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INS REFORM AND BORDER SECURITY ACT OF 1999

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSIONS

ON

S. 1563

A BILL TO ESTABLISH THE IMMIGRATION AFFAIRS AGENCY WITHIN THE DEPARTMENT OF JUSTICE, AND FOR OTHER PURPOSES

SEPTEMBER 23, 1999

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INS REFORM AND BORDER SECURITY ACT OF 1999

THURSDAY, SEPTEMBER 23, 1999

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:14 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Spencer Abraham (chairman of the subcommittee) presiding.

Also present: Senators Kyl and Feinstein.

OPENING STATEMENT OF HON. SPENCER ABRAHAM, A U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator ABRAHAM. The Subcommittee on Immigration will come to order. I want to thank everybody who is here in attendance and apologize for our slightly late start today, but we have had a number of activities going on and constituents that have kept us a bit late.

I want to welcome Commissioner Meissner. We will hear from her soon. I thank Senator Feinstein for being with us. I know she is very interested in this area and we look forward to working together on developing some of these topics today and in the days ahead in further detail.

I am going to make a brief, or maybe not so brief, opening statement here today and will turn to Senator Feinstein, and if Senator Kennedy or any of the other members are here and wish to make opening statements, we will have an opportunity before we start the panels and then sort of play it by ear a little bit once we do.

Today, our subcommittee is here to examine the INS Reform and Border Security Act, a bill which I introduced just before the end of the session in August along with Senators Kennedy and Hagel.

There is widespread agreement today, I think, that there are serious problems as to how the Immigration and Naturalization Service handles its service and enforcement functions. We understand that no structure is going to result in perfect enforcement or perfect service. However, the current problems are too large to ignore and I believe that fundamental structural changes should be made.

It should not be the case, whether it is in Michigan or Mississippi or Texas, that individuals who are arrested for flouting our laws are let go because of a lack of adequate detention space or because of a breakdown in detention policy.

It should not be the case that in places like Arizona and California, ranchers and other residents are endangered by people stream-

ing across their property and are unable to obtain any real Federal response.

It should not be the case that an individual such as serial killer Resendez Ramirez, who had been deported by the INS three times on account of prior crimes, could be apprehended at the border eight times since January 1998 but allowed to go free. This happened once after the Houston police had alerted INS that Ramirez was a murder suspect. Had he instead been detained and prosecuted that eighth time, two people who were killed would likely still be alive today.

Simply put, on the enforcement side, illegal immigration is too high and the INS is not adequately structured, in my judgment, to be able to be equipped to handle this serious problem. I believe that genuine INS reform can help reduce illegal immigration and substantially strengthen our enforcement capacity.

On the service side, the situation is equally troubling. It should not be the case that individuals who play by the rules have to wait, in some cases years, to become citizens or lawful permanent residents. It should not be the case that individuals cannot receive updates on the status of their cases because too often their files have been lost or misplaced or the computer has no record of their applications.

It should not be the case that a Department of Justice Inspector General audit concludes that, year in and year out, the INS has not established effective internal controls to ensure that accounting records and other relevant financial information are adequately maintained to ensure that taxpayer money is not being wasted. Such waste causes both service and enforcement needs to go unmet.

I just might add that each of the contexts which I have referenced here are situations which our office has heard about from constituents, and I know we are not the only Senatorial office to hear that.

The legislation we are discussing deals with important structural issues that are, I believe, at the root of many of the problems we see today. While structural changes alone may not solve all of the problems, I am convinced that it will help with many.

As I said 2½ years ago when I first became chairman of the subcommittee, the INS has been charged with performing dual missions, neither of which will be performed well until these missions are separated. We cannot expect the INS to be the good service provider by day and the tough cop by night.

I believe that a broad consensus on this fundamental point has been reached across party lines over the last 2½ years. Permitting the INS to move forward with its current structure and organization only ensures an endless recurrence of the same problems we have seen.

These problems exist not only at the national level, but at the local level, as well. District offices around the country combine service and enforcement functions. These offices are run by district directors, who are not required to have law enforcement backgrounds, with the result that enforcement often suffers. However, if a district director has exclusively a law enforcement background, it is possible that we will see service suffer.

Some say we should reorganize INS from within rather than engage in fundamental reform, but I believe that approach will not enjoy the confidence of Congress, law enforcement, immigrant advocates, or the general public. It will be widely viewed as trying to maintain the status quo, and in my judgment, seems unlikely to do enough to bring about the fundamental attitudinal changes at all levels that I think are needed.

The INS Reform and Border Security Act, which we will be hearing about today, represents fundamental change. The legislation replaces the INS with a new Immigration Affairs Agency within the Department of Justice, led by a high-ranking official, that will contain two separate bureaus, the Bureau of Immigration Service and Adjudication and the Bureau of Enforcement and Border Affairs. This will allow for concentrated effort and personnel devoted to improving the respective service and enforcement functions. Inspections, which is a combined service and enforcement function, will be a separate entity within the Immigration Affairs Agency.

The legislation also increases accountability by creating three Senate-confirmed positions, including the Director of the Service Bureau and the Director of the Enforcement Bureau. The bill also establishes the position of Chief Financial Officer in both the service and the enforcement bureaus, creating additional fiscal accountability.

Accountability will become a two-way street. When the heads of separate service and enforcement bureaus are confirmed, then Members of Congress themselves will become more accountable because they will have played a hand in the approval of those individuals and participated in setting the benchmarks of success or failure for the heads of these new bureaus.

This new structure should result in both enforcement and service improvements while allowing for the overall setting and coordinating of immigration policy. Separate chains of command within distinct bureaus will establish clear career paths and attract individuals most interested in one or the other bureau. Most importantly, it will increase accountability, particularly for senior-level personnel.

Separating out enforcement will help ensure that enforcement is sufficiently supported and that individuals overseeing enforcement functions possess a law enforcement background. Moreover, the bill would move the enforcement bureau toward the best practices of law enforcement entities that are considered more effective. Finally, the bill would require the addition of 1,000 more Border Patrol in fiscal years 2002, 2003, and 2004.

We should also see important service improvements. Separating service and enforcement will help ensure that those individuals working in the service side understand their jobs, to include the delivery of fair, equitable, accurate, and courteous service. In fact, the legislation requires that all employee evaluations include the fair and equitable treatment of immigrants as a top priority.

The legislation also creates the Office of the Ombudsman, which will assist individuals in resolving service or case problems and identify and propose changes in the service bureau to improve service. The ombudsman can appoint local representatives to resolve serious service breakdowns. In addition, the legislation models the

service bureau's organization on the Social Security Administration by creating regional commissioners and area directors charged with service implementation.

To improve the culture of employees, the bill includes a series of measures, including employee buyouts and the ability to bring in outside management executives, that are modeled on those passed by Congress in the 1998 IRS reform bill.

The legislation has already achieved support from those interested in different aspects of the execution of our immigration laws, having been endorsed by the Chief Patrol Agents Association, the Federal Law Enforcement Officers Association, and the American Immigration Lawyers Association.

I look forward to today's hearing and to receive comments and feedback from the various parties who will participate, and I do want to finish with a comment for Commissioner Meissner.

I want to stress something I have said at other hearings, right from the inception when I became chairman. These problems with the Immigration and Naturalization Service are not simply the problems of today. They have been problems that have existed for a long period of time, and the purpose of the legislation which we are offering, that we have introduced, is not to single out for particular criticism any one commissioner or any one group of people working at INS. I believe that these problems are longstanding and I believe that, as opposed to allowing them to continue, we have an obligation to examine the various ways that we can address them, both from the standpoint of resources, which we frequently do, but also from the standpoint of structure and significant policy reform the way we are hopefully going to be able to do during this process.

I just want to make sure that we convey those sentiments, because the goal here is truly to address the problems. I think that Commissioner Meissner in previous testimony has acknowledged a number of these and has sought, I think in good faith, internally to address them. But we need to, I believe, examine them now from a broader perspective and I look forward to today's hearing and its aftermath as part of that process.

At this point, I will finally finish and turn to Senator Feinstein for any opening statement she may wish to make, and then we will go to Senator Kyl. Thank you all for being here.

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

Senator FEINSTEIN. Thanks very much, Mr. Chairman. Let me just say, I think your bill is a major step forward and I look forward to working with you in a couple of areas.

Commissioner Meissner assumed the helm of the agency in 1993 in the midst of great turmoil. I at that time was new to this committee. And in 1996, Congress passed the most comprehensive illegal immigration reform measure, which dramatically increased the INS's enforcement and service responsibilities.

Funding for the INS has more than quadrupled in the last decade, from $884 million in fiscal year 1989 to $4 billion in fiscal year 2000, and in that time the demands on INS have outpaced its capacity to manage them. As a result, the agency, I believe, despite

the strongest of efforts, has been unable to keep up with its increasing size and complexity of mission.

In light of these trying circumstances, I would like to acknowledge the great strides that Commissioner Meissner has made in taking INS to a new level of professionalism, developing a strategic plan and taking the initial steps toward fundamental reform within the agency. I truly do not believe anyone could have done better.

However, even with these best efforts, it has become very clear that the problem lies not solely with the organization's management, but also with the agency's structure. The U.S. Commission on Immigration Reform studied the issue and found that, despite increases in funding and authority, the current Federal immigration structure leads to "mission overload," resulting in ineffective management of the four core functions of the system, border and interior enforcement, enforcement of immigration-related employment standards, adjudication of immigration and naturalization applications, and consolidation of administrative appeals.

According to the Commission at the time, mission overload results from the fact that the agency charged with implementing our immigration laws have so many responsibilities that they are unable to manage them all effectively and efficiently, and with an immigration landscape that is growing in complexity and size, no one agency could have the capacity to effectively manage every aspect of immigration policy.

So finding a solution to these challenges is critical, given that we currently have an estimated five million illegal aliens in this country and over 300,000 newly-arriving illegal aliens settling in the U.S. every year. Fifty percent of whatever the number, if it is 300,000 or 400,000 or 500,000, 50 percent settle in California. One-point-seven million lawful permanent residents are languishing in backlogs waiting to become American citizens. More than 650,000 are waiting in California alone.

More than one million people are in a second less-noticed INS backlog, who have had to wait sometimes as long as 39 months for the INS to process their green card applications, and this situation will only get worse as 900,000 applications for new green cards are pending, in addition to the 185,000 set for renewal.

Finally, countless numbers of spouses and minor children of legal immigrants, whose precise numbers are not available from the INS, who followed the law and played by the rules, have been waiting to reunite with their immediate family for up to 10 years.

In the meantime, the enforcement arm of the agency is confronting problems of its own. According to a recent article in the San Diego Union Tribune, progress in containing illegal migration through the San Diego border may be breaking down—may be breaking down. The article cites an INS internal memo stating that people with fraudulent documents are now getting caught repeatedly and returned to Mexico without facing legal sanctions. I had the opportunity to discuss this with the Commissioner earlier today.

Moreover, I think many of us are aware of the recent story of the alleged mass murderer, Rafael Resendez Ramirez, who repeatedly eluded law enforcement officials. Records show that he had been deported at least four times and arrested at least ten times. Much

of his record is still unclear, given that the FBI's Ten Most Wanted List included 30 aliases and numerous Social Security numbers for him.

This case demonstrates a weakness. Now, we thought it was in the IDENT system. The Commissioner earlier today said that the Ten Most Wanted List had not been entered into the IDENT system, and I asked her the question, well, what about other lists? We still need to respond to that.

I mean, this is a serial killer who came back and forth across the border. Although he was arrested or stopped, nobody knew apparently who he was or what alias he was using and the Most Wanted List had not been entered in the computer system. That, to me, is a major oversight.

Under these circumstances, any legislation that would correct this type of recurring situation, I think is deserving of our attention. But, Mr. Chairman, I want to say that you have taken, I think, a major step in a very positive direction. I believe this bill sets the stage for curing a number of maladies in the system. It would make immigration a higher priority within the Justice Department by elevating the new Immigration Affairs Agency into a higher position within the Department. That is good, in my view. It would create two separate bureaus, one for enforcement and one for service, thereby streamlining the two missions and responsibilities into manageable workloads.

One of the criticisms I had of our Customs Department was that prior to this new Customs Commissioner Ray Kelly, it had a mixed mission. It was to promote trade and also enforce the law at the border, and that mixed mission, I think, is very difficult for any organization to carry out. The separateness of the services under a common head would enforce accountability, enable better communication and cooperation between national headquarters and the field offices, and, I believe, instill a clearer sense of purpose and direction within the field offices. I mean, you would know whether you were service or enforcement.

It would enable Congress to exercise more effective oversight by requiring that the two bureau chiefs, as well as the director, be Presidential appointments subject to Senate confirmation. I have talked a little bit to the Commissioner about this. I understand her reservations. From the position of someone who sits as part of an oversight body and has for some time, I think some autonomy is actually healthy, provided there is cooperation and supervision at the top. But I think that is something that I am certainly willing to discuss further.

And your legislation would create internal checks and controls to better ensure the quality of both service delivery and enforcement activities. It would also authorize an additional 1,000 Border Patrol agents over the next several fiscal years.

I think now is the time, Mr. Chairman, to finish what was started in the 1996 immigration reform by creating an implementation structure that will give the immigration laws full force in curbing illegal immigration and improving services to legal immigrants, and I think your bill goes a long way to doing that.

I want to just mention publicly something that I mentioned to you privately, and that is that as efforts like Operation Gatekeeper

and others become more effective in deterring illegal immigration in their immediate area, they also not only push it to other areas, such as Douglas, AZ, but they also put intense pressure on ports of entry. In California, we have, I believe, problems in our ports of entry, and that is not only on the border, that is coming in from the water, as well. We have this problem particularly with drugs. So I think the ability to provide inspections at those ports of entry is really important if we are going to have enforcement be given the tools that it needs.

I look forward to the Commissioner's testimony and working with you, Mr. Chairman, to remedy some of these things.

Senator ABRAHAM. Senator Feinstein, thank you, and we look forward to working together with you, as well, and anybody else with interest in this.

Senator FEINSTEIN. May I ask your consent to enter the ranking member's statement into the record, please?

Senator ABRAHAM. Thank you. We will do that.

[The prepared statement of Senator Leahy follows:]

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

I am attending this hearing to demonstrate the importance of INS reorganization to me and to the people of Vermont, as well as to take advantage of the opportunity to express some of my concerns about the INS generally to Commissioner Meissner.

I Would also like to welcome the other panelists who have traveled here today to offer their thoughts on the INS Reform and Border Security Act. I appreciate the work that Mr. Berg, Mr. Bonner, and Mr. Gallo do to further our law enforcement objectives. And I am a great admirer of the work done by advocates such as Mr. Leiden and Ms. Yoskowitz, who labor so diligently to ensure that the American dream remains attainable for those who emigrate to the United States.

As many of you know, I have a great number of constituents who work, for the INS, and I believe that the quality of their work is unsurpassed. On too many occasions in the past, their effectiveness and dedication were overlooked here in Washington, and plans were made that would have put their careers in jeopardy. Faced with that prospect, I have worked with Commissioner Meissner to ensure that my constituents were treated fairly. As I sit here today, I am hopeful that the latest talk of reorganization will proceed without overlooking the great efficiency of the Eastern Regional Office, Law Enforcement Support Center and Debt Management Center in South Burlington, the Vermont Service Center and Sub-Office in St. Albans, the Swanton Border Patrol Sector, and our border crossing personnel.

That being said, I am very interested to hear the Commissioner's thoughts on the restructuring bill that my distinguished colleagues have introduced. I value her opinion quite highly, and believe that she has done a wonderful job in a very difficult position. I think that the Commissioner and all of us would agree that there is room for improvement at the INS, and I am open to persuasion that this restructuring bill could be the proper vehicle.

I would also like to ask the Commissioner today about her views concerning two bills that I will be sponsoring to revise portions of the 1996 immigration legislation, as well as about the INS' recent handling of asylum cases involving domestic violence.

First, I have introduced the Fairness to Immigrant Veterans Act, which would restore to U.S. veterans the right to go before an immigration judge for a meaningful hearing before being deported, and also to have a Federal court review any deportation decision. As you know, those rights were taken away by the legislation the Congress passed in 1996. I am happy to say that my bill has received the support of numerous veterans' groups, and I am sending a letter to my colleagues that some of those groups have written on behalf of the legislation, as well as a letter from the American Legion demonstrating its support for this bill. I hope that my colleagues will join with me to recognize that at the very least, we owe our veterans the chance top explain themselves before we remove them from our country for a past misdeed.

Second, I am planning to introduce in the very near future a bill that will revise our procedures for expedited removal. During the next week, I will be sending a letter to colleagues from both sides of the aisle asking for their support and sponsorship of this bill, which would limit the use of expedited removal to times of immigration emergencies. The faults of our current expedited removal system were on display once again earlier this year, when it became clear that at least two Kosovar refugees had been summarily excluded from the United States even after unrest in Kosovo was on display on the nightly news. Our current system entrusts too much power to lower-level INS officers who, as conscientious and hard-working as they may be, are simply not experienced enough to make what is often a life-and-death decision to immediately remove a foreign national who may be seeking refuge on our shores.

Third, I have serious concerns about the INS' handling of the asylum claims of two victims of severe domestic violence, Rodi Alvarado Pena, a Guatemalan woman, and a young woman from Mexico whose identity has been protected. Ms. Pena escaped from a husband who savagely beat her in Guatemala, and he has said he will kill her if she returns there, The young Mexican woman was severely abused by her father, in part because she attempted to stop him from beating her mother. In both cases, administrative judges granted the asylum requests of these abused applicants. And in both cases, the INS appealed those grants of asylum to the Board of Immigration Appeals, which reversed the administrative judges. I question why the INS found it necessary to appeal the eminently reasonable decisions to allow these abused women to remain in the United States. If prosecutorial discretion was not appropriate here, when would it be appropriate? In particular, I would like to know why these cases were treated differently from previous decisions granting asylum to the victims of domestic violence, which the INS did not appeal. (See In re A and Z (IJ (Arlington) Dec. 20, 1994); In re M and K, (IJ (Arlington) Aug. 9, 1995).) Finally, I would like to know what role, if any, the INS' 1995 asylum guidelines recognizing gender-based persecution and the 1998 guidelines on the persecution of children played in the INS' handling of these asylum cases.

Senator ABRAHAM. I am sure Senator Kennedy will also have a statement, whether or not he is able to make the hearing today, and we will enter any statements that members would like to be part of the record.

I turn now to our Senator from Arizona, Senator Kyl. Thank you for being here.

Senator KYL. Thank you, Mr. Chairman. I will just make a brief comment. I think that both you and Senator Feinstein have well summarized the frustration that we have experienced, the hope that some kind of legislation like this for reorganization will make a big difference. Certainly, Commissioner Meissner and I have discussed a lot of the problems that we think might be aided by reorganization, which frequently is not the answer to problems, but in this case, as Senator Feinstein pointed out, there has been such a growth in the problem and the resources put against the problem on both the service side and the law enforcement side.

You have a different situation today than you did in the past, and that does suggest that some reorganization could be very, very helpful here, and I suspect that the three of us and Commissioner Meissner are in relative agreement on the kinds of things that would be useful. So we are looking forward to her testimony.

The only other thing I want to say, Mr. Chairman, is that I think Senator Feinstein just made a very important point, and that is we should recognize that the pressures here for illegal immigration and legal immigration are immense, and whatever we do in one area will result in reactions in another area. The law of physics almost applies here. There is an equal and opposite reaction when you apply pressure.

So, indeed, when we helped to close down the border near San Diego, they came over to Arizona, and we are trying to deal with

them now. We have about a half-a-million apprehensions a year just in this one segment, and you mentioned Douglas, AZ. That is the Tucson sector, where Douglas is. Arizona is second only to McAllen, TX, in the amount of marijuana seized, as well, about a quarter-of-a-million pounds per year.

