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NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

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Seventh public hearing of the National Commission on Terrorist Attacks Upon the United States

Statement of James W. Ziglar to the National Commission on Terrorist Attacks Upon The United States January 26, 2004

Mr. Chairman and Members of the Commission:

I appreciate this opportunity to appear before the Commission to participate in your examination of the events that transpired on September 11, 2001, and the response to those events by the United States Government. In your letter inviting me to testify today, you requested that I focus my remarks, as follows:

1. Immigration and Naturalization Service priorities during my tenure as Commissioner of the Immigration and Naturalization Service;
2. The decisions made about border security

Current News

The Commission has released its final report. [\[more\]](#)

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- on and immediately after the attacks;
3. The use of immigration laws in responding to the attacks subsequent to September 11; and
 4. The efforts to restructure and support the INS with funding in the new security environment.

Mr. Chairman, I believe that the mandate of this Commission is legitimate and critically important to our nation. The American people deserve to know all of the facts and circumstances leading to the events of September 11, 2001, and they deserve to know what was and is being done to prevent another such occurrence. They also deserve to have the facts and circumstances put into a proper context in order to evaluate whether their government failed them before September 11, and whether it has taken effective action since September 11 to reduce the risk of another such occurrence.

Mr. Chairman, the scope of your request to me for information is daunting, and I am sure that you understand that I no longer have access to all of the records necessary to fully respond to your request, nor did I have staff resources to assist me in my effort to craft my testimony for today's hearing. Notwithstanding these obstacles, I have attempted to provide you with as much information as possible. I hope and assume that the Department of Justice, the National Security Council, the Department of Homeland Security, the Central Intelligence Agency, and others have provided you with unfettered access to materials relating to the subjects outlined above.

Mr. Chairman, as you know, I was sworn in as Commissioner of the Immigration and Naturalization Service on August 3, 2001, with my first day in the office being August 6. Obviously, given the proximity of my entering upon the duties of Commissioner to the events of September 11, I am unable to provide you with specific information or personal

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observations with respect to the operations of the INS or other relevant agencies in the months and years leading up to September 11. That I must leave to others.

BACKGROUND

When I was first approached by the White House Personnel Office in late February or early March, 2001 about the position of Commissioner of the Immigration and Naturalization Service, it was quite clear that the focus of the recruiting effort was on someone who had management experience in the public and private sectors. When I accepted the nomination, I was given two mandates by the President and the Attorney General. They were to (1) restructure and reform the INS by separating the services and enforcement functions to create more accountability, effectiveness, and efficiency, and (2) to reduce the backlog of applications to an average processing time of no more than six months. These were tall orders and would take significant resources and time to accomplish.

CHALLENGES AND MAGNITUDE OF THE TASK

The magnitude of the management, technology, personnel, information, and resource challenges at the INS were staggering and, I am sure, remain so in the Department of Homeland Security. My observations as Commissioner, and my study of the history of immigration policy and practices during the past year as a law professor at The George Washington University, and as a Fellow at the Institute of Politics at Harvard, confirm what most objective observers know—and that is that there long has been a serious mismatch between the resources provided and the responsibilities and expectations foisted upon the agency. Congress, which is accorded more deference by the Executive Branch and the Judiciary in the area of immigration policy than perhaps any other policy area, has not seen fit to adequately fund

the programs and policies it has mandated. My study of history suggests that this approach is not new, and is reflective of the divided opinion on immigration that has existed since the very beginning of the Republic.

The dimension of the challenge at the INS is illustrated by some basic realities, facts and statistics. That the INS no longer exists as a unified entity in no way diminishes the magnitude of the mission or the issues outlined below. To illustrate:

- a. Each year, the INS conducted over 500 million inspections of individuals at air, land, and sea ports-of-entry. There were approximately 5000 inspectors to perform this duty on a 24 hours a day, 7 days per week basis. Given the ratio of inspectors to people processed, there literally were only seconds to spend with each person entering the country. In addition, until it was rescinded after September 11 upon INS' strong recommendation, Congress had mandated that passengers from incoming international flights must be cleared within 45 minutes. You can imagine the pressure that inspectors must have felt when trying to clear a fully loaded Boeing 747 or other jumbo jet. As if this were not enough of a problem, when I arrived at the INS, I found that the turnover rate in the Inspector corps was, as I recall, in the range of 15% per annum. I also discovered that even though our inspectors were trained as law enforcement agents, and authorized to carry and use firearms, they did not have federal law enforcement agent status, which materially impacted their retirement benefits. In addition, their journeyman pay grade level was below that of other federal law enforcement agencies (GS-9 as compared to GS-11 for other agencies). Given the pressures they faced and other opportunities available in

the federal law enforcement arena, it was no surprise that we had such a high turnover rate. I took on this issue as one of my highest priorities, even though I sometimes found myself at odds with some of my colleagues in the administration. Eventually, the pay grade issue was resolved, and I assume that the federal law enforcement status issue will be resolved in the Department of Homeland Security.

- b. In 2001, the INS, through the Border Patrol, apprehended and removed from the United States over 1.2 million undocumented aliens along the southwest and northern borders, and it rescued more than 1,200 migrants in peril. In addition, it had the responsibility for regularly patrolling and protecting the Canadian and Mexican borders, which represent over 6000 miles. This does not include coastal areas such as Florida, the Great Lakes and other similarly situated bodies of water, for which the Border Patrol had responsibility with the Coast Guard, and which are vulnerable to illegal migration. The INS had somewhat less than 10,000 Border Patrol agents to cover this vast territory on a 24 hours a day, 7 days per week basis. Simple math would suggest that the INS was overwhelmed. To make matters even worse, our turnover rate in the Border Patrol was approaching 25%. Again, I discovered that our pay grade structure was below that of other federal law enforcement agencies, i.e., a journeyman Border Patrol Agent was capped at a GS-9 while other federal law enforcement agencies had a GS-11 cap for their journeyman agents. Again, given the difficult and dangerous life that Border Patrol agents must contend with, and the other opportunities available, no one should have been surprised that our turnover rate was so high. I also took on this issue as one of my highest priorities. I am

pleased to say that this issue also was favorably resolved before I retired. I would be remiss if I did not note that while he was Deputy Chief of Staff to the President, the present Director of the OMB, Josh Bolten, was instrumental in helping me resolve this issue for our Immigration Inspectors and Border Patrol agents. Mr. Bolten understood the importance of developing and maintaining an effective work force. I am pleased, and the country is fortunate, that he is in the position he now occupies.

- c. In 2001, the INS completed more than 121,000 investigations and deported more than 71,000 criminal aliens. The INS was tasked with the responsibility for dealing with an estimated 8 to 11 million illegal aliens in the country; to uncover and dismantle human smuggling rings; to enforce employer sanctions; to pursue criminal aliens; and to initiate and participate in terrorist investigations. Indeed, after September 11, almost 1000 of the Service's investigators were directly assigned to the September 11 investigation and, as I recall, almost 700 were still so assigned when I left office on November 30, 2002. When you consider that the total complement of investigators at the INS was approximately 2000 (and of that several hundred were specifically designated by Congress to provide so-called Quick Response teams in certain areas), no one should be confused as to why all of the above-noted mandates could not be fulfilled. The best the INS has been able to do over many years is to prioritize its mandates. Counter-terrorism was the first priority, pursuing criminal aliens was the second, dismantling human smuggling rings was the third, employer sanctions was the fourth, and the remainder were on an ad hoc basis. In my opinion, there were not enough resources to do justice even to the first

- three priorities.
- d. On the adjudication and services side, the agency received over seven million applications for naturalization, adjustment of status, and other immigration benefits each year, and was able to process approximately six million of these applications. A backlog had been building for a number of years, particularly as the number of applications was growing. For example, the number of naturalization applications filed during the past seven years has been greater than the total number for the past 40 years. The services function had a total of approximately 3,000 adjudicators to handle all of these applications. To make matters worse, as I discuss below, our information technology was antiquated, and funds had not been made available to make the capital investments necessary to remedy the problem.
 - e. The INS was technologically challenged. Its information systems had been patched together much in the same way that its management structure had grown as it attempted to react to the growing number of mandates and the crisis of the moment. It was also clear that investment in state of the art technology had never been a high priority in the budgeting and appropriations process. As I recall, when I arrived we had over 100 different databases in a variety of systems that were generally incompatible for the purpose of sharing that information. In addition, there were areas where available technology was not being employed or was underemployed. For example, although we were able to identify, within 24 hours, the 19 suspected terrorists, it took several days to confirm their identities and obtain the records of their entries. As I recall, the records were in different locations and the information was not specific enough to provide a clear road map for us to

follow. In addition, the absence of a biometric identifier made it very difficult to distinguish between persons with the same names. The general unfamiliarity of Americans with Arabic names also created a problem in distinguishing between alternative spellings of the same name. Unfortunately, a lot of the work we had to do to confirm their identities was done by hand. It was fortuitous that the hijackers had not entered the United States in the period immediately preceding September 11 because, as I learned later, we were still entering by hand much of the information from the I-94's collected from arriving international passengers. I took action immediately to resolve that problem, and the time lag associated with it.

When I arrived at the INS, there was no central platform or design from which a unified information technology system could be fashioned. Prior to my arrival, a nascent effort was underway to develop an enterprise architecture for the agency. I gave this effort a very high priority and accelerated the schedule for completion and implementation. I am pleased to report that the enterprise architecture design was completed and I approved it before my retirement. At the time, I was told by the GAO that the INS was the first federal agency to actually complete an enterprise architecture design. It is my understanding that our work product was adopted by the Department of Homeland Security as the model for the design of its enterprise architecture. Later in my testimony, I will highlight some of our other initiatives in the technology area.

- f. In my view, one of the most important obstacles to the INS was an information deficit not of its own making. While criticism of the INS' internal information technology systems was certainly

justified, the INS and the Consular Affairs section at the Department of State, were seriously impeded in doing their jobs effectively because of a lack of critical intelligence information that would have made it possible to more effectively screen people for visas, in the case of the State Department, or to more thoroughly inspect them at the borders, in the case of the INS. Although the Interagency Border Information System (IBIS), TIPOFF and other databases are good tools, they are only as good as the information that is available in the databases. It has been established that when the 19 hijackers were granted their visas by the Department of State and admitted to the United States by the INS, there was no information in their records that would have suggested potential terrorist or other criminal conduct. If the FBI, CIA and other intelligence gathering entities are not willing to share timely information on terrorists or criminals, there is little that the State Department or the Department of Homeland Security can do to intercept or prevent dangerous individuals from entering the United States. The challenge of gathering, analyzing and sharing intelligence is far beyond the scope of my testimony, but my experience suggests that the key to preventing future terrorist attacks is found in the effective gathering, analysis and dissemination of intelligence information.

