

TESTIMONY OF MICHAEL W. CUTLER, SENIOR SPECIAL AGENT, INS (RET.)

FOR THE HEARING TO BE HELD ON JANUARY 26, 2011 ON THE TOPIC:

“ICE WORKSITE ENFORCEMENT – UP TO THE JOB?”

BEFORE THE COMMITTEE ON THE JUDICIARY OF THE HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT

Chairman Gallegly, Vice Chairman King, Ranking Member Lofgren, members of the Congress, distinguished members of the panel, ladies and gentlemen:

I would like to start out by thanking House Judiciary Committee Chairman Lamar Smith, Subcommittee Chairman Elton Gallegly and Vice Chairman Steve King for their steadfast leadership in the critical issue of immigration law enforcement as well as thanking them for the invitation to appear before you today; it is an honor and a privilege to be provided with this opportunity.

The effective enforcement of our nation’s immigration laws and the creation of an immigration benefits program that has real integrity must be seen as vital components in the “War on Terror” and in efforts to protect our nation and our citizens from various pernicious transnational criminal organization such as the Mexican drug cartels. Simply stated, we cannot protect our nation and our citizens from these and other threats as long as our borders remain porous and millions of illegal aliens whose true identities are unknown and unknowable, live and work in communities throughout our nation.

Our nation’s immigration laws can only be effectively enforced if all elements of the enforcement program and the immigration benefits program are made to operate as components of a unified system.

The prospect of securing illegal employment provides the motivation that draws the majority of the illegal aliens across our nation’s borders, whether they enter our country by running our nation’s borders or by entering via the inspections process and then, subsequently, violating the terms of their admission. The incentive that such employment provides is so strong that it often causes aliens to go to such extremes that their efforts to circumvent the inspections process imperils their safety, if not their very lives.

Additionally, in order to achieve the goal of entering the United States, illegal aliens often pay large sums of money to smugglers who may well use these aliens to facilitate the smuggling of narcotics into the United States. The revenue that the smuggling trade provides often fills the coffers of criminal organizations from all over the world. Once an alien succeeds in violating our nation’s borders and making his (her) way to a city in the United States, he is likely to pay other criminals such as document vendors and identity thieves in order to secure identity documents.

Many of the illegal aliens who enter our country are single young men who, at least initially, leave behind their wives and girlfriends. This large population of illegal aliens provides potential clientele for houses of prostitution that leads to more crime and more human trafficking and more unspeakable exploitation.

Until the Immigration Reform and Control Act (IRCA) was enacted in 1986, unscrupulous employers who intentionally hired illegal aliens had little to fear from immigration law enforcement officers. Unless they harbored, shielded or transported illegal aliens there was no statutory authority, under the Immigration and Nationality Act, to punish exploitive employers. Because of this, employers were able intimidate their illegal alien workforce by threatening to call the former INS to have illegal alien employees arrested if they complained about working conditions that often involved not only wages that were well below prevailing wage levels or even minimum wage standards, but also often involved employment situations where a wide variety of health and safety issues were utterly ignored.

As an INS special agent I often saw horrific examples of such outrageous situations when I was involved in investigating illegal aliens who were working in a wide variety of industries in the United States.

On paper, at least, IRCA was to change the dynamics of this situation. Finally unscrupulous employers could be fined and ultimately prosecuted for intentionally hiring illegal aliens. This legal weapon in the legal arsenal provided my colleagues and me with encouragement that an era with a far more balanced approach to immigration law enforcement was dawning. Of course there were never nearly enough agents conducting these investigations to truly act as a deterrent and there were other issues I hope we will be able to discuss later on today, but at least the enactment of employer sanctions provisions did provide us with encouragement that was, unfortunately, short-lived. We understood that when employers intentionally hired illegal aliens there was a tacit understanding between the employers and the employed with both sides now vulnerable to punishment under the law.

Aliens motivated to violate our borders to seek unlawful employment would be deterred from violating our nation's borders and other laws, if they became convinced that our government had the resources and political will to secure our nation's borders and effectively enforce the immigration laws from within the interior of the United States, seeking to locate, apprehend and remove illegal aliens from our nation.

This would certainly take significant pressure off of our nation's porous borders and make the work of our beleaguered, valiant Border Patrol Agents a bit easier. Denying employment to illegal aliens would also stanch the flow of tens of billions of dollars of money wired or otherwise transmitted by illegal aliens from the United States to their home countries. This is money that is not spent in the

United States, money that is not invested in the United States and money that is not earned by United States citizens and lawful immigrants who are finding it increasingly difficult to support themselves and their families given the economic hardship that ever so many Americans are now facing today.

Just about every politician talks about the need to create new jobs. However, if new jobs are created but are then taken by illegal aliens and not United States citizens or resident aliens, neither our citizens nor our nation would benefit from those newly created jobs.

While I am not an economist, I am convinced that increasing resources to the interior enforcement mission would save our nation's economy more money than would be invested in such an increase in resources.

An effectively managed employers sanctions program would provide important national security/community safety benefits that would accrue through the implementation of such a program. I ask that you consider that terrorists and criminal aliens often seek employment as a means of embedding themselves in a community. Terrorists and criminals are often described by the jobs they held at the time that they were arrested, jobs that provide them with money, camouflage and mobility.

