

**DOES ADMINISTRATION AMNESTY HARM OUR  
EFFORTS TO GAIN AND MAINTAIN OPER-  
ATIONAL CONTROL OF THE BORDER?**

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**HEARING**

BEFORE THE

**SUBCOMMITTEE ON BORDER AND  
MARITIME SECURITY**

OF THE

**COMMITTEE ON HOMELAND SECURITY  
HOUSE OF REPRESENTATIVES**

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

OCTOBER 4, 2011

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## **DOES ADMINISTRATION AMNESTY HARM OUR EFFORTS TO GAIN AND MAINTAIN OPER- ATIONAL CONTROL OF THE BORDER?**

**Tuesday, October 4, 2011**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
SUBCOMMITTEE ON BORDER AND MARITIME SECURITY,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:02 a.m., in Room 311, Cannon House Office Building, Hon. Candice S. Miller [Chairwoman of the subcommittee] presiding.

Present: Representatives Miller, McCaul, Quayle, Rigell, Duncan, Cuellar, Jackson Lee, Clarke, and Thompson.

Mrs. MILLER. I am going to call the committee to order. Before I start my, I guess, sort-of more formal opening statement, I think we need to congratulate the men and women of our terrorist community for their outstanding work on capturing—or, excuse me, killing the terrorist, Anwar al-Awlaki, last week. It was certainly wonderful, wonderful news for everyone who is a fighter for freedom; it was a big blow to the enemies of freedom, al-Qaeda.

Being from Detroit, we were aware of his involvement with the Christmas day bomber, and the Times Square bomber, and so many others. Many people have said that he was a greater threat to our country, actually, than Osama bin Laden. So I think we, since we all sit on the Homeland Security Committee, we should recognize the death of this very vile terrorist removes a huge, enormous threat from our Nation.

Securing our Nation's border is certainly one of the principal responsibilities of the Federal Government, and it is foremost on this subcommittee's agenda. Over the last 9 months this year we have examined the concept of operational control at a number of our committee meetings, and really what it means in terms of how secure or how open our border actually is.

As the Border Patrol points out correctly, we have a layered approach to border security that begins at the border, but it doesn't end at the border. Interior checkpoints, bus, and other transportation checks are also very valuable tools to reduce the number of illegal aliens that enter the country.

The last line of defense, as we work to control the integrity of the border, is interior enforcement, and this hearing is intended to examine the impact of the administration's recent decision to more leniently apply prosecutorial discretion and how it will affect the Border Patrol's ability to gain and maintain operational control of

the border. I am very concerned—I know others are, as well—that the message that this administration is sending will lead to strains on the Border Patrol's resources as potential illegal immigrants may surge across the border, making it much more difficult for the Border Patrol.

What is troubling is that the administration has offered literally hundreds of thousands of illegal aliens administrative amnesty through a series of memos and letters. The Department of Homeland Security and the Department of Justice have decided to re-view every single case in the removal pipeline to weed out non-criminals and criminal aliens who haven't committed the most serious crimes, and then indefinitely close and ignore those cases that don't meet that threshold.

I think when you have the potential to administratively close hundreds of thousands of removal cases it sends a message, and that message is clear: That if you make it past the border you are scot-free and that you can stay here despite breaking our immigration laws unless you commit a serious crime, and even then there is no guarantee that these illegal aliens will be deported and sent back to their home. So this action by the administration is clearly administrative amnesty.

Certainly, I am a strong supporter of Secure Communities, a program that removes thousands of dangerous criminals from our streets every year. I certainly congratulate the men and women of ICE for the excellent work that they do to remove criminals, visa violators, and certainly recent border-crossers.

I would remind my colleagues that every single person who crosses the border illegally has, in fact, committed a crime, and we cannot send the message that unless you break the social contract and commit serious crimes we will not bother with the effort to deport you. We are either a Nation of laws or we are not, and telling illegal aliens that we are really not looking for them unless they commit additional serious crimes is a mistake, I believe, and will only serve to encourage more illegal immigration, and again, as a result, will make the job of Border Patrol agents charged with defending the Nation that much harder.

Our country has made a series of mistakes, I think, when it comes to immigration reform, without serious border security and serious interior enforcement. In every instance where we have either offered amnesty or even had a serious policy discussion about it people have responded and a surge of illegal aliens cross the border to take advantage. We saw that in 1986; we saw it again in 2006; we saw it in 2007.

Instead of offering incentives for people to break the law we should be making it more difficult to cross the border and even harder to get a job once they are here illegally. Doing anything else, I think, is less a slap in the face to honest immigrants who do the right thing, who wait in line, who fill out the paperwork, pay the associated fees, learn English, and become naturalized according to our laws.

Administration officials like to point to the number of apprehensions as an indicator of the success of their enforcement efforts, but I think this comparison is a bit disingenuous, because really the poor state of the American economy is a driving force behind the

current low apprehension numbers and the lack of people trying to cross the border. Telling the American people that the border is more secure than ever—I don't believe that. I think the reality is—in fact, according to the Mexican Migration Project, nearly 97 percent of all the illegal immigrants who try to cross the border eventually succeed, which is a startling number.

Estimates do vary, but we do have somewhere in the neighborhood of 11 million to 12 million illegal aliens living in the United States and we remove only 400,000 each year. So the already low prospect of being deported is now being further reduced by this administration's misguided attempts to circumvent the legislative process.

If the President wants to change the law he needs to submit a proposal to Congress. Article 2, Section 3 of the Constitution states that the President shall take care that the laws be faithfully executed. Not enforcing key aspects of the law is not consistent with that section of the Constitution.

We need to have a strategy to secure the border and for administration officials to be honest and candid with the Congress about the resources that it needs. But unfortunately, we get insufficient answers and an administration that circumvents the legislative process to grant administrative amnesty to thousands of illegal aliens.

I think it is past time that we come up with a plan to secure our border instead of sending signals that make gaining and maintaining operational control of our borders even more difficult. I certainly look forward to hearing the testimony of all of our witnesses and appreciate them all coming today as we talk about operational control of our borders.

[The statement of Mrs. Miller follows:]

PREPARED STATEMENT OF CHAIRWOMAN CANDICE S. MILLER

OCTOBER 4, 2011

Securing the Nation's border is one of the principal responsibilities of the Federal Government, and is foremost on this subcommittee's agenda. Over the past 9 months, we have examined the concept of Operational Control and what that means in terms of how secure or open the border really is.

As the Border Patrol rightly points out, we have a layered approach to border security that begins at the border, but does not end there. Interior checkpoints, bus and other transportation checks are also valuable tools to reduce the number of illegal aliens that enter the country. The last line of defense as we work to control the integrity of the border is interior enforcement.

This hearing is intended to examine the impact of the administration's recent decision to more leniently apply prosecutorial discretion and how it will affect the Border Patrol's ability to gain and maintain operational control of the border. I am concerned that the message this administration is sending may lead to strains on the Border Patrol's resources as potential immigrants may surge across the border, making it more difficult for the Border Patrol to identify smugglers, criminals, and potential terrorists.

What is troubling is that this administration, under the guise of lacking resources, has offered hundreds of thousands of illegal aliens administrative amnesty through a series of memos and letters. Now, I'm sure that you'll hear them take issue with that term. But the Department of Homeland Security and Department of Justice have decided to review every single case in the removal pipeline to weed out non-criminals, and criminal aliens who haven't committed the most serious crimes and then indefinitely close and ignore those cases that don't meet their threshold, I am honestly not sure what else to call it.

And what about those people whose cases are closed? They will not be removed, and will probably receive work authorization from the Citizenship and Immigration

Services. So, if they aren't being deported and they have the potential to work legally in the United States that sounds an awful like amnesty to me!

When you have the potential to administratively close hundreds of thousands of removal cases it sends a message and that message is crystal clear: If you make it past the border, you are scot-free and can stay here, despite breaking our immigration laws, unless you commit a serious crime. Even then there is no guarantee that those illegal aliens will be deported and sent back to their home.

I continue to be a strong supporter of Secure Communities, a program that removes thousands of dangerous criminal from our streets every year. I congratulate the men and women of ICE for the excellent work that they do to remove criminals, visa violators, and recent border crossers. Contrary to some critics, they do a good job at just that. But this is just half of the story.

I would like to remind my colleagues that every single person who crosses the border illegally has committed a crime, and we cannot ignore that fact or sweep it under the rug. We cannot send the message that unless you break the social contract and commit serious crimes, we will not bother with the effort to deport you.

Either we are a Nation of laws or we are not—it is just that simple. Telling illegal aliens that we are not really looking for them unless they commit additional serious crimes is a tragic mistake and will only serve to encourage more illegal immigration, and as a result, will make the job of Border Patrol agents charged with defending the Nation that much harder.

Taking a look at the series of mistakes we have made when it comes to immigration reform without serious border security and serious interior enforcement makes my head spin. In every instance where we have either offered amnesty, or even had a serious policy discussion about it, people have responded—and a surge of illegal aliens cross the border to take advantage.

We saw that in 1986 and we saw it again in 2006 and 2007. Instead of offering incentives for people to break the law we should be making it more difficult to cross the border and even harder to get a job once they are here illegally. Doing anything less is a slap in the face to honest immigrants who do the right thing, wait in line, fill out paper work, pay the associated fees, learn English, and become naturalized according to the law.

Administration officials like to point to the number of apprehensions as an indicator of the success of their enforcement efforts, but this comparison obscures the truth—the poor state of the American economy is the driving force behind the current low apprehension numbers and the lack of people trying to cross the border.

Telling the American people that the border is more secure than ever is, at best, a disservice; the reality is that, according to the Mexican Migration Project, nearly 97% of illegal immigrants who try to cross the border eventually succeed.

I'm not sure about you, but that isn't what I call a country that has control of its borders.

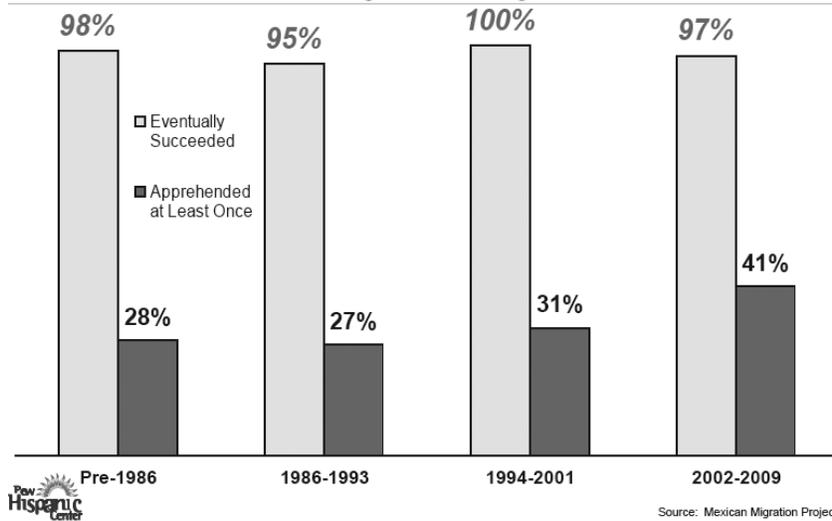
Estimates vary, but we have somewhere in the neighborhood of 11–12 million illegal aliens living in the United States, and we remove only 400,000 each year, so the already low prospect of being deported is now being further reduced by this administration's misguided attempts to circumvent the legislative process. If the President wants to change the law, then he needs to submit a proposal to Congress.

Last time I checked, Article II Section 3 of the Constitution states that the President "shall take care that the laws be faithfully executed." Not enforcing key aspects of the law is not consistent with that section of the Constitution.

What I have continually called for is a strategy to secure the border and for administration officials to be honest and candid with Congress about their resource needs, but instead we get more of the same—insufficient answers and an administration that circumvents the legislative process to grant administrative amnesty to thousands of illegal aliens.

It is well past time that we come up with a plan to secure the border instead of sending signals that make gaining and maintaining operational control even more difficult. I look forward to hearing from our witnesses how lax enforcement may hinder efforts to gain operational control of the border.

## Apprehension Rate is Up, BUT... Virtually Everyone Gets In



Mrs. MILLER. At this time the Chairwoman would recognize the Ranking Member, Mr. Cuellar, for his opening statement.

Mr. CUELLAR. Thank you so much, Madam Chairwoman, for holding this meeting.

First of all, I have a housekeeping matter. I believe the House rules call that witnesses are supposed to turn in their testimonies 48 hours before. I understand that our friend, Chief Fisher, turned his testimony at 8:43 p.m. Is that correct? Who would know that? Is that correct? Okay.

Again, I would ask the witnesses to turn their testimony in on time. I believe last time a Chief was here, officially was with us, he said he had about 250 Border Patrol agents that could be on the border but he had them at headquarters; I don't know if they can help him put this little testimony together, but I would ask that we adhere by the rules on testimony.

Madam Chairwoman, I would like to start off with the hearing with some basic figures related to illegal immigration in the United States. There are currently an estimated 11.2 million undocumented aliens in this country.

At present, ICE has the resources to remove approximately 400 undocumented aliens annually. You do not have to be a mathematician to see that there is an enormous discrepancy between the scale of illegal immigration issue and the resources available to address this.

Faced with this reality, ICE has made a reasonable decision to prioritize its resources to remove undocumented aliens who pose a threat to National security, public safety, or our immigration sys-

tem first and foremost. When I come from this kind of smart use of limited resources is called good Government.

After all, wouldn't you rather remove someone with potential ties to terrorism before an elderly person? Why wouldn't you remove a gang member before you remove a pregnant woman? Why wouldn't you remove someone with a history of DUI before a child?

This kind of prioritization should be common sense. If the use of prosecutory discretion is unique neither to the current administration nor to ICE. Past administrations have made similar choices when faced with circumstances.

Members, I would ask you to take a look at—there is the list of memos that have been turned in since 1979—I believe July 15, 1976 to the present time—both under Democrat and Republican administrations that have used prosecutorial discretions—both Democrats and Republicans, even under the last administration, my friend, George Bush. Law enforcement officials have used this—and one more thing, before I go—move from the—from this memos—there is also a letter dated November 8, 1999, signed by Democrats and Republicans—in fact, some Members from this committee—that are asking for prosecutorial discretion. Let me give you a list of some Members that you might recognize: Henry Hyde, Lamar Smith, Bill Burton—I mean, Bill Barriz—you have Brian Bilbray, Nathan Deal, David Dreier, James McGovern, James Sensenbrenner, and Sam Johnson—I don't see Michael McCaul; you weren't here in 1999—Lincoln Diaz-Balart, and I go on.

[The information follows:]

## Appendix I

**Congress of the United States**

Washington, DC 20515

Embargoed for release Monday November 8, 1999
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Contact: Allen Kay Rep. Lamar Smith 202-225-4236 (O) 202-225-2659 (cell) 301-990-3749 (H)
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November 4, 1999

The Honorable Janet Reno  
Attorney General  
Department of Justice  
10th St. & Constitution Ave. NW  
Washington, DC 20530

The Honorable Doria M. Meisner  
Commissioner  
Immigration and Naturalization Service  
425 Eye Street, NW  
Washington, DC 20536

Re: Guidelines for Use of Prosecutorial Discretion in Removal Proceedings

Dear Attorney General Reno and Commissioner Meisner:

Congress and the Administration have devoted substantial attention and resources to the difficult yet essential task of removing criminal aliens from the United States. Legislative reforms enacted in 1996, accompanied by increased funding, enabled the Immigration and Naturalization Service to remove increasing numbers of criminal aliens, greatly benefitting public safety in the United States.

However, cases of apparent extreme hardship have caused concern. Some cases may involve removal proceedings against legal permanent residents who came to the United States when they were very young, and many years ago committed a single crime at the lower end of the "aggravated felony" spectrum, but have been law-abiding ever since, obtained and held jobs and remained self-sufficient, and started families in the United States. Although they did not become United States citizens, immediate family members are citizens.

There has been widespread agreement that some deportations were unfair and resulted in unjustifiable hardship. If the facts substantiate the presentations that have been made to us, we must ask why the INS pursued removal in such cases when so many other more serious cases existed.

Appendix I, continued

Attorney General Reno and Commissioner Meissner  
November 4, 1999  
Page 2

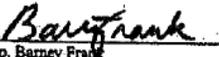
We write to you because many people believe that you have the discretion to alleviate some of the hardships, and we wish to solicit your views as to why you have been unwilling to exercise such authority in some of the cases that have occurred. In addition, we ask whether your view is that the 1996 amendments somehow eliminated that discretion. The principle of prosecutorial discretion is well established. Indeed, INS General and Regional Councils have taken the position, apparently well-grounded in case law, that INS has prosecutorial discretion in the initiation or termination of removal proceedings (see attached memorandum). Furthermore, a number of press reports indicate that the INS has already employed this discretion in some cases.

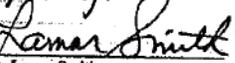
True hardship cases call for the exercise of such discretion, and over the past year many Members of Congress have urged the INS to develop guidelines for the use of its prosecutorial discretion. Optimally, removal proceedings should be initiated or terminated only upon specific instructions from authorized INS officials, issued in accordance with agency guidelines. However, the INS apparently has not yet promulgated such guidelines.

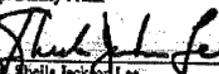
The undersigned Members of Congress believe that just as the Justice Department's United States Attorneys rely on detailed guidelines governing the exercise of their prosecutorial discretion, INS District Directors also require written guidelines, both to legitimate in their eyes the exercise of discretion and to ensure that their decisions to initiate or terminate removal proceedings are not made in an inconsistent manner. We look forward to working with you to resolve this matter and hope that you will develop and implement guidelines for INS prosecutorial discretion in an expeditious and fair manner.

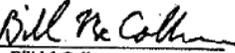
Sincerely,

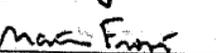
  
Rep. Henry J. Hyde

  
Rep. Barney Frank

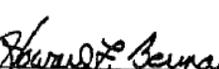
  
Rep. Lamar Smith

  
Rep. Stella Jackson Lee

  
Rep. Bill McCollum

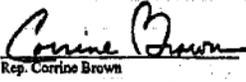
  
Rep. Martin Frost

  
Rep. Bill Barr

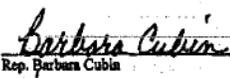
  
Rep. Howard L. Berman

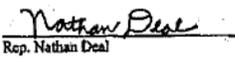
## Appendix I, continued

  
Rep. Brian P. Bilbray

  
Rep. Corrine Brown

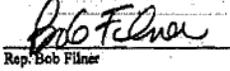
  
Rep. Charles T. Canady

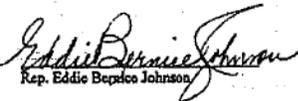
  
Rep. Barbara Cubin

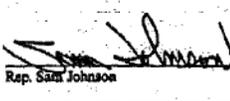
  
Rep. Nathan Deal

  
Rep. Lincoln Diaz-Balart

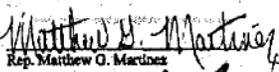
  
Rep. David Dreier

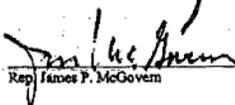
  
Rep. Bob Filner

  
Rep. Eddie Bernice Johnson

  
Rep. Sam Johnson

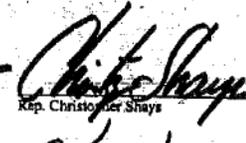
  
Rep. Patrick J. Kennedy

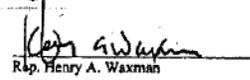
  
Rep. Matthew O. Martinez

  
Rep. James P. McGovern

  
Rep. Martin T. Mechan

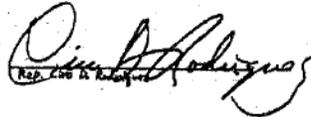
  
Rep. F. James Sensenbrenner, Jr.

