

**Hearing before the
Senate Judiciary Committee
on
“Comprehensive Immigration Reform II”**

October 18, 2005

TESTIMONY

The Honorable John Cornyn

United States Senator (R-TX)

The Honorable Michael Chertoff

Secretary of the Department of Homeland Security

The Honorable Elaine Chao

Secretary of the Department of Labor

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MEMBER STATEMENTS

The Honorable Patrick Leahy

United States Senator (D-VT)

Testimony
United States Senate Committee on the Judiciary
Comprehensive Immigration Reform II
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The Honorable John Cornyn
United States Senator (R-TX)

STATEMENT OF SENATOR JOHN CORNYN
Before the United States Senate Committee on Judiciary
Comprehensive Immigration Reform II
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Thank you, Chairman Specter, for holding this hearing today on a topic of great importance to the country and to my constituents. I appreciate your efforts to address this issue in the Committee and to grant all proposals and opinions equal consideration.

Since the last Full Committee hearing on Comprehensive Immigration Reform in July, the Governors of Texas, New Mexico and Arizona have all taken steps to address the prevalent crime and lawlessness that accompanies our broken immigration system. But at the end of the day, controlling our borders is a federal responsibility and long-term immigration reform will require federal action.

And so I look forward with great interest to the testimony of Secretary Chertoff and Secretary Chao. While it is unfortunate that they were unable to testify at the hearing in July, I know that much work is being done at both agencies. Their testimony is essential because none of us are interested in a solution that the Administration cannot implement or does not have the will to implement.

I have previously testified before this committee that immigration reform must be comprehensive and must combine increased enforcement of our laws with improved avenues for legal immigration. There is no question that we must authorize additional resources for enforcement of our immigration laws, and we must make substantive changes to existing laws so that the Department of Homeland Security may promptly remove aliens who have no legal right to enter or remain in the country.

I support efforts to pass legislation that will lead to greater control over our borders and am pleased with the increased funding for border security in the Department of Homeland Security appropriations bill. But after chairing a half-dozen hearings related to our immigration system and hearing the testimony of numerous expert witnesses, I do not believe an “enforcement only” approach is the best policy. Not only will it adversely impact our economy, it is not the best use of our limited resources. I want our highly trained law enforcement officers going after the human smugglers, the felons, and the terrorists. By channeling economic migrants into legal channels, our law enforcement officers will be in a better position to identify gang members and to address the increasing number of illegal entrants from countries of special interest.

While I support reform that will create new legal channels and that will address the ten to twelve million aliens already here, Congress must work towards reform that will not perpetuate the problems that we have today. If we don't achieve circular migration, the most highly-motivated workers from other countries will continue their one-way migration – and our hope of improving the economic conditions of sending countries will be lost.

We must also balance the need to induce illegal aliens already here to come forwards and register with the pull that any such program will have on aliens who are not yet in the United States. We must evaluate each proposal not just by the participation rate of illegal aliens already here, but also on whether it will encourage a worker in El Salvador, Honduras or any other country to take the dangerous journey to the U.S. because he believes that he will benefit from the next round of immigration reform.

I believe that the bill that Senator Kyl and I have introduced strikes the appropriate balance. It proposes the most comprehensive plan for improving enforcement of our immigration laws, but it does not do so at the expense of our economy and our proud tradition of welcoming legal immigrants. It creates a new temporary worker category with a sufficient number of visas, and it provides a way to transition the existing population of undocumented workers into a legal status without granting them preferential treatment or allowing them to go through different processes.

I look forward to working with members of this Committee and with the Chairman to reach a long-term solution.

Thank you.

Testimony
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The Honorable Michael Chertoff
Secretary of the Department of Homeland Security

STATEMENT OF SECRETARY MICHAEL CHERTOFF
U.S. DEPARTMENT OF HOMELAND SECURITY
BEFORE THE UNITED STATES SENATE
JUDICIARY COMMITTEE
TUESDAY, OCTOBER 18, 2005
WASHINGTON, D.C.

Mr. Chairman, Senator Leahy, and members of the Committee: thank you for the opportunity to address you today, and for your ongoing support of the Department of Homeland Security's efforts to keep America secure. I am honored and pleased to appear before the Senate Judiciary Committee for the first time in my current capacity to discuss the vital issues of border security, interior enforcement and immigration reform as a whole.

Illegal immigration is a severe and growing problem. As members of this Committee know, over the last few months this Administration has been consulting with members of Congress on comprehensive immigration reform. We have been grateful for your input in these productive sessions. And I am thankful for your support and input as we move forward. Citizens are rightly disturbed by illegal immigration. The President has heard these concerns. And I have heard them too, from all across the country and from right here on Capitol Hill. I am committed to taking aggressive and innovative steps to solve the problem.

We are moving to end the old "catch and release" style of border enforcement, increasing removals by tens of thousands a year. We have expanded Expedited Removal along the entire southwest border. We are hiring and training hundreds of new border patrol agents. We are deploying new technologies, from advanced telecommunications to unmanned aerial vehicles. And we are finding new ways to work with state and local law enforcement to deal with illegal immigration and the ills that it brings.

Illegal immigration hurts everyone. It flouts the rule of law, and it allows criminal elements to enter our country. It undercuts those who patiently pursue legal immigration proceedings. It places heavy economic strains on towns, overwhelming their ability to cope with the tide of humanity. And it threatens the lives of the migrants themselves. The human smugglers and traffickers -- known as "coyotes" -- who bring them to the country all too often rob them, abuse them and leave them for dead. In addition to this human cost, these smugglers also traffic in guns and narcotics, a threat to the stability of both the United States and Northern Mexico. Finally, if we can not control our borders, we leave the way open for terrorists hoping to do us harm.

Since his first inauguration, President Bush has placed the utmost importance on border security and has devoted significant resources to this challenge. The President believes -- and I agree -- that illegal immigration threatens our communities and our national security.

The President understands that ending illegal immigration means both tough enforcement and action to reduce the demand that draws illegal migrants into the country. That's why his Administration believes we need a three-pillar, comprehensive approach to reforming our immigration system: (1) gain control of the border; (2) build a robust interior enforcement program; and (3) establish a Temporary Worker Program (TWP).

The effectiveness of our border security and interior enforcement initiatives is closely tied to creating a workable and enforceable TWP. While Secretary Chao will speak in more detail, the TWP seeks to address two huge strains on the current immigration system: high U.S. employer demand for workers and active participation of an estimated eight million undocumented workers in the U.S. economy. A well-designed TWP will provide legal channels for U.S. employers and foreign born workers to meet the needs of a vibrant and successful U.S. economy without disadvantaging American workers.

The President believes we need a well-designed TWP, coupled with a tough enforcement regime, to gain control of our borders. We must aggressively enforce our immigration laws. And enforcement will not wait for enactment of the TWP. We already are making a substantial down payment on the enforcement measures that the President's program will require. Indeed, since President Bush took office in 2001, the United States government has deported several million illegal aliens, including approximately 300,000 criminal aliens. Since 9/11, yearly spending on border security has increased by \$2.7 billion, or 58 percent. Yearly spending on immigration enforcement has also increased dramatically. Enforcement expenditures by DHS and Justice have gone up by \$1 billion, or 35 percent.

I would like to talk today about some of the enforcement measures the Department of Homeland Security is already taking.

U.S. Customs and Border Protection currently has over 11,000 Border Patrol agents along the 6,000 miles of our northern and southern borders, which is an increase of 1,649 Border Patrol Agents since 2001., In addition, and an additional 18,000 CBP officers are posted at our Ports of Entry (POEs), an increase of 4,533 officers added at ports of entry since 2001. Immigration and Customs Enforcement, or ICE, has over 8,000 agents and officers working to apprehend criminals, absconders, and other aliens illegally present within the United States. These DHS agents and officers apprehend illegal aliens in a variety of ways.

For example, CBP Border Patrol agents apprehend aliens attempting to enter the U.S.

between the POEs, while CBP and ICE officers at our POEs stop illegal entry by aliens who possess stolen or fraudulent documents. In addition, CBP apprehends or detects aliens who attempt entry with terrorist or criminal intent while ICE officers and agents work with federal, state, and local correctional facilities to identify and remove aliens with criminal records. And I would be remiss if I did not mention the critical role that the U.S. Coast Guard plays in securing our land and sea borders.

In FY 2005 alone, CBP Border Patrol agents made over 1.1 million apprehensions. CBP Field Operations officers stopped more than 600,000 aliens attempting to enter at our POEs; our officers referred them for further law enforcement action such as detention or prosecution for those with criminal records. In the same period, ICE apprehended approximately 140,000 illegal aliens in interior enforcement operations with an additional 15,000 aliens apprehended under its Fugitive Operations Program. Under the President's leadership, ICE developed the Fugitive Operations Program and its first teams were deployed in 2004. CBP also voluntarily returned over 940,000 Mexicans and refused entry to an additional 425,000 aliens at POEs. ICE also executed removal orders for over 130,000 aliens who have been placed in proceedings, including 77,000 with criminal records. These are solid numbers demonstrating a solid commitment to law enforcement.

Today, the President is signing the DHS Appropriations Bill into law. Thanks to this Congress, DHS now has \$940 million in new resources for DHS law enforcement agencies to further strengthen border security and enforcement. This includes more than \$890 million alone for CBP and ICE, our primary border enforcement agencies. These increased resources will support a full range of critical border security needs, including 1,000 Border Patrol agents on top of the 500 new agents added last year. The bill also permits further expansion of detention capacity by as many as 1,920 additional beds, provides 250 additional ICE investigative agents, and adds 8 new fugitive operations teams to track down individuals ordered to leave this country, but who instead absconded.

Even now when DHS is continually focused on our response to the tragedy of Hurricanes Katrina and Rita, we have remained constant in our enforcement of the law and have not allowed those tragedies to prevent us from implementing new approaches to border security. For example:

- In September I authorized eliminating the environmental challenges that had for years blocked completion of the 14-mile border barrier in San Diego. This barrier will provide multiple layers of security, further reducing illegal entry to the United States and improving border security.
- With funds appropriated by the Congress earlier this year, we have begun to hire, 1,500 new border patrol agents for deployment along the entire border. This brings the total Border Patrol agent increase to 3,070 agents since President Bush took office in 2001. We have already begun to graduate these new agents. In addition, there are currently 400 border patrol agents at the academy in Artesia, New Mexico, whom I will have the honor of addressing this Thursday. We are grateful to the Congress for providing us the

additional funds to hire these agents.

- We recently obtained a Predator B unmanned aerial vehicle. This innovative technology enhances our ability to secure the southwest border. In addition we continue to partner with the Department of Defense to take advantage of training opportunities. For the next month, as part of such training, the Defense Department is providing four UAVs in the El Paso sector.
- We have deployed additional Border Patrol agents and support personnel to the Tucson Sector as part of the Arizona Border Control Initiative, a partnership that combines the best efforts and resources of our DHS law enforcement agencies with other federal government agencies and with State, Local, and Tribal law enforcement.
- We are providing additional Immigration Enforcement Agents devoted to criminal removal programs and additional fugitive operations teams to track down absconders.
- We have targeted violent criminal street gangs nationwide for immigration enforcement, particularly the Mara Salvatrucha organization, one of the most violent and rapidly growing street gangs. Recently, ICE arrested 359 MS-13 members including 10 clique leaders. The phenomenal success of this effort since its launch in March 2005 led to its expansion to include all criminal street gangs, a targeted effort to keep our communities safer.

Our most pressing enforcement responsibility is on the southwest border, the pathway for two-thirds of the illegal aliens currently in our country. (The other third are mostly visitors who enter legally and then overstay their visas.) While visiting the southwest border, I have seen first-hand the efforts of our border enforcement staff. They have done much; but, as we all realize, much still remains to be done.

Our apprehension work draws upon three interdependent tools: technology, infrastructure and people. Deploying all three assets in proper harmony is the key to our border enforcement work.