I hope this snapshot gives you a picture of the overwhelming challenges faced by the INS, and the almost impossibly large mandates imposed on it.

As a businessman and taxpayer, I was curious as to what it would take to fulfill all of the legislative mandates and policy directives imposed on the INS. In early 2002, we began

the process of performing a "needs assessment" to array these mandates, to compare them with the resources available, and then to estimate the resources that would be needed to actually carryout the full scope of the mandated mission. We concluded that the INS annual budget would have to grow from \$6.2 billion in FY 2002 to approximately \$46 billion by FY 2010 to fulfill these mandates, assuming that the Congress and the administration actually desired that the mandates be fulfilled. It was also assumed that our immigration laws remained static. I have provided the Commission with a copy of the study, and I leave it to your discretion as to whether it should be made part of the public record. However, I would like to highlight some of the conclusions of the study. Specifically, it was concluded that in order to carry out the enforcement mandates of the Congress and administrations, past and present, the INS would need approximately the following:

- 27,960 Investigators/Special Agents (compared to the 2000 employed at the time of the study), a 14-fold increase.
- 31,700 Border Patrol Agents (compared to 10,000)
- 21,500 Immigration Inspectors (compared to 5,000)
- 15,600 Deportation Officers (compared to 650)
- 1,440 Attorneys (compared to 770)
- 110,000 detention beds (compared to 21,107)
- And a vast increase in office space, support staff, vehicles, computer equipment, etc.

PRIORITIES

As I noted above, the priorities I had at the beginning of my tenure as Commissioner were (1) to restructure and reform the INS in order to achieve a more accountable and effective organization, and (2) to reduce the substantial backlog of pending applications. Obviously,

within those broad priorities were a number of critical sub-priorities such as building an information technology system that would support a modern, efficient organization; streamlining the decision-making processes; and creating an accountable, motivated, and productive work force.

The impact of September 11 was felt in every area of the agency. Our immediate focus shifted to fulfilling our role in the September 11 investigation, and participating in and undertaking anti-terrorism initiatives. Although the FBI clearly had the lead in the investigation and in domestic counter-terrorism operations, it was evident that the INS was a key part of the team. The 1000 agents that we assigned to work directly with the FBI represented over 50% of our interior enforcement operations. Our Border Patrol agents and Immigration Inspectors were on the front line at the border, and our priority was to get them as much help as possible. As you know, for a period of time, the National Guard was deployed at ports of entry to provide an additional presence and an additional layer of security. In addition, all of our Border Patrol agents and Immigration Inspectors were putting in substantial overtime as a way of multiplying our force level. Indeed, we quickly faced a serious problem with legislated overtime caps from which we had to get relief from the Congress.

Our priorities were focused on moving quickly to identify and put in place additional modalities for tightening control at the borders and detecting and preventing terrorism. At the same time, we were cognizant of the fact that our resources were limited and that any initiatives that were undertaken needed to be effective. If you ask those who worked with me during my tenure at the INS, they will tell you that my most often asked questions was "Will this be effective in achieving our goal?"

No better example can be found of how

seriously we treated the priority of identifying and implementing measures to detect and prevent terrorism than an effort that began almost immediately after September 11. I convened a task force of our most experienced people to "brainstorm" and identify actions that could be taken in the short-term, medium-term and long-term to better secure our borders and ports of entry. This was to be an exercise that encouraged "out of the box" thinking and included everything from the sublime to the ridiculous. Cost was not to be a consideration in the initial development of ideas and concepts. That would come later as the ideas matured and their potential effectiveness was measured. I should note also that the magnitude of the terrorism danger at the physical border, as compared to the more sophisticated ways of entering the country through ports of entry, had not been measured. We looked at the border in the aggregate and attempted to explore all possible modalities.

I would like to emphasize that the one thing on which everyone engaged in this effort agreed was that the availability of real time intelligence information is the most effective tool in detecting, intercepting, and otherwise preventing the entry of terrorists or other malafides. I should also note that I considered it important to remind everyone that the borders between United States and our neighbors to the north and south are more than lines demarcating our sovereign territory. The degree to which those borders are accessible has a direct and immediate impact on the economic health of Mexico, Canada and the United States.

As we were producing this litany of ideas, I kept the Attorney General, the Deputy Attorney General and their respective senior staff apprised of our progress. In fact, on September 19, 2001, I provided the Attorney General with an informal briefing on some of the more salient ideas that we were developing. On September 26, a number of the participants in this exercise

and I briefed the Attorney General and the Deputy Attorney General and provided them with our work product, which included over 40 potential initiatives. I have provided the Commission with a copy of the briefing material that we presented to the Attorney General and the Deputy Attorney General. I leave it to your discretion as to whether it should be part of the public record.

Later in my testimony, I will attempt to provide a listing of many, but certainly not all, of the initiatives that we undertook to help protect the nation from further terrorist attacks and to improve the performance of the agency. Many of these initiatives were on the options paper that we presented to the Attorney General on September 26.

The story of our priorities would not be complete without emphasizing that included among our highest priorities were (1) making dramatic improvements in our information systems, (2) developing an effective entry-exist system, (3) deploying the student tracking system (Student and Exchange Visitor Information System-SEVIS), (4) recruiting and training new Border Patrol agents, Immigration Inspectors, and Investigators/Special Agents, (5) breaking the back of human smuggling rings, and (6) working with Canada and Mexican immigration authorities to share intelligence and enhance our joint presence at the border. As I will also note in my discussion of the restructuring of the INS that follows, we continued to provide serious focus on the restructuring of the agency because it was recognized that patchwork solutions would not remedy the long-term problems that the agency faced.

RESTRUCTURING THE INS

Restructuring the INS was, and continued to be even after September 11, among my top priorities. The fact that it was a mandate from the President was, of course, decisive. But I also

recognized that the long-term ability of the INS to respond effectively to all of the challenges it had to face, not just those involving terrorism, was dependent on an overhaul of the agency in terms of management structures, accountability, morale, professionalism, and technology. It was clear to me that we would need substantial additional resources to accomplish our goals, but not starting down the road to restructuring because we did not have everything we needed was not an option.

Prior to commencing my service as Commissioner, I spent as much time as possible studying the INS and particularly its management and operating structure. In some ways it reminded me of a Rube Goldberg contraption. From time to time over many years, initiatives to restructure parts of the agency had been undertaken, but fundamental overhaul had not occurred. A large number of studies had been conducted by private consulting firms, other governmental entities, and within the agency with recommendations as to how to better organize its management and operational structures. There was no lack of information and analysis of the problems at the INS. What was needed was an action plan, and the will to get it done. Just as important, the support of the Congress had to be secured.

My predecessor as Commissioner, Doris Meissner, had developed a restructuring model that was well-crafted and held promise for success. Unfortunately, Commissioner Meissner was never able to get Congressional concurrence for her plan. However, the merits of her approach were not lost on me or the people I had working with me to develop a restructuring plan and strategy.

One of my first actions as Commissioner was to form an internal task force to review, analyze and synthesize the work that had been done before, to think outside the box about how we could address the problems that we faced, and

to design a new INS that could meet the challenges of the 21st century. I emphasized to all involved that the end product of our efforts had to be an organization that was effective and accountable.

I chose to engage and work closely with the career employees of the INS because I knew that their "ownership" of the process and ownership of the outcome was important to being successful. I learned that lesson in a very important way from my tenure as Assistant Secretary of the Interior for Water and Science during the Reagan Administration. By working with the career employees, we were able to fundamentally reform the Bureau of Reclamation and to downsize its workforce in a matter of just under two years. That result never would have been possible without the employees "buying into" the need for the reforms that were proposed. That was the approach I chose to follow at the INS. We had our first full meeting of the task force on August 9, 2001.

In addition to forming a task force of career employees, we also solicited comments from all INS employees as to how they thought we could restructure the agency to do a better job. We received a huge response to our request and, as you might expect, most of the responses were focused on the particular issues within an employee's work area, although we received a number of comments that demonstrated vision and thoughtful analysis. These comments were reviewed and put in a matrix for consideration. We found this process very useful because it helped us to parse the issues in real world terms.

My goal was to have a restructuring plan approved by the Administration and ready to submit to Congress for its review and approval shortly after the Congress returned from its August recess. Although our proposal envisioned an administrative restructuring, we needed the approval (the Congress refers to it as

"concurrence") of the Appropriations Committees to reprogram funds for the restructuring. Our task force worked night and day during August and early September to complete the task, and on September 10, we delivered the proposal to the Attorney General and his staff for review. However, this was not done in a vacuum. On various occasions during the month of August, I had provided briefings on our progress and thought process to the Attorney General, the Deputy Attorney General, the Attorney General's Chief of Staff, OMB personnel, and a representative of the White House Domestic Policy Council. Our goal was to build as much consensus as possible within the administration in order to move the process quickly.

The morning after we delivered the proposed restructuring to the Attorney General, the attacks occurred on the World Trade Center and the Pentagon. Needless to say, the restructuring was no longer foremost in our minds as we responded to this grave situation.

An experience during those first hours after the attacks convinced me that I could not take my eye off the ball of restructuring. As I mention elsewhere in my testimony, the INS was responsible for suggesting to the Attorney General that federal law enforcement agencies should provide agents to supplement security at airport checkpoints. We offered 300 Border Patrol agents as the first contingent of such agents and, in fact, we had those agents on the ground at nine airports within 36 hours of the attacks. When the President approved this initiative at the suggestion of the Attorney General, we set about the task of mobilizing our agents. It was then that I truly realized that the Chief of the Border Patrol was not in charge of the Border Patrol. The Border Patrol Sector Chiefs reported to a Regional Director who reported to the Executive Associate Commissioner for Field Operations. The Border Patrol Chief, in effect, reported to the Executive

Associate Commissioner. To make matters worse, there was a bureaucratic process that had to be followed before even a Regional Director could make a decision.

