

INTERIOR IMMIGRATION ENFORCEMENT
LEGISLATION

HEARING
BEFORE THE
SUBCOMMITTEE ON
IMMIGRATION AND BORDER SECURITY
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTEENTH CONGRESS
FIRST SESSION

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FEBRUARY 11, 2014
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OFFICIAL HEARING RECORD

MATERIAL SUBMITTED FOR THE HEARING RECORD BUT NOT REPRINTED

Submissions for the Record from the Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Ranking Member, Subcommittee on Immigration and Border Security. These submissions are available at the Subcommittee and can also be accessed at:

<http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=102941>.

INTERIOR IMMIGRATION ENFORCEMENT LEGISLATION

WEDNESDAY, FEBRUARY 11, 2014

HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY
COMMITTEE ON THE JUDICIARY
Washington, DC.

The Subcommittee met, pursuant to call, at 1:03 p.m., in room 2141, Rayburn Office Building, the Honorable Trey Gowdy (Chairman of the Subcommittee) presiding.

Present: Representatives Gowdy, Goodlatte, Lofgren, Conyers, Smith, King, Buck, Ratchiffe, Trott, Jackson Lee, and Guterrez.

Staff Present: (Majority) Allison Halatei, Parliamentarian & General Counsel; George Fishman, Subcommittee Chief Counsel; Dimple Shah, Counsel; Andrea Loving, Counsel; Graham Owens, Clerk; and (Minority) Tom Jawetz, Minority Counsel.

Mr. GOWDY. Welcome. The Subcommittee on Immigration and Border Security will come to order. Without objection, the Chair is authorized to declare recesses of the Committee at any time.

We welcome everyone; our witnesses and our guests. I would remind our guests that they are indeed guests and disruptions will be dealt with by removal. With that, I would recognize myself for an opening statement and then my friend from California for her opening statement.

The consensus in our country is that the current immigration system is broken, unworkable and not functioning for the best interests of our fellow citizens, and part of that is the widely held belief among our fellow citizens that our borders are insufficiently secured and frankly border security is much broader than simply a negotiating item in an ongoing immigration debate.

Border security is part of what defines a sovereign nation; the ability to control who comes and goes and provide assurances that national security is indeed the preeminent function of the Federal Government. But even the most secured of borders will not alleviate the need for further reforms and off repeated statistics bears mentioning again, which is that around 40 percent of those who are not in the country lawfully originally entered through lawful means. Simply put, around 40 percent of the undocumented population were invited here and overstayed their invitation. And, no fence can be designed or built to deal with the issue of internal se-

curity. We must also ensure the laws governing immigrants within our borders are being implemented.

There are three bills before us which takes steps to improve the efficacy and the efficiency of our immigration system. One deals with judicial proceedings ensuring they are expeditious and children, in particular, are not subject to lengthy proceedings that don't provide them with any security or safety.

Another bill before us, and one that is particularly important to some of our Committee Members, provides State and local law enforcement with the ability to enforce our immigration laws. There are over 730,000 State and local law enforcement officers in the United States. If State and local law enforcement agencies could assist ICE in enforcing immigration laws on a totally voluntary basis, this would represent a significant force multiplier for ICE; 5,000 ICE agents cannot do all that is currently being asked of them particularly with limitations imposed via memo and executive fiat.

Most importantly, this bill requires information to be shared among law enforcement agencies at all levels to ensure, for example, that individuals with 15 traffic stops including fleeing from a scene of an accidents and providing false information to law enforcement, are not allowed to continue to reside in this country period. National security is the preeminent function of the Federal Government and it is easy to argue that public safety is the preeminent function of State and local governments. That is not to say that there are not other vital functions, of course there are, but having a system of laws that are enforce with the certainty of consequences for failure to comply is the bedrock of a shared citizenry.

State and local law enforcement officers are subject to exactly the same constitutional restrictions as Federal law enforcement officers. All of these law enforcement officers are at the same risk when an unlawful immigrant decides he cannot handle going back to jail or being sent back to his or her home country. And make no mistake, being in law enforcement is among the riskiest jobs in America. We give law enforcement officers great power and with that power comes great responsibility because their purpose is so vital.

We trust State and local law enforcement in every category of crime; from murder to narcotics trafficking, to sexual assault, to domestic violence, to speeding, to robbery. When we are in our own districts, it is State and local law enforcement that come to our town halls and other public events and provide security for both us and those innocent members of the public who wish to interact with the people that they have entrusted to serve. So if those women and men can be entrusted with the investigation and enforcement of the most serious crimes in our country, and if those same women and men who we call when we hear noises outside our home in the middle of the night or when something terrible happens to us when we are in our district, why can we not give them the option; just the option of helping to enforce our country's immigration laws?

There are other bills that are on topic, on the topic of this hearing, such as to take steps to ensure victims of trafficking are provided a timely hearing before an immigration job. Another bill be-

fore us takes steps to ensure the asylum process is not abused and offered only to those with credible fear of being deported thereby ensuring the program has the capacity to take care of the immigrants the program was intended to help.

Lastly, another bill focuses on protecting children who come into custody along our borders. As we have recently witnessed, the current system is not equipped to handle such an influx and we need to focus on determining whether these children are in danger.

I welcome today's witnesses. I look forward to hearing your testimony as well as the questions and the answers. And with that, I would recognize the gentle lady from California.

Ms. LOFGREN. Thank you, Mr. Chairman.

As many know, I practiced and taught immigration law before I became a Member of Congress, and I have worked collaboratively with both Democrats and Republicans over the years to reform our broken immigration laws. And even though we were unable to pass meaningful immigration reform legislation last Congress, I remain hopeful that we will be able to work together in the future on this problem. And I know the people who sent us to Washington want us to do that sooner, rather than later.

Of course, one thing that won't fix our immigration system is if we withhold funding from the Department of Homeland Security, the agency tasked with administering the immigration laws and keeping the country safe. The decision to add immigration riders to the DHS Appropriations bill, riders that are poison pills and were added only to satisfy demands of people who are extremely anti-immigrant—I thought was reckless and dangerous.

Congress needs to pass a clean funding bill—the bill that Democrats and Republicans in the House and Senate already agreed to so that DHS can continue normal operations without having to prepare contingency plans for a potential shutdown. I am disappointed with the Majority's decision to hold funding hostage and I hope that we are not forced to go through yet another shutdown in order for the Republican leadership in Congress to do the bare minimum that is expected of us by our constituents; that we fund the government and protect the country.

I am also disappointed that the Committee has approached the issue of immigration at the very beginning of the 114th Congress quite differently than we did at the beginning of the 113th Congress. Then, the Committee held hearings on a variety of topics including opportunities for legal immigration, challenges facing farmers and farm workers, the importance of high-skilled immigration to American competitiveness and the many ways in which families are separated unfairly as a result of our broken immigration system.

By contrast, in this Congress, we began the year with a hearing that addressed a laundry list of what I believe are misplaced complaints regarding the enforcement of immigration laws. The hearing that I referred to was followed by a hearing on a bill to make E-Verify mandatory, and today's hearing is on three deportation-only bills which would make the situation worse.

This Committee considered the SAFE Act in the 113th Congress and reported the bill to the floor. I opposed the bill strongly at that time and I oppose it just as strongly today. Section 315 of the bill

would turn all undocumented immigrants in the country whether they crossed the border 10 years ago or over stayed a Visa just yesterday—into criminals. It would make it a crime for an undocumented mother to remain in the country to feed and care for her child just as it would make it a crime for a U.S. citizen to drive her undocumented father to a doctor's appointment or a member of the clergy to drive undocumented immigrants to and from religious services. That's why dozens of national, State, regional and local faith organizations and leaders wrote to Speaker Boehner in August of 2013 to oppose the bill.

Section 102 of the bill would grant States and localities the complete and unchecked power to enact and enforce their own immigration laws as well as Federal immigration laws. For years, law enforcement leaders have told us that turning local police officers into immigration enforcement agents will damage community policing practices and leave communities less safe. That's why this bill was opposed so strongly in the last Congress by the Major Cities Chiefs Association, the Police Executive Research Forum, the National Organization of Black Law Enforcement Executives, as well as police chiefs, sheriffs and district attorneys across the country.

The SAFE Act would also strip protection from the more than 600,000 young people who have come forward, cleared background checks, and obtained temporary protection from removal under the Deferred Action for Childhood Arrival program and prevent the Administration from prioritizing the removal of serious criminals and repeat offenders. One question that supporters of this bill need to answer is how this country would be safer if we focused our detention and deportation resources on the DREAMers rather than on people who pose an actual threat to public safety and national security.

The Asylum Reform and Border Protection Act and the so-called Protection of Children Act both return us to a topic that consumed much of our time and attention last summer: the spike in unaccompanied children and families who fled Honduras, El Salvador and Guatemala and were apprehended along our southwest border. Both bills appear to begin with the premise that these women and children must be turned around as quickly as possible to send the message that the United States will offer them no protection. The dangerous problem with this premise is it runs afoul of one of our most fundamental obligations under domestic and international law: the duty to refrain sending a person back to a place where he or she will face persecution.

We learned several important things last summer and in the intervening months. We learned that 58 percent of the unaccompanied children who were interviewed by the U.N. High Commissioner for Refugees spoke of serious harm that raised international protection concerns and that the countries they were fleeing—Honduras, El Salvador and Guatemala—are undergoing a major breakdown in civil society that is marked by extreme levels of violence. Depending on the source, either Honduras or El Salvador now has the world's highest murder rate and all five countries are in the top five.

We also learned that the diminished protection that unaccompanied Mexican children receive under current law may expose

many of them to further persecution, sex trafficking and abuse. Whereas UNHCR found that 64 percent of the Mexican children they interviewed raised international protection concerns, 95 percent of these children are summarily returned with little process.

And finally, we learned—and we are continuing to learn—that when many of the families across the border have received appropriate legal support, they have been able to demonstrate that they are refugees under our law and are entitled to protection from persecution.

In the 6 months that the Artesia facility was in use, 15 families were represented throughout the entirety of their proceedings by pro bono counsel arranged by the American Immigration Lawyers Association and 14 of them obtained asylum. I imagine some of my colleagues might say that that proves our asylum laws are too generous, but I think it shows how critically important it is that we not roll back procedural protections that are needed to literally save lives.

Having learned all this, I'm concerned that these bills would remove due process protection to make it easier to deport these children and families.

Despite the flaws in our current treatment of unaccompanied Mexican children, the Protection of Children Act would subject all children to the cursory screening process now conducted by Border Patrol agents. The bill actually weakens the screening further by permitting Border Patrol agents to permit a child to so-called voluntarily return to his country without even assessing whether the child is capable of making an independent decision to return.

The treatment of unaccompanied children is even worse under the Asylum Reform and Border Protection Act. The bill would repeal entirely longstanding, bipartisan TVPRA protection for all children and subject such children instead to expedited removal. More generally, the bill would gut the heart of our refugee protection laws by raising the credible fear standard. When Congress created the credible fear process in 1996 together with expedited removal, we deliberately set the standard low in recognition of the fact that many refugees do not arrive at our borders prepared to support fully their claims of protection. This bill would require that a refugee essentially prove up his or her claim at the border which will guarantee that persons fleeing persecution will be deported to face torture, abuse or death at home.

Most complex problems can't be solved with simple solutions. We can't fix our broken immigration system and the problem of illegal immigration by just increasing our enforcement of that broken system. Children and families are fleeing extreme violence in Honduras, El Salvador and Guatemala and are showing up in our country in search of protection. We can't fix that problem by sealing the border and turning our back on our history as a country that was founded by people who were themselves fleeing persecution. These are serious problems that require serious solutions. I would like to think that Congress is up to the task of coming up with those solutions, but I admit that I am discouraged by the fact that we can't even fund the Department of Homeland Security.

With that, Mr. Chairman, I appreciate your indulgence on going over the time limit and I yield back my non-existent time.

Mr. GOWDY. I thank the gentle lady from California.

The Chair will now recognize the gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman. I appreciate your holding this hearing.

In 1986, Congress and the President promised Americans vigorous interior enforcement of our immigration laws in exchange for amnesty for 3 million unlawful aliens. And while the amnesty was granted to the 3 million unlawful aliens, that promise of enforcement was never kept. Today, nearly 30 years later, this Committee is holding a hearing on three immigration bills which will finally deliver on the promise of robust interior enforcement.

All of these bills were introduced in the last Congress. One was introduced by Immigration and Borders Subcommittee Chairman Trey Gowdy and provides for crucial tools for the enforcement of our immigration laws within the interior of the United States. The second and third bills ensure that aliens apprehended along our borders are promptly removed and do not abuse our generous immigration laws.

The second bill, introduced by Committee on Oversight and Government Reform Chairman Jason Chaffetz, deals with asylum abuse and fraud within our immigration system.

The third bill, introduced by John Carter, Chairman of the Appropriation Committee's Subcommittee on Homeland Security, addresses the need to treat unaccompanied alien minors consistently so that they can be safely and expeditiously returned to their home countries.

Successful immigration reform must address effective interior enforcement and the swift removal of those aliens who are apprehended along the border. This is an integral piece of the puzzle. We can't just be fixated on apprehending aliens along the border which undoubtedly is an issue of paramount concern. We must also focus on what happens to those aliens who are apprehended; those who make it pass the border and those who violate the terms of their VISAs. That is what these three bills do.

The immigration enforcement bill introduced by Chairman Gowdy decisively strengthens immigration enforcement. The primary reason why our immigrant enforcement system is broken today is because Administrations have often ignored the enforcement of our immigration laws. The current Administration has turned non-enforcement into an art form.

When President Obama announced unilateral changes to our immigration system with a wave of his pen and cellphone on November 20th of last year, he indicated that he would allow millions of unlawful and criminal aliens to evade immigration enforcement. He did this with the issuance of new so-called priorities for the apprehension, detention and removal of aliens. Under the Obama administration's new enforcement priorities, broad categories of unlawful and criminal aliens will be immune from the law. This means that these removable aliens will be able to remain in the U.S. without the consequence of deportation.

To make matters worse, in fact much worse, even the most dangerous criminals and national security threats can cease being a "priority" for removal if there are undefined "compelling and excep-

tional factors.” We cannot allow this or any other president to shut down Federal immigration enforcement efforts unilaterally.

Mr. Gowdy’s bill will prevent this from happening by giving explicit congressional authorization to States and localities to enforce their own immigration laws so long as they are consistent with Federal immigration laws. The president may be the boss of Federal law enforcement personnel but he does not control State and local law enforcement agencies. By granting this authority to State and local law enforcement, we can eliminate one individual’s ability to unilaterally shut down immigration enforcement. Furthermore, we could line Border Patrol agents shoulder-to-shoulder at the southern border and it would not make the border secure. Why?

Because once apprehended by the Border Patrol, many of the children, teenagers and adults arriving at the border simply gain our asylum and immigration laws with the facilitation of the Obama Administration. The Administration has done little to deal with the nearly 70,000 minors and 70,000 family units that entered our country illegally last year other than ensure that their claims will be heard years down the road. In the meantime, these aliens can abscond and eventually fail to appear for their hearings. The Administration has also done little to deal with the abuse of the credible fear process by aliens apprehended at the border.

Judge Carter’s bill amends the Trafficking Victims Protection Reauthorization Act of 2008 so all unaccompanied alien minors are treated the same as Mexican youth for the purpose of removal. Under the bill, minors who have a credible fear of persecution or who have been trafficked must appear before an immigration judge within 14 days of their initial screening. Others will be swiftly and safely returned to their home country. Further, if Mr. Chaffetz’s bill were enacted, word would get out that the bogus credible fear and asylum claims are not being rubberstamped and that claimants are not being rewarded with almost certain release into the U.S. along with work authorization. The vast increase in claims would quickly abate.

In the end, it doesn’t matter how many aliens are apprehended along the border. If apprehension itself becomes a golden ticket into the country, the three bills that are the subject of today’s hearing, along with Mr. Smith’s Legal Workforce Act would finally provide the American people with a strong immigration enforcement system.

I congratulate their authors for introducing these important bill and look forward to today’s hearing.

I yield back. Thank you, Mr. Chairman.

Mr. GOWDY. Thank you, Mr. Chairman.

The Chair will now recognize the gentleman from Michigan, the Ranking Member Mr. Conyers.

Mr. CONYERS. Thank you, Chairman Gowdy.

You ought to be glad you don’t have a fourth bill here today because I would undo the three previous bills that we are considering but this is the third time this Congress, we met to discuss immigration but, instead of considering comprehensive immigration reform, we are discussing three enforcement-only bills that will criminalize the undocumented community, force more immigrants under the shadows and strip crucial due process protection from

children seeking protection from violence and trafficking. And so, we had one hearing in a Judiciary Subcommittee this morning and I had the great pleasure of working with Chairman Gowdy on it and Chairman Goodlatte.

Today we are going to hear some incredible commentary and I don't think we are going to be in—I want to enjoy the same agreement and cooperation that we had earlier. I am going to be a couple of other comments and then I am going to yield to the distinguished gentleman, Mr. Gutierrez, for a comment that I think, as a leader in the Congress on this measure and especially with the Hispanic caucus that, he will make. I understand that there are guests here in the audience and are families from the Casa de Maryland. And we want to welcome you and thank you for being here to listen in a good spirit and cooperatively with everything that goes on.

I respect the effort my colleagues are putting into the issue, but these bills are not the solution to the broken immigration system that American families and businesses have been waiting for. The first bill would criminalize the immigrant community. Gosh. It would make it a crime, potentially a felony, to be an undocumented immigrant in this country and, in addition, turns every police officer in the country into an immigration agent of sorts. In the eyes of many communities, that means the public safety mission will come a distant second.

The second bill, the Protection of Children Act, contrary to its name does nothing to protect children. In fact, it subjects children to an increase risk of harm with less due process.

The third bill, the Asylum Reform and Border Protection Act, unreasonably raises the credible fear standard to the point where it no longer acts as a threshold inquiry but would require refugees to prove their case almost immediately upon entry.

And so, I will put the rest of my statement—I'd like to yield now to my colleague, Mr. Gutierrez. I apologize for going longer than I intended.

Mr. GUTIERREZ. Thank you. You are very generous. Thank you so much.

Mr. Chairman, Ranking Member.

First of all, I want the public to know that none of these bills will ever become the law of this country. None of them. So do not fear. Justice, fairness is on your side. This is the United States of America and those that challenge the society in fairness and in openness have always prevailed in the United States.

Bishop, I'm happy you are here. We look forward to your testimony and answering questions. I am going to let you know ahead of time, I am going to ask you to please, to the extent you can, listen very carefully to my republican colleagues and what they have to say because I would like to juxtapose what they say today with the position of my church, your church and the catholic church here in the United States of America; which I know will be resoundingly different.

This is not going anywhere, and I look forward to going to Tuscan. I want my friends to know that we just were in Houston, thousand people got ready to sign up for the President's executive. We went to Charleston and Charlotte, North and South Carolina. Ev-

erywhere we go, thousands of people are getting ready to sign up for President Barak Obama's executive order. There will be millions of them and, if you want to turn the tide of history, you are going to turn the tide of history but what it is going to do is going to bite.

My colleagues in the Republican Party, you will never—you had a good run. Abraham Lincoln, George Bush, nice run. You will never elect another republican president of the United States of America because the immigrant community won't allow to ever do it again because of specifically these kinds of legislation.

Thank you so much.

Mr. GOWDY. I thank the gentleman from Illinois and the gentleman from Michigan.

We have a distinguished panel today. I will begin by swearing in our witnesses before introducing you. If you would please rise so I can administer an oath.

Do each of you swear or affirm that the testimony you are about to give is the truth, the whole truth and nothing but the truth so help you God?

Let the record reflect everyone answered in the affirmative.

Just to alert our witnesses and our guests, votes are scheduled. I will let you know in plenty of time. And so, if you see us rush out, we are coming back. We have to vote.

So with that, you may be seated. I will introduce you and then I will recognize you for your 5 minutes. I will introduce you from left-to-right en bloc.

Sheriff Sam Page is an elected official and Chief Law Enforcement Officer in Rockingham County, North Carolina, a position he has held since 1998. Sheriff Page served from 2011 to 2012 as a Chairman of North Carolina Sheriffs Association, formerly served as president in North Carolina Sheriffs Association 2010. In addition, he has served on the National Sheriffs Association's Border and Immigration Committee since 2010. Following graduation of high school, Sheriff Page served in the United States Air Force from 1975 to 1980. He is also a graduate of the National Security Institute.

Welcome, Sheriff.

Dr. Frank Morris is testifying today on behalf of the Progressives for Immigration Reform where he is a member of their board of directors. He also serves on the board of directors for the Center for Immigration Studies, the 9/11 Families for Secure America and Federation for American Immigration Reform. Dr. Morris has previously served as the Executive Director of the Congressional Black Caucus Foundation, Senior Foreign Service Officer for the Agency for International Development, and the State Department's Special Assistant to the Director of National Institute for Education while serving as a National Educational Policy Fellow. He received his A.B. with high honors from Colgate, a Masters in Public Administration from Maxwell School in Syracuse and completed his doctorate in Political Science from MIT.

Mr. Dan Cadman currently serves as Senior Fellow with the Center for Immigration Studies. He is a retired INS ICE Official with 30 years of government experience. Mr. Cadman served as a Senior Supervisor/Manager at Headquarter as well as field offices

both domestically and abroad within the Immigration Law Enforcement field. His knowledge and experience encompass among other things criminal aliens, employer sanctions, national security and terrorism matters.

And finally, the Most Reverend Gerald Kicanas—if I mispronounce that, my apologies. Pope John Paul II appointed the Bishop the Coadjutor. I am having to struggle with some of this so you bear with me, okay? Bishop of Tucson on October 30, 2001 upon retirement of Bishop Manuel Moreno. Bishop Kicanas became the sixth Bishop of Tucson on March 7, 2003. He is the chairman of the Board of Directors at Catholic Relief Services, a member of the Administrative Committee and the Budget Finance Committee of the U.S. Conference of Catholic Bishops as well as a former vice president of the U.S. Conference of Catholic Bishops. He graduated from the University of St. Mary of the Lake and the theologate graduate level seminary of the Archdiocese. He was ordained a priest for the Archdiocese of Chicago on April 27, 1967.

Welcome to each of you.

Sheriff, we'll start with you, recognizing you for your 5 minutes.

There is a series of lights; yellow will encourage you to wrap up and red means conclude that final remark.

With that, Sheriff Page.

**TESTIMONY OF THE HONORABLE SAM S. PAGE, SHERIFF,
ROCKINGHAM COUNTY, NC**

Sheriff PAGE. Mr. Chairman, Co-Chairman, and distinguished Members of the U.S. House of Representatives Judiciary Committee, I'd like to thank you for allowing me this opportunity to talk to you about the Gowdy Immigration Enforcement Bill of 2013. I give greeting from the citizens of Rockingham County, North Carolina whom I represent. Currently, I am serving in my fifth term as elected Sheriff of Rockingham County and also as a veteran, and also as a civilian law enforcement officer of more than 33 years in North Carolina.

I believe that our Congress has one of the toughest jobs in our Nation today. You're being asked to fix our broken immigration system in the U.S. and to make sure that legislation will provide a solution that will last for many years to come. I am just one of 3,080 sheriffs across America that are asking for your help in solving our immigration and border security problem that impacts all of citizens across the U.S. I am not an expert at immigration law or border security but what I can tell you about is public safety.

According to the Drug Enforcement Agency, North Carolina is second only to the Atlanta Region in the southeast where drug trafficking routes by the Mexican Drug Cartel. The Drug Cartel are operating in approximately 1,200 cities across the U.S. In two to 3 days they are in my county.

In North Carolina, since 2010, I have participated in the Secure Communities Program. Since that time, we processed 233 persons that have been criminally charged and residing illegally in the U.S. Nine illegal immigrants previously removed by ICE have returned to my county to be rearrested for the second time. Approximately 45 percent of those arrested were for DWI, 15 percent were charged

with assault, 5 percent for rape or sexual assault, one for death by motor vehicle, and one person charged for attempted murder.

I personally have traveled to the southwest border of the United States with Mexico three times over the past 4 years for the purpose to educate myself about the issues that affect local, State and Federal law enforcement officers and their, you know, border security efforts.

Last summer, I traveled to the Rio Grande Valley of Texas where almost 70,000 illegal immigrants including unaccompanied children were apprehended by Border Patrol agents. And according to Border Patrol those persons were Give Ups; they basically did not try and avoid apprehension.

When visiting one Border Patrol station, I asked why all the trucks parked outside and they said, "Sheriff, we're tied up because everybody is in here processing families and the unaccompanied children." He said they were overwhelmed.

I noted during the Border Patrol visit that some discussion came up about the Trafficking Victims Protection Reauthorization Act thus subjecting all illegal immigrants to expeditious return, minors that is, if they've been trafficked and don't face the likelihood of persecution. And that was Mr. Carter's bill. I thought it was a very interesting bill and I think it could have a very important impact.

The bill would send a clear message to parents of these children: There is no benefit by putting your children at risk by contracting, excuse me, by contracting with criminal smuggling organizations to bring your children to the U.S. illegally.

And who is profiting from this summer border surge? The Mexican Drug Cartel and the human smugglers.

What comes through the border doesn't stay there. In just a few hours or a few days driving time, the drug trafficking, human trafficking, illegal immigrants and gang members enter into my State and other States. When you look at the DHS annual summary, I asked the question: How many illegal immigrants and criminal offender did you detect and how many others did you miss?

Our Congress needs to address the misunderstood issue of detainers. Several of the Sheriffs across the U.S. have discussed concerns regarding detainers with the National Sheriffs' Association. The detainers allowed us to complete the process officially and to avoid having criminal aliens slip between the cracks and return into our communities and sometimes kind of flee and then to commit new crimes. We are also concerned about the pending law suits. We want to cooperate with ICE and do what we can to see as our duty as fellow law enforcement agencies. We want to do our part.

We badly need our Congress to step in and clarify the authority of ICE to issue detainers and our ability and obligation to comply with those detainers just as we would any other law enforcement agency in connection with legitimate law enforcement action. The Gowdy enforcement bill would do that.

My fellow sheriffs and I had the discussion and still the problems of decreasing number of criminal aliens that have been taken into custody by ICE from our facilities. Since 2010, we processed 233 persons criminally charged; 66 percent have been removed. That's

154 persons out of 233 removed from our facility. And where they go, I have no idea.

The Gowdy Immigration bill will help us by ensuring that ICE lives up to its responsibility as a role, as law enforcement partner and by detaining and removing all the criminal aliens that we work together to identify. It will give ICE more tools to make them more efficient and more effective.

What I want as a sheriff is what my citizens in Rockingham County want, is to know that ICE Agents will be able to do their job and will actually take custody and seek to remove the illegal aliens committing criminal offenses up in my county.

Thank you very much and I'll be standing by to answer your questions.

[The prepared statement of Sheriff Page follows:]



**THE HONORABLE SAMUEL S. PAGE
SHERIFF OF ROCKINGHAM COUNTY, NORTH CAROLINA**

**TESTIMONY BEFORE THE U.S. HOUSE OF
REPRESENTATIVES JUDICIARY COMMITTEE**

Hearing on Immigration Enforcement Bills

WEDNESDAY FEBRUARY 11, 2015

The Gowdy Immigration Enforcement Bill:

Mr. Chairman, Co-Chairman, and Distinguished members of this U.S. House of Representatives Judiciary Committee. I would like to thank you for allowing me this opportunity to talk to you about the Gowdy Immigration Enforcement Bill introduced in 2013 by Representative Trey Gowdy and some issues that I have identified with border enforcement and interior immigration enforcement.

I give greetings from the citizens of Rockingham County, North Carolina whom I represent. Currently I am serving in my fifth term as the elected Sheriff of Rockingham County, N.C.. I am the Past-President of the North Carolina Sheriffs' Association, and currently serve on the National Sheriff's Association Border Security and Immigration Committee as Co-Vice Chair. I am a U.S.A.F. Veteran, and have served in civilian law enforcement for more than 33 years in North Carolina.

I believe that you all in our Congress have one of the toughest jobs in our Nation today. You are being asked to fix our broken immigration system in the U.S., and to make sure that your legislation will provide a solution that will last for many years to come. I come before you today not as an expert in immigration law or border security. I am just one of 3080 Sheriffs across America that are asking for your help in solving our immigration and border security problem that impacts all of our citizens across the U.S. in many ways. What I can tell you about is public safety.

In 1990, I had my first encounter with illegal immigrants in my county. While on patrol we located (six) suspicious subjects camped out near the by-pass highway. It was determined that they were all in the U.S. illegally. When our area ICE agent was contacted, I was told that if we had not charged the subjects we had to release them. The ICE agents had no funds for transportation.

Fast forward, between 2011-2014. While working with the Triad D.E.A. Drug Task Force we arrested fifteen Mexican Drug Cartel associates within my county in North Carolina. During the investigative process, we located large amounts of Marijuana, Kilos of Cocaine, more than one Million dollars in cash, (five) AR-15 Rifles, and other assorted firearms in the possession of these persons that are not only affiliated with the Mexican Drug Cartel, but are committing criminal drug trafficking offenses within my county and state. The Sheriff in the county next to mine reported that they had (two) drug related execution style murders in the past seven years.

According to my last D.E.A. briefing, North Carolina is second only to the Atlanta Region in the South-East for drug trafficking routes by the Mexican Drug Cartel. These Drug Cartels are also reported to be operating in approximately 1200 cities within the U.S.. As I have explained to the citizens of my county it only takes two or three days traveling time for illegal drugs to travel from the border to anywhere in the United States, including rural Rockingham County, N.C..

In North Carolina, since October 2010, I have participated in the ICE "Secure Communities Program." Since that time, we have processed (233) persons that have been criminally charged and are residing illegally in the U.S.. Of those arrested, (9) Illegal immigrants previously removed by I.C.E. have returned to my county to be arrested a second time. Approximately 45% of those arrested that were found to be illegal were charged with D.W.I. offenses, 15% were charged with Assault, 5% for Rape/ Indecent liberties With Child, 1% Death by Motor Vehicle and (1) charge of Attempted Murder.

Issues at the Border Areas:

I personally have traveled to the South-West U.S. / Mexico border areas three times in the past four years. The purpose being to educate myself about local, State and Federal concerns regarding U.S. border security, drug trafficking, human trafficking, and illegal immigration activities. The South West

border is the primary point of entry for most illegal drugs and criminals associated with this business. Once they leave the border area they transition to my county in North Carolina and others States across the U.S. within only a few days.

Last summer, I traveled to the Rio Grande Valley of Texas, where almost 70,000 illegal immigrants, including unaccompanied children, were apprehended by Border Patrol agents. According to C.B.P. representatives most of the apprehensions were "Give Ups." The immigrants didn't try to avoid apprehension.

When visiting one Border Patrol station, I noticed several C.B.P. patrol trucks sitting idle at the station in the parking lot. An unidentified agent advised that the reason for all of the vehicles parked in the lot, instead of in the field, was that the agents were all tied up processing the family units and U.A.C.'s. He said they were overwhelmed.

When talking with the C.B.P. agents, the issue of the President's D.A.C.A. program came up and the border surge that they were experiencing at that time resulting in several thousand illegal immigrants crossing the border with Mexico originating from Central America. Approximately 86% of the border crossers apprehended in that area were from Central America.

I noted during the C.B.P. visit that some discussion came up about ways to curb the border surge crisis. There was mention about amending the 2008 "Trafficking Victims Protection Reauthorization Act," thus subjecting all illegal immigrant minors to expeditious return home if they have not been trafficked, and don't face the likelihood of persecution. This is exactly what Representative John Carter's bill does, and introduced in July of 2014 in order to deal with the border surge.

This bill would send a clear message to parents of these children there is no benefit to putting your children at risk by contracting with criminal smuggling organizations to bring your children to the U.S. illegally.

Who is profiting from last summer's border surge and human trafficking/smuggling business? I believe it's the Mexican Drug Cartel and human smugglers. I also understand that next to drug trafficking, smuggling human beings brings in the next highest amount of dollars from this criminal activity.

As you travel 65 miles North of McAllen, Texas you come upon a ranch owned by Mike and Linda Vickers. There is a C.B.P. checking station near their ranch. The Vickers have lived on this ranch for years. They told the visiting Sheriffs that when the President issued the Executive orders for the (D.A.C.A.) in 2012 that they started finding younger suspected illegal immigrants crossing their property.

What comes through the border doesn't stay there. In just hours, or a few days driving time, the drug trafficking, human smuggling and trafficking, illegal immigrants, and gang members enter my state, and other states. When you look at the D.H.S. annual summary of apprehensions, I ask this question. How many illegal immigrants and criminal offenders did you detect? How many others did you miss?

The Next Question: How can we restore the Rule of Law in Immigration Enforcement?

Our Congress needs to address the misunderstood issue of Detainers. Several of the Sheriffs across the U.S. have discussed concerns regarding detainers within the National Sheriffs' Association. I think we all know that ICE does not patrol our streets, and can't place an agent inside of every county jail in the U.S. to identify non-citizens who are arrested in our Communities because

we in local law enforcement are the ones who are most likely to make these encounters.

Regarding criminal aliens, we need a way to work together with ICE. To communicate, share information, and have a way to transfer custody of Criminal aliens to ICE. Regarding removal, the Secure Communities program was a huge improvement in the process and largely solved the problem of communications. The Detainers allowed us to complete the process efficiently and to avoid having criminal aliens slip between the cracks, and return to our communities, sometimes to flee and then to commit new crimes. Now, detainers are controversial, and many Sheriffs are concerned about lawsuits if they comply with the Federal detainers. Small counties like mine can't risk costly litigation like that even though we want to cooperate with ICE and do what we see as our duty as fellow law enforcement agencies.

We badly need our Congress to step in and clarify the authority of ICE to issue detainers, and our ability and obligation to comply with the detainer, just as we would any other law enforcement agency in connection with legitimate law enforcement action.

The "Gowdy Immigration Enforcement Bill" would do that.

My fellow Sheriffs and I have had the discussion of the problem of decreasing numbers of criminal aliens that have been taken into custody by ICE from our facilities. In my facility since 2010 only 66% of the incarcerated criminal aliens have had detainers placed on them by ICE. Basically only 154 picked up by ICE out of 233 criminal alien offenders.

Recently DHS Secretary Johnson has issued a memo for an updated priority offense list which indicates which current types of offenses will place a criminal alien in removal status. This priority list of offenders should concern all law enforcement officials.

The Gowdy Immigration Enforcement Bill will help us by ensuring that ICE lives up to its responsibility and role as a law enforcement partner by detaining and removing all of the criminal aliens that we work together to identify. It would give ICE more tools to make them more efficient and effective. For example it clarifies that gang members, drunk drivers, sex offenders, those who commit domestic violence, identity theft, fraud, and those who show contempt for our laws by failing to appear in court or abide by removal orders will not fall between the cracks.

There is the tragic case in California where two Sheriff's Deputies were recently killed by an illegal alien who had been deported at least once prior for criminal offenses, who apparently worked for the Mexican drug cartel, and had a record of multiple serious traffic violations in Utah. This should illustrate why ICE Interior enforcement is a necessity in the U.S.

"On Notification of Criminal Aliens to ICE"

What I want as Sheriff, and what my citizens in Rockingham County want, is to know that ICE Agents will be able to do their job and will actually take custody of and seek to remove the illegal aliens who are committing crimes in my county.

I have read the Gowdy Immigration Enforcement Bill, and I have listed a few points of interest:

1. This Bill empowers all law enforcement in America to cooperate in the process of making our communities safer as a force multiplier.
2. This Bill gives our Federal ICE agents the Congressional backing they need to carry out their duties to enforce our Nation's immigration laws as they should be.

3. This Bill reduces the chances of criminals of all types including gang members, aggravated Felons and Sex offenders from receiving or benefiting from protected status.
4. This Bill places oversight and accountability on the Secretary of DHS for decisions being made regarding interior immigration enforcement.
5. This Bill Establishes an ICE Advisory Council to advise the Congress and ICE on ways of improving enforcement, addressing the needs of ICE personnel, and assessing the effectiveness of enforcement policies.

Representative Gowdy's bill will in my opinion restore the "Rule of Law" in immigration enforcement in America as well as the authority reserved for ICE Agents to conduct proper interior immigration enforcement with those powers protected by Congressional legislation.

Mr. Chairman, I personally think that Mr. Gowdy's Bill and its provisions it covers are a tremendous step in the right direction in interior immigration enforcement. I look forward to assisting you all in this proposed legislation. I believe it to be a promising piece of legislation in the bigger picture of immigration reform.

Mr. Chairman, I have included an attachment from the National Sheriffs Association Position Statement on Comprehensive Immigration Reform for your review. It was adopted by the NSA Board of Directors on June 25, 2013.

THANK YOU AND I LOOK FORWARD TO ANSWERING YOUR QUESTIONS.



Sheriff Sam Page
Rockingham County, North Carolina

Mr. GOWDY. Thank you, Sheriff.
Dr. Morris?

**TESTIMONY OF FRANK L. MORRIS, SR., MEMBER, BOARD OF
DIRECTORS, PROGRESSIVES FOR IMMIGRATION REFORM**

Mr. MORRIS. Thank you, Mr. Chairman, Members of the Committee.

I welcome this opportunity to speak today on behalf of many American voices are not heard in the immigration debate. But the focus on comprehensive immigration reform, the focus is of course on those who are undocumented. But what about the American citizens? And that is what I want to talk to you about.

I want to talk to you while we have 8 million illegal——

Go ahead and try it now?

Okay.

Since we have more than 8 million illegal workers in jobs which they were not supposed to be able to get, this is not the way it is supposed to be. And, at the same time, we have more than 9 million American workers seeking any kind of employment and another 6 million seeking full time employment. The whole purpose of immigration law, which has been exacerbated because we have not had effective internal enforcement, has been that the American citizens are really second class citizens in this debate.

Myths, which predominate, which have dominated this debate have worked all to against the American citizens. Myths that the workforce of the illegal workers are doing jobs Americans won't do when, in reality, as I point out in my paper which I hope will be included in the record, especially in construction jobs, the jobs which 83 percent of them are American workers, that somehow there is the assumptions that, when we are talking with the illegal workforce, there's exemptions from the law of supply and demand and labor. That if you don't have—if you have a tremendous increase in supply, you won't have either wage depressing the fact or especially for Black workers, a labor substitution effect. That's fallacious.

That immigrant workers are the workers that are disadvantaged when in fact, if you see that immigrant workers have an average family income of about, illegal immigrant workers have about \$36,000 a year. African American families have an income of \$32,000 a year. I mean, a whole aspect that there has been a fact of privilege, a legal privilege, for a non-citizens that trump the citizens of America while we have the pressing effects of the contact of the criminal and the civil justice system with illegal workers, American workers, as I point out, are at a tremendous disadvantage.

Many worker with any kind of contact with the criminal justice system is that it leads to an exclusionary employment effect. How can we have this kind of double standard? American workers, when citizenship is devalued, is especially sensitive to Black Americans; where citizen costs were tremendous. And when laws are not enforced to protect the citizens of status, this an egregious violation of justice.

You know, one of the things that underlies these myths is the assumptions that American workers, if they are not working, it some-

how due to personal responsibilities. The ignoring of the competition, especially to Black workers, and this goes all the way back to the National Academy of Science document, our common destiny, the workers in the areas that are in competition with Black workers, Black workers that are tremendous and Black families that are tremendous disadvantage.

The result of this is that we have unique violations of law. The President's executive order gives non-citizens who benefited from the violation of the laws and the non-enforcement of the labor laws the fruit of the poison tree. They are able to continue working while we have the still high American unemployment. Where is the justice, as I ask the Judiciary Committee?

That's basically my contention. I welcome your questions. I hope that you will see my statement where I document these contentions in much more greater detail.

Thank you.

[The prepared statement of Mr. Morris follows:]

Testimony of Frank L. Morris PhD
 Progressives for Immigration Reform
 Retired Graduate Dean, Professor and Senior Foreign Service Officer

United States House of Representatives
 Committee on the Judiciary
 Subcommittee on Immigration and Border Security
 February 11, 2015, Rayburn House Office Building 2141, 1 PM

Interior Immigration Enforcement Legislation

Introduction

I would like to thank the chairman of the subcommittee, and all members of the Judiciary Committee for the opportunity to speak on behalf of many vulnerable American workers to support these immigration enforcement bills. They begin to address the egregious injustice which has de facto allowed illegal migrant workers to evade the letter and intent of American immigration, labor, and criminal justice laws such as working with, cooperating with, and paying international human smugglers. American laws are meant to protect American workers and keep our communities safe. When civil or criminal laws are not enforced against any group or class for any reason, that group or class has a de facto privileged status under American law, whether formally recognized or not. When that privileged status goes to noncitizens who benefited from breaking labor and immigration laws by working, this surpasses any similar benefit available to American citizens.

As an African American this is a particularly sensitive issue for me. First, African Americans have paid dearly for the long fight for equal citizen benefits. African Americans have long suffered in the past from the stringent enforcement of American laws such as those enforcing segregation, and when some of these citizen benefits evaporate because labor, immigration, and civil and criminal laws are not enforced against noncitizens, this breach against the American birthright should not be allowed to continue. Modern social science has linked the effects of increasing illegal immigrants working in fields where African Americans work to measurable negative effects on African American workers. These measurable effects show a correlation of higher immigration with low wages and increased incarceration.

This injustice is further compounded because vulnerable low-skilled workers who are disproportionately African American are denied access to jobs that should be available to them but are not, because American laws are not adequately enforced, especially in the interior of the United States away from the borders. The portions of Mr. Gowdy's interior enforcement bill that grant state and localities the authority to enforce immigration laws and the portions which protect American communities from dangerous criminal aliens would be no-brainers and not be needed if illegal alien workers had not achieved this privileged status evading the enforcement of immigration and labor laws. While illegal worker contact with the American criminal justice system is suppressed, ignored or devalued, the African-American community contact with the criminal justice system is enhanced and in contrast becomes a major factor in the denial of employment opportunities.

Immigrant Worker Privilege Versus African American Citizenship

The greatest evidence of illegal immigrant worker privilege is the fact that these workers who have violated immigration and labor laws (and possibly document fraud laws) are able to keep jobs they were never eligible to get in the first place. I define immigrant worker privilege as basically the non-enforcement of laws or sanctions for the protection of American workers toward the overwhelming majority of illegal migrant workers.

The false contention that “immigrants take jobs Americans won’t do” would be correct if it stated “immigrants take jobs Americans can’t get.”¹ Contrary to popular belief, American workers are the overwhelming majority in all the major fields of immigrant employment -- specifically construction, the services, and light manufacturing. The fact that 83% of all construction workers in America are American demonstrates how fallacious the immigrant employment myth really is. The use of illegal migrant workers in construction in lieu of young African American workers is a source of both frustration and despair in African-American communities. The critical section of Mr. Gowdy’s bill that grants states and localities the authority to enforce immigration laws can be a vital tool for the local African American activists and local political leadership to start to bring construction jobs home.

The recent testimony by our IRS Commissioner John Koskinen before a U.S. Senate subcommittee further reinforces how the illegal worker privilege further trumps the needs of American citizens who did not get access to the jobs held by the illegal immigrant workers. Koskinen testified that those millions of illegal workers who will benefit from the announced deferred deportation will not only get the right to keep their jobs with work permits, but they will also be eligible to collect billions of dollars from the U.S. Treasury in the form of retroactive earned income tax credits (EITCs). The clear intent of Congress was not only that illegal immigrant workers should not be working but also they were clearly never expected to be recipients of our income tax credits. Meanwhile there is no response toward American citizens who will be denied both the jobs and the earned income tax credits.

The Asylum Reform and Border Protection Act of the last Congress (HR 5137) had some provisions that need to be enacted to offset some of the illegal immigrant worker privilege in contrast to American citizens. American citizens should not be penalized for involvement in the criminal justice system while illegal immigrant workers, gang members, and illegal alien parents who game the system by placing children at risk with smugglers evade legal consequences for their actions. This legislation would keep out and help remove gang members. Being against this proposal implies we don’t have enough gang members of our own. Other provisions such as the non-preferential treatment in asylum cases, the clear definition of an unaccompanied minor, and federal agency information-sharing need to be enacted.