  
Rep. Christopher Shays

  
Rep. Henry A. Waxman

  
Rep. Kay Cramer

  
Rep. Gene Green

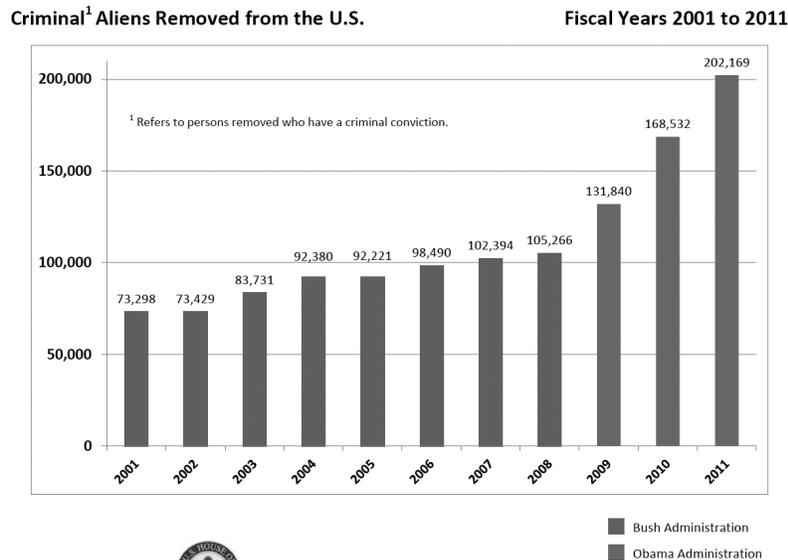
  
Rep. Luis L. Rodriguez

Mr. CUELLAR. These are Members, both Democrats and Republicans, and some folks that are taking a very strong position against prosecutorial Members. This is a letter sent off to Janet Reno and to Doris Meissner, the commissioner of INS at that time, dated November 8, 1999, that are asking for prosecutorial discretion. Again, I would ask you—I would be happy to share the copies of the memos both under the Bush administration, Reagan administration, all the way down to the Jimmy Carter administration.

As I mentioned, law enforcement agencies around the country, both Federal, State, and local, utilize the enforcement tool—this enforcement tool to ensure that they get the worst of the worst off our streets. There is a certain irony to the fact that ICE's commitment to removing undocumented aliens has been called into question when this administration has removed more undocumented aliens annually than any of its predecessors.

Members, I would ask you to take a look at the PowerPoint up there, and you will see, from 2001 we were removing criminal aliens that were removed from the United States at about 73,000—a little bit over 73,000. In 2008, the last year of the Bush administration, we removed 105,266.

[The information follows:]



Prepared by the Office of Congressman Henry Cuellar

Mr. CUELLAR. Then you move into 2009, 2010, 2011, under the Obama administration. In 2009, 131,840—you can see a jump from the past administration—that were actually removed. In 2010, 168-plus that were actually removed, a jump from the prior administration. In 2011 you have 202,169 that were actually removed.

In fact, if we keep going, in 2001, in 3 years we would remove more criminal aliens than the last 8 years under the Bush administration. This includes, again—and this includes, also, numbers when you look at—including the undocumented aliens—not only criminal aliens, but undocumented aliens, also.

Recently, as part of ICE Operation Cross Check, DHS announced the identification and arrest of over 2,900 convicted criminal aliens; 1,600 of them were—that were arrested were murderers, kidnapers, drug traffickers, child predators, rapists, gang members, and convicted sex offenders. This is a fundamental example of smart, focused, effective immigration enforcement that we have.

I would ask that during this substantial budget cuts that we look and allow ICE to continue to exercise their law enforcement discretion to place priority on identifying, arresting, and removing immigration fugitives. I certainly want to commend, Madam Chairwoman, the work of our ICE folks, and certainly Director Morton, for the work that he has done.

Finally, the last thing I would just make to conclude is, as a Member, again, from the border I would have to denote that—note that I disagree with the title of today’s hearing. The hearing title implies that there is amnesty for border crossing when, in fact, we continue to have a zero tolerance policy. In fact, in the Laredo area of the Border Patrol and the Del Rio area, it used to be that people that would cross would be sent back, but under a 1954 law we are now saying that they would have to spend some time in a detention—in jail—for doing that. That is something that we just started doing in Texas.

Finally, the border crossing and immigration violators are specifically prioritized for removal under the ICE policy. Again, we would have to be careful from using amnesty, because if not, I am afraid that we could cause a possible magnet effect of this member—of this border security, and then this misinformation would say, “You know what, in the United States there is some amnesty involved,” so we would have to be very careful.

I do not believe in amnesty. I don’t believe that what Ronald Reagan and the Democrats did in 1986 created amnesty. I don’t agree with that.

I certainly want to thank Madam Chairwoman for having this hearing so we can talk about this important issue, and certainly want to thank all the witnesses for being here today. I yield back the balance of my time.

Mrs. MILLER. The Chairwoman now recognizes the Ranking Member of the Full Committee, the gentleman from Mississippi, Mr. Thompson, for his statement.

Mr. THOMPSON. Thank you very much, Madam Chairwoman. I appreciate the hearing. I appreciate our witnesses who are also here today.

But let me start by addressing the title of today’s hearing, “Does Administrative Amnesty Harm Our Efforts to Gain and Maintain Operational Control of the Border?” I find it curious that a practical, risk-based approach to removal of undocumented aliens would be characterized by my friends across the aisle as administrative amnesty. This is not a legal term, but a political one.

Typically, the smart and efficient use of Government resources garner bipartisan praise and support in this town. What is ICE doing under the Obama administration that is different than what it or its predecessor, INS, did under previous administrations?

ICE is prioritizing its limited resources to ensure that the agency removes undocumented aliens who pose a danger to National security or a risk to public safety, along with recent illegal entrants. Currently, ICE only has the resources necessary to remove approximately 400,000 undocumented aliens.

Madam Chairwoman, I would like to offer for the record a copy of the Homeland Security appropriations measure where every

Member of this subcommittee voted for this very same program to the tune of \$1.6 billion.

Mrs. MILLER. Without objection.  
[The information follows:]

**H.R. 2017 EH**

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT**

**SALARIES AND EXPENSES**

For necessary expenses for enforcement of immigration and customs laws, detention and removals, and investigations; and purchase and lease of up to 3,790 (2,350 for replacement only) police-type vehicles; \$5,522,474,000 (increased by \$1,000,000) (reduced by \$1,000,000) (increased by \$1,000,000) (reduced by \$5,000,000) (increased by \$5,000,000), of which not to exceed \$7,500,000 shall be available until expended for conducting special operations under section 3131 of the Customs Enforcement Act of 1986 (19 U.S.C. 2081); of which not to exceed \$15,000 shall be for official reception and representation expenses; of which not to exceed \$2,000,000 shall be for awards of compensation to informants, to be accounted for solely under the certificate of the Secretary of Homeland Security; of which not less than \$305,000 shall be for promotion of public awareness of the child pornography tipline and activities to counter child exploitation; of which not less than \$5,400,000 (increased by \$1,000,000) shall be used to facilitate agreements consistent with section 287(g) of the Immigration and Nationality Act (8 U.S.C. 1357(g)); and of which not to exceed \$11,216,000 shall be available to fund or reimburse other Federal agencies for the costs associated with the care, maintenance, and repatriation of smuggled aliens unlawfully present in the United States: *Provided*, That none of the funds made available under this heading shall be available to compensate any employee for overtime in an annual amount in excess of \$35,000, except that the Secretary, or the designee of the Secretary, may waive that amount as necessary for National security purposes and in cases of immigration emergencies: *Provided further*, That of the total amount provided, \$15,770,000 shall be for activities to enforce laws against forced child labor, of which not to exceed \$6,000,000 shall remain available until expended: *Provided further*, That of the total amount available, not less than \$1,600,000,000 shall be available to identify aliens convicted of a crime who may be deportable and aliens who may pose a serious risk to public safety or National security who may be deportable, and to remove them from the United States once they are judged deportable, of which \$194,064,000 shall remain available until September 30, 2013: *Provided further*, That the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement shall report to the Committees on Appropriations of the Senate and the House of Representatives, not later than 45 days after the end of each quarter of the fiscal year, on progress in implementing the preceding proviso and the funds obligated during that quarter to make such

progress: *Provided further*, That the Secretary shall prioritize the identification and removal of aliens convicted of a crime by the severity of that crime: *Provided further*, That the funding made available under this heading shall maintain a level of not less than 34,000 detention beds through September 30, 2012: *Provided further*, That of the total amount provided, not less than \$2,750,843,000 is for detention and removal operations, including transportation of unaccompanied minor aliens: *Provided further*, That of the total amount provided, \$10,300,000 shall remain available until September 30, 2013, for the Visa Security Program: *Provided further*, That none of the funds provided under this heading may be used to continue a delegation of law enforcement authority authorized under section 287(g) of the Immigration and Nationality Act (8 U.S.C. 1357(g)) if the Department of Homeland Security Inspector General determines that the terms of the agreement governing the delegation of authority have been violated: *Provided further*, That none of the funds provided under this heading may be used to continue any contract for the provision of detention services if the two most recent overall performance evaluations received by the contracted facility are less than “adequate” or the equivalent median score in any subsequent performance evaluation system: *Pro-[ . . . ]*

Mr. THOMPSON. That constitutes, in its form, less than 4 percent of the estimated illegal alien population in the United States. Unless and until Congress appropriates sufficient funds for ICE to apprehend and remove every undocumented alien in the country we should support the agency’s efforts to focus its limited resources on removing those undocumented aliens who pose the greatest threat to our Nation.

Indeed, on the topic of appropriations, as I have already said, the Republican homeland security appropriation bill, approved by the House this session, cuts rather than increases ICE’s budget. All but one of the Republican colleagues on this subcommittee voted in favor of those cuts.

As I said before, Madam Chairwoman, our Republican colleagues tend to talk tough when it comes to homeland security and immigration enforcement, but rarely do they put their money where their mouth is.

Also, it is worth noting that under the current administration ICE has removed more criminal aliens and more aliens total than under the Bush administration or any other prior administration, Democrat or Republican. Only in Washington, DC, could those kinds of figures somehow be spun as amnesty.

Ironically, the last real amnesty was championed by President Ronald Reagan, a hero to many of my Republican colleagues. Yet, today it appears that even the largest number of removals of undocumented immigrants in our Nation’s history is not enough to satisfy some.

With that, Madam Chairwoman, I would like to welcome our distinguished panel of witnesses. I look forward to hearing them today, and I am certain that they will provide the Members of this subcommittee valuable insight into the complex issue of immigration enforcement.

I yield back the balance of my time.

Mrs. MILLER. I thank the gentleman for his comments. Other Members of the committee are reminded that opening statements might be submitted for the record.

I am going to introduce all three of our guests, and then we will start with the chief.

Chief Michael Fisher was named the chief of the U.S. Border Patrol in May of last year. He started his duty along the Southwest Border in 1987, in Douglas, Arizona.

He successfully completed the selection process for the Border Patrol Tactical Unit, BORTAC, in 1990, and was later selected as field operations supervisor for the tactical unit. Following this, he served as the deputy chief patrol agent for the Detroit sector, and as an assistant chief patrol agent in Tucson, Arizona.

We welcome you, Chief.

Deputy Director Kibble is the deputy director for U.S. Immigration and Customs Enforcement, also known as ICE, of course. Prior to this assignment, Mr. Kibble served in several key leadership roles at ICE headquarters.

His field assignments included service as a group supervisor and assistant special agent in charge of the metropolitan Los Angeles, California area. He also served as the special agent in charge of HSI's regional field office, in Denver, responsible for 17 offices in Colorado, Montana, Utah, and Wyoming.

Dr. Ruth Ellen Wasem is a specialist in immigration policy with the Congressional Research Service, CRS, Library of Congress, and in that capacity she has written reports for Congress that provide research and policy analysis on a range of immigration subjects, including on asylum, family and employment-based permanent immigration, naturalization, non-immigrant admissions, non-citizen eligibility for public assistant ends, as well as visa policy. Dr. Wasem completed her doctorate in history at the University of Michigan, and she also has an M.A. in history from the University of Michigan.

So we welcome all of you. As you heard from our opening statements, there is rather a divergence of opinion on the committee here, of whether or not this is administrative amnesty and whether or not the policy recently adopted by the administration is the proper way to proceed.

One of our, obviously, biggest functions of Congress is to provide Congressional oversight into your various agencies and departments as well as the policy that comes from the Executive Branch, and so that really is the purpose of the committee today.

With that, we would have the floor to Chief Fisher, and again, welcome you back to the committee, and look forward to your testimony, sir.

**STATEMENT OF CHIEF MICHAEL J. FISHER, BORDER PATROL,  
CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF  
HOMELAND SECURITY**

Chief FISHER. Thank you.

Chairwoman Miller, Ranking Member Cuellar, and distinguished Members of the subcommittee, it is, indeed, my privilege and honor to appear before you again today. The border is a far different place

today than it was when I began my career with the Border Patrol. I have personally witnessed the evolution of the border over the past 24 years, both in terms of additional resources applied against the threat as well as changes in the smugglers' tactics and their attempts to exploit our border.

In fiscal year 2011, just ending, the Border Patrol made approximately 340,000 arrests, compared to 10 years ago, when the number of arrest totaled approximately 1.6 million. Although we have seen positive indicators of a more secure border our work continues, and that work will not end as long as those who seek to enter this country illegally.

With the assistance of Congress, we have seen unprecedented influx of resources, and as a result we are currently at a pivot point in our strategic thinking. The Border Patrol remains committed to carrying out the laws enacted by Congress to the fullest extent possible. Our commitment to border security and that mission will not waiver.

We know from experience that targeted enforcement works. Over the past few years we have developed effective strategies to disrupt and dismantle smuggling organizations and their distribution networks, leading to a safe border.

Operations and initiatives, such as Operation Streamline, the Alien Transfer Exit Program, the Mexican Interior Repatriation Program, and the Operation Against Smugglers Initiative on Safety and Security, are focused on delivering targeted consequences to those offenders, thus breaking the smuggling cycle. Collectively, they represent the consequence delivery system that aids the overarching effort to improve the safety and security of our border, evidenced by reductions in both recidivism and reaprehension this past year.

Understanding the greatest risk lies along our border is critical to our flexibility in addressing these risks. As CBP applies targeted enforcement to areas of evolving threat, mobile response capability is critical through timely and effective resolution.

Now, CBP does not own the corner market in our National security efforts. We have learned that it requires a whole-of-Government approach and law enforcement, each with our own duties, responsibilities, jurisdictional authorities, and at all levels of Government.

We have gained a greater appreciation for the differentiation between mere collaboration and operational integration with our Federal, State, local, Tribal, and international partners. The key to a safe and secure border lies in the strength of joint planning and execution towards common objectives. Our path forward and our strategy will be risk-based.

We will increasingly depend on information and intelligence to describe the intent and capabilities of the opposition, defining the threat while continuously accessing our border vulnerabilities. We will train and deploy the workforce to be more mobile, agile, and flexible against all threats.

Thank you for the opportunity to testify today. I look forward to your questions.

[The statement of Chief Fisher follows:]

## PREPARED STATEMENT OF MICHAEL J. FISHER

OCTOBER 4, 2011

## INTRODUCTION

Chairwoman Miller, Ranking Member Cuellar, and distinguished Members of the committee, it is a privilege and an honor to appear before you today to discuss U.S. Customs and Border Protection's (CBP) efforts to secure our Nation's borders. I am Michael J. Fisher, Chief of the United States Border Patrol (USBP).

As America's front-line border agency, CBP's priority mission is to protect the American public, while facilitating lawful travel and trade. To do this, CBP has deployed a multi-layered, risk-based approach to enhance the security of our borders while facilitating the flow of lawful people and goods entering the United States. This layered approach to security reduces our reliance on any single point or program that could be compromised. It also extends our zone of security outward, ensuring that our physical border is not the first or last line of defense, but one of many.

## OVERVIEW OF BORDER SECURITY EFFORTS

Over the past 2 years, the Department of Homeland Security (DHS) has dedicated historic levels of personnel, technology, and resources to the Southwest border. We have more than doubled the size of the Border Patrol since 2004; tripled the number of Border Liaison Officers working with their Mexican counterparts; doubled personnel assigned to Border Enforcement Security Task Forces; and began screening southbound rail and vehicle traffic for the illegal weapons and cash that are helping fuel the cartel violence in Mexico. CBP also received approval from the U.S. Department of Transportation's Federal Aviation Administration to increase the miles of airspace available for Unmanned Aircraft System (UAS) operations, enabling CBP to deploy UASs from the eastern tip of California extending east across the border into Texas—covering the entire Southwest border for the first time. Further, in January of this year, CBP's operational airspace along the Northern border expanded by nearly 900 miles, allowing CBP UAS operations from the Lake-of-the-Woods region in Minnesota, to the vicinity of Spokane, Washington.

In addition, we have now constructed 650 miles of fencing out of nearly 652 miles where Border Patrol field commanders determined it was operationally required along the Southwest border, including 299 miles of vehicle barriers and 351 miles of pedestrian fence. We have also improved our technological capabilities, including the installation of remote video surveillance cameras in the Detroit and Buffalo Sectors, among other technologies.

Further, the Southwest border security supplemental legislation (based on the administration's recommendations) was signed into law in August 2010. It provided DHS additional capabilities to secure the Southwest Border at and between our ports of entry and to reduce the illicit trafficking of people, drugs, currency, and weapons. Specifically, this bill provided funding for improved tactical communications systems along the Southwest border; two additional CBP unmanned aircraft systems; 1,000 new Border Patrol agents; 250 new CBP officers at ports of entry; and two new forward operating bases to improve coordination of border security activities.

In addition, President Obama recently authorized the extension of the use of 1,200 National Guard troops through December 31, 2011 at the Southwest border to contribute additional capabilities and capacity to assist law enforcement agencies, and as a bridge to longer-term enhancements while the administration brings new assets online and pursues additional people, technology, and infrastructure dedicated to effective border management and security. These National Guard troops are providing Entry Identification Teams and criminal investigation analysts in support of these efforts. That support is allowing DHS to bridge the gap and hire the additional agents to support Southwest Border enforcement efforts, and the Departments of Defense and Homeland Security agreed to equally fund the National Guard deployment's cost. However, Congress did not approve DHS' reprogramming requests, and the Department of Defense has covered the full cost of this National Guard support.

## WHOLE-OF-GOVERNMENT APPROACH

Our overarching border security efforts require a whole-of-Government approach that emphasizes the importance of joint planning and intelligence sharing. In recent months, we have taken additional steps to bring greater unity to our enforcement efforts, to expand coordination with other agencies, and to improve response times.

In February, we announced the Arizona Joint Field Command—an organizational realignment that brings together Border Patrol, Air and Marine, and Field Operations under a unified command structure to integrate CBP's border security, commercial enforcement, and trade facilitation missions to more effectively meet the unique challenges faced in the Arizona area of operations.

Another example of our collaborative efforts along the Southwest Border is the Alliance to Combat Transnational Threats (ACTT) in Arizona. The ACTT is enforcement collaboration, established in September 2009, which leverages the capabilities and resources of more than 60 Federal, State, local, and Tribal agencies in Arizona and the Government of Mexico to combat individuals and criminal organizations that pose a threat to communities on both sides of the border. Through ACTT, we work with our international, Federal, State, local, and Tribal law enforcement partners to increase collaboration; to enhance intelligence and information sharing; and to develop coordinated operational plans that strategically leverage the unique missions, capabilities, and jurisdictions of each participating agency. Since its inception, ACTT has resulted in the seizure of more than 2.2 million pounds of marijuana, 8,200 pounds of cocaine, and 2,700 pounds of methamphetamine; the seizure of more than \$18 million in undeclared U.S. currency and 343 weapons; over 16,000 aliens denied entry to the United States at Arizona ports of entry due to criminal background or other disqualifying factors; and approximately 342,000 apprehensions between ports of entry.

In partnership with DEA, and with support from the Department of Defense, DHS has achieved initial operational capability for the new Border Intelligence Fusion Section (BIFS) as part of the El Paso Intelligence Center. This new section will integrate and synthesize all available Southwest border intelligence from Federal, State, local, and Tribal partners to create a common intelligence picture to support border enforcement activities on the Southwest border. By disseminating real-time operational intelligence to our law enforcement partners in the region, BIFS will streamline and enhance coordinated Federal, State, local, and Tribal operations along the border. Additionally, we are continuing to work with Mexico to develop a cross-border communications network that will improve our ability to coordinate law enforcement and public safety issues.