One of the things that I have stressed is the need for INS to do its very best to adhere to the law that we passed, that the President signed, that calls for certain actions, such as the training and deployment of 1,000 agents per year, net, for a period of 5 years. We know what works. It has been tremendously beneficial to get those agents on the ground. I think we can accept nothing less than our best effort and full compliance with the statute.

I think sometimes it appears to me that INS is satisfied with less than full compliance, but my constituents are clearly not. I would hope that as we proceed here, that we continue to focus on the requirements of the immigration law and use our very best efforts to get the agents on the ground, and as Senator Feinstein pointed out, to understand that we will need technology, we will need inspectors, as well as Border Patrol agents to solve this problem. We, again, know what works. We can solve the problem if we make the commitment, and I hope that the hearings that you will be conducting, Mr. Chairman, and this legislation will help us focus on the problem so that we can produce that necessary commitment.

Senator ABRAHAM. Senator Kyl, thank you.

At this time, we will turn to Commissioner Meissner. We welcome you. We are happy to have you here and look forward to your testimony today. Commissioner.

STATEMENT OF HON. DORIS MEISSNER, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Ms. MEISSNER. Thank you. Thank you very much. Mr. Chairman, members of the subcommittee, I am very pleased to be here today to discuss the critical issue of how the Nation best administers its immigration policy and system as we prepare to enter the next century.

In April 1998, this administration sent you a framework for change through restructuring. Last summer, we sent you legislation to endorse that change. And this July, we gave you a detailed restructuring proposal for how that change could work. I want to fundamentally change this agency and I want your approval to move forward as soon as possible with the kind of change that will lead to improved performance.

Realistically, restructuring would not become effective until the next administration arrives. You, as members of the subcommittee, are likely to be here at that time. I, of course, will not. The reason I care about the issue is because I believe, based on more than 20 years' experience in the immigration arena, that we must have an immigration system that is well positioned both to enforce our immigration laws effectively and to continue our tradition of welcoming immigrants in the years ahead.

Today's global society is challenging this Nation's immigration system as never before, from unforeseen world events, such as Hurricane Mitch in Central America, to increasingly sophisticated

human smuggling operations, to dramatic changes in our immigration laws, and we can expect more complex challenges ahead.

We have met these new challenges and goals head on and have achieved significant successes, from gaining control of key areas along the Southwest border, to fixing an asylum system that was badly broken, to dismantling the largest, most complex alien smuggling ring ever encountered by Federal authorities, to removing a record number of criminal aliens for the fifth straight year. And, from 1993 to 1998, 5.6 million immigrants, more than the total in the previous 30 years combined, have applied for citizenship. We have been able to congratulate 3.3 million of them as new U.S. citizens.

At the same time, I am all too aware of the problems that we have. Despite real progress, I know that consistent, courteous, and timely customer service is not uniformly provided. Mission conflict at the local operational level can impede accountability and the current bureaucratic chain of command often leads to confusion in roles and hampers efficiency.

Mr. Chairman, I believe that you and the committee know that I have been working to solve these and many other problems, but the next logical step is fundamental structural change that will allow for a fuller transformation from a strained structure designed for a different era to a modernized structure equipped to meet the challenges of today and tomorrow. We need Congressional action to accomplish it.

Mr. Chairman, the administration's proposal and the legislation that you have introduced seek to address the problems in very similar ways. Both represent bold, far-reaching changes designed to provide for better customer service and improved law enforcement. Both call for a clear split between enforcement and services to provide better results, improve accountability, and strengthen the management of each of these important functions. And, both advocate organizing these two distinct functions into separate chains of command within the Department of Justice.

Most importantly, both provide for a single policy and management official to be responsible for a new immigration agency within which these interrelated missions are integrated. This integration lies at the heart of any meaningful restructuring and we strongly support a national integrated structure.

While we share many ideas about the solutions, we also must be wary of going too far with detail in legislation so that we preserve some flexibility in the immigration system to meet unforeseen challenges that are ahead.

I have included the administration's full proposal as part of the record. It represents more than a year's work of planning how a separation of enforcement and services would actually work. Let me outline just a few of the key features.

The administration's proposal calls for fundamental change by eliminating the current INS regional and district offices where enforcement and service functions today are commingled and creating two new mission-centered organizations that replace them, one for immigration services, one for law enforcement. Each would be headed by a senior-level executive responsible for a distinct chain of command who would report to a full-time presidentially-ap-

pointed official with responsibility to manage immigration matters as one coherent immigration system.

The proposed structure for one of the new chains of command, immigration services, leverages the work that INS has already begun in reengineering the naturalization program and by establishing a newly-streamlined immigration services division, along with a national customer service center, which is expanding just this month. A new services structure would establish a senior-level customer service advocate who would be responsible for customer service training and problem resolution.

Consolidate all remote operations, such as our telephone service and card centers with newer efforts, such as the availability of forms and other information on the Internet and direct mail, so that our customers can get ready access to the information that they need.

We would consolidate our asylum program with our overseas refugee and humanitarian affairs programs and maintain the current domestic asylum offices.

And we would expand upon the more than 120 new community-based fingerprinting sites that we opened last year so that we can provide our most customer-focused activities directly in the communities that they serve.

With respect to our enforcement mission, the new structure would integrate all enforcement operations, including inspections, and consolidate domestic and international enforcement programs within one chain of command so as to have seamless enforcement between the border and interior locations and more effectively coordinate such actions as the large antismuggling operations we are seeing.

We would create community advisory panels at the national and area levels to provide community input regarding enforcement matters, and we would centralize the detention program at the national level to support our enforcement operations and to ensure uniform standards are followed and consistent practices are utilized.

Because our approach to inspections differs from that in S. 1563, let me say a word about inspections. As our border enforcement efforts become increasingly successful and the smuggling of illegal aliens becomes more sophisticated, the importance of immigration inspectors in our enforcement efforts grows. Immigration inspectors, by virtue of their training, duties, and responsibilities, and the hazards to which they are exposed, are much more closely aligned with law enforcement officers than with other types of government inspectors.

Inspectors conduct more than 500 million inspections every year. The vast majority involve law-abiding individuals. At the same time, our inspectors are increasingly at risk in performing their functions. Because of our border enforcement successes between the ports of entry, we are witnessing increasing activity and sophistication of criminal organizations that profit by the smuggling of people, drugs, and other contraband, and are turning to vehicular inspections lanes at the ports of entry, commercial airports, private aircraft landing fields, and ship dockyards.

When an inspector is viewed as an enforcement official charged with enforcing our Nation's immigration laws, it does not mean that that individual loses the ability to treat others with respect, nor loses the ability to apply the law fairly, based on proper training. We ask for an analogous form of balance from police officers on our streets, who are charged with enforcing laws while exercising appropriate discretion in carrying out their duties and serving the community with respect, courtesy, and professionalism.

So while inspectors have various roles, including welcoming visitors to the United States, facilitating commerce through timely processing, and adjudicating immigrant claims, they all compliment a core border enforcement role that inspectors perform.

The integrated enforcement structure that we have proposed is designed to meet the needs of a modern professional law enforcement agency that can deal with the complexities of immigration law and handle crimes that often extend far beyond our boundaries, while also upholding the civil rights and the courtesy due to all individuals with whom we come into contact.

Separate and apart from the integrating and coordinating structure at the top of a new agency, our proposal would provide for unified support operations that would handle support needs such as records and a national file center, training in human resource functions, automation, data support and technology, and administrative support. The importance of a unified, responsive support operations structure cannot be overstated.

While immigration enforcement and services are separate functions, they are inextricably linked and need to be managed as part of an integrated structure under the leadership of one full-time appointed official. This individual should be the focal point of accountability and the policy voice for immigration by being directly responsible and accountable for both services and enforcement operations. In this way, the Government can maintain the crucial balance between enforcement and services that is needed for a coherent national immigration policy and system and effective application of our immigration laws.

We live in an era of large-scale immigration and increasing international migration pressures. We need greater, not less, cohesion and stronger consolidation and interaction among functions in order to serve the broad public policy needs of our time.

As you mentioned, how to organize immigration governance has been debated for more than 100 years as a response to problems in the immigration bureaucracy that transcend particular administrations or historical periods. The administration's proposal represents fundamental reform that will strengthen the immigration system. We should not let the frustrations we share lead us to weakening our institutions or our ability to carry out our responsibilities that are mutually reinforcing instead of being fundamentally incompatible.

Mr. Chairman, I am committed to change and I look forward to working with you and other members of the Congress in moving forward to restructure INS and reform our system in a manner that best serves the Nation. Thank you, and I am very happy to take your questions.

Senator ABRAHAM. Commissioner, thank you very much. I just would like to indicate that members of my staff and I appreciate the working relationship that we have had and the cooperation we have had with your office. As I said at the outset, our goal here is to begin moving as constructively and in a coordinated way with all parties to try to find solutions to these problems.

We will begin the questioning with Senator Feinstein. Senator Feinstein.

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

Commissioner Meissner, let me ask you a question not quite related to this bill but one that I have not been able to get an answer to. Recently, I was visited by the former defense minister of Colombia. He is the former commander of the Colombian armed forces. What he said is that 40 percent of Colombia is essentially now under the control of narcoterrorists. He said that 300,000 people have fled the country, 60,000 to the United States, and urged that they be given refugee status when they come here because they faced reprisal going back. He said that the narcoterrorists had kidnapped 1,500 civilians, 250 soldiers, and 250 police officer, and that it was a very serious situation in Colombia.

We tried then to verify that, that there were 60,000 refugees from Colombia, and nobody can give us an answer. Can you?

Ms. MEISSNER. I would have to check the statistics on our asylum application caseload. I am unaware that we have seen any substantial spurts or increases in the filings of asylum applications from Colombia. We, of course, have been very aware of the precarious circumstances in that country and watch these matters across the board, not only from Colombia, but other countries. Certainly, we have——

Senator FEINSTEIN. May I get an answer so that I——

Ms. MEISSNER. We will provide that to you. I think that what generally happens in cases like this is that when there is trouble like this in a country, often, people who have multiple-entry visas to the United States or who have tourist or business visas exercise that visa prerogative and wait to see how the situation is developing.

So it would not be surprising that, on the one hand, there has not been a substantial increase in the asylum caseload, but on the other hand, there may be more Colombians here as visitors than would typically be the case because they are people that already had visas of one sort or another or legitimately can obtain a visa to come to visit the United States. So I would suspect that his use of the word "refugee" was very generic, as compared with the legal term that we would use.

Senator FEINSTEIN. This was that they fled for their lives. He was making a plea that they be able to remain here because he felt they would be killed if they went back. I am just trying to find out to verify that.

Ms. MEISSNER. Right. We will——

Senator FEINSTEIN. It seems to me that INS ought to be able to verify it.

Ms. MEISSNER. Oh, yes. We have those figures. I just do not have them with me.

Senator FEINSTEIN. Could you provide them?

Ms. MEISSNER. Absolutely.

Senator FEINSTEIN. Thank you very much. In recent years, there has been a shortfall of funding for the adjudications functions of INS, which include the adjudication of visa, naturalization, and adjustment applications. At the same time, the examinations fee account has been used for functions which are not related to the processing of applications, such as detention, enforcement activities, audits, and infrastructure costs.

The current Senate version of the C–J–S appropriations bill would transfer $49 million from the examinations fee account to the Executive Office of Immigration and Review. Unlike the House bill, S. 1563 attempts to deal with this issue by providing a firewall to ensure that fees paid by applicants for visa, adjustment, and naturalization services be spent on services and not diverted to other uses.

Can you discuss the degree to which fees paid to the examinations fee account are currently being used for purposes other than providing services to applicants?

Ms. MEISSNER. Thank you, Senator. That is a very important area. Let me first say that we strongly support the idea in S. 1563 of a firewall and of fees that are paid by applicants going solely to processing of applications. That is what we believe fees should be used for and that is a situation where we are not able entirely in the current circumstances to control how fees are used.

The Congress has assigned fee money to other than processing purposes from time to time. Several years ago, the Congress, indeed, assigned some of the penalty money for the adjustment of status applications that a provision existed in the law and assigned it for detention purposes. At the present time, some of the fee money pays for the international affairs program and for the asylum program, which are programs that do not generate fees.

So the situation in which we find ourselves as an agency is in having a shortage of the required funding to process immigration applications because the entire fee receipts are not devoted to processing. That funding should be protected and some provision along the lines of S. 1563 would achieve that purpose.

Senator FEINSTEIN. And you believe the firewall currently in the draft of S. 1563 is adequate, then?

Ms. MEISSNER. I believe that it is attempting to do what is required. We can work on refining it, if need be. But it is very important to protect those funds, and in addition to that, I believe that it is important to allow for appropriated funding of some kind for handling immigration applications. There is both a private purpose for people that are applying that is legitimate fee-based, but there is also a broader public purpose served in timely adjudication of immigration applications. So appropriations are valid here and we need to be making capital investments that improve the system and that should not entirely come from the fees.

Senator FEINSTEIN. My time is up. Can I ask just one more question?

Senator ABRAHAM. Yes.

Senator FEINSTEIN. S. 1563 contains a number of provisions that would require the Attorney General to provide a process for reviewing and acting upon various categories of nonimmigrant and other

petitions within specified time limits. These include 30-day deadlines for some nonimmigrant petitions and a 90-day processing deadline for adjustment of status applications and immigrant visa petitions.

While it is questionable whether such statutory processing deadlines are well-advised, it is important to note that there are no such deadlines for processing naturalization applications included in the bill. What do you think would be the consequences if we included statutory deadlines for processing these visas, naturalizations?

Ms. MEISSNER. I would not favor writing processing times into legislation. I think that is an area where there needs to be some flexibility and legislation is not the best way to achieve the improvements that we all want in processing times.

Were we to be implementing the way it is written at the present time, we would have to vastly increase the fees to those applicants in order to meet that 30-day processing time and we would be forced to apply our efforts to those applications that are mentioned and not in other areas, such as naturalization—actually, I cannot recall whether naturalization is mentioned or not.

But I do think that we can achieve the same purpose or the same objective that S. 1563 is trying to achieve by having the Immigration Service's structure that is outlined in the bill, that is very similar to what it is that the administration has advocated, because it will allow for a total management focus and expertise and efficiencies much greater than we have been able to achieve to date, although I think we are showing that we know how to do it by the work that we have done on naturalization this year, and I believe that we need to have clear customer service standards that establish accountability for the agency and for others who are expecting their work to be done by us and we are developing those customer service standards.

With naturalization, for instance, the standard is 6 months from filing to oath. We were there once a few years ago. Right now, we are not. We have cut the time in half for processing just in the last year. We are down to about 13 months——

Senator FEINSTEIN. Can I stop you on just that one point, because I would like the chairman and Senator Kyl to know that we were having a little dust-up on this point earlier in my office and you mentioned the Los Angeles office, where the waits have been so long, has in the last year cut the waiting time in half. I would just like to extend my commendation to the regional director there and thank him for his good work in that regard.

Ms. MEISSNER. He will be very happy to hear that, but it is not just Los Angeles. We have cut the waiting time in half across the country, and——

Senator FEINSTEIN. In every office?

Ms. MEISSNER. In every office, we are running now an average of 13 months, and a year from now, we will be back to the 6 months. So that is an example of a standard, of a customer service standard where we need to manage against the standard and resource against the standard so that there is consistency across the country. We are not where we want to be, but it is our commitment to be there.

Senator FEINSTEIN. I think that is real progress from where we were. I just want to say thank you to everybody that made it possible.

Ms. MEISSNER. Thank you.

Senator ABRAHAM. Thanks. Senator Kyl.

Senator KYL. Thank you. I have one question about the legislation, which I will ask at the end, but first, let me reiterate. I think none of us believe that reorganization is a panacea. Much of it depends upon the commitment that I spoke of earlier.

Two facts, and then three quick questions. No. 1, this year, this fiscal year 1999, INS trained only one-half, roughly, of the necessary agents, or the agents authorized under the 1996 Act.

Fact No. 2, the administration asked for no funds to train 1,000 agents for fiscal year 2000.

The first question, will you submit a request for full funding to train 1,000 agents in fiscal year 2000, when through the regular budget process your requests are elicited from the Department of Justice and OMB?

Ms. MEISSNER. The answer to that question is yes. That process is already underway.

Senator KYL. Thank you. Second, will you assure us that you will do your best to recruit 1,000 agents next year with the money that will be appropriated this year for that purpose?

Ms. MEISSNER. The answer is absolutely yes. We are doing everything that we possibly can, including entirely redesigning our recruitment system, and I would want to say that we have more than doubled the size of the Border Patrol in 5 years with strong support from the Congress. We have met our hiring and training goals every single year in order to achieve that. This year has been the anomaly because we have run up against a very, very tight labor market and we are readjusting in an effort to overcome those problems.

Senator KYL. Part of that readjustment is to provide better benefits, particularly for the line agents, the GSA Level 9 people who some of us have recommended should go to Level 11. Would it be your intention to include sufficient funding for that increase in salary for the bulk of those line personnel in the fiscal year 1998 budget request?

Ms. MEISSNER. That is my objective.

Senator KYL. And as I understand it, that is about a $50 million per year cost, more or less?

Ms. MEISSNER. It is in that neighborhood.

Senator KYL. OK; one of the things that the legislation does not do, but you have talked to me personally about, as I understand it, in its current version, is to include the inspector function under the enforcement responsibilities. It is my understanding that you believe that it would be better put in the enforcement side rather than the service side of the equation. If that is correct, could you explain your reasons for that?

Ms. MEISSNER. That is correct. It is the fact that inspections represent, as much as anything in the Service, the mixture of our responsibilities that have to do both with enforcement and with granting of benefits. However, inspections is more, we believe

today, like an enforcement function than ever before. It is a critical piece of our border efforts.

Everything that we have done, and you and Senator Feinstein are particular witnesses to this on the Southwest border, everything that we have done to improve the effectiveness of the Border Patrol has been done in coordination with the ports of entry. We actually have increased our inspections staffing at the Southwest border more steeply than our Border Patrol staffing.

That is an underknown fact, but there has been more than a 100-percent increase of inspectors at the Southwest border over the course of the last 4 to 5 years in this buildup and that is because we recognized from the very outset that the two, as you said, action-reaction. One action creates a reaction. Whatever you do to tighten and improve between the ports has an effect of increased pressures at the ports. So that effort at connection and coordination is extremely important.

In addition to that, over the longer term, technology will be increasingly helpful to us where legal crosses are concerned, technology in terms of identity cards, advance passenger lists that we now get from the airlines which we can check against our databases before the airplanes even land at JFK, so we know as the people get off the plane who is lawful and who we need to pull aside. Advances in that arena lead us to believe that, increasingly, our inspectors will be focusing their efforts and their expertise on problems, on criminals and other kinds of threats at our ports of entry, and they will be able to facilitate the legal flows through a variety of other means.

So we do think that although inspectors will always carry out both enforcement and service functions, they need to be handled from a management and occupational standpoint as part of an enforcement chain of command.

Senator KYL. Mr. Chairman, that is my predilection on this issue, as well. It is difficult, because you have both service and enforcement responsibilities. One of the things that all three of us, I know, have focused on is the desire to make it easier for proper access to the United States through ports of entry, to reduce the long delays that are occasioned at the ports of entry. We need to work with Customs in this regard, as well. But it seems to me that, for the reasons that the Commissioner pointed out, we might want to at least look at that section of the legislation with her comments in mind.

Thank you for your testimony, Commissioner Meissner. Thank you, Mr. Chairman.

Senator ABRAHAM. Thanks, Senator Kyl.

In that we have had both the chance yesterday to talk at some length and because your statement was very comprehensive, I am going to have only a limited number of things to add, really, to our previous discussions.

