

Testimony of Asa Hutchinson on Guest Worker Proposals

Testimony of Asa Hutchinson
Under Secretary for Border and Transportation Security
Department of Homeland Security
Before the Subcommittee on Immigration, Border Security, and Citizenship
Committee on the Judiciary
U.S. Senate
February 12, 2004

On January 7, the President announced his proposal for a new temporary worker program. In his announcement, the President set out several basic principles for the program. The three principles related to immigration enforcement are:

1. Protecting the Homeland by Controlling our Borders
2. Providing Incentives for the Return of Aliens to their Home Country
3. Workplace Enforcement of our Immigration Laws

Let me address these from an enforcement perspective:

I. PROTECTING THE HOMELAND BY CONTROLLING OUR BORDERS

A sensible immigration policy begins with security at our nation's borders. The President's proposed Temporary Worker Program is a bold step, aimed at reforming our immigration laws, matching willing workers with willing employers, and securing our Homeland. The President's proposal holds the promise of strengthening our control over U.S. borders and, in turn, improving homeland security. It is also a continuation of efforts to control our borders that intensified in the wake of the 9/11 attacks on our homeland.

Illegal entry across our borders makes more difficult the urgent task of securing the homeland. Our homeland will be more secure when we can better account for those who enter our country, instead of the current situation in which millions of people are unknown. With a temporary worker program in place, law enforcement will face fewer problems with unlawful workers and will be better able to focus on other threats to our nation from criminals and terrorists.

The President's proposed temporary worker program would provide participants in the program with lawful documentation. This would permit temporary workers to travel legally and freely across the border, resulting in more efficient management of our borders and more effective enforcement against those who are removable and those who pose a danger to our country. Giving aliens the ability and the incentive to travel through our ports of entry, rather than illegally between the ports, is a tremendous advantage to us. When US-VISIT is fully implemented, we will also know when aliens enter and exit the U.S. to verify that participants are complying with the terms of the worker program and making it easier for law enforcement to enforce the program.

Temporary workers will be able to establish their identities by obtaining legal documents under a worker program. It is critically important to create a system that prevents fraud as it was so prevalent under the 1986 Immigration Reform and Control Act (IRCA) worker and legalization programs. It is essential that a new temporary worker program provide uniform documentation for participants that is tamper-proof, as fraud-proof

as possible. While this program is a generous and compassionate one, we do not wish to reward those who game the program through fraud. Fraud prevention should be a component in creating this temporary worker program.

In order for a temporary worker program to work effectively, border enforcement will be critical. It is important to recognize that the Department of Homeland Security (DHS) has set the stage for an effective program. Since September 11, 2001, the Border Patrol has increased the number of agents from 9,788 to 10,835 as of December 1, 2003. Between the ports of entry on the northern border, the size of the Border Patrol has tripled to more than 1,000 agents. In addition, the Border Patrol is continuing installation of monitoring devices along the borders to detect illegal activity. Moreover, since March 1, 2003, all CBP officers have received antiterrorism training.

We believe the program should link efforts to control our border through agreements with countries whose nationals participate in, and benefit from, the program. We are currently negotiating interior repatriation agreements with Mexico that would help break the cycle of alien smuggling by returning aliens closer to their home in the interior of their country. Cooperation from the Mexican government will be especially critical, including possibly greater Mexican efforts to control the flow of Mexican migrants not qualified under the temporary worker program to the U.S. border and greater Mexican efforts to combat human smuggling organizations. U.S. Customs and Border Protection (CBP) will continue its Integrated Border Enforcement Team (IBET) operations on the Canadian border and continue its cooperative efforts with both the governments of Canada and Mexico.

A critical function of the Border Patrol is to save lives. A temporary worker program that permits participants to cross through our ports of entry freely, decreases the number of aliens who will desperately attempt to cross our border through desert land in dangerous conditions, thereby saving lives.

The Border Patrol is also adding sensors and other technology that assist in detecting illegal crossings along both our northern and southern borders, including Remote Video Surveillance (RVS) systems. These RVS systems are real-time remotely controlled force enhancement camera systems, which provide coverage along the northern and southern land borders of the United States, 24 hours per day, 7 days a week. The RVS system significantly enhances the Border Patrol's ability to detect, identify, and respond to border intrusions, and it has a deterrent value as well. There are currently 269 completed Remote Video Surveillance (RVS) sites in operation; 200 along the southwest border and 69 along the northern border. An additional 216 installations are in progress.

CBP pursues many initiatives in the ongoing effort to ensure a balance of two critical DHS objectives: (1) increasing security; and (2) facilitating legitimate trade and travel. These initiatives include the use of advance information, risk management, and technology, and partnering with other nations and with the private sector. Using these principles, CBP understands that security and facilitation are not mutually exclusive. Since 9/11, we have developed strategies and initiatives that make our borders more secure while simultaneously ensuring a more efficient flow of legitimate trade and travel. For example, CBP has continued to implement a variety of programs to both protect and facilitate trade and travel on our land borders, including NEXUS and FAST, which speed the cross-border movement of trusted and vetted travelers and cargo.

