

**IMMIGRATION AND NATURALIZATION SERVICE'S
(INS) INTERIOR ENFORCEMENT STRATEGY**

HEARING
BEFORE THE
SUBCOMMITTEE ON IMMIGRATION,
BORDER SECURITY, AND CLAIMS
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
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**IMMIGRATION AND
NATURALIZATION SERVICE'S (INS)
INTERIOR ENFORCEMENT STRATEGY**

WEDNESDAY, JUNE 19, 2002

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

The Subcommittee met, pursuant to call, at 2 p.m., in Room 2237, Rayburn House Office Building, Hon. George W. Gekas [Chairman of the Subcommittee] presiding.

Mr. GEKAS. The hour of 2 having arrived, the Committee will come to order. What we have done with the fall of the gavel is to continue a custom that we have started in 1994, whereby every Committee meeting or hearing in which I have had control of the gavel we actually started on time. However, the rules of the House prohibit us from proceeding until a quorum, a hearing quorum, shall have appeared, that being two Members. So reluctantly I have to gavel down the opening part of this Committee meeting until a quorum shall have appeared. The Committee stands in recess.

[Recess.]

Mr. GEKAS. The Chair notes that the Member of the Committee, Mr. Forbes, has arrived to join the Chairman in forming a proper quorum for the purposes of a hearing, and so we will proceed.

This hearing has been called because of a variety of reasons and because of one particular one which is very vexing and very troublesome in all of its permutations. Just yesterday, the President sent to the Congress a bill to establish a new Cabinet position on homeland security. Inherent in the new construct will be consideration of transferring the duties and in fact the entire Office of Immigration and Naturalization Service to that new structure in homeland security. So that the whole play of issues that are solely in the Immigration and Naturalization Service and its committees that have jurisdiction both in the Senate and in the House now will be on a broader front that is part of homeland security if the bill should succeed in final passage, which brings us to the recurring questions that abound across the land.

The 19 hijackers, as we all know by now, all were aliens, 16 of them were nonimmigrant residents in the United States at one time or another, three of them had overstayed their visas and were subject to expulsion, but we have gone past September the 11th

now, gnashing our teeth about the fact that all of that occurred because of a relaxation of or nonexistent set of procedures and statutes that could have prevented that wholesale entry into our country by those who were willing to wreak havoc among our citizenry.

So, we have then the scenario of millions, just millions of illegal aliens in our midst. We have among them some 314,000 who are not only illegal in our country but are under direct court order, final order of expulsion or deportation from our Nation, who are not on their way back to their homes but rather still among us and still counted among the illegal aliens in our midst.

What is troublesome on top of everything else about which we are worried are the recent statements emanating from the Immigration and Naturalization Service; to wit, it may be that this is a problem that is of illegal aliens but which we can do nothing or that we should just accept as a fact of life in our country and just proceed to live with it without doing anything about it. I cannot subscribe to such a policy or such an idea, and I believe that it is the duty of our Committee to look into the implications of that kind of broad policy statement or description of the conditions of our Nation with respect to illegal aliens.

For instance, I have a direct quote here where the Commissioner has stated that, "We need to set up a regime where we don't have to spend much of our time and effort in enforcement activities dealing with people who are not terrorists, who are not threats to our national security, who are economic refugees." This is a paralyzing statement to me. It implies that with one broad sweep of description that all the illegal aliens couldn't possibly be terrorists, couldn't possibly be people who constitute a threat to our national security. I can't accept that and will not accept that. There are thousands among those millions, perhaps millions among those millions who have exactly that kind of mindset to do harm to our country, to be or become terrorists.

So we have to look into all of this, and in view of the fact that the INS has stated in various ways that interior management of illegal aliens is a priority, and which priority was recognized by the Congress to the effect of additional funding being poured in to help in the management of the number of illegal aliens, then we are more than nonplussed about the conditions that exist. These questions that will be forthcoming from the Committee take into account that we have responded to the requests of the INS for additional funding and resources to deal with the number of illegal aliens, and yet we now have what amounts, to me at least, amounts to throwing up our hands and just accepting the status quo of illegal aliens in our midst.

I repeat, I will not abide by that personally. I will do everything I can to convince Members of this Committee and colleagues across the membership of the House of Representatives and the other body to convince everyone that this is a problem which we must, must mitigate and to do it as rapidly as we can.

The record will indicate that the lady from California, Ms. Lofgren, is here, as is the gentleman from California, Mr. Issa, the gentleman from Texas, Mr. Smith, who now have joined Congressman Forbes and Congressman Gekas in the constitution of a quorum for this hearing.

Does anyone else wish to indulge in an opening statement? The lady from California is recognized.

Ms. LOFGREN. Yes. I would like to offer a slightly different perspective than the Chairman on this issue. Clearly, all of us, all Americans of all political parties, want to make sure that our country is safe and we need to make sure that those who would do harm to our country, whether they are aliens or whether they are U.S. citizens, as we have found in some instances, are prevented from doing harm to our country.

As I understand it, the INS is cognizant that we have many, many persons who are within the United States who do not have proper documentation, and if we are going to do a good job at protecting the United States from terrorists we need to do a good job of sorting those who would do harm from those who would not do harm. And I will give you an example right from my own neighborhood in San Jose, California.

I know a family. The father was deceased. He was an American citizen. Mama is a permanent resident of the United States. The second oldest daughter, who is our friend, is a U.S. Born American citizen and a college student and a wonderful, wonderful young lady. And her younger brother, who is 15, is a United States citizen, also born in San Jose. But little brother, who is 7, is undocumented. We are trying to help on the documentation for this but right now he is an "illegal alien." And I don't think that 7-year-old child is a terrorist threat. If we are going to spend resources going after that 7-year-old those are resources that we cannot apply to the terrorists.

There is another little known truth, but it is something I think we need to be honest about, which is that the American economy has relied for many, many years on the presence of undocumented workers in certain industries. If you enjoy the salad this afternoon, you enjoyed the fruit of the labor of undocumented workers in California in the Imperial Valley who pick our crops in the hot sun without benefit of documents, and those undocumented farm workers are I would believe not the terrorist threat that concerns us all.

Similarly, if you go on vacation in California and you go to a hotel and expect to have clean sheets on your bed, you are relying on undocumented workers who are the hotel industry's worker bees. Those undocumented workers, primarily from the country of Mexico, are not the terrorist threat that we need to guard against.

So I think we need to be vigorous in giving tools to the INS. We need to make sure that they have access to the records and the information that has been obtained by the CIA and also by the FBI so that we can get the bad guys. But if we turn especially now, at this very perilous time for our country, if we turn this into an effort to evict the farm workers instead of finding the terrorists, we will be putting America at risk.

So I hope that we can hone and fine-tune our efforts. Reasonable people can disagree about whether those farm workers should be here or should not be here, but to turn this need to go after terrorists into an effort to oust the people who pick our vegetables I think would be a real disservice to America, and I know that none of us want to do that.

And I thank gentleman for recognizing me.

Mr. GEKAS. The Chair recognizes the gentleman from California for an opening statement.

Mr. ISSA. Thank you, Mr. Chairman, and I look forward to hearing the testimony today. I, too, want to echo a combination of the previous two Members that there are 8½ million, according to the U.S. Census, unlawful, undocumented, use whatever word you want, residents of this country. These are people who by the Commissioner's own statement 40 percent are overstays.

I have been dismayed that the proposal to take care of over-staying is to lower from 6 months to 30 days the time that you are allowed to be here, thus obviously taking care of overstays because if someone is only given 30 days they will undoubtedly leave while if someone is given 6 months that probably makes them stay longer and thus go into overstay.

But having said that, I am hopeful also today that Mr. Greene has brought with him as requested for over 2 months by the department and requested to the Commissioner personally the cost of interior checkpoints that exist within my congressional district, checkpoints that do not seek to find criminal aliens but in fact look through 200,000-plus persons a day and glean some 10 to 20 undocumented workers, most of whom are not criminal and then, as we will go through in question and answer, brag considerably about the amount of drugs that they seize, something which is clearly not a core function.

So as we go through this process, in an effort to get to a more effective INS, we will also have an opportunity to find out where those changes in emphasis since we clearly, and I would like to associate myself with the gentlelady from San Jose that in fact we are not getting rid of 8½ million workers in this country any time soon, that although I would like to very much and the President would like to see them documented, accounted for, and those who are not wishing us well taken out of this country. In the meantime I hope all of you will be testifying about creative or conventional ways in which we can make America safer by culling through those 8½ million to eliminate those who would do us harm or those who simply are criminals, both of which concern me.

And I yield back.

Mr. GEKAS. We thank the gentleman. Does anyone else seek recognition for the purpose of an opening statement? If not, we will proceed with the testimony of the witnesses as they are being introduced.

The first witness will be Joseph Greene, Assistant Commissioner for Investigations, Immigration and Naturalization Service. He began his career with the INS as an inspector at JFK Airport in New York in 1973, and he has held numerous positions with the INS, including District Director in Denver and Supervisor, Special Agent, et cetera. Mr. Greene graduated from Loyola College in Maryland, has a Master's Degree in philosophy from Fordham.

He is joined at the witness table by Richard M. Stana, the General Accounting Office, Director of Justice Issues at the GAO, who has been with that organization for 25 years. Most recently he directed GAO's work relating to law enforcement, drug control, immigration, corrections, court administration, and elections system. He is a United States veteran, Army veteran, has an MBA from Kent

State University, and has completed JFK School of Government's Program on Leadership and Performance.

And with them is Steven A. Camarota, Director of Research, Center for Immigration Studies. He has published widely on the political and economic effects of immigration on the United States. His articles on the impact of immigration have appeared in both academic publications and the popular press, including the Washington Post, the Chicago Tribune, Social Science Quarterly, and Campaigns and Elections. He has a Bachelor's Degree from Juniata College, political science from the University of Pennsylvania, Master's Degree, and a Ph.D. in public policy analysis from the University of Virginia.

And the final witness would be Marissa J. Demeo, the Regional Counsel of the Mexican American Legal Defense and Educational Fund, D.C. office, who helps develop policy positions for this organization and performs legislative advocacy on the national level for civil rights. She has served as vice chair and acting chair to the Secretary of Commerce's Decennial Census Advisory Committee from December 1999 to April of 2002. Before coming to her current status Ms. Demeo was a trial attorney for 3 years in the Civil Rights Department in the U.S. Department of Justice. She holds an undergraduate degree from Princeton University, a law degree from New York University School of Law and membership in that institution's Law Review.

The written statements of each of the witnesses as per custom will be made a part of the record, without objection, and we will ask each to try to limit the oral presentation review of that statement to 5 minutes. We will begin in the order of induction with Mr. Greene.

STATEMENT OF JOSEPH R. GREENE, ASSISTANT COMMISSIONER FOR INVESTIGATIONS, IMMIGRATION AND NATURALIZATION SERVICE

Mr. GREENE. Thank you, Mr. Chairman. Mr. Chairman, Members of the Committee, I would like to thank you for the opportunity to be here today to talk about the INS Interior Enforcement Strategy. That strategy, as you know, has evolved over the past 10 years and has been dramatically affected by the events of September the 11th.

Beginning in 1984, our special agents generally made arrests and removals of illegal migrants under several distinct activities and categories, fraud, work site, criminal aliens, status violators. But as we moved into the 1990's we began to question the impact of these operations on the overall problem of illegal immigration.

You will recall with me many public reports of major INS law enforcement operations resulting in hundreds of arrests only to learn that either the arrested aliens had returned to their jobs within a few weeks or had been replaced by other illegal aliens. It became increasingly difficult for us to justify to you and to ourselves that we were having any overall impact on illegal migration.

As a result of this, in 1998 I was invited while serving as the District Director of Denver to lead a team that would design a new enforcement strategy. The goal was to frame a strategy that would have a measurable effect on illegal migration, that would support

and coordinate the board, enforce the strategy and would operate within the budget and resource constraints that were in place at the time.

The result was the 1999 Interior Enforcement Strategy, which focused on assessing and attacking the greatest harms resulting from illegal immigration in this country. It did this by targeting the infrastructure which supported illegal migration, whether it be a smuggling organization, a fraud conspiracy, an employer involved in widespread immigration violations or a local law enforcement problem created by the arrival of illegal immigrants into a community.

Let me provide you with highlights of some of the 50 major investigations that have been conducted since January 1999 pursuant to this strategy. In September 2000, the United States Attorney announced the indictment of attorney Robert Porges, who conspired with mainland Chinese smuggling organizations for nearly a decade to file over 6,000 fraudulent asylum applications in New York City. This operation conducted by our agents involved use of RICO authority. Due to the scope and significance of the criminal enterprise it was alleged to have realized \$13.5 million during the life of the conspiracy.

The next month, in October 2000, INS conducted an operation for running the largest multi-national anti-smuggling investigation ever conducted in the Western Hemisphere. It resulted in the interdiction of 3,500 illegal migrants destined to the United States and the arrest of 38 smugglers, including Jose Leon Castillo, whose organization alone was responsible for the smuggling of thousands of migrants into the United States during the prior 5 years.

In July 2001, the grand jury indicted Kong yan Fong on smuggling charges involving a conspiracy that had resulted in the death of several smuggled migrants. Fong had been identified by international law enforcement agencies as a significant international migrant smuggler. He was convicted last September and faces life imprisonment.

In December 2001, the grand jury returned a 36 count indictment against Tyson's Foods, Incorporated for conspiracy to import and transport illegal aliens to Tyson's plants throughout the United States. These indictments culminated a 2½ year investigation. And these and other investigations pursuant to the strategy has focused on disrupting and dismantling the corrupt and criminal organizations that make illegal migration to this country possible.

But since the terrorist attacks we have reevaluated our interior strategy in the light of the new threats and have refocused our strategic direction in interior enforcement. Our strategy is to protect American lives and infrastructure using every available authority at our command under the immigration laws of this country.

Thus, within hours of the attack we began the effort that grew into Operation Tarmac, designed to secure the sensitive areas of airports from individuals who may pose a potential threat. We have audited over 1900 companies conducting business in the restricted areas of airports and, with the help and support of many Federal and local law enforcement agencies, have arrested and deported

over 600 aliens who have access to those secure areas. We have also expanded this approach to other critical infrastructures as well.

Certainly the key challenge to interior enforcement is to address all the responsibilities we have within the resources provided. As of June 4, I have 1,944 on duty agents, including supervisors. There are more sworn officers in the Dallas Police Department than I have special agents in the world. Moreover, of that number 112 of them are assigned to the Joint Terrorism Task Force, 155 are assigned to anti-smuggling units in Border Patrol sectors, 107 are assigned to OCDETF, and 197 are assigned to quick response teams.

On any given day the best I can field is approximately 1,365 special agents to work jails, investigate fraud and smuggling, conduct enforcement operations at work sites, support local task force, respond to local law enforcement officials, arrest immigration violators and support the FBI in their important counterterrorism work. This reality forces our field managers to make difficult decisions every day about how best to deploy our agents in the interest of homeland security.

We are well aware of the new missions and responsibilities that are coming in the face of these new challenges, and frankly we welcome the challenge. I am looking forward to working with Congress to ensure the right mix of mission and capability to fulfill our homeland security role. I stand ready for your questions.

[The prepared statement of Mr. Greene follows:]

PREPARED STATEMENT OF JOSEPH R. GREENE

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, I am pleased to have the opportunity to testify before you regarding the Immigration and Naturalization Service's (INS) Interior Enforcement Strategy, and our efforts to increase the domestic security of the United States.

As preliminary matter, and as you know, Mr. Chairman, the President recently announced his proposal for a new Department of Homeland Security. The INS strongly supports the creation of this new cabinet-level department, as proposed by the President and the Commissioner considers this an important and very positive development for the security of our nation and for the mission and employees of the INS. In this new structure, the INS will become a key part of one of the largest agencies in the Federal Government and will be partners in what is the most important mission of our government: protecting the American people and ensuring the safety of our institutions and our precious freedoms.

Enforcing our nation's immigration laws in the interior of the United States has always been an exceptionally demanding and challenging mission. The tragic events of September 11, 2001 have placed even greater demands and challenges upon our agents.

The INS Interior Enforcement Strategy is symbiotic to our Border Control Strategy established in 1994. The strategies envision a seamless web of enforcement from the interior of the United States to the nation's borders and out to the farthest reaches of source and transit countries that will impact the flow of illegal immigrants to the United States. The underlying principles and goals of these strategies were designed to respond to the changing migration environment in the United States in all its complexity. The Interior Enforcement Strategy includes the following strategic priorities:

- Identify, apprehend, and remove alien criminals;
- Deter and diminish smuggling and trafficking of aliens;
- Respond to community needs as they relate to illegal immigration;
- Minimize immigration benefit fraud and other document abuse; and
- Block employers' access to unauthorized workers.