¹ Steven A. Camarota. “From Bad to Worse: Unemployment and Underemployment Among Less Educated US-Born Workers, 2000 to 2010.” Washington DC. Center for Immigration Studies. August 2010.

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In contrast, between 70 and 100 million American citizens pay heavy costs for their involvement in the criminal justice system resulting in lifelong socioeconomic challenges. But now let's examine the scale of this injustice in greater depth.

In contrast to illegal alien workers, extensive contact of the African-American community with the criminal justice system leads to inferior labor market opportunities and can cause increased criminal behavior. Some recent researchers have noted that this is an issue whose consequences extend beyond the inmate to destruction of families and communities.² There is no doubt of its disproportionate impact on the African American community.³ A Center for American Progress report estimates that 87% of employers, 80% of landlords and 66% of colleges use criminal and credit background checks to screen and/or eliminate applicants. There is another equal justice concern of how this disproportionately impacts African-Americans in contrast to illegal alien workers. There are millions of people and especially a great many African-Americans who been arrested-- even for exercising their constitutional rights to protest--- and were never convicted or incarcerated but still carried the strain of having criminal charges come up in a background check. Illegal immigrant workers should not be able to avoid enforcement of American laws, nor should they be denied negative consequences for contact with the criminal justice system while American citizens, especially African American citizens, pay a heavy price. These bills are steps in the right direction but the focus of American laws should first be to benefit American citizens.

As significant as the privilege of non-enforcement of American laws are in criminal justice for illegal immigrant workers in comparison to American citizens, their economic benefits by providing, in fact, preferential job access is even more significant. Let us now take a look at the benefits from working by illegal migrant workers when American workers not able to find employment.

Economic Benefits of Illegal Alien Worker Privilege and the Costs to Low Skilled American Workers

It is important to point out that the economic environment for the American middle, working, and poor classes has been declining during the last four decades of high legal and illegal immigration. Millions of American jobs disappeared in the 1990, 2001 and 2008 recessions.⁴ Many of these jobs were manufacturing and middle-skill jobs that have not returned. These losses were not solely due to immigration but primarily to increased capital-intensive automation and outsourcing of increasingly higher order tasks. One result of the loss of these jobs for the middle class has been more competition for the former middle class workers with those seeking jobs requiring less skill and less pay. One result of this is that wages for the median family have not increased in real terms in more than 40 years,

² Robyn J.A. Cox. "Where Do We Go From Here? Mass Incarceration and the Struggle for Civil Rights," Economic Policy Institute, January 16, 2015.

³ See Michelle Alexander, The New Jim Crow: Mass Incarceration in an Age of Color Blindness, The New Press, New York, 2012.

⁴ Jim Tankersley, "Moonlighting To Keep Up," Washington Post Weekly, January 11, 2015, p.14.

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even though workers have become more productive.⁵ If this wasn't enough, we are still experiencing the loss of retail employment as more and more move online for shopping and purchasing.

The pressure on American jobs from outsourcing during our period of globalization requires special mention. Increasingly American outsourcing has impacted not just the call centers and less-skilled employment, but increasingly is affecting more skilled employees such as architects, engineers, and medical image analysts. One of the best estimates is that between 22 and 29% of all U.S. jobs are or will be potentially offshorable within a decade or two. We're talking about possibly between 28 and 34 million jobs. Furthermore, there seems to be no correlation between an occupation's offshorability and the skill of its workers as measured in either educational attainment or wages.⁶ What this means is that all jobs, especially less-skill jobs, do not face skill shortages that require immigration. It also means that jobs that require less skill are increasingly important for Americans who have no other choices. The proposed legislation is a step in the right direction if adequately enforced.

One of the greatest results of immigrant privilege is immigrants, including illegal immigrants, have a higher median household income than African-Americans. Census figures show that median African American household income as of 2010 was \$32,000 while the latest figures for median immigrant income was almost \$36,000. Both of these figures are from the Bureau of Labor Statistics March 2011 consumer price survey, which asked about income in the prior calendar year.⁷ Best estimates of the number of jobs held by illegal immigrant workers is more than eight million.⁸ This is while many African Americans and almost 10,000,000 Americans search for a job.

High rates of illegal immigrant employment have been clearly tied to measurable negative impacts on the African American community. Scholars have found a correlation between immigration, black wages, and black incarceration rates. Correlation demonstrates an association but not causation. Yet the impacts are measurable. Labor is not exempt from the law of supply and demand. When immigration increases the supply of workers in a skill group that competes with black workers, wages for the black workers fell, the employment rate declined, and the incarceration rate rose. One study suggested that a 10% increase in illegal immigrant workers resulted in a reduction of black worker wages by 3.6%, a lowered employment rate of black men by 2.4%, and an increase in the incarceration rate by a full percentage point.⁹ If African-Americans are going to be incarcerated because of factors exacerbated by immigration, surely we need interior enforcement laws such as the ones before this sub-committee, to protect American communities from dangerous criminal aliens, reduce gang membership, stop

⁵ Ibid.

⁶ Alan S Binder, "How Many US jobs Might Be Offshorable?," World Economics, Vol.10, Number 2, 2009, pages 41 to 78.

⁷ Census data at <http://www.census.gov/prod2011pubs/p60-239.pdf>. See also http://www.cis.org/sites/cis.org/files/articles/2012immigrants_in_the_united_states_2012.pdf.

⁸ See Pew Hispanic Center data at http://www.pewhispanic.org/files/2014/11/20/14-11-18_unauthorized-immigration.pdf.

⁹ George Borjas, Jeffrey Grogger, and Gordon Hanson. "Immigration and African American Employment Opportunities: the Response of Wages, Employment and Incarceration to Labor Supply Shocks." National Bureau of Economic Research Working Paper number 12518.

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inadmissible aliens from gaming the system, and end the preferential treatment for asylum applicants over other immigrants compliant with the law.

Addressing the Border Surge

African-American communities expressed among themselves the fact that many Americans identified with the mass migration of Central American children of illegal aliens was another example of immigrant privilege. Many Americans did not seem to show an equal sensitivity and concern about the vulnerability of many American citizens, especially African American citizens, to gang violence in places such as Chicago, Los Angeles, and other gang hotspots.

The Obama administration continues to value preferential rights for illegal immigrant families by requesting that taxpayers fund lawyers for what are basically civil immigration cases. This is a time when poor and working class Americans need all the legal help they can get in facing numerous civil matters that are often exacerbated by the lack of jobs and competition with illegal immigrant workers.

The legislative proposals we are discussing today address the inequity of taxpayer-funded attorneys for civil matters, and the unfairness of preferential asylum claims not available to other aliens who abided by our laws. The short-circuiting of the critical fear of prosecution should not be tolerated because it devalues its use by legitimate victims.

Conclusion

In most of the examples above I have focused upon the need for better enforcement of immigration laws to reduce the labor market impact caused by illegal immigration. Considering that there are approximately 1.8 job applicants for every available job and more than 1.5 million Americans who drop out of the workforce because they have long sought jobs without success, Congress urgently needs to move these bills forward.

Mr. GOWDY. Yes, sir. All of your opening statements will be made part of the record.

Mr. Cadman?

**TESTIMONY OF WALTER D. (DAN) CADMAN, SENIOR FELLOW,
CENTER FOR IMMIGRATION STUDIES**

Mr. CADMAN. Chairman Gowdy, Ranking Member Lofgren and other Members, thank you for the opportunity to discuss immigration enforcement at the border—

Mr. GOWDY. Is your microphone on?

Mr. CADMAN. Am I there?

Mr. GOWDY. I think so. Yes, sir.

Mr. CADMAN. Thank you for the opportunity to discuss immigration enforcement at the border and in the interior and to address the three bills being considered.

I believe they go far toward restoring a credible immigration policy. We are on the verge of a de facto go-free zone wherein almost everyone who manages to get past the first defenses of the Border Patrol can live and work unlawfully with little to fear in the way of consequences. What good is a picket line at the border, whether human or technological, if we do not enforce immigration laws in the interior? Congress can alter this course of events and restore effective immigration enforcement.

Bills focused solely on border enforcement will prove ineffectual if the country is to regain control because a borders-only focus doesn't address the pull factors contributing so strongly to illegal immigration. But, at the border, it is important to deter migratory waves, deal promptly with arrivals, and rapidly repatriate all but those who truly fear persecution.

When rubber-stamped, credible fear claims encourage future waves to make the trek and they create a climate of compassion, fatigue, and cynicism. We witnessed such a wave in the Rio Grande Valley several months last year and it was not handled effectively.

The Carter and Chaffetz bills address these issues by establishing fast track resolution of cases, creating new rules for handling asylum claims, and modifying those parts of the Wilberforce laws such as disparate treatment between juveniles from contiguous versus non-contiguous Nations.

The bills amend flaws in the way special immigrant juvenile status is defined and create baseline standards for identifying those who come forward to take custody of juveniles from Health and Human Services.

Most importantly, they take the government out of the morally repugnant business of facilitating and thus encouraging the smuggling of alien minors into our country by acting as the facilitators who deliver the load to its final destination while taking a hands-off approach toward the parents who put their children at such great risk to begin with by hiring smugglers who are often members of violent cartels.

Ineffectual interior enforcement presents a danger to public safety through misuse of prosecutorial discretion. Officers must justify at length and in detail why they should be allowed to take enforcement action because discretion is the new norm leaving many alien

criminals flying under the radar of DHS's misplaced priority system which it justifies as a resource conservation exercise.

The DHS secretary has dismantled the Secure Communities program which used modern technology to quickly identify alien criminals in a cost-effective way pushing ICE agents back to pre-electronics days having to rely on paper and faxes in a laborious, ineffectual manner guaranteed to result in more criminals slipping through the cracks.

The secretary has also ended use of immigration detainers, freeing alien criminals to re-enter communities and to reoffend, leaving in their wake many more innocent victims; victims such as Niche Knight of Philadelphia, Briana Valle of Illinois, and off-duty Border Patrol agent, Javier Vega, Jr., and forcing ICE agents to spend time, energy and limited resources, all of which the Administration claims it wants to conserve in order to track them down.

At the same time, hundreds of jurisdictions refuse to honor ICE detainers while they collect millions of taxpayer dollars via the SCAAP Program. Many ceased honoring detainers because of lawsuits real or threatened while ICE abandoned its partners to face those suits alone even declining to file amicus briefs.

The Gowdy bill acknowledges the inter-play of Federal, State and local interests where immigration is concerned. It recognizes that State and local governments have a right to take a hand in controlling illegal immigration given its adverse impact on their limited police, health, fire, emergency and social service resources. And, conversely, that ICE agents have the right to expect cooperation instead of sanctuary policies that obstruct.

Among other things, the Gowdy bill restores detainers, reinstates the Secure Communities program, reinvigorates the State and local role in shared policing efforts, provides them immunity to the same extent as Federal agents, expands categories of removable criminal aliens and creates new standards for detention of dangerous criminals.

Significantly, both the Gowdy and Chaffetz bills establish a highly desirable new enforcement provision for designating violent criminal gangs such as MS-13, whose alien members and associates would be removable and ineligible for any kind of relief or benefits upon designation of the gang.

Thank you.

[The prepared statement of Mr. Cadman follows:]

Interior Immigration Enforcement Legislation
Committee on the Judiciary
United States House of Representatives
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Statement of Walter D. (Dan) Cadman
Center for Immigration Studies

INTRODUCTION

Good afternoon, Chairman Goodlatte, Ranking Member Conyers, and other Members of this Committee. Thank you for the opportunity to address the importance of immigration enforcement, not just at the border but also in the interior of the United States, and three key pieces of legislation that are being considered in that regard.

A colleague at the Center for Immigration Studies testified at a prior hearing before this committee a week ago, on the perilous state of interior immigration enforcement in our country today.¹ We are on the verge of having created a de facto “go-free zone” wherein almost everyone who manages to get past the first defenses of the Border Patrol directly at the border lives and works unlawfully, with almost nothing to fear in the way of consequence for their action.

By way of example, in the recent Senate confirmation hearings of Loretta Lynch, designated by the president to be the next attorney general, said this about aliens working illegally: “I believe the right and the obligation to work is one that’s shared by everyone in this country, regardless of how they came here. And certainly, if someone is here — regardless of status — I would prefer that they be participating in the workplace than not participating in the workplace.” The problem with this statement is that jobs are a primary magnet which draws aliens to cross the border illegally—or enter as tourists, students, or in other nonimmigrant categories and violate the conditions of admission by working without authority.

What good is a picket line at the border, whether human or technological or some combination of the two, if we are unwilling to enforce the immigration laws in the interior? Yet, in the past several years—specifically, since initiation of the “no workplace enforcement actions” policy of 2009²—immigration enforcement against employers, to ensure that only authorized workers are employed, which was unsteady and underutilized to begin with, has become a nullity.

¹ Statement of Jessica M. Vaughan, “Examining the Adequacy of Our Nation’s Immigration Laws”, U.S. House Judiciary Committee Hearing, February 3, 2015.

² Memorandum of Marcy Forman, Director of Investigations, Immigration and Customs Enforcement, “Worksite Enforcement Strategy”, Apr. 30, 2009. <http://www.docstoc.com/docs/18725768/ICE-Enforcement-Strategy-Memo-Marcy-Forman-April-30-2009>

The president in recent statements has said he wishes to focus on the plight of the middle class, which is increasingly squeezed and, although unemployment figures are down, finds itself working for less money, in less desirable jobs (often more than one to make ends meet), and with less benefits, because of many pressures—not least of which is having to compete against alien workers who have no right to be here in the first place. Yet, as recently discovered through Freedom of Information Act requests, the administration has granted more than 5.5 million employment cards to aliens since 2009³; a superabundance of those employment authorizations were granted to aliens who crossed the border illegally or overstayed their visas.

Whether by deliberation or inadvertent consequence on the part of the administration, as millions of aliens start receiving the cornucopia of benefits to be accorded them under the president's "executive action" programs, the position of the working middle class will be worsened. Aliens now working in the shadows and under the table will no longer be willing to accept such conditions when they receive their work authorizations. But this doesn't mean that employers addicted to cheap, exploitable labor will be weaned from their dependence; rather, they will turn to unscrupulous middle men and alien smugglers to replenish their work crews with new individuals who won't meet the criteria for the president's programs—at least, not until they can find vendors of bogus documents to help them establish a phony right to apply under the new programs.

In essence, the compound effect of the administration's acts will be to establish a giant slot system in which aliens moving up the "legalization ladder" will simply be replaced by other, newer border crossers and visa violators. Try as I might, I cannot reconcile the fundamental disconnect between an expressed concern for the middle class, which forms the backbone of America, versus the willingness and commitment of the administration to fundamentally undercut their wellbeing in the jobs market.

But it is not just in the area of worksite enforcement that interior immigration enforcement has suffered. In her testimony a week ago, Ms. Vaughan spoke eloquently and in detail to the dangers to public safety which have been engendered by misuse of prosecutorial discretion, which has been turned on its head from an occasional act of ministerial grace accorded to those few with significant mitigating circumstances, to one of requiring officers to justify, at length and in detail to their superiors, taking enforcement action in lieu of said "discretion".

What is more, a key public safety program that takes advantage of modern electronic technologies and connectivity—the same kind of technologies routinely used by citizens today in their multiplicity of computers, smart phones, tablets, and other devices—to quickly and

³ Jessica M. Vaughan, "Government Data Reveal 5.5 Million New Work Permits Issued Since 2009", Center for Immigration Studies, Feb. 2015. <http://cis.org/government-data-reveal-millions-of-new-work-permits>

effectively identify alien criminals in a cost-efficient and work-saving way, has been dismantled. I am speaking of course of the Secure Communities program. This dismantling pushes the efforts of ICE agents back to pre-electronics days, in which they have to rely on paper and faxes to obtain and exchange information in a laborious and time consuming manner.

Along with Secure Communities, the Secretary of the Department of Homeland Security (DHS) has also effectively ended the use of immigration detainers to hold such identified criminals, giving them the freedom to re-enter communities and re-offend, leaving in their wake many more innocent victims, and also putting at further risk the safety of the immigration officers who will be obliged to spend needless time, energy, and limited resources to find them in order to place them into immigration proceedings, rather than receive them in a secure custody setting such as the county jail in which they were being held.

The directive from the Secretary followed an inexplicable and legally unsupported assertion from an acting director of Immigration and Customs Enforcement (ICE) that state and local compliance with such detainers was voluntary, although there are sound reasons to believe otherwise. As a consequence of this pronouncement, plus ICE's concomitant declination to weigh in on the side of law enforcement agencies who are sued for honoring detainers, over 300 state and local jurisdictions now elect not to honor them at all, or only under certain conditions, even as they collect millions of federal taxpayer dollars under the State Criminal Alien Assistance Program (SCAAP), which provided grants totaling more than \$161 million in federal fiscal year 2014 alone.⁴

Yet even before the Secretary's memorandum, DHS and ICE leaders had done incalculable damage to this critical tool in the apprehension of alien criminals through prosecutorial discretion and "prioritization" criteria. There are many reasons to believe that the rise in criminal alien removals was directly related to a robust Secure Communities program and effective use of detainers, and that the decline in those numbers that we are now witnessing is the result of policies initially designed to inhibit, and now to end them entirely.

Through its legislative prerogatives, Congress holds in its hands the capability to alter the current deleterious course of events, and restore balanced and effective immigration enforcement in the United States. However, bills focusing solely on border enforcement will prove ineffectual if the country is to regain control of immigration and establish a fair-but-lawful system of entry and residence, because a borders-only focus does not address the pull factors contributing so strongly to illegal immigration. Further, even in the context of border enforcement, there must be recognition of the importance of deterring migratory waves, including vulnerable minors, by dealing promptly with arrivals and rapid repatriation in all but the most pressing of cases such as

⁴ Source: U.S. Department of Justice, Bureau of Justice Assistance website, at <https://www.bja.gov/Funding/14SCAAPawards.xls>

those truly in fear of persecution. Credible fear claims made by border crossers in the thousands which are rubber-stamped by the bureaucracy encourage would-be migrants to make the trek in hopes of arriving at our borders, demean the asylum system, and put legitimate claimants at risk by creating a climate of compassion fatigue and cynicism on the part of the public.

There are three bills which were introduced into the House during the 113th Congress that merit careful consideration, because they would go far toward restoring a credible immigration policy—

- The Protection of Children Act (H.R. 5143);
- The Asylum Reform and Border Protection Act (HR. 5137; and
- The Strengthen and Fortify Enforcement Act (H.R. 2278), introduced by Immigration and Border Security Subcommittee Chairman Trey Gowdy.

THE PROTECTION OF CHILDREN ACT

This bill, H.R. 5143, was introduced by Representative John Carter on July 17, 2014 as a consequence of the surge of tens of thousands of Central Americans crossing into the United States over the course of months, primarily in the Rio Grande Valley of Texas. The bill aims to correct some of the deficiencies of existing law which came into sharp focus as a result of the surge.

The bill amends Section 235 of the Trafficking Victims Protection Reauthorization Act (otherwise known as the "Wilberforce Act"), dealing with unaccompanied alien children in several significant ways:

- First, it eliminates the invidious distinction between minors from countries that are contiguous versus noncontiguous to the United States, while at the same time authorizing the Secretary of State to engage in repatriation agreements with any appropriate countries, instead of limiting them to certain noncontiguous nations. This is significant because such agreements establish baseline standards for return and reintegration of children into the societies from which they came.
- Second, it establishes a "speedy trial" requirement for children who may be victims of severe forms of trafficking so that their cases will be fast-tracked before immigration judges without undue delay. This provision mandates that such cases be initiated within 14 days.
- Third, it specifies that although children in proceedings should be represented by counsel to the greatest extent possible, it must be "at no expense to the government."
- Fourth, this section establishes identification standards, as well as information sharing protocols between Homeland Security and Health & Human Services, to minimize the possibility that alien minors will be placed into the hands of inappropriate caregivers, abusers, or traffickers.

- Fifth, having eliminated the distinction between contiguous and noncontiguous countries, Section 2 clarifies the expectation as well as the legal basis for prompt return of minors to their countries of origin.

Significantly, the bill also amends Section 101(a)(27)(J) of the Immigration and Nationality Act (INA), dealing with the definition of special immigrant juveniles. The bill clarifies that only those juveniles who cannot be reunified with either parent (as opposed to both parents, under current law) may qualify for Special Immigrant Juvenile green cards.

Finally, the bill amends asylum law to divest asylum officers of initial jurisdiction in cases involving unaccompanied alien minors and instead invest jurisdiction solely with immigration judges. This is consistent with other provisions of the bill by introducing a streamlined procedure in which minors' asylum applications may be heard in a single forum, thus eliminating delays in full and final adjudication of their cases.

This bill confronts the reprehensible fact that through its policies and practices, the federal government has become a major facilitator in the business of smuggling minors. In a scenario repeated thousands of times, it goes something like this: Central American parents living and working illegally in the U.S. send remittances back to their home country for the express purpose of having their children smuggled northward. Smugglers move them through the perilous journey and, if nothing untoward happens, deliver them on the U.S. side to be united with relatives. If the children are apprehended, then the government itself moves the children onward to be united with relatives, no questions asked. This has become so well known that, for their part, smugglers are just as likely to deposit their loads of minors or families at crossroads proximate to the border so that they can be found by Border Patrol agents, thus conveniently relieving the smugglers from the burden of transporting the children on American highways, with the concomitant chance of exposure and arrest such ventures carry. And, because the illegal parents face no consequence for their part in having initiated the enterprise, word spreads and others do the same, at great risk to the children.⁵

How many perish in the jungle lowlands and highlands in Central America, or in the heat of the Mexican desert because they can't keep up? We don't know. How many die from illness, dehydration, hypothermia, accidents or murder? We don't know. In the shadowy world of commerce in human beings, there is a thin line between smuggling and trafficking: how many children whose smuggling is arranged by parents end up being diverted into lives of abuse in the sex or drug trades? We don't know. On this side of the border, we don't always even know with

⁵ For examples, see my blogs for the Center for Immigration Studies, "The Reality of Childhood Arrivals: Seamy, not Dreamy" <http://www.cis.org/cadman/reality-childhood-arrivals-seamy-not-dreamy>, Dec. 16, 2013; "Uncle Sam, Coyote Extraordinaire" <http://www.cis.org/cadman/uncle-sam-coyote-extraordinaire>, Dec. 19, 2013; and "Criminals Without Borders" <http://cis.org/cadman/criminals-without-borders>, Jan. 2, 2014

certainty whom the children are being tendered to. The bill requires an inquiry into the status of those persons, and initiation of proceedings if they are unlawfully in the U.S. Critics will say this will deter parents from coming forward. Perhaps. But the alternative is for the United States to continue facilitating the movement of human beings as cargo, even while we lecture the rest of the world as to their obligations to halt human smuggling and trafficking. The moral imperative is clear: our government should undertake no policy or practice that puts more children at risk.

There appear to be two ways in which the bill might be improved, however. One is by amending the definition of “immediate relative” in the INA to exclude the parents of any individual who is accorded special immigrant juvenile status. This would prevent such special immigrants, once reaching the age of majority, from petitioning for the parents who abandoned them.

The other is by adding to the identity requirements the bill imposes on individuals who will assume custody of minors to include biometric data. Our nation is awash in a sea of fraudulent documents, many of them used by aliens, but biometric data is inescapable. Consider that when an American citizen seeks to adopt a foreign child, he or she is subjected to a battery of homesite studies, fitness examinations, and submission of fingerprints and photographs with which to conduct background checks. Why should the standards be any less rigorous for unaccompanied minors, or minors who are to be tendered into the hands of ostensible parents or relatives?

THE ASYLUM REFORM AND BORDER PROTECTION ACT

This bill, H.R. 5137, was introduced by Representative Jason Chaffetz, Chairman Goodlatte, and others, on July 17, 2014.

Unaccompanied Minors and Surges

The bill shares common goals with the previously-discussed Carter bill in that both take significant legislative steps to ensure that any future surges are met with a more effective response than was the case occurring most recently in the Rio Grande Valley. Both bills share many common features although they sometimes take a different approach. For instance, H.R. 5137—

- Also eliminates the distinction between contiguous and noncontiguous countries, but uses the word “shall” rather than “may” in discussing the authority of the Secretary of State to negotiate repatriation agreements with other nations.
- Amends the abysmally low standard presently used by asylum officers in finding a “credible fear” of return for purposes of claiming asylum – a standard that has been susceptible to fraud and abuse in recent years. This section of the bill would require a finding threshold of “more probable than not”, and would apply to all aliens claiming a fear of return, not just unaccompanied alien minors. (This approach differs from that of the Carter bill, which divests asylum officers of credible fear reviews.) One wonders whether the change of language will suffice. Credible fear was established in the law as a way to filter fraudulent

claims, not to foster them, yet as the bill's sponsors observe, in 2013, 92% of claims were approved. The percentage has since dropped, but whether adequately to reestablish the worth of this pre-test remains an open question.

- Establishes standards for recording and preservation of interviews of aliens by arresting and processing officers who initiate expedited removal, as well as by asylum officers conducting credible fear interviews.
- Establishes a mandatory information-sharing protocol by requiring HHS officers to provide information on the whereabouts of children it has placed, and the caregivers with whom they have been placed, but does not establish baseline standards for identifying those caregivers prior to giving them custody of the child.
- Streamlines the repatriation requirements levied by Wilberforce, but does not require commencement of immigration judge hearings for unaccompanied minors within 14 days.
- Modifies the special immigrant juvenile provisions to make clear that a child with one parent capable of providing care is ineligible for that status, and also specifies that minors will not be considered as “unaccompanied” if there are responsible family members (such as grandparents, aunts and uncles, older siblings) available and able to care for the child. This is significant in closing another loophole of existing law, through recognition that there are often extended family members of aliens, just as there are with citizens, who are capable caregivers.
- Clarifies and emphasizes that legal representation of aliens, including unaccompanied minors, shall be at no expense to the government, but does so by modifying existing Section 292 of the INA, rather than embedding the language inside the Wilberforce provisions as the Carter bill does.
- Levels the playing field by specifying that unaccompanied minors will have their asylum claims examined and granted or denied in exactly the same manner as any other asylum applicants, whether those applicants are adults or minors.
- Affirms the concept of “safe third country” removals, without the necessity of bilateral agreements, so that aliens may be placed into the care of other nations, e.g. to seek asylum or other possible benefits, as an alternative to repatriation to their country of nationality on one hand, or remaining in the U.S. on the other.
- Incrementally provides, over the course of three federal fiscal years, for an increase in the number of immigration judges and trial attorney prosecutors available to conduct removal proceedings in relation to the border surge.
- Requires the Secretary of State to halt foreign aid to nations which are the source countries of large flows of aliens, particularly unaccompanied minors under the Wilberforce Act, when those countries either refuse to negotiate a repatriation agreement or decline to accept the return of their nationals. Many will agree with this proviso; others will object vigorously to tying of foreign aid assistance to immigration policies. One possible middle-ground approach is to amend the language to exempt certain forms of fundamental humanitarian aid such as medical supplies, or, alternatively, to require a halt only to certain forms of foreign

aid such as the Central American Regional Security Initiative (CARSI) or other similar programs.

Considered in sum, there are a substantial number of unaccompanied minor and surge-related provisions within this bill and the Carter bill that make them well worth reintroduction but the conflicting approaches (such as the elimination of initial jurisdiction of asylum officers in one bill, but not the other) will need resolved.

Parole

In an area unrelated to unaccompanied alien minors and cross-border surges, the bill redefines immigration parole consonant with its original, limited statutory intent and usage, making it harder for this, or any, administration to rely on a dubious interpretation of the parole authority as however broad the executive branch asserts it to be.

Critically, the bill states clearly that grant of parole does not constitute admission to the United States. This technical amendment is designed to close the interpretive loophole by which aliens granted parole seek to adjust status to permanent residence even though their initial parole was ostensibly limited in scope and purpose and never intended to provide the opening to remain permanently or indefinitely. Some courts have already construed parole to equate to an admission in their decision-making. Without this technical fix, many of the thousands of aliens who are or will be recipients of liberal grants of parole will seek to adjust status contrary to Congressional intent.

The bill also requires the Attorney General and the DHS Secretary to provide periodic reports to Congress on use of the parole authority. (This provision might be strengthened by also requiring the independent Government Accountability Office to provide periodic reports on the subject matter.)

Designated Criminal Gangs

The bill establishes new and specific grounds of inadmissibility and deportability for aliens who are members or associates of designated criminal gangs. The designation process is similar to that in current law relating to designation of terrorist organizations (Section 219 of the INA). This section also ensures that gang members and supporters will be ineligible for a host of other immigration benefits such as asylum withholding of removal, temporary protected status, special immigration juvenile visas, etc.

The bill also provides for mandatory detention of members of designated criminal gangs during removal proceedings, although the title of this section varies in describing them as “criminal *street* gangs”, as does one other portion of this provision. It is a small point, but use of the word “street” is contextually anomalous and should perhaps be eliminated as unnecessary since it

could be construed to imply some kind of distinction between street gangs and equally violent and notorious criminal gangs not transparently operating on the street.

It is gratifying to see that H.R. 5137 addresses the existence of ultraviolent transnational criminal gangs in American communities—many of which are heavily populated with alien members, such as Mara Salvatrucha (MS-13)—in such a comprehensive manner. It is past time for legislative action in this regard. For instance, various judicial rulings in recent years have created opportunities for dangerous individuals, such as gang members and cartel operatives, to qualify for asylum or withholding of deportation, despite involvement in crime and violence that would otherwise be grounds for exclusion or deportation, if they allege that they have “defected” and are therefore members of a “particular social group.”⁶ There is something decidedly wrong, almost perverse, about according the privilege of asylum, or even withholding of removal, to persons who have participated in criminal organizations, whether or not they have themselves been caught at, and convicted of, particularly serious offenses. These are individuals who have by their own admission supported organizations whose violence against others is horrific, well-documented, systematic, and widespread.

Prohibitions on Restrictions of Access for Patrolling the Border

The language of this section appears to be fundamentally the same as language found in the “Secure Our Borders First Act” recently introduced, and then withdrawn, in the House Homeland Security Committee. This provision removes prohibitions on access by border agents to federal lands controlled by the U.S. Departments of Agriculture and Interior, when those lands are within 100 miles of the border. Such prohibitions have had the functional effect of providing safe havens and passage corridors to alien and drug smugglers, while crippling enforcement and interdiction efforts. However, the provision in both bills would be better crafted if a) the portion forbidding entry onto state, tribal or private lands carved out the “within 25 miles” exception already existing in INA Section 287(a)(3); and b) permitted the Customs and Border Protection Commissioner to negotiate agreements with states, tribes and private landowners permitting access for the purpose of patrolling the borders.

THE STRENGTHEN AND FORTIFY ENFORCEMENT ACT

H.R. 2278 was introduced by Immigration and Border Security Subcommittee Chairman Trey Gowdy on June 6, 2013. Of the three bills under discussion, it is the most focused upon revivifying interior immigration enforcement, and does so in a thorough, systematic manner in six titles—

Federal, State and Local Cooperation in Immigration Law Enforcement.

⁶ See, for instance, *Gathungu, et al. v. Holder*, United States Court of Appeals for the Eighth Circuit, No. 12-2489, decided August 6, 2013 <http://media.ca8.uscourts.gov/opndir/13/08/122489P.pdf> and *Martinez v. Holder*, United States Court of Appeals for the Fourth Circuit, No. 12-2424, decided January 23, 2014, revised January 27, 2014. <http://www.ca4.uscourts.gov/opinions/published/122424.p.pdf>

This bill clearly acknowledges the interplay of the federal, state, and local governments, where the subject of immigration is concerned. It recognizes that state and local governments have a right to take a hand in controlling the force of illegal immigration given its adverse impact on their limited police, health, fire, emergency, and social service resources; and, conversely, that ICE agents have the right to expect cooperation instead of being confronted with a host of state and municipal sanctuary laws, policies and procedures that obstruct and impede them in performing their duties.

Title I of the bill institutionalizes coordination between Immigration and Customs Enforcement (ICE), and state and local law enforcement agencies (LEAs) by requiring them to exchange information on criminals and share systems access. State and local LEAs may also apply for grants to obtain technology that facilitates information and biometric data transfers. ICE must take custody of removable aliens when requested to do so by LEAs which, on the other hand, must honor ICE detainers to hold individuals for a reasonable period of time so that ICE can make arrangements for pick-up. ICE, and state and local governments, are also encouraged to establish agreements for jails meeting U.S. Marshals Service standards to hold aliens on ICE's behalf.

ICE is directed to continue and expand its program for identifying and removing criminal aliens, and to ensure they are not released into communities. Unfortunately, the language as presently written does not ensure that the now-ended Secure Communities will be restarted; it is likely that DHS will assert that the Secretary's replacement program meets statutory requirements, even though the details of that replacement program are unknown, and its efficacy untested. This is a setback to the rapid gains achieved in the past few years by leveraging electronic technology and communications interoperability.

Title I restores the integrity of the 287(g) partnership program permitting state and local LEAs to enforce immigration laws under appropriate federal oversight, by eliminating the politics from decisions as to which LEAs may participate and for what purpose. Those LEAs must abide by the rules and standards, but ICE must articulate specific reasons for denying a request to participate or for ejecting program participants, and denied or ejected LEAs would have the right to appeal in an administrative hearing.

States and their political subdivisions are permitted to enact and enforce criminal or civil penalties for conduct also prohibited by federal immigration laws as long as the criminal and civil penalties don't exceed the relevant Federal criminal penalties; and State and local LEAs may investigate, identify, apprehend, arrest, detain, or transfer to Federal custody aliens for the purposes of enforcing the immigration laws of the United States to the same extent as Federal law enforcement personnel; and State and local officers are granted immunity to the same extent as that enjoyed by federal officers in the performance of immigration duties.

Title I also ensures that disbursements made under the SCAAP and other federal LEA assistance programs only go to state and local governments which do not impede or obstruct national immigration enforcement efforts and requires the DHS Secretary to report annually on violators.

The cumulative importance of these provisions can hardly be overstated. For example, providing immunity to sheriffs and correctional departments, and clarifying their obligation and authority to hold aliens upon filing of an immigration detainer, is fundamental to the federal obligation to remove alien criminals from our communities nationwide. From 2011 to 2014, the use of ICE detainers has declined nationwide by a precipitous 50%, no doubt a reflection of the impediments thrown in the path of ICE agents from their leaders' policies on one hand, and increasingly restive state and local governments on the other—many of whom want to honor detainers but are unwilling to be sued to do so, particularly when they are left to deal with the suit alone because the federal government abandons them.⁷

National Security.

Title II of the Gowdy bill takes a fresh look at the intersection where national security interests collide with immigration and naturalization programs, and provides new tools to be used in countering threats from terrorists or foreign intelligence organizations, by prohibiting aliens involved in espionage or terrorism from receiving benefits such as asylum, cancellation of removal, or voluntary departure, and removing restrictions on the designation of countries to which dangerous spies or terrorists can be removed. It also precludes a finding of good moral character for any alien determined to have been involved in acts of terror or espionage, thus denying them adjustment of status or naturalization.

Title II limits access to the courts to file writs seeking to force granting of benefits while adverse actions are pending against national security threats; and prohibits them from filing applications or petitions on behalf of others while such actions are pending, or before all necessary background checks have been completed and results received.

The bill strengthens and streamlines existing procedures for stripping citizenship from naturalized individuals who later prove by their acts and conduct that they were not truly attached to the principles embedded in their oath of citizenship. This is an extremely powerful provision, for example, that could be used against naturalized citizens who seek to join terrorist groups such as al Shabaab or ISIS in foreign lands.

Title II also makes available for intelligence and national security purposes the otherwise-out-of-bounds files of aliens who benefited from the amnesty of 1986, but whose information is deemed confidential by the language of the act which granted them legalization.

⁷ Mark Metcalf and Dan Cadman, "Disabling Detainers: How the Obama administration has trashed a key immigration enforcement tool", Center for Immigration Studies, Jan. 2015. <http://cis.org/disabling-detainers>

Removing Criminal Aliens.

Title III of the bill begins by addressing amendments to the definition of “aggravated felony” found in the INA, to clarify the reach of some offenses (including various forms of homicide, rape and sexual conduct with minors), as well as to include additional offenses such as child pornography. It also clarifies Congressional intent with regard to length and type of sentences imposed for crimes meeting the statutory definition, and expands the reach of crimes to include not just substantive offenses and conspiracy and attempt, but also aiding and abetting and the like. The title also specifies that refugees or asylees who become aggravated felons are ineligible for waivers or adjustment of status.

The title expands the exclusion and deportation grounds to include sex offenders who fail to register as required; and prohibits citizen and permanent resident sex offenders from petitioning to bring in aliens except when there is a specific finding that the intended petitioner represents no danger to the alien beneficiary.

Where questions arise as to whether a criminal offense meets the statutory definition of an aggravated felony or a crime involving moral turpitude, Title III provides the Attorney General and DHS Secretary the authority to review such legal documents as are needed to resolve the issue. This is a salutary, common-sense provision that will aid enforcement officers, trial attorneys and immigration judges alike in arriving at appropriate decisions in such cases.

Title III also establishes language providing that post-facto attempts to vacate, expunge, pardon or otherwise alter criminal convictions for the purpose of evading removal from the United States shall have no force and effect for purposes of federal immigration law. This is an important proviso that reestablishes federal preeminence and supremacy in determining what actions and offenses merit deportation. Some states have instituted policies of parole, clemency and pardon board reviews for the sole purposes of substituting their own judgments as to whether or not an alien should face the consequence of removal for his crimes.

The title expands and clarifies grounds of inadmissibility under INA Section 212, and deportability under INA Section 237, to include aliens convicted of identity theft crimes; unlawful procurement, or conspiracies or attempts to procure naturalization. The title adds various firearms offenses and aggravated felonies; and domestic violence, child abuse and stalking offenses to the list of exclusion grounds, while concurrently establishing a waiver commensurate with that found in deportation grounds for individuals who have been victims of domestic violence. The title also expands and clarifies the exclusion grounds relating to espionage, theft of sensitive or classified information, and similar offenses, and it creates a new, specific removal ground for convicted drunk drivers.

Title III amends federal law governing possession and use of firearms by aliens through restricting their possession and use to lawful permanent residents; aliens admitted as nonimmigrants for the specific temporary purpose of a hunting trip; and a handful of other nonimmigrant classifications involving foreign officials and diplomats.

The title provides new detention authority to the DHS Secretary to hold dangerous aliens during the period of appeals from orders of removal, or in the event such an alien impedes his own removal. It also establishes a new review board to consider requests for release by aliens who cooperate with the government's efforts to remove them, on such conditions as the board deems appropriate for public safety and consistent with the removal process. It further provides for a periodic certification process to be conducted by the Secretary to hold dangerous aliens when no conditions of release are adequate to ensure the public safety but removal cannot be achieved.

Importantly Title III of the Gowdy bill contains provisions for designation of criminal gangs, and denial of admission, or removal of gang members. The provisions closely parallel those previously described which are a part of the Chaffetz-Goodlatte bill, and is equally welcome.

The bill also provides for technical amendment of certain criminal offenses involving identity theft, as well as the battery of crimes involving passport, visa and naturalization fraud (18 U.S.C. Sections 1541 through 1548); it additionally renders forfeitable the fruits and instrumentalities of these crimes. The bill includes new predicate offenses such as peonage and alien smuggling for the crime of money laundering; and it enhances sentencing penalties in aggravated cases of alien smuggling. These changes will be welcomed by enforcement officers in their struggle against the often violent criminal syndicates, such as the zetas, who have become enmeshed in the trade of human beings due to the fantastic profits to be made, including through extortion of family members of those being smuggled.

Visa Security.

The provisions in this title of the bill have been carefully thought-out; are well-crafted; and exhibit a detailed knowledge of the strengths and weakness of U.S. visa processes, as well as their susceptibility to political decisions that are not always in the national interest.

Among other things, Title IV provides for a cascading effect that cancels all nonimmigrant visas, when any nonimmigrant visa held by an alien is cancelled by the U.S. government. This provision seals a loophole that could permit an alien whose student visa has been cancelled for violations, for instance, to turn right around and reenter the U.S. using a still-valid tourist visa.

The title expands the bases under which the Secretary of State may share otherwise-confidential information contained in visa application files, including for additional criminal or civil offenses committed by the applicant as well as to foreign governments when it is in the U.S. national

interest, and requires a higher level of consultation between the Secretaries of State and Homeland Security in policies and regulations governing visa issuance, including when or not to conduct in-person interviews of applicants. It additionally grants the DHS Secretary authority to refuse or revoke visas to any alien or class of aliens, with the exception of diplomats and members of international organizations; and prohibits the Secretary of State from overriding a decision by the DHS Secretary to deny, refuse or revoke a visa.

Title IV places the Homeland Security Visa Security Program on a sound fiscal footing by providing that a portion of the visa fees collected by the State Department will be used to fund DHS Visa Security Officers (VSOs) at American embassies and consulates abroad; requires the Secretaries of State and DHS to jointly establish a list of the top 30 high-risk posts abroad for expansion of the Visa Security Program; and requires review of visa applications at those posts by Visa Security Officers (VSOs) before they may be adjudicated by consular officers. It also makes clear that Chiefs of Mission (usually ambassadors) of the 30 designated high-risk posts are required to cooperate and participate in ensuring that the DHS VSOs are cleared and in place on a priority basis, not to exceed one year after enactment into law. In the past, chiefs of mission reluctant to accept VSOs have invoked NSDD-38, a presidential decision directive, as their authority to decline, or to slow down to a crawl, assignment of VSOs to their posts. This provision specifically cites NSDD-38 as inappropriate to attempt such a maneuver.

Title IV enhances the criminal penalties for violation of Title 18 U.S. Code Section 1546 (visa fraud) when committed by officials of schools authorized to accept foreign students and exchange visitors, and plugs two massive loopholes in the foreign student program by requiring that participating schools and institutions demonstrate that they have been accredited by an agency recognized by the U.S. Department of Education, or if engaged in flight training, certified by the Federal Aviation Administration; and requires notification to DHS when accreditation of a school or institution is revoked, at which time access to Student and Exchange Visitor's Information System (SEVIS) must be suspended, which effectively precludes the school or institution from issuing documentation required to grant a visa to enter the U.S.

Title IV provides that if the DHS Secretary suspects that fraud, or attempted fraud, has been committed by an authorized school or institution, he or she may suspend its access to the SEVIS. It also provides that if an official of a school or institution is convicted of visa fraud, he or she is permanently disqualified from participation in any activities related to foreign students or exchange visitors, and requires national security and criminal history background checks of school and institution officials before they may be permitted to act as "designated officials" for purposes of issuing documents to prospective foreign students or exchange visitors.

Aid to U.S. Immigration and Customs Enforcement Officers.

Under Title V, the bill directs the DHS Secretary to authorize Immigration Enforcement Agents (IEAs) to exercise all of the powers afforded them by law in the Immigration and Nationality Act, provided they have appropriate training; and amends the pay and grade of these officers to be commensurate with that of Deportation Officers (DOs). This section is important because the Secretary has not accorded to officers who are a part of ICE Enforcement & Removal Operations (ERO), the division which daily enforces the immigration laws, the same authorities as special agents who are a part of ICE Homeland Security Investigations, although in recent statements made by the Secretary in one of his memoranda of November 20, 2014, he asserted his support for pay equity within ICE ERO. Enacting the Gowdy bill would ensure that this comes to pass.

Title V establishes a cadre of Detention Enforcement Officers whose sole job is to act as the functional equivalent of jail and transportation officers for alien detention facilities. This section recognizes that the role of a detention officer in a facility is fundamentally different than that of an officer who works the streets to locate and apprehend suspects, and creates job classifications to distinguish them accordingly. It also requires the Secretary to provide reliable body armor and weapons to IEAs and DOs. Again, this section is important because it will rectify the disparity in treatment and equipment between those officers and Special Agents in the Homeland Security Division of ICE.

The bill creates an ICE Advisory Council which includes representatives from Congress and the ICE prosecutors' and agents' unions, "to advise the Congress and the Secretary" on issues including the status of immigration enforcement, prosecutions and removals, the effectiveness of cooperative efforts between DHS and other law enforcement agencies, improvements that should be made to organizational structure, and the effectiveness of enforcement policies and regulations. This provision provides Congress and the Secretary an avenue to hear directly from line prosecutors and officers on those programs and issues which are effective, and which are ineffective or downright detrimental to enforcement of the nation's immigration laws. It also protects ICE participants against retaliation for voicing their views as council members.

