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*IMMIGRATION AND NATURALIZATION SERVICE'S INTERIOR ENFORCEMENT
STRATEGY*

HEARING

BEFORE THE

SUBCOMMITTEE ON
IMMIGRATION AND CLAIMS

OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

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C O N T E N T S

HEARING DATE

July 1, 1999

OPENING STATEMENT

Smith, Hon. Lamar, a Representative in Congress from the State of Texas, and chairman, Subcommittee on Immigration and Claims

WITNESSES

Amick, David, Sheriff, Woodbury County, Sioux City, IA

Bach, Robert, Executive Associate Commissioner for Policy and Planning, Immigration and Naturalization Service

Chishti, Muzaffar, Director, Immigration Project, Union of Needletrades, Industrial and Textile Employees

Desantis, Judith M., First Vice President, Federal Law Enforcement Officers Association

Fraser, John R., Acting Administrator, Wage and Hour Division, Department of Labor

Hammond, Thomas P., Omaha, NE

Hill, Robert, Venable, Baetjer, Howard & Civiletti, and former Commissioner on the U.S. Commission on Immigration Reform

Stana, Richard M., Associate Director, Administration of Justice Issues, General Government Division, U.S. General Accounting Office

Stein, Daniel, Executive Director, the Federation of American Immigration Reform

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Amick, David, Sheriff, Woodbury County, Sioux City, IA: Prepared statement

Bach, Robert, Executive Associate Commissioner for Policy and Planning,

Immigration and Naturalization Service: Prepared statement

Chishti, Muzaffar, Director, Immigration Project, Union of Needletrades, Industrial and Textile Employees: Prepared statement

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Stana, Richard M., Associate Director, Administration of Justice Issues, General Government Division, U.S. General Accounting Office: Prepared statement

Stein, Daniel, Executive Director, the Federation of American Immigration Reform: Prepared statement

APPENDIX

Material submitted for the record

IMMIGRATION AND NATURALIZATION SERVICE'S INTERIOR ENFORCEMENT STRATEGY

THURSDAY, JULY 1, 1999

House of Representatives,
Subcommittee on Immigration
and Claims,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to call, at 9 a.m., in Room 2226, Rayburn House Office Building, Hon. Lamar Smith [chairman of the subcommittee] Presiding.

Present: Representatives Lamar S. Smith, Bill McCollum, Elton Gallegly, Edward A. Pease, Sheila Jackson Lee and Howard L. Berman.

Staff present: Laura Baxter, Counsel; Judy Knott, Staff Assistant; and Leon Buck, Minority Counsel.

OPENING STATEMENT OF CHAIRMAN SMITH

Mr. **SMITH**. The Subcommittee on Immigration and Claims will come to order.

Good morning. We welcome you, and we appreciate your interest in such an important subject.

I do want to mention that we will have members coming and going this morning. Unfortunately, these are busy days for all of us. Not only are we meeting at 9:00, there is a crime subcommittee that meets at 9:15. There is a full Judiciary Committee hearing at 10:00, and there is a special meeting of all Republicans called at 9 this morning, and that Republican conference has already started.

As always, there are a lot of conflicts, but that does not diminish our interest in the subject at hand, and I want to acknowledge and say that I appreciate C-SPAN being here as well to carry this to a wider audience. I think this subject deserves widespread attention. I am sure that we both have opening statements; and, after that, we will go to the first of two our panels today.

Today's hearing focuses on the new "Interior Enforcement Strategy" of the Immigration and Naturalization Service, the INS. The Appropriations Committee, out of frustration, mandated that the INS develop a new strategy because increased funding for the INS had produced no visible results.

What is the new strategy? It is a bright flashing sign that says to potential illegal aliens: "come to the United States. Once you make it past the Border Patrol, you are home free."

The INS claims it will focus on criminals, alien smugglers, fraudulent document sellers, and employers who hire illegal aliens. But the smuggled aliens, the aliens who benefit from the fraud, and the illegal alien workers will suffer no consequences because of their own illegal actions. In effect, the INS has drafted a manual titled, "How to Stay in the U.S. Illegally."

By all means, let's target criminal aliens and smugglers. However, if the smuggled alien is allowed to remain in the U.S., he or she will report back home to family and friends: "come on in, the INS doesn't care." this strategy provides no deterrent to illegal immigration. In fact, it does the opposite and encourages illegal immigration.

This strategy raises many questions.

One, the mandate for developing the strategy stated: "The Appropriations Committee also believes that INS needs to revise its interior enforcement strategy to focus on the end outcome of deportation, recognizing that deportation is the strongest deterrent to illegal immigration." Why did the INS come up with a strategy that conspicuously avoids removing illegal aliens?

Two, despite a \$3.9 billion budget this year, the INS has a shortfall of \$300 million due to incompetent accounting practices—they overhired last year and never requested funds

for operating expenses. The Investigations Program is particularly hard hit by the shortfall.

Last year, the INS requested funds, but it had no strategy. This year, the INS has a strategy, which is flawed, but didn't request any additional funds for investigations. Why not?

Three, why does the strategy call for the expansion of the IDENT fingerprinting system? The case of suspected serial killer Rafael Resendez-Ramirez demonstrates the major weakness of IDENT. On June 2, 1999, the INS had Ramirez in its custody. Despite eight prior apprehensions by the Border Patrol, three prior formal deportations and numerous criminal convictions, the INS voluntarily released Ramirez. IDENT appears to be of little use because it does not alert the INS to aliens who have been previously deported. And apparently the INS does not even use IDENT to determine which aliens to place in removal proceedings, since Ramirez had been apprehended nine times in 18 months. He is accused of committing at least eight murders, four of which occurred since his release by the INS on June 2.

The INS has already spent over \$65 million on IDENT. In a tragic coincidence, the INS reportedly solicited another \$98 million in contracts to expand IDENT on June 4, the same day that Resendez-Ramirez allegedly killed his victim in Fayette County, Texas.

Let's hope that the INS has some answers to these questions.

We will also hear from the Department of Labor and the General Accounting Office regarding work site enforcement, one of the new strategy's priorities. The second panel of nongovernmental witnesses will critique the new strategy.

That concludes my opening statement, and I am happy to recognize the gentlewoman from Texas, Ms. Jackson Lee, for her opening statement.

Ms. **JACKSON LEE.** Good morning, Mr. Chairman. As a good boy scout, and my son is at leadership camp, I hope that he is doing well this week. I believe we should make our camp better than we found it, so I remain open on this very important hearing.

If I might acknowledge in the course of serving as the ranking Democrat on this committee in which the chairman has had enormous experience, I, too, have been disappointed in some of the issues that I have had to hear about with respect to the INS and its performance. Let me take a personal note and say in particular I think it is important that decisions on how INS functions comes from Washington and that we not play out in the newspapers through op-eds and various other articles that we are making decisions that we have not made.

I point particularly to hubbing. That may not be the topic of this particular hearing, but I bring that to the attention of the panelists. We must work together, and any panelist who wishes to comment on editorials and articles about what they are doing in the field, as

opposed to what I hear that they are doing in Washington, I would welcome that commentary.

The enforcement problems faced by the Immigration and Naturalization Service have become much more difficult in recent years. I highlight alien smuggling. These are the kinds of things that are hard to defend to the American taxpayers.

Together, the chairman and myself agree that we are opposed to illegal immigration, and alien smuggling contributes to the image of the INS as not being able to handle the problem of illegal immigration. Moreover, the smugglers are using more sophisticated methods to bring aliens into the United States; and they are providing new services to the aliens and to the employers who hire them. They recruit aliens from other countries who want to work in the United States and then deliver them directly to the American employers. I do not label any particular region of the world as the greatest culprit. I think it is important to note that alien smuggling happens all over.

Another new problem is the ease with which fraudulent documents can be made with readily available technology. The advent of tabletop scanners and graphic software programs has made it easy to create supporting fraudulent documents which can be used to obtain legitimate immigration documents.

The primary strategic goal of INS is to reduce the size and annual growth of the illegal resident population. We have more than 5 million aliens living illegally in the United States, and the size of this population has been increasing at an average rate of 275,000 aliens per year.

I want to help those who legitimately are in this country and certainly have issues, like those who have suffered under the late Amnesty Program that started in 1986. I believe we need to work with that population. However, the other population of which the United States continues to see an influx, we need to work with the INS in a collaborative manner to ensure that we can solve their problem.

I certainly am proud of the hard-working members of the INS team along with the Border Patrol. I want to enhance their ability to do their job. I have submitted legislation to increase the entry salary of Border Patrol agents and increase professionalism and training from a GS-9 to GS-11.

I have asked for an increase in budget on certain issues that I think are important. The INS has involved a five-point plan for dealing with these problems, which consists of identifying and removing criminal aliens, destroying organized smuggling operations, responding quickly to local communities' problems, taking aggressive steps to deal with benefit fraud and other document abuses, and making a concerted effort to prevent employers from having access to unauthorized workers.

INS has been criticized for abandoning its old ways of dealing with these problems, such as raiding work sites. I think we should be open to your new solutions, but you have to prove to us that they work. For instance, in fiscal year 1998, INS apprehended 13,897

illegal aliens, which I assume that you would document your new method works, in work site raids across the country, which amounted to 45.5 apprehensions per INS investigator workyear. At that rate, it would take 35,000 workyears to apprehend the group of illegal aliens who entered and remained in the United States just in the last 4 years.

Let me comment as coming from Texas but knowing that this is a national crisis, that I was deeply disappointed in the results of the release of Rafael Resendez-Ramierz, and INS has been severely criticized. Mr. Chairman, I have asked for a full investigative report, and I expect to see that report in writing and detail as to what occurred.

Critics claim that the new INS identification system, IDENT, is inadequate because it did not identify this man as a dangerous criminal. I believe there should be collaboration with other law enforcement agencies. That is what the INS has as part of its operation, and I don't understand why there was no collaboration with the other law enforcement agencies because of the sensitivity of this particular crisis.

The problem was that information about this man in the IDENT computer banks did not go back far enough. That is an implementation problem. More information has to be entered into the system so it identifies such people, and there needs to be more collaboration with other law enforcement agencies.

INS strategy calls for the expansion of another record keeping system, the automated I-94, an arrival and departure record matching system that is presently used at airports. This system was criticized because INS has not described how it plans to use the information it contains to locate aliens who overstay their authorized admission periods. In fact, unless a nonimmigrant alien already has a permanent residence in the United States when he arrives and he gives that address to the INS when he is inspected, there is no way to locate him months later when he becomes an overstay.

We need to encourage INS to find solutions to its problems. I applaud the effort that is demonstrated with the interior enforcement strategy approach. I, however, have to be convinced that it is working; and I think it is important that we have other representatives on the panels to come.

And, Mr. Chairman, let me acknowledge that Democrats are meeting as we speak; and, as you have noted, we have three or four hearings that are overlapping; and so to all of the panelists I apologize if we are in and out. Again, I echo that it does not diminish the importance of your presentation.

I thank you, Mr. Chairman.

Mr. **SMITH**. Thank you, Ms. Jackson Lee.

We will now go to the first panel consisting of Robert Bach, accompanied by Mark Reed, Central Regional Director. Mr. Bach is the Executive Associate Commissioner for Policy and Planning, Immigration and Naturalization Service. John R. Fraser, Acting Administrator, Wage and Hour Division, Department of Labor; and Richard M. Stana,

Associate Director, Administration of Justice Issues, General Government Division,
General Accounting Office.

We welcome all three of you.

Dr. Bach, if you would begin.

STATEMENT OF ROBERT BACH, EXECUTIVE ASSOCIATE COMMISSIONER
FOR POLICY AND PLANNING, IMMIGRATION AND NATURALIZATION
SERVICE

Mr. **BACH**. Good morning, Mr. Chairman. Good morning, Congresswoman Jackson Lee. Thank you for the opportunity to appear before you to discuss the INS Interior Enforcement Strategy.

As you mentioned, Mr. Chairman, I am joined this morning by Mark Reed who is the INS Regional Director for the Central Region.

Before we begin, I want to join you and the entire subcommittee in expressing our deep concern about public enemy number one, Mr. Rafael Resendez-Ramirez. We have many of the same questions you have about how he passed through the enforcement screen that Federal law enforcement agencies have built over the years. We want to maximize the chance that this will not happen again.

To that end, Commissioner Meissner has asked the DOJ's Office of the Inspector General and INS's Office of Internal Audit to examine the various ways in which information on this man has been handled throughout the law enforcement community. One person, the likes of this man, renders our enforcement efforts, no matter how vigorous, less than adequate.

Still, INS is progressing toward reaching a record number of removal of criminal aliens. INS projects that it will surpass 62,000 criminal alien removals by the end of this fiscal year, or 105 percent greater than the figure in 1994. Removal of criminal aliens is the first priority of the INS Interior Enforcement Strategy. The other four priorities include deter and diminish alien smuggling, respond to community concerns, minimize benefit fraud, and block access to undocumented workers and remove those located.

Each priority is crucial in its own right, but they are also necessarily linked. For example, INS believes there is a clear nexus between defeating smuggling organizations, priority 2, and blocking access and removing undocumented workers, priority 5. In this strategy, the whole is greater than the sum of its parts. We have already heard encouragement and concern about this strategy, some of which we know members of the subcommittee share, so it may be of value to raise several direct issues this morning.

Mr. Chairman, your staff has asked us why, for example, a potentially effective enforcement tool such as 274(c), penalties for fraud, was not discussed specifically in the

strategy. This is just one of the many specific issues that is not explicitly included because our purpose is to outline a future direction, a vision for which a detailed list of authorities and enforcement tactics could be developed.

On this specific issue, INS would be the first to agree that a crackdown on fraudulent documents, which is part of our priority 4, could be greatly assisted by an appropriate use of 274(c) authority.

A second area of concern is INS's capacity to respond to local residents and local law enforcement. For fiscal year 1999 Congress provided INS with resources to create and deploy 45 Quick Response Teams in 12 States which in regular performance of their Federal duties will respond to local law enforcement agencies and remove illegal aliens when encountered.

INS's response to local needs must also include a responsiveness to community perceptions and interests. Congresswoman Jackson Lee and others have expressed concern about INS's hubbing concept. We have heard these concerns and criticisms and have put the hubbing concept to rest permanently.

INS still has a problem with detention and removal, for which we are seeking advice on appropriate and effective solutions.

We want to work with you, Congresswoman Jackson Lee and others to address three primary issues: How to minimize the amount of detention time for someone who will be removed from the country; how to increase access to the incarcerated person by attorneys, families and consulates of their home country; and how to guarantee a safe and orderly return to their home lands. These are problems that we are trying to solve collectively.

We know the subcommittee is also concerned about whether the strategy provides sufficient emphasis on the removal of illegal aliens, especially as a consequence of work site enforcement operations. Our strategy clearly pursues different approaches to work site operations and, as a result, will change the way people will evaluate and measure our effectiveness.

As GAO says in their report, at current rates INS could increase its resources by two or three times and not have a significant impact on illegal workers and certainly not on employers and labor markets. INS will arrest and remove illegal aliens encountered in the work site operations. Other illegal aliens will return to their country of origin because they have to abandon their jobs to avoid arrest. Either way, as long as the way back to their jobs remains open, many simply go home and visit before returning to the United States.

Our goal is to move in a comprehensive way to break the link in the labor market between job demand and the networks that supply illegal workers. INS will focus its activities on criminal investigations against employers who engage in practices such as

those in the case of Operation Seek and Keep, where employers were found to be consciously ordering illegal workers from an international network that smuggles them into the United States. These investigations benefit greatly from the new authorities, Mr. Chairman, provided to INS under IIRIRA, and we appreciate the subcommittee's work on that.

Overall, the INS's new Interior Enforcement Strategy seeks to go beyond pressing for hard-fought but marginal gains in enforcement productivity. With 5 million illegal residents in the United States, INS is looking for new enforcement actions that have consequences of much higher orders of magnitude than is presently the case. We believe this comprehensive strategy will increase effective enforcement, not diminish it; and we believe it will restore public trust and protect people's rights, not sacrifice them to other priorities.

Mr. Chairman, thank you for the time to present these remarks; and Mr. Reed and I will gladly try to answer your questions.

Mr. **SMITH**. Thank you, Dr. Bach.

[The prepared statement of Mr. Bach follows:]

**PREPARED STATEMENT OF ROBERT BACH, EXECUTIVE ASSOCIATE
COMMISSIONER FOR POLICY AND PLANNING, IMMIGRATION AND
NATURALIZATION SERVICE**

Good morning Mr. Chairman, Congresswoman Jackson-Lee, and Members of the Subcommittee. Thank you for this opportunity to appear before you today to discuss the new Interior Enforcement Strategy of the Immigration and Naturalization Service (INS). Interior enforcement is one of INS' primary strategies for gaining control over illegal immigration, reducing the size of the illegally-resident population, and restoring public trust in the immigration system. Our new strategy seeks to conduct old business in new ways and to achieve several new objectives. We have learned from the 12 years since the Immigration Reform and Control Act of 1986 (IRCA) that a new approach is needed that produces both more effective law enforcement and greater assurance that the rights of all individuals will be protected. INS is committed to preserving the integrity of the legal immigration system and reducing the undocumented immigrant population in the United States while at the same time building community partnerships, promoting public safety and trust, and ensuring that all individuals can exercise their rights under the law.

The INS has spent much of the last six years focusing its enforcement efforts on restoring control to the Southwest border, building new capacities with the Service, and removing those who have entered the U.S. illegally or committed crimes after they have been admitted legally. We also recognized that interior enforcement had to be dramatically improved. INS engaged in several activities that strengthened interior enforcement activities.

Two years ago, INS recognized that doing more of the same was not enough. Building

on the success of the INS border enforcement strategy, the agency began to reexamine its capabilities in its priorities for enforcement in the nation's interior.

INS undertook an extensive process of consultation with representatives of other Federal law enforcement agencies, associations of state and local law enforcement, the private bar, community groups, and policy and research organizations for over a year to assist in the development of this Strategy. The Service developed a comprehensive strategic approach that focused resources on areas that would have the greatest impact on illegal immigration, its causes and consequences. The INS Strategy identified five priorities: to identify and remove criminal aliens, deter and diminish alien smuggling, respond to community concerns and build partnerships, minimize benefit fraud and other document abuse, and block access to undocumented workers and remove those located. While each priority is crucial in its own right, these enforcement activities are also necessarily linked. Operations in one priority area will have an impact on another.

The way that these priorities intertwine is critical in understanding the new Strategy. For example, INS believes there is a clear nexus between defeating smuggling organizations—which is Priority 2—and blocking access to and removing undocumented workers—Priority 5. Disrupting and dismantling a smuggling organization that transports undocumented workers across the U.S. border will have a direct impact on limiting employers' access to this exploitable source of labor. Additionally, anti-smuggling efforts generate leads on employers and industries employing undocumented workers. They often produce leads on fraudulent document abuses. Certainly, disrupting criminal smuggling organizations will have a beneficial impact on local communities and public safety. Dismantling the smuggling networks also directly diminishes the capacity of workers to enter the United States without detection, travel without interruption across the country, and find illicit employment.

The goal of our new Interior Enforcement Strategy, then, is straightforward. We believe it will increase effective enforcement, not diminish it. We believe it will restore public trust and protect rights, not sacrifice them to other priorities. And, we believe the Strategy as a whole will improve the well-being of communities across the nation.

THE GOAL OF INTERIOR ENFORCEMENT

The strategic goal of interior enforcement is to reduce the size and annual growth of the illegal resident population. In the past, INS has estimated that over 5 million illegal aliens reside in the U.S. This population changes each year with some components of this total population increasing and others decreasing at the same time. The net increase historically has been about 250,000 new illegal residents each year. INS continues to work on improving its estimates of this illegally resident population and has been working with experts across the country to update these figures. The Strategy aims to reduce both the net increase and the absolute number of the illegally resident population. From an enforcement perspective, this goal requires us to take actions that will both increase the removals of those who have remained here and deter and prevent more from settling each year. INS believes this goal can be achieved through pursuing five priority

areas of enforcement.

Priority 1: Identify and Remove Criminal Aliens and Minimize Recidivism

We are all concerned about the negative effects that criminal aliens have on local communities and public safety. The question is where can INS target its resources to have the greatest impact on reducing the size of this criminal alien group. INS has worked for several years to improve the effectiveness and efficiency of removal of those who are already incarcerated. Congress and the Administration have also worked together to increase Federal reimbursement to states and counties for the costs associated with incarceration of criminal aliens.

Many other criminal aliens, however, pass through the criminal justice system at various levels of local, county, state, and Federal jurisdiction and, although they are known to the criminal justice system at the time of their processing, they are released back into the community before their legal status is ascertained or before the INS can be called or reach them. Priority 1 of the Interior Enforcement Strategy focuses on working with governments at all levels of jurisdiction to identify criminal aliens as they are processed through the criminal justice system and remove them as appropriate.

These next steps will focus on a readily identifiable population of illegal immigrants who are known to the government in that they all have had contact with the criminal justice system. In particular, this group includes criminal aliens released on probation and parole, and those with final orders of removals who have absconded. This potential pool of removable criminal aliens is substantial, estimated to be over 300,000. As of December 31, 1998, the INS estimates that approximately 110,000 to 140,000 incarcerated criminal aliens who are subject to removal are incarcerated in Federal, state, or local jails. Two-thirds of these incarcerated aliens are persons who entered the United States without inspection and have committed a subsequent crime. Another 80,000 to 146,000 of removable criminal alien population are serving state probation and, although the precise numbers are unknown, perhaps as many as fifty percent entered the United States without inspection. Of those criminal aliens on parole and subject to removal as of December 31, 1998, 30,000 to 40,000 are from state prisons, and another 12,000 are from Federal prisons.

INS is currently working aggressively to keep up with the increase in the resident criminal alien population, and these efforts have led to unprecedented increases in aliens removed from the United States. Yet, the total numbers make only a modest impact on the total population of removable illegal aliens. Of the non-expedited removals, which totaled 95,680 for FY 1998, 56,083 (59%) were criminal. The Institutional Removal Program accounted for 13,942 of these criminal removals. As mentioned, the population of illegal aliens incarcerated, on probation, or paroled, however, adds up to over 300,000 or more. The object of the new INS Strategy is to significantly increase the number of removals by extending operations to this group, about two-thirds of whom have entered the United States without inspection. By using information about these individuals already available to the government, INS will be able to operate more efficiently and

effectively, and make informed choices about the value of various, alternate removal operations. INS will continue to expand measures to identify and remove criminal aliens in the Federal and state prison systems, and to improve the efficiency and effectiveness of its removal program.

INS will also boost efforts to identify and remove criminal aliens in a way that reduces recidivism, that is, repeat offenses by the same person. Recidivism is a persistent law enforcement problem for the entire criminal justice system and is the focus of attention of many criminal justice programs. INS needs to join this debate about repeat offenders because it faces an even greater challenge, that of a dual recidivism of both illegal entry and criminal offense. Some criminal aliens who have been previously removed use fraudulent identity documents or evade inspection altogether by crossing illegally between ports of entry to successfully re-enter the United States. Upon return, they then commit additional crimes. A 1997 study of the Los Angeles County jail system, for example, found that 75 percent of aliens removed from the facility to their home country had returned to the United States within six years and reentered the criminal justice system.

Removals from the country are effective forms of law enforcement only if the person deported does not successfully re-enter the United States. In recent years, prosecutions of 8 U.S.C.1326 felony cases—re-entry after deportation—have increased as a way to deter such actions and to prevent these felons from reaching their destinations. For example, the number of convictions on re-entry charges has increased from 803 in 1994 to 3,149 in 1998. The INS Strategy calls for further coordination with the Executive Office of United States Attorneys and with U.S. Attorneys offices to commit to prosecution of reentry cases. Additionally, to strengthen an effective prosecution strategy, INS is expanding its use of the IDENT fingerprint system to identify those who re-enter after deportation.

The INS Law Enforcement Support Center (LESC) provides another effective means of identifying repeat illegal border crossers and repeat offenders. Developing the LESL is a positive bipartisan effort achieved over the last few years. The Burlington, Vermont, based LESL was started in FY 1995 to provide state and local law enforcement agencies in designated LESL coverage areas with 24-hour-a-day access to immigration status information on suspected aliens arrested for committing aggravated felonies. The LESL responds to nearly 8,000 queries a month. Ten percent of all queries made result in matches with INS records; significantly 65 percent of the matches made are aggravated felons. Current LESL coverage areas include Arizona; Iowa; Nebraska; Utah; Vermont; Puerto Rico; Florida; Colorado; Wyoming; South Dakota; Kansas; Missouri; Illinois; Kentucky; Massachusetts; El Paso, Dallas, and Harris County in Texas; Atlanta, GA; and San Diego, Imperial, and San Mateo Counties and the Anaheim City Jail in California.

Finally, the INS will strengthen overseas deterrence through exploring with the governments of key source countries new ways of monitoring and controlling foreign travel of deported aliens and through establishing new preflight inspection stations and other offshore interdiction mechanisms. INS is working with both the Canadian and Mexican governments to share information and to coordinate efforts to improve

borderwide criminal enforcement.

The INS goal for this priority is clear. Persons who enter the United States without inspection and commit a crime should know that they face near certainty that they will be removed. If they try to return, they will be either stopped before they can re-enter or apprehended again and prosecuted.

Priority 2: Deter, Dismantle and Diminish Smuggling or Trafficking of Aliens

INS' new Strategy also commits to expanding and intensifying efforts to disrupt criminal activity involved in smuggling activities. It will also follow through to combat the civil offenses that seem to always occur when smuggling is prevalent. Human smuggling has become a global problem. INS is encountering it more and more at all ports of entry. Some of this smuggling is old and well-entrenched, and increased enforcement efforts are simply now uncovering its pervasiveness and harm. Our stepped-up law enforcement activities on the borders, for example, have exposed the local cottage industry in smuggling, making them work more visibly at their illegal operations. Some of this smuggling is also new. INS is uncovering more sophisticated organized networks, counterfeit document producers, and employers and contractors who recruit illegal workers inside Mexico and other countries. Aliens are now showing up in the work forces of industries that previously were not part of the illegal labor stream and in areas of the country with little prior exposure to illegal immigration. Smuggling promotes illicit spin-off businesses in source and transit countries as well as in the United States, such as individuals who set up staging areas for border crossings, drivers and guides who transport illegal immigrants across the U.S. borders, and contractors who arrange for the recruitment and employment of undocumented workers.

Both the Administration and Congress have recognized the need to combat these organized criminal activities. The President's International Crime Control Strategy targets these international challenges to the nation's borders and communities. The Report states, "The Strategy calls for aggressive efforts to protect U.S. borders by attacking and decreasing smuggling and smuggling-related crimes" (May 1998, page 33). In passing the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Congress also recognized the need to combat organized activities by providing the INS with new authorities, such as Title III wiretap authority, that allows officers to investigate below the surface of labor markets to discover the disguised forms of illegal recruitment and abuse.

The INS Strategy gives priority to disrupting and dismantling the infrastructure by which criminal organizations promote and profit from illegal migration and through which individuals are victimized. Such an approach entails a series of law enforcement activities that begin overseas 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.

INS embarked on this action earlier than other priorities because of the availability of

new authorities and the urgency of the problem. In FY 1998, INS presented 1,547 principal smugglers for prosecution of alien smuggling violations, a 19 percent increase over FY 1997. INS has also concluded recent anti-smuggling operations that provide a clear model of the direction this new interior enforcement strategy takes us. Operation Seek and Keep, for example, is a year-long, multi-agency investigation that broke the largest, most complex alien smuggling ring INS has ever encountered. This criminal enterprise had been in operation for at least three years and was responsible for smuggling as many as 300 Indian nationals a month to employers in the United States at a cost of more than \$20,000 per alien. INS estimates that more than 10,000 illegal aliens were brought into the United States over a three-year period with organizers grossing more than \$200 million in illicit fees.

Operation Seek and Keep represented the first case in which INS used its wiretap authority. Additionally, although INS initiated and led the investigation, these efforts could not have been as successful without the active support of government officials from more than a half dozen other nations. Permanent INS enforcement officers assigned overseas as part of the "Global Reach" initiative coordinated extensive locate and arrest activities. As of March 1999, 24 individuals had been arrested in the United States, Bahamas, Central America, and the Dominican Republic and charged with alien smuggling, conspiracy, and money laundering. As these and other cases are concluded, INS will also be able to turn to the significant number of businesses and illegal workers who violated the law as part of the smuggling infrastructure. In addition to INS worksite and removal actions, information will also be provided at an appropriate time to the Department of Labor to investigate wage and hours violations which may be associated with a business' participation in illegal transactions.

Priority 3: Respond to Community Reports and Complaints about Illegal Immigration and Build Partnerships to Solve Local Problems

Changing patterns of illegal immigration, and a growing awareness of the vulnerability of businesses, workers, and communities to illegal immigration, have sharply increased concerns among local residents and law enforcement officials in areas that have not had much experience with this phenomenon. Of special concern has been the impact of criminal alien activity, unauthorized employment of illegal aliens, and the movement of smuggled aliens along interior transportation routes on the economy and quality of life in these local communities. In the past, INS has been unable to adapt flexibly to changes in migration patterns in the United States and to reach these new areas of impact with significant resources and consequence. Under the new Strategy, INS seeks to develop ways to continuously work with local communities to assess their needs and to respond to law enforcement demands. In the process, INS seeks to instill and increase public confidence in its ability to respond to local problems effectively and appropriately. These actions include a concerted effort to increase communication with local officials and community groups, to provide appropriate training and education, and to respond openly and effectively to complaints against INS if and when they arise. In working with local communities, INS has a large educational challenge to inform both community members

and local law enforcement officers about the complexities of INS' federal law enforcement priorities.

One tool available to respond to local law enforcement agencies and communities involves local INS teams. For the FY99 budget, INS requested resources to support two types of local enforcement teams, one that focused on anti-smuggling investigations, the other to perform flexible community enforcement actions. Congress revised this request and provided INS with sufficient resources to create and to deploy 45 Quick Response Teams (QRTs). These QRTs will be deployed in 12 states with growing illegal migration problems, either transient or resident, that typically had not been affected by illegal immigration in the past. The teams will strengthen enforcement in the interior of the United States and expand appropriate cooperation with state and local law enforcement agencies. In the regular performance of their Federal duties, these INS officers will apprehend and remove illegal aliens encountered by state and local law enforcement officials. The deployment of the QRTs does not confer Federal immigration authority on state and local law enforcement agencies. The goal is to allow each level of law enforcement to concentrate on performing authorized duties. Better coordination and cooperation will assist in creating the comprehensive law enforcement effort that local communities deserve.

The QRTs are designed to respond swiftly to minimize the impact of criminal alien and smuggling activities on local law enforcement and local communities. Two hundred officers, consisting of special agents, detention officers, and deportation officers, will be assigned to the QRTs. The teams will be under the direction and supervision of the INS District Office and/or Sub-office located in the states where they are deployed. The INS District Directors will ensure that the teams respond to calls in a timely manner and that removal of QRT-processed aliens is a priority.

In addition to the QRTs, 43 positions will be added to the LESC to expand its coverage to seven additional states, including Hawaii, Idaho, North Dakota, Illinois, Oklahoma, North Carolina, and Connecticut, as well as specific areas in California, New York, and New Jersey. Any state or local law enforcement agency with suspected illegal aliens in custody will contact the LESC for initial determination of alienage and/or status. The LESC will then refer appropriate incidents to the QRT for response.

The Strategy also calls for new problem-solving approaches with community organizations and local officials to jointly determine the primary law enforcement challenges within a location, and joint courses of action to address them. Local government and law enforcement officials, community leaders, the Office of the United States Attorney, and advocacy groups all have a significant role in shaping a comprehensive INS response to the impact of illegal immigration on local communities. From dialogue with these groups, INS will develop local threat assessments and action plans based on the gravity of local problems and their impact on the community, such as industries or areas with a high concentration of criminal activity associated with illegal migration, smuggling, document or visa fraud, unauthorized employment, and worker exploitation and abuse. These plans will be reviewed on an annual basis, or as needed, to

determine changes in criminal alien activity. They will be further consolidated on both a regional and national level to identify national trends and support anti-smuggling efforts.

Priority 4: Minimize Immigration Benefit Fraud and Other Document Abuse

Maintaining the integrity of the legal immigration system is another of the core priorities of the Interior Enforcement Strategy. Reports of impostors, false claims to U.S. citizenship, and document fraud in connection with attempts to enter the United States have increased. These reports indicate an increased reliance on the use of fraudulent and counterfeit documents at border ports of entry. The threat posed by benefit fraud is that it may result in the issuance of genuine INS documents that could be used to apply successfully for legal immigration benefits. In FY 1998, the INS encountered 6,000 fraudulent adjustment of status (I-485) applications that, if approved, would have granted the applicant legal permanent resident status. In FY 1998, INS presented 325 cases for prosecution involving the entire range of fraud activity.

The INS Strategy recognizes that a new initiative is needed in this area. The Strategy focuses on increasing investigative activities at INS Service Centers, which represent the greatest single resource in detecting application fraud. Currently, INS officers detect fraud primarily on a case-by-case basis during routine examination of benefit applications. The examiner's primary goal in this situation is only to make a decision on an individual application. The Strategy directs higher priority to the investigation and prosecution of complex fraud schemes identified by Service Centers and a greater degree of national coordination of such investigations. One case of marriage fraud discovered at the Eastern Service Center provides clear evidence of the potential gain from a new approach. The case involves a large-scale review of I-130 immediate relative petitions in which 25,000 potential marriage fraud files were identified.

In the future, INS will consider creating anti-fraud teams, using new technology and methodologies such as data mining, to identify and enforce against the substantial fraud schemes that are becoming visible to the Service. At this time, INS believes that the applications that have the greatest potential for significant impact include the I-130 (family-based petition), I-129 (application for temporary workers in L & H categories), and the I-90 (replacement for I-551 or green card).

Nonimmigrant aliens who enter legally but overstay their authorized period of admission constitute a persistent source of concern regarding benefit fraud and illegal immigration in general. At last estimate, only 1.5 percent of foreign travelers overstayed their visas, so the problem is not with tourism or legal immigration in general. Although a relatively small share of visitors each year violate the law, without strong enforcement efforts they settle and their numbers accumulate over the years. At present, INS estimates the total number of illegal residents who overstayed their visa has reached approximately 2 million or, 40 percent of the illegal resident population.

In an effort to identify and to prevent visa overstayers entering the United States through airports, INS has developed the automated Form I-94 pilot program that applies

current technology to the collection of arrival and departure information in a controlled environment. The pilot started out in Philadelphia, and INS has now acquired equipment necessary to support the automated I-94 system for 17 airports. INS plans to deploy the system to 30 additional airports in both FY 2000 and FY 2001. Initial reports from the Philadelphia airport are encouraging in that they show that INS can build and deploy an effective system. On the US Airways flights between Munich and Philadelphia, INS collected 51,023 departure records for the period May 1997 through December 1998. Only 127 departure records did not match the automated entry record for technical reasons. Of the 50,896 matched entry-exit records, a full 99.6 percent did *not* overstay their visas.

The new Strategy embraces the direction of this airport pilot program and proposes to institute an enforcement component through a set of graduated penalties for aliens who have abused the conditions of their visas. The ultimate penalty would be visa cancellation or a formal order of removal in cases of a pattern or extended periods of violation. In all cases, the record of the violation will be entered into INS and Department of State databases to provide lookout information for consular officers and immigration inspectors.

Priority 5: Block and Remove Employers' Access to Undocumented Workers

The fifth priority area in INS' new Strategy involves the work site. Before the Immigration Reform and Control Act of 1986 (IRCA) was enacted, the INS concentrated its enforcement efforts in what was formerly called area control. INS officers sought out illegal aliens primarily in the workplace but also in residential areas and commercial neighborhoods. The targets of enforcement actions were selected based upon investigative leads obtained through public input and complaints from employees or employers. Area control also encompassed locating illegal aliens while on routine patrol in interior locations, such as transportation centers (bus, rail, air). During these operations, INS encountered citizens, legal residents, and illegal residents and workers alike. While INS officers arrested the illegal aliens, they faced the persistent difficulty of determining on the spot who was and who was not unauthorized.

The employer sanctions provisions of IRCA added to these pre-IRCA enforcement efforts. The focus of employer sanctions was to discourage employers from utilizing unauthorized workers through a document-based verification system (Form I-9) and civil and criminal penalties for knowingly employing an illegal worker. The large number of employers in the United States in comparison to INS' limited investigative capacity, however, did not allow for large numbers of suspect employers to be investigated, and the prevalence of fraudulent documentation severely undermined the employment verification provisions of IRCA.

Worksite enforcement efforts have evolved over the last few years toward investigations based on specific complaints, targeting individual work sites, which yielded uneven results in communities and across industries. Funding limits have also kept worksite enforcement activities at a fairly constant and modest level. In FY 1998,

INS apprehended 13,897 illegal aliens at work sites across the United States. That averages out to roughly 45.5 apprehensions per INS investigator workyear. At that rate, it would take an enormous increase in investigative resources to begin to have an impact on the number of illegal resident workers in the United States. Even allowing for increased efficiencies under the current approach and a dramatic increase in resources, the need for a comprehensive approach toward building a stronger deterrent became clear.

In the past, worksite efforts have also proven to be one of the most controversial aspects of INS enforcement, partly because it often involves questioning of U.S. citizens and legal residents. Worksite and area control operations in general have sparked complaints regarding the intrusiveness of INS activity and raised allegations of mistreatment and improper questioning and targeting of persons who may appear to be foreign-born. All good law enforcement needs and depends on establishing and maintaining public trust and confidence. To improve its enforcement effectiveness, therefore, INS has sought to increase the professionalism, transparency, and credibility of its worksite operation procedures. An initial step was taken in May 1998 to provide INS field managers with clear instructions and reminders of the procedures regarding worksite enforcement operations. A DOJ taskforce, charged by the Attorney General to review INS worksite enforcement policies and procedures, submitted recommendations to the INS, which will soon issue guidance to INS officers.

The new Interior Enforcement Strategy adopts a sustained, comprehensive approach to denying employers access to unauthorized workers. INS will focus on the crucial role played by the employer in creating an effective deterrent to illegal migration. The vast majority of employers comply with the law. Most do not knowingly employ unauthorized aliens and realize that a legal workforce is a stable workforce. INS seeks to create an open and cooperative relationship with the nation's employers to improve their ability to comply with the employment eligibility verification process and to achieve a demonstrable reduction in the employment of illegal workers.

Several INS offices around the country have developed worksite enforcement practices that demonstrate the value of this approach. They build relationships with employers, openly conduct audits and surveys, invite employer cooperation, and continue to work with employers well after unauthorized workers are removed to ensure continued compliance with immigration laws. These actions emphasize the positive objective of worksite enforcement—to open jobs for authorized workers—and working with employers to help reach it. For example, Operation Cleansheet was a San Diego operation that involved 39 hotel industry employers and resulted in a 77 percent reduction in illegal employees and a substantial reduction in verification errors (30.5 percent to 1.6 percent in I-9 violations). The Operation involved an initial audit, cooperation over the course of a year with the employer to improve practices, and a follow-up audit. Using this method of engagement and follow-up, INS was able to expand its enforcement efforts, reach more employers with fewer resources, and intensify its impact on both egregious violators and the ability of unauthorized workers to find jobs.

A similar example is Operation Vanguard, the Omaha program initiated in 1998 with the purpose of changing the hiring practices in the meatpacking and meat processing industry where traditionally there is a high number of unauthorized workers. Operation Vanguard began with a dedicated outreach phase (involving community leaders, law enforcement officials, advocacy groups, and meatpackers and processors) in Nebraska and western Iowa. In addition to the extensive outreach explaining each step of the operation to concerned parties, INS has established a clearinghouse to examine the work authorization of existing employees at meatpacking plants.