Meeting these priorities requires the capacity to remove all removable, deportable, and excludable aliens so that the execution of a final order of removal is a certainty. Only with this effective enforcement can the INS ensure that these key strategic policy objectives are met. The INS has less than 2,000 Special Agents throughout the world.

Within the context of the Interior Enforcement Strategy, INS Special Agents are tasked with a wide range of critical responsibilities including working with the Federal Bureau of Investigation (FBI) and intelligence community to support counter-terrorism efforts within the Joint Terrorism Task Forces (JTTF). In fact, the INS committed a significant number of agents to the 9-11 investigation and provided a significant amount of investigative information for the 9-11 investigation. In addition to our counter-terrorist efforts, the INS' responsibilities include identifying convicted criminal aliens and processing them for deportation; investigating immigration crimes; and auditing and identifying employers and employees who have violated immigration laws.

Another of our critical missions is to support state and local law enforcement through the INS' Law Enforcement Support Center (LESC) located in Burlington, Vermont. The primary mission of the LESC is to help local law enforcement agencies determine if a person they have contact with, or have in custody, is in fact an illegal, criminal, or fugitive alien. The LESC provides a 24/7 link between Federal, state, and local officers and the databases maintained by the INS.

In FY 2001, the LESC received 221,507 state and local law enforcement inquiries, 10,155 investigative inquiries, and 10,338 inquiries regarding foreign nationals seeking to purchase firearms, and it lodged 1,465 detainers authorizing the detention of an unlawful alien.

The LESC provides every law enforcement officer in participating states direct access to the INS. When a police officer arrests an alien, INS personnel at the LESC are able to provide that officer with vital information and guidance, and if necessary, place the police officer in contact with an INS officer in the field. On a daily basis, these interactions result in the INS taking into custody individuals who are present in the United States unlawfully and who may have committed a crime. The partnerships fostered by the LESC increase public safety by identifying criminal aliens who may otherwise pose a threat to the local community or our nation.

Another way in which the INS has responded to the needs of the law enforcement community is through 45 Quick Response Teams (QRTs) across the United States. The QRTs are comprised of 200 INS Special Agents and Detention and Removal Officers. The primary duty of the QRTs is to work directly with state and local law enforcement officers to take into custody and remove illegal aliens who have been encountered by state and local law enforcement officers for violations of state or local laws.

For decades, the INS has actively participated in Federal, state, and local task forces that target criminal activities and enterprises with criminal alien involvement. One such task force is the Violent Gang Task Force (VGTF). INS agents assigned to VGTF units in major cities throughout the United States assist local and Federal agencies in investigations and operations involving alien-based gangs and organized crime groups. The INS also has 127 Special Agents assigned to the Organized Crime Drug Enforcement Task Force (OCDETF) in nearly 60 cities across the United States. OCDETF is a multi-agency Federal task force operating under the direction of the Department of Justice, which has as its primary mission the identification, investigation, prosecution, and dismantling of sophisticated organizations involved in narcotics trafficking.

INS agents from each District also participate in a nationwide worker exploitation task force that conducts investigations targeting abusive employers who subject workers to inhumane or substandard working conditions, or who violate a wide range of other criminal statutes. The task force is comprised of Federal, state, and local law enforcement agencies across the country.

Worksite enforcement activity is another facet of our interior enforcement strategy. The Immigration and Nationality Act was revised in 1986 to establish employment controls that restrict the availability of work for illegal aliens. The goal, of course, was to deter illegal immigration by removing the employment opportunity magnet. Under this strategy, the INS specifically targets employers who are abusive to their workers and violate other Federal and state laws, regardless of industry or geography.

INS Special Agents conduct investigations of immigration benefit and document fraud. Benefit fraud investigations target organizations, facilitators, and unscrupulous attorneys and immigration consultant, who seek to take advantage of vulnerable immigrants to undermine our legal immigration system. Benefit fraud may involve attorneys who prepare fraudulent asylum applications, immigration consult-

ants who arrange fraudulent marriages, and very complex business-related visa fraud schemes. Recent activities have included an initiative focusing on facilitators of student visa fraud.

Document fraud investigations target individuals who produce or sell counterfeit or fraudulently obtained immigration and identity documents. These investigations may involve high quality photo-substituted passports used to attempt entry into the United States, counterfeit “green cards” and Social Security cards sold to illegal aliens seeking to gain employment here, or genuine, but fraudulently obtained, U.S. birth certificates, driver’s licenses, or other identification used by aliens to establish a new, “legal” identity in the United States.

INTERIOR ENFORCEMENT IN THE POST 9/11 ENVIRONMENT

The terrorist attacks on September 11, 2001 prompted a refocus of the INS’ strategic approach to its law enforcement responsibilities. The INS is committed, as the highest priority of its interior strategy, to ensure domestic security using all the immigration law enforcement authorities at its disposal. There are several notable examples of this approach.

Worksite Enforcement—National Security Focus

As a result of a new emphasis on worksite enforcement targeting national interest industries, there has been more than a 20 percent increase in employer case completions. Specifically, the INS launched Operation Tarmac to enhance security at our nation’s airports.

INS Headquarters directed its field offices to initiate worksite enforcement investigations into the hiring practices of companies employing individuals who work at airports and who have direct access to commercial aircraft and other secure areas to ensure that these individuals are authorized to work and that employers are complying with the employment eligibility verification requirements. Particular attention is devoted to companies that provide security at major airports throughout the United States. These operations have included prosecution of individuals who violated criminal immigration statutes, removal of unauthorized aliens from airport workites, and fraudulent document training of security officials responsible for granting access badges to secure areas.

The primary objective of Operation Tarmac is to ensure that travelers have confidence in their safety and security while traveling. This effort has been undertaken in cooperation with a variety of Federal agencies, as well as airport authority management officials. Participating Federal agencies include the FBI, the Executive Office of the U.S. Attorney, the Transportation Security Administration, and the Offices of the Inspector General for the Departments of Labor and Transportation.

Operation Tarmac has been an enormous undertaking. For example, the INS has audited over 190,000 Employment Eligibility Verification Forms (Forms I-9) at more than 1,900 airport businesses; and, to date, over 500 unauthorized aliens have been arrested, and over 260 have been charged with criminal violations of law. We have also initiated Operation Glowworm, using the same goals and methodologies to enhance the security of our nation’s nuclear power facilities.

Operation Southern Focus

Our efforts to enhance domestic security also led to the initiation of Operation Southern Focus. In January 2002, the INS initiated a multi-jurisdictional enforcement initiative aimed at targeting alien smuggling organizations specializing in the movement of U.S.-bound aliens from countries that are of interest to the national security of the United States. Information available to the INS indicates terrorist organizations often use human smuggling organizations to move around the globe. Many targets of Operation Southern Focus were believed responsible for smuggling hundreds of aliens. Since the inception of this operation, five significant alien smugglers have been arrested and charged with alien smuggling violations, and significant alien smuggling pipelines have been severely crippled.

Alien Absconder Initiative

The INS recently initiated the Alien Absconder Initiative (AAI). The AAI is designed to identify and apprehend unauthorized aliens who have unexecuted final orders of removal. The objective of Phase I of the AAI is to locate, apprehend, interview, and deport approximately 5,900 aliens with unexecuted final orders from countries with active al Qaeda networks and to gather valuable information to assist in the prevention of future terrorist or criminal attacks. INS Headquarters provided more than 5,000 leads to INS field offices that have thus far resulted in the apprehension of nearly 700 fugitives, including 32 positive hits from the National Crime and Information Center (NCIC).

Phase II of the AAI targets over 300,000 immigration fugitives with unexecuted final orders of removal. The AAI is the INS' first national program to address alien absconders.

Joint Terrorism Task Forces

Our Joint Terrorism Task Forces (JTTF) continue to be the backbone of the INS' efforts to combat international terrorism in the interior of the United States. The INS has 112 JTTF agents stationed in various locations. JTTF agents serve as a critical component in the effort to root out terrorists and their supporters. INS Special Agents working with the JTTFs have played a significant role in recent terrorist investigations nationwide. Working closely with the FBI and other agencies within the multi-agency task forces, INS Special Agents serve the national security of the United States by proactively investigating, targeting, and arresting known terrorists, terrorist organization leaders, members, and associates.

INS agents assigned to the JTTFs have conducted approximately 6,300 joint INS/FBI interviews since September 11, 2001 and have played a critical role in increasing our domestic security efforts.

CONCLUSION

In closing, I would like to state that the men and women of the INS stand ready to tackle the many critical missions with which they are faced. The INS' mission of deterring illegal migration and combating immigration-related crime has never been more critical to our nation's efforts to ensure the safety of the American public. Thank you for this opportunity to appear, Mr. Chairman. I look forward to your questions.

Mr. GEKAS. The time of the gentleman has expired. We turn to Mr. Stana.

STATEMENT OF RICHARD M. STANA, DIRECTOR OF JUSTICE ISSUES, UNITED STATES GENERAL ACCOUNTING OFFICE

Mr. STANA. Mr. Chairman and Member of the Subcommittee, I am pleased to be here today to discuss challenges pertaining to INS's Interior Enforcement Strategy. INS issued this strategy in 1999 and refocused it somewhat following the events of 9/11. The strategy was designed to identify and remove criminal aliens from the United States, dismantle and diminish alien smuggling operations, resolve community complaints about illegal immigrants, detect benefit and document fraud and deny employers access to unauthorized workers.

My prepared statement discusses in detail the results of our most recent work on these programs. In my oral statement I would like to briefly make three main points.

First, INS faces numerous daunting enforcement issues. For example, the potential pool of removable criminal aliens and fugitives numbers in the hundreds of thousands. Criminal aliens are incarcerated in hundreds of Federal, State and local facilities while others are fugitives at large across the country. The number of individuals smuggled into the United States has increased dramatically and alien smuggling has become more sophisticated, complex, organized and flexible.

Annually thousands of aliens illegally seek immigration benefits such as work authorization and change of status, and some of these aliens use these benefits to enable them to conduct criminal activities. Hundreds of thousands of aliens unauthorized to work in the United States have used fraudulent documents to circumvent the process designed to prevent employers from hiring them. In some instances employers are complicit in this activity. Given the nature, scope and magnitude of these issues, INS needs to ensure that it is making the best use of its limited enforcement resources.

Second, our work has disclosed fundamental management challenges that are common to INS's interior enforcement programs. The issues I just listed are daunting, yet the interior enforcement programs receive about one-fifth of funding devoted to border enforcement. Therefore, INS needs to make best use of its limited resources.

The following examples illustrate the need for improvement.

Example one: In several areas we noted that INS does not believe it had sufficient staff to reach its program goals, but it also lacked data on how best to use existing or additional staff. In the criminal alien removal program and at the forensic document laboratory INS lacked good management information to determine how many staff it needed and how to allocate additional staff to best achieve program goals.

Example two: INS has had long-standing difficulty developing and fielding information systems to support its program operations. Too often, program and management data were kept in a loose collection of automated systems that were difficult to access and analyze. Further, data gaps and inaccuracies put INS officials in a poor position to make fact-based decisions about applicant eligibility and program management.

Example three: Working level guidance was sometimes lacking or nonexistent. We found that INS had not established guidance for opening and prioritizing benefit fraud and work site enforcement investigations. Without such guidance, INS cannot be assured that the highest priority cases are investigated and resources are used optimally.

Example four: Program coordination within INS and with other agencies was sometimes problematic. We found that the anti-smuggling program lacked coordination, resulting in multiple anti-smuggling units, overlapping in their jurisdictions, making inconsistent decisions about which cases to open, and functioning autonomously without a single chain of command. We also found that coordinating with the Labor Department on work site enforcement issues was sometimes problematic because Labor would not delve into authorization issues if it might cause workers not to report potential workplace wage and safety violations.

We have made many recommendations to improve program operations, some of which have already been implemented by INS. In our strategic plan, we expressed our intent to follow up on these issues and recommendations.

My last point is having an effective Interior Enforcement Strategy is an essential complement to having an effective border strategy. Controlling illegal immigration requires INS not only to raise the risk of apprehension at the border but also target resources to those who successfully penetrate border controls by denying work authorization and immigration benefits to those who are not eligible to receive them and to remove those illegally in the United States.

INS needs to address significant challenges and appropriately staffing program areas providing reliable information for program management, establish a clear and consistent guidance for working level staff to do their jobs consistent with the goals of the program, promoting collaboration and coordination with INS and with other

agencies and developing outcome-based measures that would indicate progress toward the strategy's objectives. Addressing these issues is important if INS is to achieve full program potential.

This concludes my oral statement. I would be happy to address any questions the Subcommittee may have.

[The prepared statement of Mr. Stana follows:]

PREPARED STATEMENT OF RICHARD M. STANA

GAO

United States General Accounting Office

Testimony

Before the Subcommittee on Immigration and Claims,
Committee on the Judiciary,
House of Representatives

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IMMIGRATION ENFORCEMENT

Challenges to Implementing the INS Interior Enforcement Strategy

Statement by Richard M. Stana, Director, Justice Issues



Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss selected issues pertaining to the Immigration and Naturalization Service's (INS) enforcement of immigration laws within the interior of the United States.

In the 1990s, INS developed a strategy to control illegal immigration across the U.S. border and a strategy to address enforcement priorities within the country's interior. In 1994, INS's Border Patrol issued a strategy to deter illegal entry. The strategy called for "prevention through deterrence"; that is, to raise the risk of being apprehended for illegal aliens to a point where they would consider it futile to try to enter. The plan called for targeting resources in a phased approach, starting first with the areas of greatest illegal activity. In 1999, the INS issued its interior enforcement strategy designed to deter illegal immigration, preventing immigration-related crimes, and removing those illegally in the United States. Historically, Congress and INS have devoted over five times more resources in terms of staff and budget on border enforcement than on interior enforcement.

In my statement today, I make the following points:

INS's interior enforcement strategy is designed to address the detention and removal of criminal aliens, the dismantling and diminishing of alien smuggling operations, community complaints about illegal immigration, immigration benefit and document fraud, and employers' access to undocumented workers. INS faces numerous enforcement issues in each area.

INS could do a better job of using its limited interior enforcement resources. For strategy implementation to be effective, INS needs better data to determine staff needs, reliable information technology, clear and consistent guidelines and procedures for working-level staff, effective collaboration and coordination within INS and with other agencies, and performance measures that help INS assess program results.

Having an effective interior strategy is an essential complement to having an effective border strategy. Addressing management challenges is important if INS is to achieve their full potential.

My testimony today will be based primarily on the results of work that we have completed in recent years, namely, our February 1999 testimony on INS's efforts to identify and remove criminal aliens,¹ our April 1999 report on INS's worksite enforcement program,² our May 2000 report on alien smuggling,³ our May 2001 report on the processing of immigration benefits,⁴ our January 2002 report on immigration benefit

¹ U.S. General Accounting Office, *Criminal Aliens: INS' Efforts to Identify and Remove Imprisoned Aliens Continue to Need Improvement*, GAO/T-GGD-99-47 (Washington, D.C.: Feb. 25, 1999).

² U.S. General Accounting Office, *Illegal Aliens: Significant Obstacles to Reducing Unauthorized Alien Employment Exist*, GAO/GGD-99-33 (Washington, D.C.: Apr. 2, 1999).

³ U.S. General Accounting Office, *Alien Smuggling: Management and Operational Improvements Needed to Address Growing Problem*, GAO/GGD-00-103 (Washington, D.C.: May 1, 2000).

⁴ U.S. General Accounting Office, *Immigration Benefits: Several Factors Impede the Timeliness of Application Processing*, GAO-01-188 (Washington, D.C.: May 4, 2001).

fraud,⁵ and our March 2002 report on INS' Forensic Document Laboratory.⁶ In these reports we made many recommendations to improve INS operations. INS has implemented or is in the process of implementing some of these recommendations. We plan to follow up on INS's plans to improve the various programs.