Title V creates a pilot program for electronic production of arrest and charging documents by officers operating in the field or at locations remote from ICE offices. Such a capacity is critical to ensuring that field officers work at their most efficient while also ensuring that charging documents are issued and served on the arrestee in a timely manner.

Finally this title of the Gowdy bill authorizes, subject to appropriations, augmentation of the existing 2013 manpower levels of deportation officers (by 5,000), support staff (by 700) and, an augmentation of ICE prosecutors (by 60). Collectively, these officer, prosecutor and support staff enhancements are an acknowledgement that nearly half of the aliens illegally in the United States did not enter as border crossers, and that the overwhelming majority of illegal aliens in the

United States, regardless of how they originally entered, work and reside in the interior where ERO officers work and must have the resources to perform their duties.

Miscellaneous Enforcement Provisions.

This title of the bill amends existing statutes relating to the grant of voluntary departure in lieu of formal removal, both before and after the initiation of immigration hearings, by:

- limiting grants of this privilege to no more than 120 days pre-hearing and 60 days after commencement;
- authorizing the government to require the posting of a voluntary departure bond by the alien to ensure that he or she actually departs;
- requiring the alien to affirmatively agree to voluntary departure in writing, with the stipulation that in so doing he/she waives further appeals, motions, requests for relief, etc.;
- providing civil penalties for aliens who renege on their voluntary departure agreements or fail to depart, preclude them from seeking reopening of their cases, and bar them from a variety of forms of relief from removal;
- precluding the repeated grant of voluntary departure to an alien; and
- authorizing the Secretary (for DHS officers) or the Attorney General (for immigration judges) to establish regulations imposing additional reasonable limitations on use of voluntary departure.
-

These are welcome amendments because voluntary departure, originally envisioned as a method of streamlining the expulsion of aliens charged with less-serious, non-criminal offenses, has become the subject of much abuse, both by government (which has been overly generous in its grants of voluntary departure— increasingly even to aliens with criminal histories), and by aliens (who accept the offer and then, instead of departing, abscond or file repeated frivolous motions to reopen their case with the immigration courts in order to buy more time to remain in the U.S.).

Title VI restructures the bars for reentry of inadmissible aliens who fail to depart after being ordered removed, and provides that they are ineligible for relief. The language of the section is intended to deter aliens from fleeing instead of obeying lawful removal orders, by strengthening and extending the “shelf-life” of penalties for failing to depart, and making clear that aliens who become fugitives will be entitled to no future consideration or benefits under the law.

The title also expands the conditions under which prior orders of removal may be reinstated (in lieu of new/additional proceedings) when aliens are found to have subsequently illegally reentered the U.S.; prohibits any grant of relief to such aliens; and limits the use of judicial review and habeas corpus proceedings to contest reinstated orders. Reinstating previously-issued orders of removal, against aliens who reenter the U.S. illegally, results in a tremendous savings of officer, prosecutor, and court resources. It is also a prudent means of preserving limited

taxpayer funds while deporting recidivist alien offenders. This section augments the existing authority for its use, and ensures that there are few, if any, loopholes for aliens to exploit in avoiding expulsion through reinstatement of prior orders, when caught in the United States again.

Title VI clarifies that an adjustment of status to permanent residence under the INA constitutes an admission to the United States—the functional equivalent of a lawful physical entry. This is a technical but highly desirable amendment because it ensures that if an alien violates his resident alien status after adjustment (for instance, through criminal conviction), the “date of entry” will be calculated only back as far as his adjustment, not his original entry. This will prevent many undeserving aliens from claiming that they have accrued enough time after “entry” to merit relief from deportation even in the face of unlawful conduct.

Title VI establishes a mandatory reporting requirement to Congress on use—and abuse—of discretion by executive branch officials. (This provision appears to be a direct response to administration activities curtailing immigration law enforcement and granting the equivalent of an administrative free pass to thousands of aliens who are in the country illegally.)

Title VI also contains a section similar to that previously mentioned in the Chaffetz-Goodlatte bill, prohibiting the Secretaries of Interior or Agriculture from establishing rules or policies that prevent patrolling within 100 miles of the borders on federal lands, and waives certain rules relating to creating roadways, fences, dragstrips and the like, which are used by federal officers in their border patrol efforts. The comments earlier in my testimony with regard to the Chaffetz-Goodlatte bill are the same as I would offer here.

CONCLUSION

I would like to conclude my testimony by offering an observation. With important and complex issues such as immigration, it is important, and much more far-sighted, to legislate a few quality portions of law at a time, in digestible chunks, than to create a chameleon-like bill that is the thickness of a telephone directory, has the kind of small print you would expect in a used-car ad, and which purports, falsely, to be all things to all people, all at the same time.

It is important that such bills do not maunder, it do not double-talk, and it do not compromise on the security of the nation or the safety of American communities. I believe these bills, if reintroduced with minor modifications, meet that test.

Thank you, Mr. Chairman, Ranking Member Conyers, and the other honorable members of the Committee for the chance to share my views.

Mr. GOWDY. Thank you, sir.
Bishop?

**TESTIMONY OF MOST REVEREND GERALD F. KICANAS,
BISHOP OF TUCSON, U.S. CONFERENCE OF CATHOLIC
BISHOPS**

Bishop KICANAS. Thank you very much.

My diocese, the Diocese of Tucson, extends along the entire border between Arizona and Mexico. Today, I come representing the United States Conference of Catholic Bishops.

I would like to thank Subcommittee Chairman Trey Gowdy and Ranking Member Zoe Lofgren for having me here to testify today.

Before I begin, I would like to remember Kayla Mueller; the young woman who is from Arizona and recently died while in captivity in the Middle East. Kayla who dedicated her life to the service of others represents the best of our country's values. She spent her life and lost her life in attempting to help the most vulnerable here and overseas. She felt the pain and suffering of others and responded. We might learn from the example of our fellow American.

I was last with you in 2010 when I testified on the subject of the ethical imperative for comprehensive immigration reform. Since that time, the U.S. Catholic Bishops and the Catholic community and many other religious communities has not wavered on their commitment to comprehensive immigration reform; even though we have not yet gotten there. My written testimony details all of the specifics of what should be part of comprehensive immigration reform which includes a path to citizenship for the undocumented in our Nation.

I would like to address my remarks today to the three bills before this Subcommittee and explain in general terms our opposition to them. First of all, the bills adversely impact immigrant and refugee children, perhaps the most vulnerable population impacted by our Nation's immigration laws. Among other things, these bills would first repeal the deferred action for childhood arrival and would repeal protections for children fleeing violence in Central America and would keep children in detention for long periods of time and would weaken protections for abandoned, neglected and abused children.

Our country is judged by how we treat the most vulnerable, and the removal of protection from children, the most vulnerable, flies against human decency and violates human dignity. It would undermine our credibility as a global leader in defense of human rights. We should not punish these children who themselves are innocent and only seeking opportunity and safety.

My brother Bishop from El Paso Texas, Bishop Mark Seitz, testified before the House Judiciary Committee last year and explained that he had spoken with a mother in El Salvador who explained the tough decisions faced by parents of children experiencing persecution at home. Bishop Seitz asked her, "Why would you let your child make the journey north if she knew it was so dangerous?"

And she responded, "Bishop, I would rather my child die on the journey seeking safety in the United States than on my front doorstep."

To use an analogy, Mr. Chairman, the removal of due process from these children seeking safety as these bills would do is like a fireman showing up at a burning building and locking the doors. This would be contrary to our values as a Nation and contrary to our moral authority as a Nation that has a historic commitment to refugee protection.

Second, these bills, specifically the Secure and Fortify Enforcement Act, would among other things criminalize undocumented presence and those who transport undocumented persons to assist their wellbeing. Congress has debated this issue before when the House of Representatives passed H.R. 4437 in December of 2005. That legislation, which had similar provisions and died in the U.S. Senate, you will remember sparked protests across the country. As a Nation do we really want to take the country down this road again? Do we want to criminalize millions of persons who have built equities in this country, jail them and separate them families including those with U.S. citizen children?

Instead of fixing a broken system, would we rather jail nuns and other good Samaritans who are simply coming to aid of their fellow human beings consistent with their faith? Moreover, by allowing States and localities to create their own immigration laws and to enforce them, the SAFE Act would create a patchwork of immigration laws across the Nation making the system more disjointed.

Third, the bills would severely weaken our asylum and refugee protection system ensuring the vulnerable groups are sent back to their persecutors against our heritage as a safe haven for the worlds oppressed. It would raise the standard for meeting the credible fear standard for the persecuted to obtain asylum status and it would also repeal the use of parole in place thus resulting in more family separation.

The Conference of Bishops, the people of faith communities in our country, and the majority of Americans were terribly disappointed that comprehensive immigration reform legislation was not passed in the 113th Congress. You have the opportunity again to fix our broken system by passing such legislation in a series of bills or in one in the 114th Conference. We stand ready to work with you toward this goal.

Thank you very much, Mr. Chairman.

[The prepared statement of Bishop Kicanas follows:]

Statement of

Most Reverend Gerald F. Kicanas
Bishop of Tucson, Arizona

Before

The House Subcommittee on Immigration and Border Security

On

Interior Immigration Enforcement Legislation



February 11, 2015

I am Bishop Gerald F. Kicanas, bishop of Tucson, Arizona. I am pleased to have the opportunity to testify today on behalf of the USCCB and its Committee of Migration, of which I am a consultant, on the Catholic Church's perspective on interior immigration enforcement legislation.

I would like to thank you, Mr. Chairman, and Representative Zoe Lofgren (D-CA), ranking member of the subcommittee, for holding this hearing on such a vital issue to our nation. I would also like to recognize Representative Bob Goodlatte, chairman of the full House Judiciary Committee, and Representative John Conyers (R-MI), ranking member of the full committee, for their participation in this hearing.

I testify today in opposition to the three bills from the 113th Congress that are the specific focus of today's hearing:

- The *Strengthen and Fortify Enforcement (SAFE) Act* (HR 2280), which we believe would criminalize undocumented immigrants and those who offer them basic needs assistance;
- The *Protection of Children Act* (H.R. 5143), which we believe would repeal due process protections for unaccompanied children fleeing persecution in Central America; and
- The *Asylum Reform and Border Protection Act* (H.R. 5137), which would weaken asylum protections below international standards for children and other vulnerable refugees and asylum-seekers.

We were hopeful, Mr. Chairman, that at the beginning of this Congress, this Subcommittee's initial activities would mark the beginning of a process that would result in the passage of the type of comprehensive immigration reforms that our nation so sorely needs. We are disappointed, therefore, that the first actions in this Subcommittee, of the full Committee, and indeed, of the full House of Representatives have moved the debate in the opposite direction. Our nation cannot wait to repair a broken immigration system that does not accommodate the migration realities we face in our nation today, does not serve our national interests, and does not respect the basic human rights of migrants who come to this nation fleeing persecution or in search of employment for themselves and better living conditions for their children.

In order to achieve real reform, the Administration and Congress must work together on a comprehensive package that would legalize undocumented migrants and their families in the U.S., provide legal means for migrants to enter our nation to work and support their families, and reform the system whereby immigrants come to the United States to be reunited with close family members. We also must restore due process protections to immigrants, many of which were taken away under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Perhaps most importantly, the United States must work with Mexico and other nations to address the root causes of migration, so that migrants and their families may remain in their homelands and live in dignity.

The three bills that are the subject of today's hearing fail to meet any of those goals.

Mr. Chairman, in January 2003, the U.S. and Mexican Catholic bishops issued a historic joint pastoral letter on the issue of migration entitled *Strangers No Longer: Together on the Journey of Hope*. Among its many recommendations, it outlines the elements which the bishops of both nations believe are necessary to reform U.S. and Mexican immigration policy in a comprehensive and just manner. With your permission, Mr. Chairman, I ask that the chapter of the pastoral letter addressing policy recommendations be included in the hearing record.

My testimony today recommends that Congress—

- Enact comprehensive immigration reform legislation which provides a legalization program (path to citizenship) for undocumented workers in our nation; reforms the employment-based immigration system so that low-skilled workers can enter and work in a safe, legal, orderly, and humane manner; and reduces waiting times in the family preference system for families to be reunited.
- Examine the “push” factors of migration such as international economic policies and enact policies which encourage sustainable economic development, especially in sending communities;
- Enact in reform legislation the Agricultural Job Opportunity, Benefits, and Security Act (AgJOBS) and the Development, Relief, and Education for Alien Minors Act (DREAM Act);
- Adopt humane immigration enforcement policies that ensure the integrity of our nation’s borders but ensure that human rights and human life are protected; and
- Reject overly harsh enforcement-only schemes that fail to protect the civil and human rights of both persons who entered or remain in the United States without authorization, as well as citizens, permanent residents, and others whose stay in the United States is authorized.

I. Catholic Social Teaching and Migration

The Catholic Church is an immigrant church. More than one-third of Catholics in the United States are of Hispanic origin. The Church in the United States is also made up of more than 58 ethnic groups from throughout the world, including Asia, Africa, the Near East, and Latin America.

The Catholic Church has a long history of involvement in the immigration issue, both in the advocacy arena and in welcoming and assimilating waves of immigrants and refugees who have helped build our nation throughout her history. Many Catholic immigration programs were involved in the implementation of the Immigration Reform and Control Act (IRCA) in the 1980s and continue to work with immigrants today. In fact, the USCCB was a national coordinating agency for the implementation of IRCA’s legalization program. We have a strong working relationship with the Department of Homeland Security (DHS) and with U.S. Citizenship and Immigration Services (USCIS), the agency that would be largely responsible for implementing any new legalization and temporary worker programs. There are currently 158 Catholic immigration programs throughout the country under the auspices of the U.S. bishops.

The Church’s work in assisting migrants stems from the belief that every person is created in God’s image. In the Old Testament, God calls upon his people to care for the alien because of their own alien experience: “So, you, too, must befriend the alien, for you were once aliens yourselves in the land of Egypt” (Deut. 10:17-19). In the New Testament, the image of the migrant is grounded in the life and teachings of Jesus Christ. In his own life and work, Jesus identified himself with newcomers and with other marginalized persons in a special way: “I was a stranger and you welcomed me.” (Mt. 25:35) Jesus himself was an itinerant preacher without a home of his own as well as a refugee fleeing the terror of Herod.
(Mt. 2:15)

In modern times, popes over the last 100 years have developed the Church teaching on migration. Pope Pius XII reaffirmed the Church’s commitment to caring for pilgrims, aliens, exiles, and migrants of every

kind, affirming that all peoples have the right to conditions worthy of human life and, if these conditions are not present, the right to migrate.¹ Pope John Paul II stated that there is a need to balance the rights of nations to control their borders with basic human rights, including the right to work: "Interdependence must be transformed into solidarity based upon the principle that the goods of creation are meant for all."² In his pastoral statement, *Ecclesia in America*, John Paul II reaffirmed the rights of migrants and their families and the need for respecting human dignity, "even in cases of non-legal immigration."³

During his visit to the United States in April, 2008, His Holiness Pope Benedict XVI chose migration and immigration as one theme of his visit, citing the importance of keeping families together and addressing the issue not only nationally, but regionally and globally as well: "The fundamental solution is that there would no longer exist the need to emigrate because there would be in one's own country sufficient work, a sufficient social fabric, such that no one has to emigrate. Besides this, short-term measures: It is very important to help the families above all."⁴

Pope Francis, who will visit the United States and address a joint meeting of Congress in September, has also defended the rights of migrants, decrying the "globalization of indifference" toward their plight. He also has called for the care and protection of unaccompanied children fleeing strife in their home countries and seeking protection in the United States.

In our joint pastoral letter, the U.S. and Mexican Catholic bishops further define Church teaching on migration, calling for nations to work toward a "globalization of solidarity." "It is now time to harmonize policies on the movement of people, particularly in a way that respects the human dignity of the migrant and recognizes the social consequences of globalization."⁵

For these reasons, the Catholic Church holds a strong interest in the welfare of immigrants and how our nation welcomes newcomers from all lands. The current immigration system, which can lead to family separation, suffering, and even death, is morally unacceptable and must be reformed.

II. The Immigration Debate

We were heartened by the progress made in the 113th Congress by the passage of immigration reform legislation in the U.S. Senate, but were discouraged when the House of Representatives not only failed to take up the Senate bill or put forth its own version of legislation, but when it passed a series of measures late in the 113th Congress that would have taken the country in the opposite direction. It is our hope that the 114th Congress will finish the job on immigration reform legislation.

In order to achieve this goal, however, Congress and the president must work in tandem throughout the legislative process, and efforts must be taken to minimize the harsh rhetoric which has characterized much of the past and present debate.

I must say upfront that the U.S. bishops continue to be concerned with the tone on Capitol Hill toward immigrants. We do not agree with terms that characterize immigrants as less than human, since no person

¹ Pope Pius XII, *Exsul Familia (On the Spiritual Care of Migrants)*, September, 1952.

² Pope John Paul II, *Sollicitudo Rei Socialis (On Social Concern)* No. 39.

³ Pope John Paul II, *Ecclesia in America (The Church in America)*, January 22, 1999, no. 65.

⁴ Interview with His Holiness, Pope Benedict XVI, during his flight to America, April 15, 2008.

⁵ *Strangers No Longer: Together on the Journey of Hope. A Pastoral Letter Concerning Migration from the Catholic Bishops of Mexico and the United States,* January 23, 2003, n. 57.

is “illegal” in the eyes of God. Such harsh rhetoric has been encouraged by talk radio and cable TV, for sure, but also has been used by public officials, including members of Congress.

We are hopeful that the national debate on immigration will begin to focus upon the many contributions that immigrants, both documented and undocumented, make to our country and not scapegoat newcomers for unrelated economic or social challenges we face as a nation. History informs us that our nation has been built, in large measure, by the hard work of immigrant communities. We must remember that, except for Native Americans, we are all immigrants or descendants of immigrants to this great land.

I ask the subcommittee today to take the lead in ensuring that the upcoming debate is a civil one and refrains from labeling and dehumanizing our brothers and sisters. While we may disagree on the substance or merit of a position, we should never disagree that the conversation should remain civil and respectful.

Mr. Chairman, the U.S. Conference of Catholic Bishops (USCCB) supported the President’s executive action on immigration because it would help as many as 4 million persons and keep an untold number of families together. Rather than attempt to rescind the decision, it should provide an incentive for the House of Representatives and Congress to *supersede* it through the passage of immigration reform legislation. We encourage this response, provided it addresses all aspects of the system.

With regard to enforcement, Mr. Chairman, we believe that the best way to secure our borders and to ensure that our immigration laws are just and humane is to enact comprehensive immigration reform legislation that prioritizes family unity while targeting limited resources on those who endanger our society and are a threat to public safety.

Others maintain that the United States must first “secure its border” or enact harsh interior enforcement policies before considering broader immigration reforms.

We believe that enforcement is part of an immigration reform package, but must be complemented with reforms in the legal immigration system. “Enforcement First” has been the de facto U.S. strategy for nearly thirty years, yielding too many costs and too few results. The costs have indeed run high. Since 2000, Congress has appropriated and the federal government has spent about \$200 billion on immigration enforcement, multiplying the number of Border Patrol agents by a factor of five (over 20,000 agents)⁶ and introducing technology and fencing along the border.⁷ Border Patrol in particular has seen a nine-fold budget increase since 1992.⁸

In addition, the Obama Administration has deported persons and divided families at record rates, having deported over 2 million persons since 2009. Tragically, between 1998 and 2010 nearly 7,000 migrants have perished in the desert trying to enter the United States.⁹ This trend shows no signs of decreasing --

⁶ Testimony of Marc Rosenblum, Migration Policy Institute, House Judiciary Committee, February 3, 2015.

⁷ Immigration Policy Center, “Throwing Good Money After Bad: Immigration Enforcement without Immigration Reform Doesn’t Work”, May 26, 2010, p. 1, available at immigrationpolicy.org/just-facts/throwing-good-money-after-bad (accessed 07/07/10); see also Douglas Massey, “Backfire at the Border: Why Enforcement without Legalization Cannot Stop Illegal Immigration,” CATO Institute, Center for Trade Policy Studies, June 13, 2005, available at www.free-trade.org/pubs/pas/tpa-029.pdf (accessed 07/07/10).

⁸ See IPC at fn. 2.

⁹ Stuart Anderson, “NFAP Policy Brief”, National Foundation for American Policy, May 2010, p. 1 (citing border patrol statistics), available at www.nfap.com/pdf/0505brief-death-at-border.pdf (accessed 07/07/10); see also Spencer Hsu, “Border Deaths Are Increasing,” The Washington Post, September 30, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/09/29/AR2009092903212.html?hpid=topnews> (accessed 07/07/10).

border deaths in 2009 reached their highest level in three years, despite the efforts of Border Patrol teams that have rescued thousands of desert-crossers.¹⁰ Judging by these measures, enforcement first has largely failed to end illegal immigration on its own.

Despite record spending and deportations, the “enforcement first” strategy has failed partly because of its unintended effects. For instance, by tightening border checkpoints, it has spawned a booming human smuggling industry. In fact, these “coyotes” have become very good at evading detection, helping migrants gain a nearly 100% success rate at eventually entering the United States.¹¹ Border security build-up has also disrupted “circular migration” – preventing some immigrants from returning home to Mexico and Central America after a few years of work in the United States. Instead, these workers attempt to bring their families to settle in the United States.

At root, “enforcement first” has failed because it has not addressed the underlying cause of illegal immigration: an outdated immigration system that does not meet the economy’s demand for workers and an inability for migrants to reunite with family members. We are hopeful that comprehensive immigration policy reform, which emphasizes legal avenues for migration, will mitigate the perceived need for harsh enforcement proposals and laws. Such reform could alleviate the pressure on border enforcement by undermining human smuggling operations and reducing the flow of undocumented migrants across the border. It also could help create a more stable atmosphere for the implementation of enforcement reforms, such as employment verification systems, biometric visas and passports, and exit-entry systems which would help better identify those who are here to contribute between those who may come to harm us.

III. Overtly Harsh Enforcement-only legislation

Mr. Chairman, I would like to offer the position of the U.S. Conference of Catholic Bishops on legislation being considered by the subcommittee:

The SAFE Act (H.R. 2278, as introduced in 113th Congress). The USCCB acknowledges and accepts the role of the government in ensuring the integrity of our border. However, the “SAFE” Act would grant unprecedented immigration enforcement powers to states and localities, ultimately leading to civil rights violations, racial profiling, and abuses of basic human rights. The legislation also could inadvertently increase crime in some communities, as some residents would be fearful to report incidents to local authorities and local enforcement would be required to police for immigration violations -- thus diverting limited law enforcement resources away from serious criminals.

USCCB opposes the SAFE Act for the following reasons:

- **The SAFE Act would grant extensive immigration enforcement powers to states and localities and eradicate effective federal government oversight.** The SAFE Act would allow states and political subdivisions of states to “investigate, identify, apprehend, arrest, detain or transfer to federal custody” individuals in order to enforce any federal immigration violation -- civil, criminal or state immigration penalty allowed under the act. It would permit state and local law enforcement officers, untrained in federal immigration law, to issue an immigration hold and detain an individual indefinitely. We fear that such a regime would result in prolonged detention for U.S. citizens and

¹⁰ See Hsu, at fn. 9.

¹¹ Even if the migrant is apprehended on his first attempted entry, he has a nearly 100% success rate on subsequent attempts especially if he uses a coyote. Wayne Cornelius, et al., *Controlling Unauthorized Immigration from Mexico: The Failure of “Prevention through Deterrence” and the Need for Comprehensive Reform*, Washington, DC: Immigration Policy Center, American Immigration Law Foundation, June 10, 2008, p. 34.

lawfully residing residents. Such an unprecedented transfer of authority could lead to civil rights abuses and discrimination against immigrants and legal permanent residents and U.S. citizens.

- **The SAFE Act would criminalize those in undocumented status and those who assist them, including religious and faith-based organizations.** As originally introduced, H.R. 2278 would make undocumented presence a crime. Migrants who enter our nation are not criminals, in our view, as they are in many cases trying to survive and support their families. Criminalizing them would subject them to further incarceration and increase detention and court costs. The legislation also would criminalize those who transport or provide assistance to undocumented persons, including religious (nuns), priests, and other faith-based actors. This would include transporting to a hospital or to church services or Mass. This is very troubling, as it impacts the ministry of the church to care for those in need.
- **The SAFE Act would repeal the Deferred Action for Childhood Arrivals (DACA) program.** As introduced, H.R. 2278 would repeal the DACA program, which protects over 600,000 young people who entered the country as children, many with or under the direction of their parents. Many of these young people, who know no other country, would be subject to deportation back to a country they do not know. It would also deprive our nation of their talents and contributions to our nation.
- **The SAFE Act would harm bona fide refugees and asylum-seekers fleeing persecution.** The bill would bar from naturalization, including those who have resided in the United States for years, any person who cannot meet a definition of good moral character because he or she may have provided food or money under duress, such as the threat of death, to barred organizations. This provision could apply to legal permanent residents who have lawfully resided in the United States for years.
- **The SAFE ACT would create a disjointed national immigration policy that could employ 50 different State immigration policies and countless local policies.** The SAFE Act would allow states or political subdivisions of states to create their own criminal and civil penalties for federal immigration violations. This element of the SAFE ACT is directly in contradiction to the recent Supreme Court decision *Arizona v. United States*, 132 S. Ct. 2492 (2012) which held that states cannot enact their own criminal alien registration penalties in addition to the federal legal penalties/scheme.
- **The SAFE Act would be cost prohibitive to implement.** The costs to effectively implement this piece of legislation would be financially burdensome in a time of fiscal austerity. For example, the detention policy proposed in the SAFE Act calls for an increase in the number of detention facilities, an increase in the population to be detained (including all individuals awaiting a decision for removal), and an increase in funding for state and local governments to detain individuals in local jails. According to the Congressional Budget Office, the SAFE Act would cost \$22.9 billion over the first 5 years.¹²

The Asylum Reform and Border Protection Act (H.R. 5137, as introduced in 113th Congress). Mr. Chairman, USCCB believes that our nation should honor our heritage as a safe haven for the persecuted, consistent with our international obligations and as a leader on human rights in the world. However, H.R. 5137 would take our nation in the opposite direction. We oppose H.R. 5137 for the following reasons:

- **H.R. 5137 would unjustly raise the credible fear standard, denying protection to bona fide refugees.** Under the legislation, an asylum-seeker would have to prove that it is *more likely than not*

¹² Congressional Budget Office, Cost Estimate, H.R. 2278 (Dec 5, 2013).

that his or her statements are true. This is problematic, as credible fear interviews can be conducted over the phone, with background noise, and with applicants who are traumatized and are communicating through interpreters of variable quality. Moreover, adults are often before enforcement authorities or in detention facilities during the credible fear interview, making it more difficult for them to articulate their fears. It is also important to note that an applicant's credibility is relevant to whether the person is actually at risk of harm, not how they communicate it. H.R. 5137 also would apply this high standard to unaccompanied children, as it would expose them to expedited removal.

- **H.R. 5137 would subject all unaccompanied children to expedited removal, even those from noncontiguous countries in Central America fleeing well-documented persecution and harm.** This provision would repeal protections for children entering from Central America, where they are threatened with their lives by organized crime. We fear that under this measure, they would be given cursory screenings by a border patrol officer and, in many cases, summarily returned to their persecutors, at great risk to their health or their lives. Should a child achieve credible fear, the bill would subject them to the one-year filing deadline and bar them from receiving government-funded counsel, giving many of them little chance of navigating the complex immigration system. The bill would remove all protections for child trafficking victims, which was a hallmark of the Trafficking Victims Protection Reauthorization Act of 2008.
- **H.R. 5137 would amend the parole statute in immigration law to eliminate the statutory basis for arriving asylum seekers to be released from detention while awaiting their adjudication.** This would submit already traumatized asylum-seekers to lengthy detention when there are humane alternatives available to them. Asylum-seekers who pass credible fear can be placed in a wide range of alternative forms of detention, including community-based case management, operated at far below cost of a detention bed.
- **H.R. 5137 would re-define unaccompanied alien children, resulting in mass incarceration of these children.** By requiring that the presence of other legal guardians or family members in the United States disqualifies a child from being "unaccompanied," H.R. 5137 would subject many children to detention and possible expedited removal. This would be in violation of the "Flores Settlement" in which the then-Immigration and Naturalization Service (INS) agreed that children should be placed in the least restrictive setting possible and should not be housed with adult detainees. In every other area of law, we recognize that children should be treated differently and given additional protection. Immigration law should be no different. We should not abandon our principles of child protection so easily.

The Protection of Children Act (H.R. 5143 as introduced in 113th Congress.) The U.S. Conference of Catholic Bishops opposes H.R. 5143 because it would repeal protections from unaccompanied children from non-contiguous countries and would make the screening of all children much worse by removing protections for tender aged children and those with intellectual abilities. We also oppose the measure because it would subject children to 30 days incarceration, violating standards found in *Flores v. Reno*, and it would manipulate the reunification as a means to identify undocumented individuals and initiate removal proceedings against family members of children, thus resulting in additional foster care placements for children.

- **H.R. 5143 would repeal protections for unaccompanied children from non-contiguous countries found in the William Wilberforce Trafficking Reauthorization Act of 2008.** The USCCB opposes this provision because it would deny a hearing before an asylum judge for children fleeing

violence in Central America. According to the United Nations High Commissioner for Refugees (UNHCR), as many as 6 out of 10 children fleeing the region have valid protection claims.¹³ Adopting this provision would have the effect of sending them back to harm or possible death.

- **H.R. 5143 would make the screening of ALL children much worse and would remove essential protections for young (tender aged children) and those who lack the capacity to make an independent decision.** We have long held that children deserve additional protections in our society because they are the most vulnerable. Within this group, very young children and children with intellectual disabilities are even more vulnerable to abuse. We oppose this provision because it would remove the current requirement that DHS consider whether a child is able to voluntarily withdraw their application for admission. DHS's current policy is to refer these children to HHS custody for further review and an immigration court proceeding. While we are troubled by the fact that DHS does not always follow this policy or provision of the TVPRA to the fullest extent possible, we believe that the solution is not to take away these important rights, but rather to strengthen them to ensure that the most vulnerable children are protected under the law.
- **H.R. 5143 would subject children who meet the credible fear standard to incarceration for as long as 30 days in substandard and restrictive settings, violating the standards established in *Flores v. Reno*.** Mr. Chairman, Americans witnessed the pictures of children being detained in overcrowded Border Patrol stations, without beds and with limited access to recreation and basic medical and nutritional support. This provision would eliminate the requirement that DHS transfer these children to HHS custody within 72 hours so they can be placed in a less restrictive setting. These children can be emotionally and psychologically harmed by lengthy detention in restrictive settings.
- **H. R. 5143 would use these children to deport their family members, many of whom would qualify for legalization under comprehensive immigration reform.** Instead of reunifying these children with family members until their immigration proceedings, this provision would discourage such family reunification by requiring that parents submit documentation and would require DHS to initiate removal proceedings if they are not legally in the country. This would restrict family reunification and ensure that children are kept in some form of detention.

Mr. Chairman, instead of passing these restrictive bills, we urge you to consider passage of comprehensive immigration reform, which we believe would help fix our system in a humane and just manner.

IV. Policy Recommendations for Immigration Enforcement

Mr. Chairman, instead of these bills, we offer the following policy recommendations for the creation of an immigration enforcement system which is humane.

- **National Employer Electronic Verification System.** Mr. Chairman, we know that there has been significant discussion and debate, including legislative proposals, to enforce laws against hiring and employing unauthorized workers in the workplace by imposing a mandatory electronic verification system on employers nationwide, so as to ensure that employees who are hired are in the country legally and authorized to work. While we are not *per se* opposed to such a system, several steps must be taken to ensure that any system is applied uniformly and accurately.

¹³ United Nations High Commissioner for Refugees. "Children on the Run." March, 2014.

We would not oppose the adoption of a mandatory employer verification system provided that –

- 1) is accompanied by a broad-based legalization program, so that all workers have an opportunity to become legal and not remain outside of the system;
 - 2) the system is phased in at a reasonable rate with objective benchmarks so implementation is feasible for both employers and the government;
 - 3) that is not implemented until inaccuracies in the government databases used to cross-check identification and eligibility are corrected so that employees are not wrongfully dismissed or wrongfully denied employment opportunities;
 - 4) protections are put in place so that employers do not use the system to wrongfully discharge certain employees; and
 - 5) employees who have are the victims of false positive assessments about their status are given the opportunity to correct any misinformation that lead to the false positive assessment.
- **Reform of Detention Standards and Practices.** Mr. Chairman, we are deeply concerned with the status quo when it comes to the detention of immigrants, especially vulnerable immigrants such as children and families. We believe that detention should be used to protect the community from threats, not to incarcerate for purposes of deterrence or penalty. There are alternatives to detention which are more humane and would ensure that immigrants appear at their immigration proceedings, including case management and community based alternatives to detention. Asylum-seekers, especially women and children, should, at a minimum, be placed in these alternative settings. We oppose the expenditure of funds for the detention of families, including the close to 3000 beds included in the 2015 DHS budget.

We support adoption of reforms to detention standards and practices that would –

- 1) end mandatory detention and the nationwide bed mandate to restore discretion to immigration officials and judges to release individuals who are not a flight risk and do not pose a risk to public safety, particularly asylum-seekers;
- 2) establish and fund nationwide, community-based alternatives to detention programs;
- 3) improve standards for detention conditions, by promulgating regulations that apply to all facilities used for U.S. immigration detention, making the detention system truly civil in nature and including prompt medical care in compliance with accreditation requirements, and appropriate standards through regulations for families, children, and victims of persecution, torture, and trafficking;
- 4) provide access to legal counsel for those in asylum and immigration proceedings;
- 5) provide funding and authorizations for legal orientation programs nationwide by the DOJ/EOIR to facilitate more just and efficient proceedings;
- 6) increase funding for adjudication by DHS/CIS and by DOJ/EOIR so that backlogged cases are adjudicated and there are sufficient resources to adjudicate ongoing cases in a timely manner; and

7) establish a new Office of Detention Oversight at the Department of Homeland Security.

- **Protect Asylum-Seekers and Refugees.** Mr. Chairman, we understand the desire of you and your colleagues to ensure that the U.S. asylum system provides protection to bona fide asylum-seekers and not those who are trying to take unfair advantage of the system. We share that goal. We believe that the United States currently has the tools to identify and prevent fraud. The U.S. government can protect the American public by using the many tools available to them.

Over the years, Congress has built in many fraud precautions into the U.S. asylum process. These precautions include an in-depth examination of each person's case, an in-person interview or hearing, and rigorous examination of evidence to make sure the applicant meets the strict refugee definition and is not otherwise barred. The asylum seeker signs the application under penalty of perjury, fraudulent applicants are permanently barred, and fraudulent filers, preparers and attorneys can be prosecuted.

In addition, there are numerous bars that prohibit asylum for anyone who has persecuted someone else, committed a particularly serious crime, an aggravated felony, a serious nonpolitical crime abroad, terrorist activity, material support of terrorist activity, or who reasonably presents a danger to the security of the United States. (INA sec. 208(b)(2)(ii-v).

Moreover, federal law requires extensive background and security checks that are tools to identify fraud and safeguard security. (INA sec. 208(d)(5)(A)(i).) The databases, among others, include the Central Index System (CIS), Deportable Alien Control System (DACs), Automated Nationwide System for Immigration Review (ANSIR), the Interagency Border Inspection System (IBIS) (that has incorporated the National Automated Immigration Lookout System (NAILs), and IDENT database checks, (See Office of International Affairs Asylum Division, *Affirmative Asylum Procedures Manual (Asylum Manual)*, 2007, updated 2010, pp. 2-6.) The FBI also checks names, birthdates, and fingerprints against their databases, and all asylum applicants are also sent to the CIA to be checked against their databases.

Mr. Chairman, we believe these tools, properly used, are sufficient to ensure that the asylum protection system protects those deserving of relief. Increased penalties and detention for asylum-seekers would not necessarily uncover or deter would-be fraudulent applicants, but would harm those seeking protection.

Those who come to our shores in need of protection from persecution should be afforded an opportunity to assert their claim to a qualified adjudicator and should not be detained unnecessarily. The expansion of "expedited removal," a practice that puts *bona fide* refugees and other vulnerable migrants at risk of wrongful deportation, should be halted. At a minimum, strong safeguards, such as those suggested by the U.S. Commission on International Religious Freedom, should be instituted to prevent the return of the persecuted to their persecutors. Moreover, the one-year filing deadline for asylum applications should be repealed, as many asylum-seekers do not have the resources or assistance to meet this deadline. We urge the subcommittee to include these reforms in any reform legislation.

We also believe that the definitions of terrorist activity, terrorist organization, and what constitutes material support to a terrorist organization in the Immigration and Nationality Act (INA) were written so broadly and applied so expansively that thousands of refugees are being unjustly labeled as supporters of terrorist organizations or participants in terrorist activities. These definitions have prevented thousands of bona-fide refugees from receiving protection in the United States, as well as prevented or blocked thousands of applications for permanent residence or for family reunification.

We urge the committee to re-examine these definitions and to consider altering them in a manner that preserves the intent to prevent actual terrorists from entering our country without harming those who are themselves victims of terror—refugees and asylum-seekers. At a minimum, we urge you to enact an exception for refugees who provide assistance to a defined terrorist organization under duress.

- **Due Process Protections should be restored to the system.** Finally, we urge the committee to reexamine the changes made by the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which eviscerated due process protections for immigrants. We urge you to restore judicial discretion in removal proceedings so that families are not divided, repeal the 3-and 10-year bars to re-entry (or waive them under certain circumstances), and revisit the number and types of offenses considered as aggravated felonies as a matter of immigration law.

V. Policy Recommendations for Comprehensive Immigration Reforms

Mr. Chairman, the U.S. Catholic bishops believe that the best way to address our country's broken immigration system is to enact comprehensive immigration reforms and that, in addition to containing reforms to border and interior immigration enforcement system, any comprehensive immigration reform bill should also contain the following elements:

- a legalization program ("path to citizenship") that gives migrant workers and their families an opportunity to earn legal permanent residency and eventual citizenship;
- a new worker visa program that protects the labor rights of both U.S. and foreign workers and gives participants the option to earn permanent residency ;
- reform of our family-based immigration system to reduce waiting times for family reunification;
- enactment of the Agricultural Job Opportunity, Benefits, and Security Act (AgJOBS) and the Development, Relief, and Education for Alien Minors Act (DREAM Act); and
- implementation of policies that address the root causes of migration, such as the lack of sustainable development in sending nations.

1) *Legalization ("Path to Citizenship") for the Undocumented*

With regard to immigration policy reform, it is vital that Congress and the administration address a legalization program with a path to permanent residency for the undocumented currently in the United States; employment-based immigration through a new worker visa program; and family-based immigration reform. Without addressing reform in each leg of this "three-legged stool," any proposal will eventually fail to reform our immigration system adequately.

A main feature of any comprehensive immigration reform measure should be a legalization program which allows undocumented immigrants of all nationalities in the United States the opportunity to earn permanent residency and citizenship. Such a feature would provide benefits to both our nation and to immigrants and their families, who would be able to "come out of the shadows" and become members of the community.

It is vital, however, that any earned legalization program is both **workable** and **achievable**. In other words, the program cannot be so complicated as to be unworkable, or not easily administered, nor should the requirements be so onerous as to disqualify or discourage otherwise qualified applicants.

We are concerned, for example, with proposals which would require the undocumented population to return home in order to qualify for legal status or permanent residency. We believe that such a proposal could “chill” members of the immigrant community from participating in the program, fearing that they would be unable to return to their families. We also believe that such a proposal may be unworkable and overly cumbersome.

We also would support a shorter waiting time for applicants for the legalization program to “earn” permanent residency. Some proposals in the past have suggested waiting times as long as 10 years or more before an applicant could apply for permanent residency. We find this period too lengthy, and believe the American public would agree. Polls and other surveys of the American public find that Americans want immigrants integrated into society as soon as possible, so that they are “playing by the same rules,” as U.S. citizens.

We also support broad eligibility requirements for the legalization program, including generous evidentiary standards and achievable benchmarks toward permanent residency. This also would include a recent arrival date. The payment of fines should be achievable and English competency, not fluency, should be required, with a demonstration that an applicant is working toward fluency.

It is important that any legalization program capture the maximum number of those who currently live in the shadows, so that we significantly reduce, if not eliminate, the undocumented population in this country.

Finally, the U.S. bishops would not support proposals that only grant temporary legal residence to the undocumented and ban any opportunity for them to obtain permanent residency and citizenship. Creating a permanent underclass in our society, without full rights in our communities, cuts against American tradition and values.

Despite the dire warnings of opponents of legalization for undocumented workers, evidence suggests that legalization would yield benefits at many levels by preserving family unity, securing the economic contributions of migrants, and raising the wages and working conditions of all workers. It would also make us more secure, as immigrants would be able to come forward and register with the government so that we know who they are and why they are here, leaving law enforcement the ability to focus upon criminals in our nation.

2) *Employment-Based Immigration*

Perhaps the most problematic aspect of immigration policy reform is the creation of a “future flow” worker program that protects the basic rights of all workers, both foreign and domestic. The history of “guest worker” programs in the United States has not been a proud one. Indeed, the *Bracero* program, the largest U.S. experiment with temporary laborers from abroad, ended abruptly in 1964 because of abuses in the program. The U.S. Catholic bishops have long been skeptical of large-scale “guest worker” programs. Nevertheless, the status quo, which features a large underclass of undocumented workers unprotected by the law, is unacceptable.

In this regard, the U.S. bishops have proposed a new model for a worker program which includes several elements, better labeled a new worker program. Any program should ensure 1) adequate wages and benefits; 2) worker protection and job portability; 3) family unity; 4) a labor-market test to

protect U.S. workers; and 5) the enforcement of labor protections for workers; and 6) an opportunity to apply for permanent residency after some time. Each of these elements, properly implemented, would, in our view, help protect the rights of foreign and U.S. workers and ensure that legal avenues are provided for future migrants so that they can enter the country in a safe, legal, controlled and humane manner.

In our view, any new worker program must contain these elements in order avoid the abuses of past such programs and to ensure that worker's rights are protected. In addition, it should be enacted in conjunction with a legalization program for the undocumented so that groups of workers are not pitted against each other. A just worker program also will mitigate the amount and effects of undocumented migration, which can lead to the abuse, exploitation, or even death of migrants.

In addition, we believe that Congress should establish a floor for annual visas in any new worker program, with the commission examining environmental factors and making an annual recommendation to Congress regarding a level of visas above the floor. We also believe that the commission should consider humanitarian factors, such as the rates of deaths in the American desert, so that the program can be adjusted accordingly.

Religious Workers. We urge you to include a permanent extension of the special immigrant non-minister portion of the Religious Worker Visa Program in any reform legislation. This program permits 5,000 non-minister religious and lay persons each year to enter the United States and work on a permanent basis. They work in religious vocations and contribute to their denominations, but also work in the community helping U.S. citizens.

3) *Family-Based Immigration*

Family reunification, upon which much of the U.S. immigration system has been based for the past 40 years, must remain the cornerstone of U.S. immigration policy. Immigrant families contribute to our nation and help form new generations of Americans. Even while many migrants come to the United States to find employment, many come as families.

The U.S. family-based immigration system, which helps keep families together, is in urgent need of reform. The current visa quota system, last revised by Congress in 1990, established statutory ceilings for family immigration that are now inadequate to meet the needs of immigrant families wishing to reunite in a timely manner. The result has been waiting times of five years or more—and up to seven years for Mexican permanent residents—for spouses to reunite with each other and for parents to reunite with minor children. The waiting times for adult siblings to reunite can be twenty years or longer.¹⁴

Such lengthy waiting times are unacceptable and actually provide unintentional incentive for some migrants to come to the United States illegally. Substantial changes must be made to the U.S. family-based immigration system so that it will meet the goal of facilitating, rather than hindering, family unity.

Such changes can be made in several ways, but they should not alter the basic categories in the family preference system. We oppose the elimination of the third (adult married children) and 4th (brothers and sisters) preferences and support the inclusion of spouses and children of LPRs into the immediate relative category.