It was obvious to me that it would take days, or even weeks, to work our way through the decision-making process as to whom, how many from each Sector, and under what conditions Border Patrol agents would be assigned to this initiative. I immediately suspended that chain of command, put the Border Patrol Chief in direct command, and we had our agents on the ground in 36 hours. A few weeks later, we had another initiative dealing with the Border Patrol and I decided to let the regular chain of command function. After two weeks of wasted time and effort, I again suspended the established chain of command and the Border Patrol Chief got the job done within a day.

In April 2002, after finally receiving reprogramming authority from the Appropriations Committees in late March, the first change I announced as part of a phased restructuring of the INS was the permanent realignment of the Border Patrol chain of command to put the Chief of the Border Patrol as its operating head.

The story of the restructuring is a long, but important, saga. On September 14, 2001, I called together the senior staff to remind them that, even with all of the other things we had to do, we could not stop the effort to rebuild and reform the agency. With the events of September 11 so near in time and so raw in our memories, no one could argue that we needed to keep moving on improving the agency. I approached the Attorney General on September 25 about getting his feedback and approval of the plan in order to get it over to the White House for approval. On October 3, we had an all-hands meeting with the Attorney General in the new DOJ Media Center and made a formal and detailed presentation of the proposed plan. After

a long discussion and a few minor changes being made, the Attorney General approved the plan.

The plan was immediately submitted to the White House for appropriate review, which included OMB, the Domestic Policy Council, the National Security Council, and the Homeland Security Council. Over the next month, a number of meetings were held in the White House to discuss the restructuring plan. On November 9, a meeting of the Deputies Committee of the Homeland Security Council was held with representatives from, among others, OMB, DPC and NSC in attendance. I made a brief presentation of the plan and a lengthy discussion ensued. Several minor changes were made and the plan was approved for submission to the Congress for reprogramming concurrence.

The plan was submitted to Congress on November 14. I attempted to brief as many Members as possible in the short window of time available. In general, the response was very positive. However, opposition developed from those in Congress who had introduced legislation to abolish the INS and split it into two separate legal entities—one for the services element and one for the enforcement function. Although the restructuring plan would have been complementary to that legislation since we proposed to separate the services and enforcement functions and, therefore, would have facilitated and expedited the implementation of this legislation if it had passed, a concerted effort by the sponsors of the legislation was made to stop the restructuring.

For the next four months there were numerous meetings, conference calls, exchanges of information, correspondence and other contacts with the Congress with regard to our request for reprogramming, but nothing happened. It was not until the so-called issuance of postmortem

student visas to Mohammed Atta and Marwan Al-Shehhi (which did not occur notwithstanding press reports—a description of this event is included as an Appendix to this testimony) that it was noticed that Congress was not acting on the reform of the INS. The concurrence letters from the Appropriations Committees were issued in the last week of March.

Following the receipt of the concurrences, we immediately started the process of implementing pieces of the restructuring plan. Although we had been unable to implement any changes during the period we were awaiting congressional concurrence, we used that time constructively to create detailed plans for the restructuring. On April 17, 2002, we announced the first phase of the restructuring in a press conference attended by the Attorney General at INS headquarters. We announced a number of initiatives, such as:

- Establishing a direct reporting relationship from Sector Chiefs in the field to the Border Patrol Chief in Headquarters, as I already have mentioned in my testimony
- Establishing the position of Chief Information Officer to ensure the effective development, integration and coordination of data systems, as well as ensuring that we stayed on the leading edge of the technology curve.
- Establishing the position of Chief Financial Officer to provide better financial management and reporting.
- Transferring to the Detention and Removal Program direct management and oversight of facilities, care of detainees, standards of detention, and bed space allocations. These functions had been under the control of various District offices,
- Commencing a phased process of untangling cross-reporting relationships and creating direct reporting in the adjudications area.

- Establishing an Office of Juvenile Affairs reporting directly to the Commissioner with direct line authority over officers in the field who made and implemented decisions regarding unaccompanied alien minors who were in the custody of the INS.

As we were moving to start implementation of the next phases, the President announced his intention to seek legislation to create a new Department of Homeland Security into which the INS would be merged. Although we continued to make the changes envisioned in the restructuring plan, we also started to work with the Homeland Security Council, OMB and others involved in structuring the new department to mesh our efforts with theirs, and to make sure that the redesigned pieces of the INS would fit within the framework crafted for the Department of Homeland Security. What we found was that the INS was as well prepared, if not better prepared, than any other agency to make the transition to the Department of Homeland Security because (1) the restructuring plan design was complementary to that contemplated for the new department, and (2) we already had been engaged in the change management process with our employees, so they were better prepared for major change. Upon my retirement in late 2002, I was pleased to receive a letter from Admiral Steve Abbott, Secretary Ridge's Deputy at the Homeland Security Council in which he noted, "You have given the new department a huge jump-start on reforming INS." I am confident that our efforts at restructuring the INS were not in vein.

I have only scratched the surface in describing all that occurred in the restructuring effort. I will not attempt to describe the plan in any detail. The plan speaks for itself, and I have provided the Commission with a copy. I leave it to your discretion as to whether it should be made part of the public record.

SEPTEMBER 11, 2001—THE DAY

It is almost a cliché to say that no one will ever forget September 11, 2001, but I can tell you that I will never forget it. It all seems a bit surreal as I look back on it, but it was a moment of reality and realization that we are vulnerable in so many ways. For me, it was also a realization that our well-crafted governing and institutional structures are only as good as their ability to function in a moment of national crisis. We faced that moment on September 11.

On the morning of September 11, I was meeting with a group of local officials from California when we heard reports of the first plane hitting the World Trade Center. Having worked in the shadow of the World Trade Center for many years, my first reaction was that what had happened was what many of us had speculated, and that is, someday a plane would accidentally veer off course and hit one of the towers. I feared that day had arrived, and I worried about my friends who worked in the building. When the second plane hit the World Trade Center, there was no longer any question about the accidental nature of the event. Our meeting was adjourned, and as the participants were preparing to depart, the third plane hit the Pentagon.

Within minutes, I sent out a call for all senior staff to assemble in the conference room. While they were assembling, two things occurred. First, I received a call from the Deputy Attorney General instructing me to report to the Justice Department Command Center as soon as possible. The second call was from Chuck Winwood, the Acting Commissioner of the Customs Service, who suggested that we jointly raise the level of alert at the ports of entry to Level One. While Commissioner Winwood was on the phone, I consulted with Mike Becraft, my Chief of Staff, and we concurred that we should go to Level One. Mr. Becraft conveyed that message throughout the system, and I joined

the senior staff in the conference room.

At the time, the Deputy Commissioner position was not filled. Fortunately, on the previous Friday I had received approval to appoint Mike Becraft as Acting Deputy Commissioner. I had planned to announce his appointment later in the week, but made it effective immediately and announced it to the assembled senior staff. At this meeting, we quickly reviewed what needed to be done from each component. Among others, we activated our emergency operations center (the "Command Center") on the 4th floor and put it on a 24/7 footing. We also activated a "prevent departure list" whereby we supplied other agencies, airlines and transportation companies with a daily (and more often if necessary) watchlist of individuals who were not to be allowed to leave the country without clearance. As I recall, we also put out a call to all employees to be prepared to report to work on short notice and to be prepared to work substantial overtime.

I reported to the Department of Justice Command Center where most of the senior staff and component heads were assembling. Needless to say, there was a high level of activity and anxiety. Like most of the other component heads, I was communicating with senior personnel in my office. I was pleased with the progress we were making at the INS at moving to an emergency footing.

Shortly after I arrived at the Department of Justice Command Center, component heads and senior staff for the Attorney General and the Deputy Attorney General were transported by van to a secure off-site location. Given the traffic problems and general confusion that reigned in Washington, D.C. at the time, it took a lot of maneuvering to get out of the city. What struck me about the process was that there was no apparent emergency evacuation procedure in place to handle a situation as had just occurred. I recalled that when I worked in the Justice

Department during the Nixon administration, we had briefings and drills for evacuating in the event of a nuclear attack. I guess the end of the Cold War caused us to lower our guard.

When we arrived at the secure location, it was apparent to everyone that operating from this venue was difficult and that our ability to communicate was limited. We all were attempting to stay in touch with our respective agencies or offices, often to no avail. We were there for only a short while when the Deputy Attorney General decided that we needed to return to Washington and operate from the FBI SIOC (Strategic Information Operations Center), where the Attorney General was then located. My recollection is that the entire time involved in the trip to the secure facility was approximately five hours.

We returned to Washington in the late afternoon and went immediately to the SIOC where an on-going meeting was being held in a conference room assigned to the Attorney General. During the course of the afternoon and evening, there was a focus on gathering as much information as possible and on strategy and tactics to prevent any other attacks that might have been planned as part of a concerted campaign by the terrorists. The Attorney General made it clear that the FBI was in charge of the investigation and the response to the attacks and potential attacks, and that we were to provide full cooperation. There were numerous discussions as to what would be appropriate responses to the situation at hand, and how we could prevent further attacks. We all attempted to contribute good ideas for effective responses.

I have mentioned elsewhere in my testimony the INS role in suggesting that federal law enforcement agents be deployed to various airports around the country to bolster security at screening points. That was an idea that the Attorney General immediately conveyed to the President who approved it. Within 36 hours, we

had Border Patrol agents on the ground at nine airports throughout the country. As I have noted in the portion of my testimony related to the restructuring of the INS, my experience with that initiative convinced me that restructuring the agency to achieve a more streamlined command structure was essential to its long-term effectiveness.

I returned to the INS sometime in the early evening. I was impressed with the professionalism and dedication being exhibited by all of our people. In particular, I recall that our investigations and intelligence agents already had made tentative identifications of the hijackers by working with the airlines. Indeed, this was the first time I heard about a detainee that we had in Minneapolis who had raised suspicions. I soon learned his name, Zacarias Moussau.