In improving our nation's homeland security, CBP has created "One Face at the Border." This includes designating one Port Director at each port of entry and instituting a single, unified chain of command for all CBP Officers at all of our ports of entry and all our inspectors - whether they be legacy customs, immigration, or agriculture employees. CBP has also developed specialized immigration and customs antiterrorism response teams and consolidated its passenger analytical targeting units. These units coordinate with CBP's National Targeting Center, which serves as the interagency focal point for obtaining manifests and passenger information for flights of concern.

A Temporary Worker Program will not change CBP's mission. Unauthorized entry into the United States will still be illegal, and CBP will continue to improve our Homeland Security by gaining greater control over our borders and more effectively and efficiently inspecting and screening arriving passengers, vehicles, and conveyances. For this reason, as reflected in the President's 2005 Budget, it will be more important than ever to ensure that the Border Patrol has adequate funding for the personnel, infrastructure, equipment and technology to continue to adopt its tactics and deploy its resources to meet its priority anti-terrorism mission.

II. PROVIDING INCENTIVES FOR RETURN TO HOME COUNTRY

The President's proposal for the temporary worker program requires the return of temporary workers to their home country after their period of work has concluded. The legal status granted by this program would last three years, be renewable, and would have an end. Returning home is made more desirable because during the temporary work period, workers would be permitted to come and go across the U.S. borders so the workers can maintain roots in their home country.

In addition, the Temporary Worker Program would offer additional incentives for these workers to return home, including portability of investments and the skills learned and education attained during their work experience in America.

III. WORKPLACE ENFORCEMENT OF IMMIGRATION LAWS

A temporary worker program would require workplace enforcement. The worksite enforcement mission is now located in Immigration and Customs Enforcement's (ICE) National Security Division. The goal is to maintain integrity in the employment procedures and requirements set forth under our immigration laws. The Critical Infrastructure Protection Unit within the ICE National Security Division is the unit responsible for coordinating enforcement of our employment requirements under the Immigration and Nationality Act. ICE will continue to coordinate its employer sanctions and worksite enforcement activities with agencies having relevant jurisdiction, such as the Department of Labor and the Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices, where there are indications of worker abuse based on illegal status or intentional abuses of salary requirements and laws on account of an alien's illegal status. Further, monitoring will occur in situations such as criminal and administrative investigations of employers, in conjunction with ongoing alien smuggling investigations, and in industries where intelligence and ICE auditing indicates widespread disregard of employment verification requirements.

Since 9/11, DHS has audited 3,640 businesses, examined 259,037 employee records, arrested 1,030 unauthorized workers, and participated in the criminal indictment of 774 individuals. Post-9/11 enforcement operations targeting unauthorized workers at critical infrastructure facilities identified over 5,000 unauthorized workers who obtained employment at airports, nuclear plants, sporting arenas, military bases, and federal buildings by presenting counterfeit documents to their employers and providing false information to security officials. DHS' challenge is to enhance public safety to ensure that individuals intending to do us harm are not providing access to controlled areas.

In addition to tougher worksite enforcement, we envision that a temporary worker program would also require employers to report when foreign workers enter and leave their employment to maintain the integrity of the immigration system. This would help DHS ensure that the temporary workers are maintaining their legal status under the program particularly when workers switch jobs. We look forward to working with Congress to achieve this goal.

Lastly, I want to highlight another key aspect to the President's proposal - ensuring that past illegal behavior is not rewarded. This proposal does not provide an automatic path to citizenship. The program has a finite period of time and requires workers to return home. Those that have broken the law and remain illegally in our country should not receive an unfair advantage over those who have followed the law. We recognize that some

temporary workers will want to remain in the U.S. and pursue citizenship. They will be able to apply for green card status through the existing process behind those already in line.

IV. FY 2005 BUDGET FOR IMMIGRATION ENFORCEMENT

In conjunction with the temporary worker program, the President is committed to enhancing immigration security and enforcement, as the FY 2005 budget illustrates. The FY 2005 budget seeks \$4.0 billion for ICE, \$302 million more than FY 2004, and \$6.2 billion for CBP, an increase of \$258 million over FY 2004.

A. ICE Budget Requests

The FY 2005 President's Budget includes \$41 million for ICE worksite enforcement, an addition of \$23 million above the FY 2004 budget. This more than doubling of existing funds for worksite enforcement illustrates the President's commitment to serious immigration enforcement and the rule of law as part of a temporary worker program.

Detention and Removal of illegal aliens present in the United States is critical to the enforcement of our immigration laws. An increase of \$108 million in FY 2005 will expand ongoing fugitive apprehension efforts and the removal from the United States of jailed offenders, and support additional detention and removal capacity.