The INS Strategy also emphasizes prosecuting employers who do not act legally or responsibly. The willingness of some employers to hire illegal workers provides them an unfair advantage over their competitors who hire authorized workers at legitimate wages and employment conditions. While these employers profit from illegal laborers' low wages, some of the workers and their families are unable to overcome the financial hardships created by their low income.

INS will focus its activities on criminal investigations against employers who engage in a pattern and practice of knowingly employing unauthorized workers and who sometimes—as in the case of Operation Seek and Keep—are found to be consciously ordering illegal workers from an international network that smuggles them to the United States. Special efforts will include enforcement actions against employers who are abusive of their workers and who violate multiple federal and state laws. INS will identify and target notorious and egregious employers based on institutional experience, current data, and threat assessments compiled on the local, regional and national levels.

The Strategy's emphasis on the employer and on deterring illegal employment does not constitute an abandonment of the apprehension of illegal workers in the United States. Rather, the Service will reinforce its shift in focus to the employer by identifying unauthorized aliens at worksites and arresting them as a result of investigations into the entire network of illicit recruitment, transportation, and employment. It also has the advantage of increasing the possibility that they will not return because their access to the workplace has been denied.

COMPREHENSIVENESS

As mentioned previously, a fundamental feature of this new Strategy is its comprehensiveness. All five priorities interact and complement each other, creating a web of integrated enforcement. In this case, the whole is greater than the sum of the parts. The Strategy recognizes, for example, that INS enforcement activities such as interdiction, criminal aliens removals, fraud deterrence, vigorous prosecutions, and disrupting smuggling organizations, will also have a direct impact on local labor markets and the availability of illegal workers. According to estimates derived from the Bureau of Justice Statistics, for instance, probation population estimates approximately 70 percent of all persons on probation also actively participate in the workforce. If illegal immigrants on probation work at roughly the same rate as their counterparts, INS' action to remove them could amount to as many as 40,000 to 70,000 workers, the equivalent of 4 to 5 years of current worksite arrests. The removal of these illegal immigrants on

probation not only removes someone with a criminal conviction, it also has the effect of opening employment opportunities for citizens and legal residents.

Recent INS criminal investigations have also clearly established a nexus between smuggling activity and employers' access to illegal workers. Operation Seek and Keep shut down a smuggling enterprise that brought more than 10,000 unauthorized workers to the United States within a three-year period. Another operation, Over the Rainbow II, crippled a criminal syndicate responsible for smuggling as many as 150 Chinese nationals per month into the United States. Finally, Operation I-25 included an investigation of Atlantic Finishing, a Georgia-based apparel manufacturer, and prosecution of its president for enlisting the services of a smuggling organization to supply the firm with an illegal work force. These successful disruptions of smuggling activities shut down pipelines for unauthorized workers to enter the United States and developed leads on other employers who take advantage of a ready supply of cheap, illegal labor to undercut their law abiding competitors.

MEASURING PERFORMANCE

The new Strategy for the first time provides the INS with a performance objective against which to assess the efficiency and effectiveness of its interior enforcement resources. Currently, INS focuses primarily on the total number of arrests and removals to gauge its progress. These measures are crucial dimensions of INS activities and will continue to be used to monitor the pace of enforcement operations.

The bipartisan Congressional Results Caucus, however, charges government agencies with improving performance by going beyond measures of "output," such as apprehensions, to focus on the "impacts" of those actions. For INS, these impacts include reduction in the overall size of the resident illegal population, the costs of criminal alien incarceration in federal, state, and local facilities, improvement in the competitiveness of employers who must survive against others who break the rules of the marketplace, increases in the availability of jobs for authorized workers and their wages and improved work conditions, and a dramatic reduction in the victimization of smuggled aliens as criminal organizations are dismantled. For local communities, the impact of INS operations should be greater confidence and support for enforcement actions. Community surveys, as recommended by the Results Caucus, should show, for example, an increase in satisfaction with the government's actions in their neighborhoods. Certainly, more timely and sufficient response from INS officers will help improve relationships with local communities. Also, the availability of jobs, a reduction in crime, and greater confidence in the integrity of documents all should provide local communities with a greater sense of satisfaction and support. In addition, evidence that INS enforcement operations are intended to—and do—solve problems in ways that do not violate individual and civil rights will greatly improve community support for its activities and for the goals of law enforcement in general.

CONCLUSION

Criminal aliens will continue to be a principal focus of INS interior enforcement because they pose the greatest risk to the safety and well-being of communities. INS will pursue aggressively their identification and removal, but it will do even more to prevent and to deter them from reaching the United States. Large-scale, well-organized smuggling operations are now visibly involved in transporting illegal immigrants into and throughout the United States. They feed upon criminal conspiracies and resources, while often victimizing the immigrants who seek them out to gain a false sense of certainty in reaching their destination.

INS plans to respond much more quickly and completely to the communities that call for assistance and to work more closely with local groups and leaders to gain the trust and confidence of the general public. A large part of building confidence is to be able to respond promptly and effectively when there are problems. Another large part is to enforce the law in ways that respond to the perceptions and fears of those in the community who are not targets of the enforcement but live with the intrusiveness of the operations. INS seeks to move beyond conflicting perceptions of its intentions and practices to develop new enforcement efforts that, simply, are both more effective and less socially intrusive. Good law enforcement achieves both. It does not trade one for the other.

Finally, the INS Interior Enforcement Strategy seeks to support and to foster the positive dimensions of immigration in the United States. Its new focus on fraud reduction is an effort not only to root out those who seek an unfair advantage in their applications, but also to reinforce the integrity of the legal immigration system. Its comprehensive approach to worksite enforcement also seeks to eliminate the advantage that some employers gain illicitly over their business competitors by hiring illegal workers. The objective is to protect a labor market which provides authorized workers the opportunity to obtain good jobs and that encourages employers to invest in the education and training of an available workforce.

These are goals that are long overdue in the nation's efforts to combat illegal immigration. By building national public support for interior enforcement, these efforts have a chance to succeed. In the end, the INS Interior Enforcement Strategy, like its counterpart for the border, strives to strengthen immigration law enforcement for the benefit of the entire community.

Note: Additional material submitted by Mr. Bach, the Immigration and Naturalization Service's documents entitled "Interior Enforcement Strategy," dated January 1999 and "Interior Enforcement Strategy Interim Report," dated April 3, 1998, are on file with the House Judiciary Committee's Subcommittee on Immigration and Claims.

Mr. **SMITH.** Mr. Fraser.

STATEMENT OF JOHN R. FRASER, ACTING ADMINISTRATOR, WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

Mr. **FRASER**. Mr. Chairman, Ms. Jackson Lee, Mr. Gallegly, thank you for inviting us this morning. I am just going to summarize some of the points in my written statement and then respond to your questions.

Mr. Chairman, this administration has made and followed through on a strong commitment to combatting illegal immigration through a comprehensive strategy built around enhanced border control, work site enforcement and stepped-up deportations, as Dr. Bach has outlined. I will in my statement this morning focus on the work site enforcement aspects of that strategy where the Department of Labor plays an important role.

It is widely accepted that the lure of jobs in the United States is the single most compelling incentive for illegal immigration. Deterring illegal immigration, including the overstaying of temporary visas, must include reducing this magnet of employment opportunities through effective work site enforcement of both immigration laws and labor standards. That is why work site enforcement is a key component of our overall strategy and why effective sanctions against employers as well as more effective labor standards enforcement must be pursued in tandem as part of the strategy.

Vigorous enforcement of employment standards can serve as a meaningful deterrent to illegal immigration by denying some of the competitive advantage that might be gained through the employment of highly vulnerable and exploitable workers at substandard wages and working conditions. Labor law enforcement not only helps ensure fairness and minimally acceptable employment standards in the workplace, but also helps foster a level competitive playing field for employers who do seek to comply with the law.

The Employment Standards Administration and INS have historically sought to identify appropriate circumstances in which to coordinate work site enforcement activities in order to achieve a legal workforce that enjoys the benefits of employment standards protections.

Our efforts to have the agencies work more closely together have revealed a fundamental dilemma of work site immigration enforcement. DOL needs the cooperation of workers, including undocumented workers, to report on labor standards violations, in many cases very egregious labor standards violations, or to provide information needed to develop our enforcement cases. Unfortunately, many vulnerable low-wage workers, the primary focus of our labor standards enforcement efforts, are often much less willing to report workplace exploitation or cooperate with Department of Labor investigations when they perceive that doing so threatens their continued employment either because of retaliation by their employer, which is too common, or because contact with the Department of Labor could trigger an INS action to deport them, their family or their friends.

The administration has continued to assess its work site enforcement priorities and strategies to identify opportunities for improving their effectiveness and avoiding unintended consequences. That is, in part, why the INS undertook the review of its

Interior Enforcement Strategy, and why we worked together to look at improvements in work site enforcement elements that the Department of Labor pursues.

Last November, we entered into a new operating agreement with the INS which we believe maintains and strengthens the administration's commitment to combating illegal immigration. This new working agreement, a memorandum of understanding, reflects what our agencies have learned from our experience over the last decade and should help achieve a better balance in increasing compliance through more effective enforcement of fair labor standards and employer sanctions.

A key feature of our new agreement with the INS is that ESA will now only inspect employers' compliance with their employment eligibility verification obligations when we do "directed," that is, noncomplaint based, investigations. This approach should help ensure that exploited workers are not discouraged from filing complaints because they fear that our investigations will be the cause of an INS enforcement action in the workplace.

Complementing this policy are provisions for INS cooperation in delaying the removal of undocumented workers who cooperate in case development and prosecutions, who will serve as witnesses in our cases and in helping to ensure that any payment due, any back wages due to those workers is provided when and/or as they are removed from the workplace.

In addition, INS has agreed to refer employers found to be employing unauthorized workers to the Department so we can coordinate efforts to try to find legal U.S. workers to replace them so there is not a cycle of a turnover of illegal workers in the workforce.

We are convinced that our current approach will go a long way toward helping to avoid discouraging workers, both legal and illegal, from complaining about exploitative working conditions out of fear of the consequences for themselves, their families or their co-workers. We believe that our approach addresses the fundamental dilemma of work site immigration enforcement—difficulty in getting cooperation from the exploited workers themselves. We believe that under this arrangement our two staffs can work better together to ensure that employers who do hire unauthorized workers do not profit from not having to pay them for the work that they perform when they are apprehended and removed from the work site, and that employers who hire unauthorized workers do not succeed in attempting to misuse our agency's enforcement powers to intimidate or coerce their workers.

Mr. Chairman, members of the subcommittee, the Department of Labor is committed to doing all that it can to see that workers are adequately protected and that employer sanctions can be made to work. We are combatting the serious problems that derive from illegal immigration by focusing on the source, those employers that lure illegal workers into this country, pay them less than legal wages and provide substandard working conditions. In doing so, we believe we will be able to not only better ensure fair and humane treatment for workers, but also help reduce the power of the job magnet that draws illegal workers into the workplace in the United States.

That concludes my statement, Mr. Chairman.

Mr. **SMITH**. Thank you, Mr. Fraser.

[The prepared statement of Mr. Fraser follows:]

PREPARED STATEMENT OF JOHN R. FRASER, ACTING ADMINISTRATOR,
WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear today to discuss the recently revised Memorandum of Understanding (MOU) between the Department of Labor's (DOL) Employment Standards Administration (ESA) and the Immigration and Naturalization Service (INS). This MOU defines our respective roles and how we will carry out these roles to effectively enforce the employer sanctions provisions of the Immigration and Nationality Act (INA).

I would like to begin by briefly explaining why the Department of Labor has an indispensable role to play in efforts to control illegal migration.

LABOR STANDARDS ENFORCEMENT HELPS CONTROL ILLEGAL MIGRATION

Mr. Chairman, the U.S. continues to face serious problems which derive from illegal migration as unauthorized workers are drawn to and remain in the U.S. workplace.

This Administration has made and followed through on a strong commitment to combating illegal immigration through a comprehensive strategy built around enhanced border control, worksite enforcement, and stepped up deportations.

It is widely accepted that the lure of jobs in the U.S. is the single most compelling incentive for illegal migration. Deterring illegal migration—including overstaying of authorized periods of admission or employment in the U.S.—therefore must include reducing this magnet of employment opportunities through effective worksite enforcement of both immigration laws and labor standards. That is why worksite enforcement is a key component of our overall strategy, and why effective sanctions against employers who hire unauthorized workers—combined with more effective labor standards enforcement—must be pursued in tandem as part of the strategy.

Vigorous enforcement of employment standards can serve as a meaningful deterrent to illegal migration by denying some of the competitive advantage that might be gained through the employment of highly vulnerable and exploitable workers at substandard wages and working conditions. Labor law enforcement not only helps ensure fairness and minimally acceptable employment standards in the workplace, but also helps foster a level competitive playing field for employers who seek to comply with the law.

In addition to our core responsibility to enforce labor standards, the INA provides DOL a role in the enforcement of employer sanctions. This recognizes that DOL agencies are frequently involved at worksites and that vigorous targeted enforcement of labor standards can serve as a meaningful deterrent to illegal migration. Employers' obligations to verify the employment eligibility of their workers does, in fact, constitute an employment standard.

Curbing illegal migration and enforcing worker protection laws have a direct policy connection. Illegal immigrants are frequently subjected to subminimum wages, dangerous workplaces, long hours, and other poor working conditions because they are desperate for work and in an unusually weak position to assert their rights. Knowingly hiring unauthorized workers both reveals, and rewards, an employer's willingness to break the law, and undermines wages and working conditions for authorized workers.

DOL ROLE AND RELATIONSHIP WITH INS

The Department's Employment Standards Administration has certain responsibilities for enforcing employer sanctions. ESA administers and enforces a variety of laws that establish standards for wages and working conditions for most of the Nation's workers, including the Fair Labor Standards Act, the Family and Medical Leave Act, the Migrant and Seasonal Agricultural Worker Protection Act, Executive Order 11246, the Rehabilitation Act of 1973 and the Vietnam Era Veterans' Readjustment Assistance Act.

The agency performs its employer sanctions-related functions as an adjunct to core responsibilities for ensuring compliance with labor standards and civil rights laws. The primary responsibility is the enforcement of these labor standards with the goal of ensuring that *all* covered workers—regardless of their immigration status—are afforded the full benefits and protections of these laws.

Our responsibilities regarding employer sanctions involve examining *employers'* compliance with their employment eligibility verification obligations, and do *not* involve checking the status of the workers or whether an employer may have knowingly hired unauthorized workers. Even with regard to employment eligibility verification, we have not had any authority to sanction employers for violations—this authority has always been reserved for INS.

ESA and INS have historically sought to identify appropriate circumstances in which to coordinate worksite enforcement activities in order to achieve a legal workforce that enjoys the benefits of employment standards protections. To this end, we entered into an MOU with INS in 1992 to establish better communications between our agencies, at all levels, so that the enforcement efforts of each agency would be mutually reinforcing.

Our efforts to have the agencies work more closely together revealed a fundamental dilemma of worksite immigration enforcement. DOL needs the cooperation of workers, including undocumented workers, to report on labor standards violations or provide

information needed to develop enforcement cases. Unfortunately, many vulnerable low-wage workers—the primary focus of DOL labor standards enforcement—are often much less willing to report workplace exploitation or cooperate in DOL investigations when they perceive that doing so threatens their continued employment either because of retaliation by their employer or because contact with DOL could trigger an INS action to deport them, their family or their friends.

REEXAMINING ROLES AND RELATIONSHIPS IN MOU

The Administration has long recognized that effective worksite enforcement—of both employer sanctions and fair labor standards—is an essential element of a comprehensive strategy for controlling and deterring illegal migration to the U.S. Accordingly, the Administration has continued to assess its worksite enforcement priorities and strategies to identify opportunities for improving their effectiveness and avoiding unintended consequences.

Part of our worksite enforcement assessment involved reexamining the roles and relationship between DOL and the INS regarding the effect on the abilities of the agencies to carry out their primary enforcement missions and serve the Nation's fundamental interests. This review resulted in agreement on a new MOU between INS and DOL that took effect in November of last year.

Our new MOU maintains the Administration's commitment to combat illegal immigration. It gives effect to what our agencies have learned from our experience over the last decade and should help achieve a better balance in increasing compliance through more effective enforcement of fair labor standards and employer sanctions. The MOU clarifies enforcement roles and responsibilities in areas of shared authority, and seeks to ensure more efficient use of resources, reduction in duplication of effort, and improved communication and appropriate coordination between the agencies.

The new MOU provides for cooperation and coordination in the development of policies, procedures, regulations, enforcement priorities and approaches, training and activity reporting. It provides for:

cooperative development of criteria and procedures for prompt referral of suspected violations;

exchange of information and interaction among DOL and INS field offices in ways that avoid extensive reporting burdens;

cross-training among the agencies; and

cooperation between INS and ESA field personnel to identify appropriate opportunities to coordinate enforcement activities and to conduct coordinated or joint investigations where appropriate, with each agency pursuing violations within its own jurisdiction.

A key feature of the new MOU is that ESA will now only inspect employers'

compliance with their employment eligibility verification obligations in conjunction with "directed" investigations—that is, in cases that do *not* arise from a complaint alleging violations. This approach should help ensure that exploited workers are not discouraged from filing complaints because they may fear that our investigation will be the cause of an INS enforcement action at the worksite.

Complementing this policy are provisions in the MOU for INS cooperation in delaying the removal of undocumented workers who cooperate in case development and prosecutions and in helping to ensure that any payment due is provided to workers removed from the workplace. In addition, INS agreed to refer employers found to be employing unauthorized workers to DOL. DOL will coordinate with the State Employment Service, ESA's Office of Federal Contract Compliance Programs' local offices and private organizations to obtain legal replacement workers for the employers. ESA and INS officers also will continue to refer indications or allegations of sanctions-related discrimination to the Office of Special Counsel for Immigration-Related Unfair Employment Practices.

While conducting employment eligibility verification inspections only in "directed" investigations will reduce the number of such inspections conducted by DOL agencies, it will not, in our view, adversely affect our contribution to employer sanctions enforcement. Over the last five years, in more than 100,000 employment eligibility verification inspections conducted, we have found more than half of the employers inspected to be in compliance, and with another one-third we could not make a compliance determination. Less than 20 percent of all employers inspected were not in apparent compliance and many of these were probably in the low-wage industries where our directed enforcement program is concentrated. We are convinced that our current approach will go a long way toward helping to avoid discouraging workers—both legal and illegal—from complaining about exploitative working conditions out of fear of the consequences for themselves or their co-workers. We believe our approach addresses the fundamental dilemma of worksite immigration enforcement—difficulty in getting cooperation from the exploited workers.

We believe that under our current MOU, INS and DOL enforcement staff can better work together to ensure that employers who hire unauthorized workers (a) do not benefit from not having to pay for the work performed by unauthorized workers apprehended and removed through INS's worksite enforcement initiatives, and (b) do not succeed in attempting to misuse the agencies' enforcement powers to intimidate or coerce their workers.

The Department of Labor is in the process of implementing our new MOU. We held a meeting with stakeholders in January to solicit their input and assistance in helping educate workers on the changes in the ESA and INS relationship. We also are holding similar field meetings. Our staffs are working together to develop the details and specific procedures needed to fully implement the MOU.

CONCLUSION

Mr. Chairman, the Department of Labor is committed to doing all it can to see that workers are adequately protected and that employer sanctions can be made to work. We are committed to combating the serious problems that derive from illegal immigration by focusing on the source—those employers who lure illegal workers into this country, pay them less than legal wages and provide substandard, often intimidating working environments. In so doing, we believe we will not only be able to better ensure fair and humane treatment for workers but also help reduce the power of the job magnet that draws illegal workers into the country.

This concludes my prepared statement. I would be glad to respond to any questions you or the Members of the Subcommittee may have.

Mr. **SMITH.** Mr. Stana.

STATEMENT OF RICHARD M. STANA, ASSOCIATE DIRECTOR,
ADMINISTRATION OF JUSTICE ISSUES, GENERAL GOVERNMENT DIVISION,
U.S. GENERAL ACCOUNTING OFFICE

Mr. **STANA.** Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, I am pleased to be here today to discuss the results in our recently issued report on INS's enforcement of workplace immigration laws.

As you know, one of the primary magnets attracting illegal aliens to the United States is jobs. Immigration experts believe that as long as opportunities for employment exist the incentive to enter the United States illegally will persist and efforts at our borders to prevent illegal entry will be undermined. Reducing the magnet of employment should therefore be an integral part of a comprehensive strategy to reduce illegal immigration.

In the IRCA of 1986, Congress sought to prevent employers from hiring unauthorized aliens by creating an employment verification process. Our report and prepared statement discuss in detail the nature of INS's work site enforcement program, the manner in which it has been implemented, the results it has achieved and plans for change.

In my oral statement I would like to focus on four main points:

First, the effectiveness of INS's verification process has been undermined since its inception because it is easily thwarted by fraud. Large numbers of aliens, unauthorized to work in the United States, have used fraudulent documents to obtain jobs. Employers seeking to comply with the law can be deceived by fraudulent documents and unknowingly hire unauthorized aliens. Those employers seeking cheap labor could intentionally hire unauthorized aliens under the guise of having complied with the employment verification requirements.

Second, INS's efforts to improve the verification process are hampered by a number of obstacles. For example, relatively few employers have volunteered to participate in INS's

pilot programs in which employers electronically verify an employee's eligibility to work. This is due in part to their concern that in the current tight labor market they would not have enough authorized workers applying for jobs and thus could lose potential workers to competitors who are not enrolled in a pilot.

Another obstacle is that INS has made little progress toward reducing the number of documents that employers can accept to determine employment eligibility. Having a smaller number of acceptable documents could make the process more secure and reduce employer confusion.

Further, while INS has begun issuing new documents with increased security features, aliens can show employers various documents, like Social Security cards, that do not have security features.

My third point is that INS's employer investigation efforts have been modest and have produced modest results. INS has devoted a relatively small percentage of its enforcement resources to work site enforcement, about 2 percent a year since 1994. In fiscal year 1998, INS completed about 6,500 employer investigations, which equated to about 3 percent of the country's estimated number of employers of unauthorized aliens. However, about 43 percent of the investigations were not done in the industries targeted by INS as having a high probability of violators, and 83 percent of the investigations resulted in no employer sanction even though INS sought to target employers who were major violators. INS initiated criminal proceedings in about 2 percent of the investigations and collected about one-half of the \$4.9 million in fines that employers had been ordered to pay.

To bolster its work site enforcement efforts, INS in 1992 entered into an agreement with Labor that called for the agencies to work together in identifying employers suspected of hiring unauthorized workers. However, Labor generally limited its assistance to INS because it believes that delving into immigration-related work site enforcement matters could hamper its own mission of enforcing worker protection laws. That is, unauthorized workers fearing possible removal from INS could be discouraged from complaining about labor standards violations. Under the latest agreement, Labor will significantly reduce its reviews of employer compliance with employment verification procedures.

My fourth point is that INS is in the process of changing its approach to work site enforcement. INS developed a strategy for enforcing the immigration laws within the United States with five strategic priorities, two of which involve work site enforcement. One calls for INS to pursue criminal investigations of employers who are "flagrant violators." However, the strategy does not describe the criteria INS would use to open investigation on such employers such as defining what is a flagrant or grave violation.

The other priority calls for INS to block and remove employers' access to unauthorized workers. INS plans to do this by educating employers whom INS has found to have unknowingly hired unauthorized aliens. This in turn will enable INS to focus its limited

work site enforcement resources on employers suspected of criminal activities. Since INS is just beginning its new work site strategy, it is still too early to tell how these proposed changes are going to work.

Our report recommended that the INS Commissioner seek assistance from Federal and State agencies in disseminating information to employers about the electronic verification procedures and clarify the criteria in the new enforcement strategy for opening investigations of employers suspected of criminal activity.

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

Mr. **SMITH**. Thank you, Mr. Stana.

[The prepared statement of Mr. Stana follows:]

PREPARED STATEMENT OF RICHARD M. STANA, ASSOCIATE DIRECTOR,
ADMINISTRATION OF JUSTICE ISSUES, GENERAL GOVERNMENT DIVISION,
U.S. GENERAL ACCOUNTING OFFICE

ILLEGAL ALIENS—SIGNIFICANT OBSTACLES TO REDUCING
UNAUTHORIZED ALIEN
EMPLOYMENT EXIST

Mr. Chairman and Members of the Subcommittee: I am pleased to be here today to discuss the Immigration and Naturalization Service's (INS) enforcement of workplace immigration laws. My statement will outline the results presented in our recently completed report, *Illegal Aliens: Significant Obstacles to Reducing Unauthorized Alien Employment Exist* (GAO/GGD-99-33, April 2, 1999).

One of the primary magnets attracting illegal aliens to the United States is jobs. Immigration experts believe that as long as opportunities for employment exist, the incentive to enter the United States illegally will persist, and efforts at the U.S. borders to prevent illegal entry will be undermined. Therefore, these experts believe that reducing the availability of employment for illegal aliens should be an integral part of a comprehensive strategy to reduce illegal immigration.

In this statement, I make the following points:

Significant numbers of aliens unauthorized to work in the United States have used fraudulent documents to circumvent the employment verification process designed to prevent employers from hiring them, thereby undermining the effectiveness of the process. Employers seeking to comply with the law can be deceived by fraudulent documents, while those seeking "cheap labor" can intentionally hire unauthorized aliens under the guise of having complied with the employment verification requirements.

INS has taken steps to improve the employment verification process, yet considerable obstacles remain.

INS and the Department of Labor's immigration-related worksite enforcement efforts have been limited, and INS' employer investigation efforts have produced modest results.

INS is changing its approach to worksite enforcement, but it is too early to gauge its success.

We made recommendations in our report that are shown at the end of this statement.

Background

The Immigration Reform and Control Act (IRCA) of 1986(see footnote 1) made it illegal for employers knowingly to hire unauthorized aliens. IRCA requires employers to comply with an employment verification process intended to provide them with a means to avoid hiring unauthorized aliens. The process requires newly hired employees to present a document or documents that establish their identity and eligibility to work. Employers are to review the document or documents that an employee presents and complete an Employment Eligibility Form, INS Form I-9. On the form, employers are to certify that they have reviewed the documents and that the documents appear genuine and relate to the individual. Employers are expected to judge whether the documents are obviously fraudulent.

IRCA also provides for penalties or sanctions, such as fines, against employers who do not complete the verification process or who knowingly hire unauthorized aliens. INS, under its worksite enforcement program, and to a limited degree, Labor, are responsible for checking employer compliance with IRCA's verification requirements.

IRCA also prohibits employers with four or more employees from discriminating against authorized workers. The Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) and the Equal Employment Opportunity Commission share responsibility for investigating complaints alleging immigration-related discrimination.

Fraudulent Documents Have Undermined Effectiveness of INS' Employment Verification Process.

IRCA's employment verification process is easily thwarted by fraud. Large numbers of unauthorized aliens have used fraudulent documents to circumvent the employment verification process. For example, data from INS' employer sanctions database showed that, over the 20-month period from October 1996 through May 1998, INS identified about 50,000 unauthorized aliens who had used 78,000 fraudulent documents to obtain employment. About 60 percent of the fraudulent documents used were INS documents; most of the rest were Social Security cards.

Large-scale counterfeiting has made employment eligibility documents widely available. For example, in November 1998 in Los Angeles, INS seized nearly 2 million fraudulent documents, such as counterfeit INS permanent resident cards and Social Security documents. These documents were headed for distribution points around the country. In its 1997 report to Congress,(see footnote 2) the Commission on Immigration Reform reiterated its 1994 conclusion that the single most important step that could be taken to reduce unlawful migration was the development of a more effective system for verifying an employee's authorization to work.

INS Is Taking Steps to Improve Verification Process, Yet Considerable Obstacles Remain.

INS has undertaken several initiatives to improve the employment verification process, but it faces significant obstacles. First, as mandated in the 1996 Act, INS is testing pilot programs in which employers electronically verify an employee's eligibility to work. However, INS has had difficulty in meeting its goal for enrolling employers in the pilot programs. Although INS originally expected to enroll 16,000 employers by the end of fiscal year 1999, only 2,500 were participating as of November 1998. According to various officials we spoke with, some employers are reluctant to participate in the pilots because of concern that participation may have a negative economic impact on their businesses. According to these officials, employers in some industries believe that, in the current tight labor market, they would not have enough authorized workers applying for jobs if they participated in a verification pilot. The employers reportedly fear that they could be put at a competitive disadvantage because employees rejected by the verification system might go to work for competitors who are not enrolled in a pilot.

Another reason for low participation in the pilot program could be that some employers are not aware of the pilots. Other federal and state agencies, such as Labor and state labor agencies, have contact with employers who might be interested in INS' pilot programs. While they did not have a formal role in informing employers about the pilots and generally did not do so, the Labor and state labor officials we talked to said they would be willing to inform employers about the INS pilots.

Second, INS has made little progress in reducing the number of documents that employers can accept to determine employment eligibility. Having a smaller number of acceptable documents would make the process more secure and reduce employer confusion. In February 1998, INS issued proposed regulations to reduce the number of documents that could be used from 27 to 14. However, as of February 1999, 27 documents could still be used, and INS did not know when the proposed regulations would be finalized.

Lastly, INS has begun issuing new documents with increased security features, which it hopes will make it easier for employers to verify the documents' authenticity. However, in addition to these INS documents, aliens can show employers various other documents that authorize them to work. Other widely used documents, such as the Social Security card, do not have the security features of the INS documents. Therefore, unauthorized

aliens seeking employment can circumvent the improved security features of INS documents by simply presenting fraudulent non-INS documents—such as counterfeit Social Security cards—to employers.

INS and Labor Enforcement Efforts Have Been Limited.

Since no verification system is foolproof, enforcing IRCA's employer sanctions provisions will always be important. INS has devoted a relatively small percentage of its enforcement resources to worksite enforcement, about 2 percent a year since 1994. In fiscal year 1998, INS completed about 6,500 employer investigations, which equated to about 3 percent of the country's estimated number of employers of unauthorized aliens. To best use its limited worksite enforcement staff, INS has attempted to target specific industries that historically have had a high probability of violations. Yet, 43 percent of the investigations INS opened in 1998 were not in the targeted industries.

To bolster its worksite enforcement efforts, INS in 1992 entered into an agreement with Labor that called for the agencies to work together in identifying employers suspected of hiring unauthorized workers. However, Labor has generally limited its assistance to INS to a review of employers' compliance with the employment verification paperwork requirements. Labor believes that delving into immigration-related worksite enforcement matters, such as the immigration status of workers, could hamper its own mission of enforcing worker protection laws. That is, unauthorized workers, fearing possible removal by INS, could be discouraged from complaining about labor standards violations. About 70 percent of all Labor investigations are based upon complaints; Labor initiates only about 30 percent. Under a new agreement with INS effective November 1998, Labor's role in this area has been reduced. To avoid discouraging unauthorized workers from complaining, Labor is no longer to review employer compliance with the employment verification procedures in investigations stemming from complaints. Labor is only to review employer compliance in Labor-initiated investigations.

INS Worksite Investigation Efforts Produced Modest Results

A major goal of INS' worksite program was to investigate employers INS believed intentionally hired illegal workers, including prosecuting some employers for criminal violations of immigration law. However, 83 percent of the investigations INS completed during the period we reviewed resulted in no employer sanctions. In fact, INS found nearly half of the 9,600 employers INS investigated to be in compliance with the employment verification procedures. INS initiated criminal proceedings in only about 2 percent of the investigations.

INS officials attributed these modest results to various factors. They said that the widespread use of fraudulent documents made it difficult for INS to prove that an employer knowingly hired an unauthorized alien. In addition, they said that INS' requirement that its district offices' worksite programs meet various numerical goals, such as identifying a certain number of unauthorized aliens, may have placed an undue focus on arresting unauthorized aliens, thereby undermining INS' overall goal to target

employers suspected of intentionally hiring unauthorized aliens. For the closed cases we reviewed, INS collected about \$2.5 million in penalties, about one-half of the \$4.9 million employers had been ordered to pay. INS did not collect the balance for various reasons, including that the employer went out of business or went bankrupt.

INS Is Changing Its Approach to Worksite Enforcement.

INS is in the process of changing its approach to worksite enforcement. INS developed a strategy for enforcing the immigration laws in the interior of the United States with five strategic priorities. Two of the priorities involve worksite enforcement. One calls for INS to pursue criminal investigations of employers who are flagrant or grave violators. However, the strategy does not describe the criteria INS will use to open investigations on such employers, such as defining a "flagrant or grave violation." Although INS' previous worksite program goal was similar, 83 percent of its investigations resulted in no employer sanctions. Another priority calls for INS to "block and remove employers' access to unauthorized workers." The INS official responsible for drafting the strategy told us that INS plans to build relationships with employers to create an effective deterrent to illegal immigration. By educating employers whom INS has found to have unknowingly hired unauthorized aliens, INS expects that such employers will be better able to comply with IRCA. This, in turn, would enable INS to focus its limited worksite enforcement resources on employers suspected of criminal activities. However, at the time of our review, INS had not specified how much staff it planned to devote to the worksite enforcement priorities.

Conclusions and Recommendations.

INS faces significant obstacles to reducing unauthorized alien employment. Significant numbers of unauthorized aliens can still obtain employment because IRCA's employment verification process can be easily thwarted by fraud. Employers who want to hire only authorized workers can be deceived by unauthorized aliens' use of fraudulent documents. Other employers who seek "cheap labor" can intentionally hire unauthorized aliens under the guise of having complied with the employment verification requirements. Generally, employers of unauthorized aliens have faced little likelihood that INS would (1) investigate them, (2) prove that they knowingly hired unauthorized aliens, (3) collect fines, or (4) criminally prosecute them. Further, Labor's efforts to identify employers suspected of hiring unauthorized aliens have been limited and are to be even more limited in the future.

Because enforcement measures can only go so far, we believe INS is going in the right direction by testing electronic verification procedures, proposing to reduce the number of employment eligibility documents, and making INS documents more tamper-resistant to try to improve the verification process. However, obstacles such as reluctance on the part of some employers to participate in electronic verification pilot programs and lack of knowledge about them, have hampered INS' ability to improve the process. Electronic verification can be effective with employers in industries with a history of reliance on unauthorized aliens only to the extent that they use it. Therefore, inducing such

employers to participate in the electronic verification pilots is important.

INS' new interior enforcement strategy lacks criteria for opening investigations on employers suspected of criminal violations. Having clear criteria is important if INS is to focus its limited staff to achieve its enforcement goals. Since INS is just beginning its new worksite enforcement strategy, it is too soon to know how the proposed changes will be implemented or to assess their impact on the employment of unauthorized workers.

Our report recommended that the INS Commissioner

as part of the outreach program for INS' pilot verification programs, seek assistance from federal and state agencies, such as the Department of Labor and state labor agencies, in disseminating information to employers about the programs, and

in implementing the interior enforcement strategy, clarify the criteria for opening investigations of employers suspected of criminal activities.

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

Mr. **SMITH**. Before we go to questions, let me recognize the presence of two members who have joined us, Mr. Elton Gallegly of California to my right, and Mr. Howard Berman of California to my left.

Dr. Bach, Ms. Jackson Lee and I share some of the same concerns that you stressed as well about the Rafael Resendez-Ramirez case. I was glad to hear that the INS commissioner has asked for the inspector general to answer some of the many questions that all of us have. My concerns, however, go beyond just this one case. If the INS released an individual like this person after he had committed a number of murders, and after he was released, he committed a number of other murders, we don't know if it is 4 or more, my concern is how many other individuals might have been released by the INS, either because of a lack of ability to track individuals with criminal records or who had been deported before or who had been apprehended multiple times, or because the INS computers are not able to interface with the FBI computers and you are not able to check the backgrounds of so many of these individuals.

I don't think that my concern is unfounded and I will go into more detail. We estimate that the number of illegal immigrants in the country today is about 5 million. I think that is conservative, but let's start with that. That represents about 2 percent of our overall population in the United States, but yet at least 20 percent of the population of Federal prisoners consist of illegal aliens who have been convicted of serious crimes.

Now those figures would take us to the conclusion that someone who is in the country illegally is about 10 times more likely to commit a crime than someone who is in the country legally. Those are just obvious figures and conclusions. So individuals, whether it be members of this subcommittee or members or others in the United States, I think

have legitimate concerns about what the INS is doing or not doing, legitimate concerns about illegal immigrants who might commit crimes. Certainly not all do, but a disproportionate percentage do. I notice in your list of 5 priorities under the new strategies, the deportation of noncriminal aliens is not one of the 5 priorities. Is that correct? Am I reading your five priorities right?

Mr. **BACH**. It is not listed as one of the priorities. It is part of both the smuggling and the work site.

Mr. **SMITH**. But it is not one of the enumerated priorities?

Mr. **BACH**. It is not. The overall goal, Mr. Chairman, is to reduce the size of the illegal population.

Mr. **SMITH**. The reason that it concerns me that it is not an enumerated priority is because it is my understanding that the first interim strategy report actually said that the deportation of illegal aliens was the goal, was the end result of an immigration strategy, and yet after *you* reviewed that interim strategy and the new strategy was announced, the deportation of illegal aliens was somehow left off the priority list. Why did you not endorse the interim report which was written by professionals in the field, law enforcement officers, why did you change their goals, their priorities, and drop the deportation of illegal aliens off your priority list?

Mr. **BACH**. Both the interim report and the final report were the consequence of 2 years of extensive work with the field and with the same headquarters staff that wrote both documents. My involvement with both documents was exactly the same as supervisor over them. It did not change.

Mr. **SMITH**. Why the big change between the interim report which emphasized deporting illegal immigrants and the final report which did not emphasize that?

Mr. **BACH**. I am not—that characterization is an overstatement of a difference between the reports, Mr. Chairman. The removal of the population has always been—reduction in the 5 million has been the primary goal of the entire strategy.

Mr. **SMITH**. Let me read from the interim report which says, "Integrating removals by coordinating administrative prosecutions, detention and transportation to ensure the certainty of removal of illegal aliens."

Anything approximating that statement was dropped out of the final report, and yet that certainly is a major portion of the interim report. So again, why the change?

Mr. **BACH**. In my written testimony we talk about increasing the certainty if you come to the United States illegally of being returned. There may be a difference in the writing styles, but there was not a difference in the methods. The goal is to reduce not only the rate of increase but absolutely the 5 million in the population.

Mr. **SMITH**. Let me squeeze in another question because you raised the point, you referred to a certainty in the United States of wanting those individuals to be deported.

As I understand it, and I think this is roughly the case, the INS deported about 40,000 noncriminal illegal aliens last year. That represents less than 1 percent of the total illegal alien population in the United States. It is further my understanding, and I learned this yesterday for the first time from Mr. Gallegly and it is also true of Texas as well as California, that is that there is a policy that an illegal alien will not go through the formal deportation process until that illegal alien is apprehended 10 times. So let me paint this picture which I think is accurate. First of all less than 1 percent of all illegal aliens in the country who are not convicted criminals are going to be deported. When that one out of a hundred is apprehended, he has to be apprehended 10 times before he is going to be formally deported. That sounds like the message that we are sending out is there is one chance in a hundred if you are an illegal alien that you are going to be deported; it is a lot less than that. In effect you get nine "get out of jail free" passes before you are deported.

I don't know what minuscule amount of illegal aliens in the United States ever reach that point, but it seems to me that that is exactly the wrong message to send if we are trying to reduce illegal immigration.

I am going to have another round of questions. The gentlewoman from Texas, Ms. Jackson Lee, is recognized.

Ms. **JACKSON LEE**. Thank you very much, Mr. Chairman and I thank the presenters. Dr. Bach, I appreciate your focus on some of the issues for which I have great concern.