Some terrorists also avail themselves of opportunities to acquire lawful immigration status by committing immigration benefit fraud- an issue I hope you will delve into in detail in future hearings, but it is also important to note that as an INS Special Agent I often apprehended criminal aliens on the jobs where they worked. These aliens had lengthy conviction records and may well have been previously deported and were working at nondescript jobs that enabled them to hide in plain sight.

Leaders at ICE often note their concerns about illegal aliens working at what are described as being components of "critical infrastructure." Among such stated venues are airports, nuclear power plants, chemical plants and military bases to name the most commonly noted facilities.

Recently officials of the DHS voiced concerns about Mumbai-style attacks being carried out in Europe or the United States that would target hotels or places where large numbers of people congregate as well as recently stated concerns about efforts by al-Qaeda to poison patrons of restaurants or hotels.

It would then logically follow that critical infrastructure should also include food processing plants.

How secure is our nation and how safe are our citizens, when you consider that there are many thousands of illegal aliens working in our country in a variety of venues, including food processing plants as well as restaurants and hotels, where they may come into direct contact with the food we eat and there is no way of knowing their true identities, or backgrounds, or intentions?

In my nearly 40 years of involvement with the immigration issue, I have not seen any administration

distinguish itself by effectively securing our nation's borders or enforcing the immigration laws of our nation. However in my view, the current administration has all but rolled out the welcome mat to illegal aliens. Consider that the President and high level members of the administration have made it clear that during the course of employer sanctions investigations, employers would be punished but that no meaningful effort to arrest, detain and seek the removal of illegal aliens relating to the worksite investigation would be undertaken. This sends a clear and very wrong message to illegal aliens and to people around the world who might be contemplating running our nation's borders or otherwise entering our country to seek illegal employment- such aliens have virtually nothing to fear from the special agents of ICE.

To expand a bit on this point, when I was an INS special agent I was convinced that when my colleagues and I encountered illegal aliens and then failed to take them into custody and seek to have them immediately brought before an Immigration Judge that we actually did more harm than if we had not encountered those illegal aliens in the first place. Many of these illegal aliens used multiple false names and all too often provided false addresses. Through "Catch and Release" we emboldened these aliens because it became readily apparent to them that the former INS lacked the resources to take action against those foreign nationals who violated our nation's borders and a variety of law including, but limited to, our immigration laws. Most of these illegal aliens never showed up for hearings even if they were served with an Order To Show Cause. My perspective was shared by most of of my colleagues who were also demoralized by this deplorable situation.

Today illegal aliens who are encountered during the course of Employer Sanctions investigations may not even be served with a Notice To Appear- the equivalent document. This makes it abundantly clear that the government of the United States is unconcerned about aliens who violate our borders and violate a slew of laws as well. Imagine the astonishment of the illegal aliens who are encountered by the special agents of ICE and quickly discover that no meaningful action is taken against them for their violations of our borders and our laws. Imagine the phone calls that they will undoubtedly make to their friends back in their home countries telling them that federal immigration law enforcement officers couldn't care less about them or the laws they violated. Think how many more foreign nationals become persuaded to run our nation's borders to seek unlawful employment and ignore the very same immigration laws that the government of the United States is apparently happy to ignore.

Additionally, from what I have heard, all too frequently worksite investigations are carried out purely by ICE personnel auditing I-9 forms and do not even involve interviewing the employees of the companies at all. This all but guarantees that illegal aliens will not come into contact with special agents of ICE and hence will not be taken into custody.

Last week, the Wall Street Journal reported on ICE's creation of the "Employment Compliance Inspection Center" that is supposed to facilitate the auditing of I-9's and supporting documents for companies that hire large numbers of employees. Such auditing operations have been aptly given the nickname "silent raids." These "raids" do not involve the arrest of illegal aliens and therefore I suspect most illegal aliens hear nothing about these efforts to punish employers accused of intentionally hiring illegal aliens. Certainly "silent raids" do not deter illegal aliens from entering the United States which should be an important goal of worksite investigations.

Furthermore, the President and members of Congress of both houses and both major parties have spoken frequently about the need to place illegal aliens on a “pathway to United States citizenship” thereby all but declaring that running our nation's borders is a prerequisite for becoming a United States citizen.

Also worth noting is the lawsuit filed by the United States Department of Justice in an effort to block the State of Arizona from enforcing its own immigration laws that parallel the federal statutes- not only won't the federal government enforce the federal immigration laws effectively, it is clear it will seek to block any state that attempts to fill the enforcement vacuum created by the administration's stance on immigration law enforcement. This offers further encouragement to illegal aliens and those foreign nationals who aspire to become illegal aliens in our country.

If morale was low when I was employed by the former INS because of the the reasons I noted previously, morale at ICE today has to be all but nonexistent given the current state of affairs concerning the current administration's posture on the enforcement of our nation's immigration laws.

I would like to end my prepared testimony by recalling that prior to World War II, the enforcement of the immigration laws had been the responsibility of the Department of Labor out of a concern that if large numbers of foreign workers were able to enter our country to seek employment that such an influx of workers would serve to drive down wages and worsen the working conditions of the American worker. Indeed, our laws still reflect that it is illegal to hire foreign workers if, in so doing harm is done to the American workforce.

Effective worksite investigations are supposed to protect our nation and our workers and turn off the power to the “magnet” that draws so many illegal aliens to our country. The time has long since come for our government to actually provide the resources and the leadership to enforce these important provisions of our nation's immigration laws.

I am gratified that you are holding this hearing on an issue that is of such profound importance to all Americans, especially today.

I look forward to your questions.