¹⁴ U.S. Department of State, *Visa Bulletin October 2014*.

In addition, we must revise stringent income requirements (“public charge”) which prevent family members from joining their families and we must repeal bars to admissibility for unlawful presence, which can separate families for up to ten years.

4) *Passage of the Agricultural Job Opportunity, Benefits, and Security Act and the Development, Relief, and Education for Alien Minors Act*

While we urge the committee and Congress to place comprehensive immigration reform as a top priority, there are two measures which enjoy bipartisan support which can be enacted in the near future.

The Agricultural Job Opportunity, Benefits, and Security Act, “AgJobs”, represents a bipartisan initiative which would help protect both a vital industry and a labor force which is vulnerable to exploitation. Introduced by Senator Dianne Feinstein (D-Calif.), the measure, which represents a negotiated agreement between the agricultural employers and the United Farm Workers, would both stabilize the labor force in this important industry and ensure that employers have access to a work-authorized supply of labor, if necessary.

The Development, Relief, and Education for Alien Minors Act (DREAM) is a bipartisan initiative which would allow some undocumented students to be eligible for in-state tuition and give them an opportunity to become permanent legal residents. Having entered the United States as very young children, often through no fault of their own, these students have otherwise contributed to their schools and communities. Many have lived in the United States for years.

We urge Congress to enact both of these important pieces of legislation in the 114th Congress by including them in a comprehensive immigration reform measure.

5) *Addressing the Root Causes of Migration*

In our pastoral letter, the U.S. and Mexican Catholic bishops write that “the realities of migration between both nations require comprehensive policy responses implemented in unison by both countries. The current relationship is weakened by inconsistent and divergent policies that are not coordinated and, in many cases, address only the *symptoms* of migration and not its *root causes*.”¹⁵

It is critical that the Congress and the administration look at the immigration issue with Mexico and other governments as part and parcel of the entire bilateral relationship, including trade and economic considerations. Addressing the immigration systems of both nations, for example, will not control the forces which compel migrants to come to the United States.

Without a systematic approach which examines why people migrate, the U.S., Mexican, and Central American governments will not be able to address the underlying causes of migration. It is clear that Mexican and other nationalities continue to come to this nation regardless of enforcement strategies pursued by both governments. What attracts them is employment which either cannot be found in their own communities or better opportunities because of underemployment in sending nations, in which jobs do not pay enough or are not full time.

In an ideal world for which we must all strive, migrants should have the opportunity to remain in their homelands and support themselves and their families. We therefore support the \$1 billion in the

¹⁵ *Strangers No Longer*, n. 56.

President's budget for 2016 which addresses some of these underlying causes in Mexico and Central America.

VI. Conclusion

Mr. Chairman, we appreciate the opportunity to testify today. We urge you and the committee to consider our recommendations as you consider the myriad issues in this vital area.

We are hopeful that, as our public officials debate this issue, that immigrants, regardless of their legal status, are not made scapegoats for the challenges we face as a nation. Rhetoric which attacks the human rights and dignity of the migrant are not becoming of a nation of immigrants. Neither are xenophobic and anti-immigrant attitudes, which only serve to lessen us as a nation.

Mr. Chairman, the U.S. Catholic bishops strongly believe that comprehensive immigration reform should be a top priority for Congress and the Administration. We look forward to working with you and the administration in the days and months ahead to fashion an immigration system which upholds the valuable contributions of immigrants and reaffirms the United States as a nation of immigrants.

Thank you for your consideration.

Mr. GOWDY. Thank you, Bishop. The Chair will now recognize the gentleman from Virginia, the Chairman of the Full Committee, for his questioning.

Mr. GOODLATTE. Thank you very much, Mr. Chairman.

Dr. Morris,—

[Disturbance in hearing room.]

Mr. GOWDY. I thank the law enforcement. I apologize to our four invited guests and recognize the gentleman from Virginia.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Dr. Morris, I am particularly delighted to have you here.

Mr. MORRIS. Thank you, sir.

Mr. GOODLATTE. Because I want to ask you very specifically what will be the consequences to American workers and taxpayers if the United States government doesn't take necessary steps to stop illegal immigration and enforce our immigration laws?

Mr. MORRIS. Well, American workers are already at a disadvantage; some more than others. And that's the focus of the sum that I talked about.

The interesting thing is that ironically the things that place them at a disadvantage are contact with the laws and the contact of the criminal justice system. And that suppression of that contact of illegal workers is not only unfair, it's compounded and—

Mr. GOODLATTE. And creates a lack of respect for the rule of law, does it not?

Mr. MORRIS. Well, it's not only that—

Mr. GOODLATTE. They are treated differently from people who are not lawfully in the country?

Mr. MORRIS. Yes, and in effect is that you keep the benefits of that in terms of the jobs.

[Disturbance in hearing room.]

Mr. GOWDY. Thank the Capitol Police and would recognize the gentleman from Virginia.

Mr. MORRIS. Sir, there is one more thing I wanted to say.

Mr. GOODLATTE. Before you do, Dr. Morris, I just want to again thank you for being here to speak on behalf of the American worker.

Mr. MORRIS. Thank you, sir.

One of the things that I didn't include in my paper is how much of the recovery has gone to immigrant workers. Immigrant workers are 17 percent of the economy but they are getting 45 percent of the jobs that have been generated by this recovery because many times they are in areas such as construction, health and some of the other areas and increasingly limited retail that have been generated. So we have American workers at a multiple disadvantages. Multiple disadvantages that even not recovered from the recovery and then not having the likelihood of getting future jobs.

Mr. GOODLATTE. Thank you.

Sheriff Page, isn't interior enforcement essential in order to locate and apprehend unlawful aliens who have successfully evaded the U.S. Border Patrol and aliens who have entered legally but have chosen not to leave when required to do so? Do you believe that Mr. Gowdy's bill recognizes the critical nature of interior enforcement?

Sheriff PAGE. I do. I do.

And I understand the importance of interior enforcement because what comes through our borders, and I have been to the border multiple times, it's open and once this person has come into our communities and they are identified and they end up in our facilities and we contact ICE, our expectation is this person that has criminal offense will be removed from the United States as it should be. But, and I didn't mean to be short a while ago, is but when people ask me in my community, "Sheriff, where do the persons go when they leave here?"

I said, "I can only assume either temporary detention and then possibly release." And from there, as I read, nearly 900,000 absconders across the United States, and if we don't have the interior enforcement mechanism, how can we track these people down? And like you said, 5,000 ICE agents, that's a lot to be tracking down 900,000 people.

Mr. GOODLATTE. Thank you. Very important. Thank you.

Mr. Cadman, the Administration began a parole program for minor children of parents from certain Central American countries who are "legally" in the United States including unlawful aliens who have received deferred action. As the Administration admitted, it began its program because relatively few of the minors in El Salvador, Honduras or Guatemala can meet the refugee requirements. In other words, the conditions in those countries do not, according to the Administration's own admission, meet the refugee requirements for the Administration's in-country refugee processing program. Even by USCIS's own definition humanitarian parole is used sparingly and for a temporary period of time due to compelling emergency.

My question for you is, isn't the Administration's new parole program a clear abuse of humanitarian parole as defined in statute? And how would the Chaffetz Asylum bill prohibit the ability of the Administration to misuse humanitarian parole?

Mr. CADMAN. I do believe that the program, as I have read the documents that have come out from the State Department and USCIS, to contemplate uses of parole that were not ever intended by the statute and seem to be beyond the perimeters and parameters that were intended. It was supposed to be used sparingly and only in the rarest of cases, and yet it looks to me like it is going to be used as a pressure valve instead to try and accommodate people who may not fit the five criteria that are outlined in both international and in domestic law with regard to refugee status.

And the fact that it uses the phrase that it will be accorded to relatives of people who are in the United States legally presently, frankly that's mushy because that includes all of the people who were given benefits under the President's executive action. And that is to my way of thinking, a stretch of the notion of in the United States legally.

The consequence of all of this is that unless something is done to reinstitute the notion of parole as it was intended, I think that it could become a runaway train. I think that the portions of the bills under consideration that reiterate the purposes of parole will help that happen. But I would caveat, quite honestly, that the language in the law is only as good as the executive's willingness to enforce and abide by it. And that is a wild card.

Mr. GOODLATTE. My time has expired.

Thank you, Mr. Chairman.

Mr. GOWDY. Thank the gentleman from Virginia.

The Chair will now recognize the gentle lady from California, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman.

Before going into my questions, I would ask unanimous consent to enter into the record 13 letters from the following organizations in opposition to all of the bills under consideration today: the Immigration Council; the Church World Service; the Hebrew Immigrant Aid Society; the Leadership Conference of Women Religious; the Lutheran Immigration Refugee Service; Network; Human Rights First; the National Immigrant Justice Center; the First Focus Campaign for Children; the Coalition for Humane Immigrant Rights of Los Angeles; the ACLU; the Tahirih Justice Center; and the U.S. Committee for Refugees and Immigrants.

I also ask unanimous consent to enter into the record a letter from a Coalition of the Evangelical Organizations in opposition to the SAFE Act.

And finally, I ask unanimous consent to enter into the record a letter signed by 19 groups in opposition to the Asylum Reform and Border Protection Act.

Mr. GOWDY. Without objection.

Ms. LOFGREN. I just wanted to make a couple of corrections before getting into questions.

First, Mr. Cadman, you indicated in your testimony that the change in the Secure Communities would take us back to pre-electronic days. And that's incorrect. The automatic sharing of biometric data was not affected by the Secretary's recent memo. In fact, the memo says the exact opposite.

So I would ask unanimous consent to enter the memorandum that addresses this into the record, Mr. Chairman.

Mr. GOWDY. Without objection.

Ms. LOFGREN. I also noted that there was a suggestion that the existence of DACA had somehow instigated the number of child, unaccompanied minor children coming in. And we just received a report prepared by the Niskanen Center examining the unaccompanied minor child/DACA link that pretty much proves that there is no link. It is actually prepared by David Bier who worked for our colleague, Mr. Labrador, before leaving and joining the non-profit. And I would ask unanimous consent to enter that into the record as well.

Mr. GOWDY. Without objection.

Ms. LOFGREN. You know, I am happy that everyone took time to be here today. You know, a lot of people don't realize that the witnesses are volunteers just to try and help us. And so we do appreciate that.

I wanted especially, I know it is hard for you, Bishop, to get here given your schedule. And I am wondering, in terms of the proposals we are considering today, the Protecting our Children Act and the Asylum Reform and Border Protection Act, they would have particularly harsh provisions for unaccompanied children and would very, substantially restrict due process protections for these chil-

dren and likely lengthen the amount of time that little kids are held in detention.

Last summer, of course, we saw a surge in border crossings by immigrant refugee children from Central America. Have you been able to speak with any of these children? And if so, can you talk a bit about your experiences with that? Can you share any of their stories with this Subcommittee?

Bishop KICANAS. Thank you very much, Ms. Lofgren.

Yes. I have had an opportunity. We have two places in Tucson currently where unaccompanied children are being kept. One is Sycamore Canyon which is a small number of young people. And then, in Southwest Key which has probably about 70 children at this point. And, in both places, I have had the opportunity to pray with them and to hear some of their stories. And they are stories that are deeply troubling, both in their home country and in their journey trying to get to a safe place of safety.

They speak of gangs; gang recruitment. They speak of violence and fear of violence for themselves and their families. Some of them have very horrendous family situations; very troubling situations. They speak of tremendous poverty, a sense of hopelessness, and a fear for their lives. And these are young children. I mean, at Southwest Key, some of these children are as young as 7 years of age. They also have had babies there. They weren't there when I said the mass. These are girls and boys, the most polite and respectful young people that I have met in a sense of their prayerfulness, their reflectiveness. So it was a very powerful and very moving experience, I must say.

Ms. LOFGREN. Thank you.

I know my time has expired but I want to ask this final question and I don't know if you can answer it or not. You recently delivered a letter from the Pope to a border group in Arizona. Can you tell us what the Pope said in the letter or is that secret?

Bishop KICANAS. Sure, I would be happy to.

It was a thrill, really. You know, Pope Francis received some letters from what are called the Kino Teens which are young people working along the border with an organization called the Kino Border Initiative run by the Jesuits. And I invite, by the way, all of our Congress persons here to come and see Kino Border Initiative and to really engage and experience the face and voice of the migrant. It is a very powerful moving experience. Perhaps the only thing that really changes attitudes.

But these young people wrote letters to the Holy Father telling him about their work with migrants and inviting him to come to the border. Usually the Holy Father does not respond personally to letters; he receives millions of them. But Cardinal O'Malley was able to give these letters to him personally and he took the time to write a letter congratulating these young people for their sensitivity, for their care for these vulnerable people and his encouragement to them to stay the course. That this is what America is about. This is what our country is about; responding to people who are vulnerable and in need. And he actually signed it Francis.

Ms. LOFGREN. So Bishop, my staff is better organized than I am. Apparently, the letter is not a secret and it is a beautiful letter. And I would ask unanimous consent to make it part of the record,

and of course we are very much looking forward to Pope Francis when he comes here in the fall.

Bishop KICANAS. Yes. I think, as you know, he is going to be speaking before the Congress and I can't imagine that this issue is so terribly close to his heart, will not come up and that he will not be encouraging our Congress to address the immigration question.

Ms. LOFGREN. My time has expired.

Mr. Chairman, I thank you for your indulgence.

Mr. GOWDY. Thank the gentle lady from California.

The Chair will now recognize the gentleman from Iowa, Mr. King.

Mr. KING. Thank you, Mr. Chairman.

And I thank all the witnesses for your testimony today.

And I want to make sure that I am clear on the position that I have long taken in my time as a private citizen, my time as a State senator, as a son of a father who was deeply involved in law enforcement and steeped me in respect for the supreme law of the land, the Constitution and the rule of law and our ordered society, and remind people that there is no liberty without justice. And we have seen an example in here, during this hearing, of what happens when people have contempt for the law.

I think it would be to safe bet to submit that a good number of the people that disrupted this place are unlawfully present in the United States. They have been, at least in theory, granted a pass by the President of the United States in a lawless way also, I would add, in defiance of his own oath to the Constitution, defiance of the very law that requires that when people unlawfully present are encountered by immigration officers, that they place them in removal proceedings. And the President has ordered ICE agents to ignore that law. And now we see the results of it. The results of being rewarded for breaking the law with more contempt for the law in the disorderly conduct that took place within this hearing.

We can expect to see more and more and more of that until such time as we can restore the respect for the rule of law in this country and that has been my central objective in all of the years that I have been involved in immigration policy. And it has been nothing else. It has been about the Constitution, the rule of law, and the sanctity and the security of our borders. And in doing so, we can build an even greater country and in exporting the values that we need to restore here.

We can help all the world but, if we allow our system to break down and reward people for breaking that system down, we are going to end up in the third world, the place they came from. They came from a lawless place and they are bringing lawlessness here. That is what we have witnessed here today.

But I wanted to turn to Your Excellency, and I appreciate you coming back. And I appreciate the tone and the delivery of your remarks and the faith that emanates from you, Your Excellency. And I wanted to ask this question. I missed a couple of words, but you told a narrative about parents of a child coming from Central America, I presume. And I wrote this down, "Rather have child die on the journey than," could you complete that statement? I missed the conclusion of it.

Bishop KICANAS. I would be happy to.

First of all, could I say, Representative King, it is unfair for people to impute intentions to people, as I am sure you feel was done here, but it is also we need to be careful about the attentions of others. Maybe it is not so much a desire to break the laws as a passion and a fear and a concern that is in the hearts of many people right now.

But I think what I was saying at that time was that this mother, and I have heard this by others, this mother said that I would rather have my child experience the danger of crossing to the United States rather than die here in our porch or our home. Because the situation in Central America,—I talked to Bishop Ramazzini from Guatemala who is deeply involved, Cardinal Oscar Rodriguez Maradiaga in Honduras, they are very concerned about the circumstances in their country and the fear with which children are living.

Mr. KING. Bishop, if I could, and I know our clock is ticking, I have made a number of trips to the border, I have not track, but in one of those recently, in McAllen area, went through Brownsville, McAllen area, each location that I could. I talked with people that were taking care of the, your phrase, migrants. And asked a series of questions, and in transfer centers also: How many of the unaccompanied alien juveniles are sexual assaulted on the way? And they told us there is a range of answers. Somewhere from a third to 70 percent are sexually assaulted on the way.

Of the girls, from seven different sources, they told us that every one of them receives a pill before she leaves, or a pharmaceutical too, because the expectation of being raped along the way is so high. And I am going to presume that that pill, and I don't know whether it is an abort efficient, and so to keep her from getting pregnant as a result of rape. Can you imagine being a father or a grandfather, or a mother or a grandmother, and going to the drug store to buy a pill that ends a life of an innocent unborn baby and sending your daughter across the continent because we are not sending them back, they are sending them here?

And everyone down there told us, "Until you send them back, they are going to keep coming and they are going to be subjected to that kind of rape, that kind of violence, that kind of death of innocent unborn babies."

Bishop KICANAS. As you know, Representative King, the Catholic Church has been the most outspoken in its opposition to abortion as one of the many life issues from conception to natural death that we seek to uphold.

There is no doubt that these young people are experiencing trauma at home and in the journey here. And that is why it is so incredibly important that there not be something like expedited removal for these children before they have an opportunity to present their situations and be treated carefully because they are highly traumatized.

And the sensitivity of having Border Patrol do this kind of investigation, which is not their responsibility, it is a mistake and something that I think could further traumatize these children when they are returned home.

I know when the huge number of children came in and many that were being housed in Nogales, in a Border Patrol station, and the Border Patrol said to me, "Bishop, this is not our job. We don't know how to take care of kids. We're here to detain people, we're here to enforce the law. This is not our job."

And so, to have a bill that would entrust to the Border Patrol this responsibility of determining whether a child has an asylum reason I think would be a mistake.

Mr. KING. Thank you.

I yield back.

Mr. GOWDY. The Chair will now recognize the gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

I ask unanimous consent to put into the record a statement for the record for a Frank Morris and a statement for the record for a Mr. Dan Cadman.

Mr. GOWDY. Without objection.

[The information referred to follows:]

THE CASE FOR CITIZEN, NOT IMMIGRANT, PREFERENCE FOR A
DECLINING NUMBER OF AMERICAN JOBS

Testimony of Frank L. Morris Sr., Ph.D
Progressives for Immigration Reform

House of Representatives
Committee on the Judiciary

Subcommittee on Immigration Policy and Enforcement

2141 Rayburn HOB

March 1, 2011

Frank L. Morris Sr. Ph. D

Mr. Chairman and members of the Subcommittee, it is my honor to testify on the subject of making immigration "work" for American minorities. The answer can be summarized in one sentence. Current American immigration and labor laws, plus the mandatory application of E-verify procedures, should and must be vigorously enforced, especially at a time when all American workers, and especially African American workers, are so economically vulnerable.

I will first note that immigrant workers have a privileged status in the American economy. They are privileged as preferred job applicants; they benefit from the non enforcement of laws for which there is no parallel for American workers; and last but not least, they benefit from a false immigrant/US civil rights struggle analogy. I will then point out that this privilege differential should not be maintained because of very negative present and future economic and labor market trends for American workers, which require that the shrinking supply of American jobs, especially jobs that require less education and skill, should be reserved for American workers, or at a minimum, should not place American workers at a disadvantage because of the non enforcement of laws and policies which could help them.

Immigrant Privilege

This hearing is timely because our immigration and labor law enforcement practices reinforce what is a de facto privileged status in favor of immigrant workers, especially illegal immigrant workers compared to American minority workers, and especially less educated and skilled minority workers. While the conservative number of unemployed Americans exceeds 14 million, more than 7 million illegal alien immigrants hold American jobs. Less than one quarter of these jobs held by immigrants are in agriculture. Americans are the overwhelming majority of workers nationwide in sectors where the majority of illegal alien immigrants are employed in fields such as light manufacturing, health, construction, cleaning including janitorial services, and food preparation. These are supposedly jobs which Americans will not do, in spite of the fact that the overwhelming numbers of workers in these job fields, are Americans. These workers have escaped the scrutiny of identification documents subject to verification through E-verify.

¹Jeffery S. Passel, "The Size and Characteristics of the Unauthorized Migrant Population in the U.S." Pew Hispanic Center, Washington D.C. March 7,2006

There is no greater evidence of immigrant employment privilege than the latest figures which show that over the past two years (2008-2010) while US unemployment remained near double-digit levels, and the economy shed jobs in the wake of the financial crisis, over a million foreign born workers, many of whom were and are illegal, found work.² These 1.1 million new migrants who have come since 2008, found jobs while US household employment declined by 6.26 million over the same period.³ Andrew Sum the well respected director of the Center for Labor market Studies at Northeastern University has been quoted as concluding.... "Employers have chosen to use new immigrants over native born workers and have continued to displace large numbers of blue-collar workers and young adults without college degrees.....One of the advantages of hiring, particularly young, undocumented immigrants, is the fact that employers do not have to pay health benefits or basic payroll taxes."⁴

As an African American, I am sensitive and outraged when non citizens have the benefit of not having American laws enforced against them, especially American laws with the intent to help American workers. African Americans have long suffered from the stringent enforcement of American laws such as those enforcing segregation, and American terrorism like lynching, and racial profiling which were enforced as law, but were not official law. African Americans continue to suffer the disproportionate effects of the intensive enforcement of American drug laws. American prison population has increased sevenfold in less than 30 years going from about 300,000 to more than 2 million. More than two million African Americans are currently under the control of the criminal justice system. African Americans make up 80 to 90% of the non violent drug offenders in some states, despite the fact that studies continually show that people of all races use and sell drugs at remarkably similar rates.⁵ No principle of justice can be considered fair when laws which negatively impact them are strictly enforced while laws meant to protect their workplace rights are not enforced or minimally enforced to the benefit of non citizens who have broken multiple other American laws.

² Ed Stoddard, "More than a million land U.S. jobs: Stepped-up enforcement is not deterring trend of foreign born employment." Reuters. January 20, 2011 at <http://www.msnbc.com/id/41182482/ns/business-u...>

³ Ibid.

⁴ Ibid.

⁵ Michelle Alexander. "The New Jim Crow: How mass incarceration turns people of color into permanent second class citizens." The American Prospect. Vol.22 number 1, January/February 2011, pp A 19-21.

In contrast to African American workers, immigrant workers benefitted from the lax enforcement of immigration laws at both border and internal enforcement. They also have benefitted from not automatically becoming at risk of immediate deportation from interactions and even convictions in the criminal justice system. Many immigrant advocates attempt to imply that these justice system interactions are congruent with the Black civil rights struggle.

Let me now address why the false comparisons of privileged immigrants, including illegal alien immigrants, with the Black Civil Rights movement is in error. The most benign interpretation devalues the magnitude of the civil rights struggle, and in its most reprehensive comparison, mocks the struggle by implying that citizens who have suffered for centuries, had a privileged place in the American workforce enhanced by the non enforcement of American law. Specifically and briefly, the comparisons are not valid for the following reasons.

1. The analogy implies that actions of American citizens to challenge the constitutionality laws at personal risk of life in some cases, are equivalent to advocating the lax or none enforcement of laws for non citizens, some of which have violated and ignored numerous laws for personal benefit.
2. The analogy implies that the current employer preference to hire and pay immigrant workers in a modern American economy is equivalent for employment preferences the last time African Americans were the preferred "employees" during slavery, contract exploitation in chain gangs or agriculture sharecropping. Last hired and first fired is still a meaningful slogan and reality for African American workers.
3. In contrast to immigrants, African Americans did not have another home nation to return to for jobs that pay less than in America, nor did African Americans have diplomatic representatives from another nation monitoring any potential US human rights violations against them or to keep them from being extradited to the US to face the death penalty US citizens must face.
4. In contrast to the often mentioned "merit principles used to deny African Americans employment, immigrants with less education and deficient English language skills have been given employment preferences over American workers with more education and better English language skills. Education and deficient English language skills (Ebonics) deficits have been constantly used to exclude African

American workers as being less or unqualified for employment.

It is relevant to note here that charges of racism during immigration debates are always leveled toward those in favor of reduced immigration regardless of their reasons. Ironically we Americans deny the consistent American racial history of always accepting, welcoming, and treating most immigrants better than they treat and value fellow African American citizens and yet falsely do not treat that as racism.⁶

Deteriorating Labor Market Conditions Require Course Corrections

The need to address this is urgent because current economic trends suggest that the conditions of American workers are at even greater risk. If we acknowledge or assume economic uncertainty for American workers, it does not make economic sense, to continue to permit the current level of legal and illegal immigration when there are almost five American workers for every job opening while unemployment among African American workers continues at a depression level.⁷ This is especially the case while we as a nation suffer from weak and lax border and internal enforcement of labor laws.

The preference for illegal workers devastates potential entry level jobs for young workers⁸ and eliminates most potential opportunities for the employment of the more than 600,000 African Americans released from jails and prisons each year and greatly in need of the employment opportunities that only come with a tight labor market. In contrast to a tight labor market, younger and less educated American workers including many African American workers, do the same jobs as immigrants⁹.

Our great recession has recently cost America 8 million jobs and our weak jobless "recovery" has neither come close to replacing those jobs lost nor provided jobs to keep up with our immigration driven population increases. The best estimate is

⁶ See my introduction to "Cast Down Your Bucket Where You Are: Black Americans on Immigration." Center for Immigration Studies., June, 1996.

⁷ Heidi Shieholz, " Three years after start of Great Recession, no jobs for three out of four unemployed workers." Economic Policy Institute, February 8, 2011, [http://www.epi.org/authors/bio/shierholz_heidi/]

⁸ Andrew Sum et al., "Vanishing Work Among US Teens 2000-2010..." Center for Labor Market Studies Northeastern University, July 2010, P. 5

⁹ Stephen A. Camarota. "From Bad to Worse: Unemployment and Underemployment Among Less Educated US Born Workers 2007 to 2010. Washington DC. [Center for Immigration Studies](#), August 2010.

that we are currently 10 million jobs short.¹⁰ There is no way we can conclude that we have a labor shortage in the United States that can justify high levels of immigration, especially unskilled and less skilled and educated immigrants legal and illegal. We permit this situation in violation of American laws because we do not value vulnerable American workers, as much as we really value legal and illegal immigrants. No other industrial nation in the world has similar practices.

I want to also point out that in line with American tradition and history, African American incomes fell more than any other major American racial group during the great recession. The percentage loss for African American household income was almost double the percentage losses for white and Asian households and almost 30% more than for Hispanic households¹¹.

We also exclude from the immigration and American jobs debate factors such as how the loss of past manufacturing jobs, especially in industries such as steel, automobile manufacturing and even rubber have resulted with little, if any access to middle class jobs which do not require post secondary educational credentials. The manufacturing job losses plus the likely pending great reductions coming in state and local government employment are a double whammy against jobs to the middle class that had been especially important to African American workers. This is reinforced by the latest data which shows a disappointing downward, not upward mobility, of African American children, even those from middle class homes in our land of the Horatio Alger story. Among children raised in black middle income homes, in 2008 45% of children moved to the poorest quintile as adults compared to 16% of white children¹².

In any wealth discussion, I must point out how black family wealth is disproportionally held in home ownership and these homes have been disproportionally foreclosed upon¹³. This has happened because of the likely deliberate negative racial targeting of sub-prime loans to minority borrowers, especially

¹⁰ Economic Policy Institute, *The State of Working America*, "Recession has left in its wake a jobs shortfall of 10 million" www.stateofworkingamerica.org/great/recession Washington DC, Feb. 14, 2011.

¹¹ Economic Policy Institute, *The State of Working America*. "Black incomes fell more than any other US racial groups during the recent great recession." www.stateofworkingamerica.org/greatrecession/. Washington DC Feb.14, 2011.

¹² Ron Haskins, Julia Isaacs and Isabel Sawhill. 2008. *Getting Ahead or Losing Ground: Economic Mobility in America*. Washington DC: Brookings Institution Press

¹³ Kai Wright. "Backward Mobility: The recession is wiping out the jobs, homes, and dreams of the African American middle class." *The American Prospect*. Vol.22, Number 2, March 2011. Pp A 16-17.

African American borrowers. At the height of the subprime excess in 2006, African American borrowers at all income levels were three times more likely to be sold subprime loans than their white counterparts, even those with comparable credit scores. This reflects the fewer credit choices and great economic vulnerability associated with the lack of wealth and limited employment opportunities.

African American workers not only suffer from a jobs and wealth deficit, they also suffer from an unequal payoff from an education finance deficit while they accumulate more college debt. According to 2008 College Board data 27% of black college students left school with more than \$30,500 in debt, by far the highest rate among all races and ethnicities in spite of lower earnings prospects¹⁴.

While our labor market gives preference to immigrants throughout labor categories, more than 15% of today's Black college graduates are unemployed compared to less than 8% of white college graduates¹⁵. Even more important for the focus of this testimony, one in three black high school graduates under 24 years old are out of work¹⁶. While this situation exists, 42% of the 1.1 million new immigrants who have landed US jobs since 2008 were under 30. Most of these immigrants were undereducated, and unskilled or semi-skilled as well as being young. 86,000 of these post 2008 arrivals have found American jobs in the construction sector where Andrew Sum has noted unemployment is almost 21%.¹⁸ Note that the unemployment rate for young black high school graduates who cannot find full time employment was 41% in 2010 and for black high school drop outs in direct immigrant competition, more reliable unemployment measure (the Labor Department U-6) was 43%¹⁹.

The evidence in this section should ignite a fairness and equity concern for fairness for minority workers compared to immigrant workers. If these ominous trends for minority workers were not enough, there are additional future labor market trends that will make job procurement even more precarious for American workers. Let's now examine a few because my allotted time is running out.

¹⁴ Kai Wright. "The Assault on the Black Middle Class," The American Prospect, July/August 2009.

¹⁵ Wright, 2011, P.17.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Stoddard, Reuters 1/20/2011.

¹⁹ Camarota, 2010

Present and Future US Labor Market Threats which Require that American Jobs, Especially Jobs Requiring less Education or Skill be Reserved for American Workers

I want to highlight three American labor market trends that are presently having an impact on the American labor market and are very likely to have a greater impact in the future. Each of these factors show those American jobs, especially jobs which require less education and skill, will become increasingly scarce and thus should be reserved for American citizens.

The first trend is the increasing susceptibility of American jobs toward outsourcing. The best estimate of future outsourcing of American jobs is by Alan Blinder, the esteemed Princeton Professor. He estimated that between 22 and 29% of all US jobs are or will be potentially offshorable within a decade or two. Most estimate that we are talking about 28 to 34 million jobs. Blinder found that there is little or no correlation between an occupation's offshorability and the skill of its workers as measured either educational attainment or wages²⁰. Thus less as well as more skilled jobs are off shore substitution vulnerable.

A second ominous trend for African American workers is the reality of the perception of the need to greatly reduce public sector employment even in a time of inadequate job creation. This is an ominous trend because public sector discrimination has received greater scrutiny and thus has been more diversified than private sector employment over time. Evidence of this comes from the March 2009 Current Population Survey. 15% of all American workers work in the public sector, while 22% of native born black folks work in the public sector. Looking at state and local workers only, 13% of Americans work in this sector while 17% of black workers work in this sector.

This sector is likely to feel tremendous pressure to constrict because it has grown over the last few decades. If we examine the state and local workers with only a high school education or less, 8% of public sector workers but 12% of black workers fit this category. One out of eight less educated US born black Americans work for state and local government. This is 59% higher than for all other workers. Thus they will be especially hard hit as state and local governments cut back.

The last trend is probably the most significant. For the first time in American history, our largest companies have returned to profitability without hiring large numbers of Americans because

²⁰ Alan S. Blinder. "How Many US Jobs Might be Offshorable?" World Economics Vol.10 Number 2, 2009, pages 41-78

half their revenues and most of their production now comes from abroad. When the financial crisis hit, America's employers laid off many more workers than their counterparts in other major industrial competitors and have not rehired them. This was in spite of the fact that the US economy contracted less than the competition. Between 2008 and 2009, the US GDP dropped 2.4% compared to 2.6% in France, and around 5% in Germany, Japan and Britain. Yet US unemployment increased by about 5 percentage points since 2007 compared to 1 point in France and Japan and 2 points in Britain. In Germany, unemployment has actually dropped a point since the downturn began and is now 2 points lower than ours²¹.

The needs of American and especially minority American workers need special attention because American corporations have a number of strategies including high immigration to keep American wages low. In addition to shifting employment abroad by offshoring, another strategy has been to increase temporary workers in lieu of full time employees. A recent news report noted that in 2010 American companies created 1.4 million jobs overseas while only creating fewer than 1 million in the US²².

All of these three major present and future trends add up to the fact that American Jobs, especially jobs for the less skilled and educated, are and will continue to be in short supply.

Summary and Conclusion

Immigrant workers have numerous employment advantages when compared to American workers, and especially American minority workers. Most of this advantage comes because of employer preference for the more vulnerable and cheaper employees and the refusal of our government to vigorously enforce our immigration and labor laws to protect our workers in contrast to every other major industrial nation. For immigration to work for American minorities, current American immigration and labor laws, plus the mandatory application of E-verify procedures with stiff sanctions should be vigorously enforced especially at a time when all American workers, especially African American workers, are so economically vulnerable.

²¹ Harold Meyerson. "Business is Booming: America's leading corporations have found a way to thrive even if the American economy doesn't recover" American Prospect, Vol. 22, Number 2, March 2011, Pp 12-16.

²² Robert Scott, Economic Policy Institute quoted by Pallav Gogoi of the Associated Press in the Dallas Morning News December 28th, 2010, pp.D2-5

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Admitting Terror, Part 3

Florida INS director Dan Cadman fooled Congress; then his bosses promoted him

By Bob Norman

published: November 01, 2001

Five years ago Walter "Dan" Cadman left South Florida in disgrace. The former director of Florida operations for the [Immigration and Naturalization Service](#) had been caught deceiving a Congressional task force and then trying to cover up his actions. The [Justice Department](#), after an investigation into what became known as Kromegate, recommended that Cadman be fired or, at the very least, receive a 30-day suspension and be permanently relieved of management duties. In 1996 the INS transferred

Details:

Read "[Admitting Terror, Part 1](#)", "[Admitting Terror, Part 2](#)", "[Admitting Terror, Part 3](#)", "[Admitting Terror, Part 4](#)", "[Admitting Terror, Part 5](#)", and other related [New Times](#) stories

Cadman from his position in Florida to the service's Washington, D.C., headquarters, where he was temporarily demoted to an investigator's position. But two years later, after the public outrage over Kromegate had died down and Cadman's name was all but forgotten, Immigration's top brass quietly handed him a new job, a position that was more important than anyone could have known: The INS made Cadman its counterterrorism chief.

Cadman, as director of the INS National Security Unit, continues to oversee a staff and direct criminal investigations across the country. He is also responsible for working with other federal agencies, including the [FBI](#) and [CIA](#), to help catch terrorists. The man who had been caught deceiving Congress was soon testifying before House and Senate subcommittees about the nation's effort to combat terrorism.

"If a person can't be trusted, how can he be given a job dealing with terrorism with the INS?" wonders U.S. Rep. Elton Gallegly, a California Republican and chairman of the task force that was lied to at Krome (the western Miami-Dade County facility where hundreds of immigrants are detained). "He should have been fired after Kromegate."

Gallegly, a longtime critic of the INS, says he learned only after the September 11 disasters that Cadman held the important post. And he says Cadman's promotion following the scandal illustrates the chronic mismanagement of the immigration service.

Cadman refused to comment for this article. But INS spokeswoman Nancy Cohen spoke for him. "INS has every confidence that Dan Cadman has the ability to run the national security unit," she said. "We're definitely supportive of Dan and his efforts."

The September 11 attacks, however, have shone a spotlight on the failures of the INS. Immigration inspectors, for instance, admitted terrorist ringleader Mohamed Atta into the country on January 10 when he should have been deported. This past Monday, President Bush announced that the Justice Department is forming a task force to reform the entire immigration system. Also on Monday, Rep. James Sensenbrenner, chairman of the House subcommittee on immigration, visited INS centers in Miami and met with top officials including district director John Bulger and union leaders William

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King and Jose Tournon, who detailed chronic problems at the service in a recent *New Times* article ("Admitting Terror," October 18).

Cadman himself illuminated some of the National Security Unit's shortcomings when he testified before a Senate subcommittee in 1998. He conceded that the INS was failing to update computer databases used to track and identify terrorists. He also said that the INS and other federal agencies weren't communicating enough with one another, making it possible for terrorists to slip through the cracks.

Yet it seems little has been done to improve the situation since then. "INS's failure has played a key role in the threat to American security," Gallegly says. "There is no question about that. I'm not going to point fingers, but there is simply no enforcement happening at INS."

Cadman's climb through the bureaucracy began when he joined the INS in 1976. After working as an investigator and regional director, he took over Florida operations in 1992.

Three years later, when the seven-member Congressional fact-finding team visited Krome and Miami International Airport, Cadman was among several high-ranking INS officials who attempted to deceive the Washington politicians into believing that Miami immigration operations were managed well. Cadman and others abruptly released 58 inmates from the critically overcrowded Krome Detention Center two days before the task force's visit, according to an exhaustive federal investigation. More than 80 other aliens were transferred to other federal facilities to dupe the House delegation. To give the illusion that the inspection process at the Miami airport was well-managed, staffing was bulked up and noncriminal detainees were allowed to wait in an unsecured lobby rather than in a less hospitable holding cell. Inspectors were also ordered to remove their gun holsters and handcuffs to portray a kinder, gentler INS that focused on customer service.

After more than 45 employees, many of them union members, blew the whistle on their bosses, Kromegate broke. The Office of the Inspector General (OIG) for the Justice Department investigated the matter and, in June 1996, released its findings in a 197-page report. In it, Inspector General Michael Bromwich not only detailed the conspiracy behind the INS sham but also explained how Cadman and other officials tried to cover up their wrongdoing.

While Cadman didn't personally direct the conspiracy to deceive the task force (that job was left to his deputy, Valerie Blake), he did "sit by and allow the deception to occur," Bromwich wrote. "Moreover, and perhaps most troubling, Cadman was a willing participant in efforts to mislead INS headquarters and then to mislead and delay the investigation into this matter."

Justice officials found that Cadman had presided over meetings in which the conspiracy was planned. On the day of the visit, Cadman, reportedly red-faced with anger, threatened to arrest two INS inspectors who tried to alert the representatives about the whitewash. Cadman even called airport police.

Cadman's cover-up efforts began after the OIG started its investigation. "Cadman did not deny that large numbers of aliens had been transferred and released from Krome," Bromwich wrote in his report. "However, Cadman essentially represented that all alien movements were normal in light of Krome's overcrowded condition." That explanation, investigators determined, wasn't true.

Rather than cooperate with investigators, Cadman forced the Justice Department to obtain subpoenas to access his computer files. When the OIG finally gained access to Cadman's computer, all his e-mails relating to the delegation's visit had been deleted. According to the OIG report, "In his interview, Cadman stated that as a matter of consistent practice he contemporaneously deleted his electronic

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mail messages shortly after responding to them. In searching his e-mail, however, we did find some of Cadman's messages from June 1995 -- which was inconsistent with Cadman's representation to us."

In an expensive and time-consuming process, investigators were eventually able to locate 61 messages that had been sent or received by Cadman regarding the congressional visit, many of which helped the OIG prove that the officials had purposefully deceived Congress.

"On the basis of evidence gathered in this investigation, we believe the appropriate punishment for Miami District Director Walter Cadman falls within a range from a 30-day suspension to termination of employment," the OIG concluded. "Should he not be terminated, we urge his reassignment... to a position where he would not have significant managerial responsibilities."

After Cadman's removal from Miami, he virtually disappeared into the INS bureaucracy. Then on March 4, 1997, Rep. Harold Rogers (R-Kentucky) held hearings on Kromegate, trying to find out how Cadman and his cohorts were punished. Rogers grilled then-Attorney General Janet Reno:

Rogers: I need to know what happened to the people. Let's get to the bottom line here. What happened to the people that misled the Congress? Name the names, and where are they now?

Reno: Dan Cadman elected a voluntary demotion to GS-15, criminal investigator in headquarters ops.

Rogers: Where is he now?

Reno: I cannot tell you precisely.

Rogers: Is he still working?

Reno: He accepted a voluntary demotion, sir, so I would assume he is still working.

Rogers: He's a Justice Department official, correct?

Reno: So far as I know, sir.

Rogers: He misled the Congress, still works for the Justice Department. Who else?

When Reno told Rogers that Cadman and other Kromegate officials went through a legal process to maintain their jobs, Rogers shot back, "We want to protect their rights. I'm also protective of the people's right to have truthful federal employees reporting truthfully to their people's representatives. And when they lie to the Congress... and they maintain their employment with the Justice Department, people have a right to be suspect.... How can we make policy when our own officials are misleading the people like that?"

Roughly a year later, in 1998, INS promoted Cadman to head the newly formed National Security Unit. "This is a case where truth is stranger than fiction," says Rep. Gallegly. "And I think this explains in some way what is wrong with INS."

Mr. CONYERS. Thank you very much.

Bishop, I appreciate your presentation and recognition that we do have a responsibility of dealing with millions of hardworking and law-abiding undocumented immigrants in our country. What occurs to you to be a just and principle way to deal with this issue, sir?

Bishop KICANAS. I didn't hear the comment.

Mr. CONYERS. How do you believe we should deal with this undocumented immigrant issue in our country? What steps should we take as opposed to the very harsh criminal approach of the three bills that are before us? I am glad there weren't more than three.

Bishop KICANAS. Certainly, enforcement has to be a portion of the solution but it is not the only solution and not even perhaps the first solution.

The Conference does support the need for enforcement. We do believe that countries have a right to secure their borders. But we must have policies that are in keeping with our values and these particular pieces of legislation I don't think reflect well the values of our country.

What we believe is that it would be extremely important to address the 11 million people who are in this country without documents to find a way to legalize their presence especially those who are simply cooperating, participating, engaged. And in our, all of our States there are such people who have no documentation but who are our neighbors who are working hard, who are contributing.

We would like to see a way for workers to come to this country to legally, so that they don't have to come illegally into the country, to address issues. And we are concerned that there will be family unification, excuse me, unification because right now it is far too long for families to be separated from one another.

Mr. CONYERS. Thank you so much.

I would like to ask you one other question and that is about the DREAMers. We have struggled with this. We passed the DREAM Act and the 111th Congress couldn't overcome the conservative filibuster in the Senate. We put the DREAM Act in the comprehensive immigration reform that passed the Senate in 2013 but the bill was never brought up for a vote in the House controlled by conservatives.

Now the president, in 2012, extended temporary protection for deportation to many of these young people, over 600,000 at this point, through the Deferred Action for Childhood Arrivals, DACA. The SAFE Act contains a provision that would eliminate DACA relief from the dreamers. Do you have a view about this and how do you think we should treat these young people? What do you think our solution should be?

Bishop KICANAS. You know, one of the strong reasons why we would oppose the SAFE Act is its repealing of DACA. This is a big mistake.

I have talked many of these young people, some here in Washington, when we gathered after the mass that was celebrated at the border in Nogales by Cardinal O'Malley. And your heart goes out to these young people. They don't know any other country. They don't know any other experience than being here. They grew

up here. They are a part of our society. They do respect the law. They do want to contribute to the community.

It is time to find a way to defer action against childhood arrivals. That is the most decent thing we can do. It is a limited thing but is certainly an important thing.

Mr. CONYERS. Thank you so much.

I have a question for Sheriff Page that I will submit to him and he can send me a response. And I have another question for you, Bishop, and you can send me a response as well.

My time has expired. I yield back and I thank the witnesses.

Mr. GOWDY. I thank the gentleman from Michigan.

The Chair would now recognize the gentleman from Colorado, Mr. Buck. Former District Attorney in Colorado, Mr. Buck.

Mr. BUCK. Thank you, Mr. Chair.

Sheriff Page, a couple quick questions for you. Have you ever or has your department ever arrested an illegal immigrant for, say, a DUI charge?

Sheriff PAGE. I am sure we have, sir.

Mr. BUCK. Okay.

Who pays the salary of the Sheriff's Deputy who makes that arrest?

Sheriff PAGE. The county pays.

Mr. BUCK. And how about the booking officer who books that illegal immigrant into the jail?