When I left the SIOC, I was scheduled to go with the Attorney General later in the evening to provide a classified briefing for Members of Congress. I learned upon arriving at the INS that the National Security Council had cancelled the briefing. Having worked in the Senate for a total of 10 years and having just left the position of Sergeant at Arms of the Senate, I expressed concern that this was a potentially bad decision. The Congress jealously guards its prerogatives as a co-equal branch of government and to not provide information at that time would have been a mistake, I felt. Later in the evening, an unclassified briefing was scheduled and I accompanied the Attorney General and others, including Steve Hadley from the National Security Council, to a briefing of Members of the House and Senate at the Headquarters of the United States Capitol Police. At that point, there was not much that we could add to what already was being reported through the news media.

The days that immediately followed September 11 were long and intense as we attempted to

make sure that we were responding effectively to any potential threat, whether at the border or in the interior. We found ourselves in the position of being a major partner with the FBI in the investigation of the bombings and in the effort to identify any potential threats that still existed. We took an activist position in developing and recommending initiatives that could enhance our national security. Throughout my testimony, I have attempted to provide you with information about these initiatives. The final section of my testimony will provide a litany of many, but not all, of the actions and initiatives that were undertaken in the post-September 11 period during which I served as Commissioner. The list is incomplete, but represents my recollection and materials presently available to me.

UTILIZATION OF IMMIGRATION LAWS IN RESPONDING TO THE ATTACKS

The Attorney General made it clear to all of us who were engaged in the response to September 11 that every weapon available in our arsenal of laws, technology, and manpower would be utilized to detect the perpetrators, and to disrupt and prevent further acts of terrorism. The immigration laws were an important, but not the only, tool used in the aftermath of September 11. Much has been written on this subject, and I expect that the discussion will go on for a considerable period of time.

In the immediate aftermath of September 11, the decision was made to assign approximately 1000 of INS' agents to work directly with the FBI in the Penttbom investigation (the name given the September 11 investigation). Those agents worked with the FBI in developing information on potential suspects and accompanied the FBI when interviews were held. As we all know, most of the people who were detained in the investigation were aliens who were out of status, primarily over-stays. The immigration agents who were part of these

teams exercised their lawful authority to detain persons who were found to be in violation of immigration laws.

The legal authority to detain violators of the civil immigration laws pending disposition of their cases was also a tool used in the Penttbom investigation. The question whether the rules established for detention were violated in some cases by the "no release until cleared by the FBI" policy, as well as a variety of other issues involving practices and procedures, has been, and continues to be, a matter of litigation and internal investigation as reflected in the Department of Justice Inspector General's report on the September 11 detainees. Since I am a defendant in some of this litigation, I am unable to comment specifically.

A public record has been established indicating that INS personnel, including me, raised questions and concerns about the appropriateness of certain policies and practices that were being pursued by the Department of Justice in the investigation. I considered it my duty to raise my hand when I felt that the bounds of the law were being approached, or where a practice or policy was ineffective, ill-advised, or violated notions of fundamental fairness. I make no apologies for doing what I believed to be my duty.

Let me also note that many of the initiatives that we undertook were also done with the goal of better enforcing the immigration laws for which we had responsibility. In that respect, I would suggest that the immigration laws were being used as a tool in the overall response to September 11.

I would like to add one other note. Many initiatives have been taken since September 11 under the guise of being anti-terrorism measures when, in reality, they have little to do with detecting or preventing terrorism. Rather, they are measures designed to more strictly

enforce our immigration laws. That is a legitimate and desirable goal, but we should be careful not to confuse or mislabel the purposes of our initiatives lest we create the unfortunate impression that we believe that all persons seeking to come here to visit, or to emigrate to the United States, are potential terrorists. We have a long history in our country, particularly in times of crises, of incorrectly assuming that there is a clear nexus between immigration and terrorism or anarchy. Our public discourse needs to be better informed. This Commission bears a particular burden in that respect.

ACTIONS AND INITIATIVES

The number of actions and initiatives undertaken by the INS on and after September 11 was extensive. Without the benefit of staff or complete records to which I no longer have access, I have attempted to compile, based on my recollections and material presently available to me, a summary of the major actions and initiatives that were undertaken on my watch. Elsewhere in my testimony, I have discussed certain initiatives that may or may not be included in the following summary. Although many of the following initiatives do not fit neatly into a particular category, in order to present this material in an orderly manner, I have divided the actions and initiatives into several categories: (1) immediate and near-term responses to September 11, (2) initiatives and actions taken at the border, (3) initiatives and actions taken within the United States, (4) initiatives and actions taken beyond the border, (5) technology initiatives and accomplishments, (6) management and personnel initiatives and accomplishments, (7) investigations and operations, including human smuggling, human rights abusers, drug smuggling, and individual cases, and (8) rules, regulations and notices.

IMMEDIATE AND NEAR-TERM RESPONSES TO SEPTEMBER 11

The immediate response to the attacks of September 11 was focused on preventing other attacks that may have been planned, and to apprehend those who may have been conspirators with the hijackers, or otherwise had information that would assist in the investigation. The following reflects some of the actions taken by the INS within the first few days of the attacks:

- On September 11, all ports-of-entry were placed on a Threat Level One status. All ports of entry subsequently were required to be staffed on a twenty-four hours a day, seven days per week basis. These actions were taken in conjunction with the United States Customs Service.
- On September 11, the INS activated its Command Center, operating on a 24/7 basis. This stand-by Command Center, with sophisticated communications equipment, was utilized for two months after the terrorist attacks as the nerve center for all INS operations.
- Within hours of the attacks, INS set up the Prevent Departure Unit under Section 215 of the Immigration and Nationality Act. The Prevent Departure Unit was responsible for the rapid dissemination of the Prevent Departure Lists that were based on the FBI's "Watch Lists." These lists went to all INS regional field offices, other federal government agencies, and transportation organizations.
- Immediately after the September 11 attacks, the INS suggested to the Attorney General that various federal law enforcement agencies, including the Border Patrol, dispatch agents to airports to provide additional security. The Attorney General made this recommendation to the President and within 36 hours of the attacks, INS had deployed 317 Border Patrol agents to nine airports across the country as part of this multi-agency effort to heighten

security at key airports. National Guard personnel replaced these agents on October 25.

- To supplement resources available to Immigration Inspectors at northern border ports-of-entry, 110 Border Patrol Agents and 32 Immigration Inspectors were immediately deployed to the northern border. These agents assisted with traffic management, inspections and port security. In addition, 40 Border Patrol Agents were detailed to the ports of San Ysidro and El Paso to assist with security and traffic management.
- Progressive inspection of aircraft was suspended and all flights into the United States were inspected at their first United States port of arrival consistent with Threat Level One procedures. On November 21, 2001, INS and the Customs Service amended this policy to allow international-to-international flights under certain conditions, while progressive flights continued to be suspended. On April 22, 2002, the INS and the Customs Service reinstated progressive flights and began to allow transfer of passengers on international-to-international flights. These flight services were reinstated under tightened security procedures, including the availability of complete advance passenger information.
- 1000 INS Special Agents were reassigned and deployed to work with the FBI in investigating the terrorist attacks, and to assist in the investigation and prevention of other potential attacks.
- A special unit was created within the INS National Security Unit that was composed of Special Agents and lawyers from the General Counsel's office. The unit operated on a 24 hours a day, 7day per week basis, and was tasked with the responsibility of processing persons with immigration violations who had been detained in the investigation.

INITIATIVES AND ACTIONS AT THE BORDER

- Passenger Analysis Units/Advance Passenger Information/Passenger Name Records – Canada and the United States operate passenger analysis units at major airports that produce tactical advance intelligence information on passengers from Advance Passenger Information/Passenger Name Record data provided by the airlines. The INS, which had the lead in producing such tactical advance information for the use of immigration inspectors at United States ports-of entry, worked with the Canadian government to establish Joint Passenger Analysis Units to facilitate the exchange of tactical information on passengers between the United States and Canada. A model was developed whereby both countries obtained API/PNR information on all international flights and both countries would exchange lookouts at all times so that each country could match API data against both sets of lookouts. At the same time, the INS and the Customs Service worked together to make sure that the information available to the Passenger Analysis Units was tailored to focus on the counter-terrorism mission.
- INS worked with the participants in the Interagency Border Inspection System (IBIS), which was managed by the Customs Service, to upgrade the capacity of the system and to upgrade the Advance Passenger Information System (APIS), thereby allowing that system to be the collection and distribution mechanism for all arrival and departure data received from airlines and cruise ships. In particular, the INS and the Customs Service coordinated efforts to modify IBIS to accept electronic manifests for visa waiver passengers beginning October 1, 2002. The INS and

the Customs Service worked closely with the airlines and the Air Transport Association to meet the October 1, 2002 timeline, and the January 1, 2003 requirement that all airlines send arrival and departure manifests to INS and Customs Service on all passengers.

- The Border Patrol and the United States Coast Guard began almost immediately after September 11 to undertake a variety of joint initiatives to increase security in the Great Lakes region. These included intelligence sharing, coordinated patrols, and the expanded use of Integrated Marine Enforcement Teams.
- The INS initiated enhancements to the security of the Transit Without Visa Program (TWOV) program with a four-part plan: (1) Adding several countries to the list of countries whose citizens are ineligible for TWOV privileges, (2) Reducing the number of stops a TWOV alien would be permitted – from two stops to one, (3) Increasing the amount of liquidated damages imposed on carriers for failing to remove a TWOV alien, and (4) Reviewing TWOV data, determining performance standards, and notifying carriers that their TWOV agreement would be terminated for failing to remove TWOV aliens.
- INS undertook an immediate review of existing ports-of-entry to detect any security problems within the immigration control areas. It also undertook a review to determine whether any ports-of-entry should be eliminated due to security concerns.
- INS undertook an immediate review of all alternative inspections programs such as the NEXUS program, the SENTRI Program, the Remote Video Inspection System, and the General Aviation Telephonic Entry System. The programs were reviewed for eligibility criteria, enrollment procedures, and participant removal criteria.