Along the Northern Border, CBP has established the Operational Integration Center (OIC), located at Selfridge Air National Guard Base in Harrison Township, Michigan. The OIC is a demonstration project aimed at enhancing border security and situational awareness for CBP and its mission partners along a critical area of the Northern Border by integrating personnel and technology. In terms of personnel, the OIC allows for a collaborative work area and communications capabilities for all components of CBP, the U.S. Coast Guard, other DHS entities, Federal law enforcement agencies, State and local law enforcement, and appropriate Canadian agencies. The OIC brings together information feeds, including radar and camera feeds, blue force tracking, database query from databases not previously available to CBP, remote sensor inputs, Remote Video Surveillance Systems, and Mobile Surveillance Systems feeds, and video from various POE, tunnel and local traffic cameras. This personnel and technology integration may serve as a model for technology deployments on the Northern Border.

CBP is engaged with several National initiatives which all contribute to the border security mission. Our officers and agents provide support to the Integrated Border Enforcement Teams (IBET) which operates as intelligence-driven enforcement teams comprised of U.S. and Canadian federal, state/provincial and local law enforcement personnel. By incorporating integrated mobile response capability (air, land, marine), the IBETs provide participating law enforcement agencies with a force multiplier—maximizing border enforcement efforts. Our personnel additionally provide manpower to Border Enforcement Security Task Force (BEST) units, multi-agency teams which collaborate to identify, disrupt, and dismantle criminal organizations which pose significant threats to border security.

In addition to these efforts, Operation Stonegarden (OPSG) grants are available and designed to support State, local, and Tribal law enforcement agencies that are involved in border security. While the grants themselves are managed by the Federal Emergency Management Agency, the participating agencies are required to submit operations orders to the Border Patrol. The Border Patrol is responsible for ensuring that all operations funded by this grant have a direct nexus to border security.

CBP has also partnered with State and local law enforcement for certain out-bound operations at POEs. Over the years, the personnel at the POEs along the Southwest Border have developed good working relationships with State and local law enforcement agencies. State and local law enforcement officers are a tremendous asset to CBP. They act as force multipliers, bringing their knowledge of the

community, and their understanding of local criminal elements. Joint outbound operations target proceeds, firearms, ammunition, stolen vehicles, and fugitives.

Additionally, a Processing, Exploitation, and Dissemination cell has been established at the Air and Marine facilities in Riverside, California, and Grand Forks, North Dakota, to provide essential information to law enforcement across the Nation—increasing understanding of evolving threats and providing the foundation for law enforcement entities to exercise targeted enforcement in the areas of greatest risk. This intelligence-driven approach prioritizes emerging threats, vulnerabilities and risks, greatly enhancing our border security efforts.

Building on a legacy initiative, in 2005, CBP created a robust Information Sharing Environment known as “BigPipe”, which links equipped CBP aviation assets, via the internet and information sharing protocols, to Federal, State, local, and Tribal law enforcement agencies in order to provide near-real time video and sensor data—enhancing the situational awareness of officers across the law enforcement community. Additionally, BigPipe is used extensively by numerous Federal, State, local, and Tribal agencies during warrant presentations, controlled deliveries, search and rescue, and surveillance operations.

#### CONSEQUENCE DELIVERY SYSTEM

CBP conducts operations along the entirety of the nearly 2,000 miles of border between Mexico and the States of California, Arizona, New Mexico, and Texas. The ability of the Border Patrol, U.S. Immigration and Customs and Enforcement (ICE), our strategic partners, and the judicial system to impose consequences on those entering the United States illegally varies greatly between each State, judicial district, and Border Patrol sector.

To break the smuggling cycle and deter a subject from attempting further illegal entries or participating in a smuggling enterprise, CBP has developed, with the support of ICE, a new Consequence Delivery System (CDS) that guides management and agents through a process designed to uniquely evaluate each subject and identify the ideal consequences to deliver to impede and deter further illegal activity.

The CDS uses a combination of criminal and administrative consequences developed by the Border Patrol, and implemented with the assistance of ICE, targeting specific classifications of offenders, effectively breaking the smuggling cycle along the border of the United States. This allows the U.S. Border Patrol to match the individual and the consequence in the most effective and efficient way.

#### OVERVIEW OF REPATRIATION AND CRIMINAL PROSECUTION CONSEQUENCES

Standard criminal prosecutions are the traditional means for imposing consequences on aliens who have committed criminal acts. Aliens entering the United States without being lawfully admitted are subject to prosecution for illegal entry. If an alien has been previously ordered removed, they are amenable to a felony charge of reentry after removal. Criminal prosecutions are essential to border security operations; however the volume of border-related illegal activity restricts the percentage of criminal cases that the Border Patrol is able to process within the criminal justice system. Due to limitations imposed by the labor, detention costs, and the expense of criminal prosecutions and administrative proceedings, repatriation is often the preferred consequence.

The following initiatives represent examples of the Consequence Delivery System that aids the overarching effort to improve the safety and security of the border:

- Operation Against Smugglers Initiative on Safety and Security (OASISS) is a bilateral, criminal prosecution agreement between the United States and Mexico. Since 2005, this program allows for Mexican citizens found smuggling aliens in the United States to be prosecuted by the government of Mexico.
- Streamline is a criminal prosecutions program targeting individuals who illegally enter the United States through defined geographic locations. Consequences are imposed through consistent application of criminal sanctions to reduce illicit cross-border activity. Streamline is a multi-agency effort that relies heavily upon the collaborative efforts of CBP, the U.S. Magistrate, the Federal Judiciary, the U.S. Attorney’s Office, the U.S. Marshals Service, ICE, and the Executive Office of Immigration Review.
- Efficient Immigration Court Hearings: CBP is working with EOIR to increase the efficiency of immigration court hearings by placing aliens apprehended along the border in removal proceedings in courts close to the border, eliminating the need to acquire detention space to hold an alien while awaiting an appearance before an Immigration Judge. The judge’s Order of Removal establishes that the subject cannot apply to legally re-enter the United States for a

period of 10 years. Subjects re-arrested are amenable to be charged criminally with a felony, Illegal Re-entry after Deportation.

- Alien Transfer Exit Program (ATEP) repatriates aliens into regions far from their entry location to disrupt future coordination with smugglers after their arrest and removal. ATEP is designed to disrupt the smuggling cycle that often reunites removed aliens with their hired smugglers to attempt another illegal entry.
- Mexican Interior Repatriation Program (MIRP) is a joint CBP and ICE effort. The program removes Mexican nationals to the interior of Mexico on a voluntary basis, away from high-risk areas of the Sonora Desert, where temperatures spike and exposure-related deaths peak during summer months. The objective of the program is to save lives and disrupt the human smuggling cycle. At-risk aliens are identified for participation by factors that include age, physical condition, and travel status.
- Expedited removal proceedings are initiated against aliens who are present without admission and encountered by an immigration officer within 100 air miles of the U.S. border, and not physically present in the United States for the 14-day period immediately before their arrest. Aliens processed for expedited removal procedures are not detained pending a hearing before an immigration judge, but are immediately processed for a formal administrative removal order. If an alien expeditiously removed returns illegally, he may be considered for criminal prosecution (Illegal Re-entry after Removal).
- Reinstatement of Removal provides the ability to reinstate a previously executed removal order with respect to aliens who illegally reenter the United States. If an alien is found to have reentered the United States after removal, the prior order of removal is reinstated from its original date and is not subject to review. In most cases, it is not necessary to detain aliens processed for reinstatement pending a hearing before an immigration judge. Reinstatement does not preclude criminal prosecution in accordance with local procedures and guidelines. Much like expedited removal, reinstatement of a final order is an efficient means for immigration officers to remove aliens who fit within this category from the United States without referral to an immigration judge.
- Voluntary Return is used at the discretion of Border Patrol agents and their supervisors to allow an alien to depart voluntarily from the United States in lieu of being subject to removal proceedings. Eligible aliens may prefer to seek voluntary return rather than undergo formal removal proceedings. Voluntary return reduces processing time for agency personnel, while at the same time allowing the alien to avoid the potential penalties attached to formal removal proceedings.
- Warrant of Arrest/Notice to Appear is used when Border Patrol agents make an arrest and the alien is to be detained in DHS custody pending a hearing before an immigration judge. Generally speaking, whenever an alien is detained for formal immigration proceedings, the commitment of labor, and resources involved in the removal process are significantly higher.

We know from experience that targeted enforcement works. Collective understanding of where the greatest risks lie along our borders is critical to our flexibility in addressing these risks. As CBP applies targeted enforcement to areas of evolving threat, mobile response capability is critical to timely and effective resolution. This mobile response capability must actively engage all CBP components and our partners in order to ensure proper synchronization and effectiveness.

#### IMPACT OF IMMIGRATION ENFORCEMENT EFFORTS

Over the past 2 years, the administration has established clear priorities that govern how DHS uses its immigration enforcement resources. These priorities focus resources on enhancing border security and identifying and removing criminal aliens, those who pose a threat to public safety and National security, individuals recently apprehended at the border while illegal entering, repeat immigration law violators, and other individuals prioritized for removal. While additional work remains, DHS has made tremendous progress in its effort to focus resources on these enforcement priorities.

In light of law enforcement priorities and limited resources, ICE has implemented policies that call for the utilization of prosecutorial discretion, when appropriate, in order to enhance the allocation of resources devoted to the removal of priority aliens. As a result of these policies, ICE has been able to increase its support of Border Patrol operations along the Southwest Border. The detention beds and immigration agents that are provided by ICE ERO enhance Border Patrol's ability to apply consequences through the CDS which have the greatest deterrent effect on in-

dividuals apprehended at the border after illegally crossing. ICE's focus on I-9 audits has eliminated many of the jobs that served as magnets, drawing people to illicitly cross the border. Equally important is the deterrent effect provided by ICE's prioritization of recent border entrants, criminal offenders, and repeat immigration law violators.

The strategic reallocation of resources to the Southwest Border and prioritization of recent border entrants, convicted criminals, and repeat immigration law violators has helped CBP continue to drive down illicit cross border traffic. There is no doubt that the historic results achieved by the Border Patrol along the Southwest Border are due, in part, to the assistance of ICE and the establishment of these policies.

#### CONCLUSION

Chairwoman Miller, Ranking Member Cuellar, and distinguished Members of the committee, thank you for this opportunity to testify about the work of U.S. Customs and Border Protection, and our efforts in securing our borders.

I look forward to answering your questions at this time.

Mrs. MILLER. Thank you very much, Chief.

Mr. Kibble.

#### **STATEMENT OF KUMAR C. KIBBLE, DEPUTY DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY**

Mr. KIBBLE. Good morning, Chairman Miller, Ranking Member Cuellar, and distinguished Members of the subcommittee. On behalf of Secretary Napolitano and Director Morton, thank you for the opportunity to address you today regarding ICE's mission to promote homeland security and public safety through the criminal and civil enforcement of Federal laws governing border control, customs, trade, and immigration.

The men and women of ICE do this every day by carrying out ICE's role in protecting the borders through smart and effective immigration enforcement; securing and managing our borders against illicit trade, travel, and finance; and preventing terrorism and enhancing National security. In the last 2.5 years we have made unprecedented strides across our agency, and as a result, we have made communities across America, and Americans around the world, safer and more secure.

There has been much discussion in recent months about the administration's approach to immigration enforcement. The administration's policies have been alternatively described as either an unprecedented effort to deport record numbers of individuals arbitrarily, or as an administrative amnesty that ignores the Government's responsibility to enforce immigration laws. Both characterizations are inaccurate.

Over the past few years, ICE has worked to develop guidance to help focus immigration enforcement efforts on our highest priorities: Promoting public safety, border security, and the integrity of the immigration system. This approach has yielded impressive results.

In fiscal year 2010, ICE removed a record 195,772 criminal aliens, more than any other year in history, and 81,000 more criminal removals than in fiscal year 2008. Nearly 50 percent of the aliens we removed in fiscal year 2010 have been convicted of crimes.

This trend has continued. We will again have removed a record number of criminal aliens from the country in this most recent fiscal year, 2011.

This prioritized approach will also continue to enhance ICE's historic partnership with Customs and Border Protection. This partnership includes the dedication of ICE resources to the apprehension and detention of recent border-crossers.

The record-setting results achieved along the Southwest Border are attributable, in part, to this unprecedented partnership. Notably, this process will allow DHS to free up additional resources that can be shifted to the Southwest Border to aid and, again, promote border security.

As I have stated, the administration has established the identification and removal of public safety and National security threats as a top priority. To aid in this effort, we have expanded the use of Secure Communities, which identifies individuals arrested and booked into jail for a violation of a State or local criminal offense, convicted criminals, gang members, and other enforcement priorities in our jails and prisons.

Since its inception in 2008, more than 97,600 aliens convicted of crimes, including more than 35,500 convicted of aggravated felony offenses, were removed from the United States after identification through Secure Communities. These removes significantly contributed to a 71 percent increase in the overall percentage of convicted criminals removed by ICE.

In March 2009 the administration launched the Southwest Border Initiative, to bring unprecedented focus and intensity to the Southwest Border security. In support of this initiative, ICE has targeted considerable resources at the Southwest Border to investigating transnational crime stemming from and resulting in the interdiction of contraband, such as firearms, ammunition, bulk cash currency, stolen vehicles, human smuggling, and the detection of tunnels and other border crime at and between ports of entry along the Southwest Border.

Since 2006, DHS has leveraged the Border Enforcement Security Taskforce, or BEST, model, which combines Federal, State, Tribal, local, and foreign law enforcement and intelligence resources to synchronize efforts to combat emerging and existing threats. Thus far, in fiscal year 2011, ICE-led BESTs have made almost 1,600 criminal arrests, seized over 200,000 pounds of narcotics, and more than \$11 million in U.S. currency and monetary instruments. Some 733 defendants have been convicted thus far in this most recent fiscal year.

Enforcing our immigration priorities and obligations is neither simple nor easy, and we are committed to getting it right. We all agree that we need fair, consistent, and enforceable immigration laws that encourage the free flow of commerce while respecting both security and the rights of individuals.

While we are committed to being smart and tough with our enforcement, it remains the administration's position that Congress needs to take up immigration reform. We look forward to working with Congress to this end.

Thank you, again, for the opportunity to appear before you today. I am proud of the work our ICE teams do each and every day to help strengthen and secure our homeland, and we are engaging in record-breaking immigration enforcement strategies.

I appreciate your interest in this issue and your continued support of ICE, and I will be pleased to answer any questions you may have.

[The statement of Mr. Kibble follows:]

PREPARED STATEMENT OF KUMAR C. KIBBLE

OCTOBER 4, 2011

INTRODUCTION

Chairman Miller, Ranking Member Cuellar, and distinguished Members of the subcommittee: On behalf of Secretary Napolitano and Director Morton, thank you for the opportunity to address you today regarding U.S. Immigration and Customs Enforcement (ICE). As the investigative arm of the Department of Homeland Security (DHS), ICE's primary mission is to promote homeland security and public safety through the criminal and civil enforcement of Federal laws governing border control, customs, trade, and immigration. The men and women of ICE do this every day by carrying out ICE's role in: (1) Protecting the borders through smart and effective immigration enforcement; (2) securing and managing our borders against illicit trade, travel, and finance; and (3) preventing terrorism and enhancing National security.

We are effectively managing our resources by carrying out our responsibilities in a smart, fair, and efficient manner. In the last 2½ years, we have made unprecedented strides across our agency, and as a result, we have made communities across America, and Americans around the world, safer and more secure. I welcome this opportunity today to share with you our successes and our opportunities as we move into a new year.

*Protecting the Borders Through Smart and Effective Immigration Enforcement*

There has been much discussion in recent months about the administration's approach to immigration enforcement. The administration's policies have been alternatively described as either an unprecedented effort to deport record numbers of individuals arbitrarily, or as an administrative amnesty that ignores the Government's responsibility to the enforce immigration laws. Both characterizations are inaccurate. The administration's policy guidance governing immigration enforcement makes this clear, as does its enforcement record. ICE has worked to develop guidance to help focus ICE's enforcement efforts on our highest priorities, including: Aliens who pose dangers to National security or risks to public safety; recent illegal entrants; repeat violators of immigration law; and aliens who are fugitives from justice or otherwise obstruct immigration controls.

This approach has yielded results. DHS has produced record immigration enforcement. In fiscal year 2010, ICE removed a record 195,772 criminal aliens, more than any other year in history, and 81,000 more criminal removals than in fiscal year 2008. Nearly 50 percent of the aliens we removed in fiscal year 2010 had been convicted of criminal offenses. Removing these individuals helps to promote public safety in communities across the country. We expect that this trend will continue, and that this fiscal year, we will again remove a record number of criminal aliens from the country.

Of those we removed in 2010 who lacked criminal convictions, more than two-thirds were either recent border entrants or repeat immigration law violators. As such, and unlike ever before, an overwhelming majority of the aliens removed fell into one of ICE's enforcement priorities. In fact, the number of individuals removed who could not definitively be placed into at least one of the priority categories—for example, those who were not immigration fugitives, repeat immigration law violators, or removed at the border—dropped from more than 19 percent in 2008 to less than 10 percent in 2010. We expect to see similar results in fiscal year 2011 as well.

*Prosecutorial Discretion*

DHS must ensure that our immigration enforcement resources are focused on the removal of those who constitute our highest priorities, specifically individuals who pose threats to public safety such as criminal aliens and National security threats, as well as repeat immigration law violators, recent border entrants, and fugitives from justice or those who otherwise obstruct immigration controls. There are a significant number of cases currently pending before U.S. Department of Justice (DOJ) immigration courts, many of these will take years to resolve. Tens of thousands more are pending review in Federal courts. Each of these cases costs taxpayers thousands of dollars, and those involving low-priority individuals divert resources

and attention from high-priority cases. Due to the fiscal limitations, the expenditure of significant resources on cases that fall outside of DHS enforcement priorities hinders our public safety mission by consuming litigation resources and diverting resources away from higher-priority individuals.

Prosecutorial discretion has always been exercised in order to prioritize the use of immigration enforcement resources. The Immigration and Naturalization Service under the Department of Justice and later ICE under DHS has used discretion on a case-by-case basis where we feel it has been appropriate and responsible to do so, and where it enhances our ability to meet our priorities. In keeping with this practice, DHS and DOJ have recently established an interagency working group to implement existing guidance regarding the appropriate use of prosecutorial discretion in a manner consistent with our enforcement priorities.

This interagency working group will work to determine that immigration judges, the Board of Immigration Appeals, and the Federal courts are focused on adjudicating high-priority cases more swiftly by relieving pressure on the judicial system by identifying very low-priority cases and on a case-by-case basis, setting those cases aside. This will allow for additional DHS resources to be focused on the identification and removal of those individuals who pose the greatest threats. In part, this process will accelerate the removal of high-priority aliens from the country. At no point will any individuals be granted any form of “amnesty.” There will be no reduction in the overall levels of enforcement and removals—only a more effective way of marshaling our resources towards our highest-priority cases and thus, increasing the number of criminal aliens and repeat immigration violators removed from the country.

Likewise, it will enhance ICE’s historic partnership with U.S. Customs and Border Protection (CBP). Over the past few years, ICE has worked closely with CBP to increase efforts to prevent illicit trade and travel across our borders. This partnership includes the dedication of ICE officers, agents, and detention facilities to the apprehension and detention of recent border-crossers. The record-setting results achieved along the Southwest Border are attributable, in part, to this unprecedented partnership. Notably, this process will allow DHS to free up additional resources that will be dedicated to the Southwest Border.

#### *Secure Communities*

As I have stated, the administration has established the identification and removal of public safety and National security threats as a top priority. To aid in this effort, we have expanded the use of the Secure Communities program, which identifies individuals arrested and booked into jail for a violation of a State or local criminal offense, convicted criminals, gang members, and other enforcement priorities in our jails and prisons.

ICE has acknowledged that it faced challenges in rolling out the Secure Communities program initially, including in explaining how the program works and which entities are required to participate. Nevertheless, Secure Communities has proven to be one of our best tools to help focus our immigration enforcement resources on our highest enforcement priorities, including convicted criminals and egregious immigration law violators, and ICE remains fully committed to the program.

Since its inception on October 27, 2008, through September 18, 2011, more than 97,600 aliens convicted of crimes, including more than 35,500 convicted of aggravated felony offenses were removed from the United States after identification through Secure Communities. These removals significantly contributed to a 71 percent increase in the overall percentage of convicted criminals removed by ICE, with 81,000 more criminal alien removals in fiscal year 2010 than in fiscal year 2008. As a result of the increased focus on criminals, removals of non-criminals fell by 23 percent during the same time period. In addition, over 25,000 aliens who were previously removed and reentered or who failed to leave the United States following the issuance of a final order of removal, deportation or exclusion, who are also DHS enforcement priorities, were removed through Secure Communities over the past 2 years.