Let me start as one would expect on the horror that all of us experienced both with local law enforcement coming from Houston, coming from Texas, as well as the Federal agencies upon noting that Mr. Rafael Resendez-Ramierz was in the hands of the Border Patrol. My horror was again, as I emphasized in my opening remarks, was what I deemed to be a lack of coordination. You did indicate that the commissioner, and I do applaud the quick response to hopefully many of our calls, will be looking to determine in a very detailed manner through the inspector general and other agencies the crux, if you will, or the cause of those circumstances that resulted in his release. But can you logistically describe for me what you might have imagined occurred as individuals like that cross the border and what are the particular procedures just generally now that would have occurred in the case of this gentleman or anyone else that would be coming across?

Mr. **BACH**. A person that crosses the border without inspection illegally, particularly in the Texas area, and if they are apprehended, if they are 12 years of age or older, is put into the IDENT system which is a fingerprint system and picture. Then that person is voluntarily returned in this case to Mexico.

The purpose of the IDENT database is a very specific Border Patrol goal and system. Just as we have systems that work in our ports of entry, in our airports and others, this is

the Border Patrol inspection system, if you will. The problem that the Border Patrol always has is that people give false names upon arrest. The identifiers that you would use to check other law enforcement databases are not typically there.

This is the importance of the fingerprint in what we call a recidivist database. So Mr. Rafael Resendez-Ramirez, like others, are entered into the recidivist database so every time the Border Patrol catches, apprehends the person, that is recorded.

There is a threshold at which time the number of repeat arrests trips an investigation. The Border Patrol will do something different, make a different inquiry, turn the person over to the U.S. Attorney. The U.S. Attorneys all along the border set different levels. In the western region of Texas, it is 5 repeat arrests before the Border Patrol agent is supposed to refer them for further investigation. In Santa Theresa, New Mexico, where Mr. Rafael Resendez-Ramirez was caught three times, the threshold established between the U.S. Attorney and the Border Patrol is nine.

So what happened was that our Border Patrol agent was looking at the recidivist database and seeing a repeat voluntary return entry without inspection. That limited database, although an important database for the Border Patrol's purpose, had no other information than that he had been caught for entry several times.

Ms. **JACKSON LEE.** Dr. Bach, I know that we will get a very, very detailed report upon this investigation. Forgive me for probing you a little more and say that I am very much gratified to see a number of cracks in our armor. We now know that there are other players involved, and let me raise the question about these geographic and distinctive analysis made by the U.S. Attorney's office, and maybe that is an area of investigation, not out of any negative reflection on the U.S. Attorney's office, multiple that they are, but that we might need to standardize if we are going to be serious about this issue of illegal aliens, and we may need to standardize.

The other issue that I would certainly find great pause is why the IDENT system would not, if they minimally had any collaborative database, not have entered into it the FBI's most wanted list. If you don't do anything else, if your technology cannot extend to the other law enforcement agencies, at least to have had the FBI most wanted which is not an unattainable number. You may want to answer that but let me just ask this question. Looking at your 5 points, 5 priorities, would you answer for me are you totally convinced that as you have listed them here that you have—that are able to grapple with the crisis of what we see, keeping in mind that we are not asking you to violate the civil rights of individuals but we are asking you to be tough on this issue of illegal immigration and I would appreciate you just making it clear for me that the hubbing concept is dead.

Mr. **BACH.** Okay, very quickly you are absolutely correct, congresswoman, that the FBI 10 most wanted list should be in the IDENT system. It is now in the IDENT system.

There is a look out database that has other information when it comes to criminal history. I just didn't get around to explaining that, but there is a way that criminal data is

entered into that database when we have it.

Second of all, you can appreciate why the commissioner asked the Department of Justice Office of Inspector General to look into this. The last thing you want, I think all of us want, from this kind of instance is the different law enforcement agencies pointing fingers or questioning each other. We have to pull together here to figure out what the solution is and that is a Department of Justice goal. That is what we are trying to do and that will include the U.S. Attorneys and the FBI and the INS and everyone else that is involved trying to figure out how we can do better. In terms of grappling with the overall problems, I would like to come back to something I did say in my statement that it is absolutely critical. The new authorities that we have, particularly to investigate large cases and criminal cases and the smuggling cases are proving to be just invaluable. We haven't been able yet to demonstrate their full outcome, particularly in terms of arresting the actual illegal workers, because these cases are very big and complicated and powerful. We are able to bring, for example, money laundering charges for the first time against some of these smuggling networks. We are talking about workers of 10,000 or more over one or 2 years; 150 Chinese nationals per month being smuggled into the country to particular work sites; and the view in the past that employers, the large employers that employed illegal immigrants, just didn't know what was happening. With the new investigative authorities which this committee and Congress has worked to provide INS, wiretap authority, organized crime investigations, et cetera, has proven to be a powerful weapon that we think will have a huge impact on work site issues and the whole labor market as well as the criminal alien removals because where these organized networks are, crime follows, victimization follows and exploitation of workers follows.

Ms. **JACKSON LEE.** Hubbing.

Mr. **BACH.** The concept, the name, is not being used any more. If you hear it being used, it is someone that shouldn't be using it. We are trying to solve the problem. The hubbing concept was an interesting local initiative in trying to solve problems. It got too far out in front and was not communicated as well as we should have communicated. The lesson that we have learned is very important, that particularly when protecting people's rights, we need to first discuss our plans with the community, get their reaction first before we proceed. That is not what happened here. We are now in the mode of going throughout the country in the large cities, talking to community groups and talking to counsels, talking to our local investigators and detention officers, trying to solve the three problems that I laid out.

So where we are as an agency is we have three problems. We all agree those are the three problems and we are trying to come up with a broad based community response to it. It will be hubbing.

Ms. **JACKSON LEE.** Thank you very much. Thank you, Mr. Chairman.

Mr. **SMITH.** Thank you, Ms. Jackson Lee on the way to recognizing Mr. Gallegly of California, I would also like to recognize the gentleman from Indiana, Mr. Pease, who

has just joined us as well. Mr. Gallegly.

Mr. **GALLEGLY**. Thank you very much, Mr. Chairman. Thank you for calling this meeting.

Before I ask a question, I would just like to make one brief observation and a follow-up to a statement that the chairman made earlier. It is common knowledge, and there is no disputing the fact, that over 20 percent of the prison population in this country are a result of criminal activities on the part of someone illegally in the country. If, in fact, there are 5 million illegals in the country, I happen to believe that is a very conservative number, Mr. Smith's assessment would mean that it is 10 times greater that someone that is illegally in this country is obviously guilty of committing a major crime. There are 10 million people in the country, that would logically mean that it is still 5 times. Those numbers, and we are talking about illegals, we are not talking about legal immigrants and illegal immigrants combined, make up for 26 percent of the Federal penitentiary population.

So in any event, that observation I thought I would like to make.

Dr. Bach, we passed a law last year on a jail program that I had in operation. The administration, through the INS, testified aggressively against this bill time and time again in this very room. We found that we had a pilot program going in my county and also in Orange County, California for prearrestment of individuals when they come into screening to see if they were legally or illegally in the country for crimes committed, other than immigration violations.

In the first year in the pilot program we found in my district 67 percent of those screened were illegally in the country. In fact, we found one person that subsequently was convicted of murder that had four prior arrests for criminal activity in my county and had never been identified. The program was a very good success. A bill subsequently passed the House to expand the program nationwide to areas where they were asking for help. We weren't saying the INS was going to go in unless the local jurisdiction requested help.

It passed the House 410 to 2, passed on the unanimous consent calendar in the United States Senate, and with that type of support, the President did not veto it, he did sign it into law. However, having signed it into law, that is where it stopped. The program has not been a part of the budget this year, and we are still up and operating in our county, and it is still continuing to be very successful.

Can you tell me why the administration is not following the authorization of Congress on that?

Mr. **BACH**. Congressman Gallegly, first of all, the INS—first of all, you are getting a memo. It is on the way.

Mr. **GALLEGLY**. It is in the mail?

Mr. **BACH.** In response to this. The INS level of effort on the county jail project is greater than the \$10 million that you—in the planning sequence.

Mr. **GALLEGLY.** So you acknowledge that it is a success at this point?

Mr. **BACH.** Yes. We actually appreciate the initiative and the idea, and we are doing other things, similar things, video conferencing; Mr. Reed can talk about some of the things in the central region. So we have some—we have issues about funding, and we have issues about trade-offs between being able to focus on getting those criminals, the serious criminals out of Federal prison and State facilities versus a prearrestment scheme. Those are legitimate trade-offs that we can discuss.

Mr. **GALLEGLY.** I am encouraged to hear that. One suggestion that I might make for consideration that I think would be very successful and very beneficial and minimize the number of people hours, and that would be the IDENT system tied into the jails. It is very simple, I understand the software is available, and my folks out there are crying for it. Everyone else that I have talked to that supports this, it would simplify the process unbelievably, as it has in some of the border areas.

One thing I have to also make note of, and I have some real concerns about, I couldn't agree with anyone more than I do with Mr. Stana on the issue of employer sanctions as it relates to interior enforcement. If the magnet is not there, that in and of itself is going to minimize, if not eliminate, or at least mitigate to a large degree those that are coming here. The overwhelming majority of people who are illegally entering the country, I think we would agree, are not coming here to be criminals. Most of them are coming here for economic reasons; most of them are good people who are just trying to find a way to better their quality of life. However, it is costing American jobs, and it happens to be against the law.

The thing that concerns me, Dr. Bach, and I will summarize with a quick question and let you respond. I met a couple of times with the local folks in our community in Ventura County and they have what they call definite new directives from headquarters that says, we are no longer to go out, detain, arrest and remove, without direct approval of headquarters. Our objective is to discourage; to go out and tell employers, hey, if we find that you have 100 people here illegally, get rid of them, we are going to be back in a week or so, and if they are not gone we are going to file against you. Well, naturally they know that they are going to come back, they come back and they are gone, but they are working across the street.

Could you respond to that?

Mr. **BACH.** Congressman, I don't know of any directive that says that headquarters must directly approve operations.

Mr. **GALLEGLY.** I will get you a copy of the directive.

Mr. **BACH**. We do have the 1998 memorandum on work site which asks district offices before they conduct operations to create a plan and to send it up through their normal channels, which would be to regional directors, not directly to headquarters, to my knowledge. So if you have different information, we would like to look at it.

Mr. **GALLEGLY**. Well, the question is, they no longer can go out and do employer enforcement and arrest and removal without the approval of either the regional director or Washington; is that correct?

Mr. **BACH**. Can we ask a regional director to answer that?

Mr. **GALLEGLY**. Okay.

Mr. **REED**. Let me speak for the central region.

Mr. **GALLEGLY**. But is the issue really, is the emphasis really on discourage rather than removal? Is that fair?

Mr. **REED**. No. The emphasis is on impact rather than numbers. We are trying to ask the field, before you go to that site, be sure that you are going to do something there that lasts longer than that 1 week period of time.

We have delegated that authority down to the chief patrol agent and the district director, those people are making those decisions in the field. We do review their actions and challenge them. "Okay, if we went to that factory, so what?" What does that mean besides the fact you went in and arrested a lot of people and removed them? What have you done in terms of being sure that those jobs are not going to be replaced by yet another unauthorized worker?

If we suspect that, in fact, they are going to be replaced with other unauthorized workers, there has to be a better way of doing business. So the idea of that memo is to challenge them on going to the next level. It is not just arrest and removal. That is a tool, but then what comes after that. How do we actually be sure that when we go back there a year from now that those jobs are not going to be occupied by other unauthorized workers or worse yet, as we have seen over the last few years, more unauthorized workers. And that is a culture change.

A lot of the people in the field—I have been there for 25 years. I have done a lot of these things and arrested a lot of aliens. We get hung up thinking that our mission is arrest and removal, arrest and criminal prosecution. Those are tools, but that is not the mission. What we are trying to do now is to challenge our agents in the field to figure out ways to stop the illegal activity.

How do you stop the alien smugglers? How do you stop the employers?

Mr. **SMITH**. Mr. Gallegly, will you yield for a minute?

Mr. **GALLEGLY**. I think my time has expired.

Mr. **SMITH**. It is kind of amazing what we are listening to. There aren't many individuals and there aren't many government agencies that would equate fewer results with greater success, and we are going to come back to this subject a little bit more in a minute, but I am surprised by some of the concepts of this new policy. Thank you.

The gentleman from California, Mr. Berman, is recognized.

Mr. **BERMAN**. Thank you, Mr. Chairman. I want to make a short statement, but I want to do the opposite. I want to raise a couple of issues and then make my statement. But just the first point, twice I think both you, Mr. Chairman, and my neighbor from California, Mr. Gallegly, have said that the figure—the conclusion of a conservative estimate of illegal immigrants, 2 percent of the country's population, versus a survey of the State and Federal systems.

Mr. **SMITH**. Federal prisoners who are convicted who are illegal aliens convicted of felonies are 20 percent or more.

Mr. **BERMAN**. Right. That, to me, does not draw a conclusion of 20 percent of that universe—that 10 times that universe—that universe is 10 times more likely to be committing crimes than the——

Mr. **GALLEGLY**. Being convicted of a Federal crime.

Mr. **BERMAN**. To be serving time in a Federal prison for being convicted of a Federal crime is a very different universe, I will bet, than—so I just think what Mr. Gallegly said, most of these people who are trying to come here illegally are good people trying to get—looking for better economic opportunities. I think that statement is an accurate statement. I have no doubt that there probably is a higher likelihood of criminal activity programs in this universe than in the overall universe, but I don't think it is 10 times or anywhere near it, and I just want to make that distinction.

Mr. **GALLEGLY**. Would the gentleman yield?

Mr. **BERMAN**. Yes, I will yield.

Mr. **GALLEGLY**. I don't believe it is 10 times either, I believe it is 5 times, because I believe there are 10 million illegals. I yield back.

Mr. **BERMAN**. A lot of good people seeking a better economic opportunity.

And by the way, they seem not to have better economic opportunities in this country if I am seeing the figures correctly. But in any event, I fully agree with all of the people on the committee that we do have a job to try and reduce illegal immigration, to strengthen,

particularly strengthen enforcement at the border before undocumented immigrants can reach the interior.

I want to commend the INS. I support the INS's decision to shift the focus of your interior enforcement strategy away from the workplace raids. The GAO report points out that even if you were to triple your investigative staff, you would only be able to investigate a small number of employers. In addition to being ineffective, raids have become a tool for unscrupulous employers who just happen to call the INS when a unionize drive is in progress or when the employees are protesting specific irregularities in working conditions or payments.

Inevitably, many lawful permanent residents and workers are subject to harsh questioning or other harassment because of their accents or the color of their skin. On balance, it seems that raids are a limited enforcement tool with a number of negative side effects.

On a related matter, I believe the Department of Labor was prudent in its decision not to refer these kinds of complaint-driven cases to the INS, and I hope that both agencies will work together to train its employees on the ground level on the implementation of their recent NLU. So to the extent that you are getting battered in some quarters for this policy, at least know that one person here thinks you made the right decision, and we don't want to batter you if you backed off of it.

I also think it is right to target the large alien smuggling rings who exploit immigrants. We should have a zero tolerance policy for employers who engage in indentured servitude, and in theory—well, Mr. Smith, the chairman, and Mr. Gallegly and I have all talked for a long time about the whole issue about the efficacy of employer sanctions without some meaningful verification system, and the one thing we know is notwithstanding our efforts, not the executive branch, not the INS, not the Department of Labor, not the outside community-based organizations, but the House of Representatives itself has, on a number of occasions, rejected any effort to provide that kind of meaningful verification system.

In fact, the author of an outstandingly shocking amendment to a bill several years ago named Mr. McCollum who introduced a bill asking the House to direct the Social Security Administration to check whether or not the feasibility of the Social Security FIR system would be okay was repudiated on a bipartisan basis, notwithstanding our votes on the House floor because this body didn't want to make that meaningful. So when we start casting stones around about what the intentions are and who is really serious about doing something about this, I think we have to put the whole record into perspective here.

Anyway, I think I have made my points, and the red light tells me that even if I haven't, I should yield back.

Mr. **SMITH**. Thank you, Mr. Berman.

Speaking of the gentleman whom you just mentioned, I want to note that we have been joined by the gentleman from Florida, Mr. McCollum, who is the chairman of the Crime Subcommittee, and it is because of the Crime Subcommittee finishing its work this morning that you have been able to join us, and we appreciate that.

The gentleman from Indiana, Mr. Pease, is recognized for his questions.

Mr. **PEASE**. Thank you, Mr. Chairman.

Dr. Bach, I want to follow up on some of the points that were raised by Mr. Gallegly. Specifically, as it deals with the interim strategy that was developed by the INS a little bit more than a year ago or the final strategy that was adopted at that time, and I want to quote from it and then ask you a question about an Appropriations Committee conference report. The strategy says: "instead of focusing on outputs such as the total annual number of illegal aliens removed from the United States, INS will evaluate its performance in different terms. Changes in behavior or business practices of the persons and organizations and positive impact on local communities of INS law enforcement efforts become the tangible measurable results of this strategy."

The Appropriations Committee conference report followed the findings of the Commission on Immigration Reform and in that act of Congress said: "the committee also believes that INS needs to revise its interior enforcement strategy to focus on the end outcome of deportation, recognizing that deportation is the strongest deterrent to illegal immigration."

Now, can you explain to me why your strategy is directly at odds with the Congressional action taken on this issue?

Mr. **BACH**. Congressman, it goes to the point that we have raised very explicitly and somewhat innovatively at risk to ourselves, and that is recidivism. A removal is not the ending. What we are finding——

Mr. **PEASE**. Removing illegal aliens is not——

Mr. **BACH**. Is not the end game. The rate at which people are coming back, Congressman, is substantial. It is the same problem all law enforcement has. People that—the largest number of crimes are committed by a small number of people.

And it is a special law enforcement problem to try to break into this recidivism issue. That is what we have put on the table. It is simply a cat and mouse game to believe that just by apprehending someone and removing them to their country of origin, that you have finished your job. They are coming back. So what we have focused on is not in contradiction to what the House committee wanted to do, but augmenting and saying, a removal is only good if you make it stick, and how do you make that removal stick? You have to remove the person, but then you have to take away their ability to come back into the country and that magnet of employment.

So we believe we are consistent. It is a question of which do you do first? Where do you intervene into the process? Where do you have the most—we say in our own report in Mr. Gallegly's area, the Los Angeles County jail project finds very substantial recidivism, not only of a new illegal immigrant once deported coming back in, but getting caught by the law enforcement community and put back into the jail. We have to take on that issue.

In San Diego County, again, along the border using IDENT as an effective tool, we have found that 25 percent of the apprehensions along the border in San Diego are committed by only 8 percent of the people, individuals that we catch. We have been able to use that information to identify smugglers, the traffickers. The same person is bringing people back and forth. Arresting that person, prosecuting that person makes removal successful and makes deterrence in the work site successful.

So it is not that we are opposed to removals at all. We put it out that we track ourselves quarterly on the number of removals we make, and that is how we gauge our budget. This is very important to us. But we need to go the next step and say how do we make a removal permanent?

Mr. **PEASE**. Is it true that you have in some districts reassigned staff to adjudicate naturalization petitions, and diverted staff from enforcement to naturalization?

Mr. **BACH**. I don't know. I will have to ask, and we will get you an answer to that, Congressman.

Mr. **PEASE**. I would appreciate that.

No further questions, Mr. Chairman.

Mr. **SMITH**. Thank you, Mr. Pease. The gentleman from Florida, Mr. McCollum is recognized.

Mr. **MCCOLLUM**. Thank you very much, gentlemen. I have several areas of questions and I will have to limit myself here because there are so many to ask about I suppose in a hearing like this. But first of all——

Mr. **SMITH**. Mr. McCollum, we are going to have another round of questions.

Mr. **MCCOLLUM**. All right. Thank you. Thank you.

I am curious, Mr. Stana, in the GAO report that is out here now with regard to obstacles to reducing unauthorized alien employment, is the document, the Social Security card that was referred to by Mr. Berman a while ago and its easy counterfeiting, in your judgment a significant impediment to the problem of getting these illegal aliens identified in the employment place?

Mr. **STANA**. The IRCA of 1986 set up the employment verification procedure as really the first line of defense here, and this relies on the alien, after being hired, presenting to their employer documents to prove their status. Aliens in our experience and in our reading find it all too easy to have manufactured documents or counterfeit documents or even have a real document that is owned by somebody else, for someone else and presented to the employer and be authorized to work in that location.

Mr. **MCCOLLUM**. One of the principal documents is the Social Security card.

Mr. **STANA**. The Social Security card does not currently have the security features that some of the INS documents do.

Mr. **MCCOLLUM**. If we were to make that Social Security card as tamper resistant say as the \$100 billion or as the passport paper, we don't have to put a picture necessarily, I am just talking about paper with ingrained proof watermarks, et cetera, I realize that wouldn't be perfect, but would that, in your judgment, improve the situation for the INS and improve the situation for enforcing employer sanctions?

Mr. **STANA**. That would definitely be a step in the right direction, but I remind you that currently there are 27 different documents that can be shown to an employer to verify their authorization to work.

Mr. **MCCOLLUM**. And many of these are just as easily counterfeited as the Social Security card, right?

Mr. **STANA**. That is correct.

Mr. **MCCOLLUM**. So you would recommend that we reduce the number of those documents, I assume?

Mr. **STANA**. Yes, and in fact, INS had an initiative underway to do just that, but in the past couple of years, not much action has been taken.

Mr. **MCCOLLUM**. Again, the bottom line would be to reduce the number of documents and then make those documents that remain more tamper resistant by improving the quality like we mentioned the \$100 billion or whatever you have to do.

Mr. **STANA**. It would certainly take the guesswork and, I might add, the discrimination out of the employment decision.

Mr. **MCCOLLUM**. I don't know if anybody here knows, Dr. Bach, or you, Mr. Stana, but I had a hearing here the other day in which the folks at the Secret Service told me that they rarely investigate counterfeiting of Social Security cards, that they find a lot of misuse of the card, and yet they say we are principally charged with that, and we don't see INS asking us to do that very often.

Do either of you know the degree to which other law enforcement agencies are involved in trying to get to the bottom of counterfeiting of false documents like the Social Security card that are affecting this employer sanction law and your ability to operate, Dr. Bach?

Mr. **BACH.** I did not know about the Social Security—the Secret Service statement, so I can't address that. We do have an initiative, a final regulation in the final steps of clearance to reduce the number of documents to 15. Social Security card unfortunately is still on there because of the volume of the people that have to rely on that card.

Mr. **MCCOLLUM.** And you would like to see that document, obviously that Social Security card among others, made more counterfeit-proof?

Mr. **BACH.** Certainly INS leads in making our documents as counterfeit-resistant as any in the world, so it is our institutional interest.

Mr. **MCCOLLUM.** Am I not correct that the Social Security card, together with the driver's license, are perhaps the most commonly used when people go seeking a job today among those that are available to people?

Mr. **BACH.** I don't know if that is correct or not.

Mr. **MCCOLLUM.** Let me suggest to you that there is a need to talk with the Secret Service, and that is something I didn't know about until this past week, and I would encourage you to do that, because there is apparently very little going on or knowledge on their part that counterfeiting of Social Security cards itself is a problem for INS, and since they are the chief enforcement agency for counterfeiting of those documents, I would certainly encourage you to do that.

I also want to jump over to the question of the criminal aliens for a second with you, Dr. Bach. Permanent resident aliens since the law was changed a few years ago are removable by a much more expedited process if they are criminal aliens, and, in principle, I have agreed with that. But the law went further than the House intended originally, and the ultimate bill that became law because the Senate had a different version, and my understanding is that we now have a law that has a very reduced, compared to the previous law, a very reduced type of crime that could be making you subject to automatic removal with no opportunity for a judge to have a waiver. For example, simple theft, if you have, simply have a conviction of the crime, if it carried with it a potential sentence of a year or more, subsection to automatic removal.

Is that causing a greater burden on the Immigration Service to have so many more crimes automatically removable as opposed to the way it was before when you get down into this, if you will, call it lesser crimes than the serious ones?

Mr. **BACH.** I think it is, Congressman, in a variety of ways. We are certainly interested in having the ability of an immigration judge review a selective group of those

kinds of crimes, restore some of the discretion to an immigration judge. Where it is, as you well know and the members of the whole committee know, the subcommittee know, the dramatic stories of a person that has been a very fine member of U.S. society, but committed a crime of a certain level that may be not as serious as others, or was so far—committed so long ago and has shown rehabilitation, really puts any law enforcement agency, but certainly the Immigration Service, in a position of enforcing a condition where you have sympathy for the person that is caught up in—

Mr. **MCCOLLUM**. Part of that is that retroactive feature too in that bill so that somebody who was convicted of a crime years ago would now be subject to removal under this new law when they weren't subject before that, and they may have served their sentence or never had any sentence, but this law is causing those kinds of stories to come forward, isn't it?

Mr. **BACH**. Right. We would like to see an immigration judge be able to review whether somebody who committed a crime more than 10 years ago and has changed their life, can demonstrate to the judge that they have not committed a crime, have been working, have established families; that that belongs in a judge's hands, not in law enforcement direct hands.

Mr. **MCCOLLUM**. Thank you, Dr. Bach. Thank you, Mr. Chairman.

Mr. **SMITH**. Dr. Bach, a minute ago in response to a question by Mr. McCollum, you said that you are focusing on the removal of illegal aliens. I have just been looking at the figures of individuals who have been deported in this fiscal year, and in the first 6 months it was 11,000, and if we prorate that over the whole year, it is going to be something like 20,000. I think I may have been too generous a while ago in giving you credit, and I use that word in a facetious way, for deporting 1 percent of all of the illegal immigrants in the country, because if you all only deport 20,000 this year, if there are roughly 5 million illegal aliens in the country, you are only going to be deporting less than one-half of 1 percent. If Mr. Gallegly is right and the number of illegal immigrants in the country is closer to 10 million, then you are only going to be deporting one-fifth of 1 percent, about 1 out of every 500 illegal immigrants in the country.

That doesn't sound to me like you are focusing on removal.

I want to follow up on another question that you were just asked, actually Mr. Stana was asked, and that is the reduction in the number of documents to try to help us in our efforts to remove the presence of fraud. The number of documents were supposed to have been reduced from 29 to 15. Mr. Stana just mentioned that not much has been done by the INS in the last couple of years. With such an obvious way to try to reduce fraud, which is to say reduce the number of documents that can be used fraudulently, why is the INS late in coming up with the regulations to reduce the number of documents?

Mr. **BACH**. Congressman, we put out an interim regulation 2 years ago to reduce the documents by 4; we then put out a proposed regulation to reduce it further down to 15. We have some very good comments.

We are almost finished—what we are struggling with, and I think you can appreciate it is the following: That there are certain members of U.S. society that don't have the documents that are generally available, and by this I particularly mean there are certain tribal documents of Native Americans that we need to keep on the list, but we are trying to figure out ways to narrow those. Our I-94, which is the entry document, but if you are a nonimmigrant working for a particular employer, it is only the I-94 that designates employment for that particular employer. You can't use——

Mr. **SMITH**. When will we get to the 15 documents?

Mr. **BACH**. I think the regulation will be finished and cleared this summer.

Mr. **SMITH**. Okay.

Mr. **BACH**. We are very close.

Mr. **SMITH**. This summer, good.

Among your stated priorities, as we have already pointed out, one of the stated priorities is not removing illegal immigrants, but one of your stated priorities is that, according to your statement, the INS will reinforce its shift in focus to the employer by identifying unauthorized aliens at work sites and arresting them as a result of investigations into the entire network of illicit recruitment, transportation and employment.

Here you are talking about one of your priorities is arresting individuals who are working illegally in the United States. And yet, according to the figures we have, and tell me if these are accurate, in fiscal year 1998, you arrested 13,000 individuals. The projected number of arrests in fiscal year 1999 is 3,000. You are going from 13,000 to 3,000, even though arrest is a stated priority.

Furthermore, in one well publicized effort by the INS in Nebraska, the INS identified more than 4,000 suspected illegal aliens who were working in this country illegally, interviewed 1,000, but arrested only 34.

If one of your stated priorities is the arrest of individuals who are working in this country illegally, why are the number of arrests plummeting?

Mr. **BACH**. Several steps in this, Congressman. First of all, the overall removals, just looking at the figures, total removals are up this year over last year, in general, criminal, noncriminal, other removals.

Mr. **SMITH**. So we are talking about arrests at the work site?

Mr. **BACH**. We are talking about work site. Our numbers are slightly different, but the

point is basically the same, that this year so far, work arrests at the work site are significantly lower than they were before. Again,——

Mr. **SMITH.** And yet that is a stated priority to increase the arrests?

Mr. **BACH.** The kinds of operations we are doing, particularly the smuggling operations, have to work all the way through in order to actually get to the individual workers.

Mr. **SMITH.** But if it is a priority, why wouldn't the number of arrests go up, not down? If it is a stated priority, as it is of the INS, to arrest the individuals who are working illegally; last year you arrested 13,000, this year you are closer to 3,000. That sounds to me like it is already a failed policy.

Mr. **BACH.** Well, I know that Mr. Reed wants to get back in here and comment, but this is a very similar situation, Congressman, that we faced along the southwest border when we started our border enforcement where when you focus on impact, when you focus on actually blocking people from entering the country, from breaking the law, your actual numbers sometimes go down.

Mr. **SMITH.** Are you saying there is nobody around to arrest?

Mr. **BACH.** We are saying that in some of the operations that we are focused on breaking up the employment operation. That is not being done in a way that——

Mr. **SMITH.** I think I know what you are trying to say, but it just sort of sounds like the world upside down. As I said a while ago, the results keep decreasing, the numbers keep going down, and you are equating that with a successful policy. It just doesn't follow.

One last question, if the gentlewoman will yield to me, you also say as a part of your stated policy, it has the advantage of increasing the possibility that they will not return, that is the illegal workers will not return, because the access to their workplace has been denied.

Dr. Bach, just a common sense answer. Do you honestly think that just because you are denying these individuals the ability to work in one place, that they are going to go back home to their home country rather than try to find another job? Do you honestly believe that?

Mr. **BACH.** Congressman, in Atlanta when the investigators pulled off a smuggling case and convicted the employer for smuggling and broke up the transportation route and smuggling, those workers who were removed and those workers from their villages would have a terribly hard time——

Mr. **SMITH.** I can assure you, there is nobody in the field, there is no law enforcement

officer that I have talked to, no Border Patrol agent that I have talked to that honestly thinks that just because someone is deprived of a job in one location, they are going to go back home. They are going to go try to find another job.

The gentlewoman from Texas is recognized.

Ms. **JACKSON LEE**. I thank the chairman. Let me try to continue the line of questioning by allowing you to further answer that. I may have a slightly different perspective in that I am not looking necessarily for bigger, but I am looking for better. So I want, Dr. Bach, you to respond to the question of whether or not the fact that you have not continued the work site raids or you have done them in a different manner, and I think your numbers have suggested that you were not getting the return on them that we would have liked.

Are you being effective in stopping or closing down work sites that heavily rely on illegal immigration and illegal smuggling of aliens, if you will; are you being effective from your perspective and what is the criteria that you use to show that success, or to show that you are having results?

Mr. **BACH**. Thank you, Congresswoman. Let me begin with the baseline and a sort of negative statement. We are not being sufficiently effective right now, and that is in the way operations are being run in focusing on arrests and not changing access to the workplace. We are spending a lot of time with little gain, and the reason why the numbers are coming down is a particular category of voluntary returns.

Ms. **JACKSON LEE**. How do you fix that?

Mr. **BACH**. By these kinds of—first of all, a comprehensive strategy where the work site, the employer, the labor market, as in the case of the Nebraska operation where it is just not a single company where workers can come back to another company right next door, but the entire labor market is being shut off to the illegal workers. They have to fundamentally change their behavior.

Ms. **JACKSON LEE**. And you are talking about the employers, and that is where you are focusing in collaboration with the Labor Department?

Mr. **BACH**. Yes.

Ms. **JACKSON LEE**. Have you found them to be cooperative?

Mr. **BACH**. Yes. And some of our numbers will be different numbers. Some of our numbers will come down, like arrests of people at work sites, but criminal prosecutions are up; the substantive fines are coming up. We have been able to effectively prevent employers from using the Immigration Service to break up unionization drives, for example, in Washington State because of the cooperation with labor and the MOU.

Ms. **JACKSON LEE**. Mr. Reed, you are in the field. How do you perceive this? What

are you seeing in the field on the ground with respect to this approach? How effective are you being?

Mr. **REED**. I think this is the first time in the history of the Immigration Service as I know it, where we have come up with an effective strategy to actually remove unauthorized workers from the workplace. Arrest and removal has not worked. We know what doesn't work. Going in and doing raids does not work. In 1992, we went in to a major plant in Nebraska, and we took about 200 agents, helicopters, K9 groups. We arrested over 300 people at the plant. It got national coverage. And nothing happened. When we went back again this year, that same plant had that many, if not more, unauthorized workers back in the plant. That is just not a strategy that we have enough people to do.

If the numbers were smaller, if we had less people in the United States unlawfully, if we had less employers engaging in this, doing raids and removing people would be a much more effective strategy, but we simply can't do that. In Nebraska, they have well over 100 meat packing plants. Our strategy in the past has been to go to each of those meat packing plants and raid them. If you just do the numbers and you count the number of agents that we have available to do that and how much time it takes to do that, as the meat packers figured out, it takes us a long time to cycle through that strategy. Some meat packers believe that they would prefer to have us doing raids, because they know that we can't get back for a long period of time, and it just became a cost-effective way of doing business.

What we have done now, is gone to the meat packing industry as a whole in the entire State of Nebraska and have told them you can no longer hire unauthorized workers. I agree, the neon light is on, it has been on for decades, and that neon light is driven by jobs. As long as those jobs are available, those people are going to come in.

What we have done with the meat packers is to say we need to help you review your work force. We are subpoenaing records and we are taking a look at the documentation that is being provided to the employers, and we are coming up with discrepancy lists and identifying people we want to go back in and interview.

Ms. **JACKSON LEE**. So you are using law enforcement technology methods as opposed to the sort of rough-riding methods. Let me just say this, because my time is short and I appreciate you have a lot to say on the issue. Let me ask for a more detailed report or response on my question of success, comparing past directions and success and what we are doing now, and I apologize, Mr. Reed, for cutting you off, but let me just get one or two questions in here.

Mr. **SMITH**. Ms. Jackson Lee, if you will yield, we are going to continue questioning this panel when we come back from the vote, so there will be more opportunity, and I don't want to miss this vote.

Ms. **JACKSON LEE**. If you leave, I can finish my 5 minutes.

Mr. **SMITH**. We will do just that.

Ms. **JACKSON LEE**. And I will follow you to the floor.

Mr. **SMITH**. Let me announce to those in attendance that we do have a vote; we will stand in recess for about 10 minutes after Ms. Jackson Lee finishes her questions, and then we will continue questioning this panel when we return.

Ms. **JACKSON LEE**. Thank you very much, Mr. Chairman. I have one question for Mr. Reed and then I will go vote.

Mr. Reed, you have heard me talk about hubbing quite a bit, and I met with Commissioner Meissner on this issue. We thought we had it resolved, and then I discovered that the district director in Houston and yourself were out seemingly contradicting the Commissioner on whether hubbing was in place or not. Can you please clarify this once and for all for the record.

Are you still engaged in hubbing, or can I accept Dr. Bach's representation to me in this hearing that we will be proceeding in an investigatory manner in searching these issues with the community, and that the idea of pronouncements that hubbing is in place and a policy of the INS will end?

Mr. **REED**. The hub site plan is dead. However, the principals that we were trying to get through in the hub site plan that is improving access, reducing the number of days people have to stay in jail and then getting them home in a safe and orderly manner is still open dialogue, and taking your leadership on this, it is something that has to be done through collaboration. If we need to do a burning ceremony where we take the hub site paper outside and burn it. Whatever it takes. We don't use the "H" word any more in the region.

Ms. **JACKSON LEE**. I look forward to working with you in a collaborative manner along with the many communities that I think you have charge over or at least were impacted from Chicago, Illinois down to our border areas, and I am sure we will look forward to the collaboration that you have offered.

With that, I must, as well, acknowledge the recess that has been called; and we will be right back.

Thank you very much.

[Recess.]

Mr. **SMITH**. The Subcommittee on Immigration and Claims will resume. Dr. Bach, I have a few more questions for you, not on the subject of priorities, but on, frankly, a lot of different issues. And I want to say to Mr. Fraser and Mr. Stana, we are not ignoring

you all; it is just that I am sort of working down the row here.

Mr. **FRASER**. We are not feeling neglected, Mr. Chairman.

Mr. **SMITH**. Dr. Bach, let's see. The first question goes back to the Ramirez case and the IDENT fingerprinting system that the INS has.

I want to hear you say again that in expanding this program and asking for the additional money, you are going to fix what is wrong with the program. Are you going to be able to interface with the FBI computers, for example, and get the information that they have on individuals?

Mr. **BACH**. Congressman, as I said, we have an investigation of this going on, so what I can tell you, what I know, which isn't the total picture, so I am not giving you the complete answer that you are seeking. We have a recidivism piece of the IDENT data base and a look-out piece, which is the look-out information that contains information on criminal and deportation on people who are in the IDENT system.

We will continue to expand that look-out system by putting in the names and fingerprints of people whom we are deporting, felons whom we are deporting. At what point or whether it even works to connect IDENT to NCIC, the National Crime Information Center, or some other database, I would really like to leave for the outcome of the examination.

Mr. **SMITH**. You are aware, I am sure, that in 1997, two years ago, INS testified before Congress and Congress was told that the IDENT system would interface with the computers at the FBI. Apparently, that testimony was not accurate; it was false. But we still don't know, in other words, when the problem is going to be solved; is that right?

Mr. **BACH**. I just can't speak to that at this point, Congressman.

Mr. **SMITH**. The other thing, I know you can't speak to either, but I hope will be a part of the investigation is that several days ago, the INS said that they had no knowledge that Mr. Ramirez was a known criminal. Just yesterday, we found out that in fact the INS had been told by local law enforcement authorities about his background and about him, so that they were on notice.

Again, the nice way to say that is we got, and the public got, conflicting information about Mr. Ramirez. Do you not know anything more about that?

Mr. **BACH**. Not really, and that would certainly be the subject of the Inspector General's report.

Mr. **SMITH**. Okay. Thank you.

Let me go to the INS budget. I think the INS got almost everything it asked for last

year. The total budget was \$3.9 billion, and as you know, the INS has enjoyed a greater increase in this budget than any other government agency, and yet, the INS ended up with a shortfall for the year of \$300 million. How, other than mismanagement, did that occur?

Mr. BACH. It occurred, Congressman, in several different ways, and some of it is not a shortfall, it is a process of distributing funds as the year goes through.

You were correct in identifying in your opening statement that there was the issue of maximum hire at the end of one fiscal year going into the beginning of the fiscal year. You usually end up not a total hiring maximization, so there is flexibility as you move on. We also had the detention issue in the fall that you are well aware of. We have received the \$80 million supplemental appropriations for those detention operations. We have also done a \$31—submitted a \$31 million reprogramming. But to go to the issue of the management side, what you hear from the field and when you look yourself is that there weren't resources available the whole year.

During the process—during the year, through the course of the year, at quarterly reviews, mid-year reviews, INS reviews its budget and distributes money to the field as an ongoing part of its management and process. I am looking at the figure in January 1999 as a part of this normal review. We distributed \$48.9 million to cover field operations. We did similar activities through the mid-year review as well. Our third quarter review is coming up and there are items for which senior management sits around at the table for 2 days, listens to the Mark Reeds and Johnny Williams from the field and makes decisions on how to make sure that operations are covered and moves ahead.