One of the things I did want to talk about, though, is on the delays issue. My experience in the last couple of years has been that for everybody who is in a line delayed somewhere are ten friends and relatives who somehow have our phone number. They have your phone number, too, I suspect. It is probably, more than almost anything, what we in Congress certainly get feedback about.

Lately, there has been an increased level of concern focused on reports both in my State as well as elsewhere in the country that in some service centers, delays for green card processing are backing up dramatically, sometimes in excess of a year and a half, which seems like an extremely long period of time. I am wondering if we have the same sort of physics factor involved here that Senator Kyl referred to and that you have referred to. And that we have moved in the direction of naturalization, and achieved perhaps some reductions in the lines for that, in some service areas. Is that what is going on here and prompting increases in waits in other types of areas?

Ms. MEISSNER. The issue with green cards is not actually a question of producing the green card. We actually have a wonderful technology that is working very well for the actual production of the cards, but it is the adjustment of status application that leads to the eligibility for the green card, and the backlogs there have risen well beyond what we believe is acceptable.

It is the case that in focusing on naturalization in the way that we have over the last year, we have focused more resources on the naturalization caseload than we had previously and that has brought about some serious reductions in service in other areas. It was a judgment that I felt needed to be made and there was strong support in the Congress and elsewhere for making that judgment, because even with the caseloads in other application categories, the naturalization caseload was so very, very large that it required that level of effort.

However, there is light in the tunnel. We are on track to meeting and probably exceeding our naturalization production goals this year. We have, as I said, cut the time in half. We are well on our way to being able to get it back to the 6 months in another year and we will, therefore, next year, although we will still be working very heavily on naturalization, we will this coming fiscal year be able to apply some additional resources to adjustment of status and to some of these other case categories and begin to tame them, as well.

Senator ABRAHAM. I hope we can, and the purpose of today's hearing is not to set the priority list in such a fashion that we want to argue which line should be the shortest. I think all of us clearly feel that somebody who is entitled to citizenship ought to have the chance to be sworn in as soon as possible.

At the same time, I think it reflects the problem that you confront, and I guess I want to just make a point. In trying to set some kinds of parameters in legislation for reasonable lengths of delay, perhaps we are reflecting, or at least we have tried to reflect, what we are hearing, or at least what this Senator is hearing and others who were involved in the preparation of the legislation, from home, as well as in this position I have from other parts of the country to some extent, too.

The point is this. I think we, certainly as we move forward, will determine or debate back and forth as we talked yesterday whether or not some of these kinds of deadlines are appropriate for legislation, but I hope we can move, and not just under your leadership but I would hope in the future, as well, after 2000 and after 2004 and so on, that we would have a relationship with this agency,

whatever it is called and whatever its structure, that if the issue is trying to come up with a service-friendly approach, that we debate what are the resource requirements to get the job done.

I think Congress has the responsibility on the one hand to try to set in motion a process that gets done in a reasonably brief period of time, and if the agency, whatever it is called, says, look, this is only feasible if there are either fee increases or if there is another form of appropriated support, we need to know that, too, and we need to work together.

We are trying here to tell people through this legislation that the signal needs to be stronger that we are going to deal with it. For instance, it is my understanding that in terms of employment-based immigration petitions, that there are wide variances between various service centers, that in the Vermont and the Texas areas, those centers, the timeframe is in the range of 2 months. But we are hearing in my State that the Nebraska center is somewhere in the vicinity of 10 months. I do not know, again, what accounts for those differences. I would be happy to hear anything you might want to add on that.

But that is another part of it, that goes to the variances between the areas, and the reason that we felt and feel some need to put some kind of common standard out there so that somebody who has got a 10-month track record and thinks that is good enough maybe realizes it is not if there is legislation that specifies that is not good enough.

Could you comment on those distinctions, because we are curious in our area because we are hearing a lot of concerns.

Ms. MEISSNER. I think those are very fair points. I think that the most important thing that this legislation can do to address those points is to provide the machinery for a stable funding base for the immigration services organization. The funding base has to be protected, and this idea of firewalls and the idea of fees along with some capability for appropriated funding so that capital improvements in the ability of the infrastructure of the agency to be able to do this work in the most efficient way is very, very important.

Beyond that, things like the service centers where there may be a 2-month or a 10-month delay, that is unacceptable. That should not be the case. There should be a similar or same level of service whether you live in Peoria or whether you live in Miami.

So the customer service standards are the kinds of things that should regulate that. There obviously has to be the funding, but the management of it is important, too, and that is why we have asked for these service centers and our national resources to all be organized under one manager as part of that immigration services organization rather than reporting differentially, because those are our factories. Those are our main production resources and that work needs to be calibrated and made consistent and resources moved around among them, if need be. You are always going to have some anomalies for maybe a month or two if there is a spurt of applications, but there does need to be that overall management that calls for consistency.

The other thing that I do not know—I cannot recall whether it is in your legislation or not, but the other thing that would be very important in services with fees coming in is that there be some re-

programming authority, some percentage of reprogramming authority that the agency could do itself when additional fees come in without requiring Congressional approval at every point. That is to say, I mean, for instance, we just have a new requirement, temporary protective status, that was decided after Hurricane Mitch. We have fees that we have received to do those applications, but that increased funding level that we have has not yet been approved Congressionally and so we cannot spend those funds.

So a little bit of flexibility where expenditure is concerned—5 percent, 10 percent has been recommended by the National Association for Public Administration, for instance, the National Academy—something like that in the legislation would be very helpful.

Senator ABRAHAM. Commissioner, thank you for that suggestion, those comments, and for your participation. I want to just, as I said at the outset, thank you for trying to participate with us in a constructive way. There is obviously a lot of work that needs to be done before legislation passes. I am actually quite pleased that what I began talking about a couple of years ago now seems to be, in one form or another, maybe not in identical form, to be a subject on which there is a sense of consensus developing, that the need to separate functions is an important component in making things better.

We will look forward to working with you and maybe other members. I will leave the record open, if other members have questions they might want to submit in writing. But we do look forward to working with you and your team as we move forward with the legislative efforts on this side of the Capitol and thank you very much for being with us today. We appreciate it.

Ms. MEISSNER. Thank you. We very much appreciate the chance. Good bye.

Senator ABRAHAM. Thank you.

[The prepared statement of Ms. Meissner follows:]

PREPARED STATEMENT OF DORIS MEISSNER

INTRODUCTION

Thank you Mr. Chairman, Senator Kennedy and Members of the Subcommittee. I am pleased to be here today to discuss the critical issue of how best to reform our current immigration structure to address current and future immigration challenges facing the nation.

In April 1998, this Administration sent you a framework for change through restructuring, last summer we sent you legislation to endorse that change, and this July, we gave you a detailed restructuring proposal for how that change could work.

I want to fundamentally change this agency, and I want your approval to move forward as soon as possible with the kind of change that will lead to improved performance.

Some have asked me why I care about this issue and am working so hard on it, since, realistically, restructuring would not become effective until the next Administration arrives. Members of the Subcommittee, you are likely to still be here in 2001—I will not. My only stake in the restructuring debate—based on more than 20 years' experience in the immigration arena—is to try to achieve an immigration system that is best positioned both to enforce our immigration laws effectively and to continue our tradition of welcoming immigrants in the years ahead.

Today's global society is challenging this nation's immigration system as never before—from unforeseen world events such as Hurricane Mitch in Central America to increasingly sophisticated human smuggling operations to dramatic changes in our immigration laws. And we can expect more complex challenges ahead.

We have met these new challenges and goals head on and have achieved success in many areas. Let me mention just a few.

INS has had the greatest success in enforcement, particularly at the border, where we have used new resources to address longstanding enforcement challenges.

A prime example is our Southwest border enforcement strategy where we have achieved more in the past five years than has been done in decades. Five years ago, we developed a comprehensive multi-year Southwest border strategy with a clearly defined goal of deterring illegal migration, drug trafficking and alien smuggling, while facilitating legal migration and commerce.

To help us meet our goal, Congress provided funding for unparalleled growth in personnel and resources. We have doubled the number of Border Patrol agents, which stands at more than 8,000 today, and have supported them with state-of-the-art force-multiplying equipment and technology. And we have seen results.

Today, we have achieved considerable success in restoring integrity and safety to much of the Southwest border, thereby improving the quality of life in border communities. Operation Rio Grande is just one recent example of how successful deterrence works. After a concentrated effort to gain control of the border in South Texas and New Mexico was initiated in August 1997, apprehensions in Brownsville declined by 35 percent in fiscal year 1998. This mirrors the decline in criminal activities that have accompanied INS border operations in other areas such as in Nogales and Laredo, and in San Diego, where the success of Operation Gatekeeper resulted in an 18-year low in apprehensions in fiscal year 1998. And, as the Southwest border strategy takes hold in high traffic areas and leads to increased border activity in new locations, such as the areas of Arizona recently affected, we will respond with the same comprehensive enforcement operations to achieve similar success.

To complement the work along the border between the ports of entry, we have worked closely with other federal agencies to enhance our enforcement efforts at the ports while at the same time facilitating legal migration and commerce. Our target has been to achieve a less than 20 minute wait in our port of entry traffic lanes at least 80 percent of the time. From October 1998 to May 1999, we met this goal 96 percent of the time and we continue to build on this success at all ports of entry.

Complementing this enhanced border management is an effective approach to combating illegal immigration in the nation's interior. We have now developed and begun to implement a new interior enforcement strategy focused on the investigation of human smuggling, human rights abuses, and other criminal violations. Last November, we announced the dismantling of the largest, most complex smuggling ring ever encountered by federal authorities. It smuggled more than 10,000 people into the United States, with organizers grossing nearly $200 million.

We have also been successful at keeping pace with record numbers of criminal and illegal aliens coming through the system. For the fifth consecutive year, INS removed a record number of criminal and other aliens in fiscal year (fiscal year) 1998, reflecting the agency's continuing commitment to ensuring that illegal immigrants are not only caught, but also removed from the country.

From fiscal year 1993 to fiscal year 1998, criminal alien removals increased by 98 percent, from 27,825 to 55,211. Such record removals and increased resources have helped INS deal with the fastest growing detention population within the Department of Justice. In fiscal year 1998, alone, INS expanded its detention capacity by 33 percent, or 4,000 beds for an end of year total of 16,000 beds, which supported the detention of more than 160,000 individuals who spent some time in INS custody.

Success has not been limited to our enforcement function. We are also beginning to see improvement in the provision of immigrant services as a result of recent funding and our reengineering efforts.

Our top priority in the provision of these services has been revitalizing the nation's citizenship program in its entirety. In fiscal year 1998, we opened more than 120 new fingerprinting sites in immigrant communities across the country, implemented additional quality assurance procedures to ensure integrity which repeated outside audits have validated, and expanded access of our customers to information that they need.

During this comprehensive effort to overhaul the entire naturalization process, we have maintained as our number one focus the reduction of the backlog of pending naturalization applications. With the new staff that we have brought aboard and the continued improvements in our conversion to automated processes, we have moved ahead in meeting the very ambitious goals that we have set in naturalization for this year. During fiscal year 1999 through July, INS completed more than 942,910 naturalization applications, a 102 percent increase over the same period in fiscal year 1998. We have also reduced the time required to process a naturalization application from 28 months at the beginning of fiscal year 1999 to an expected 12 months by the end of September.

Indeed, from 1993–1998, 5.6 million immigrants—more than the total in the previous 30 years combined—applied for citizenship. We have been able to congratulate 3.3 million of them as new United States citizens.

The significant progress that we have made on these and other longstanding problems demonstrate that we can achieve results given the proper resources and a truly coordinated approach.

However, I am all too aware of the problems that we have at INS. Consistent, courteous and timely customer service is not uniformly provided. Mission conflict at the local operational level often impedes accountability, and the current bureaucratic chain of command hampers efficiency.

I assure you that I am and have been working to solve these and other problems, but I cannot fully succeed without the necessary structural changes that will result in a true and meaningful transformation—from a strained structure designed to deal with the smaller and more manageable workload of yesterday to a modem system equipped to meet the challenges of today and tomorrow.

Restructuring alone will not solve all of our problems but it will better position us to solve many by providing the core framework for administering the nation's—immigration policy in the most effective manner possible. Restructuring will provide us with the tools necessary to achieve comprehensive change across the board, from our operational structure to the culture of our organization. It is the next step in our ongoing institutional reform.

I am committed to fundamental change that will bring about true, meaningful reform as quickly as possible, and I want to work with Congress to achieve these reforms.

The INS must change and will change. Therefore, the question before us is how to change the current immigration system to ensure that this change will improve the immigration system so as to meet tomorrow's challenges and not undermine the significant progress we have made.

And the time could not be better. We have a new workforce eager and ready to embrace the structural change that will allow them to perform more effectively and foster the new culture of customer-oriented professional service.

Fortunately, I believe we share most core restructuring principles and structural solutions. This is critical, for we must work together to lay the foundation of the immigration system that will last far beyond this Administration and this Congress into the next century.

I know that we cannot succeed without your help and support and I look forward to reaching a final plan together.

Before discussing the Administration's proposal, let me briefly share with you the extensive research and work we have done to bring us to where we are today.

ADMINISTRATION PROCESS

As you may know, two years ago, Congress asked the Attorney General and I to report back on the 1997 proposal that the Commission on Immigration Reform (CIR) prepared calling for structured changes in the nation's immigration system. The Administration's review of the CIR recommendations led to a proposal for a new framework for improving INS which I shared with you last spring.

As you may recall, the Administration's Framework for Change set forth a high level structure that fundamentally changes our immigration system to the core. It preserves one coherent immigration system while building a strengthened law enforcement operation and a new service-oriented organization by splitting enforcement and services functions into two distinct chains of command.

Since April 1998, INS has worked on providing the detail that illustrates how the INS' organizational structure would look and operate beneath the framework. In September 1998, INS formed a restructuring team in the Commissioner's Office, and hired a nationally renowned consulting firm, PricewaterhouseCoopers (PwC), to provide design support and best practices from other public and private organizations.

The Restructuring team's internal planning has been extensive and has drawn upon input from both field and headquarters staff.

Through a PwC stakeholder advisory board as well as through specific briefings, the Restructuring team also engaged in extensive consultations with INS external stakeholders, ranging from community-based organizations to trade and international business organizations to other government and law enforcement agencies. Regular meetings with staff from the Department of Justice, the Office of Management and Budget (OMB), the White House, and Congress have been ongoing to gain input and ideas.

To apply successful lessons from structures of relevant organizations for benchmarking purposes, the team extensively researched other federal law enforce-

ment and service providing agencies, including selected state agencies and private corporations.

INS senior management and Administration reviews of this work have led to the detailed proposal, which I would now like to discuss with you.

ADMINISTRATION PROPOSAL

Let me begin by saying that the Administration's proposal and the legislation you recently introduced Senator Abraham, S. 1563, seek to address the same longstanding problems and share very similar structural solutions.

Both the Administration's proposal and S. 1563 represent bold, far-reaching, non-status quo reform geared toward providing better customer service and improved law enforcement.

Both call for a clear split between enforcement and services to provide better results, improve accountability, and strengthen management of each function. And both advocate putting these two, distinct functions into separate chains of command, keeping them within the Department of Justice.

Most importantly, both provide for an integrated structure to coordinate these interrelated missions. The integration of these missions lies at the heart of any restructuring and we strongly support a national coordinating structure.

While we share many structural solutions, we must also be wary of going too far with detail in legislation so that we preserve the flexibility of the immigration system to meet the unforeseen challenges ahead.

The Administration's proposal achieves each of the four primary goals that we identified at the beginning of our effort.

First, the proposal strengthens accountability by providing clear, separate chains of command for immigration services and enforcement from the top of the agency to each local manager so that these managers can be held accountable for performance and results in their area of expertise.

Second, the proposal helps achieve a culture change in customer service by providing for structural features such as remote servicing offices and for full-time positions devoted solely to ensuring consistent, courteous, accurate and timely service.

Third, the proposal builds a seamless enforcement structure that supports all enforcement activities at and between ports of entry and in the nation's interior.

Finally, and most importantly, the proposal ensures a coherent immigration system for the nation that enforces the laws at the border and in the interior as well as serves the immigrant community.

The Administration's proposed new immigration structure represents fundamental reform. In the current organization, managers and employees are frequently required to reconcile conflicting priorities at the expense of one or the other of the agency's immigration services and law enforcement missions. This proposal calls for radically transforming the current structure by creating two new mission-centered organizations—one for immigration services and one for law enforcement—each with a distinct chain-of-command but within one coherent immigration system.

The three INS regional and thirty-three district offices that have increasingly struggled with dual mission responsibilities would be eliminated and replaced with area and local offices organized in networks focused around either immigration service delivery or law enforcement.

IMMIGRATION SERVICES

The proposed structure for Immigration Services (IS) builds upon the work that INS has already begun in its comprehensive overhaul of its benefit-granting mission in providing new customer service as reflected in the streamlined Immigration Services Division and the National Customer Service Center. The new structure is designed to achieve a culture change that will make Immigration Services a model of customer service.

Specifically, the new structure would establish a senior executive manager for Immigration Services who would be the head of the new Immigration Services chain of command and skilled in service delivery. Working with an integrated program staff organized according to specific services—family, business and trade, resident and status, and citizenship—this executive would be responsible for INS' immigration services mission and would be held solely accountable for results.

Much like the Ombudsman position proposed in S. 1563, the proposal establishes a senior level Customer Service Advocate who reports directly to the head of Immigration Services to promote customer service throughout the agency. The Advocate would have the responsibility of ensuring that customers are treated fairly and courteously in a timely manner in local offices throughout the country. We would reinforce this newly institutionalized culture of customer service by having a national

point for customer service training, the conducting of annual customer satisfaction surveys, and problem resolution.

The proposal eliminates a layer of management and creates geographic operational areas headed by directors who would report directly to the head of Immigration Services. We have ensured that the new areas are based on such factors as the location of immigrant communities to better reach and serve our customers. In addition, each of the new geographic areas contains one of the metropolitan areas that are among those with the largest volume of applications so as to better manage the workload for more timely and accurate processing. These Area directors would oversee all local immigration services offices within their area and ensure quality, timely management of adjudications workloads as well as consistent decision-making. With clear single mission demands, the Area directors can be held directly accountable for achieving timely performance and customer service standards within their areas. We believe that this is a more sound approach and will achieve the results we all seek rather than specifically setting out in legislation deadlines for processing.

To maximize direct service for our customers, the proposal would build upon existing offices that locate the most customer focused activities—fingerprinting, information, problem resolution, testing, adjudication services—directly in the communities to eventually establish additional local immigration offices that would report, through Area directors, to the head of Immigration Services.

In addition, the proposal would build upon the gains we have made in using economies of scale to improve service such as in the provision of remote services to our customers. The proposal would consolidate all remote operations—telephone, service, and card centers—under one director that would report to the Immigration Services executive. This director would be held accountable for these operations critical to a modem customer service organization.

Finally, we recognize the importance of adequate funding for services. We want to work with the Committee to ensure that fees are applied to processing applications which generated the fees, and to create a source of support for major immigration services projects and investments so as to lessen the need to rely on fee revenue exclusively for major expenditures.

ENFORCEMENT

To effectively enforce the nation's immigration laws, the new structure integrates all existing enforcement functions under one new chain of command. This chain is divided into geographic enforcement areas across the country based on workload and enforcement priorities such as anti-smuggling routes, and headed by law enforcement professionals responsible for monitoring performance and ensuring compliance with standard agency-wide policies and procedures. The proposal removes a layer of middle management so that the area heads report directly to the head of enforcement. This direct chain of command and full integration will allow enforcement area directors to allocate resources in response to rapid changes in criminal and illegal activities.