Earlier this year, as part of the administration’s continued commitment to smart, effective immigration enforcement, ICE announced key improvements to the Secure Communities program. They included:

- Establishing a task force, comprised of law enforcement, State and local government officials, prosecutors, and immigration advocates, as part of the Homeland Security Advisory Council to develop recommendations on how to improve Secure Communities so that it can better focus on identifying and removing individuals who pose true public safety threats. ICE is currently reviewing recommendations submitted by the Task Force;

- Developing a new policy to protect victims of and witnesses to crimes, to ensure that the crimes continue to be reported and prosecuted;
- Revising the detainer form that ICE sends to local jurisdictions to emphasize long-standing guidance that State and local entities are not to detain an individual for more than 48 hours pursuant to the detainer;
- Working with the DHS Office for Civil Rights and Civil Liberties (CRCL) on regular and in-depth statistical monitoring of the program;
- Creating a series of training sessions in collaboration with CRCL designed primarily for use by front-line State and local law enforcement agency personnel to address civil rights and civil liberties issues that may be relevant when Secure Communities is activated for a jurisdiction; and
- Agreeing to a protocol for CRCL to take the lead in investigating complaints of alleged civil rights violations for jurisdictions where Secure Communities is activated.

We are confident these changes will aid in our continued efforts to strengthen and improve Secure Communities. We will continue to expand Secure Communities to additional jurisdictions, and we look forward to Nation-wide deployment by the end of 2013. We will also continue to examine the program's effectiveness and invest in additional training and education efforts.

#### *Worksite Enforcement*

As part of its immigration enforcement efforts, ICE has been pursuing a comprehensive worksite enforcement strategy to deter unlawful employment and drive a culture of compliance with the Nation's immigration-related employment laws. The administration is focused on conducting criminal investigations and prosecuting employers who exploit or abuse their employees and those who have a history of knowingly and repeatedly employing an illegal workforce.

Our strategy has been designed to: (1) Penalize employers who hire illegal workers; (2) deter employers who are tempted to hire illegal workers; and (3) encourage all employers to take advantage of easy to use and well-crafted compliance tools.

The success of our approach is evident in the statistics. As of September 17, 2011, ICE has initiated 3,015 investigations, which is 154 percent more than in all of fiscal year 2008. In fiscal year 2010, ICE arrested 196 employers for criminal worksite-related immigration violations, surpassing the previous high of 135 arrests in fiscal year 2008. So far in fiscal year 2011, ICE has also issued a record 2,393 notices of inspection, a more than a 375 percent increase from the number issued in all of fiscal year 2008. This year, ICE has issued 331 final orders totaling \$9 million in fines levied on employers compared to 18 final orders issued totaling \$675,000 in fiscal year 2008. In addition, fiscal year 2010 worksite investigations resulted in a record \$36.6 million in judicial fines, forfeitures, and restitutions.

Enforcing our immigration priorities and obligations is neither simple nor easy, and we are committed to getting it right. We all agree that we need fair, consistent, and enforceable immigration laws that encourage the free flow of commerce while respecting both security and the rights of individuals. We are committed to making changes within the immigration system that make sense and are achievable. While we are committed to being smart and tough with our enforcement, it remains the administration's position that Congress needs to take up immigration reform. We look forward to working with Congress to this end.

#### *Securing and Managing our Borders Against Illicit Trade, Travel, and Finance*

##### *Southwest Border Initiative*

In March 2009, the administration launched the Southwest Border Initiative to bring unprecedented focus and intensity to Southwest Border security, coupled with a reinvigorated, smart, and effective approach to enforcing immigration laws in the interior of our country. In support of this initiative, ICE has targeted considerable resources at the Southwest Border to address the activities associated with transnational criminal organizations, including the interdiction of contraband such as firearms, ammunition, bulk cash currency, stolen vehicles, human smuggling, and the detection of tunnels and other border crime at and between ports of entry along the Southwest Border. Under this initiative, ICE has doubled the personnel assigned to Border Enforcement Security Task Forces (BESTs); increased the number of intelligence analysts along the Southwest Border focused on cartel violence; and quintupled deployments of Border Liaison Officers to work with their Mexican counterparts. At the end of the third quarter of fiscal year 2011, ICE deployed special agents to high-risk locations, including Tijuana and Monterey, Mexico. ICE so far this year has initiated 9,748 investigations along the Southwest Border, and is on pace to surpass fiscal year 2010 totals.

Additionally, with the aid of \$80 million provided in the 2010 Southwest Border supplemental appropriations, ICE has deployed 241 special agents, investigative support personnel, and intelligence analysts to the border. Indeed, ICE now has one-quarter of all its special agents assigned to the Southwest Border, more agents and officers along the border than ever before.

*Border Enforcement and Security Task Forces (BESTs)*

In fiscal year 2011, ICE also continued to bolster border security through the efforts of its BESTs, which bring together Federal, State, local, territorial, Tribal, and foreign law enforcement. Thus far in fiscal year 2011, ICE-led BESTs have made 1,565 criminal arrests, 814 administrative arrests, and obtained 757 indictments; seized 200,278 pounds of illegal drugs and \$11.4 million in U.S. currency and monetary instruments. Some 733 defendants have been convicted thus far in fiscal year 2011.

*Illicit Finance Investigations*

One of the most effective methods for dismantling transnational criminal organizations is to attack the criminal proceeds that fund their operations. In coordination with public and private partners, ICE works to seize illicit proceeds derived from and used for criminal activities, and to shut down the mechanisms used to retain and transfer these funds by countering bulk cash smuggling within the U.S. financial, trade, and transportation sectors targeted by criminal networks.

ICE's bulk cash smuggling investigations are coordinated through the ICE-led Bulk Cash Smuggling Center, from which we provide real-time operational and tactical support to Federal, State, and local officers involved in bulk cash smuggling seizures. In 2010, ICE, in partnership with the Drug Enforcement Administration, utilized the El Paso Intelligence Center (EPIC) to tackle bulk cash smuggling. This partnership ensures improved collaboration across the Federal Government for bulk cash smuggling investigations 24 hours a day, 7 days a week.

*International Partners and Cooperation*

ICE works closely with our international partners to disrupt and dismantle transnational criminal organizations. As part of these efforts, ICE currently maintains nine vetted units world-wide. These units are composed of highly-trained host country counterparts that have the authority to investigate and enforce violations of law in their respective country. Because ICE officials working overseas do not possess law enforcement or investigative authority in host countries, the use of vetted units enables ICE to dismantle, disrupt, and prosecute transnational criminal organizations while respecting the sovereignty of the host country.

In fiscal year 2010, Transnational Criminal Investigative Units (TCIUs) in Mexico, Colombia, and Ecuador played a central role in Operation Pacific Rim—an ICE-led investigation that dismantled one of the most powerful and sophisticated bulk cash and drug smuggling drug trafficking organizations in the world. As a result of international cooperation, this operation resulted in ten guilty pleas, 21 indictments, and 22 arrests along with seizures totaling over \$174 million in currency, 3.8 tons of cocaine, \$37 million in criminal forfeitures, and \$179 million in property. During 2011, two more TCIUs became operational and ICE plans to expand additional TCIUs in fiscal year 2012.

*Preventing Terrorism and Enhancing National Security*

As the largest investigative arm of DHS, ICE enhances National and border security by interrupting the illicit flow of money, merchandise, and contraband that supports terrorist and criminal organizations. As of the end of the third quarter of fiscal year 2011, ICE has seized \$363 million in currency, 1.4 million pounds of narcotics and other dangerous drugs, and \$272 million worth of contraband and other illegal merchandise. In addition, ICE agents and officers responded to 1.1 million inquiries and calls for assistance from other Federal, State, and local law enforcement agencies through ICE's Law Enforcement Support Center (LESC).

ICE leads efforts in National security investigations through interconnected programs that prevent criminals and terrorists from using our Nation's immigration system to gain entry to the United States. This includes: Investigating terrorist organizations and their actors; preventing criminal and terrorists from obtaining U.S. visas overseas; preventing criminal and terrorist organizations from acquiring and trafficking weapons and sensitive technology; and identifying and removing war criminals and human rights abusers from the United States, while protecting children from exploitation.

*Joint Terrorism Task Force (JTTF)*

The FBI-led JTTFs are a part of a joint counterterrorism partnership between U.S. law enforcement agencies. Since 2007, ICE agents assigned to JTTFs have initiated 5,564 cases, resulting in approximately 1,119 criminal arrests and 2,010 administrative arrests. In fiscal year 2011, ICE special agents in Louisville, Kentucky, assisted in a JTTF investigation which ultimately led to the arrest of Waad Ramadan Alwan and Mohanad Shareef Hammadi. Both of these Iraqi refugees were indicted on Federal terrorism charges, as well as the murder of a U.S. person engaged in official duties. They both had allegedly conspired to have money and weapons shipped to Iraq to support the activities of al-Qaeda. In fiscal year 2012, ICE will continue to collaborate with our law enforcement colleagues through the FBI-led JTTFs.

*Visa Security Program*

The Visa Security Program (VSP) deploys ICE special agents to diplomatic posts world-wide to conduct visa security activities and identify potential terrorists or criminal threats before they reach the United States. By working closely with the Department of State, this program enhances National security by providing an additional level of review of persons of special interest before they enter the United States. ICE conducts visa security operations at 19 high-risk visa adjudication posts in 15 countries.

*Counter-proliferation Investigations*

ICE leads the U.S. Government's efforts to prevent foreign adversaries from illegally obtaining U.S. military products and sensitive technology, including weapons of mass destruction and their components. In fiscal year 2011, ICE initiated 1,780 new investigations into illicit procurement activities, made 583 criminal arrests, obtained 419 indictments, achieved 262 convictions, and made 2,332 seizures valued at \$18.9 million.

In 2010, ICE, in coordination with the World Customs Organization (WCO), launched "Project Global Shield," an unprecedented multilateral law enforcement effort aimed at combating the illicit cross-border diversion and trafficking of precursor chemicals used by terrorist and other criminal organizations to manufacture improvised explosive devices by monitoring their cross-border movements. On March 22, 2011, Global Shield was endorsed by the WCO Enforcement Committee and converted from a pilot project to a permanent program. It currently has 83 participating countries and has led to 19 arrests, 24 seizures, and chemical seizures totaling over 33 metric tons.

*Human Trafficking and Human Smuggling Investigations*

ICE works with our interagency and international partners to extend our borders and disrupt and dismantle international human smuggling and trafficking networks and organizations along their entire routes. ICE holds the directorship of the Human Smuggling and Trafficking Center (HSTC), an interagency information and intelligence fusion center and clearinghouse. The HSTC was established to facilitate the broad dissemination of anti-smuggling and trafficking information and help coordinate the U.S. Government's efforts against human smuggling, human trafficking, and criminal facilitation of terrorist mobility.

In 2010, ICE's Office of Intelligence established its Human Trafficking Unit to develop intelligence and identify potential human trafficking investigative targets. In the coming fiscal year, ICE plans to expand coordination with the Departments of Justice and Labor to initiate additional investigations of human trafficking violations.

Sadly, a significant number of human trafficking victims are children. ICE takes these cases very seriously. ICE's "Operation Predator" targets and investigates human smugglers and traffickers of minors, as well as child pornographers, child sex tourists and facilitators, criminal aliens convicted of offenses against minors, and those deported for child exploitation offenses who have returned illegally. Since its launch in 2003, Operation Predator has resulted in the arrest of over 13,594 sexual predators, of which 10,975 were non-citizens.

In fiscal year 2012, ICE will expand operations of our Child Exploitation Section by establishing the Child Exploitation Center and deploying Child Sex Tourism Traveler Jump Teams to conduct investigations of U.S. citizens traveling in foreign countries for the purpose of exploiting minors. ICE will also continue working to end human trafficking and smuggling alongside the Department's "Blue Campaign"—a DHS initiative to combat human trafficking through enhanced public awareness, victim assistance programs, and law enforcement training and initiatives.

## CONCLUSION

Thank you so much for the opportunity to share with you the good work of Immigration and Customs Enforcement. I'm proud of the work our ICE teams do each and every day all around the world to help strengthen and secure our homeland; we're engaging in record-breaking immigration enforcement strategies, and I am confident we will continue to do so. ICE's broad authority to enforce the Nation's trade, travel, finance, and immigration laws has made American communities safer. On behalf of the men and women of ICE, I thank you again for the opportunity to testify on these efforts. I would now welcome any questions you may have.

Mrs. MILLER. Thank you very much, Mr. Kibble.

The Chairwoman now recognizes Dr. Wasem, and we appreciate your attendance here today, Doctor.

**STATEMENT OF RUTH ELLEN WASEM, PH.D., SPECIALIST IN IMMIGRATION POLICY, CONGRESSIONAL RESEARCH SERVICE**

Ms. WASEM. Chairwoman Miller, Ranking Member Thompson and Ranking Member Cuellar, and Members of the committee, I am honored to be testifying before you today on behalf of the Congressional Research Service. This morning I will summarize my written testimony, which I would like to submit for the record, with three themes: The features of U.S. immigration law that are especially pertinent today's hearing, the factors that drive unauthorized migration, and the relevance of the recent Department of Homeland Security memorandum upon prosecutorial discretion.

U.S. immigration law specifies a complex set of numerical limits and preference categories that reflect the principles of family reunification, workers with needed skills, protection of refugees, and diversity of origin. The law also provides for temporary admission of foreign nationals, such as tourists, students, and workers. In addition to the provisions in the law over who and how many may be admitted, the law establishes a system of immigration authorities, tools, and procedures to control unauthorized migration and to enforce the law against those who violate it.

Immigration law further targets special categories of foreign nationals for exclusion and removal. Among these targeted categories are criminal aliens and those who pose National security risks.

The 1986 Immigration Reform and Control Act was the last major law that allowed unauthorized aliens living in the United States to legalize their status. As you can see from Figure 1, the estimated number of unauthorized resident aliens has steadily increased since then, peaking in 2007.

The research points to various factors that have contributed to the increase in unauthorized resident aliens over the past 2 decades as well as the recent leveling off in these trends. Unauthorized migration is generally attributed to the push-pull of job opportunities in the United States in contrast to the lack of opportunities in sending countries. Accordingly, the recession that began in December 2007 may have curbed unauthorized migration, particularly because the sectors that traditionally rely on unauthorized aliens—construction, services, and hospitality—have been especially hard hit.

The number of aliens apprehended in the United States offers another perspective on the dynamics of unauthorized migration. Figure 2 compares apprehension data with the number of Border Patrol agents and the unemployment rate.

While it appears that apprehensions are correlated with the number of agents and with unemployment levels over the past decade, the empirical evidence to support a causal link with either labor market demands or border enforcement has not been demonstrated. Other contributing factors are in my written testimony.

All unauthorized aliens are potentially removable. Figure 3 shows that formal removals have grown from 30,000 in 1990 to over 387,000 in 2010. Since its enactment in 1952, the Immigration Nationality Act has given the attorney general, and more recently, the Secretary of Homeland Security, prosecutorial discretion in exercising the power to remove foreign nationals.

As early as 1975, agencies have issued guidance on this that have been driven by humanitarian concerns, resource limitations, and enforcement priorities. The backdrop of these memos provide historical context for the latest memorandum.

In the 2011 memorandum, the guidelines included National security or risks to public safety, recent illegal immigrants, and fugitives or other aliens who obstruct immigration controls. The 2011 June memo, Director Morton details 18 specific factors to be considered in weighing prosecutorial discretion.

Now, in addition to citing factors that might prioritize the removal proceeding, he also lists factors that might halt a removal proceeding. Some of these would include an alien has an immediate relative in the U.S. military, the alien is a caretaker of someone with physical or mental disabilities, or the alien has strong ties to the community.

It is also useful to point out what the Morton memorandum does not do. They do not give anyone legal immigration status. They do not provide an employment authorization. They do not prevent the reopening of a removal case at a later date.

In closing, the relevance of the memorandum on prosecutorial discretion may be viewed through the lens of a changing environment. Despite the recent drop, the sheer size in the unauthorized population has grown substantially in the past 2 decades.

State and local governments are playing an increasing role in enforcing immigration law. Congressionally-mandated programs as well as technological advances have led to dramatic improvements in the identification of removable aliens. These dynamics serve to expand the pool of removable aliens at a time when the financial resources of the Federal Government are especially pressed.

This concludes my formal testimony, and I look forward to your questions.

[The statement of Ms. Wasem follows:]

PREPARED STATEMENT OF RUTH ELLEN WASEM

OCTOBER 4, 2011

Chairwoman Miller, Ranking Member Cuellar, and Members of the House Homeland Security Subcommittee on Border and Maritime Security, I am honored to be testifying before you today on behalf of the Congressional Research Service. This morning I will discuss some of the key features of U.S. immigration law that pertain to this hearing, the factors that drive unauthorized migration to the United States, and the relevance of the recent Department of Homeland Security (DHS) memoranda on prosecutorial discretion.

Four major principles underlie U.S. immigration policy: The reunification of families, the admission of immigrants with needed skills, the protection of refugees, and

the diversity of admissions by country of origin. The Immigration and Nationality Act (INA) specifies a complex set of numerical limits and preference categories that give priorities for immigration reflecting these principles. Typically, about 1 million new legal permanent residents are recorded each year. The INA also provides for the admission of various categories of foreign nationals, who are admitted for a temporary period of time and a specific purpose. They include a wide range of categories, including tourists, students, business people, and workers.<sup>1</sup>

In addition to the system of categories, priorities and numerical limits that govern who and how many may be admitted, the INA establishes a system of immigration authorities, tools, and procedures to control unauthorized migration and to enforce the law against those who violate the provisions governing legal entry. The law further targets special categories of foreign nationals for exclusion and removal from the United States. These categories include criminals (e.g., aggravated felons, human traffickers, and alien smugglers) and those that pose National security risks (e.g., terrorists, subversives, and other threats to National security).<sup>2</sup>

The last major law that allowed unauthorized aliens living in the United States to legalize their status was the Immigration Reform and Control Act (IRCA) of 1986 (Pub. L. 99-603). Figure 1 presents the estimate of 3.2 million unauthorized resident aliens in 1986. As expected after the passage of IRCA, the estimate for 1988 dropped to 1.9 million.<sup>3</sup> The estimated unauthorized resident alien population grew to 3.4 million in 1992 and to 5.0 million (subsequently revised to 5.8 million) in 1996.<sup>4</sup> By the close of the decade, the estimated number of unauthorized alien residents reached 8.5 million.<sup>5</sup> The estimated number of unauthorized resident aliens had risen to 9.3 million by 2002.<sup>6</sup> During the first decade after IRCA, researchers projected that the net growth in unauthorized aliens had averaged about 500,000 annually; analyses done during the early 2000s estimated the average growth at 700,000 to 800,000 unauthorized alien residents annually.<sup>7</sup>

<sup>1</sup> Customs and Border Protection inspectors tallied 163 million temporary admissions of foreign nationals to the United States during 2009. CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Ruth Ellen Wasem.

<sup>2</sup> These criteria include: Health-related grounds; criminal history; security and terrorist concerns; public charge (e.g., indigence); illegal entrants; and aliens previously removed. INA §212(a). CRS Report RL32480, *Immigration Consequences of Criminal Activity*, by Michael John Garcia; CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*, by Ruth Ellen Wasem.

