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U.S. House of Representatives

Committee on the Judiciary Hearing:

**“S. 744 and the Immigration Reform and Control Act of 1986: Lessons Learned or  
Mistakes Repeated?”**

Testimony of David V. Aguilar

Partner, GSIS

Retired Acting Commissioner US Customs and Border Protection

Chairman Goodlatte, Ranking Member Conyers, and distinguished Members of the Committee, it is an honor to appear before you this afternoon to testify on S.744 and the Immigration Reform and Control Act of 1986: "Lessons Learned or Mistakes Repeated". I have testified many times before Senate and House Committees and Subcommittees as Chief Patrol Agent of the Tucson Sector, overseeing the most active Border Patrol Sector in the nation, as National Chief of the United States Border Patrol during a time of tremendous growth, as Deputy Commissioner of US Customs and Border Protection, and as Acting Commissioner of CBP. But this is the first time that I testify from what I believe to be the most important position for anyone of us, as a citizen of our great country. I look forward to testifying today along with my distinguished and fellow panel members.

I believe that the subject of today's hearing is of critical importance to our nation. Our country has been struggling with the issue of immigration reform for many decades. It is a matter that captures our nation's attention and generates deep, some would say, visceral emotions. One thing that the vast number of Americans agree on is that our nation's immigration system is broken. I agree with this position.

I spent 35 years working the borders of our country at many levels within the organizations responsible for the security of those borders. As I will detail in my testimony, we have made tremendous advances in border security as a nation. Illegal immigration flows across our borders must be controlled. But we must understand that controlling this illegal flow of persons is but one of many challenges that the men and women who "stand the line" face each and every day. Officers and agents also combat the illegal flow of narcotics, criminals, criminal organizations, weapons, bulk currency, and cartel activities into our country.

Controlling, mitigating, managing, and addressing each and every one of these flows is critical to the security of our nation, but right now the most taxing and workload-intensive aspect of the job is the work that goes into controlling the illegal flow of people. A comprehensive and balanced immigration reform plan that guarantees a workable legal flow of immigrants in the future—and thereby diminishes the flow of illegal entrants—would allow the men and women who secure our borders to focus time and resources on these other threats and would significantly enhance our nation's security overall. It would be a tremendous force multiplier if we were able to dramatically reduce the illegal flows of people and redirect our border law enforcement efforts and resources towards the narcotics traffickers, criminals, and criminal organizations that will continue to try to exploit our borders.

The best way to do that is to successfully design and implement a comprehensive and balanced immigration reform bill that will finally respond to the demands of the American people and fix our broken immigration system. Because despite the advances in border security that we have made over the years, this is a problem we cannot fix through enforcement alone. We need an immigration system that allows us to meet our nation's labor needs, further enhances our border security efforts, implements an employment verification system with meaningful employer sanctions for violators, and provides a tough but fair path to legal status for the current unauthorized population.

The importance of providing for future legal flows must be taken into account. I believe this is the most important lesson we can learn from the Immigration Reform and Control Act of 1986 (IRCA). We need to make sure that people who come here to join close family members or fill needed jobs come in through our ports of entry, are subjected to background checks, and are admitted legally for proper reasons and under appropriate conditions. Based on my current

review of S. 744, the bipartisan Senate immigration reform bill, I believe that it contains the foundational pieces to set up such a successful system.

### **TRANSFORMED BORDERS: Unprecedented Resources at Our Borders**

Before I speak about our current level of investment into securing our borders, allow me to provide some context. During the time period when the Immigration Reform and Control Act (IRCA) was being considered and implemented from 1986 to 1990 there were approximately 3,000 Border Patrol Agents in Service throughout the entire southwest border. Technology at that time consisted literally of hand held flashlights, Viet Nam era sensors, very little lighting on the border, and certainly none of the outstanding technology that our agents work with today. Fencing and infrastructure were extremely minimal, nothing to speak about.

The difference between then and now is stark. We are at a time of opportunity. Our nation's borders are safer and more secure than ever before. The flows of illegal crossings are at their lowest point in over 40 years. Since its inception, DHS has dedicated historic levels of personnel, technology, and infrastructure in support of our border security efforts. Resource levels, when considered with other factors, remain essential elements in controlling and assessing the security of our borders. We have resourced our borders at and between the ports with unprecedented levels of enforcement assets.

