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REFORM OF LEGAL IMMIGRATION

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BEFORE THE
SUBCOMMITTEE ON IMMIGRATION
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
ONE HUNDRED FOURTH CONGRESS
FIRST SESSION
ON
LEGAL IMMIGRATION REFORM PROPOSALS
SEPTMBER 13, 1995
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REFORM OF LEGAL IMMIGRATION

WEDNESDAY, SEPTEMBER 13, 1995

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:03 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Alan Simpson (chairman of the committee), presiding.

Also present: Senators Kyl, Kennedy, Simon, and Feinstein.

OPENING STATEMENT OF HON. ALAN K. SIMPSON, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator SIMPSON. Welcome. This hearing of the subcommittee will come to order.

I welcome my good colleague from California, Senator Dianne Feinstein, who has been a remarkably consistent contributing member to the work of this subcommittee and certainly to me, and now joined by Senator Paul Simon, the old pro himself, who comes and assists me in so many ways through the years, and I have returned that effort and enjoy very much working with him, a man whom I have worked with for over 20 years in legislating.

I also welcome Senator Kyl, another very active and helpful member of the subcommittee, who comes from the land where the problems are, just as Senator Feinstein, so they both add a great deal because they are there on the ground. The rest of us can sometimes talk a good game, especially on illegal immigration, but they live it daily.

So this is the second subcommittee hearing. Earlier, we dealt with various illegal immigration issues. Today we will look at legal immigration issues.

In 1990, Senator Kennedy and I cosponsored legislation which made sweeping changes in our immigration program. We modified the preferences, and we greatly increased the numbers. At that time, apprehensions of illegal aliens had decreased for the fourth straight year. Employer sanctions seemed to be having the desired effect on illegal immigration, and it seemed appropriate then to increase legal immigration.

Unfortunately, we were mistaken about the effect of employer sanctions and the control of illegal immigration, the failure of employer sanctions because of the gimmickry of the identifying documents. But in any event, the false sense of security resulted in an unnecessary and excessive increase in legal immigration.

The American people then reacted accordingly, and for the past several years, there has been a general call for reduced immigration. We have also seen a widespread concern about at least a perceived burden that immigrants, legal and illegal, have placed upon our public welfare systems. I believe that some of that concern is misplaced. Illegal aliens for the most part come to work and not to seek public assistance, and our laws have long provided that legal immigrants likely to become a "public charge" should not be admitted. That has been on the books since 1882, so it is not exactly new stuff.

Nevertheless it is important that we respond to this public concern by making it as clear as possible that illegal aliens will not be able to access the welfare system and ensuring, as much as possible, that immigrants who do need assistance obtain it from the relative who sponsored them, as was agreed to at the time of entry—remember how that works.

Provisions to accomplish those goals were included in legislation already processed by this subcommittee and in the welfare bills now being considered in the Congress this very day. In fact, those issues of immigration and what people should receive in the way of support have been the subject of amendments this morning and will be this evening and on into the finality of that debate.

The discussion draft which we provided to all the witnesses—and that is, I emphasize, exactly what it is, a discussion draft; it is complete at this time—but Congressman Mizzoli, then chairman of the House back years ago and when I chaired the Senate subcommittee, we held hearings without even a bill before us and went right forward with our work. But we have provided a discussion draft which proposes to reduce overall immigration, while meeting the general principles of U.S. immigration policy: First, to provide for the unification of the nuclear family, that is, spouses and minor children as we define it, and nuclear families of U.S. citizens and permanent resident aliens, and second, to provide visas for immigrants who are among the best in the world at what they do for senior-level executives and managers of multinational corporations and for workers who are truly needed in American society by American employers, and, most importantly, protecting U.S. workers—this is a very vital condition—protecting U.S. workers from unfair competition with immigrant workers.

Thus the draft provides for unlimited immigration of the spouses, minor children, and elderly parents of citizens. It also has other provisions which will become well apparent.

The bill also provides for the immigration, as part of the nuclear family, of disabled adult sons and daughters, and we do that because we believe these are the folks who are most likely to reside together as part of the nuclear family.

Working on it, as I said, will be much more comprehensive after today's testimony, and there will be testimony in support of the draft and testimony in opposition, as it should be, and we will weigh that and we will then proceed accordingly.

The draft bill provides for the admission of immigrants of extraordinary ability, professionals with graduate and undergraduate degrees, and experienced, skilled workers.