- On September 27, 2001, I met with Secretary of the Interior Norton to develop joint efforts regarding border security on Native American lands contiguous to the international boundary. In January 2002, the INS hosted the first Border Patrol-Native American Border Security Conference. This event brought together leaders and law enforcement officials from Native American tribes to meet with representatives of the Border Patrol, the Bureau of Indian Affairs, and other agencies to explore ways to strengthen security along the Southwest and Northern borders. Increased cooperation between Tribal law enforcement agencies and the Border Patrol resulted from this conference. In addition, the Border Patrol increased its recruitment efforts among Native Americans.
- On October 11, 2001, Assistant Secretary of State Mary Ryan and I agreed to deploy to all ports-of-entry, within 90 days, the Department of State's Consolidated Consular Database, which includes nonimmigrant visa information and a photograph of the alien. The alien's photograph is now available in secondary inspection for use as an additional tool and to assist inspectors in determining if a nonimmigrant visa holder is engaged in fraudulent conduct or is otherwise making a valid and legal application for admission. The deployment was completed in January 2002.
- In January 2002, Project Northstar, a United States/Canadian joint committee, at the suggestion of the Border Patrol, held a meeting in Niagara, Ontario to discuss the creation of additional Integrated Border Enforcement Teams along the United States/Canadian Border. Among the 200 participants were members of the CIC, Royal Canadian Mounted Police, Canadian Custom and

Revenue Agency, INS and the Customs Service. This initiative led to the formation of additional Integrated Border Enforcement Teams.

- The Border Patrol Strategic Plan, which was put in place in 1994, had four phases. At the time of the September 11 attacks, the Plan was in Phase II. After the attacks, the INS accelerated the implementation of Phase IV of the plan, which included the northern border.
- On January 14, 2002, the INS detailed 100 Border Patrol agents to strategic locations along the Northern border (Operation Northern Vigilance 2002) to enhance operational capabilities between the ports of entry. In May 2002, an additional 245 Border Patrol agents were selected as part of the Northern Border FY 02 Enhancements. 104 of these positions were funded.
- On February 15, 2002, after almost five months of negotiations, INS signed a Memorandum of Agreement with the Department of Defense (DoD) for limited port –of-entry and Border Patrol support in order to sustain Threat Level One operations. These extended discussions with DoD resulted in an agreement by which DoD supplied 16 intelligence personnel who worked in Border Patrol sector intelligence centers, and six helicopters that provided aviation support in six sectors. In addition, DoD supplied personnel to land border ports-of-entry. These personnel provided a heightened security presence, assisted in physical inspection of vehicles, and performed traffic management and pedestrian control duties. Deployment of 800 National Guard personnel began in March and terminated in August.
- In February 2002, the Border Patrol deployed 261 agents to the Winter Olympics to provide outer perimeter security at three venue sites: Park City Main Street, Park City Ski Venue, and

Deer Valley, Utah. Outer perimeter coverage was provided 24 hours a day, 7 days per week for the duration of the events. The Border Patrol worked closely with the Secret Service and a number of other agencies to provide security.

- In an effort to insure that crew detained aboard vessels did not desert and pose a possible threat, the INS and the United States Coast Guard worked jointly at the seaports-of-entry to insure that proper security existed to reduce opportunities for potential deserters. Procedures were put in place that prevented the entry of a vessel until appropriate security checks and security measures had been taken to prevent restricted individuals from leaving the vessel.
- In March 2002, the INS made available a consolidated and comprehensive list of deserters from vessels at seaports-of-entry to be used to identify high-risk vessels and source countries. The list was forwarded to all seaports-of-entry and regional and headquarters oversight offices on a weekly basis. The INS policy on deserting crew members was expanded in April 2002 to require the entry of a lookout notice into the National Automated Immigration Lookout System (NAILS) for all deserting crewmen.
- On March 22, 2002, I issued a "zero-tolerance" policy with respect to employee failures to know and follow the rules and regulations established by the INS. This policy was rescinded in the fall of 2003.
- Effective April 1, 2002, automatic revalidation of certain nonimmigrant visas was no longer permitted at ports-of-entry. This included nonimmigrant aliens returning from short visits to contiguous territories or adjacent islands who applied for new visas during such visits, and aliens who were nationals of countries identified as sponsors of terrorism.

- The National Security Entry Exit Registration System (NSEERS) was implemented in June 2002 as the first phase of the Congressionally mandated entry-exit tracking system. On September 11, 2002, the INS began fingerprinting and photographing individuals based on criteria established in the regulations with respect to countries of origin and specific individual characteristics. Information gathered from the fingerprinting and photographing process is compared against data available on known terrorists, and law enforcement lookout lists. A periodic reporting and registration requirement was also included as part of the program, and was implemented in late 2002.
- The INS increased its Border Safety Initiative and its Border Patrol Search Trauma and Rescue (BORSTAR) efforts. The primary purpose of the Borstar teams is to rescue migrants in peril. Their presence also has enhanced the Border Patrol's ability to interdict human smugglers and flows of illegal aliens.

INITIATIVES AND ACTIONS WITHIN THE UNITED STATES

- Shortly after September 11, Special Agents from the INS' National Security Unit met with agents from the Nuclear Regulatory Commission (NRC) to address the issue of non-citizens in their employ at sensitive nuclear sites throughout the United States. As a result, the INS began Operation Glowworm, a national worksite investigation initiative targeting nuclear power generating plants and other nuclear facilities. The NRC provided INS agents with a list of non-citizens for background checks to ascertain their status and eligibility to remain in the United States, and whether they were

- suspected of any ties to terrorism, or other adverse information.
- In November 2001, INS launched Operation Tarmac to enhance security at the nation's airports. INS Headquarters directed field offices to initiate worksite enforcement investigations into the hiring practices of companies employing individuals who worked at airports and who had direct access to commercial aircraft and other secure areas to ensure that these individuals were authorized to work and that employers were complying with the employment eligibility verification requirements.
 - On November 30, 2001, I briefed the Attorney General and members of his staff regarding my plans to focus on alien absconders (i.e., persons who were subject to final deportation orders and had become fugitives) as a method of enhancing enforcement of the immigration laws. On December 5, 2001, I announced the Alien Absconder Initiative. This project involved entering the names of fugitive alien absconders into the FBI's National Crime Information Center database. The program was quickly altered to become the Alien Absconder Apprehension Initiative to focus on absconders from a list of countries designated as terrorist supporting states. These individuals became the subject of a nationwide effort to apprehend them.
 - An additional security check through the Interagency Border Inspection System was imposed on all applicants and petitioners for INS benefits. These checks, although performed at an earlier stage in the process, were required to be repeated in the period immediately prior to the granting of an application or petition.
 - As a result of the issuance of a Presidential Executive Order, the Department of Justice created the Foreign

Terrorist Tracking Task Force (FTTTF) on October 29, 2001. The primary role of the FTTTF was to ensure that federal agencies coordinate their efforts to identify potential terrorists attempting to enter or remain in the United States. The FTTTF's focus was directed against individuals who are representatives, members or supporters of terrorist organizations; aliens who were suspected of engaging in terrorist activity; or aliens who provided material support to terrorist organizations. The INS provided the initial funding, facilities, personnel and administrative support for the FTTTF.

- On November 9, 2001, the Attorney General directed the law enforcement entities of the Department of Justice, including the INS, to conduct a series of interviews of aliens who entered the United States on nonimmigrant visas. Initially, 5000 foreign nationals, from countries with known Al Qaeda presence or activity, were designated for interview. The effort to interview the identified aliens was coordinated by the United States Attorneys' Offices in each of the 94 federal judicial districts throughout the United States. The National Security Unit coordinated INS' role in this operation.
- On March 20, 2002, the Attorney General directed a second-round of interviews of approximately 3,000 non-immigrants. A large number of INS Special Agents were again involved in these interviews.
- On July 1, 2002, the INS began deploying the Internet-based reporting and tracking system, SEVIS. This system maintains information on, and tracks all foreign students and exchange visitors in the United States. SEVIS began accepting school petitions for eligibility (Form I-17) on July 1, 2002, and after adjudication began issuing full SEVIS access to eligible schools on July 17, 2002.
- In conjunction with the implementation of

the SEVIS system, the INS initiated a process of recertification of all schools and institutions (approximately 74,000) authorized to accept foreign students.

- Operation Ensure West involved the development of individual district threat assessments identifying the industries and facilities in each jurisdiction considered to be high value terrorist targets and vulnerable to internal attack. Those industries included: aerospace, dams, water districts, power companies, transportation systems, bio-tech research facilities, and hazard and explosive materials companies. Numerous local initiatives were undertaken to address the potential threats that were identified in the individual district assessments. The "Operation Ensure West" assessment/action plan process was adopted as part of a national strategy to protect strategic industries.

INITIATIVES AND ACTIONS BEYOND THE BORDER

- In September 2001, INS and Department of State jointly agreed to evaluate the effect of the Visa Waiver Program on the law enforcement and national security interests of the United States. The INS undertook the reviews to determine how a particular countries' participation impacted the United States' (1) immigration law enforcement interests, (2) general law enforcement interests, (3) security interests, and (4) extradition interests. Based on the evaluations, a determination was to be made on whether program designation of a particular country would be continued or terminated. In November 2001, the INS began by reviewing the program designations of Argentina, Belgium, Italy, Portugal, Slovenia, and Uruguay. The reviews were based on vulnerabilities in

document security and overstay rates. In February 2002, the Attorney General terminated Argentina's participation in the Visa Waiver Program as a result of the immigration enforcement consequences of Argentina's economic collapse.

- Enhanced security procedures were established and implemented with respect to the Refugee Program. Refugee applicants were required to be fingerprinted at the place of application, and more extensive background investigations were required to be undertaken before refugees were allowed to embark for the United States.
- A program was put in place to share tactical information with airlines regarding the use of fraudulent documentation by travelers attempting to embark on international flights to the United States.
- In conjunction with Citizenship and Immigration Canada (CIC), INS deployed a pilot of the Support System for Intelligence (SSI) -- an established system to monitor the movement of improperly documented arrivals at air ports-of-entry, and to track such persons who are denied boarding at foreign embarkation points.
- In September 2001, the INS provided the Department of State with a suggested list of additional questions to be used in visa applications, particularly in those countries of special interest. That list formed the basis for the Department of State's revisions to its visa application forms.
- In October 2001, representatives of INS and Citizenship and Immigration Canada (CIC) met at INS headquarters to define joint responses to September 11. Representatives of the Department of State, the Customs Service, and the Royal Canadian Mounted Police also participated. Agreement was achieved on a broad range of immediate and long-

range action items aimed at improving security on the United States/Canada border and improving regional security generally in those areas within the responsibility and competence of the two immigration agencies.