Our partnership with Mexico is unprecedented. Today, US and Mexican agencies with responsibility for border enforcement coordinate and partner at levels and collaboration never seen before. This has made a dramatic difference in the manner in which our countries cooperate and work together against the criminal organizations that exploit our borders. I have witnessed and experienced a depth and growth of resolve on the part of our Mexican partners to jointly

work the border region that adjoins our two nations. There is a recognition on their part and ours that we have a joint responsibility to secure our borders.

Reduced crime rates along the Southwest border indicate success of our law enforcement efforts. According to 2010 FBI crime reports, violent crimes in Southwest border-states have dropped by an average of 40 percent in the last two decades. More specifically, all crime in the seven counties that comprise the South Texas area is down 10 percent from 2009 to 2011. Between 2000 and 2011, four cities along the Southwest border – San Diego, McAllen, El Paso, and Tucson – experienced population growth, while also seeing significant decreases in violent crime.

These border communities have also seen a dramatic boost to their economies in recent years. In FY 2012, over \$176 billion in goods entered through the Laredo and El Paso, Texas ports of entry as compared to \$160 billion in FY 2011. Additionally, the import value of goods entering the United States through Texas land ports has increased by 55 percent between FY 2009 and FY 2012. In Laredo alone, imported goods increased in value by 68 percent. Arizona is also a significant source for the flow of trade. In both FY 2011 and FY 2012, \$20 billion entered through Arizona ports of entry.

Communities along the Southwest border are among the most desirable places to live in the nation. Forbes ranked Tucson the number one city in its April 2012 “Best Cities to Buy a Home Right Now” and in February, 2012, the Tucson Association of Realtors reported that the total number of home sales was up 16% from the same month the previous year. Tucson also joins Las Cruces, New Mexico on Forbes’ list of “25 Best Places to Retire.” These Southwest border communities are safe. In fact, Business Insider published a list of the top 25 most dangerous

cities in America, and again, none of them is located along the southwest border. In fact, El Paso was named the second safest large city in America in 2009 and the safest in 2010 and 2011. This is in dramatic contrast to Ciudad Juarez, just across the border, which is often considered one of the most dangerous cities in the Western Hemisphere.

The successes of a secure border are also reflected in key national economic indicators. In 2011, secure international travel resulted in overseas travelers spending \$153 billion in the United States – an average of \$4,300 each – resulting in a \$43 billion travel and tourism trade surplus. In addition, a more secure global supply chain resulted in import values growing by five percent and reaching \$2.3 trillion in FY 2012 and is expected to exceed previous records in the air, land, and sea environments this year.

The Border Patrol is now staffed at the highest level in its 88-year history. The number of Border Patrol agents (BPAs) doubled, from approximately 10,000 in 2004 to more than 21,000 agents today. Along the Southwest border, the number of law enforcement assets on the ground have increased from approximately 9,100 BPAs in 2001 to nearly 18,500 today. At our Northern border, the force of 500 agents that we sustained ten years ago has grown to more than 2,200 agents.

Our agents benefit from over 650 miles of border fence and barrier designed by them and applied where required. State of the art technology has been deployed and plans are in place to expand technological capabilities with the support of the Congress.

Law enforcement capabilities at the ports of entry (POEs) have also been reinforced. To support the evolving, more complex border security mission since September 11, 2001, the number of CBP officers (CBPOs) ensuring the secure flow of people and goods into the nation increased

from 17,279 customs and immigration inspectors in 2003, to more than 21,000 CBPOs and 2,400 agriculture specialists today. These frontline employees facilitated \$2.3 trillion in trade in Fiscal Year (FY) 2012, and welcomed a record 98 million air travelers, a 12 percent increase since FY 2009, further illustrating the critical role CBP plays not only with border security, but with economic security and continued growth.

### **Infrastructure and Technology**

As a country, we have made unprecedented investments in border security infrastructure and technology. Technology is the primary driver of all land, maritime and air domain awareness—and this will become only more apparent as CBP and our country faces future threats.

Technology assets such as integrated fixed towers, mobile surveillance units, and thermal imaging systems act as force multipliers increasing agent awareness, efficiency, and capability to respond to potential threats. As we continue to deploy border surveillance technology, particularly along the Southwest border, these investments allow CBP the flexibility to shift more Border Patrol Agents from detection duties to interdiction and resolution of illegal activities on our borders.

At our POEs, CBP has aggressively deployed Non-Intrusive Inspection (NII) and Radiation Portal Monitor (RPM) technology to help identify contraband and weapons of mass effect. Prior to September 11, 2001, only 64 large-scale NII systems, and not a single RPM, were deployed to our country's borders. Today CBP has 310 NII systems and 1,460 RPMs deployed. The result of this investment in resources is the capacity for CBP to scan 99 percent of all containerized cargo at seaports and 100 percent of passenger and cargo vehicles at land borders for radiological and nuclear materials upon arrival in the United States.