In FY 2003, ICE removed 76,604 criminal aliens. Under "Operation Predator," ICE identifies, investigates, and removes child predators from America's streets. From July 9, 2003, when Operation Predator began, through December 2003, ICE apprehended 1,694 predators. The FY 2005 budget requests an appropriated funding increase of \$78 million to fund improvements in immigration enforcement both domestically and overseas, including a doubling of current worksite enforcement efforts. This funding will be used to detect and locate individuals in the United States who are in violation of immigration laws, or who are engaging in immigration-related fraud. Also, pursuant to section 428 of the Homeland Security Act, the Department of Homeland Security will improve visa security by working cooperatively with U.S. consular offices to evaluate visa applicants.

As part of its overall immigration enforcement strategy, ICE will continue to analyze data generated through the Student and Exchange Visitor Information System (SEVIS) and US-VISIT program to detect individuals who are in violation of the Nation's immigration laws and pose a threat to homeland security. The FY 2005 budget's request of \$16 million will increase the funding for ICE's SEVIS and US-VISIT compliance efforts by over 150 percent.

Pursuant to section 428 of the Homeland Security Act and the Memorandum of Understanding between the Departments of Homeland Security and State, ICE's FY 2005 budget request of \$14 million includes an increase of \$10 million to support a new Visa Security Unit (VSU). The VSU and DHS staff stationed at overseas posts, including Saudi Arabia, will work cooperatively with U.S. consular officials to promote homeland security in the visa process.

Immigration fraud poses a severe threat to national security and public safety because it enables terrorists, criminals, and illegal aliens to gain entry and remain in the United States. ICE's goal, in conjunction with CIS, is to detect, combat, and deter immigration fraud through aggressive, focused, and comprehensive investigations and prosecutions. The \$25 million FY 2005 budget request will provide stable funding to ICE's benefits fraud program by replacing funding previously provided through the Examinations Fee Account.

The Institutional Removal Program is designed to ensure that aliens convicted of crimes in the U.S. are identified, processed, and, where possible, removed prior to their release from a correctional institution. The FY 2005 budget request of \$30 million will further ICE's plans to expand the program nationally to all Federal,

State, and local institutions that house criminal aliens, while ensuring more efficient processing and case management.

Fifty million dollars are requested to continue the implementation of the National Fugitive Operations Program, established in 2002, which seeks to eliminate the existing backlog and growth of the fugitive alien population over the next six years.

Eleven million dollars have been requested in the FY 2005 budget to establish non-traditional family and female detention settings and establish community supervision operations. The premise for this initiative is that the effective control of persons released into the community during immigration proceedings or while awaiting removal will stem the growth of the fugitive population.

From FY 2001 to FY 2002, the number of cases filed in Immigration Court increased by more than 8000. During that same period, the number of unresolved cases rose by nearly 40,000. To keep pace with the increased number of cases and help eliminate the backlog, additional attorneys and support staff are required. Six million dollars are sought in the FY 2005 budget to increase the program staffing and help address the increased workload.

Adequate detention space has long been considered a necessary tool to ensure effective removal operations. An increase in bed space to accommodate a higher volume of apprehended criminal aliens results in a significantly higher appearance rate at immigration proceedings. When final orders of removal are issued, this will result in a greater number of removals and fewer absconders. With the \$5 million request, ICE will enhance its ability to remove illegal aliens from the United States.

B. CBP and US-VISIT Budget Requests

In FY 2003, CBP processed 412.8 million passengers and pedestrians arriving in the U.S. - 327 million at land borders, 70.8 million at international airports, and 15 million at sea ports. The FY 2005 budget seeks \$2.7 billion for border security inspections and trade facilitation at ports of entry and \$1.8 billion for border security and control between ports of entry. This includes \$10 million for Unmanned Aerial Vehicles testing and \$64 million for border enforcement technology, such as sensors and cameras. The FY'05 budget provides \$340 million for US-VISIT, an increase of \$10 million over the FY 2004 funding. Only one month old, US-VISIT has successfully and efficiently recorded the entry of 1,114,119 passengers and the exit of 3,067 travelers without causing delays at ports of entry or hindering trade. Eighty-four watch list hits, including serious criminals, have been verified under US-VISIT because of the biometric collection from nonimmigrant visa holders. Aliens who have repeatedly entered the U.S. illegally and used multiple aliases are now being detected. US-VISIT will play a key role in the President's temporary worker program by validating that aliens are complying with the terms of the worker program as they enter and exit through ports of entry, making it easier to enforce the program. The President's proposed temporary worker program complements BTS' immigration enforcement initiatives and programs, particularly worksite enforcement, as well as the FY 2005 budget requests. The President is committed to moving this initiative forward. While the Administration certainly recognizes that immigration is a complicated, emotional issue, advocates across the immigration spectrum want reform of our unduly confusing and inconsistent immigration laws. Passing a temporary worker program that works to benefit the American economy while bringing integrity to our immigration system is a reasonable goal for all of us. The Administration is ready to work with the Congress to move forward in achieving this important goal.