Sheriff PAGE. Likewise, the county.

Mr. BUCK. And how about the jail officer who watches that cell overnight?

Sheriff PAGE. And the county. Yes, sir.

Mr. BUCK. Okay.

How about the transport officer that brings that prisoner to the courthouse for a hearing on bond?

Sheriff PAGE. It is all county funded. Yes, sir.

Mr. BUCK. And the courtroom deputy who is in the courtroom at the time when that bond hearing is held?

Sheriff PAGE. Yes, sir.

Mr. BUCK. The county?

Sheriff PAGE. Yes, sir.

Mr. BUCK. Okay.

The judge, judge's salary?

Sheriff PAGE. The judges are paid by the Administrative Offices of the Court through the State.

Mr. BUCK. The State of North Carolina?

Sheriff PAGE. Yes, sir, State of North Carolina.

Mr. BUCK. All right.

And the Judicial Clerk, the assistant in the courtroom, is that also a State function?

Sheriff PAGE. Yes, sir. Through the State.

Mr. BUCK. All right. In the State salary?

Sheriff PAGE. Yes, sir.

Mr. BUCK. And the prosecutor who is in the courtroom at the time of the bond hearing. Who pays for that individual?

Sheriff PAGE. The State of North Carolina.

Mr. BUCK. And how about the public defender's office, if the defendant qualifies for a public defender?

Sheriff PAGE. The State.

Mr. BUCK. And tell me something. If the individual is released, you have a Pretrial Services program in North Carolina?

Sheriff PAGE. We do, sir.

Mr. BUCK. And do you have pretrial service officers?

Sheriff PAGE. We do, sir.

Mr. BUCK. And who pays the salaries for those pretrial service officers?

Sheriff PAGE. The county does.

Mr. BUCK. And how about after sentencing if an individual receives probation? Who pays for the probation officer's salary?

Sheriff PAGE. The State of North Carolina.

Mr. BUCK. Do you have a victim compensation fund run through the State of North Carolina?

Sheriff PAGE. We do, sir.

Mr. BUCK. So if an illegal immigrant, during that DUI, were to hit a guardrail, for example, owned by the county or owned by the State? Those would be public funds that would pay for that guardrail?

Sheriff PAGE. They could ask for restoration through the defendant to pay back.

Mr. BUCK. If the defendant was not able to pay, who would pay for it then?

Sheriff PAGE. The State would incur the cost.

Mr. BUCK. And how about for the victim? If the defendant wasn't able to pay for damage done to a car or something, would the victim compensation fund run by the State pay for—

Sheriff PAGE. Yes, sir.

There is some compensation back to the victims through the State. Yes, sir.

Mr. BUCK. And I just wanted to ask you a more open-ended question. Do you have an opinion as to who bears the cost for a broken and failed Federal immigration system?

Sheriff PAGE. You and I do, sir. The taxpayer.

Mr. BUCK. Okay. I yield back.

Thank you.

Mr. GOWDY. The Chair would now recognize the gentle lady from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. I thank the Chairman and the Ranking Member. We are doing a lot of double duty today. So I thank the witnesses very much for your presence here today. And I think, Bishop, you have shared with us before, as I recall. We are certainly aware of your service. Frankly, we are aware of the Pope's service as well, as he came in to set a new tone for the world which is to use our better angels no matter what ecumenical view we have and to try and find a common thread of humanity.

I just finished, an hour or two ago, a hearing on ISIS. In that hearing I offered my sympathy for the death of the young woman from Arizona who we can be so proud of because her definition was I am going to the most vulnerable places to help the most vulnerable people. I don't know whether she was an immigrant in a far-away land, but I do know she was a Good Samaritan. I also offered sympathy to three Muslim persons here in the United States at a school my daughter went to and graduated, University of North

Carolina Chapel Hill, seeking a better life who were murdered. I can only imagine because of the intolerance that someone felt they had to act upon.

I would only offer to give my own opinion on where we are today with respect to the legislation and never attribute to anyone any untoward thoughts. But I do know that I have been working on this Committee for almost 20 years fighting for comprehensive immigration reform because I never thought that I would have to be concerned with a tax by unaccompanied children or mothers who are simply trying to reunite with children.

I think we can answer the questions of a number of colleagues who have offered legislative initiatives by a comprehensive approach that is not inhumane, it is not harsh. Because, I would much rather find the dastardly actors who follow the ideology of ISIS who may, for some reason, have the opportunity be overstay such as the 9/11 terrorists as opposed to families who are simply trying to reunite.

So Bishop, would you give me just a moment. I have another question so I want to make sure I get one in. Would you give me a comment on that aspect of humanity and how some of the legislative initiatives before us, and I know you have not looked at them in detail, may be contrary to what we are trying to do?

Bishop KICANAS. We are all very proud of our country and the values that are the foundation of this country. And part of those failures are the respect for the dignity of every human being and a concern for those who are vulnerable and who are in situations of danger.

You know, our country would never say to a receiving country who is receiving people who are living under persecution to close their doors. And we can't be a country that even though we have received a number of children from Central America who have lived in very traumatized situations we have received them, we have brought them to a place where they can now address their issues, we can't close our door when there are true asylum needs and refugees seeking to find the place of safety. Those are the values our country stands for.

Ms. JACKSON LEE. I thank you for that. That is a note I would like to leave on. And I understand that many are asking for an addition of immigration judges.

Mr. Chairman, I would hope that you would join me on my bill that has added more judges. Immigration Judges might help all of us no matter what our position is. And so, I ask unanimous consent to introduce the Immigration Judges bill that I have offered? I ask unanimous consent to put it into the record?

Mr. Chairman?

Mr. GOWDY. Without objection.

Ms. JACKSON LEE. I also wanted to put into record, Mr. Chairman, I'm concerned about a number of statements contained in Mr. Cadman's testimony today. I ask unanimous consent to enter into the record a report prepared by the Department of Justice, Office of Inspector General, detailing Mr. Cadman's role as the INS Miami District Director in receiving a Bipartisan Congressional Taskforce that traveled to Miami in 1995 to investigate complaints regarding the Krome Detention Facility in Miami International

Airport? The report highlights Mr. Cadman's efforts to hinder the OIG's investigation stating that Cadman has actively participated in efforts to mislead and impede official efforts to learn the truth.

I also ask unanimous consent to enter into the record an article in the Broward-Palm Beach New Times further describing this incident. The article quotes the previous Chairman of this Committee, Elton Gallegly, as saying, "I think it is a disgrace that the bills we've been entrusted enforcing the laws of the land would themselves violate the law. It is clear to me that some INS employees are on the wrong side of the bars. There is no question that Mr. Cadman violated the law and obstructed justice."

I ask unanimous consent to put this report in the record?

Mr. GOWDY. Without objection.

[The information referred to follows:]

114TH CONGRESS
1ST SESSION

H. R. 77

To provide for the appointment of additional immigration judges.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 2015

Ms. JACKSON LEE introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To provide for the appointment of additional immigration
judges.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Justice for Children
5 Now Act of 2015”.

6 **SEC. 2. ADDITIONAL IMMIGRATION JUDGES.**

7 (a) IN GENERAL.—The Attorney General may ap-
8 point 70 additional immigration judges in addition to im-
9 migration judges currently serving as of the date of enact-
10 ment of this Act.

1 (b) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated such sums as may be
3 necessary to carry out this section.

○

**Alleged Deception of Congress: The Congressional Task Force on Immigration Reform's
Fact-finding Visit to the Miami District of INS in June, 1995**

VI. OIG Conclusions on Administrative Responsibility

This section summarizes OIG's conclusions concerning the responsibility of individual INS managers for the decisions and events that are described in this report, both with regard to their presentation of a false picture to the Task Force during its visit to Miami and failure to fully cooperate with this investigation. Because they were not germane to the overall description of the events that occurred in connection with the visit, some of the facts described below are not contained elsewhere in this report. They are included here because they are relevant to assessments of individual responsibility.

Our recommendations of appropriate punishment are based solely on the facts found in this investigation and our determination of the seriousness of the misconduct in light of the employee's position, level of culpability in the events we investigated, and any mitigating or aggravating circumstances arising out of the investigation, such as the level of cooperation with OIG. Disciplinary decisions may properly take into account other factors relating to the person's employment history and record in fashioning the appropriate punishment.

A. Miami Deputy District Director Valerie Blake

Based on the evidence, we believe that the single person most responsible for orchestrating the effort to present a false picture to the Task Force was Valerie Blake, who was then the Deputy District Director in Miami. [During this investigation, Blake was promoted to the position of District Director for Minneapolis, Minnesota.] But for Blake's actions, the events described herein would likely not have occurred. Blake is also primarily responsible for attempting to mislead OIG and impede this investigation.

On June 8, 1995 -- two days before the Delegation's arrival -- Blake flew into Miami from her detail at the INS Eastern Regional Office. [Blake flew in expressly for the Delegation's visit and returned to the Region the following week.] It was then that the wheels were set in motion to change routine practices at Miami Airport and reduce Krome's population in time for the Task Force visit on June 10, 1995. Prior to Blake's arrival on the scene, neither District Director Cadman nor any Krome manager signalled any intention to reduce the population before the Delegation's arrival. In fact, in his June 9, 1995 response to Dr. Rivera, Cadman simply shifted responsibility for the overcrowded situation to his superiors, by saying ". . . in a bureaucracy, sometimes our imperatives and discretion are not entirely unfettered." Cadman then implied that he had been forced into adopting a position of "tough enforcement and detention of airport arrivals, but [had] not been offered any help or relief in terms of what to do with people once they're on our figurative doorstep." Cadman deflected Rivera's call for action by asking her to improve the quality of her staff's paperwork to enable him to parole more people. Cadman did not advise Dr. Rivera that the population would be immediately reduced (as was happening). Moreover, Kathy Weiss, Krome's Camp Administrator, stated that she and Vincent Intenzo, the Supervisory Deportation Officer, were prepared for the Delegation to see Krome as overcrowded as it was. See Sections II.A.1.d. and II.A.2.c.(2), above.

According to Miami District and Eastern Regional managers, Miami Airport was not well-managed prior to the Delegation's visit. As Eastern Regional Commissioner Carol Chasse stated, by June 1995, "it was clear that [Miller and Emory] weren't capable of running the airport" and the airport had been "chronically mismanaged." Blake flew into Miami Airport on June 8 and went directly into meeting to prepare the Airport's top managers and supervisors for the Delegation's visit. [Blake had previously directed Assistant District Director for Inspections Aris Kellner to schedule the meeting.] Blake

instructed Miller and the Airport's supervisors to ensure that on the day of the Delegation's visit, the airport ran smoothly, there was no passenger backup, and that as many inspectors as necessary were brought in on overtime to achieve those results. Blake instructed them not to complain about the lack of inspectional staff or to make negative comparisons with staffing levels at JFK. [INS Director of Congressional Affairs Pamela Barry was the source of these instructions, which were consistent with directions issued by Eastern Regional Director Carol Chasse. Blake testified, however, that she "thought [Barry] was nuts" in regards to the instructions. Yet, she communicated the instructions to her subordinates because "it was something that had originated in headquarters." Though Blake had challenged other instructions by Barry (specifically regarding the provision of lunch to the Delegation), she did not report up through her chain of command to challenge the instructions precluding discussion of the inspectional staffing shortage at Miami Airport. Blake stated that she did not challenge the instructions because she "just didn't care and . . . was going to ignore her." Although she conveyed Barry's instructions practically verbatim, she testified that because of her "tone of voice" she "didn't think anybody was going to pay attention to Pam Barry." Blake conceded, however, that Barry's instructions were consistent with those given by Chasse. She also conceded that some supervisors at the meeting could have taken her instructions seriously and would then have felt constrained from speaking about certain issues. If Blake truly believed that the instructions were "nuts," it is incomprehensible that a manager at her level would have followed the course she chose. More likely, however, she gave the instructions because she believed they would result in a favorable impression in the eyes of the Delegation.] Blake restricted the use of the holding cells to the incarceration of criminal aliens. Moreover, Blake directed supervisors to tell the line inspectors that, if asked, they were to provide false information to the Delegation regarding the criteria for placing aliens in the hard secondary holding cells. Specifically, Blake instructed that the Delegation should be told that as a matter of regular practice only criminal aliens are kept in those cells.

After finishing with the Airport, Blake immediately turned her attention to Krome. Blake found Krome close to crisis. [Throughout May 1995, Blake was mostly traveling and away from the District. During that time, Krome's population had been steadily and predictably growing due to the change in policy to interdict Cuban rafters for repatriation and to detain all Third-Country Cubans attempting to enter the United States illegally through the Airport. Krome and Miami District managers had advised the Region about the growing problem in an effort to alleviate the increased overcrowding at Krome. However, no action was taken until Blake telephoned the Region about it the day before the Delegation arrived.] In Blake's words, things there were "out of control." Perhaps most importantly, its condition would be quite apparent to visitors touring the facility. As of the day before the Delegation's visit, Krome had reached a population of over 400 aliens. Many of those aliens were Cubans who were being detained pursuant to a May 2, 1995, policy change. In addition, Krome was housing approximately twice the number of women that it was capable of housing indoors. As a result, about 55 women were sleeping on cots in the lobby area of Krome's medical clinic run by the Public Health Services. On June 8, 1995, Dr. Ada Rivera, Krome's Chief Medical Officer, had sent a memorandum to Miami District management warning of the serious health consequences of the overcrowded conditions and advising that she intended to suspend the medical clinic's normal functions (primarily because women detainees were forced to sleep in the clinic's work space). In addition, Blake was concerned that two local Florida Congressional representatives, Lincoln Diaz Balart and Ileana Ros-Lehtinen, would disrupt the Delegation's visit by organizing a demonstration in front of Krome to protest the new strict Cuban detention policy. See supra Section III.A.4.d.

Blake almost immediately obtained permission from Deputy Regional Director Michael Devine and Eastern Regional Director Carol Chasse to reduce Krome's population before the Delegation arrived the next afternoon. Blake then advised Camp Administrator Kathy Weiss to go ahead and move people out of Krome before the members of Congress came. Blake communicated to Weiss that the impending Congressional visit was a "very important factor" in acting to reduce Krome's population by the

following day. Blake also communicated that information to Assistant District Director for Inspections Kenneth Powers, who similarly contacted Weiss on Friday and instructed her to "reduce the population at Krome to below 300 detainees in time for the [Congressional Delegation's] visit."

Blake's and Powers' instructions to Weiss are reflected in an electronic mail message that Weiss sent to them at 1 p.m. and in Blake's response at 1:40 p.m. In that e-mail exchange, Weiss advised Blake that aliens would be "stashed out of sight for cosmetic purposes," to which Blake responded "great work so far." See Sections III.A.2.c.(2); III.A.4.d. In that e-mail, Blake forwarded Weiss' cost estimate of \$21,000 for the transfers (along with the rest of Weiss' message) to Deputy Regional Director Michael Devine.

Blake's instructions at Miami Airport on June 8, and her directions to Weiss and Powers on June 9, were calculated to create an appearance of well-run facilities that were under control, which did not comport with the reality at that time. In the process, she caused her subordinates to take deceitful actions about which they seemed to feel they had no choice, breeding cynicism and dishonesty within INS.

As a direct result of Blake's instructions at the Airport, additional Immigration Inspectors were assigned to work in the primary inspection booths to process arriving international passengers just before the Delegation's arrival, even though only a small number of passengers were waiting in line. Aliens who would normally have been detained in the hard secondary cells -- those who had submitted fraudulent documents to obtain admission to the United States -- were left to sit in an unsecured waiting area. Moreover, the Delegation was given false information about the type of aliens held in those cells.

As a direct result of Blake's instructions at Krome, the population was reduced from 410 aliens on June 9 to 289 aliens by the time the Delegation arrived. In approximately the 24 hours immediately preceding the Delegation's arrival, about 100 aliens were either transferred or released to the community, "stashed out of sight for cosmetic purposes." They were stashed out of sight at a cost of \$10,267. For the most part, the aliens released to the community were women and Cubans. The women were released to prevent the Delegation from seeing women sleeping throughout the medical clinic's lobby area, which prevented the clinic from functioning normally. Evidence exists that the Cubans were released to reduce the possibility of a demonstration against the new strict Cuban detention policy. In the rush to comply with Blake's directives, 34 aliens were released to the Miami community without medical clearances on the very day that the Delegation arrived. In addition, a total of nine aliens with criminal records were released on June 9 and June 10. See Sections III.A.2.c.(2); III.A.2.d.; III.A.4.d.; III.A.4.e., above

Not only is Blake responsible for having triggered the decisions that set the above-described deceptive actions in motion, she is also the manager primarily responsible for attempting to mislead and impede the OIG investigation into this matter. Blake prepared the July 13 and July 17 Memoranda that were ultimately signed by Cadman. The purported purpose of these memoranda was to provide the truth about the allegations. Instead, Blake concocted rationales and false explanations for the events that had occurred, which were designed to obfuscate and mislead rather than to set the record straight.

In so doing, Blake again engendered cynicism and dishonesty in her subordinates, on whom she relied to obtain artificial and false explanations for events about which she was intimately familiar. Weiss admitted that her written responses to the allegations, which were later incorporated almost verbatim into the July 13 and July 17 Memoranda, were not accurate in that they conveyed the impression that it was "business as usual" on the day the Delegation visited, when in fact it was not. Weiss testified that she "knew that the allegations concerning alien movement were true, but her communications with Powers and Blake gave her the impression that a plausible explanation was wanted in response to the allegations."

Blake's subsequent conduct throughout this investigation was equally troubling. Despite OIG's request

that all relevant documents be produced, and Cadman's initial instruction that his staff cooperate fully with the investigation, Blake never produced or alerted OIG to the existence of her June 9 electronic mail exchange with Weiss. Rather, she sought to pass over that e-mail when OIG agents specifically went to her office to retrieve it and others. Then, after refusing a voluntary interview, Blake declined to take immediate action to ensure that Miami District e-mails would not be destroyed. Moreover, during the course of her subsequently compelled interview, Blake repeatedly contradicted her own testimony and consistently sought to deny allegations, the truth of which she ultimately admitted.

Based on the evidence developed in this investigation, we believe that Valerie Blake should be terminated from employment with INS.

B. Eastern Regional Director Carol Chasse

Chasse bears responsibility for fostering and approving an overall approach to the Delegation's visit that was not forthright. The credible testimony of all relevant Krome and Miami District managers indicates that the last-minute orders to reduce Krome's population in time for the Delegation's visit were given by Blake with Chasse's approval. In addition, Chasse suggested that the Miami District discourage complaints about the Airport's chronic inspection staffing problem. It is likely that Chasse's suggestion (and the concern it reflected) contributed to Blake's issuance of instructions designed to avoid the appearance of a staffing problem at Miami Airport as well as what amounted to a gag order regarding comparisons with JFK's staffing levels. See Sections III.A.2.c.(2); III.A.4.d.; and IV.B.3.b., above.

On May 22, 1995, District Director Cadman sent Chasse an e-mail reporting on his recent meeting with INS Commissioner Doris Meissner at INS Headquarters about the Delegation's visit. Cadman wrote that the Commissioner viewed the upcoming visit as "EXTREMELY important" and was concerned, in substance, that "it would take very little to put the kiss of death on [the Task Force's] views towards INS, with significant adverse consequences for some time thereafter. . . ." He also communicated the idea that there might be real risks should members of the Delegation pull employees aside to get the "real story." In short, Cadman's e-mail reflected his impression that the "real story" -- to the extent it was a story of serious mismanagement and chronic problems -- should not be told. See Sections I.A.2.; IV.B.3.b., above.

The next day, Eastern Regional Director Chasse responded to the e-mail. Chasse did not communicate the message that the Delegation should be permitted to see things as they were, problematic or otherwise. Rather, she wrote, "Dan, your message was very much on point and should be shared with employees almost verbatim." She went on to say, "Employees complaining that they can't do their job due to lack of resources communicate only one message, 'INS can't do its job.'" Chasse recommended that the District hold a meeting with other participants in the visit to advise them that they will not be "doing [INS] a favor" by telling the Delegation that INS cannot do its job with the resources that have been allocated. In addition to her e-mail message, Chasse spoke by telephone to Cadman, who said she told him that "there might be some people at the journeyman level, perhaps Union members, who would be a little unbalanced in their presentation if they had the opportunity to do so." In addition, Chasse expressed concern that "there might be comparisons with JFK International Airport that might cause questions that were difficult to answer. . . ." It was clear to Cadman that in responding to questions or making presentations, Chasse did not want anyone to volunteer negative comparisons to staffing levels at JFK. While Chasse denied knowing that Miami Airport employees had been instructed not to make comparisons with JFK Airport, that instruction was the predictable outcome of her own directives. See Sections I.A.2.; IV.B.3.b., above.

During her testimony, Chasse virtually admitted that the picture of Miami Airport shown to the Delegation was tantamount to being a sham. Chasse testified that it was fair to say that INS did not want

to show its warts and boils during the Delegation's visit, but rather wanted to make a favorable impression on the Delegation and show that Krome and Miami Airport were well managed. By her own admission, however, Miami Airport was not, at that time, well managed. See Section IV.B.3.b., above.

Chasse was also aware that prior to the Delegation's visit, Krome was seriously overcrowded and that it was a problem that could develop into an emergency. By her own admission, Chasse met with Devine in his office and directed him to "do whatever it takes" to "get the population down at Krome" --including releasing aliens to the community. [It bears noting that Chasse was the Deputy District Director in Miami from October 1990 until July 1993, and had a solid understanding of Krome, the Miami District and the means by which Krome's population could be reduced.] Chasse testified that she did not consult with anyone at INS Headquarters about this decision. Yet, according to Chasse, the original decision after the Cuban-American accords to detain all Third-Country Cubans entering through Miami Airport had been driven by INS Headquarters and was a matter of interest even at the White House. Chasse explained that the period between the accords and the Delegation's visit was exceptional because of the agreement to repatriate Cubans. However, INS wanted to "ensure that the Department of Justice, meaning the Attorney General, [and] that the President of the United States were comfortable with what was going to happen in terms of Cuba, that they understand what was going to happen in terms of Cubans; that we were still going to have to release some of them because we could not remove them." Chasse testified that during this time period, "Dan [Cadman] felt that they had removed his parole discretion because -- well, let me put it this way, Dan knew very clearly, as did I, that there was going to be an enormous amount of second guessing of any parole discussion and that we felt it was much better if everybody reached the consensus of what that discretion was going to entail." According to Chasse, that consensus was never reached. Nonetheless, Chasse said she took it upon herself, without consulting anyone in Headquarters, to unilaterally authorize the reduction of Krome's population -- through transfers and releases.

Chasse testified that her instructions to Devine to reduce Krome's population occurred during the week before the Delegation's visit (the week ending June 2, 1995). In other words, she contended that her instruction was issued to address a problem, and not because of the proximity of the Delegation's upcoming visit. In light of the lack of activity towards that goal until the day before the Delegation's arrival, the speed with which it was ultimately accomplished, and the accompanying violation of routine practices and newly issued policies, we do not find that claim to be credible. Chasse also claimed that she could not remember speaking with Devine or Blake on June 9, 1995, but subsequently admitted that she could not "remember with any specificity" which day she had issued the instruction to reduce Krome's population. While she could not recall the timing of her unilateral instruction to transfer and release aliens from Krome, she was able to recall with specificity the complex series of events and policy discussions that preceded that decision. During her approximately six-and-one-half-hour long testimony, Chasse responded that she did not know the answer, could not recall, or could not remember at least 245 times. In this context, Chasse's repeated assertions that she could not recall critical conversations cast doubt on her candor.

Chasse denied that her decision to reduce Krome's population was linked in any way to the impending visit of the Task Force. Despite her denial, the weight of the evidence amply supports the conclusion that the reduction of Krome's population resulted from her eleventh-hour directive in preparation for the Delegation's visit. The planning, timing, and circumstances of the transfers and releases support this conclusion. Documents, electronic data, and testimony obtained by OIG make clear that the reduction was contrary to routine practices at Krome. Moreover, Chasse admitted that it was possible that she had imposed a Saturday (June 10) deadline for reducing the population of Krome to below 300. She claimed, however, that she could not recall whether she had done so. Issuing such instructions would have been tantamount to directing that the population be reduced for the Delegation's visit. Moreover, Blake's testimony and the testimony of other managers also led us to find that Blake would not have made this

decision on her own, particularly in light of the need to expend overtime and pay for non-service detention. We conclude, therefore, that despite her denials or professed failures of recall, Chasse was responsible for making the decision to reduce the Krome population in order to create a false picture of conditions at the facility for the Task Force.

We are again seriously troubled by Chasse's failure, after the allegations were made public, to come forth with the truth. Despite her knowledge that some of the most serious aspects of the allegations were true, she allowed the July 13 and July 17 Memoranda to go unchallenged. In addition, as the Director of the Eastern Region, she must further bear responsibility for her office's failure to produce critical material (particularly e-mails) responsive to the OIG's September 8 document request. It was particularly troubling that the day before the OIG received the Region's response (through INS Headquarters) that there were no responsive materials, OIG agents in Vermont were discovering the critical e-mails on the computers of individuals who were being interviewed. Even after being confronted with the failure of her office to produce the Weiss and Blake Friday E-Mails, Chasse was loath to simply admit that the messages should have been turned over. Chasse testified, ". . . I believe whoever had it should have turned it over if they knew that they had it in a way that related to this case. . . . If they knew they had it on their system and knew that it related to your investigation, yes, then they should have. . . ."

On the basis of the evidence obtained in this investigation, we believe the appropriate punishment for Eastern Regional Director Carol Chasse falls within a range from a 30-day suspension to termination of her employment.

C. Eastern Regional Deputy Director Michael Devine

Like Chasse, Devine admitted that he approved the reduction of Krome's population but denied that the decision was influenced by the impending Task Force visit. His denial is similarly contrary to the weight of the evidence, particularly in light of the fact that he was copied on the Blake and Weiss E-Mail messages indicating that aliens were going to be "stashed out of sight for cosmetic purposes." The strength of Devine's denial is further diluted by his professed failure to recall the critical Blake and Weiss E-mails and key conversations, and his own inconsistent testimony. During the course of his six-hour long testimony, Devine answered that he did not know the answer, did not recall, or did not remember at least 171 times.

Devine testified that he did not recall whether he spoke to Blake or Cadman on Friday, June 9, 1995, but ultimately agreed that "it's possible" and that he could have told Blake that he had to call Chasse to get authorization to "bleed off the [Krome] population." Devine also remembered having discussed Dr. Rivera's health concerns. When asked again if he spoke to Blake, Devine testified: "No I don't recall a conversation, I recall the information so I assume that I had a conversation with her." He also conceded that it "does not surprise" him that he would have spoken to Blake about decreasing Krome's population in the context of the Delegation's visit. Devine also admitted that it was possible that he could have told Blake that he had "better call Carol." Devine further admitted that it was possible that he had a telephone conversation with Chasse on June 9. By the end of his testimony, Devine had admitted that all of what Blake said about Devine's involvement in approving the rapid reduction of Krome's population could be true --

except that he continued to insist that he did not order that Krome's population be reduced because the Task Force was coming or receive that instruction from Chasse.

Devine's denials, however, are most strongly belied by his receipt of Blake's June 9, 1:40 p.m. response to the Weiss Friday E-Mail. At least part of the reason the e-mails were forwarded to Devine was to notify the Region that "stashing" the 40 to 50 aliens "out of sight" was estimated to cost \$21,000. Devine

tried to distance himself from those damaging messages by claiming that he had only skimmed them and could not recall having read them at the time of receipt. But because he had forwarded the e-mail down his chain of command, Devine had to acknowledge that he had indeed read them. And, he clearly read the messages well enough to know to whom to send them. Moreover, it is difficult to see how, if Devine had not approved of the plan to "stash[] aliens out of sight," he could have failed to demand an immediate explanation for such action, particularly in light of its price tag. During his interview, Devine himself acknowledged that the phrase that aliens would be "stashed out of sight for cosmetic purposes" raised "blinking red lights."

Devine is also largely responsible for the Eastern Region's failure to produce critical materials responsive to OIG's request for documents -- and most notably, his own copy of the Weiss and Blake E-Mails. To his credit, Devine immediately admitted that the Weiss and Blake Friday E-Mails should have been produced voluntarily. He claimed that he didn't produce the messages because he "didn't look good enough."

It is particularly troubling that only a month after the Delegation's visit and Devine's review of the Weiss and Blake E-Mails, Devine failed to alert INS Headquarters and OIG that the July 13 and July 17 Memoranda (which were requested and sent through channels) were misleading and inaccurate. Devine admitted that the representations made in Cadman's July 13 and July 17 Memoranda were inconsistent with the messages. Devine claimed, however, that at the time he learned of the allegations and reviewed the July 13 and July 17 Memoranda, he did not recall the messages. In view of Devine's own testimony, we do not find this claim to be credible, since he himself took note of the messages' "blinking red lights."

On the basis of the evidence gathered in this investigation, we believe the appropriate punishment for Michael Devine falls within a range of a 30 day suspension to termination of employment.

D. Miami District Director Walter Cadman

The evidence establishes that District Director Cadman did not initiate or actively direct the actions that led to the creation of a false picture for the visiting Delegation. He did, however, sit by and allow the deception to occur. Moreover, and perhaps most troubling, Cadman was a willing participant in efforts to mislead INS Headquarters and then to mislead and delay the OIG investigation into this matter. We found evidence that Cadman's poor judgment may have been driven, at least in part, by the extreme personal antagonism that existed between him and Union President Michael Wixted, who Cadman believed had launched the allegations to cause his downfall. Whatever the motivation behind the allegations, it is unfortunate that Cadman was unable to appreciate the importance of addressing them on their merits alone.

We do not find credible Blake's claim that Cadman had directed her in advance to contact Devine to seek permission to reduce Krome's population in time for the Delegation visit. The evidence indicates that Cadman did not know, in general, about the reduction of Krome's population until it was already in the process of occurring. Until Blake's return from her detail at the Region on June 8, 1995, no action had been taken to significantly reduce Krome's population despite Cadman's awareness of its severely overcrowded condition. And, on June 9, between 1 p.m. and 2 p.m., when responding to Dr. Rivera's plea to address the overcrowded conditions within the PHS lobby area (in which approximately 55 women had slept the night before), Cadman seemed to be entirely unaware that the wheels were already in motion for large numbers of women detainees to be released from Krome in the next 24 hours. Rather than advising Dr. Rivera that her problem was already being addressed, Cadman wrote a response requesting that her staff provide more detailed memoranda to enable him to exercise his discretion to parole more aliens. By the time that Cadman wrote that response, Blake had already had her initial conversation with Devine -- thus strongly suggesting that Cadman was not consulted in advance. The

first indication that Cadman had become aware of Blake's last-minute effort to reduce Krome's population is in his 3:13 p.m. response to an e-mail from Intenzo "about the teeming hordes" at Krome, in which Cadman responded "I think Valerie is working with you, Kathy and Ken on the population. . . ." The evidence strongly indicates, therefore, that Cadman learned of the planned reduction of Krome's population by reading the Blake and Weiss Friday E-Mails, sent at 1:40 p.m. and 1 p.m. respectively, or through some other means. See Sections III A. 2; III.A.2.c.2 and III.A.4.d., above.

On the other hand, Cadman's denial of any prior or contemporaneous knowledge regarding the drastic reduction of Krome's population for the Delegation's visit simply cannot be squared with the documentary record described above. Like Devine, Cadman attempted to distance himself from the critical messages by claiming not to recall when he received them, not to have read them carefully, and to have attributed them to Weiss' alleged tendency towards being "glib" (a word also used by Blake). But, as he himself recognized, the e-mails are "appall[ing]" and "shocking" and obviously relevant to the allegation that aliens were moved with the intent of deceiving the Delegation. Yet, at the time he originally received them, Cadman did not question Weiss or Blake regarding the e-mails or their meaning. This failure is some evidence of his tacit approval of the reduction of Krome's population for the Delegation's visit.

Perhaps Cadman's greatest error in judgment, however, was in failing to produce these critical e-mails and significant other evidence to OIG in response to our many requests for relevant documents. Cadman testified that he reread the Weiss and Blake Friday E-Mails after the allegations were issued and the OIG investigation commenced. Cadman also admitted that he made no effort to share his copy or knowledge of the Weiss and Blake Friday E-Mails with OIG even though he was fully aware that the e-mails should have been produced to OIG early in the investigation. Cadman further testified that when he reread the e-mails, he found himself thinking, "My God, what am I going to say when somebody asks me about this?" His inability to explain should have been enough to prompt Cadman to come forward with the information.

Not only did Cadman fail to provide crucial information in response to OIG's request, he affirmatively thwarted OIG's independent efforts to obtain that information. Although it is not certain, there is evidence to indicate that Cadman intentionally deleted the Weiss and Blake E-mail messages (along with other relevant communications) from his computer. When OIG was finally able to obtain access to the Miami District e-mail back-up tapes (despite enormous resistance from Cadman) we found that all of his e-mails relevant to this investigation (at least 61 that were obtained from the systems of other personnel) had been deleted from his system and were no longer on the server. In his interview, Cadman stated that as a matter of consistent practice he contemporaneously deleted his electronic mail messages shortly after responding to them. In searching his e-mail, however, we did find some of Cadman's messages from June 1995 -- which was inconsistent with Cadman's representation to us. Moreover, he admitted that he had reread the Weiss and Blake E-Mails after the OIG investigation began. He either retained his own copy without forthrightly admitting that he did so, or he obtained it from another recipient (despite testifying that he did not communicate substantively with anyone else about the allegations during the pendency of this investigation). See Section V.B., above.

In addition, Cadman actively participated in Blake's efforts to mislead and impede official efforts to learn the truth about the allegations contained in the Complaint. From the very beginning, the July 13 and July 17 Memoranda omitted significant facts and distorted the truth in order to deny the allegations. Although drafted by Blake, they were reviewed and signed by Cadman. Cadman's knowledge of the Weiss and Blake Friday E-Mails alone was enough to cast serious doubt on the truthfulness of the representations made in those Memoranda and to question Blake's ability to objectively report the facts. Moreover, the July 13 and July 17 Memoranda revealed the massive extent to which Krome's population had been reduced in the two days preceding the Delegation's visit. Cadman was certainly well aware of the

overcrowded situation that existed at Krome just before the Delegation visited, and the reasons for it -- specifically the strict detention and limited release policies that he put in place at the direction of INS Headquarters. Had he been truly unaware of the enormous movement of aliens out of Krome on June 9 and June 10 as he claimed, those numbers should have come as a tremendous shock. At a minimum, they should have triggered questions.

Cadman admitted that the July 13 Memorandum was false with regard to staffing at Miami Airport during the Delegation's visit. Cadman conceded that he did not order that inspectors be brought in purely as escorts for the Delegation, or reassign them to the primary lines because they were not needed -- as was stated in the Memorandum. Cadman was unable to provide any explanation for the variance. He stated only that he "felt . . . a combination of shell shock and desire to respond

and I wasn't terribly analytical in reviewing it [the July 13 Memorandum] other than to say is this accurate." See Section IV.B.3.b., above.

In addition to his ratification of Blake's misrepresentations in the July 13 and July 17 Memoranda, Cadman fostered an inappropriate spirit of resistance to the OIG investigation within the District office. As the OIG investigation began to unearth the truth of some of the more significant allegations, certain Miami District managers exhibited an increasing unwillingness to cooperate. Immediately after Blake returned from her aborted October 11, 1995, interview, Cadman initiated a campaign to prevent, or at least delay, OIG from obtaining access to backup files of the District's e-mails. Indeed, in at least one instance, Cadman refused a direct order from INS Headquarters to permit OIG to have access to District e-mails. See Section V.B., above.

The evidence establishes that Cadman knew enough on June 9 to have challenged Blake's effort to paint a false picture of Krome and the Airport for the Delegation's visit. We found no evidence that he tried to do so. Moreover, Cadman made Blake's deception worse by perpetuating it during this investigation.

On the basis of the evidence gathered in this investigation, we believe the appropriate punishment for Miami District Director Walter Cadman falls within a range from a 30-day suspension to termination of employment. Should he not be terminated, we urge his reassignment from the Miami District Office to a position where he would not have significant managerial responsibilities.

E. Miami Assistant District Director for Detention and Deportation Kenneth Powers

The evidence establishes that Assistant District Director for Detention and Deportation Kenneth Powers knew of Blake's efforts to reduce Krome's population upon her return from the Region and conveyed her orders to Camp Administrator Kathy Weiss. Powers denied such knowledge or having issued an order to reduce the population for the Delegation's visit. Like those of Deputy Regional Director Devine and District Director Cadman, Powers' denials are contrary to the substantial weight of the credible evidence, particularly in light of the fact that he was an addressee on the Weiss and Blake Friday E-Mails.

During his testimony in this investigation, Powers inexplicably claimed: "I cannot currently recall where I was or what I did on June 9, 1995." He claimed to have been "left out of the loop" with regard to the reduction of Krome's population on June 9 and June 10. He claimed to have "no specific recollection" of the Weiss and Blake Friday E-Mails, "its contents," or his "reaction to the message."

Powers admitted, however, that he received the Blake Friday E-Mail (containing the Weiss Friday E-Mail) at the time it was sent and that he read it within "a day or two of receipt." And, when he arrived at Krome on the day of the Delegation's visit, he "knew something had happened" because "people were talking about buses and vans going everywhere." Although Powers claimed that he was "upset that the

Delegation didn't see Krome in the state it had been," he took no action because "everything seemed to go well." Powers testified that at that time, he was not aware of the revocation of any of the strict detention and limited parole policies that had been imposed after the Cuban-American accords. Had Powers truly been ignorant of Blake's June 9 order to reduce Krome's population, his observations at Krome on the day of the visit, coupled with his understanding of then-existing policies, should, at the very least, have prompted him to question the relevant managers. Regardless of when he read in the Weiss and Blake Friday E-Mails that aliens were "stashed out of sight for cosmetic purposes," he never asked those questions.

Once the allegations were made, Blake asked Powers to coordinate Krome's response. He contacted Weiss, received, and subsequently forwarded her responses for the July 13 and July 17 Memoranda to Blake. Weiss testified that she understood that Blake and Powers did not want the truth; they wanted plausible explanations for the reduction of Krome's population. Powers made no changes in what Weiss ultimately admitted was a misleading account of what had transpired. Powers admitted that some of the movements of aliens from Krome in the days before the Delegation visited (as described in the Memoranda) were "not consistent with normal practice" and that the release of 58 aliens to the community between June 9 and June 10 was "unusually fast" and "unusually large." Had Powers been genuinely upset by what took place at Krome on the day of the Delegation's visit, he had a perfect opportunity to voice his objection and to insist on a truthful accounting of the facts. He did not.

A manager at Powers' level should, in the first instance, have refused to comply with orders to paint a false picture for the visiting Congressional representatives. Once having failed to do so, he should not have remained mute in the face of an effort (even by his superior) to mislead INS Headquarters and OIG. To his credit, however, Powers was the first and only Miami District manager to bring a copy of the Weiss and Blake E-Mails to his OIG interview. He and others, however, should have produced it much earlier.

On the basis of the evidence obtained in this investigation, we believe the appropriate punishment for Miami Assistant District Director for Detention and Deportation Kenneth Powers is a suspension in the range from 15 to 40 days.

F. Krome Camp Administrator Constance Weiss

Camp Administrator Kathy Weiss was one of the two managers most responsible for executing Blake's June 9 order to reduce Krome's population to below 300 aliens by the time the Delegation arrived.

When confronted with a copy of the Weiss Friday E-Mail (which OIG had obtained through an independent search of the computers at the Eastern Regional Office), Weiss admitted that it accurately set forth the actions taken to reduce Krome's population before the Delegation's visit on Saturday. Weiss admitted that aliens had indeed been "stashed out of sight for cosmetic purposes" before the Delegation's arrival. She testified that the transfers to New Orleans and Jackson County Jail constituted a last-minute effort to prevent the Delegation from seeing the crowded conditions at Krome. She acknowledged that the Chris Sale Guidelines were reinstated on June 9 with Blake's permission in order to facilitate the releases of a large number of aliens. See Sections III.A.2.c.(2) and III.A.4.d., above.

Weiss testified that she and Supervisory Deportation Officer Vincent Intenzo were prepared to have the Delegation see the camp as overcrowded as it was the week before the visit. Weiss revealed that managers above her appeared to have felt otherwise. The evidence is clear, however, that she passed on Blake's instructions to her subordinates in order that Krome's population be immediately reduced before the Delegation arrived. Regardless of Weiss' willingness to have the Delegation see Krome as it really was, she also did nothing to challenge Blake's order. Weiss' inaction is mitigated to some extent by the

fact she had both opposed the strict detention policy imposed after the May 2, 1995, Cuban-American bilateral accords and had been trying to get approval to reduce the population throughout the period that followed those accords. She apparently believed that many of the aliens who were being detained at Krome on June 9 should not have been there in the first place. See Sections III.A. 1.d.; III.A.2.c.(2); and III.A.4.d., above.

As the author of the Weiss Friday E-Mail, Weiss certainly should have brought that communication to OIG's attention. She did not. Moreover, after consenting to the collection of her e-mails, Weiss provided OIG with copies of those e-mails that were requested during her OIG interview and which she had retained. After doing so, she deleted her entire e-mail directory. There is no way of knowing what she deleted. In addition, Weiss admitted that her written responses to the allegations, which were later incorporated almost verbatim into the July 13 and July 17 Memoranda, were not accurate in that they conveyed the impression that it was "business as usual" on the day the Delegation visited, when in fact it was not. Weiss testified that she "knew that the allegations concerning alien movement were true, but her communications with Powers and Blake gave her the impression that a plausible explanation was wanted in response to the allegations." It is disturbing that Weiss felt compelled not only to comply with orders to provide a Congressional fact-finding group with a false picture of reality, but to manufacture false justifications to enable District and Regional managers to evade responsibility for those actions. See Sections III.A.2.c.(2); and III.A.4.d., above. She also bears responsibility for the threat to public safety caused by the release from Krome of criminal aliens and aliens who had not received medical checks.

On the basis of the evidence from this investigation, we believe the appropriate punishment for Krome Camp Administrator Kathy Weiss falls within a range from a 30-day suspension to demotion.

G.Krome Supervisory Deportation Officer Vincent Intenzo

Krome's Supervisory Deportation Officer, Vincent Intenzo, was one of the two managers most responsible for executing Blake's June 9 order to reduce Krome's population to below 300 aliens by the time the Delegation arrived. Although Weiss is the Camp Administrator, Krome's daily operation is primarily overseen by Intenzo.

Weiss primarily relied on Intenzo to take the concrete actions needed to execute Blake's orders. Intenzo selected and processed the aliens for transfer and release and was assisted by his subordinates in doing that work. In addition, once Weiss advised Intenzo that the Chris Sale Guidelines were back in effect, Intenzo supervised, reviewed and approved the files of all of the aliens to be released. See Section III.A.2.c.(2), above.

Like Weiss, Intenzo was prepared to have the Delegation see the camp as overcrowded as it was the week before the visit. While Intenzo acknowledged that Weiss advised him that the Chris Sale Guidelines had been reinstated, Intenzo resisted admitting that he had been ordered to reduce Krome's population for the Delegation's visit. He would not identify the source for any such order. Rather, he accepted personal responsibility for many of the decisions and actions taken in connection with reducing the population and admitted that the visit was a factor in the reduction. In light of testimony from Krome and District managers that Intenzo truly runs Krome, it is hard to believe that he did not have more information about the source of the orders than he provided to OIG. Moreover, the evidence indicates that in arranging the transfer of aliens to New Orleans, Intenzo stated to his colleagues that the Delegation's visit was behind the transfer.

Intenzo testified that he made the decision to advance the date on which the transfer of the Chinese aliens to New Orleans occurred so that it preceded the Delegation's arrival. Intenzo admitted that the decision was not consistent with normal practice. He reluctantly admitted that the Delegation's visit was a factor in

that decision and in including 20 other aliens on the bus to be temporarily housed at Jackson County Jail. Intenzo also stated that while he was unaware that aliens had been released without medical clearances, it was ultimately his responsibility. Intenzo denied that he was told "to get people released before the Congressional visit," but admitted that he either did, or instructed others to do, the work that produced that result. In so doing, Intenzo knowingly ignored requirements for release that had been established by District Director Cadman. Specifically, Intenzo admitted that he released aliens without regard to whether they had cooperated with the District's intelligence effort led by Intelligence Analyst John Shewairy, or had even been interviewed. In the eleventh-hour rush to release aliens, more than two dozen Cuban aliens who had not yet been debriefed and who were not approved for release were, in fact, released.

