Comprehensive Immigration Reform"**
**Secretary Carlos Gutierrez**
**February 28, 2007**

**QUESTIONS FROM SENATOR EDWARD M. KENNEDY**

*You recently commented that immigration is a critical issue for the U.S. economy and workforce as business owners can't find people to fill jobs. Our economy over the last three quarters grew at 3%.*

***Question:*** *If the United States had legal immigration flows sufficient to meet the needs of our business owners, how much higher do you estimate economic growth would have been?*

**Answer:** I am not aware of an estimate of this kind, but it is clear that immigration is a valuable part of a growing economy. The National Research Council conducted an extensive study of immigration and concluded that immigration provides a "significant positive gain" – which adjusted for a $12 trillion economy in 2005 – amounts to up to $25 billion annually for Americans born in the United States.

Today, immigrants make up 15 percent of our labor force, and they account for about half the growth in the labor force since 1996. As I have traveled the country, business and industry leaders across the Nation have reported difficulty finding enough workers to build and grow their businesses. This is just one of many reasons why it is essential that Congress pass comprehensive immigration reform as soon as possible.

*The President has spoken on the need for a temporary worker program. This sort of program would enhance border security by allowing the Border Patrol to focus on criminals and terrorists and meet the needs of our economy. The Administration proposes, and I agree, that employers should be allowed to hire temporary workers only for jobs Americans have not taken.*

***Question:*** *What system would you put in place to ensure temporary workers do not take jobs Americans want?*

**Answer:** A temporary worker program should be designed so that temporary workers are only doing jobs that Americans are unwilling to do. This can be accomplished by allowing employers to use a temporary worker program only after they have demonstrated an effort to hire American workers at a competitive wage. The Administration stands ready to work with Congress to establish such a system.

*According to the Bureau of Labor Statistics, between 2002 and 2012 the U.S. economy is expected to create 56 million new jobs. Half of these jobs will require no more than a*

*high school education. During the same period, roughly 75 million U.S. baby boomers will retire. U.S.-born workers are becoming more educated with each decade.*

***Question:*** *Can the U.S. economy meet its workforce needs over the coming decades without increased immigration? If immigration is not high enough to meet workplace demands, what would be the economic consequences?*

**Answer:** Immigration is essential to meeting our economy's growing needs for workers. While we face tight labor markets today, the difficulty of finding workers in the current market is minimal when compared to the demographic challenges looming over the horizon. For example:

- The number of people in the labor force in their prime working years (ages 25-54) is expected to increase by a mere 0.3% per year over the next seven years.
- By 2010, the 77 million baby boomers will begin to reach retirement age. Some are retiring already.
- By 2030, nearly one in every five Americans will be over the age of 65.

We must act to address our workforce needs now, before the situation becomes dire. Many of our major competitors around the world face a similar – or worse – prognosis. In the developed world, the nations that prosper in the 21st century will be those who are able to make immigration a competitive advantage.

As I said in my testimony, welcoming and assimilating new immigrants has been a historic national strength, and there is no reason that this asset cannot be put to work for us today.

*The Pew Hispanic Center estimates that between 500,000 and 700,000 undocumented immigrants settle in this country every year. We all know that there are only 5,000 immigrant visas available for lower skilled workers. This seems like a serious mismatch between labor demand and labor supply.*

***Question:*** *How should we address this problem?*

**Answer:** The United States approved permanent residency for approximately 1.1 million immigrants in 2005. These green cards were distributed in four major categories: family-based, employment-based, humanitarian interest, and the diversity lottery program.

Congress may want to consider how the current green card allocation can be configured to better address the realities of our labor needs. In addition, the President has expressed his support for a reasonable increase in green cards. Such an increase could provide more green card opportunities for lower skilled workers who display leadership skills, a commitment to American values and strong work experience.

*About 12 million undocumented immigrants currently reside in the United States. Most are employed. Many have been here for decades, own homes, and are raising families that include American citizen children.*

***Question:*** *How do you respond to those who argue that the best way to resolve the status of these undocumented immigrants is to take such stringent law enforcement measures that they are persuaded to leave the United States?*

**Answer:** As the President has said many times, we must resolve the status of the 12 million illegal immigrants currently in the United States. There should not be a mass amnesty for these illegal immigrants, because it would simply encourage more illegal immigrants to follow in their footsteps. However, deporting 12 million people is neither a practical nor humane solution.

We must find a rational middle ground between these two extremes. A middle ground policy would not provide amnesty but would require illegal immigrants to pay a meaningful penalty, learn English, pass a background check, hold a job and go to the back of the line for permanent status.

## QUESTIONS FROM SENATOR RUSSELL D. FEINGOLD

***Question:*** *The United States only has available about 5,000 employment-based immigrant visas designated exclusively for low-skilled workers. We have an estimated 12 million undocumented migrants in this country, many of whom have come here to fill low-skilled jobs. Do you believe that part of the reason we have such a large undocumented population is because so few immigrant visas are available to low-skilled workers?*

**Answer:** The United States approved permanent residency for approximately 1.1 million immigrants in 2005. These green cards were distributed in four major categories: family-based, employment-based, humanitarian interest, and the diversity lottery program.

Congress may want to consider how the current green card allocation can be configured to better address the realities of our labor needs. In addition, the President has expressed his support for a reasonable increase in green cards. Such an increase could provide more green card opportunities for workers who display leadership skills, a commitment to American values and strong work experience.

## QUESTIONS FROM SENATOR JOHN CORNYN

**A. American Competitiveness**
*We've heard from a number of businesses and nonprofit entities about the impact of current immigration policies on their ability to recruit and retain high-skilled labor. These businesses span the gamut in terms of size and presence in the domestic and international markets. Their greatest concern is that if Congress fails to reform the immigration laws this year, they will be forced to "out-source" in order to remain competitive.*

***Questions:*** *What are your views on increasing the number of high-skilled temporary and permanent visas to keep America Competitive? What strategies should the U.S. employ to recruit the top foreign professionals to work for U.S. companies?*

**Answer:** The United States has always attracted the best and brightest to our shores. In a world-wide economy, there is a global competition for talent, which means that we must enhance our efforts to attract the most talented individuals to this country. This includes increasing the number of temporary and permanent high-skilled visas.

Companies competing in the marketplace will develop the strategies necessary to recruit the best workers. The Government's role should be to provide reasonable and predictable criteria to determine whether or not American workers are filling a given job advertised at a competitive wage. If American workers are unable to fill certain jobs, the Government should administer a system whereby U.S. firms can hire foreign professionals to fill these positions, provided that foreign professionals meet security and background checks and that the system functions within limits placed by Congress. In an increasingly global marketplace, firms will go where they can find a steady stream of skilled labor. If the United States does not take steps to make this such a place, firms will go elsewhere.

***B. Worksite Enforcement***
*With the recent increase in ICE worksite enforcement actions, such as the raids of the Swift Meat Packing Co., employers are concerned with the current employment verification system and with their liabilities for hiring illegal aliens even if they participate in a Basic Pilot or EEVS system. Employers want to be assured of some type of "safe harbor" - protection from civil penalties and disruption of business operations if they are required to participate in an employment verification system.*

***Questions:*** *Do you think employers should be given some protection from civil and criminal penalties if they participate in an employment verification system? What level of civil and criminal penalties should be imposed, especially to large companies, to deter hiring of illegal aliens?*

**Answer:** As the President has said, employers should not be required to act as detectives when verifying the immigration status of their employees. Unfortunately, the potential

for document fraud often puts employers in a difficult position. The Federal Government has an obligation to provide employers with a workable employment verification system. Tamper-resistant biometric identity cards should also be established for foreign workers so that employers have no excuse for violating the law.

Most companies are law-abiding and willing to conform to the letter of the law, and for those firms, there could be some kind of recognition of their compliance. However, the law should not protect companies who have built their business model on illegal immigration.

To effectively deter employers from hiring illegal workers, we must ensure that they face real consequences. Our current civil penalties for employers hiring illegal workers, however, are simply inadequate.

Any employer of reasonable size can write off a small fine as the cost of doing business. The Administration looks forward to working with Congress to establish civil penalties that truly punish egregious violators.

**C. Secure Documents**

*In your testimony, you state that the Federal government should establish a tamper-proof biometric identity card for foreign workers.*

***Questions:*** *Do you have any views on creation of a single identification and employment authorization document? Should we require such a document for U.S. citizens as well as foreign workers?*

**Answer:** In 2005, Congress passed the REAL ID Act, which provided for the gradual implementation of uniform standards for state driver's licenses around the country. These licenses can provide secure mechanism by which employers can verify identity.

If comprehensive immigration reform is enacted before the REAL ID Act is completely implemented or if some states decline to implement REAL ID, Congress will need to examine how to ensure that employers have a secure document upon which they can rely.

# SUBMISSIONS FOR THE RECORD

**STATEMENT OF THE HONORABLE MICHAEL CHERTOFF**
**SECRETARY**
**U.S. DEPARTMENT OF HOMELAND SECURITY**
**BEFORE THE UNITED STATES SENATE JUDICIARY COMMITTEE**
**WEDNESDAY, FEBRUARY 28, 2007**

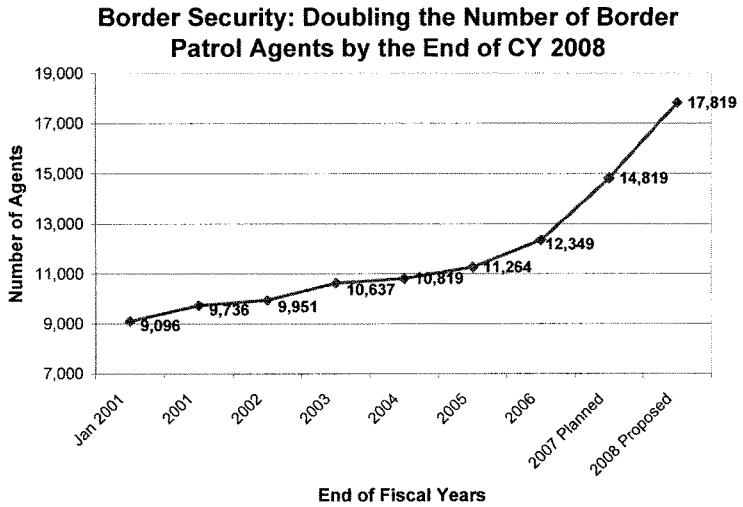
Mr. Chairman, Senator Specter, Members of the Committee:

Thank you for inviting me to testify today about immigration reform. The Department of Homeland Security (DHS) is committed to the President's vision of immigration reform based on five main pillars: (1) gaining effective control of the border; (2) building a robust interior enforcement program; (3) establishing a Temporary Worker Program (TWP); (4) bringing illegal aliens who are now in the U.S. out of the shadows; and (5) promoting assimilation of new immigrants into our society. With Congress's help, DHS has made measurable progress in achieving effective control of the border and improving the enforcement of our immigration laws in the interior. I would like to share some of our accomplishments with you today. But to continue on this path of success, you must help us further by giving us effective tools to do our job. As you consider immigration reform legislation, I urge you to heed the lessons of past reform efforts and avoid repeating their mistakes. In that respect, I would like to share with you some of my views, as the head of the Department charged with administering our immigration programs, of what we could learn from our past experience.