This full integration under one enforcement head will help address many difficulties we presently encounter in our enforcement efforts and will facilitate seamless law enforcement from the nation's borders to its interior. With one person in charge of enforcement, the structure will enhance coordination with other law enforcement agencies on comprehensive border control strategies and strengthen the ability to pursue illegal activities that cross geographic boundaries. And, with the enhanced coordination between and among ports, and with other INS enforcement entities, the ability to identify and break large-scale criminal enterprises will increase.

As our border enforcement efforts become even more successful and the smuggling of illegal aliens become more sophisticated, we cannot overlook the importance of immigration inspectors in our enforcement efforts. One of the places where we differ with S. 1563 is with the placement of the inspections function. The Administration believes that inspectors are an integral part of INS enforcement mission, and while acknowledging the multi-faceted role they serve, we believe there are compelling reasons for keeping inspectors in the enforcement chain of command.

Immigration inspectors, by virtue of their training, duties and responsibilities, and the hazards to which they are exposed, are much more closely aligned with law enforcement officers than with other types of Government inspectors. While inspectors perform crucial adjudicative functions as well, the primary reason for placing inspectors at ports of entry is to serve both as a deterrent and to enforce U.S. immigration laws which have increasingly involved criminal sanctions. In carrying out these apprehensions and detentions, inspectors use authorities given them by Congress which are characteristic of law enforcement officers.

Inspectors facilitate the entry of over 500 million people to the United States every year. In fiscal year 1997 alone, inspectors apprehended more than 184,000 criminal aliens and originated 24,445 criminal prosecution cases. Additionally, they detained approximately 500,000 applicants who subsequently were not admitted to the United States.

And these inspectors are increasingly at risk in performing this law enforcement function. As a result of our border enforcement successes in between the ports-of-entry, we are witnessing increasing activity and sophistication of criminal organizations that profit by smuggling people, drugs, and other contraband through vehicular inspections lanes at the ports-of-entry, commercial airports, private aircraft landing fields, and ship dockyards. The competition to funnel illegal aliens, drugs and contraband through these traditional entry points has resulted in increased violence as well. As part of their daily routine, inspectors must subdue belligerent applicants, persons resisting arrest, and persons attempting to flee when they realize they have become suspects during an interrogation at a port-of-entry.

When an inspector is charged with enforcing our nation's immigration laws, it does not mean that that individual loses the ability to treat others with respect nor loses the ability to apply immigration law fairly based on their extensive training. We ask for the same type of balance in charging police officers on the street with enforcing the laws while at the same time exercising appropriate discretion in carrying out their duties and serving the community with the proper respect, courtesy, and professionalism. While different in their duties, both are charged with more than just an expanded enforcement mission.

In short, while inspectors have various roles—whether welcoming visitors to the U.S., facilitating commerce through timely processing, or adjudicating immigrant claims—these all complement the fundamental enforcement role they serve.

Recognizing the exponential increase in the demand for detention space, the Administration's proposal would centralize the detention program at the national level to provide for better management of limited detention bed space. The proposal also recognizes our increased dependence upon the use of contracted beds to meet our detention responsibilities. As a result, the proposal provides for a national structure that ensures that uniform standards are followed, consistent practices are utilized, and INS and contracted facilities are monitored to ensure that every INS detainee is afforded the same protections and rights guaranteed by law.

Of special concern are those individuals who are detained while seeking asylum. Clearly, it is not in our interest to detain asylum seekers whose eligibility for asylum can be clearly established in the course of a credible fear interview. The Administration proposal will build on current INS efforts to address the unique situation of such asylum seekers. Structurally, the Administration proposal would maintain the current domestic asylum offices and consolidate the asylum, refugee, and humanitarian affairs programs in immigration services. Detention would be treated as a separate entity in the enforcement chain.

The proposal also creates Community Advisory Panels at the national and area levels to provide community input regarding enforcement operations, to institutionalize a forum for public involvement, and to foster better community relationships and cooperation. This will ensure that senior management directly hear from the community as they make operational decisions, and will better educate our personnel in the field of the concerns unique to a particular community as they carry out an enforcement mission.

In short, the proposed integrated enforcement structure is designed to meet the needs of a modern, professional law enforcement agency that can manage the complexities of immigration law and crimes that often extend far beyond our boundaries while upholding the civil rights of all individuals.

SUPPORT STRUCTURE

Separate and apart from the coordinating structure at the top, the Administration's proposal, like S. 1563, provides for a unified support operations structure that would handle support needs such as a records and national file center, training and human resource functions, automation, data support and technology, and administrative support.

The importance of a unified, responsive support operations structure cannot be overstated.

Just taking into account the millions of records alone that we handle, we do not believe our daily business can be done without a support structure dedicated solely to meeting the needs of both enforcement and services chains of command. Currently, we maintain more than 25 million immigrant files. Each contains the documentation required to ascertain an individual's immigration history with the United

States, including both enforcement and benefit matters. These files must be complete and must be readily available whether to an adjudicator in Immigration Services or an investigator in Enforcement Operations.

The Service's chronic problems surrounding "lost" files are finally being addressed with the opening of an automated, centralized National File Center in November. A new structure needs to strengthen these long overdue improvements and I believe our proposal does just that.

COORDINATION

Most significantly, both the Administration's proposal and S. 1563 recognize the need for an overall integrating structure managed by one full-time, senior appointed official who will be the policy voice for immigration and directly responsible and accountable for both immigration services and enforcement operations. This would allow the government to maintain the crucial balance between the inextricably linked immigration enforcement and immigration services that is needed for a coherent national immigration policy and system and effective application of immigration law.

For instance, the nation's immigration laws determine the legal status of all noncitizens in the United States. The laws outline how those who are here unlawfully can obtain legal status and how those here legally can lose that status. Because these processes are intertwined in statute and practice, assigning them to separate entities with no coordination would fragment and weaken the government's ability to fairly and effectively administer immigration laws.

And, in this day of rapidly changing events that can play out before the world in real time, a single voice for United States immigration policy that can respond quickly and decisively on immigration matters is critical.

That is why we would establish a structure with one person reporting to the Attorney General and the Deputy Attorney General with a number of functions at the national level in such critical areas as legal representation, policy, financial management, professional responsibility and review, and Public Affairs and Congressional Relations, yet still provides for complete separation of enforcement and services from national offices down to the field offices. And, to ensure accountability and policy consistency, we believe this official should be the only Senate-confirmed appointee in the immigration system.

The need for broad-level overarching coordination is also important in ensuring that what would be a relatively small Immigration Services organization receives the priority and resources necessary to do its job within the larger law enforcement missions of the Department of Justice. We believe that one chief financial officer will best help facilitate proper resource coordination.

Separate and apart from high-level integration, operational coordination is also key and must be accounted for in separating the two missions into two chains of command. Let me use just one key example.

And, as I alluded to earlier, as INS has increased its enforcement effectiveness in its border control, interior enforcement and criminal alien removals, there has been a corresponding increase in the number of individuals resorting to fraudulent means to enter and remain in the United States. Stopping benefit fraud requires close coordination between enforcement and services.

On a daily basis, INS adjudicators in service centers and local offices review thousands of applications and other supporting documents. In the course of their adjudication work, they often detect suspected fraudulent documents and suspect applications. The service centers and local offices refer suspect applications and petitions to the appropriate district office for analysis and consideration for investigation. Immigration Services employees also develop general intelligence information about patterns of fraud and possible groups or individuals involved.

INS Special-Agents working with the service center or local office review the information referred by immigration services employees. Once an investigation is initiated, special agents complete all necessary fieldwork on the case through prosecution if necessary, and report the results to the appropriate immigration services office for completion of the adjudication action. Special agents and intelligence analysts also compile intelligence information from various service centers and local offices into plans containing strategies and tactics to maximize future investigations of benefit fraud.

Benefit fraud investigations and resulting fraud reduction efforts would suffer from constant challenges and competing priorities if the two interrelated missions were completely split.

In short, the Administration proposal carefully balances the need to eliminate potential mission conflict at the day-to-day operational level while recognizing that the

missions are complementary and both must be considered where immigration policy and the national interest are involved. I urge the Subcommittee to ensure that final restructuring legislation includes this vital integrating structure.

CONCLUSION

We live in an era of large-scale immigration and increasing international migration pressures. We need greater, not less, cohesion and stronger consolidation and interaction among functions, in order to serve the broad public policy needs of our time.

How to organize immigration governance has been debated for more than 100 years as a response to problems in the immigration bureaucracy that transcend particular administrations or historical periods. This Administration's proposal represents fundamental reform that will strengthen the immigration system. We should not let the frustration we share lead us to weaken our institutions and our ability to carry out responsibilities in both enforcement and benefit-granting that are mutually reinforcing, not fundamentally incompatible.

Mr. Chairman, I look forward to working with you and other members of Congress in moving forward to restructure INS to bring much needed reform to our immigration system in a manner that best serves the nation. Thank you.

Senator ABRAHAM. We will now invite our second panel to come forward to join us. Our second panel will consist of Chief Paul Berg, who is the chief of the Chief Patrol Agents Association and chief of the Del Rio Sector of the U.S. Border Patrol; Mr. Warren Leiden, who is a partner with the law firm of Berry, Appleman and Leiden, who will be testifying on behalf of the American Immigration Lawyers Association; Mrs. Rachel Yoskowitz, Director of Immigration and Citizenship Services with Jewish Family Service of Detroit, MI; and we will also hear from T.J. Bonner, who is president of the National Border Control Council; and finally, from Mr. Richard Gallo, who is the national president of the Federal Law Enforcement Officers Association.

We welcome all of you. We have, obviously, a fairly busy panel or large panel here today, so I am going to have the clock more rigidly enforced on this go-around. For those of you unfamiliar with it, it is basically a 5-minute clock which alerts the witnesses at the 4-minute point with the orange light and at the 5-minute point with the red light. We are usually pretty flexible about letting folks finish thoughts that are in progress at that point, but we will, of course, include everybody's complete statement for the record if it would be longer than that.

Thank you all for being here. We will start with you, Mr. Berg. Thank you for being here.

PANEL CONSISTING OF PAUL M. BERG, CHIEF, DEL RIO SECTOR, U.S. BORDER PATROL, AND CHIEF, CHIEF PATROL AGENTS ASSOCIATION, DEL RIO, TX; WARREN R. LEIDEN, BERRY, APPLEMAN AND LEIDEN, SAN FRANCISCO, CA, ON BEHALF OF THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION; RACHEL S. YOSKOWITZ, DIRECTOR, IMMIGRATION AND CITIZENSHIP SERVICES, JEWISH FAMILY SERVICE METRO DETROIT, DETROIT, MI; T.J. BONNER, PRESIDENT, NATIONAL BORDER PATROL COUNCIL, CAMPO, CA; AND RICHARD J. GALLO, NATIONAL PRESIDENT, FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION, NORTHPORT, NY

STATEMENT OF PAUL M. BERG

Mr. BERG. Thank you, Mr. Chairman. Chairman Abraham, Senator Kennedy, and members of the subcommittee, I am pleased to

have the opportunity to talk to you today about the impact of the proposed INS Reform and Border Security Act of 1999.

The Chief Patrol Agents Association, which consists of over 190 top field managers, firmly believes that both immigration enforcement and immigration services are critically important to our Nation's sovereignty and those to whom we provide service.

The problems with the existing system have been caused by the complexity and diversity of the two competing missions of the Immigration and Naturalization Service. On one hand, you have an agency responsible for adjudicating the various immigration benefits, applications for those seeking to legally immigrate to the United States, and most importantly, the vesting of U.S. citizenship to those eligible and deserving of such. Divergently, enforcement elements deal with people who try to circumvent the legal immigration system or violate their status after admission.

The largest of these enforcement elements is the U.S. Border Patrol, which is tasked with protecting our borders. Last fiscal year, the Border Patrol apprehended 1.5 million illegal entrants and seized nearly $1.9 billion worth of narcotics. Those figures will probably be equaled this fiscal year.

The other enforcement element, consisting of intelligence, investigations, and detention/deportation, are essential to immediate border control, as well as an effective interior enforcement strategy. There is also a vital immigration inspection force that ensures those entering the United States through the ports of entry have the proper documentation and have the legal authority to be here. The management of such diverse activities by one person leads to an adverse competition for resources.

Historically, budget allocations for the enforcement element serve as a funding mechanism for the support services and benefits programs. When there are shortages in those areas, funds for enforcement, equipment, and enhancements, including personnel, often are redirected.

Congress fully intended to improve the efficiency of the INS, as evidenced by the record budgets over the past 5 fiscal years. Yet, the agency has fallen short in accomplishing the objectives mandated by Congress. Shortages of personnel and technology continue to exist.

As you can see from my prepared statement, the priorities of a law enforcement agency are drastically different from a benefits-providing agency. What we presently have is similar to expecting one manager to oversee the operations of the Federal Bureau of Investigation and the Social Security system at the same time.

The chain of command for the enforcement side of INS is extremely dysfunctional. As chief patrol agent for the Del Rio Sector, my immediate operational supervisor is not within the Border Patrol but is the central regional director. The chief of the Border Patrol at INS headquarters is not even in the chain of command.

In reviewing all the enforcement divisions within the Department of Justice, we are the only agency organized in this nonfunctional management structure. For optimum efficiency, the functions and management of the enforcement elements must be structured similar to a large metropolitan police department.

The proposed legislation will allow the directors of the two bureaus to concentrate their efforts on making a system that is efficient, to remain focused on very complex missions, and they will be independently accountable. At the same time, the Associate Attorney General for Immigration Affairs can ensure coordination between the two immigration bureaus and directly oversee immigration inspections at the port of entry.

We must stop illegal entry into the United States and remove those who have slipped through, remain, and work here illegally. We must eliminate the incentive for people who risk their lives at the hands of unscrupulous smugglers. The new enforcement agency should be managed by career enforcement officers with the expertise to enforce immigration law, much like the FBI structure. A well-managed border will enhance our national security and safeguard our immigration heritage, while restoring our Nation's confidence in the integrity of its sovereign border.

This cohesive strategy is essential to eliminate the negative impact of unimpeded illegal immigration on communities not only in Texas, New Mexico, Arizona, and California, but in places such as Detroit, Boston, and other East Coast destinations that draw illegal entrants not only from the Southern border but from the Northern border, as well.

The Chief Patrol Agents Association believes the INS Reform and Border Security Act of 1999, properly implemented, will create an immigration enforcement bureau capable of properly managing our borders and at the same time provide a coordinated interior enforcement strategy. We would like to thank Chairman Abraham and Senator Kennedy and Senator Hagel for introducing this very important legislation.

Mr. Chairman, ranking member, and members of this subcommittee, speaking now on behalf of all officers of INS and especially for the agents of the U.S. Border Patrol, we are proud to be serving our country and take pride in carrying out the intent of the immigration laws passed by Congress. I thank you for allowing me the opportunity to appear before you today on behalf of the members of the Chief Patrol Agents Association and I would be happy to answer any questions that you might have.

Senator ABRAHAM. Chief Berg, thank you very much. We all appreciate your service. Again, we have a tendency here when we focus on problems to perhaps convey the impression that there is not a lot of respect and appreciation and admiration for the folks who are on the front lines here. That is not certainly our intention. I know Senator Kyl would like to comment on that, too, before he leaves.

Senator KYL. Mr. Chairman, I have a 3:30 appointment and I have got to leave, but Paul Berg is already making a big impact and we really appreciate all your help and the communication we have had with you. Keep up the great work, and I apologize to the rest of the panel. Thank you.

Senator ABRAHAM. Thanks, Senator Kyl.

[The prepared statement of Mr. Berg follows:]

PREPARED STATEMENT OF PAUL M. BERG

Chairman Abraham, Senator Kennedy, and Members of the Committee, I am pleased to have the opportunity to talk to you today about the impact of the proposed "INS Reform and Border Security Act of 1999" on immigration enforcement operations.

The Chief Patrol Agents' Association, which consists of over 190 top field managers, firmly believes that both immigration enforcement and immigration services are critically important to our nation's sovereignty and those to whom we provide service. Each area requires equal dedication and continuous management oversight.

The problems with the existing system have been caused by the complexity and diversity of the two competing missions of the Immigration and Naturalization Service—providing services to legal immigrants and preventing the entry of individuals who attempt to enter the United States illegally.

On one hand, you have an agency responsible for adjudicating the various immigration benefit applications for those seeking to legally immigrate to the United States. The immigration services functions primarily deal with the paperwork and meticulous details that are required to provide benefits within the immigration and nationality laws passed by Congress.

The public is entitled to efficient and timely handling of applications and issuance of immigrant and non-immigrant visas, and most importantly the vesting of U.S. Citizenship to those eligible and deserving of such.

Divergently, you have enforcement elements who deal with people who try to circumvent the legal immigration system or who violate their status after admission. The largest of these enforcement elements is the U.S. Border Patrol.

The Border Patrol is the uniformed law enforcement element tasked with protecting the border of our nation 24-hours-a-day, 7-days a week, 52-weeks a year. Last fiscal year, the Border Patrol apprehended 1.5 million people attempting to enter the country illegally; and seized nearly 1.9 BILLION dollars of narcotics. Those figures will be equaled this fiscal year. (See attached apprehension statistics.)

Supporting these enforcement elements are the offices of intelligence, investigations, and detention and deportation. All the aforementioned are essential to immediate border control as well as an effective interior enforcement strategy.

We also have immigration inspectors at the ports of entry. The inspectors have the dual function of facilitating the free flow of commerce and persons through our land, sea and airport ports of entry, as well as detecting malafide applicants for admission and interdicting illegal contraband.

As you can see the management of such diverse activities by one person leads to an adverse competition for resources. Historically, budget allocations for the enforcement elements served as a funding mechanism for the support services and benefits programs, when there are shortages in those areas. Funds for enforcement equipment and enhancements are redirected, when temporary increases in adjudicators are needed.

Congress has initiated a commitment to improving the efficiency of the Immigration and Naturalization Service as is evidenced by the record budgets allocated to the agency over the past five fiscal years. Yet the Agency has fallen short in accomplishing the objectives mandated by Congress.

Naturalization application backlogs, unacceptable inspection waiting times at ports of entry, poor investigation of fraudulent applications for benefits, overstay of non-immigrants, as well as shortages of personnel and technology continue to exist.

As you are aware, the operation of a law enforcement agency is drastically different from the operation of a benefits providing agency. What we presently have is similar to expecting one manager to oversee the operations of the Federal Bureau of Investigation and the Social Security System at the same time. While smaller in size, the current INS requires the same diversity.

Additionally, the current system provides for a very disjointed operation. The chain of command for the enforcement side of INS is extremely dysfunctional. As Chief Patrol Agent for the Del Rio Sector, my immediate operational supervisor is not the Regional Director for Border Patrol, but, is the Central Region Director. The Regional Director then reports to the Office of Field Operations at INS Headquarters on all operational matters. The Chief of the Border Patrol at INS Headquarters is not even in the chain of command.

In reviewing all the enforcement divisions within the Department of Justice—FBI, DEA, Bureau of Prisons, U.S. Marshals Service and the INS—we are the only agency organized in this non-functional management structure.

To have an effective immigration law enforcement element, there is a need for a very precise chain of command, with as few layers of management as possible, and, with trained law enforcement people in management functions.

For optimum efficiency, the functions and management of the enforcement elements must be structured similar to a large metropolitan police department, with adjustments for the national scale of the immigration enforcement elements.

The proposed legislation—the "INS Reform and Border Security Act of 1999"—will provide the potential for effective management of the Immigration Services and Immigration Enforcement activities. At the same time it will place the immigration inspectors directly under the Associate General for Immigration Affairs, and independent of the immigration enforcement or services elements. This will place the inspectors on the same level at the other agency inspectors at the Ports of Entry.

The creation of two bureaus will allow the directors and the Associate Attorney General to concentrate their efforts on making a system that is efficient, to remain focused on the very complex missions facing them, and they will be independently accountable.