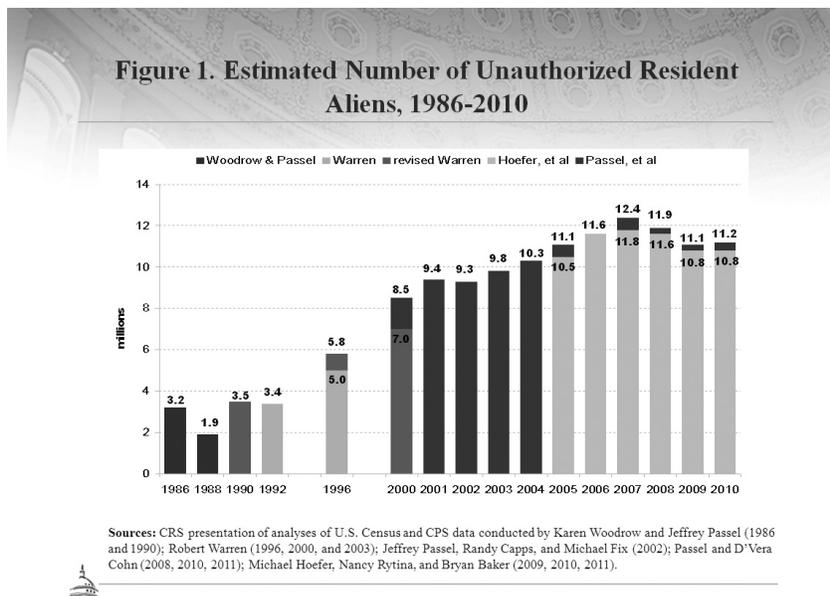
<sup>3</sup> Karen Woodrow and Jeffrey Passel, "Post-IRCA Undocumented Immigration to the United States: An Analysis Based on the June 1988 CPS," in *Undocumented Migration to the United States*, by Frank D. Bean, Barry Edmonston, and Jeffrey Passel (RAND Corporation, 1990).

<sup>4</sup> *Annual Estimates of the Unauthorized Immigrant Population Residing in the United States and Components of Change: 1987 to 1997*, by Robert Warren, Office of Policy and Planning, U.S. Immigration and Naturalization Service, September 2000.

<sup>5</sup> U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration and Claims, *Hearing on the U.S. Population and Immigration*, August 2, 2001.

<sup>6</sup> The Urban Institute, *Undocumented Immigrants: Facts and Figures*, by Jeffrey Passel, Randy Capps, and Michael Fix, January 12, 2004.

<sup>7</sup> Jeffrey S. Passel and D'Vera Cohn, *Trends in Unauthorized Immigration: Undocumented Inflow Now Trails Legal Inflow*, Pew Hispanic Center, October 2, 2008.



The calculated number of unauthorized alien residents peaked in 2007, when there were estimated 12.4 million unauthorized alien residents in the United States. The estimates made from both the Current Population Survey (CPS) and the American Community Survey (ACS) indicated that the number dropped in 2008 and in 2009 before leveling off in 2010.<sup>8</sup>

The research points to various factors that have contributed to the increase in unauthorized resident aliens over the past two decades as well as a leveling off of these trends. Historically, unauthorized migration is generally attributed to the “push-pull” of prosperity-fueled job opportunities in the United States in contrast to limited or nonexistent job opportunities in the sending countries.<sup>9</sup> Accordingly, the economic recession that began in December 2007 may have curbed the migration of unauthorized aliens, particularly because sectors that traditionally rely on unauthorized aliens, such as construction, services, and hospitality, have been especially hard-hit.

Some researchers maintain that lax enforcement of employer sanctions for hiring unauthorized aliens facilitated the “pull” for many years and that the ratcheting up of work site enforcement in 2007 and 2008, along with increased investments in border security, has subsequently mitigated the flow.<sup>10</sup> Trend data suggest a correlation, but it remains difficult to demonstrate this element empirically, especially because the increased worksite enforcement and removals were coincident with the housing downturn and the onset of the economic recession.<sup>11</sup>

Although most policy makers have assumed that tighter border enforcement reduces unauthorized migration, some researchers have observed that the strengthening of the immigration enforcement provisions may have inadvertently increased the population of unauthorized resident aliens. This interpretation, generally referred to as a caging effect, argues that increased penalties for illegal entry, coupled with increased resources for border enforcement disrupted the historical pattern of a circulatory movement of migratory workers along the Southern Border; this in

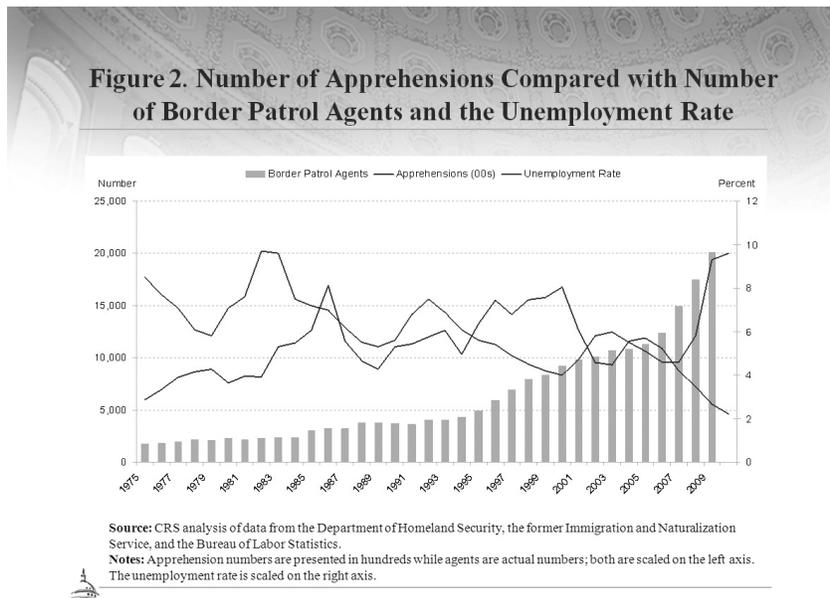
<sup>8</sup> Jeffrey S. Passel and D’Vera Cohn, *Unauthorized Immigrant Population: National and State Trends, 2010*, Pew Hispanic Center, February 1, 2011.

<sup>9</sup> CRS Report RL32982, *Immigration Issues in Trade Agreements*, by Ruth Ellen Wasem.

<sup>10</sup> CRS Report R40002, *Immigration-Related Worksite Enforcement: Performance Measures*, by Andorra Bruno.

<sup>11</sup> Steven Camarota and Karen Jensenius, *A Shifting Tide: Recent Trends in the Illegal Immigrant Population*, Center for Immigration Studies, July 2009.

turn raised the stakes in crossing the border illegally and created an incentive for those who succeed in entering the United States to stay.<sup>12</sup>



Data on the number of aliens apprehended entering the United States offers another perspective on unauthorized migration. Figure 2 compares apprehension data with the number of Border Patrol agents and with the unemployment rate. While it appears that apprehensions are correlated to the number of agents and unemployment levels over the past decade, the empirical evidence to support a causal link with either labor market demands or strengthened border enforcement policies has not been demonstrated.<sup>13</sup>

Political instability or civil unrest at home is another element that traditionally has led people to risk unauthorized migration.<sup>14</sup> Asylum seekers who enter the United States illegally have always been included in the estimates of the unauthorized alien population. Asylum seekers have become a smaller share of the unauthorized alien residents, however, and do not account the overall trends in the unauthorized resident aliens in recent years.<sup>15</sup>

<sup>12</sup> Wayne Cornelius, "Death at the Border: Efficacy and Unintended Consequences of U.S. Immigration Control Policy," *Population and Development Review*, vol. 27, no. 4 (December 2001); Wayne Cornelius, "Evaluating Recent U.S. Immigration Control Policy: What Mexican Migrants Can Tell Us," in *Crossing and Controlling Borders: Immigration Policies and Their Impact on Migrants' Journeys*, ed. Mechthild Baumann, Astrid Lorenz, and Kerstin Rosenhow (Farmington, MI: Budrich Unipress Ltd, 2011); Thomas J. Espenshade, "Undocumented Migration to the United States: Evidence from a Repeated Trials Model," in *Undocumented Migration to the United States*, by Frank D. Bean, Barry Edmonston, and Jeffrey Passel (RAND Corporation, 1990); Douglas S. Massey, Jorge Durand, and Nolan J. Malone, *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration* (Russell Sage Foundation, 2002).

<sup>13</sup> For further discussion see: CRS Report R41237, *People Crossing Borders: An Analysis of U.S. Border Protection Policies*, by Alison Siskin.

<sup>14</sup> For a summary of this research, see Commission for the Study of International Migration and Cooperative Economic Development, *Unauthorized Migration: An Economic Development Response*, Appendix E, July 1990.

<sup>15</sup> Not all humanitarian migrants are eligible for asylum or refugee status, and roughly 30% of all asylum cases in recent years have been approved. The legal definition of asylum in the INA is consistent with the refugee definition, which specifies that a refugee is a person who is unwilling or unable to return to his country of nationality or habitual residence because of a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. CRS Report R41753, *Asylum and "Credible Fear" Issues in U.S. Immigration Policy*, by Ruth Ellen Wasem.

The inadequacies in the current system of legal immigration is sometimes cited as another factor contributing to the growth in unauthorized alien residents.<sup>16</sup> There are statutory ceilings that limit the type and number of immigrant visas issued each year, which create wait-times for visas to become available to legally come to the United States.<sup>17</sup> The Immigration Amendments of 1990 cut the number of skilled and unskilled employment-based legal permanent residents from 27,000 to 10,000 annually, leading some to argue that the remainder of this migrant flow shifted from legal to illegal pathways to work in the United States. Family members sometimes risk staying in the United States on an expired temporary visa or entering the United States illegally to be with their family while they wait for the visas to become available. It remains difficult, however, to correlate these factors or to guarantee that increasing the levels of legal migration would absorb the flow of unauthorized migrants.<sup>18</sup> The recent increase in the number of aliens formally removed from the United States annually might also have had a chilling effect on foreign nationals weighing the risk of illegal presence if they would ultimately be eligible to immigrate.<sup>19</sup>

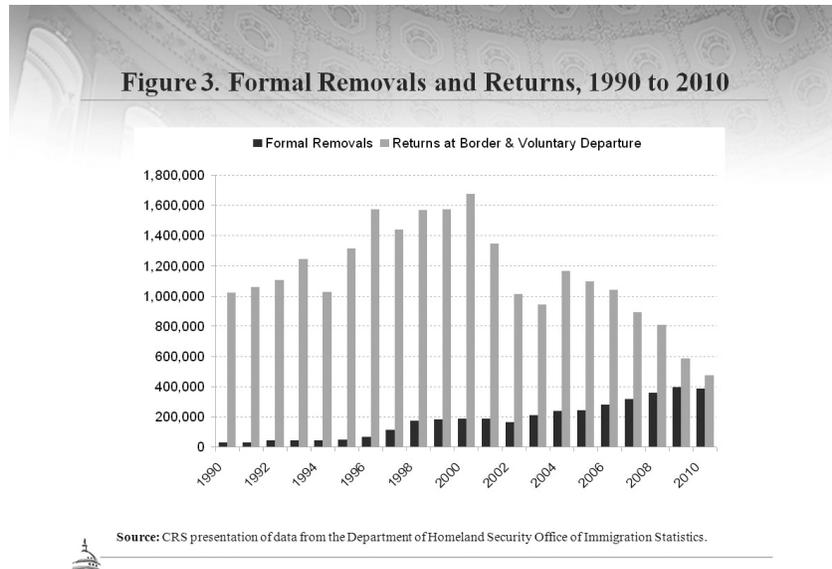


Figure 3 shows that formal removals have grown from 30,039 in 1990 to 387,242 in 2010. Since 2001, formal removals have increased by over 100%. The trends for direct returns at the border and voluntary departures (i.e., permitting aliens to leave the United States on their own recognizance and at their own expense) within the interior in Figure 3 resemble that of apprehensions over the same period as depicted in Figure 2.

All unauthorized aliens (i.e., aliens who have entered without permission or violated the terms of their visas) are potentially removable. The INA specifies six broad classes of foreign nationals who are removable, including persons who:

- are inadmissible at time of entry or violate their immigration status;<sup>20</sup>

<sup>16</sup> U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Immigration, Refugees and Border Security, *Comprehensive Immigration Reform in 2009, Can We Do It and How?* 111th Cong., 1st sess., April 30, 2009.

<sup>17</sup> CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem.

<sup>18</sup> U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Immigration, Refugees and Border Security, *Comprehensive Immigration Reform in 2009, Can We Do It and How?* 111th Cong., 1st sess., April 30, 2009.

<sup>19</sup> Office of Immigration Statistics, *Immigration Enforcement Actions: 2010*, Department of Homeland Security, June 2011, <http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement-ar-2010.pdf>.

<sup>20</sup> All aliens must satisfy to DHS inspectors upon entry to the United States that they are not ineligible for admission under the grounds for inadmissibility specified in INA § 212. These

- commit certain criminal offenses (e.g., crimes of moral turpitude,<sup>21</sup> aggravated felonies,<sup>22</sup> alien smuggling);
- fail to register (if required under law) or commit document fraud;
- are security risks (such as aliens who violate any law relating to espionage, engage in criminal activity which endangers public safety, partake in terrorist activities, or assisted in Nazi persecution or genocide);
- become a public charge within 5 years of entry;<sup>23</sup> or
- vote unlawfully.

Foreign nationals who are removed are subsequently subject to bars to reenter the country.<sup>24</sup>

In removal proceedings an immigration judge from the Department of Justice's Executive Office for Immigration Review determines whether a foreign national is removable. The courts have ruled that removal proceedings are civil not criminal proceedings.<sup>25</sup> The proceeding commences when the person is issued a notice to appear (NTA) which can be issued by a variety of DHS personnel including Border Patrol officers in Customs and Border Protection (CBP), asylum officers and adjudicators in U.S. Citizenship and Immigration Services (USCIS), and investigators and detention officers in Immigration and Customs Enforcement (ICE).<sup>26</sup>

In 1986, Congress made deporting aliens who had been convicted of certain crimes an enforcement priority. IRCA required the Attorney General "In the case of an alien who is convicted of an offense which makes the alien subject to deportation . . . [to] begin any deportation proceeding as expeditiously as possible after the date of the conviction."<sup>27</sup> Between 1988 and 1996, Congress enacted a series of measures, including the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104-208), expanding the definition of aggravated felons and created additional criminal grounds for removal.<sup>28</sup>

TABLE 1.—REMOVALS OF CRIMINAL ALIENS AND NON-CRIMINAL ALIENS, 2001 TO 2010

Fiscal Year	Criminal	Non-Criminal	Percent Criminal
2001	73,298	115,728	39
2002	73,429	91,739	44
2003	83,731	127,367	40
2004	92,380	148,285	38
2005	92,221	154,210	37
2006	98,490	182,484	35
2007	102,394	216,988	32
2008	105,266	254,529	29
2009	131,840	263,325	33
2010	168,532	218,710	44

Source: DHS Office of Immigration Statistics Yearbook, 2010, Table 38.

include health-related grounds, criminal history, National security and terrorist concerns, becoming a public charge, seeking to work without proper labor certification, illegal entry and immigration law violations, lack of proper documents, ineligibility for citizenship, and aliens previously removed.

<sup>21</sup>Moral turpitude is not easily defined under immigration law. Some argue that the flexibility in the term allows for changing social norms.

<sup>22</sup>The definition of aggravated felony (defined in INA §101(a)(43)) includes over 50 types of crimes. In addition, an alien convicted of an aggravated felony is conclusively presumed to be deportable (INA §238(c)). Misdemeanors at the State level may be aggravated felonies under the INA.

<sup>23</sup>So few aliens have been deported under these grounds since 1980, that DHS does not report the number.

<sup>24</sup>There is a 5-year bar to admissibility for aliens who have been subjected to expedited removal or those ordered removed when trying to enter the United States. There is a 10-year bar for admission for those who were ordered deported. There is a 20-year bar for those who have been previously removed, and those convicted of an aggravated felony are permanently inadmissible. INA §212(a)(9)(A).

<sup>25</sup>Charles Gordon, Stanley Mailman, Stephen Yale-Loehr, *Immigration Law and Procedure*. Newark: LexisNexis, vol 6.

<sup>26</sup>8 C.F.R. § 239.1(a).

<sup>27</sup>Pub. L. 99-603, § 701.

<sup>28</sup>Anti-Drug Abuse Act of 1988 (Pub. L. 100-690); Immigration Act of 1990, Pub. L. 101-649 (1990); Immigration and Nationality Technical Correction Act of 1994, Pub. L. 103-416 (1994); Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132 (1996); Illegal Immigrant Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, Div. C (1996).

The number of criminal aliens who have been removed has risen sharply in recent years. According to the DHS Office of Immigration Statistics presented in Table 1, the number of criminal aliens removed from the United States has gone from 73,298 in 2001 to 168,532 in 2010. These numbers constitute a 138% increase in the removal of criminal aliens over the past decade. Criminal aliens made up 44% of all removals in 2010, the largest portion of removals since 2002.

Since its enactment in 1952, the Immigration and Nationality Act has given the Attorney General and more recently the Secretary of Homeland Security prosecutorial discretion to exercise the power to remove foreign nationals. In 1959, a major textbook of immigration law wrote, "Congress traditionally has entrusted the enforcement of its deportation policies to executive officers and this arrangement has been approved by the courts."<sup>29</sup> Generally, prosecutorial discretion is the authority that an enforcement agency has in deciding whether to enforce or not enforce the law against someone. In the immigration context, prosecutorial discretion exists across a range of decisions that include: Prioritizing certain types of investigations; deciding whom to stop, question, and arrest; detaining an alien; issuing a notice to appear (NTA); granting deferred action; agreeing to let the alien depart voluntarily; and executing a removal order.

As early as 1975, the former Immigration and Naturalization Service (INS) issued guidance on a specific form of prosecutorial discretion known as deferred action, which cited "appealing humanitarian factors." The INS Operating Instructions said that consideration should be given to advanced or tender age, lengthy presence in the United States, physical or mental conditions requiring care or treatment in the United States, and the effect of deportation on the family members in the United States. On the other hand, those INS Operating Instructions made clear that criminal, immoral, or subversive conduct or affiliations should also be weighed in denying deferred action.<sup>30</sup> It is especially important to note that not all prosecutorial discretion decisions to halt removal proceedings result in a grant of deferred action to the foreign national.

In an October 24, 2005 memorandum, then-ICE Principal Legal Advisor William Howard cited several policy factors on needs to exercise prosecutorial discretion. One factor focused on institutional changes, as he wrote,

"Gone are the days when INS district counsels . . . could simply walk down the hall to an INS district director, immigrant agent, adjudicator, or Border Patrol officer to obtain the client's permission to proceed . . . Now the NTA-issuing clients might be in different agencies, in different buildings, and in different cities from our own."

Another issue Howard raised was resources, as he pointed out that the Office of Principal Legal Advisor (OPLA ) was "handling about 300,000 cases in the immigration courts, 42,000 appeals before the Board of Immigration Appeals (BIA or Board) and 12,000 motions to re-open each year." He further stated:

"Since 2001, Federal immigration court cases have tripled. That year there were 5,435 Federal court cases. Four years later, in fiscal year 2004, that number had risen to 14,699 Federal court cases. Fiscal year 2005 Federal court immigration cases will approximate 15,000."<sup>31</sup>

Howard offered examples of the types of cases to consider for prosecutorial discretion, such as someone who had a clearly approvable petition to adjust to legal permanent resident status, someone who was an immediate relative of military personnel, or someone for whom sympathetic humanitarian circumstances "cry for an exercise of prosecutorial discretion."<sup>32</sup>

In November 2007, then-DHS Assistant Secretary Julie L. Myers issued a memorandum in which she clarified that the replacement of the "catch and release" procedure with the "catch and return" policy for apprehended aliens (i.e., a zero-tolerance policy for all aliens apprehended at the border) did not "diminish the responsibility of ICE agents and officers to use discretion in identifying and responding to meritorious health-related cases and caregiver issues." Myers referenced and attached a

<sup>29</sup> Charles Gordon and Harry N. Rosenfield, *Immigration Law and Procedure*, Albany, New York: Banks and Company, 1959, p. 406.

<sup>30</sup> Shoba Sivaprasad Wadhia, "The Role of Prosecutorial Discretion in Immigration Law," *Connecticut Public Interest Law Journal*, Spring 2010.

<sup>31</sup> William J. Howard, Principal Legal Advisor, U.S. Immigration and Customs Enforcement, *Prosecutorial Discretion*, memorandum to all Office of the Principal Legal Advisor Chief Counsel, October 24, 2005.

<sup>32</sup> William J. Howard, Principal Legal Advisor, U.S. Immigration and Customs Enforcement, *Prosecutorial Discretion*, memorandum to all Office of the Principal Legal Advisor Chief Counsel, October 24, 2005.

November 7, 2000, memorandum entitled “Exercising Prosecutorial Discretion,” which was written by former INS Commissioner Doris Meissner in 2000.