In the weeks ahead, I will be speaking much more about a systematic program of technology acquisition, infrastructure improvements, and workforce efficiencies that will animate our work at the border. Congress has generously provided for additional technology investment. I have created a new DHS program office and hired a talented leader for that office. With our DHS team, we will define clear performance mandates for how best to make these investments. Our work ahead is not just about buying more gizmos – it is about using all the considerable tools in our border security toolkit in a more disciplined, systematic, and effective manner.

This is not rocket science, but it does involve properly applying both high-tech tools such as detection sensors and low-tech, proven tools such as vehicle barriers. What is needed in rural areas will be different from the asset mix needed for border security in urban areas. I have directed that a comprehensive, border-wide plan be established for these

investments.

The public is impatient for these improvements and I share that impatience. I am convinced that we can soon make dramatic improvements in the use of technology, infrastructure, and our rapidly growing enforcement team. We will set clear, measurable goals and report routinely to Congress and the American public about our performance.

While much of the public attention regarding border security has focused on apprehending those crossing the border, catching illegal entrants is just the first step. Obviously, the security of America and the integrity of our nation's legal immigration system require that the number of removals at least equal the number of apprehensions. Otherwise, apprehensions lead to release and disappearance. Regrettably, today apprehensions exceed removals.

Once detained, an illegal immigrant must be held until he or she is successfully removed from the country. For most illegal entrants, removal is swift, and detention is not a substantial administrative or budget problem. For example, the nearly 900,000 Mexicans who are caught entering the U.S. per year illegally are returned immediately to Mexico.

But other parts of the system have nearly collapsed under the weight of numbers. The problem is especially severe for non-Mexicans apprehended at the southwest border. In FY 2005 alone, the Border Patrol apprehended over 160,000 non-Mexican nationals. Only 30,000 of these illegal entrants were removed from the United States. The rest will be released, either under bond conditions or on their own recognizance

Let me reiterate this point. When a non-Mexican is caught trying to enter the U.S. across the southwest border today, he has an 80% chance of being released immediately because we have nowhere to hold him. Of course, he will be charged as an immigration law violator, but he will likely fail to appear at his immigration hearings.

This practice of "catch and release" acts as an enticement for additional border crossers. Indeed, Border Patrol apprehensions of non-Mexican nationals crossing into the U.S. illegally across the Mexican border have tripled in just three years. We must end "catch and release" and implement "catch and return." In fact, we are already taking steps to implement "catch and return" as I speak. We are reengineering our detention and removal process, without which we cannot have an effective enforcement strategy. This is the problem we have attacked first, in part to demonstrate decisively the advantage of taking a comprehensive approach to immigration enforcement problems.

In attacking this problem, we have also learned valuable lessons from recent successful operations. When a large number of Brazilians began illegally crossing the southwest border, we responded in July 2005 with "Operation Texas Hold 'Em." We prioritized the existing space, dedicated bed space and began detaining and removing all of the illegal Brazilians we apprehended. The word spread surprisingly swiftly; within its first thirty days, the operation had already begun to deter illegal border crossings by Brazilians. In fact, the number of Brazilians apprehended dropped by 50%. After 60 days, the rate of

Brazilian illegal immigration through this sector was down 90%, and it is still significantly depressed all across the border. In short, we learned that a concentrated effort of removal can actually discourage illegal entries by non-Mexicans on the southwest border.

Building on that experience, we asked how we could achieve the same results with all non-Mexican entrants. We undertook a comprehensive review, identified choke points in the existing removal process, and devised ways to eliminate them.

The essence of our plan is to expand removals by better using our detention and removal assets. For example, our system will be three times as efficient if, instead of removing one person after a three-month detention, we can remove three people after detentions of just one month each. So our comprehensive plan calls for both more beds and faster turnover.

To improve turnover, we are expanding removal authority, pressing foreign governments to take back their nationals more promptly, streamlining review by their consular officers—we have been experimenting with secure video links to facilitate this -- modifying our staffing requirements for escorts on international flights, modifying our air transport contracts, and streamlining the paperwork involved in removal flights. Additional steps are also being examined. Our experience with Brazilian entrants tells us that an aggressive removal program will deter illegal immigration attempts, multiplying the effect from increased beds and more rapid turnover of those beds.

Today I am announcing this goal for DHS: eliminate completely the “catch and release” enforcement problem. Return every single illegal entrant -- no exceptions. What's more, it should be possible to achieve significant progress in less than a year, as we apply concentrated removal efforts with the support of individual countries.

I am pleased to report that DHS has already begun implementing many significant changes in transitioning from “catch and release” to “catch and return.” Here are some of those changes:

- We have substantially expanded our detention capacity as of October 1. With the President’s signing of our appropriations bill, we will have \$90 million in new resources to add hundreds of more beds. Even with no additional efficiencies in the process, this one change will allow us to remove thousands of additional illegal aliens apprehended along our borders. We are
- I have directed the expanded use of Expedited Removal to all Border Patrol sectors along the southwest border. This allows us to remove quickly eligible aliens, reducing the time required in detention prior to removal. Over all, we expect to cut removal times in half, reducing days in detention from an average of 90 days to an average of 45 days.
- We have contracted for expanded air transportation services to move illegal migrants back to their home more quickly and efficiently.

- I have also directed the overhaul of our ground transportation system. We have a complex system that requires moving more than 1.8 million apprehended individuals per year, but we have identified significant opportunities to improve and streamline this process. For example, we will cut costs and removal time by using bus drivers and other contractors, rather than law enforcement agents, to transport apprehended migrants.
- We are modifying our policies on when removed aliens require escorts. By adopting a risk-based policy, our officers and agents can send more illegal migrants home faster and more efficiently while maintaining the safety of all involved in the removal process.
- Working with the Secretary of State, we are in the process of streamlining country clearances, an internal U.S. government processing change that could cut several days from every escorted deportation. Because an overstuffed removal pipeline is our most immediate problem, cutting even a few days from the average deportation will allow us to increase removals by thousands a year.
- Also working with the State Department, we have begun aggressive dialogues with foreign governments to ensure better foreign-country compliance with our repatriation requirements. We often find that people who are removable sit in our detention facilities—simply because the foreign country has failed to give us a “travel document” agreeing to take its citizen back. We must make this a top priority in our bilateral relationships around the world, and working with Secretary Rice, I am sure that we will.
- We are moving to implement internal “best practices” so that all of our offices throughout the country operate using best-practices information. We want our removal process to be dynamic and efficient over the long run.

The comprehensive approach we have taken to removal can be applied more broadly to other aspects of border and interior enforcement. In that sense, what we are doing in our removal efforts is simply a down payment on our overall border enforcement initiative, which we are designing as a complement to the President’s Temporary Worker Program.

There is a vitally important component to comprehensive immigration reform that I have not yet discussed: worksite enforcement. We can all agree that the current state of worksite enforcement does not work well enough. In anticipation of the Temporary Worker Program (TWP), we must strengthen our efforts to monitor worksites to ensure that both now, and with the start of the TWP, we deploy the necessary resources to ensure those employers who violate the current laws face appropriate punishment. We already have more aggressive efforts underway, including the ICE Worksite Enforcement Units. In addition, we must also give employers the necessary tools to verify the legal status of their employees. The current verification system is insufficient to detect fraud, particularly document fraud, and we must resolve this.

Interior enforcement is not worksite enforcement alone, however. It also includes a focus on criminal aliens, aliens considered a national security risk, traffic stop responses as well

as criminal investigation and apprehension of aliens with final orders who have absconded. Importantly, it includes working with individual state and local governments to coordinate responses. I have heard and recognize the frustration that some state and local law officials have expressed about illegal immigration and their desire for closer relations with immigration enforcement agencies. We will find new ways to work with them. This will include new border enforcement task forces and expanded use of our existing legal authorities to train state law enforcement personnel.

Working with DHS's state partners is also a key part of our border strategy. We will actively reach out to our state partners for their agreement to improve our cooperation. and these are just some of the ideas by which our partnership with state and local law enforcement can be most effective.

In summary, my immediate enforcement priorities at DHS focus on five tasks:

- First, we will undertake transformational investment in technology and infrastructure.
- Second, we will work with Congress to staff effectively these enhanced enforcement efforts.
- Third, we will end the policy of catch and release.
- Fourth, we will implement more robust interior enforcement.
- Fifth, we will coordinate better with our federal, state, local and international partners to improve immigration enforcement overall.

These steps will significantly deter illegal immigration. Moreover, they will greatly improve border security.

Each facet of comprehensive immigration reform program that Secretary Chao and I discuss here today is carefully considered. Taken together, they offer a comprehensive strategy. We will continue regularly to apprise this Congress of the steps forward, and the expected outcomes.

As Secretary of Homeland Security I am committed to working closely with the Administration and with the members of this Congress to pass comprehensive immigration reform legislation that reflects the principles discussed with you today. This must be legislation that will meet the needs for a total solution to immigration reform. Nothing I do as Secretary of the Department of Homeland Security is more important to the national security of the United States than securing our borders, and I look forward to working with the members of Congress on this critical task.

Testimony
United States Senate Committee on the Judiciary
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October 18, 2005

The Honorable Elaine Chao
Secretary of the Department of Labor

STATEMENT OF
SECRETARY OF LABOR ELAINE L. CHAO
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
October 18, 2005

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on the President's plan for comprehensive immigration reform. I would like to begin by underscoring the point that the effectiveness of border security and interior enforcement initiatives is tied to creating a legal avenue for the workers our economy needs to keep growing. This will allow U.S. enforcement to focus on achieving control of our borders. When integrated with a workable and enforceable temporary worker program, U.S. border security and enforcement resources can be maximized to strengthen our homeland security, stop illegal immigration, and meet U.S. needs for a legal workforce.

Last year, the President proposed that we reform our current system for admitting and employing temporary foreign workers in this country. The President set forth principles that should guide comprehensive immigration reform. Those principles are:

- **Protect the Homeland by Controlling Our Borders:** A new program must support ongoing efforts to enhance homeland security.
- **Serve America's Economy by Matching a Willing Worker with a Willing Employer:** When no U.S. worker is available and willing to take a job, the program should provide workers for American employers. The process should be as clear, streamlined, and efficient as possible so people can find jobs and employers can find workers in a timely manner.
- **Protect the Rights of Legal Immigrants:** The program should not permit illegal immigrants to gain an advantage over those who have followed the rules.
- **Provide Incentives for Return to Home Country:** The program will require the return of temporary workers to their home country after their period of work has concluded.
- **Promote Compassion:** The program should afford illegal immigrants who are currently working an opportunity to join the temporary worker program and avoid exploitation. Participants in a new program would be able to travel back and forth between their home and the U.S. without fear of being denied re-entry into America.

A reformed temporary worker program based on these basic principles will provide America with several benefits, including:

- **A More Secure Homeland by Improving the Efficiency and Management of All People**

Crossing Our Borders: It is in the interest of our country, and each community, to identify foreign visitors and immigrants and clarify the nature of their intentions during their stay.

- A More Prosperous Economy: The program would allow workers to find jobs and employers to find workers, quickly and simply.

I know there are several immigration and temporary worker-related bills under consideration in Congress. I am not here today to endorse any particular bill you may be considering. Instead, I will share with you the Administration's plan for comprehensive reform that addresses border security, interior enforcement, and a temporary worker program. Reform must address these three aspects to be effective, but also must not allow amnesty.

I will focus my comments on the need for a reformed temporary worker program as an integral component in improving the safety and border security of the nation. An improved temporary worker program will enhance border security and interior enforcement by providing a workable and enforceable process for hiring foreign temporary workers.

The President's plan for reform recognizes that foreign workers are drawn to this country because of economic opportunity. These workers find employment here because many important sectors of our economy rely on foreign temporary workers to fill certain jobs when there are shortages of willing and able U.S. workers.

But, the current system for hiring and admitting foreign workers is complex and burdensome for both the employer and employee. The Department of Labor has initiated some regulatory reforms over the past couple of years to help improve procedures in the labor certification process. But making additional effective improvements to our system of admitting and tracking temporary foreign workers will require legislative as well as administrative changes.