**Protecting Our Nation's Border**

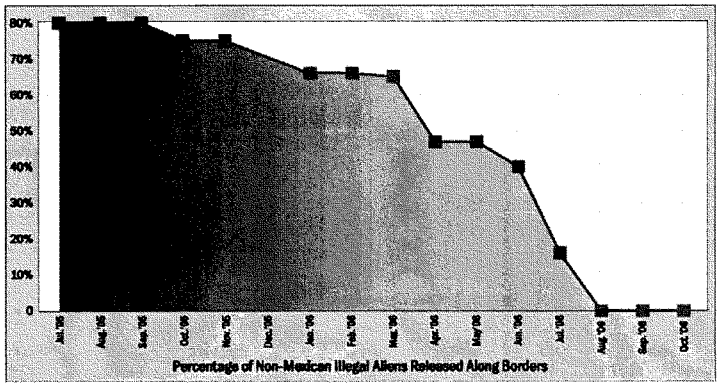
We have accomplished a lot in improving our border enforcement. The following are our key accomplishments in this area:

***6,000 National Guard Deployed to Border:*** In support of the President's initiative to secure the border, 6,000 National Guard personnel were deployed to the Southwest border as part of *Operation Jump Start*. In addition to the National Guard deployment, Border Patrol agent staffing increased by over 30 percent since 2001, as shown in the chart below.



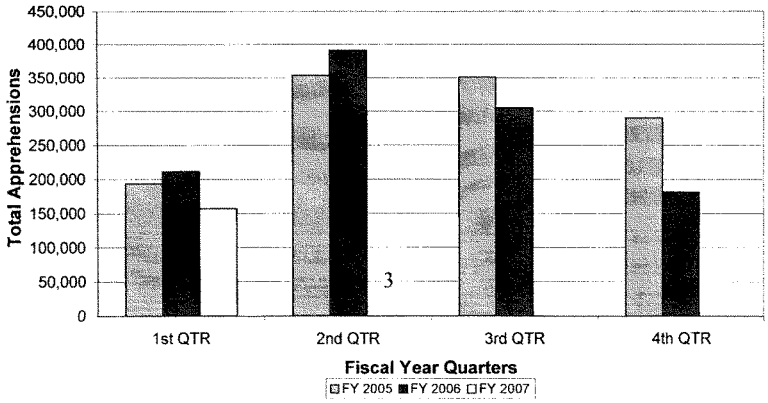

***"Catch and Return" Replaced "Catch and Release" Along the Borders:*** As part of the Secure Border Initiative, the Department ended the practice of "catch and release" along the Southern and Northern borders. In the past, we apprehended illegal aliens at the border from countries other than Mexico, who we could not immediately remove from the U.S., and then released them on their own recognizance. Often these illegal aliens failed to return for their immigration hearings. In July 2005, we were releasing up to 80 percent of non-Mexican illegal aliens because we did not have the bed space to hold them. As of August 2006, all removable aliens caught at the border are detained until returned to their home countries. When people know they will be held in detention and then returned to their home country, it creates a strong disincentive to cross illegally in the first place. Ending this practice and replacing it with "catch and return" is a breakthrough in deterring illegal immigration on the Southern border.

## SBI Ends Catch and Release




***Apprehension Rates Declined:*** Beginning in the third quarter, FY 2006 showed a marked decrease in the apprehension rate due, in principle, to the end of "catch and release," the implementation of *Operation Jump Start*, and the expanded use of expedited removal procedures, among other factors. The graph below provides historical data by fiscal year for total apprehensions of both Mexican and non-Mexican aliens between U.S. ports of entry. CBP's Office of Border Patrol (OBP) made nearly 100,000 fewer apprehensions in FY 2006 than in FY 2005 due to these factors. This decline is represented below by quarter, with the drop in apprehension rates corresponding to the implementation of *Operation Jump Start* in the third quarter of FY 2006 and the full implementation of "catch and return" in FY 2007.

**Border Security Deterrence**



***Border Security at and Between the Nation's Ports of Entry Increased:*** By deterring illegal immigration, security has been strengthened. With fewer alien crossings, DHS can more effectively target resources to control our borders with fewer alien crossings. As shown in the chart above, our efforts resulted in a reduced number of apprehensions at the borders during each of the three quarters since *Operation Jump Start.*

**SBI*net:*** Last year, DHS initiated a multi-year plan – SBI*net* – to secure our borders and reduce illegal immigration by upgrading technology used in controlling the border, including improved communications assets, expanded use of manned and unmanned aerial vehicles, and state-of-the-art detection technology. We are currently evaluating the proper mix of fence and other tactical infrastructure, as well as personnel and technology, to gain effective control of the Southwest border.

Two operational task orders have already been contracted under SBI*net*; they are Project 28 and Project 37. Project 28 is being carried out along 28-miles of border flanking the Sasabe, Arizona Port of Entry. It will demonstrate the SBI*net* system's capabilities by deploying sensor towers, unattended ground systems and upgrades to existing Border Patrol vehicles and communication systems. Project 28's completion date is set for June 2007. In January 2007, we awarded a task order for Phase I (9 miles) of the Barry M. Goldwater Range Project 37. The next phase of this project involves completion of 34 miles of fencing and vehicle barriers.

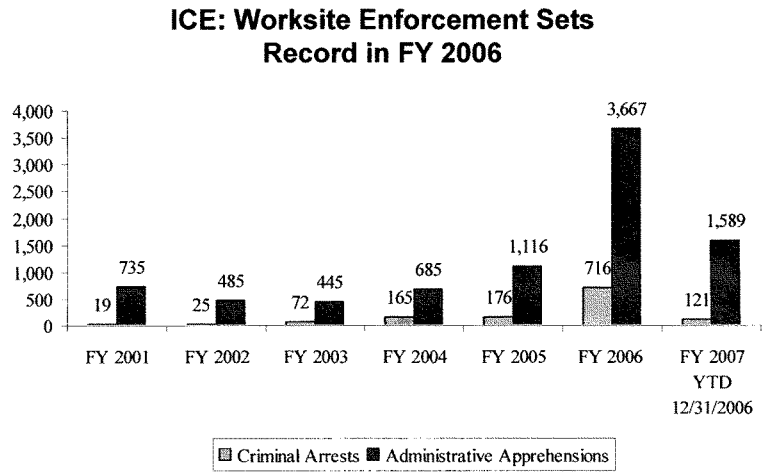
***US-VISIT's Biometric Program Kept Terrorists and Other Criminals Out of Our Country:*** US-VISIT's biometric program increased watch list hits by 185 percent at consular offices between FY 2005 and FY 2006. The program protects American people by keeping terrorists and other criminals out of our country, while facilitating visits from legitimate travelers. In FY 2006, there were 2,558 watch list hits at consular offices, up from 897 hits in FY 2005. The use of biometrics has allowed DHS to deny entry to more than 1,100 known criminals and visa violators.

**Improving Interior Enforcement**

We have also dramatically improved the enforcement of our immigration laws in the interior. The following are some of our key accomplishments:

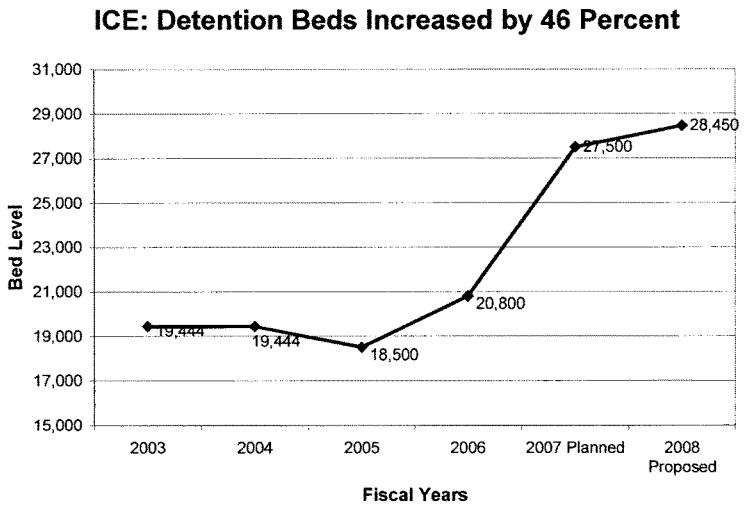
***ICE Set New Records for Worksite Enforcement and Compliance Enforcement:*** As depicted in the graph below, in FY 2006 more than 4,300 arrests and apprehensions were made in the U.S. Immigration and Customs Enforcement (ICE) worksite enforcement cases, more than seven

times the arrests and apprehensions in FY 2002, the last full year of operations for the U.S. Immigration and Naturalization Service (INS). ICE completed 5,956 compliance enforcement investigations resulting in the administrative arrest of 1,710 overstay and status violators, a 75 percent increase over the number of administrative arrests in FY 2005.




In our most recent worksite enforcement operation, on February 22, 2007, ICE agents arrested 190 unauthorized workers in 64 locations who were employed by ROSENBAUM-CUNNINGHAM INTERNATIONAL, Inc. (RCI), a Florida-based company that specializes in nationwide contract cleaning services at several national restaurant chains and resorts. The charges include allegations that one of the owners and his co-conspirators obtained over $54 million from its contracts by using sub-contracting cleaning crews comprised almost entirely of undocumented aliens. This two-year investigation is just the latest example of our intent to maintain an aggressive worksite enforcement program that targets egregious employers who are knowingly violating the law.

***ICE Set New All-Time Record for Alien Removals:*** ICE removed 192,171 illegal aliens including 88,217 criminals, from the country in fiscal year 2006. This marks a 13 percent increase in total removals and a 4 percent increase in criminal removals over the prior fiscal year. As shown in the following chart, ICE also increased its detention bed space by 6,700 during FY 2006 and is now funded for a total of 27,500 beds for FY 2007.