The Jordan Commission recommended that immigration law protect these most vulnerable workers, unskilled workers, skilled workers just coming into the labor market and recent college graduates entering the labor market. To avoid competition with these most vulnerable classes I have just described, the draft bill eliminates unskilled immigration altogether. It requires a certain level of experience for those skilled workers and professionals who will be competing directly with our U.S. workers who are just entering into the job market.

I must make note and commend former Congresswoman Barbara Jordan. It has been a distinct honor and privilege to work with her, to observe her work, to see her in action, and to see the remarkable skills and energy and ability she has brought to the cause. No one could have done what she has done in dealing with the issue of legal immigration and illegal immigration. I am fully aware of all the perils that go with that after my years of experience.

So she did a wonderful job and continues to do so. I commend her and admire her richly.

So we are looking out for these people who are the vulnerable classes. The commission's recommendations are much of the basis for this discussion draft, although we made many changes and additions.

So we have invited representatives of the interested groups to participate in this hearing, and we are indeed most interested in their comments. However—and I think we forget this—we must all keep in mind that the largest interest group, the American people, is represented here by those of us on this subcommittee, and in our work on immigration reform, their views, therefore, must have great significance. And it has been my experience that as you labor in this particular field, the interest groups would think that they are speaking always for the majority of Americans, and I have found that not to be true at all.

So hopefully, we will be speaking for the majority of Americans in a nonnativist, nonracist, not mean-spirited way. And I will look forward to working with the members of the subcommittee, particularly with Senator Ted Kennedy, who was chairing this subcommittee when I came to the Senate in 1979. I have seen him work with the refugee issues, the Refugee Act, legal immigration, illegal immigration, and it has been a distinct privilege to work with him in a bipartisan way through the years, winning some, losing some, but always in a spirit of cooperation and assistance, and he has indeed done that, even when he voted against measures with a mumble sometimes—I would say, "Senator, I did not get that—was that a yes or a no?" and there would be a mumble. [Laughter.]

In any event, I look forward to again working together, as we have in the past, and I would turn now to my ranking member and friend, Senator Kennedy.

**STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR
FROM THE STATE OF MASSACHUSETTS**

Senator KENNEDY. Thank you very much, Mr. Chairman.

As Al Simpson has pointed out, I think both of us have enjoyed the opportunity to work together on this issue, which is of central

importance in terms of defining our national life. This has been a small committee, expanded in this most recent Congress, but we have been dealing with some of the most difficult and complex issues, and we have found common areas, and in areas where we have not, we have differed in our own beliefs and what the best course of action would be.

But I want to at the outset thank you for the whole way we have been dealing with both foreign and legal immigration. As all of us know, these issues have been in the forefront at various levels and times over the period, particularly of recent months. And I think the willingness of you, Mr. Chairman, in particular and your leadership certainly in the Senate and being willing to sit down with the Jordan Commission members prior to the time that they put forth their recommendations, to seek out the members and get some sense of their thinking and their judgment. It was a distinguished group of men and women who served on that commission, representing a wide variety of different experiences. I think this is the kind of legislative experience which is really in the true interest of the Senate and also of the country.

We are going to have important areas of difference in the legislation, and I think all of us want to try to maximize the areas of agreement, but I think all of us—and I know I speak for my colleagues here—know the number of interventions which you have received from members, and the different pieces of legislation that have been coming up to try to address aspects of legal or illegal immigration issues which were fashionable at the time and emotional at the moment, and I think you have resisted that and have tried to bring us together to a point where, in these next very few weeks, we will be making a recommendation to the full committee and moving in a reasonable way to try to fashion legislation which is in the best interest.

So I thank you at this very important time when we have the document which you have put out, which I think is enormously positive and constructive—there are areas of difference, and I will just touch on those very quickly—and also for the range and comprehensiveness of the witnesses that you have included today.

I will ask that my full statement be placed in the record. I have outlined in my statement some of the particular areas where I differ with you, and we will have a chance to examine those in some detail, but the hour is moving along, and we are going to be moving into a series of additional amendments on the floor in a short period of time. So out of consideration of the witnesses and my colleagues, perhaps I will restrain from going through it, but would ask that my full statement be made a part of the record.

Senator SIMPSON. Without objection.

[The prepared statement of Senator Kennedy follows:]

PREPARED STATEMENT OF SENATOR EDWARD M. KENNEDY

Today's hearing is about our roots as Americans. Except for Native Americans, all of us today, by choice or circumstance, are immigrants or the descendants of immigrants. Yet, this enduring theme in our national heritage, in which we take rightful pride, has become one of the most contentious issues of our time.

