

**Prepared Testimony of Michael W. Cutler, Senior Special Agent, INS (Ret.)
for Senate Judiciary Committee Hearing on March 20, 2013 on the topic:
“Building an Immigration System Worthy of American Values”**

Good afternoon Chairman Leahy, Senator Coons, Ranking Member Grassley, other members of the Judiciary Committee, fellow witnesses, ladies and gentlemen.

I greatly appreciate the opportunity to provide my perspectives at this important hearing concerning how America's immigration system be made reflective and worthy of American values. For me personally, immigration is the story of my own family and it has virtually been my life's work. As you may know, I was sworn in as an Immigration Inspector in October 1971 at the New York District Office of the former Immigration and Naturalization Service. Thus began my career with the INS that would span some 30 years. At the end of my career with the INS I was a Senior Special Agent assigned to the Organized Crime, Drug Enforcement Task Force.

My career provided me with a unique front row seat to the true importance of America's immigration laws to nearly every challenge and threat confronting America and Americans.

Rather than simply being a single issue, immigration is a *singular* issue that impacts everything from national security, criminal justice and community safety to the economy, unemployment, healthcare and public health, education and the environment to name the most prominent.

America's immigration laws were enacted to achieve two critical goals- protect innocent lives and protect the jobs of American workers.

A review of Title 8, United States Code, Section 1182 will make the purpose and intentions of our immigration laws clear. This section of the Immigration and Nationality Act enumerates the categories of aliens who are ineligible to enter the United States. Among these categories are aliens who have dangerous communicable diseases, suffer extreme mental illness and are prone to violence or are sex offenders. Criminals who have committed serious crimes are also excludible as are spies, terrorists, human rights violators and war criminals. Finally, aliens who would work in violation of law or become public charges are also deemed excludible.

It is vital to note that there is nothing in our immigration laws that would exclude aliens because of race, religion or ethnicity.

Our valiant members of the armed forces are charged with keeping our enemies as far from our borders as possible while the DHS is charged with securing our borders from within. While mentioning our borders it is vital to understand that any state that has an international airport or has access to a seaport is as much a border state as are those states that are found along America's northern and southern borders.

We are constantly told that the immigration system is broken. What is never discussed is the fact that for decades the federal government has failed to effectively secure America's borders and enforce and administer the immigration laws. These failures convinced desperate people from around the world that the United States is not serious about its borders or its laws. This impression was further

exacerbated by the Amnesty created by IRCA in 1986 which enabled more than 3.5 million illegal aliens to acquire lawful status and a pathway to United States citizenship.

This supposed one-time program that was to finally restore integrity to the immigration system was an abysmal failure. It could be argued that the failures to effectively enforce the immigration laws especially where the employer sanctions provisions of IRCA was concerned, to balance the amnesty provisions, provided a huge incentive for aliens to enter the United States in violation of America's borders and laws and consequently, the United States witnessed the largest influx of illegal aliens in history.

Respect for America's immigration laws have been further eroded by other factors such as the advocacy by the administration, and some Congressional leaders, for the creation of a program under the aegis of "Comprehensive Immigration Reform" that, if enacted, would provide unknown millions of illegal aliens, whose true identities and entry data are unverifiable, with pathways to citizenship. There are many reasons that programs such as these are problematic, but first and foremost is the undeniable fact that there is no way to determine the true identities of these aliens nor any way to verify how or when they entered the United States. This lack of integrity also plagues the program known as DACA (Deferred Action for Childhood Arrivals) that the administration created under the guise of "prosecutorial discretion" to provide illegal aliens who claim to have entered the United States as teenagers with temporary lawful status and employment authorization. It has been estimated that this program may ultimately provide between one million and two million such illegal aliens with official identity documents and employment authorization. The identity documents enable those to whom these documents are issued to obtain Social Security cards, driver's licenses and other such official identity documents even though it is virtually impossible to be certain of the true identities of the aliens to whom these documents are issued.

These are essentially the same aliens who would have been eligible for lawful status under the failed legislation known as the DREAM Act. As a former INS special agent I can tell you that there is no magical way to verify the information contained in the applications for participation in Comprehensive Immigration Reform or DACA is accurate or honest. The best chance to do this would be to conduct full field investigations- investigations that ICE and USCIS do not have the resources to conduct. Time and again the GAO and OIG have pointed to a lack of integrity to the immigration benefits program. Fraud undermines the immigration system and national security as well.

Here is are two important excerpts from the 9/11 Commission Staff Report on Terrorist Travel.