Components of the Interior Enforcement Strategy

In January 1999, INS issued its Interior Enforcement Strategy. This strategy focuses resources on areas that would have the greatest impact on reducing the size and annual growth of the illegal resident population. Certain criteria were used to develop the priorities and activities of the strategy. The criteria focused on potential risks to U.S. communities and persons, costs, capacity to be effective, impact on communities, potential impact on reducing the size of the problem, and potential value for prevention and deterrence. The strategy established the following five areas in priority order:

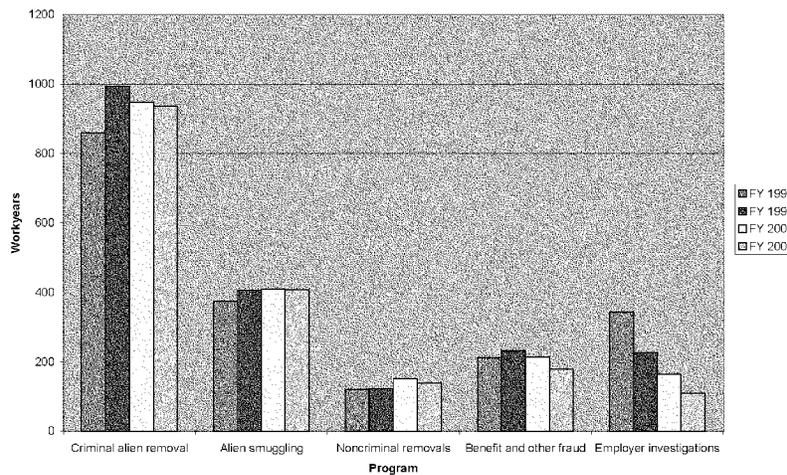
1. Identify and remove criminal aliens and minimize recidivism. Under this strategic priority, INS is to identify and remove criminal aliens as they come out of the federal and state prison systems and those convicted of aggravated felonies currently in probation and parole status.
2. Deter, dismantle, and diminish smuggling or trafficking of aliens. This strategic priority calls for INS to disrupt and dismantle the criminal infrastructure that encourages and benefits from illegal migration. INS efforts are to start in source and transit countries and continue inside the United States, focusing on smugglers, counterfeit document producers, transporters, and employers who exploit and benefit from illegal migration.
3. Respond to community reports and complaints about illegal immigration. In addition to responding to local law enforcement issues and needs, this strategic priority emphasizes working with local communities to identify and address problems that arise from the impact of illegal immigration, based on local threat assessments.
4. Minimize immigration benefit fraud and other document abuse. Under this strategic priority, INS is to aggressively investigate and prosecute benefit fraud and document abuse to promote integrity of the legal immigration system.
5. Block and remove employers' access to undocumented workers. The strategy emphasizes denying employers access to unauthorized workers by checking their compliance with the employment verification requirements in the Immigration Reform and Control Act of 1986. Coupled with its efforts to control smuggling activity, this effort could have a multiplier effect on access of employers to illegal workers and on the overall number of illegal residents in the country.

⁵ U.S. General Accounting Office, *Immigration Benefit Fraud: Focused Approach Is Needed to Address Problems*, GAO-02-66 (Washington, D.C.: Jan. 31, 2002).

⁶ U.S. General Accounting Office, *INS Forensic Document Laboratory: Several Factors Impeded Timeliness of Case Processing*, GAO-02-410 (Washington, D.C.: Mar. 13, 2002).

Figure 1 shows that INS has generally allocated its interior enforcement resources consistent with these priorities and that the workyears devoted to several of INS's interior enforcement efforts have either declined or stayed about the same between fiscal years 1998 and 2001.

Figure 1: INS Investigations Workyears



Note: Workyear totals do not include administrative time.

Source: GAO's analysis of INS's data.

Challenges Exist in Implementing Interior Enforcement Programs

Our work has shown that INS faces numerous daunting enforcement issues. For example, the potential pool of removable criminal aliens and fugitives numbers in the hundreds of thousands. Many are incarcerated in hundreds of federal, state, and local facilities, while others are fugitives at large across the country. The number of individuals smuggled into the United States has increased dramatically, and alien smuggling has become more sophisticated, complex, organized, and flexible. Thousands of aliens annually illegally seek immigration benefits, such as work authorization and change of status, and some of these aliens use these benefits to enable them to conduct criminal activities. Hundreds of thousands of aliens unauthorized to work in the United States have used fraudulent documents to circumvent the process designed to prevent employers from hiring them. In many instances, employers are complicit in this activity.

Given the nature, scope, and magnitude of these activities, INS needs to ensure that it is making the best use of its limited enforcement resources. We found that fundamental management challenges exist in several of INS's interior enforcement programs and that INS could do a better job using its limited resources.

Need for Better Staff Levels and Allocations

In several reports we noted that INS did not believe it had sufficient staff to reach its program goals. Having data on how to effectively allocate staff and placing sufficient staff in the right locations is important if INS is to achieve program goals.

Staff shortages have contributed to INS's inability to promptly remove the majority of criminal aliens after they have completed their prison sentences. In 1995, INS did not place into removal proceedings 57 percent of potentially deportable criminal aliens who were released from federal prisons and state prisons from 5 states. In 1997, INS did not place about 50 percent of these aliens. We reported that, although the removal of criminal aliens was an INS management priority, INS was facing the same staff shortage issues in 1997 as it had in 1995. In particular, agent attrition – about 30 percent in 1995, and about 32 percent in 1997- continued to impede INS's ability to meet its program goals. INS has told us that since 1997, the attrition rates of agents in this program has stabilized and that, in fiscal year 2003, the agents from this program would be reclassified as detention removal officers, which INS believes should further help reduce attrition.

INS's Forensic Document Laboratory (FDL) has been beset with staff shortages for years. According to FDL officials, staff shortages have made it difficult for the FDL to stay current with its workload and produce timely responses to requests for forensic document examination. Congress's January 2002 supplemental appropriation will nearly double FDL's current staff of 35.

Even if INS had additional staff working in these program areas, it lacked good management information to determine how many staff it needed to meet its program goals and how best to allocate staff given the limited resources it did have. With respect to its program for removing incarcerated criminal aliens, INS told us that beginning in fiscal year 2002, the agency implemented our recommendation to use a workload analysis model to help identify the resources the agency needs for its criminal alien program in order to achieve overall program goals and support its funding and staffing requests. We have not reviewed this new model to ascertain its usefulness.

With respect to alien smuggling, INS lacked field intelligence staff to collect and analyze information. Both 1998 and 1999 INS Annual Performance Plan reports stated that the lack of intelligence personnel hampered the collection, reporting, and analysis of intelligence information. Although INS's Intelligence Program proposed that each district office have an intelligence unit, as of January 2000, 21 of INS's 33 districts did not have anyone assigned full-time to intelligence-related duties.

The worksite enforcement program received a relatively small portion of INS's staffing and budget. In fiscal year 1998, INS completed a total of 6,500 worksite investigations, which equated to about 3 percent of the estimated number of employers of unauthorized aliens. Many immigration experts have said that as long as opportunities for employment exist, the incentive to enter the United States illegally or overstay visas will persist, and efforts at the U.S. borders to prevent illegal entry will be undermined.

Need for Better Information Technology

INS has had long-standing difficulty developing and fielding information systems to support its program operations. In 1990, we reported that INS managers and field officials did not have adequate, reliable, and timely information to effectively carry out the agency's mission. We also reported that INS had not conducted a comprehensive agencywide information needs assessment. As a result, program and management data were kept in a loose collection of automated systems, as well as a number of ad hoc labor-intensive manual systems.

Effectively using information technology continues to remain a challenge for INS. For example, benefit fraud investigations have been hampered by a lack of integrated information systems. The operations units at the four INS service centers that investigate benefit fraud operate different information systems that do not interface with each other or with the units that investigate benefit fraud at INS district offices. As a result, sharing information about benefit applicants is difficult. The INS staff who adjudicate applications did not have routine access to INS's National Automated Immigration Lookout System (NAILS). Not having access to or not using NAILS essentially means that officers may be making decisions without access to or using significant information and that benefits may be granted to individuals not entitled to receive them. Thus, INS is not in the best position to review numerous applications and detect patterns, trends, and potential schemes for benefit fraud.

FDL's database, the Forensic Automated Case and Evidence Tracking System (FACETS), did not contain sufficient data for managers to know the exact size and status of the laboratory's pending workload or how much time is spent on each forensic case by priority category. As a result, FDL managers were not in the best position to make fact-based decisions about case priorities, staffing, and budgetary resource needs.

With respect to the criminal alien program, INS lacked a nationwide data system containing the universe of foreign-born inmates for tracking the hearing status of each inmate. In response to our recommendation, INS developed a nationwide automated tracking system for the Bureau of Prisons and deployed the system to all federal institutional hearing program sites. INS said that it was working with the Florida Department of Corrections to integrate that state's system with INS's automated tracking system. INS also said that it planned to begin working with New York, New Jersey, and Texas to integrate their systems and then work with California, Illinois, and Massachusetts. INS projected that this entire project will be completed by the end of fiscal year 2002. We have not examined these new systems to ascertain their effectiveness.

INS lacked an agencywide automated case tracking and management system that prevented antismuggling program managers from being able to monitor their ongoing investigations, determine if other antismuggling units were investigating the same target, or know if previous investigations had been conducted on a particular target. In response to our recommendation, INS deployed an automated case tracking and management system for its alien smuggling investigations to many of its antismuggling units by August 2001 and planned to complete deployment by the end of fiscal year 2002. Again, we have not examined the new system to ascertain its effectiveness.

Need for Better Guidance to Program Staff

Our review of the various program components of the interior enforcement strategy found that working-level guidance was sometimes lacking or nonexistent. INS had not established guidance for opening benefit fraud investigations or for prioritizing investigative leads. Without such criteria, INS cannot be ensured that the highest-priority cases are investigated and resources are used optimally.

INS's interior enforcement strategy did not define the criteria for opening investigations of employers suspected of criminal activities. In response to our recommendation, INS clarified the types of employer-related criminal activities that should be the focus of INS investigations.

INS's alien smuggling intelligence program had been impeded by a lack of understanding among field staff about how to report intelligence information. Staff were unclear about guidelines, procedures, and effective techniques for gathering, analyzing, and disseminating intelligence information. They said that training in this area was critically needed.

Need for Better Program Collaboration/Coordination

Over the years, we have issued a number of reports identifying program coordination and cooperation both within INS and between INS and other agencies as problematic. This was verified as an issue in a 1995 GAO survey of INS managers and in our reviews of individual program components. For example, although both the Border Patrol and INS's Office of Investigations have antismuggling units that conduct alien smuggling investigations, these units operate through different chains of command with different reporting structures. INS's antismuggling program lacked coordination, resulting in multiple antismuggling units overlapping in their jurisdictions, making inconsistent decisions about which cases to open, and functioning autonomously and without a single chain of command. INS investigation officials told us that the autonomy of individual units and the lack of a single chain of command were major obstacles to building a more effective antismuggling program.

INS's approach to addressing benefit fraud is fragmented and unfocused. INS's interior enforcement strategy does not address how the different INS components that conduct

benefit fraud investigations are to coordinate their investigations. Also, INS had not established guidance to ensure the highest-priority cases are investigated.

With respect to collaboration with other agencies, some of our reports have noted the importance of INS working with other governmental entities to achieve program objectives.⁷ For example, with respect to worksite enforcement, we recommended that INS seek assistance from federal and state agencies, such as the Department of Labor and state labor agencies, in disseminating information to employers about INS's pilot programs for verifying employees' eligibility to work. INS has implemented our recommendation with respect to state labor agencies, but coordinating with the Labor Department is problematic because of the different interests of the two agencies. That is, Labor officials will not delve into worksite immigration matters if it would have a detrimental effect on Labor's primary mission of enforcing worker protection laws. If employees perceived that Labor investigators were trying to determine their immigration status and possibly report those who may be unauthorized to INS, it would have a "chilling effect" on employees' willingness to report workplace violations. With respect to criminal aliens, INS needed to work with states to make enhancements to the removal process, such as reducing the number of state prison facilities that served as intake, hearing, and release sites for foreign-born inmates. At the time our work was completed, INS had variable success with getting states to agree to make such reductions.

Need for Better Performance Measures

INS does not have established outcome-based performance measures in place that would help it assess the results of its interior enforcement strategy. We have found this to be an issue in both border enforcement and interior enforcement areas. For example, we have issued several reports pertaining to INS's border strategy and have noted that INS has not evaluated the strategy's overall effects on illegal entry and has not analyzed key performance data.

While INS had met its numeric goals for its antismuggling program, it had not yet developed outcome-based measures that would indicate progress toward the strategy's objective of identifying, deterring, disrupting, and dismantling alien smuggling. This was also the case for the INS intelligence program. INS had not developed outcome-based performance measures to gauge the success of the intelligence program to optimize the collection, analysis, and dissemination of intelligence information.

INS had not yet established outcome-based performance measures that would help it assess the results of its benefit fraud investigations. Additionally, INS had not established goals or measurement criteria for the service center operations units that conduct fraud investigation activities.

INS's interior enforcement strategy did not clearly describe the specific measures INS would use to gauge its performance in worksite enforcement. For example, the strategy states that INS will evaluate its performance on the basis of such things as changes in the

⁷ GAO/T-GGD-99-47, GGD-99-33, GGD-00-103, GAO-02-66.

behavior or business practices of persons and organizations. Although INS indicated that it would gauge effectiveness in the worksite area by measuring change in the wage scales of certain targeted industries, it left unclear a number of questions related to how it would do this. For example, INS did not specify how wage scales would be measured; what constituted a targeted industry; and how it would relate any changes found to its enforcement efforts or other immigration-related causes. The strategy stated that specific performance measurements would be developed in the annual performance plans required by the Government Performance and Results Act.

According to INS's fiscal year 2003 budget submission, the events of September 11th have required INS to reexamine strategies and approaches to ensure that INS efforts fully address threats to the United States by organizations engaging in national security crime. As a result, with regard to investigating employers who may be hiring undocumented workers, INS plans targeted investigations of industries and businesses where there is a threat of harm to the public interest. However, INS had not set any performance measures for these types of worksite investigations.

Concluding Observations

Having an effective interior enforcement strategy is an essential complement to having an effective border strategy. To be sure, INS's tasks with regard to interior enforcement are considerable given the nature, scope, and magnitude of illegal activity. Nevertheless, in reviewing our work, we find that INS is an agency that faces significant challenges in appropriately staffing program areas, providing reliable information for program management, establishing clear and consistent guidance for working-level staff to do their jobs consistent with the goals of the program, promoting collaboration and coordination within INS and with other agencies, and developing outcome-based measures that would indicate progress toward the strategy's objectives. Addressing these issues is important if INS is to achieve full program potential.

Mr. Chairman, this concludes my prepared statement, I would be pleased to answer any questions that you or other members of the subcommittees may have.

Mr. GEKAS. We thank the gentleman and turn to Mr. Camarota.

STATEMENT OF STEVEN CAMAROTA, DIRECTOR OF RESEARCH, CENTER FOR IMMIGRATION STUDIES

Mr. CAMAROTA. Mr. Chairman and Member of the Committee, thank you for offering me the opportunity to testify at this hearing on interior enforcement. My name is Steven Camarota, and I am

Director of Research at the Center for Immigration Studies here in Washington.

Along with visa processing overseas, the Nation's borders and ports of entry, enforcing laws within the interior of the United States is a key component of administrating the Nation's immigration laws. Unfortunately, for quite some time enforcement has been largely neglected. This has helped to create a very large illegal alien population, now estimated at over 8 million.

There are a number of reasons why interior performance must be improved. First, in a nation built on the rule of law, allowing any set of laws, including those pertaining to immigration, to be widely flouted undermine the very foundation of our Republic.

Second, we know from a variety of sources that illegal aliens are overwhelmingly unskilled, with perhaps three-fourths lacking a high school education. In a 1997 report, the National Research Council concluded that by increasing the supply of such workers immigration was responsible for close to half of the decline in relative wages for high school dropouts since 1980, making workers who already are the poorest in the United States even poorer.

By lowering wages and labor costs illegal immigration creates a third problem. There is strong evidence that increasing reliance on unskilled illegal alien labor in such industries as agriculture and construction is slowing productivity gains and causing the United States to fall behind its international competitors.

A fourth problem with illegal immigration is it imposes significant costs on taxpayers. For example, the National Research Council has estimated that an immigrant with less than a high school education, which includes the vast majority of illegal aliens, imposes a net fiscal drain of \$89,000 on public coffers during the course of his or her lifetime.

Finally and perhaps most importantly, illegal immigration is a problem because it increases the risks from foreign born terrorists. In a study recently completed by the Center for Immigration Studies we found that at least 22 of 48 al Qaeda foreign born terrorists operating within the United States since 1993 had committed significant violations of immigration laws prior to taking part in terrorism. Thus, strict enforcement of immigration laws could be a key component of our antiterrorism efforts given the large number of foreign terrorists who violate our immigration laws.

Now what can be done to make interior enforcement more effective? Let me touch on a few things very quickly. First, the tracking system currently envisioned for foreign students should be expanded to include the more than 1 million temporary workers, trainees and in-company transfers. INS investigators then could be sent out to follow up to the sponsoring employer or other institution as soon as they receive notice that a person is not coming to work or attending class as they agreed to when they got their visa.

Second, another area of enforcement that is needed is to put the names of all visa overstays in the Nation's criminal data base. Now, of course we have to create an effective entry-exit system to do that. The INS has estimated that some 40 percent of all illegal aliens in the country are people who enter on temporary visas and then overstay. With millions of visa overstays in the country, there is no question that tens of thousands of them are arrested or pulled

over in routine traffic stops each year. In fact, two of the 9/11 hijackers were pulled over in traffic stops in the months preceding the attacks, including the plot's ring leader Mohamed Atta.