The President's plan seeks to address problems in the current temporary worker system by streamlining the process so that willing workers can efficiently be matched with employers who need foreign temporary workers to fill jobs for which there are no willing U.S. workers. The President's plan would also bring illegal immigrants who currently work in an underground economy into the open. And, of course, any reforms that improve the process for workers and employers must be matched with reforms that improve the safety and border security of our country as a whole.

Our current system is overloaded, ineffective at deterring fraud, does not work well for workers or employers, and strains the nation's enforcement abilities. Our country faces a continuing high demand for foreign labor in several sectors of the economy. This demand is strongest among lower skilled occupations and for seasonal positions in businesses and agriculture. This constant, and in many cases increasing, demand for foreign labor strains our current admission system. As the members of this committee know, some visa programs have annual limits that are often reached in the first few months of the year. This environment creates an unfair system of winners and losers that does not serve our

national economic interests.

The Department hears about these problems from employers and from members of Congress. Each year, we receive scores of inquiries from Congressional offices about pending visas or requesting the re-classification of entire groups of workers from one visa category to another with available slots.

When the demand for visas overwhelms the supply, many workers resort to illegal border crossings. Once in our country, these workers often use fraudulent documentation in order to obtain employment. As a result, employers can unwittingly hire illegal workers because there is no quick and efficient way to verify the authenticity of identification documents. And of course, some employers knowingly resort to hiring illegal workers because they fail to obtain legal foreign workers or because they do not want to incur the expense of navigating the complex bureaucracy required to obtain a foreign worker with a visa.

A well-designed temporary worker program will help alleviate each of these concerns by providing stability and certainty to workers, employers, and the American people. With a technologically advanced new system in place, workers will have visa documentation that clearly establishes their eligibility to work. Employers will have access to a verification system that enables them to quickly check the eligibility and verify the identity of potential employees. And with increased enforcement efforts, the American public will have confidence that employers are obeying the law and hiring only those people who are in the country legally.

The reforms should enable those who are here unlawfully an opportunity to come forward, apply for a legal temporary work status, and participate in the legal economy. But these people will not be granted amnesty for their violations of law. President Bush strongly opposes amnesty, because it unfairly rewards lawbreaking and because amnesty encourages further illegal immigration. At a minimum, those who come forward will not be offered an automatic pass to citizenship and should be expected to pay a substantial fine or penalty to participate in the temporary program. Applicants for the temporary worker program, including those already in the country, should undergo credentialing procedures and background checks, and at a minimum should have to meet the legal admissibility standards set by Congress. Felons and those in removal proceedings would not be eligible to participate in the program.

Workers should also be issued biometric, tamper-resistant cards that will allow them to cross U.S. borders during their stay here. Currently, many illegal immigrants do not leave the U.S. because it can be costly and dangerous to make a return trip. A new temporary worker program will remedy this situation by providing workers with temporary status the ability to freely travel back and forth to their home country. This will help enable temporary workers to maintain ties to their home and help encourage them to return when their temporary visa expires.

That is a basic outline of how a new program would be structured for workers. Now let

me share with you this Administration's view of the responsibilities a new program would entail for employers.

The President is committed to ensuring that every U.S. worker who wants a job can find one. Under the President's plan, U.S. workers come first. U.S. employers would have to make reasonable efforts to find a U.S. worker to fill a job before extending job offers to foreign workers. The temporary worker program must include strong workplace enforcement provisions and incentives for foreign workers to return home when their time in the program is done. These program requirements are necessary to ensure that we protect our jobs for U.S. workers.

The Department of Labor has a limited, but important, role in the current work visa programs. As a prerequisite to hiring a foreign worker through most work visa programs, an employer must first have attempted to hire U.S. workers for the job openings. If that effort proves unsuccessful, an employer may then apply to hire foreign workers with a temporary work visa. The effort by employers to seek out and attempt to hire sufficient numbers of U.S. workers is referred to as a "labor market test."

The Department is responsible for verifying that an employer who wishes to hire temporary foreign labor has properly complied with the labor market test. In addition, the Department is responsible for enforcing the labor standards associated with these temporary worker programs to prevent the exploitation of the temporary workers and guard against adverse employment effects on U.S. workers.

Our colleagues at DHS and DOJ enforce the immigration laws. DHS also conducts security checks, determines admissibility, and adjudicates benefits, and we anticipate they would continue their role of ensuring that workers abide by the program requirements, and that employers hire only documented temporary foreign workers.

On the topic of matching willing workers with employers, this Administration believes that the private marketplace, rather than a vast government bureaucracy, is better suited to meet this challenge. The federal government will have a great deal of work to do in completing background checks on temporary worker applicants, issuing visas, and improving border security. Private organizations, whether they are nonprofit or for profit, could help match employers with available workers. Of course, such a system will have to contain some government controls and regulations to prohibit, for example, the imposition of excessive fees on workers. But this Administration fundamentally believes that the private marketplace is best equipped to design and manage an efficient matching system.

The Department of Labor takes very seriously its responsibility to ensure that our workforce, including foreign workers admitted under temporary worker programs, is fully protected by our nation's labor laws. The Department will continue its strong enforcement of labor laws to protect the health, safety, working conditions and pay of all workers. It is this Administration's policy to hold employers accountable and to enforce all labor laws without regard to the legal status of workers. These efforts not only help

protect foreign born workers from exploitation, but also help ensure that U.S. workers are not undercut by unscrupulous employers.

The Administration looks forward to working with the Senate and the House in the coming months. I know Senators are deeply interested in the temporary worker program and members of this committee have introduced bills suggesting significant changes in that system. Reforming our temporary worker programs is a difficult and complicated undertaking. Working together, I am confident that reforms will be enacted to protect homeland security, restore the rule of law, serve the economic needs of our nation, and honor our history of openness to legal immigration.

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Frank Sharry
Executive Director
National Immigration Forum

Testimony of
Frank Sharry
Executive Director
National Immigration Forum
Before the Senate Committee on the Judiciary
On Comprehensive Immigration Reform
October 18, 2005

Many thanks to Chairman Specter and to the other members of the Senate Judiciary Committee for this opportunity to share my views on the urgent challenge of fixing our broken immigration system.

The American people are right to demand that Congress and the Administration take effective action to restore the rule of law to our nation's immigration system. The evidence of the system's dysfunction is all around us: young men and women die gruesome deaths in southwestern deserts as they attempt to enter the U.S. in search of work; fake document merchants and criminal smugglers turn huge profits in networks that one day might be exploited not by those seeking work in our economy but by those seeking to attack our nation; local community tensions simmer and sometimes explode as housing gets stretched, schools experience change, and language differences emerge; immigrant families remain divided for years, even decades, by restrictive admissions policies and inefficient processing; immigrant workers afraid of being discovered and deported are subject to abuse and exploitation by unscrupulous employers seeking to gain an unfair advantage over law-abiding competitors; meanwhile, public frustration mounts as the federal government seems incapable of mobilizing the political leadership and enacting the policy changes to fix the system once and for all.

Mr. Chairman, I urge you and the Committee to lead the way and take effective action in this Congress. The country is crying out for leadership on this issue and a solution to this problem. Immigration policy is fundamentally and constitutionally a matter for the federal government. States and local communities are understandably frustrated with the effects of a broken immigration system, but they cannot and do not set national immigration policy. It is up to Congress and the Administration to rise to the occasion.

I believe the Senate Judiciary Committee is uniquely suited to the task at hand. This Committee has rightly earned a reputation for confronting difficult challenges in a professional and dignified manner. Others on Capitol Hill may be tempted to take the

path of least resistance and enact piecemeal measures that sound tough but solve nothing. But this Committee, if it acts with dispatch and intelligence, can set the tone and direction for the debate in this Congress, and create the template for immigration reform that is bipartisan in its formulation, comprehensive in its approach, and workable once fully implemented.

A problem as hard to diagnose as it is to solve

Fixing the broken immigration system requires sizing up its complexity and its dimensions. The numbers tell part of the story. Some 11 million undocumented immigrants now live and work in the United States. That means that almost one third of all the immigrants in America lives here without government authorization. 14 million people, including some 5 million kids, live in households headed by an undocumented immigrant. 1 out of 20 workers in the nation's labor force is living and working here illegally. Two-thirds of them have arrived in the last decade. More than half are from Mexico. More than 80% are from Latin America and the Caribbean. America's backyard is showing up on America's front porch.

Illegal immigration is no longer a niche issue affecting a handful of gateway states and cities. It has gone nationwide. Consider the five states with the fastest growing populations of undocumented immigrants: North Carolina, Utah, Colorado, Arizona, and Idaho. In fact, a wide swath of the nation's heartland, from the old South stretching up through the Mountain states to the Northwest, is undergoing a remarkable demographic transformation with little to no recent experience to draw on to respond to it.

Moreover, most new undocumented immigrants appear to be here to stay. The vast majority no longer fit the stereotype of the migrant male on his own here to do temporary work before returning home. Today, 70% live with spouses and/or children. And only 3% work in agriculture. The vast majority are employed in year-round service sector jobs. After all, the jobs are plentiful. More than half the new jobs created in the American economy require hard work, not multiple diplomas. Meanwhile, young native-born workers are smaller in number, better educated than ever, and more interested in office work than manual labor. Consequently, much of the nation's demand for housekeepers, childcare workers, landscapers, protein processors, busboys, cooks, janitors, dry wallers, and construction workers is met by a steady flow of some 500,000 undocumented migrants who enter and settle in America each year.

Which begs the question: Since the U.S. has a legal immigration system, why don't these workers from Mexico and elsewhere simply wait in line and enter with legal visas? Answer: what legal visas? There are virtually none available for these workers. While the labor market demands an estimated 500,000 full-time low-skilled service jobs a year, our immigration laws supply just 5,000 permanent visas for workers to fill these jobs. And this tiny category is so backlogged it has been rendered useless. As the Immigration Policy Center recently pointed out, of the other 15 immigrant visa categories available for employment and training, only two are available to industries that require little or no formal training. These two categories (H2A and H2B) are small and seasonal. In addition

to the enormous mismatch between labor market realities and our government's immigration policy, our family visa lines are so backlogged that it can take a decade for spouses to be reunited, legally. Not surprisingly, many stop waiting and cross the border illegally in order to reunite with their loved ones.

What to do? Some argue that the solution is to simply enforce the laws we already have on the books. And while we certainly need tighter, more targeted, and more effective enforcement as part of a comprehensive overhaul, the fact is that over the past two decades the "enforcement only" approach has failed miserably. As another of this hearing's witnesses, Princeton professor Douglas Massey, recently documented, since 1986 the border patrol budget has increased ten-fold in value. This beefing up of border enforcement has been augmented by tough restrictions on immigrant access to employment, public services, and due process protections.

And yet this unprecedented increase in enforcement has coincided with an unprecedented increase in illegal immigration.

Why hasn't "enforcement only" worked to stem illegal immigration? Because our current approach to immigration and border security policy fails to recognize that the United States has an increasingly integrated labor market with Latin America. In much the same way that we used to see workers from rural areas in South migrate to the urban North to fill manufacturing jobs, we now see workers from rural areas south of the border migrating to all areas of the U.S. to fill service jobs. Our failure to account for this fact of life leads to a failure of policy. Instead of building a workable regulatory regime to govern what is essentially a market-driven labor migration, we keep legal channels severely restricted and then wonder why workers and their families have nowhere to go but into the clutches of a migration black market dominated by smugglers, fake document merchants, and unscrupulous employers.

Dan Griswold of the Cato Institute sums it up this way: "Demand for low-skilled labor continues to grow in the United States while the domestic supply of suitable workers inexorably declines – yet U.S. immigration law contains virtually no legal channel through which low-skilled immigrant workers can enter the country to fill that gap. The result is an illegal flow of workers characterized by more permanent and less circular migration, smuggling, document fraud, deaths at the border, artificially depressed wages, and threats to civil liberties." He adds, "American immigration laws are colliding with reality, and reality is winning."

Griswold is right. We will not be able to restore respect for the rule of law in our immigration system until we restore respect for the law of supply and demand. Instead of "enforcement only" or "enforcement first," we need an "enforcement plus" approach.

