

Subcommittee on Immigration, Citizenship, Refugees,
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Hearing on

Past, Present, and Future: A Historic and Personal Reflection on American Immigration

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Good morning Chairman Lofgren, Ranking Member King, and Members of the Subcommittee. My name is Jack Martin, and I am Special Projects Director for the Federation for American Immigration Reform. FAIR is a national, non-profit, public interest organization representing more than 250,000 members and activists that has been working for more than 26 years to end illegal immigration, to restore moderation to legal immigration and to reform our immigration laws to bring them into accord with the national interest. On behalf of the more than 250,000 FAIR members and activists, thank you for this opportunity to share with you our perspectives on current day immigration.

The setting here at Ellis Island in sight of the Statue of Liberty is a vivid reminder of America's immigration history. It is estimated that as many as two-fifths of today's Americans have ancestors who were among the over 12 million immigrants processed at Ellis Island during its 62 years of operation. While we remember our immigration history and those who entered through this portal, we should not forget that Ellis Island was a screening center. Not everybody who came here was admitted as an immigrant. Since the beginning of Ellis Island as an immigration portal, we have not had open borders to all comers.

Today the country is intently focused on the issue of who should be admitted as immigrants and in what numbers. Our standards today are similar to those that applied during most of the time that Ellis Island was operating as a screening station. Not only were our laws aimed at protecting the American public against possible harm, they also were aimed at regulating the size of the flow.

The immigration debate today is heavily influenced by the issue of millions of foreigners who are residing illegally in our country. These are persons who have not been screened to make sure they represent no threat to the American public, and who have violated the limits that are intended to regulate a moderate flow of immigrants.

A FOCUS ON THE UNSCREENED, UNINVITED ILLEGAL ENTRANTS

My focus today is not on immigrants who enter America legally, but rather on those who disregard our immigration law by illegally entering the country or who chose to ignore the requirement that they leave the country when their entry permit expires.

It is important not to ignore the distinction between those who come to the United States legally as immigrants and those who come here illegally. It is important because legally admitted immigrants are screened by our consular and immigration officials to assure that they do not represent a threat to the American public, while illegal immigrants, by the nature of their presence in the country, bypass any such screening. If legally admitted immigrants were found to have any significant involvement in crime in our country, it would be a serious indictment of our screening process akin to the scandalous sloppiness of our consular nonimmigrant screening process that gave visas to the 19 terrorists who committed the

mass murder of nearly 3,000 innocents here in New York, in Washington, DC and in Pennsylvania on September 11, 2001.

When both legal and illegal immigrants are lumped together in studies of their impact on the country, the results are misleading. Whether studying immigrant educational levels, or poverty, or criminal activity, for example, such studies do a disservice to legal immigrants and disguise the impact on the country by illegal alien residents. Legal immigrants are screened to make sure that they will be self-supporting after their arrival, they also often have sponsors, and they are not admitted if they have criminal records or are considered some threat to the American public. This obviously is not true for those who are in the United States in violation of our immigration laws.

A FOCUS ON THE ISSUE OF CRIMINAL ALIENS

As noted above, it is unsurprising that the incidence of criminal activity is much greater among those who have broken our immigration laws than among those who have adhered to them. Not only are those who violate our immigration laws not screened to exclude those who have criminal backgrounds, but those entering the country illegally are more likely to be living on the economic margins of our society and be attracted to criminal activity, especially economic crimes.

Arizona serves as a case in point. The state in 2000 had the nation's highest per capita rate of illegal aliens. According to the FBI Uniform Crime Reports, it also had the nation's highest rate of property crimes, the highest rate of vehicle theft, and the 2nd highest rate of larceny theft. It also ranked above the median among the states for burglaries (5th), murders (9th), robberies (15th), and aggravated assaults (15th).

While it would be wrong to assume that most illegal immigrants enter the country with the intent of harm to Americans, nevertheless, they are likely to leave harm in their wake. At the outset, they often cause property loss to landowners through whose property they cross. If they cross through public lands, they often contribute to ecological damage. Human smuggling operations often are related to criminal activities in the United States such as prostitution, drug distribution, or increasingly gang-related activities.