The latter is something I know this committee is very concerned with, and is important to our employers, the taxpayers. When tax-dollars are allocated to hire 1,000 new employees, or to purchase technology enhancements, it is important that the purchases be made for these specific purposes, and the funds not be diverted to other activities based on one person's conflicting mission priorities.

From the standpoint of the proposal for the Bureau of Enforcement and Border Affairs, we believe the creation of the bureau will provide a framework to properly enforce the immigration laws of this nation, at the same time creating a separate bureau to better serve those wishing to immigrate legally or seek benefits under immigration law.

As I have said previously, we must not only stop illegal entry into the United States, but, we must remove those who have slipped through, remain and work here illegally. We must ensure employers stop hiring people who can not legally work in this country. We must remove the incentive for people to risk their lives at the hands of smugglers who are paid not only by those who are being smuggled, but also by employers in search of cheap labor. We must be able to detect, identify, and remove those who are threats to our society through modern technology and the human resources required to effect the removals.

This will require an enforcement agency structured much like the FBI, with professional law enforcement officers in charge of each area who know how to enforce immigration laws, as you have suggested in the proposed legislation.

The Bureau of Enforcement and Border Affairs must be an agency with the majority of its officers in the field where the enforcement takes place, and with a very limited amount of management overhead. It must take advantage of the latest technology to ensure the most efficient use of its resources.

The proposed legislation would provide the framework for this country to more effectively manage its borders, while improving the services required to eligible persons. The Bill would bring the National Border Patrol Strategic Plan, developed in 1994, nearer to closure. The establishment of a Bureau of Enforcement would serve as the bridge required to integrate a successful border control policy with an effective interior enforcement strategy.

This cohesive strategy is essential to eliminate the negative impact of unimpeded illegal immigration on communities not only in Texas, New Mexico, Arizona and California, but, in places such as Detroit, Boston and other east coast destinations, that draw illegal entrants not only from the Southern Border but from the Northern Border as well.

A well-managed border will enhance our national security and safeguard our immigration heritage, while restoring our nation's confidence in the integrity of its sovereign border.

The Chief Patrol Agent's Association believes the INS Reform and Border Security Act of 1999, properly implemented, will create an Immigration Enforcement Bureau capable of properly managing our borders. We thank Chairman Abraham, Ranking Member Senator Kennedy and Senator Hagel for introducing this very important legislation.

As stated, this Bill provides the framework. A detailed implementation plan would be developed in a collaborative effort with those impacted by this plan, internal and external customers, community-based organizations, advocacy groups, other government and law enforcement agencies, the Department of Justice and with the members of Congress.

Mr. Chairman, and Members of this subcommittee, speaking on behalf of all the employees and officers of the Immigration and Naturalization Service, and especially the Agents of the U.S. Border Patrol, we are proud to be serving our country and take pride in carrying out the intent of the immigration laws passed by Congress.

I thank you for allowing me the opportunity to appear before you today on behalf of the members of the Chief Patrol Agents' Association. I now would be happy to answer any questions you might have.

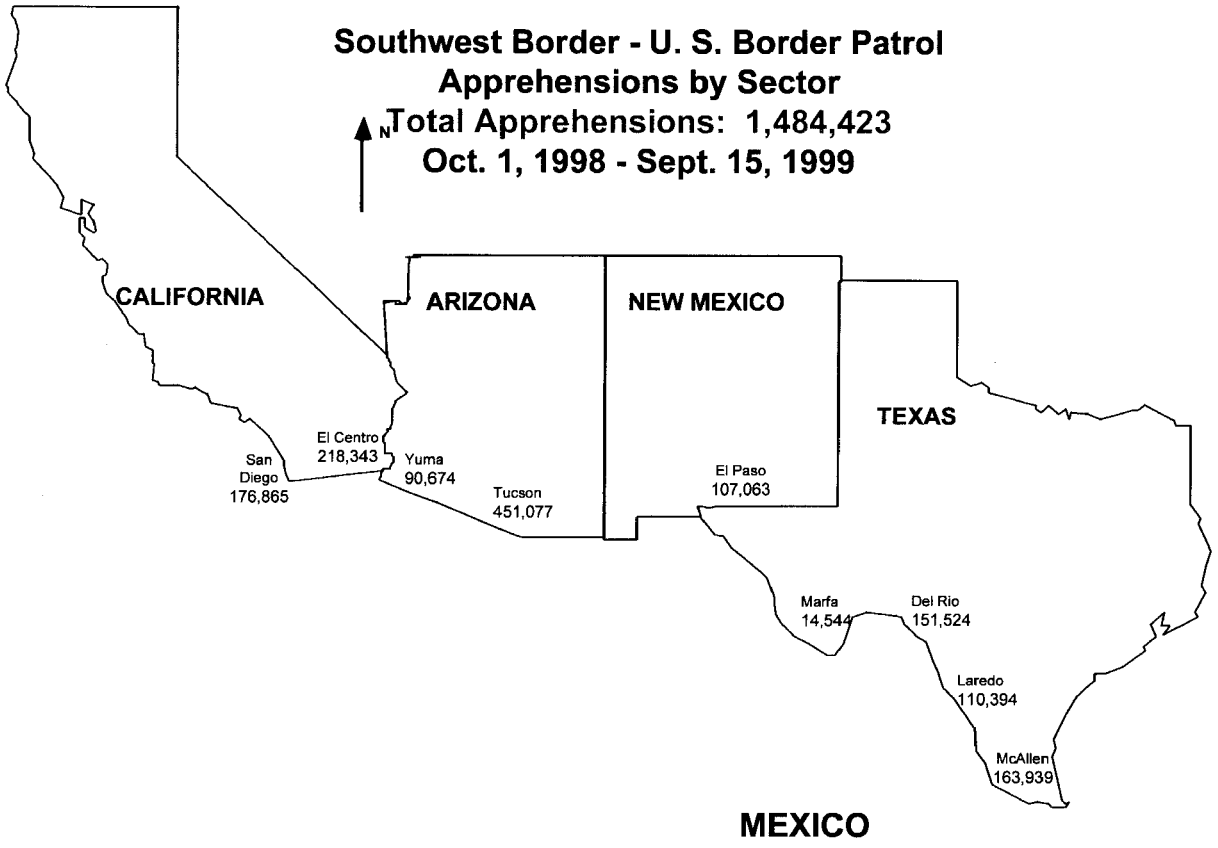
U.S. Border Patrol Apprehensions
Fiscal Years 92-99

Fiscal Year	Nationwide	Southwest Border	Southwest Border Sectors								
			San Diego	El Centro	Yuma	Tucson	El Paso	Marfa	Del Rio	Laredo	McAllen
1992	1,199,560	1,145,574	565,581	29,852	24,892	71,036	248,642	13,819	33,414	72,449	85,889
1993	1,263,490	1,212,886	531,689	30,058	23,548	92,639	285,781	15,486	42,289	82,348	109,048
1994	1,031,668	979,101	450,152	27,654	21,211	139,473	79,688	13,494	50,036	73,142	124,251
1995	1,324,202	1,271,390	524,231	37,317	20,894	227,529	110,971	11,552	76,490	93,305	169,101
1996	1,549,876	1,507,020	483,815	66,873	28,310	305,348	145,929	13,214	121,137	131,841	210,553
1997	1,412,852	1,368,707	283,889	146,210	30,177	272,397	124,376	12,692	113,280	141,893	243,793
1998	1,555,776	1,516,902	248,092	226,695	76,195	387,406	125,035	14,509	131,280	103,433	204,257
1999*	1,457,888	1,420,249	170,910	199,480	87,279	433,424	103,564	13,959	146,834	106,970	157,829

* - Through August 31, 1999

Operation Fiscal Years

FY93	Hold the Line - El Paso
FY94	Gatekeeper - San Diego
FY95	Safeguard - Tucson
FY97	Rio Grande (McAllen/Laredo)


Southwest Border - U. S. Border Patrol
Apprehensions by Sector
N
Total Apprehensions: 1,484,423
Oct. 1, 1998 - Sept. 15, 1999
CALIFORNIA
ARIZONA
NEW MEXICO
TEXAS
San Diego 176,865
El Centro 218,343
Yuma 90,674
Tucson 451,077
El Paso 107,063
Marfa 14,544
Del Rio 151,524
Laredo 110,394
McAllen 163,939
MEXICO

Senator ABRAHAM. Mr. Leiden, welcome back. It is good to have you again before one of our hearings. We appreciate it and turn to you at this time.

STATEMENT OF WARREN R. LEIDEN

Mr. LEIDEN. Thank you, Mr. Chairman, and thank you to the members of the committee for this opportunity to speak on behalf of the American Immigration Lawyers Association. Our nearly 6,000 members represent tens of thousands of U.S. families and American businesses petitioning for immigrants, as well as refugees and others seeking asylum. As you know, I was a member of the Commission on Immigration Reform and I feel like I have been studying the INS organization and reorganization issue for over a decade.

Our association strongly supports S. 1563, the INS Reform and Border Security Act, because the Immigration Service is no longer succeeding at its dual mission of both enforcement and adjudications. In particular, I would like to focus on the adjudications function, which is suffering tremendously in the last 2 years and is imposing both personal hardship on families and economic hardship on businesses.

As has been mentioned, in the immigrant petitions, we see adjudications taking longer than 10 months in both California and Michigan and those two regions. Naturalization petitions have almost come down to a year, but only very recently, and in some areas are taking well longer than a year. Adjustment applications are really not being adjudicated now. The few that are trickling out are 18 months or longer, but adjustment and other applications and requests for a service actions are essentially halted right now and there is no real planned time for adjudications to resume.

There are several reasons for this failure. First, I think it is widely acknowledged that it just does not work any longer to combine the conflicting missions of enforcement and adjudications. They really have different missions, they require different skills, and their professionals should have different career paths.

Second, the development of the Immigration Service management simply has not kept pace with the vast changes in the law the last decade and the tremendous growth in the size of the Immigration Service. Too many senior managers are without expertise in leading large service operations, and for many senior managers, their career path has zigzagged back and forth between service functions and adjudications functions. I do not mean to be critical, because I think that there are few government agencies with as dedicated and hardworking members as the Immigration Service, but it is precisely because of its structure that they are having a hard time succeeding today.

Adjudications suffers from a shortage of resources, and not just a shortage of resources, but also the timing of the resources provision. As was mentioned previously, in many cases, there has been an increase in revenues because of an increase in applications in the first quarter of the year, but those funds are not released for expenditure until the last quarter of the year, and in some cases until the first quarter of the next year.

Finally, there has been an ongoing series of mandates for special projects—special investigations, special audits, multiple outside management studies, most of which have been paid for from the exams or other user fee accounts.

In contrast, S. 1563 lays a foundation, an important foundation, for change. First, it separates the enforcement and adjudications functions into two separate bureaus.

Second, it establishes the Associate Attorney General for Immigration Affairs, who will provide unified leadership on policy matters to both agencies.

Third, it provides coordination between the two bureaus through the Associate Attorney General by providing policy and planning coordination, as well as administration of shared support resources.

Finally, S. 1563 calls attention to the need to limit user fee funds to services for which they are intended and for which they were provided.

In closing, I would like to focus on three additional points. First is that the reorganization of the Immigration Service is a means to an end. The goal has to be for all of us that both enforcement and adjudications are done effectively, efficiently, and fairly, and that is both in the interest of immigrants, new Americans, and all Americans.

Second, the Congress can help make the reorganization of the Immigration Service a success through continued attention and oversight through the implementation of reorganization after enactment.

And finally, on the funding issue, additional attention by the committee is warranted to the sources of funding, how they are utilized, and when they are made available.

I want to thank you again for this opportunity to testify. Our association has been close working partners with the Immigration Service since our association was founded in 1946 and we want to continue to work with your committee, as well, to go forward on this important mission.

Senator ABRAHAM. Thank you very much.

[The prepared statement of Mr. Leiden follows:]

PREPARED STATEMENT OF WARREN R. LEIDEN

Mr. Chairman and distinguished Members of the Subcommittee, I am honored to be here today representing the American Immigration Lawyers Association (AILA). AILA strongly supports S. 1563, the INS Reform and Border Security Act of 1999, recently introduced by Senators Abraham, Kennedy and Hagel. S. 1563 will go a long way toward resolving the many complicated issues that must be addressed before reorganizing a federal agency that affects the lives of so many people and should lay the foundation for important improvements in both the enforcement and service functions.

By way of introduction, AILA is the national bar association for immigration attorneys in the US, with nearly 6,000 attorney members, and is an affiliated organization of the American Bar Association. AILA takes a comprehensive view of immigration matters. AILA Members provide representation in virtually all types of immigration cases: individuals and families who have applied for permanent residence; thousands of U.S. businesses that sponsor both temporary and permanent workers; and foreign students, entertainers, athletes, and asylum seekers, often on a pro bono basis. AILA appreciates this opportunity to express its views on the issue of the restructuring of the Immigration and Naturalization Service (INS).

OVERVIEW OF THE RESTRUCTURING ISSUE

As the federal agency responsible for enforcing U.S. immigration law, guarding the borders of our nation, inspecting those who seek admission, and adjudicating applications for naturalization, asylum, and family and business immigration, the INS needs to function efficiently, effectively, and fairly. Unfortunately, it is currently failing to do so, despite the dedicated efforts of so many of the men and women who staff the agency.

There are many reasons for this failure, and the Administration and Congress must share some of the responsibility.

First, the agency has the important combined mission of immigration enforcement and adjudications, two functions that need to be both better differentiated but also better coordinated and lead.

Second, in the past decade there have been vast changes in immigration law and unprecedented growth in the INS' size and responsibilities. Yet, the development of the INS leadership and management team has not kept pace, often resulting in ineffective management and uncertain direction. Individuals who are effective in law enforcement are promoted to senior roles in service management and vice versa, with many career paths zigzagging between law enforcement and adjudications.

Third, the continued shortage of, and failure to timely provide, adequate resources to the adjudications side must be addressed by Congress if its efforts on restructuring are to bear fruit. The processing time delays, halts in adjudications, and regional disparities have reached a breaking point. U.S. families and employers suffer personal and economic hardship, INS personnel become demoralized, and the public loses faith when the immigration laws are not enforced or adjudicated consistently, professionally, and humanely.

Finally, these existing problems have been exacerbated by an ongoing series of unfunded, complicated and often conflicting mandates imposed by the Administration and Congress. To our knowledge, most of the investigations, audits, and outside management reports have had to be paid for from the already limited funds of the user fee accounts, deepening the funding shortage.

AILA is on record urging the creation of a new, independent cabinet-level department or agency combining all current immigration functions of the INS and the Departments of Justice, State, and Labor. Such an agency could separate the immigration services and enforcement functions. If a new, independent agency is not feasible, AILA urges the creation within the Department of Justice of two separate entities—one for service and one for enforcement—overseen and led by an Associate Attorney General for Immigration Matters, who reports directly to the Attorney General.

Unified leadership at the top is essential to success of all subsequent reforms of the immigration function. It would improve accountability by fully integrating policy making with policy implementation, ensure direct access to high-level officials within the executive branch, attract top managerial talent, and coordinate the distinct efforts of the two bureaus.

In other words, AILA believes that Congress needs to separate the adjudications and enforcement functions but keep them in the Department of Justice. There must be single authority to whom both functions are accountable to ensure strategic coordination and to lead both an integrated national enforcement strategy and an effective immigration services function.

As you know, as a member of the U.S. Commission on Immigration Reform, I was able to study at length the operations and structure of the INS, and wrote in my statement in the final report to Congress in 1997:

> Separation of functions would permit the establishment of unified, focused chains of command and operations at every level. Separation of enforcement from adjudications would allow each function to have a clear mission and to set clear goals on which performance could be judged and accountability enforced. Separate functions would benefit greatly from the ability to gear hiring, training, promotions, and discipline to a clear mission.I66* * * * *
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> The two main functions of the INS—enforcement and adjudications—should be separated into two different agencies within the Department of Justice, with separate leadership. This would also permit the insertion of a senior level office in the Department of Justice to coordinate and lead the separate functional agencies.

PRINCIPLES OF INS RE-ORGANIZATION

AILA has worked with and studied the INS since the Association's founding in 1946. As a result of the collective experience of our members across the United States, AILA has adopted four principles that we believe should guide any INS reform.

(1) Separation of the enforcement and adjudications functions

Separation of these two functions will lead to more clarity of mission and greater accountability, which will lay the necessary foundation for more efficient adjudications and more accountable, consistent, and professional enforcement.

S. 1563 meets this principle. It would create two separate Bureaus within a newly created Immigration Affairs Agency in the Department of Justice: The Immigration Services and Adjudications Bureau and the Immigration Enforcement and Border Affairs Bureau. Most importantly, S. 1563 provides for coordination between the two Bureaus, so that the benefits of communication and information-sharing can continue. S. 1563 also establishes immigration Inspections, which combines service and enforcement functions, as a separate entity within the Immigration Affairs Agency. While AILA believes that Inspections is almost entirely an adjudications function (and thus most properly belongs in the Immigration Services and Adjudications Bureau), we do not oppose this function as a separate entity within the Immigration Affairs Agency.

H.R. 2528, introduced by Representatives Rogers (R–KY), Smith (R–TX) and Reyes (D–TX), would divorce the INS' enforcement and adjudications functions. However, there is no adequate provision for coordination between the two entities, not to mention the uncertainty of leadership over them. This appears to be a case of going from one extreme to the other.

In addition, H.R. 2528 would house immigration inspections in the enforcement bureau, which we find to be inappropriate. AILA strongly opposes the inclusion of Inspections in the enforcement bureau. Immigration Inspectors have quasi-judicial authority, and they are called upon daily to both acquire facts and to render a decision on those facts. Placing them in an enforcement bureau (with a pure enforcement mission) would provide no checks or balances to ensure that inspectors continue their quasi-judicial role and do not deport legitimate asylum seekers, refugees or immigrants. In addition, H.R. 2528 would authorize a plan that would require that people applying for asylum and others be detained by the Bureau of Prisons. AILA cannot support a policy of locking up non-criminal refugees and immigrants with convicted criminals. In our opinion this would violate international treaties to which the U.S. government is a signatory.

(2) Accountability and leadership at the top

Appoint a high level, full-time person at the top, in charge of supervising both functions, who will be able to integrate policy making with policy implementation, as well as to coordinate the separate service and enforcement chains of command.

There needs to be one full-time, high level person in charge of our nation's immigration functions. The adjudications and enforcement functions are distinct, with different missions, different goals, different organizational cultures, and different career paths. However, they also need to be coordinated at the top, and there needs to be strong authority to which each function reports that will hold them accountable for their accomplishments and their short-comings.

S. 1563 fulfills that principle by creating the Associate Attorney General for Immigration Affairs. The Associate Attorney General for Immigration Affairs can provide full-time oversight, supervision, and coordination to the two functions without having direct operational responsibility. As the source of policy and planning formulation on immigration matters, the Associate Attorney General's office would set goals and review progress toward the goals of both functions. The Associate Attorney General would have authority at a very senior level in the Justice Department and would be expected to have direct access to high-level officials within the executive branch.

In contrast, H.R. 2528 provides for no full-time coordinating entity of the adjudications and enforcement functions, relying instead on the part-time divided attention of the Deputy Attorney General, to whom both functions would report. Based on past experience, we conclude that this type of coordination is inadequate, even when the functions are part of a unified whole. With the functions separated, we fear that such part-time oversight would make it virtually impossible to articulate or implement a coherent, unified immigration policy.

(3) Split the functions, but establish coordination between enforcement and adjudications

S. 1653 recognizes the need for the two bureaus to be closely coordinated. The bill achieves this coordination by establishing the Office of the Associate Attorney General for Immigration Affairs with authority over the two bureaus. Most fundamentally, the planning and policy making of the Associate Attorney General will necessarily result in unified goals and coordinated policies between the two bureaus. Built into the proposed structure is the understanding of the need to share records and information between the two bureaus, albeit for different purposes. The Office of the Associate Attorney General will be responsible for all records and information, and the technology and management needed, for the two bureaus. Moreover, it will be the source of legal counsel and administrative infrastructure, including personnel and training.