Now the centerpiece of any Interior Enforcement Strategy has to be enforcing the prohibition on hiring illegal aliens. While work site enforcement, as it has commonly been called, may not seem to be vital to national security, in fact it is. We found that eight of the 48 al Qaeda terrorists in our study worked in the U.S. illegally prior to taking part in terrorism.

Also, gaining control of the border is probably not going to be possible unless we slow the number of illegal job seekers trying to cross it. You all know the national security, economic and fiscal arguments against illegal immigration are overwhelming. Many people still argue that there is little that can be done about this situation, but the evidence is actually to the contrary. The INS itself estimates that 200,000 illegal aliens each year leave the country on their own or are deported. Another 200,000 or so actually get green cards as part of the normal legal immigration process. In sum, the illegal alien population decreases in theory by about 400,000 a year. Of course something like 800,000 new illegal aliens arrive annually, but if we significantly reduce the number of new illegal aliens entering and increase the number who go on their own by vigorously enforcing the laws within the United States, the problem will largely take care of itself over time.

Now, no system can be foolproof, but with regard to terrorism it doesn't have to be if only some of those involved in a terrorist plot can be uncovered and stopped the entire conspiracy can often be unraveled, as was the case with the millennium plot. If properly implemented, interior enforcement can help to improve the lives of the working poor in this country, save taxpayers money, increase business productivity and help reduce the terrorist threat.

Thank you.

[The prepared statement of Mr. Camarota follows:]

PREPARED STATEMENT OF STEVEN A. CAMAROTA

Interior enforcement is a critically important part of effective immigration control. Along with visa processing overseas, the borders, and ports of entry, enforcing laws within the United States is a key component of administering the nation's immigration laws. Unfortunately, for a long time, efforts to enforce immigration laws within the United States have been very limited. This has helped to create a very large illegal population, now estimated by the Census Bureau at more than 8 million.¹ Lax enforcement of immigration laws has also increased America's vulnerability to foreign-based terrorists. Reinvigorating interior enforcement could play a vital role in reducing both conventional illegal immigration and the terrorist threat. In my testimony I will explain why interior enforcement is so important to the nation and suggest some possible ways to make it work better.

There are a number of reasons why interior enforcement must be improved. First, in a nation built on the rule of law, allowing any set of laws, including those pertaining to immigration, to be widely flouted undermines the very foundation of our republic. More specifically, there are significant costs to the U.S. economy and American taxpayers from allowing millions of people to live in the United States illegally. Finally, there is the risk from foreign-born terrorists. In a study recently completed by the Center for Immigration Studies, we found that 22 of 48 al Qaeda-linked terrorists who have been involved in terrorism in the United States between 1993 and 2001 had committed significant violations of immigration laws prior to

¹A copy of a Census Bureau report can be found on line at: www.census.gov/dmd/www/ReportRec2.htm

taking part in terrorism.² Thus, strictly enforcing immigration laws could become a key component of our anti-terrorism efforts.

WHY ILLEGAL IMMIGRATION IS A SERIOUS PROBLEM

Illegal Immigration Is a National Security Risk. As already indicated, a number of terrorists violated immigration laws before they committed their crimes. In many cases these terrorists lived, worked, opened bank accounts, and received driver's licenses with little or no difficulty. They operated for extended periods within the United States while they were in violation of immigration laws. For example, of the 48 terrorists in the study cited above, at least 13 had overstayed a temporary visa at some point.

In addition to overstaying visas, we found in our study that terrorists have violated immigration laws in a number of other ways. Some terrorists have engaged in fraudulent marriages to American citizens, such as Fadil Abdelgani, who took part in the plot to bomb New York City landmarks in 1993, and Khalid Abu al Dahab, who raised money and helped recruit new members for al Qaeda from within the United States. Terrorists also violated immigration laws by providing false information on their applications for permanent residence, such as Sheik Omar Abdel Rahman, who inspired several terrorist plots. Still other terrorists have violated the law by working illegally in the United States; at least eight terrorists held jobs for extended periods while living in the country illegally before taking part in terrorism, including those involved in the 1993 World Trade Center attack, the plot to bomb New York landmarks, and the Millennium plot. Because such a large percentage of foreign-born terrorists violated immigration law, enforcing the law would be extremely helpful in disrupting and preventing terrorist attacks.

Tolerating Illegal Immigration Facilitates Terrorism. One might reasonably point out that the vast majority of illegal aliens are not terrorists. However, allowing a large illegal population to reside in the United States facilitates terrorism for two reasons. First, it has created a large underground industry that furnishes illegals with fraudulent identities and documents that terrorists can (and have) tapped into. Several of the 9/11 terrorists were assisted in getting their Virginia driver's licenses from someone who specialized in helping run-of-the-mill illegal aliens obtain them.

Second, the existence of a huge illegal population creates a general contempt or disregard for immigration law. Although the general public may still want the law enforced, the scale of illegal immigration creates a tacit acceptance by law enforcement, policymakers, and even the INS itself. With millions of illegal immigrants already in the country, and with immigration laws widely flouted, it is perhaps easy to understand why the immigration inspector at Miami's airport allowed Mohammed Atta back into the country in January 2001 even though he had overstayed his visa on his last visit and had abandoned his application to change status to vocational student by leaving the country.

The release from detention of 1993 World Trade Center Bomber Ahmad Ajaj, or Brooklyn subway bomber Gazi Ibrahim Abu Mezer, both of whom had no legal right to be in the country, does not seem so outrageous when one considers that immigration law is routinely violated and millions of people are allowed to live in the country illegally. Tolerating mass illegal immigration is by no means the only factor increasing the chance that terrorists will successfully enter and remain in the country, but by not enforcing immigration law we certainly made life easier for the large number of terrorists who had broken immigration laws in the past.

Illegal Immigration Imposes Significant Costs on the Economy. We know from a variety of sources that illegal aliens are overwhelming unskilled, with perhaps more than three-fourths lacking even a high school education. Each year roughly one-quarter of a million illegal aliens who lack a high school education settle in the United States. Allowing in so many unskilled workers creates very significant economic problems. The economic goal of a modern society such as ours is to create a large middle class through high-wage, capital-intensive jobs exhibiting growing labor productivity and aiming toward a flatter distribution of income. Mass unskilled immigration, a very large share of which is illegal, subverts these goals. In its 1997 report, the National Research Council concluded that by increasing the supply of unskilled workers, immigration was responsible for close to half the decline

²A copy of the Center's terrorism report can be found on line at: www.cis.org/articles/2002/terrorpr.html

in relative wages for high school dropouts from 1980 to 1994, translating into lost wages for those dropouts amounting to about 5 percent of their incomes.³

From the point of view of employers, this seems like a desirable state of affairs, since lower labor costs mean higher profits, and for consumers it should mean lower prices as well. Of course, for the 10 percent of our workers who lack a high school education and who are already the lowest-paid workers, this reduction is quite harmful. But, putting aside the impact on the working poor, the long-term consequences of illegal immigration for the economy are also harmful.

There is strong evidence that in industries as diverse as construction, garment manufacturing, and agriculture an increasing reliance on unskilled illegal-alien labor is slowing productivity gains and causing the United States to fall behind its international competitors. Unskilled immigration acts as a subsidy by artificially holding down labor costs by increasing the supply of labor. Businesses tend to want subsidies and often grow dependent on them. But like any subsidy, illegal immigration prevents innovation and causes the industry in question to lose its competitive edge in the long term. Reducing illegal immigration and allowing wages to rise naturally would not only be good for the working poor, it would make for a more productive economy. Employers, in response to upward pressure on wages, would adopt more productive methods, such as dried-on-the-vine raisin production or greater use of pre-fabricated material in construction. We can reduce illegal immigration secure in the knowledge that it will not spark inflation because unskilled workers account for such a tiny fraction of total economic output. High school dropouts account for less than 4 percent of total output in the United States, so even if wages rose substantially for these workers, the effect on prices would be very small.

Illegal Immigration Is Also a Problem for Public Coffers. In addition to reducing wages for the working poor and hindering productivity gains, there is another problem with illegal immigration—it imposes significant fiscal costs. As a practical matter, the middle and upper class in the United States pay most of the taxes. The poor, immigrant or native, generally consume significantly more in public services than they pay in taxes. Because illegal aliens are overwhelming unskilled, this results in their having much lower incomes and tax payments. Moreover, while illegal aliens are not supposed to use most welfare programs, in fact they often make use of them anyway. Even if the immigrant himself is not eligible because of legal status, immigrant families can still receive benefits on behalf of their U.S.-born children, whose welfare eligibility is the same as any other native-born American.

In research done by the Center for Immigration Studies, we estimated that of households headed by illegal aliens from Mexico (the largest component of the illegal population), 25 percent used at least one major welfare program. This is lower than the 34 percent estimated for households headed by legal Mexican immigrants. But it is much higher than the 15 percent estimated for natives. Significant use of public services coupled with much lower tax payments means that illegal immigrants almost certainly create a net fiscal drain.

In 1997 the National Academy of Sciences (NAS) estimated that immigrant households consume between \$11 billion and \$20 billion more in public services than they pay in taxes each year. This net fiscal drain (taxes paid minus services used) is almost entirely the result of unskilled immigrants. The Academy estimated that an immigrant with less than a high school education imposes a net fiscal drain of \$89,000 on public coffers during his lifetime. This burden on taxpayers would, of course, become even worse if these immigrants were legalized, because they would remain largely poor, given their limited education levels, but they would become directly eligible for welfare programs. From the point of view of taxpayers, reducing illegal immigration by enforcing the law would almost certainly be desirable.

WHAT CAN BE DONE TO MAKE INTERIOR ENFORCEMENT EFFECTIVE

Tracking System for Temporary Visa Holders. There is a longstanding problem that the federal government often has no idea whether foreign visitors have left when their temporary visas expire. In addition, it often has no idea where foreign citizens live while their visas are still valid. A number of terrorists have been tourists and business travelers, and it would be very difficult to track such individuals within the United States. Even in the current environment, it is unrealistic to expect all foreign visitors to submit their passports every time they check into a hotel and to expect hotels to report that information. Currently, foreign travelers are required to write down their destination upon entering the United States, but no effort is made to verify the information; in fact, two of the 9/11 jihadists listed “Mar-

³Smith, James P. and Barry Edmonston, Eds. 1997 “The New Americans: Economic, Demographic, and Fiscal of Immigration,” Washington DC: National Academy Press.

riott Hotel, New York” as their destination. Perhaps there is some practical means for tracking tourists and business travelers; developing such a system would certainly be a significant challenge, but it is something the INS should at least be studying.

While tracking tourists and business travelers may not be possible at present, it would be possible to track foreign citizens residing here for extended periods of time who are affiliated with an American institution responsible for their whereabouts. Such a system makes sense because many of these long-term visitors (here from one to six years, or more) reside here for a long time in a legal status, whereas short-term visitors are less likely to have the time to hatch sophisticated plots before their visas expire. Although short-term tourists and business travelers, who are not attached to any American institution, make up the majority of non-immigrants, the number of long-term visa holders requiring oversight is still quite large. In 1999, there were more than 923,000 foreign students and exchange visitors admitted (including their spouses and young children), up 45 percent just from 1995. And the number of long-term foreign workers, plus family members, was approximately 1 million in 1999, up 123 percent from 1995. Tracking these individuals through their American institution is both desirable and possible. If they leave their schools, jobs, or otherwise violate the visa we would know it immediately, and then we could send out an investigator while the trail was still warm.

Tracking Foreign Students. One of the largest single categories of long-term temporary visitors is foreign students (F1 and M1 visas). A number of terrorists originally entered on student visas, including Eyad Ismoil, a conspirator in the 1993 World Trade Center bombing, and 9/11 hijacker Hani Hanjour, and both were in the country illegally when they committed their crimes. Ismoil dropped out after three semesters and remained in the United States illegally, while Hanjour never even attended class. Both Khalid Abu al Dahab and Wadhi el Hage originally came to the United States on student visas, later married Americans, and became naturalized citizens.

The 1996 immigration law mandated that the INS develop a computerized tracking system for foreign students to replace the current manual, paper-based system. Unfortunately, the system has not moved beyond the pilot stage, and has only been tested in a couple of dozen southeastern schools, largely because of opposition from universities and colleges. Institutions have opposed it, fearing the extra administrative burden and also because they do not like the idea of treating foreign students differently from their American counterparts. But given the very real threats we face, tracking students makes perfect sense. Ideally such a system would provide the INS with real-time information verifying a student's enrollment and immediately notify the INS if the student drops out or otherwise is not honoring the terms of his visa. The border security bill recently signed by the president will go a long way toward creating such a system. Of course, it remains to be seen whether such a system will be given the resources and political support it needs to be fully implemented.

Tracking System Should Be Expanded to Non-Students. There is no reason to limit the tracking system only to foreign students. There are an additional million temporary workers, trainees, and intra-company transferees who can and should be included in such a system. Expanding the new tracking system to cover both foreign students and foreign workers is needed to ensure that the system is as comprehensive as possible. INS enforcement then could follow up with the sponsoring employer or other institution as soon as it receives notice that the person is no longer honoring the terms of the visa.

An Entry/Exit System Is Needed for Effective Interior Enforcement. An estimated 40 percent of illegal aliens entered the United States originally on a temporary visas and then did not honor the time limit. Given the large number of terrorists who have overstayed, enforcing visa time limits could disrupt or perhaps uncover terrorist plots in the future. The first step to enforcing time limits is the establishment of an entry/exit system that would automatically record the entry and exit of all persons to and from the United States. Those who overstayed should be barred from ever entering the country again. The system would also allow the INS to identify overstayers who are still in the country. Such a system is provided for in the border security bill the president signed last month, and it is up to elected officials to ensure that it is properly implemented.

Names of Visa Overstayers Should Be Placed in a Criminal Database. In January of 2002, the INS announced that it was going to add to the FBI's criminal database the names of more than 300,000 illegal aliens who have been ordered deported, but whose departure the INS cannot verify. This is certainly a good start, but once a well-functioning entry/exit system is in place, there is no reason why the names, photos, and fingerprints of all visa overstayers could not also be added to the crimi-

nal database (assuming we begin gathering such information on all visa applicants). In that way, if they are ever arrested for a crime or even pulled over in a traffic stop, they could be held by local police and then turned over to the INS. This could become a key component of interior enforcement. With 3 to 4 million visa overstayers living in the United States, there is no question that tens of thousands of them have some encounter with the authorities each year. Traffic stops and arrests are a significant opportunity to apprehend those in the country illegally, and we should take full advantage of them.

While adding visa overstays to the criminal database would help reduce illegal immigration, one may still wonder if it would ever be useful against terrorists. In fact, two of the 9/11 hijackers were pulled over in traffic stops in months preceding the attacks. In the spring of 2001, the plot's ringleader, Mohammed Atta, received a traffic ticket in Broward County, Florida, for driving without a license. He had, by this time, overstayed his visa on his previous visit to the United States between June of 2000 and January of 2001, though the INS at Miami International Airport allowed him back into the country. Had a system of carefully tracking overstays and placing their names in the criminal database been in place, then we might have been able to apprehend Atta and perhaps avert the 9/11 attacks. Although he had not overstayed his visa, Ziad Samir Jarrah, who was on board United Airlines Flight 93 that crashed in Pennsylvania on 9/11, was issued a speeding ticket on September 9 in Maryland for driving 95 miles an hour in a 60-mile-per-hour zone. Thus, even the most sophisticated terrorists in American history seem to have run afoul of the law prior to carrying out their plans.

For the INS to quickly take custody of visa overstayers detained by police, it would need more detention space and more agents assigned to interior enforcement. By adding the names of visa overstays to the criminal database, the INS would in effect enlist the help of thousands of local law enforcement officers.

Enforcing the Ban on Hiring Illegal Aliens. The centerpiece of any interior enforcement strategy has to be enforcing the prohibition on hiring illegal aliens. While worksite enforcement, as it is commonly called, may not seem to be important to national security at first glance, it is, in fact, vital to reducing the terrorist threat. In 1986, Congress prohibited the employment of illegal aliens, although enforcement was at first spotty and has been virtually nonexistent for most of the past decade. Although it is obviously directed at turning off the magnet of jobs attracting conventional illegal aliens, such worksite enforcement is also important for anti-terrorism efforts. Gaining control of the border between crossing points is probably only possible if we dramatically reduce the number of illegal job seekers who routinely cross into the United States. If prospective illegal aliens knew there was no job waiting for them in the United States, fewer would try to cross illegally, making it easier to secure the border.

As already indicated, the estimated 8 million illegals now living in the country have also created a vast market and infrastructure for fraudulent documents. The existence of widespread fraud can only make it easier for terrorists to operate in the United States. In addition, it would be much harder for terrorists who overstay their visas to blend into normal life if finding a job is made more difficult. A number of terrorists have worked illegally prior to being arrested for terrorism. At least eight of the terrorists in our study worked in the United States illegally before being arrested. Of course, terrorists could still come with large sums of cash and try to live undetected, but doing so would be much harder if getting a job is much more difficult.