**Elements of a Successful Immigration Reform**

***Border Security and Interior Enforcement***

The continuation of our success in securing the border and enforcing immigration laws in the interior depends on whether the immigration legislation that Congress enacts gives us the necessary tools to accomplish our task. Let me outline some of the authorities that I believe are needed:

- First, and most important, immigration reform should ensure that we maintain effective safeguards preventing terrorists from taking advantage of our tradition of welcoming immigrants of all nations. To that end, I urge Congress to enhance DHS's authority to consider national security and terrorist activity in determining an alien's eligibility for citizenship and other immigration benefits, including relief from removal.

- We should make it clear that "port running" and evasion of DHS checkpoints are criminally punishable. We should strengthen criminal sanctions for dodging checkpoints or failing to obey a DHS officer.

- We should strengthen our ability to penalize countries that impede effective removal of their nationals from the United States by such means as delaying issuance of travel documents to their citizens, limiting the repatriation flights, or otherwise refusing to take back their own nationals.

- We should set reasonable rules to govern courts ordering immigration-related injunctions, to ensure that our practice of "catch and return" can continue.

- We should ensure DHS's ability to detain dangerous aliens until removal.

- We should strengthen the definition of "aggravated felony" in the immigration law to ensure that it bars aliens who committed manslaughter, homicide, and other serious felonies. We should make gang membership an independent ground for removal and inadmissibility.

***Worksite Enforcement***

I especially urge Congress to ensure that the immigration legislation contains provisions strengthening the worksite enforcement system. Effective worksite enforcement tools are crucial to mitigating the economic incentives that draw illegal aliens into the United States. If those who are here illegally cannot find jobs, we will remove the main incentive drawing illegal immigration to our country.

While we have dramatically increased our worksite enforcement efforts, they have been severely hampered by a lack of tools, both for enforcement officials and for employers who want to comply with the immigration laws. I urge Congress to fill gaps in current law, and to do the following to make sure that our worksite enforcement is both workable and effective:

- We should make it mandatory for employers to use the Electronic Employment Verification System (EEVS). This system would enable employers to confirm that their new hires are U.S. citizens or work-authorized aliens. This system would give employers a verification tool that is accurate, fast and easy to use. But we need legal authority to assure that the Social Security Administration can share with us and with employers data concerning stolen identities being misused to obtain work illegally.

- One of the mistakes of the Immigration Reform and Control Act of 1986 (IRCA) was to deprive immigration authorities and employers of the ability to adapt to new forms of worksite fraud. As a result, it has become much easier for illegal immigrants to avoid the verification requirements by using fraudulent documents. To remedy this mistake, DHS should be given flexible authority to establish new requirements in response to new forms of immigration fraud, such as identity theft.

- We should not tie up worksite enforcement in endless litigation. This was yet another mistake we made in 1986. To the greatest extent possible, we should build an enforcement system that does not mire employers, workers, and the government in drawn out litigation.

- We should ensure that civil and criminal penalties for violation of the immigration laws are tough enough that scofflaw employers cannot just treat fines as a cost of doing business. We cannot afford another law like the 1986 reform that makes enforcement expensive and violations cheap. We should increase penalties for repeat offenders and establish substantial criminal penalties and injunction procedures that punish employers who engage in a pattern of knowing violations of the laws and effectively prohibit the employment of unauthorized aliens.

***Temporary Worker Program and Program for Currently Undocumented Workers***

Our efforts to ensure vigorous enforcement of our laws in the interior, and especially at the worksite, are crucial to controlling the problem of illegal immigration. But they alone will not be sufficient. We must create a lawful mechanism so that in the future, foreign workers can come into the United States on a temporary basis to fill jobs that U.S. workers do not want. This regulated channel for temporary workers would dramatically reduce the pressure on our borders, aid our economy and ease the task of our law enforcement agents inside the country. There is an inextricable link between the creation of a TWP and better enforcement at the border.

We also cannot ignore the presence in our country of about 12 million illegal aliens. Many of them have been living in the United States for a long time, doing jobs that our economy needs to have filled. As Secretary Gutierrez stated, it is simply not in our interest to have a population of this size remain in the shadows of our economy and often beyond the reach of law enforcement. We should seek to bring these people out of the shadows and under the rule of American law. That process must also involve acknowledgment and atonement for those who have broken our immigration laws.

Over the course of the past month, Secretary Gutierrez and I have had the chance to meet with many of you and your Senate colleagues. We listened carefully to your views on the main features of immigration reform in general and of this problem in particular. We are considering carefully what we have learned in our conversations. After we have had some time to consider your advice, I hope to return to you so that we can work together on sound and long overdue immigration reform legislation.

Today, though, I would like to share with you some of my own thoughts, as the head of the Department that would be charged with administering the TWP, as to some of the principles that should guide that program. These thoughts are shaped by our experience administering the system that was bequeathed to us by the 1986 immigration reform:

- First, we need to have clear and consistent application standards that will protect the applicant, guide those reviewing and granting each application, and defend against fraud. One of the mistakes made by the drafters of IRCA was the vagueness of its eligibility provisions. The requirements for applicants must be simple and straightforward. The more confusing or complicated the process is, the less likely it is that applicants will seek to enter the program, and the more likely it is that the system will be abused. We should minimize the number and complexity of fact-based adjudications that must be performed by a government agency.

- Second, we should carefully design judicial review of application decisions to ensure that applications are treated fairly and objectively but do not become a source of never-ending litigation. As a result of IRCA, judicial review provisions have jammed the federal court system with a huge backlog of legalization cases. Some of this litigation continues even today, 20 years later. Excessive litigation will break any immigration system.

- Third, we should not give illegal aliens who have already broken the law greater access to our courts than those who have legitimately applied for a visa or green card from outside our country. There is no reason to grant special treatment to those who flouted our laws to get here.

- Fourth, as with worksite enforcement, we need to have flexibility in implementing and managing a TWP and a program for currently undocumented workers. On an annual basis the DHS immigration agencies oversee the monitoring, evaluation, and processing of millions of legal immigrants. The work of implementing a TWP and a program for currently undocumented workers will be piled on top of this already enormous workload. To do this work well, we will need to have sufficient time and resources to develop regulations, develop and implement contract requirements, hire and train workers, and plan for the enhanced workload.

- Fifth, we cannot give a blank check of "confidentiality" for information learned in the course of adjudicating applications for the program. Counterterrorism and law enforcement investigators should not be hobbled by artificial walls that keep them from gaining access to relevant information that could protect Americans.

Workable reforms are needed in many areas of immigration law. Today, Secretary Gutierrez and I have shared with you some of our thoughts as to the measures needed to build a successful immigration system. I thank you for the opportunity to do so.

February 1, 2007

**The Honorable Nancy Pelosi**
Speaker
U.S. House of Representatives
H-232 US Capitol
Washington, DC 20515

**The Honorable Harry Reid**
Majority Leader
U.S. Senate
528 Hart Senate Office Building
Washington, DC 20510

Dear Speaker Pelosi and Majority Leader Reid:

As an alliance of our country's leading immigrant rights coalitions, organizations and allies, we thank you for all your hard work over the course of the 109th Congress to secure comprehensive immigration reform. 2006 was a pivotal year in advocating and organizing for truly just and humane immigration reform legislation. It was a year marked by the historic mobilization of immigrants and their supporters throughout the nation followed by the unprecedented increase in the civic participation of immigrant voters.

This year we look to the 110th Congress to present new opportunities to pass immigration reform legislation that contains the following elements:

1) Workable, inclusive, earned legalization – including the DREAM Act and AgJOBS Bill – that does not discriminate among undocumented immigrants based on the length of time in the U.S. or other arbitrary factors

2) Eliminate the unconscionable backlogs in the family immigration system and facilitate family reunification

3) Job training resources for all low-wage workers so the entire workforce may benefit from immigration reform

4) Clear separation of authority between federal and local law enforcement in immigration matters

5) Any worker visa program must provide strong worker protections that include the right to change jobs and the opportunity to gain US citizenship

6) Strengthen the enforcement of existing labor laws regardless of immigration status, including additional funds to the Department of Labor to enforce wage and hour laws. Until complete accuracy of data is ensured and safeguards are in place preventing discrimination and abuse, the use of SSA no match letters or other employment verification should be prohibited. Employers should not be a proxy for immigration enforcement nor should employment verification systems be used in order to take adverse job actions where there is a labor dispute



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7) Facilitate immigrant integration through increased resources for English as a Second Language classes, naturalization and legal services, prevent massive increases in application fees and simplifying the application process for naturalization

8) Ensure civil rights and due process for all immigrants, including the restoration of judicial discretion, redefining "aggravated felonies" to only include felony offenses, and restore access to federal courts and judicial review

9) Through immigration law reform and improvements in the management of the immigration system, decrease the need for mass detention, detention centers and detention beds. Where detention is deemed necessary, keep detainees as close to families and legal representation as possible, defend against indefinite detention, support parole of detainees, codify detention standards and post 9/11 detention issues of reforming material witness laws, develop alternatives to detention, and establish clear oversight authority that includes community participation to ensure that due process, civil and human rights standards are met

10) Establish mechanisms for accountability that halt the escalation of militarization on the border, end the senseless death of people trying to cross, incorporate broader training for enforcement officials, reduce violence from smugglers against migrants and border residents, and protect fragile ecosystems along the border

11) Restore the number of refugees that enter the United States to pre 9-11 levels

As comprehensive immigration reform legislation is drafted in the months ahead, we look forward to working with your offices to make sure the rights and opportunities of all immigrants are guaranteed.

Our organizations and allies are committed to implementing a field strategy that amplifies the voice of the community in support of the principles above.