“Like all law enforcement agencies, the INS has finite resources, and it is not possible to investigate and prosecute all immigration violations. The INS historically has responded to this limitation by setting priorities in order to achieve a variety of goals. These goals include protecting public safety, promoting the integrity of the legal immigration system, and deterring violations of the immigration law. It is an appropriate exercise of prosecutorial discretion to give priority to investigating, charging, and prosecuting those immigration violations that will have the greatest impact on achieving these goals.”

Meissner further stated that prosecutorial discretion should not become “an invitation to violate or ignore the law.” She concluded by citing the “substantial Federal interest” principle governing the conduct of U.S. Attorneys when determining whether to pursue criminal charges in a particular instance, and claimed that this principle was pertinent to immigration removal decisions as well. According to the memorandum, immigration enforcement officers “must place particular emphasis on the element of substantiality. How important is the Federal interest in the case, as compared to other cases and priorities?”<sup>33</sup>

The backdrop of the Meissner, Howard, and Myers memoranda provide historical context for the recent memoranda on prosecutorial discretion written by ICE Director John Morton. In March 2011, Morton published agency guidelines that define a three-tiered priority scheme that applies to all ICE programs and enforcement activities related to civil immigration enforcement.<sup>34</sup> Under these guidelines, ICE’s top three civil immigration enforcement priorities are to: (1) Apprehend and remove aliens who pose a danger to National security or a risk to public safety, (2) apprehend and remove recent illegal entrants,<sup>35</sup> and (3) apprehend aliens who are fugitives or otherwise obstruct immigration controls.

In his June 17, 2011 memorandum, Morton spells out 18 factors that are among those that should be considered in weighing prosecutorial discretion. The factors included those that might halt removal proceedings, such as whether the person’s immediate relative was serving in the military, whether the person was a caretaker of a person with physical or mental disabilities, or whether the person had strong ties to the community. The factors Morton listed also included those that might prioritize a removal proceeding, such as whether the person had a criminal history, whether the person poses a National security or public safety risk, whether the person recently arrived in the United States and how the person entered.

“This list is not exhaustive and no one factor is determinative. ICE officers, agents and attorneys should always consider prosecutorial discretion on a case-by-case basis. The decisions should be based on the totality of the circumstances, with the goal of conforming to ICE’s enforcement priorities.”

The Morton memoranda would halt removal proceedings on those foreign nationals that are not prioritized for removal.<sup>36</sup>

<sup>33</sup> Doris Meissner, Commissioner of the Immigration and Naturalization Service, *Exercising Prosecutorial Discretion*, memorandum to regional directors, district directors, chief patrol agents, and the regional and district counsels, November 7, 2000.

<sup>34</sup> ICE’s mission includes the criminal and civil enforcement of Federal laws governing border control, customs, trade, and immigration; see ICE, “ICE Overview: Mission,” <http://www.ice.gov/about/overview/>. Laws governing the detention and removal of unauthorized aliens generally fall under ICE’s civil enforcement authority, while laws governing the prosecution of crimes, including immigration-related crimes, fall under ICE’s criminal enforcement authority. Also see Hiroshi Motomura, “The Discretion That Matters: Federal Immigration Enforcement, State and Local Arrests, and the Civil-Criminal Line,” *UCLA Law Review*, vol. 58, no. 6 (August 2011), pp. 1819–1858.

<sup>35</sup> The memorandum does not define “recent illegal entrants.” DHS regulations permit immigration officers to summarily exclude an alien present in the United States for less than 2 years unless the alien expresses an intent to apply for asylum or has a fear of persecution or torture; and DHS policy is to pursue expedited removal proceedings against aliens who are determined to be inadmissible because they lack proper documents, are present in the United States without having been admitted or paroled following inspection by an immigration officer at a designated port of entry, are encountered by an immigration officer within 100 miles of the U.S. border, and have not established to the satisfaction of an immigration officer that they have been physically present in the United States for over 14 days.

<sup>36</sup> John Morton, Director of Immigration and Customs Enforcement, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for Apprehension, Detention, and Removal of Aliens*, memorandum to field office directors, special agents in charge, and chief counsels, June 17, 2011.

It is also useful to point out what the Morton memoranda do not do. They do not:

- give an unauthorized alien a legal immigration status;
- entitle an alien to employment authorization;
- alter the target on the number of aliens to be removed;
- count as time toward cancellation of removal; or
- prevent re-opening a removal case at later date.

It is possible that the guidance of the memoranda, along with the procedures described in a subsequent letter Secretary Janet Napolitano wrote August 18, 2011, might provide a system or structure that would lead to greater consistency in the use of prosecutorial discretion. The interagency working group that Secretary Napolitano is establishing with the Department of Justice is charged with reviewing (on a case-by-case basis) the files of persons currently in removal proceedings and issuing guidance on the appropriate consideration necessary to meet the enforcement priorities.<sup>37</sup> The Task Force on Secure Communities recently recommended that DHS ensure that its personnel exercise prosecutorial discretion systematically.<sup>38</sup> Whether this interagency working group will provide such a structure to do so remains to be seen.

The relevance of these memoranda on prosecutorial discretion may be viewed through the lens of a changing environment. The sheer size of the unauthorized population has grown substantially, despite a recent drop in both the unauthorized resident alien population and the apprehensions of illegal aliens. State and local governments are playing an increasing role in enforcing immigration law.<sup>39</sup> As a result of Congressionally-mandated programs as well as technological advances, there have been dramatic improvements in the identification of removable aliens. These dynamics serve to expand the pool of removable aliens at a time when the financial resources of the Federal Government are especially pressed.

This concludes my formal testimony, and I look forward to your questions.

Mrs. MILLER. Thank you very much, Dr. Wasem.

I appreciate the testimony of all of our witnesses today, and I know there has been some consternation about the title of our hearing, and I would say this, as I have listened to all of your testimony: I don't think anybody disagrees with the concept, certainly, of removing criminal aliens from the United States. We are all very, very much in support of that.

I think the problem that many of us have as we categorize this as administrative amnesty is allowing all others who have not actually committed a crime not to—I mean, any other crime other than entering the country illegally, which is a crime, obviously, that there would be no efforts, really, because of resources, as I am understanding it, to deport them, or remove them, or what have you.

I would just mention, first of all, in regards to the dictionary's definition of amnesty, whether or not this is amnesty when you have—if you are going to deport 400,000 and leave the other whatever is left out of 11–12 million or more illegals here, “the act of any authority, such as government, by which pardon is granted to a large group of individuals; the excusing of an offense without enacting a penalty; a release from the legal penalties of an offense.”

I believe that that is the definition of what the administration is doing here in regards to administrative amnesty, and there has been a huge outcry around the country, of course, about the administration's policy in regards to this.

I would also note, and I am sure we are going to get into this today as we question, whether or not the resources that you have

<sup>37</sup>The Honorable Secretary Janet Napolitano, letter to the Honorable Senator Dick Durbin, August 18, 2011.

<sup>38</sup>Homeland Security Advisory Council, *Task Force on Secure Communities Findings and Recommendations*, September, 2011.

<sup>39</sup>CRS Report R41221, *State Efforts to Deter Unauthorized Aliens: Legal Analysis of Arizona's S.B. 1070*, by Kate M. Manuel, Michael John Garcia, and Larry M. Eig.

are adequate. I understand, believe me, in strict budgetary constraints that we all have, of what the financial condition of the country is. But it is for the agencies to tell the Congress what kind of resources are actually necessary, and it is for us to prioritize when we do our appropriations process. Just say you don't have enough resources, we need to know what kind of resources are necessary, and that is one of the things this committee has been trying to get at, certainly this year, of what kind of resources actually are necessary, because it is a Constitutional responsibility of the Congress to secure our borders.

I believe that the American people—the majority of the American people—have demonstrated over and over that they have the political will to secure our borders, and it is for the Congress to work together with the agencies, I believe, to make sure that we can do the very best job that we can to secure our borders.

Talking about prioritizing, I know that there have been some comments made about not putting enough in the budget for this. I would just mention—I have got the numbers here for the fiscal year 2012 budget—in regard to ICE's removal operations, the House-passed appropriation bill is in conflict with—which was mentioned a little bit earlier here, actually mirrored the President's request in all by categories.

Actually, for custody operations, the House plussed-up by almost \$27 million, which was for 600 additional detention beds, and then we also plussed-up the Secure Communities by another \$10 million. So I think we are putting our money where our mouth is in regards to prioritizing for border security.

Again, I would say, if we are only going to remove those who have actually committed a crime, you know, we think about 9/11, for instance. That is why this committee even came into existence, as a reaction to 9/11.

Four of the 9/11 hijackers were here on extended—or, excuse me, overstayed visas, but yet, they had no criminal background at all; they had never done anything other than overstay their visa, and so they were here illegally, although they hadn't gone out and assaulted somebody on the street corner. I think that leads us to why we are concerned about this administrative amnesty, how we can be proactive as a Nation; reactive, after something happens.

I would also point out just the cost of illegals on States and local governments, was mentioned, I think, by the doctor, about the States and the localities are picking—the municipalities are picking up so much of the expense. I have seen some numbers as high as, you know, \$10 billion to \$15 billion of additional cost that the States and local governments are absorbing because the Federal Government is really not doing the jobs that we should do as adequately as we can do.

So, in regards to this particular policy, I guess my question for both the chief and Mr. Kibble, were your two agencies involved in determining that this would be the new policy, and do you completely support it? Do you have any consternation with it that you may be willing to talk about on the record, or—were you involved with this policy? Is this something that you think is the best path forward in securing our borders?

Mr. KIBBLE. Chairwoman Miller, as in policy formulation in other areas, this was not developed in isolation within ICE, speaking for ICE. It was a collaborative process including the Department of Homeland Security and the White House, as well.

There were a couple—if I could just address a couple of the points you had mentioned before, I do think it is important to clarify that the prioritization does not—is not limited to just criminal aliens. We are looking to promote public safety, border security, and the integrity of the immigration system.

So if you look at our annual data, roughly 50 percent of it are criminal alien removals, but then by definition, about half of them are not. We are looking at repeat immigration violators. We are targeting recent border entrants.

With respect to National security threats, we are also—have programs that we have established in response to 9/11 to address those concerns. So it really is taking these resources—these 400,000 removals that we have—and trying to maximize and use each and every one of them to the maximum extent we can to promote public safety.

To your question in terms of whether I agree with it, I think every law enforcement agency around the world exercises discretion, because there is a recognition we have a finite amount of resources and we all want to do the maximum we can to promote a public good. So I do agree with this idea of smartly and effectively approaching immigration enforcement, and again, making every one, to the maximum extent we can, making every one of those 400,000 removals count.

Mrs. MILLER. So your testimony is that ICE, as an agency, was involved with determining this particular path forward as an administrative policy and that you are completely on board with it?

Mr. KIBBLE. That is correct, ma'am. It was done in collaboration with the Department of Homeland Security and the White House, as well. With respect to the—again, I am a strong supporter of exercising discretion and operating in a prioritized way.

Mrs. MILLER. Chief.

Chief FISHER. Chairwoman, any time that you can take a look—and again, from the Border Patrol, it is certainly CBP's perspective, what this does is this allows us and gives us additional detention spaces. When you look at prioritizing those cases—and by the way, when you look at the prosecutorial discretion memo that Director Morton signed, certainly we continue to work with ICE and to find out what, if any, changes that we are looking at between the ports of entry, and I will tell you one: As we are working through this right now, it is going to allow us more detention capability for those entrants that we apprehend between the ports of entry, and from a prioritized enforcement standpoint we do support that.

Mrs. MILLER. Just a question for Dr. Wasem. Last Wednesday the President made some press because he was talking to an audience about this particular policy and he said that the statistics are a little deceptive, I think in order to play down the significance of the number of removals, perhaps, under his administration. I am not sure why he said the statistics are a little deceptive, but as a statistician, or as you have gone through the research, et cetera, do you think the statistics are a little deceptive?

I guess I would also ask you, in regards to amnesty that, for instance, as we mentioned, back in 1986, and you saw this huge spike, do you think that this policy will—that we will look at another spike as a result of this?

Ms. WASEM. Let me speak to your first—your second question first, and that is, any time there is a magnet effect, and when we have seen it in history, it is hard to measure that in contrast to the ability to measure apprehensions, or the unemployment rate, or other economic and demographic data. So it has always been one of the unmeasurables, that it is difficult to sort out the extent to which it has made a difference. Often, when we see something that we could argue is a magnet effect, it is coincidental with other factors and forces at play, whether they are economic, or factors in the sending countries, like devaluation of the peso, or natural disasters.

So while most social scientists would recognize that there can be magnet effects, a lot of it hinges on what is going on in the sending countries and how aware they are, and how much they understand the sending policy. Sometimes it could be a misunderstanding of a policy that could create this. So it is not something that can be empirically demonstrated.

I must confess that I did not hear the President's speech that you are referring to, so I don't feel able to respond to that question, if you—

Mrs. MILLER. Okay. I understand that. That is fine.

At this time, the Chairwoman will recognize the Ranking Member, Mr. Cuellar.

Mr. CUELLAR. First of all, let me just, again, refer to this letter of November 4, 1999, that is signed by, again, Henry Hyde, Lamar Smith, a series of very prominent Republicans, David Dreier, and other folks, including Nathan Deal, which, by the way, has the toughest immigration law. He also signed this letter.

It goes on, and they are asking for prosecutorial discretion. In fact, there they say the principle of prosecutorial discretion is well established, and then they go on why the need for prosecutorial discretion.

In fact, if you look at ICE power—authority—comes in under the Homeland Security Act of 2002, where they gave you the exclusive authority to prosecute all removal proceedings. So you got that from the 2002 law.

Also, the Supreme Court has recognized that the exercise of discretion is generally not subject to questioning or review, and agents—agencies' decision not to prosecute or enforce, whether it is civil or criminal, is committed to the agencies' absolute—and I emphasize, absolute discretion. This is the *Heckler v. Chaney* case—U.S. Supreme Court's 1985 case that we have.

Also, as Ranking Member Thompson mentioned a few minutes ago, when we passed the homeland security bill—the appropriation bill—specifically, there was \$1.6 million that was provided to identify aliens convicted of crime who may be deportable and who may pose a serious risk of public safety or National security issues. They didn't say everybody; they just said that is the work.

In fact, it goes on, Members—and we all voted for this, or at least the ones that voted for it; I think I voted against it—that the

Secretary shall, “prioritize the identification and removal of aliens of—convicted of a crime by severity of that crime.” So you all, everybody voted—or at least the ones that voted for this, you voted for this particular bill. So I think to come back now and say, there is no—you know, we shouldn’t be doing this, we should have all voted no on that homeland security and moved on at that time.

Mr. Kibble, let me ask you, \$1.6—what is your cost—billion dollars, let us assume that bill would have passed, you would follow the appropriation bill, right, to follow and say, “Go after the more—aliens with criminal records,” is that correct?

Use your mike, yes.

Mr. KIBBLE. I am sorry, sir.

We have been operating under the 2010 appropriations language that directs us to expend \$1.5 billion, focused on the identification, apprehension, and removal of criminal aliens. Just to put that in perspective, the enforcement and removal operations component within ICE is the principal agency that affects civil immigration enforcement. That represents, you know, better than half of the resources that have been devoted to immigration enforcement—that component—

Mr. CUELLAR. How much does it cost to remove one alien—identify—ICE?

Mr. KIBBLE. For ICE resources it costs roughly \$10,000. We have brought that down—

Mr. CUELLAR. Right. \$10,000, and let us assume that the appropriation bill that got passed this year, this one—I know it is still in the Senate—\$1.6 billion—it went up from \$1.5 billion to \$1.6—taken it costs you \$10,000, how many aliens could you—criminal aliens could you deport using those numbers, roughly?

Mr. KIBBLE. Roughly, we are still at about an overall population of about 400,000 removals, and we anticipate that within those resources with—being able to maintain detention space at a roughly 33,400 beds, that we will be able to continue to increase the criminal aliens removed within that overall population of roughly 400,000.

Sir, just to kind of make a point, the record-breaking immigration enforcement we have done over several years—and I am proud of the folks that have done this—this has continued into fiscal year 2011. We are continuing to break records moving in excess of 200,000 criminal aliens in this just most recent fiscal year concluded.

Mr. CUELLAR. The next three—I mean, if you continue for your 3 years that would match the 8 years that the prior administration had in removing criminals and you keep going at the pace that you are going?

Mr. KIBBLE. It has been several years, now, of record-breaking immigration enforcement.

Mr. CUELLAR. Okay.

I have a question for Ms. Wasem. You did some research on amnesty. When was the only time we really have had amnesty in the United States that you are aware of?

Ms. WASEM. Well, the major legalization legislation passed in 1986. There are a variety of other smaller—

Mr. CUELLAR. The President was—

Ms. WASEM. That was President Ronald Reagan.

Mr. CUELLAR. Okay. All right.

I have no further questions.

Mrs. MILLER. Thank you very much.

Just before I recognize the gentleman from Mississippi, I hadn't seen this letter that my Ranking Member keeps referring to, and we are going to make sure all the Members of the committee do get a copy of this. But I would just note one thing on the letter that is being referenced: We are talking about removing criminal aliens, but as you read the letter it is talking, actually, about removal proceedings against legal permanent residents—legal permanent residents, not criminal aliens. I would just mention that.

At this time I would recognize the gentleman from Mississippi, Mr. Thompson.

Mr. THOMPSON. Thank you very much.

Mr. Kibble, you indicated that it costs ICE about \$10,000 per alien to be deported. It has been factored in that the overall cost to the Federal Government is about \$23,000 per alien.

I put on the map—on the screen—that if there are 11 million unauthorized aliens, and if it costs \$23,000 per alien, that will cost us to eradicate the problem about \$257.6 billion. For the sake of comparison, what is ICE's total annual budget?

Slightly less than \$6 billion.

[The information follows:]

## U.S. Government Costs to Remove All Unauthorized Aliens

**\$23,000 per alien**

X

**11.2 million unauthorized aliens**

=

**\$257.6 BILLION**



Prepared by the Committee on Homeland Security,  
Democratic Staff

Mr. KIBBLE. Yes, sir.

Mr. THOMPSON. Okay. Given the reality of slightly less than \$6 billion coupled with the potential to solve the problem, so what is your driving factor in deciding to exercise prosecutorial discretion?

Mr. KIBBLE. The key thing, sir, is to, again, use the 400,000 or so removals that we are resourced to complete in a given year and

to use those in a way that is going to remove public safety threats from our communities, promote border security through partnership with Customs and Border Protection in targeting recent border violators, and also responding and restoring to the integrity of the immigration system, for those folks that are immigration fugitives, that are defying an order of removal or that are gaming the system through fraud.

So using those resources—those finite resources that are available to us, in this past fiscal year 90 percent of our overall removals fell within those priorities—90 percent. Roughly 54 percent of that 400,000 were criminal alien removals. But again, our priorities extend broader than just criminal aliens.

Mr. THOMPSON. Chief, in the application of ICE's prosecutorial discretion, has that harmed or helped CBP's ability to perform its stated responsibilities?

Chief FISHER. Congressman, it has helped us because it has allowed additional beds that would—we would require under a consequence delivery system, so it has helped.

Mr. THOMPSON. So your testimony is that ICE's use of prosecutorial discretion has allowed you to have more beds available to do your job?

Chief FISHER. Yes, Congressman. In those areas where that has been implemented—and again, because this is an enforcement process, any time that we can, subsequent to our arrests—and by the way, just for clarification, when we are talking about prosecutorial discretion, Border Patrol agents are still and will continue to arrest everybody that enters this country illegally. There is no discretion there. I just want to make sure that we understand that correctly.

Subsequent to the arrest, when we look at final disposition following the consequence delivery system, to the extent that we have additional bed spaces either for the consequence delivery system or for final disposition, that helps out our ability to control the border, and that is our intent.

Mr. THOMPSON. Dr. Wasem, you have reviewed the history of prosecutorial discretion. Have you seen the application of this both during Democratic and Republican administrations? If so, have you found the application to be different?

Ms. WASEM. In the memorandum and guidance that I have reviewed from 1975 forward, certain themes are common throughout: The humanitarian concerns, the resource issues, and other enforcement priorities. The main thing that struck me about the latest set of memorandum is the specificity, in that it lists 18 factors. Now, those factors fit in the broader categories that the earlier memos mentioned, but it is—the level of specificity is a little different.