I recall the first time I came face to face with the reality of an integrated labor market and the futility of an "enforcement only" strategy. In the late 1990's I accompanied a delegation that visited Tixla ("Teesh-la"), a "sending community" located in the Mexico. Most of its sons and daughters had left and migrated illegally to Chicago to fill available

service jobs in construction, landscaping, hospitality, and childcare. Those left behind consisted mostly of women, children, and the elderly. The workers used to come back and forth, at least for visits, but this had mostly stopped due to the press of their multiple jobs up north and the risks associated with re-crossing the border illegally. The townspeople were proud to show us the new school and basketball court which had recently been built with pooled remittances. And there, right there in the middle of the basketball court, was a huge replica of the logo for the Chicago Bulls.

That's when it hit me. Tixla, a dusty, rural town south of Mexico City, is a bedroom community for Chicago. We may not think of it that way, but it is 21st century fact. The town produces the workers needed to fill newly-created service sector jobs in the Chicago area. There is plenty of work available just up the road, and these workers are willing to risk their lives to make the commute.

Needed: a new perspective and a comprehensive strategy

Like so many other public policy debates, the highly-charged immigration debate is often polarized and paralyzed by an “either/or” framework. The tit-for-tat goes something like this: you are either for immigrants or for control; you are either for higher levels or lower levels; you are either for closed borders or open borders; you are either for lax policies or tough policies. This narrow and lopsided framework is a trap that obscures realistic solutions.

What's needed is a “both/and” approach that recognizes the reality of an integrated labor market with Latin America and the legitimate U.S. demand for operational control of its borders in a post 9/11 world. Such an approach seeks to integrate seemingly contradictory elements into a comprehensive package; a package that combines expanded enforcement strategies and expanded legal channels for those entering the U.S. to work and join families and expanded pathways to legal status and citizenship for undocumented immigrants already living and working in the U.S. We need to change our immigration laws so that they are enforceable and enforce them effectively.

Senator Edward Kennedy put it this way in recent testimony before this Committee: “The past debate has long been polarized between those who want more enforcement and those who want more visas. But to repair what’s broken, we need to combine increased enforcement and increased legality. Better border control and better treatment of immigrants are not inconsistent – they are two sides of the same coin.”

This new perspective was first promoted and popularized by Presidents Bush and Fox in their 2001 migration negotiations. The two presidents imagined a system based on improved border security and widened legal channels. The idea was, and is, to recognize, regularize, and regulate the status of workers who are either coming from south of the border to jobs in the U.S. or already here working and contributing to our economy. The goal? Make the healthy, positive, and predictable movement of workers to available jobs safe, legal, and orderly.

The President deserves considerable credit for getting this “big idea” and sticking with it. In January 2004 he announced principles for immigration reform that, although somewhat vague and incomplete, captured this new perspective. And this vision of immigration reform has spawned two significant immigration reform proposals in the Senate. One is authored by Senators McCain and Kennedy. The other is authored by Senators Cornyn and Kyl. Both proposals are serious and go beyond an “enforcement only” approach. However, in our view only the McCain-Kennedy bill is both fully comprehensive and workable. That is why the organization I direct has joined with constituencies from across the political spectrum and across the country to endorse the Secure America and Orderly Immigration Act of 2005.

Secure America: A cure for what ails us

Secure America is not perfect, but it is an excellent draft that should serve as the basis for fixing our broken immigration system. Specifically, the bill combines 1) enhanced enforcement to ensure the reformed immigration system is effectively policed; 2) widened legal channels for the future flow of workers and families; 3) a workable solution for the 11 million undocumented immigrants currently working and living in the United States; and 4) support for the successful integration of newcomers in the communities where they settle.

The key to effective enforcement is to augment our border enforcement efforts with a system that ensures that all workers hired in the United States are in our country legally. The bill accomplishes this by building an electronic worker verification system (the bill contemplates credit card swipe machines, but for social security cards, drivers’ licenses, or immigration documents, and only at the point of hire) combined with tough sanctions for employers who attempt to end-run the new system. I predict that responsible employers will support it as long as the verification system is functional and the new system is combined with legal channels for workers here and those needed in the future. I predict that unscrupulous employers -- those that benefit from the dysfunctional status quo -- will oppose it.

The keys to making the admissions system realistic, controlled, and workable are a) to provide enough visas for the expected future flow of workers and families; and b) to avoid the exploitation and abuses of old-style guest worker programs. Secure America accomplishes the first by creating 400,000 worker visas a year and increasing family reunification visas so that the current illegal flow will be funneled into a legal one while being fair to those from around the world. It tackles the second by requiring employers to pay newly-admitted workers the same wages as similarly-situated workers, and by mostly de-linking workers’ status from employer say-so. For example, workers on temporary visas (three year visas, renewable) will be able to “vote with their feet” and change jobs without threatening their immigration status. After four years in the country, such workers will be able to self-petition for permanent residence – rather than having to ask for the blessing of a particular employer.

The key to putting migration on legal footing once and for all is finding a way for the 11

million or so undocumented immigrants to come out of the shadows voluntarily and transition to legal status. Secure America addresses this controversial issue head on. It offers incentives for undocumented immigrants already here to come forward, register with the government, submit to criminal, security, and health screenings, pay a hefty fine, study English and civics, and clear up their taxes as a way to eventually earn permanent residency. Immigrants who meet these requirements can apply for permanent residence after six years, and become eligible for citizenship in 11 years at the earliest. And this component interacts with the family reunification provisions such that those waiting in the queue outside the U.S. secure permanent residence before those previously undocumented immigrants who obtain temporary status.

Critics label this process of registration and earned legalization an “amnesty.” Senator Kennedy rightly objects that “there is no free pass, no automatic pardon, no trip to the front of the line.” The Wall Street Journal editorial page, which I suspect rarely lines up with the senior Massachusetts Senator, agrees: “This amnesty charge may be potent as a political slogan, but it becomes far less persuasive when you examine its real-world implications. If paying a fine isn’t good enough for illegals already here, what are the restrictionists proposing? Mass arrests, raids on job-creating businesses, or deportations? . . . Those who wave the ‘no amnesty’ flag are actually encouraging a larger underground illegal population. The only reform that has a chance to succeed is one that recognizes the reality that 10 or so million illegal aliens already work in the U.S. and are vital to the economy and their communities.”

Finally, the bill promotes the successful integration of new immigrants into local communities. Immigration to America has worked throughout our history because newcomers have been encouraged to become new Americans. Secure America takes steps to renew this commitment by increasing English classes for adult immigrants, citizenship promotion and preparation, and the legal security immigrant workers need to move up the economic ladder. In fact, it’s worth noting that when 3 million undocumented immigrants became legal immigrants some 20 years ago, their wages increased by 14% over 5 years – they were no longer afraid to speak up or change jobs – and their productivity increased dramatically – they studied English and improved their skills through training. The bill also deals with a longstanding and legitimate complaint from state and local governments by reimbursing costs related to health care and other public services.

The bill certainly has its faults and its critics. The immigration enforcement provisions are strong but will need to be strengthened if we are to ensure immigrant workers and families use widened legal channels and no others. Similarly, the bill aims to construct a temporary worker program that adequately protects both native and immigrant workers alike, but will probably need to be tweaked to fully realize this objective. After all, the goal of immigration reform should be nothing less than to restore the rule of law – both to our immigration system and to low-wage labor markets. And unfortunately, the bill does not adequately address the acknowledged long-term solution to the migration challenge: economic development in sending nations and communities. It is my hope that this session’s immigration reform debate will serve as a stepping stone to, if not a venue for, a

much-needed review of trade, aid, and development policies in the Americas.

Overall, though, the bill's premise is brilliant and its promise viable: take migration out of the black market and bring it under the rule of law; funnel the illegal flow into legal channels; increase the legality of the migration that is occurring, rather than increase the numbers of those who enter; get control of the flow so we get control of our border; bring undocumented immigrants out of the shadows and under the protection of our laws; know who is in our country and who is entering it; shift from repressing migration ineffectively to regulating migration intelligently; turn the broken status quo into a functioning, regulated system; drain the swamp of fake documents and criminal smugglers; vetted airport arrivals instead of deaths in the desert; families united rather than divided for decades; verification mechanisms that work and fake documents that don't; legal workers and an equal playing field for honest employers; equal labor rights for all rather than a race to the bottom for most. In sum, this bill represents a 21st century solution for a 21st century challenge.

The Cornyn-Kyl bill: Right direction, but falls short

The proposal introduced recently by Senators John Cornyn and Jon Kyl is a serious bill. And Senator Cornyn in particular has distinguished himself recently by his eloquent diagnosis of our broken immigration system. He has repeatedly said that the only way to solve the immigration dilemma is to combine tougher enforcement with a legal regime that deals realistically both with those entering our nation and those already here.

Unfortunately, the bill as introduced is not workable. Instead of offering carrots to draw the 11 million out of the shadows so they register with the government, submit to screenings, pay a fine, and get in line for eventual permanent residency, it presents mostly sticks that would end up with most undocumented immigrants opting to remain in the shadows. Instead of reuniting families in a more timely fashion and keeping nuclear families together, the bill fails to address existing backlogs and instead would most likely result in more families split between different countries for longer periods of time. Instead of ensuring that immigrant workers are treated equally so that both low-wage workers and law-abiding employers benefit, the bill would likely end up favoring employers who undercut their competitors by hiring short-term guest workers. Instead of providing for a stable workforce and promoting citizenship, the bill threatens to force workers out of the country or out of their jobs, and provides no meaningful path to citizenship.

Nevertheless, the authors have rightly steered clear of an "enforcement only" or "enforcement first" approach and have developed a number of ideas worthy of consideration and inclusion in a Senate Judiciary Committee bill. It is my hope and recommendation that this Committee, led by its Chairman, will start with the McCain-Kennedy template and include the best of the proposals before it in a way that builds momentum and support in the full Senate for workable comprehensive reform.

Final remarks

We at the National Immigration Forum have been working on challenges related to immigration policy for more than 20 years. We understand how hard it is to fashion immigration reform that can pass Congress and work on the ground once enacted. We are fully prepared to support and fight for a combination of tough and smart enforcement measures if combined with simultaneous reforms to our admissions policies that bring undocumented immigrants out of the shadows and provide a sufficient number of worker and family reunification visas for the future flow. But we cannot and will not support proposals that have no realistic chance of working once implemented. Our stand is that we not only get it done, but that we get it done right.

But we are optimistic. We believe this is our generation's best shot at enacting workable reform. As a nation we seem poised to moved beyond the old debate -- characterized by simplistic and shallow prescriptions of the past, the non-solution, sound bite-driven "get tough and be done with it" approach. The nation is ready to take part in a new debate, one that takes all of the moving parts into full consideration and at the same time. The old debate suggests that we have to choose between being a nation of immigrants or a nation of laws. The new debate recognizes that the only way to be either is to be both.

We look forward to working with the Committee to turn this vision of reform into a reality.

Testimony
United States Senate Committee on the Judiciary
Comprehensive Immigration Reform II
October 18, 2005

Mark Krikorian
Executive Director
Center for Immigration Studies

Statement of Mark Krikorian
Executive Director, Center for Immigration Studies
Before the Senate Committee on the Judiciary
Hearing on “Comprehensive Immigration Reform II”
October 18, 2005

Thank you, Mr. Chairman, for the opportunity to testify before this panel on the issue of immigration.

There is broad dissatisfaction with the current state of our immigration policy. We have in our country 11 or 12 million illegal aliens among a total immigrant population of 35 million, the largest number in our nation’s history and soon to be the largest percentage of the population in our history. Despite misleading reports to the contrary, the pace of immigration is not abating; in the past five years, eight million people from abroad have settled in the United States, about half of them illegally.

How should we deal with the illegal aliens who are here? How should we structure future immigration policy to prevent this situation from recurring? There are two major proposals before this house attempting to answer these questions, one by Senators Kyl and Cornyn, the other from Senators Kennedy and McCain. In addition, there are at least two comprehensive proposals before the other house. And, of course, the Administration has its own proposal. The plans differ widely, but most have some form of legalization (i.e., amnesty) for illegal aliens already here, plus provisions to import large numbers of foreign workers in the future, whether through guestworker programs or large increases in permanent immigration.