Worksite Enforcement Must Be Made Effective. There are two steps that are needed to make worksite enforcement effective. First, a national computerized system that allows employers to verify instantly that a person is legally entitled to work in the United States needs to be implemented. Employers would submit the name, date of birth, Social Security number (SSN), or alien registration number to the INS for each new hire. This information is already collected on paper as part of the Immigration Reform and Control Act of 1986, but is not used by the INS. After an instant check of its database, the employers would then receive back from the INS an authorization number indicating that the person is allowed to work in the United States. The authorization number would provide the employer an ironclad defense against the charge that they knowingly hired an illegal alien. Tests of such systems have generally been well received by employers.

Document fraud, of course, is widespread, but a computerized system would be a key tool in uncovering it. For example, a valid SSN that is linked to a different name and submitted to the INS, or a SSN and name that show up among numerous employers across the country, would both be indications that a worker is trying to skirt the law. The INS could develop procedures to identify potential problems of this kind. When a potential problem is identified, the INS would then go out to the

employer and examine all the paperwork for the employee, perhaps conducting an interview with the worker and determine the source of the problem.

Dramatically Increase the Number of INS Investigators. Investigators from the INS are charged with such tasks as worksite enforcement, anti-smuggling efforts, and combating document fraud. There are only approximately 2,000 agents assigned to interior enforcement for the entire country. This number must be increased dramatically. At present there are only the full-time equivalent of 300 INS inspectors devoted to worksite enforcement year-round, whose job it is to enforce the ban on hiring the five or six million illegal immigrants now working in the country. If the number of investigators was increased to the levels necessary, they could begin to visit employers identified by the verification system as having a potential problem, and additionally could randomly visit worksites to see that employers were filing the paperwork for each worker as required by law. Those employers found to be knowingly hiring illegals would be made to pay stiff fines.

It is not just in the area of worksite enforcement that more investigators could be put to work. The system of tracking students and perhaps other visitors requires that there be enough agents to locate those identified by the tracking system as having violated their visas. If we create a tracking system, for example, but there are no agents to investigate those who stop working or attending class, then a tracking system is almost meaningless. Failure to develop such a system means that millions of illegal immigrants will continue to work and live in the United States facing little or no penalty. Not only does this make a mockery of the rule of law, harm the working poor, and impose significant costs on taxpayers, it also exposes the country to significant security risks.

Enforce Employment Verification and Alien Registration. Most of the recommendations outlined above have dealt with temporary visa holders or efforts to reduce illegal immigration. More effective monitoring is also needed of permanent residents. A number of militant Islamic terrorists have been legal immigrants, including Sheik Omar Abdel Rahman, Siddig Ibrahim Siddig Ali (ringleader of a plot to bomb New York landmarks) and Mahmud Abouhalima, a leader of the 1993 attack on the World Trade Center. Until the early 1980s all non-citizens living in the United States were required to register annually their whereabouts with the INS. This practice should probably not be revived in that form. Potential terrorists cannot be expected to dutifully send in their addresses. However, the employment verification system outlined above could be a very effective tool in locating non-citizen legal immigrants. This is especially important when a person is placed on the watch list after he has entered the country. At present, there is often no way for the INS to know where that individual lives; however, the employment verification process would provide the INS with the last known employer for green card holders who work. Thus, if it became necessary to arrest or at least undertake surveillance of a non-citizen, his last known employer would be a place to start. The verification system would in effect be alien registration, at least for those resident aliens who work.

The INS Must Integrate Databases. One reform that would be relatively easy to undertake would be for the INS to integrate its various databases. At present, separate databases are maintained for non-immigrants, immigrants, citizenship applications, and deportations. The INS needs to establish a single integrated file on each foreign citizen that uses a biometric identifier like a digitized fingerprint. This file would contain information from each step in the visa process, including each land border crossing, each entry and exit at airports, each change in status at school or work, each arrest, as well as any application for permanent residence. This file should be accessible to law enforcement and would remain open until the person becomes a citizen.

Prevent Illegal Aliens from Obtaining Driver's Licenses and Bank Accounts. One change that seems obvious is to make it more difficult for illegal aliens to get driver's licenses and open bank accounts. Bank accounts are important because they make it easier for people who work illegally in the United States to cash paychecks and transfer money abroad. Thus, by allowing illegals to open bank accounts we make it easier to be an illegal alien, which in turn can only increase illegal immigration. A foreign passport or consular registration card should not be enough to open an account in the United States. A person should be allowed to open an account only with a U.S.-issued driver's license or state I.D. card. The key is to prevent illegals from getting driver's licenses. A number of the 9/11 terrorists were able to get licenses and open bank accounts with little difficulty. Virginia, which issued eight drivers licenses to 9/11 terrorists, only required that a third party attest to the fact that the license applicant is a state resident. This is a clear invitation for illegal aliens and terrorists to obtain drivers licenses.

All states must require birth certificates and other supporting documents for licenses. Unfortunately, a number of states do not carefully verify identity or eligibility for a license, and in fact some states now explicitly allow illegal aliens to get licenses. Not only do licenses make it easier to open bank accounts, licenses are also helpful when accessing government documents, looking for a job, renting motor vehicles, and of course boarding commercial airliners. If we are serious about reducing illegal immigration and protecting the country from terrorists, then doing a great deal more to prevent illegals from opening bank accounts and obtaining drivers licenses will have to be part of our efforts.

Amnesties for Illegal Aliens Have Helped, and Not Hindered, Terrorists. The existence of a large illegal population clearly creates a host of problems for the United States. Instead of enforcing the law, some have suggested giving green card to the illegals, thereby “eliminating” the illegal population. Of course, this would not solve the problem of future illegal immigration; after the last amnesty in 1986, the 2.7 million who were given green cards were entirely replaced by new illegal aliens within less than 10 years. While the events of 9/11 have significantly reduced political support for what had been growing momentum to grant amnesty to Mexican and perhaps other illegals, the idea will likely re-emerge at some point in the future. Some have even argued after 9/11 that granting amnesty would be helpful to national security because it would allow law enforcement to know who is in the country. For this reason some amnesty advocates have even taken to calling it a “registration” of illegal aliens. However, in the past, amnesties have helped terrorists, and not impeded them in any way.

Mahmud Abouhalima received amnesty under the 1986 Immigration and Reform and Control Act, by falsely claiming to be an agricultural worker even though he was a cab driver. Given the limited resources of the INS, it was not possible to investigate or even verify the stories of the millions of people who applied for amnesty. As a result, the vast majority who applied for the amnesty were approved. Issuing Mahmud Abouhalima a green card facilitated his terrorism because he could then work at any job he wished and was able to travel to and from the United States freely. In fact, according to the October 4, 1993, issue of Time magazine, it was only after he received his green card in 1990 that he made several trips to Pakistan, where he received combat training. Thus, the 1986 amnesty is what made his training by al Qaeda possible. Had Abouhalima not been given permanent residency, he would not have been able to travel abroad and become a trained terrorist.

The case of Mohammed Salameh, who rented the truck used in the 1993 World Trade Center bombing, shows why an amnesty will not hinder terrorists. His application for amnesty was denied because he was not as adept at making fraudulent claims as was Abouhalima. The INS did its job in his case and rejected his application on its face. However, because there is no mechanism in place to force people who are denied a green card to leave the country, he continued to live and work in the United States illegally and ultimately take part in terrorism. Thus, in the past terrorists who applied for amnesty either received it, making their operations easier, or, when turned down, simply continued to engage in terrorism unhindered. In sum, the last amnesty only helped terrorists and did nothing to hinder those involved in the first World Trade Center bombing. If we are to have an amnesty, then at the very least we first need to devote a great deal more resources to interior enforcement, including detention space and INS agents assigned to investigate applications and to detain and remove those found ineligible.

CONCLUSION

Although the national security, economic, and fiscal arguments against illegal immigration are overwhelming, many people still might argue that there is little that can be done about this situation. In fact, the problem isn't nearly as intractable as it may seem. The INS estimates that each year roughly 150,000 illegal aliens leave the country on their own, another 200,000 or so get green cards as part of the normal “legal” immigration process, 50,000 illegals are deported, and about 20,000 die. In sum, at least 400,000 people leave the illegal-alien population each year.

Of course, something like 800,000 new illegals arrive annually, and thus the total illegal population continues to grow. But the numbers leaving the illegal population are still huge, and we can use this fact to our advantage. If we significantly reduce the number of new illegal aliens entering the country and increase the number who go home, even if only modestly, we can engineer an annual decline in the illegal-

alien population, allowing the problem to become progressively smaller over time through attrition.⁴

Strict enforcement of immigration laws—at consulates overseas, at ports of entry, at the border, and especially in the interior of the United States—is one of the most effective means we have of reducing the threat from foreign-born terrorists. Failure to develop a vigorous interior enforcement system will result in the continual increase of the illegal alien population, imposing significant costs on unskilled American workers, taxpayers, and, in the long-run, American business. By enforcing immigration laws we can improve the lives of the working poor, save taxpayers money, and help reduce the terrorist threat.

Mr. GEKAS. We thank the gentleman. And we turn to tower final witness, Ms. Demeo.

STATEMENT OF MARISA DEMEO, REGIONAL COUNSEL, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

Ms. DEMEO. On behalf of MALDEF, I appreciate the opportunity to present testimony to you today. In order to evaluate the INS's Interior Enforcement Strategy and its effect on the national security and the civil rights of Latinos, I will raise two issues. The first point I will make is that the Federal Government's changing Interior Enforcement Strategy at work sites does not forward the goal of fighting terrorism but impacts greatly the Latino community.

The second point I will make is that allowing local law enforcement to engage in immigration enforcement when crime is not involved decreases public safety and increases mistrust between Latinos and local law enforcement.

First, as has been stated there are approximately 8½ million undocumented immigrants in the U.S., and 60 percent are from Latin American countries. Traditionally the INS has focused its Interior Enforcement Strategy in areas that are designed to protect the public safety, which we support by focusing on crime and work sites where crime or abuse is occurring. Since 9/11, however, the interior enforcement policy has changed significantly.

In my written testimony I review recent INS enforcement activities at airports. Hundreds of individuals have been fired from their jobs and hundreds more have had indictments brought against them. The intention to fight terrorism and the result of finding no ties to terrorism in these efforts, however, are constant themes in these enforcement efforts.

Take the case of Salt Lake City Airport. After checking work authorization papers the INS ensured that over 200 individuals were fired from their jobs, and working with the U.S. Attorney's Office, they secured an additional 69 indictments. Most of the indictments were brought against Central and South American immigrants for allegedly using false Social Security cards. While three employees worked in security screening, many worked in other areas, such as janitorial services and food services. The U.S. Attorney admitted that not one of the persons indicted was associated with any kind of terrorism. He also said "we think we simply had people who wanted to work."

The firing and indictments of hard working family-oriented Latinos is not helping our war on terrorism, but it is causing grave economic and other hardships on our community. Congress should

⁴The report, authored by Robert Warren, can be found on line at: <http://lamarsmith.house.gov/INSreport.pdf>

provide strict oversight of the INS's Interior Enforcement Strategy post-9/11 and redirect those efforts to methods that actually achieve the goal of increasing national security.

Second, there are already tensions between local law enforcement agencies and many minority communities. The fear and mistrust of local law enforcement in the Latino community is only heightened when local law enforcement engages in immigration enforcement. Also racial profiling of Latinos increases. Current trends post-9/11 to involve local law enforcement in enforcing immigration laws make matters worse.

INS Commissioner Ziglar announced in December that the INS would for the first time input data on over 300,000 individuals who have somehow violated their visas into an FBI data base. About half of those on the list are originally from Mexico and most have violated civil immigration laws but are not dangerous criminals. Local law enforcement officials who stop motorists for a traffic violation could access the data base and detain individuals even if there are no criminal violations.

Earlier this year the INS also began working on agreements with Florida and South Carolina so that more local law enforcement officials could arrest immigrants on civil immigration violations. In South Carolina the State Attorney General is eager to deputize his local officials to enforce immigration laws. He said, "you can go around the streets of Columbia, South Carolina, and you can see people that there is every reason to suspect that they are not here legally." He further explained that, "you have got our borders being overrun in this country. I am sure we are going to find out that the major problem in South Carolina will be those of Mexican origin."

To make things worse, Attorney General Ashcroft recently announced that the Justice Department would soon seek the help of local law enforcement to enforce not only criminal but also the civil immigration laws. The AG did this despite strong opposition from the Latino community. Although the AG tried to present the involvement of local law enforcement as limited, he could not hide this dramatic new interpretation of immigration law. Going against long-standing precedent, the AG has now interpreted the law in a way that claims that every local law enforcement agency has the "inherent authority" to enforce not only the criminal provisions of the immigration law but also the civil provisions.

This drastic change in legal interpretation will empower not only local law enforcement officials who are trying to fight terrorism, but it will also empower and embolden those officials who are bad actors. We are particularly concerned about the impact of this decision in areas where there are new and growing Latino immigrant communities. Eighty thousand local law enforcement agencies could begin enforcing civil immigration laws for which they are not trained and which will increase fear among Latinos and increase abuse.

Congress must take steps to remove local law enforcement's involvement in immigration where criminal activity is not involved to reduce the possibilities of civil rights violations of Latinos and a reduction in overall public safety.

Thank you.

[The prepared statement of Ms. Demeo follows:]

PREPARED STATEMENT OF MARISA J. DEMEO

INTRODUCTION

The Mexican American Legal Defense and Educational Fund (MALDEF) appreciates the opportunity to provide testimony regarding “The Immigration and Naturalization Service’s (INS’) Interior Enforcement Strategy” and some of the changes INS has made since the terrorist attacks of September 11, 2001. MALDEF is a national nonprofit organization dedicated to protecting and promoting the rights of Latinos in the areas of education, employment, political access, immigrants’ rights, criminal justice, and public resource equity. We achieve our mission through community education, litigation and advocacy. Founded in San Antonio, Texas, in 1968, MALDEF now is headquartered in Los Angeles with offices in Sacramento, San Antonio, Houston, Albuquerque, Phoenix, Chicago, Atlanta, and Washington, D.C.

In order to evaluate the changes to the interior enforcement actions of the INS and their effect on national security and the civil rights of the Latino community, this testimony raise two issues: 1) the federal government’s changing interior enforcement strategy at work sites does not forward the goal of fighting terrorism but impacts greatly the Latino community; and 2) allowing local law enforcement to engage in immigration enforcement when crime is not involved decreases public safety and increases mistrust between Latinos and local law enforcement.

CHANGING INTERIOR ENFORCEMENT STRATEGY AT WORK SITES DOES NOT FORWARD THE GOAL OF FIGHTING TERRORISM BUT IMPACTS GREATLY THE LATINO COMMUNITY

Traditionally, the Immigration and Naturalization Service (INS) has focused its interior enforcement strategy in areas that are designed to protect the public safety. According to the latest estimates from the census in 2000, approximately 8.7 million undocumented immigrants were living in the U.S. in April of 2000.¹ The largest group is from Mexico, which is estimated to be about 3.8 million.² Another 1.4 million are from other Latin American countries in South America, Central America, and the Caribbean.³ As a result, any interior enforcement strategy will greatly affect not only the Latinos who are here in an undocumented status, but their families with whom they live, including spouses, children, and siblings who are in many cases either U.S. citizens or legal immigrants.

We supported the INS’ past policy to focus primarily on crime, smuggling of undocumented immigrants, fraud rings, and work sites where there is also smuggling of undocumented immigrants, human rights abuses and other criminal violations.⁴ Since the terrorist attacks on September 11, however, the INS interior enforcement policy has changed significantly. In this section, the testimony will review the current trend in the INS’ activities in work site raids. In the following section, the testimony will discuss the INS’ increasing cooperation with local law enforcement.

Soon after the September 11, 2001 terrorist attacks on the U.S., the INS initiated an interior enforcement operation, which has been called either “Operation Safe Travel” or “Operation Tarmac” on different occasions. This Operation was first reported in the press in Seattle, Washington; however, the Operation is a national strategy. According to media reports, over 350 individuals have been arrested by authorities at 13 airports throughout the country mainly because of presenting false information regarding their immigration status or using false documentation to obtain employment.⁵ Hundreds more have lost their jobs as a result of the raids.

In Seattle, INS officials met with representatives from employers who employ individuals at the Sea-Tac Airport.⁶ While INS officials spoke about their activities as fulfilling the need to fight terrorism, the INS did not just search the records of security screeners and baggage handlers.⁷ INS also searched records of individuals who worked in the food service sector and in maintenance.⁸ Further, the INS pro-

¹ Genaro C. Armas, *Illegal Immigrant Population Doubled*, Assoc. Press., Jan. 23, 2002 (visited Jan. 23, 2002).