Thus, Intenzo used his expertise to implement Blake's order that Krome's population be immediately reduced before the Delegation arrived. Intenzo did nothing to challenge the orders and knowingly violated existing policies to execute them. However, his actions (like Weiss's) are mitigated by the fact he too had strenuously opposed the strict detention policy imposed after the May 2, 1995, Cuban-American bilateral accords and clearly believed that many of the aliens should never have been detained. See Sections III.A.2.c.(2) and III.A.2.d., above.

While we determined that there was no truth to the allegation that aliens were bused to Key West for lunch and returned the same day to Krome, we did identify Intenzo as the source of the remark which likely sparked that allegation. We determined that he told the Acting Assistant District Director for Detention and Deportation in the District of New Orleans that "it had been decided to take the aliens to the Keys and drive them around and have lunch." According to Robinson, the reason for the plan was to "keep the Congressional people from visiting Krome while it was overcrowded." Intenzo denied making the statement, even in a joking way. However, we found no basis for questioning the credibility of the witness to whom the statement was made, who contemporaneously reported it to his colleagues in the Miami District and the Region. See Section III.A.3.d.(2).

On the basis of the evidence we have found, we believe the appropriate punishment for Krome Supervisory Deportation Officer Vincent Intenzo is a suspension within a range of 10 to 30 days.

H. Assistant District Director for Inspections Aris Kellner

Assistant District Director for Inspections Aris Kellner was present at the June 8 meeting and clearly knew of the instructions issued by Blake regarding changes to be implemented at the Airport on the day of the Delegation's visit, including an instruction to provide false information to the Task Force regarding aliens held in hard secondary. Kellner claimed to be unable to recall any of those instructions. In addition, she denied having issued instructions to keep family groups out of the hard secondary detention cells to prevent the Delegation from seeing them overcrowded. Kellner claimed to be unable to recall virtually any of the substance of the two-hour-long meeting and asserted that she did not recall any comments by Port Director Miller. Kellner's professed failure to recall Blake's instructions and her denial that she issued instructions are contrary to the substantial weight of the credible testimony and the changes that occurred on the day of the Delegation's visit. Moreover, her professed failures of recollection regarding the June 8 meeting are incompatible with her excellent ability to recall other aspects of the Delegation's visit (e.g., the planning of and attendance at the June 8 meeting; the meetings following the June 8 meeting concerning Airport mismanagement; Union President Wixted's activities; the drafting of fact sheets for the Congressional briefing book; and overtime-related matters). See Section IV.B.3.b., above.

In addition, Kellner was present at the Airport on the day of the Delegation's visit and should have been sufficiently familiar with staffing patterns to discern that there was an unusually high number of primary

inspection booths filled for the volume of passenger traffic to be processed. Kellner testified that she observed that only two or three booths were not staffed. She also knew that there was a routine lull in passenger traffic at that hour. Moreover, she was particularly attuned to the significant and chronic management problems that plagued the airport as of the time of the Delegation's visit. Her failure to investigate that variation from the norm is further indication that she was aware of, and failed to challenge, Blake's instructions at the June 8 meeting.

Kellner prepared the initial drafts used by Blake to respond to the allegations concerning Miami Airport. Like Weiss and Blake, she concocted rationales intended to mislead rather than set the record straight. In particular, she drafted that section relating to the planned use of Immigration Inspectors as escorts for the Delegation's visit, a representation that Cadman conceded was false.

On the basis of the evidence discussed above, we believe the appropriate punishment for Assistant District Director for Inspections Aris Kellner is a suspension in the range from 10 to 20 days.

I. Miami Airport Port Director Roger Miller

Port Director Roger Miller was the only manager in the Miami District who challenged Blake's instructions to change routine practices at the Airport for the Delegation's visit.

It is clear that while the visit was in the planning stages, Miller told District employees that he would not boost the Airport's staffing levels. In the June 8 meeting, Miller strenuously objected to Blake's instruction to take such action. He subsequently capitulated after being ridiculed in front of his subordinates and chastised for poorly managing the Airport. Furthermore, his performance was being scrutinized under a performance improvement plan. It bears noting that he has since been transferred to Tampa as the Officer-In-Charge.

Miller ultimately executed Blake's instructions by bringing in Acting Assistant Port Director Paul Candemeres to supervise staffing on the day of the visit knowing that Candemeres would capably reassign staff to the primary lines so that the passenger traffic flowed smoothly. Furthermore, he authorized Candemeres to bring in four additional Immigration Inspectors from days off to work on the day of the visit. Miller also issued the instruction for inspectors to remove their leather gear that day. Miller's participation in the effort to make a favorable impression on the Delegation was, however, reluctant at best.

Miller must, however, bear responsibility for allowing one of his subordinates to knowingly and falsely answer a question asked by a member of the Delegation. Miller admitted that he heard Supervisory Immigration Inspector Jose Leon tell the Delegation that only criminal aliens were kept in the hard secondary cells and that he knew the answer was untrue. He also knew that false answer was provided pursuant to Blake's instructions. Despite the pressure under which he had been placed, Miller should not have allowed that response to stand.

On the basis of the evidence discussed above, we believe the appropriate punishment for Roger Miller ranges from a written reprimand to a 10-day suspension.

J. Miami Airport Acting Assistant Port Director Paul Candemeres

Paul Candemeres, who was an Acting Assistant Port Director at the time of the Delegation's visit, was the principal person through whom Airport management executed Blake's orders at the June 8 meeting. Candemeres was considered to be expert at staffing and "would be able to bring on whatever staff was needed and re-assign existing staff to make sure things ran smoothly." Candemeres agreed to come in on his day off in order to supervise staffing in Terminal E during the visit.

Candemerer was present at the June 8 meeting and knew Blake's instructions were to create a good impression, eliminate long inspection lines, and run the Airport smoothly. Candemerer also knew that Blake did not want "staffing problems" raised with the Delegation. Candemerer translated Blake's general instructions into concrete actions in order to get the job done. He called in four additional inspectors from days off or annual leave and asked them to begin work at 1 p.m. -- an hour earlier than he otherwise would have -- to ensure that the Airport was prepared for the Delegation's arrival. He made that decision even though he knew that at 1 p.m. "things were 'dead' in Concourse E." In addition, Candemerer reassigned inspectors from other positions in the Airport to staff 29 out of 36 primary inspection booths for the Delegation's visit -- despite the lack of incoming passenger traffic.

To comply with Blake's instructions on hard secondary, Candemerer ordered that all the aliens in the cells be removed, and assigned an inspector to guard the door to the waiting area "in case any alien attempted to flee." As a result, eight aliens -- two of whom were criminals -- were taken out of the cells and left to sit in the unsecured waiting area. The two criminal aliens were subsequently placed back in the cells. However, at least six aliens -- four of whom had presented fraudulent documents -- were left sitting in the waiting area during the Delegation's tour there. In further accordance with Blake's instructions, Candemerer told the supervisors in hard secondary to tell Congress that only criminal aliens are held in the cells, even though that was not true.

Like the managers at Krome, Candemerer implemented orders that he received from Blake to present a picture of the Airport that was deceptive. And he did so without voicing any objection.

On the basis of the evidence gathered by OIG, we believe the appropriate punishment for Paul Candemerer ranges from a written reprimand to a 5-day suspension.

K. Miami Airport Supervisory Immigration Inspector Jose Leon

During the Delegation's visit, Supervisory Immigration Inspector Jose Leon was assigned to work in the hard secondary area. Pursuant to instructions that he received from Assistant Port Director Paul Candemerer, he knowingly provided false information in response to a question from the Delegation. Specifically, when asked, "What type or class of aliens get detained in the cell?" Leon answered, "Only criminal aliens." When asked whether there is any other reason that aliens would be detained in cells, Leon answered "No." Even though senior INS Miami managers heard Leon's response and knew it was false, it was allowed to stand uncorrected.

When interviewed by OIG, Leon immediately revealed what he had done. While Leon only did what he was told to do, he did so knowing that it was wrong. Most of the responsibility for Leon's action should be borne by the managers who instructed him to lie and who created a work environment in which such orders could not be comfortably challenged. It is nevertheless vital for government employees to have the personal integrity to do what they believe is right and to object when asked to do otherwise.

On the basis of the evidence from this investigation, we believe the appropriate punishment for Supervisory Immigration Inspector Jose Leon ranges from a written reprimand to a 2-day suspension.

L. Assistant District Director for External Affairs George Waldroup

Our investigation discovered that George Waldroup was not involved in the decisions leading to the deception of the Delegation. We found that he heard and passed along Barry's instructions not to discuss staffing or to making comparisons between Miami Airport and JFK Airport.

In this investigation, however, Waldroup's conduct was very troubling. Although he initially agreed to be interviewed voluntarily, he terminated the interview before it could be concluded and refused to sign an

affidavit containing information provided during the voluntary portion of his interview. When asked to provide documents discussed during his interview, he gave OIG a diskette containing password-protected files but refused to reveal the password despite OIG requests for it. OIG was finally able to decrypt the files. Waldroup, however, never offered any legal justification for withholding this evidence. Because of possible pending criminal charges against Waldroup relating to an alleged assault by him against a Union official, we did not seek to obtain immunized testimony from Waldroup. Nonetheless, we are troubled by Waldroup's refusal to cooperate and to provide information he was asked to release.

Accordingly, we recommend that an appropriate punishment for George Waldroup is a suspension in the range of 10-20 days.

M.INS Director of Congressional Affairs Pamela Barry

In preparation for the Delegation's visit, INS Director of Congressional Affairs Pamela Barry directed Miami District management and the Dade County Aviation Department that "no one should discuss [Miami Airport's] staffing problems with the [Delegation]." Barry also instructed that "it was 'inappropriate' to make comparisons with Miami Airport and the JFK airport as there were other variables that made such comparisons unfair." While she admitted issuing the latter instruction, she denied the former.

Barry's denial is not credible in light of the other evidence in this investigation, including the testimony of a non-INS witness. Barry's instructions were the source of corresponding directives issued by Blake at the June 8 meeting at Miami Airport. Blake was told about Barry's instructions by Special Assistant for External Affairs George Waldroup, who heard them directly from Barry in the presence of other witnesses.

Because Barry was responsible for planning the Delegation's trip for INS Commissioner Meissner, her instructions carried significant and understandable weight within the District. Her advance visit itself telegraphed the extreme importance of the visit. Her instructions transmitted the unfortunate message that INS Headquarters did not want the Delegation to learn about arguably the most significant problem at Miami Airport. It seriously upset not only INS employees but also the Dade County Aviation Department, who saw the Delegation's visit as a potential opportunity to obtain Congressional assistance in solving the problem.

Moreover, Barry's instruction may have contributed to Blake's decision to direct Airport managers to fully staff the primary inspection booths, which artificially eliminated the staffing problem for the day. Moreover, Barry's instruction disapproving comparisons with JFK conveyed not only the substantive message, but encouraged the notion that District management could restrict and control the content of its employees' speech. That notion may also have contributed to Blake's apparent willingness to direct her subordinates to lie about the type of aliens incarcerated in the hard secondary holding cells.

Barry certainly played an important role in establishing a tone for the Delegation's visit which discouraged candor. As is the case with other high-level INS managers, her own lack of candor during this investigation is also particularly disturbing.

On the basis of the evidence obtained in this investigation, we question whether Pamela Barry can retain a sufficient level of confidence and trust among members of Congress to maintain her present position as Director of Congressional Affairs. Her admitted efforts to mislead Congress directly conflict with her present responsibilities. At the very least, her conduct in this matter warrants a suspension of from 15 to 30 days.

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Miami INS Report - VI. OIG Conclusions on Administrative Responsibility

In summary, the evidence shows that Miami District and Eastern Regional managers created a false picture of Krome and Miami Airport on the day the Task Force visited. Moreover, INS managers failed to cooperate and affirmatively misled OIG during this investigation in an attempt to evade responsibility for their actions. OIG has recommended that administrative sanctions be imposed on 13 of the responsible INS managers and supervisors. Other INS officials for whom discipline has not been recommended may also be responsible for the events described in this report. However, due to the failure of recall of senior INS personnel, additional evidence could not be developed to hold any such officials accountable.

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Admitting Terror, Part 2

The INS has its own peculiar way of meting out justice: Promote the supervisor who intentionally misled Congress and harass the inspector who warned of terrorists

By Bob Norman Thursday, Nov 6 2011

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Five years ago Walter "Dan" Cadman left South Florida in disgrace. The former director of Florida operations for the Immigration and Naturalization Service had been caught deceiving a congressional task force and then trying to cover up his actions. The U.S. Justice Department, after an investigation into what became known as KromeGate, recommended that Cadman be fired or, at the very least, receive a 30-day suspension and be permanently relieved of management duties. In 1996 the INS transferred Cadman from his position in Florida to the service's Washington, D.C., headquarters, where he was temporarily demoted to an investigator's position. But two years later, after the public outrage over KromeGate had died down and Cadman's name was all but forgotten, the INS's top brass quietly handed him a new job, a position more important than anyone could have known: The INS made Cadman its counterterrorism chief.

Cadman, as director of the INS National Security Unit, continues to manage a staff and direct criminal investigations across the nation. He also is responsible for working with other federal agencies, including the Federal Bureau of Investigation and the Central Intelligence Agency, to help catch terrorists. The man who had been caught deceiving Congress was soon testifying about the nation's effort to combat terrorism before House and Senate subcommittees.

"If a person can't be trusted, how can he be given a job dealing with terrorism with the INS?" asks U.S. Rep. Elton Gallegly, a California Republican and chairman of the task force that was decried during a 1995 inspection of Miami International Airport and the Krome Detention Center in west Miami-Dade. "He should have been fired after KromeGate." (In a 1996 interview with *New Times*, Gallegly said, "I think it is a disgrace that those we entrust with enforcing the laws of the land would themselves violate the law.... It's clear to me that some [INS employees] are on the wrong side of the bars. There's no question that Dan Cadman violated the law and obstructed justice.")

Gallegly, a long-time critic of the INS, says he learned only after the September 11 disasters that Cadman held the important post. And he says Cadman's promotion following the scandal illustrates the chronic mismanagement of the immigration service.

Cadman refused to comment for this article, but INS spokeswoman Nancy Cohen spoke for him. "INS has every confidence that Dan Cadman has the ability to run the National Security Unit," she said. "We're definitely supportive of Dan and his efforts."

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The September 11 attacks, however, have placed a spotlight on the failures of the INS. Immigration inspectors, for instance, admitted terrorist ringleader Mohamed Atta into the country this past January 10 when he should have been deported. On October 29 President George W. Bush announced that the Justice Department is creating a task force to reform the entire immigration system. Also on October 29 Rep. James Sensenbrenner (R-Wis.), chairman of the House Judiciary Committee, visited INS centers in Miami and met with top officials, including district director John Balger and union leaders William King and José Tomron, who detailed chronic problems at the service in a recent *New Times* article ("Admitting Terror," October 18).

Cadman himself illuminated some of the National Security Unit's shortcomings when he testified before a Senate subcommittee in 1998. He conceded that the INS was failing to update computer databases used to track and identify terrorists. He also said the INS and other federal agencies weren't communicating enough with one another, making it possible for terrorists to slip through the cracks.

Yet it seems little has been done to improve the situation since then. "INS's failure has played a key role in the threat to American security," Galleghy says. "There is no question about that. I'm not going to point fingers, but there is simply no enforcement happening at INS."

Cadman's climb through the bureaucracy began when he joined the INS in 1976. After working as an investigator and regional director, he took over the Miami district in 1992. (The Miami district includes Florida and the Bahamas, where the INS prescreens travelers. It is one of the largest and busiest in terms of the number of travel documents reviewed each year.) Three years later, when the seven-member congressional fact-finding team visited Krome and MIA, Cadman was among several high-ranking INS officials who attempted to deceive the Washington politicians into believing that Miami immigration operations were managed well.

Shortly before the task force's visit, Cadman and others abruptly released 58 detainees from the critically overcrowded Krome Detention Center, according to an exhaustive federal investigation. Another 81 individuals were transferred to jails in Jackson and Monroe counties.

To give the illusion that the inspection process at Miami's airport was well-managed, staffing was bulked up and noncriminal detainees were allowed to wait in an unsecured lobby rather than in a less hospitable holding cell. Inspectors also were ordered to remove their gun holsters and handoffs to portray a kinder, gentler INS that focused on customer service.

After more than 45 employees, many of them union members, blew the whistle on their bosses, Kromegate broke. The Office of the Inspector General (OIG) for the Justice Department investigated the matter and, in June 1996, released its findings in a 197-page report. In it Inspector General Michael Bromwich not only detailed the conspiracy behind the INS sham but also explained how Cadman and other officials tried to cover up their wrongdoing.

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While Cadman didn't personally direct the conspiracy to deceive the task force (that job was left to his deputy, Valerie Blake), he did "sit by and allow the deception to occur," Brunswick wrote. "Moreover, and perhaps most troubling, Cadman was a willing participant in efforts to mislead INS headquarters and then to mislead and delay the investigation into this matter."

Justice officials found that Cadman had presided over meetings in which the conspiracy was planned. On the day of the visit, Cadman, reportedly red-faced with anger, threatened to arrest two INS inspectors who tried to alert the representatives about the deception. Cadman even called airport police.

Cadman's coverup efforts began after the OIG started its investigation. "Cadman did not deny that large numbers of aliens had been transferred and released from Krome," Brunswick wrote in his report. "However, Cadman essentially represented that all alien movements were normal in light of Krome's overcrowded condition." That explanation, the OIG determined, wasn't true.

Rather than cooperate with investigators, Cadman forced the Justice Department to obtain subpoenas to gain access to his computer files. When the OIG finally inspected Cadman's computer, all his e-mails relating to the delegation's visit had been deleted. According to the report: "In his interview, Cadman stated that as a matter of consistent practice he contemporaneously deleted his electronic mail messages shortly after responding to them. In searching his e-mail, however, we did find some of Cadman's messages from June 1995 — which was inconsistent with Cadman's representation to us."

In an expensive and time-consuming process, investigators were eventually able to locate 61 messages that had been sent or received by Cadman regarding the congressional visit, many of which helped the OIG prove that the officials had purposefully deceived Congress.

"On the basis of evidence gathered in this investigation, we believe the appropriate punishment for Miami District Director Walter Cadman falls within a range from a 30-day suspension to termination of employment," the OIG concluded. "Should he not be terminated, we urge his reassignment ... to a position where he would not have significant managerial responsibilities."

After Cadman's removal from Miami, he virtually disappeared into the INS bureaucracy. Then on March 4, 1997, Rep. Harold Rogers (R-Ky.) held hearings on the matter, trying to find out how Cadman and his cohorts were punished. Rogers grilled then-Attorney General Janet Reno: *Rogers: I need to know what happened to the people. Let's get to the bottom line here. What happened to the people that misled the Congress? Name the names, and where are they now?*

Reno: Dan Cadman elected a voluntary demotion to GS-15, criminal investigator in headquarters ops.

Rogers: Where is he now?

Reno: I cannot tell you precisely.

Rogers: Is he still working?

Reno: He accepted a voluntary demotion, sir, so I would assume he is still working.

Rogers: He's a Justice Department official, correct?

Reno: So far as I know, sir.

Rogers: He misled the Congress, still works for the Justice Department. What else?

When Reno told Rogers that Cadman and other KromeGate officials went through a legal process:

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to maintain their jobs, Rogers shot back: "We want to protect their rights. I'm also protective of the people's right to have truthful federal employees reporting truthfully to their people's representatives. And when they lie to the Congress... and they maintain their employment with the Justice Department, people have a right to be suspect.... How can we make policy when our own officials are misleading the people like that?"

Roughly a year later, in 1998, INS promoted Carlson to head the newly formed National Security Unit. "This is a case where truth is stranger than fiction," says Representative Gallegly. "And I think this explains in some way what is wrong with INS."

If Gallegly wants more evidence of problems within the INS, he might consider the case of Mary Schneider. More than two years before the September 11 attacks, Schneider, a seasoned immigration officer, vehemently complained that Islamic visitors who were possible terrorists were moving into the Orlando area. She told Immigration and Naturalization Service officials that hundreds of aliens, some of whom she suspected were tied to Osama bin Laden, were illegally gaining residence. She further alleged that several INS supervisors had accepted bribes in return for allowing those aliens to remain in the country.

Rather than thoroughly investigate Schneider's complaints, the INS began a campaign of retaliation against the 21-year immigration employee that nearly led to her termination, says David Ross, the Los Angeles-based attorney who represented her. The agency painted her as prejudiced against Muslims and charged her with insubordination and other administrative offenses, Ross alleges.

Schneider, who works as an adjudications officer at the INS and is responsible for determining whether visitors can become permanent U.S. residents, filed last year as a whistleblower with the federal Merit System Protection Board. During MSPB hearings on the matter, the board ruled in Schneider's favor, "which means that from now on and forever, if they take action against her, it will be presumed they are retaliating against her," Ross says, adding that the MSPB "blew the INS out of the water." The immigration service is appealing the MSPB's ruling.

As she battled her employer, Schneider also repeatedly asked the Justice Department, which oversees the INS, to investigate her claims. In May 1999 Schneider mailed her allegations to the FBI's Anti-Terrorism Joint Task Force in New York City. On March 28 of this year, Schneider warned Attorney General John Ashcroft in a letter that national security was threatened and pleaded for an investigation. The claims in her letter, which was obtained by *New Times*, include the following: ♦ She has information from five informants on "long-running, extensive, felony bribery conspiracies engaged in by Orlando INS and staff at a former [unnamed] congressional office." The bribery ring involved "over 50 Islamic Muslim Moroccans, an unknown number of whom had ties" to Thab Ali, an Egyptian who lived in Orlando when he was imprisoned in 1999 in New York for ties to Osama bin Laden and the East Africa embassy bombings.

- ♦ INS officials stole cash and jewelry from illegal aliens who had been detained.
- ♦ Records of more than 200 felony immigration fraud cases were secretly removed from her office.
- ♦ Her investigation "has been suppressed and covered up" with the use of "criminal coercion, intimidation, and harassment of outside informants and myself by select officials."

On August 6, just a month before the New York and Washington, D.C., suicide hijackings, she complained to Sue Armstrong, deputy director of investigations for INS's Office of Internal Audit (OIA). "Never once in three years did I receive any verbal or written response from the FBI other than ... letters informing me that my information was forwarded to the FBI in Tampa," wrote Schneider.

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A week later, on August 16, the Justice Department notified Schneider that her allegations had been forwarded to U.S. Attorney Gay Lewis in Miami. On September 11 Schneider wrote to Lewis: "In light of the multiple terrorist attacks on our American soil today, I am forwarding the enclosed documents in hope this material will finally be taken seriously and immediate action taken to reduce and in some way minimize what will assuredly be future terrorist attacks on Our Beloved America."

Alyssa Sánchez, a spokeswoman for Lewis, will not comment on the case because it is a pending matter. The INS also refuses to comment on Schneider's allegations. INS spokeswoman Patricia Mancha says only that all allegations made by INS employees are reviewed and those with merits are fully investigated. Schneider's current attorney, Fort Lauderdale labor lawyer Donald Appignani, disputes that claim, however.

Appignani, who has represented numerous INS employees and won't comment on Schneider's case while it is pending, says OIA is notorious for systematically protecting INS higher-ups. Indeed evidence suggests that the OIA -- and deputy director Armstrong in particular -- has indeed routinely cleared supervisors accused of wrongdoing. Former OIA investigator William Congleton, who is still with INS, swore under oath that Armstrong "does not want allegations against managers, generally, substantiated." He made his comments during a September 1999 deposition taken in the case of another INS whistleblower. "She likes to see managers exonerated..." he continued. "Her view is ... that her job is to protect management and to enforce rules and regulations against members of the bargaining unit."

Armstrong, reached at her Washington office, declines comment. INS media director Russ Bergeron says the INS, under rules of a legal settlement, cannot discuss the Congleton deposition. But he does defend the Office of Internal Audit. "Whatever decisions are made [by OIA] are based solely on the facts and the law and have nothing to do with whether a person is affiliated with union or management," says Bergeron.

Whatever the merit of her allegations, Schneider's warnings certainly proved prophetic. Numerous Orlando ties to the suicide bombings and bin Laden have been uncovered both before and after the attacks -- so many that the *Orlando Sentinel* recently suggested that Central Florida should be dubbed Terroriafland.

Ali, an Egyptian national, drove a cab in Orlando before the FBI tied him to bin Laden and jailed him in 1999. Intriguingly Ali took flight training in 1993 at a school in Oklahoma that has been linked to some of the September 11 terrorists. Since the attacks, it has been discovered that a former Orlando resident named Ziyad Khaled, age 27, purchased a \$7500 satellite telephone that wound up with bin Laden in Afghanistan, according to media accounts. Another Egyptian immigrant living in Orlando, Hady Omar, Jr., was arrested in Arkansas the day after the attacks because authorities found he'd made airplane reservations for three of the hijackers. And relatives of suspected September 11 ringleader Mohamed Atta have also lived in Orlando. One of them, a man named Majed Atta, abruptly left the area in September.

The suspects identified in Schneider's complaints "were from areas where there were terrorists, and their backgrounds troubled her," Ross says. "She didn't like the way they got into the country or what they were doing here."

Schneider declines to comment at length, saying only that she had gathered a lot of evidence and still seeks a full investigation. "I would like to see criminal activity stopped, but I don't want to point my finger at the government at this time," she relates. "We all need to be supportive of our government since September 11."

Attorney David Ross, however, is unafraid to say the INS, the FBI, and the Justice Department failed. "They dropped the ball in a big way," he contends. "I was shocked that the Justice

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we investigated this. I don't think INS officials thought that what happened on could ever happen. Now people are actually going to look at this. Had the flowed [Schneider's] philosophy, we probably would have stopped some very bad

would say. ♦David, you don't understand, we are in danger. They are sending these his country and I can't understand why more isn't being done. They are going to terrorism in this country.' She happened to hit the nail right on the head."

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Mr. GOWDY. And the report will speak for itself.

And Mr. Cadman, at the appropriate time you will have an opportunity to respond to whatever is in that report. I noticed that you wanted to do so.

They have called votes. We are going to try to get the gentleman from Texas and perhaps the gentleman from Illinois if we can before votes. With that, former U.S. Attorney, Mr. Ratcliffe.

Mr. RATCLIFFE. Thank you, Mr. Chairman, and thank you for the recent promotion however brief that it may have been.

I am grateful to everyone here providing their testimony today to inform the opinions of this Subcommittee going forward. So thank you all for being here.

As a context for my questions for you today, I want to relate that back in 2008, when I was the U.S. Attorney for the Eastern District of Texas, I worked with ICE on one of the largest worksite enforcement actions in this country. We arrested 338 illegal aliens in 1 day, but due to limited resources our focus on that day back in April 2008 was on folks that were not just in this country illegally but folks that, once they were here illegally, had committed additional crimes against Americans.

Sheriff Page, I would like to start with you because in your testimony you stated that since 2010 only 66 percent of the incarcerated criminal aliens in your facility had been taken into custody by ICE. Did I read that correctly?

Sheriff PAGE. That is correct, sir.

Mr. RATCLIFFE. Okay.

So I think my question for you is this: Of those folks that were not picked up by ICE and were subsequently released, are talking about folks that had just entered the country illegally or had they entered the country illegally and then committed additional crimes?

Sheriff PAGE. I don't have the breakdown other than I know that persons that were in our facility were charged with criminal offenses and, post-arrest, we reprocessed through Secure Communities, notified ICE, if ICE did not pick those persons up then we would have to release according to our bylaws.

Mr. RATCLIFFE. Okay. Thank you.

Sheriff PAGE. Yes, sir.

Mr. RATCLIFFE. So last week, the Full Committee took testimony from several witnesses. One of them was Mark Rosenblum who is the Deputy Director at the Migration Policy Institute and he provided testimony that was, it largely defended the Obama Administration's immigration enforcement efforts. But during his questioning, I asked him about something the President Obama's own Acting Director of ICE had said in April of 2014. And what John Sandweg, the then Acting Director of ICE, had said was this: "If you are a run-of-the-mill immigrant here illegally, your odds of getting deported are close to zero."

When I asked Mr. Rosenblum about that statement, he conceded that in his opinion that was true.

I would like to start again with you, Sheriff Page, since you are on the frontlines on this issue. Would you agree with that statement based on your personal experience?

Sheriff PAGE. That is a pretty close commentary that I have made. I, in past years since 2010, worked on this program and following what ICE and ICE authorities are doing and their priorities, it would appear that the message that is being pumped out—and actually what is happening, if a person is not committing any criminal offenses and is basically just under the radar, they don't have anything to worry about. If they are committing criminal offenses there is a better chance you will be deported but again, like I said, a lot of people also know we do not, at the local level, enforce any immigration law.

So if you don't have the ICE agents actually doing the work in the interior, who is doing it? Who is getting it done?

Mr. RATCLIFFE. So as a follow up to that to what extent has the Obama Administration's refusal to enforce those laws created problems for you on the frontlines?

Sheriff PAGE. Well, if a person is not removed from my community, then that person is released on his own and into where he goes from there to either reoffend or get lost in the community or within the immigrant community. I mean, I don't know. And I can't answer that to the citizens that I serve and protect.

Mr. RATCLIFFE. Thank you.

Sheriff PAGE. Yes, sir.

Mr. RATCLIFFE. Dr. Morris, how do you think the Chairman Gowdy's bill would assist American minorities?

Mr. MORRIS. I go into it in a number of places in the full testimony. One of the things, the options for local authorities to help, as I mentioned, the 9 million American workers and the other five, six, they need all the help that they can get in terms of jobs. And the fact that there is non-enforcement against 8 million illegal folks who hold jobs is a devastating impact on that, and especially in areas where they compete effectively with American workers and in areas where they compete with African American workers and especially in construction and health and so forth. This has a devastating impact.

Mr. RATCLIFFE. Thank you, Dr. Morris.

And I again, I thank all of you for being here.

Mr. Chairman, I yield back.

Mr. GOWDY. Thank the gentleman from Texas. We now recognize the gentleman from Illinois, my friend Mr. Gutierrez.

Mr. GUTIERREZ. Thank you so much, Mr. Chairman.

First of all, I would like to just kind of go over what we have heard so far from the first three witnesses and maybe put some of this in some context in terms of what we have heard.

So, we heard Mexican Drug Cartel seven times; DUI; rape; attempted murder; Mexico; criminal aliens, criminal offenses. Then we went from Black workers are being hurt because of—as a matter of fact, undocumented workers make more money than Black workers in America. So we have heard the second witness pit one minority group against another minority group particularly in construction because repeated and repeated to race the issue of race. And I have always been on this Committee and we try, at least I have, not to raise the issue of race. And I know that when Members of this side raise the issue of race Members of the other side always say, "Don't raise the issue of race here."

But today I guess there was an exception to the rule and we got to raise the issue of race on numerous occasion because that seems to be the fundamental point.

And then we went to, after that, we went to again, the third witness, talking about the children coming with violent criminal gangs, and again violent cartels. And then we finished up with one of my colleagues talking and accusing those that protested here of being illegally in the country as though he knows. But then, I don't know if he ever saw anybody of color he didn't think was illegally in the country and wasn't a suspect. And I think that is fundamentally what is wrong with so much of the testimony.

Look, with all due respect and deference to all of those that have submitted legislation, this legislation isn't going anywhere; isn't going to be approved in the Senate, it may not even be approved in the House of Representatives. And the President will never sign it.

So why don't we get about the business of fixing our broken immigration system and being serious. Instead of raising scurrilous charges which makes them—look, if I were one of those protestors and I heard all of you testify, I would be a little upset, a little angry too. If every reference made to people, they were like the protestor, were drug cartels, criminals, rapists and murderers.

Now, I bet if I went out to South Carolina, North Carolina and went out to those fields, I would see some of those undocumented workers, those illegals that you talk, making sure that those farms, doing backbreaking work on those farms. I'm sure. You know how I know? Because I have been there and I have seen them. And nobody wants them all taken away.

We are going to have the food placed on our tables each and every day handpicked by foreign hands in foreign countries or picked by foreign hands in the United States of America? That is just the truth, and I will be the first one to submit to everybody here that my wife and I did not get married, raise two children to work in the fields. As honorable as that work is, we sent them to school, we sent them to college, we sent them to do other work, but someone must do that work and I don't see Americans protesting that people are doing their work.

I traveled to your districts. I go in the back; I go to Chinese restaurant, I go to Greek restaurant, I go to Italian restaurant, and it just seems to be that there are people who speak Spanish cooking those meals. They are very diverse. I go to hotel rooms and nobody says, "Oh, I'm not going to eat that meal. I'm not going to rest in that hotel room."

So think about how it is you speak about a community of people and, when you speak of them in terms of them being all criminals, because none of you ever said that you saw one of them that worked hard was here to contribute and should be able to stay in the United States of America. You see no merit. I heard all three of you speak, the first three witnesses speak, you never uttered a one instance any merit to those work. Yet, we know that the vast majority of those who work in agriculture are undocumented and put the food that you eat each and every day on your table.

I would like to end by saying, Bishop, we're going to visit you out in Tucson to sign people up and make sure there are more dream-

ers. And I would just like to say, what do you think His Holiness, our Holy Father—could you give us what he would think when he comes to speak to the Congress of the United States?

Bishop KICANAS. Well, I have no idea what our Holy Father will say when he comes to speak to the Congress, but I do know the issue of immigration is dear to his heart. One of his first initiatives was to go to Lampedusa which is an island that many people are crossing the ocean at great risk to their lives. And he wanted to be there because saw these people as people wanting a better way of life and in danger of their life, and he wanted to be there among them which is what he does. He lives what he says. He speaks with authority.

And I think he will prod the Congress to move forward with courage and conviction in doing a comprehensive bill that includes enforcement as an ingredient, but certainly many other areas like a pathway to citizenship, like legal ways for people to come here, like reuniting families, like helping these sending countries so that people don't have to come. Nobody wants to leave their own country whether at home in their culture and their language, but some have to and we have to understand that.

Mr. GUTIERREZ. I can't wait to hear from the Pope.

Thank you so much.

Mr. GOWDY. Thank the gentleman from Illinois.

And in my final act of compassion to you, I'm going to try and go before we leave to go votes that way you don't have to wait around an hour for me to vote and come back. So if I talk fast, it is only for that reason.

I want to say something about my friend Luis Gutierrez. I have never spent a moment wondering about his motives. We may disagree. In fact, we do disagree on certain things, but I have never once questioned his motives. I think that he and the gentle lady from California are both interested in solutions as opposed to the issue.

But Bishop, a year ago, sitting exactly where you are sitting right now was the former Mayor of San Antonio, and we could not get him to quit repeating this mantra of citizenship for 11 million aspiring Americans. Call me skeptical, I don't know any group of 11 million except perhaps nuns that could all pass a background check. God knows 11 million Members of Congress couldn't pass a background check; 11 million of no category could.

So if you are talking about 11 million as one homogeneous group, all of whom could pass background checks, all of whom aspire to citizenship and not just legal status. That tells me that that person is more interested in having a political discussion than a factual discussion.

And I want to say, what you said about the young lady from Arizona, so perfectly captured her life. And I want to thank you for remembering her. I have to be candid with you. When you were describing her characteristics, I was thinking about the guy sitting on the other end of the desk from you because the cops that I worked with were willing to give their lives for other people and in many instances for people who did not appreciate what they were doing.

So it is hard for me to understand, with respect to people like the sheriff and my own sheriffs, how we trust them with every

other category of crime; murder, sexual assault, robbery, speeding, narcotics. Who do we call when we hear somebody prowling around at night? Who do we call as Member of Congress when we are in our districts going to town halls and we need security? We trust him for that.

Sheriff, just so you know, they will trust you to provide security for them at one of their town halls or one of their public events. God knows why they don't trust you to enforce immigration laws. They will trust you for everything else.

Bishop, there is this notion going through my head that we are a Nation of laws but we are a people of humanity and compassion. We are a Nation of laws but a people of humanity so how we synthesize those too.

And I appreciate what Mr. Gutierrez said. I actually have no idea what someone's legal status is by looking at them. I wouldn't begin to try to guess. I have no idea. I would never ask anybody, frankly.

So I come to it with a law enforcement bias; that the number one function of government is public safety. And I can tell you that I would be at a loss to explain to the victims of any crime how someone got here through unlawful means, committed another crime, was released, remained here, and then committed another crime. I'm not a good enough lawyer to explain that.

So let me ask you, not people who cross the border, but people who overstay VISAs. What is your internal security plan? Because overstaying a VISA is not a crime. So how are we going to identify—and we certainly don't want to treat VISA over stayers from Germany differently than we do border crossers from Guatemala. So what is your internal, interior security plan for folks who overstay their VISAs?

Bishop KICANAS. Thank you very much, Chairman Gowdy, and I know you are, like many in our Congress, struggling with some very complex issues. And it is not easy.

First of all, with regard to local law enforcement, Arizona has been doing that road; SB 1070. This is not the expertise of local enforcement officers. This is a complex issue; immigration law, asylum determinations. We have to be very careful of entrusting to people for whom that is not their expertise.

There are many police chiefs in this country who do not want that responsibility. They feel it would put their officers at great risk for racial profiling, they are concerned that it would disrupt the community being able to bring forward allegations of criminal behavior because they might be deterred.

And so, I think it is the responsibility of our Federal Government and we have to give them the responsibility to handle that so we don't have a disjointed system, we can't have 50 immigration policies in our country. That would be tragic.

As far as, you know, the 11 million people, obviously there are some that will need to be deported. You know, President Obama has actually deported 2 million people; that is an incredible number, even more than under previous Administrations in his 6 years. So yes, there will be some. But we also have to carefully look at individual situations because not everyone is the same.

I ask—

Mr. GOWDY. I don't want to cut you off, but I don't want these two to miss votes and I am over time.

I would just say this in conclusion: In South Carolina, the murder statute is one sentence long. Murder is one sentence long in South Carolina. Our DUI statute is 16 pages long. It is incredibly complex. So if we trust State and local cops in South Carolina to understand the labyrinth that is our DUI law, I think they can figure out immigration law.

And the only other thing I will say about racial profiling, racial profiling is wrong whether it is traffic offenses, narcotics offenses, certainly in immigration. It is wrong across-the-board, but we trust Sheriff Page in narcotics cases, traffic violations.

Five thousand ICE agents is not going to get it done and, before we can get to the rest of immigration reform, you are going to have to convince your fellow citizens that we are actually serious about enforcing the law. That is just a political reality.

And with that, I want to thank all four of you. I apologize for the disruption. Frankly, it is not persuasive. What is persuasive is hearing Zoe and Mr. Conyers and Luis make their arguments. Disrupting four invited guests and others who were playing by the rules is not persuasive but that is up to them whether they want to do it or not.

So with that, this concludes today's hearing. Thanks, all the witnesses for attending. Without objection, all Members will have 5 legislative days to submit additional written questions for the witnesses and materials for the record.

With that, the hearing is adjourned.

[Whereupon, at 2:52 p.m., the Subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

List of Submissions from the Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Ranking Member, Subcommittee on Immigration and Border Security

Prepared Statement of the American Immigration Council
Prepared Statement of the Church World Service (CWS)
Prepared Statement of the Hebrew Immigrant Aid Society (HIAS)
Prepared Statement of the Leadership Conference of Women Religious (LCWR)
Prepared Statement of the Lutheran and Refugee Service, Kids in Need of Defense, and the Women's Refugee Commission
Prepared Statement of NETWORK, A National Catholic Social Justice Lobby
Prepared Statement of Human Rights First
Prepared Statement of the National Immigrant Justice Center
Prepared Statement of First Focus Campaign for Children
Letter from the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)
Prepared Statement of the American Civil Liberties Union (ACLU)
Prepared Statement of Tahirih Justice Center
Prepared Statement of the U.S. Committee for Refugees and Immigrants
Prepared Statement of a Coalition of Evangelical Organizations
Letter from Law Enforcement Officers
Memo from the Department of Homeland Security (DHS)
Report of the Niskanen Center
Letter from Pope Francis

Note: These submissions are available at the Subcommittee and can also be accessed at:

<http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=102941>

Material Submitted by the Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Ranking Member, Subcommittee on Immigration and Border Security

A UNIFIED VISION FOR PROTECTING UNACCOMPANIED CHILDREN:

Statement of Principles

This "Unified Vision for Protecting Unaccompanied Children" sets out a statement of principles developed through a series of roundtable discussions hosted by Lutheran Immigration and Refugee Service. The principles are timely in their application to current compelling events, and also timeless in their enduring applicability to the care of unaccompanied children beyond this immediate humanitarian crisis. While current events continue to change and evolve, along with the U.S. government's legislative and programmatic approaches to unaccompanied children, the relevance and necessity of these fundamental principles has never been greater, in order to ensure that there is no erosion of humanitarian and due process protections for the lives and safety of unaccompanied children.

Principle #1

Unaccompanied children are children first and foremost. U.S. policies and practices must recognize their unique vulnerabilities and developmental needs within a context of the best interests of the child.

Principle #2

Screening of children for persecution, abuse, or exploitation should be done by skilled child welfare professionals.

Principle #3

Children require individualized adjudication procedures that recognize a child's need for trust, safety and time, in order to disclose trauma and maltreatment; in legal proceedings, unaccompanied children need legal counsel to represent their wishes, and the equivalent of a guardian ad litem (Child Advocate) to represent their best interests.

Principle #4

Children are best cared for by their families, and family unity supports children's long-term stability and well-being. When children are in transitional situations, they should be cared for by child welfare entities in the most family-like, least restrictive setting appropriate to their needs.

Principle #5

Programs with care and custody of unaccompanied children must provide a safe and nurturing environment with trained and qualified staff who have child welfare expertise, while also preparing children and their future caregivers for a successful transition to a supportive family setting.

Principle #6

Following reunification, every unaccompanied child should receive community-based case management and support services to facilitate healthy integration and to prevent child maltreatment.

Principle #7

Children are best served when government agencies and their partners incorporate principles of accountability, collaboration, information sharing, documentation of best practices, evaluation, and quality improvement.

We represent a diverse group of service providers: both faith-based and secular, providing legal and social services, working nationally, in academia, and in local communities. Many of us have served unaccompanied children for decades, giving us a perspective beyond this immediate crisis. Some of us have worked with and provided direct services to refugee children in the U.S. and abroad, while others have focused on children in our U.S. child welfare systems. These principles developed during three national "Roundtable" meetings remained consistent in their focus on the central themes of protection, stability, accountability, and cross-system collaboration.

We are united by the certainty, and sense of urgency, that the current humanitarian crisis must be viewed through the prism of child protection and guided by these enduring principles.



Individual endorsers:

Thomas M. Crea, PhD
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February 11, 2015

Mr. Chairman, Members of the Committee, thank you for the opportunity to submit a statement for the hearing on Interior Immigration Enforcement Legislation, focusing on the situation of unaccompanied children from El Salvador, Guatemala and Honduras – the so-called “Northern Triangle” of Central America – in the United States.

UNHCR recognizes the enormous challenges facing the U.S. and other countries as a result of the recent large movement of people. We offer the following four points to inform the response to the refugee dimension of the flow of people from the Northern Triangle region.

- Forced displacement of unaccompanied children from Central America is a new and concerning trend. The children from El Salvador, Guatemala and Honduras and Mexico gave UNHCR multiple reasons for leaving, including violence, family, opportunity, and improved living conditions- but fear of violence and the conviction that they could not be protected from their own governments was the tragic, common factor for a majority of those interviewed. Alarming, 58% of the children cited violence in their home countries as at least one key reason for leaving.
- Unaccompanied children and families who fear for their lives and freedoms must not be forcibly returned without access to proper asylum procedures. UNHCR calls on all countries in the region to uphold their shared responsibility to identify and protect displaced children, families or adults who are forcibly displaced by violence. This is critical over both the short and long term, as governments implement solutions to address forced displacement and the dire country conditions causing it.
- Reception of asylum-seekers - particularly children and families fleeing violence - must focus on protection and not on deterrence.
- This is a regional humanitarian situation that requires a regional humanitarian response. UNHCR calls for regional cooperation to:
 - Enhance child protection systems in source/transit countries;
 - Enhance the capacity of governments to address the humanitarian consequences of forced displacement through the development of public policies and protection responses;
 - Identify solutions that are in the best interests of children, including, where appropriate, return and family reunification;
 - Reinforce asylum systems in countries of transit and asylum in Central America and Mexico; and
 - Collaborate on violence prevention, citizen security and unaccompanied children issues with relevant agencies in source and transit countries

As the UN Refugee Agency, UNHCR has particular expertise in the area of protecting children displaced by violence and conflict.