Rather than examine the minutiae of the various measures, I want to address some of the fallacies that pervade the discussion of immigration in general, and of amnesty and foreign-worker schemes in particular, in order to offer some principles by which to judge the soundness of the various proposals.

Immigration is not inevitable

The bedrock assumption underlying most of the immigration plans being offered is that the flow of workers from Mexico and elsewhere is unstoppable – a natural phenomenon like the weather or the tides, which we are powerless to influence. Therefore, it is said, managing the flow in an orderly and lawful manner is preferable to the alternative.

On the surface, the flow of Mexican immigration may indeed seem inevitable; it is very large, rapidly growing, and spreading throughout the country. But a longer view shows that this flow has been created in large part by government policies, both in the United States and Mexico. And, government policy having created the migration flows, government policy can interrupt the flows, though a social phenomenon like this is naturally more difficult to stop than to start.

Migration is often discussed in terms of pushes and pulls – poverty, corruption, oppression, and general societal dysfunction impel people to leave their homelands, while high wages and expanded economic and social opportunities attract people to this country. While true, this analysis is incomplete because it overlooks the connection between the sending country and the receiving country.

No one wakes up in Timbuktu and says, "Today I will move to Milwaukee!" – migration takes place by way of networks of relatives, friends, acquaintances, and fellow countrymen, and few people immigrate to a place where these connections are absent. Consider two countries on the other side of the planet – the Philippines and Indonesia. These neighbors both have large, poor populations and share many cultural similarities, yet there are more than one million Filipino immigrants in the United States and only a handful of Indonesians, and annual immigration from the Philippines is routinely 40-50 times greater than immigration from Indonesia. Why? Because the ties between the United States and the Philippines are numerous and deep, our having ruled the country for 50 years and maintained an extensive military presence there for another 50 years. On the other hand, the United States has very few ties to Indonesia, whose people tend to migrate to the Netherlands, its former colonial ruler.

At the end of the Mexican War in 1848, there were only a small number of Mexican colonists living in the Southwest, many of whom soon returned to Mexico with the Mexican government's assistance. The immigration of Mexican workers began in a small way with the construction of the railroads beginning in the 1870s and later with the expansion of other industries. But the process of mass migration northward to the United States, and the development of the networks which made further immigration possible, began in earnest during the Mexican Revolution of 1910-1920. The Cristero rebellion of the late 1920s was the last major armed conflict in Mexico and was centered in the states of west-central Mexico; partly to prevent further trouble, the newly consolidated Mexico City regime adopted a policy of encouraging emigration from these very states. The power of government-fostered migration networks is clear from the fact that even today these same states account for a disproportionate share of Mexican immigrants to the United States.

On the U.S. side, federal policies that established migration networks between the United States and Mexico arguably began in the 1920s, when Congress specifically excluded the Western Hemisphere from the newly enacted immigration caps so as not to limit the flow of Mexican immigrants. Then in 1942, the Bracero Program to import Mexican farmworkers was started under the cover of World War II, and it continued until 1964.

About 4.6 million contracts were issued to Mexican workers (many were repeat contracts for workers who returned several times, so that an estimated one to two million individuals participated). By creating vast new networks connecting the United States and Mexico, the Bracero Program launched the mass illegal immigration we are still experiencing today. Illegal immigration networks were reinforced by the IRCA amnesty of 1986, which granted legal status to nearly three million illegal aliens, at least two-thirds of whom were Mexican. This new legal status conferred by the federal government generated even more immigration, legal and illegal, as confirmed by a 2000 INS report. And the federal government's effective abandonment of interior immigration enforcement has served to further promote immigration from Mexico.

As a result of this series of government decisions, the flow of Mexican immigration to the United States is very large. The Mexican immigrant population ballooned from less than 800,000 in 1970 to nearly eight million in 2000, and is more than 10 million today, most having arrived since 1990. This rapid growth has created a snowball effect through the reinforcement of old networks and the establishment of new ones. If present trends continue, within a few years Mexico will have sent more immigrants to the United States in 100 years than Germany (currently the leading historical source of immigrants) has in more than 300 years.

Far from being an inevitable process with deep historical roots, then, mass immigration from Mexico is a relatively recent phenomenon created by government policies. The same is true for most other sources of immigration to the United States, such as Cuba, India, Central America, Russia, Vietnam, and elsewhere.

We have not seriously tried to enforce the law

A supporter of a guestworker/amnesty program might respond that while interrupting immigration flows may be possible in theory, it cannot be accomplished in practice, and the proof of that is that we have tried to enforce our immigration laws and failed.

We have done no such thing. Increases in immigration enforcement over the past decade have been confined almost exclusively to patrolling the border; as important as that is, enforcement of the immigration laws inside the country has declined precipitously, and without such a combined strategy, success is impossible. In particular, enforcement of the ban on hiring illegal aliens, the centerpiece of any effort to regain control of our chaotic immigration system, has been all but abandoned. We might date the abandonment from INS raids in Georgia during the Vidalia onion harvest in 1998, which caused large numbers of illegal aliens – knowingly hired by the farmers – to abandon the fields to avoid arrest. By the end of the week, both of the state's senators and three congressmen had sent an outraged letter to Washington complaining that the INS “does not understand the needs of America's farmers,” and that was the end of that.

So, the INS tried out a “kinder, gentler” means of enforcing the law, which fared no better. Rather than conduct raids on individual employers, Operation Vanguard in 1998-

99 sought to identify illegal workers at all meatpacking plants in Nebraska through audits of personnel records. The INS then asked to interview those employees who appeared to be unauthorized – and the illegals ran off. The procedure was remarkably successful, and was meant to be repeated every two or three months until the plants were weaned from their dependence on illegal labor.

Local law enforcement officials were very pleased with the results, but employers and politicians vociferously criticized the very idea of enforcing the immigration law. Gov. Mike Johanns organized a task force to oppose the operation; the meat packers and the ranchers hired former Gov. Ben Nelson to lobby on their behalf; and, in Washington, Sen. Chuck Hagel (R-Neb.) pressured the Justice Department to stop. They succeeded, the operation was ended, and the senior INS official who had thought it up in the first place was forced into early retirement.

The INS got the message and developed a new interior enforcement policy that gave up trying to actually control immigration and focused almost entirely on the important, but narrow, issues of criminal aliens and smugglers. As INS policy director Robert Bach told *The New York Times* in a March 9, 2000, story appropriately entitled “I.N.S. Is Looking the Other Way as Illegal Immigrants Fill Jobs”: “It is just the market at work, drawing people to jobs, and the INS has chosen to concentrate its actions on aliens who are a danger to the community.”

The enforcement statistics tell the story in a nutshell: According to the GAO, even in 1999, only 417 notices of intent to fine were levied against employers who knowingly hired illegal aliens; but in 2004, the number of employer fines was 3. That’s “three”. Nationwide.

Tony Blankley, the *Washington Times*’ editorial-page editor, summed it up last year:

I might agree with the president’s proposals if they followed, rather than preceded, a failed Herculean, decades-long national effort to secure our borders. If, after such an effort, it was apparent that we simply could not control our borders, then, as a practical man I would try to make the best of a bad situation. But such an effort has not yet been made.

Amnesties and foreign-worker programs can’t stop illegal immigration

Even if it is possible to enforce the law, wouldn’t accommodating the immigration flow through a guestworker program or increased issuance of green cards (plus an amnesty for those already here) be another way of eliminating illegal immigration?

No.

Putting aside their other effects, amnesties and increased immigration (whether permanent or “temporary”) simply cannot eliminate illegal immigration. To begin with

expansions in immigration: The sense seems to be that the economy demands a certain amount of foreign labor each year, but that the various legal channels only admit a portion of the needed flow, with the rest entering illegally. It would follow, then, that establishing a legal means for those foreign workers “forced” to come illegally would all but eliminate ordinary illegal immigration.

This represents a simplistic understanding of both the economy and of immigration. Immigration always creates more immigration and, as the discussion above about Bracero Program made clear, the proliferation of connections created by the arrival of workers from abroad will continually expand the pool of people who have the means to come here, leading to more immigration, legal and illegal. In fact, a large body of sociological research shows that one of the best predictors of a person’s likelihood to immigrate to the United States illegally is whether he has legal immigrant family members already here.

This is why the momentum of immigration continues regardless of economic circumstances; the economy today no longer serves as a regulator of immigration levels. For instance, if we examine the four years before and after 2000, we see that the first period, 1996-2000, was a time of dramatic job growth and rapid expansion, while 2000-2004 saw slower economic growth and weaker labor demand. Immigrant unemployment grew significantly during that period, as did the number of unemployed immigrants. And yet immigration actually increased slightly, from 5.5 million arrivals during the first period and 6.1 million new immigrants during the second.

The experience with amnesties is no different. About 2.7 million people were legalized in the late 1980s and early 1990s as a result of the amnesties contained in the Immigration Reform and Control Act (IRCA) of 1986. But INS figures show that by the beginning of 1997 those former illegal aliens had been entirely replaced by new illegal aliens, and that the unauthorized population again stood at more than 5 million, just as before the amnesty.

In fact, INS estimates show that the 1986 amnesty almost certainly increased illegal immigration, as the relatives of newly legalized illegals came to the United States to join their family members. The flow of illegals grew dramatically during the years of the amnesty to more than 800,000 a year, before dropping back down to “only” 500,000 a year.

To sum up: If increased admission of foreign workers served to limit illegal immigration, how can it be that all three – legal immigration, “temporary” work visas, and illegal immigration – have all mushroomed together? In 1974, legal immigration was less than 400,000; in 2004, it was nearly 1 million. In 1981, about 45,000 “temporary workers and trainees” were admitted; in 2004, the number was 684,000. Twenty years ago, the illegal population was estimated to be 5 million; today it is 11-12 million, even after nearly 3 million illegals were amnestied.

Whatever other arguments might be made for them, neither amnesties nor foreign-worker programs are a solution to illegal immigration.

The poor are not overpaid

But perhaps an amnesty and foreign-worker program, despite the illegal immigration they spark, are worth it because a reliable supply of cheap labor is needed to fill low-paying jobs that Americans won't take.

This too is false.

Rejecting amnesty and worker-importation programs, and enforcing the immigration law instead, would result in a gradual decline in the number of foreign workers. Employers would respond in two ways, both of them good for America, by 1) making the jobs more attractive for legal workers, and 2) using existing workers more efficiently.

As to the first: in a free-market economy, when a prospective buyer can't find sellers to trade with, he increases what he is willing to pay until a seller comes forward. With regard to employment, if workers are not responding in sufficient numbers to job offers, employers offer more money, or additional compensation in some other form, in order to purchase their labor.

If we assume, for the sake of argument, that a labor shortage exists at the bottom of the labor market, one needs to ask whether Congress should interfere with the natural workings of that market (by increasing either temporary or permanent immigration) to prevent wage increases. A foreign-worker program would do precisely that – by artificially inflating the supply of low-skilled workers, it would short-circuit any market incentives for employers to increase the wages and benefits, or improve working conditions, for entry-level blue-collar workers.

Support for a foreign-worker program, then, must be based on the assumption that the poor are overpaid and that the government should intervene to lower their wages. The inflation-adjusted wages of full-time workers with less than a high school education actually declined more than 7 percent during the 1990s. What's more, high-school dropouts are already the poorest workers in our country, so the drop in wages caused by additional imported labor, or the rise in wages caused by the lack of such labor, would have a much greater impact on their quality of life.

The drop in wages has been even more pronounced among farmworkers, the subset of the low-skilled workforce which would be most immediately affected by the admission of more foreign workers. According to a March 2000 report from the Department of Labor, the real wages of farmworkers fell from \$6.89 per hour in 1989 to \$6.18 per hour in 1998 – a drop of more than 10 percent. A new guestworker program would continue this downward trend in farmworker wages.