Also, the August letter that Secretary Napolitano sent to Senator Durbin proposed as a structure that would be reviewing the process. That actually reminded me a bit, as a response to something that I referenced in my written testimony, that William Howard wrote about in his 2005 memo and how things had changed organizationally from the days when it was Immigration and Naturalization Service and everybody was in the same agency to one of the issues they were facing in 2005, where people were in different agencies and different parts of the country.

So whether or not the Napolitano letter is really going back to what it was like under one agency by putting something at the Departmental level or whether it is going to take us in new directions really remains to be seen. It is too soon to tell.

Mr. THOMPSON. Thank you very much.

I yield back, Madam Chairwoman.

Mrs. MILLER. The Chairwoman now recognizes the gentleman from Texas, Mr. McCaul.

Mr. MCCAUL. Thank you, Madam Chairwoman.

Let me first just commend the ICE agents who every day put their lives on the line, and particularly those serving under very dangerous conditions in Mexico.

To the Ranking Member, I agree, we need more resources. I think, you know, we talk to our friend, Judge Ricardo Hinojosa, and he will tell you that not only do we need more agents, we need more judges and prosecutors.

As a former Federal prosecutor, I understand the concept of prosecutorial discretion. It is nothing new. Prosecutors exercise it every day, and they have to. You have to look at violent crime versus non-violent crime. So I understand all that.

What I was confused about is when this policy came out and it caused some controversy—I think a lot of my constituents view it as an amnesty program; I think most of my constituents do not agree with amnesty—but what was confusing was the *New York Times* reports that administration officials said, in commenting on this new policy, that those who qualify for relief can apply for admission to work in the United States and will probably receive it.

So call this whatever you want, but when administration officials say that through the *New York Times*, it appears to me that the administration is saying, “Look, if you are a noncriminal alien we are just going to allow you to stay in the United States, and beyond that, we will let you apply for work permits.” So it has the appearance of the administration in a back-door way is pushing a guest worker or amnesty program, call it what you want, but allowing illegal aliens to stay in the country and apply for work permits.

So, Mr. Kibble, I asked, in a prior hearing, a Homeland Security official this very question, and he couldn’t answer it. Can you tell me if this is the policy of this administration?

Mr. KIBBLE. Sir, as you acknowledged, the discretion is something that goes back decades. With respect to the particular application in this group, the working group that has been established, including both senior professionals from both the Department of Homeland Security and the Department of Justice are working on criteria to go through what amounts to roughly 300,000 active cases that are on the immigration court docket.

As they look at—as they go through that they are going to be looking to exercise discretion, and we anticipate that it will be very narrow. We anticipate that it—

Mr. MCCAUL. My time is a little—and I understand that. I understand prioritizing the criminal cases. As the Ranking Member said, we need to be careful about our messaging.

Is it the policy of this administration to allow noncriminal aliens to stay in this country and apply for work permits?

Mr. KIBBLE. No. That doesn't appropriately characterize the policy, sir. In fact, even once—through this process, if these cases—some of these cases that qualify for discretion, where we choose to exercise discretion are set aside, first off, it is done on a case-by-case basis—a case-by-case individual—

Mr. MCCAUL. So those that you choose not to prosecute, are they allowed to stay in the country and apply for work permits?

Mr. KIBBLE. They can certainly apply for work authorization, but there is no automatic grant of work authorization.

Mr. MCCAUL. But it is the policy of this administration that they can stay in the country and possibly apply for work permits?

Mr. KIBBLE. The policy focuses more on unclogging the immigration court docket so that we can accelerate our high-priority—

Mr. MCCAUL. You know, I get that. I understand all that. But it is the message that we are going to allow the non-criminal alien to stay in the country and apply for work permits. I think that is the core issue with this new policy.

I still haven't got a very clear answer to that. You know, if Mohamed Atta, the leader of the hijackers, who had a non-criminal record—didn't have a criminal record, had overstayed his visa, if he was pulled over in a traffic stop would he be let go and allowed to stay in the country and apply for a work permit?

Mr. KIBBLE. No, sir, because our priorities extend to non-criminal immigration violators as well, so those presenting National security threats—again, if you just look at our removal numbers, roughly half of them are not considered criminal aliens—

Mr. MCCAUL. So what would be the threshold for a—okay, you have got non-criminal and criminal. What is the threshold, then—he gets pulled over for a traffic stop. Is that enough to deport him? I don't think it is, under your policy.

Mr. KIBBLE. Sir, I can't speak to that particular—I mean, every officer has been empowered with the ability to look at the merits of that particular case and exercise discretion at any point in the continuum. What we seek to do is to exercise it earlier, but I will tell you that our officers are very concerned about public safety, and in this case you pose a National security example. If we don't know what we have we may choose to move forward if we establish that the alien is potentially removable, arrest them, look at biometrics, continue to develop information and process that person for removal.

Mr. MCCAUL. Let me just close by saying, you know, I am concerned about this from a National security standpoint, as well. I hope you factor that in in these cases.

Last, again, I don't know who these administration officials were that said this, and I don't—I haven't got a clear answer whether this—that is the policy of this administration, but I think that kind of statement from this administration really calls into question this policy. Prosecutorial discretion is nothing new, as you and I have talked about, but to say that they can stay in the country and apply for work permits, that goes a whole step further, and actually goes around, I think, the will of the Congress.

So with that, Madam Chairwoman, I yield back.

Mrs. MILLER. The Chairwoman now recognizes the gentleman from Michigan, Mr. Clarke.

Oops. Excuse me. I am sorry.

The Chairwoman now recognizes the gentleman from Mississippi, Mr. Thompson.

Did you have your time?

Mr. THOMPSON. Well, do you want me to go again?

Mrs. MILLER. No, okay, it is Mr. Clarke. I am sorry.

You looked up—

Mr. Clarke.

Mr. CLARKE. Yes, thank you, Madam Chairwoman. I yield my time from the gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. I think the gentleman yields his order rather than his time, Madam Chairwoman.

Mrs. MILLER. Gentlelady from Texas is recognized.

Ms. JACKSON LEE. I don't want Mr. Clarke to give up his time.

But let me thank you very, very much for your presence here today. I am going to call each and every one of you a patriot. Thank you so very much for your service to this Nation.

I have worked with all of you. I know your work, Doctor, and certainly have worked with Customs and Border Patrol and the Border Patrol separately, and, of course, ICE, over many, many years.

Chief Fisher, I just want to ask you, do you have the necessary resources? I think we were reading an article about the efforts on the Southern Border; I know our Chairwoman comes from the Northern Border and work is necessary there, but it is intense work, is it not, Chief?

Chief FISHER. Yes, it is.

Ms. JACKSON LEE. Are you further enhanced—it is not a perfect system, but are you further enhanced—I introduced a major amendment in about the mid—either 2000s—I am trying to remember when I have been on this committee, so I think it was in the mid- to early 2000s where we talked about helicopters, night goggles, computers, new equipment. You have received some of that, is that not correct?

Chief FISHER. Yes, ma'am. That is—

Ms. JACKSON LEE. Does that enhance your ability to do the work—the night work—that is required when there was an intensity of individuals coming over? Does that enhance your work?

Chief FISHER. Yes, ma'am, it has.

Ms. JACKSON LEE. Do you see a decided decline, partly, maybe, because of our economy—not saying a cessation of those coming, the kind of immigrants that have been coming for work that we have seen that have just been coming over either reunite with family or for work? Have you seen some of the impact of your work along with maybe the economy impacting those coming over?

Chief FISHER. Yes, we have.

Ms. JACKSON LEE. But you see repeat offenders, I assume?

Chief FISHER. Yes, we do.

Ms. JACKSON LEE. All right. Those repeat offenders, I think, are described as a felony now. I think the law, or the 1996 laws describe those individuals as felons that keep coming back and forth. Is that—

Chief FISHER. If, in fact, they have been formally removed on their—an earlier apprehension and they were formally removed, if

we catch them a subsequent time and the U.S. attorney chooses to prosecute, that could be a felony, yes, ma'am.

Ms. JACKSON LEE. Could you use more resources, Chief?

Chief FISHER. Certainly. But before we would say yes, we need more, and then the question is, well, what do you need, because of the infusion of resources, both in terms of personnel and in particular, technology, you know, one of the things that we are looking at now is two things in particular: No. 1, do we have the resources in the areas of highest risk? In other words, do we need to move some of those resources in areas where traditionally we didn't have the level of control which we do now?

No. 2, how do we deploy those types of resources? You know, we look at the largest civilian air force, and the capabilities that CBP has, in particular, the field commanders within the Border Patrol, and, as you have mentioned, some of the technology, both in terms of the mobile surveillance systems, and the mobile surveillance capabilities, the unattended ground sensors, the fliers, all of those—the unmanned aerial surveillance systems that have come on with in CBP—gives us a huge capability.

Ms. JACKSON LEE. Thank you, Chief, very much.

Let me quickly, I appreciate the collaborative work between Chairwoman Miller and Ranking Member Cuellar, but we know that this is a “get you” hearing. This is an order that has come down from our leadership—the Republican leadership. It is to spend your time getting the President as we move toward 2012. Every committee has that responsibility, and this is another “get you.”

My good friend from Texas, who I work with quite well, Mr. McCaul, has put on the record that we need more resources for our prosecutors and judges. He is absolutely right. The Southern district is overburdened with the number of immigration cases.

But let me ask Mr. Kibble, who we have worked with, let me just put on the record very quickly that prosecutions for illegal reentry have jumped more than two-thirds since 2008. That is under the Obama administration. President Obama has already deported around 1.1 million immigrants—let me make it very clear—more than any President since Dwight D. Eisenhower.

[The information follows:]

## More crossing into U.S. are repeat offenders

Most of them heading back to their families

By DAMIEN CAVE  
NEW YORK TIMES

AGUA PRIETA, Mexico — “My wife, my son — I have to get back to them,” Daniel kept telling himself, from the moment he was arrested in Seattle for driving with an expired license all the way through the deportation proceeding that delivered him to Mexico in June.

Nothing would deter him from crossing the border again. He had left his hometown at 24, he said. Twelve years later, he spoke nearly fluent English and had an American son, a wife and three brothers in the United States. “I’ll keep trying,” he said, “until I’ll get there.”

This is increasingly the profile of illegal immigration today. Migrant shelters along the border are filled not with newcomers looking for a better life, but with seasoned crossers older men and women, often deportees, braving ever-greater risks to get back to their families in the United States — the country they consider home.

### A determined cadre

They present an enormous challenge to American policymakers, because they continue to head north despite obstacles more severe than at any time in recent history. It is not just that the American economy has little to offer the border itself is far more threatening. On one side, fences have grown and American agents have multiplied; on the other, criminals haunt the journey at every turn.

And yet, while these factors — and better opportunities at home — have cut illegal immigration from Mexico to its lowest level



SCOPING IT OUT: A man looks around a border fence that separates Nogales, Mexico, from Arizona. It is scheduled to be replaced with a more modern fence, harder to scale.

in decades, they are not enough to scare off a sizable, determined cadre. “We have it boiled down to the hardest lot,” said Christopher Sabatini, senior director for policy at the Council of the Americas.

Indeed, 56 percent of apprehensions at the Mexican border in 2010 involved people who had been caught previously, up from 44 percent in 2005. A growing percentage of deportees in recent years have also been deported before, according to Department of Homeland Security figures.

For the administration of President Barack Obama, these repeat offenders have become a high priority. Prosecutions for illegal re-entry have jumped by more than two-thirds since 2008. Officials say it is now the most prosecuted federal felony.

Obama has already deported around 1.1 million immigrants — more than any president since Dwight D. Eisenhower — and officials say the numbers will not decline. But at a time when the dynamics of im-

IN CITY & STATE  
Border issue debate heats up on campaign trail. **PHOTO BY**

migration are changing, experts and advocates on all sides are increasingly asking if the approach, which has defined immigration policy since 9/11, still makes sense.

### Deportation not cheap

Deportation is expensive, costing the government at least \$12,500 per person, and it often does not work: Between October 2008 and July 22 of this year, Immigration and Customs Enforcement spent \$2.25 billion sending back 180,229 people who had been deported before and come back anyway.

Many more have returned and stayed hidden.

The administration acknowledges that immigrants like Daniel are rooted in the U.S. and typically have otherwise clean criminal records. But under its new plan introduced in August — suspending deportations for pending low-priority cases, including immigrants brought to the U.S. as children — repeat crossers are singled out for removal alongside “serious felons,” “known gang members” and “individuals who pose a clear risk to national security.”

Administration officials say they are trying to break the “yo-yo effect” of people bouncing back, as mandated by Congress when it made re-entry a felony in 1996.

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Ms. JACKSON LEE. Let me make that very clear: 1.1 million. Officials say the numbers will not decline, but at a time when the dynamics of a—immigrations are—goes on to say a lot of other things.

Immigrations and Customs Enforcement spent \$2.25 billion sending back 180,229 people. I think a lot of people would like that money to go for creating jobs.

So, Mr. Kibble, let me just ask you, do you think that ICE is doing its job?

Mr. KIBBLE. We are always looking for ways to improve and find more—

Ms. JACKSON LEE. Absolutely. Are you doing your job to the best of your ability now?

Mr. KIBBLE. With the resources that are available we are breaking records in virtually every—

Ms. JACKSON LEE. Every single day. Would you use more resources under the mandate that is not an unintelligent mandate, which is to get rid of the criminal aliens? Would you do that if you had more money?

Mr. KIBBLE. We could obviously do more with more, but we would still be operating with—in terms of priorities, because the violations so far outstrip the resources that are available.

Ms. JACKSON LEE. I just want to put this into the record, but I think this was utilized, it says \$23,000 per alien, 11.2 million unauthorized aliens, it would cost us \$257.6 billion. Many of these are students and individuals who are here simply trying to access legalization.

I further want to just comment, Madam Chairwoman, this is a letter that I signed that you mentioned that is on—I am not sure what your interpretation, but I will just say that this sentence clearly indicates that it was people writing to suggest, “We write you because many people believe that you have the discretion to alleviate some of the hardships and we wish to solicit your views as to why you have been unwilling to exercise such authority in some of the cases that have occurred.”

So, those of us who signed—Henry Hyde, now deceased, our esteemed Chairman of the Judiciary Committee, Barney Frank, Lamar Smith, my co-Ranking Member on the Immigration Committee, and Sheila Jackson Lee, and many others, were trying to say that you are wasting your monies on individuals that are just here versus getting the criminal aliens. That is what we wrote in 1999.

I would yield back to the Chairwoman.

Mrs. MILLER. Thank the gentlelady.

We all now have a copy of this letter that was written 12 years ago, and I think we can all look at it and see what we see here. It says, removing criminal aliens, they brought that to the attention. In the second paragraph it says, “However, removal proceedings against legal, permanent residents,” and then they go on with the rest of the letter. So again, I wasn’t here 12 years ago.

But at this time—recognize the Ranking Member.

Mr. CUELLAR. Yes, if you don’t mind, because I—let me clarify that letter.

You know, first of all, they are talking about removals, they said in some cases. So they are talking about criminal aliens, but they said, but in some cases they may be legal, permanent residents who have had aggravated felonies. So they are even saying, let’s go ahead and help these folks that have had felonies—felonies, felonies, felonies—and all this.

Then they go on, you know, they have obtained jobs, they are self-sufficient, they have started families in the United States—by the way, this is a Republican saying this—so—and then they talk about—and this is a very important thing, is they goes on and I am—it goes on and they are saying, you know, there is widespread agreement that deportations were unfair and resulted in unjustifiable hardship. Not Democrats saying this, but Republicans.

It goes on, we just ask why INS pursued removal in such cases when so many other more serious cases existed. Therefore, this is why they are asking a prioritization.

Madam Chairwoman, just so everybody is clear about this letter, I would ask that—I would ask your permission and the committee’s

permission that I introduce this letter, dated November 4, 1999, into the record.\*

Mrs. MILLER. Absolutely, without objection—

VOICE. Would the gentleman yield?

Mrs. MILLER [continuing]. We are going to introduce it to the record because I think it is important that we—that everyone has an opportunity to read this—legal permanent residents.

VOICE. Would the gentleman yield?

Mrs. MILLER. At this time I am going to recognize—go on through our questions here, and we will have the second round if we need to.

VOICE. Okay.

Mrs. MILLER. I would recognize the gentleman from South Carolina, Mr. Duncan. We are recognizing in order of the Members who were present at the start of the hearing.

Mr. DUNCAN. Okay. Thank you, Madam Chairwoman, and appreciate you having this particular hearing.

I thank the witnesses for being here today for this very important topic.

But as I sit here and I think, we should ask ourselves, why is this hearing on administrative amnesty so important, I want to applaud the Chairwoman for defining amnesty for us. I actually had looked it up on my iPad and was going to do that as well.

But let me tell you, the folks that I represent in South Carolina fully recognize—fully recognize—what most Americans, I think, agree on, and that is that we have a serious illegal immigration problem in this country. We have heard today criminal versus non-criminal, but I scratch my head and think that are not all illegal immigrants who entered the sovereign Nation known as the United States of America not criminal in some aspect, because they have violated the sovereign laws of this Nation by entering this country through illegal means, or staying in this country beyond their visa, which is against the law?

So at what point in time do we choose which laws we are going to enforce and which laws we are not going to enforce as a Nation? By us choosing not to enforce certain laws, does that not water down our legal system as a whole?

Director Kibble, listening to the testimony and hearing Mr. McCaul ask you some questions about folks that are stopped with a traffic stop, and whether they are National security threats or other things, I wonder, President Obama's uncle was recently arrested on suspicion of driving under the influence, which was a crime. News reports indicate that he had a deportation order since 1992 but was never deported.

I understand that Mr. Obama was freed from ICE recently under an order of supervision. If our deportation process is not robust enough to successfully deport someone with a 19-year-old deportation order, why should Americans have any confidence that we can deport terrorists and criminals who pose a threat to public safety?

Mr. KIBBLE. Sir, with respect to that particular case, DHS privacy rules limit what I can discuss on that. I know some of that

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\*The information has been submitted previously by Mr. Cuellar.

was inappropriately and in an unauthorized way leaked to the media. That is a subject of a separate OIG investigation.

However, there are some things I can confirm. He was referred to us by the local police. He had been entered into proceedings. As you indicated, he has been released and is under an order of supervision, and he is not being treated any differently than any other alien in similar circumstances as we continue to pursue the matter.

But this is—I mean, the proceedings sometimes take an extended period of time to ultimately affect a successful removal.

Mr. DUNCAN. I realize there are 12 to 20 illegal aliens in this country. That is a number that is thrown around. I believe we don't really know what the true number is.

I know that it is very costly, as has been pointed out by the other side of this argument, that it would be very costly to round those up and send them home. I get that.

But if we stop someone through normal law enforcement and we realize that they are here overstaying their visa, they are here illegally, they can't prove that they are here on a legal status, we have got that person. Why are we choosing not to deport them?

Mr. KIBBLE. Sir, again, I mean, depending on the circumstances of the case, different officers may make different decisions in terms of when and how to exercise discretion based on—

Mr. DUNCAN. But these are the easy ones. These are on the ones we know. We are not having to round them up out of the shadows. We are not having to go to the employers and check the immigration status of every one of their employees.

This is somebody we have, we stop, we realize that they are here illegally. It is the easy—it is the low-hanging fruit, so to speak. Why not deport these guys?

Mr. KIBBLE. We do remove a number of those, sir. I mean, I indicated before—first off, we have not reduced immigration enforcement in any way. As I have indicated previously, we are removing more people than ever in the history of our agency. On top of that, while 50 or so percent are criminal aliens, we are removing other folks that fall within these other areas that we are concerned about, that include immigration fugitives, recent border violators, and even though I say 90 percent of our overall removals are in prioritized areas, there is also 10 percent for folks that do come across our radar because we are not going to ignore the law.

Mr. DUNCAN. I thank you.

I will yield back the balance of my time.

Mrs. MILLER. Thank the gentleman.

The Chairwoman now recognizes Mr. Rigell, from Virginia.

Mr. RIGELL. Thank you, Madam Chairwoman.

I join my colleagues today in thanking—

Mr. THOMPSON. Madam Chairwoman, I think according to the rules of the committee, Ms. Jackson Lee is next. Mr. Clarke yielded his time to her, but—

Mrs. MILLER. He actually yielded his order, not his time.

Mr. THOMPSON. He said he yielded his time. I mean, everybody was clear on that.

Mrs. MILLER. I will ask the parliamentarian, since I want to exercise my discretion and make sure everyone who is here got a chance to ask.