Sincerely,

| Organization | State |
|---|---|
| Asociación Salvadoreña de Alabama | Alabama |
| Hispanic Interest Coalition of Alabama | Alabama |
| Arizona Coalition for Migrant Rights | Arizona |
| 5.18 People's Uprising Commemoration Committee | California |
| African Community Resource Center | California |
| Antioch Korean Christian Community Church | California |
| Asian Pacific American Legal Center of Southern California (APALC) | California |
| Asian Pacific Coalition (University of California-Los Angeles) | California |
| Asian Pacific Islander Americans for Fair Immigration Reform (Southern California) | California |
| Asian Pacific Student Association, Loyola Marymount University | California |
| Central American Resource Center (CARECEN-LA) | California |
| Chinatown Service Center | California |



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|---|---|
| Church of Peace (PCUSA) | California |
| Clergy and Laity United for Economic Justice of California | California |
| Coalition for Humane Immigrant Rights of Los Angeles | California |
| Colombianos en Acción | California |
| Dolores Mission Church | California |
| Global Exchange | California |
| Good Friend Mission | California |
| Good News Presbyterian Church of San Francisco (PCUSA) | California |
| HanNuRi Korean American Cultural Troupe | California |
| Illegality Preventive Christian Connection | California |
| Immigrant Legal Resource Center | California |
| Justice Overcoming Boundaries/Gamaliel Foundation | California |
| Khmer Girls in Action (KGA) | California |
| KOA Dance Federation | California |
| Korean Alliance for Peace and Justice | California |
| Korean Dry Cleaners - Laundry Association of Southern California | California |
| Korean Resource Center (KRC) | California |
| Korean Senior Citizen Mutual Club | California |
| Korean Westminster Presbyterian Church | California |
| Koreatown Immigrant Workers Alliance | California |
| Legal Services for Children | California |
| National Korean American Service and Education Consortium (NAKASEC) | California |
| Orange County Asian and Pacific Islander Community Alliance | California |
| Proyector Pastoral at Dolores Mission | California |
| Services, Immigrant Rights, and Education Network (SIREN) | California |
| South Bay Ko-Am Senior Center, Inc | California |
| University of Southern California, Asian Pacific American Student Assembly | California |
| Young Koreans United (YKU) of Los Angeles | California |
| Young Koreans United (YKU) of USA | California |
| Basil Doc's Pizza, LLC | Colorado |
| Centro Humanitario Para Los Trabajadores | Colorado |
| Colorado Democratic Latino Initiative | Colorado |
| Colorado Immigrant Rights Coalition | Colorado |
| Colorado Progressive Action | Colorado |
| Colorado Progressive Coalition | Colorado |
| Confianza-an Association of Latino Ministers | Colorado |
| Dignity through Dialogue and Education | Colorado |
| El Centro AMISTAD | Colorado |
| Free A Child | Colorado |
| Latin American Research and Service Agency | Colorado |
| Los Pobres, Inc. | Colorado |
| Padres/Jovenes Unidos | Colorado |
| Rights for All People | Colorado |
| SLV Immigrant Resource Center | Colorado |
| Junta for Progressive Action | Connecticut |



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|---|---|
| United Action Connecticut/Gamaliel Foundation | Connecticut |
| African Resource Center | District of Columbia |
| National Capital Immigrant Coalition | District of Columbia |
| American Friends Service Committee, Florida | Florida |
| C.O.D.I. Centro de Orientacion al Immigrante | Florida |
| Farmworker Association of Florida | Florida |
| Florida Immigrant Advocacy Center | Florida |
| Florida Immigrant Coalition | Florida |
| For The Children, Inc | Florida |
| Guatemalan Unity Information Agency | Florida |
| Haitian Women of Miami | Florida |
| People Acting for Communities Together | Florida |
| Unite for Dignity | Florida |
| We Count! | Florida |
| ABLE/Gamaliel Foundation | Georgia |
| Atlanta Chapter of American Immigration Lawyers Association | Georgia |
| Coalicion de Lideres Latinos-CLILA | Georgia |
| Korean-American Association of Greater Atlanta (KAAGA) | Georgia |
| Korean-American Information Technology Professionals Association (KATPA) | Georgia |
| LULAC Georgia Housing Commission | Georgia |
| Faith Action for Community Equity | Hawaii |
| Idaho Community Action Network | Idaho |
| Alliance of Filipinos for Immigrant Rights and Empowerment | Illinois |
| Asian American Institute | Illinois |
| Chicago Irish Immigrant Support | Illinois |
| Chinese American Service League | Illinois |
| Community Health Partnership | Illinois |
| Council of Islamic Organizations of Greater Chicago | Illinois |
| Council on American Islamic Relations - Chicago | Illinois |
| Dominican Literacy Center | Illinois |
| East Central Illinois Refugee Mutual Assistance Center | Illinois |
| Ethiopian Community Association of Chicago | Illinois |
| Hamdard Center for Health and Human Services | Illinois |
| Hanul Family Alliance | Illinois |
| Holy Family Church Immigration Services | Illinois |
| Illinois Caucus for Adolescent Health | Illinois |
| Illinois Coalition for Immigrant and Refugee Rights | Illinois |
| Immigration Project | Illinois |
| Interfaith Leadership Project | Illinois |
| Jewish Council on Urban Affairs | Illinois |
| Korean American Community Services | Illinois |
| Korean American Community Services | Illinois |
| Korean American Resource and Cultural Center | Illinois |
| Korean American Women In Need | Illinois |
| Latin Americans United | Illinois |



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| Latino Organization of the Southwest of Chicago | Illinois |
| Logan Square Neighborhood Association | Illinois |
| Office of Hispanic Catholics - Vicariate 1 | Illinois |
| Organization of the NorthEast | Illinois |
| Pilsen Neighbors Community Council/Gamaliel Foundation | Illinois |
| Polish American Association | Illinois |
| Sierra Leone Community Association of Chicago | Illinois |
| South Suburban Action Conference/Gamaliel Foundation | Illinois |
| The Immigration Project | Illinois |
| The Southwest Organizing Project | Illinois |
| United African Organization | Illinois |
| Gloria Mendez, Farmers Insurance | Iowa |
| La Bilingue, LLC | Iowa |
| National Catholic Rural Life Conference | Iowa |
| Network Against Human Trafficking | Iowa |
| Quad Cities Interfaith/Gamaliel Foundation | Iowa |
| Sky Mortgage | Iowa |
| Southwest Iowa Latino Resource | Iowa |
| St. Mary Hispanic Ministry in Marshalltown | Iowa |
| United for the Dignity and Safety of Immigrants | Iowa |
| Hispanos Unidos Northeast Wichita Chapter | Kansas |
| Hispanos Unidos Southwest Kansas Chapter | Kansas |
| Hispanos Unidos Wichita Chapter | Kansas |
| MORE2/Gamaliel Foundation | Kansas |
| Peace and Social Justice Center of South Central Kansas | Kansas |
| Sunflower Community Action | Kansas |
| Kentucky Coalition for Comprehensive Immigration Reform | Kentucky |
| Lexington Hispanic Association | Kentucky |
| Maxwell Street Legal Clinic | Kentucky |
| Centro Latino Maine | Maine |
| Immigrant Legal Advocacy Project | Maine |
| Main Council of Churches | Maine |
| Maine Civil Liberties Union | Maine |
| Maine Civil Liberties Union | Maine |
| Maine Council of Churches | Maine |
| Maine Immigrant Rights Coalition | Maine |
| Maine People's Alliance | Maine |
| Mano en Mano (Hand in Hand) | Maine |
| NAACP Portland Branch | Maine |
| Casa of Maryland, Inc. | Maryland |
| Lutheran Immigration and Refugee Service | Maryland |
| St. Matthew Church, Immigration/Detention Committee | Maryland |
| Agencia ALPHA | Massachusetts |
| American Civil Liberties Union of Massachusetts | Massachusetts |
| Anti-Displacement Center | Massachusetts |



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| Audrey M. Robert - International Institute of Boston | Massachusetts |
| Berkshire Immigrant Center | Massachusetts |
| Bishop Filipe C. Teixeira, OFSJC | Massachusetts |
| Brazilian Immigrant Center | Massachusetts |
| Brazilian Women's Group | Massachusetts |
| Center for Haitian American Civic Rights, INC | Massachusetts |
| Centro Presente | Massachusetts |
| Christian Church New Life | Massachusetts |
| Community Action Agency of Somerville | Massachusetts |
| Community Economic Development Center of Southeastern Massachusetts | Massachusetts |
| Diocese of Saint Francis of Assisi, CCA | Massachusetts |
| Doctors for Global Health | Massachusetts |
| Dominican Development Center Massachusetts | Massachusetts |
| East Boston Ecumenical Community Council | Massachusetts |
| El Comite Centroamericano de Emergencia en Massachusetts (CCEMA) | Massachusetts |
| Guatemala Solidarity Committee Boston | Massachusetts |
| Immigrant Assistance Center | Massachusetts |
| Immigrant Information Center | Massachusetts |
| Immigration Pastoral Center, Inc. | Massachusetts |
| Irish Immigration Center Boston | Massachusetts |
| Jewish Vocational Services of Boston | Massachusetts |
| Latinos Unidos en Massachusetts | Massachusetts |
| Lowell Community Health Center | Massachusetts |
| LULAC Metrowest Massachusetts | Massachusetts |
| Massachusetts Alliance of Portugese Speakers | Massachusetts |
| Massachusetts Asian & Pacific Islanders for Health | Massachusetts |
| Massachusetts Coalition for Occupation, Safety and Health (MassCOSH) | Massachusetts |
| Massachusetts Communities Action Network | Massachusetts |
| Massachusetts Immigrant and Refugee Advocacy Coalition | Massachusetts |
| Massachusetts Jobs with Justice | Massachusetts |
| MassVOTE, the Massachusetts Voter Education Network | Massachusetts |
| Northeast Action | Massachusetts |
| Office of Boston City Councilor Felix Arroyo | Massachusetts |
| One Lowell | Massachusetts |
| Proyecto Hondureno | Massachusetts |
| Roca, INC | Massachusetts |
| Sisters of St. Joseph of Springfield | Massachusetts |
| The Frosina Information Network | Massachusetts |
| Arab Community Center for Economic and Social Services | Michigan |
| MI Voice Michigan/Gamaliel Foundation | Michigan |
| Michigan Organizing Project | Michigan |
| MOSES/Gamaliel Foundation | Michigan |
| Hispanic Ministry Leadership Team, Archdiocese of St. Paul & Minneapolis | Minnesota |
| ISAIAH/Gamaliel Foundation | Minnesota |
| Korean Quarterly | Minnesota |



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| Metropolitan Congregations United/Gamaliel Foundation | Missouri |
| Montana People's Action | Montana |
| Center for Service and Justice, Creighton University | Nebraska |
| El Centro de las Americas | Nebraska |
| Justice for Our Neighbors | Nebraska |
| Nebraska Appleseed Center for Law in the Public Interest | Nebraska |
| Progressive Leadership Alliance of Nevada | Nevada |
| New Hampshire Immigrant Rights Task Force | New Hampshire |
| African Services Committee | New York |
| American-Arab Anti-Discrimination Committee New York Chapter | New York |
| Arab American Association of New York | New York |
| ARISE/Gamaliel Foundation | New York |
| Greater New York Labor-Religion Coalition | New York |
| Jews for Racial and Economic Justice | New York |
| Latin American Integration Center | New York |
| Long Island Immigrant Alliance | New York |
| Long Island Organizing Network/Gamaliel Foundation | New York |
| Make the Road by Walking | New York |
| New York Immigration Coalition | New York |
| Northern Manhattan Coalition for Immigrant Rights | New York |
| NYC AIDS Housing Network | New York |
| Talat Hamdani | New York |
| The Workmen's Circle/Arbeter Ring | New York |
| YKASEC - Empowering the Korean American Community | New York |
| North Carolina Latino Coalition | North Carolina |
| CAUSA | Oregon |
| Latinos Unidos Siempre | Oregon |
| Oregon Action | Oregon |
| Oregon Farmworker Ministries | Oregon |
| Pineros y Campesinos Unidos del Noroeste | Oregon |
| Rural Organizing Project | Oregon |
| Salem-Keizer Coalition for Equality | Oregon |
| Day Without an Immigrant Coalition | Pennsylvania |
| Pennsylvania Immigration and Citizenship Coalition | Pennsylvania |
| Pittsburgh Interfaith Impact Network/Gamaliel Foundation | Pennsylvania |
| Korean Americans for Just Immigration Reform (KAJIR) | Pennsylvania |
| Korean Alliance for Peace & Justice - Philadelphia chapter | Pennsylvania |
| International Institute of Rhode Island | Rhode Island |
| Coalition for New South Carolinians | South Carolina |
| Asociacion Latina of Tennessee | Tennessee |
| Conexion Americas | Tennessee |
| El Crucero (Latino Newspaper in Nashville) | Tennessee |
| Mid-South Interfaith Network for Economic Justice | Tennessee |
| Race Relations Center of East Tennessee, Inc. | Tennessee |
| Shelby County Mayor on Hispanic Affairs | Tennessee |