In contrast, H.R. 2528 would make such coordination difficult. There does not appear to be provision for the hammering out of unified policies. As a result, we fear that, under H.R. 2528, the two bureaus would end up working at cross-purposes, with their leaders sending conflicting messages on policy matters and interpretation of our complex laws.

Without a structural linkage between the two agencies to access records and information, routine requests for records checks could become a Kafkaesque nightmare. Congressional staff handling requests for information and assistance on immigration matters also would have to deal with two separate agencies, making their jobs much more difficult and time-consuming.

(4) Adequate resources: Provide adequate resources for the adjudications function. Ensure that direct Congressional appropriations are available to supplement user fees

As Congress considers reforming the INS, we urge you to also review the funding of immigration functions. Currently, enforcement functions are supported by Congressional appropriations, while adjudications are almost entirely funded by user fees.

In theory, the filing fees paid by employer and family petitioners and applicants for immigration benefits should be used for adjudicating their petitions and applications. In practice, however, large portions of the user fees are diverted to support other functions. During fiscal year 1998 and fiscal year 1999, for example, Congress mandated the diversion of about $300 million (including § 245(i) revenue) to pay for Justice Department oversight, Inspector General investigations, and infrastructure costs that appear to not be related to directly supporting immigration benefits.

Immigrant applicants and their petitioners, who already are experiencing lengthy delays and unacceptable levels of service, should not be forced to "pick up the check" for programs unrelated to the processing of their applications. In fact, user fees should not be viewed as general tax revenue. The responsibility for agency oversight and for programs that do not generate fees should be shared among all taxpayers—not just those who happen to be petitioning or applying for immigration benefits.

AILA supported the establishment of the Examinations Fee Account when it was first created as a solution to the adjudications problems of the day. Unfortunately, despite some improvements in the intervening years, adjudications delays and nonperformance are now worse than ever for almost all types of cases. The hundreds of millions of dollars paid into the Examinations Fee Account are just not being used proportionately for adjudication of petitions and application. Given its history and the current situation, the Examinations Fee Account cannot be seen as the sole support for the Adjudications function. It is now our view that Congress should supplement user fees with Congressional appropriations to ensure that an appropriate level of service is achieved. In addition, we urge Congress to reject the diversion of funds from the user fee accounts to pay for important but indirect and unrelated initiatives. Congress needs to find sources of funding, other than from user fees, to pay for these efforts.

S. 1563 recognizes this problem, and provides financing reforms. Specifically it would require that fees collected for an adjudication or naturalization service be used only to fund those services or the costs of other similar adjudications. This is an important first step in the right direction.

In contrast, H.R. 2528's stunning silence on funding leaves one to wonder whether the Adjudications funding crisis is acknowledged or understood. Failure to begin to address Adjudications funding issues will further postpone badly needed improvements to customer service and a solution to the nearly three year backlog faced by legal immigrants waiting for green cards or citizenship.

CONCLUSION

In closing, let me reiterate that AILA strongly supports S. 1563 because it adheres to the four principles noted above. It also is important to remember that:

- Restructuring is but the first step in a long process, the end result of which is effective, efficient, and fair adjudications and enforcement. Both Congress and the immigration agency need to be mindful of the end result. Congress must continue to pay attention to the INS's needs and the demands it faces, while the agency needs to deliver on its promises.
- Congress has the opportunity to make reorganization a success: Congress must be ever mindful about its important role in creating and maintaining a vital and successful federal immigration function. Conflicting, complicated and unfunded mandates will threaten the agency's ability to fulfill its mission and bring us right back to where we are today.
- Any meaningful restructuring of the immigration function needs to include financing proposals. Restructuring would be incomplete without also reviewing the sources of funding for this function. Especially given the diversion of funds in the adjudications function noted above, any successful restructuring plan must respond to the funding demands of the adjudications function. Both enforcement and adjudications are in the national interest and should be adequately funded.

AILA is dedicated to working with Congress and the INS to ensure that reorganization succeeds. S. 1653 is a huge step towards that end. We appreciate the opportunity this hearing has given us to explore this important issue. Thank you.

Senator ABRAHAM. We will now turn to Mrs. Yoskowitz. I want to say, before you start, as a constituent, I want to thank you for the dedication and hard work that you and the other members of our Detroit Area Coalition for Responsible Immigration Policy have been doing. I think it really makes a difference, and even though it does not necessarily always get a lot in the limelight, I think the work of the coalition has been terrific. We appreciate it and welcome you here today. Thanks for coming.

STATEMENT OF RACHEL S. YOSKOWITZ

Mrs. YOSKOWITZ. Thank you. Thank you, Senator. It is a pleasure to be here. In fact, it is a privilege and a responsibility to be here as a representative of the Jewish Family Service of Metropolitan Detroit and our coalition partners. We have been resettling refugees at JFS since 1937, and in December 1996, we began assisting people with citizenship. We have assisted over 4,000 people from 42 nations in this short time period, and I will be discussing their issues at this time.

We can categorize them into issues of delays, denials, and dissonance, and we find these issues not only within the Detroit District INS, but Detroit is but a microcosm of the entire country and I like to think that our district is better than most because of you, Senator, and in defence to you and your commitment.

I in no way want to cast aspersions on individual INS officers. In individual encounters, INS representatives demonstrate concern for the immigrant cohort, knowledge of the laws, but they are overburdened by inadequate resources and inadequate training with which to address the overwhelming backlog of cases.

Why, in this technologically sophisticated age, when the click of a mouse enables us to access more information than we ever need, are cases, files, lost by INS? A native of the former Soviet Union who entered this country in New York and resides in Detroit has an INS file in the District of Columbia. A native of Southeast Asia in Detroit has a file in L.A. N–400 applications are processed in

Lincoln, NE. Fingerprints are processed in Pennsylvania. With each geographic location, we increase the opportunity for lost files. This is highly inefficient of time, increases the risk of loss, and compromises consumer confidentiality.

In terms of issues with green cards, that has been addressed by others, and I will be happy to address them more specifically in Q and A if you would like.

Because INS lacks the capacity to meet the stated need for service, it has prioritized naturalization applications and adjudication in this area. And though their target is 6 months for processing N–400's, the reality is that this timeframe is double or triple in Detroit, with a 12- to 18-month time lag. Nationally, we are hearing that it is 18 to 24 months.

Individuals in Michigan are now fingerprinted at applicant support centers, which is much more efficient because there is not as much of a timeframe for them to wait to be printed. However, we do not have a digital print scanner. People are still printed the old fashioned way, and their prints are often rejected and they must be repeatedly reprinted. It breaks my heart to see seniors with their hands bent by arthritis, swollen with fluid, the skin surfaces worn smooth by hard physical labor have to be reprinted three and four times, in spite of policy capping fingerprints at two unsuccessful attempts.

It is crucial that the culture of INS be converted to one of service. Regardless of the infrastructure changes which you are so wisely recommending, there must be an attitudinal change in INS staff. Any restructuring of INS must also address mandatory training functions with adequate appropriations to assure INS officers will be customer service oriented in all jurisdictions, including overseas processing centers, and it is my hope that a product of the restructuring of INS will be implementation of a quality structure to address the problems of overseas processing.

National policies need to be clearly presented to all district and local offices so all officers at all levels are familiar with national policy. Oversight of INS policy implementation must be a major component of national office responsibility, and it is imperative that there be a single central strong leader vested with authority to represent all INS jurisdictions.

Sitting here is the granddaughter of a lumber merchant from Zhitomer, Ukraine, and a soldier who went AWOL from the czar's army to come to America, men who naturalized and loved this country with all their hearts. I fully realize our sacred trust to assure the same opportunity for others.

The first image we present to those stepping foot on our soil is often the image of INS. I trust that your deliberations and those of the full Congress and subsequent reform of INS will assure that every immigrant coming to our country will be welcomed in dignity, treated fairly, and his issues will be adjudicated quickly.

Senator Abraham, I want to conclude my remarks by thanking you again for giving me this opportunity today, and on behalf of all of our community-based organization partners in the immigrant service community, we thank you from the bottom of our hearts for your interest. Under your guidance, your district staff and the staff

of this committee are consistently approachable, professional, and responsive. Thank you for your leadership.

Senator ABRAHAM. I thank you. I am very flattered that you had those feelings and we appreciate the working relationship we have had with your organization and the others. It is great.

[The prepared statement of Mrs. Yoskowitz follows:]

PREPARED STATEMENT OF RACHEL S. YOSKOWITZ

Mr. Chairman, members of the sub-committee, ladies and gentlemen: Thank you for the commitment, thoroughness and seriousness of purpose with which you have approached your task of reforming the Immigration and Naturalization Service. It is my privilege and responsibility to be here today participating in this aspect of our democratic process. As a representative of many others, I will try to faithfully represent those for whom I speak. Though a partner in multiple ethnic and faith based coalitions, as detailed in the written testimony before you, today, I will not speak for the coalitions but rather for the many thousands of foreign born whom we serve. These individuals who are legally residing in the United States have been voiceless and powerless in impacting the workings of our INS.

The infrastructure and process issues which I am addressing today while occurring within the jurisdiction of the Detroit District INS are not unique to that jurisdiction. Detroit is but a microcosm of the rest of the country and may, in fact, be a little better than most districts in deference to the priorities of the Senator from Michigan who chairs this sub-committee.

The issues before us are service issues. These issues can be categorized as delays, denials, dissonance. In no way do I want to cast aspersions on individual INS officers. In individual encounters, each officer has demonstrated concern for the immigrant cohort and knowledge of the laws which INS must uphold. However, these well-intentioned individuals are over burdened by lack of material and human resources as well as adequate training with which to address the overwhelming backlog of cases with which they are confronted. Currently, in the USA, there is a backlog of *45,000* refugees; *37,000* asylees; and thousands of others awaiting adjustment of status. These numbers convert to a delay of *34* months from application to adjudication for green card and of *18–24* months from application to naturalization adjudication for 1.75 million future citizens for a green card—Why?

Why indeed? Why in this technologically sophisticated age when the click of a mouse enables us to access more information than we ever want or a need—are INS files lost?

A native of the Former Soviet Union, who entered this country in N.Y. and resides in Detroit has an INS rile in D.C.; a native of Southeast Asia living in Detroit has a file in L.A.; naturalization applications (the N–400) are processed in Lincoln, Nebraska; fingerprints are processed in Pennsylvania. With each geographic location requesting a hard copy file and transfer of riles, is it any wonder that riles can't be located? Even locally—riles are transferred. A file coming into Detroit District main office will be transferred to the airport for an adjustment of status interview—then back to District then back to D.C. This is highly inefficient of time, increases the risk of loss and compromises client (consumer) confidentiality.

In our technological age, it is incomprehensible that a piece of equipment which prepares "Green Cards" for LPRs does not work. Yes, there is 1 Center in Nebraska for preparing all Green Cards and the machine which does this task is faulty. Consequently, the individuals' names are misspelled, the Dates of Birth are incorrect or the Dates of Entry to the USA are incorrect. Every second green card prepared in Nebraska is inaccurate. Imagine that, a 50 percent failure or success rate. That's not acceptable. Individuals who applied to adjust status in 1997 and 1998 are only now receiving their green cards which are erroneous and must, therefore be returned to Nebraska for correction.

How long will it take for a correct card to be issued? In the interim, employment, college admission, financial aid applications for universities are all on hold for the consumer. Life is in limbo because the one piece of equipment to process all requests for Green Cards, doesn't work.

The backlog of applications for adjustment of status is very substantial. Since July 1998 with the Nebraska Service Center became the single point of contact for adjustment of status requests not a single new individual has been interviewed for a green card.

The INS lacks the capacity to meet the stated need for service, and has therefore, prioritized Naturalization applicants. All others are on hold. Even with

prioritization of naturalization applications, there is not an efficient process for review and adjudication in this category.

Within our district, although there is a target of 6 months for processing N–400s the reality is double or triple that with a lag of 12–18 months from application to adjudication. With the implementation of the off site Applicant Support Centers—the fingerprint process is more efficient. Individuals are printed by appointment and seen within an hour of the scheduled time. Yet, Detroit—a community of xxx L.P.Rs still does not have the digital print scanner and to our knowledge, the district is not on the scheduled list of communities to receive scanners. Our district still prints the old fashioned way.

Consequently, many individuals have their prints rejected and must be reprinted repeatedly. How it breaks my heart to see immigrants in their seventies with hands bent by arthritis, swollen with fluid and skin ridges worn smooth by age and years of hard physical labor reprinted 3 and 4 times—in spite of the regulation capping fingerprints at two unsuccessful attempts. (Refer to case specific data attached) Each fingerprint rejection extends the delay in the individual naturalization process—Why is the full implementation process of the technologically efficient ASC being delayed?

Similarly—all N–400s are mailed to a central processing site in Lincoln, Nebraska there is one direct mail address. There is also one phone number for the service center to which CBOs working on behalf of consumers must address all inquiries. One number which is most often, inaccessible, continuously busy. BIA accredited representatives leave voice messages on an answering machine to inquire about the status of cases. Voice messages that are never returned. It is crucial that the culture of INS be converted to one of *Service.* Regardless of the changes in infrastructure which you are so wisely recommending, there must be an attitudinal change for all INS staff—so they can treat all immigrant clients with respect, courtesy and cultural sensitivity—i.e. A Moslem woman with a head cover who avoids eye contact with the male INS officer is not a liar, she is modest and acting according to her belief system. An elderly "stutterer" who can not respond quickly enough to a question, is not a liar, he is slow of speech; a senior citizen who was a member of the Communist party in Kiev or Moscow or Leningrad as a condition of his employment twenty years ago, is not a threat to the United States today. Let me share the case of Tamara, an elderly Russian refugee who entered the USA under the provisions of the Lautenberg Amendment. She has advanced ms, her hands shake with uncontrolled tremors, she is confined to a wheelchair. Tamara's 648 (medical waiver) was denied and she was called for an INS interview to naturalize. At the interview, her caregiver was not permitted to be with her. The INS officer again refused to consider her waiver and proceeded to test her ability to write English. She placed a pen in Tamara's shaking hands and began to dictate. She was unable to hold the pen or to write. The INS officer said, "I'll steady your hand" and proceeded to "assist" her. Tamara fainted. The officer told her "you did well". She has heard nothing further. Her fingerprints have not cleared. This is not a kinder, gentler INS.

Any restructuring of INS must address mandatory training functions with adequate appropriation to assure that INS officers will be customer service oriented, culturally sensitive and knowledgeable in applying federal statute equitably to all immigrants in all jurisdictions.

All jurisdictions are inclusive of INS overseas processing locations. Please note that not only are there issues with INS process locally, district and nationally, but there are international implications of INS inefficiency, poor training and process failure in the overseas offices located in US Embassies and run by INS officers. These officers are truly the gatekeepers to the refugee and parolee programs. They must apply the law equally.

It is my hope that a by product of the INS restructuring will be the implementation of a quality structure to address the problems of overseas processing.

There must be *consistency in the implementation of policy* in all INS offices.

National policies need to be clearly presented to all District and local offices so that all officers are familiar with national policies. All INS staff and interviewing officers must have access to the most recent regulations and directives from Washington. Oversight of the implementation of INS policy must be a major component of national office responsibility. Local offices must be able to appeal to appropriate staff at headquarters for specified concerns if problems are not adequately addressed by the regional/district office.

In addition, structures for better day-to-day supervision and quality assurance also need to be in place. The waiting period for those in the naturalization process or for any other services provided by the INS local office should be uniform regardless of domicile. Accordingly, the INS should deploy resources to ensure a more even

waiting period and that the location of INS office and ASC sites are easily accessible to consumers public transportation.

Within whatever service structure is reengineered or reorganized, there needs to be an easily accessible appeals process for those who believe the decision on their application was in error, and a "complaint office" where those who feel they have been unfairly or inappropriately treated can go to redress their grievance. Appeals must be completed within a reasonable time frame. Such information should be available to the not for profit organization working with the individuals having business with the INS and available to consumers in multiple languages.

All fees collected from consumers by INS should be utilized on service delivery and improvement. None of these funds should be available to the enforcement structures. A national fee waiver policy must be in place to assure that everyone who is eligible for a service can receive it regardless of their ability to pay the fee. This policy must be implemented consistently in all offices.

Individuals required to reapply to a service because of an INS error [e.q. list file] should not be required to pay another application fee. Appropriations for enforcement must be totally separate and apart from any federal funds for service provision.

Attached to this testimony is a list of cases which remain unresolved. I am distraught that there are cases outstanding which have been pending for years. In testimony—these cases for reasons of protecting their privacy are cited only by initials. With the permission of this sub-committee, I would like to present this list of cases and full names and alien registration number to staff for further inquiry. These are only some of the cases requiring special attention. Most individuals who must navigate the INS system do not know to whom they can turn for assistance. Representatives of the CBOs see only a small portion of those who need assistance. The establishment of an independent Ombudsman's office may address this issue assuming that this function will be well funded, highly visible and readily accessible to the immigrant cohort. This access must be geographic and linguistic so that immigrants can adequately articulate their needs. Each jurisdiction's ombudsman office will have different language needs determined by the cohort of immigrants in that region, but translators are a basic necessity to make the office of the Ombudsman an effective component of the INS restructuring as proposed by the S.B. 1563—The INS Reform and Border Security Act of 1999.

Sitting here as the granddaughter of the lumber merchant from Zhitomer, Ukraine and of the soldier who went AWOL from the Czar's army to come to America, naturalized and loved this country with all their hearts, I realize our sacred trust to assure the same opportunity to others. The first image we present to those stepping foot on U.S. soil is often the image of INS. It is our obligation to assure that image will be one which conveys all of the positive attributes which make our country the magnificent land of freedom which we so love. I trust that the deliberations of this sub-committee and the subsequent reform of the INS will assure that every immigrant coming to our country will be welcomed in dignity and treated fairly.

Mr. Chairman, let me conclude my remarks by again thanking you for inviting me to be here today and share the concerns of our immigrants with you. I am also most appreciative of your on going commitment to and concern for the immigrant population. Your staff and the staff of this committee are consistently approachable and responsive to the immigrant concerns. Thank you for your leadership in this area.

Senator ABRAHAM. Mr. Bonner, we welcome you. Thanks very much for being part of today's hearing, and we will turn to you for your testimony at this time.

STATEMENT OF T.J. BONNER

Mr. BONNER. Thank you, Mr. Chairman. On behalf of the 23,000 INS employees represented by the National Border Patrol Council and National Immigration and Naturalization Service Council, I would like to express our thanks to you and to the other distinguished members of the subcommittee for the invitation to present our views concerning this important legislation, as well as your leadership in this and other immigration issues.

The debate has shifted from whether the INS should be reorganized to how it should be reorganized. Thanks to the leadership of

this subcommittee, many facets of the INS Reform and Border Security Act of 1999 contain essential elements of a successful reorganization. Most importantly, it has a strict delineation between enforcement and service.

Perhaps equally importantly, it establishes the Office of the Associate Attorney General for Immigration Affairs to provide key leadership to ensure that the enforcement and service bureaus coordinate their efforts in a cooperative fashion. Separate chief financial officers for the enforcement and service bureaus will ensure that funding earmarked for a given program is not diverted to a different program. The shared resources concept is a practical solution to balance the desire for totally separate support structures with the need to provide support within realistic means. The three-year extension of annual increases of 1,000 Border Patrol agents will provide critical reinforcements and is greatly appreciated.