² *Id.*

³ *Id.*

⁴ See, e.g., Immigration and Naturalization Service, *Investigations* (visited Jan. 23, 2002) <www.ins.usdoj.gov/graphics/lawenfor/interiorenf/investigations.htm>.

⁵ Matthew L. Wald, *Officials Arrest 104 Airport Workers in Washington Area*, N.Y. Times, Apr. 24, 2002 at A11.

⁶ Sam Skolnik, Seattle Post-Intelligencer Rptr, Nov. 28, 2001.

⁷ *Id.*

⁸ *Id.*

vided no evidence that the status of being undocumented *per se* means that one is a security risk.

Another report of work site enforcement at an airport came from the Lindbergh Field airport in San Diego, California.⁹ Again, the search was not limited to those who arguably might hold high security positions.¹⁰ The search included employers who hire individuals to work at McDonald's, retail shops, newsstands, candy shops and bookstores.¹¹ INS spokesperson Lauren Mack stated, "This is a part of our commitment to protect the nation's security and safety in the wake of Sept. 11 terrorist attacks."¹² She went on to say, "We've received information that some airport employees with access to sensitive security areas, especially the tarmac, may have been working in this country without the appropriate authorization to do so."¹³ What Mack did not say was that the INS had facts to establish that working without authorization equaled being a security threat.

In Salt Lake City, Utah, the INS not only checked work authorization papers, it ensured that 202 individuals were fired from their jobs.¹⁴ In addition, INS worked with the U.S. Attorney's office in Utah to secure 69 indictments.¹⁵ Of the 69 indictments, most were from Central and South America.¹⁶ Except for six of the indictments, the rest were brought against individuals who are allegedly in the country in an undocumented status.¹⁷ Their indictments were for allegedly using false Social Security cards.¹⁸ Based on information and belief, the six individuals indicted for allegedly lying about their past criminal histories were white non-Latinos. The indictments were brought against employees who worked for private companies in areas such as security screening, janitorial and food services.¹⁹ Of the 69, 3 were involved in security screening.²⁰

While the INS operation in Salt Lake City, Utah, was done to fight terrorism, U.S. Attorney Paul Warner admitted that none of the suspects have been tied to terrorism.²¹ He stated, "While there is no evidence that anyone indicted as a part of Operation Safe Travel has attempted any kind of terrorist activity at the airport or that the airport is anything less than safe, in today's environment, we are not going to wait around for something to happen."²² Warner also said about those who were caught in this operation, "We think we simply had people who wanted to work."²³

After Salt Lake City, the INS continued its Operation in Portland, Oregon.²⁴ INS detained thirty individuals for allegedly providing false information to work for employers serving the Portland International Airport.²⁵ It found an additional 94 who allegedly were unauthorized to work.²⁶ Two of the individuals indicted in Portland are Jose Fortanel Garcia and Victoriano Royas Modesto, both from Mexico living with their spouses and children in the U.S.²⁷ Their attorney indicated that neither had been charged with a violent crime, using a weapon, or a serious drug crime, and that the two are not dangerous in any way.²⁸ The Assistant U.S. Attorney handling the case, Kathleen Bickers, stated "This is part of the federal government's increased vigilance to ensure airport security and safety."²⁹ This was said despite the fact that officials reported that there was no evidence linking those arrested to terrorist activities.³⁰ Ed Sale, an INS spokesperson claimed that those who are undocumented are "trying to hide (their illegal immigration status), [therefore] they're

⁹ Marisa Taylor & Ronald W. Powell, *INS Checks on Lindbergh Workers' Status*, San Diego Union-Trib., Dec. 1, 2001, at A-1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Pat Reavy, *Airport Bust Rounds Up 271*, Deseret News, Dec. 12, 2001.

¹⁵ *Id.*; Jerry Seper, *50 Alien Workers At Airport Arrested*, Wash. Times, Dec. 13, 2001, at A6; *Salt Lake Airport Workers Arrested*, Assoc. Press, Dec. 11, 2001.

¹⁶ Reavy, *supra* note 14.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Seper, *supra* note 15, at A6.

²¹ Reavy, *supra* note 14.

²² Seper, *supra* a note 15, at A6.

²³ Reavy, *supra* note 14.

²⁴ Mark Larabee, *30 Workers at PDX Arrested*, Oregon Live, Dec. 12, 2001.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

subject to coercion and bribery. That could be a security threat.”³¹ Although Sale made this claim, he produced no facts to substantiate it.

In Phoenix, Arizona the INS cooperated with the Social Security Administration, the FBI, and U.S. Marshals Service to indict 33 workers at Sky Harbor International Airport for document fraud.³² Almost all of the workers are Latinos. Again there was no evidence connecting any of these workers with terrorist activities.

In the Washington, DC area, a total of 104 workers have been arrested who were employed at Dulles, Reagan National and Baltimore Washington International Airports.³³ Many of these workers were undocumented immigrants and were charged with supplying false information to obtain jobs. Yet again, none were linked to terrorism in any way.³⁴

In San Francisco, 25 immigrants were arrested at San Jose and San Francisco International Airports. Eleven of those arrested were undocumented immigrants, and 14 were lawful permanent residents with prior felony convictions. All of them were subject to deportation.³⁵

In Las Vegas, 27 workers at McCarran International Airport were indicted on charges of providing false information regarding their immigration status or using false social security numbers to obtain employment.³⁶ Maria Del Carmen Reyes and Mirella Bravo-Zambrano, two workers who were arrested, were described by their employer as outstanding examples of quality workers who “. . . are wives and mothers and didn’t deserve to be handcuffed and shackled like they were.”³⁷

While the INS has argued that its Operation Safe Travel or Operation Tarmac focusing at airports across the country is a good tool to fight terrorism, it has so far failed to prove the effectiveness of the tool that is hitting the Latino community particularly hard. After the federal government’s operations have resulted in hundreds of employees being fired and hundreds more being indicted most often for document violations, the federal government has yet to connect any of those arrested at the airports with terrorism or terrorist activities. Justice Department officials admit that had these workers done the same thing in order to work in a restaurant or at Wal-Mart they might not have been prosecuted.³⁸ Government officials admit time and again that there have been no ties to terrorism yet they keep insisting that this is an effective tool to fight terrorism. While the INS’ efforts so far have focused heavily at airports, other sites that the government will allege are national security concerns will also be targeted.³⁹ The firing and indictments of hard-working, family-oriented Latinos and other immigrants are not helping our war on terrorism but are causing grave economic and other hardships on our community. Congress should provide strict oversight of the INS’ interior enforcement strategy post-9/11 and re-direct those efforts to methods that actually achieve the goal of increasing national security.

ALLOWING LOCAL LAW ENFORCEMENT TO ENGAGE IN IMMIGRATION ENFORCEMENT WHEN CRIME IS NOT INVOLVED DECREASES PUBLIC SAFETY AND INCREASES MISTRUST BETWEEN LATINOS AND LOCAL LAW ENFORCEMENT

MALDEF traditionally has been opposed to allowing local law enforcement to engage in immigration enforcement where crime is not involved. There are already many tensions between local law enforcement agencies and minority communities in different parts of the country for a variety of reasons. The fear and mistrust of local law enforcement in the Latino community is only heightened when local law enforcement engages in immigration enforcement.

In order to address this issue through litigation, MALDEF filed a case last year against the Rogers, Arkansas police department. In our case, we allege that Rogers police pulled over our plaintiff, Miguel Lopez, while he was driving his car with his family in July 2001 as he was approaching his home. After detaining Lopez and his wife, the officers asked to see their immigration papers and searched their car without their consent. The offices left without issuing a citation. It was racial profiling

³¹ *Id.*

³² Department of Justice, Office of the U.S. Attorney, District of Arizona, Press Release, *Federal Agencies Cooperate in Joint Investigation to Promote Airport Security-Arrests Made Involving Sky Harbor International Airport in Phoenix*, Apr. 18, 2002.

³³ Wald, *supra* note 5.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Juliet V. Casey, *Operation Tarmac: Advocates: Hispanics Unfairly Targeted*, Las Vegas Rev.-Jrnl, Feb. 9, 2002.

³⁷ *Id.*

³⁸ *Id.*

³⁹ See, e.g., Megan Boldt, *Border Patrol Arrests Eight Illegal Aliens at Energy Plant*, Assoc. Press, June 13, 2002.

similar to that experienced by African Americans with the added offense of asking for immigration papers without any reason other than race or national origin.

Immigrants, generally, prefer not to draw attention to themselves from the government or the private sector even if they are here legally. This explains, in part, why Latino immigrants under-report when they are the victims of crime or when they are the victim of illegal civil practices, such as employment discrimination, unsafe working environments, or housing discrimination even though they experience these practices in significant numbers. Current trends post-9/11 to involve local law enforcement in enforcing immigration laws, particularly civil laws, will only drive Latino immigrant communities further underground and make them less willing to provide information to law enforcement that would be helpful in solving crimes and resolving legal violations that affect not just Latinos but others with whom they work and live. It will also lead to less cooperation from immigrant communities with law enforcement searching for leads to fight terrorism.

On December 5, 2001, at a House hearing before the House Committee on Government Reform Subcommittee on Criminal Justice, Drug Policy and Human Resources, INS Commissioner James W. Ziglar announced that the INS would for the first time input data on over 300,000 individuals who have overstayed their visas or somehow violated their visas into a federal criminal database.⁴⁰ Although Ziglar claims that this was not part of the anti-terrorism strategies, it was done at a time when local law enforcement is looking for ways in which they can help fight terrorism.⁴¹ South Carolina Attorney General Charlie Condon, for example, wants the INS to delegate more authority to local law enforcement to enforce immigration laws.⁴² About half of the individuals on the list of 300,000 are originally from Mexico.⁴³ It has been reported that most of the individuals are people who have violated civil immigration laws but are not dangerous criminals.⁴⁴

The FBI runs the database, known as the National Crime Information Center (NCIC), to which the 300,000 names will be added.⁴⁵ Over 80,000 law enforcement agencies have access to NCIC.⁴⁶ INS officials have said that once the names are in the system, local law enforcement officials who stop motorists for a traffic violation or for minor infractions could have access to the database and detain the individual until the INS comes to take over the detention.⁴⁷ INS Commissioner Ziglar has admitted that, "It's a huge project and it absolutely will create more work at the field level."⁴⁸

The State of Florida has already begun working on a broader agreement with the INS that would allow Florida law enforcement agencies to arrest immigrants on civil immigration violations.⁴⁹ Under this plan, 35 police officers, sheriff's deputies and other state law enforcement agents would be trained in immigration policies and procedures and would carry out limited immigration enforcement responsibilities.⁵⁰

The Attorney General of the State of South Carolina, Charlie Condon, has also initiated a similar plan to deputize a special unit of state law enforcement officers to investigate immigration violations.⁵¹ Claiming that undocumented immigrants are easy to identify on sight, Condon stated during his announcement of his effort that, "You can go around the streets of Columbia, [South Carolina] and you can see people that there's every reason to suspect they're not here legally."⁵² He went on to explain that, "You've got our borders being overrun in this country. I'm sure we're going to find out that the major problem in South Carolina will be those of Mexican

⁴⁰ Chris Adams, *INS to Put in Federal Criminal Databases The Names of People Ordered Deported*, Wall St. Jnl., Dec. 6, 2001, at A22.

⁴¹ Jonathan Peterson, *Response to Terror: INS Fugitives to Be Listed on FBI Database*, L.A. Times, Dec. 6, 2001.

⁴² OP-ED, *Immigrants Aren't Terrorists*, The Herald (Rock Hill, SC), Oct. 26, 2001, at 8A; Charlie Condon, *States Can Help Stop Illegal Immigration*, The State (Columbia, SC), Oct. 26, 2001, at A15; Assoc. Press, *South Carolina Editorial Roundup*, Sun News (Myrtle Beach, SC), Oct. 30, 2001.

⁴³ Peterson, *supra* note 41.

⁴⁴ *Id.*

⁴⁵ Mary Beth Sheridan, *INS Seeks Law Enforcement Aid in Crackdown: Move Targets 300,000 Foreign Nationals Living in U.S. Despite Deportation Orders*, Wash. Post, Dec. 6, 2001.

⁴⁶ *Id.*

⁴⁷ Peterson, *supra* note 41.

⁴⁸ *Id.*

⁴⁹ Mike Branom, *Fla. Police May Aid INS in Detaining Immigrants*, Wash. Post, March 5, 2002 at A5.

⁵⁰ *Id.*

⁵¹ Jim Davenport and Kim Baca, *Attorney General Wants All Illegal Immigrants Removed From the State*, Assoc. Press, Oct. 12, 2001.

⁵² *Id.*

origin.”⁵³ Although the details of these plans have yet to fully emerge, it is clear that there will be ramifications for the Latino and immigrant communities. In South Carolina, those of Mexican origin are the express targets of local law enforcement involvement with federal immigration law enforcement.

To make things worse, on June 5, 2002, Attorney General John Ashcroft announced that the Justice Department would soon affirmatively seek the assistance of local and state law enforcement agencies to help enforce, not only the criminal, but also the civil immigration laws as part of the new National Security Entry-Exit Registration System.⁵⁴ This change in procedure reverses the Department’s longstanding position that local law enforcement had no authority to enforce the civil immigration laws.⁵⁵ Although the Justice Department is requesting, at least initially, that local law enforcement limit its enforcement activities to the names contained in the NCIC database as part of the new registration program, the Justice Department will soon issue an Office of Legal Counsel opinion granting local law enforcement with the “inherent authority” to enforce both the civil and criminal provisions of the immigration laws.⁵⁶

The National Security Entry-Exit Registration System will require certain non-immigrant visa holders to register with the INS and have their fingerprints and photographs taken when entering the country. They will then be required to register their departure within 30 days. If they remain in the country after thirty days, they must report to an INS office to re-register, and appear every 12 months after that.⁵⁷ These regulations will apply to all nationals of Iraq, Iran, Sudan, Libya and Syria; certain nationals of other countries whom the State Department determine to be an elevated national security risk; and any other alien identified by INS inspectors upon specific criteria which have not yet been revealed.⁵⁸ Any individual that fails to comply with these requirements will be entered into the NCIC database, and the Department of Justice will seek the assistance of local law enforcement in their apprehension. The listing of violators includes any visitor that fails to re-register within the required time periods or otherwise overstay their visas.

Not only will the INS find itself busier, of even greater concern, are 80,000 local law enforcement agencies having access to a database and believing they have inherent authority beyond the database listing to enforce civil immigration laws, for which the law enforcement agencies are not trained and which will increase fear in Latinos of interaction with local officials. It will not just be undocumented immigrants who will fear the local officials, it will be brothers, sisters, cousins, parents, co-workers, and neighbors of documented and undocumented immigrants who will take every opportunity to avoid interaction with local officials out of fear that somehow they will be detained or someone they know will be if they interact with police. If the INS wishes to prioritize and detain individuals who have been issued deportation orders or are in violation of our laws, it can do so under our laws but it should steer away from involving local officials. If criminal activity or suspicion is not involved in the immigration context, Congress must take steps to remove local law enforcement’s involvement to reduce the possibility of civil rights violations of Latinos and a reduction in overall public safety.

CONCLUSION

MALDEF and the Hispanic community support the President, the Congress, and our Government as they move through the difficult task of preventing future terrorist attacks. Many in our community are already serving our country in the military and in a number of other ways. While the country must take steps to protect our national security, it is incumbent upon Congress to monitor the INS to ensure that its own activities and its cooperative relationships with local law enforcement do not have the unintended effect of decreasing public safety and unnecessarily depriving hard-working Latinos who are not security-risks of the chance to work.

⁵³ *Id.*

⁵⁴ Department of Justice Fact Sheet, *National Security Entry-Exit Registration System*, June 5, 2002. (visited June 18, 2002) <<http://www.ins.usdoj.gov/graphics/exitrackingsys.pdf>>

⁵⁵ See, e.g., Department of Justice, Office of Legal Counsel, *Assistance by State and Local Police in Apprehending Illegal Aliens*, Feb. 5, 1996 (visited June 18, 2002) <<http://www.usdoj.gov/olc/1996opinion.html>>.

⁵⁶ Department of Justice, *Attorney General Prepared Remarks on the National Security Entry-Exit Registration System*, June 6, 2002 (visited June 18, 2002) <<http://www.ins.usdoj.gov/graphics/preparedremarks.htm>>

⁵⁷ Department of Justice, *supra* note 54.

⁵⁸ *Id.*

Mr. GEKAS. We thank the lady. We acknowledge the presence of, and let the record so indicate, the gentleman from California, Mr. Berman, and the lady from Pennsylvania, Ms. Hart, and we will proceed with 5-minute periods of question on the part of each Member. We will start with of course then acknowledging the presence of the lady from Texas, Ms. Jackson Lee, with 5 minutes allotted to the Chair for the purposes of rolling along in questions here.