According to the parliamentarian, my interpretation is correct. I am just trying to make sure that everybody who was seated here on time is getting their opportunity to ask their question, and certainly other Members will have their opportunity on a second line of questioning here.

Mr. THOMPSON. The only thing I am trying to get clarity on, Madam Chairwoman, is Mr. Clarke was clear in yielding his time. It was his time—

Mrs. MILLER. His order.

Mr. THOMPSON. Right. He yielded his 5 minutes to Ms. Jackson Lee. It was not Ms. Jackson Lee's time. It is now her time, according to the order and rules of committee.

Now, you are the Chairwoman—

Mrs. MILLER. Well, I will ask the parliamentarian again. Which do you agree?

I have got to ask my attorney here.

Ms. Jackson Lee corrected Mr. Clarke and said he was yielding his spot in the order. The Chairwoman is going to exercise what I think are the rules of the committee and make sure that everybody has an opportunity to ask questions.

At this time, I would recognize Mr. Rigell, from Virginia.

Mr. RIGELL. Thank you, Madam Chairwoman.

I join my colleagues today in thanking ICE and the Border Patrol for the brave work that is being done. I join Congresswoman Lee in just referring to you as patriots. I believe that is true. So thank you.

You know, an essential part of leadership and management is the allocation of limited resources, so the idea that we are providing judgment in this area does not at all surprise me. In fact, I think it is a good thing.

Having said that, I think that to develop—to define and announce a specific plan that really nails down exactly why we are going to really go after and who we are not, I think it either by design or default is an unwise policy, and I will tell you why. Let us consider a town, for example, that is having fiscal stress, and it causes a sharp decrease in the amount of money that is being given or allocated to the police department.

I think it would be unwise for the chief of police to come out and to be very specific on exactly what laws are not going to be enforced. Maybe, "Okay, we are not going to give anybody a ticket 15 miles or under on speeding," for example. You know, we are really making clear here, I think, what is a safe haven. Again, either by design or default, I don't think that is a wise plan.

Mr. Kibble, in light of that, I would like to ask you, sir, if—for a person who is outside of our borders presently who has an understanding of this new policy—and it is a change in direction, indisputably—do you think that this new policy either increases or decreases or has no effect on his or her likelihood to enter the country—and we are assuming this is a person who does not have a criminal background and has no criminal intent?

Mr. KIBBLE. Sir, I would say that, you know, since 2009 we have already been exercising discretion and we have not seen flows across the border, although I will defer to Chief Fisher in terms of what he has observed. In fact, we have seen declines.

But speaking directly to your point, one of our priorities is recent border violators, and when we talk about recent we define that—we think of that in terms of years, not months. So I think that right there clearly sends a message that if you are crossing—if you are attempting to cross the border you are not getting a free pass. You are going to remain a priority for us for years.

Mr. RIGELL. With respect, Mr. Kibble—and I have learned in my short time in Congress, I really don't like interrupting people, but this clock ticks and you only have 5 minutes, and you really want to make sure the point is made. I am not asking for, you know, metrics here, or the fact that we are sending more back than ever before. Those facts are not in dispute, and I applaud that progress.

I am asking you to get into the mind of a person contemplating coming over illegally. My specific question was—and I think I covered the universe of alternatives—does it increase, decrease, or have no effect on that person's mindset—their thinking that they may be able to, "get away with it," or be able to stay in our country illegally?

Mr. KIBBLE. Sir, and that was the point I was trying to make, is that because we are making clear that we are targeting people that if they cross the border—if they are not currently in the United States and they cross the border there is going to be a period of years where they are still on our radar and they are still a priority for us to go after them and remove them.

Mr. RIGELL. I appreciate I think a genuine attempt, on your part, to answer the question. I am not sure it was really answered there.

Chief Fisher, let me ask you the same question, if I may. Does it affect the mind of the person contemplating coming to this country? Or, let's make it even easier. Let's just say a person is in this country illegally. When they hear of this policy—they are non-violent; they are not a threat to public safety—does it increase, decrease, or have no effect on their mindset that they are concerned that they are going to be detained and possibly deported?

Chief FISHER. For those individuals that are contemplating coming into this country illegally today, tomorrow, or next week, I can tell you they will be arrested. No classes of individuals will not be amenable to the level of discretion that we are discussing today. They are recent entrants, and although we are doing it on a case-by-case basis, border security between the ports of entry we take very seriously.

We look at discretion and we look at the application of prioritizing bed spaces and case loads, that is different than our mission within the Border Patrol, sir.

Mr. RIGELL. I would submit to you that the only answer to those questions is absolutely yes, it does decrease their concern about entering our company—our country or staying in our country illegally. For that reason I don't think it is a wise policy.

Thank you.

Mrs. MILLER. The Chairwoman now recognizes the gentlelady from Texas.

Ms. JACKSON LEE. Thank you very much, Madam Chairwoman.

Thank you to my colleagues for their kindness and their indulgence.

Since I was one of the Members who was there at the time of the 1999 signing and want to give the interpretation that I think is appropriate to the letter that was submitted by my Ranking Member, Mr. Cuellar, dated November 4, 1999. What you have to remember is that at that time there was a question about the deportation of individuals who had never been back, who had come here as babies, children. There was a sizable Polish community in Boston, Massachusetts, that was being unevenly, or how should I say—it was being heavily targeted. Many of these individuals had never been to Poland and had juvenile offenses that were now coming to fruition, and many of them now were being deported. We heard from the Polish community, and many of the signees on here were from that region.

The sentence that is relevant, “However, cases,” and I would like to share this, “cases of apparent extreme hardship have caused concern. Some cases may involve removal proceedings against legal, permanent residents who came to the United States when they were very young and many years ago committed a single crime at the lower end of the aggregated felony spectrum but have been law-abiding citizens every since, obtained and held jobs, and remained self-sufficient and started families in the United States.”

So the issue was, these were legal, permanent residents, but what was happening with the new laws, because of the felony issue, if they were picked up they were being deported. They had families; they had never been back to Poland, or wherever else they might be sent—a somewhat similar analysis to where we are today.

One paragraph, then, says, “True hardship cases call for the exercise of such discretion, and over the past year many Members of Congress have urged the INS to develop guidelines”—notice the old terminology, INS—“to develop guidelines for the use of its prosecutorial discretion.”

Mr. Kibble, what I understand the administration’s policy is not a get out of jail key, as I understand it. It is to use the appropriate discretion to ensure that those who would do us harm, those who have offended the legal system, are your—those who are threats to society are your chief priorities. Is that my understanding?

Mr. KIBBLE. That is correct, ma’am. It is to accelerate these high-priority removals through what is currently a clogged system due to some of the issues that have been raised earlier today, in terms of limited immigration judges and other resources.

Ms. JACKSON LEE. You do not make the law, and if, for example, we pass a comprehensive immigration law that provided access to citizenship and put people in a line that had no interest in doing anything but being part of this great society, which I call, still, this great Nation—for me this Nation has never missed a step or a beat; we are a great Nation with great democracy and great rights. You would follow that law, as well, if that was passed by the Congress, signed by the President of the United States?

Mr. KIBBLE. Yes, ma’am. As a senior career official in the agency, our role is to take the laws and the policies that are handed to us and implement them in the most effective way we can.

Ms. JACKSON LEE. And to follow the law. So if there is an analysis that has been made that a college student that came here at age 2, graduated from high school, got accepted into a college be-

cause of various different State laws, that that may not be at the top of ICE's priority right now, based upon the interpretation that comes to you from the Government?

Mr. KIBBLE. Yes, ma'am. Director Morton's memo of June 17 clearly states, though, that we are going to look at a whole range of factors and consider the merits of each individual case, and then determine on a case-by-case basis, based on that analysis, whether someone should be afforded extended discretion. I should just say, ma'am, that does not confer legal status.

Ms. JACKSON LEE. I understand. We welcome that, but we also know that while you are doing that you achieve a lot of human resources in doing so. But we welcome that.

Finally, I am sorry that Mr. Duncan had to bring up a connected relative of our President. I don't know how many other Members of Congress who come from immigrant backgrounds that may have had similar circumstances.

Thank you for awarding the President of the United States both privacy, but also the recognition that nothing inappropriate occurred. Is that correct, sir, to your knowledge?

Mr. KIBBLE. Again, I would say that this case is being treated no differently than any other case that we would handle with meeting these consistent circumstances.

Ms. JACKSON LEE. Okay.

Then I would finally suggest, again, 1.1 million that have been picked up and deported by the Obama—President Obama administration, although the President has clearly said his position, as it is my position, to support comprehensive immigration reform I believe would be the solution to your task so that you could focus on issues.

Finally, the cleric that was killed, I think it would be absurd to suggest that if he was stopped in a car that local police would not be sensitive enough to his connectedness that someone would not detain him. Would you think that would be a reasonable response?

Mr. KIBBLE. Yes, ma'am, although in the particular case I think it was a reference to Awlaki, who is actually a U.S. citizen, so it would be a different context within the—

Ms. JACKSON LEE. Well, then you are absolutely right. It would be a different context. You would expect someone else to be dealing with his particular situation because he is a U.S. citizen. But if there was a non-U.S. citizen with connectedness like the U.S. cleric, now deceased, you would be able to find some way to detain that individual.

Mr. KIBBLE. In the days after 9/11 we actually created programs specifically focused on those particular vulnerabilities and ensuring that we had a close lash-up with the Joint Terrorism Task Force in coordination with the National Counterterrorism Center and a whole range of other interagency efforts to make sure that we are guarding against National security threats.

Ms. JACKSON LEE. Well, let me thank you very much, again, for your service.

I yield back. Thank you.

Mrs. MILLER. The Chairwoman now recognizes the gentleman from Arizona, the new father.

Mr. QUAYLE. Thank you, Madam Chairwoman. Thank you for holding this hearing.

I want to thank all our witnesses for being here today and want to echo the sentiments of how proud we are of the CBP men and women and the men and women of ICE. They do a great job.

We have had a lot of talk about cost today, and one of the things that hasn't been mentioned is the cost of—how much cost illegal immigration puts on the U.S. Government. It is about \$113 billion a year. The vast majority of it is actually taken up by State and local governments—about \$84 billion, according to some reports.

Now, the States and locals—in my State of Arizona we constantly have to try to come to Washington to get payback for the amount of funds that we use as State level from the Federal Government because of illegal immigration. We are inundated by this for a long time.

So, we have talked in here that—illegal immigration, this is a Federal rule, because—we in Arizona know that because we tried to pass a law, or we passed a law, that was going to enforce the Federal law, but then we got sued by the DOJ. The problem here, as Mr. McCaul was kind of pointing out, is that I understand prioritization, but it is the grand scheme of things from the administration that gives some—especially in my home State of Arizona—pause, saying that we are not going to be enforcing our immigration laws and we are not going to be securing the border the way that we can by not allowing—having these big beacons for people to come in illegally.

I think it points to what was noted in the *New York Times* piece, but also what the President has been saying, himself, saying that we are not—he said recently in a town hall format that we are not going to be going after young people who did nothing—who didn't break any other laws besides being here illegally. So that grander scheme of things shows that, you know, we will have an amnesty by administrative policy.

For those of us in Arizona, that is a huge concern for us. It is a big concern also because as we have made great strides along the border, especially in the Yuma sector, but the Tucson sector still has a lot of work to be done, and the one thing that was actually great for the Yuma sector was Operation Streamline, and it showed that there was going to be teeth for people and repercussions for people who came across illegally.

Now, we are talking about we are still going to have enforcement when people are coming across the border and we are going to continue to work on that, but one thing I wanted to ask you, Chief Fisher, because you said, you know, you take it seriously—and I know you guys do down there—but once they get inside and once they actually get past that first sector—and, Mr. Kibble, you were talking about once you are here for just a few years, or a couple, you are still on the radar—how do you know how long they have been in America if they came across illegally and we didn't apprehend them? We have no way of doing that.

So, Chief, that is what—and Mr. Kibble, both—how do we know that once somebody is in the United States how long they will be? Because that is where you were saying if they are in for a short amount of time they would still be on the prioritization of deporta-

tion, but I don't know how you can actually determine how long somebody has been in here if they came in illegally and weren't apprehended actually at the border.

Chief FISHER. Well, sir, the first point I would like to address in terms of the Streamline case, we are right now—40 spots per day from Yuma are being allocated in the Yuma district for those cases in Tucson. I will also say that Streamline, as an independent program, it is a lot stronger within the consequence delivery system than as a stand-alone program because we are seeing reduced recidivism and reaprehension rates within the CBS. So I just wanted to at least—just so you know, we are taking some of those recommendations from this particular committee and moving forward with those. We have this year and we will continue next year.

When we apprehend an individual at the border and we do our biometric checks, among other things, it tells us a lot about those individuals. For those very small percentage of individuals that we apprehend that have been in this country for an extended period of time, there is a formal process. We still do the biometrics; we have to identify who these individuals are, if, in fact, they have a criminal history, and we, on each one of those cases, work those with ICE to find out the final determination.

Mr. QUAYLE. But there is no real way, if they don't have any past history of coming across the border, right, and they are actually inside the United States, past where the enforcement areas really are, and if they picked up, is there—there is no real determination on how many years, how many months they have been in the United States illegally, correct?

Mr. Kibble, do—

Mr. KIBBLE. Sir, I mean, our officers and our investigators, I mean, will—if they have an encounter and someone meeting that category comes across their radar, I mean, that is part of pursuing the process because we don't know what we have and we may arrest them and we may continue to move them through the process until they demonstrate some sort of evidence that they have been here in a manner that perhaps takes them outside of our priorities.

But even if they are outside of our priorities, we are not saying we are going to ignore the law, in terms of non-priority removals. As I mentioned earlier, 10 percent we are removing that aren't priorities.

Mr. QUAYLE. You are right. You have said that, but the problem is that other officials, and including the President, has been saying other things—not that we are not just going to enforce the law, but we are just not going to go after people and we are not going to enforce it against a certain people who are here illegally. I know it is not what you are saying right now, but when the President and other administration officials do say that, I mean, that is—words matter, and that actually does provide a magnet for people because they realize, especially once the economy gets back roaring again, which I hope it does soon, we are going to see, as we have seen historically, an uptick in illegal crossings.

Mr. KIBBLE. Sir, may I—

Mr. QUAYLE. Yes, absolutely.

Mr. KIBBLE. Speaking to the magnet point, again, we are not reducing immigration enforcement in any way, and I am sorry I am

repeating myself, but I am proud of what my guys have done—my guys and gals have done. I mean, we are breaking records, and again, in virtually every category.

With respect to the magnet in particular, I haven't talked about worksite enforcement yet, but that is the motivator. That is what fuels a lot of illegal migration.

We have been breaking records in that category as well. We have brought criminal charges against more than 200 employers, up from last year, which was a previous record. We have initiated 3,000 investigations. We have audited more businesses than we have before.

All of that helps to address the magnet, in terms of trying to dry up those opportunities that fuel that migration.

Mr. QUAYLE. I applaud that, and I think that you guys have been doing a great job. I just think that why this hearing was actually called was because of the concern that the overall narrative that has been coming out of the administration—not specifically, you know—I mean, you have been addressing this today, but the overall narrative is that—and with the magnet—is that what is going across and what people are hearing is that if you can come across and get through where the Border Patrol agents are at the border and get into the United States and you just follow the law, except for that you broke the law, then you are going to be able to stay and we are not—and the United States Government is not going to—now, you are saying that obviously we are not going to be doing that, but that is just the message that has been getting out.

Mr. KIBBLE. Sir, I do want to be clear, though. I mean, our focus, our emphasis is on the priorities. But the point I want to make is that when non-priority aliens that we encounter may come across our radar we are not just ignoring that.

I mean, with each one of those 400,000 removals we want to, to the maximum extent possible, make each one of them count in terms of promoting public safety. If you think about a 40 to 60 percent National recidivism rate on criminal offenders, it is no stretch to say that when we remove 200,000 aliens from our communities, from our country, we are preventing thousands of crimes. I think it just makes good sense to pursue a prioritized approach, as I think many have agreed, although—

Mr. QUAYLE. Right. I think that the prioritization, we understand it, it is just the overall narrative that has been coming out of certain parts of the administration, it changes that dynamic from, "Hey, we are going to go after this," to, it goes, "We are not going to go after that." That is the thing that a lot of us have problems with. So thank you for your clarification.

Thank you, Madam Chairwoman. I yield back.

Mrs. MILLER. I thank the gentleman.

Let me, again, sincerely thank all of the witnesses for their testimony today. It has been a very interesting hearing. Obviously, as I said at the outset, we have some significant differences on the committee about whether or not this is administrative amnesty. My personal belief is it clearly is, and that in no way diminishes our respect for the brave men and women in the Border Patrol or in ICE and the work that you do all the time.

I will just note that—because I know we brought this up when your—Mr. Morton has been here, in June of last year, as has been widely acknowledged, there was a vote of no confidence by the ICE union rank-and-file members with Mr. Morton. I also believe that—that is why I asked you specifically, Mr. Kibble, whether your testimony was that you had been actively involved in this policy and that ICE supports it—your rank-and-file, your union president actually testified in front of the Judiciary Committee recently—I won't go through his whole testimony here, but basically they don't like this policy, at least that was their testimony to another committee. So I would just mention that.

Again, for the record, I have the letter that was referred to by my Ranking Member. We will put that in the record. There is a lot of—I will let people read it and determine what you think. We will use our own discretion as to what was meant 12 years ago.

But I will say that, obviously, that letter was written before 9/11. This subcommittee, our last hearing was actually about visa overstays, and we are talking today about whether or not this new policy is going to incentivize those to cross the border illegally.

I think—it is my opinion—that it will also incentivize those who really mean us harm, those that are not just coming here to advantage themselves economically. That is probably the biggest concern that I have about this, as I mentioned in my opening question or testimony that—opening statement, is that many of the 9/11 hijackers had overstayed visas.

These are individuals who may want to have sleeper cells, what have you. Believe me, they are not going to be out being caught drunk driving, leaving a bar after 2 o'clock and assaulting some woman, or whatever.

So that is a concern, because they won't be criminal—they won't have a criminal record. I think that there is just a big cause for concern there when you see that—we have heard different numbers, whether it is 40 percent, 47 percent—in the 40 percentile—of all the illegals that are here in this country are on visa overstays, as well.

Of course, the visas are going through the Department of State, and we had somebody, because of our oversight that we were doing in this subcommittee, as I think we were doing our job to talk about visa overstays, all of a sudden, I don't know whether it was coincidence, serendipity, the day of our committee hearing a fellow came from State and said that they now have a new policy, which is good, to take a look at these kinds of things. But there has been great consternation about this.

Before we close the committee I would recognize my Ranking Member for any further comments.

Mr. CUELLAR. Yes. Thank you, Madam Chairwoman. Again, I appreciate the good working relationship that you and I have had, and of course, the Members all working in a bipartisan way.

We do have a few differences, as you can tell today, on this particular issue, but I think we are all trying to achieve the same goal and trying to secure our country. I am also encouraged that my colleagues on the other side, the Majority, are reading the *New York Times* and quoting from the *New York Times*. I am also very en-

couraged that they are also listening to what the unions are saying, also.

So I am very encouraged that we are at least looking at different perspectives. But in all seriousness, I just want to join the Madam Chairwoman in saying this, that we appreciate all three witnesses for being here.

I, in particular, want to point out the work that ICE has done—the work that ICE has done. John Morton has, under very difficult circumstances, has really done a tremendous job in three—almost in 3 years doing more than, you know, the other 8 years in the prior administration. I know it is hard, but again, if we give you \$1.5 billion and then raise it up to \$1.6 we are going to still end up with 400,000 or so folks that we can deport, and that is what the resources are.

So hopefully we will come together in a bipartisan way, and I know we do have a few differences but we are all trying to do the same thing.

Madam Chairwoman, I thank you for all the courtesies.

Mrs. MILLER. Thank you, Ranking Member, very much.

Again, we thank the witnesses, and certainly applaud and support the work that is done 24/7 by your departments and your brave men and women.

Thank you, Doctor, for coming, as well, from CRS. You did very well today. Very interesting testimony.

With that, the hearing record will be open for 10 days if any further questions come from any subcommittee Members here today. With that, thank you very much. The committee will be adjourned.

[Whereupon, at 11:46 a.m., the subcommittee was adjourned.]