Many employees are concerned by the broad personnel flexibility granted to the Attorney General under the legislation. While it is clear that a certain amount of flexibility is necessary and some administrative and senior-level management positions will be eliminated, the flexibility should be limited to those positions. In order to avoid disruptive morale problems, front-line employees should be assured that their position, duties, pay, and geographic location will not change as a result of the reorganization. otherwise, it will be extremely difficult to convince them that a reorganization is in their best interest and obtain their needed support.

The establishment of a new agency also creates the potential for disrupting the relationship between management and labor that has existed for 35 years by exposing employees in the new law enforcement agency to the specious claim that they are exempt from the protections they currently enjoy because they are engaged in national security work. If these employees somehow lost those protections, Congress and the public would lose the single most valuable source of candid information and feedback about the efficiency and effectiveness of the new agencies.

The councils, therefore, strongly urge that this disruptive scenario be avoided by inclusion of language in the legislation that makes it clear that the employees of the new bureaus remain entitled to the protections of the Civil Service Reform Act.

Similarly, language preserving the existing bargaining units and collective bargaining agreements would eliminate the potential for disruption from successorship issues that could arise from the creation of a new agency.

Replacement of the inspections program under the Immigration Affairs Agency instead of the enforcement bureau is problematic because it fails to recognize that these employees perform essential law enforcement functions in addition to facilitating the legal entry of millions of people into the country. In this respect, they are no different than police officers engaged in traffic enforcement. While one of their functions is to facilitate the movement of traffic, an equally important function is to issue citations and arrest criminals.

During 1998, immigration inspectors arrested more than 25,000 criminal aliens, initiated 23,000 prosecutions, apprehended 3,900 drug smugglers, made over 3,100 drug seizures, intercepted 126

terrorists, prevented the illegal entry of 735,000 inadmissible aliens, seized nearly 100,000 fraudulent documents, and were assaulted 42 times in the line of duty.

The proposal to grant both investigative responsibility and disciplinary power to the Office of Professional Responsibility would create several serious problems. Aside from the obvious conflict of interest, lack of impartiality, and denial of due process that would result, taking disciplinary power away from those with supervisory responsibility would seriously undermine their ability to maintain order in the workforce.

The provision requiring the new agency to use the fair and equitable treatment of aliens by employees as one of the standards for evaluating employee performance has a potential problem. It is troubling to the extent that it would discourage law enforcement employees from asserting their legal authority out of fear that it would negatively impact their performance evaluation. This could result in decreased enforcement of immigration laws, as well as increased assault against employees. Accordingly, the councils recommend that the standard be defined differently for law enforcement personnel than for service employees.

In conclusion, the councils strongly endorse the concept of separating the enforcement and service functions of the INS and believe that this legislation contains many of the elements necessary for a successful reorganization and are confident that the other elements will be added or improved as the legislation advances.

Mr. Chairman, we again commend you for your leadership on this issue and thank you for considering our concerns.

Senator ABRAHAM. Thank you, and thanks for being here to share them with us. We appreciate it and will continue, obviously, to work with the association.

[The prepared statement of Mr. Bonner follows:]

PREPARED STATEMENT OF T.J. BONNER, PRESIDENT, NATIONAL BORDER PATROL COUNCIL AND CHARLES J. MURPHY, PRESIDENT, NATIONAL IMMIGRATION AND NATURALIZATION SERVICE COUNCIL

Immigration issues have been at the forefront of public debate for the past several years. As a result, the Immigration and Naturalization Service has received unprecedented increases in personnel and funding. Despite this, it remains unable to slow, much less stop, the tide of illegal immigration, or to efficiently process the immigration benefits under its jurisdiction. Examples of such inefficiencies and mismanagement surface almost daily. Many of the most compelling and shocking accounts are relayed through the employee unions on behalf of frustrated employees who want to do a good job but are stymied by an inept bureaucracy.

One of the reasons for these problems is the current structure of the I&NS, which places the responsibility for handling both the enforcement and service functions under the same offices, causing both functions to suffer. There is no longer any legitimate reason to debate whether or not these functions should be separated. The debate should now be focused on how to best accomplish this necessary division. The National Border Patrol Council and National Immigration and Naturalization Service Council, representing over 23,000 employees, would like to share some thoughts regarding the elements they believe are necessary for a successful structure, as well as their concerns regarding certain aspects of various approaches that have been advocated.

Close coordination and cooperation between the enforcement and service functions is crucial to the success of any reorganization effort, especially since a sizeable number of benefit applications are fraudulent. The Office of the Associate Attorney General for Immigration Affairs created by the INS Reform and Border Security Act of 1999 would provide this key leadership.

A clear separation of funding and the creation of separate offices to handle the financial affairs of each function are also essential to a successful reorganization. The present system has resulted in far too many instances of funding being diverted for purposes other than those for which it was intended. Assuming that the Chief Financial Officer for the Immigration Affairs Agency would not have the ability to transfer funds between the service and enforcement bureaus, the structure proposed in S. 1563 would ensure this separation.

Another essential element required for a successful reorganization is adequate support for the two core functions. The recognition in the legislation that certain economies can be realized by sharing some support services is a practical solution to balance the desire for totally separate support structures with the need to provide support within realistic means.

The Councils greatly appreciate the commitment of the Chairman and Subcommittee to provide necessary increases to the Border Patrol agent workforce by extending by three years the coverage of Section 101(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which provides for an annual supplement of 1,000 agents. The Councils recommend that Section 101(b), which provides for a corresponding annual increase of 300 support positions, also be extended for the same period.

It is clear that a certain amount of personnel flexibility is necessary to effectuate a reorganization of the magnitude envisioned, as some administrative and senior-level management positions will be eliminated. The broad language of the legislation, however, would extend this flexibility to all positions, not just those that would be eliminated by the reorganization. Although the legislation is not intended to effectuate wholesale personnel changes unrelated to the reorganization, the proposed language would empower bureaucrats with a different vision to circumvent that intent. In order to avoid disruptive morale problems, front-line employees should be assured that their position, duties, pay and geographic location will not change as a result of the reorganization. Otherwise, it will be extremely difficult to convince them that a reorganization is in their best interest and obtain their needed support.

The creation of new agencies also creates the potential for disrupting the relationship between management and labor that has existed within the MNS for approximately thirty-five years. The Councils are concerned by reliable reports that certain senior-level managers intend to attempt to eliminate labor organizations within the newly created enforcement bureau by claiming that all such employees are exempt from the protections they currently enjoy because they are engaged in national security work. While this claim is specious at best, the ensuing conflict would be extremely disruptive and damaging to the relationship of the parties. Moreover, if such protections were somehow lost, Congress and the public would lose the single most valuable source of candid information and feedback about the efficiency and effectiveness of the new agency. The Councils strongly urge Congress to avoid this disruptive scenario by including language in the legislation that makes it clear that the employees of the new bureaus remain entitled to the protections of the Civil Service Reform Act.

Similarly, the creation of separate agencies or even a single new agency would create the potential requirement for new labor organization election processes and a corresponding need to negotiate new collective bargaining agreements. This would also be extremely disruptive to the relationship between labor and management. It could easily be avoided by incorporating language into the legislation that preserves the existing bargaining units and collective bargaining agreements, and the Councils urge that this be done.

The placement of the Inspections program under the Immigration Affairs Agency instead of the enforcement bureau is problematic because it fails to recognize that these employees perform essential law enforcement functions in addition to facilitating the legal entry of millions of people into the country. In this respect, they are no different than police officers engaged in traffic enforcement: While one of their functions is to facilitate the movement of traffic, an equally important function is to issue citations and arrest criminals. During 1998, Immigration Inspectors arrested more than 25,000 criminal aliens, initiated 23,000 prosecutions, apprehended 3,900 drug smugglers, made over 3,100 drug seizures, intercepted 126 terrorists, prevented the illegal entry of 735,000 inadmissible aliens, seized nearly 100,000 fraudulent documents, and were assaulted 42 times in the line of duty. While placement in the umbrella agency would be preferable to placement in the service bureau, it would subject the program to some of the same problems that all I&NS programs currently experience: The emphasis of the program shifts according to the inclination of the director. Under a director who is enforcement-oriented, the program emphasizes enforcement, and under a director who is service-oriented, the program emphasizes service.

The proposal to grant both investigative responsibility and disciplinary power to the Office of Professional Responsibility would create several serious problems. Aside from the obvious conflict of interest, lack of impartiality, and denial of due process that would result, taking disciplinary power away from those with supervisory responsibility would seriously undermine their ability to maintain order in the workforce.

The provision requiring the new agency to use the fair and equitable treatment of aliens by employees as one of the standards for evaluating employee performance is troubling to the extent that it would discourage law enforcement employees from asserting their legal authority out of fear that it would negatively impact their performance evaluation. This could result in decreased enforcement of immigration laws as well as increased assaults against employees. Accordingly, the Councils recommend that such standard be defined differently for law enforcement personnel than for service employees.

Finally, it needs to be recognized that reorganizing is not the sole answer to many of the troubles that plague the Immigration and Naturalization Service. A fundamental cultural change must occur at all levels in order to transform it into an organization that is capable of fulfilling its mission efficiently and effectively. Although MNS employees receive some of the most comprehensive and finest training available, they are rarely empowered to exercise independent judgement.

In conclusion, the Councils strongly endorse the concept of separating the enforcement and service functions of the Immigration and Naturalization Service, and believe that this legislation contains many of the elements necessary for a successful reorganization, and are confident that the other elements will be added or improved as the legislation advances.

Senator ABRAHAM. I turn to Mr. Gallo. It is good to have you back.

STATEMENT OF RICHARD J. GALLO

Mr. GALLO. Thank you, Mr. Chairman. My name is Rich Gallo and it is a pleasure to be before you today. I serve as the president of the Federal Law Enforcement Officers Association, FLEOA, which is a voluntary nonpartisan professional association representing more than 16,000 Federal special agents and law enforcement officers in America. We represent the Feds FLEOA. It is my pleasure to be here today to deliver a summary of FLEOA's position on the reform, restructure, and revitalization of the Immigration and Naturalization Service. As National President of FLEOA, I represent many of the outstanding men and women who enforce our Nation's immigration laws.

The divisions, the investigation division, Border Patrol, and detention and deportation, of which we get our membership from within INS, make up the enforcement components of INS, along with the inspections and intelligence divisions. The men and women of these components risk their lives every day in an ever-increasingly dangerous line of work.

In July 1998, two Border Patrol agents were killed. The first female agent was killed, along with a male trainee, while attempting to arrest a deranged murderer in San Benito, TX. Ironically, the INS has yet to implement the provision of the Immigration Act of 1990—this Act was passed by Congress in 1990—that provided general arrest authority extending protection against legal liability to INS officers in such situations. I offer this as one example of many of the inefficiencies of the bureaucracy of INS.

In brief, the work has changed, Congress has changed the laws and increased the funding, yet INS remains stuck in the 1980's. Congressman Hal Rogers captures the essence of the problem in stating, "The mission and jobs they are charged with are too big

and too important to be botched, and that is what they have done, botched their jobs."

Mr. Chairman, I read two of your statements that FLEOA totally agrees with. One, "It makes little sense to have a single agency, the INS, responsible for keeping out illegal immigrants and at the same time letting in legal immigrants and refugees." And, two, another quote of yours, "We should consider splitting the INS up into one law enforcement agency and one legal immigration agency to increase the efficiency of both." Clearly, we cannot agree any more with you, Mr. Chairman, and we commend you and this subcommittee and your staffers for your determined efforts in this important endeavor.

It is apparent that there is a broad bipartisan consensus in Washington for the separation of immigration law enforcement from benefit disbursement, but a wide spectrum of thought on how best to attack this problem. Sentiment runs from the Commission on Immigration Reform endorsement of piecemealing out different functions to the State and Labor Departments to the other end, a recommendation by Booz-Allen to give INS more time to get its house in order with an internal separation.

FLEOA feels very, very strongly the solution lies in the middle. I have to say, though, the country cannot wait any longer, and no more further delays in rectifying this problem. As I travel to numerous FLEOA chapters throughout the country, and last night, I was in Cleveland, the INS special agents continually cite the urgent need for a substantive and dynamic reorganization of INS by separating the law enforcement branches from the benefits branches, with an increase in the staffing of special agents assigned to interior enforcement.

INS has to be professionalized and depoliticized. Two separate bureaus, both within the Justice Department, one for immigration law enforcement, the other for benefit disbursement, will relieve INS's mission overload.

Current INS district directors face severe pressures to provide services for aliens, sometimes with inadequate resources. When faced with such situations, the district directors, and just recently the directors in Chicago and Boston have done this, they frequently use enforcement agents as a labor pool to perform nonenforcement duties. This practice has continued for over 20 years and shows no signs of diminishing.

I will give one example from the past. In Baltimore, the district director used all of the special agents in the district as ushers at a naturalization ceremony, including those special agents working undercover assignments, both long-term and short-term undercover assignments. They were called in to act as ushers at a naturalization ceremony. It is unheard of in a law enforcement chain of command for that to happen. This is just one example of the ongoing nationwide problem within INS's management structure.

In closing, Mr. Chairman, FLEOA respectfully submits that legislation providing for a substantive and complete reorganization of the INS be passed. Your legislation will greatly increase the morale in the enforcement branches of INS. With the legislation pending before the House and the Senate, FLEOA believes that the separation issue will be fully resolved. Thank you.

Senator ABRAHAM. Thank you very much.
[The prepared statement of Mr. Gallo follows:]

PREPARED STATEMENT OF RICHARD J. GALLO

Good afternoon, Mr. Chairman and distinguished Members of the Subcommittee. I am honored to submit this written statement in support of my oral testimony for such an important and vital hearing. The Federal Law Enforcement Officers Association (FLEOA), is a voluntary, non-partisan professional association.

FLEOA currently represents over 16,000 federal law enforcement officers and is the largest association for federal officers of its kind. Several years ago, FLEOA joined with all of the major state and local police national associations to form the Law Enforcement Steering Committee. The Law Enforcement Steering Committee also includes the following prominent and important organizations: Fraternal Order of Police, National Troopers Coalition, Major Cities Chiefs of Police, Police Executive Research Foundation, National Association of Police Organizations, National Organization of Blacks in Law Enforcement, International Brotherhood of Police Organizations and the Police Foundation. In becoming a part of this group, federal agents were able to add our voices to those of the over half a million state and local officers already commenting on the issues that our Association considers to be of greatest importance. I tell you today, as I have told my membership for the past three years that the continuing revitalization of immigration law enforcement is one of our highest priorities. That revitalization will be accomplished through passage of the recently introduced Reyes-Rogers-Smith Bill, H.R. 2528 in the House as well as the Abraham-Kennedy Bill S. 1563, with reconciliation of relatively minor distinctions in conference. FLEOA pledges to do everything possible to ensure swift and successful Congressional action.

As National President of FLEOA, I represent many of the outstanding men and women who enforce our Nation's immigration laws. These men and women risk their lives every day in an ever-increasingly dangerous line of work. In fact, in July of 1998, the first female Border Patrol agent was slain along with a male trainee Patrol agent while attempting to arrest a deranged murderer in San Benito, Texas. Ironically, the INS has yet to implement a key provision of the Immigration Act of 1990 (IMMACT) that would provide general arrest authority to extend protection against legal liability to INS officers in such very situations. That is correct, I said 1990! This tragic anecdote is not a mere criticism of the status quo but rather an indictment. I offer this by way of example of the total inefficiencies of that current bureaucracy. In essence, the work environment for immigration law enforcement has changed drastically; the statutory mandates as well as funding for immigration law enforcement have similarly undergone dramatic changes but yet the INS remains stagnant, at best and highly resistant to those very changes. The INS representation in FLEOA derives primarily from three organizational divisions: Investigations, Detention & Deportation, and the Border Patrol. These three, along with the Inspections and Intelligence Divisions, represent the enforcement components of the INS. I would ask that you keep them, and the complex bureaucratic framework in which they operate, at the forefront of your thoughts because I believe this is the essence of both the present problem and its potential solution.

I read, with interest, your statements Mr. Chairman in The New York Times on January 17, 1997. At that time, you outlined your priorities for the Senate Immigration Subcommittee when addressing the Cypress Semiconductor Corporation in San Jose, California. I could not agree more that it makes "little sense to have a single agency, the Immigration and Naturalization Service, responsible for keeping out illegal immigrants and, at the same time letting in legal immigrants and refugees". Furthermore, you then suggested splitting the INS into two agencies. In August of 1997, The New York Times again quoted you as saying "We should consider splitting the INS up into one law enforcement agency and one legal immigration agency to increase the efficiency of both". Clearly, you have been on the cutting edge of this issue and we commend you, Mr. Chairman for your tenacious and determined actions in this most important effort.

On March 31, 1998, the Honorable Harold Rogers questioned INS Commissioner Meissner regarding the current recommendations for restructuring by Booz-Allen, the INS Contractor, and stated, "Did you look at two different agencies within Justice to achieve on one hand, enforcement; on the other hand, service matters?" Mr. Rogers went on to point out the systemic formula for failure that even the Booz-Allen study would perpetuate when he stated, "There is an inherent conflict with having this all in one agency * * * Even though you may have two separate chains of command, it eventually winds up on your desk Mr. Rogers echoed the concerns

of both the Republican and Democratic leadership in concluding that the INS had collapsed under the weight of its dual conflicting missions: service and enforcement. Immigrants who apply to become citizens wait up to two years in large cities. The INS deports 112,000 illegal immigrants a year, fewer than half the 275,000 who enter illegally each year or stay after their visas expire.

Representative Rogers captured the essence of the problem in stating "The missions and jobs they're charged with are too big and too important to be botched, and that's what they've done, botched their job".

It is apparent that there is a broad, bipartisan consensus in Washington for the clear separation of immigration law enforcement from benefit disbursement. There has also been a wide spectrum of thought on how best to attack this extremely important problem. Sentiment runs the gamut from the Commission on Immigration Reform (CIR) endorsement of piece-mealing out different functions to State and Labor to affording INS more time to get its house in order with the internal separation recommended by Booz-Allen. I would submit to this Body today that the citizens and the country cannot afford any further delay in rectifying this problem.

FLEOA feels strongly that the solution lies in the middle of that spectrum. As I travel to the numerous FLEOA chapters throughout the country, the topic most on the minds of the more than 600 beleaguered INS special agents who currently belong to FLEOA is the urgent need for a substantive and dynamic reorganization of the immigration law enforcement mission. Immigration law enforcement must be both professionalized and depoliticized. Two separate bureaus within Justice for immigration enforcement and benefit disbursement will provide the essential specialization to resolve "mission overload". At the same time, enforcement and service will have the requisite communication and coordination through oversight by the Justice Department. This will avoid a constant budget battle between the totally different, but equally important, missions of enforcement and service. In addition, law enforcement management officials will not be in a position of influencing benefit decisions and vice-versa, thereby eliminating the possibility of a "tilt" in emphasis by a single administrator or top agency management toward, or against either function.

WHAT SHOULD IMMIGRATION ENFORCEMENT DO WELL

A 1991 General Accounting Office (GAO) General Management Report entitled Immigration management: Strong Leadership and Management Reforms Needed to Address Serious Problems, identified changes in the evolving INS enforcement mission. The report noted, "During this period INS saw its enforcement mission evolve from one aimed primarily at interdicting aliens at or near the border to one with increased emphasis on investigative work and drug interdiction." GAO recommended the consolidation of all field enforcement functions, including Border Patrol and District enforcement functions under a single official within a geographic area."

The consolidation of enforcement functions will not only alleviate the problem of overlapping enforcement programs, but will enhance the ability to maintain consistent service and enforcement postures throughout the United States. The variances in District Office policies relating to service functions should be greatly reduced when District Directors are relieved of the responsibility of carrying out simultaneous enforcement efforts.