- In October 2001, representatives of INS and the Department of State met with representatives of the European Commission Ministry of Justice and Home Affairs, and on October 26 with the EU Strategic Committee on Immigration, Frontiers, and Asylum to initiate discussions on areas of cooperation between the United States and the EU to improve methods to identify and prevent the entry of terrorists, criminals, and unlawful migrants.
- In early December, Attorney General John Ashcroft signed an 8-point cooperation agreement with the Canadian Minister of Citizenship and Immigration relating to joint activities between CIC and the INS designed to enhance border security. The INS negotiated this agreement on behalf of the Attorney General. An important element of this agreement was the commitment to jointly deploy Immigration Control Officers overseas to work with airlines in screening potentially inadmissible aliens.
- In December, Homeland Security Director Ridge and Canadian Minister of Foreign Affairs Manley signed a Smart Border Declaration. The Smart Border Declaration outlined a 30-point Action Plan for the collaboration of the two governments in identifying and addressing security risks while efficiently and effectively expediting the legitimate flow of people and goods across the United States/Canadian border. A key element of this bi-national plan was NEXUS, technology designed to enhance security and improve traffic flow along the United States-Canadian border.

NEXUS lanes reduce the waiting times for low-risk, frequent border crossers, and the expanded use of automation and technology enables officers from both the United States and Canada to focus more attention on higher-risk traffic. The INS played a major role in the formulation of this Action Plan and had the responsibility for the deployment of the NEXUS system at strategic points on the Canadian border. That task was successfully complete.

- On March 4, 2002, I accompanied Governor Ridge and other senior government officials to Mexico City, Mexico, to develop measures for strengthening our joint security and to build on recent INS cooperative efforts with the Mexican government. A 22-point Border Partnership action plan for working together to secure our borders and facilitate trade and commerce was agreed upon and signed by Secretary of State Powell and Mexican Secretary of Foreign Relations, Jorge Castaneda, on March 22, 2002

TECHNOLOGY INITIATIVES AND ACCOMPLISHMENTS

- As discussed earlier in my testimony, a very significant accomplishment in the technology area was the completion of the INS Enterprise Architecture project in the early fall of 2002. This effort was undertaken in accordance with the Federal CIO Council guidance on federal enterprise architecture, and provided a design for the standardization, prioritization and integration of technology for INS' enforcement and service functions. According to the GAO, the INS was the first federal agency to actually complete its enterprise architecture process. It is my understanding that the Department of

Homeland Security has adopted the INS enterprise architecture as the model for the development of its own enterprise architecture.

- INS accelerated its project to link all of its law enforcement case management and other databases under a unified system called ENFORCE. An important element of ENFORCE was its linkage with the INS' IDENT two-print electronic fingerprint system which provides a biometric marker for each individual apprehended and enrolled by INS law enforcement personnel. Funding for the deployment of IDENT/ENFORCE to all applicable locations was received after September 11 and was in the process of being completed at the time of my retirement. Other related initiatives involved the mobile deployment of IDENT, and linking IDENT's two-print system with the FBI's IAFIS ten-print system.
- INS sought and received approval to implement the National Crime Information Center Interstate Identification Index (NCIC-III) at ports-of-entry shortly after September 11. This system allows Immigration Inspectors to better identify the criminal histories of applicants for admission, and then to take appropriate action to apprehend them or deny them admission.
- After September 11, the INS accelerated the deployment of Remote Video Surveillance Systems on the northern and southwestern borders as a "force multiplier" for the Border Patrol.
- The INS Forensic Document Laboratory (FDL) played, and continues to play, a key role in the Federal counter-terrorism effort. The FDL is recognized as one of the leading, if not the leading, forensic document laboratories in the world. The FDL's work in the September 11 investigation and the on-going investigation of terrorist threats has been critical.

- In the aftermath of September 11, the INS became one of the first federal law enforcement agencies to establish direct, secure, electronic communications capability with the national intelligence community, including the CIA. The effect of this capability is that INS can now add directly to the on-going development and refinement of intelligence information critical to the disruption of hostile acts against the United States involving foreign nationals. Further, INS has direct access to critical intelligence community databases and secure e-mail technology linking INS directly with the intelligence community.
- The entry-exit tracking system that was mandated by Congress in 1996, and then put on hold until certain issues were resolved in the Data Management Improvement Act of 2000, was a priority project for the INS. During the period when the project was on hold, and even in the absence of appropriations to actually begin deploying the project after the enactment of the Data Management Improvement Act of 2000, the INS continued to analyze the technical, operational, design, and policy issues that had to be addressed in the development of such a system. After September 11, when momentum built for the deployment of the system, the INS was prepared to provide the administration with the design options and a cost analysis. The National Security Entry-Exit Registration System, although broader in scope than the contemplated entry-exit system, constituted the first phase of the implementation of such a system. It is my understanding that many of the issues involved in the overall development of an entry-exit tracking system are still being considered even as the US Visit program is being deployed at key ports-of-entry.
- The INS and the CIA's Office of Technical

Services undertook a joint effort to study the travel documents associated with known or suspected terrorists. The goal of this effort was to identify and isolate commonalities that may be of use in interdiction of future terrorists intent on entering the United States.

MANAGEMENT AND PERSONNEL INITIATIVES AND ACCOMPLISHMENTS

- To combat very high attrition rates among the Border Patrol and Immigration Inspectors, as I have discussed earlier in my testimony, we undertook a massive hiring program, which included substantial public outreach. We were particularly pleased that actor Chuck Norris voluntarily produced an advertisement for the Border Patrol. As a result of this outreach program, we received over 86,000 applications for Border Patrol Agent positions and 114,000 applications for Immigration Inspector vacancies. The criteria for hiring is very stringent, and we were able to hire a total of 7,800 new employees in fiscal year 2002.
- Recognizing that the pressure on the INS to recruit and train new employees would continue indefinitely into the future, and also recognizing that the quality and availability of training was critical to the INS' effectiveness, we developed and implemented a Strategic Plan for Training and Career Development.
- As noted earlier in my testimony, we also were able to get the journeyman level pay grade increased from GS-9 to GS-11 for Border Patrol Agents and Immigration Inspectors. This had a positive impact on the attrition rate and the hiring effort.
- As part of the overall project to centralize alien records and have them available to any part of the organization on an expedited basis, we consolidated all alien

- files at our National Records Center.
- We completely overhauled our financial management system, and deployed the Federal Financial Management System. This system provides real-time access to financial and budget information, and makes it possible to continuously track and control funds, resulting in financial accountability throughout the agency. The INS received its first unqualified audit opinions on FY 2001 and FY 2002 financial statements.

INVESTIGATIONS AND OPERATIONS

Human Smuggling

Alien smuggling organizations have become one of the primary instruments for the movement of illegal aliens across the United States land borders. These organizations are becoming increasingly sophisticated and are known to be very brutal. They present a serious security risk to the United States because of their willingness and ability to smuggle dangerous criminals and terrorists. A high priority of the INS was to detect and disrupt the operations of these smuggling rings. Our efforts were rewarded with a number of successes. However, the amount of resources available to address this problem were severely limited. The following are a few examples of the INS' initiatives in the area of human smuggling.

- The INS initiated Operation Southern Focus in January 2002, a multi-jurisdictional enforcement initiative aimed at targeting alien smuggling organizations specializing in the movement of special interest aliens out of Central and South America, and the Caribbean. Special Agents worked in Mexico, Guatemala, Panama, Ecuador, and the Dominican Republic to target "kingpin" smugglers for prosecution in the United States. Many of the targets were identified as significant

alien smugglers with links to terrorism and were involved in attempts to smuggle large numbers of special interest aliens into the United States. By mid-2002, four large-scale alien smugglers had been arrested and were facing alien smuggling charges in United States courts.

- Operation Great Basin was a two-year investigation into the alien smuggling activities of a commercial bus company, Golden State Transportation. Investigators found that Golden State Transportation conspired with alien smugglers to move hundreds of undocumented migrants every month from the southwest border to destinations nationwide. A Title III Wire Intercept was requested and authorized which allowed INS investigators to monitor telephone conversations at the Phoenix and Tucson bus depots. Monitoring of these telephone conversations criminally implicated the company president, vice president, a number of the corporate headquarters employees, depot managers, and other employees. In December 2001, this case culminated with the indictment of thirty-three Golden State Transportation principal officers and employees on charges of alien smuggling.
- The INS initiated Operation Atlas to address the increasing problem of human trafficking across the international border, particularly at the port of San Ysidro. This initiative was part of a successful joint effort between the INS and Mexican authorities. This operation increased the enforcement posture against human trafficking and demonstrated an unprecedented level of cooperation between the two governments.
- In Operation Broken Mirror, INS investigated the alien smuggling activities of alien smuggler Dario Espejo who was operating his smuggling organization out of Central and South America. The Espejo

alien smuggling organization was known to smuggle undocumented migrants from China, India, Pakistan, Ecuador and Guatemala. Espejo has been known to United States law enforcement for several years and was one of the "Top Ten" targets.

- In Operation Shadow, INS conducted a criminal investigation into the alien smuggling activities of Maher Jared, operating out of Ecuador. Jared was the head of a large alien smuggling organization responsible for the smuggling of a large number of United States bound aliens. Jarad was known to smuggle Iraqis, Syrians, Palestinians, and Egyptians. In February 2002, a smuggling vessel, the Esperanza, was interdicted as it attempted to sail from Ecuador to Guatemala carrying 154 United States-bound migrants. INS officers in Ecuador and the Washington District worked together to obtain an indictment for Jared on several counts of alien smuggling.
- In Operation Chiva, INS investigated the alien smuggling activities of alien smuggler Mohammed Assadi operating out of Ecuador, Columbia, and the Caribbean. Assadi was the head of a large alien smuggling organization responsible for the smuggling of hundreds of special interest aliens into the United States. INS officers arrested Assadi and the four Iraqis nationals after they landed in Florida. Assadi was charged with alien smuggling.
- In Operation Double 07, INS conducted a criminal investigation into the alien smuggling activities of Francisco Tsoi, operating out of Guatemala, Panama, and Venezuela. Tsoi was known to smuggle nationals from the People's Republic of China (PRC) to the United States via Central and South America. Tsoi was also believed to be one of the top Triad (Chinese organized crime) members and to have smuggled thousands of United

States-bound PRC migrants into the United States. The Mexico City and Washington District offices initiated an investigation. Tsoi was charged with alien smuggling in the District of Columbia.