First of all, here is the first paragraph from the preface of that report:

"It is perhaps obvious to state that terrorists cannot plan and carry out attacks in the United States if they are unable to enter the country. Yet prior to September 11, while there were efforts to enhance border security, no agency of the U.S. government thought of border security as a tool in the counterterrorism arsenal. Indeed, even after 19 hijackers demonstrated the relative ease of obtaining a U.S. visa and gaining admission into the United States, border security still is not considered a cornerstone of national security policy. We believe, for reasons we discuss in the following pages, that it must be made one."

Here is a paragraph under the title "Immigration Benefits" found on page 98:

"Terrorists in the 1990s, as well as the September 11 hijackers, needed to find a way to stay in or embed themselves in the United States if their operational plans were to come to fruition. As already discussed, this could be accomplished legally by marrying an American citizen, achieving temporary worker status, or applying for asylum after entering. In many cases, the act of filing for an immigration benefit sufficed to permit the alien to remain in the country until the petition was adjudicated. Terrorists were free to conduct surveillance, coordinate operations, obtain and receive funding, go to school and learn English, make contacts in the United States, acquire necessary materials, and execute an attack."

On December 7, 2012 the DHS OIG issued a report that was entitled:

“Improvements Needed for SAVE To Accurately Determine Immigration Status of Individuals Ordered Deported”

In conducting its investigation and preparing the report, the OIG examined the SAVE (Systematic Alien Verification for Entitlements) program. The results of the review were disconcerting, to say the least. The report noted that failures to update the data in the system could potentially affect the more than 800,000 individuals who have been ordered deported, removed, and excluded but who are still in the United States. That report went on to note that a random statistical sample tests of individuals who had been ordered deported but still remained in the United States identified a 12 percent error rate in immigration status verification. In other words, these individuals had no status, but were erroneously identified as having lawful immigration status.

Adding this to the clearly stated policies of the administration which invoked “Prosecutorial Discretion” to not arrest or seek the removal of illegal aliens unless the aliens in question have been convicted of committing serious crimes.

Most recently the administration has engaged in a program to release thousands of illegal aliens from custody who have criminal histories. This program undermines any vestiges of integrity that the immigration law enforcement program might have had. I cannot imagine how a clearer message could be sent to people around the world that our nation is not only willing to ignore violations of law but reward violations of laws that were enacted to protect innocent lives and the jobs of American workers.

Meanwhile leaders of some cities and states openly demonstrate their disdain and contempt for our immigration laws by declaring that they have created “sanctuaries” for illegal aliens; yet the federal government refuses to take action against them.

Each of these actions, or lack of action, has served to encourage, induce, aid or abet aliens to violate our immigration laws. Sanctuary cities and states also serve to shield illegal aliens from detection by the federal government. It is important to note that this all represents violations of Title 8, United States Code, Section 1324 that addresses alien smuggling, harboring, inducing and, in general facilitating the entry of illegal aliens into the United States.

This would be wrong at any time but my concern is that today our nation is threatened by international terrorist organizations and transnational criminals from the four corners of our planet, and the pernicious gangs and criminal organizations that they often belong to.

Notwithstanding these threats and the fact that the American economy is hobbled by extraordinarily

high unemployment and underemployment rates, the immigration component of these challenges has been ignored. Each month the United States lawfully admits tens of thousands of foreign workers who are authorized to work in the United States, while failures to effectively secure our borders and enforce the immigration laws from within the interior of the United States provides unfair competition for American workers desperate to find decent jobs. By not routinely enforcing the immigration laws and by its latest decision to release thousands of criminal aliens, the entire immigration system has come to lack integrity and fails to provide the deterrence against foreign nationals who would enter the United States intent on working illegally or, perhaps, with far more nefarious goals in mind.

Law enforcement is at its best when it creates a climate of deterrence to convince those who might be contemplating violating the law that such an effort is likely to be discovered and that if discovered, adverse consequences will result for the law violators. Current policies and statements by the administration, in my view, encourages aspiring illegal aliens around the world to head for the United States. In effect the starter's pistol has been fired and for these folks, the finish line to this race is the border of the United States.

Back when I was an INS special agent I recall that Doris Meissner who was, at the time, the commissioner of the INS, said that the agency needed to be "customer oriented." Unfortunately, while I agree about the need to be customer oriented what Ms Meissner and too many politicians today seem to have forgotten is that the "customers" of the INS and of our government in general, are the citizens of the United States of America.

I look forward to your questions.