Enforcement efforts will be more uniform in application, and the overlapping functions of the Border Patrol and Investigations can be substantially reduced or eliminated altogether. This can be accomplished through development of Enforcement Sectors and the integration of enforcement components within that structure.

ENFORCEMENT SECTOR COMPONENTS

The establishment of integrated sub-units at the field level would ensure an appropriate level of specialization while maintaining flexibility, and would facilitate a cooperative and balanced approach. Frankly, the establishment of a Chief Enforcement Officer who supervises all enforcement components in a particular field enforcement sector and reports to the Bureau of Immigration Enforcement Headquarters Director, is an idea whose time has come. This concept begs for congressional attention. It is needed to overcome the inefficient and incredibly confusing status quo or even the halfsteps that are envisioned under an internal benefits-versus-enforcement split within INS.

BORDERPATROL

The Border Patrol is the largest enforcement component within INS, with considerable growth in the recent past to approximately 8,000 agents on duty. The INS

is now the largest federal agent force at 12,403 total immigration officers, with more armed agents than either the Bureau of Prisons or the FBI. The Border Patrol has accounted for roughly two-thirds of that fiscal growth.

The traditional responsibility of the Border Patrol is patrolling the border between ports of entry. In recent years, the span of Border Patrol activities has extended to include drug interdiction and tactical operations. Under the new immigration law enforcement bureau concept, a Deputy Chief for Border Patrol Operations would report to the Chief within a respective Enforcement Sector.

INVESTIGATIONS

The Investigations Division is the general and criminal investigative arm of the "Enforcement Sector," and should be responsible for all complex, protracted investigative activities. It is FLEOA's recommendation that the Investigations component operate in a manner similar to that of most major federal investigative agencies and detective bureaus. Investigative activities should place more emphasis on proactive criminal investigations in the following functional areas: anti-smuggling, benefit application fraud, document fraud, "sensible" worksite enforcement, and participation in multi-agency task forces including OCDETF, Joint Terrorism Task Forces, Violent Gang Task Forces, and INS-led Community Based Criminal Alien Task Forces. This division would be overseen by a Deputy Chief for Investigative operations, reporting to the Chief of the Enforcement Sector.

The Investigations Division employs approximately 2,000 special agents today for the entire interior of the United States. The Administration, itself, estimates that for every one alien apprehended by the Patrol, two get through and that approximately 42 percent of the current 6,000,000 illegal alien population entered the country with a valid visa and simply overstayed that visa. Budget increases for the Division under the Administration's priority emphasis on immigration have been modest by anyone's standards. While the aforementioned increase in INS Border Patrol positions was appropriated and paid for by the Congress—the same was not true for increases for the Investigations Division. The addition of 1,200 special agents under the Illegal Immigration and Immigrant Responsibility Act (IIRAIRA) of 1996, (300 visa overstayer Special Agents/investigators in fiscal year 1997—300 anti-smuggling and employer sanctions Special Agents/investigators in fiscal year 1997, fiscal year 1998 and fiscal year 1999) was authorized but not appropriated for by the Congress. In short, no agents at all.

Congress must begin to strike a balance between enforcement on our borders and enforcement in the interior. A total focus on the first line of defense will lead to only a hollow victory with word of mouth rapidly traveling back to the source countries that one must merely make it across the border in order to attain this new form of unsanctioned amnesty.

Prompted by a then current estimate of 5,000,000 illegal aliens in the country, The Wall Street Journal wrote that "immigration is becoming an issue deep in America's heartland as legal and illegal immigrants are pulled well beyond the border areas in search of employment." The article illustrated one of the most frequently traveled routes used by alien smugglers—1–80 from the California coast through the Mid-West and on to Chicago. An analysis of that route reveals the shortage of INS criminal investigators in the interior states through which that route passes:

- Nevada—eleven special agents
- Utah—six special agents
- Wyoming—one special agent
- Nebraska—fourteen special agents
- Indiana—four special agents

While it is true that California and Illinois have relatively large contingents of INS Special Agents, even those numbers are insufficient to cope with a problem of this magnitude. The latest Census Bureau figures list 1,875,000 illegals in California or 4,630 per agent. In order to be effective, it is necessary that immigration law enforcement be comprehensive and balanced.

Pursuant to a directive by the Subcommittee on Commerce, Justice, State and Judiciary of the House Appropriations Committee, the INS has been developing a long overdue comprehensive, mission-oriented integrated interior enforcement strategy that together with its border control strategy, would effectively determine the application of enforcement priorities and resources throughout the United States. The required report was due on April 1, 1998 but was never received until March 30, 1999, after repeated promptings. This strategy would focus around an integrated effort to

deter and remove unlawful presence and unlawful activities in the United States. The mission would be achieved by prioritizing operational activities. For example, "sensible" worksite enforcement should and would be tied into the current anti-smuggling strategy that targets notorious and/or abusive employers who contract for smuggling loads with identified criminal syndicates. This is a common sense approach to create a deterrent effect through successful criminal prosecutions of the most egregious violators. In the weighing contest with the current extremely limited interior resources, it is evident that those resources should be utilized first and foremost against criminal aliens and other criminal violators of the Immigration and Nationality Act (INA).

DETENTION/DEPORTATION

The Detention/Deportation component is responsible for the care and custody of the alien population detained by the Enforcement Sector; it is responsible for managing the alien docket and bond control, and for arranging removal of aliens from the United States. FLEOA believes that this component should also be responsible for the processing and removal of all foreign nationals incarcerated in federal, state, and local correctional institutions or jails. The Deputy Chief for Detention and Deportation Operations would oversee this unit, and would report to the Chief Enforcement Officer.

INSPECTIONS

The Inspections component is responsible for the inspection of applicants seeking admission to the United States at air, land and sea ports of entry. The Inspections Division facilitates an integrated approach to border management and promotes cooperation with other inspectional agencies such as the Customs and Public Health Services. As with the others, the Deputy Chief for Inspections Operations would report to the CEO.

INTELLIGENCE

The Intelligence component within the Enforcement Sector should play an integral role in support of the other enforcement components. Intelligence officers should be integrated into each field enforcement component unit. The Deputy Chief for Intelligence and staff would be responsible for the collection of information, analysis of information, and reporting of intelligence product upward through the organization and outward to other components. The Deputy Chief would also serve as a primary liaison point with the Directors of Adjudications Service Centers, Directors of Asylum Offices, and any enforcement units remotely posted to the field benefits offices, adjudications service centers or asylum offices, to assist in their anti-fraud efforts. The Deputy Chief for Intelligence Operations would report to the CEO.

Mr. Chairman, I would respectfully submit that upon creation of the standalone enforcement bureau, it is not necessary to reinvent the wheel but merely adopt tried and true successful practices of modern day law enforcement entities. For example, virtually all municipal, county and state law enforcement organizations of significant size are composed of distinct investigative and patrol divisions—the Los Angeles County Sheriffs Office provides an excellent example of a well respected law enforcement organization that centralizes command and control over the divergent functions of patrol, investigations and detention. Even the Royal Canadian Mounted Police (RCMP), although operating in a different national and enforcement environment, is structured similarly at the national and field level.

Implementation of Enforcement Sectors would facilitate a cooperative and balanced approach to enforcement of our nation's immigration laws. In turn, you will then begin to see the accountability and productivity that our citizens not only deserve but are demanding of immigration enforcement.

For many years, the INS was derisively referred to as a stepchild within the Department of Justice. In the 1980s, a Main Justice official told The Washington Post that the Department had "no idea what they do over there"—a reference to the physical distance between the Main Justice Building and the INS Headquarters in Washington, D.C. More importantly, this aside expressed the apathy and perhaps disdain with which many prior Administrations regarded the immigration issue. All that has changed and the Main Justice bureaucracy must change at the same time that the independent immigration enforcement bureau is created through legislation. Specifically, there is no office at the Justice Department exclusively charged with immigration policy development. That must be rectified under the oversight of a new Associate Attorney General who would coordinate and facilitate communication between the various Justice components involved in this issue. The Department of Justice clearly has the clout to serve as a major forum for immigration policy

making, but it rarely exercises such authority. The immigration issue is based upon law and should not be dictated by the politics of the moment. FLEOA would stress that the Director of the new Enforcement Bureau must be guaranteed freedom from political interference.

Mr. Chairman, FLEOA strongly urges Congress, through the appropriate Subcommittees, to adopt into legislation the already carefully considered recommendations of both chambers for a substantive and complete reorganization of the INS. INS District Directors face severe pressure to provide services for aliens, and when confronted with inadequate resources, have frequently used enforcement agents as a labor pool to perform non-enforcement duties. This practice has continued for over twenty years and shows no signs today of diminishing. We believe that diversion damages the professional image of immigration law enforcement officers, it diminishes their capacity to provide assistance to other federal, state and local law enforcement agencies and the communities they serve, and it fails to provide protection for our society at large.

INS, as did the IRS until very recently, struggles under an obsolete and confused organizational structure. Without the creation of a distinct bureau for immigration law enforcement with the requisite federal law enforcement chain of command, it is unlikely that the legislative innovations passed by the 104th Congress in 1996 will ever be used to their full potential. Only through streamlining the bureaucracy, overcoming institutional inertia, and establishing balance through a separation of functions, can modern day immigration law enforcement be successful.

The separation of immigration benefit disbursement from law enforcement would allow immigration agents in the interior and on the border to focus solely on enforcement activities, in accordance with a standard federal law enforcement chain of command. Repeated headlines in newspapers throughout the country on alien smuggling, foreign narcotics trafficking and international terrorism demonstrate that our nation cannot afford anything less. I ask this Subcommittee to do everything within its power to effect this change for the good of our nation and the preservation of the world's most generous system of legal immigration. The creation of a new Bureau of Immigration Enforcement will allow this to pass.

On behalf of FLEOA, and the many dedicated men and women who risk their lives enforcing our immigration laws, I appreciate your time and attention, and the opportunity to share our views. Thank you.

Senator ABRAHAM. Let me just ask, obviously, we have heard some very powerful statements from each of you and we will probably have additional questions we may submit in writing. I have a couple of things I wanted to ask you to all comment on.

There are some disagreements we heard expressed here today with respect to a few of the issues that are dealt with in the bill, and I know that among the panel here, that you are not all necessarily in agreement on each of these points. I do not want to start a "Crossfire" type setting here like the TV show, but what I would like is to ask each of you to, if you have a position on this issue or if your organization does, to express it and give maybe a very brief statement of the basis for it, just to sort of flesh out the record on some of these things.

Let me start with a question about inspections, because there is some debate as to whether that should be something that is a central sort of part of the operation under the person, the Associate Attorney General, the individual who would be at the top of the operation, or whether or not it should be fully located within the enforcement division. We heard disagreement expressed by a couple of the members here about that today.

I know, as I said, several of you have different views on this, and if you have those views, I would like to hear what they are and why, either yes or no and why. We will start with you, Chief.

Mr. BERG. Well, Mr. Chairman, we do have different views on inspections. Inspections has always been a problem, even in the current structure, and the main reason is because inspectors are not 6(c) law enforcement-covered. So if they are placed within the new

Bureau of Enforcement, which in the language of the bill should be in the best practices of the FBI and DEA, you are looking at a Bureau of Enforcement that is a pure law enforcement bureau.

So if the inspections program is not given, legislatively, I suspect, 6(c) or law enforcement coverage, what operationally will happen within that bureau, then, is there will have to be two training academies maintained and the career paths within the Bureau of Enforcement will become extremely bifurcated. I mean, I do not know how they are going to cross each one. So operationally, it will cause great problems.

The other thing is, if they are given 6(c) coverage and placed within the bureau, those things can be overcome, but then at your ports of entry, you are going to have part of your force with 6(c) coverage and part of your Customs inspector force not 6(c) covered. So there are some real problems with what to do with inspections.

Of course, the third thing is, most of their duties, are they enforcement duties or are they expediting commerce and people?

Senator ABRAHAM. I appreciate that.

Mr. BERG. We have some real operational problems with placing them within that bureau without 6(c) law enforcement coverage.

Senator ABRAHAM. As I said, I am going to ask each of you who cares to to comment today. You do not have to if it is not within your realm of focus, but also to follow up, maybe with perhaps an expanded basis and so on. Mr. Leiden, do you want to comment?

Mr. LEIDEN. Yes. This is an issue that we have addressed, as well, and I think that arguments can be made on both sides because it is a function with responsibilities. But we come down on the side of thinking that it is appropriate for inspections to be in the Associate Attorney General's office and not in enforcement. We see the vast majority of the activity of inspectors is, in fact, adjudicating entries, that is, making findings of fact and conclusions of law, to be profound about it, but that is really what they are doing, is they are making judgments.

To me, the metaphor is they are the Department of Motor Vehicles and they are very different than the traffic cops who are chasing down law breakers. They are issuing licenses, they are issuing registrations, and renewing them.

We are also concerned, and I think this is what tips the balance for us, is there is a quasi-judicial aspect of this position, and particularly in the case of people seeking refuge and asylum seekers, where a decision has to be made on the spot. Is this someone you are going to put back on the plane or is this someone who is fleeing persecution and death and needs to really get the haven of the United States' asylum laws?

I think that we want our law enforcement officers to really be looking for law violations and to be pursuing them and prosecuting them and causing deterrent, and this role, I think, is a somewhat judicial role. Therefore, we think it is appropriate that it be seen as an adjudications function primarily with some enforcement aspect.

And then finally, I think that inspections, from our point of view, is just in the chain of adjudication. The petition is filed, the petition is approved. The visa is issued, the visa is used at the border. I can see in a career path, you see the fruition of your work at a

service center, at a district office, coming back at the port of entry when someone applies for admission. Thank you.

Senator ABRAHAM. Mrs. Yoskowitz.

Mrs. YOSKOWITZ. This is beyond my realm and I prefer not to comment at this time. Thank you.

Senator ABRAHAM. That is fine. That is fine. Mr. Bonner.

Mr. BONNER. As you can probably understand, I have strong feelings on this issue. We feel that——

Senator ABRAHAM. We wanted to give everybody a chance to comment.

Mr. BONNER. Right. We feel that if it looks like a duck, walks like a duck, quacks like a duck, it is a duck. These people enforce laws. They get assaulted in the line of duty. Some have given their lives in the line of duty. They make numerous arrests, seizures. They are law enforcement officers.

Putting them under the umbrella agency of the Officer of the Associate Attorney General, we feel perpetuates the problem that exists now for all of the INS programs in that if you have a person who is enforcement-minded, then they emphasize enforcement. If you have someone who is service-minded, they emphasize service. So they blow with the political wind.

We feel that the cut should be made, put them in enforcement, treat them like law enforcement officers. Yes, it will cost a little more money to compensate them. I think that overcomes Chief Berg's objection that they would be in enforcement but would not have the same standards. I think they should be treated like law enforcement officers in all respects.

Senator ABRAHAM. Mr. Gallo.

Mr. GALLO. Just briefly, Mr. Chairman. Basically, the inspection division is the closest to the middle ground, on one hand, the adjudication of people coming in, and on the other hand, being almost the front line for the investigations branch to work further investigations.

It is a quandary that they are in, and your legislation kind of deals with it by leaving them in the middle with reporting to the Associate Attorney General, which, unless further looked at, is probably going to be the way to go, but you are going to have to look at their—they are very important to the enforcement side, as well as they are also very important to the benefits side. They are definitely in that middle gray area.

Senator ABRAHAM. It is obviously one of the harder calls that we made in the process of drafting the legislation, but I think it is important for the record here to demonstrate that there are varied opinions and the rationale for each of them.

I am going to ask just one more of these sorts of questions and then I think, in light of the time, we will bring the hearing officially to an end, although, as I said, we will have the record open.

There has been some comment, or I think there is a certain school of thought, perhaps, that suggests that the Associate Attorney General level leadership position, as to the extent of responsibility that would be housed in that post as opposed to the two, as we contemplate them, at least, the two branches of enforcement and service.

I guess I have, and we tried to draft the legislation in a fashion that would give a lot of strength to the two individual areas because we think they really need strength and they need to have a person in charge that is widely known to the Members of Congress who, at least in the Senate, they were confirmed. Right now, if we were to ask our colleagues who held the responsibility for the service operations of the INS, I will bet no one could answer that question, and the same is probably true in the House of Representatives. There are darn few members. It seems to me we need somebody in that job, as well as the enforcement side, who has the kind of familiarity to the Congress, as well as the accountability that is required.

The question is, does the person who would be, under at least our legislation, superior to those individuals, what would be their duty? Are they merely to be sort of supervisory or coordinating or are they to give direction and leadership?

I believe the draft that we have of our legislation is in the latter category, where they would be the ultimately responsible individual brought before Congress on immigration issues. But some have said that that, perhaps, should be a less-strong position and that we should, maybe for purposes of moving forward, that we should, in effect, put the real strength in the two branches.

I am curious as to how you all see it. I believe, at least, Mrs. Yoskowitz addressed that, at least in part, in her comments, so we know your thoughts, and I am wondering if any of the other members here would like to make a comment. We will start with you, Chief.

Mr. BERG. I think you have to put the strength in the directors of each bureau and hold them accountable because they are going to have separate focused missions that they need to do and they need to be held accountable. I would envision that the Associate Attorney General would have more of an oversight role of both of them.

One of the things that we were very concerned with was putting too much shared services, management support functions in the Associate Attorney General level and the fear would be that you would create a status quo INS agency one level above the directors. It is essential that each one of those directors have control over their personnel, procurement, training, and other issues like that. Otherwise, how can we hold them accountable to get the mission completed?

Senator ABRAHAM. Mr. Leiden.

Mr. LEIDEN. This is an issue that we have thought a lot about, as well. I certainly agree that there needs to be a strong leader of each bureau who can be accountable for goals that are set for accomplishment by that bureau, and the question is, where are the goals set? I think that the setting of the goals, the setting of policy, it makes sense that that be done at the Associate Attorney General or some superior officer level so that there can be coordination.

There have been times in the past when enforcement actions and adjudication service programs could have been seen in conflict but for a coordination of what national priorities are and what national policies are, and I think it is important that the buck stops someplace in the Justice Department and that it stops with someone

who gives full-time attention to both bureaus and someone who can give full-time attention to assessing how progress is made towards achieving this goal.

Senator ABRAHAM. Mr. Bonner, do you want to comment?

Mr. BONNER. I think you need someone at the top who speaks with one voice on these issues. The natural tendency of law enforcement folks is to emphasize law enforcement and the natural tendency of the folks who would be in the service branch would be to emphasize the service, and that is understandable and I think it is entirely appropriate. But where you have these feuds that would erupt, you need somebody to step in and say, this is the way it is going to be.

Senator ABRAHAM. Mr. Gallo.

Mr. GALLO. You need someone who is strong, independent, and probably appointed for a set term, looking at the Director of the FBI, appointed for a 10-year term. There is a bill pending now before the Senate to appoint the Customs Commission to a 5-year term. You need a strong and independent leader. We do not have attorneys general and deputy attorneys general who are shy and introverted people. If they need to settle a dispute between the Director of the FBI and the Administrator of DEA, you have to feel comfortable with your oversight of the Justice Department to have that strong leader, the ultimate leader being the Attorney General and then the President. But as far as the bureau directors, you need a strong, trained career law enforcement or career benefits person in charge.

Senator ABRAHAM. We appreciate all of you being here today. As I said, we will keep the record open for additional questions that might come along, either from our office or others who were not able to participate or the other two Senators.

I think that, just to put this in context, there is certainly action going on in this arena in the House. We want to make sure that the Senate moves forward, as well, and we will work to that end. We will talk, certainly, with our colleagues on the other side of the Capitol as we move forward.

But we really appreciate your input because that has been a helpful part of the process for me today, and appreciate our audience participation here today, as well. It was nice to have a good level of interest demonstrated in these topics.

With that, the hearing is adjourned.

[Whereupon, at 4:01 p.m., the subcommittee was adjourned.]

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