- In Operation Telecom, INS investigated the criminal activities of a New York Immigration law firm operated by Attorney Robert Porges and his wife, Sherry Porges. Defendants Robert and Sherry Porges, and approximately twenty-five of their employees, were engaging in racketeering activities involving the smuggling of nationals from the PRC into the United States, and the preparing and submission of fraudulent asylum applications on behalf of the smuggled migrants. The smuggled PRC nationals were threatened and beaten by smugglers and forced to work in sweatshops to repay their smuggling debt. The Porges Law Firm was indicted on Racketeer Influenced and Corrupt Organizations (RICO) charges, including alien smuggling, kidnapping, hostage taking, and asylum fraud. On August 9, 2002, Robert and Sherry Porges were sentenced to 97 months incarceration and fined \$125,000 and \$25,000 respectively. Additionally, the court issued a final order of forfeiture of six million dollars in conjunction with the criminal charges.
- Operation White Fields was a criminal investigation into the activities of a multinational child smuggling organization responsible for the smuggling of children and young adults from El Salvador and Guatemala into the United States. On April 5, 2002, Guatemalan authorities intercepted seven public transport buses. This interception resulted in the rescue of fifty-three children ranging in age from two to seventeen years, and the arrest of twelve smugglers. This investigation was conducted by INS officers in El Salvador,

Guatemala, Mexico City, Washington D. C., Houston and Los Angeles, in cooperation with law enforcement officers in El Salvador and Guatemala.

- Operation Atlantic Link was a criminal investigation into the activities of an organization involved in the trafficking of female juveniles from Africa to the United States. Upon arrival in the United States, these juveniles were forced to be indentured servants and to work without compensation for the clients of the trafficking organization. A total of seven defendants were convicted as a result of this two-year investigation on charges of involuntary servitude, harboring aliens for financial gain, conspiracy to harbor illegal aliens, passport fraud, and marriage fraud.
- Operation Sonic was an investigation of the activities of a criminal organization involved in trafficking females, including juveniles, into the United States for the purpose of forcing them to engage in commercial sex acts. As of mid-2002, eight defendants had been charged with violations of Title 18, United States Code, Section 1591(a)(2), Sex Trafficking of Children by Force, Fraud, or Coercion. Six of these defendants had been arrested and two were fugitives. This was a joint investigation conducted by the Newark INS District Anti-Smuggling Unit, the Office of the Inspector General, United States Department of Labor, the United States Attorney's Office, the Civil Rights Division, the Union County Prosecutor's Office, the Elizabeth Police Department, and the Plainfield Police Department.
- Operation Broken Promise was an investigation into the Ceras-Manilla smuggling organization, which was responsible for the death of fourteen Mexican migrants in a botched smuggling attempt through the Arizona desert in May 2001. Border Patrol agents interviewed several members of the

smuggling load that survived the ordeal and they reported that their group was abandoned in the remote desert by their smuggler. During the course of the investigation, Border Patrol agents were able to identify several of the smuggling organization's co-conspirators and to gather evidence of their involvement in this operation.

Human Rights Abusers

The INS takes seriously its obligation to ensure that the United States does not become a safe haven for torturers, war criminals, or human rights abusers. The INS has undertaken a number of major enforcement operations aimed at detecting and arresting rights abusers. Several examples follow:

- On August 14, 2002, after a thorough national and international INS investigation, Rwandan national Enos Kagaba became the first person charged with genocide in an immigration proceeding. Kagaba was arrested on December 14, 2001, by INS agents at St. Paul, Minnesota for attempted illegal entry into the United States. After his arrest, Kagaba was charged with attempting to enter the United States without a valid entry document and with fraud for willfully misrepresenting his identity when applying for admission.
- On April 29, 2002, INS special agents arrested Haitian citizen Herbert Valmond after having been ordered deported. Valmond was denied all relief by an Immigration Judge in Miami and was held in detention pending removal. Valmond was involved in human rights abuses while serving as a lieutenant colonel in the Haitian armed forces under the Cedras junta, and was implicated in the massacre of 25 Haitian peasants in 1994 (the Raboteau Massacre). Valmond was

convicted in absentia by the Haitian government for his crimes.

- In late 2001, INS arrested former Haitian Army Colonel Carl Dorelien. Dorelien, who was also convicted in Haiti in connection with the Raboteau Massacre, was ordered deported.
- On April 25, 2002, Juan Evagenlista Lopez-Grijalba was arrested by the INS. Grijalba is a former commander of Military Battalion 316, a well-documented Honduran Death Squad. INS alleged that Grijalba personally ordered and participated in massive human rights abuses, murder and torture while commanding troops of Battalion 316.
- Eriberto Mederos, a naturalized United States citizen, was convicted on August 1, 2002 for naturalization fraud, after a lengthy investigation by the INS. The criminal indictment alleged that Mederos had concealed his past as a torturer when applying for his citizenship. Mederos died of natural causes on August 23, 2002 while awaiting sentencing.

Drug Smuggling

The INS was second only to the United States Coast Guard as the federal law enforcement agency that interdicted the largest volume of drugs being smuggled into the United States. Although drug enforcement was not a primary mission of the INS, the presence of Border Patrol Agents on the border and Immigration Inspectors at the ports-of-entry, placed them in positions to intercept illegal drugs. The INS also participated in a number of drug smuggling investigations and operations that involved foreign nationals and aliens present in the United States. The following are two examples of INS cooperation and activity in the war on drugs.

- In Operation Caballeros Frios, INS was a major participant in a joint task force

investigation conducted by the Orange County, California Drug Task Force. This investigation targeted an organization of Mexican nationals involved in the distribution of methamphetamine, as well as the importation and distribution of heroin and cocaine. The investigation included an 11-month Title III wire intercept that led to the identification of three businesses involved in the conspiracy. Fifty-three arrests were made, seven clandestine methamphetamine labs were dismantled, there was a seizure of 132 lbs of methamphetamine, 136 gallons of methamphetamine in solution, 129 lbs of pseudoephedrine/ephedrine, 415 gallons of freon, and \$200,000.00 in drug proceeds. Nationally, the investigation resulted in the arrests of 165 individuals, the dismantling of 30 clandestine labs and the seizure of 244 lbs. of methamphetamine, 401 lbs of methamphetamine in solution, and \$338,000.00 in drug proceeds.

- Operation Big Bird was a joint operation of the INS, DEA, Idaho State Police, United States Marshal and United States Attorney's Office to dismantle a network of organizations engaged in the distribution of methamphetamine in California, Idaho, Washington, Minnesota and Mexico. This case resulted in the criminal indictments of 30 defendants, 23 of whom were foreign nationals.

Individual Cases

The following cases involved individuals who were the object of INS' investigative and enforcement activities in the area of terrorism. They serve to illustrate the commitment of the INS to the counter-terrorism effort notwithstanding the paucity of resources available to do the job effectively. As noted elsewhere in my testimony, in 2001 the INS

completed a total of 121,000 investigations and deported 71,000 criminal aliens. It is also worth noting here that the immigration laws are an important tool for removing dangerous aliens from the United States when their illegal activities are not provable beyond a reasonable doubt because of evidentiary or other rules. Some of the following cases are illustrative of that point.

- On August 15, 2001, INS St. Paul District, Minnesota JTTF agents received information from the FBI that Zacarias Moussaoui had paid \$8,000 cash to Pan Am Airlines in Miami, Florida to learn how to land and take-off in a Boeing 747-400 airplane. He was subsequently scheduled to take 747-400 simulator training via Northwest Airline Training Company, Eagan, Minnesota. Moussaoui was apprehended and was in INS detention on September 11. He was later implicated in the September 11 conspiracy and indicted.
- On June 12, 2002, Nabil Soliman was removed to Egypt after apprehension and removal proceedings undertaken by the INS. Soliman was suspected of active participation in the 1981 assassination of Egyptian President Anwar Sadat. The Government of Egypt had sought Soliman for over 17 years as a result of his 1984 conviction in absentia for his part in the crime. Soliman was believed to be a member of the radical fundamentalist group, the Muslim Brotherhood.
- October 24, 2001, Ali Steitiye, a native of Lebanon, was arrested while in possession of an unauthorized firearm. He was arrested for false statements on firearms applications. This arrest was one of a long string of arrests for Steitiye, who had become a naturalized citizen on July 11, 2000. At the time of his arrest, police found Hamas literature and a Hamas plaque in his residence. Following

investigation by INS, the Bureau of Alcohol, Tobacco & Firearms, and the FBI, Steitiye was indicted for firearms violations, as well as procurement of naturalization by fraud, and welfare and social security fraud. On June 17, 2002, Steitiye was found guilty of all charges in the federal indictment.

- In May 2002, the FBI received information that Tunisian Ahmed Merzouk, an employee of All Action Security at the Los Angeles Greyhound bus terminal, was interested in obtaining explosive devices. Merzouk allegedly wanted to strike at the United States in a way no one would forget, and to become a suicide bomber. The plan entailed Merzouk and his friends boarding buses to the Los Angeles and Burbank airports and upon reaching the terminals, detonating themselves to become heroes and martyrs. With no viable criminal charges against Merzouk, the FBI turned to the INS, which arrested him on June 4, 2002 on INS administrative charges for working without authorization. On August 21, 2002, Merzouk was arraigned on criminal charges that he used an unauthorized Social Security number in order to gain employment, based on the investigative efforts of the INS working with the FBI.
- In 2001, information was developed that Imran Mandhai, a Pakistani national and lawful permanent resident of the United States, was plotting to destroy electrical facilities in South Florida by placing bombs at transformer and electrical substation sites. Additional plot discussions involved whether to target the Israeli Consulate in Miami, a military reserve facility, or a hospital and other locales in Tallahassee, Mandhai was arrested in February 2002 for administrative violations relating to sabotage and terrorist activities after admission to the United States. Evidence

included a videotape of Mandhai identifying and handling shoulder-fired rocket launchers, AK-47s and AR-15s. He and a co-conspirator were charged with conspiracy to destroy property by fire and explosives, and solicitation to commit a crime of violence.