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| Tennessee Immigrant and Refugee Rights Coalition | Tennessee |
| Workers Defense Project | Texas |
| Boat People SOS | Virginia |
| Comunidades Unidas | Utah |
| Empower Hamptons Roads/Gamaliel Foundation | Virginia |
| Tenants and Workers Support Committee | Virginia |
| Asian Counseling and Referral Services (ACRS) | Washington |
| Asian Pacific Islander Coalition of Washington State | Washington |
| Hate Free Zone | Washington |
| Indo Chinese Cultural and Service Center | Washington |
| Korean Women's Association of Washington State | Washington |
| Northwest Immigrant Rights Project | Washington |
| Washington Community Action Network | Washington |
| Club San Sebastian | Wisconsin |
| ESTER/Gamaliel Foundation | Wisconsin |
| Federacion de Oaxaquenos del Medio Oeste | Wisconsin |
| Hispanic Chamber of Commerce of Wisconsin | Wisconsin |
| JOB/Gamaliel Foundation | Wisconsin |
| JOSHUA/Gamaliel Foundation | Wisconsin |
| Milwaukee Interfaith Coalition Allied for Hope/Gamaliel Foundation | Wisconsin |
| Peace Action Wisconsin | Wisconsin |
| The Interfaith Coalition for Worker Justice of South Central Wisconsin | Wisconsin |
| Voces de la Frontera | Wisconsin |
| Wisconsin Coalition to Normalize Relations with Cuba | Wisconsin |
| WISDOM/Gamaliel Foundation | Wisconsin |

| Organization | Regional/National |
|---|---|
| Northwest Federation of Community Organizations (NWFCO) | Regional |
| American Families United | National |
| Breakthrough: Building Human Rights Culture | National |
| Center for Community Change | National |
| Enlace | National |
| Fair Immigration Reform Movement (FIRM) | National |
| Gamaliel Foundation | National |
| National Alliance of Latinamerican and Caribbean Communities (NALACC) | National |
| National Asian Pacific American Women's Forum | National |
| National Coalition for Asian Pacific American Community Development | National |
| National Council of Jewish Women | National |
| National Federation of Filipino American Associations (NaFFAA) | National |
| National Immigrant Solidarity Network | National |
| National Korean American Service and Education Consortium (NAKASEC) | National |
| National Network for Arab American Communities | National |
| Presbyterian Church (USA) | National |
| South Asian American Leaders of Tomorrow (SAALT) | National |



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| Southeast Asian Resource Action Center (SEARAC) | National |
| The Shalom Center | National |
| United Methodist Church, General Board of Church and Society | National |
| UniteFamilies.org | National |
| Workers' Centers Network, Interfaith Worker Justice | National |

| Individuals | State |
|---|---|
| Dr. Richard Moreno | Colorado |
| Carmela G. Alden | Iowa |
| Marty Deputy | Kentucky |



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# Principles for Immigration Reform of the Fair Immigration Reform Movement

**The United States Should Stand for the Principles of Justice and Equity.**
Yet our immigration laws fail on both counts. It is time to reform our laws and strengthen these traditions. Furthermore, immigration policy does not stand alone. It is inextricably tied to how the United States treats all workers, how this nation relates economically and politically to poorer nations, how we treat our most vulnerable, and how this nation may continue to grow and prosper economically and culturally.

**The Status Quo is Broken.**
Current immigration policies leave millions of immigrants in the shadows, vulnerable to abuse because they lack legal documentation, and unable to fully participate in a country they help build. The mismatch between outdated policies and the economic realities of our country has led to thousands of deaths at the border and to millions of immigrants being denied basic rights. As a consequence, the nation's economic needs go unmet and countless families remain divided.

**Real Reform Must Address the Root Causes of Migration**
The flow of immigration results mainly from changes in the global economy, uprooting individuals and families in search of a better life. These immigrants, many of whom are undocumented workers, contribute significantly to our nation's economic life and are now a critical part of the labor force.

**We Need to Restore Integrity, Equity, and Effectiveness to our Immigration System.**
It is possible to have an immigration system that respects the rights of all, protects individuals fleeing persecution, makes us all more secure, and acknowledges the economic, social, and cultural contributions of immigrants. We need an approach to immigration that is safe, efficient, and accountable. This stands in stark contrast to cynical policy proposals that waste precious resources on impractical border fences, recruit local law enforcement, businesses and churches into immigration enforcers and threaten basic principles of civil rights, such as due process and proportional punishment.

## The Solution: A Comprehensive Approach that Makes Sense for America and its Newcomers

**Provide a Path to Permanent Resident Status and Citizenship for All Members of Our Communities.** Our immigration policy needs to be consistent with reality. Most immigrants are encouraged to come to the United States by economic forces they do not control. Immigrants bring prosperity to this country, yet many are kept in legal limbo. Legalization of the undocumented members of our communities would benefit both immigrants and their families *and* the U.S.-born, by raising the floor for all and providing all with equal labor protections.

**Reunite Families and Reduce Immigration Backlogs.** Family unity is a guiding principle in federal policy. Immigration reform will not be successful until we harmonize public policy with one of the main factors driving migration: family unity. Currently families are separated by visa waiting periods and processing delays that can last decades. Comprehensive immigration reform must strengthen the family preference system, by increasing the number of visas available both overall and within each category. In addition, the bars to re-entry must be eliminated, so that no one who is eligible for an immigrant visa is punished by being separated from their family for many years.

**Provide Opportunities for Safe Future Migration and Maintain Worker Protections.**
Any worker visa program must include provision for full labor rights (such as the right to organize and independent enforcement rights); the right to change jobs; and a path to permanent residence and citizenship. A regulated worker

visa process must meet clearly defined labor market needs, and must not resemble current or historic temporary worker programs. The new system must create a legal and safe alternative for migrants, facilitate and enforce equal rights for all workers, and minimize the opportunities for abuse by unscrupulous employers and others.

**Respect the Safety and Security of All in Immigration Law Enforcement.** Immigration enforcement laws already in place are creating fear among immigrant and nonimmigrant communities alike. Ineffective and costly policies should not be expanded, but new alternatives and solutions should be sought. Fair enforcement practices are critical to rebuilding trust among immigrant communities and protecting the security of all. Any immigration law enforcement should be conducted with professionalism, accountability, and respect. Furthermore, there should be effective enforcement of laws against human trafficking, and a border strategy that emphasizes training, accountability and competency that rejects militarizing the border with Mexico. In all cases, immigration reform must respect clear boundaries between federal immigration enforcement, local law enforcement and the enforcement of labor laws.

**Recognize Immigrants' Full Humanity and Eliminate Barriers to Full Participation.** Immigrants are more than just workers. Immigrants are neighbors, family members, students, members of our society, and an essential part of the future of the United States. Our immigration policies should provide immigrants with opportunities to learn English, naturalize, lead prosperous lives, engage in cultural expression, and receive equitable access to needed services and higher education. FIRM opposes unreasonable barriers to naturalization, including excessive fees, endless and discriminatory background checks, and grinding bureaucracy.

**Restore Fundamental Civil Rights of Immigrants.** Since September 11, 2001, selective and discriminatory implementation of sweeping law enforcement policies has not only failed to make us safer from future attacks, but undermined our security while eroding fundamental civil liberties. Failure to protect these fundamental rights goes against the core values of a democracy, and, therefore, the United States. For the benefit of everyone, and not just immigrants, these basic rights must be restored and protected.

**Protect the Rights of Refugees and Asylees.** The United States has always been viewed as a safe haven for those fleeing persecution. Yet, since September 11, 2001, significantly fewer refugees have been admitted. The U.S. government has an obligation to remove barriers to admission and save the lives of thousands of people across the world fleeing for their lives. In addition, our current policies treat many asylees unequally based on their country of origin. Our country must ensure fair and equal treatment of individuals and their family members seeking asylum, and end the inhumane detention and warehousing of asylum seekers.

**Economic Justice.** America's immigration system plays an important and often under-recognized role in United States labor policy, opening doors to particular populations to serve the short and long-term needs of American industry. Under such a dynamic, immigrants can be pitted against native-born workers in a labor market under stress from general economic insecurity. We believe strongly in the solidarity of all workers, especially low wage workers. Any worker – immigrant or native born – vulnerable to exploitation threatens the standing of all workers.

**No Criminalization.** The United States has a long and revered immigrant past; however current immigration laws, which seek to criminalize future flows of immigrants and workers, undermine that history. Governments that selectively legislate certain groups of people as criminal in their behavior or appearance and limit access to government services and protections under this basis run the risk of creating abuse of authority and discrimination. Such abuse increases exponentially when factors of race, religion, national origin, and sexual orientation are involved.

***(Each of these principles are reflected in a letter dated February 1 addressed to Congressional Leadership laying out FIRM's policy agenda for comprehensive immigration reform in 2007.)***

**Senator Grassley's Statement**
**Judiciary Committee Hearing on Immigration Reform**
**Wednesday, February 28th at 10:00 a.m.**

Every day, we in Congress deal with issues that aim to improve the everyday lives of the American people. The Senate body is known for its pragmatic approach to our country's problems, and we take our legislative duties very serious. But, unfortunately, we don't always think hard enough about the long-term consequences of the laws we enact. We are often ignorant or oblivious to the possible pitfalls of the actions we take. The 1986 Immigration Reform and Control Act is a prime example.

The immigration bill we passed in 1986 was not only short-sighted but it was unworkable. It was soft on enforcement, and weak on legal reforms. At that time, this committee believed that a legalization component was in the best interests of the country. The American people – myself included - were led to believe that illegal immigration would decline with an amnesty program. Evidently, we were wrong. The 1986 bill failed us.