About half of the world’s refugees are children, and they are considered by UNHCR to be particularly vulnerable in situations of forced displacement. Because the vulnerability of children is largely the result of their age and dependence on adults, exceptional protection efforts for children are needed. In situations of violence and conflict, children are both indirect and direct targets because of their age. Unaccompanied refugee children are the most vulnerable, as they have no adult who is legally recognized to be responsible for their care. Refugee girls are also more likely than boys to be the subjects of neglect and abuse, including sexual abuse, assault, trafficking and exploitation.

Drawing from our decades of experience and expertise working with children, UNHCR developed a *Framework for the Protection of Children*. This Framework informs our position on the international protection of children, including those who are unaccompanied, in the context of forced displacement.

Forced displacement of unaccompanied children from Central America is a new and concerning trend requiring a response to the refugee dimension

In late 2011, UNHCR and others noted a considerable uptick—the beginning of what is now known as the “surge”—in the numbers of unaccompanied children coming across the U.S. border. Every year since, the numbers of UACs crossing the border has essentially doubled, until June of 2014, when the number of arrivals in a single month exceeded that for FY 2009, 2010 and 2011 combined. These children were primarily from three Central American countries – El Salvador, Guatemala, and Honduras—and from Mexico. Given our mandate to ensure the protection of those fleeing for their lives and freedoms, especially children, UNHCR undertook a study to understand the reasons for the increase.

Working closely with the U.S. Government and with child protection experts, UNHCR developed and implemented a sound, fully vetted methodology to learn from the children themselves why they decided to leave. Applying this methodology, UNHCR interviewed 404 children from the four countries, aged 12 to 17, in U.S. federal custody.¹ Launched in March 2014, our report, “Children on the Run: Unaccompanied Children from El Salvador, Guatemala, Honduras and Mexico and the Need for International Protection,”² reflects the findings and recommendations of our study.

The children from El Salvador, Guatemala and Honduras and Mexico gave multiple reasons for leaving, including violence, family, opportunity, and improved living conditions- but fear of violence and the conviction that they could not be protected from their own governments was the tragic, common factor for a majority of those interviewed. Shockingly, 58% of the children cited violence in their home countries as at least one key reason for leaving. This number varied by country: El Salvador (72%), Honduras (57%), and Guatemala (38%).³ These children shared stories of violence, threats, intimidation and abuse – experiences that, like for so many children in situations of widespread violence and conflict, they should never have to face. The following are the voices of the children themselves⁴:

I am here because the gang threatened me. One of them “liked” me. Another gang member told my uncle that he should get me out of there because the guy who liked me was going to do me harm. In El Salvador they take young girls, rape them and throw them in plastic bags. My uncle told me it wasn’t safe for me to stay there. They told him that on April 3, and I left on April 7. They said if I was still there on April 8, they would grab me, and I didn’t know what would happen. . . . My mother’s plan was always for the four of us – her, my two sisters and me – to be together. But I wasn’t sure I wanted to come. I decided for sure only when the gang threatened me. - Mariya, El Salvador, Age 15

¹ This sample, statistically significant to represent the broader UAC population, represents the appropriate gender distribution of girls and boys.

² UN High Commissioner for Refugees (UNHCR), *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the need for International Protection*, 13 March 2014, available at http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_ful%20Report.pdf

³ UNHCR is not alone among UN agencies and other intergovernmental bodies in the region noting the violent roots of this displacement. UNICEF, the UN agency charged with protecting children, recently released a statement saying, “Clear and compelling evidence . . . show distinct ‘push factors’ are at the heart of why these children flee. They are often escaping persecution from gangs and other criminal groups, brutality and violence in their own communities and even in their homes, as well as persistent conditions of poverty and inequality. . . .” *Berni Aussen, UNICEF Regional Director for Latin America and Caribbean*, “Dramatic increase of unaccompanied children seeking to enter the United States”, 10 June 2014, http://www.unicef.org/media/media_73755.html.

The Inter-American Commission on Human Rights (IACHR) also released a statement expressing its “deep concern over the situation of unaccompanied children migrants that are arriving to the southern border of the United States of America.” Commissioner Felipe González, the Rapporteur on the Rights of Migrants of the IACHR and country Rapporteur for the United States, went on to highlight, “We are dealing with a humanitarian crisis involving record numbers of migrant children on the southern border of the United States, but also in other countries of the region. Through on-site visits and hearings, we have seen that our children are dying or being victims of several forms of violence in many parts of the region, and in this context there are some children who have been able to flee from these forms of violence, both inside and outside of their countries. . . .”

http://www.oas.org/en/iachr/media_center/PRReleases/2014/067.asp

⁴ Additional quotes from the children are included as an appendix to the present statement.

Gangs in a nearby neighborhood wanted to kill me and some other people. They wanted me to give them money, but what money was I supposed to give them? I didn't have any. They asked me a bunch of questions, like who was my father, and who was my family. I told them my father was dead. They told me to say goodbye because I was going to join my father. They asked me if I knew who they were, if I could identify them. I said no, because I knew if I said yes they would kill me. They held my cousin and me for three hours, tied up. My cousin was able to untie the rope and he helped me untie mine. We heard gun shots and we ran. They kept looking for us, but we escaped. - David, Guatemala, Age 16

My grandmother wanted me to leave. She told me: "If you don't join, the gang will shoot you. If you do join, the rival gang will shoot you—or the cops will shoot you. But if you leave, no one will shoot you." - Kevin, Honduras, Age 17

In November 2014, UNHCR released another report,⁵ studying the international protection needs of unaccompanied children from the Northern Triangle in Mexico. Based on our interviews with children in the Mexican government's custody, the report found that fear of violence and harm figured prominently in half of the children's motivations for leaving.

The children's accounts are tragically borne out in country conditions in the Northern Triangle. In El Salvador, Guatemala and Honduras, women and girls are targets of epidemic levels of gender-specific violence.⁶ Instances of rape, mutilation, murder and disappearances of women and girls are not only present in the media, but are also tracked in data. In Honduras, from 2005 to 2012, murders of women and girls increased 346%.⁷ In El Salvador, noted as having one of the highest femicide rates in the world,⁸ organized armed criminal actors target women and girls, using rape as an intimidation tactic in communities.⁹ All this in a region with a 95% impunity rate for homicides.¹⁰

Children are also particularly vulnerable to the violence at the hands of organized armed criminal actors. Children were subject to increasing brutality in retaliation for refusing forced recruitment into organized armed criminal groups, especially *maras*, and for refusing to be the sexual slave of *mara* members. Families are targeted for refusals to comply with extortion and other demands.¹¹

⁵ UNHCR Mexico, *Arrancados de Raíz (Uprooted)*, November 2014, English Summary, available at http://www.acnur.org/t3/fileadmin/Documentos/Eventos/2014/Uprooted_One-pager.pdf?view=1.

⁶ Hastings, Deborah, *In Central America, Women 'Killed with Impunity' Just because They're Women*, 10 January 2014, New York Daily News, available at <http://www.nydailynews.com/news/world/femicide-rise-central-america-article-1.1552233>.

⁷ Yagenova, Simona V., *La violencia contra las mujeres como problema de seguridad ciudadana y las políticas de seguridad. El caso de Guatemala, El Salvador, Honduras y Nicaragua*, November 2013, available at http://www.observatoriodeseguridadciudadanadclasmujeres.org/materiales/INFORME_VCM_CA..pdf.

⁸ In a 2012 publication of the Small Arms Survey, El Salvador, Guatemala and Honduras were in the top five countries in the world for instances of femicide. See <http://www.smallarmssurvey.org/fileadmin/img/highlights/Femicide-RN14-fig2.pdf>.

⁹ See Arce, Alberto, *El Salvador's Gangs Target Women and Girls*, 6 November 2014, The Houston Chronicle, available at <http://www.houstonchronicle.com/news/nation-world/world/article/13-Salvador-s-gangs-target-women-and-girls-5876883.php#0>.

¹⁰ Gurney, Kyra, *Report Details How El Salvador Gangs Use Rape as Weapon*, 7 November 2014, Insight Crime, available at <http://www.insightcrime.org/news-briefs/el-salvador-gangs-rape-sexual-violence-femicides>.

¹¹ Chavez, Suchit, Avalos, Jessica, *The Northern Triangle: Countries that Don't Cry for Their Dead*, April 2014, Insight Crime, available at <http://www.insightcrime.org/news-analysis/the-northern-triangle-the-countries-that-dont-cri-for-their-dead>.

¹¹ In Honduras the youth murder rate surged over the first 5 months of 2014, rising from an average of 70 children and youth killed per a month in 2010-2013 to an average of 90 children. <http://www.laprensa.hn/sucesos/politicas/647527-96/reportan-muerto-violenta-de-270-hondure%C3%B1os-menores-de-23-a%C3%B1os>. May 2014 saw the heaviest death toll for children and youth with 102 murdered that month. <http://hoy.com.do/mas-de-100-menores-de-23-amos-fueron-asesinados-en-honduras-en-mayo/>. Some of the child-murders in Honduras in May were particularly barbaric, shocking a nation that has grown numb in some ways in the face of pervasive violence. http://www.oas.org/en/iachr/media_center/PReleases/2014/056.asp. On May 4, in Limón, Honduras, a gang broke into the home of a family that had refused to cooperate with their demands and murdered four children ages 2 to 13, hacking their bodies with knives. A day earlier, in San Pedro Sula (<http://latino.foxnews.com/latino/news/2014/05/02/gangs-suspected-in-killings-kids-in-honduras/>), the tortured bodies of two children were found in the La Pradera neighborhood. <http://www.proceso.hn/2014/05/03/Reportajes/Reclutamiento-de-grupos/85941.html>. The children's hands and feet were reportedly bound and the faces of the boys were half-peeled off. This was the eighth such incident in the same neighborhood - In early May, at

Compared to UNHCR research in 2008, where we found that only 13% of the flow of unaccompanied children in the region had protection concerns, our 2014 research proved conclusive. The patterns of regular migration in this region have changed. Many of the children chose Mexico or the United States because they had family members there.¹² While 85% of the asylum applications are filed with these two countries, Nicaragua experienced a 238% increase of asylum applications from persons from these three countries last year alone. For those like Maritza who had lived in fear of even leaving their homes, let alone going to their neighborhood school, fleeing is not only logical but expected as she cannot find protection from her own government.

Unaccompanied children and families who fear for their lives and freedoms must not be forcibly returned without access to proper asylum procedures. UNHCR calls on all countries in the region to uphold their shared responsibility to identify and protect displaced children, families or adults who are forcibly displaced by violence. This is critical over both the short and long term, as governments implement solutions to address forced displacement and the dire country conditions causing it.

At the core of refugee protection is the prohibition of returning a refugee to persecution. This prohibition, known as the principle of *non-refoulement*, is the fundamental obligation of States parties to the 1951 Convention relating to the Status of Refugees¹³ and/or its 1967 Protocol,¹⁴ and one that is binding on the United States.¹⁵ A critical first step in complying with this obligation is to ensure that asylum-seekers are identified, screened and given full and meaningful access to

least nine kids were killed by armed criminal groups in the La Pradera neighborhood in San Pedro Sula. All children were tortured, bound by their hands and feet, and shot in the face multiple times. <http://www.laprensa.hn/sucesos/policiales/705951-96/los-ochonin%C3%B1os-se-apon%C3%ADan-a-ser-parte-de-las-maras-seg%C3%BA> According to the BBC, the victims were targeted because they refused to join these organized armed criminal groups. <http://www.bbc.com/news/world-latin-america-27265309> Further, from 2005 to 2012, murders of women and girls increased 346%. Murders of men and boys increased by 292% over the same time period. http://www.observatoriodeseguridadciudadadelasmujeres.org/materiales/INFORME_VCM_C.A..pdf [Note that while the government reports that the overall murder rate dropped slightly in 2013, the murder rate for women and girls rose 263% between 2005 and 2013 as well as the rate in forced disappearances of women and girls in 2013.] http://www.un.org/apps/news/story.asp?NewsID=48241#U81Pb_dV8E In El Salvador, clandestine mass graves, some of the worst this country has seen since the civil war, were recently unearthed in El Salvador. <http://www.insightcrime.org/news-analysis/homicides-mass-graves-and-truth-about-el-salvador-gang-truce> As many as 44 bodies have been found in Colon province. Police recently identified 70 abandoned houses in a neighborhood controlled by the MS13 gang. <http://el mundo.com/sv/abandonan-su-casa-luego-de-amenazas-de-pandillas-2> According to UNICEF, over 6300 children have been murdered in El Salvador from 2005 to 2013, and this number does not include forced disappearances. <http://www.diariolasamericas.com/america-latina/cifra-asesinados-salvador-indigna-unicef.html> In El Salvador there was a 93% increase in disappearances in 2013 according to U.S. State Department. <http://travel.state.gov/content/passports/english/alertswarnings/el-salvador-travel-warning.html>. "Although Salvadoran police statistics show a decrease in annual homicides during 2012 and 2013, the homicide rate has been rising steadily since August 2013," according to the U.S. State Department. <http://travel.state.gov/content/passports/english/alertswarnings/el-salvador-travel-warning.html> Children are targeted in their neighborhoods and schools, and the gangs are increasingly targeting public school teachers for threats and extortion. http://www.elsalvador.com/mvedh/nota/nota_completa.asp?idCat=47859&idArt=8646193 One family reportedly fled their home after the father was killed by gang members while trying to rescue his eldest son, who had been kidnapped by them. http://www.elsalvador.com/mwcdh/nota/nota_completa.asp?idCat=47859&idArt=8724063

¹² Of the 404 unaccompanied children interviewed by UNHCR, only 8% had both parents in the U.S.; 28% had one parent in the U.S.; and 64% had no parents in the U.S. See UNHCR, "Children on the Run: Unaccompanied Children from El Salvador, Guatemala, Honduras and Mexico and the Need for International Protection," p. 63, March 2014, available at www.unhcrwashington.org/children.

¹³ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.refworld.org/docid/3be01b964.html>.

¹⁴ UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at: <http://www.refworld.org/docid/3ae6b3ae4.html>.

¹⁵ The United States of America is a state party to the 1967 Protocol to the 1951 Convention on the Status of Refugees. See <https://treaties.un.org/Pages/ViewDetails.aspx?src=UNTSO&tabid=2&msgid=no-V-5&chapter=5&lang=en#Participants>. For a map of states parties to the 1951 Convention or the 1967 Protocol, see UN High Commissioner for Refugees (UNHCR), *State Parties to the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol*, June 2014, available at: <http://www.refworld.org/docid/51d3dad24.html>

asylum. This is particularly critical for children, whose age and comprehension capacity limits their ability to engage protection systems on their own.

With the knowledge that nearly 60% of the unaccompanied children from El Salvador, Guatemala and Honduras have potential claims for international protection, it is critical that they be identified, screened and given access to the U.S. asylum system.¹⁶ Critical in ensuring this access is having in place child-appropriate protection procedures. Strengthening procedures to ensure that those who are fleeing for their lives have meaningful access to protection in the U.S. and all other neighboring countries is the critical first step toward ensuring that those who fear persecution are not turned away in error.¹⁷ An appropriate system to thoroughly screen children for protection needs also identifies those children that do not, facilitating and expediting their safe return.

Reception of asylum-seekers - particularly children and families fleeing violence - must focus on protection and not on deterrence.

As a global leader in refugee protection, the United States has long led by example in encouraging other countries in the region and around the world to develop and strengthen their own protection systems. As the United States decides what actions to take in responding to an increase in the number of unaccompanied children and families asking for protection from violence, the solution is not to make seeking that protection more difficult. Rather it is to strengthen and make efficient processes already in place to ensure that those who are in need of international protection have meaningful access to the system and are treated with dignity and respect.

Seeking asylum is neither a crime nor a prohibited act. In fact, the right to seek asylum is a protected right reflected in U.S. law. Any response to increases in the numbers of children and families fleeing violence should not seek to deter those with legitimate claims from attempting to seek refuge. Since the height of the surge in June of 2014, the U.S. government has found that of the families placed into the "credible fear process", a process whose threshold is higher than the accepted international standards¹⁸, nearly 70% have been found to have legitimate asylum claims.

With this knowledge, policies and practices designed to create conditions to deter those fleeing persecution from seeking safety and protection are contrary to both the letter and the spirit of the 1951 Refugee Convention and its 1967 Protocol as well as other international human rights instruments. These measures are also ineffective. UNHCR and others have long noted that no empirical evidence supports the assumption that immigration detention deters irregular migration, or that it discourages people from fleeing their countries to seek asylum.¹⁹ UNHCR research found that, "Critically, threats to life or freedom in an individual's country of origin are likely to be a greater push factor for a refugee than any disincentive

¹⁶ The families arriving from the three Northern Triangle countries have children of the same age and profile of the unaccompanied children interviewed by UNHCR for *Children on the Run*. As such, UNHCR considers that many of these families have similar claims to those of the UACs.

¹⁷ UNHCR has already noted troubling reports of violence – including homicide – of children returned to Honduras. See Reuters, *Departed Central American Child Migrants Face Threats, Death at Home: U.N.*, 3 February 2015, available at http://www.nytimes.com/reuters/2015/02/03/world/americas/03reuters-americas-immigration-children-violence.html?_r=#

¹⁸ UNHCR's Executive Committee, of which the United States of America forms a part, has recognized that countries may adopt procedures to identify in an "expeditious manner . . . applications which are considered to be so obviously without foundation as not to merit full examination at every level of the procedure." Under such procedures, authorities identify cases that are either "clearly abusive" or "manifestly unfounded," which are "defined as those which are clearly fraudulent or not related to the criteria for the granting of refugee status laid down in the 1951 United Nations Convention relating to the Status of Refugees nor to any other criteria justifying the granting of asylum." Such accelerated procedures should only be carried out with appropriate procedural safeguards, so as to ensure against *refoulement*. See UN High Commissioner for Refugees (UNHCR), *The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum*, 20 October 1983, No. 30 (XXXIV) – 1983, available at <http://www.refworld.org/docid/3ac68e6118.html>

¹⁹ UN High Commissioner for Refugees (UNHCR), *Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants*, p. 2, April 2011, PPLA/2011/01.Rev.1, available at: <http://www.refworld.org/docid/4de935fd.html>

created by detention policies in countries of transit or destination.²⁰ However, evidence does exist showing the detrimental impact of detention on asylum-seekers' well-being, an impact felt particularly strongly by children.²¹

Unaccompanied children and families with children must be treated with dignity and provided age-appropriate refugee reception conditions during their asylum procedures. This includes accessing more humane and cost-effective alternatives to detention arrangements.

This is a regional humanitarian situation that requires a regional humanitarian response.

UNHCR calls for regional cooperation to:

- Enhance child protection systems in source/transit countries;
- Enhance the capacity of governments to address the humanitarian consequences of forced displacement through the development of public policies and protection responses;
- Identify solutions that are in the best interests of children, including, where appropriate, return and family reunification;
- Reinforce asylum systems in countries of transit and asylum in Central America and Mexico; and
- Collaborate on violence prevention, citizen security and unaccompanied children issues with relevant agencies in source and transit countries

While the United States receives the vast majority of asylum claims from the Northern Triangle, forced displacement from these three countries is clearly felt elsewhere in the region. At the time that UNHCR published our "Children on the Run" report, available data from 2008 to 2012 showed a 435% increase in the number of asylum applications overall from El Salvador, Guatemala and Honduras filed in Belize, Costa Rica, Mexico, Nicaragua, and Panama. Updating the data to include 2013 figures, the increase from 2008 to 2013 is now 712%. Given the regional nature of this displacement crisis, the United States cannot and will not bear the burden of addressing the situation alone.

Moreover, the trends of displacement over the last few years from the Northern Triangle are not out of sync with other global situations of forced displacement due to conflict. Individuals and families do not want to flee their homes, or their countries, if they can avoid it. Many will often displace internally before seeking refuge outside their countries. One current example is that of the Syria conflict, where displacement over time grew greater as the intensity and pervasiveness of the conflict made it untenable for individuals and families to stay.²² Internal displacement due to violence in the Northern Triangle countries is serious challenge for the Northern Triangle governments. There are no official government-tracked statistics of displacement, making the scope of the problem difficult to quantify. Nonetheless, some indicators exist. For instance, a 2012 study estimated that around 130,000 citizens of El Salvador had been internally displaced at least once by violence, this in a country of 6,000,000 at the time.²³ In recognition of the magnitude of forced displacement due to violence, the Honduran government created a national commission on internal displacement in 2014.

In January 2015, the United Nations Secretary General Ban Ki Moon traveled to Honduras and El Salvador. Ban called on the countries and the international community to support anti-violence efforts in both countries, which he noted as key to prevent displacement of children.²⁴ UNHCR stands ready to continue to support the U.S. and other asylum countries in the region – particularly Mexico and Guatemala – to enhance protection systems throughout the region and to provide

²⁰ *Id.*

²¹ See, e.g., Robiant, Hassan and Katona, Mental health implications of detaining asylum seekers: systematic review, *British Journal of Psychiatry*, August 2008, available at <http://bjp.rcpsych.org/content/194/4/306.long>

²² See <http://data.unhcr.org/syrianrefugees/regional.php>.

²³ Cantor, James, *The New Wave: Forced Displacement Caused by Organized Crime in Central America and Mexico*, September 2014, Oxford Refugee Survey Quarterly, available at <http://rsq.oxfordjournals.org/content/early/2014/06/10/rsq.hdu008.full.pdf>

²⁴ See Associated Press, *U.N. Chief Ban Ki-Moon in Honduras on Anti-Violence Mission*, 14 January 2015, *New York Times*, available at http://www.nytimes.com/aponline/2015/01/14/world/americas/ap-14-honduras-un-ban-ki-moon.html?_r=0; Nelson Reteria, *U.N.'s Ban Ki-Moon Worried by El Salvador Violence as Murders Soar*, 16 January 2015, *Business Insider*, available at 14 January 2015, <http://www.businessinsider.com/t-uns-ban-ki-moon-worried-by-el-salvador-violence-as-murders-soar-2015-1>.

protection to those whose lives and freedoms are under threat. The U.S. has been a leader globally and regionally in refugee protection, particularly in protecting unaccompanied children and others of our most vulnerable. UNHCR hopes that the U.S. will continue to lead by example to encourage and support strong protection for children and families throughout Central American and Mexico.

Conclusion

The increase in arrivals of unaccompanied children and families seeking protection in the U.S. has no doubt placed great pressures on the United States' long-standing commitment and values to the protecting the most vulnerable of those seeking safe haven in the U.S. Understanding what has propelled these children and families from their homes, providing appropriate reception conditions, and ensuring protection to those who cannot return, is fundamental to meeting U.S. obligations to protect refugees and other vulnerable persons. Perhaps more importantly, it is fundamental to the United States' moral authority and long-standing identity as a beacon of hope to the persecuted. UNHCR stands ready to support the United States and other countries in the region in providing protection to these children—and families—on the run.

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Appendix

Sometimes adults view children as lesser and they think we can't become anything or don't have an opinion. They don't ask for our view on things. They need to give us a voice.

- Girl, 17, El Salvador

"Children on the Run": Quotes from the Children²⁵

Girl, 12, Honduras: In the place that I lived, it's like an *aldea*, and there were a ton of "mareros". All they did was bad things, kidnapping people. My mom and grandmother were afraid that something would happen to me, so that's why my mom brought me here. They rape girls and they end up pregnant. There were five girls that the gang members got pregnant, others that their families never heard from them again. There was a lot of security in my school, and I only had to walk two minutes. Even then, either one of my uncles or male cousins would accompany me to school. I was afraid that if I wasn't careful they would grab me and who knows what would happen.

Girl, 17, Honduras: My uncle was killed one week before I left. In the *colonia* where we lived, a *mara* is in charge. The "*mara*" extort all the bus drivers who live in the area. My uncle was a bus driver. They went to the bus station and killed him. I was two blocks away when this happened, waiting for a taxi. I heard everything happen, all the gun shots. After they killed him, the gang members came and told me that they knew I was his niece and that I was in danger. My entire family had to leave after the *colonia* because we were in danger. *I didn't plan on leaving for the United States until this happened*

Boy, 16, Honduras: Last year the gang members told everyone in my *colonia* that the gang was in control and everyone had to get out. My entire family left because they knew it was dangerous. They try to make boys join the gang. It's dangerous for girls, too. My sister is 19. Even if they don't make girls join, they will make girls be with them by force.

Boy, 17, El Salvador: The problem was that in the place that I studied there were lots of gang members from M-18. The place that I lived was under control of the other gang, MS-13. They thought I belonged to MS-13. *The gang members waited for me outside of the school.* It was a Friday and I was headed home. It was the week before *Semana Santa*. They told me that if I returned to school, I wouldn't make it home alive. Where I studied, they killed two kids I went to school with, and I thought I might be the next one. The "*maras*" killed the two police officers that protected our school. After that, I couldn't even leave my "*canton*". They prohibited me. If they had seen me even shopping in the city, it would have been problematic for me. I know someone who the gangs threatened this way. He didn't take their threats seriously. They killed him in the park. He was wearing his school uniform. If I hadn't had these problems, I wouldn't have come here.

Boy, 17, Guatemala: Guys in La Union that were part of the Zetas wanted me to traffic cocaine for them from La Union to Gualan. They said that if I didn't do it they would kill me. They wouldn't leave me alone and I was afraid they would do it. One time they called me and asked me for the address where I lived. They said they would come look for me and they wouldn't leave me alive. I couldn't go to La Union anymore.

Boy, 15, El Salvador: It was urgent that I leave. My town used to be one of the safest towns. Now it is filling up with "*maras*". Starting in November 2011, MS-13, they were pressuring me to join them, and I don't want to do that. I want to get ahead in life and study. They told me to go with them and try drugs. They said that I would feel good and liberated. They told me to leave my house at night and go with them. They sent me text messages and called me. They would say "Hey, '*que onda*' (what's up), are you coming out with us, or what? If not, let's see what happens to you."

Boy, 16, Honduras: I live in one of the most dangerous neighborhoods in Honduras. The gangs in my neighborhood wanted me to join their gang. They told me they would give me money, drugs, weapons, women, and power. They wanted me to defend my neighborhood from the rival gang as a gang member. They were from MS-13. I didn't want to hurt

²⁵ Due to child protection sensitivities, UNICR only interviewed children aged 12 to 17.

people or steal things, so I told my mom I wanted to come. When I was deported from Canada, I was in my neighborhood and some of the MS-13 guys saw me and thought I belonged to the rival gang because they didn't recognize me. They tried to kill me. They beat me with the butt of a rifle and tried to shoot me. I escaped, but I had to hide in my house for a couple months until I was able to come to the United States.

Boy, 17, El Salvador: I left because I had problems with the gangs. They wanted me to join them, and they said if I didn't that they would kill me. They bothered me on the way to and from school because they hung out by a field that I had to pass to get to school. Police won't go there because they are afraid of the gangs too. ... If you say you don't want to join, they force you. I have many friends who were killed or disappeared if they refuse to join the gang. I told the gang I didn't want to. Their life is only death and jail, and I didn't want that for myself. I want a future. I want to continue studying and to have a career. That isn't possible when you're in the gang. I didn't want that for my family either. I didn't want my mother to suffer the way that mothers of gang members suffer. My friends who were in the gang were pushing me to join. You can't stop being friends with them even though they are pushing you to join the gang. It's dangerous to be their friend, yes. But, if you're not their friend, you're their enemy. And that's dangerous, too. The more they saw me refusing to join, the more they started threatening me and telling me they would kill me if I didn't. ... They beat me up five times for refusing to help them. I didn't like when they beat me because the pain was so bad that I couldn't even stand up. They killed a friend of mine in March because he didn't want to join. They didn't find his body until May. This made me want to leave even more.

Girl, 14, Honduras: One of my uncles in Honduras mistreated me. He would beat me when he came to my house. He told me I rubbed him the wrong way. He also didn't like seeing me talking to another boy. He raped me in 2009. I didn't tell my mother until last year. My family reported him, but he paid off the police. I told my mom to bring me several months ago, but it took a long time. ... It's dangerous and she was worried about bringing us girls.

Boy, 17, Honduras: The gangs are like a virus that infects the entire region.

Boy, 17, El Salvador: "I left because I was afraid. I wasn't brave enough to continue living there. One day, some MS-13 gang members told me that they had seen me and they thought that I would be a good gang member. I didn't say anything, I just ignored them. A couple weeks later, I was riding my bicycle to my grandmother's house, and two gang members were waiting for me by a gate. They asked me what I thought about their offer. I told them that I didn't want to join, that it wasn't for me. They said that they gave me two options -- I could either live or die. They told me that they would give me eight days to think it over, and that if I didn't come to the right decision that they would kill me."

February 12, 2015

The Honorable Trey Gowdy,
Chairman, Subcommittee on Immigration and Border Security
Committee on the Judiciary
House of Representatives
Washington, DC

Dear Chairman Gowdy,

Thank you for the opportunity to respond on the record to two documents introduced by Representative Conyers at yesterday's hearing on interior immigration enforcement.

Inspector General (IG) report

The events described occurred twenty years ago. It is not in the power of anyone to move the clock back or undo mistakes. We don't get do-overs. The best that one can do is take responsibility, accept the consequences, learn the hard lessons, and try to live a better life while moving forward. I did and I have.

After removal from position and demotion, it would have been easier and less painful by far for me to hide away and never be seen or heard from again. I didn't take that path because it smacked of cowardice and I owed the agency and myself more than that. I went on to other paths where I felt I could contribute (one of which I discuss below under the "New Times article" header).

Subsequent to retirement, I was hired as a contractor to work on the now-ended Secure Communities program and was responsible for activations in about half the country. More than two years before the government ultimately too, the position that the program was not voluntary—and contrary to their statements on the record to Congress—I had written a memorandum stating that there was no legal basis for asserting that it was voluntary (and certainly it would have been a mistake operationally to allow localities to "opt out"). They chose to ignore me, although when they could no longer deny the inevitable, much of the logic and many of the statutory citations in my memorandum found their way, without attribution, into the government's ultimate position. Despite their floundering, I continued to work operationally on the program because I believed, and still believe, in its worth. As recently as July of last year, I had occasion to engage in an email dialogue about Secure Communities with David Martin, who was Deputy Counsel of DHS during that timeframe, under Secretary Janet Napolitano. I was astonished when he advised me that he had never seen my August 2009 memorandum until I forwarded it to him as an email attachment, and he conceded that "It does seem that you were unfairly scapegoated as the SC voluntariness issue was finally cleared up. Should you wish, I will forward you those documents, although frankly they are at this point a footnote in history.

To return to the IG report, though, I am troubled that history seems to be repeating itself. A story published July 9, 2014 by *The Blaze* carried this headline: "Border Patrol Official: DHS Ordered Illegal

The Honorable Trey Gowdy
 Re: Response for the Record

Page 2

Immigrant Holding Facility "Cleared Out" Before Congressional Visit".

(<http://www.theblaze.com/stories/2014/07/09/border-patrol-official-dhs-ordered-illegal-immigrant-holding-facility-cleared-out-before-congressional-visit/>) I have attached a copy for your ready reference. Although the DHS IG has conducted and reported about on-site visits at locales containing unaccompanied minors, it is not at all clear to me that the allegations, per se, were ever investigated.

New Times article

The article entirely misses its mark. I apologize to no one for my performance or conduct as head of INS's national security unit (NSU). Here are the facts:

- The individual who placed me into the job was the INS commissioner. I'm told that, because of the events in Miami, she cleared it with the Attorney General before doing so. These are the same two individuals, both senior officials in a Democratic administration, who sat in judgment on me in the aftermath of those events.
- Prior to being given the job, I underwent a security background investigation, which included a review of the Miami incident to determine my fitness for the necessary level of clearances.
- The NSU was a small component within the INS investigations division. Our function was to coordinate liaison with the FBI's counterterrorism division at headquarters, and with the FBI's joint terrorism task forces in the field. My job never included responsibility for, or authority over, airport inspections or terrorist lookouts. Those duties belonged, respectively, to INS Inspections Division officials named Michael Cronin and Robert Neighbors, who coordinated lookout responsibilities with the State Department.
- In the investigation that came out of the 9/11 attacks conducted by the Presidential Commission (the "9/11 Commission"), I and members of my unit, and senior FBI officials at their headquarters, were interviewed exhaustively. Questions as to lookouts and admission of the 19 hijackers were addressed by the Inspections officers mentioned above, as well as the responsible State Department officials.
- In the comprehensive multiple-volume report of findings issued by the 9/11 Commission, one will find no assignment of fault to me or to my unit for actions taken or not taken in the days and months leading up to the attacks.

Again, thank you for the opportunity to respond, and for having given me the chance to express my views at the hearing.

Respectfully,



Walter D. Cadman

Attachment: July 9, 2014 article from *The Blaze*

Border Patrol Official: DHS Ordered Illegal Immigrant Holding Facility 'Cleared Out' Before Congressional Visit

Jul. 9, 2014 10:17am Sara Carter

Department of Homeland Security officials are stonewalling lawmakers who try to make unannounced visits to immigrant detention facilities throughout the country and are closing off public roads along the U.S.-Mexico border in an effort to keep journalists from reporting on the growing illegal immigration crisis, federal law enforcement officials told TheBlaze.

The officials said senior supervisors have made scheduling visits ahead of time mandatory at detention facilities, turned back officials from unannounced visits, and that Border Patrol agents have been forced to clean up facilities and transfer illegal aliens from unauthorized holding cells before they are inspected by lawmakers. Reporters have also been stopped by DHS officials from traveling along public access roads near the Rio Grande, where most of illegal immigrant children and groups are crossing into the U.S.

The media crackdown along the Rio Grande happened shortly after TheBlaze visited the region last month and traveled along some of the more secluded roads along the river's edge. TheBlaze witnessed dozens of illegal immigrants turning themselves into Border Patrol agents after making the crossing into the United States and interviewed many of them before they were taken away.

While in McAllen, Texas, TheBlaze made multiple requests to have access to the facilities where illegals are being held. Border Patrol spokesman Joe Gutierrez said all requests needed to be approved by senior DHS officials in Washington, D.C., and all were denied. A tour of a facility in Brownsville, Texas, was given to reporters who were forbidden from speaking to agents or immigrants. TheBlaze chose not to participate in the tour.

Border Patrol agent Chris Cabrera said supervisors in his sector cleared more than 200 illegal immigrants being detained in the sally port, a garage used to load and unload illegal immigrants, last Wednesday when a group of bipartisan senior lawmakers made a planned visit to the McAllen Border Patrol station.

House Judiciary Committee Chairman Bob Goodlatte (R-Va) and House Oversight Chairman Darrell Issa (R-Calif.), Rep. Zoe Lofgren (D-Calif.), Rep. Sheila Jackson Lee (D-Texas) and Rep. Joe Garcia (D-Fla.) traveled to the Rio Grande Valley Sector to inspect the facilities where the majority of illegal immigrant children and adults are being detained.

"They don't want people to know what's going on here, or for that matter anywhere, when it comes to the surge of illegal aliens and when [Congress] went to visit, the place was cleared out," said Cabrera, who is the vice president of the National Border Patrol Council's Local 3077. "The night before the group of lawmakers arrived the senior supervisors loaded up a couple

hundred people being held in the sally port and shipped them out to Laredo. If everything is so fine and dandy, why not let the lawmakers in just the way it is?"

DHS officials in Washington, D.C., did not immediately return phone call requests for comment. More than 47,000 unaccompanied children have crossed into the U.S. illegally this year. Up to 90,000 are expected to cross into the country by year's end.

Cabrera, along with several other Border Patrol agents who spoke on the condition of anonymity because they were not authorized to speak publicly, said the Obama administration is covering up the difficult working conditions that Border Patrol agents are confronted with, as well as the detrimental situation to the nation as the flow of illegal aliens continues to increase.

"It even frustrated some of the mid-level management," Cabrera said of the order by DHS officials to move the illegals the night before the congressional visit. "How are we supposed to get any help out here if we're hiding the facts from the people who are supposed to be here to help us?"

The clamp down by DHS on information and access in the Rio Grande Valley is also being felt at Fort Sill, Oklahoma, where more than 1,000 unaccompanied minors, mainly from Central America, are being housed. Rep. Jim Bridenstine (R-Okla.) said Monday that he was denied access to the facility housing the children when he made an unplanned visit on July 1.

Bridenstine said he was told by a manager from the Department of Health and Human Services that the next opportunity for him to visit would be July 21, but was later told that a July 12 tour was possible.

The congressman [sent a letter to HHS officials](#) Monday protesting the administration's demand that visits be planned and prescheduled.

"It is unacceptable that any representative of the people be limited to pre-planned, showcased visits to a facility so critical to the well-being of children," he wrote. "Ordinary Americans have a right to know what is happening in these facilities, how the children are being treated, and what is being done to stop this human tragedy."

<http://www.theblaze.com/stories/2014/07/09/border-patrol-official-dhs-ordered-illegal-immigrant-holding-facility-cleared-out-before-congressional-visit/>

**Statement of Peter Kirsanow to the House Subcommittee on Immigration and Border Security
February 9, 2015**

Chairman Gowdy, Congressman Labrador, Members of the Committee, I am Peter Kirsanow, a member of the U.S. Commission on Civil Rights, a former member of the National Labor Relations Board, and a partner in the labor and employment practice group of Benesch, Friedlander. I am writing in my personal capacity.

The U.S. Commission on Civil Rights was established by the Civil Rights Act of 1957 to, among other things, examine matters related to discrimination and denials of equal protection. Because immigration often implicates issues of national origin and sometimes race discrimination, the Commission has conducted several hearings on various aspects of immigration, particularly illegal immigration. The most recent hearings occurred in January 2015, August 2012, and in 2008.

The evidence adduced at such hearings revealed two significant issues pertinent to the matters presently under consideration by this Committee: 1) The use of presidential executive orders to reduce barriers to entry in the U.S. by illegal aliens; and 2) the effect of the consequent increase in illegal immigration on black employment.

Statements made by both panelists and commissioners at the January 2015 hearing suggest that there are a number of executive actions that the President will be encouraged to take to further undermine enforcement of immigration laws. Based on past experience, imminent administration initiatives are often previewed at the Commission before being officially launched by the administration. Therefore, it seems likely that the President will be urged to issue directives implementing at least some of the following suggestions.

- “Miranda rights” for illegal aliens that spell out what they need to say in order to obtain asylum and encourage illegal aliens to resist cooperating with law enforcement and immigration enforcement.¹

¹ U.S. Commission on Civil Rights, Briefing on Civil Rights in Immigration Detention Facilities, January 30, 2015, at 183.

CHAIRMAN CASTRO: . . .

Well, to each of you, Hinojosa earlier had mentioned in her presentation, this concept of Mirandizing the immigrants. . . .

What do you all think about this idea of providing the immigrants that are being detained with knowledge of their rights right at the beginning of that custody? And if so, if you think it's a good idea, how would we go about actually accomplishing that from your perspective?

MS. BONO: It's critical. Especially because these women and children are coming from countries where they don't have the same types of constitutional rights. So it doesn't even -- in their minds it's not even a possibility. It doesn't even occur to them that they might have the rights that we have in our government, in our system.

And I'm sure Ms. Lucas has some points on this, but I would also say to the extent that that's provided, it's very important that it be provided not only in Spanish, but in the indigenous languages. Because as Ms. Lucas mentioned, that's a very im -- that's a very -- it's been a large barrier to these women getting access to what little few legal services there are there in place.

CHAIRMAN CASTRO: Ms. Lucas?

- Requiring immigration detention facilities to provide more access to NGOs so they can better coach illegal immigrants on what to say in order to make an asylum claim,²
- Requiring **publicly-funded** immigration attorneys for detainees,³

MS. LUCAS: Yes, I would fully agree with that. I think that giving any immigrant in proceedings, at the border, in detention, knowledge of their rights is critically important. And there are some good models for this.

...

I think too there is an obligation on border patrol to do a better job with giving the immigrants who are apprehended by border patrol an understanding not only of their rights, but of their obligations and their responsibilities. And also to give it in the language that they can understand.

Part of the problem with expedited removal is that it's fast. And so the first moments and the first contact that immigration enforcement officers have with immigrants is critical. If an individual does not express their fear, know that they have the right to express their fear. Know what's going to happen if they do express their fear.

If they don't know that as early on in the process as possible, they -- the avenue to asylum is closed for them.

So, I would advocate for much more information as early as possible.

CHAIRMAN CASTRO: **But would this need to be done by legislation? Or could it be done in your opinion by w [sic] Order by the President?** (emphasis added)

MS. LUCAS: **I do not think it would have to be done legislatively at all. I think this is well within the Administration's authority to create new protocols.**

Id. at 195.

COMMISSIONER KLADNEY: Thank you. During lunch we did speak, a couple of us spoke about getting a statement of rights together to give to these folks. And just before Mr. Stacy left us, that's what I asked him to do and get us that information.

I would ask both of you to please do that. And I would also ask the folks who are on the next panel to do that. And maybe we can combine your submissions and maybe we can get a majority of the Commission to recommend that.

² *Id.* at 186.

MS. LUCAS: I do not think it would have to be done legislatively at all. I think this is well within the Administration's authority to create new protocols.

And also to expand the Legal Orientation Program to get NGOs into border patrol facilities so they can meet with individuals who are being held in the short term detention facilities. And that they can, as individuals who are not affiliated with the Government, have much more honest conversations and productive conversations with the detainees.

³ *Id.* at 188-90.

COMMISSIONER YAKI:

I kept on making this point earlier in the hearing, and that had to do with the fact that these are families that we are talking about. This is not -- these are not hardened criminals. These are not -- **these are people who for reasons that they need to be able to articulate to whatever legal standard we decide is applicable.** (emphasis added)

But nevertheless, there was a -- there's something compelling them to leave their native land to come here and seek a better life. Whether it was depression, whether it was fear of gangs, whether it was fear of domestic violence. Whatever it is.

...

And I think what the Chairman said is very important. And I think it's important for you to articulate to us that if the Administration chooses to at least have this interdiction policy for families, they should at least realize that because they are families and there's a different way we should deal with it, that it does -- that there is a -- it should provide other safeguards for these families that perhaps -- you hate to single out anything, but for this one I think it's warranted because of these extraordinary circumstances.

If the Administration has the ability, we need your help in looking at the law to help us formulate these positions to provide for onsite ALJs. That includes a right to counsel, not just an ability to have counsel, but a right to counsel that may be subsidized or paid for with Federal dollars.

...

So we need you[r] help in saying -- looking at the law and saying the President has the ability through the Executive Order pen, which he's very fond of right now, to provide these sets of additional protections and safeguards for these families coming across our border. And if you can do that, that would be very, very helpful to us. (emphasis added)

- Mandating that DHS lower or eliminate immigration bond requirements for women and children;⁴
- Dramatically reducing the number of illegal aliens in detention and/or eliminating or reducing the use of privately-run detention facilities, regardless of the intent of Congress.⁵

Id. at 194-95.

MS. LUCAS: And what I would say on that is that there are -- I can't agree more that there are very strong arguments for Government-funded counsel, a right to Government-funded counsel in the immigration context. No question.

Either because of the particular vulnerabilities of the individual or because of the dire consequences of the outcome of immigration proceedings. In the criminal context, there are of course very dire consequences what the outcome of your criminal proceeding is. With deportation proceeding[s], same thing.

You know, we're talking about people who have been fleeing for their lives. And the question is, do they get returned to a situation in which they may be killed or not? That is a very weighty consequence. And of course our Supreme Court has recognized that in Padilla.

And so, you know, in the criminal justice context, it is now a constitutional obligation for defense counsel to advise their clients about the immigration consequences of their plea. Or the immigration consequences of their case, precisely recognizing how dire immigration consequences can be.