Mr. SMITH. But to go back to my question, the INS it looks like to me spent about 10 percent more of its budget than it had. If every government agency operated that way, we would be in chaos. Are you saying it is not going to happen again, or it didn't really happen this time?

Mr. BACH. Again, I think there is a temporal process here that we were running in the beginning in the first quarter of the year at that higher rate, but there are adjustments that occur all throughout the year in managing toward resources and operational needs.

Mr. SMITH. My 5 minutes keeps going quicker and quicker, my time for questioning.

The gentleman from California, Mr. Gallegly, is recognized.

Mr. GALLEGLY. Thank you, Mr. Chairman. Dr. Bach, I just wanted to let you know I was so excited after your earlier testimony on the jail bill that when we had the vote I went running up to my office to check the mailbox. It is not there yet, so I am going to run to the Post Office every day and see if I get it.

On a more serious note, the issue that we talked about having to do with verification on the employer sanctions, the safeguard to the 1986 Immigration Bill more commonly known to some of us as the amnesty bill, the employer sanctions are just not working. What did we say, we had 27 documents, all of which are subject to counterfeit. Also, I

assume you know that the booklet that the employers are given to explain how to fill out the I-9 form is 29 pages long. There has been debate about a national I.D. And a lot of controversy surrounding that.

I don't know, maybe I am missing something in this process, but it seems to me that the resolution is a lot simpler than we are trying to make it, with 29 pages and 27 documents and a national I.D. We have a national I.D. Card that is required for everyone to work, it is called a Social Security card. So what if someone counterfeits it? If I go to K-Mart and I have a \$2 charge and I want to use my MasterCard, they are going to verify a \$2 charge electronically, or they could, before we did it electronically, they had an 800 number they called.

I want to tell you something. I know this without any doubt, and it is of good sources. There are employers in my State, and I think this is probably true of most States, that knowingly are hiring illegals. But they also know that they are protected under the cover of all of these documents that could be counterfeit and they have shown due diligence even though they know in their heart of hearts that the folks are illegal.

Their concern is not the INS, Dr. Bach. I don't mean to be critical. You guys have got an unbelievable job, and I yield to you on that, but the problem is not, their concern is not the INS is going to get them. You know what their biggest concern is now? They are concerned because Social Security is making random checks on Social Security numbers, and their concern isn't that they are going to get in trouble, their concern is that they are going to lose their employees.

Now, if we come up with a more aggressive program on what we started as a volunteer program, we know the people that are participating voluntarily, they are not our problem children, it is the folks that aren't participating. But the fact remains that if we can verify a \$2 bill at K-Mart on our MasterCard or Visa or American Express or whatever instantaneously or we could have done it 20 years ago to protect a \$2 charge, why in the world can't we protect American jobs as easily as industry did 10 or 20 years ago?

That is a real concern, believe me, of employers out there today that are knowingly hiring illegals but know that they are covered by this shield of 27 documents and counterfeit documents, just like this one that you can buy on any street in California for about \$22. In fact, it is called the resident alien card, more commonly known as a green card.

Can you give us your assessment of using a Social Security number, which is already required by law, that you have a Social Security card; it also, I think it is inherent that it be a valid Social Security card.

Mr. STANA. Well, I think your major point is well taken. I think the real key is employment verification, and that is really the major thing that is broken here. As long as an alien or an employer can hide behind the guise of a system that is broken and do these illegal acts, nothing is going to be fixed.

So what I would suggest is basically three things. The first thing is this fix of employment verification. Perhaps you can't do it all overnight, but you can start with the top 15 industries that are known to employ illegals, and instead of making it voluntary, maybe make it mandatory. We talked to one employer who said that he played by the rules, he joined the pilot, he checked the I-9 and he lost some workers that way and he found that he lost a contract to the Orange County municipal government or county government for a landscaping contract. When he drove by the work site, he saw some people that he rejected working for the guy who was awarded the contract.

The second thing I would mention is, there ought to be a consequence to these employers who knowingly hire illegal aliens. I am not so sure there really is right now. In the cases we looked at, we found that the average fine was only about \$6100, which is arguably a cost of doing business. \$6100 is not a lot of money in this day and age to take that kind of a risk.

Mr. **GALLEGLY**. It is overhead.

Mr. **STANA**. It could be considered overhead I suppose. And the third thing would be to have greater consequence to the illegal alien. As was pointed out in earlier discussions, if you can just go down the street and find another job, it certainly isn't much of a consequence if you are removed from one.

Mr. **GALLEGLY**. Thank you, Mr. Chairman.

Mr. **SMITH**. Thank you, Mr. Gallegly. Ms. Jackson Lee is recognized.

Ms. **JACKSON LEE**. Thank you, Mr. Chairman. And Mr. Stana, thank you, because earlier in this year with some previous hearings I made the same point about part of the problem that we experience is the easy ride, if you will, the lack of a heavy burden that the employers do carry. I would be interested in a perspective analysis from the General Accounting Office on the question of what we can do. What would be the type of punitive measure or the type of measure that might get the attention of our employers in this instance.

Would you explore, would you view it only as a monetary assessment that would get the attention from your preliminary assessment of the employers?

Mr. **STANA**. Yes. When we did our work and reported in April, we didn't discuss in detail the options available to the INS to sanction employers, but we do know that only 1 out of 5 investigations resulted in an employer sanction and that the sanction imposed averaged \$6,100. There are obviously some above that amount, and some below it. If you would like us to do some further investigation into that, we can discuss that with your staff.

Ms. **JACKSON LEE**. I would. Thank you.

One point that you just made, the one thing that we can certainly determine is that the sanctions are being used, if I heard you correctly, one out of five times, and maybe we need to increase those numbers, improve those numbers. I think it also goes to the point, we had a hearing a couple of weeks or so ago and there was vigorous discussion and some agreement and some disagreement, which is the impact in the workplace for American workers, and one of the things that I certainly want to encourage, I know economists don't like it, but I happen to like full employment in America, because it happens to impact communities that I represent, individuals in my communities and some others, rural areas the most, even though there is high and wonderful prosperity, there are those of certain economic levels that are not experiencing it. So I want to see full employment. I would like to see the gentleman get the landscape contract, and I hope that he could find the resources, human resources here to do that.

So I would be interested as well in some further information about answers for these employers as to why they don't have a sufficient base here in this country for hiring even landscape persons. I find that to not be an unattractive position. I know there is some difficulty with the meat packing industry, and we need to look at their OSHA standards and other workplace standards to increase their pool of workers here in the United States.

But let me, from that point of questioning, also raise a point to mention these documents. I am concerned about which documents you would remove from the work authorization process, and do you think this would have adverse effects on workers who are lawfully authorized to work in the country? That is to you, Mr. Stana.

Mr. **STANA**. You mean with respect to the 27 documents?

Ms. **JACKSON LEE**. Yes, the enormous burden that it seems that we have.

Mr. **STANA**. It seems that number should be reduced. We're not suggesting that 15 is the correct number, or 17 or 11. But a smaller number would still provide sufficient flexibility to the system without putting an undue burden on anyone to produce a document that wouldn't be readily available. Almost all of us have a driver's license, Social Security card, a passport, or other means of documentation. We are sensitive to the idea that there are some populations in the country that would need a special document, but it just seems that 27 is an inordinately large number.

Ms. **JACKSON LEE**. I was just speaking to the chairman and I know he won't mind me mentioning it, but I would be more interested in getting a fraud-free document. I might even go with one, I know that is an extreme situation that have 27 that simply load up on paper. I am on the Science Committee, I have an Internet caucus with the Congressional Black Caucus, but I am enormously concerned about the paper trail in the United States Government.

In fact, Mr. Chairman, I want you to know that I received a preliminary census inquiry. And I may have to engage the Census Bureau because if we are going to get anyone counted, we certainly are going to have to make it legible and understandable. But I really would like to see us work on fraud-free documents.

Let me move on, I know my time is going to run out and I do have some concern that I think is very important. Mr. Stana, I obviously will take your input and maybe pursue it as we move toward discussions about fraud-free documents, I think would be very important.

Dr. Bach, Mr. Reed, let me acknowledge on a positive note, both of you are a breath of fresh air as we try to work through some of the ailments that INS has, and I think you are well aware that there is sometimes a lot of criticism. But I want you to recognize the fact that I appreciate your presence here and your straightforward answers.

Let me not leave the questioning without acknowledging as well that I think respect for civil rights should also be a part of our discussion, and I think you may be familiar with the Chandler, Arizona incidences which involved local police raiding neighborhoods, selecting persons because they happen to be brown, they happen to be people that were different from the general neighborhood or going into the neighborhoods and raiding them. I would certainly be concerned if you engaged local law enforcement—that we do have an aversion against racial profiling, driving while brown, if you will, because we are dealing with some of these issues in our community.

What efforts will be put in place to do our job, but at the same time to acknowledge that every person who looks as if they are illegal because they happen to be Hispanic or Mexican or with a different surname be subject to these stops and searches, if you will, illegally and, as far as I am concerned, in violation of their civil rights. Would you respond to that, Dr. Bach.

Mr. **BACH**. Thank you for the kind words.

Also, as you know, the Presidential memo on racial profiling directs the variety of law enforcement agencies, including the Department of Justice and INS, to engage in a review of its practices of data collection related to instances where there would be open encounters, open stops of people in the general public. The process will be—we are in the middle of it, and we will design a field test that will occur over the next year. And then the Department of Justice will write a report with recommendations for the Attorney General and others.

The Immigration Service will focus in our current discussions, this is still in the discussion format, but it is relevant to your concerns, in three areas.

One is Border Patrol traffic stops, particularly in the southwest area.

Two is the issue of secondary inspections at airports and ports of entry where there is a second level of selection and scrutiny; and then third is targeted investigations.

As you know, the Chandler incident is one where there is a concern that in the process of figuring out how to do an investigation and where to do it, that race and ethnicity and

gender come into consideration, and we are looking into that and will seriously test and study it and come up with alternatives that do not use race and ethnicity and gender improperly in law enforcement.

Ms. **JACKSON LEE**. Specifically about Chandler, and this is my last question, will there be any disciplinary actions on any of the principals or individuals involved in that incident in Arizona?

Mr. **BACH**. I am not privy to the outcome of that, Congresswoman. We will get you an answer from our office of internal audit who has done the investigation and can speak directly to it.

Ms. **JACKSON LEE**. I would appreciate that. Thank you.

Thank you, Mr. Chairman.

Mr. **SMITH**. The gentleman from Indiana, Mr. Pease is recognized.

Mr. **PEASE**. Thank you, Mr. Chairman.

Mr. Frazer, I want to follow up. I share the concerns of Ms. Jackson Lee in regard to immigration's impact on the native work force. I am wondering whether the Department has done any studies on the impact of illegal immigration on wages paid, job availability, and other related issues dealing with the native American work force.

Mr. **FRASER**. Mr. Pease, I believe the Department has done some research on that, or certainly at least compiled information or research that has been done in the academic sector. I will endeavor to find out what we have. I know this committee also had some hearings on that very issue earlier this year, so I will see what we can provide for you.

Mr. **PEASE**. I would really appreciate that. Thank you.

Dr. Bach, in your willingness to follow up on my question earlier about whether enforcement personnel have been diverted to adjudication matters, we have received anecdotal information that this is happening rather extensively and in particular in Denver, if that helps your research, I would certainly appreciate it.

Mr. **BACH**. That would help.

Mr. **PEASE**. Earlier this year, I think it was in May, we had a hearing on nonimmigrant visa fraud, and Mr. Yates, the acting deputy associate commissioner, described what he thought was, and it sounded to us to be a successful joint INS-State Department program to combat fraud in H-1B area. I was glad to hear of the progress that seemed to be being made in that area. However, I got the clear impression that the plan was not to deport the people that had been found to be here fraudulently under the H-1B program. Is that your understanding?

Mr. **BACH**. That, Mr. Pease, is not my understanding, but it may be for lack of information rather than a principle. I know we have that investigation, we have a significant investigation going on at the California Service Center on L Visas as well, and we have always talked about workers who have received those documents improperly to be removable.

Mr. **SMITH**. Would the gentleman from Indiana yield just for a minute?

Mr. **GALLEGLY**. I would be happy to yield.

Mr. **SMITH**. Every question you have asked so far were questions that I wanted to ask as well, so I had a special interest. But my information on your last question about the fraud in H-1B Visas is that last year, 6,000 fraudulent visas were singled out, and to my knowledge, not a single one of those individuals was removed.

Could that be accurate information?

Mr. **BACH**. I will check on that. As you know, Congressman, the issue here is did the nonimmigrant, the alien, know they were participating in the fraud. They received the benefit, but were they complicit in the fraudulent illegal activity. So each one of those is an investigation.

Mr. **SMITH**. Dr. Bach, we had a hearing on this aspect a few weeks ago, and it was the opinion of the experts that most of the fraud involved were the result of affirmative actions, which is falsifying resumes and so forth. And for not a single one of these 6,000 individuals who engaged in fraud to obtain one of these visas were they deported is an absolutely amazing figure to me.

I thank the gentleman for yielding.

Mr. **PEASE**. Thank you, Mr. Chairman.

Dr. Bach, on that same point, this committee was actively involved in an effort to be of assistance to both the INS and American employers on the H-1B issue. It was a very high profile, as you know, very high profile issue, very controversial, and the committee, I think, worked hard to strike a balance between the needs of employers and protecting American employees, and if, in fact, after all of that effort, there is this sort of systemic fraud, there is going to be serious concern, I believe, by a number of members of this committee and the full Congress.

So if you could review that issue in particular, I would appreciate it, particularly since we are now hearing that there is an effort to expand H-1Bs even further, and I would suspect that before we get into those hearings, we would want to know what is happening in the current program.

Mr. **BACH**. We share your concern completely.

Mr. **GALLEGLY**. I appreciate that.

Thank you, Mr. Chairman.

Mr. **SMITH**. Thank you, Mr. Pease.

Dr. Bach, it is clear that we are not deporting individuals who engage in fraud to any great degree, even though, in my opinion, that would certainly be a deterrent to fraud; and if you don't deport individuals who engage in fraud, it is another one of those neon signs that we have been referring to saying, welcome to try fraud. If you try, you are not going to be penalized in any way.

But there is another question which I think is also relevant here and that is if you are not going to deport the individuals who engage in fraud even though I think that is a wrong-headed policy, are you going to at least make note of them so that they cannot apply for and be the beneficiary of Federal benefits that would be given to them.

Does the INS keep track of individuals who are engaged in fraud? If you are not going to punish them, at least to make sure that they are not further rewarded?

Mr. **BACH**. Congressman, the reason that fraud and document abuse is our fourth priority is the fact that we recognize that the Service has not been able to do effective fraud investigation and enforcement in the past, and we want to do much, much more. The cases that we cite out of the Eastern Service Centers, the Texas Service Center, we are seeing through use of new law enforcement technology, data mining techniques, et cetera, very substantial networks of fraudulent activity with the documents.

Mr. **SMITH**. Why hasn't that been reflected in additional and substantial budget increases that you would request?

Mr. **BACH**. We believe we can begin to move, particularly in fraud detection groups, at the service centers. We run into a question of budgetary competition and priority.

Mr. **SMITH**. You will forgive some of us if we are skeptical because I hear you saying that we are going to do more with the same amount. Many of us feel that you have not done enough with what you have been given, so the proof will be in your results.

Finally, and again we talked so much about statistics today, one of the frustrations we have is not being able to get statistics from the INS. I am told that the INS has not yet published its statistics even for fiscal year 1997 which was supposed to be out sometime after September 30 of 1997. Is there any good reason why we haven't seen those statistics going back to 1997?

Mr. **BACH**. There are very good reasons, Congressman. First of all fiscal year 1998

numbers are—the initial report that we typically release in the April/May period is about to come out. The 1997 figures, because of the re-engineering of the naturalization program and other adjudications which is where we got the data from, those computer systems' 1 year transition caused a problem in the data. That has now been fixed so that 1 year has a problem. That has now been fixed. We have moved onto the next year so we will be coming out with those.

Mr. **SMITH**. Thank you, Dr. Bach.

Mr. Fraser, let me address a question to you. This is a follow-up to one of the questions that Mr. Pease asked. Do you feel that if labor standards were enforced, which is to pay the minimum wage, working conditions and so forth, would that reduce the number of individuals working illegally in this country? Would that have a deterrent effect?

Mr. **FRASER**. It is certainly an important part of the solution, Mr. Chairman. We must deal with enforcement of the legal requirements to verify employment eligibility, and we also have to deal with the economic incentives which encourage employers to use unauthorized workers. We have to provide disincentives to exploitation and to taking advantage of vulnerable workers. It has to be a part of the solution.

Mr. **SMITH**. So the answer is, yes, if labor standards were enforced, it would reduce?

Mr. **FRASER**. Yes, sir.

Mr. **SMITH**. We have another vote coming up.

Let me ask Mr. Stana a couple of questions. I appreciate your testimony and candor in response to other questions. You point out in your testimony, I believe, that about half of the investigations conducted by the INS involve individuals who should not have been in this country, and yet INS initiated criminal proceedings in only about 2 percent of the investigations. While 50 percent were illegitimate, and the INS investigated only 2 percent of those. Does that strike you as a legitimate policy or deterrent to individuals working in the country illegally?

Mr. **STANA**. The short answer is no. I believe most aliens who come into the country are well aware that the enforcement mechanism is modest and that they stand a good chance once across the border to find employment.

Mr. **SMITH**. Mr. Stana, you say employers of unauthorized aliens have faced little likelihood that the INS would, one, investigate them; two, prove that they knowingly hired unauthorized aliens; three, collect fines, and you have mentioned that a few minutes ago; and four, criminally prosecute them. Hiring unauthorized aliens have been limited and are to be even more limited in the future. And yet that is one of the stated five priorities of the INS.

If what you say is true, does that equate to a priority in your opinion?

Mr. **STANA**. That is one of the concerns that we have with the new strategy. Of course it hasn't been working long enough to fully evaluate it, but some of the same kinds of steps, some of the same target populations as we saw under the old strategy are present in the new strategy, and we saw in the old strategy that only one out of five investigated received a sanction.

Mr. **SMITH**. You mentioned a report that states that although the INS arrested about 27,000 unauthorized workers, due to INS data limitations, you could not determine how many aliens were released or removed from the U.S. To what do you attribute that lack of enforcement?

Mr. **STANA**. Well, first off, there isn't data available to see what has happened to those aliens. Some may have been removed, but INS's policy is to concentrate their detention space on criminal aliens. These are not criminal aliens so they are not detained and deported.

Mr. **SMITH**. Again, it is not an INS priority?

Mr. **STANA**. It is not an INS priority to deport aliens found in unauthorized work.

Mr. **SMITH**. Thank you. The gentlewoman from Texas is recognized.

Ms. **JACKSON LEE**. Thank you, Mr. Chairman. Dr. Bach, may I solicit your cooperation and comment on the point that I made to Mr. Stana regarding the enormous number of documents, and let me ask you pointedly is there a way for us to work or for INS to work to bring about some sanity to the number of documents, and also that we might explore this issue of a fraud-free type identifying document as well?

Mr. **BACH**. Congresswoman, we appreciate that very much and agree. Let me tell you several of the documents that our final regulation will eliminate so you can see what in fact is happening here.

The voter registration card will be eliminated as a document. The school ID card with a photograph will be eliminated. The birth certificate will be eliminated as an employment eligibility card. A U.S. citizen ID card, school records, and report cards those are all documents right now, part of the 27, 25 that could be used. What we are saying when we look at the other ones that we need to keep on the list right now, that is because there are special difficulties or special populations, including U.S. citizen groups, that don't have access to all of the same card.

One of the issues we have is the—as I said the I-94 which is an easily counterfeited document. We know. We would like to eliminate it, but we don't have a way yet of having our employment authorization, which is a very good counterfeit resistant document, apply to those nonimmigrants who now use an I-94 for certain employers. So we are working through that. It will take some time. But we are certainly bringing down

the documents for exactly the reasons that you are saying, and we would like to go even lower for the same reasons.

Ms. **JACKSON LEE.** Does the multitude of documentation make it difficult for you in the field, Mr. Reed?

Mr. **REED.** Yes, but that is not my big problem in the field. I am frustrated with this right now because we are talking around an issue right now. I think we all have common agreement what is happening here. I want to go back to Nebraska real quick. Industrywide for the entire State, 3,000 people left the work site. We need to find out how many of those people are unauthorized workers. There is absolute consensus, broad-based support with this in terms of effectiveness.

In Nebraska, we will remove unauthorized workers from the workplace in the meat packing industry Statewide. Talk to meat packers, and they will tell you that. By the way, these people are signed up for basic pilot so they have verifications processes in place. These people are now adopting the identity of other individuals that actually exist. If they can get Mark Reed's name and date of birth, and Social Security card number, that person becomes invisible to a verification system.

You are absolutely right, the answer—if we accept the premise that the threat to interior enforcement is that neon light that says jobs, then we have to get a fraud-free document that stops it at the front door.

That is what the industry is asking for. Give us a document that they can swipe. If they can do it in the business world, why can't we do it here. We have to stop these people at the point of the job interview. Or—maybe I should not say it exactly that way, but at the time of hiring. We have to be able to identify who is eligible to work and who is not. We are going to have a tremendous success in Nebraska. These people are moving out of the industry. We are not removing the people from the country.

Mr. **SMITH.** That is the problem.

Mr. **REED.** We are dimming that neon light in Nebraska. We are engaged with some parallel criminal investigations, and we are gathering intelligence. The word in Mexico now is don't go to Nebraska to look for work. INS is engaged; go someplace else.

Mr. **SMITH.** Does that help us when they go to the other 49 States?

Mr. **REED.** That is right. We need to go industrywide and then pick another industry and slowly start turning down that magnet. We don't have enough agents to play catcher's mitt stuff with this. If you just do the numbers, we are doomed for failure. We cannot go out and locate 5 million people and remove them from the United States, that alone would take years and that is based upon a presumption that none of these people would come back and others will not enter.

Ms. **JACKSON LEE**. Reclaiming my time, that is why I said better rather than bigger. We are going to have to go and vote. I appreciate the straightforwardness of your answers.

Dr. Bach, I look forward to working with your office on the planned meeting that we will hope to hold in Houston that will focus on enforcement and service issues that are of great importance.

Mr. Reed, let me thank you for answering both the chairman, but as well my proposition. We need to get better with what we are trying to do with respect to the large issue of illegal aliens.

Mr. **SMITH**. Thank you, Ms. Jackson Lee. We are going to take a vote recess and then start with our second panel when we return.

[Recess.]

Mr. **SMITH**. The subcommittee will resume. Before I introduce the second panel, I want to do something that I have not done before, but it is important to take a moment just to recognize the good work of Laura Baxter who is the legal counsel to the immigration subcommittee. Laura, like so many individuals who works for the government, puts in 12-hour days and does not get the appropriate acknowledgment and recognition by the rest of us. So Laura, thank you for all of the hard work on this hearing and the many other hearings during the course of our tenure.

Let me go to the second panel, Mr. Robert Hill with Venable, Baetjer, Howard & Civiletti, and former commissioner on the U.S. Commission on Immigration Reform, Mr. Thomas P. Hammond from Omaha, Nebraska; Ms. Judith M. Desantis, first vice president, Federal Law Enforcement Officers Association; Mr. Daniel Stein, executive director, The Federation of American Immigration Reform; and Sheriff David Amick, Woodbury County, Sioux City, Iowa; and Muzaffar Chishti, director, Immigration Project, Union of Needletrades, Industrial and Textile Employees. We welcome you all and look forward to your testimony.

Mr. Hill, we will begin with you.

**STATEMENT OF ROBERT HILL, VENABLE, BAETJER, HOWARD & CIVILETTI,
AND FORMER COMMISSIONER ON THE U.S. COMMISSION ON IMMIGRATION
REFORM**

Mr. **HILL**. Good morning, Mr. Chairman. Thank you for this opportunity to testify before you today concerning the recently announced interior enforcement strategy of the INS.

I am currently a partner in the Washington, D.C. Office of Venable, Baetjer, Howard & Civiletti where I manage the firm's corporate immigration and consular law practice. From 1991 through 1997 I served as a member of the U.S. Commission on Immigration

Reform, the Jordan Commission. However, I am appearing before you this morning as a private citizen who has been engaged professionally in questions concerning international migration for the past 15 years.

I am not representing the interests or views of any client or any other organization. In January, the INS announced a new interior enforcement strategy, described as a 5-year phased plan that adopts new approaches to old activities and develops new operations to implement its interior enforcement policies.

The plan's primary strategic goal is to reduce the size and annual growth of the illegal resident population. To achieve this goal, INS has established five strategic priorities intended to identify and remove criminal aliens, deter and reduce alien smuggling or trafficking, respond to and cooperate with local communities, reduce benefit fraud and other document abuse and block employer access to undocumented workers.

After providing some statistical and historical background, the plan goes on to outline strategies and activities designed to accomplish the goals reflected in each area. Much of the INS plan is to be applauded. In particular, I agree with the Service's assessment that the most significant immigration related risk to the U.S. population and communities results from the commission of crimes by aliens in the United States.

Removal from the United States of any individual who has violated our laws and abused the privilege of residing in this country by committing a serious crime should be the highest priority of immigration enforcement. INS is correct in identifying it as such.

The plan's emphasis on combating alien trafficking, benefit fraud and document abuse are worthy goals as well and reflect the Service's determination to adopt enforcement policies to evolving trends in immigration-related threats to public safety, as well as to the integrity to our immigration system. Restoring public confidence in the credibility of that system is paramount in maintaining public support for a generous lawful immigration policy.

Finally, the plan's recognition of the need to interact more closely with local communities impacted by immigration is certainly long overdue. State and local governments have borne the cost of Federal failures to enforce our immigration laws for too long. This is particularly true in the case of law enforcement and public education. INS is to be commended for placing a new emphasis on efforts to respond to local concerns and cooperate with local officials and community leaders. Congress should follow this example and assist those communities with the economic burden imposed by the Federal Government's continued failure to adequately enforce the immigration laws.

However, the INS plan as presented is flawed in two fundamental respects.

First, it ignores completely the need to remove any illegal aliens other than those who have committed crimes; and second, it has relegated work site enforcement efforts to the lowest of its stated priorities. Despite the primary emphasis placed on removal of

criminal aliens, the plan makes absolutely no mention of the need to remove other categories of individuals present in the United States.

Absent a credible threat of removal, there is little hope in any policy designed to deter the flow of unlawful migration. Put simply, if the belief persists that one is home free once over the border or out of the airport, the risk will always be worth taking to those who intentionally enter or remain in the United States in violation of our law. The threat of detection and subsequent removal, even if initially targeted for strategic reasons, must be real.

To the contrary, in this plan it is ignored entirely. Building on the work of its initial report to Congress in 1994, the Jordan Commission's final report included an extensive discussion of removal strategy as an essential element of a comprehensive policy to curb unlawful migration.

It argued that the current system does not work largely because of a fragmented, uncoordinated approach to enforcement rather than flawed legal structures. The Commission urged Congress and the administration to implement immediate reforms to improve management of the removal system. The reforms it recommended included enhanced coordination and local oversight and accountability for action, establishment of priorities and numerical targets for the removal of criminal and noncriminal aliens alike, increased and consistent prosecutorial discretion in proceeding to trial, and strategic use of detention and release decisions to ensure appearance at removal hearings, among others.

In particular, the Commission noted with concern that beyond the highest removal priority placed on convicted criminals, the INS has not developed numerical targets for the removal of specific categories of noncriminal aliens. It went on to identify failed asylum seekers, visa overstayers, unauthorized workers in targeted industries, and those who use false documents as categories that require attention if our removal system is to become credible and deter abuse.

Recognizing the strain that would be placed on the system by a potentially huge caseload of removable aliens in these categories, the Commission recommended setting priorities and targets as well as implementing a "last-in, first-out" strategy to demonstrate seriousness to potential offenders. Such a strategy appears to have worked well in the asylum context, and there is no reason to believe it would not work similarly well in the removal context.

The plan's apparent demotion of work site enforcement measures to last among its stated priorities is unacceptable. As the Jordan Commission stressed again and again, the primary reason that illegal migrants come to and remain in the United States is because they find jobs. Jobs are the magnet. Aggressive and effective work site enforcement must be the deterrent.

According to INS, the reason for this change in priority is the Agency's perceptions

that it has failed to effectively deter illegal immigration. There is little doubt that the INS has had difficulty enforcing current law. It is apparent that current enforcement mechanisms simply do not work. However, shifting its focus away from workplace enforcement is the effective equivalent of conceding defeat.

Giving up on work site enforcement is not the answer. The government should be examining new ideas to simplify the process for both employers and the government, thereby attaining positive results.

The current employment eligibility verification or I-94 system does not work, but INS should not shift its focus away from the most critical aspects of controlling illegal immigration. Instead, a new system of verification is needed. In its first report to Congress, the Jordan Commission proposed testing what it viewed as the most promising option for a secure, nondiscriminatory verification system. A computerized registry using data provided by the Social Security Administration and INS.

The details of this proposal are well known by now and discussed fully in my written testimony, and I will not repeat them now. It is my view that an electronic verification system provides excellent prospects for making significant inroads into the prevention of illegal immigration, while removing a substantial amount of the burden of achieving the goals of employers and the INS.

Which leads me to the final point I would like to make this morning. In its final report to Congress, the Jordan Commission made specific, if controversial, recommendations for restructuring the administration of the immigration system to achieve the policy goals set out in the commission's complete body of work. Included was a proposal that immigration-related employment standards would be enforced by wage and hour inspectors, given heightened authority and resources in the Department of Labor rather than INS investigators.

In reaching this conclusion, the Commission pointed to systemic flaws in the existing Government structure for carrying out its immigration related functions that were particularly troublesome in the context of work site enforcement. The Commission found that this fragmentation of responsibility leads to unclear or even conflicting messages from the different agencies involved through unnecessary delay in adjudication of cases, and to redundancies and implementation of enforcement policy.

It results in inefficiency, ineffectiveness, lack of accountability and weak or nonexistent policy formulation and coordination. With its superior resources and experience with employer investigations the Commission concluded that the Department of Labor was the logical choice for enforcing compliance with the employment verification requirements.

Throughout its tenure from 1991 to 1997, the Jordan Commission stressed again and again the following fundamental themes: Restoring credibility, setting realistic priorities and achieving them, preserving the distinction between legal immigration and unlawful migration, promoting Americanization. All require comprehensive and fundamental

reform of the immigration system.

In the 18 months since the release of the Commission's final report to Congress, I have had the time to observe the deterioration of a system that appears to be collapsing under its own weight and to reflect on the proposals that we made for revitalizing that system. Those proposals are not without imperfections, but I remain persuaded that they constitute the best option for comprehensive reform available.

The INS interior enforcement strategy presented to you today reinforces my belief that such reform is necessary. Thank you.

Mr. **SMITH**. Thank you, Mr. Hill.

[The prepared statement of Mr. Hill follows:]

PREPARED STATEMENT OF ROBERT HILL, VENABLE, BAETJER, HOWARD & CIVILETTI, AND FORMER COMMISSIONER ON THE U.S. COMMISSION ON IMMIGRATION REFORM

Mr. Chairman and Members of the Subcommittee, I wish to thank you for this opportunity to testify before you today concerning the recently announced "Interior Enforcement Strategy" of the Immigration and Naturalization Service ("INS"). For the record, I am currently a partner in the Washington, D.C. office of Venable, Baetjer, Howard & Civiletti, LLP, where I manage the firm's Corporate Immigration and Consular Law Practice within the Labor and Employment group. From 1991 through 1997, I served as a Member of the U. S. Commission on Immigration Reform—the "Jordan Commission." However, I am appearing at this hearing this morning solely as a private citizen who has been professionally engaged in questions of international migration for the past fifteen years. I am not representing the interests or views of any client or other organization.

The INS Plan. In January of this year, the INS published its new "Interior Enforcement Strategy," which the Service described as a "five-year, phased plan that adopts new approaches to old activities . . . and develops new operations" to implement interior enforcement policies designed to impact illegal immigration to the United States. The Service's strategic direction is described in a mission statement—or "vision"—as follows:

"INS' Interior Enforcement Strategy will preserve the integrity of the legal immigration system and promote public safety and national security by deterring illegal migration, preventing immigration-related crimes, and removing individuals, especially criminals, who are unlawfully present in the United States."

The plan's primary strategic goal—consistent with this mission statement—is to reduce the size and annual growth of the illegal resident population. In order to achieve this goal, INS has established five strategic priorities intended to: 1) identify and remove criminal aliens; 2) deter and reduce alien smuggling or trafficking; 3) respond to and cooperate

with local communities impacted by illegal migration; 4) reduce benefit fraud and other document abuse; and 5) block and remove employer access to undocumented workers. After providing some statistical and historical background, the plan goes on to outline strategies and activities designed to accomplish the goals reflected in each area.

Positive Changes in Emphasis. Much in the INS plan is to be applauded. Few of us would disagree with the Service's assessment that "the most significant risk to the US population and communities" results from the commission of crimes, in this context, of course, by citizens of other countries present in the United States. Although the document appears to limit that risk to crimes committed by "illegal immigrants," I am confident that this is merely a rhetorical oversight and does not reflect a policy decision to relegate crimes committed by aliens lawfully in the United States to a lower enforcement priority. Removal from the United States of any individual who has violated our laws and abused the privilege of residing in this country by committing a crime should be the highest priority of immigration enforcement. INS is correct in identifying it as such.

The plan's emphasis on combating alien trafficking, benefit fraud, and document abuse are worthy goals as well and reflect the Service's determination to adapt enforcement policies to changing trends in immigration-related threats to public safety as well as to the integrity of our immigration system. Restoring public confidence in the credibility of that system is paramount in maintaining public support for a generous lawful immigration policy.

Finally, although INS makes no mention of proactively requesting Congress to address the continuing fiscal impacts on local communities struggling with high levels of migration, the plan's recognition of the need to interact more closely with those communities is certainly long overdue. State and local governments have born the cost of federal failures to enforce our immigration laws for too long. This is particularly true in the case of law enforcement and public education. INS is to be commended for placing a new emphasis on efforts to respond to local concerns and cooperate with local officials and community leaders. Congress should follow this example and assist those communities with the economic burden imposed by the federal government's continued failure to adequately enforce the immigration laws. And it is not necessary to increase taxes or domestic spending to do it. It has recently been suggested to me that Congress consider offsetting this impact aid to American communities by corresponding decreases in foreign aid sent to countries that continually fail to cooperate with us in addressing the flow of unlawful migration of their own people. This is a common sense proposal worthy of attention.

Fundamental Flaws: Removals and Worksite Enforcement. The INS plan as presented, however, is flawed in two fundamental respects that make it unacceptable as a matter of policy. First, it ignores completely the need to remove any illegal aliens other than those who have committed crimes, and second, it has relegated worksite enforcement efforts to the lowest of its stated priorities.

Despite the primary emphasis placed on removal of criminal aliens, the plan makes

absolutely no mention of the need to remove other categories of individuals unlawfully present in the United States. Absent a credible threat of removal, there is little hope in any policy designed to deter the flow of unlawful migration. Put simply, if the belief persists that one is home free once over the border or out of the airport, the risk will always be worth taking to someone whose motivation for coming here can be as varied as the countries from which he or she may come. The threat of detection and subsequent removal, even if initially targeted for strategic reasons, must be real.

Building on the work of its initial report to Congress in 1994, the Jordan Commission's final report included an extensive discussion of removal strategy as an essential element of a comprehensive policy to curb unlawful migration. Indicating again that a credible immigration system requires the effective and timely removal of aliens determined to have no right to remain in the United States, the Commission argued that the current system does not work largely because of a "fragmented, uncoordinated approach" to enforcement rather than flawed legal structures.

Thus, the Commission urged Congress and the Administration to implement immediate reforms to improve management of the removal system. The reforms it recommended included: enhanced coordination and local oversight and accountability for action plans; establishment of priorities and numerical targets for the removal of criminal—and non criminal—aliens alike; increased and consistent prosecutorial discretion in proceeding to trial; and strategic use of detention and release decisions to ensure appearance at removal hearings, among others.

In particular, the Commission noted with concern that beyond the highest removal priority placed on convicted criminals, INS has not developed numerical targets for the removal of specific categories of noncriminal aliens. It went on to identify "failed asylum seekers . . . visa overstayers, unauthorized workers in targeted industries, and those who use false documents" as categories that "require attention if our removal system is to become credible and deter abuse." Recognizing the strain that would be placed on the system by a potentially huge caseload of removable aliens in these categories, the Commission recommended setting priorities and numerical targets as well as implementing a "Last-In-First-Out ("LIFO") strategy to demonstrate seriousness to potential offenders. Such a strategy appears to have worked well in the asylum context, and there is no reason to believe it will not work similarly well in the removal context as well.

More than a year after the Commission issued its final report on September 30, 1997, the INS continues to experience overwhelming problems in the removal of illegal aliens from the United States. Some progress has been made in removing criminal aliens and statistics appear to reflect some increase in other removals as well, but those increases are limited to locations like San Diego in which increased resources have been allocated to the border. Surprisingly, the INS interior enforcement plan makes no mention whatsoever of any reforms or strategy to remove noncriminal aliens and the recommendations of the Jordan Commission along these lines are not discussed.

Second, the plans' apparent demotion of worksite enforcement measures to last among its stated priorities is unacceptable. As the Jordan Commission stressed again and again throughout its existence, the primary reason that illegal migrants—in government parlance, "EWI's" (entrants without inspection) and "visa overstays" alike—come to and/or remain in the United States unlawfully is because they find jobs. No ifs, ands, or buts. Jobs are the magnet; aggressive and effective worksite enforcement must be the deterrent.

According to the INS, the reasons for this change in priority are the agency's perceptions that it has failed to effectively deter illegal immigration through its current workplace enforcement efforts and that achievement of its other goals, such as removal of criminal aliens, will reverse this trend.

There is little doubt that, as it concedes, the INS has had considerable difficulty enforcing immigration law as it is currently embodied. In its Interior Enforcement Strategy document, the INS acknowledges that, at the rate at which it has been apprehending illegal aliens at U.S. worksites, it would take 35,000 work years to remove all the illegal residents who entered and stayed in this country in the last four years. It is apparent that current enforcement mechanisms simply do not work.

However, shifting its focus away from work place enforcement is the effective equivalent of conceding defeat. Giving up on worksite enforcement is not the answer. Instead of marginalizing worksite enforcement, the government should be examining new ideas to simplify the process for both employers and the government, thereby attaining positive results.

Much of the failure to achieve substantial results in the area of worksite enforcement is attributable to the burdens that the current system imposes on employers and the government. Currently, the Immigration Reform and Control Act of 1986 ("IRCA") mandates that all employers verify the identity and authorization to work of all employees. To fulfill this obligation, employers are responsible for examining documentation establishing an employee's identity and employment eligibility and ensuring that the documents presented reasonably "appear" to be genuine and relate to the individual presenting them. This information is recorded on the employee's Employment Eligibility Verification Form ("I-9 Form"). Under these procedures, employees can use one or more of twenty-nine different documents to prove their identity and employment eligibility.

For several reasons, the current verification process has failed to deter the hiring of undocumented aliens as the law intended. First, the system easily may be thwarted by fraud. Widespread counterfeiting of identity and employment authorization documentation has been reported since the implementation of IRCA. In addition, it is relatively easy to obtain genuine I-9 or "breeder" documents, such as birth certificates or driver's licenses, through fraudulent means. As a result, employers have difficulty determining whether the document with which they are presented meet the verification test; i.e., that they reasonably appear on their face to be genuine and to relate to the

person presenting them. Indeed, such documents may pass this test, but still frequently are fraudulent.