We must keep history in mind when we create a new system for our future. If we're not careful, we'll create an unworkable immigration system. The devil will be in the details. But, if it's not done right, we face the risk of unraveling the glue that binds this country together.

The question we must ask ourselves is "What kind of system do we want – not just for today or tomorrow – but for future generations?"

We should want an immigration system that provides a legal and safe avenue for those who want to come here. We should desire a visa application process that is secure but efficient. We should want an employer verification system that is electronic and reliable for our country's small businesses. We should place an emphasis on helping undeveloped countries help themselves so that poverty is reduced and economic freedom is achieved. We should want an immigration system that makes sense, and doesn't repeat the mistakes made in the past.

In addition to these principles, we should make sure that loopholes are eliminated. We cannot allow illegal aliens to bypass the tax system or ignore our medical standards. We cannot be lenient when it comes to requiring knowledge of the English language. We must encourage assimilation, and stay true to our founding values.

We also need to reduce fraud and improve the efficiency of our bureaucracies. Deserving immigrants are caught in red tape, while fraudulent applications are approved. Applications are lost.

The U.S. Citizenship has to be forced into the 21st Century when it comes to technology. We need to provide resources and personnel so that national security cases aren't overlooked, and so that citizenship applications aren't rubberstamped. I have a hard time overcoming the doubt that the agency we currently have in place could handle a program for millions of lawbreakers.

I would like my colleagues to remember one thing as they consider comprehensive reform, particularly a legalization program. I want them to think about the effect that such a program would have on our law enforcement and to our border patrol. Every day, men and women put their lives on the line to enforce our laws and prohibit illegal border crossings. Border patrol agents face drug smugglers and sex traffickers, and people who wish to do us harm. If we grant legalization to people that illegally crossed our border, we're undermining our agents. We'll demoralize them, and in turn, they'll lose faith in us.

Finally, I do not think that the change of hands in Congress is a mandate for amnesty. Rather, it was a message to all members of Congress that we haven't done enough to stop the flow of illegal immigrants or enforce the laws we have on the books.

For the sake of the American people and for the future of our country, I hope my colleagues will think twice before they speak in support of amnesty. I hope this Congress provides fixes so that my grandkids aren't picking up the mess that we create. We've done it once, and once is enough.

**Testimony of**
**Carlos M. Gutierrez**
**Secretary of Commerce**
**Before the**
**Senate Judiciary Committee**
**February 28, 2007**

Chairman Leahy, Ranking Member Specter, Members of the Committee, I'm pleased to have this opportunity to discuss immigration reform with you. Thank you for your leadership and hard work on this important issue.

For several years, we have been in the midst of a vigorous debate about the role of immigration in this country. This is not the first time in our nation's history that immigration has been a source of contention in the halls of Congress and communities across America.

One result of this passionate debate is that many words in our immigration discourse have lost their meaning, with people often just talking past each other. However, when you peel back the rhetoric and actually have a conversation with Members on both sides of the aisle and all sides of the issue – as I have on dozens of occasions over the past few weeks – you find that while there are policy differences, we are much closer to common ground.

Secretary Chertoff and I come before you today on behalf of the President with a simple message: we believe that, with some hard work by both Republicans and Democrats, a solution can be found, and we pledge to roll up our sleeves and work with you over the next few weeks and months to find a solution that serves our national interest.

In the spirit of finding a solution, here is a framework that the Administration believes can help guide us toward good legislation that addresses all the essential pieces of reform:

**Secure U.S. borders**

First, immigration legislation must secure our borders. As Secretary Chertoff will detail in a moment, this Administration has taken dramatic steps in this area, including:

- doubling spending on Border Security,
- deploying the National Guard to the Southern Border,
- initiating the Secure Border Initiative within the Department of Homeland Security,
- ending "Catch and Release" at the border, and
- increasing the number of Border Patrol agents.

These efforts have produced results, and they will continue.

**Give employers the tools necessary to the verify the immigration status of workers they hire, and hold them accountable to do so**

Next, legislation should provide employers with the tools necessary to verify the immigration status of who they hire and hold them accountable to do so.

For decades, under Republican and Democratic presidents, the Federal Government failed to systematically enforce immigration laws at the worksite. Under the President's leadership and with Secretary Chertoff's efforts, this policy has ended.

Last year, the U.S. Immigration and Customs Enforcement (ICE) arrested more than 700 individuals on criminal charges and more than 3,600 on administrative charges. This is seven times the number of arrests completed by the old U.S. Immigration and Naturalization Service (INS) in its last full year of operation.

While the Federal Government is moving forward in the enforcement arena, more can be done to provide businesses with a workable way to verify the legal status of their employees. Tamper-proof biometric identity cards should be established for foreign workers so that employers have no excuse for violating the law.

To effectively deter employers from hiring illegal workers, we must ensure that they face real consequences. Our current civil penalties for employers hiring illegal workers, however, are simply inadequate.

Any employer of reasonable size can write off a small fine as the cost of doing business. I look forward to working with you to establish civil penalties that truly punish egregious violators.

**Provide a lawful channel for employment through a temporary worker program**

Third, we must establish a lawful channel for employment through a temporary worker program.

A temporary worker program strengthens our national security by providing a legal way for workers to enter the country, allowing our Border Patrol agents and law enforcement personnel to focus their efforts on apprehending dangerous criminals attempting to cross the border – not men and women coming here to work.

A temporary program is just that – temporary. This ensures that the program does not become an opportunity to stay in the United States indefinitely.

A temporary worker program must also serve our economy's need for labor. There is a reality that we must confront: many jobs in this country will not be filled without foreign labor because Americans are unwilling to fill these jobs.

Businesses across the country repeatedly report difficulty filling jobs. There were 4.4 million job openings in December, 2006.

Not only is this an issue right now, but it will increasingly be a problem for us in the future unless we acknowledge and address our economy's need for labor. Let me be

clear on this point: without people to fill the jobs it creates, our economy will not continue its growth.

And this growth has been remarkable. Our economy has added jobs for 41 straight months, more than 7.4 million jobs have been created, and real wages and real after-tax income have both increased for Americans. Since 2001, productivity had strong annual average growth of 3.1 percent.

We know that immigration has been an essential part of this growth: immigrants make up 15 percent of our labor force and account for about half of the labor force growth since 1996. Even with the flux of immigrants, the American labor market remains tight, with the unemployment rate at 4.6 percent.

Immigration contributes to economic growth in three important ways. First, immigrants are grabbing the initial rungs of the economic ladder in this country – taking jobs in agriculture, hospitality, and construction where employers can't find Americans to do them.

Their work in these jobs directly provides Americans with affordable goods and services that sustain our quality of life. We also know that immigrants have a multiplier effect in our economy by supporting American businesses and workers in the supply chain who depend on the affordable goods and services produced by immigrants.

Moreover, immigration supports the social mobility of Americans. Between 1996 and 2004, the number of high school dropout American adult citizens fell by 4.6 million. Americans in general are increasingly attaining a basic level of education – and with that education, moving on to higher-paying jobs.

As Americans rise, the jobs they leave behind are filled by immigrants eager to improve on the standard of living from their home country and pursue their own path of social mobility.

Finally, we know that immigrants are an essential source of the knowledge-based skills that are necessary to compete in the 21st century. In the high-skill fields of computers, mathematics, engineering, architecture, and science, immigrants make up more than 40 percent of the workers with PhDs.

As countries like China, Japan and the United Kingdom face declining populations, the United States can make immigration a competitive advantage to help maintain a vibrant and growing economy. In order for this to happen, however, immigration reform must recognize our economy's need for workers at both ends of the skill spectrum.

**Bring illegal workers out of the shadows without amnesty**

We must also work together to bring illegal workers out of the shadows without amnesty. Most credible sources estimate about 12 million people are in the United States illegally today. It simply is not in the national interest for a population of this size to remain underground, connected only marginally to mainstream society and beyond the reach of law enforcement.

The President is against amnesty and has suggested several principles to resolve the status of these illegal immigrants, including:

- undergoing a criminal background check;
- paying a meaningful penalty;
- paying taxes;
- requiring them to wait their turn in line;
- learning English; and
- having a job.

But let's be clear: there should be no "special deals" for people who have broken the law. Congress should be clear that if illegal immigrants come out of the shadows, get right and stay right with the law, and pay appropriate penalties, then applying for permanent status is a possibility. But we are not going to reward those who came here or stayed here illegally.

**Promote the assimilation of new immigrants**

Fifth, we must recognize that the United States is a nation of immigrants, and that over the course of America's history our ability to assimilate new immigrants has been a tremendous national strength. In an era of global competition, this national strength can be an enormous competitive advantage – but assimilation to American ideals and values won't happen on its own. We must harness this national strength by actively promoting the assimilation of new immigrants.

While other countries often struggle to assimilate immigrants, becoming an American citizen has always been more broadly accessible to hard-working people of good character because it is based on fidelity to a core set of principles and personal attachment to this country – not one's race, religion, class or personal connections.

English is the language of custom and opportunity. We do immigrants a great disservice if we enable them not to learn it. In fact, one of the best things that ever happened to me was that I was forced to learn English soon after I arrived in this country.

Assimilation doesn't come easily – it is the result of a deliberate decision to choose America, her language, her customs and to identify with her cause. This doesn't mean new immigrants have to jettison their ethnicity, native language or customs; but it does mean embracing what unifies us as Americans.

There also must be a public and private commitment to assimilate new immigrants. The President has started this effort by appointing the Task Force on New Americans, and we look forward to working with you to find ways to foster the assimilation of new immigrants.

**All policies must be workable**

Finally, all policies must be workable. We made a mistake in 1986 by not crafting a law that was workable. We should not repeat that mistake.

The only way we will pass good legislation is by working together to craft a solution that both Republicans and Democrats can support and that is worthy of our great tradition as a nation of laws and a nation of immigrants. We believe that these principles provide a path forward. We recognize that there are many tough questions inherent in writing legislation of this scope, and we look forward to the opportunity to work with you to resolve them.

The good news here is that all the pieces necessary for immigration reform are on the table. The question before us is simply this: do we have the political will to assemble them in a way that furthers the national interest?

I believe we do, and I would be pleased to answer your questions.