So, we're on the way. **And I welcome any support for pushing the Administration on Government-funded counsel.** (emphasis added)

⁴ *Id.* at 191-92.

MS. LUCAS: . . . The other thing that I'll say -- just a couple of things on that. So the policy of having no bond or an exceptionally high bond in all of the cases is actually written in the DHS affidavits in the packet that they submit to the immigration judge when they're opposing bond in a bond hearing.

So it is -- there are places in which it is expressed. That's not a regulation, but it is written down. And the other thing is that I take your point about the disconnect between some of what the Administration is doing with Executive authority and the policy that seems to be in place for families.

COMMISSIONER YAKI: Yes, and just to interrupt you just slightly. I mean, I understand that the pressure that the Administration is under in these situations. But I just think that they're reacting in such a way, way over to the other side. **There's still a way with the wave of the magic pen in the Oval Office to balance it a little bit more.** (emphasis added)

I mean, I'd rather there not be any at all. **But I understand that the politics of the Congress are such that the President's ability to do that is somewhat constrained. But to the extent that he still has that ability, he can make it a little -- make it a fair fight.** (emphasis added)

MS. LUCAS: Absolutely he can make it a fair fight. But also even in the new memoranda that came out of Executive action in November, there is the section in the enforcement memo on detention policy and discretion that should be applied with respect to particularly vulnerable populations in detention.

And nursing mothers, primary care givers, they are all part of existing DHS policy favoring release. All the Administration would have to do is act on that, even with respect to these families.

⁵ *Id.* at 245-

COMMISSIONER KLADNEY: . . . Everything we seemed to have talked about, there seems to have been tons of criticism of ICE here today. **Private prisons, how they're run and all that stuff. Can't most of this be corrected by Executive Order?** (emphasis added)

MS. McCARTHY: Well it's by Executive Order that we've seen an increase of family detention from 100 beds in May 2014 to what? 2,400 now, yes.

COMMISSIONER KLADNEY: Right, right. But I'm not -- I'm saying one, can it be corrected by Executive Order? Two, even if we have contracts for 34,000 beds, we don't have to fill them.

MS. McCARTHY: Right.

COMMISSIONER KLADNEY: **ICE could be told to use alternative forms even if Congress demands that we pay the money to these prison companies. Is that correct?** And we could implement -- (emphasis added)

MR. TAKEI: Well, it's simply [sic] couldn't do that. There's --

COMMISSIONER KLADNEY: Okay.

As the son of someone who escaped Soviet communism, I adamantly support legitimate asylum-seekers receiving sanctuary in the United States. But the attitude of many of the witnesses at the briefing, and some commissioners, seemed to be that almost everyone who showed up at the border had an unabridged **right** to be in the United States, and we must find some way to shoehorn them into the asylum requirements.

Based on recent experience, the proposed actions listed above will almost certainly be widely publicized in Latin America.⁶ People coming to the United States primarily for economic opportunity or to be reunited with family members (as understandable as such desires may be) will learn how to claim “credible fear,” when they actually are not in a true asylum context. We need only look to last spring and summer to see how reports of the President’s DACA executive action spread throughout Central America, leading to the “surge.” DHS Secretary Jeh Johnson even publicly warned Central Americans that the rumors of “*permisos*” were false, to no avail. Any such “statement of rights” will only provide others with a blueprint for gaming the system.

More importantly, any such actions may or may not exceed the President’s authority. To my knowledge, none of the witnesses at the briefing were experts on constitutional law and executive authority. The question of whether such actions would be constitutional ran a distant second to the question of what policies enable unimpeded access to American soil.

Additionally, such actions would further undermine the enforcement of our immigration laws. The refusal to enforce our immigration laws has dire consequences for the rule of law generally, as indeed does the President’s repeated “wave of the magic pen” itself. But, as noted below, the refusal to enforce the immigration laws also has dire consequences for American citizens and legal residents.

MR. TAKEI: Yes, there's -- so, at the top level, DHS has adopted what I would consider an appropriate interpretation of the 34,000 bed quota requirement, which is that they need to maintain those beds, but they don't necessarily need to keep them all filled.

COMMISSIONER KLADNEY: Right.

MR. TAKEI: And the problem is, it's sort of like if you had a police department where the budget was -- said you have all of this money that must be used to maintain a fleet of tanks and then the money that's left over can be used for cars and motorcycles and that sort of thing. If you know, all of the money and all of the attention is being sucked toward detention rather than ICE being able to invest in the way it ought to be able to invest in alternatives.

COMMISSIONER KLADNEY: I understand that. So you're saying there's no money for alternative.

MS. McCARTHY: It becomes an appropriations issue in Congress.

COMMISSIONER KLADNEY: Okay. And what about these other types of conduct we're talking about that occurs within the facilities? That's not dictated by Congress, right?

MS. McCARTHY: No. I think you're absolutely right.

COMMISSIONER KLADNEY: **That could be all done by fiat, right?** (emphasis added)

MS. McCARTHY: That's administratively.

COMMISSIONER KLADNEY: I mean the way it's -- it's a management issue. It's not a political issue.

MS. McCARTHY: Right.

COMMISSIONER KLADNEY: Unless you make it a political issue.

MR. TAKEI: Right. Yes.

⁶ Stephen Dinan, *Homeland Security sets up Obama amnesty complaint lines for illegals*, WASH. TIMES, Feb. 8, 2015 (“During the border surge this summer, Mr. Moran said, agents discovered that some of the illegal crossers had written scripts with them to coach them on what to say to be released into the U.S.”), <http://www.washingtontimes.com/news/2015/feb/8/homeland-security-sets-up-obama-amnesty-complaint-/?page=1>.

In 2008, the Commission held a briefing specifically related to the effect of illegal immigration on the wages and employment opportunities of black Americans.⁷ The evidence adduced at the latter hearing showed that illegal immigration has a disproportionately negative effect on the wages and employment levels of blacks, particularly black males.⁸

The briefing witnesses, well-regarded scholars from leading universities and independent groups, were ideologically diverse. All the witnesses acknowledged that illegal immigration has a *negative* impact on black employment, both in terms of employment opportunities and wages. The witnesses differed on the extent of that impact, but every witness agreed that illegal immigration has a discernible negative effect on black employment. For example, Professor Gordon Hanson's research showed that "Immigration . . . accounts for about 40 percent of the 18 percentage point decline [from 1960-2000] in black employment rates."⁹ Professor Vernon Briggs wrote that illegal immigrants and blacks (who are disproportionately likely to be low-skilled) often find themselves in competition for the same jobs, and the huge number of illegal immigrants ensures that there is a continual surplus of low-skilled labor, thus preventing wages from rising.¹⁰ Professor Gerald Jaynes's research found that illegal immigrants had displaced U.S. citizens in industries that had traditionally employed large numbers of African-Americans, such as meatpacking.¹¹

Illegal immigration has a disparate impact on African-American men because these men are disproportionately represented in the low-skilled labor force. The Census Bureau released an important report on educational attainment after the Commission issued its 2008 report. This report, released in February 2012, found that 50.9 percent of native-born blacks had not continued their education beyond high school.¹² The same report found that 75.5 percent of foreign-born Hispanics had not been educated beyond high school, although it does not disaggregate foreign-born Hispanics who are legal immigrants from those who are illegal immigrants.¹³ However, Professor Briggs estimated that illegal immigrants or former illegal immigrants who received amnesty constitute a third to over a half of the total foreign-born population.¹⁴ Foreign-born Hispanics who are in the United States illegally are disproportionately male.¹⁵ African-Americans who have not pursued education beyond high

⁷ U.S. COMMISSION ON CIVIL RIGHTS, THE IMPACT OF ILLEGAL IMMIGRATION ON THE WAGES AND EMPLOYMENT OPPORTUNITIES OF BLACK WORKERS [HEREINAFTER THE IMPACT OF ILLEGAL IMMIGRATION], available at http://www.usccr.gov/pubs/IllegalImmig_10-14-10_430pm.pdf.

⁸ *Id.* at 3, Finding 5.

Illegal immigration to the United States in recent decades has tended to depress both wages and employment rates for low-skilled American citizens, a disproportionate number of whom are black men. Expert economic opinions concerning the negative effects range from modest to significant. Those panelists that found modest effects overall nonetheless found significant effects in industry sectors such as meatpacking and construction.

⁹ *Id.* at 26.

¹⁰ *Id.* at 37, 38-39.

¹¹ *Id.* at 31.

¹² CAMILLE L. RYAN & JULIE SIEBENS, U.S. CENSUS BUREAU, EDUCATIONAL ATTAINMENT IN THE UNITED STATES: 2009 (Feb. 2012), at 7, available at <http://www.census.gov/prod/2012pubs/p20-566.pdf>.

¹³ *Id.*

¹⁴ THE IMPACT OF ILLEGAL IMMIGRATION, *supra* note 1, at 35-36.

¹⁵ Peter Skerry, *Splitting the Difference on Illegal Immigration*, NATIONAL AFFAIRS (Winter 2013), at 5 ("Of the undocumented immigrants over the age of 18 currently residing in the U.S., there are approximately 5.8 million males, compared to 4.2 million females."). available at http://www.nationalaffairs.com/doclib/20130102_Skerry.pdf.

school are also disproportionately male.¹⁶ These poor educational attainment levels usually relegate both African-American men and illegal immigrant men to the same low-skilled labor market, where they must compete against each other for work.¹⁷

The obvious question is whether there are sufficient jobs in the low-skilled labor market for both African-Americans and illegal immigrants. The answer is no. As Professor Briggs noted in his testimony to the Commission, “In February 2008 . . . the national unemployment rate was 4.8 percent, but the unemployment rate for adults (over 25 years old) without a high school diploma was 7.3 percent.”¹⁸ During 2007, “Black American adult workers without a high school diploma had an unemployment rate of 12.0 percent, and those with only a high school diploma had an unemployment rate of 7.3 percent.”¹⁹ These statistics suggest both that there is an overall surplus of workers in the low-skilled labor market, and that African-Americans are particularly disfavored by employers.²⁰ More recently, Professor George Borjas of Harvard wrote:

Classifying workers by education level and age and comparing differences across groups over time shows that a 10 percent increase in the size of an education/age group due to the entry of immigrants (both legal and illegal) reduces the wage of native-born men in that group by 3.7 percent and the wage of all native-born workers by 2.5 percent. . . . The same type of education/age comparison used to measure the wage impact shows that a 10 percent increase in the size of a skill group reduced the fraction of native-born blacks in that group holding a job by 5.1 percentage points.²¹

¹⁶ THE IMPACT OF ILLEGAL IMMIGRATION, *supra* note 7, at 52; see also Anne McDaniel, Thomas A. DiPrete, Claudia Buchmann & Uri Shwed, *The Black Gender Gap in Educational Attainment: Historical Trends and Racial Comparisons*, 48 DEMOGRAPHY 889, 890 (2011) (“It is well known that black males trail black females on a range of key educational outcomes, including high school graduation, college enrollment, and college completion.”), available at <http://jmcisolver.shorensteincenter.netdna-cdn.com/wp-content/uploads/2011/10/fulltext.pdf>.

¹⁷ THE IMPACT OF ILLEGAL IMMIGRATION, *supra* note 7, *Statement of Vernon M. Briggs, Jr.*, at 37.

[I]t is not everywhere that there is likely to be significant competition between low skilled black workers and illegal immigrant workers, but there are ample circumstances where there is – such as the large metropolitan labor markets of Los Angeles, New York, San Francisco, Chicago, Miami and Washington-Baltimore. Moreover, some of the fastest growing immigrant concentrations are now taking place in the urban and rural labor markets of the states of the Southeast – such as Georgia, North Carolina and Virginia, which never before were significant immigrant receiving states in previous eras of mass immigration. Indeed, about 26 percent of the nation’s foreign-born population are now found in the states of the South – the highest percentage ever for this region. There is mounting evidence that many of these new immigrants in this region are illegal immigrants.

¹⁸ THE IMPACT OF ILLEGAL IMMIGRATION, *supra* note 1, *Statement of Vernon M. Briggs, Jr.*, at 36.

¹⁹ *Id.*

²⁰ *Id.*, *Statement of Harry J. Holzer*, at 41.

Other evidence, including that by ethnographers, indicates that employers filling low-wage jobs requiring little reading/writing or communication clearly prefer immigrants to native-born blacks, and encourage informal networks through which immigrants gain better access to these jobs. The native-born black workers likely would be interested in some, but not all of these jobs, depending on their wages.

²¹ George Borjas, *Immigration and the American Worker: A Review of the Academic Literature*, Center for Immigration Studies (April 2013), available at http://cis.org/immigration-and-the-american-worker-review-academic-literature?utm_source=E-mail+Updates&utm_campaign=344e45830d-Borjas_Study4_8_2013&utm_medium=email.

Furthermore, these statistics reflect an economy that was not experiencing the persistent stagnation we are experiencing today. The country's economic woes have disproportionately harmed African-Americans, especially those with little education. In 2011, 24.6 percent of African-Americans without a high school diploma were unemployed, as were 15.5 percent of African-Americans with only a high school diploma.²² Five years into the economic recovery, African-Americans face particular difficulty obtaining employment. According to the Bureau of Labor Statistics, the seasonally adjusted December 2014 unemployment rate for all black Americans—not just those with few skills—was 10.4 percent, more than twice the white unemployment rate of 4.8 percent.²³ The black labor force participation rate is an appalling 61.3 percent.²⁴ Only 54.9 percent of all blacks have jobs. The economy has a glut of low-skilled workers, not a shortage.

Not only do illegal immigrants compete for jobs with African-Americans, but that competition drives down wages for the jobs that are available. Harvard professor George Borjas wrote:

Illegal immigration reduces the wages of native workers by an estimated \$99 to \$118 billion a year A theory-based framework predicts that the immigrants who entered the country from 1990 to 2010 reduced the average annual earnings of American workers by \$1,396 in the short run. Because immigration (legal and illegal) increased the supply of workers unevenly, the impact varies across skill groups, with high school dropouts being the most negatively affected group.²⁵

Immigration, both legal and illegal, resulted in a disproportionately large increase in the number of high school dropouts in the labor pool. This caused a drop in wages among the poorest and least-educated members of the workforce.²⁶ As discussed above, these people are disproportionately likely to be African-American men. Furthermore, there is evidence that wages for these men have not just failed to increase as much as they would have in the absence of illegal immigration. Their real wages, the number of dollars they take home at the end of the week, have actually diminished. Julie Hotchkiss, a research economist and policy advisor at the

²² U.S. DEPT. OF LABOR, *The African-American Labor Force in the Recovery* (Feb. 29, 2012), at Chart 3, available at http://www.dol.gov/_sec/media/reports/BlackLaborForce/BlackLaborForce.pdf.

²³ BUREAU OF LABOR STATISTICS, *Employment status of the civilian population by race, sex, and age* (Jan. 27, 2015), <http://www.bls.gov/news.release/empsit.t02.htm>.

²⁴ *Id.*

²⁵ Borjas, *supra* note 21.

²⁶ *Id.*:

[The simulation] shows that immigration particularly increased supply at the bottom and top of the education distribution. Immigration increased the effective number of hours supplied by high school dropouts to 25.9 percent, and those of workers with more than a college degree by 15.0 percent. In contrast, immigration increased the number of hours supplied by workers with 12 to 15 years of school by only 6 to 8 percent. Overall, immigration increased effective supply by 10.6 percent during the two-decade period.

Because of the skewed nature of the supply shift, the simulation shows that immigration particularly affected the wage of native workers at the two ends of the education distribution. The large supply increase experienced by high school dropouts decreased the wage of this group by 6.2 percent in the short run and 3.1 percent in the long run. Similarly, the wage declines for the most highly skilled workers (those with more than a college degree) were 4.1 percent in the short run and 0.9 percent in the long term.

Federal Reserve Bank of Atlanta, estimated that “as a result of this growth in the share of undocumented workers, the annual earnings of the average documented worker in Georgia in 2007 were 2.9 percent (\$960) lower than they were in 2000. . . . [A]nnual earnings for the average documented worker in the leisure and hospitality sector in 2007 were 9.1 percent (\$1,520) lower than they were in 2000.”²⁷ A \$960 annual decrease may not seem like much to a lawyer or a doctor. But as President Obama noted in regard to the 2012 payroll tax cut extension, an extra \$80 a month makes a big difference to many families: “It means \$40 extra in their paycheck, and that \$40 helps to pay the rent, the groceries, the rising cost of gas”²⁸

The consequences of illegal immigration for black men and the black community in general are not limited to wages. In another study, Borjas found that lower wages and fewer jobs also correlate with an increase in the black incarceration rate.

Our study suggests that a 10% immigrant-induced increase in the supply of a particular skill group is associated with a reduction in the black wage of 2.5%, a reduction in the black employment rate of 5.9 percentage points, and an increase in the black institutionalization rate of 1.3%. Among white men, the same 10% increase in supply reduces the wage by 3.2%, but has much weaker employment and incarceration effects: a 2.1 percentage-point reduction in the employment rate and a 0.2 percentage-point increase in the incarceration rate. It seems, therefore, that black employment and incarceration rates are more sensitive to immigration rates than those of whites.²⁹

Both lower wages and incarceration likely contribute to one of the most serious problems facing the African-American community today: the dearth of intact nuclear families. The late senator Daniel Patrick Moynihan famously sounded the alarm about the disintegration of the black family during his tenure at the Department of Labor in the 1960s.³⁰ It is one of the great tragedies of modern America that the disintegration of the African-American family has not abated.³¹ 72 percent of African-American children are born out of wedlock.³² It is now a truism that children born out of wedlock are far more likely to experience a host of negative outcomes than are children raised by their own biological, married parents.³³

²⁷ THE IMPACT OF ILLEGAL IMMIGRATION, *supra* note 7, at 46.

²⁸ Amie Parnes, *Obama: Payroll tax cut extension will help with higher gas prices*, THE HILL, Feb. 21, 2012, available at <http://thehill.com/blogs/e2-wire/e2-wire/211765-obama-payroll-tax-cut-extension-will-help-with-higher-gas-prices>.

²⁹ George J. Borjas, Jeffrey Grogger, and Gordon Hanson, *Immigration and the Economic Status of African-American Men*, 77 *ECONOMICA* 255, 256 (2010).

³⁰ United States Department of Labor, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* (March 1965), available at <http://www.dol.gov/oasam/programs/history/webid-meynihan.htm>.

³¹ Kay Hymowitz, *The Black Family: 40 Years of Lies*, CITY JOURNAL (Summer 2005), available at http://www.city-journal.org/html/15_3_black_family.html.

³² Jesse Washington, *Blacks struggle with 72 percent unwed mothers rate*, ASSOCIATED PRESS, Nov. 7, 2010, available at http://www.nbcnews.com/id/39993685/ns/health-womens_health/t/blacks-struggle-percent-unwed-mothers-rate/#.UWR6fZPvyn4.

³³ See Charles Murray, *COMING APART*, 139–41 (2012):

Trends in marriage are important not just with regard to the organization of communities, but because they are associated with large effects on the socialization of the next generation. No matter what the outcome being examined—the quality of the mother-infant relationship, externalizing behavior in childhood (aggression, delinquency, and hyperactivity), delinquency in

Married men are more likely to be employed and to have higher earnings than unmarried men, although the relationship between marriage and economic success is complex.³⁴ However, it is obvious that men who are unemployed or are incarcerated are far less appealing prospective spouses than men who hold down a steady job.³⁵ Yet there are fewer and fewer jobs available—and at lower wages—for men in traditionally male-dominated industries.³⁶ Giving amnesty/work permits to illegal immigrants would only exacerbate this problem facing low-skilled men, who are disproportionately African-American. The dearth of job opportunities gives these men less confidence in their ability to support a family, and gives women reason to fear that these prospective husbands will be only another mouth to feed.

Granting amnesty/work permits to illegal immigrants will only further harm African-American workers. This same dynamic pertains to expanding the labor pool by diluting,

adolescence, criminality as adults, illness and injury in childhood, early mortality, sexual decision making in adolescence, school problems and dropping out, emotional health, or any other measure of how well or poorly children do in life—the family structure that produces the best outcomes for children, on average, are two biological parents who remain married. Divorced parents produce the next-best outcomes. Whether the parents remarry or remain single while the children are growing up makes little difference. Never-married women produce the worst outcomes. All of these statements apply after controlling for the family's socioeconomic status. I know of no other set of important findings that are as broadly accepted by social scientists who follow the technical literature, liberal as well as conservative, and yet are so resolutely ignored by network news programs, editorial writers for the major newspapers, and politicians of both major political parties [citations omitted].

See also W. Bradford Wilcox and Jeffrey Dew, *Protectors or Perpetrators: Fathers, Mothers, and Child Abuse and Neglect*, Center for Marriage and Families (Feb. 2008), available at http://www.wbradfordwilcox.com/Dad_abuse.pdf.

[A] 1996 federal study found that the overall rate of child maltreatment among single-parent households was nearly double that of two-parent families: 27.3 children per 1,000 were maltreated in single-parent families, whereas 15.5 children per 1,000 were maltreated in two-parent families. Another study found that 7 percent of children who had lived with a single parent had been sexually abused, compared to 4 percent of children who lived in an intact, biological family. Still another study found that children were half as likely to suffer physical abuse involving a traumatic brain injury when they lived in a household with their father, compared to children living in a fatherless family.

Research also indicates that children living in stepfamilies are more likely to suffer from abuse. One study by David Finkelhofer of the University of New Hampshire and his colleagues found that “children currently living in single parent and stepfamilies had significantly greater lifetime exposure than those living with two biological or adoptive parents” to five different forms of victimization—sexual assault, child maltreatment, assault by peers or siblings, being a victim of a crime, or witnessing violence. Other studies have found that children are markedly more likely to be killed or sexually abused by stepfathers, compared to children living in an intact, married household.

³⁴ See Murray, *supra* note 27, at 156–157 (2012) (discussing the “marriage premium”).

³⁵ *Id.* at 157 (“In the 2000s Fishtown had a lot fewer men who were indicating that they would be good providers if the woman took a chance and married one of them than it had in 1960.”); see also Hannah Rosin, *THE END OF MEN* (2012) 8–10 (a single mother’s description of her daughter’s underemployed father as “one less granola bar for the two of us”).

³⁶ See Rosin, *supra* note 35, 71–97 (2012).

derogating, or nullifying the criteria to qualify for asylum. Not only will the low-skilled labor market continue to experience a surplus of workers, making it difficult for African-Americans to find job opportunities, but African-Americans will be deprived of one of their few advantages in this market. Some states require private employers to use E-Verify to establish that their workers are in the country legally. This levels the playing field a bit for African-Americans, who would benefit more substantially if the use of E-Verify were mandatory nationwide. But if illegal immigrants are granted legal status, this advantage disappears.

Furthermore, recent history shows that granting amnesty to illegal immigrants will encourage more people to come to the United States illegally. The 1986 amnesty did not solve the illegal immigration problem. To the contrary, that amnesty established the precedent that if you come to America illegally, eventually you will obtain legal status. Even a *rumor* of amnesty will increase illegal immigration, as demonstrated by the cross-border surge in the summer of 2014. Thus, it is likely that if illegal immigrants are granted legal status, more people will come to America illegally and will further crowd African-American men (and other low-skilled men and women) out of the workforce.

Thank you for the opportunity to provide this statement. Should you have any questions, I will be pleased to answer them.



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**STATEMENT OF
WADE HENDERSON, PRESIDENT & CEO,
THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS**

“MAKING IMMIGRATION WORK FOR AMERICAN MINORITIES”

**SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT
HOUSE COMMITTEE ON THE JUDICIARY**

MARCH 1, 2011

Chairman Gallegly, Ranking Member Lofgren, and members of the Subcommittee; I am Wade Henderson, President and CEO of The Leadership Conference on Civil and Human Rights. I appreciate the opportunity to present the views of The Leadership Conference to you today.

The Leadership Conference on Civil and Human Rights is the nation’s oldest and most diverse coalition of civil and human rights organizations. Founded in 1950 by Arnold Aronson, A. Philip Randolph, and Roy Wilkins, The Leadership Conference seeks to further the goal of equality under law through legislative advocacy and public education. The Leadership Conference consists of more than 200 national organizations representing persons of color, women, children, organized labor, persons with disabilities, the elderly, gays and lesbians, and major religious groups. I am privileged to bring the voices of this community to today’s hearing.

Comprehensive Immigration Reform, a Matter of Civil and Human Rights

I would like to begin by noting what I hope are a few general points of agreement. First, I believe that everyone in this room can agree that our nation’s immigration system is badly broken. It fails to keep up with economic realities, it fails to provide an orderly way to keep track of who is here, it inhumanely separates families and keeps them apart, it penalizes children for the actions of their parents, and it is so unfair and so burdensome that it fails to give people enough incentives to play by the rules. America’s immigration system clearly needs sweeping changes, and it needs them soon.

Second, I think we can also agree that in fixing our immigration system, it is vital that we include more effective – but also more realistic and more humane – immigration enforcement. While it is important for many reasons to know who is coming here and under what circumstances, it is simply unrealistic to attempt to stretch fences across our massive national borders. Nor can we haphazardly leave federal immigration law enforcement in the hands of state and local law enforcement officials, or worse, in the hands of private groups such as the Minutemen. As a nation, we can and must take more sensible measures, such as hiring additional inspectors and border patrol agents, making better use of technology, and working more closely with Mexico to cut down on problems like human trafficking and the drug trade.

Third – and while this, of course, has long been the subject of contentious debate – I would hope that we might come to agree on the importance of giving unauthorized immigrants, living and working in our



country, a realistic way to come out of the shadows and legalize their status. As a lifelong civil rights advocate, I see this not as an issue of economics but of morality, and I believe it goes directly to our most basic understanding of civil and human rights.

It is easy to focus on the fact that unauthorized immigrants have broken the rules in order to get or stay here. We do not need to condone violations of our immigration laws. But as we do in most other circumstances, we should also look at *why* these individuals have broken the rules. Motives count. And the overwhelming majority of unauthorized immigrants have broken the rules *not* to “steal jobs,” to live off the government, or to take advantage of anyone else. Instead, most of them have been motivated, to the point where many have even risked their lives to come here, by the desire to escape economic or political hardships that few native-born Americans today could fully understand. At the same time, they are all too often enticed here by employers who are perfectly willing to use and abuse them in the process.

When we consider the motives of most of the unauthorized immigrants who live and work in our country, it is clear to The Leadership Conference – and hopefully to everyone – that our policies should not treat them as fugitives to be hunted down, but as an economic and social reality that must be addressed in a thoughtful manner that best serves our nation and our communities as a whole. For example, unauthorized immigrants should not be so afraid of law enforcement, due to their immigration status, that they refuse to report crimes in their own neighborhoods. When they go to work, they – like every human – have a right to know they will be treated safely and paid fairly, which protects the interests of native-born workers as well. If they drive on our roads, it is in the interest of everyone to make sure they are doing so safely. Regardless of how they may have initially come here, if they show a willingness to play by the rules and contribute to our economy and our society, we should have policies in place that will reward their hard work. At the very least, I would hope that we can agree that punishing the children of unauthorized immigrants for the actions of their parents is nothing short of insane, and is an affront to our deepest values and constitutional traditions.

Finally, I am sure that we agree that family unity should be a key foundation of our immigration laws, in the same way that it is a key foundation of our society itself. Yet sadly, our current immigration system is chronically plagued by administrative backlogs in the family-based visa process, as well as by the woefully inadequate numbers of family-based visas that become legally available each year. As a result, it can often take years or even more than a decade for close relatives of U.S. citizens or permanent residents to obtain immigrant visas, and these delays simply encourage people to overstay temporary visas or find other ways to enter the country in order to be with their loved ones. Addressing these and numerous other problems in our immigration system is an essential component of the modern civil and human rights agenda.

Immigration and the African-American Workforce

Turning more directly to the subject of today’s hearing, which is on making our immigration policies work to the benefit of native-born racial and ethnic minorities, I believe it is important to begin with a discussion of the impact that immigration currently has on minority communities, particularly African Americans. Needless to say, this topic has generated a great deal of controversy, particularly in recent years as our economy has struggled and African Americans have faced much higher unemployment rates than usual.

I certainly share the legitimate concerns about unemployment and underemployment among African Americans. Indeed, advancing policies that would address these concerns has been one of my highest



priorities throughout my career. The needs of low-wage workers – a group disproportionately composed of African-American workers – have long been neglected by policymakers, a situation that has needlessly exacerbated tensions between the African-American and immigrant communities. Many African Americans, as a result of the difficult economic conditions they face, understandably fear that the immigrant workforce will worsen their situation as the competition for jobs in our struggling economy reduces the opportunities and the wages of all vulnerable workers. Yet having said this, I do not share the simplistic and divisive view, advanced by some, that immigrants are to blame for “stealing jobs” on any widespread scale from native-born Americans.

The Impact of Immigration on African-American Employment

The situation facing African-American workers is a complicated one, and the impact of immigration on the employment prospects and the wages of African Americans is the subject of much debate among economists. It might have been helpful to include some of them in today’s hearing. As economists such as Steven Pitts of the Center for Labor Research and Education at the University of California have pointed out, for example, the employment crisis facing African Americans began long before our nation took a more generous approach to immigration policy in 1965. Looking at overall unemployment rates over the last 50 years, we see that the unemployment rate for African Americans has always been approximately twice as high as for White Americans, and has remained approximately the same¹ even as the percentage of foreign-born Americans, relative to the population as a whole, has increased in the past several decades:

Year	Black Unemployment	White Unemployment	Black/White Unemployment Ratio
1956	8.3%	3.6%	2.3
1965	8.1%	4.1%	2.0
1975	14.8%	7.8%	1.9
1985	15.1%	6.2%	2.4
1995	10.4%	4.9%	2.1
2005	10.0%	4.4%	2.3

As most economists would explain, this employment crisis has a wide variety of causes that are remarkably difficult to sort out. These causes include both historical and contemporary racial discrimination, not only in the labor market, but also in other sectors of society such as housing markets, educational systems, and consumer finance. The higher rates – and the lasting stigmatic effects – of incarceration of African-American males are also significant.² Disparities in health care are both a cause and a consequence of unemployment.³ In addition, the situation has certainly been compounded by broader changes in the U.S. economy as a whole, including the globalization of the economy and the movement of many types of jobs overseas.

¹ U.S. Department of Labor, Bureau of Labor Statistics; also Council of Economic Advisors, *Changing America: Indicators of Social and Economic Well-Being by Race and Hispanic Origin*, Sept. 1998, at 26.

² See, e.g., Jenny Bussey and John Trasviña, *Racial Preferences: The Treatment of White and African American Job Applicants by Temporary Employment Agencies in California*, Discrimination Research Center, Dec. 2003; Devah Pager, *The Mark of a Criminal Record*, *AMERICAN JOURNAL OF SOCIOLOGY* 108(5): 937–75.

³ Kristen Suthers, *Evaluating the Economic Causes and Consequences of Racial and Ethnic Health Disparities*, Issue Brief, American Public Health Association, Nov. 2008.



As to the question of whether immigration might play a role in aggravating the long-existing causes of African-American unemployment, economists who have studied the issue have not been able to establish any sort of consensus.⁴ Even among experts who do think there is an impact, there is disagreement over its extent. For example, Bernard Anderson, an economist at the University of Pennsylvania's Wharton School, believes that while immigrants have probably taken some jobs previously performed largely by African Americans, there is also evidence that African Americans are less likely to perform low-skill service jobs because they have largely moved on to take better-paying jobs or have retired from the labor force. The displacement that has taken place, Anderson argues, has not had a significant effect on the wages or opportunities of native-born workers.⁵ Another study, by the Immigration Policy Center, found that in states and metropolitan areas with high levels of recent immigrants, unemployment among African Americans was actually *lower* than in areas with low levels of recent immigrants.⁶ Finally, a study by the Economic Policy Institute found that any negative effects of new immigration were felt largely by earlier immigrants, the workers who are the most substitutable for new immigrants.⁷

Policies Aimed at Improving Conditions for Low-Income Minority Workers

As explained above, economists simply do not – and perhaps cannot – know with certainty the full extent of the displacement of African-American workers by new immigrants. As such, I reject the sweeping, simplistic, divisive indictments of immigrants that have been offered by some advocates, and I urge this Subcommittee to do the same. At the same time, I do recognize that it is possible that unskilled, native-born workers have been – or could be – displaced by increased immigration. There is certainly anecdotal evidence to that effect, even as the overall body of statistical evidence is far less clear. In any event, the prospect of job displacement caused by immigration has long caused concerns within the African-American community – a fact that has been exploited by some to drive a wedge between African Americans and Latinos.

For these reasons, The Leadership Conference takes the underlying concerns about job displacement very seriously. Because the unemployment crisis facing African Americans has a wide variety of causes, however, we believe that efforts focusing on widespread deportation – or on making immigrants feel so unwelcome that they “self-deport,” as some advocates have proposed⁸ – miss the mark completely.

There are numerous policy proposals that academics and advocates have advanced to assist low-wage native-born workers. The Leadership Conference is proud to have contributed to these ideas. In 2007, we organized a summit of leaders from African-American, Latino, and Asian-American communities to discuss how the concerns of low-income workers might best be addressed in the ongoing debate over immigration reform. The organizations and leaders involved in those discussions produced a statement of

⁴ See, e.g., Harry J. Holzer, *Immigration Policy and Less-Skilled Workers in the United States: Reflections on Future Directions for Reform*, Migration Policy Institute, Jan. 2011; Roger Lowenstein, *The Immigration Equation*, THE NEW YORK TIMES, July 9, 2006.

⁵ *The Immigration Debate: Its Impact on Workers, Wages and Employers*, KNOWLEDGE@WHARTON, May 17, 2006, available at <http://knowledge.wharton.upenn.edu/article.cfm?articleid=1482>.

⁶ *Immigration and Native-Born Unemployment Across Racial/Ethnic Groups: Untying the Knot, Part II of III*, Special Report, Immigration Policy Center, May 2009.

⁷ Heidi Shierholz, *Immigration and Wages: Methodological Advancements Confirm Modest Gains for Native Workers*, Briefing Paper, Economic Policy Institute, Feb. 2010.

⁸ See, e.g., Mark Krikorian, *Not Amnesty but Attrition: The Way to go on Immigration*, National Review, Mar. 22, 2004.



principles and legislative recommendations that we urged Congress to take up as a part of comprehensive immigration reform. These recommendations call upon Congress to provide for:

- Better enforcement of antidiscrimination laws, through testing and other measures, and enhanced public education efforts to counter stereotypes about immigrants and African Americans;
- More open vacancy notification systems, to overcome the use of informal networks of friends and relations to fill low-wage jobs, which reduces job competition;
- Increased enforcement of workplace standards, including fair wage and overtime requirements, and safety, health and labor laws;
- Making it easier for workers to compete for jobs in other locations through better advertising of unskilled jobs and the allocation of resources to pursue and relocate for them; and
- More job skills, training and adult education opportunities for low-wage workers, including young people and high school dropouts.

During the 2007 debate in the Senate over comprehensive reform legislation, we worked with Sen. Sherrod Brown (D-OH) on an amendment focusing on the second point above. His amendment would have required employers who want to hire immigrant workers, under the temporary employment visa provisions of the bill, to show that they have advertised – and to continue to advertise, for one year – all similar job vacancies with the state employment service. The requirement would have been extended to all vacancies that require comparable education, training, or experience as the job to be given to an immigrant worker. It would have helped ensure that native-born workers became aware of, and had the opportunity to apply for, job openings before employers resorted to hiring immigrant workers. Unfortunately, the Senate deliberations over immigration reform collapsed before Sen. Brown was able to offer his amendment. We believe, however, that his proposal could have earned widespread bipartisan support, and it would have been an important and constructive step in addressing the concerns of low-income minority workers.

I would urge Congress to move forward with all of these proposals – and I would note that they can be enacted even in the absence of comprehensive immigration reform legislation. By doing so, our elected officials can provide low-wage African-American workers with much-needed assistance, and can help mitigate tensions between African-American and immigrant workers. I would also urge the Subcommittee to consider a 2009 blueprint for immigration reform that was jointly issued by the two American labor federations, the AFL-CIO and Change to Win, together representing more than 60 different unions and about 16 million American workers. Their proposal, entitled *Framework for Comprehensive Immigration Reform*,⁹ meets many of the concerns expressed in the African-American community by providing for the fair and humane treatment of immigrants, on one hand, and preventing immigrant workers from being exploited and used to undercut work standards to the detriment of native-born workers, on the other.

So-called “Black vs. Brown” in the Immigration Debate: Perceptions and Realities

Before I conclude, Chairman Gallegly, I would like to say more about the misperceptions about relations among African Americans and Latinos, misperceptions that some immigration reduction advocates have attempted to foster, in recent years, in an effort to pit community against community with the goal of preventing immigration reform. In 2007, for example, a group that called itself the Coalition for the Future American Worker, organized primarily by immigration reduction organizations, deliberately attempted to stir up African-American resentment toward immigrant communities and immigration

⁹ Available at <http://www.aflcio.org/issues/civilrights/immigration/upload/immigrationreform041409.pdf>.



reform by running full-page newspaper ads that blamed immigrants for taking hundreds of thousands of jobs from African Americans.

As with any controversial issue – and immigration reform is undoubtedly a controversial issue – there inevitably will be a range of individual opinions within any community. The panel you have assembled today is proof of that, and we can all benefit from a diversity of viewpoints. But on the whole, the relationship between the African-American community and immigrant communities has long been far too complex to neatly summarize in a newspaper ad.

On one hand, as minority groups in America, African Americans and immigrants share a strong common interest in fairness and equal opportunity. Indeed, because the immigrant community includes many individuals of African and Caribbean descent, African Americans do have a direct interest in fair immigration policies. For these reasons, the traditional civil rights movement was instrumental in eliminating discriminatory immigration quota laws in favor of more generous policies in the 1960s, and leading civil rights organizations have continued to speak out on behalf of immigrants' rights since then.

On the other hand, as I have explained above, it is clear that many African Americans, particularly those who struggle the most to make ends meet in today's economy, are concerned about the way their economic well-being is affected by increased immigration. Time and time again, immigration reform opponents focus only on these anxieties while ignoring the common ground that exists. For example, following the August 2008 raid at Howard Industries, immigration reduction advocates focused on a segment of some African-American workers who apparently celebrated the arrests, as an example of the divide between native-born and immigrant workers, while ignoring the fact that the African-American leadership at Howard Industries' union supported signing up Latino workers and forging solidarity to improve the living standards of all employees.

Contrary to what the propaganda of some groups might suggest, African-American concerns about the effects of immigration do not, on the whole, lead to any widespread resistance to the legalization of undocumented immigrants or the other elements of comprehensive reform. Our own public opinion research confirms this. In 2007, Lake Research Partners held African-American focus groups in a number of cities throughout the country, followed by a poll of 700 African-American voters nationwide.

What we found was not surprising. Indeed, 51 percent of respondents did believe that immigrants take jobs away from Americans, and 52 percent believed that they drive down wages for Americans, with 59 percent believing that they cause lower wages for African-American workers in particular. Despite these fears, however, we found that 70 percent of respondents supported comprehensive immigration reform that includes increased border security, penalties on employers of illegal workers, and criteria for a path to citizenship, with only 22 percent opposing such reforms. Furthermore, a strong majority (83 percent) agreed that if an immigrant has been working and paying taxes in this country for five years and learning English, there should be a way for her or him to become a citizen, with a 55 percent majority "strongly" agreeing. Finally, our research confirmed that strong majorities of African Americans believe that they can work together with immigrant communities on common social and economic goals such as expanding access to health care and education, reducing crime, and improving wages, work benefits, and job opportunities.¹⁰

¹⁰ Polling conducted by Lake Research Partners, for The Leadership Conference on Civil Rights & Leadership Conference on Civil Rights Education Fund, December 8-17, 2007, among 700 African-American voters.



In short, African Americans generally understand that it is inherently wrong to divide people along the lines of race or ethnicity or national origin, and that creating “us versus them” scenarios does not help anyone in the long run. If Congress did more to protect low-income, native-born workers, as a part of immigration reform or even independently, and consistent with the principles I outlined above, the numbers I have just cited would be even more favorable.

Finally, I would like to add that African Americans do tend to take note of how consistently – or inconsistently – immigration advocates show their concern for the well-being of the African-American community across the board. Unfortunately, evidence of that concern is often sorely lacking.

For example, during the 2006 reauthorization of the Voting Rights Act, the most important civil rights law governing our most important civil right, the same immigration reduction groups and individuals who claim to be interested in protecting African Americans now stood squarely against us then, and at one point they even went so far as to prevent the reauthorization bill from coming to the House floor.¹¹ Similarly, for years before the financial crisis, civil rights organizations pointed to racial disparities in subprime lending practices that would ultimately have disastrous effects on the financial well-being of African Americans, but our pleas for legislative or regulatory policy changes were disregarded by many people who say they want to help African Americans in the context of immigration. Instead, after the crisis erupted, many of those same individuals tried to falsely blame the crisis on the Community Reinvestment Act, a decades-old civil rights law that could have in fact reduced predatory subprime lending had it been more uniformly applied,¹² and since then, they have opposed policies aimed at reducing home foreclosures.¹³

In another example, even though educational disparities are a significant cause of reduced job opportunities for African Americans, the House recently passed legislation that made drastic cuts in funding for Head Start and Pell Grants,¹⁴ programs that have long proven helpful and cost-effective. Finally, some immigration reduction advocates have even gone so far as to propose rewriting the 14th Amendment of our Constitution,¹⁵ striking at a core foundation of our nation’s civil rights protections that is deeply cherished by most African Americans. Earlier this year, in an appalling display of the inconsistent regard that these advocates show for the interests of the African-American community, a group called State Legislators for Legal Immigration held a press conference to unveil such a proposal, featuring a state legislator who had been elected based partly on his support for the Confederate flag, and who opened his remarks by fondly recollecting the Confederate attack on Fort Sumter that started the

¹¹ I am thankful that these efforts were rebuffed by the bipartisan leadership of former Committee Chairman James Sensenbrenner, Ranking Member John Conyers, Constitution Subcommittee Chairman Steve Chabot, and Rep. Mel Watt, among others on both sides of the aisle.

¹² Myths about the Community Reinvestment Act (CRA) contributing to the financial crisis have been thoroughly debunked by experts, but nevertheless continue to proliferate. See, e.g., letter from Federal Reserve Chairman Ben Bernanke to Sen. Bob Menendez (D-NJ), Nov. 25, 2008, available at <http://menendez.senate.gov/pdf/112508ResponsefromBernankeonCRA.pdf> (explaining that he found no evidence to support the claim that the CRA was to blame for the mortgage crisis).

¹³ Indeed, this very week, the House Committee on Financial Services intends to move forward with hearings and a markup of legislation to terminate federal anti-foreclosure programs, without advancing any alternatives that might prove more effective.

¹⁴ H.R. 1, Full-Year Continuing Appropriations Act, 2011.

¹⁵ See, e.g., H.R. 140, Birthright Citizenship Act of 2011.



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Civil War.¹⁶ Given the underlying issue that led to the Civil War, I am hard-pressed to think of a more ineffective way to attract the trust of the African-American community on the issue of immigration.

In pointing to these examples – and I could point to many more – I do not claim to know what is in the heart of any individual who calls for more restrictive immigration policies. Regardless of what motivates some to take these policy stances, however, I do know how their rhetoric is likely to be received by most African Americans. Simply put, to anyone who looks closely, and does not rely solely on full-page newspaper ads, it is fairly clear that immigration reduction advocates have rarely gone out of their way to prove that they are our friends.¹⁷

This concludes my prepared remarks. Again, I want to thank you for the opportunity to speak before your subcommittee today. I look forward to answering any questions you may have.

¹⁶ Brian Bennett, *Group pushes for state laws that would redefine citizenship*, CHARLOTTE OBSERVER, Jan. 6, 2011 (remarks of South Carolina Senate Majority Whip Danny Verdin).

¹⁷ There always have been, and always will be, noteworthy exceptions to any such generalization. I am thankful, for example, for the bipartisan effort that resulted in the enactment of the Fair Sentencing Act of 2010, which will help reduce racial disparities in cocaine sentencing. Its champions in Congress included a number of prominent opponents of comprehensive immigration reform.