An employer that wishes to look beyond the face of the verification documents presented to it in order to determine whether an employee truly is eligible to work in this country faces several impediments. If an employer asks for additional documentation, the employer subjects itself to claims that it has committed an unfair immigration-related employment practice. On the other hand, even though completion of an I-9 Form forms the foundation of a good faith defense against allegations of knowingly hiring illegal aliens, employers may be found to have constructive knowledge of the illegal status of their workers if they fail to follow up on anomalies uncovered in the I-9 process. Thus, an employer seeking in good faith to ensure that an employee is eligible to work in the U.S. is caught between the enforcement priorities and legal interpretations of separate government agencies. Placing employers in this unenviable position in no way furthers the goals of preventing illegal immigration.

The current system also places a significant administrative burden on employers. In addition to the difficulties already cited, the I-9 requirement presents employers with a substantial amount of paperwork. Not only are they required to keep the I-9 Forms themselves, often employers photocopy the documents presented to them for verification purposes in order to avoid accusations that they knowingly hired an illegal alien. Taking and keeping such documentation increases an already sizeable paperwork obligation imposed by the panoply of federal laws and regulations. Further, the technical complexity of the requirement places significant demands on the employer in the form of compliance instructions, training of staff, contact time with candidates for employment, and interaction with INS investigators.

Many of these challenges affect the INS's ability to ensure compliance. Investigating whether an employer complied with rules that are difficult for the employer to implement is difficult for the INS as well. During an investigation or audit, the INS must spend a considerable amount of time discussing the particulars of the employer's compliance efforts and examining the variety of documents that may exist in the employer's files. Because of the complexity of the record keeping requirements, the INS frequently is faced with difficult decisions that may or may not be made consistently with those made by other officers at other locations.

In sum, the current employment eligibility verification system does not work. The solution, however, is not for the INS to shift its focus away from the most critical aspect of controlling illegal immigration. Instead, a new system of employment verification is needed.

In its first report to Congress in 1994, the Jordan Commission proposed testing of what it viewed as the most promising option for a secure, nondiscriminatory verification system—a computerized registry using data provided by the Social Security Administration ("SSA") and the INS. Such a registry would be used by employers to verify that a social security number provided by an employee is valid and has been issued

to the individual presenting it. This database would be created and updated from existing SSA and INS files. The SSA would provide names, social security numbers, and other identifiers such as date of birth and mother's maiden name. The INS would contribute information regarding the status of lawfully admitted immigrants, non-immigrants, and other aliens permitted to remain temporarily in the U.S.

Under this system, an employer no longer would ask individuals if they are citizens or aliens. Instead, the employer merely would request a name and social security number. The employer then would verify this information through the computerized registry. The registry would provide the employer with a confirmation number if the information provided by the individual matched that in the database. The employer would retain the confirmation number as evidence that it complied with the verification requirement. If a match were not found in the system, the employer would receive an acknowledgment that the search was conducted, but that the employee is not eligible to work. Under this system, it would be neither necessary nor possible for an employer to learn why the match did not occur. Such a system also could inform the employer that the individual is eligible, but that the employer should use the system to re-verify eligibility at some future date. In sum, all employers would be required to check with this database to ensure that all employees are eligible to work in the U.S. The system in return would provide the employer with one of three results: (1) that the employee is eligible to work; (2) that the employee is eligible to work, but that the employer should re-verify eligibility as of the date when the authorization expires; or (3) that the employee is not eligible to work.

This system would have the distinct advantage of reducing the number of steps that an employer must take to one: checking that the social security number supplied by the employee is valid and that the individual with that social security number has been authorized to work in this country. Additionally, individuals would not be asked whether they are citizens or aliens, thus reducing the chance for or appearance of discrimination based on national origin or citizenship. In addition, the opportunity for fraud would be greatly reduced, as employees would not be left responsible for providing the documentation upon which the employer must make its decision.

Enforcement of such a system would be far simpler as well. The INS merely would have to examine the employer's records to verify that it had performed the eligibility check for all employees and that the check revealed that all employees were eligible. The streamlining of the process would permit the INS to conduct far more investigations in the same amount of time, thus enhancing the deterrent effect of its investigatory process.

A computer verification system provides excellent prospects for making significant inroads in the prevention of illegal immigration, while removing a substantial amount of the burden of achieving the goal from employers and the INS. With such a system, INS would not have to turn its attention to other areas of its mission to the exclusion of work place enforcement, a far less desirable result.

For that reason, I am mystified that the INS plan makes no mention of this alternative verification system nor does it provide any report on the status or results of its own testing. In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996,

Congress instructed INS to design and begin testing options for an electronic verification system on a voluntary, pilot basis. Even accounting for delays in implementation and the obvious problems associated with making participation in the pilot program voluntary, INS has surely had enough experience to date to offer some thoughtful analysis of the feasibility of such a system. That it chose not to do so in this plan is a very serious weakness.

Restructuring. Which leads me to the final point I would like to make this morning. In its final report to Congress, the Jordan Commission made specific, if controversial, recommendations for restructuring the administration of the immigration system to achieve the policy goals set out in the Commission's complete body of work. Included among those recommendations was a proposal that immigration-related employment standards would be enforced by Wage & Hour inspectors given heightened authority and resources in the Labor Department rather than INS investigators.

In reaching this conclusion, the Commission pointed to two major systemic flaws in the existing government structure for carrying out its immigration-related functions that were particularly troublesome in the context of worksite enforcement. The first, which it defined as "mission overload", related to conferral of a disproportionate and unmanageable role in the system upon one agency, the INS. The second, "fragmentation or diffusion of responsibility", related to other agencies being given a partial role in key functions leading to lack of accountability, unnecessary delay in decision-making, and redundancies in operations.

By giving INS the predominant role in each of the core functions outlined above, Congress has given that agency so many responsibilities over the years that it has proven incapable of managing them effectively. Over the last decade, each publicized breakdown or failure has led to legislative intervention setting new agency priorities and reigning in the agency's executive discretion. In turn, successive administrations have compounded the problem by expanding their own internal priorities in reaction to congressional frustration. The result has been an exponential increase in agency priorities that simply cannot be handled. In many respects, this is reflected in the INS interior enforcement plan.

Four government agencies—two each in the Departments of Justice and Labor—share interrelated enforcement functions for ensuring employer compliance with the employer sanctions and anti-discrimination provisions of IRCA. Under current law as implemented by a complicated Memorandum of Understanding between Justice and Labor, federal inspectors from INS, the Wage & Hour Administration ("Wage & Hour"), or the Office of Federal Contract Compliance Programs ("OFCCP") are all authorized to compel examination of a company's employment eligibility verification forms. Only INS, however, is authorized to impose sanctions on an employer for noncompliance, often necessitating duplication of effort with INS inspectors conducting an independent review of violations referred to it by Labor.

The Commission found that this fragmentation of responsibility leads to unclear or

even conflicting messages from the different agencies involved, to unnecessary delay in adjudication of cases, and to redundancies in implementation of enforcement policies. It results in inefficiency, ineffectiveness, lack of accountability, and weak or nonexistent policy formulation and coordination.

Although with its superior resources and experience with employer investigations, the Department of Labor was the logical choice for enforcing compliance with employment verification, the Department has consistently viewed worksite enforcement under IRCA as incompatible with its institutional mission to protect American workers. This has resulted in reluctance to take on an expanded role perceived as undermining its ability to win the confidence of workers—including those who may be undocumented and working illegally in the United States.

This reluctance was a serious impediment to the Commission's efforts to craft a proposal to consolidate worksite enforcement responsibilities that would be acceptable to Labor. The solution required two steps. First, the law's current requirements for verification of a worker's authorization to work in the United States and for compliance with attestations concerning wage and working conditions for hiring foreign workers had to be defined as labor standards intended to protect American workers. Second, expanded employer sanctions enforcement responsibilities then had to be tied to implementation of a simplified, electronic employment verification system.

Together, these steps would negate the need to prove that an employer knowingly hired an illegal worker, only that it had failed to verify that worker's authorization. Identification and apprehension of undocumented workers would continue to be an immigration enforcement activity remaining within the jurisdiction of the Justice Department, but it would no longer be part of routine employer sanctions worksite enforcement. That role would now be limited to enforcement of labor standards and would appropriately fall within the new jurisdiction of the Labor Department without compromising the agency's traditional mission.

Conclusion. Throughout its tenure from 1991–1997 the Jordan Commission stressed again and again the following fundamental themes: restoring credibility; setting realistic priorities and achieving them; preserving the distinction between legal immigration and unlawful migration; promoting Americanization. All require comprehensive and fundamental reform of the immigration system. In the 18 months since the release of the Commission's final report to Congress, I have had the time to observe the deterioration of a system that appears to be collapsing under its own weight and to reflect on the proposals we made for revitalizing that system. Those proposals are not without imperfections, but I remain persuaded that they constitute the best option for comprehensive reform available. The INS Interior Enforcement Strategy presented to you today only reinforces my belief that such reform is necessary.

Thank you for giving me this opportunity to appear before you this morning.

Mr. **SMITH.** Mr. Hammond. On your way to presentation, I want to thank you for a

13 page small type, detailed comprehensive statement.

STATEMENT OF THOMAS P. HAMMOND, OMAHA, NE

Mr. **HAMMOND**. Thank you, Mr. Chairman and distinguished members of the subcommittee. I entered duty with the INS in 1972 at Chula Vista, California as a Border Patrol agent. I have also been an immigration inspector, a deportation officer, and a special agent. These are the four basic law enforcement positions in the INS. In 1997, when I retired from the INS, I had been a supervisory special agent in Omaha, Nebraska for almost 10 years. I appear before you today solely as a concerned citizen who has some specialized knowledge of INS enforcement activities in the interior of the United States.

It is clear to see that much is fundamentally wrong with the way that this country goes about controlling the Nation's borders and enforcing the immigration laws in the interior of the United States. Most Americans have little in depth knowledge of the immigration laws but want the immigration laws enforced and expect that Congress, through the administration, will oversee the INS to ensure that the immigration laws are fairly and effectively enforced across the United States.

In January, 1999, INS came out with a new interior enforcement strategy. This new strategy has been implemented where I live in Nebraska under the name Operation Vanguard and targets the Nebraska meat packing and processing industry where most readily identifiable illegal aliens have historically been employed. INS has widely announced in Nebraska that Operation Vanguard is not about arresting and removing illegal aliens from the United States, but that INS now only intends to remove illegal aliens from jobs and not from the country.

In my experience as a field level immigration officer of over 25 years, I have to say that this new strategy by INS will clearly result in any displaced illegal aliens obtaining new fraudulent ID and then obtaining a new job in another meat packing plant or another industry or city or State. Many displaced illegal aliens, will no doubt, enter into fraudulent marriages and schemes against INS to obtain INS work permits; and some will, no doubt, become involved in criminal activity in this country. It will also result in increased illegal immigration to the interior of the United States as the deterrent of INS enforcement action is removed.

INS is the only law enforcement agency in the U.S. That has the authority to arrest and remove illegal aliens from the country. That is INS's primary law enforcement function in the interior of the United States. The meat packing industry has relied for years on a steady stream of illegal alien workers. For 20 years INS management has claimed that they have not had the manpower and funding to arrest and remove the large numbers of illegal aliens that have been employed in that industry.

Last year, Congress gave them the manpower and the funding. Reportedly, there will now be 42 INS special agents on duty in the Omaha district office by September. Now

INS has the manpower and the funding, but their tune has changed. The new spin is that it is too expensive to remove noncriminal illegal aliens from the interior of the United States.

Clearly INS management has been intimidated by the large meat packing corporations. INS is simply not doing its job when it fails to remove illegal aliens from the United States. In the new strategy, alien smugglers are targeted, arrested, and prosecuted. That is important, but INS is not going to arrest and remove the smuggled aliens. The problem with that is that it is smuggled aliens who are keeping the smuggling operations in business. When smuggled illegal aliens are allowed to remain, they announce their success to their friends, relatives, and countrymen; and the result is more smuggled aliens.

The new strategy mentions the importance of detecting and investigating fraud schemes against the INS. However, I am not confident that INS management is sincere about coming down hard in the area of fraud. In my written statement, I describe a huge fraud against INS that was ignored by INS management most likely because of the embarrassment to the Service. This is a strategy that is good for the INS bureaucracy but, in my opinion, is bad for America.

I understand that Congress gave INS more funding than ever for interior enforcement operations this year. However, INS investigation units all over the United States have been seriously underfunded all year. Apparently, for some reason, most of the funding has been held back by headquarters INS.

I would like to have my entire written statement placed in the record. I am willing to answer any questions that you may have.

Mr. **SMITH**. Thank you.

[The prepared statement of Mr. Hammond follows:]

PREPARED STATEMENT OF THOMAS P. HAMMOND, OMAHA, NE

Good morning, Mr. Chairman and distinguished members of the Subcommittee. Thank you for the opportunity to submit this written statement in support of my oral testimony concerning law enforcement activities, as conducted by the Immigration and Naturalization Service (INS), in the interior of the United States.

I entered on duty with the INS on April 2, 1972 at Chula Vista, California as a border patrol agent. I have also held the positions of immigration inspector, deportation officer and special agent. These are the four basic, officer corps, law enforcement positions in the INS. At the time I retired from the INS on May 2, 1997, I was a supervisory special agent assigned to the INS investigations unit at Omaha, Nebraska. During my entire career I was always assigned to a field office and never served in any administrative or headquarters setting.

Prior to entering the INS I had been a deputy sheriff for two years and had spent nine years in the U.S. Army as an infantryman, military policeman and as a criminal investigator with the U.S. Army Criminal Investigation Division (CID). I am a Vietnam veteran.

I appear before you today solely as a concerned citizen who has some specialized knowledge of INS enforcement activities in the interior of the United States. I have no current connection with the INS or any organized group that opposes or supports illegal immigration. My mother came to this country as an immigrant, when she was a young woman, and I am not opposed to legal immigrants and refugees being lawfully admitted to the United States. Everything I am saying here today I learned during my service with the INS, or from accounts given to me after my retirement.

I believe that Immigration law enforcement is a legitimate function of the federal government; it has nothing to do with racism, xenophobia, the Statue of Liberty, ethnic or national holidays, or the American flag. Factually immigration law enforcement has everything to do with the national security and the national sovereignty of the United States. It is clear to me that the INS is not currently effectively enforcing the immigration laws of the United States in the interior of the United States. This has to be changed, and that is why, when I was asked, I decided to come here, and do what little I can to effect such change.

When I entered the INS in 1972, the agency had about 7,500 employees of which about 2,000 were in the U.S. Border Patrol stationed mostly along the Mexican border. There were only about 700 or so criminal investigators, as INS special agents were known at the time, in the interior of the United States to enforce the immigration laws. The Omaha district office of the INS had 3 criminal investigators assigned to perform all the INS law enforcement functions throughout Iowa and Nebraska. The agency budget at that time amounted to several hundred million dollars. The illegal alien population in 1972 was estimated by INS to be about 250,000. Most of the illegal aliens at that time were employed in seasonal agricultural work. Very few illegal aliens were involved in serious criminal activity.

Now the INS has over 30,000 employees of which about 8,000 are in the U.S. Border Patrol. The agency now has about 2,000 special agents deployed in the interior of the United States. In September 1999, the Omaha district office of the INS will reportedly have 42 special agents to enforce the immigration laws throughout Iowa and Nebraska. The agency budget is now over 4 billion dollars. The INS now estimates that there are now well over 5 million illegal aliens in the United States. This estimate may well be too low, and could be missing the mark by several million illegal aliens, but nobody really knows. A great many illegal aliens are now involved in serious criminal activity.

The INS states that they removed about 60,000 criminal aliens from the United States last year and common sense dictates that the 60,000 are only a fraction of the total number of aliens who are involved in criminal activity in this country. When I retired from the INS there were about 950 deportable aliens in the Iowa and Nebraska jails and prisons. These aliens were in state custody for having perpetrated criminal offenses

ranging from murder and drug trafficking to drunk driving. Most of the aliens in Iowa and Nebraska jails were either illegal aliens or were aliens who had managed to legalize their status under an amnesty program or through the Section 245(i) adjustment of status program.

It is clear to see that much is fundamentally wrong with the way this country goes about controlling the nation's borders and enforcing the immigration laws in the interior of the United States. Most American citizens have little in-depth knowledge of the immigration laws, want the immigration law enforced, and expect that Congress, through the Administration, will oversee the INS to ensure that the immigration laws are fairly and effectively enforced.

In reality, certain foreign governments, large numbers of naturalized former illegal aliens, legal immigrants and current illegal aliens, immigrant rights advocacy groups, and other vested interests that generally support continued massive illegal immigration have effectively taken control of United States immigration policy. Those people instead of Congress have been determining who comes into the United States by completely ignoring the immigration laws. Congress must take back control of United States immigration policy and stop the demagoguery that surrounds this issue.

During 1986, in an effort to control illegal immigration, Congress passed amnesty programs that legalized over 3 million illegal aliens. It is safe to say that many of the illegal aliens who were subsequently granted amnesty through those programs were actually not even in the United States at the time the amnesty laws were passed. Many illegal aliens entered subsequently to take advantage of, and to fraudulently take part in the very liberal amnesty "open season" filing period that lasted for over a year.

The 1986 amnesty programs were full of fraud. The INS did not have the will or the way to investigate the over 3 million amnesty applications that were filed and therefore almost all were "rubber stamped" through. In the Special Agricultural Worker (SAW) program it was estimated that over 500,000 of the amnesty applications were fraudulent. Some applicants even claimed that they used ladders to pick strawberries off of trees, that's how bad the fraud really was in the SAW program.

It is my opinion that the 1986 amnesty programs, and such legalization paths as the Section 245(i) adjustment of status program, served to greatly encourage the over 5 million illegal aliens now in the United States to come to this country. This Section 245(i) "rolling amnesty" adjustment of status program for illegal aliens especially undermined the effective enforcement of the immigration laws in recent years. Section 245(i) encouraged large numbers of illegal aliens to enter into fraudulent marriages with United States citizens, by which they could secure a coveted "work permit" and permanent resident alien status.

It is widely known that INS has not investigated fraudulent marriages in many years and simply "rubber stamps" immediate relative petitions filed by United States citizen spouses of illegal aliens through the INS "honor" adjudication system. A few years ago

Omaha INS got onto a clearly fraudulent marriage after an illegal alien was arrested for a petty criminal offense. A United States citizen had filed an immediate relative petition in behalf of the illegal alien, claiming him as her spouse for immigration benefits. An immigration judge ruled that the marriage could not be considered fraudulent because the United States citizen petitioner and the illegal alien beneficiary "shacked up" together for a weekend in a motel.

They told the judge that they loved each other that weekend and consummated the marriage. The fact that they never lived together after that one weekend, a year before, did not mean anything to the immigration judge, and he ruled that the marriage was a valid one for immigration purposes. For "shacking up" one weekend with a United States citizen, the immigration judge gave this illegal alien permanent resident status. Such rulings are not the exception, but are routine, and usually are "rubber stamped" through by INS adjudicators and never even get to an immigration judge. This is the standard for immigration marriages today. Actions such as this clearly undermine the effective enforcement of the immigration laws.

I had another marriage fraud case where the illegal alien involved paid a United States citizen nude dancer to marry him fraudulently. They never lived together as man and wife. The United States citizen filed an immediate relative petition in the alien's behalf that contained miss-statements of fact. The United States citizen then attempted to extort additional money from the illegal alien with the threat that she might contact INS and spill the beans on him.

A week later the United States citizen was found dead in a closet. The illegal alien was the only known person who had a motive to kill the United States citizen. Due to a lack of evidence the illegal alien was never prosecuted. The illegal alien was placed under deportation proceedings. The deportation proceedings ended 11 years later with a Circuit Court of Appeals affirming the illegal alien's deportability.

During the 11 years that deportation proceedings were pending the illegal alien was free on bond in this country. During that time he married another United States citizen and had at least two children that were of school age when the illegal alien was finally deported.

Many of the millions of former illegal aliens who have been legalized since 1986 by way of the amnesty programs and the Section 245(i) "rolling amnesty" adjustment program for illegal aliens have now naturalized as United States citizens or will soon be eligible for naturalization. Millions of those people are now eligible to vote or will soon be able to vote. This has brought another dynamic into the way the highly politicized INS management team approaches the enforcement of the immigration laws in the interior of the United States.

The former illegal aliens, who are now voters, or who will soon be voters, along with millions of other former legal immigrants, who have naturalized in recent years and who can also now vote, have a special interest in relaxing the immigration laws. These new

voters want their family members, friends and countrymen to come to, or be able to stay in the United States. Since these people were able to ignore the immigration laws and were rewarded for their efforts they feel that the new illegal aliens should also be given the same benefits. Most of the 5 million or so illegal aliens now in the United States are the family members, friends and countrymen of the new voters.

The 1986 amnesty programs and legalization paths such as Section 245(i) have given heart to further massive illegal immigration to this country and have undermined the enforcement of the immigration laws. The millions of illegal aliens who have come in recent years believe that they too, will be granted amnesty some day. They know that to be eligible for future amnesty programs they must stay hidden in the United States and avoid being arrested and removed from the United States by INS.

History has now shown that large-scale amnesties for illegal aliens do nothing to control or stop future illegal immigration. The fact of the matter is that they exasperate the problem. The INS can never properly process and adjudicate millions of claims from illegal aliens at one shot, what happens is that the bureaucratic management team at the top, that always takes the easy way out, "streamlines" the process, that results in the big "rubber stamp" process being activated.

I believe that the basic law enforcement function of the INS is to investigate, arrest and remove illegal aliens from the United States. I further believe that doing that is the "bottom line" in immigration law enforcement. Those are the reasons for the existence of the enforcement entities of the INS in the interior of the United States. When illegal aliens are allowed to remain in the United States it encourages further illegal immigration, when they are removed through INS enforcement action it discourages further illegal immigration. This is especially true, as it becomes more expensive and dangerous for illegal aliens to be smuggled into the United States.

In January 1999 the INS came out with a new interior enforcement strategy. This new strategy paper is well written and explains some important facts. However, I believe that the new strategy paper is also misleading in some ways. The new strategy is supposed to address all aspects of immigration law enforcement work. I am going to address three of the priorities listed in the strategy paper and show why I believe that the strategy is shortsighted and will only result to further increase illegal immigration to the United States.

The first priority of the new INS strategy that I will address is priority #2 entitled "Detection, disruption and dismantling of organized smuggling and trafficking". This priority relates to the investigations of alien smuggling organizations that are engaged in the smuggling of illegal aliens into the United States from all over the globe, with many of these illegal aliens, from far off countries, paying upwards of \$20,000 or so for the smuggler's services.

It is very important to catch and prosecute the smugglers. However, I do not believe that INS will ever be able to deter, dismantle and diminish the smuggling or trafficking of

aliens unless INS also catches all the illegal aliens that the smugglers have brought to the United States and removes the illegal aliens from this country. This is especially important in connection with alien smuggling organizations that are bringing illegal aliens from far off countries.

I say that because it is the illegal aliens who are paying the smugglers, and by paying the smugglers, it is the illegal aliens who are keeping the alien smuggling organizations in business. I do not believe that the INS anti-smuggling strategy properly addresses that issue. When INS reports the successful completion of investigations relating to large alien smuggling organizations, that have been operating over time, it is seldom or never reported that the illegal aliens that were brought into the United States in large numbers have been arrested and removed from this country.

It appears to me that the INS is satisfied to report the capture of the smugglers, but really does not care to do the work necessary to track down the relating smuggled illegal aliens. When the smuggled illegal aliens are allowed to remain in the United States they simply telephone and write to their friends and relatives and in effect encourage further alien smuggling and illegal immigration.

Alien smugglers constantly come and go from the United States usually without any problem from INS. As an example, some years ago when I was assigned to an anti-smuggling unit I arrested an alien smuggler, who was himself an illegal alien, along with about 15 smuggled illegal aliens, at Council Bluffs, Iowa. Criminal prosecution of the alien smuggler was declined by the United States Attorney. The alien smuggler was given a deportation hearing before an immigration judge, was found to be deportable, and about a week later was deported to Mexico.

About 10 days after the alien smuggler was deported to Mexico I was by myself on official business in an INS sedan on the main street in Tama, Iowa which is about 200 miles East of Council Bluffs. As I came to an intersection, I could not believe my eyes, as the same alien smuggler walked out from between two cars to a point directly in front of my vehicle. As our eyes met, he took off running down the middle of the main street. I jumped out of my vehicle, ran him down on foot, and arrested him for re-entry to the United States after deportation, which is a felony. The alien smuggler was accepted for prosecution by the United States Attorney. The chances of me coming upon that individual again in Iowa, unexpectedly, were about as high as winning the lottery. I have no doubt that this alien smuggler is still plying his trade someplace in the United States today.

The second priority that I will address is strategy priority #4 and is entitled "Benefit fraud and other document abuse". This priority relates mainly to fraud by illegal aliens and their allies against the INS. It is correctly pointed out in the strategy that fraud represents a grave threat to the integrity of the legal immigration system in that it results in aliens obtaining benefits from the INS to which they are not lawfully entitled. However in my experience I have found that INS management is willing to overlook

large-scale fraud. I will describe one case that I was involved with in 1995 which clearly points that out, and which I considered to be a threat to national security.

During 1995 another INS officer and I, along with an Assistant United States Attorney were tasked with traveling to the INS Northern Service Center at Lincoln, Nebraska to review a fraud scheme named "Operation Orange" that had been uncovered by INS personnel assigned to that facility. During a briefing conducted by the INS special agent assigned there, he told us that over a short period of time he had determined that persons unknown had filed at least 6,000 applications for the issuance of INS re-entry permits, by mail with the Service Center, that were fraudulent. He pointed out that while each application contained accurate written data relating to a true permanent resident alien, that each application had photographs attached to them that were of persons other than the permanent resident alien to whom the data on the application related, in other words the photographs were of alien imposters.

The special agent further advised that the scheme had come to light after a clerical employee noticed that a great many completed INS re-entry permits were being mailed from the Service Center to a number of the same addresses in California. Review of individual INS "A" files relating to the permanent resident aliens whose data was contained on the re-entry permit applications showed that the aliens were all Asian persons, apparently living all over the West Coast of the United States. Review of data contained in each "A" file showed that the individual data was correct on the re-entry permit applications, but that the photographs were of unknown imposters who were Asian persons. An inquiry conducted by the special agent assigned to the Service Center showed that all of the suspect 6,000 or so re-entry permits that had been obtained fraudulently had been mailed by the INS to Asian owned travel agencies in California.

This appeared to be a serious case to us that clearly merited an extensive criminal investigation by INS, with the objective of criminally prosecuting the matter in the District of Nebraska. The Assistant United States Attorney also realized the seriousness of the matter, immediately contacted the United States Attorney, who indicated that if INS properly investigated the matter that the Office of the United States Attorney would be willing to prosecute the matter. I understand that the INS officer who accompanied me to the Northern Service Center, who was senior to me in the INS, then wrote a report concerning the matter to Headquarters, INS requesting that an appropriate investigation be immediately initiated.

I then went back to my routine duties, and after a month I was contacted by the Assistant United States Attorney who asked me how the INS criminal investigation named "Operation Orange" was progressing. I then contacted the INS officer senior to me who wrote the report to INS Headquarters and asked him what was going on. He told me that INS Headquarters could not find any INS investigations unit in California that was interested in investigating the matter, and that as a result the matter had been closed out, and that INS would not be taking any further investigative action. I then notified the Assistant United States Attorney of what I had found out, to say the least he was very surprised by the inaction by INS. This Assistant United States Attorney contacted me

every now and then about the matter until I retired from the INS.

The INS special agent assigned to the INS Northern Service Center told me that the Service Center was taking action to enter "appropriate information" about the 6,000 or so fraudulently obtained INS re-entry permits in the INS lookout system at all United States ports of entry. That action should have resulted in any person attempting entry to the United States with one of the fraudulently obtained re-entry permits being stopped and questioned by immigration inspectors. Up until the day I retired from the INS I never heard that any of the bearers of the fraudulently obtained INS re-entry permits were ever detected attempting to gain entry to the United States.

This case had some very disturbing aspects that were apparently completely ignored by INS management when they decided not to investigate this matter. There were at least 6,000 INS re-entry permits that were fraudulently obtained according to the Northern Service Center. Each of the re-entry permit applications was filed out with correct identification and immigration status data that related to a true permanent resident alien who was originally from an Asian country.

This individual data is usually only known to the individual that it relates to. The only other entity that has access to that data is the INS, where the data is contained on computerized databases, such as the INS Central Index System, and in the alien's individual INS "A" file. At the time the fraudulent re-entry permit applications were filed, the relating individual "A" files for the most part were located in INS offices in California, and they were only mailed to the INS Northern Service Center after this fraud scheme was detected.

Maybe about 6,000 permanent resident aliens were involved in a vast criminal conspiracy to defraud the INS, by placing an imposter's photograph with a re-entry permit application that they submitted to INS. If not, it had to be someone inside INS, who had access to INS computerized databases and individual Service "A" files who was supplying identifying data relating to permanent resident aliens to perpetrators outside the INS. That may never be known.

Whoever dreamed up this scheme had to have knowledge of how INS adjudication programs worked. Only INS employees would know that most INS adjudication's accomplished at Service Centers are completed without the Service Center ever obtaining and physically checking inside relating Service "A" files. Without an available "A" file, INS employees at the Service Center had no way of comparing a photograph submitted with a re-entry application to a photograph already on file with INS. Therefore, whoever dreamed up this fraudulent scheme had reason to believe that they could successfully defraud the INS.

I believe that after INS processed the 6,000 or so fraudulent re-entry permit applications and mailed them to a number of addresses in California, that the re-entry permits were then either taken, or were re-mailed, to locations outside the United States. No doubt they were probably sold to the person whose photograph was laminated into the

document for a premium price. These documents were legitimate United States re-entry permits, similar to a passport, that could be used by aliens to travel out of one country and into another country in lieu of a passport from their country of origin. United States re-entry permits are considered to be conclusive evidence that the bearer is a permanent resident in the United States by foreign immigration officials.

Those foreign immigration officials might then allow the bearer of a United States re-entry permit into their country, when they might not allow the same alien to enter if he or she were using a passport from some Asian country. This is because they would expect that an alien who was a permanent resident of the United States would leave at the end of a short stay. These re-entry permits can also be used to travel from Asia to Canada or to countries in Central America from which the bearer could easily be smuggled into the United States. The fraudulently obtained United States re-entry permits can also be used to facilitate the international travel of foreign criminals and terrorists, from country to country, who have no interest in gaining entry to the United States.

I suggested to the Service Center staff that in the future that they should review individual Service "A" files and compare photographs that were submitted with re-entry permit and refugee travel document applications with known photographs contained in the "A" files to detect imposter's photographs that may be submitted with such applications in the future. I was told that comparisons with data and photographs in "A" files could not be done because of the program priority paradigm that had been established by INS management.

I was told that it took too long to order the "A" files from other INS offices, and that the Service Center was issuing several hundred thousand re-entry permits and refugee travel documents each year, all of which had to be mailed back to the applicant, within a week, after the application was received at the Service Center.

The Service Center staff told me that all they could do was to program their computers to alert them if more than 50 re-entry permits or refugee travel documents were ever mailed from the Service Center to one address in the future. I was also advised that sometime in the future the Service Center hoped to have all permanent resident aliens and refugees photographs in an INS computerized database from which comparisons with submitted photographs could be made, but that that would take years.

The Service Center staff also told me that in order to accomplish their established program priority paradigm that a certain level of fraud was deemed by them to be acceptable. Based on that statement, it is clear that INS management is not really interested in maintaining the integrity of the INS adjudication system. I believe that INS management's actual primary objective is to rapidly issue as many re-entry permits and refugee travel documents as possible in order to collect the filing fees that INS management uses, in part, to operate the INS Examinations Division. It was clear to me that the re-entry permit and refugee travel document adjudication's programs remained open to massive fraud. One can also safely presume that all other INS adjudication's programs whereby identification documents are issued to aliens are open to the same type

of fraud.

The third strategy priority that I will address is strategy priority #5 "Block and remove employers" access to unauthorized workers. This priority relates to removing illegal aliens from unauthorized employment in the United States. To explain how this priority is actually being carried out in the field I will dwell on an INS enforcement initiative entitled "Operation Vanguard" that was commenced in September 1998 in Nebraska by the Omaha INS district office. This initiative targeted illegal aliens employed in the Nebraska meatpacking and processing industry.

"Operation Vanguard" was originally called "Operation Prime Beef" but had to be changed after Omaha INS management discovered that the Nebraska meatpacking and processing industry handled more than just beef products. "Operation Vanguard" is really only a bureaucratic attempt to re-invent the wheel regarding routine INS law enforcement work that has been around for a long time.

The way the program works is that INS requests copies of employment eligibility paperwork and employment history records for all employees at a particular meatpacking or processing plant. The INS and other cooperating federal and state agencies then run the employee data through government databases to determine who is authorized to work in the United States and who is not. After the checks are completed the INS shares the results with the employer and makes an appointment to visit the plant at some future date to talk with employees for who record checks revealed discrepancies. The employer then notifies the effected employees' that INS will be coming to talk with them. Common sense dictates that any of the employees' that INS wants to talk to who are illegal aliens will flee to avoid apprehension.

Omaha INS management publicly announced in Nebraska that "Operation Vanguard" is not about arresting and removing illegal aliens from the United States, and that the objective of "Operation Vanguard" was to remove illegal aliens from the Nebraska meatpacking and processing industry.

Omaha INS management is telling the public in Nebraska that INS management has come to the conclusion that it is too expensive to continue to arrest and remove illegal aliens from the interior of the United States. That statement is odd, because this year, INS received the largest amount of money ever from Congress to fund their law enforcement operations. Experienced INS officers have told me interior investigations programs in INS were extremely under funded this year and that there is a belief that enforcement funds are being reallocated by INS upper management to INS adjudication's' and naturalization programs.

It is my opinion that it is nonfeasance of duty for INS management to purposefully allow large numbers of illegal aliens, many of who have criminal records, to escape apprehension and removal from the United States.

"Operation Vanguard" as described by Omaha INS management was obviously

designed to only detect a portion of the illegal aliens working in meat packing plants. The initiative uses only computerized checks that compare information and data given by workers to employers, with information that is already contained in government databases. These checks will generally detect the use of counterfeit identification and work authorization documents used by illegal aliens, but generally cannot detect illegal alien imposters who are fraudulently using identification and work authorization documents that were legitimately issued to another person.

In accordance with the "Operation Vanguard" procedures, as they were publicly described by Omaha INS management, INS only intends to interview workers for who INS has found discrepancies during the computerized checking process. This means that a large portion of the illegal alien population employed in Nebraska meatpacking and processing plants, who are imposters, using identification and work authorization documents that were legitimately issued to another person are effectively being ignored by INS. This group includes many illegal aliens who are falsely claiming to be United States citizens.

Large numbers of illegal aliens in the United States have assumed the identities of living and dead United States citizens. This class of illegal alien can be routinely found working in Nebraska meatpacking and processing plants. For the most part these illegal alien imposters are fraudulently using identification and work authorization documents that were validly issued to United States citizens. These imposters are the most subversive class of illegal aliens that there are to the effective and orderly enforcement of the immigration laws. Once in the interior of the United States these imposters can and do lay claim to all the benefits of United States citizenship. In large numbers they are clearly a threat to our national security. The superficial computerized checks being conducted under the "Operation Vanguard" procedures generally will not detect these individuals.

In my experience the only sure way that INS can detect and apprehend most illegal alien imposters is by interviewing all the workers at a meatpacking or processing plant that is under investigation. Computerized checks are great to initially establish that illegal aliens are employed in a meatpacking or processing plant and will detect some illegal aliens, but they are of limited utility in detecting illegal alien imposters working at such a location.

Omaha INS management is claiming that since "Operation Vanguard" commenced about 9 months ago that about 3,000 suspected illegal aliens have quit their employment in Nebraska meatpacking and processing plants and that they have managed to arrest 34 illegal aliens. Historically, there is very high employee turnover in the meatpacking and processing industry. Thus in actuality since INS never interviewed any of the 3,000 persons, INS has no way to determine if those people were illegal aliens or if "Operation Vanguard" checks were really the reason that those workers quit their jobs. INS also does not know what happened to the 3,000 workers; most probably they just moved on to another job in another meatpacking or processing plant. In actuality INS can really only prove that their checks detected the 34 illegal aliens that they actually apprehended.

I do not believe that INS has a mandate to disperse suspected illegal aliens from one industry or place to another industry or place in the United States without apprehending the illegal aliens. The INS has only about 2,000 special agents in the interior of the United States to enforce the immigration laws, there are now well over 5 million illegal aliens in the United States and there are probably about 8 or 9 million employers. The INS special agents should be assigned to perform meaningful and effective law enforcement work and should not be assigned to conduct bogus and illegitimate law enforcement initiatives such as "Operation Vanguard". The "bottom line" in immigration law enforcement is to arrest and remove illegal aliens from the United States, by not doing that with "Operation Vanguard" INS management is removing immigration law enforcement efforts as a deterrent to illegal immigration and is encouraging further illegal immigration into Nebraska.

Illegal aliens take great risks in being smuggled into the United States. Illegal aliens are not going to just leave the United States as INS management suggests because they were forced from a job. They will just move on to another industry and many will no doubt resort to entering into fraudulent marriages by which they can obtain an INS work permit.

At first "Operation Vanguard" will no doubt cause some disruption in the illegal alien workforce availability in Nebraska meatpacking and processing plants. But I have no doubt that the illegal aliens and "wily coyote" who advises and assists them, will in time, figure out the limited effectiveness of "Operation Vanguard" and will start using identification and work authorization checks that cannot be detected by the "Operation Vanguard" computerized checks. Especially since Omaha INS management has publicly announced that they no longer intend to arrest and remove employed illegal aliens from Nebraska.

What Omaha INS management should be doing with the meatpacking and processing plants is conducting investigations designed to apprehend and remove as many illegal aliens from the United States as possible from each plant under investigation. Then once INS knows that a plant is completely clean of illegal aliens, weekly or monthly checks by INS, during which all new employees' are interviewed will result in deterring new illegal aliens from applying for work at the plant. But INS has to physically interview all new employees and not just employees who appear to have discrepancies in their identification and work authorization documentation.

With 42 special agents due to be on duty in the Omaha INS district by September of this year, for the first time, Omaha INS will finally have the manpower to keep illegal aliens out of the meatpacking plants. These meatpacking plants need a steady stream of illegal aliens available for hire. With the illegal aliens they can keep wage rates low and working conditions harsh. In past years INS management used the excuse of a lack of manpower to justify their inability to remove illegal aliens from the meat packing plants and from the United States. Now since they have the manpower to do the job, they have changed their tune and are now claiming that they have determined that it is too expensive to arrest and remove the illegal aliens from the United States.

During September 1992 Omaha INS culminated a criminal investigation at a large meatpacking plant located at Grand Island, Nebraska. The personnel manager at the plant was a former INS officer who had been kicked out of the INS for reportedly stealing government funds. This individual was responsible for recruiting well over 1,000 illegal aliens, over time, to work at the plant. The plant was owned by a Fortune 500-corporation and plant management refused to cooperate with the INS, at times refusing to admit INS special agents to the property, unless they left their INS issued side arms in their government motor vehicles.

With the help of over 100 state and local law enforcement officers, 86 INS officers from all over the United States, who were armed with a criminal search warrant, surrounded the plant one evening. Plant management was then given the opportunity to clear the meat lines so that large quantities of beef would not be lost, and after all the employees at the plant were interviewed almost 350 were found to be illegal aliens.