And wages aren't the only indicator. Of full-time workers without a high-school diploma, fully 54 percent are not offered health insurance by their employers. There are signs,

however, that this trend may be shifting. Because of difficulty in recruiting and retaining low-skilled workers at the end of the 1990s expansion, the fast food industry, for instance, began to offer medical and dental insurance. What's more, these employers, such as McDonald's, Burger King, and Taco Bell, began to offer 401(k) plans, stock options, home and car insurance, etc.

Some fear that allowing wages at the bottom of the economic ladder to rise in this way would spark inflation. Mexican immigration in the 1990s, for instance, held prices down by, at most, two-tenths of 1 percent. But since all high-school dropouts – native-born and foreign-born, legal and illegal – only account for about 4 percent of total output in the United States, even a substantial increase in their wages from tighter immigration policies could not have more than the most minute impact on prices.

The purpose of a foreign-worker program is to slow the rise in wages for the poor by removing the natural incentives for businesses to increase compensation. Passage of such a program, then, would reflect the sense of Congress that the poor do not require the better pay that the market would otherwise begin to offer them in the absence of unskilled foreign labor.

Jobs Americans will do

But even at higher wages, aren't there jobs that Americans simply won't do, and that foreign workers – either as illegal aliens, guestworkers, or conventional immigrants – must be imported for?

It seems very likely that most jobs held by Mexican immigrants are jobs that would not interest the majority of Americans, because they are generally low-paying jobs done by unskilled workers. However, it is also clear that there are millions of Americans who are already doing precisely these kinds of jobs. In March 2003, there were 8.8 million native-born full-time workers without a high-school education, 1.3 million native-born dropouts unemployed, and a further 6.8 million not even in the work force. There is a good deal of evidence that these workers are in direct competition with Mexican immigrants – i.e., these are jobs that Americans will do and are doing already.

With the exception of agricultural labor, native-born and Mexican-born workers have a similar distribution across occupations. Thus, natives who lack a high school education and Mexican immigrants appear to be doing the same kind of jobs and are therefore in competition with one another. Another way to think about whether Mexican immigrants compete with unskilled native-born workers is to look at their median wages. If Mexican immigrants were employed in jobs that offered a very different level of remuneration than native-born dropouts, then it would imply that the two groups do very different kinds of work. But, in fact, the median wage of Mexican immigrants and native-born high school dropouts is very similar; the median weekly wage for native-born high school dropouts who work full time is \$350, while the median weekly wage for full-time Mexican immigrants is \$326. Like their distribution across occupations, the wages of the

two groups seem to indicate that they hold similar jobs.

Other research has shown the same thing – that unskilled immigrants and natives compete for the same jobs. A report prepared by the Bureau of Labor Statistics concluded that native-born and immigrant high school dropouts are almost perfect substitutes for one another in the labor market. That is, they compete directly with one another for the same jobs. In a paper published by the Brookings Institution in 1997, Harvard economists George Borjas, Richard Freeman, and Lawrence Katz also found that natives and immigrants who lack a high school education tend to hold similar jobs and concluded that immigration had a significant adverse impact on the wages of natives without a high school education. And a National Academy of Sciences report also came to the same conclusion – unskilled natives and immigrants tend to compete with one another for the same jobs.

Mass immigration slows innovation

Even if wages were increased and American blue-collar workers flocked to the jobs that immigrants now fill, wouldn't there still be a shortage of labor that foreign workers would need to fill?

No.

The above discussion focussed on the first part of an employer's response to a drop in the number of foreign workers – offering higher wages and benefits. The other part of the response would be to use existing labor more efficiently, more productively, through mechanization and reorganization of work. And mass immigration (whether of illegal aliens, "temporary" workers, or permanent immigrants) slows this process of technological innovation and increasing productivity in the industries where foreign workers are concentrated.

Elementary economics tells us that capital is likely to be substituted for labor only when the price of labor rises, something a foreign-labor program is specifically intended to prevent. A 2001 report by the Federal Reserve Bank of Boston highlights this problem by warning that a new wave of low-skilled immigrants over the course of this century may slow growth in U.S. productivity.

That this is so should not be a surprise. Julian Simon, in his 1981 classic, *The Ultimate Resource*, wrote about how scarcity leads to innovation:

It is all-important to recognize that discoveries of improved methods and of substitute products are not just luck. They happen in response to scarcity – a rise in cost. Even after a discovery is made, there is a good chance that it will not be put into operation until there is need for it due to rising cost. This point is important: Scarcity and technological advance are not two unrelated competitors in a Malthusian race; rather, each influences the other.

This is true for copper or oil, and is just as true for labor; as wages have risen over generations, innovators have devised ways of substituting capital for labor, increasing productivity to the benefit of all. The converse, of course, is also true; the artificial superabundance of a resource will tend to remove much of the incentive for innovation.

Stagnating innovation caused by excessive immigration is perhaps most apparent in the most immigrant-dependent activity – the harvest of fresh fruit and vegetables. The period from 1960 to 1975 (roughly from the end of the “Bracero” program, which imported Mexican farmworkers, to the beginning of the mass illegal immigration we are still experiencing today) was a period of considerable agricultural mechanization. Although during hearings on the proposed termination of the Bracero Program in the early 1960s, California farmers claimed that “the use of braceros is absolutely essential to the survival of the tomato industry,” the termination of the program prompted mechanization which caused a quintupling of production for tomatoes grown for processing, an 89 percent drop in demand for harvest labor, and a fall in real prices.

But a continuing increase in the acreage and number of crops harvested mechanically did not materialize as expected, in large part because the supply of workers remained artificially large due to the growing illegal immigration we were politically unwilling to stop.

An example of a productivity improvement that “will not be put into operation until there is need for it due to rising cost,” as Simon said, is in raisin grapes. The production of raisins in California’s Central Valley is one of the most labor-intensive activities in North America. Conventional methods require bunches of grapes to be cut by hand, manually placed in a tray for drying, manually turned, manually collected.

But starting in the 1950s in Australia (where there was no large supply of foreign farm labor), farmers were compelled by circumstances to develop a laborsaving method called “dried-on-the-vine” production. This involves growing the grapevines on trellises, then, when the grapes are ready, cutting the base of the vine instead of cutting each bunch of grapes individually. This new method radically reduces labor demand at harvest time and increases yield per acre by up to 200 percent. But this high-productivity, innovative method of production has spread very slowly in the United States because the mass availability of foreign workers has served as a disincentive to farmers to make the necessary capital investment.

We’ve seen this phenomenon in manufacturing, as well. A 1995 report on Southern California’s apparel industry, prepared by Southern California Edison, warned of the danger to the industry of reliance on low-cost foreign labor:

In Southern California, apparel productivity gains have been made through slow growth in wages. While a large, low-cost labor pool has been a boon to apparel production in the past, overreliance on relatively low-cost sources of labor may now cost the industry dearly. The fact is, Southern California has fallen behind both domestic and international

competitors, even some of its lowest labor cost competitors, in applying the array of production and communications technologies available to the industry (such as computer aided design and electronic data interchange).

Conversely, homebuilders, who are still less reliant on foreign workers than some other industries, have begun to modernize construction techniques. The higher cost of labor means that “In the long run, we’ll see a move toward homes built in factories,” as Gopal Ahluwalia, director of research at the National Association of Home Builders, told the Washington Post several years ago. But as immigrants increasingly move into this industry, we can expect such innovation to spread much more slowly than it would otherwise.

And, despite the protestations of employers, a tight low-skilled labor market can spur modernization even in the service sector: automated switches long ago replaced most telephone operators, continuous-batch washing machines reduce labor demand for hotels, and self-service ordering allows restaurant staff to be more efficient. As unlikely as it might seem, many veterans’ hospitals are now using mobile robots to ferry medicines from their pharmacies to various nurse’s stations, eliminating the need for a worker to perform that task. And devices like automatic vacuum cleaners, lawn mowers, and pool cleaners are increasingly available to consumers. Artificially suppressing the cost of low-skilled labor through any kind of foreign-worker program would stifle this ongoing modernization process.

There’s nothing as permanent as a “temporary” worker

But whatever the effects of a guestworker program, at least the “temporary” workers will go home – right?

Wrong.

The distinguishing feature of a guestworker program, as indicated by its name, is that the “guests” are expected to return home rather than settle permanently. This is an attempt to make the importation of people operate more like the importation of goods, such that only the product of their labor stays behind. As President Bush said of his proposal last year, “This program expects temporary workers to return permanently to their home countries after their period of work in the United States has expired.” Toward that end, the White House has suggested “tax-preferred savings accounts” for foreign workers who returned home and totalization agreements which would apply U.S. work experience toward qualifying for the home country’s pension system.

But history conclusively shows that such efforts are in vain and that the “guests” stay long after the party is over – precisely because people are not objects, but instead have their own plans and purposes. The Bracero program from Mexico, for instance, was supposed to be a temporary expedient during a wartime emergency. Yet once farmers became addicted to it, they devoted resources to lobbying to keep it rather than to

mechanization and innovation. Thus the “wartime” measure lasted for 22 years, until it was ended in 1964.

Not only did the program last longer than intended, but it also dramatically increased Mexican legal and illegal immigration; during the 22 years the program lasted, there were a total of 4.6 million Bracero entries, but also 5.3 million illegal-alien apprehensions and more than half a million Mexican legal immigrants. Rather than work temporarily and go home, large numbers of Mexican guestworkers over time settled and served as magnets for further immigration, sparking one of the largest migrations in human history.

Overseas the story is the same. Germany has become a “reluctant land of immigration” because of its program for guestworkers from Turkey and elsewhere. The number of these workers peaked in 1973 at 2.6 million, when the oil crisis prompted the German government to stop recruiting guestworkers. The government had been told that the now-unemployed guestworkers were part of a “circular” migration pattern, like the supposed back-and-forth migration among Mexican workers in the Southwest. Instead, the Turks and other workers stayed in Germany (just like the Mexicans here), figuring correctly that neither job prospects nor the social safety net were any better at home. What’s more, now that they were established in Germany, they had their families join them, leading to an 82 percent increase in the number of foreigners in Germany between 1973 and 1999.

This could not have been otherwise. Once employers come to depend on foreign workers, they cease looking for alternatives, and foreign workers come to depend on their guestworker wages to support their families. In addition, guestworker programs distort the economy, as employers factor in the presence of workers in their future plans, vastly increasing the likelihood that the “guests” will move in for good.

The old aphorism is as true today as it has ever been: There is nothing as permanent as a temporary worker.

The high cost of cheap labor

Supporters of amnesty and foreign-worker programs also claim that such schemes don’t negatively impact taxpayers. Temporary workers don’t use government services, the story goes, while illegal aliens, once they are amnestied, will start to pay taxes and carry their own weight.

This, too, is false.

In fact, because of the inevitable large-scale settlement of guestworkers and their families, friends, acquaintances, and fellow countrymen, the long-term budgetary fallout of a guestworker program would likely be enormous.

The modern American economy increasingly rewards skilled workers, while offering very limited opportunities to the unskilled, a category that would include current illegal

aliens as well as most guestworkers and those who follow them into the United States. The best way to gauge the fiscal reverberations of a guestworker program is to look at the characteristics of current Mexican immigrants, since many of them who are now illegal would participate in such a program and because they are similar to the new guestworkers who would arrive from Mexico.

Due to their low levels of education, Mexican immigrants experience limited economic mobility in the United States. The average income of Mexican immigrants is less than half that of natives. While their income rises steadily the longer they live in the United States, even long-time Mexican immigrants do not come close to closing the gap with natives. According to data from the Census Bureau's March 2000 Current Population Survey, more than half of legal Mexican immigrants who have been in the United States for more than 20 years and their U.S.-born children (under age 18) live in or near poverty.

This poverty guarantees high levels of welfare use. Even after welfare reform, welfare use among Mexican immigrant households remains much higher than that of natives. Based on Center for Immigration Studies analysis of the same Census Bureau survey, an estimated 33.9 percent of households headed by a legal Mexican immigrant and 24.9 percent headed by an illegal Mexican immigrant used at least one major welfare program. In contrast, 14.8 percent of native households used welfare. Moreover, Mexican immigrant welfare use remains much higher than that of natives even among those who have lived in the United for many years.