Ms. Demeo, you are indicating you have no objection, I take it, in your statement to law enforcement, local law enforcement becoming involved in an immigration or deportation matter or some other way of treating an illegal alien once a criminal action has been begun in which that law enforcement officer might be involved?

Ms. DEMEO. That is correct, that the legal precedent allows local law enforcement to get involved where there is any suspicion of criminal activity.

Mr. GEKAS. How would you envision the thing that you fear that a law enforcement agent might become involved without the benefit, so to speak, of a criminal action? How do you anticipate that would occur?

Ms. DEMEO. Well, already we have experience with local law enforcement trying to enforce civil immigration laws even before there was no such legal interpretation. For example, in Rogers, Arkansas we have a lawsuit right now against the police force there because what they did is they targeted people based solely on how they looked, Latino, and asked them for immigration papers even though there was no basis to do that. With an interpretation that local police have the authority to do this inherently, then we envision that local police such as those in a city like Rogers will continue to pull aside people based solely on how they look and will say they suspected they are here in an undocumented status, which is only a civil violation.

Mr. GEKAS. Were any of those discovered to be illegal aliens, undocumented, so forth, given the fact that from your perspective it was a violation of civil rights, shall we say, was there a result on any of those that the finding was made of undocumented workers?

Ms. DEMEO. The plaintiffs in our case were all here legally either as legal residents or as U.S. citizens. There may have been some apprehension of undocumented immigrants, but the case is on behalf of those who were here legally who were targeted simply on the basis of how they looked by local law enforcement.

Mr. GEKAS. Mr. Greene, you stated that you came and as you were transferred in 1998 or 1999 and began working, I take it that you were then talking about the actions you took like with the 600 that were actually deported prospectively; that is, in the time that you organized your little unit. What happened to the millions that were already in illegal status?

Mr. GREENE. Let me clarify that. The project that I worked on in 1998 was the planning module for the Interior Enforcement Strategy. In September, October 1998 I went back to Denver and conducted my responsibilities there. The national strategy was announced in January 1999. Those individual cases that I outlined for you were cases that were done across the country and in fact across the world pursuant to the strategy.

Mr. GEKAS. That is what I am saying, that these were new cases in effect for you.

Mr. GREENE. Some of them dealt with people who were here, who had made entries prior to the rollout of the strategy. Some of them, as Operation Forerunner was, actually interdicted people who were attempting entry in the United States before they arrived here. So it was really a combination of, you know, folks who had already made an illegal entry, already committed violations, folks who intended to commit violations.

Mr. GEKAS. But that would not have made a dent in the numbers of illegal aliens?

Mr. GREENE. The dent is difficult to quantify because we only have anecdotal information about the effectiveness of the criminal organizations that we dismantled. What we know, for example, is with the Porges case that the potential to create additional thousands of fraudulent asylum cases were brought to an end by our shutting down that organization. What we know about Operation Forerunner was that we shut down an infrastructure of smuggling that extended overseas through Central America into the United States.

So in that sense, the purpose of the strategy and the use of the resource was to dismantle a system that fostered and profited from illegal migration to—it has been difficult for me, and one of the things that I have wrestled with since I became the head of the Investigation Division is to try to quantify in terms of a credible number how many people did we prevent from coming into the United States by dismantling this system.

Mr. GEKAS. The 314,000, that is the figure we have of people under direct court order of deportation. What methodologies do we use to try to enforce those directives?

Mr. GREENE. The Absconder Initiative has, Mr. Chairman, two phases. We took during phase 1, which was the responsibility for my division because of the implications to national security involved, a little fewer than 6,000 cases. What we found when we went back into reviewing each and every case was that approximately 10 to 15 of those cases drop out where for some reason or another we have been able to identify that the person has in fact left the country, and we didn't know that in our system, we found that some of them died, we found that some of them became legal immigrants into this country.

Mr. GEKAS. How do you find out that some of them died?

Mr. GREENE. We take the file and we do a check, we data mine private sector data systems like ChoicePoint or Lexis-Nexis, and what we find is that if there is no record connected with this it gives us a lead to maybe going to a bureau of vital statistics and finding out. In some cases we found out because we went and talked to neighbors.

That is the significance of the Absconder Initiative. It is the first time we systematically went out as a Service to conduct a program that enforced every single final order that we have issued. Now we had to prioritize that. The initial 6,000 involved people who might potentially pose a threat to this country or people with egregious criminal records. When we moved beyond that into phase 2, which are sort of remaining final orders, we will be prioritizing that as

well in terms of association with criminal activity and then just straight administrative violations.

I must say, however, that the reason that we are looking to put these names into the National Criminal Identification Computer, into NCIC, is that in fact failure to leave under a final order of deportation is a crime. It is a felony under title VIII. And so that is the implication, that simply because the predicated offense was an administrative violation, how they entered the United States, failure to respond to a final order of deportation is in fact a crime.

Mr. GEKAS. The time of the Chair has expired. The lady from California is recognized for 5 minutes.

Ms. LOFGREN. Thank you, Mr. Chairman. I was very interested, Mr. Greene, in your testimony about the workplace enforcement and what works and what doesn't work, and I want to take this chance to ask you about something that has bothered me for a long time. I have seen the phenomena of employers calling in the INS when employees start to organize, for example, into a labor union or there is, say, an OSHA violation or something that an employee is going to rat on the employer about, and that is when the INS is called in and actually that doesn't help in terms of sanctions because it is the employees who are penalized, not the employers.

What is your idea about how to go after employers so that they are really chilled from offering employment to people who are not authorized to be employed as compared to punishing employees?

Mr. GREENE. One of the approaches that we took in 1998, as you know, in connection with the new strategy, was that the goal of work site enforcement operations was to change the hiring practices of employers as opposed to merely arrest and remove the employees. Now, we think that an effective strategy involves both. We—and it is a special new strategy that we are using in connection with these national infrastructures. But clearly the piece that involves changes in employers' hiring practices is critical to the success of the program. What we found, however, when we looked at the sliding scale of harms that were created in the late 1990's by illegal migration was that criminal aliens, smuggling organizations, worker exploitation, human trafficking, sexual exploitation of migrants, posed a much greater threat in fact than the fact that people, illegal migrants, were working in the workplace. The reality was that after 1996 we were getting very few complaints about worker displacement by illegal migrants.

Ms. LOFGREN. I don't want to interrupt but we only get 5 minutes. I would like to work with you further on this issue, because I think we certainly want employees to be able to make sure that employers who are, you know, operating unsafe work sites and the like are deterred from doing so. The current situation really is adverse in enforcing both labor laws and also INS laws because now employees are going to hide out.

I was interested in the testimony, the GAO report on page 5, the need for better information technology. I appreciate those reports. Of course this is music to my ears because it is something that I have been talking about for the last 5 years.

I want to ask you, Mr. Greene, I can't find the newspaper article but I was reading it over the weekend, the Commissioner came to California and talked about a new data base system for entry with

biometrics, and it sounded very positive. Can you tell the Committee about that?

Mr. GREENE. I can now.

Ms. LOFGREN. A little good news, Mr. Chairman.

Mr. GREENE. This is the Data Share system that you are describing. It is another one of the innovations that came out of the recognition since the terrorist attacks for the need for greater sharing. What it involves is placing at the hands of our inspectors at ports of entry immediately information that relates to the nonimmigrant visa applications that were made and adjudicated by the Department of State overseas along with the photograph. So it becomes a very useful tool not only in terms of the facial recognition of the applicant, but as an investigating tool regarding the purposes of entry at the time. It is a great step forward for us, and we are very enthused to see it work.

Ms. LOFGREN. Finally, Mr. Chairman, I would note that the INS has less agents than we have police officers working on any given day within Santa Clara County. So it is important that their efforts be targeted to those who pose the greatest risk. It sounds like that is what the INS is trying to do. I would hope that we would be in agreement that following up on those people that CIA has identified as a terrorist threat is more important than going after the 7-year-old I mentioned in my opening statement whose father, American citizen father died before he could petition for him and who is now in legal limbo.

And with that, I would yield back.

Mr. GEKAS. We thank the lady. We turn to the gentleman from California, Mr. Berman, for 5 minutes round of questioning.

Mr. BERMAN. Thank you, Mr. Chairman. Just a few questions, Commissioner Greene.

Mr. GREENE. Assistant Commissioner Greene.

Mr. BERMAN. You have noted that the INS and Commissioner Ziglar's proposals for a Department of Homeland Security would include the INS. A consensus has sort of developed in the Congress and I think in the Administration regarding the need for a restructuring within INS. Much of it is focused on the separation of the enforcement activities from the services activities.

Mr. BERMAN. Can you spell out for me how the INS Commissioner's own restructuring proposals will develop in light of this decision to move INS to the Department of Homeland Security?

Mr. GREENE. Congressman, I must tell you that the details are not clear enough yet to be able to say that. I think that in discussions that we have had with the Office of Homeland Security, the Administration has in fact taken the position that any new structure for the Immigration Service would involve some sort of separation between the enforcement functions and the service functions, but we are still waiting to see how that will play itself out in terms of the details of the new proposed department.

Mr. BERMAN. So what you are saying is, in and of itself, the simple shift of INS from the Department of Justice to the Department of Homeland Security does not mean that the efforts, whether they are legislative or administrative, to restructure the INS and effectuate the separation will end, that that restructuring effort will continue?

Mr. GREENE. I can't say definitively, but that is not my sense.

Mr. BERMAN. Okay. Dr. Camarota testified about the—well, let me skip that issue.

When we talk about the employer—we know that employer sanctions have in effect turned out to be somewhat farcical as envisioned—not perhaps as envisioned but as implemented. And perhaps a lot of the problems could easily have been anticipated, we say in hindsight. I am curious about the INS's view of the Hoffman Plastics case, where the somewhat farcical employer sanctions provisions were used, notwithstanding the best efforts of the Department of Justice through its solicitor, and not withstanding the report language of the committee that passed IRCA in 1986.

The Court held that those provisions trumped other labor protections, and particularly the protections against termination for union activity. And the dissent pointed out, and I believe the Center for Immigration Studies has also commented, that one consequence of the decision to render those effective remedies for labor law violations moot because the person discriminated against or denied the benefits of the law was undocumented, was that it incentivizes employers. It provides additional reasons why employers will seek out undocumented workers, because it gives them far more leeway than they might otherwise have.

Mr. Greene, do you have any thoughts about this issue? And perhaps Mr. Camarota also.

Mr. GREENE. I regret to say, Congressman that I am not familiar with the details of this case.

Mr. BERMAN. It was a very big case.

Mr. GREENE. I apologize. But I will say this: that one of the things that I think we are concerned about is to attempt to fashion a way to encourage employers to hire legally authorized people in a way that doesn't create a group of people in this country who then become specifically vulnerable to manipulation. And we have, frankly, been sort of nibbling around the edges of this for a number of years. We have been in negotiations and have come to agreements with Mexican consular offices all around the country to ensure that they get their—when we remove them from work sites, they get their salary, they get their benefits. We know that—we work with the Department of—

Mr. BERMAN. Who gets them?

Mr. GREENE. The employees, when they are removed. I mean, one of the things that—

Mr. BERMAN. Oh, when they are deported?

Mr. GREENE. Yes, sir.

Mr. BERMAN. I see. In other words, you don't view your interior enforcement mission and mission to deport people who are not authorized to be here as a way by which the employer can therefore get away from their obligations to comply with the law?

Mr. GREENE. Yes. We try very hard to avoid those circumstances, that's right.

Mr. BERMAN. Mr. Chairman, could I just hear if Mr. Camarota has any comments?

Mr. GEKAS. Yes. We extended the time of the gentleman to allow Mr. Camarota to answer.

Mr. CAMAROTA. Yes, I agree. We don't want immigration law to be a tool that employers use to beat workers over the head with to prevent them from unionizing. But I think that is a consequence of the kind of half measures or basically lack of enforcement that we have, which allows the law then to be enforced very arbitrarily. The solution to that problem is to uniformly and strictly enforce the law and to put in—structure the computer system and enough inspectors to take care of that.

In this particular case you mention, I agree it was troubling, because ideally what should have happened is these workers should have gotten the back pay and then be forced to leave the country, and the employer should have been fined. But I don't think the Supreme Court realizes that they may well have made illegal alien workers more attractive by their decision, kind of—which clearly wasn't their intent. They were hoping to be supportive of enforcement, but it may have had that perverse effect.

Mr. GEKAS. The time of the gentleman has expired.

We now turn to the gentleman from Virginia, Mr. Forbes, to whom I issue an apology. The thanks I gave him for being the first to help me establish a quorum was to make him wait to next to last to pose questions. My apologies.

Mr. FORBES. Thank you, Mr. Chairman. And thank all of you, members of the panel, for being here today and for your assistance to each of us.

I have got a number of questions. I am going to try to focus them all in in just a few minutes, and I am going to start, Mr. Greene, with you. And the first question I have is you can tell by opening statements and comments in here that probably nobody in this room would agree on all of the immigration laws and regulations that we currently have. Some people think they are too restrictive; some, that they are not restrictive enough.

So my question is not going to be what the laws are, what the regulations are. But I am going to ask you, can you list for me today, or provide for me a list of any of those immigration laws or regulations that the INS has a position that they should not be enforced? Are there any?

Mr. GREENE. No, sir. There are no—I think as a matter of policy, we have never said that there are not laws that we will enforce.

Mr. FORBES. Is it your opinion that those laws and regulations are to date being enforced by the INS?

Mr. GREENE. My opinion is that we are using all of the laws and authorities that we have to do—prior to September 11th—reduce the greatest harms that illegal migration poses; and since September 11th, to do the most that we can to ensure the safety of American lives and infrastructure.

Mr. FORBES. And in all due respect, and not being argumentative, the question I have, though, is I recognize that you are doing all that you can with the resources that you have; but is it your opinion, personal opinion, that you are enforcing those laws and those regulations today?

Mr. GREENE. And I am not trying to weasel out of the question either, but what I will say is that if you look around our field offices, you will find agents who are using every law and every authority at their disposal to accomplish certain ends, but those ends

are limited to those which we interpret pose the greatest harm to our people.

Mr. FORBES. Would you agree with me that at least a majority of the American people would have some question as to whether or not the INS today is enforcing those laws, so there is a credibility question there, at least?

Mr. GREENE. Absolutely. I think it has been difficult for us to make the case, frankly, that we are doing the best we can with what we have, because it seems like there are—I mean, you read in the press every day, there is another vulnerability there, another illegal alien detected that the INS did not respond to. And that is not a function of not using the authorities. That is a function of having to make a difficult decision about whether this individual poses a risk as opposed to that individual.

Mr. FORBES. Let me take you back to those difficult decisions, if I can. I hear three categories of needs coming out of the INS whenever I read literature and just listen. One of them is you need more information, always. We always need more information. Two, perhaps changing or looking at some of the enforcement policies. And the third one is more resources. Would that be fair to say, there are three categories of needs?

Mr. GREENE. I think that is accurate, yes.

Mr. FORBES. As to the more information, just from what I see, there is a serious question as to whether or not you can use right now adequately all of the information that you have. Do you believe you can?

Mr. GREENE. I think that that has been a problem with us for a long time, going back to 1984 when we set up a system that was designed to prioritize the referrals that we have received. Since I took over the investigations program, we have actually started a project to revise that. We need a better risk management program than we currently have in the investigations program, and so—and I can give you a fuller briefing on that at another time. But, yes, it is certainly a problem, especially now since the attack, of deciding what of the information that we receive is actionable and important and what is not.

Mr. FORBES. Do we have any better way now of making sure that our inspectors know what the policies are from the INS? And I point specifically to the situation we had in Chesapeake, where the inspector didn't know, 6 months after the policy had changed, what the policy even was, much less what the information was. Have we done anything to—

Mr. GREENE. Yes, sir. I think the Commissioner has taken a personal interest in ensuring that that information has been communicated again to every field office and every port of entry.

Mr. FORBES. Last question, because my time is going to be out. When we look at the resource question, the need for resources, has the INS ever had more investigators and immigration agents than it has now?

Mr. GREENE. Yes, sir.

Mr. FORBES. When was that?

Mr. GREENE. I think it goes back to between 1986 and 1990, but I can give you a fuller development on that.

Mr. FORBES. If you could when you get an opportunity, just supply that to me.

[The information referred to follows:]

In FY 1998, the INS had more investigators and special agents on board than it does now. At that time, the INS had 2,033 Special Agents and 287 Immigration Agents on board.

Mr. FORBES. And then a last question for you. I know the interior enforcement strategy lists the identification and removal of criminal aliens as the INS's top priority. Do we know how many aliens there are in the Federal and State prison systems right now?