All the illegal aliens were then taken to the local national guard armory, where cots, blankets, food and telephones were provided to the illegal aliens, over a 3 day period, until all were processed by INS officers. Within three days mostly all of the illegal aliens had been removed from the United States to Mexico. No immigration officers or illegal aliens were injured during the operation.

The meatpacking corporation was caught with their pants down and had no recourse but to cooperate with the INS. Wage rates were raised and within a few days a legal workforce was hired to replace the apprehended illegal aliens. The new plant management agreed that INS special agents should check all their new hires each month in ensure that illegal aliens were not again hired at the plant. Each month, for a year, INS special agents traveled to the plant and interviewed every employee who was hired that month. At first a few illegal aliens were caught each month, then in following months the plant was clean. After a year, even though the plant management wanted to continue the monthly checks, INS management refused claiming the checks were unproductive. The meatpacking plant then immediately loaded back up with illegal aliens.

INS administratively fined the meatpacking corporation \$100,000.00 for knowingly hiring illegal aliens a sum that was mitigated down from a much higher initial sum by INS management. The plant personnel manager knew he and the plant were under investigation by INS for knowingly hiring illegal aliens, and a few days before the 350 illegal aliens were caught in the plant, the personnel manager died of a sudden heart attack.

This operation was planned and carried out by experienced law enforcement INS supervisors in Omaha as a demonstration project for upper INS management on how large numbers of illegal aliens could be quickly and efficiently arrested and removed from a work site in the interior of the United States. INS management generally stayed aloof from the operation until it was deemed a success and then jumped on board. However, the meat packing industry and their lobbyists subsequently intimidated the

completely politicized INS upper management with demands that INS stop large scale enforcement operations targeting the meatpacking industry that resulted in the removal of large numbers of illegal aliens from the United States. The result is ineffective efforts such as "Operation Vanguard".

Recently the Omaha INS district director in a radio interview indicated that INS now wants to move away from arresting and removing large numbers of illegal aliens, as was done in the 1992 enforcement operation, described above. He said that INS will be following the "Operation Vanguard" procedures whereby large numbers of illegal aliens will be removed from jobs, but will be allowed to remain in the United States. That statement clearly shows that INS management is attempting subvert the law enforcement functions of the INS into an ineffective administrative compliance type procedure.

Working conditions in the meatpacking and processing industry are kept very harsh due to the availability of large numbers of illegal alien workers. Some years ago I came in contact with an illegal alien who had worked several years in a number of Nebraska meatpacking plants. This illegal alien had stabbed an American citizen to death in a bar fight and was being deported. This illegal alien had a dangerous job working on the kill floor where the cattle entered the meatpacking plant and were slaughtered. His job was to stand in a pit under where the cattle were being killed and to make certain cuts in the animal's hides near the hoofs so that the hide could be stripped off the animal right after it died. He told me that many times the animal was still alive when he started his cuts and in response he could easily be injured when the animal kicked in response to being cut.

The illegal alien went on to say that one night in the winter he had the flu and was trying to do his job, but could not keep up. He was in the pit with three large knives trying to do his job, the animals had ice on their legs that that took the "sharp" off his knives. He had to stop frequently and sharpen the knives. He told me that the plant managers kept yelling at him to work faster as he was "slowing down the chain" on which the dead cattle were being moved through the kill operation.

He told me that as he worked he got weaker from the flu, passed out and fell to the floor. He told me that the plant managers then brought him to the plant nurse's office where he was given aspirin and was told to get back to work. The illegal alien told me that he needed the money he was getting from his job, but was too sick to continue. When he told plant management that he had to go home sick he was immediately fired. Incidents like this show why the meatpacking and processing industry have relied on steady streams of available illegal alien labor.

During the summer of 1996 it became evident that a large meatpacking plant at Norfolk, Nebraska had become a big time employer of illegal aliens. Law enforcement officers in Norfolk estimated that this company was responsible for about one thousand illegal aliens coming there. It was estimated that the plant which had a workforce of about 1,200 and was employing about 600 illegal aliens on two shifts. In 1987, at start up, this plant had been given about 5 million dollars in taxpayer money as an investment by the State of Nebraska to create 450 jobs in Norfolk. The plant was paying low wages and working conditions were reportedly harsh.

Omaha INS conducted an investigation based upon the model used earlier at Grand Island; many INS officers were detailed in from all over the country; Nebraska law enforcement agencies agreed to help in a big way; the United States Attorney was on board and a federal judge issued a sealed search warrant for the plant.

The day before the scheduled law enforcement operation at the plant the Omaha INS district director, against the advise of the experienced INS special agents assigned to the investigation, traveled to the targeted plant. The INS district director then told the plant manager that the INS enforcement team would be coming to the plant the next day to arrest hundreds of illegal aliens. In doing that the INS district director effectively sabotaged the enforcement operation.

The enforcement operation was conducted the next day. Only about 75 illegal aliens were arrested and it was later determined that an additional 262 illegal aliens who should have been at the plant working at the time of the enforcement operation had stayed home that day. Inquiry showed that after the INS district director visited the targeted plant the previous day that plant managers had spread the word throughout the plant that INS would be coming to the plant the next day. This allowed the 262 suspected illegal aliens to evade being arrested by INS and from being removed from the United States. The reason that the 75 illegal aliens were arrested was that they did not believe that INS was really coming to the plant the next day.

The Omaha INS district director then held a news conference and hailed the operation as being a success. He would never allow another enforcement operation to go forward against that meatpacking plant. That whole fiasco made INS look stupid in the eyes of all the other law enforcement agencies that had volunteered to assist in the operation. Essentially the Omaha INS district director was in violation of Rule 6E of the Federal Rules of Criminal Procedure because of the sealed federal search warrant, but nobody that counted really cared. About a year later the workforce at the plant went on strike, all the workers were fired, the plant was closed and sold, and no mention was made of what ever happened to the State of Nebraska's five million dollar investment.

There are meatpacking plants in Iowa and Nebraska where plant managers can be trusted to cooperate with INS enforcement efforts and there are some who will not cooperate. You just have to know from experience who you can trust and who you can't trust. This INS district director had no experience in this area and simply did not know what he was doing.

The illegal immigration situation in Nebraska and Iowa is a microcosm of the illegal immigration phenomenon throughout the United States. Most of the readily identifiable illegal aliens in Iowa and Nebraska are Mexican citizens who are smuggled into the United States. These illegal aliens initially come to Iowa and Nebraska to find work in the meatpacking and processing industries. Most only stay in the meatpacking and processing plants until they can find jobs in other sectors because of the low wage rates

and very harsh working conditions. Some of the illegal aliens leave the meatpacking and processing industry and engage in criminal activity and the illicit trafficking in drugs.

There are also large numbers of illegal aliens present in the two-state area from many other countries. Most of those illegal aliens initially entered the United States legally as nonimmigrant visitors, foreign students and temporary workers and have stayed in the United States longer than permitted by law. Recently a number of illegal aliens from Nepal, who were admitted as foreign students, and who went out of status by accepting unauthorized employment, have been located by INS in Omaha. One of the illegal aliens from Nepal recently made the front page of the Omaha newspaper after he was convicted of robbing two banks.

I am trying to tell you what experienced immigration law enforcement officers have to put up with each day as they try to do their jobs. The day I entered the U.S. Border Patrol in 1972 I met a legendary Chief Patrol Agent from North Platte, Nebraska who told me "Tom, remember this, always treat the illegal aliens with respect and as you would want to be treated if you were in their situation, because they are your bread and butter; but always watch out for INS management as they are your real enemy as long as you are on this job". No truer words were ever said.

I believe that there are three things that are vitally important in order to get immigration law enforcement in the interior of the United States back on track.

1. Congress must redefine this issue of illegal aliens into the law enforcement problem that it really is. The issue of illegal aliens should be completely separated from the nation's legal immigration program. Almost everything that illegal aliens do to gain entry to the United States and to stay in this country constitutes them breaking some federal, state or local law. Illegal aliens must be held responsible for their actions and should not be rewarded for illegally coming to the United States. Congress must get this problem under control soon. The benefits that accrue to an illegal alien who successfully sneaks into the United States today are potentially enormous. If the illegal alien somehow manages to obtain a legal status the alien becomes eligible to the whole array of government benefit and welfare programs and can eventually bring his or her whole family to the United States. The incentives for illegal immigration to grow must be shut down by congressional action. If Congress does not take corrective action soon, because of the potential numbers of people involved, they may never be able to do so in the future. The illegal alien problem is like an upside down pyramid, the more illegal aliens that jump in the top the bigger the problem gets.

2. The Immigration and Naturalization Service (INS) as it is now organized is obsolete. The agency cannot even address the illegal alien problem properly, let alone solve it. The agency has conflicting missions that make it impossible to accomplish its' law enforcement responsibilities in the interior of the United States. At the same time the agency is charged by Congress with arresting and removing illegal aliens from the United States, it is attempting to find ways to allow illegal aliens to remain in the interior of the United States in order to mollify the supporters of continued illegal immigration.

The INS is only a law enforcement agency up to about the second line of supervision in the law enforcement sections. Above the second line of supervision the agency is run by what I consider to be an uncaring non-law enforcement oriented bureaucracy that would much rather find some way to legalize an illegal alien than hold the alien responsible for his or her action and take the steps necessary to remove the illegal alien from the United States. The INS bureaucracy in my experience always takes the easy way out.

It is much easier bureaucratically to "rubber stamp" an illegal alien into a legal immigration status than take the steps necessary to remove the illegal alien from the United States. INS management clearly has a conflict of interest. I believe that non-action by INS management over the years to see that the immigration laws were vigorously enforced in the interior of the United States is the primary reason why the illegal alien problem has grown in recent years. This is the primary reason why I believe that the law enforcement entities of INS must be completely removed from the customer service oriented entities of the agency.

I do not believe that the INS is capable of reorganizing itself in a manner that will not just result in a bureaucratic shuffling of cards so to speak. In the past when INS has accomplished an internal reorganization, it has just resulted in the movement of upper management officials from one job to another, which usually resulted in the creation of additional bureaucratic upper management positions in the agency. The more things changed the more they stayed the same.

I believe that Congress must take the bull by the horns and reorganize the U.S. Border Patrol along with the other law enforcement entities of the INS into a new immigration law enforcement agency. Professional law enforcement officers, from top to bottom should staff this new agency. The new immigration law enforcement agency should be given the authority and the manpower to perform its law enforcement responsibilities fairly and effectively throughout the United States. The new immigration law enforcement agency should be managed using law enforcement procedures that are in force in every other professional law enforcement agency in the United States.

Many basic law enforcement procedures used by professional law enforcement agencies across the United States are yet to be instituted in the INS. As an example, many times illegal aliens who are apprehended by INS are not even checked against law enforcement databases such as the National Crime Information Center (NCIC). This failure to follow standard law enforcement procedures results in wanted criminal aliens being removed from the United States without the law enforcement agency that placed an alert in NCIC being notified that a wanted alien has been taken into custody by INS. This failure usually occurs because the arresting INS law enforcement officers do not have the support personnel available to them to run the required checks. When large numbers of illegal aliens are arrested the arresting officers usually do not have the time to go to a computer terminal and run a large number of time consuming computer checks. I am sure that INS management will say that NCIC checks are standard practice, but in my experience many times they are not done.

When I retired from the INS, it was an agency where upper management was content to ignore serious personnel shortcomings; supervisors were prevented from supervising; and many employees' and managers who attained their positions through cronyism, nepotism and political correctness were protected by upper management inaction. These protected employees' could do or say just about anything they wished, including not doing their assigned work or outright nonfeasance of duty without being held responsible for their actions.

Recently a TV news investigative reporter appeared at my home and asked to talk to me about a case that I had assigned to an INS special agent to investigate a few weeks before I retired. The news reporter had in his possession a number of INS and police department documents. He did not say where he got them. The documents indicated that INS had received a report that an illegal alien was residing at a specific address at Lincoln, Nebraska, after having been deported, and that the illegal alien was "wanted" in another state for attempted murder. The report also indicated that the illegal alien had been physically abusing his spouse. The TV reporter told me that the INS special agent had done nothing on the case and that as a result the illegal alien had murdered a United States citizen. As it turned out it appears that the murder victim may well have been the person who reported the illegal alien to the INS.

Clearly from my experience the INS investigator should have taken action on this case. The least that should have been done was that the Lincoln Police Department should have been notified by the INS special agent of the report and a check should have been made to determine if the illegal alien was also wanted in another state for attempted murder. Of course the INS special agent could have also gone to Lincoln and arrested the illegal alien, who was clearly a prior deport, and who was amendable to criminal prosecution. However the INS special agent took no action. The TV reporter then asked the Omaha INS deputy district director about the matter on camera. His response was that the INS special agent had been assigned too much to do and that it was not a time to cast blame. Few protected employees are held personally responsible for not doing their jobs in INS, and the bureaucracy just moves on until the next incident occurs.

3. Immigration law enforcement cannot be effective in the interior of the United States until Congress takes action to secure the Southern border. Border enforcement and interior enforcement go together, neither can be successful until both are successful. The U.S. Border Patrol is too small to control the Southern border. Even if it takes hiring and training a force of 20,000 border patrol agents to secure the Southern border that must be done. Congress should also consider deploying military units along the Southern border assist in stopping the large-scale alien smuggling that has now continued to grow and prosper along the Southern border now for generations. Criminal aliens can easily cross the Southern border and gain entry into the United States anytime they want.

Before I retired the command officers of the Nebraska State Patrol told me that they estimated that up to 1,000 illegal aliens a day were being transported by alien smugglers Eastbound through Nebraska on Interstate Highway I-80 in trucks and vans. Loads of

smuggled illegal aliens are routinely stopped by the Nebraska State Patrol who should have been encountered and stopped by the U.S. Border Patrol near the Southern border. Recently the Nebraska State Patrol encountered a large tour bus on Interstate Highway I-80 reportedly carrying over 50 smuggled illegal aliens from Southern Arizona to Chicago. This bus was apparently noticed through a fluke when a stupid driver drove into a highway weigh station rather than a rest area. One can only guess as to how many times that bus has made the same trip carrying 50 or more illegal aliens or how many more busses like it are operating on the same smuggling route.

Thank you, I am prepared to answer any questions that you may have.

Mr. **SMITH**. Ms. Desantis.

STATEMENT OF JUDITH M. DESANTIS, FIRST VICE PRESIDENT, FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

Ms. **DESANTIS**. Thank you. Good morning, Mr. Chairman and distinguished members of the subcommittee. I am very honored to be here today.

The Federal Law Enforcement Officers Association is a voluntary nonpartisan professional association. As the first vice president, I represent many of the outstanding men and women who enforce our Nation's immigration laws. I am also a career special agent with the DEA and serve as a lieutenant colonel in the United States Army reserves. INS representation in FLEOA derives primarily from three distinct organizational divisions, the Border Patrol, Investigations, and Detention and Deportation.

These three, along with the Intelligence and Inspection divisions, represent the enforcement components of the INS. I ask that you keep them and the complex bureaucratic framework in which they operate at the forefront of your thoughts because I believe this is the essence of both the present problem and its potential solution.

FLEOA currently represents over 16,000 Federal law enforcement officers and is the largest association for Federal officers of its kinds. Immigration law enforcement and, in particular, enhanced interior immigration law enforcement coupled with a legislated separate immigration enforcement bureau continues to be one of our highest priorities. FLEOA's national president, Rich Gallo, had the privilege of speaking before this subcommittee twice on the lack of enforcement resources in the interior of the United States and the need for a dynamic separation between immigration law enforcement and immigration benefit services.

FLEOA continues to believe that sorely needed structural change is the only answer to the problem at hand. The current INS management reorganization plan and its inherent weaknesses when combined with the limited enforcement resources in the interior, the array of competing investigations priorities, and the limitations on detention space, paint a discouraging picture for the INS enforcement officer intent on doing his or her job. Mr. Chairman, change is needed, and the time is now.

I would not even be here today nor would this hearing even be in progress except for the fact that Congress was forced to mandate that INS devise an interior enforcement strategy. Why should Congress have to tell INS headquarters the obvious? To make matters worse, this strategy was first officially requested in April, 1997, as part of the fiscal year 1998 appropriations bill and never delivered to this body until March 30, 1999 after repeated promptings.

If one considers this extremely slow response by INS headquarters and further reflects upon the fact that the general arrest provision arising from the Immigration Act of 1990 has still not been implemented by headquarters, it appears that INS's responsiveness to Congress and its citizenry is measured not in months or years but rather decades.

In essence, INS, as an organization, has lost credibility with the taxpayers and many of its own employees. The agents I represent have asked me to tell you that they still firmly believe in the Immigration and Nationality Act but no longer have any faith in their own organization. FLEOA serves as the advocate for INS special agents in lieu of any meaningful advocacy from within their own organization.

This is certainly demonstrated by the fact that this interior strategy was commissioned by the Congress and not from within. The recently proclaimed INS integrated interior enforcement strategy addresses many of the serious societal problems caused by illegal immigration today. FLEOA wholeheartedly supports the strategy's emphasis on professional, sophisticated criminal investigations regarding criminal aliens, and alien smuggling organizations.

However, the strategy basically addresses all of the aforementioned problems without any detailed explanation on how it can realistically be done with the current special agent work force of roughly 2,000 agents for the entire interior of the United States. The strategy claims to be all things to all people.

In fiscal year 1998, the Congress appropriated money for its own interior enforcement strategy after INS failed to deliver such a plan. The Congressional strategy is referred to as quick response teams and is designed to make resources available to State and local law enforcement who have encountered an ever-increasing number of alien smuggling loads in the interior as a result of the changing patterns of alien smuggling triggered by the southwest border strategy.

This is a law enforcement problem that must be dealt with. But a piecemeal approach in a limited number of interior States will only provide an extremely limited solution. In order to be effective, it is necessary that immigration law enforcement be comprehensive and balanced. Border patrol and interior enforcement are complementary functions. Therefore, it is critical that both be enhanced. Without the creation of a separate bureau for enforcement, as well as a much-needed infusion of new monies, the interior enforcement strategy is doomed to failure.

INS struggles under an obsolete organizational structure. The legislative innovations passed by the 104th Congress in 1996 including the Illegal Immigration Reform and the Immigration Responsibility Act and the Antiterrorism and Effective Death Penalty Act cannot be used to their full potential without the creation of a distinct bureau for immigration law enforcement.

Only through streamlining the bureaucracy, overcoming institutional inertia and establishing balance through a separation of functions can modern day immigration law enforcement be successful. As first vice president of FLEOA, I ask this subcommittee to do everything within its power to effect this change for the good of our Nation and the preservation of the world's most generous system of legal immigration.

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

Mr. **SMITH**. Thank you.

[The prepared statement of Ms. Desantis follows:]

PREPARED STATEMENT OF JUDITH M. DESANTIS, FIRST VICE PRESIDENT,
FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

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

As First Vice President of FLEOA, I represent many of the outstanding men and women who enforce our nation's immigration laws. I am also a career special agent with the Drug Enforcement Administration (DEA) and serve as a Lt. Col. in the U.S. Army Reserves. I would point out that INS representation in FLEOA derives primarily from three distinct organizational divisions: the Border Patrol, Investigations and Detention and Deportation. These three, along with the Intelligence and Inspection Divisions, represent the enforcement components of the INS. I ask that you keep them, and the complex bureaucratic framework in which they operate, at the forefront of your thoughts because I believe this is the essence of both the present problem and its potential solution.

FLEOA, as you know, currently represents over 15,600 federal law enforcement officers and is the largest association for federal officers of its kind. Several years ago, FLEOA joined with all the major state and local police national associations to form the Law Enforcement Steering Committee. The Law Enforcement Steering Committee also includes the following prominent and important organizations: Fraternal Order of Police, National Troopers Coalition, Major Cities Chiefs of Police, Police Executive Research Foundation, National Association of Police Organizations, National Organization of Blacks in Law Enforcement, International Brotherhood of Police Organizations, and the

Police Foundation. In so doing, federal agents were able to add the voices of over half a million state and local officers to the issues that our Association considers to be of greatest importance.

Immigration law enforcement, and in particular, enhanced interior immigration law enforcement, coupled with a legislated, separate immigration enforcement bureau, continues to be one of our highest priorities. In April of 1997 and again in May of 1998, FLEOA's National President, Richard Gallo, had the privilege to speak before this Subcommittee on the lack of enforcement resources in the interior United States and the need for a dynamic separation between immigration law enforcement and immigration benefit services. FLEOA continues to believe that sorely needed structural change is the only answer to the problem at hand. The current INS management re-organization plan and its inherent weaknesses, when combined with the limited enforcement resources in the interior, the array of competing Investigations priorities, and the limitations on detention space, paint a discouraging picture for the INS enforcement officer intent on doing his or her job. Mr. Chairman, change is needed and the time is now.

A profound structural change of the INS is essential. In addition, resource enhancements for interior enforcement of the immigration laws will preserve the integrity of the legal immigration system and promote public safety by preventing immigration-related crimes, and removing individuals, especially criminals, who are unlawfully present in the United States.

Unfortunately, I would not be here today nor would this Hearing even be in progress except for the fact that Congress was forced to mandate that INS devise an interior enforcement strategy. Why should Congress have to tell INS Headquarters the obvious. To make matters worse, this strategy was first officially requested in April of 1997 as part of the FY 98 Appropriations Bill and never delivered to this Body until March 30, 1999 after repeated promptings. If one considers this extremely slow response by INS Headquarters and further reflects upon the fact that the general arrest provision arising from the Immigration act of 1990 has still not been implemented by Headquarters, it appears that INS responsiveness to Congress and the citizenry is measured not in months or even years but rather decades. In essence, INS as an organization, has lost credibility with the taxpayers and many of its own employees.

The agents I represent have asked me today to tell you that they still firmly believe in the Immigration and Nationality Act (INA) but no longer have any faith in their own organization. FLEOA serves as the advocate for INS special agents in lieu of any meaningful advocacy from within their own organization.

This is certainly demonstrated by the fact that this Interior Strategy was commissioned by The Congress and not from within as well as reoccurring budget requests that virtually ignore many of the interior problems that the demanded Strategy is required to resolve.

Specifically, this new Interior Enforcement Strategy is discussed today at an ironic point in the history of the INS Investigations Division when authorized staffing exceeds

100% but yet case support money, which was initially at ten cents on the dollar for FY 99 in comparison to FY 98, ends up at forty to fifty cents on the dollar for that same period of comparison after undergoing some budgetary triage only after this was revealed in the media. How can one implement a new national strategy if INS is simultaneously regressing rather than progressing in money allotted to such enforcement activities.

The recently proclaimed INS Integrated Interior Enforcement Strategy addresses many of the serious societal problems caused by illegal immigration today. FLEOA wholeheartedly supports that Strategy's emphasis on professional, sophisticated criminal investigations regarding criminal aliens and alien smuggling organizations. However, the Strategy basically addresses all of those aforementioned problems without any detailed explanation on how that can realistically be done with the current special agent workforce of roughly 2,000 agents for the entire interior of the United States. The Strategy claims to be all things to all people. By way of example, the proverbial kitchen sink is lumped into the Fraud priority when the problem of nonimmigrant visa overstays mysteriously appears, almost as an afterthought. While there is no clear nexus between immigration fraud and visa overstays, this particular obligation by INS Headquarters comes at a time when some in the Congress would seek to undercut the 1996 provision of law that mandated INS to develop a system of departure controls in order to begin to attack this large scale problem of overstays. FLEOA adamantly opposes such an effort at the very time in our history that America is the number one target of foreign terrorists.

Recently retired Assistant Commissioner for Investigations, Jack Shaw was often quoted as saying that INS continuously promises The Congress that it will do more with less until ultimately, it does everything with nothing! This would be humorous, were the illegal immigration problems not so serious.

In FY 1998, The Congress appropriated monies for its own interior enforcement strategy after INS failed to deliver such a plan. That Congressional Strategy is referred to as Quick Response Teams(QRTs) and is designed to make enforcement resources available to state and local law enforcement who have encountered an ever increasing number of alien smuggling loads in the interior as a result of changing patterns of alien smuggling triggered by the southwest border strategy. Under the INS Strategy debated today, these QRTs roll into a priority dealing with community response. Once again, this is a law enforcement problem which must be dealt with but a piecemeal approach in a limited number of interior states will only provide an extremely limited solution. The first time that counsel for illegal aliens advise their clients in smuggling loads to request administrative deportation hearings rather than simply consent to voluntary return, the QRT strategy will unravel due to lack of sufficient jail space.

FOCUS ON INTERIOR ENFORCEMENT RESOURCES IS VITAL

I want to state for the record, with a firm knowledge that this Congress is attentive to the issue, that we must establish a new perspective. For far too long, the issue of illegal immigration has been viewed as merely one-dimensional. In order to be effective, it is necessary that immigration law enforcement be comprehensive and balanced. Border

control and interior enforcement are complimentary functions; therefore, it is critical that both be enhanced.

While border control is certainly an integral piece of the puzzle and the solution, it alone cannot take us where we need to be. By INS estimates, there are allegedly over 5 million illegal aliens currently in the United States. A minimum of 41% of these aliens entered legally with a visa and simply overstayed that visa. This number is compounded by the INS estimate that for every one apprehension by the Border Patrol, two illegal aliens get through.

Clearly, the Border Patrol was understaffed for far too many years. However, I would submit to you that many of your congressional colleagues outside of this Subcommittee are not even aware of those interior enforcement components I mentioned; namely Investigations and Detention and Deportation. We must revise this way of thinking and change that traditional mindset that the first line of defense or the Border Patrol is the cure-all.

The INS has the federal government's largest law enforcement contingent. As the Border Patrol has grown over the past several years to over 8,000 Patrol Agents, the Investigations Division, by comparison, remains at approximately 2,000 Special Agents. This is clearly inadequate, considering that the Investigations Division is the only INS law enforcement presence in large interior, non-border, urban areas such as New York, Boston, Washington, D.C., Atlanta, Houston, Los Angeles and Chicago.

These agents are tasked with such demanding and diverse missions as criminal alien investigations; anti-smuggling activities; employer sanctions; status violator/visa overstayed apprehensions; maintenance of the INS Violent Gang Task force; and participation in the Organized Crime Drug Enforcement Task force (OCDETF) as well as the FBI's Joint Terrorism Task Force(JTTF). Again, with only 2000 agents throughout the United States, mission fulfillment is difficult, at best.

Consider that the FBI employs over 1,000 Special Agents in the greater New York City area alone and the Capital Police employ 1,200 Officers to patrol an area of Washington, D.C. that is measured in city blocks. In contrast, INS in New York City has less than 200 Special Agent positions.

In addition, due to the lack of interior resources and management apathy, INS agents leave the agency at an unprecedented rate. An informal inquiry in just one District, New York City, indicates that over the last 12 months, 18 Special Agents have left the New York District for other agencies. Last month, another 27 agents were interviewed for other federal law enforcement positions.

Obviously, morale is not high in the ranks. This is largely attributable to an inferior journeyman civil service grade level as well as misutilization of scarce investigative resources for such duties as detention officers or even ushers at a naturalization ceremony. There is a general lack of recognition within INS of the importance and

expertise that its own special agents bring to modern day law enforcement. The time to professionalize immigration law enforcement is now. The legislation introduced by the Honorable Harold Rogers (H.R. 4264) last Session will provide the way, if enacted.

Without a sufficient immigration law enforcement presence in the interior, there really cannot be any effective deterrent to illegal immigration. If one circumvents the Border Patrol after repeated attempts, if necessary, or disembarks from the plane with an easily obtainable non-immigrant visa in hand and knows with a fair degree of certainty that absent a serious criminal act, he or she is home free, then what have we accomplished?

In turn, that message of token interior enforcement rapidly passes from the successful illegal entrant back to an all too eager audience in the native country. Obviously, the "pull factor" then grows stronger.

FLEOA supports the recommendation in the Conference Report that accompanied the FY 1998 Appropriations Act, which stated that "Deportation is the strongest deterrent to illegal immigration". However, this is true only if there is a high degree of certainty that an illegal immigrant will be identified, arrested and promptly removed.

The lack of INS enforcement resources in the interior United States does not allow the agency to even put a dent in the estimated 5 million plus illegal immigrants currently here. The problem is not a lack of good intentions by rank and file enforcement officers. Rather, due to the Agency's determined efforts to establish control of the border, it has seemingly ignored the critical, complimentary roles and responsibilities of interior enforcement.

I respectfully submit that the entire INS interior enforcement structure is in need of revision. Your recent legislative efforts have repaired the law and revitalized the first line of defense. Now, we must turn attention, energy and resources to the interior.

DYNAMIC ORGANIZATIONAL CHANGE ESSENTIAL

Mr. Chairman, just as the Congress has constructively revised the provisions of the Immigration and Nationality Act in recent years, so must it mandate revision of the INS organizational structure. The INS is both a service provider and law enforcer and critics charge that it has failed to balance its two missions. The agency invariably promises more than it is capable of delivering. In 1997, the bipartisan Commission on Immigration Reform advised this Administration "that no single agency can act as a social agency and policemen, as the INS is required to do".

There have been several recent bills and reports recommending a stand-alone bureau for enforcement with realigned geographical areas.

FLEOA enthusiastically supports the separation of INS into two bureaus within the Department of Justice (DOJ), somewhat along the lines of H.R. 2588, proposed by Congressman Reyes of Texas during the 105TH Congress. As you recall, that bill would

have established the "Office of Enforcement and Border Affairs" within DOJ. The newly created bureau would be headed by the Director of Enforcement and Border Affairs, a career law enforcement officer who would have a status in rank equal to that afforded the heads of other federal law enforcement bureaus such as the Marshals Service, Drug Enforcement Administration or the Federal Bureau of Investigation.

In addition, H.R. 3105, introduced during the 103rd Congress by former Congresswoman Molinari of New York, recommended a reorganization of the field enforcement operations of INS into multi-state geographical areas to be known as "enforcement sectors". As you know, the present structure encompasses both immigration districts and border patrol sectors whose jurisdictions overlap, and whose top officials' report through different chains of command. A combination of these two bills would establish a fully integrated enforcement bureau within the new agency's structure and must be mandated. In fact, FLEOA National President Gallo has detailed exactly what such a structure should look like in previous written testimony delivered to this Subcommittee.

Immigration law enforcement must be professionalized and depoliticized. Creating two separate bureaus within DOJ is essential. It would provide the specialization necessary to resolve "Mission overload;" would eliminate the intense competition for resources between service and enforcement components within the same agency; and it would eliminate the possibility of a "tilt" in emphasis by a single administrator or top agency management toward, or against, either function.

Conversely, placing the two functions under one Cabinet Department, as opposed to subdividing and scattering a host of the INS' current components among several different agencies, would assure continuity of communication, coordination and oversight within the Executive Branch and the Congress.

Cooperation is critical in such areas as continued access by the immigration enforcement components to data and benefit records. This could be ensured as a part of reorganization legislation or for that matter, via policy directive from the Attorney General.

Establishing two separate bureaus through legislation would avoid a constant budget battle within the same agency between the two different, but equally important missions. It would also eliminate reprogramming of funds from one side to the other by a single agency administrator with a bias toward one or the other function.

We believe that immigration law enforcement functions should be integrated within a single set of geographic boundaries, eliminating overlap and establishing a national law enforcement chain of command. Field managers must be career law enforcement professionals as contrasted with the status quo. This direct line structure would be more effective in carrying out a uniform national enforcement program and would also better meet the needs of other federal, state and local law enforcement agencies.

One bureau for immigration enforcement, with field components reporting to the agency's headquarters, would ensure proper allocation of enforcement personnel, equipment, and funding. Employee morale would be significantly enhanced because agents would have a clear sense of mission, and the knowledge that their superiors support their efforts and accomplishments.

A more uniform application of enforcement efforts would inevitably result from (1) the separation of enforcement from benefit services functions, and (2) the development of enforcement sectors with integrated components.

Mr. Chairman, this concept is needed to overcome the inefficient and incredibly confusing status quo—or even the half-steps that are envisioned under an internal benefits-versus-enforcement split within INS in which the organizational flaws that INS, itself, has recognized at its field office level are still fostered in the Headquarters; namely non-law enforcement personnel will still make operational decisions and influence law enforcement policy.

FLEOA strongly urges Congress, through the appropriate Subcommittees, to examine and then adopt into legislation, the above recommendations for reorganization of the INS. Without the creation of a separate bureau for enforcement as well as a much needed infusion of new monies, the Interior Enforcement Strategy is doomed to failure.

INS struggles under an obsolete organizational structure. The legislative innovations passed by the 104th Congress in 1996, including the Illegal Immigration Reform and Immigrant Responsibility Act and the Antiterrorism and Effective Death Penalty Act, cannot be used to their full potential without the creation of a distinct bureau for immigration law enforcement. Only through streamlining the bureaucracy, overcoming institutional inertia, and establishing balance through a separation of functions, can modern day immigration law enforcement be successful. As First Vice President of the Federal Law Enforcement Officers Association, I ask this Subcommittee to do everything within its power to effect this change for the good of our nation and the preservation of the world's most generous system of legal immigration. The creation of a new Bureau of Immigration Enforcement will allow this to come to pass.

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

Mr. **SMITH.** Mr. Stein.

STATEMENT OF DANIEL STEIN, EXECUTIVE DIRECTOR, THE FEDERATION OF AMERICAN IMMIGRATION REFORM

Mr. **STEIN.** Thank you for the opportunity to appear again before this subcommittee. My name is Dan Stein, and I am the executive director for FAIR, the Federation for American Immigration Reform. We appreciate very much your leadership on this

important issue.

This is a difficult time politically for those working to try to solve the problem of illegal immigration, and those political leaders who are willing to stand up and face the battery of criticism from the special interests that profit from today's system are to be applauded, and we applaud your leadership, Mr. Chairman.

We also applaud the leadership of Barbara Jordan whose untimely death prevented her from carrying forward to enact the Commission on Immigration Reform's recommendations. We have heard a lot about credibility today. She said credibility in immigration policy can be summed up in one sentence, she told this committee several years back. Those who should get in, and those who should be kept out, are kept out. Those who should not be here will be required to leave.

For the system to be credible, people actually have to be deported at the end of the process. Mr. Chairman, by that standard the interior enforcement strategy presented for this committee and the attention of Congress fails miserably. If the American people knew what was going on I think they would be outraged, as millions of people go to bed every night thinking the Federal Government is doing its job identifying and removing illegal aliens from within our midst. What are we to make of a system that doesn't work, and the interior is virtually dysfunctional?

There is an old adage how you identify mental pathology. That if a bathtub is overflowing, you hand the patient a mop. Now, if the person is insane, they immediately start mopping. If the person is sane and has his head screwed on right, he first turns off the spigot. Well, the interior enforcement strategy doesn't make any sense. It is like shoving flood waters around an overflowed bathroom without first turning off the bathtub. And frankly, it is more like caulking bathtubs on the Titanic. It is not likely to have any real effect.

One of the problems that we see underscored in the Rafael Resendez-Ramirez case, and really pervades all of immigration enforcement is that the immigration service and the Border Patrol are isolated in their enforcement operations from other law enforcement agencies at the State, Federal and local level. Folks around the country need to understand that the Immigration Service doesn't work effectively with other agencies at any level of government, and we are frankly horrified to have our warnings about this isolation to be so terribly vindicated in the case of the Rafael Resendez-Ramirez case.

But illegal immigration hurts people more than in the direct way that we see in the Rafael Resendez-Ramirez case. People are hurt. Americans are being hurt by the systemic illegal immigration that is being tolerated by the ineffective INS interior enforcement strategy.

Working conditions are deteriorating.

In meat packing plants in Georgetown, Delaware, the average hourly wage is \$8 an

hour for a starting worker. Most workers in the meat packing plants today don't last more than 4 to 6 months. If you are willing to stand in there and continue to work in meat packing today, you can expect a yearly wage increase of 25 cents an hour. A recent report from the Chicago Tribune found a woman who had been working in a meat packing plant for 20 years in Georgetown, Delaware.

After 20 years, she had succeeded in increasing her wages to \$13 an hour. Illegal immigration is about greed; it is about exploitation and fear. There are powerful special interests that are fighting to retain a hold on illegal immigration, and those who—in our political leadership who are working to try to remedy this problem are also working to help relieve the burden on public education, safety, and save the taxpayers money particularly for the middle class taxpayers who are paying the tremendous costs.

In the end, there needs to be some political accountability for the failure to enforce the immigration laws in the interior. The Immigration and Naturalization Service has offered up a program that isn't going to do anything other than move illegals around the country as they move from labor sector to labor sector.

Without a backup strategy to remove illegal aliens from the work site when they are detected, all you are going to be doing is moving the problem around the country. The interior enforcement strategy we are considering today tries to eliminate any objective measures of enforcement success, number of apprehensions as an objective measure of enforcement success has now been eliminated; moving instead in favor of what they call customer satisfaction.

Well the only people who are going to be satisfied with this new strategy are the employers of illegal aliens who don't feel anything to fear from the systemic recruitment and hiring of them and the immigrants themselves, who even though they might have come across the border illegally, might have infectious tuberculosis, they hear the INS is coming and they just leave and go into another community, ultimately without any proper inspection by the Government.

It is a threat to public health, this interior enforcement strategy, as we have already seen in Nebraska. There does not seem to be any political accountability for the failure to enforce the laws effectively. There does seem to be political accountability exercised against those political leaders who have tried to bring some sense to this problem, and I think what we need in addition to all the proposals that we have talked about here, the machine-readable verification document that we have been talking about since Peter Rodino introduced employer sanctions 50 years ago is a consistent message, it is a consistent message from our political leaders that illegal immigration is bad and employers who use them are going to be taken on and dealt with effectively, with dramatically increased fines and sanctions against those who do.

Mr. Chairman, in our prepared statement, we have laid out a variety of recommendations from FAIR's comprehensive legislative agenda for the 106th Congress. One thing I want to add very briefly in addition to those recommendations, what we see

going on in meat packing. If one employer can pay \$8 for 20 years to one employee, every other employer is going to say "we have to have those workers, too, or this guy is going to kill me on labor costs." The problem is that the industry-wide standards have to be enforced regularly, and it does suggest that in the new interior strategy there are some things that they are talking about that make sense.

But in the end, we would like to see Congress restate the idea that RICO sanctions would be available for rival firms who believe that an employer has systematically used illegal workers to underbid other people on labor costs. With treble damages and a civil suit as an option, we believe that would suddenly change the dynamics of the playing field to discourage one employer's use of illegal aliens from forcing, if you will, other employers in the same industry to use them as well.

With that, I would like to conclude my remarks and would be happy to answer any questions that you have.

Mr. **SMITH**. Thank you.

[The prepared statement of Mr. Stein follows:]

PREPARED STATEMENT OF DANIEL STEIN, EXECUTIVE DIRECTOR, THE FEDERATION OF AMERICAN IMMIGRATION REFORM

This statement sets forth FAIR's view of the current problem in interior enforcement of the nation's immigration laws and outlines an action agenda for remedying the problems.

"Credibility in immigration policy can be summed up in one sentence: Those who should get in, get in; those who should be kept out, are kept out; and those who should not be here will be required to leave." ". . . for the system to be credible, people actually have to be deported at the end of the process."

—The Honorable Barbara Jordan, Chair, U.S. Commission on Immigration Reform, Testimony to House Immigration Subcommittee, February 24, 1995.

INTRODUCTION

Thank you, Mr. Chairman, for the opportunity to present the views of the Federation for American Immigration Reform (FAIR) on the crucial issue of interior enforcement. My name is Dan Stein, and I am FAIR's executive director.