Also, more than half (52.6 percent) of Mexican immigrants do not have health insurance, compared to 13.5 percent of natives; Mexican immigration by itself accounted for 3.3 million or 29 percent of the growth in the size of the nation's total uninsured population from 1987 to 2000. Even among legal Mexican immigrants who have lived in the country for more than 20 years, more than one-third are still uninsured.

It is unlikely that our society would want, or be able, to deny public services to millions of foreign workers. Much of the 1996 welfare reform that limited welfare eligibility for immigrants has been rolled back, and even those portions that remain have been almost completely negated by state decisions to provide benefits. Congress expressed an unwillingness in 1996 to give states even the option of denying public education to illegal-alien children – so there would seem to be little likelihood that even a suspension of automatic birthright citizenship for children born here to guestworkers (as has been suggested by some) would have any effect in limiting their use of public services.

The above discussion has been about the fiscal fallout of a foreign-worker program. But even an amnesty of the illegal aliens already here would result in huge additional costs to taxpayers. We estimate that households headed by illegal aliens paid \$16 billion in taxes in 2002 – but imposed more than \$26.3 billion in costs on the federal government. The result was a net fiscal deficit of more than \$10 billion a year, or \$2,700 per illegal-alien household. Amnesty advocates are correct in saying that legalization would increase tax payments from illegal-alien households, as more of them “came out of the shadows” and

worked on the books; our estimate is that tax payments would increase by 77 percent. However, the same “out of the shadows” phenomenon would cause use of government services to balloon by 118 percent. This means that legalizing the illegal population would cost federal taxpayers \$29 billion, or \$7,700 per illegal household, nearly triple the current costs. Note that these estimates are only for federal taxes and services; the cost to taxpayers at the state and local level is likely to be even larger.

In short, there is no way to avoid the high cost of cheap labor.

No amnesty or foreign-worker program is administratively feasible

In any large government program, plans on paper must translate into policies on the ground. Any amnesty or foreign-worker program would require extensive background checks as well as simple management of the program – processing applications, interviewing applicants, checking arrivals, tracking whether a worker is still employed, enforcing the departure of those who are supposed to leave. Supporters of the various amnesty and foreign-worker proposals have assumed that administering these programs would not be a problem.

But it is not explained how the immigration bureaus within the Department of Homeland Security, already choking on massive workloads, are supposed to be able to accomplish these goals. The GAO has reported that the backlog of pending immigration applications of various kinds was at 6.2 million at the end of FY 2003, up 59 percent from the beginning of FY 2001. It has since shrunk to “only” 4.1 million.

Because of the enormity of the backlog, the immigration service often issues work permits and travel documents to green-card applicants right when they submit their forms, knowing that it will be years before anyone actually reads the application. What’s more, the immigration bureaus are trying to implement vast new tracking systems for foreign students and foreign visitors. The crush of work has been so severe, that many important statutory deadlines have been missed.

And the context for all this is a newly created Department of Homeland Security, which incorporates pieces of the old Immigration and Naturalization Service and many other agencies in various combinations. To add to DHS’s well-known management problems, all three immigration bureaus are currently without a head.

The registration and screening and tracking of million of additional aliens for amnesty or foreign-worker programs would result in complete institutional paralysis and breakdown. After all, the workload created by any such program would be larger than the total number of visas issued annually worldwide by the State Department (approximately 5 million), and many, many times larger than the total number of green cards issued each year by DHS (around 1 million). None of this is to pin blame on the bureaucrats charged with implementing congressional mandates. Rather, the immigration proposals themselves are the problem, because they are not based on any real-world assessment of

the administrative capacity of the immigration agencies.

Massive fraud is a security threat

In addition to widespread paralysis, overloading administrative agencies with the vast and complicated new responsibilities of an amnesty and foreign-worker program would cause staggering levels of fraud, as overworked bureaucrats are pressured to rubber-stamp applications.

In fact, even without the tsunami of paperwork that new immigration programs would cause, fraud is already dangerously widespread. Stephen Dinan of The Washington Times reported earlier this month that internal investigators at U.S. Citizenship and Immigration Services (USCIS) have uncovered thousands of cases of misconduct, including bribery, exchanging immigration benefits for sex, and being influenced by foreign governments. And new charges are being added at the rate of 50 per week.

Nor is this a new development. A January 2002 GAO report addressed the consequences of such administrative overload. It found that the crush of work has created an organizational culture in the immigration services bureau where “staff are rewarded for the timely handling of petitions rather than for careful scrutiny of their merits.” The pressure to move things through the system has led to “rampant” and “pervasive” fraud, with one official estimating that 20 to 30 percent of all applications involve fraud. The GAO concluded that “the goal of providing immigration benefits in a timely manner to those who are legally entitled to them may conflict with the goal of preserving the integrity of the legal immigration system.”

This last point was reinforced in an especially lurid way by the last big amnesty program, which was part of the Immigration Reform and Control Act (IRCA) of 1986. As Paul Virtue, then general counsel of the INS, testified before Congress in 1999, “the provisions of IRCA were subject to widespread abuse, especially the Special Agricultural Worker (SAW) program.” There were nearly 1.3 million applications for the SAW amnesty – double the total number of foreign farm workers usually employed in the United States in any given year, and up to six times as many applicants as congressional sponsors of the scheme assured skeptics would apply. INS officials told The New York Times that the majority of applicants in certain offices were clearly fraudulent, but that they were approved anyway, since the INS didn’t have the means to prove the fraud. Some women came to interviews with long, painted nails, while others claimed to have picked strawberries off trees. One woman in New Jersey who owned a five-acre garden plot certified that more than 1,000 illegal aliens had worked on her land.

This is a problem not just because it offends our sensibilities but because ineligible people will get legal status – people like Mahmud Abouhalima, a cabbie in New York, who got amnesty as a farmworker under the 1986 law and went on to help lead the first World Trade Center attack. Having an illegal-alien terrorist in your country is bad; having one with legal status is far worse, since he can work and travel freely, as

Abouhalima did, going to Afghanistan to receive terrorist training only after he got amnesty.

And we cannot safely assume that at least those illegal aliens who have snuck across the Mexican border are no threat, since they want only to wash our dishes. For example, Iraqi-born smuggler George Tajirian pled guilty in 2001 to forging an alliance with a Mexican immigration officer to smuggle “Palestinian, Jordanian, Syrian, Iraqi, Yemeni, and other illegal aliens through Mexico and into the United States.” And in late 2003, the former Mexican consul in Beirut was arrested for her involvement in a similar enterprise.

Another amnesty or large foreign-worker program is guaranteed – guaranteed – to give legal residence to a future terrorist.

A third way – neither roundups nor amnesty

The final selling point for supporters of amnesty and foreign-worker programs is that there are only two options available to us – either massive roundups and a huge burst of deportations, or some form of legalization. And since it’s clear there’s no way we can remove 11 million people all at once, the only option available to us is amnesty, however it might be labeled or camouflaged.

But there is a third way that rejects this false choice, and it is the only approach that can actually work: Shrink the illegal population through consistent, across-the-board enforcement of the immigration law. By limiting the settlement of new illegals, by increasing deportations to the extent possible, and, most importantly, by increasing the number of illegals already here who give up and deport themselves, the United States can bring about an annual decrease in the illegal-alien population, rather than allowing it to continually increase. The result would be attrition of the illegal population, shrinking it over a period of several years to a manageable nuisance, rather than today’s looming crisis. This is analogous to the approach a corporation might take to downsizing a bloated workforce: a hiring freeze, some layoffs, plus new incentives to encourage excess workers to leave on their own.

Churn in the illegal population. This strategy of attrition is not a pipe dream, or the idle imaginings of a policy wonk. The central insight is that there is already significant churn in the illegal population, which can be used to speed the decline in overall numbers. According to a 2003 report from the Immigration and Naturalization Service, thousands of people are subtracted from the illegal population each year. From 1995 to 1999, an average of 165,000 a year went back home on their own after residing here for at least a year; the same number got some kind of legal status, about 50,000 were deported, and 25,000 died, for a total of more than 400,000 people each year subtracted from the resident illegal population. The problem is that the average annual inflow of new illegal aliens over that same period was nearly 800,000, swamping the outflow and creating an average annual increase of close to 400,000.

A strategy of attrition would seek to reverse this relationship, so that the outflow from the illegal population is much larger than the number of new illegal settlers from abroad. This would be a measured approach to the problem, one that doesn't aspire to an immediate, magical solution to a long-brewing crisis, but also does not simply surrender, as the amnesty and foreign-worker proposals do.

There are a number of real-world examples of successful enforcement. During the first several years after the passage of the IRCA, illegal crossings from Mexico fell precipitously, as prospective illegals waited to see if we were serious. Apprehensions of aliens by the Border Patrol – an imperfect measure but the only one available – fell from more than 1.7 million in FY 1986 to under a million in 1989. But then the flow began to increase again as the deterrent effect of the hiring ban dissipated, when word got back that we were not serious about enforcement and that the system could be easily evaded through the use of inexpensive phony documents.

That showed that reducing new illegal immigration is possible; but what about increasing the number of illegals already here who give up and leave? That, too, has already been demonstrated. After the 9/11 attacks, immigration authorities undertook a “Special Registration” program for visitors from Islamic countries. The affected nation with the largest illegal-alien population was Pakistan, with an estimated 26,000 illegals here in 2000. Once it became clear that the government was getting more serious about enforcing the immigration law – at least with regard to Middle Easterners – Pakistani illegals started leaving on their own in large numbers. The Pakistani embassy estimated that more than 15,000 of its illegal aliens left the United States, and the Washington Post reported the “disquieting” fact that in Brooklyn’s Little Pakistan the mosque was one-third empty, business was down, there were fewer want ads in the local Urdu-language paper, and “For Rent” signs sprouted everywhere.

And in an inadvertent enforcement initiative, the Social Security Administration in 2002 sent out almost a million “no-match” letters to employers who filed W-2s with information that was inconsistent with SSA’s records. The intention was to clear up misspellings, name changes, and other mistakes that had caused a large amount of money paid into the system to go uncredited. But, of course, most of the problem was caused by illegal aliens lying to their employers, and thousands of illegals quit or were fired when they were found out. The effort was so successful at denying work to illegals that business and immigrant-rights groups organized to stop it and won a 90 percent reduction in the number of letters to be sent out.

A policy of attrition through enforcement would have two main components: an increase in conventional enforcement – arrests, prosecutions, deportations, asset seizures, etc. – plus expanded use of verification of legal status at a variety of important points, to make it as difficult and unpleasant as possible to live here illegally.

Conventional enforcement. As to the first, the authorities – from the White House on down – need to make an unambiguous commitment to immigration enforcement. There must be an end to the climate of impunity for border-jumping, and illegal employment,

and fake documents, and immigration fraud. To use only one example of the longstanding lack of commitment, aliens who repeatedly sneak across the border are supposed to be prosecuted and jailed, and the Border Patrol unveiled a new digital fingerprint system in the mid '90s to make tracking of repeat crossers possible. The problem is that short-staffed U.S. attorneys' offices kept increasing the number of apprehensions needed before they would prosecute, to avoid actually having to prosecute at all.

It would be hard to exaggerate the demoralizing effect that such disregard for the law has on immigration enforcement agents. Conversely, the morale of immigration workers would soar in the wake of a real commitment to law enforcement.

Among measures that would facilitate enforcement: hiring more U.S. Attorneys and judges in border areas, to allow for more prosecutions; expanding our laughably small Border Patrol which, even with recent increases, is barely one-quarter the size of the New York Police Department and is only able to deploy an average of one agent per mile along the Mexican border during any given shift; promoting enhanced cooperation between federal immigration authorities and state and local police; and seizing the assets, however modest, of apprehended illegal aliens; expanding detention capacity; streamlining the immigration appeals process to deport aliens more quickly.