According to a recently released report of Homeland Security's Inspector General's Office, about 5.4 percent of the estimated illegal alien population in the country – about 623,000 persons – is comprised of fugitive aliens, i.e., those who have had their day in court and been ordered to leave. That share is understated because it compares fugitive aliens, who may be presumed to be adults, with the overall estimated illegal alien population, which has a significant number of children in it. A more realistic percentage of the share of illegal aliens in the country who are fugitive aliens is likely higher than eight percent. Despite the fact that the immigration authorities have mounted a major effort in recent years to locate and remove these fugitives from the country, the number of fugitive aliens loose in the country continues to climb.

According to DHS Inspector General Richard L. Skinner, "The fugitive alien population is growing at a rate that exceeds the teams' ability to apprehend." He noted the inability of the apprehension teams, "to keep pace with the increase in the backlog of fugitive aliens, not to mention reduce it."

This enormous number of fugitive aliens does not include the number of deportable aliens who are not at large because they are incarcerated. The Bureau of Justice Statistics reports on the basis of a prisoner census in 2000 that one-fourth of federal prisoners are deportable aliens. About 5 percent of state prisoners are similarly deportable aliens, as are about 12 percent of those in privately-run prisons. A Government Accountability Office report in April 2005 prepared for Congress found 49,000 criminal aliens incarcerated in the federal prison system in 2004 and an additional 77,000 criminal aliens in state prisons plus a further 147,000 criminal aliens in local jail systems. That totals to 273,000 deportable criminal aliens in prison.

DISTORTED DATA ON CRIMES BY IMMIGRANTS

Some researchers recently have issued findings that suggest that criminal activity by immigrants is not a problem, because the crime incidence is lower than for native-born citizens. That finding has been taken to the absurd conclusion of suggesting that if a community wanted to reduce its crime rate, it should seek the settlement of immigrants.

This research finding is very misleading for the reason previously mentioned. It is a serious error to lump together both legal immigrants and illegal aliens when studying crime incidence. Legal immigrants should be assumed to have a criminal activity incidence near zero. And, because legal residents constitute the largest share of the foreign-born population, a study that lumps the two groups together distorts the crime incidence by both legal and illegal aliens, but especially the latter, as they are the smaller group.

CORRECTING THE RECORD

In fairness to legally admitted immigrants and to policymakers who must grapple with the problem of confronting the illegal immigration problem, it is necessary to focus specifically on the incidence of illegal alien criminality. This can only be done with data that identifies who among the prison population are criminal aliens. Fortunately, data are available that allow for this focus. They are compiled in the State Criminal Alien Assistance Program, known as SCAAP.

SCAAP data are reported by state and local prison authorities to the federal government in the process of seeking reimbursement for their costs. The data are partial, because some jurisdictions judge the level of compensation is so low that it is not worth the effort. The recent GAO report was based on data reported in the SCAAP program by 47 states and about 700 local governments.

My recent report is "Illegal Aliens and Crime Incidence: Illegal Aliens Represent a Disproportionately High Share of the Prison Population" used SCAAP data to identify the size of the incarcerated population and the share composed of deportable aliens. I found that the criminal aliens were 4.5 percent of the total prison population in terms of detention days. I then calculated how this share compared to the illegal alien share of the overall population, using a federal government estimate of the illegal alien population and adjusting the overall population and the illegal alien population for just adults. My finding was that illegal aliens constituted 3.1 percent of the population. The higher incidence by criminal aliens in the state and local prisons than their representation in the adult population demonstrates that illegal aliens are likely to be incarcerated for crimes nearly half-again – a more than 45 percent higher rate – than their presence in the population.

This finding suggests that, on average, a community that turns a blind eye to or accommodates illegal resident aliens is running a risk for a higher incidence of crime in that community.

A growing number of states and local jurisdictions are acting to discourage the settlement of illegal aliens in their communities despite the argument that immigration policy is a federal responsibility. FAIR certainly agrees that immigration policy is a federal responsibility, but it is actively engaged in defending the right of local jurisdictions to adopt policies to discourage illegal immigration. We know from our extensive network of members across the country and our contacts with local officials that they are hoping that Congress will act to alleviate the problem of illegal immigration without repeating the serious mistake of the amnesty in 1986 that resulted in a major increase in illegal immigration.

A Realistic Aspiration

It is our hope and that of a majority of Americans, I am sure, that we effectively end the illegal immigration problem now confronting us so that the American people may again confidently welcome all foreigners – whether immigrants, refugees, students, tourists, or other visitors – as legal entrants into the country in compliance with our immigration law. That will not be achieved until we have effective control over our

borders and our workplaces. The tools to achieve this aspiration are available, what is still lacking is the political will and the legal framework necessary to make it a reality.