**HONDURAN UNITY-UNIDAD HONDURENA**
**1421 S.W. 8th. Street Suite # 4 Miami, Fl. 33135. / Tel. 305-285-1755**
**AMERICAN FRATERNITY-FRATERNIDAD AMERICANA &**
**10364 West Flagler Street , Miami, Fl. 33186. / Tel. 305-228-1208**
**PERUVIAN AMERICAN COALITION-COALICION PERUANA-AMERICANA**
**19108 S.W. 80th. Court Miami, Fl. 33157. / Tel. 786-242-4280**

**Miami, Florida**
**Wednesday, February 28, 2007**

**The Honorable Chairman Senator Patrick J. Leahy**
**United States Senate**
**Committee on the Judiciary**
**224 Dirksen Senate Office Building**
**Washington, D.C. 20510**
**Ref: Hearing on "Comprehensive Immigration Reform"**

**Dear Chairman Leahy:**

**On behalf of the "Honduran Unity", "American Fraternity" and the "Peruvian American-Coalition", (all non profit community based and immigrant advocacy groups founded in the city of Miami over 15 years ago), we wish to commend your leadership and thank your efforts by holding a hearing today along with your Honorable Committee Colleagues on "Comprehensive Immigration Reform" with such distinguished witnesses such as the Honorable Secretary of Commerce Carlos Gutierrez, and the Honorable Secretary of the Department of Homeland Security Michael Chertoff, whose testimony is fundamental in the debate not only fix our broken immigration system, secure our borders , establish a temporary guest worker program to secure an orderly, human and legal entry into our country but moreover bring about justice and fairness within the traditions and values of our great nation which will become even a greater one if enacted the "CIR".**

**We would kindly request that you consider that our letter be made part of the record in this historical and fundamental hearing as we have several concerns and suggestions for your kind consideration:**

**Page# 2/3.**

1. **We kindly urge and request from the Senate Judiciary Committee to request from the Administration of President George W. Bush through both distinguished witness to consider as an act of good will and faith, working relationship, and to cease tensions within the community to grant an administratively discretionary moratorium on raids, detentions and deportations of Non-Criminal Immigrants whom will benefit from the approval of a Comprehensive Immigration Reform. These immigrants whom will benefit from a CIR are under a perpetual fear with the current operations by the DHS through ICE not only for themselves but for their minor children many US born and its negatively impacting our economy because of the fear to send their children to school, going to work many our own fellow Americans don't do and reducing their economical resources to support their families and purchase capability among others. We recall the words of former INS Commissioner Doris Meissner that the focus of the Agency was not to conduct massive deportations and that their resources were to detain and deport Criminal but not Non-Criminal Immigrants, which represent a majority. Granting a moratorium is a measure of common sense which we pray and hope it prevails We enclosed a copy of the resolution addressed to President George W. Bush and approved last February 20, by the Miami-Dade County Board Commissioners in support of the moratorium for non criminal immigrants and for the approval of a CIR. Similar resolutions are being considered across the nation.**

2. **"Detention Centers of Undocumented Immigrant Minors": We bring to your attention our concern and kindly urge and request that you consider and to bring about the issue of these minors whom we seek and support their release to parents and/or relatives whom are willing and able to provide for their care under a supervision plan program that they report to a local ICE officer and not be placed under a detention center facility which there have been serious critical reports of abuse with regards to their detention and conditions of the detention centers. We encourage that the current system should be revised and restructured.**

**Page # 3/3.**

3. **"Comprehensive Immigration Reform": We commend your leadership and courage to resolve this complex issue in a simple and humane manner by holding this committee's first hearing but when we speak about a comprehensive immigration reform we must also consider the following: A) That it includes a path to citizenship with rules and regulations that enable not only for undocumented immigrants to legalize their status but also those refugees whom have been under a temporary protected status (TPS) among others. B) Reinstate Section 245-i. C) Increase the annual permanent residency adjudication cap from one million to three or four million per year for a temporary period of the next five years and may be adjusted to decrease or increased same on an annual basis depending our country conditions and upon the request of the Administration in power and consideration and approval of our US Senate and Congress. This measure will decrease current backlogs and avoid new ones. For those beneficiaries of the CIR they will await in the back of the line of those whom have been waiting for years to adjust to a permanent residency status. D) Enable beneficiaries of CIR to obtain an EAD card for employment. E) That it also establish humanitarian and discretionary waivers and motions to reopen cases in order to benefit from CIR specially those with humanitarian issues and keeping the family united when those have an order of removal and or final order of deportation basically may have exhausted legal recourses under stricter Immigration Laws approved in 1996 and or some have been even misrepresented. This discretionary authority may be granted to the Director of USCIS and to the Immigration Judges, Officials and the Board of Immigration Appeals.**

4. **"Temporary Protected Status": We kindly urge and request that the Honorable Secretary of the Department of Homeland Security Michael Chertoff consider to extend the temporary protected status which will expire next July 05, 2007 for over 70,000 Honduran and 5,000 Nicaraguan refugees and on September 09, 2007 for over 220,000 Salvadorans all victims of natural disasters and civil war and as these countries are under a lengthy reconstruction process. on renewal will cause deportation and chaos to the region, which is an emerging democracy and economy.**
**We enclosed a joint letter addressed to President Bush in support of the above mentioned matter signed by Congresswoman Ileana Ros-Lehtinen, Congressman Lincoln Diaz-Balart and Congressman Mario Diaz-Balart dated February 01, 2007.**

**Thanking you in advance,**
**Sincerely,**

| | | |
|---|---|---|
| **Jose Lagos** | **Nora Sandigo** | **Sergio Massa** |
| **President** | **Executive Director** | **President** |
| **Honduran Unity** | **American Fraternity** | **Peruvian American Coalition** |

A RESOLUTION CALLING FOR A MORATORIUM ON DETENTIONS & DEPORTATIONS AND IN FAVOR OF COMPREHENSIVE & FAIR IMMIGRATION REFORM.

WHEREAS, we the people of Miami-Dade county believe in the dignity of all our residents, regardless of immigration status, race or class and recognize their many contributions to the social, spiritual, cultural and economic life of the county, the state and the nation; and

WHEREAS, we acknowledge that except for our native Seminole or Micosukee brothers and sisters, all of our ancestors, either by force or by choice migrated from other lands hundreds, decades or mere years ago; and

WHEREAS, Miami has been internationally recognized by the United Nations as the most diverse city of the world with sixty percent (60%) of our family, neighbors, fellow students, co-workers, employees, congregants, community leaders and friends hailing from outside the United States; and

WHEREAS, Florida's prosperous primary industries, agriculture, tourism and construction rely and greatly benefits from immigrant and other workers' blood, sweat and tears; and

WHEREAS, many of those who have come fleeing political or economic violence and oppression instead of being embraced with fairness, opportunity and justice as are the stated values of our nation, are denied opportunities to adjust their status instead being relegated to the shadows of second class citizenship and vulnerable to exploitation; and

WHEREAS, Approximately 5,000 kids yearly who have grown up in Florida, graduate from a Florida high school but don't yet have the proper immigration documentation, through no fault of their own, are unable to secure a drivers' license or afford college and in fact live in fear of their parents or themselves being deported to a land they do not know or a language they do not speak; and

WHEREAS, our belief and investment in strengthening families and other social networks as building blocks for healthy and cohesive communities is being threatened by the detentions and deportations conducted by the Department of Homeland Security based on unfair, outdated and dysfunctional policies, tearing families apart, creating panic and fear greatly affecting the fabric of our communities; and

WHEREAS, the Dade Congressional delegation has endorsed and is endeavoring to pass bi-partisan comprehensive immigration reform that recognizes the crucial contributions immigrants make to our nation, to enable employers to legally hire needed immigrant workers, to protect all workers, regardless of immigration status, from mistreatment by employers, to facilitate family reunification, and to restore civil rights and civil liberties to all; and

WHEREAS, the actions and practice of The Department of Homeland Security and its operative agency, Immigration & Customs Enforcement have wrecked panic, disrupted the social, economic an moral integrity of our communities; and

NOW, THEREFORE, BE IT RESOLVED THAT THE MIAMI-DADE COUNTY COMMISSION URGES

- THE PRESIDENT OF THE UNITED STATES TO EXERCISE HIS EXECUTIVE POWER AND THE DEPARTMENT OF HOMELAND SECURITY TO EXERCISE ITS DISCRETIONARY CAPACITY TO CEASE ALL DETENTIONS AND DEPORTATIONS, AS A MORATORIUM UNTIL COMPREHENSIVE IMMIGRATION REFORM IS PASSED.

**Congress of the United States**
**Washington, DC 20515**

February 1, 2007

The Honorable George W. Bush
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. President:

We are writing to request that you designate the countries of El Salvador, Honduras and Nicaragua for Temporary Protected Status (TPS). These countries have faced a number of natural disasters that have caused wide-spread damage and made returning to the countries dangerous or their nationals in the United States.

El Salvador, Honduras and Nicaragua are still recovering from severe devastation and demolition caused by earthquakes, volcanic activity and hurricanes. These natural disasters destroyed innumerable lives and caused significant damage to the infrastructure and economy of these countries.

The purpose of TPS is to create a safe haven for undocumented immigrants who face deportation to a country which presents a dangerous situation. Salvadorans, Hondurans and Nicaraguans deported to their homelands will return to an unstable situation incapable of safely supporting their return. Clearly, the situation in these countries is dangerous and, we believe, a clear example of why Congress included TPS in the Immigration and Nationality Act.

Furthermore, the remittances sent by these hardworking, tax paying, and law abiding nationals working in the U.S. have been contributing factors in the recuperation of these fragile economies and emerging democracies.

We would like to thank you, Mr. President, for your support in the past for renewal of TPS for various deserving countries, and respectfully request, in accordance with all applicable rules and regulations, your serious consideration of TPS for El Salvador, Hondurans and Nicaragua. By renewing TPS, you would be making another compassionate contribution to the ongoing reconstruction of El Salvador, Honduras, and Nicaragua.

Cordially,

Lincoln Diaz-Balart

Ileana Ros-Lehtinen

Mario Diaz-Balart

PRINTED ON RECYCLED PAPER

Statement
*United States Senate Committee on the Judiciary*
**Comprehensive Immigration Reform**
**February 28, 2007**

**The Honorable Patrick Leahy**
United States Senator , Vermont

Statement of Chairman Patrick Leahy
"Comprehensive Immigration Reform"
Senate Judiciary Committee
February 28, 2007

I thank Secretary Gutierrez and Secretary Chertoff for agreeing to appear before the Committee today. I hope their participation will demonstrate the President's wholehearted commitment to working with us to enact comprehensive immigration reform legislation this year. Without the Administration's earnest engagement on this issue, our efforts are likely to suffer the same fate they did last year. This Committee reported a comprehensive immigration reform bill only to see Republican congressional opposition stall that effort, prevent a House-Senate conference and, instead, force through a bill calling for billions to be wasted constructing a 700-mile fence along our 2,000-mile Southern border. This year we have a renewed opportunity to do the right thing — one which may not come along again.