Mr. GREENE. The Federal and State prison system data, I haven't seen anything within, I guess, the last—that covers either 1999 or 2000. The data that we get from the Federal and State system is generally better than the problem that we have with county jails. That is much more difficult to quantify. We do have some figures on that, and I would be happy to provide that to you.

Mr. FORBES. And when you do that, if you would provide me with—of those who were subject to removal, how many of those were released in 2001 without being placed into removal procedures.

Mr. GREENE. I don't know that we will have data that current, but I will be happy to work with you.

[The information referred to follows:]

The Bureau of Justice Statistics (BJS) publishes statistics annually on the correctional populations as of December 31 of the previous year. These populations are based on place of birth but not disaggregated by citizenship resulting in total foreign-born populations, not total alien populations. The most recent BJS data are for December 31, 2000.

From these data, the INS prepares estimates of the number of foreign-born individuals in state and Federal prisons as well as the number of such individuals subject to removal. These estimates are point counts for a specific day and the total number of individuals in prison in a given year will be greater as some will have been released or paroled or deceased prior to the December 31 count.

On December 31, 2000, the INS estimates that there were:

- 71,000 – 94,000 foreign-born individuals in state prisons of which 57,000 – 75,000 were aliens subject to removal.
- Approximately 35,000 foreign-born individuals in Federal prisons of which approximately 28,000 were subject to removal.
- 31,000 – 42,000 individuals paroled from state prisons that were aliens subject to removal.
- Approximately 15,000 individuals paroled from Federal prisons that were aliens subject to removal.
- 91,000 – 168,000 individuals on state probation that were aliens subject to removal.

The INS is developing estimates of the number of aliens released from state and Federal prison who are not taken into custody.

Mr. GEKAS. The gentleman's time has expired.

We will now turn for an opening statement to the lady from Texas, the Ranking minority Member of this Committee, and she may use such time as she might consume for the opening statement. And then we will allot her a further 5 minutes for the interrogation which she may wish to conduct.

Ms. JACKSON LEE. Thank you, Mr. Chairman. I thank you for holding this hearing. I would like to ask unanimous consent to have the entirety of my opening statement submitted into the record.

Mr. GEKAS. Without objection.

Ms. JACKSON LEE. We had a hearing on this matter, I believe, in July 1999, when the interior enforcement strategy came to us in an internal memo titled such, and, Mr. Assistant Commissioner, we noted then that the INS was going to be involved in issues such as suspected violations of Federal and State criminal laws, suspected fraudulent activities, possessing or manufacturing fraudulent immigration documents, suspected smuggling and trafficking of aliens, and suspected work site violations.

You established as well priorities with respect to these issues that you would be focusing on. It appears since 9/11 and in a testimony given in June of 2002, you began, as I understand it, operation Tarmac. INS conducted the Absconder Apprehension Initiative. INS and State Department established new initiatives to increase security, INS inspectors to have access to visa data from a consolidated consular database, the IDENT program, I believe. And so it looks as if you took on a completely new turn or different turn.

I had the opportunity, as I try to do when I visit different jurisdictions, to visit the INS personnel. In San Francisco, I visited with the district director. Commissioner Ziglar was there, and we looked at some of the new technology. In El Paso, I visited with Chief Louise Barker; Danny Montoya; Mike Carvel, assistant patrol agent in charge of the El Paso station; James Gonzales, a patrol agent in charge of the San Teresa station and the New Mexico and El Paso station; people there on the front line dealing with issues that are current and I think are relevant to the duties of the INS, particularly our border patrol agents who face the issues of protecting our border, but balancing these concerns that we have.

Without attributing any particular comment to them, they acknowledged and felt that they were very competent and able to secure the border. They were not advocates of militarizing the border collectively. I will not attribute any individual comments, but I thought them to be very able, very responsible, horse patrols, ATV patrols, that I got a chance to see, and the closeness of our borders. So I realize that the work of the Border Patrol and the INS as relates to those responsibilities is crucial.

My remarks—and I will pose questions, and I thank the Chairman, and this is part of my opening statement. I raise concerns and a sense of tolerance and balance in what we have to do now with our new focus.

I am delighted our witness Ms. Demeo is here, and we will pose some questions to her. But let me tell you what I perceive to be some problems. Resources and staffing, as relates to taking on duties in reference to the internal memo of 1999, and now your new jurisdiction of—I was delayed coming to this hearing, because I

was debating on the floor of the House the proposed resolution of this Congress to design the Homeland Security Department. As you know, the initiative came forward from the President last week, but his legislation came over this week, in fact yesterday, and all of us stand shoulder to shoulder with the President on fighting terrorism and the creation of this department.

What we do not stand shoulder to shoulder on—and let me speak for my interpretation of this—is the design that the House is giving, a select committee of nine persons that are going to now tell you what to do in a new proposed section called Border and Transportation Safety. Initially it seemed as if the INS might be in its totality, and I imagine that the INS had some input and maybe the ultimate design came forward as Border and Transportation Safety.

The questions will be raised as to how that will be designed. Are border patrol agents going to be expected to do internal security, if you will, or are they going to be stretched to the limit beyond the borders, and now they are going to be responsible for doing internal enforcement?

I think it makes no sense to have a committee that is of nine persons and does not take the full value of the expertise of a Committee like the Judiciary Committee that did its work on the restructuring.

So I make these remarks, because everywhere I go, I am going to say that I think it is wrong directed. We will certainly work with who we can work with, and I am going to be pressing the INS for its input. And I will encourage the Chairman of this Committee to seek to be intimately and actively involved—Chairman of the full Committee and Chairman of the Subcommittee—on having oversight over how the INS and its responsibilities will fit into the new homeland security legislation as it is now constructed.

I would ask, as I said, that my comments be submitted into the record.

[The information referred to follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF TEXAS

Good Afternoon Mr. Chairman and thank you for holding this hearing on a very important subject. At our last hearing on this matter in July 1999, I stated that the job of the Immigration and Naturalization Service (INS) had become much more difficult citing alien smuggling as a problem. Needless to say, things are significantly more difficult today. The events of September 11 have underscored the difficult task facing the INS.

The primary strategic goal of INS is to reduce the size and annual growth of the illegal resident population. According to the Congressional Research Service, estimates of unauthorized alien population at 8.5 million individuals. The size of this population has been increasing at an average rate of about 275,000 aliens per year. Other estimates place the immigrant population as high as 8.7 to 9 million.

INS has developed a five-point plan for dealing with these problems. It consists of: 1) identifying and removing criminal aliens; 2) destroying organized smuggling organizations; 3) responding quickly to local communities that experience immigration problems; 4) taking aggressive steps to deal with benefits fraud and other document abuses; and 5) making a concerted effort to prevent employers from having access to unauthorized workers.

Since September 11, we were reminded of just how difficult the task of INS has become. The unfortunate failure of the agency to prevent the issuance of confirmation letters approving change of status applications for two of the September 11 Hijackers, Mohamed Atta and Marwan al-Shehhi, underscored the need for changes at the INS. I cite these events not to further deride the Immigration and Natu-

ralization Service, but to say that I look forward to hearing what the INS has done to combat this type of inadequacy.

Further, I look forward to hearing all of your thoughts on how you feel the INS's interior enforcement strategy will be affected by the many new proposals from the Administration and Congress. As you know, prior to the President's proposal for a new Homeland Security Department, this Committee successfully passed legislation to restructure the INS. Now that the President has indicated that the INS would be integrated into the new Homeland Security Department, I am are concerned that the service functions of the agency will be overshadowed by the enforcement functions. I look forward to hearing your perceptions on how interior enforcement will be effected by these proposals.

Local Police Enforcement of Immigration Laws

An issue that is raised by the Attorney General's recent decision to deputize local law enforcement officers to assist the federal government with enforcing certain aspects of immigration law [?]. Proponents of this position argue that this will result in more effective enforcement because local agencies have more knowledge of the community and know how best to do the job. Further, they argue that this initiative will provide increased resources to assist a beleaguered INS.

Oponents of deputizing local law enforcement officers to assist the federal government with enforcing certain aspects of immigration law, argue that this initiative will undermine the relationship between local law enforcement agencies and the communities they serve. Moreover, they argue that potential witnesses and victims of crime may be reluctant to come forward for fear that action might be taken against them. Perhaps testimony here today will help get to the bottom of this issue.

Student Visas

I know that the INS is struggling to meet a Congressional mandate to certify the legitimacy of close to 70,000 schools that have accepted foreign students. I understand that next month, some small schools will be able to use the Student and Exchange Visitor Information System (SEVIS) to better communicate with the INS and our embassies. However, I am aware of the fact that the Justice Department's Office of Inspector General is concerned that the INS may not be able to meet the January 2003 deadline set by Congress to overhaul its student tracking system. This Congressional Mandate is a strong step forward, and I urge that the INS be diligent in evaluating its effective use of and need for resources to make their programs more effective.

Document Fraud

A problem that remains is the ease with which fraudulent documents can be made with readily available technology. The advent of table-top scanners and graphic software programs have made it easy to create fraudulent supporting documents which can be used to obtain legitimate immigration documents. Since the September 11 attacks, it has been discovered that many of the hijackers used fraudulent documentation to obtain drivers licenses, particularly in Florida and Virginia. Subsequently, since 9/11, state legislatures and Congress have introduced a number of proposals aimed at cracking down on immigrants' drivers' license applicants. Congress is considering numerous measures that address this issue. By giving the federal government new powers to review drivers license applications. One of these measures seeks to establish a uniform system using computer chips with biometric and other personal information as identification.

Another measure, before this Subcommittee, would require driver's licenses of foreign nationals to expire when their visas expire. I would be interested to know your views on these proposals.

Worksite Enforcement

There are many who support more active enforcement of employer sanctions, arguing that jobs are the number one cause of illegal immigration in the United States. While I support the premise that employers should not hire illegal immigrants at the expense of citizens or legal immigrants, I am not convinced that the enforcement practices used by the INS effectively address this problem. I do not know how best to address this problem and I look forward to your thoughts.

Last Friday, I attended the American Immigration Lawyers Association Conference in San Francisco. At the Conference, Commissioner James Ziglar announced a major expansion in the Multiagency Data-share Initiative between the INS and Department of State at the San Francisco International Airport. At the heart of this proposal is the need for agencies to share information.

In conclusion, I would like to state that immigration is not terrorism. While we can agree that, in light of the events of September 11 and its aftermath, the INS needs to maximize its efficacy on the matter of interior enforcement. We must remember that the vast majority of immigrants come here as hard-working, law abiding individuals, seeking the American Dream.

Ms. JACKSON LEE. Recognizing that my time is fast going, I will use the rest of my time, Mr. Chairman, the 5 minutes, for my questions.

Mr. GEKAS. The lady is recognized for 5 minutes for the purposes of examination of the witnesses.

Ms. JACKSON LEE. And you cannot ask questions without weaving in commentary, so let me just continue by again acknowledging the work that you have done. But as we do that, then, let me go to you, Mr. Greene, and say between night and day, how have you changed. And what are the focus of your resources between the 1999 memo and now your new challenges with respect to internal security?

Mr. GREENE. Let me respond to that on two levels. What happened after the terrorist attacks was within the framework of existing laws and strategy, we did a number of things. We have been supporting the FBI through the Joint Terrorism Task Force since about 1998. As I mentioned in my opening remarks, we have a little over 100 agents who are assigned full time to the Joint Terrorism Task Force. We directed a lot of agents above and beyond those dedicated positions to supporting the FBI investigations. At one point within the first 3 months of the attack, we saw something like 50 percent of our agent hours basically working on counterterrorism investigations and following leads that grew out of the PENTTBOMB investigation.

Operation Tarmac was designed to be—Operation Tarmac, and then expanded to other critical infrastructures, was designed to stand for the proposition that basically there were certain areas, certain critical work sites in the United States, where we needed to have people who were legally authorized to work, and only people who were legally authorized to work. And that is for two reasons. It is not just that some foreign-born people pose a threat, but people who have violated the immigration laws, as we have seen in other contexts, are likely to be—are amenable to being blackmailed, manipulated, exploited by outside people. And so there is a vulnerability there, simply in having somebody who has violated the immigration law working.

The Absconder Initiative is a way of—especially in the first phase where we dealt with people who might pose a potential threat—is a way of in some ways continuing to keep the other side guessing about, you know, what we are doing. The first phase was designed to sort of go after people where we had actionable, enforceable leads that would result in their removal from the United States. We have done all that in almost 700 cases.

Ms. JACKSON LEE. Because my time is short, let me ask you this. Did you move, then, resources away from employer site visitation to do this?

Mr. GREENE. The employer work that we were doing, we are focused on the critical structures, that is right.

Ms. JACKSON LEE. So it is a matter of prioritizing and using resources as you have them?

Mr. GREENE. That is correct.

Ms. JACKSON LEE. Let me then explore further. I frankly believe that some of the work that you strategized to do after the horrific act of September 11th, the heinous terrorism that we all are op-

posed to, was vital. But I do believe that you were also caught up in the emotion of the day—obviously, the enormous snafu of two visas coming to two individuals who are deceased and also terrorists—but the wave of deportation rates went up.

And I was very much concerned with that, because I have a story that tracks that of my distinguished colleague from California, a family of nine, described in our local newspaper in Texas as the Palestinian Cleaver family. Certainly Palestinian draws concern when people want to stereotype, but the newspaper was trying to suggest that this was an all wholesome family that wanted nothing but to become citizens and had sought asylum, but in one of the raids that you engaged in, you raided them about 6 a.m. and caused emotional stress, health problems. And they had amongst their family a 9-year-old citizen, a child, that had the ability to access citizenship on their behalf.

I am concerned about those issues, and I am going to go to Ms. Demeo for her to share with me what further concerns we may have with an overexaggeration of interior enforcement if we don't balance it, and also taking away resources from the security of our borders.

Ms. DEMEO. Well, I think the example that is being discussed in terms of the Operation Tarmac which is being expanded into other areas, is a perfect example. Assistant Commissioner Greene talked about over 600 individuals being deported. Yet in terms of all the media counts that we have been able to read through, not one of those individuals was associated with terrorism.

What the INS has said in its public statements is that they are afraid that someone who is here simply as an undocumented person could be a security risk, perhaps because they allege, as has been said today, that they could be blackmailed. And yet there is actually no evidence that has shown that someone who is undocumented is per se a security risk.

We do not object to workers being investigated for security purposes, to determine whether they are a security risk. But what is happening is that people are being dismissed, and indictments are being brought against them for minor crimes, most of the time civil violations; and, as a result, not only are undocumented workers being affected, but the citizens who they live with, the legal permanent residents who they live with are being affected, and this is causing massive fear and distrust in many immigrant communities.

There has to be some distinction made between those who are real security threats and those who are here simply to work and raise their families.

Ms. JACKSON LEE. I would ask the gentleman for an additional minute to pose a final question.

Mr. GEKAS. Without objection.

Ms. JACKSON LEE. I thank the Chairman. Let me just take Ms. Demeo's point and to say, Mr. Greene, I am concerned with the potential imbalance, one, in your resources, but also in possibly being guided by hysteria.

Quickly, let me say that I think much could have been gotten by paying attention to information we had on September 11th, as an aside, and we all know about the two memoranda that were not under your Department.

But what I want to say is, in light of what Ms. Demeo has said, are you using resources beyond the INS inspectors and others? Are you using local law enforcement, and how much of that? And I will raise a concern, as you say so, but let me understand that, and just say that I would think down the road, that kind of—our oversight will be needed in how much local law enforcement is utilized, inasmuch as I have heard them say that they would like not to be enforcers of immigration laws.

Mr. GREENE. Two real quick answers. The short answer with regard to Operation Tarmac is that we are using local law enforcement resources, usually under the supervision of the U.S. Attorney, and operational plans have been worked out ahead of time.

With respect to the larger issue, number two, about the use of local law enforcement, this has been a concern of ours, as you know, for years; and especially it has come up in the context of the authority that the Congress gave us to enter into written agreements with local law enforcement agencies that have asked them.

We feel, and the Attorney General has indicated, that the inherent authority issue should be used within the context of national security investigations about domestic security investigations. All of our work with local agencies to date has been to ensure that the proper training has occurred, to ensure that the proper supervision is in place, to ensure that liability issues are addressed and solved.

And we value as much as local law enforcement the bond of trust that local cops must have with their communities in order to properly execute their duties. Witnesses need to be able to come forward. Victims need to be able to come forward. And we respect that and have worked collaboratively with local law enforcement agencies to achieve that result.

Ms. JACKSON LEE. I thank you very much, Mr. Chairman. Hopefully we can continue our oversight.

Mr. GEKAS. We want to thank the witnesses for appearing today, and by their presence here, I hope they are indicating that they are willing to answer written questions that may be follow-up on the part of any of the Members.

Mr. GEKAS. With that, we extend our gratitude and declare this meeting closed.

[Whereupon, at 3:26 p.m., the Subcommittee was adjourned.]