- On June 2, 2002, Pakistani, Nasir Ali Mubarak attempted to purchase a one-way airline ticket to Sacramento, California from Dallas, Texas. At the time, Mubarak was on the Federal Aviation Administration (FAA) "no-fly" list. Mubarak was arrested, and a joint Texas Department of Public Safety, FBI and INS investigation ensued. Mubarak is associated with Abdul Hakim Murad, convicted in a 1995 plot to bomb 11 United States airliners, and who admitted connections to Osama Bin Laden. In joint INS/FBI interviews, Mubarak admitted that he had met Murad in the United Arab Emirates around 1990. He further admitted that he attended flight school with Murad in the United Arab Emirates, and in Texas, New York, and North Carolina. On August 21, 2002 Mubarak, who had been in INS custody in removal proceedings since June 2, agreed to a settlement with the INS whereby he would be deported to Pakistan and would agree to fully cooperate by means of a pre-departure interview with the INS and FBI.
- On May 17, 2002, Semi Osman was arrested pursuant to an INS warrant based on Osman's fraudulent marriage to a United States citizen. Four search warrants were executed against Osman's properties resulting in the seizure of evidence related to international terrorism. On May 24, 2002, Osman was criminally charged with Federal violations for attempted fraudulent procurement of naturalization, and possession of a firearm with obliterated or altered serial

number.

- On August 22, 2002, Mazen Al-Najjar, a Palestinian, was deported from the United States. Al-Najjar was arrested by INS agents in Tampa in 1995, which began a lengthy legal battle, culminating in his removal to Lebanon. Al-Najjar, and his brother-in-law, Sami Al-Arian, both professors at the University of South Florida in Tampa, had been accused of membership in the Shura, or ruling council, of the radical Islamic terrorist group, Palestinian Islamic Jihad (PIJ).
- Operation Eagle Strike a.k.a., Operation Noble Eagle, was a prevention-and-disruption case jointly conducted by the State Department Diplomatic Security Service, the INS and the FBI. The purpose of the operation, which began on July 3, 2002, was to locate and arrest approximately 71 special interest country nationals (primarily Jordanians and Pakistanis) who had obtained United States visas by fraud, using the corrupt services of a foreign service national at the American Embassy in Doha, Qatar.
- In early June 2002, the INS received information that a group of Tunisian nationals residing in the Dale City area of San Francisco were possibly members of a terrorist cell posing an imminent national security threat to the United States. On June 16, 2002, INS and FBI agents were able to locate, identify and arrest a group of Tunisian nationals who were tied to terrorist activity. Nine individuals were detained on INS administrative charges in the absence of viable criminal charges, and subsequently removed. The suspected ringleader has been criminally charged with harboring aliens unlawfully in the United States.
- In Operation Big Man, the Bangkok INS office conducted a criminal investigation in cooperation with officers from the Thai Special Branch Police, Thai Armed Forces Security, Thai Army Intelligence, Thai

National Security Council, and the United States Central Intelligence Agency. Many of the co-conspirators in this case are believed to have direct links to terrorist organizations such as Al Qaeda, Al Gamet Al Islamaya, Hezbollah, and various other terrorist organizations based in Thailand. The case resulted in the arrest of the organization's kingpin and several other criminal co-conspirators.

REGULATIONS

During my tenure as Commissioner, a large number of rules, regulations and notices were published, many of which were necessary to the implementation of initiatives, a number of which are noted in this testimony, undertaken by the INS in response to the events of September 11. The following is a listing of some of the major rules, regulations and notices published during that period.

- September 7, 2001—Rule implementing a new "V" non-immigrant classification for certain spouses and children of lawful permanent residents.
- September 20, 2001—Rule amending INS regulations regarding the period of time after an alien's arrest in which the INS must make a decision whether to issue a charging document and make a custody determination.
- October 31, 2001—Rule expanding the ability of the INS to invoke an automatic stay of an Immigration Judge's decision to release an alien from custody.
- November 14, 2001—Rule amending the procedures for reviewing the detention of aliens with final order of removal in light of the Zadvydas decision.
- January 31, 2002—Rule creating new non-immigrant "T" classification for victims of severe forms of trafficking who assist law enforcement.
- February 21, 2002—Rule terminating

Argentina's participation in the Visa Waiver Program.

- April 12, 2002—Rule limiting the period of admission for "B" non-immigrant aliens.
- April 22, 2002—Rule requiring change of status from "B" visitor visa to "F" or "M" student status prior to beginning a course of study.
- April 22, 2002—Rule governing the disclosure of information by state or local governmental entities relating to INS detainees being housed by that entity.
- May 9, 2002—Rule requiring aliens with final orders of removal to surrender themselves to the INS.
- May 16, 2002—Rule implementing the Student and Exchange Visitor Information System (SEVIS).
- May 28, 2002—Rule allowing Immigration Judges to issue protective orders and seal records containing law enforcement or national security information.
- June 4, 2002—Final Rule under LIFE Act allowing certain class action members to become lawful permanent residents.
- June 13, 2002—Rule to require the registration and monitoring of certain non-immigrants (National Security Entry Exit Registration System).
- July 24, 2002—Final Rule implementing section 103(a)(8) of the INS permitting the Attorney General to authorize state or local police to exercise immigration enforcement powers in periods of mass influx of aliens.
- August 12, 2002—Final Rule for registration and monitoring of certain non-immigrants (National Security Entry Exit Registration System).
- August 13, 2002—Rule implementing Supreme Court decision in *St.Cyr v. INS*, allowing certain Legal Permanent Residents to seek relief under former section 212(c) of the Immigration and Nationality Act.
- November 6, 2002—Notice requiring non-

immigrant aliens from certain countries to report to the INS for registration (National Security Entry Exit Registration System).

- November 13, 2002—Notice designating certain aliens who arrive by boat as subject to expedited removal.
- November 22, 2002—Notice requiring non-immigrant aliens from an additional group of countries to report to the INS for registration under the National Security Entry Exit Registration System.

CONCLUSION

Mr. Chairman, I appreciate the opportunity to testify before this Commission. I have attempted to provide you with information that will be useful in your inquiry. However, what I have been able to cover in this testimony provides only a glimpse of the whole story of the INS, its efforts to improve its performance, and its response to the events of September 11. I want you to know that I will continue to cooperate with you in any way possible to assist in making the record clear and complete.

Thank you.

APPENDIX

In March 2002, news reports suggested that the INS has issued “student visas” to two of the 19 dead hijackers, Mohammed Atta and Marwan Al-Shehhi. That was proven not to be true, yet to this day this episode is still reported incorrectly.

The facts are as follows:

When Mohammed Atta and Marwan Al-Shehhi arrived in the United States, they entered legally on visitor visas. After their entry, they applied for a change to student status in order to attend flight training at Huffman Aviation International. At that time, the INS possessed

no information from intelligence or any other sources that indicated these applications should be denied. After several months, the change of status applications for Mohammed Atta (on July 17, 2001) and Marwan Al-Shehhi (on August 9, 2001) were approved by the INS.

When Huffman Aviation accepted Atta and Al-Shehhi into its flight training program, it issued them each an I-20 form which was sent to the INS. The I-20 form has two copies – one for the school and one for the student. After INS approved Atta's and Al-Shehhi's applications on July 17, 2001 and August 9, 2001, respectively, the INS sent one copy of the I-20 form to Atta and Al-Shehhi, respectively. The school's copies were sent to an outside contractor to perform data entry to update INS records. Under procedures established pursuant to a 1996 contract, the contractor held the copies for six months and then sent them to Huffman Aviation International for its files.

Reporters were present when Huffman Aviation International received its file copies, and the story took on a life of its own. While the episode and the paperwork sent to Huffman had no impact on the events of September 11, it made the INS a target.

Under the Student and Exchange Visitor Information System (SEVIS) that INS has developed, this cannot happen again, since the paper-based system in place in 2000-2001 has been replaced by a new, electronic, internet-based system. INS began enrolling schools into the new foreign student tracking system on July 1, 2002, and required any school that admits foreign students to be certified and enrolled to use this system by January 30, 2003. SEVIS is part of an overall program of tightening foreign student procedures and rules that INS has undertaken. As noted in the section "Regulations" above, on April 22, 2002, INS published a rule that prohibits nonimmigrant visitors from attending school prior to obtaining

approval of a change to student status. Likewise, individuals may no longer enter on a visitor visa and apply for a change to student status unless they declare their intention upon entry.

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Before joining the Law School faculty in May 2003, Professor Ziglar had more than 15 years of experience in the federal government, and 23 years experience in the private sector. He was Commissioner of the Immigration and Naturalization Service from August 2001 until his retirement from federal service in November 2002. In addition to his position at the INS, he has served at various times as Sergeant at Arms of the U.S. Senate, as Assistant Secretary of the Interior for Water and Science - where he oversaw the operations of the Bureau of Reclamation, the Bureau of Mines and the U.S. Geological Survey, as a congressional and public affairs officer at the Department of Justice, and as an aide to the Chairman of the U.S. Senate Judiciary Committee.

Professor Ziglar began his legal career in 1972 as a law clerk for U.S. Supreme Court Associate Justice Harry A. Blackmun. Following his clerkship, he joined the New York law firm of Mudge, Rose, Guthrie, Alexander and Ferdon, where he specialized in public securities law. In 1977, he joined O'Connor, Cavanagh, Anderson, Westover, Killingsworth and Beshears as a partner in the Phoenix office, where he established and managed the firm's public securities practice. Professor Ziglar worked for 16 years in the investment banking industry as a Managing Director of UBS PaineWebber Inc., as a Senior Vice President of Dillon, Read & Co., and as a Managing Director of Drexel Burnham Lambert. Professor Ziglar was a Resident Fellow at the John F. Kennedy School of Government's Institute of Politics in the Spring Semester 2003.

Professor Ziglar serves as Chairman of the Board of Aqua Dyne Inc., a water and environmental technology company, and as an Advisory Director of Cross Match Technologies, Inc. He also serves on a number of non-profit Boards, including the Advisory Board of the Division of Earth and Life Studies of the National Research Council of the National Academies.

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