## **AIR AND MARINE**

CBP not only supports security efforts along the nearly 7,000 miles of land borders, but also supplements our efforts on the coastal shoreline. CBP's Office of Air and Marine (OAM) has 269 aircraft, including 10 Unmanned Aircraft Systems (UAS), and 293 patrol and interdiction vessels that provide critical aerial and maritime surveillance and operational assistance to personnel on the ground. The UAS, six of which operate along the Southwest border, flew more than 5,700 hours in 2012, the most in the program's history. Since the formation of OAM within CBP eight years ago, CBP transformed a border air wing composed largely of light observational aircraft into a modern air and maritime fleet capable of a broad range of detection, surveillance and interdiction capabilities. This fleet is extending CBP's detection and interdiction capabilities, extending our border security zones, and offering greater opportunity to stop threats prior to reaching the nation's shores. Further synthesizing the technology, CBP's Air and Marine Operations Center (AMOC) integrates the surveillance capabilities of its federal and international partners to provide domain awareness for the approaches to American borders, at the borders, and within the interior of the United States.

Last year the United States Border Patrol apprehended 356,000 people illegally attempting to cross along our nation's southwest border. This is approximately 80% fewer apprehensions than the peak year of activity in FY 2000 when over 1.5 million apprehensions were made by the US Border Patrol and over a 40% reduction from FY 2008.

It is against this backdrop of record border enforcement that we must view the bipartisan immigration reform bill that is now moving through the Senate. The bill requires the Secretary of Homeland Security to prepare a Comprehensive Southern Border Security Strategy and a

Southern Border Fencing Strategy and it prohibits legalization from beginning until the implementation of each strategy has begun. Unlike IRCA, the bill begins at a point where border security efforts are substantial and conditions the earned legalization program on further border security efforts.

### **ADDRESSING THE JOBS MAGNET**

A critical component of a comprehensive and balanced immigration reform system includes a strong means to crack down on the draw of a jobs magnet. A mandatory E-Verify type system, a tamper proof employment eligibility and identification document system, and an aggressive employer sanctions program for violators that is well-resourced are critical and integral to a successful immigration program. S. 744 appears to contain each of these elements. Perhaps most important, the bill requires that all employers use an electronic employment verification system. Lest anyone fear that the government will not carry out its promise to make E-Verify mandatory, the bill also prevents Registered Provisional Immigrants from obtaining green cards if the mandatory E-Verify system has not been rolled out for use by all employers.

But it is not enough to simply require that employees have work authorization. We also must have a firm commitment to a workable legal flow of immigrants into the future. A commitment that supports the needs of our country. A commitment that adequately and fairly addresses our nation's needs relative to a viable and working immigration system. One that keeps the highest interest of securing our nation at its forefront.

A key lesson that we should take away from the debacle of IRCA is that the same broken system that existed before IRCA was enacted continued to exist after the law was enacted. IRCA addressed legalization of the illegal population and implemented what turned out to be a very

weak employer sanctions program. But it did not address our nation's market economy-driven labor needs. It was that broken system that led to the development of a large population of undocumented immigrants in 1986, and that same broken system led to the development of the population we have today.

The lesson we must heed from IRCA and other attempts to fix only pieces of our broken system over the years is that we must fix and modernize our broken immigration system in a comprehensive manner so that it works for our nation's security, our country's businesses, economy, and our nation's families. We need to design and implement an immigration system that works in a fashion where our citizens, immigrants, and our nation's businesses are encouraged to go through the system, not around it. Such a system will not only support our country's economic engine but, critically important, will ensure that our country's border enforcement resources can stay focused on the very real vulnerabilities, threats and risks posed by criminals, criminal organizations, narcotics, cartels, weapons, and those seeking to do harm to our way of life.

The Senate bill appears to meet all of these requirements. The bill reforms our high-skilled and low-skilled immigration laws to ensure that American businesses have access to the workers they need. Together with the reforms to our agricultural labor system, these changes will help us replace the illegal flow of people who come here in search of work with a legal flow. The bill also makes changes to expedite the reunification of close family members. And critically important it provides for continued border enforcement resources to be acquired and applied under strategies to be developed by DHS and CBP.

Chairman Goodlatte and members of the Committee I thank you for the opportunity to testify before you today and I look forward to answering any questions you may have of me.

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