FAIR is a national, non-profit organization of concerned citizens nationwide pushing for better immigration controls and an immigration time-out to insure that today's policies serve the needs of the American people. Ever since its founding twenty years ago, FAIR has insisted on the need to end the routine onslaught of illegal immigration; FAIR has supported substantial, permanent reductions in today's mass immigration. An immigration time-out is the only way to achieve that objective. It is the only way to reduce mass immigration from today's record rates. FAIR does not receive any federal

grants, contracts or subcontracts.

Mr. Chairman, FAIR congratulates this committee's efforts, under your leadership, to focus the attention of the nation's policymakers on the fact that the reform legislation of 1996 left a large agenda of needed changes in our nation's immigration law and its implementation. In addition, we appreciate that you have held to a constant course of working for immigration policies in the nation's interest during a period when many were backing away from even the limited reforms that were adopted in 1996. We recognize that the public support for a sensible, workable immigration policy is under constant assault by organized lobbies seeking to use the public immigration system for private purposes. Those willing to take an enlarged view of the long-term national interest are too rare, and should be recognized.

Mr. Chairman, we feel that the American people, who are clear on the concept that the present mass immigration is not in their interest, owe you a debt of gratitude. The reforms passed by the Congress in 1996 are worthy of support and oversight; you have been a leader in this process of insuring Congress has not lost sight of the public's interest in this function. Your interest and superintendence in this oversight process has been of vital interest to the United States.

INTERIOR ENFORCEMENT—INS'S SELF-IMPOSED TRIAGE

Today, nearly every day, the news media report smuggling rings or counterfeit document rings being exposed, or new routes for armies of illegal aliens sneaking into the country, or sweatshops discovered exploiting illegal aliens, or enterprises found to have substantial illegal alien workforces, or truckloads of illegals intercepted on the highways, or Border Patrol agents shot at or killed in the line of duty, or illegal aliens found dead near the border from drowning or exposure, while others tell stories of assault and rape while trying to illegally enter the United States. Can anyone doubt that we are losing control of our borders, and thereby, our national sovereignty?

Why is this happening? In 1986 Congress adopted legislation intended to put an end to the growing problem of illegal entry and visa overstays by adopting sanctions against the employers of illegal aliens. You and your colleagues, Mr. Chairman, in 1996 added new sanctions to penalize illegal aliens and to strengthen the Border Patrol. Yet we still see no abatement of the problem.

It is tempting to simply blame the Administration for sending signals that encourage further illegal entry. Examples of that encouragement include the suspension of deportation of illegal criminal aliens from Central America after Hurricane Mitch and the conferral of temporary protected status, even for illegal aliens from that area, bending the law to ease permanent residence for long-term illegal aliens from Central America, or the decision to cease requiring illegal aliens from Cuba to apply for asylum before they could become residents. Perhaps the most blatant dereliction of duty by the Administration may be seen in the new interior enforcement strategy which lessens the threat of deportation for illegal alien workers, to which I will return shortly.

But responsibility for the on-going hemorrhage of the country's boundaries by illegal aliens and for the casualties of that invasion must be shared by the Congress. I say this, Mr. Chairman, because the Congress in 1986 enacted a flawed employer sanctions system. That law only gave momentary pause to intending illegal aliens until they figured out that the threat of enforcement would be a paper tiger so long as the employers could get away with accepting phony identity documents as proof of work eligibility. In addition, the amnesty for illegal aliens adopted at the same time has proven to be not the "first and last" wiping clean of the slate, as was solemnly promised to the American people by the bill's sponsors, but rather simply the first of a developing pattern of throwing in the towel rather than enforcing the nation's immigration law.

The current hemorrhaging of the nation's borders would not have happened if intending illegal aliens had received the clear and consistent message beginning 15 years ago that the United States seriously would try to apprehend them coming across the border, that jobs would be difficult if not impossible to get, and that chances of apprehension would be high even if they did get across the border and find an employer willing to risk hiring them. For that to have happened, employers had to have a way to screen the employment identification documents of their new employees. That screening ability has been available for years for federal, state and local government agencies, but it was ignored in the 1986 legislation. And, when that glaring loophole was highlighted by the reports of the U.S. Commission on Agricultural Workers and the U.S. Commission on Immigration Reform, the Congress looked at the problem again in the 1996 reforms and blinked by consigning action to further study.

Therefore, the Clinton Administration and the INS are not entirely to blame for the deteriorating conditions that have accumulated since 1986. In fact, no administration since the Reagan Administration has demonstrated any leadership in attempting to deter illegal aliens.

THE INS RESPONSE

The current Administration has taken accommodation of the interests of illegal alien employers and alien support groups to a new level. Three major changes typify the Administration's accommodationist policy. The first of these was a change in operating procedures that tied the hands of INS enforcement personnel and limited their ability to conduct worksite raids on businesses employing illegal aliens. The second is a new enforcement strategy that allows illegal aliens to play musical chairs with employers while downplaying the responsibility of the INS to apprehend and remove them from the country. Finally, new directives from INS Headquarters have attempted to hide the erosion of the INS interior enforcement effort by reinventing the enforcement standards and the meaning of what constitutes success.

Limiting Worksite Enforcement—On December 31, 1996, INS Commissioner Meissner issued instructions to the field discouraging apprehension of illegal alien suspects for questioning during worksite investigations and specifying that the INS personnel should plan to interview and make determinations at the worksite whether

aliens were in a legal work status. At the same time, the instruction admonished the investigators that "Entry into the worksite should be conducted in a manner that minimizes disruption of the legitimate activities of the workplace." With this instruction, INS investigations personnel were told that they should not just focus on enforcing the nation's immigration law against illegal aliens, but that they also should focus on not inconveniencing the employer of the illegal aliens. But how could the investigators spend more time at a work establishment interviewing all of the illegal alien suspects without running the risk of disrupting the workplace? Commissioner Meissner thereby created a new "Catch 22."

The screws were further tightened on INS interior investigation operations in a May 22, 1998 memo. INS Executive Associate Commissioner for Field Operations, Michael Pearson, issued instructions to all regional directors requiring that worksite raids henceforth must be undertaken with a public relations criteria as part of the planning. This meant that enforcement personnel had to appoint one of their members to act as a public relations coordinator, alert the media and local interest groups about an impending enforcement action and invite participation, and then if the investigators considered that the action would generate media attention, the plans had to be sent to INS Headquarters for prior approval. If the media were supposed to be briefed, how could a regional director expect that there would not be media attention. Another "Catch 22."

The effect of the new instruction was to require that significant INS worksite enforcement operations would not be undertaken without Washington's approval. In addition, the new rules virtually assured that there would be greater media coverage of INS operations. And, by alerting "community based organizations"—which operationally means alien rights groups that assist illegal aliens in avoiding deportation—to an impending enforcement operation, the procedure virtually assured the presence at the enforcement site of persons who would decry to the media the cruelty of the INS for interfering in the rights of the "undocumented" aliens to work to support their families here and in their home country.

Musical Chairs—The new instruction also embodied a requirement that INS enforcement personnel share with employers the results of their employment records checks if they uncover employees who likely are illegal aliens. This new approach is referred to as the Phoenix plan. Since last year, the Phoenix plan has become more stylized, with INS asking employers to dismiss employees who appear to be illegal aliens unless they are sure that the employee is a legal worker. This sham of enforcement operations has taken on the aspect of a Kabuki play with INS scheduling interviews with illegal alien suspects to determine their work status.

On the surface, it may seem reasonable to adopt a strategy that denies illegal aliens the employment that draws them to this country, but that would be true only if the loss of a job were accompanied by removal from the country—the standard INS operation, mandated by law, that has been discarded from the new enforcement strategy.

An illegal alien who has lost employment as a result of being identified to the

employer by the INS is left free to take his fraudulent documentation—that the alien used to get the job—to another employer and continue his illegal residence in the United States. The alien does not even have to worry about being identified as a repeat border violator, because he is not removed from the country.

What clearer message could be sent to would-be illegal immigrants in the alien's home country? "If you can get past the Border Patrol, you have got it made, because the United States is not serious about enforcing its laws against illegal aliens."

Cynicism Reigns in INS Headquarters—For INS administrators the only misgivings with the Phoenix plan appears to be that it is likely to result in a reduced number of apprehensions and removals of illegal aliens. This might be inconvenient to the INS managers if lawmakers and the public concluded from that fact—correctly of course—that the INS was falling down on the job in enforcing the nation's immigration laws.

To solve this dilemma, Executive Associate Commissioner for Policy and Planning, Robert Bach crafted a new Interior Enforcement Strategy that was released in January of this year. Noted Bach, "Under this Strategy . . . the success of INS enforcement activities in local communities will likely lead to a downturn in apprehensions." Therefore, new indicators of success, other than apprehensions and removals, needed to be invented. Bach's solution was this: "Accordingly, measures such as forcing alien criminal activity to change location . . . will be used to determine the effectiveness of this strategy." Other tests of success included "customer satisfaction and reduction in local crime rates." The latter provision—local crime rates—tacitly indicates an INS assumption that crime rates escalate with the number of illegal aliens in a community, and that by causing them to leave the community the crime rates may be reduced. What this ignores, is that under the new INS strategy, the American public in general is not being protected from the incidence of illegal-alien-related crime, it is only being shifted from one community to a new unsuspecting community.

The same can be said with regard to public health. Several contagious diseases have begun to surge in proportion to the increasing illegal alien population. Tuberculosis is the most serious of the diseases, but other such as rubella and sexually transmitted diseases are also on the rise. In the Midwest, health authorities are concerned because of a German measles outbreak among illegal alien workers. Their concern is compounded by the new INS musical chairs strategy. Because the INS is applying the Phoenix plan in meat processing plants in the area, workers with this highly-contagious disease are moving to other areas and spreading infection. If the INS were pursuing their traditional worksite enforcement strategy with surprise raids and detaining and removing illegal aliens, the spreading of the disease would be abruptly curtailed.

The Bach strategy document appears to be confused on the concept of who is the customer whose satisfaction is sought. Is the "service" in the INS name performed for the American public, or is it for the immigrant communities and their support groups? It is fair to conclude that the INS leadership is unclear on this concept.

THE NUMBER IS GROWING

Mr. Chairman, FAIR is convinced that enforcement of our immigration laws must be that which was expressed by Barbara Jordan to this subcommittee in 1995 on behalf of the U.S. Commission on Immigration Reform. She said: "*Credibility in immigration policy can be summed up in one sentence: Those who should get in, get in; those who should be kept out, are kept out; and those who should not be here will be required to leave.*" She added: ". . . for the system to be credible, people actually have to be deported at the end of the process." It is not difficult to imagine the scorn that she would heap on the new INS so-called "Interior Enforcement Strategy" if she were still among us.

WHY DOES IT MATTER?

Unfortunately, Mr. Chairman, there is a growing lobby of apologists for illegal aliens, which appears to have the tacit support of the INS political leadership. They insist that illegal aliens enter or stay in the United States because the country benefits from their labor and secretly wants them to continue coming. They argue that the illegal aliens do work that Americans won't do. They say that illegal aliens are God-fearing, law-abiding, family-oriented, hard workers who pay taxes and that to send them home would be an unfair hardship and would break up families.

It certainly is true that a large number of employers, especially in seasonal crop agriculture rely heavily on illegal aliens. Yet this fact is hardly a reason to conclude that illegal aliens have a legitimate role in our society on the basis of their "sweat equity." It must be remembered that the growing presence of illegal aliens in agricultural labor has been developing for decades. The large number of illegal alien workers was a major obstacle to Cesar Chavez' efforts to unionize these workers. Over the past several years, the earnings of farmworkers have dropped in inflation-adjusted wages. This could never have happened during a period where wages in every other sector were rising if it were not for the large presence of the illegal alien workers.

Now farmers say they need a new increasing supply of alien workers, and they have advanced various legislative proposals to accomplish that. They argue that their workforce is dwindling because workers are leaving agriculture to go into higher paying jobs.

It does not take a great deal of analysis to come to the conclusion that the farmers have created their own dependence on an illegal workforce. It would be difficult to sell a crop harvested with a workforce paid a decent wage while competitors are able to hire illegal alien workers for less. What we should be asking is whether other sectors of our society, including high-technology employers, are now following the dead-end model of the seasonal crop farmers. The high-tech employers are striving to hold down salaries through increased access to imported foreign labor rather than to let them rise to attract more Americans into that field. In the long term, this trend has the potential of driving Americans into other more remunerative fields and creating another employment sector dependent on foreign labor because "they are jobs that Americans won't do." The cleaning services industry and, more recently, meat processing industry offer other examples of

this trend. Employment in these sectors, that used to be unionized and well paying, now pay less because of the rapid penetration of these worksites by illegal alien workers.

The issue, Mr. Chairman, should not be whether to abandon responsibility for apprehending and removing these workers. The issue that should be addressed is how best to do so. A legitimate debate might address the merits and demerits of a "cold-turkey" approach as opposed to a forced gradual withdrawal of employers from the addiction to illegal, exploitable alien labor.

The advocates for the illegal aliens always fail to discuss the fiscal and social costs associated with an illegal workforce. I have already indicated two of the costs: crime and disease. Law enforcement personnel regularly point to a relationship between the size of an illegal alien population and a rise in crime, especially drug-related offenses. One of the provisions of our immigration law is to protect the American public from exposure to contagious-disease carrying foreign travelers. Illegal entry bypasses this screening mechanism and exposes the public to unnecessary risk.

Every reputable study of the costs of illegal immigration has arrived at the conclusion that the fiscal costs are in the billions of dollars every year with the greatest impact on the local level. For example, a 1994 study by the Urban Institute of the costs in seven states of just three expense categories (incarceration, schooling and emergency medical services) found expenditures at about two billion dollars per year greater than taxes paid. Other studies put the costs much higher.

Illegal immigration also increases the welfare population, especially children in poverty, and increases the growing income inequality in the United States. This occurs especially because of our accommodation of illegal residents by the process of incorporating them as permanent residents through the 1986 amnesty, adjustment of status or the NACARA legislation, for example. Several major studies, including the two-year study of the National Academy of Sciences, have documented that immigration of unskilled workers (mostly illegal aliens) has a negative impact on lower-skilled, less educated Americans.

Mr. Chairman, there is no need to debate the costs and negative effects of illegal immigration; but it is important to expose the arguments of the apologists for illegal aliens for what they are—disinformation designed to weaken the resolve of the American people and their elected officials for defending the country's borders and for insisting that newcomers to our society enter the country legally pursuant to the provisions of immigration law that are designed to protect the interests of the American people.

CONCLUSION

Mr. Chairman, FAIR earlier was privileged to be able to set forth to this subcommittee our views on what further reforms are needed to create a truly effective interior enforcement strategy. The measures that we have outlined include:

Deny Jobs to Illegal Aliens—Make employer sanctions against hiring illegal aliens

effective by providing employers the means to verify the identity and work eligibility of all new employees with the Social Security Administration and with the INS. This system is working for federal, state and local governments now, and there is no reason for further delay. In addition to deterring illegal migration to this country by decreasing the job magnet, implementation of this procedure will relieve employers of the burden of reviewing documents of new employees to determine whether they are eligible to work in the United States and place it where it belongs, i.e., on the government.

Protect the Integrity of Identity Documents—Provide greater integrity for state-issued driver's licenses, by assisting the states to incorporate security features and collecting Social Security numbers of the applicants. This will end the ease with which these vital documents are being undermined as a secure means of identification.

Implement IIRAIRA Section 110—Harness technology to the task of maintaining records on when alien visitors arrive in our country and when they leave. Only by having that system—that is now used for air and sea ports of entry—extended to the nation's land borders can we have a sure way to determine the pattern of visa abuse that leads to two-fifths of our enormous and growing illegal alien population. Besides being an invaluable means for fighting illegal immigration, it also will offer benefits in deterring terrorism.

Enable Local Law Enforcement Agency to Respond to Local Problems—Promote the IIRAIRA §133 provision that allows local law enforcement personnel to be trained by the Justice Department in immigration law enforcement. This will empower local jurisdictions to work cooperatively with the INS to deal with local illegal alien problems and strengthen the effectiveness of the INS in the interior enforcement;

Provide the Resources Needed to Regain Control—Authorize the personnel and appropriate the funds necessary to provide an effective deterrent to illegal entry and visa overstays. That means continuing to strengthen the under-manned Border Patrol—including the neglected personnel needs on the U.S.-Canadian border; increasing the interior inspections personnel—that has been largely ignored and diverted to border enforcement operations; and providing the detention space necessary to assure that detained illegal aliens are not be released back into the community to find a new job rather than be removed from the country.

Mr. Chairman, we increasingly hear from the career staff of the INS how frustrated they are with the crippling restrictions imposed by their political bosses. This sense of malaise permeates the Immigration Service's public servants from Border Patrol to asylum adjudicators to investigators. It is unfair to the American public and to these dedicated defenders of our communities to allow this erosion of immigration law enforcement to continue.

Assuring that our immigration law protects the American public is a complicated and troublesome responsibility which the majority of politicians prefer to avoid. Yet there is no remedy to the seriously deteriorating situation without changes in the law and oversight exercised by this body. For that reason, Mr. Chairman, we express our most sincere appreciation for your efforts to marshal support for needed reforms and offer our

constant willingness to support those efforts. I am ready to answer any questions you or any other member of the subcommittee may have at this time.

Mr. **SMITH.** Mr. Amick.

STATEMENT OF DAVID AMICK, SHERIFF, WOODBURY COUNTY, SIOUX CITY, IA

Mr. **AMICK.** Mr. Chairman, thank you for the opportunity to be here today to perhaps share with you and the committee what some of the effects are on local authorities.

The Woodbury County jail has recently been put under a cap of 192 prisoners. Our jail provides incarceration for the local population as well as providing bed space for INS and Marshal prisoners. Through a Cooperative Agreement Program grant, Woodbury County is obligated to provide 15 beds for Federal prisoners. Their needs far exceed the contracted bed space. In 1998, the Marshal's prisoners averaged 35 prisoners per day, and INS averaged 22 prisoners per day. In 1999, those numbers have continued to rise. Presently, Federal prisoners represent over one-third of our total jail population and occupy approximately two-thirds of our long-term cells.

We have experienced a tremendous growth in drug trafficking, and have earned the designation and funding as a high-intensity drug trafficking area. Arrests on drug charges by our tri-State drug task force have so far this year included one-third illegal aliens. These illegals contribute substantially to our methamphetamine problem in Woodbury County and the tri-State area.

While we find these policies and procedures of the Marshal's office fair and in the spirit of cooperation, we, unfortunately, do not always find the same to hold true for INS. Once a hold is obtained, INS provides reimbursement only after disposition of State charges and being notified for pick up. The reimbursement methodology utilized by INS represents a cost shift to the local entity. While the individual is known to be illegal, INS has stated they do not have the funds or personnel to address the population. Local law enforcement agencies have been directed to turn them loose if unable to detain and prosecute.

Woodbury County has applied for and received monies under the State Criminal Alien Assistance Program for the past 2 years and will apply again this year. However, the amount received represents only approximately 28 percent of the actual costs of incarceration and does not include any money for prosecution. Federal agencies, INS in particular, place local jurisdictions at risk when their procedural practices require local law enforcement agencies to choose between detention, overcrowding, or escalation of crimes to justify INS participation.

Solutions need to be sought that represent overall needs rather than separate kingdoms. As stated previously, the Marshal's office is under contract with Woodbury County for 15 beds. The needs of the office, however, have far exceeded the amount of that contract for the past 5 years. Statistics indicate the need today of 50 beds, with a projected need of 65

beds within the next 18 months; and that is only for Marshal prisoners. That does not even include INS.

INS performs a diverse range of functions that may be responsible for some of the difficulties in efficient and effective operations. Needs, however, for identification, detention, and deportation of illegal aliens requires focused attention and a clear chain of command responsive to the needs of local law enforcement. Thank you.

Mr. **SMITH**. Thank you, Mr. Amick.

[The prepared statement of Mr. Amick follows:]

PREPARED STATEMENT OF DAVID AMICK, SHERIFF, WOODBURY COUNTY,
SIOUX CITY, IA

ISSUE:

The Woodbury County Law Enforcement Center has been placed under order by the Chief Jail Inspector of the State of Iowa to reduce inmate population to a mandated cap of 192 by June 1, 1999, with additional restrictions for increased personnel by August 1, 1999. Personnel must be in place by August 1, or the cap will be lowered to the design capacity of 158.

The waiver granted the facility for current operations also requires the County to submit a Plan of Action to address the issues of overcrowding and inadequacies created by the overcrowding over a 3-year time period.

The Law Enforcement Center provides incarceration for local populations as well as providing contracted bed space (15) to the U.S. Marshal's Office and INS holds. Needs of the U.S. Marshal's Office and INS, however, far surpass the contracted bed space and needs of the federal offices need to be reflected within the scope of the Plan of Action to assure effective, efficient and economical incarceration alternatives.

BACKGROUND:

The Woodbury County Law Enforcement Center opened in 1987 with design capacity of 90 maximum-security cells and 18 holding cells. Since opening in 1987, the jail has been remodeled through use of U.S. Marshal CAPS funding to provide a 30-bed work release area and shortly after completion of the first remodel, a second remodel to transform the existing exercise area into a 20-bed dorm. The projects increased jail capacity to 158 consisting of 110 long-term cells, 18 holding cells and 30 work release beds. Populations remained stable for a five-year period, remaining under the 158 capacity until marked increases began in 1995.

Woodbury County experienced a tremendous growth in drug trafficking throughout the metropolitan and rural areas, which earned designation, and funding as a High Intensity Drug Trafficking Area (HIDTA). The Tri-State Drug Task Force was formed in 1995 to

provide a focused response between local, state and federal agencies for investigation and enforcement. The Task Force has received federal funds for investigation and enforcement as well as receipt of additional U.S. Northern District prosecutors, INS agents, DEA and FBI agents.

With increased investigation, enforcement and prosecution, comes the increased incarceration of serious offenders. U.S. Marshal prisoners increased to 41 in 1997 with INS holds equaling 25 inmates per day. The federal inmates corresponded to an average jail population of 197. In 1998, the U.S. Marshal's Office trimmed its population to 35 by placing prisoners in surrounding facilities and INS holds decreased to a 22 holds per day average. By 1999, however, both agencies have again experienced an increase in the number of beds necessary to meet their demands. The U.S. Marshal's Office continues to utilize the jail and as recently as 3-16-99 had 46 prisoners in the jail while INS holds totaled 24. The federal numbers represent 36% of the total jail population and 64% occupancy of long-term cells.

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In addition to representing an increased percentage of the population, inmates under hold by the U.S. Marshal's Office and INS represent a higher length of stay. U.S. Marshal inmates vary between 6-12 months stays while INS holds average 39 days of incarceration with nine of the 39 days occurring after notification provided to INS for pickup.

Federal funds expended in the area for increased investigation and enforcement have produced the desired effect of increased prosecution of serious drug dealing and trafficking offenses. Since initiation in 1995, drug arrests have also increased drastically.

Arrests on drug charges increased from 779 in 1995 to 1,017 by 1997 and coincide with the increase in jail population.

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Drug Task Force arrests additionally reflect a significant portion of illicit drug operation to be associated with illegal alien population.

Location of the Woodbury County Law Enforcement Center is advantageous to all entities. The jail is located across the street from the Woodbury County Courthouse and one block from the federal courthouse. Transportation costs for all entities are minimal for court appearances.

As population in the jail increases, requirements for the U.S. Marshal to locate available beds have become mandatory. Availability, however, is dependent upon other local smaller facilities. On March 16, 1999, the Marshal's Office, whose bed occupancy had reached 41, was required to relocate prisoners to other facilities. The following chart depicts facilities commonly utilized by the Marshal's Office and accessed to alleviate the above condition.

It is critical to the continued operations of the Woodbury County Law Enforcement Center that all agencies utilizing the facility respond in an efficient and timely manner.

Federal prisoners are often welcomed by detention facilities as the policies and procedures practiced by the Marshal's Office for reimbursement represent attractive revenue for jails. Negotiated per diems reflective of the facilities operations are paid for every day of incarceration.

INS policies and procedures for reimbursement, notification and transport, however, are contrary to the U.S. Marshal's operations. While illegal aliens are identified shortly after incarceration, procedures to obtain holds are often cumbersome and time consuming which provides individuals suspected of felony offenses the opportunity to obtain bail while local law enforcement personnel await INS response. Once a hold is obtained, INS provides reimbursement only after disposition of state charges and notified for pickup. The reimbursement methodology utilized by INS represents a cost shift to the local entity. While the individual is known to be an illegal, INS has stated they do not have the funds or personnel to address the population. Local law enforcement agencies have been directed to "turn them loose" if unable to detain and prosecute on state charges.

Woodbury County has applied for and received moneys under the State Criminal Alien Assistance Program for the past two years and will apply again this year. The amount received represents approximately 28% of the actual costs of incarceration and does not include any moneys for prosecutorial efforts.

SUMMARY:

Jail overcrowding is not specific to Woodbury County. A large number of government entities are experiencing the problems relative to increased enforcement and prosecution. Solutions need to be sought that represent overall needs rather than separate kingdoms.

As stated previously, the Marshal's Office is under contract with Woodbury County for 15 beds. The needs of the Office, however, have exceeded the contract amount for the past five years. Statistics indicate a current need for approximately 50 beds to avoid costly transportation and personnel costs with a projected need of 65 beds within 18 months.

INS performs a diverse range of functions that may be responsible for difficulties in efficient and effective operations. The needs, however, for identification, detention and deportation of illegal aliens requires focused attention and a clear chain of command responsive to the needs of local law enforcement.

Mr. **SMITH**. Mr. Chishti.

STATEMENT OF MUZAFFAR CHISHTI, DIRECTOR, IMMIGRATION PROJECT, UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES

Mr. **CHISHTI**. Thank you, Mr. Chairman. My name is Muzaffar Chishti. I direct the

Immigration Project at the Union of Needletrades, Industrial and Textile Employees. We represent apparel, textile, laundry, and light manufacturing workers all across the United States, Canada, and Puerto Rico.

Again, thank you for holding this hearing and giving us the opportunity to give the views of my union on this subject. I will do my best not to read my testimony which I hope that you will incorporate in the record.

Mr. **SMITH**. I should say, Mr. Chishti, if you will give me a minute, all completed and opening statements will be made a part of the record without objection. So even though you have to summarize it, the entire text will appear in the record.

Mr. **CHISHTI**. Thank you. Those of us who engage in this process, sitting at the witness stand or listening to you at various subcommittee hearings over the years know that controlling illegal immigration is a complex issue. Many of the strategies for enforcement that we have seen being introduced over the years are fine in intent, but in implementation and consequences they tend to be problematic and not very effective. And I think that is probably the kind of attitude that we should have toward the new enforcement strategy. If we believe that this is the panacea for controlling illegal immigration in the future, I am afraid that we are going to set ourselves up for a failure.

Having said that, let me first say that this new enforcement strategy is a move in the right direction. We are glad that INS has finally realized that workplace raids do not work and they are not productive in reducing illegal immigration. Having said that, that does not mean that it is an endorsement for illegal immigration from our union. We believe that the illegal immigration is a problem, a real problem and a political problem, and it should be controlled. But we believe that there are some approaches to illegal immigration that work better than others. We have actually endorsed and supported most efforts of this administration at improved border control, and some of them we believe have yielded results.

Actually there are some elements of this strategy that was announced that we do tend to support. I think going after smugglers and going after criminal and undocumented aliens and producers of counterfeit documents are all good elements of a strategy that are targeted at real exploiters of people who prey on other people's vulnerability.

There are two elements of the new strategy however we disagree with. One is the cooperative arrangement of employers through audits and surveys and workplace enforcement, and the other is the cooperative arrangements with the local law enforcement officers.

Let me first talk about the workplace strategy. Indeed if you look at it, we already have elements of this workplace strategy in place. What this new strategy does is try to make the pilot programs that are going around in the country and make them national. The first obvious thing is that unless we know how the present pilot programs are working, we should not be engaging in a whole new widespread expansion of these programs.

The second is from our experience—at the factories and in the shops—of how these programs work. That is what I want to communicate to you today. At the end of each of these audits or surveys, what happens is the INS presents the employer with the name and list of a set of employees who are deemed to be unauthorized in United States. The expectation is that the employer would meet with these workers, interview them, and they will, on their own, leave.

That may be true, but from our experience again and again in many unions, what happens is workers leave and find employment in the next town with the next employer—frequently at less wages and worse conditions. What it actually does is nothing other than create musical chairs of movement of workers from one shop to another.

This is exacerbated when this survey and audit happens in the middle of a union drive where the union effort to organize is thwarted as a result of these audits and surveys. At the end, therefore, all we do is undermine wages and working conditions and provide more incentive for exploitative employers to keep on hiring undocumented workers.

The second part of the strategy with which we disagree is the cooperative arrangement by the INS with the local law enforcement officers. This is not engaging in sentimentality or sensationalism on this, Mr. Chairman, this is from sheer good law enforcement sense.

This cooperative arrangement will affect public safety and will impede law enforcement. Every law enforcement officer needs the trust of the victim and the witnesses to a crime. If you are a law enforcement officer and it is known that you have a cooperative relationship with the INS, no member of the community in which a crime may be committed is likely to come forward and report that. You are not going to get witnesses to come and testify on the crime that they have witnessed if they know that the local law enforcement officer might report them to the immigration service.

The best example of that in this country is the mayor of New York City, Rudolph Giuliani. I think no one can fault him for being slow on law enforcement. He has constantly maintained that any co-operation of local police officers in New York with INS for law enforcement of the laws in New York tends to be counterproductive. It is against good law enforcement function.

The second concern about the new cooperative arrangements is that it clearly undermines civil rights. We have seen many examples all around the country where local police officers when they have deputized themselves to enforce immigration laws have targeted members of the ethnic community purely on the basis of their looks. And I think in Chandler, Arizona is probably the most publicized case of it, but this phenomenon is present all over the country.

What does this mean? Does it mean that we should do nothing about illegal immigration? Obviously not. We should probably at least look at a different approach than we have tried in the past. We have tried employer sanctions. We have tried

workplace raids, and we have tried verification systems. All with rather poor results.

It may be time to test a different approach, and our recommendation of that approach is that we try to focus on conditions of work and exploitation of workers as against their status. And here the Department of Labor has an extremely important role to play. It has been our union's position for a long time that industries and occupations where wage and working conditions are low are the industries where there are large number of undocumented immigrants.

So if we go to the heart of the problem which is unscrupulous employers using sweat shop conditions and abusing undocumented workers, I think that is the problem we need to address. This means aggressive and coordinated enforcement of the fair labor standards laws by giving more resources to the Department of Labor which I might quickly add has been starved to effectiveness in the last 10 to 15 years. But more than that, I think it needs a different philosophical approach toward enforcement by DOL when it comes to undocumented immigration.

Mr. **SMITH**. We are going to need to move on.

Mr. **CHISHTI**. I will just take one more minute. They—in the same manner as law enforcement officers do—need to provide incentives for victims of labor standards exploitation to come forward. This means giving them protection against exposure to INS, and it may actually, like we do in law enforcement agency, give protection to whistle blowers, give them some guarantee that they will not face immigration consequences and give them the right to stay here in the country.

I might just add——

[The prepared statement of Mr. Chishti follows:]

PREPARED STATEMENT OF MUZAFFAR CHISHTI, DIRECTOR, IMMIGRATION PROJECT, UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES

Mr. Chairman. My name is Muzaffar Chishti. I am a lawyer and the director of the Immigration Project of the Union of Needletrades, Industrial and Textile Employees (UNITE). UNITE represents workers in the textile, apparel, laundry, light manufacturing and related industries all across the United States, Canada and Puerto Rico. Our diverse membership includes native-born and immigrant workers, working in factories, distribution centers, offices and plants in urban and rural areas.

I appreciate the opportunity to testify before this Subcommittee and express the views of my union on the new internal enforcement strategy announced by the Immigration and Naturalization Service (INS) in March of 1999. We commend the Subcommittee for holding this hearing on what is obviously an important shift in INS's strategy for interior enforcement.

In announcing the new enforcement strategy, the INS identified five priorities designed to reduce illegal immigration in the United States:

"(1) identify and remove 'criminal aliens;' (2) dismantle alien smuggling rings, including employers that knowingly use smuggling networks to hire employees; (3) crackdown on fraud and document abuse; (4) build partnerships with local community and law enforcement agencies to develop 'operational plans' to deal with illegal immigration; and (5) encourage employer cooperation in INS audits and surveys to identify illegal workers."

Before analyzing the elements of the new strategy, let me commend the INS for a fundamental shift in its enforcement strategy. The INS is moving away from its focus on workplace raids. That is clearly a shift in the right direction. My union, other unions and immigrant defense organizations have for a long time maintained that workplace raids are not only ineffective in reducing illegal immigration, but they almost always result in wholesale violations of civil and labor rights, not only of immigrant workers but of all workers in a workplace. We are glad that the INS has finally come to the conclusion that enforcement through raids is simply not productive.

Our strong and long-standing opposition to workplace raids is not an endorsement of illegal immigration. We share the goal of this Administration and, I am sure, of this Subcommittee, of reducing illegal immigration. Indeed we have, for the most part, supported the Administration's initiatives for improved border enforcement.

Similarly, there are some elements of the new enforcement strategy with which we agree. We support INS's plans to focus on undocumented immigrants who commit violent crimes. We believe it is also important to concentrate on dismantling smuggling operations that profit from illegal immigration and on cracking down on manufacturers of counterfeit documents. These strategies are appropriately targeted at those unscrupulous elements that prey on immigrants' vulnerabilities.

There are, however, two elements of the new enforcement strategy with which we strongly disagree: seeking increased employer cooperation in INS audits and surveys, and increasing cooperation between INS and local law enforcement and community agencies. Both of these strategies are of dubious effectiveness, and they are likely to lead to violation of important labor and civil rights. We have come to this conclusion from our long experience with the actual effects of similar policies, not from a philosophical stand on these issues.

Let me first focus on the strategy of using employers to ferret out undocumented workers. There are two ways INS intends to do this: through audits and surveys of personnel records, using INS, Social Security Administration and other government data bases; and through electronic verification of the employment eligibility of new hires by employers authorized to access INS and Social Security computer data bases.

These programs do not amount to a new strategy, however. They really only amount to national implementation of programs that have existed in various parts of the country for

some time. Furthermore, the strategy is "going national" before the more localized prototypes have been shown to work.

The anticipated operation of the cooperative partnership with employers is quite simple: INS presents the employer with a list of workers that INS believes to be unauthorized. The employer confronts the workers with INS's suspicions. The workers leave their jobs without protest, and then leave the country. It sounds both effective and non-confrontational. The only problem is, it has not worked in practice. My own union and many other unions have documented that fact, based on actual experiences.

Let me elaborate from two recent examples. In one of UNITE's factories that makes automotive parts in a rural area between Cleveland and Toledo, INS conducted an audit based on a tip. A number of workers were laid off following the audit. These workers did not return to their home countries; they simply moved to work in the next town for a non-union employer at considerably lower wages and with worse working conditions.

In a more publicized case, the INS subpoenaed the payroll records of some 13 fruit-packing houses in the Yakima Valley in the state of Washington. The employers were asked to terminate those workers whose records did not match various government data bases. Over 500 workers were fired. The Yakima Valley episode came in the midst of an organizing drive in the fruit-packing houses by a Teamsters union affiliate. For the workers who lost their jobs as a result of the INS audit, it meant the end of the quest for a union-protected set of labor standards. In all likelihood, it also meant new jobs in the same area with lower pay and no or a minimal level of protections.

Another problem with the new strategy is illustrated by the ongoing INS enforcement initiative in the meatpacking industry in Nebraska and Iowa, titled Operation Vanguard. In that approach, INS subpoenas employment documents from an employer, compares them against various government agency data bases and gives the employer a list of suspected unauthorized employees. INS then schedules "interviews" with such workers at the workplace. The expectation once again is that the unauthorized workers will voluntarily leave their employment and the country, either before or after the interview.

Under Vanguard, some 31 employers have been informed of discrepancies in the employment records of their employees. Since early May of 1999, approximately 1,000 workers on the discrepancy list were interviewed by the INS at their workplaces. Of these 1,000, all but 34 workers verified their status. In short, many authorized workers, including U.S. citizens, were wrongly identified as undocumented. This would seem to validate the widespread concern about the accuracy of the INS and Social Security data bases for purposes of determining employment eligibility.

Another component of the new workplace strategy is to expand the three existing pilot programs for electronic verification of employment eligibility that Congress authorized in 1996. Employers volunteer to sign up for these pilot programs, which employ INS and/or SSA data bases to verify employment eligibility of new hires. INS's plan to enroll 16,000 employers in the pilot programs has met with remarkably little success: it is believed that

as of November 1998, only 2,500 or so employers had volunteered. As part of the new employment strategy, INS will attempt to persuade more employers to sign up for the pilots.

The existing pilot programs have invited legitimate concerns from union and immigrant defense advocates. Given the lack of confidence in the accuracy of the SSA and INS data bases, the concern that many authorized workers will not be verified by the system and potentially lose employment opportunity is a real one. In addition, the verification system would encourage employers to scrutinize workers for work eligibility on the basis of race or ethnicity. Since the system would only record data regarding new hires, information regarding applicants who never get hired will not be available. Thus impermissible discrimination could result and remain undetected. Because of these serious concerns about possible discrimination, the existing pilots are scheduled to undergo independent evaluation. These evaluations are barely under way. It would seem only appropriate that no new verification programs should go into effect until evaluation of existing programs is complete.

Thus the new enforcement strategy is unlikely to reduce illegal immigration. On the other hand, making employers partners of INS in enforcement gives them a green light to suppress labor rights, engage in sweatshop practices, create a climate of intimidation and increase workplace discrimination. This has the perverse effect of undermining decent jobs and working conditions, and giving rise to a race to the bottom.

The other element of the new enforcement strategy that raises strong concerns for us is the increased cooperation between INS and local law enforcement agencies. INS plans to deploy Quick Response Teams (QRTs) on request to cooperating police departments in 11 states. The QRTs will assist state and local law enforcement agencies in apprehending and removing illegal aliens they encounter in the performance of their ordinary police functions.

This policy will do irreparable harm to law enforcement and public safety. Effective law enforcement depends a great deal on the trust of witnesses and complainants. If local police are known to have a cooperative relationship with the INS, members of immigrant communities are not likely to report crimes or assist officers investigating crimes. Even citizens in ethnic communities are likely to stop cooperating with the police if they believe that they are viewed with suspicion because of their ethnicity. The fear generated by the cooperative relationship between the INS and the police also encourages criminals to prey on immigrants.

Similarly, abuses of immigrant workers by employers are likely to go unreported. The slave-like conditions that were unearthed in the El Monte, California apparel sweatshop and the plight of the deaf Mexican workers in New York City are some of the egregious examples of fear of exposure to immigration authorities leaving victims or witnesses reluctant to report legitimate complaints.

The cooperative relationship would also result in violation of civil rights. Even in the absence of a cooperative relationship, there are too many examples in which local police

have used race or ethnicity as a substitute for reasonable cause. In Chandler, Arizona, in a well-publicized case, local police targeted Latino residents and questioned their immigration status, solely because of their ethnicity. With the best of intentions, local law enforcement officers are likely to engage in profiling when encountering members of ethnic communities. The ability to call on INS's QRTs will only add to this phenomenon.

Both of the enforcement strategies discussed above promise to be ineffective in reducing illegal immigration, and both come at a high price in violations of important civil rights and labor rights.

This does not suggest that there is no way to reduce illegal immigration. Effective border control must be the first priority. We also believe that workplace enforcement has a role in controlling illegal immigration. But the workplace enforcement strategies that have been attempted to date have failed to yield the necessary result. Workplace raids, employer sanctions and all forms of employer audits and verification systems tried so far have done virtually nothing to reduce illegal immigration.