By their votes in the most recent elections, the American people have reaffirmed America's traditional place as a nation of immigrants. We are not anti-immigrant or racist. We understand people seeking a better life for their children and grandchildren as naturally as we do. Americans understand that comprehensive immigration reform does not mean criminalizing the hard work of law-abiding people, deporting millions of families who have lived here for years or seeking to wall ourselves off from our neighbors and the world around us. Thankfully, the politics of fear did not succeed. Americans rejected the poisonous rhetoric of intolerance in favor of a more confident, realistic and humane approach that finds strength in diversity and human dignity.

If we are to reclaim America's promise, we need to keep our eyes on the core principles of comprehensive reform. To his credit the President has called for comprehensive legislation and "an immigration system worthy of America." Now he must demonstrate his commitment to those principles and lead Republicans toward achieving that goal so that, not as Democrats or Republicans but as Americans, we can honor our history as a nation of immigrants and strengthen our future and leadership in the world.

The President has said that no one element of immigration reform can succeed without a comprehensive approach. The Committee-reported bill last year took a comprehensive approach. The Senate-based bill took a comprehensive approach. The House-generated bill that the President signed just before the election did not.

Our broken system has fostered incongruities from coast to coast -- from our biggest cities to our smallest towns, and from our factories to our farms. Reform is overdue. We must be realistic about the millions of undocumented people in this country. We need to bring people out of the shadows. When we provide opportunity for people to be responsible, the vast majority will be and we will all be the better for it. We can and should do everything necessary to protect opportunities for our domestic workers. We need to reduce illegal immigration by reforming our temporary worker programs to

allow more access to the unfilled jobs and unmet needs in our economy. These are not either-or propositions; we can do both.

Dairying in Vermont is more than a job or an industry – it is a way of life. Our agricultural economy depends on the hundreds of millions of dollars dairy farmers bring to our state every year. But that way of life is threatened when family dairies cannot find help to milk the cows, deliver calves and keep up with chores. Finding help on the farm is becoming increasingly difficult for hundreds of Vermont farms. Many have turned to migrant workers from Mexico and Central America. Currently, Vermont dairies are depending on an estimated 2,000 foreign workers. We know there is something wrong with this hodge-podge arrangement, and we need to do better. We need to bring order and common sense to a broken system. Vermont dairy farmers should not have to choose between saving their family farms and obeying the law.

The President has acknowledged that "you cannot deport 10 million people who have been here working." He said at the Southern border last August: "It's unrealistic. It may sound good in certain circles and political circles. It's not going to work." He went on to outline what he called "the best plan" for those here illegally. He recommended saying to them: "If you've been paying your taxes, and you've got a good criminal record, that you can pay a fine for being here illegally, and you can learn English, like the rest of us have done, and you can get in a citizenship line to apply for citizenship. You don't get to get in the front, you get to get in the back of the line." He called this a "reasonable way to treat people with respect and accomplish what we want to accomplish, which is to be a country of law and a country of decency and respect." I agree, and those were precisely the elements contained in the Committee and Senate bills last year.

Our mission must be to create an immigration system for the 21st Century that honors the great history and tradition of our nation and secures our future. What we must always remember is that immigrants are real people who have families, and hopes, and dreams. In most cases, these are people who want to contribute, who work hard, who are striving to overcome the fortuitousness of where they were born. They contribute to our armed forces and sacrifice to protect the freedoms we have and they hope to enjoy. They contribute to our economy, to our lifestyle, and help with our most important responsibility when they help raise America's children. As the grandson of immigrants to the United States, I will work to reaffirm the promise of America's lamp beside the golden door for the poor and oppressed.

**Statement of the National Immigrant Justice Center**
**Hearing of the Senate Committee on the Judiciary**
**Comprehensive Immigration Reform**
**February 28, 2007**

The National Immigrant Justice Center, a partner of Heartland Alliance for Human Needs & Human Rights, provides direct legal services to and advocates for immigrants, refugees, and asylum seekers through policy reform, impact litigation, and public education. We commend the Senate Committee on the Judiciary for holding today's hearing on comprehensive immigration reform and express gratitude to the Chairman for the opportunity to submit a statement for the hearing record. Chairman Leahy, Immigration Subcommittee Chairman Kennedy, Senator Durbin, and many members of the Committee from both the majority and minority parties have worked tirelessly to reform our nation's broken immigration system in a way that honors American values, serves our national economy, and protects the due process rights of immigrants, refugees and asylum seekers.

Reform is a bipartisan and bicameral endeavor, and also requires the active participation of the Executive Branch. The National Immigrant Justice Center appreciated the statements of President Bush in his State of the Union Address on January 23, 2007, in favor of a legalization program to help bring undocumented immigrants out the shadows and in support of a temporary worker program to pair employers with willing workers. These reforms are necessary. The current immigration system is rife with backlogs and inefficiencies. It separates families, violates due process, limits opportunities for protection for refugees, and prevents businesses from hiring the immigrant labor they depend upon for economic productivity.

The National Immigrant Justice Center calls on the President and his cabinet, including Secretaries Chertoff and Gutierrez, to aggressively press for legislation this year. Reform must be fair, however. Elements of the President's proposals, as detailed in a fact sheet released by the White House on January 23, 2007, fail to protect the basic rights of immigrants, refugees and asylum seekers.

*Comprehensive Immigration Reform Must Protect Fundamental Rights:*
The National Immigrant Justice Center urges Congress to pass enforcement measures that are fair and just. Everyone deserves a day in court, and immigrants should not be subjected to a second-class system. Any new law must protect the basic fundamental rights of all individuals to access legal counsel, appear before a judge, and appeal an unfair judgment. In the 109th Congress, key members of the Judiciary Committee fought to ensure that the Federal Courts of Appeals were not stripped of jurisdiction over immigration appeals. New legislation must preserve due process rights for all immigrants and guarantee that no

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individual is arbitrarily or indefinitely deprived of her liberty. Specifically, legislation should preserve the Supreme Court's decision in *Zadvydas v. Davis,* 533 U.S. 678 (2001), which prohibits indefinite detention.

*Ensure Meaningful and Timely Review for Asylum Seekers and Immigrants:*
The immigration courts are struggling under heavy caseloads and resource constraints. Since the 2002 "streamlining" of the Executive Office of Immigration Review, Immigration Judges and the Board of Immigration Appeals (BIA) have been pressured to adjudicate more cases more quickly, with less discretion and little regard for fairness or process. Judicial oversight must be retained and strengthened in any new legislation. Congress should enact sections 701-706 of the Comprehensive Immigration Reform Act of 2006, S.2611ES, 109th Congress. These provisions increase the number of Immigration Judges; restructure the BIA, including a rollback of the 2002 streamlining process; and expand existing legal orientation programs for detained immigrants.

*Bringing Immigrants Out of the Shadows Will Help Secure the Nation:*
The National Immigrant Justice Center has long supported proposals to create a path to legalization for undocumented immigrants residing in the United States. By providing eligible individuals with the opportunity to earn legal status, the federal government can direct its resources to the true security needs on the border. The National Immigrant Justice Center urges the Committee to support legislation in the 110th Congress that does not create an unworkable multi-tiered system of eligibility. We believe that the "three-tiered" system adopted in floor debate last year, and included in the version of S.2611 that passed the Senate on May 25, 2006, was overly complex and would have added to an already choked immigration processing system. A more simple system will serve the interests of citizens, immigrants, workers, employers, and our government agencies that are responsible for implementing a new law.

*Temporary Worker Program Should Embrace Economic Realities:*
Mirroring last year's Senate bill, the President recently called for a temporary worker program that would link immigrant workers with the U.S. employers who depend on immigrant contributions to our labor force. The President, however, diverges from the Senate approach in a critical and unfavorable manner. He would have temporary workers leave the United States at the end of the time period authorized in their visas. The President's proposed requirement has negative implications for our nation's economic stability and may separate families unnecessarily. Those who abide by our laws should not be forced to leave the country at the end of their work visa period if they and their employer wish to maintain a relationship, or if the immigrant has fulfilled the requirements to apply for adjustment of status. The National Immigrant Justice Center urges the Committee to adopt a temporary worker program structured similarly to the program contained in the Comprehensive Immigration Reform Act of 2006, S.2611ES, 109th Congress.

*Worksite Enforcement can be Tough but Fair, Protecting All Workers:*
A reform package should meet employer demand for workers by creating legal opportunities for immigrants to live and work in the United States. Once adequate legal mechanisms are in place, worksite enforcement can be achieved in a fair and comprehensive manner. For example, employers acting in good faith will strive to follow the rules, allowing the government to concentrate efforts on bad actors. Immigrants will be encouraged to utilize legal avenues for employment, such as the temporary worker program, because employers will be strongly deterred from hiring undocumented workers. New legislation is expected to modify and expand the Basic Pilot employer verification program. Any expanded system should protect potential employees from inaccurate determinations of status. The system must protect personal data against identify theft and prevent government agencies from sharing taxpayer or social security data. Long overdue reform can be achieved with this balanced approach.

*Secure and Cost Effective Detention Alternatives Must be Funded:*
While key members of this Committee, including the Chairman, Senator Kennedy, Senator Durbin, and others, have strongly supported the use of alternatives to immigration detention, there is a tendency in Congress to increase the number of detention beds each year. The White House supports such increases, even though alternatives are proven to work and to be highly cost-effective. When necessary, detention should be humane and comply with detention standards developed by the Department of Homeland Security (DHS). A report of the DHS Inspector General, released January 16, 2007, revealed serious compliance failures at immigration detention facilities around the nation. These standards provide for the protection of immigrant detainees' basic human and legal rights, but do not carry the force of law. A comprehensive reform bill should call for codification of the standards or at least take steps to significantly improve compliance and oversight.

*Enact the DREAM Act and "Ag Jobs":*
The DREAM Act, introduced by Senator Durbin, has long enjoyed broad bipartisan support in the House and Senate. This legislation allows students who enter the U.S. before the age of 18 and who graduate from high school to obtain legal status and pursue higher education. These students may eventually adjust to Lawful Permanent Status. Like the DREAM Act, "Ag Jobs" is a bill that has overwhelming bipartisan support. This bill represents a hard-fought compromise that serves the needs of both agricultural workers and growers, and that treats everyone fairly. Just as they were last year, these two key reform packages should be added to a comprehensive reform package in the 110th Congress.

*Conclusion:*
Congress has a historic opportunity to enact reform this year. Likewise, the Bush Administration has before it the chance to cooperate with Congress to enact a bipartisan bill that will help solve the problems that are so evident in our nation's immigration system. The National Immigrant Justice Center thanks the Chairman and the full Committee for its hard work in the past and its efforts to come in the months ahead.

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