Firewalls. Even if we were somehow to increase deportations ten-fold, most of the decline in the illegal population would have to come through self-deportation, illegal aliens giving up and going home. Unlike at the visa office or the border crossing, once aliens are inside the United States, there's no physical site to exercise control, no choke point at which to examine whether someone should be admitted. The solution is to create "virtual choke points" – events that are necessary for life in a modern society but are infrequent enough not to bog down everyone's daily business. Another analogy for this concept is to firewalls in computer systems – filters that people could pass through only if their legal status is verified. The objective is not mainly to identify illegal aliens for arrest (though that will always be a tool) but rather to make it as difficult as possible for illegal aliens to live a normal life here.

This is the rationale for the prohibition against employing illegal aliens – people have to work, so requiring proof of legal status upon starting a job would serve as an important firewall. Congress instituted this firewall tactic in 1986 when it prohibited the employment of illegal aliens; but in the absence of a mandatory verification mechanism, such a system could not succeed. The immigration service has already developed a verification system which has proven both workable and popular with participating businesses (including my own Center for Immigration Studies). Building on this fledgling system, we need to find other instances in which legal status might be verified, and thus illegals barred, such as getting a driver's license, registering an automobile, opening a bank account, applying for a car loan or a mortgage, getting a business or occupational license, and obtaining government services of any kind.

An important element in this firewall tactic is secure documentation. By enacting the

Real ID Act, Congress has already taken a step toward establishing uniform standards for state driver's licenses, which serve as our nation's de facto national identification system. At least as important is to formally prohibit acceptance of consular registration cards, chiefly Mexico's "matricula consular" card, which functions as an illegal-alien ID; when accepted by U.S. jurisdictions and companies as a valid ID, it enables illegal aliens to pass through many firewalls.

An important point about using verification of legal status as a way to downsize the illegal population is that its effects would be felt gradually, rather than all at once. A new, functional verification system for employment, for instance, would be applied mainly to new hires (though employers should have the option of checking existing employees as well). The same is true for getting a driver's license or a mortgage – these are not things people do every day, so the effects of verifying legal status would unfold over a period of time.

Mr. Chairman, you and your colleagues should deliberate on immigration policy secure in the knowledge that reasserting control over immigration requires no land mines, no machine guns, no tattoos – none of the cartoonish images invoked by opponents of tight immigration controls. All that is needed is the consistent application of ordinary law-enforcement tools – plus a rejection of measures that would undermine enforcement, such as amnesties or expanded foreign-worker programs. I look forward to any questions you might have.

Testimony
United States Senate Committee on the Judiciary
Comprehensive Immigration Reform II
October 18, 2005

Douglas S. Massey, Ph.D.
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Testimony of Douglas S. Massey
Senate Judiciary Committee
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Mr. Chairman and members of the Judiciary Committee, my testimony is very simple. The U.S. immigration system is badly broken. It has been broken since 1986 and has been getting worse. The central problem concerns the relationship between Mexico and the United States. Mexico accounts for 60% of all unauthorized migrants currently in the United States and around a fifth of recent legal immigrants. After Mexico's six million unauthorized U.S. residents, the next closest countries are El Salvador and Guatemala with totals of less than 300,000 each. Few unauthorized migrants come from Asia, Europe, Canada, Africa, or the Pacific.

Undocumented migration is thus overwhelmingly a problem of the Western Hemisphere, and very disproportionately Mexican. Next to Canada, Mexico is our closest neighbor and largest trading partner. Together we share a 2,000 mile border and trade annually totaling \$286 billion. In 2004 175,000 legal immigrants entered the US from Mexico, along with 3.8 million visitors for pleasure, 433,000 visitors for business, 118,000 temporary workers and dependents, 25,000 intra-company transferees and dependents, 21,000 students and dependents, 8,400 exchange visitors and dependents, and 6,200 traders and investors. At the same time, one million Americans presently live in Mexico and 19 million travel there each year along as visitors. U.S. foreign direct investment in Mexico now totals \$62 billion annually.

These massive cross-border flows are occurring by design, under the auspices of the North American Free Trade Agreement. However, at the heart of NAFTA lies a contradiction: even as we move to promote the freer cross-border movement of goods, services, capital, and commodities we simultaneously seek to prevent the movement of labor. We somehow wish to create a single North American economy that somehow integrates all factor markets except one—that for labor. To maintain the illusion that we can somehow integrate while remaining separate, we have militarized our border with a friendly country that is among our closest trading partners and strongest allies and which poses no conceivable threat to U.S. national security. Even as binational trade with Mexico grew by a factor of eight from 1986 to the present, the Border Patrol's enforcement budget has increased by a factor of ten and the number of officers tripled. The U.S. Border Patrol is now the largest arms-bearing branch of the U.S. government save the military itself, with an annual budget of \$1.4 billion.

The attempt to stop the flow of Mexican labor into the United States through unilateral enforcement has not only failed miserably, it has backfired. It has not deterred would-be immigrants from entering the United States nor has it reduced the size of the annual inflow. What it HAS done is channel migratory flows away from traditional crossing points to remote zones where the physical risks are great but the likelihood of getting caught is small. As a result, the number of deaths has skyrocketed to a record 460 persons per year while the probability of apprehension has fallen to forty year low. We are spending more tax dollars to catch fewer migrants and cause more deaths.

Moreover, once deflected away from traditional crossing points, Mexican migrants have moved on to new destinations as well. Whereas two thirds of Mexicans who arrived in the United States during 1985-90 went to California, during 2000 to 2005 only one third did so. In essence, our border policies have helped to transform a regional movement affecting three states into a national phenomenon affecting all 50 states.

Our policies also served to transform what had been a seasonal movement of male workers into a settled population of families. Increasing the costs and risks of undocumented entry did not deter undocumented migrants from coming; perversely, it only discouraged them from going home once they were here. Having faced the gauntlet at the border, undocumented migrants were loathe to do so again and hunkered down for the long term. As a result of our militarization of the border, therefore, undocumented trips have lengthened and rates of return migration have plummeted. If the rate of in-migration remains stable while the rate of out-migration declines, only one outcome is possible demographically: a sharp increase in the net rate of undocumented population growth. In addition, as male migrants stayed away from home longer, they sent for their wives and children. Rather than constituting a circular flow of temporary male workers, Mexico-U.S. migration has become a settled population of permanent residents and their families, thus driving up the social and economic costs of immigration to American taxpayers.

In sum, the American attempt to stop the flow of Mexican workers within a rapidly integrating North American economy has reduced the rate of apprehension at the border, raised the rate of death among migrants, produced longer trip lengths, lowered rates of return migration, increased the pace of undocumented population growth, and transformed what had been a circular flow of workers affecting three states into a settled population of families scattered throughout 50 states, all at the cost of billions of taxpayer dollars.

These are statements of fact, not opinion, as data from the Mexican Migration Project reveal. Figure 1 shows the shift to new crossing points and destinations during the 1990s. Figure 2 documents the tripling of the death rate among undocumented border crossers after the launching of the Border Patrol's Operation Blockade. Figure 3 shows the remarkable decline in the probability of apprehension after 1995. Figure 4 shows the relatively constant rate of in-migration that has prevailed since 1980 combined with the steadily falling rate of return migration. Figure 5 draws upon U.S. census data to show the inevitable result of declining rates of return in the face of constant rates of entry: a

sharp acceleration in the rate of Mexican population growth after the middle 1990s.

Our border policies have thus given us the worst of all possible worlds: continued immigration under terms that are disadvantageous to us, harmful to American workers, and injurious to the migrants themselves. This lamentable state of affairs stems from our failure to come to terms with the contradiction of continental integration under NAFTA. Rather than viewing Mexican migration as a pathological product of rampant poverty and unchecked population growth, we should see it as a natural product of economic development in a relatively wealthy country undergoing a rapid transition to low fertility. Mexico is presently a one trillion dollar economy with a per capita income approaching \$10,000, 92% literacy, a total fertility rate of just 2.2 children per woman, and a population growth rate of just 1.2% per year. Rather than attempting to suppress the movement of workers back and forth across the border, we should bring the flows above board, legalize them, and manage them in ways that minimize the costs and maximize the benefits for all concerned, putting us in a better position to protect American workers, lower the costs of immigration to taxpayers, and enhance the security of our nation. I believe the McCain-Kennedy immigration legislation moves us substantially in this direction and for this reason I support it as a scientist and member of the National Academy of Sciences, a dedicated citizen of the United States, and a concerned human being interested in the welfare of both immigrants and the American people.

Statement
United States Senate Committee on the Judiciary
Comprehensive Immigration Reform II
October 18, 2005

The Honorable Patrick Leahy
United States Senator
Vermont

Statement of Senator Patrick Leahy,
Ranking Member, Judiciary Committee
Hearing on “Comprehensive Immigration Reform II”
October 18, 2005

I commend the Chairman for convening a second hearing on this important topic. Securing our borders is a challenge that we must face, no matter how complex and difficult. While tackling these issues we also need to recognize the key role immigrant labor plays in our economy and adopt practical guest worker programs that are supportive of that contribution.

In July, the Administration cancelled the appearance of its two scheduled witnesses, Michael Chertoff, Secretary of Homeland Security, and Elaine L. Chao, Secretary of Labor, just days before the hearing. It was the first of two such last-minute cancellations of administration witnesses before the Committee that week. I am pleased that Secretaries Chertoff and Chao are here today.

Since the July hearing, we have heard many rumors about a White House proposal on comprehensive immigration reform. Today, we will hear about the President’s plan in broad terms, but apparently without significant detail. I believe that we should give all due respect to any serious attempt to reform our broken system, whether it comes from the Congress or the White House. I am disappointed, however, to see time slipping away. Over the summer, the Senate Majority Leader said that immigration is not likely to be taken up on the Senate floor this year. We all know that 2006 is an election year, making it difficult to advance proposals to solve our immigration problems free from campaign rhetoric and posturing. I hope that we can take up these serious issues this year, and avoid the pressure of an election cycle.

In May, Senators McCain and Kennedy introduced their bill, S.1033, the Secure America and Orderly Immigration Act. I have said many times that I believe the McCain-Kennedy bill is the appropriate starting point for the Judiciary Committee to consider immigration reform. This bill recognizes that much of the nation’s economy depends on immigrant labor, and that some of those immigrants do not have legal status. The bill provides an opportunity for those workers to earn legal status. It contains border security and enforcement provisions.

Just prior to the July hearing, Senators Cornyn and Kyl introduced S.1438. Their approach supports the concept of a guest worker program but makes it exceedingly

difficult for these non-citizens to obtain legal status. Illegal immigrants would have to leave the U.S. and then meet certain criteria before they could re-enter with legal, temporary status. The Cornyn-Kyl approach contains some troubling provisions that we must review carefully. It would authorize state and local police to enforce federal immigration laws, a policy that could undermine community policing efforts in immigrant communities. It would also expand expedited removal programs, which are already hurting bona fide asylum seekers.

Border security is a pressing issue in Vermont. I remain concerned that the Administration seems to have ignored Congress' clear and consistent call for substantial increases in staffing for the Border Patrol. The Border Patrol's presence on our Northern Border was minimal before the September 11th attacks, with about 300 agents assigned to the 4,000-mile border. Last December, Congress passed and the President signed the Intelligence Reform and Terrorism Prevention Act of 2004, which mandated an increase of at least 2,000 Border Patrol agents for FY 2006, with at least 20 percent of the increased agents to be assigned to the Northern Border. The President's budget, however, would have provided only enough funding to add 210 Border Patrol agents, or about 10 percent of what Congress mandated. Moreover, it appears that, of those agents provided for in the President's budget, not a single one would be assigned to the Northern Border.

While I was disappointed that the Homeland Security Appropriations Conference Report passed by the Senate and House earlier this month failed to reach authorized levels, it did allocate a total of \$6 billion for securing our Nation's borders, which is \$378 million more than the President's request. This includes \$1.8 billion for border security between ports of entry, including hiring 1,000 additional Border Patrol Agents to reach the goal of 10,000 more agents over the next 10 years, and \$79.5 million to annualize the cost of 500 Border Patrol Agents funded in the Intelligence Reform and Terrorism Prevention Act of 2004.

The approaches to immigration reform that we will discuss today are complex. I commend Senators for studying the issues carefully and putting forward their proposals for our consideration. I look forward to today's hearing and thank all the witnesses for their contributions.