We believe a smarter workplace enforcement strategy is one that shifts the emphasis to the conditions of work rather than the immigration status of the workers. Indeed, it has been our view for a long time that undocumented workers tend to concentrate in occupations and industries where wages and working conditions are so low as to make the jobs unattractive for U.S. workers.

We, therefore, believe that the long-term solution to undocumented immigration is to remove the incentive for employers to hire undocumented workers. This can best be achieved by effective, targeted and aggressive enforcement of our various labor protection laws—with respect to both the undocumented and the documented.

The Department of Labor has a critical role to play in this regard. However, Congress has been loath to increase the funding for labor law enforcement. The agency of government that has the mandate to guarantee protection of our labor standards has been starved into ineffectiveness. Providing more resources to that agency is an obvious need. Given the current resources of the DOL, its enforcement efforts should be targeted at industries and sectors of the economy notorious for gross violations of labor standards.

More efficient use of scarce resources could also be accomplished by coordinating the enforcement efforts of various federal, state and local labor standards agencies, especially in those cases where there is overlapping jurisdiction. Frequently, agency missions and activities are duplicative of each other. Special task forces could be established to coordinate the work of these agencies in industries known for their pattern of labor standards violations.

In addition to more and better use of resources, what is needed is a basic shift in DOL's enforcement policy where undocumented workers are involved. DOL, like other law enforcement agencies, must rely on cooperation from victims and witnesses. Any policy measures that provide disincentives for cooperation are counterproductive. If undocumented workers who are victims of employer abuse believe that by complaining

about their exploitation they will face deportation proceedings, they have a clear disincentive to report. When workers fail to enforce their labor rights, labor abuses continue. When sweatshop employers see that they can exploit workers with impunity, they are encouraged to seek out and hire more undocumented workers who will suffer violation of their rights in silence. In the present scheme of things, employers have a perverse incentive to hire undocumented workers.

In this regard we welcome the recent policy change in the revised memorandum of understanding between the DOL and the INS that prevents DOL from sharing information regarding immigration status of undocumented workers it encounters in a complaint-driven investigation. However, exploited workers are not similarly protected in a non-complaint-driven investigation. The vulnerability of such workers is considerable, and undercuts DOL's enforcement ability.

The effectiveness of DOL enforcement would also get a big boost if it had the ability to give protection and immunity to complainants and witnesses. The protection to "whistle blowers" that is routinely granted in other law enforcement regimes is simply not available when there is an immigration consequence of reporting a labor law violation. If such protection is an effective tool in other law enforcement situations, it is time to try it in the labor law context. This makes good law enforcement sense. Complainants to the DOL should be granted legal status—similar to the grant of "S"visas currently available for criminal prosecutions—or, at a minimum, protection against deportation.

Improved labor law enforcement that provides an incentive for complainants to come forward would not only be useful against unscrupulous employers, it would also have collateral advantages. Given protection, complainants can provide critical information about smuggling operations and fraudulent document producers—two areas of focus in the new interior enforcement strategy.

In conclusion, the new enforcement strategy includes some positive steps. The two components that raise grave concerns are the employer cooperation in workplace enforcement and cooperative relationships with local law enforcement. An interior enforcement strategy that holds much more promise of success is one that focuses on aggressive and intensive enforcement of our labor laws.

Mr. **SMITH.** Mr. Chishti, there will be opportunity for you to amplify during the question and answer period. Let me explain my concern. We have a vote in 15 minutes. We also are going to lose possession of the room, and so I would like all members to have an opportunity to ask questions.

Let me begin, Mr. Hill, and ask questions. I won't read all of the excerpts from your statement, but I agree completely with the points that you made. You mentioned that the INS is flawed in two fundamental respects. You went into some detail on that. You said, absent a credible threat of removal, there is little hope any policy designed to deter the flow of unlawful migration will be successful, and I agree with those points as well.

Do you think that what the INS has proposed is a credible immigration policy?

Mr. **HILL**. In part, yes. Overall, no.

Mr. **SMITH**. Okay.

Mr. **HILL**. The reason that I say no is that the two fundamental points are the most important points. Rather than focusing strictly on the removal of criminal aliens which as I indicated is an extremely important aspect, they should, in my view, have structured a proposal that would have focused on removals of both criminal and noncriminal illegal aliens alike, much as the commission tried to point the way in its final report.

The second is, and I can't overstate the importance of, in my view, work site enforcement, particularly with respect to and being tied to an effective verification system. This is by far the single most important thing that I believe Congress and the administration can do to affect the job magnet. Both of those are fundamental weaknesses in this enforcement plan, but as I said, there is also much to be applauded.

Mr. **SMITH**. Mr. Hill, you say shifting focus away from workplace enforcement is the effective equivalent of conceding defeat.

Mr. **HILL**. In my view, the problem of illegal immigration is primarily one of illegal employment. That is the magnet; it is the primary reason people come here and stay once they have been here because they find jobs.

If we are to hold back from the enforcement at the work site, what we are left with is either conceding defeat and repealing IRCA, or on the other hand encouraging what I believe to be unsound legislative approaches like Proposition 187 in California which attempts to take a shotgun approach and shift enforcement areas to places like schools and hospitals which is totally inappropriate. The place to fight illegal immigration in the interior is at the work site.

Mr. **SMITH**. Mr. Hill, you were a member of a very illustrious commission, Commission on Immigration Reform, chaired by Barbara Jordan, otherwise known as the Jordan Commission. Why do you think that the INS has chosen to ignore the recommendations of the Commission which to my knowledge was the only bipartisan commission to study the problem of immigration reform?

Mr. **HILL**. Well, it is a difficult question to try to assess specific motives for. I admit I am puzzled. Particularly because the Commission benefited so much from the expert staff advice that we had from the INS in many respects, from the State Department and Department of Labor and other agencies of Government. It was a bipartisan Commission that basically reached its recommendations by consensus. I suspect that there is a reluctance in government agencies and sort of a feeling that outside commissions are not welcome, that they are somehow usurping the role of the primary agencies. I don't think

that was our intent at all.

Mr. **SMITH**. Thank you, Mr. Hill. Mr. Hammond, I want to read into the record because I thought it was a good statement what happens to be the first sentence in your prepared statement although it wasn't a part of your oral statement. This is the quote. "I believe that immigration law enforcement is a legitimate function of the Federal Government. It has nothing to do with racism, xenophobia, the Statute of Liberty, ethnic or national holidays, or the American flag. Factually, immigration law enforcement has everything to do with the national security and the national sovereignty of the United States." I think that is a fair statement and a point that we don't make often enough.

You also mention in your statement that you do not believe the INS has a mandate to disperse suspected illegal aliens from one industry or place in the United States to another industry or place in the United States without apprehending the illegal aliens.

What do you mean by that? Why is the INS dispersing individuals and why is that kind of pointless?

Mr. **HAMMOND**. Well, I think what is going on, especially in the meat packing industry in Nebraska, what they are doing, they are running computer checks and then telling employers who they intend to interview at a later date. And the employers, of course, they are going to tell the employees, and what happens is the illegal aliens just leave employment before the INS ever gets there.

What this does is it just encourages the illegal aliens in my experience as an immigration officer at the field level, I was never at the level that these other guys were at that were here this morning, but at the field level, I think what is going to happen is most of these illegal aliens are not going to leave the United States. They are just going to get new fraudulent documents, and it doesn't take very long to do that. As Mr. Reed said, they are going to become Mark Reed. They are going to get documents where they are going to dig in further than they ever were. They are just going to go out and go to other cities and States and other industries and businesses and get jobs. That is what it boils down to.

Mr. **SMITH**. Thank you, Mr. Hammond. The gentlewoman from Texas is recognized.

Ms. **JACKSON LEE**. Thank you very much, Mr. Chairman. Let me thank again the panelists this morning. And Mr. Hill, I had hoped on some of these important issues we would have an opportunity to debate, and when I say that, the previous panel it would have been good for them to be here to raise some of the concerns that you have raised.

I will make a statement, and I may get a chance to ask a question, but I am delighted that you have focused on the key element of illegal immigration, and you label it as illegal employment. And so we must find a balance between what the INS is now suggesting, maybe something different than work site raids. And you are seemingly suggesting that we have to do more than what they are doing in Nebraska because we will

have the fallout of moving one group from one place to another.

I have taken note of your point, and I will be probing the INS further with your inquiry. I did want to comment and thank Ms. Desantis for her presentation and note to her that I have authored legislation, along with Congressman Reyes, H.R. 1881 that talks about the Border Patrol Recruitment and Retention Act which increases the salary and also provides for an opportunity for INS to recruit its own officers. And Senator Hutchinson has a companion legislation, and we would like to get your support for that.

Ms. **DESANTIS**. I believe it was already given, but I would have to double-check and get back to you. We will put it in writing.

[The information was not provided:]

Ms. **JACKSON LEE**. We would like to be helpful to you. You were here in the audience hearing our inquiry about Mr. Rafael Resendez-Ramirez, but we are very cognizant of the responsibility that Border Patrol agents have and how large the border is. You had able testimony here what a great need there is for Border Patrol agents at the northern border as well. I thank you for your points, and I appreciate very much your input on these issues.

Let me pursue another line of questioning that I think impairs or impacts, if you will, the credibility of our pursuit here because I think what we are addressing is extremely important. With that, Mr. Chairman, I would like to submit into the record and ask unanimous consent for the Wall Street Journal dated Thursday, October 2, 1997.

Mr. **SMITH**. Without objection we will make that a part of the record.

Ms. **JACKSON LEE**. I thank you. I would like to pose my questions to Mr. Stein.

Mr. Stein, you are active in this committee, obviously you are an advocate for certain issues which this committee reviews. You have offered testimony four times and with that because of your curiosity and interest I have directed my staff to learn a little more about your organization, and so I have some questions for you in that regard.

According to the San Francisco Examiner, December 12, 1993, your organization has received \$1 million from the Pioneer Fund, a white supremacist organization devoted to race betterment and eugenics. The fund has concentrated, in particular, on what it sees as the intellectual inferiority of black Americans. Why did your organization accept such money, and why do you think that this group has supported your cause?

Mr. **STEIN**. I don't believe that FAIR has ever accepted any money from any organization that is a white supremacist organization.

Ms. **JACKSON LEE**. Will you provide me a letter stating that because the Pioneer Fund has been described as such and your reputation of receiving the money I cannot

read into the record because it has profanity in it. If you would provide me with a written response to document that they are not a racist organization, as I proceed to investigate it, I will welcome your letter.

My next question is to include in that letter if you no longer take the money, why haven't you returned the money that they gave.

Another member of your organization's coalition is the Council of Conservative Citizens. According to the Southern Poverty Law Center, the Council of Conservative Citizens is a group that has portrayed itself as relatively mainstream, but it was revealed in 1998 to have starkly racist views. Why do so many racists work in FAIR or are part of your group or coalition and what attracts them to you?

Let me have—also have you comment on a quote in the Wall Street Journal article that says that you said we encourage people in other countries to have small families, Mr. Stein says, otherwise they will all be coming here because there is no room at the Vatican. Would you comment on those two issues that I have just made today?

Mr. **STEIN.** I would say first of all I hope that we can avoid the partisan politicization of this issue, and I think we can all be inspired by the leadership of Barbara Jordan in chairing this Commission and trying to avoid the kind of divisive allegations that I think that you are raising here, particularly since my testimony dealt primarily with interior enforcement strategy of the INS.

Ms. **JACKSON LEE.** Reclaiming my time, Mr. Stein. I love the way you ignore and side step the issue. I have the greatest respect for Barbara Jordan. We all have the greatest respect for her. You will not intimidate me by using Barbara Jordan's name, God rest her soul. But I will say to you if you have derogatory and racist statements to make about any members of this committee, including the ranking member, recorded it in a meeting that you had, I would appreciate if you would under oath make those same comments. I think the dignity of the process, the dignity of the chairman, the dignity of this committee, the dignity of this issue requires individuals to come before us who don't carry racist baggage. That is what you have and promote.

If you had a response to my question, why did you make a comment suggesting that you encourage people from other countries to have small families because otherwise they will be coming here because there is no room at the Vatican? That I cannot understand. Why are you taking money from the Pioneer Fund, which is a racist organization? Why have you taken money from the Southern Conservative——

Mr. **STEIN.** I am not——

Ms. **JACKSON LEE.** Reclaiming my time. I will conclude my remarks by saying your only answers are to cite the honorable and late Barbara Jordan, of which I am a lasting admirer of her, and probably had more contact than maybe you.

My concern is if you come as a presenter of issues here, which I welcome, we have even had the opportunity to talk, do not denigrate the members of this committee, including myself; do not denigrate racial groups; do not come before us with your background of racist statements.

As I said to you before, I welcome your testimony and the presentation of those who may disagree with me, but I do not agree with your approach casting about and comparing the chairman and myself in a derogatory manner. Please clarify your records wherever you may be, and I expect your response in writing and I thank you very much, Mr. Stein.

Mr. **SMITH**. Thank you, Ms. Jackson Lee. Mr. Stein before I recognize you to respond briefly, I do not believe that you have denigrated me nor any member of this committee, nor have I ever heard you make any racist remarks.

Ms. **JACKSON LEE**. We will be happy to play the tape for you, Mr. Chairman.

Mr. **SMITH**. Would you like to respond briefly before I resume my questioning?

Mr. **STEIN**. Well, all I can say about the Wall Street Journal is that I don't think that it is an authoritative recitation of any statement that I or anyone else has made. Statements that I have made that are under oath are on the record. Statements from speeches are adequate for questioning. Some of the statements the Wall Street Journal printed in that article are fabrications.

Ms. **JACKSON LEE**. Are you denying it?

Mr. **STEIN**. That statement——

Ms. **JACKSON LEE**. Are you denying it?

Mr. **SMITH**. Reclaiming my time.

Mr. **STEIN**. The whole discussion of family planning and immigration is an important issue, far beyond the purview of this hearing. If I have ever said anything derogatory about you personally, if I said anything about you that you feel is inaccurate, I would be happy to correct it. If I have said anything about you that you would construe as racist, may God strike me dead right here.

Ms. **JACKSON LEE**. I welcome and accept that apology.

Mr. **SMITH**. If I may resume my questioning.

Ms. **JACKSON LEE**. You certainly can.

Mr. **SMITH**. Mr. Stein, I appreciate your comments. I think you have made yourself

very clear.

Let me go back to Ms. Desantis, if I may. In your testimony you said that the INS has lost credibility with the taxpayers and many of its own employees. What makes you make that statement?

Ms. **DESANTIS**. Well, sir, in preparing the testimony we talked with some of our INS members, and that was a perception that they expressed to me; and that is why I put it in the statement, sir.

Mr. **SMITH**. So that represents the view of—

Ms. **DESANTIS**. Of many of our members, yes, sir.

Mr. **SMITH**. I appreciate your support of the exit/entry system, and that is integral to our being able to stop illegal immigration.

Let me end on this question. This was a question asked the INS earlier today, that we have been informed that the INS district directors oftentimes reassigned INS special agents and other enforcement personnel to form adjudications of benefit applications.

How do you know that to be the case? The INS professed ignorance. Have you heard that from individuals themselves?

Ms. **DESANTIS**. Mr. Chairman, let me respectfully answer this question in which the districts isn't a misutilization of limited investigative resources that is taking place. INS directors, many who lack law enforcement experience, have historically considered criminal investigators to be jacks of all trades. And in that purview we need to make sure that we professionalize the INS and law enforcement as a whole, and we need the structural reform to correct this particular issue.

If our leadership is law enforcement leadership and the reorganization of the structure allows that, the two bureaus under a Cabinet-level DOJ, which is in my written statement, sir, I believe that having a law enforcement professional at the top will do away with all of this.

Mr. **SMITH**. Thank you.

Mr. Stein, let me go to your testimony, and on the way there you began your testimony with a quote from Barbara Jordan, which I very much appreciate. I think if she were here today, she would quite frankly persuade a lot of my colleagues in Congress to support the reforms that the commission recommended, some of which have been mentioned by Mr. Hill as well. It is a tragedy for the country that she is not here in many, many ways.

You mention in your statement that a new enforcement strategy that allows illegal aliens to play musical chairs with employers while downplaying the responsibility of the

INS to apprehend and remove them from the country—and you further go on to make the point that the standard INS operation as mandated by law has been discarded from the new law enforcement strategy. An illegal alien who has lost employment as a result of being identified to the employer by the INS is free to take his fraudulent documentation to another employer and continue his illegal residence in the United States.

I think we have had a number of people testify that is the case. Even the INS, I don't believe, contradicted that. My question is: Do you consider what the INS has proposed any kind of a legitimate or effective law enforcement strategy?

Mr. **STEIN**. Mr. Chairman, what is frustrating about the enforcement strategy is that it contains an element which makes good sense, which is to try to work on an industry-wide basis because of the domino effect and how the recruitment network works and the need employers feel to keep up with what another employer is doing when competing on a wage basis.

But the abandonment of work site enforcement by itself can't be justified operationally, given that it is an integral part of the deterrence of any interior enforcement operation and our primary concern is that the deterrence will be lost and that this decision to abandon work site enforcement has been preceded by a variety of actions that suggest that work site enforcement has been under attack politically around the country by organizations around the country that oppose it; and so we are concerned that there is no operational reason to abandon work site enforcement in addition to working industry-wide. They should be increasing work site enforcement. We want more employers to feel the fine and sanction, and deterrence is a critical component of any enforcement strategy.

Mr. **SMITH**. Thank you, Mr. Stein. Since the first part of my time was taken up by an exchange between you and the ranking gentlewoman, I am going to ask a couple of questions and try to finish up with this panel.

Sheriff Amick, if I may go to you for a minute. What do you think the impact of the new immigration policy will be on your county, given your past experience?

Mr. **AMICK**. Until there is a place to go, I see little impact, if any. Our experience has been—and I don't see anything in the new strategy to change it—is that there is nowhere to go with them other than to the local facilities. Consequently, I think adding additional staff—will be beneficial to a degree. There still needs to be a place of holding, a place of incarceration, if you will, until such time as they would be deported. So far I don't see an answer to that question.

Mr. **SMITH**. Okay. I agree with you. Not only do I not see an answer, I see a real problem with what the INS is proposing that I think will worsen your situation as far as the number of prisoners and the cost to the taxpayers.

Mr. **AMICK**. As do I, sir.

Mr. **SMITH**. Mr. Chishti, you mentioned in your prepared statement, you say that the

verification system, this is the pilot program being implemented by the INS, would encourage employers to scrutinize workers for work eligibility on the basis of race and ethnicity. It won't, and that is because the identification system would apply to all new hires regardless of who they are, what they look like, or what color they might be. And the verification was proposed and detailed in cooperation with the INS to avoid just the kind of problem that you are concerned about. So I want to reassure you on that score. The gentlewoman from Texas——

Mr. **CHISHTI**. May I respond.

Mr. **SMITH**. Yes.

Mr. **CHISHTI**. The problem does not occur at the new-hire situation. The problem is before the people are hired. It happens at the application stage. Employers don't even input some people in the verification system by discriminating on the basis of race and ethnicity. And that will not be measured by this program.

Mr. **SMITH**. That is a different problem and illegal under our laws; but as far as the verification system itself, it does not discriminate.

Mr. **CHISHTI**. That is why we need an evaluation of that system. I was arguing that we should not expand these programs unless we know the discriminatory impact.

Mr. **SMITH**. Maybe we just disagree here because clearly discrimination does exist in many places in the workplace. However, if you have a system that checks everybody when it gets to that level, it is clearly by definition not discriminatory. I don't deny that discrimination doesn't exist before. But as far as the system itself, it does not discriminate.

The gentlewoman from Texas is recognized.

Ms. **JACKSON LEE**. I am going to abbreviate my questions so that Mr. Berman will have an opportunity to ask questions.

Mr. Hill, I will pursue the point that I made earlier and cite for example the agricultural industry where it has almost become dependent on foreign cheap illegal labor. It is perceived to be about 40 percent. What was the position of the U.S. Commission on Immigration Reform proposals to expand the agricultural guest worker program, the H-2 A, and what impact would such a proposal have on illegal immigration in the United States?

Mr. **HILL**. I think we were quite unambiguous in two of our reports on that question. We were adamantly opposed to such a program. I believe that it is simply an encouragement to increase illegal immigration. The problem with guest worker programs, when people come under the temporary guise of this kind of a program, they don't leave.

They stay generally, and it also is susceptible to employers who would exploit those workers, which we find to be unacceptable.

In essence, we have found that historically the programs are unwise. They are imprudent; and, in fact, in many respects employers want workers, but they find that they get people, and that is a real problem because we don't want to encourage a system of guest workers like Kuwait had in the past.

Mr. **BERMAN**. Would the gentlewoman yield.

Ms. **JACKSON LEE**. I yield.

Mr. **BERMAN**. I just ask if the committee would take the exchange between the gentelady and the ranking member and Mr. Hill, type it up and frame it and I would like to deliver it to Mr. Gallegly, especially the part about the tendency of temporary guest workers to want to stay.

Ms. **JACKSON LEE**. I thank you for that. Mr. Chairman, I hope we can have a hearing dealing with the Border Patrol agents. I thank Ms. Desantis for her interest in it.

Mr. Chishti, I look forward to exploring with you—I will not do it now—how this change in the illegal immigrant strategy with respect to work site approaches by INS impacts your constituency base. I would be very interested in that, and we can engage in that later on.

Mr. Chairman, I would close by simply saying that Mr. Stein has been here on a regular basis. And the only issue I would raise is whether or not he brings too much baggage to the table regarding racist views that does not allow us to have a fair rendition and discussion of issues that are important to us, and I wonder if he is constructive. There are many other witnesses who represent the same point of view and not have this enormous racist baggage that he brings to the table, and I look forward to his apology to all of us. Thank you.

Mr. **SMITH**. Thank you, Ms. Jackson Lee. Again, I don't believe that Mr. Stein has ever made a racist comment in my presence, and I do think that he represents a lot of Americans and their views on the need for immigration reform.

Mr. Berman, you are recognized.

Mr. **BERMAN**. I want to explore both with Mr. Stein and Mr. Hill this criticism which in terms of the real world I do not understand, that the INS change in policy regarding work site enforcement is a reduction in the deterrent impact of efforts to deal with illegal immigration.

You have a system now of employer sanctions, which is laughable on its face, where forged documents are rampant; where the employers' only obligation is to see the

document and note it on the proper form; in a world where the employer has no other responsibility and no penalties for hiring people, and the notion that a raid which has a one in a 5,000 chance in the course of 5 years hitting that particular employer is not going to happen, when even if it did happen, nothing would happen to him other than perhaps a temporary disruption of his work force is a loss of a deterrent. It doesn't sound in the real world credible to me.

The chairman mentioned, again, the question of the automatic process where you would determine whether somebody had work authorization, and I agree with him. I think that would be a tremendous tool against discrimination, because I really do believe that the problem now employer sanctions have, in addition to being ineffective for the person who wants to enforce them, they can tend to have discriminatory impacts even where they are not intended, and the employer who is wary about hiring an immigrant based on looks and accent and such refuses hire him.

I have seen this Congress in Democratic years and Republican years. This place is not going to adopt a comprehensive intrusive identification system, notwithstanding the arguments that do exist in favor of it. And then—so I am interested in your reactions to that.

One last thing, Mr. Chishti. I did not hear in your discussion of what we need to be doing about illegal immigration—you did not talk about the border and to what extent the obligation to get really tough on the border is a useful tool, and I think critics of some policies that we have dealt with in terms of illegal immigration should address that issue, which I think is a strong positive and something that we should be doing.

And, of course, as I talk, I always want to say one more thing. If Barbara Jordan were here today, she would have said that 1996 bill went too far. In its removal of due process procedures for deportation and its expansion of the things for which people can be deported and its efforts to exclude people who had come across here illegally, those were overreaches which, in addition to other overreaches which have since been corrected in terms of welfare reform, those overreaches should now be corrected. That is what I think she would say.

Mr. **SMITH**. Mr. Berman, you were doing great until that last comment. I don't want to argue with you because you made so many good points today, but I just would disagree with you respectfully that I don't think that the 1996 bill overreached. But I would say that, had we passed all that Barbara Jordan recommended, we probably would not have needed a 1996 bill, and that would have perhaps been a better result.

Mr. **BERMAN**. I want to hear the notion of their belief in the deterrent theory.

Mr. **SMITH**. If you can be brief on this. We need to be out of this room immediately.

Mr. **HILL**. First, I would not characterize the verification system as intrusive, although it has been characterized that way, and I understand your point about the potential for its passage in Congress. Unless Congress gets serious and passes a verification system, the

hope of having an effective interior strategy is almost impossible to attain.

Mr. **SMITH**. Thank you, Mr. Hill.

Mr. **STEIN**. And I would just say that there should be an integrated interior enforcement strategy which includes both secure verification, the verification of my native-born birth or my naturalized citizenship or work authorization and work site enforcement. You have deterrence that run against employers using illegal workers, and you have the major economic magnet; and you have the deterrence against the immigrants themselves. And most Americans would like to see more responsibility being placed on immigrants to comply with the law, so they all work together. Any single element is not going to do the trick, but comprehensive work site raids are indispensable.

Mr. **SMITH**. Thank you, Mr. Berman. Let me thank all members of the panel for their contributions for being here today. Some of you traveled some distance, and we appreciate your efforts and your testimony.

Mr. Stein, I do want to say to you I apologize, and I hope that you did not take it personally.

Mr. **STEIN**. Thank you. I appreciate your comments.

Mr. **SMITH**. All witnesses deserve to be treated with respect and not have false charges laid on them; but this is a give and take and you understand that, and none of us will be deterred in what we think is good for America or good for immigration reform.

Thank you all again for being here.

[Whereupon, at 1 p.m., the subcommittee was adjourned.]

A P P E N D I X

Material Submitted for the Hearing Record

Federation for American
Immigration Reform (FAIR),
Washington, DC, July 16, 1999.

Hon. **LAMAR SMITH**, *Chairman*,
Subcommittee on Immigration and Claims,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR CHAIRMAN SMITH: On behalf of the Federation for American Immigration, I am submitting this letter and attached materials to be made a part of the formal hearing record for the hearing on INS Interior Enforcement Strategy dated July 1,

1999. This letter is in response to assertions made by Representative Sheila Jackson-Lee at the aforementioned hearing questioning whether FAIR had the right to appear as a witness before this or any committee on any subject of U.S. immigration law and policy. FAIR is a national membership organization with over 70,000 members in all 50 states. It is the largest and most influential immigration reform organization in the United States.

For the record, I am submitting several important documents:

1) A biography. I am an attorney and I ran the Immigration Reform Law Institute. In my capacity at FAIR, I have been asked by relevant immigration committees to appear as a witness close to 50 times, including at least 38 where the Congress was controlled by the Democrats. I also include the lengthy list of speeches, law review articles, popular articles (78 through 1996), and major media appearances undertaken on behalf of FAIR. This *vitae* lists approximately 150 personal major TV network appearances on behalf of FAIR, covering virtually every imaginable topic of interest to this committee. Nearly every major news program and all networks are represented. In addition, I have hosted a one-hour, national weekly news and information program entitled *BorderLine* (48 programs in 1996). FAIR's comments have also appeared in literally thousands of news articles pertaining to U.S. and international immigration policy. Clearly, the public, the Congress and the media consider FAIR to be a reliable source of expertise and responsible advocacy. FAIR's record on this topic is unmatched anywhere in America.

2) FAIR's National Board of Advisors and Directors have included former Attorneys General, INS commissioners, governors and senators. At present, former Senators Eugene McCarthy, Walter Huddleston and Alan Simpson serve, as does former Colorado Governor Dick Lamm. I enclose a listing, with Board biographies.

3) FAIR's non-discriminatory Statement of Principles is attached. They include the statement that "immigration policy should not discriminate for or against persons on the basis of race, religion, national origin or political or social group membership."

4) FAIR is accused of accepting grants from the Pioneer Fund, a little-known research foundation whose principal founders have been deceased for many years. FAIR's support from the Pioneer Fund has amounted to less than 2 percent of our aggregate income over 20 years. The grants were for projects and purposes consistent with FAIR's charitable purposes with full disclosure of FAIR's principals of non-discrimination. The record demonstrates that the Pioneer Fund is a research foundation, and *there is no evidence Pioneer has ever sought to influence the outcome of any research or project it has funded*. Other grantees have included the University of Minnesota, the University of London, the University of Delaware, Johns Hopkins University, Smith College, Tel Aviv University, Cornell University and the National Hemophilia Foundation. Much of the alleged evidence claimed against the fund appears distorted. FAIR's funding base is extraordinarily broad and diversified, as is our membership. To equate the quality or character of this large-scale effort to the alleged views of any single member or trustee, living or dead, of an unrelated foundation is hardly responsible or fair.

5) The *Wall Street Journal* article submitted for the record by Ms. Jackson-Lee from October 2, 1997, was written by a free-lance writer Tucker Carlson for the op-ed page. In subsequent interviews, Mr. Carlson admitted he was paid to write that negative article by the WSJ "to investigate FAIR." All of the quotes in that article are inaccurate, distorted and, in several important cases, entirely fabricated. The WSJ refused to publish any response to correct the record. The WSJ editorial board has been a consistent, virulent foe of any effort to curtail the influx of low-cost labor.

I am unable to provide additional information on Congresswoman Jackson-Lee's assertions because they were accusations made where no evidence was provided. To accuse and to prove are far different things; those charged with the oversight of our nation's Judicial Branch ought to keep that in mind.

We are grateful for the opportunities we have had over the years to present our case to the public and the Congress. We believe we have earned that right through hard work, a dedication to accuracy and reliability, and a thorough commitment to professionalism at all times.

Sincerely,

Dan Stein, *Executive Director*.

cc: Congresswoman Sheila Jackson-Lee

FAIR'S BOARD OF DIRECTORS

John Tanton, M.D., FAIR's founder and chairman, became interested in immigration to the United States as a result of his long-standing concerns for the effects of unplanned and uncontrolled population growth and resource depletion. He was national president of Zero Population Growth from 1975–1977 and was chairman of its Immigration Study Committee from 1973–1975. He was organizer and president of the Northern Michigan Planned Parenthood chapter, and from 1971–1975 was chairman of the Sierra Club National Population Committee. Dr. Tanton, who practices ophthalmology in Petoskey, Michigan, is a graduate of Michigan State University and the University of Michigan Medical School, and editor and publisher of *The Social Contract*, a quarterly public policy journal. He was a 1990 recipient of the Chevron Conservation Award.

Nancy Anthony is President of Fernwood Advisors, Inc., an investment advisory firm. Her business career has been in investment management and tax planning and preparation. She has also worked in production planning for a major manufacturing company. She has been active in several Boston area medical, social service and educational institutions and in local, state, and national politics. She received a B.A. in Economics from Northwestern University and a Master of Science in Accountancy from DePaul University. She completed her C.P.A. requirements in the states of Illinois and

Missouri.

Sharon Barnes, is a Vice President of investments at one of the largest insurance companies in the country. A founding member of FAIR, she has also been active in population, environment, women's and community issues.

C. Henry Buhl III is a photographer and president of Buhl Studio, Inc., in New York. His career has included financial consulting, management of international mutual funds, and membership on the New York Stock Exchange. Mr. Buhl is on the Board of Trustees of Brooks School, North Andover, Massachusetts; founder and president of the Buhl Family Foundation; and founder of the SoHo Partnership, a not-for-profit organization providing vocational training and employment to homeless persons.

Donald A. Collins serves as a program and financial consultant for a number of nonprofit and charitable institutions. A resident of Washington D.C., Mr. Collins serves on the Board of Directors of Institute and is a founding board member of the Center for Population Options (now Advocates for Youth International), Health International and International Projects Assistance Service.

Sarah G. Epstein is an art lecturer and volunteer. She is on the board of Pathfinder, Planned Parenthood of Metropolitan Washington, Center for Development and Population Activities, and the Population Institute. She has served as a volunteer for the Urban League, and as an organizer for civil rights marches in Washington. She is a graduate of Oberlin College and Simmons School of Social Work.

Otis Graham Jr., Ph.D., is Professor Emeritus of History at the University of California, Santa Barbara, and Adjunct Professor of History and Business at the University of North Carolina, Wilmington. From 1975–79, he was Program Director at Robert Maynard Hutchins Center for the Study of Democratic Institutions, Montecito, California. He serves on the board of the Center for Immigration Studies, a Washington, D.C., think-tank. Among his books are *Losing Time: The Industrial Policy Debate and A Limited Bounty: The United States Since World War II*. He is a graduate of Yale College and Columbia University.

Richard D. Lamm, Chairman of the National Board of Advisors, served as Governor of Colorado from 1975–1987. A graduate of the University of Wisconsin, he received his law degree from the University of California, became a civil rights lawyer with the Colorado Antidiscrimination Commission, and then served as a member of the Colorado State Legislature for eight years. He currently serves as Director of the Center for Public Policy and Contemporary Issues at the University of Denver, and is a frequent lecturer on government, health care policy, population, and the environment. He is the author of *The Immigration Time Bomb*, *The Angry West*, 1988 (with Arnold Grossman), and *Megatraumas*.

Stephen B. Swensrud is the Chairman of Fernwood Advisors, Inc., an investment advisory firm in Boston, Massachusetts. His business career has involved both private

and institutional venture capital, ownership of operating companies in diverse fields and representation on many investment company and trust boards. He has been active for many years with various educational and medical institutions in the Boston area, including the Dana Farber Cancer Institute. He is a graduate of Princeton University and has an MBA from Harvard.

Max Thelen Jr. is a lawyer and foundation executive in San Francisco. Mr. Thelen received his undergraduate education at the University of California at Berkeley and earned his J. D. at Harvard. He is a member of the California State Bar and the American College of Trial Lawyers. A past governor of the Commonwealth Club of California, Mr. Thelen is trustee and past president of the World Affairs Council, and a member of the Committee on Foreign Relations, the World Trade Club, and the World Jurists Association.

FAIR'S NATIONAL BOARD OF ADVISORS

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WHAT IS FAIR (THE FEDERATION FOR AMERICAN IMMIGRATION REFORM)?

The Federation for American Immigration Reform (FAIR) is a national nonprofit public interest organization of concerned citizens who share a common belief that our nation's immigration policies must be reformed to serve the national interest.

Today the United States admits more immigrants than at any time in our history. Immigration has become an important issue because it affects virtually every aspect of life in America. With more than 1 million legal and illegal immigrants settling in the United States each year, immigration has an impact on education, health care, infrastructure, government deficits, employment, the environment, crime, and countless other areas of American life. It is evident to many Americans that large-scale immigration is not serving the needs and interests of the country.

FAIR advocates a moratorium on all immigration except spouses and minor children of U.S. citizens and a limited number of refugees. A moratorium would allow us to hold a national debate and devise a comprehensive immigration reform strategy. A workable immigration policy is one that would allow us to regain control of our borders and restore overall levels of immigration to more traditional levels of about 300,000 a year.

FAIR believes America can and must have an immigration policy that is nondiscriminatory and is designed to serve the social, economic, and environmental needs of our country. It is a policy that all recent polls show has the overwhelming support of the American public.

FAIR has been leading the call for immigration reform since it was founded in 1979.

Representatives of our organization are routinely interviewed by the major news networks, radio talk shows, and the print media about all aspects of the immigration debate. FAIR is one of the few reliable sources of information of this subject. Our research and publications are relied on by academics and government policymakers. We testify regularly before Congress on all immigration-related legislation.

With more than 70,000 members nationwide, the Washington-based FAIR is a nonpartisan group whose membership runs the gamut from liberal to conservative. We have a satellite office in Los Angeles and field representatives across the nation. FAIR activities include research, public education, media outreach, grassroots organizing, government relations, litigation, and advocacy at the national, state, and local levels.

THE FEDERATION FOR AMERICAN IMMIGRATION REFORM: STATEMENT OF GOALS, OBJECTIVES, AND GUIDING PRINCIPLES

Our Goals:

to end illegal immigration;

to set legal immigration at levels consistent with the demographic, economic, and social realities of the present.

Our Objectives:

to develop a better understanding of the causes and effects of immigration through research and policy analysis;

to inform leaders in academe, government, and the media, as well as the public at large;

to influence public policy directly by lobbying (to the extent permitted by our tax status) and by litigation.

FAIR believes:

that illegal immigration can and must be substantially reduced by humane measures that are consistent with our democratic ideals;

that immigration should not be permitted to undermine opportunities for America's poor and disadvantaged to improve their working conditions and wages;

that our immigration laws must be fairly and effectively enforced; there should be no favoritism toward or discrimination against any person on the basis of race, color, or national origin;

that all immigration should come within a single, stable ceiling which is periodically reviewed on the basis of reasoned, explicit population goals for the United States.

that three criteria should guide selection of immigrants: our fair share of refugees, our national manpower policy, and concerns for reunification of nuclear families;

that the United States should not contribute to a brain drain that entices away the skilled and talented who are desperately needed in their homelands; we should meet our need for skilled professionals by training and retraining our own;

that the United States should make greater efforts to encourage population control, economic development, and alleviation of poverty worldwide and especially in countries of great migration;

that the era of mass international migration as a solution to national problems has come to an end; problems of poverty and overpopulation must be vigorously confronted where people live, rather than postponing their solution by either the export or the importation of masses of people;

that determining its own immigration and population policy is the sovereign right and responsibility of every nation.

FAIR STATEMENT ON THE PIONEER FUND

The Federation for American Immigration Reform today issued the following statement:

In recent months, the Federation for American Immigration Reform (FAIR) has been rudely and unfairly attacked in the context of a recent ballot initiative before the Sierra Club on immigration policy. Specifically, these allegations concern the fact that FAIR has, in the past, received several general operating support grants from the Pioneer Fund, a private charitable foundation. Pioneer support has amounted to less than three percent of FAIR's overall income. The allegations are not new. However, in the Sierra Club debate, the alleged "facts" have become increasingly wild and irrational.

The Federation for American Immigration Reform is supported by over 70,000 members and some 40 foundations. Persons with distinguished backgrounds in America's environmental and family planning movement have long associations with FAIR. FAIR works for sound immigration policies consistent with common sense and widely-shared domestic priorities: a stable population size, a safe environment, wilderness and resource preservation, strong communities, the rule of law and impartial justice, and a successful national culture.

The Pioneer Fund, a foundation repeatedly attacked in the context of its grants to FAIR, has contributed less than three percent of FAIR operating funds. FAIR has received no financial support from Pioneer for several years.

During the time FAIR received grants from Pioneer, FAIR had—and continues to have—in its Declaration of Principles that "immigration policy should not discriminate for or against individuals solely on the basis of race or ethnicity." This has been and remains our policy.

Pioneer is a private foundation recognized by the U.S. Government as a funder of legitimate research. The grants from Pioneer were for general operating support consistent with fair's charitable purposes based on our requests.

Pioneer grants have gone to many of America's and the world's most prestigious universities and research institutions. *There is no evidence Pioneer ever sought to influence the outcome of any research or other project it funded—ever.* Pioneer trustees have included many, many distinguished Americans, including a Supreme Court justice and a leading prosecutor at the Nuremberg War Crimes tribunal following World War II.

The Sierra Club membership should be allowed to consider the question of immigration's role in population size and resource stress on the merits. That the Sierra Club immigration policy debate should unleash such unfair and inaccurate attacks underscores a blind bias among certain of the leadership against fact-finding and truth. Let's keep straight the few facts that have been allowed in this disappointingly unenlightened and uncivil debate.

(Footnote 1 return)

P.L. 99-603, 8 U.S.C. 1324a *et seq.*

(Footnote 2 return)

Becoming an American: Immigration and Immigrant Policy (U.S. Commission on Immigration Reform, September 1997).