The debate is about how we see ourselves as a nation, as the American people. Do we stand for the family and family values? Do we want to expand the ingenuity of American workers with new talent and new ideas from immigrants who enter legally, roll up their sleeves, contribute to our communities, and help us remain com-

petitive in the global marketplace? The American motto—E Pluribus Unum, out of many, one—is not a hollow slogan, but an enduring statement of the strength we draw from our diversity.

Our first priority must be to control illegal immigration. This Administration has devoted more attention and more resources to this problem than any Administration in history. Congress is working closely with the Administration to provide new authorities and new enforcement tools. I am confident that, under the Chairman's leadership, bi-partisan legislation will emerge soon from the Judiciary Committee to deal with this critical national challenge.

But the crisis over illegal immigration should not be allowed to create an unfair and unjustified backlash against legal immigration. Our gates should be closed to those who attempt to enter in violation of our laws, and those who are illegally should be promptly deported. But those who arrive legally under our laws should be welcomed as they join their families, contribute to our communities, and become the next generation of proud, new Americans.

The challenge before us today is to adjust our immigration laws to meet current national interests and to serve the country into the next century. The question is partly about the number of immigrants we should admit, but it is also about the national interests served by immigration.

The Jordan Commission on Immigration Reform has provided outstanding leadership in this area and a solid framework for our deliberations today. As Barbara Jordan, the Chairman of the Commission, stated so eloquently before this Subcommittee in June, "A properly regulated system of legal immigration is in the national interest of the United States." She called for an immigration framework consisting of "family unification, employment-based immigration, and refugee admissions."

Clearly, family unification is a fundamental American value which should remain a cornerstone of our immigration laws and policies into the future. We are all committed to the unity of the closest family members, and we agree that the reunification of husbands, wives, and their minor children should be our first priority.

I am concerned, however, by proposals to eliminate the ability of American citizens to bring other close relatives to the United States. I am particularly disturbed by proposals to bar Americans from bringing their mothers and fathers here if they are under 65 years of age, and to require that most of the family already be here before the parents can immigrate. We all want to be certain that parents do not become a public burden, but we need to be careful that sponsorship of parents does not become so onerous that only wealthy Americans can have their parents join them.

I also believe that American citizens should continue to be able to bring their adult children here. In addition, if American citizens are no longer able to bring their brothers and sisters here, what are we to say to the hundreds of thousands of Americans who have already paid fees to the U.S. Government and have been waiting for years for visas for their brothers and sisters?

On the issue of employment visas, I am concerned that the current system is not effective for employers or adequately protective of U.S. workers. We should welcome immigrants who come here under our rules, contribute to our modern economy, and become assets to our communities. Employers should be able to petition for such immigrants where qualified U.S. workers are clearly unavailable.

Too often, our immigration laws have not adequately protected American workers. When 1,000 of the 1,200 employees in a computer consulting firm are temporary foreign workers, something is wrong. Today we will hear testimony on these and many other issues in immigration reform, as we work through these complex and vitally important for our country.

As President Kennedy wrote in his book, *A Nation of Immigrants*,

There is no part of our nation that has not been touched by our immigrant background. Everywhere immigrants have enriched and strengthened the fabric of American life.

Those words and that thought was echoed by President Ronald Reagan, in his final speech before leaving the White House. He said,

We lead the world because, unique among nations, we draw our people—our strength—from every country and every corner of the world. * * * Thanks to each wave of new arrivals to this land of opportunity, we're a nation forever young, forever bursting with energy and new ideas, and always on the cutting edge, always leading the world to the next frontier. This quality is vital to our future as a nation. If we ever closed the door to new Americans, our leadership in the world would soon be lost.

I commend the Chairman for scheduling this hearing today. I commend him for the bipartisan spirit in which we are addressing this vital issue, and I look forward to the testimony of our witnesses.

Senator SIMPSON. It would be my intent to go forward, unless members of the committee would like to make brief statements, and I will certainly defer if you wish to do that, and then we will go to Doris Meissner, John Fraser, and Mary Ryan, in that order, Ms. Meissner having a commitment that she must keep.

Senator Feinstein.

**STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR
FROM THE STATE OF CALIFORNIA**

Senator FEINSTEIN. Thank you very much, Mr. Chairman, and thank you for your leadership, and you, too, Senator Kennedy.

I said this before, and I have to say it again. I come from a State where this is probably the most incendiary issue. I fully expected to lose my election and not be sitting here today because I opposed Proposition 187, and I figured I would rather go down with something that I felt was right than win with something I felt was wrong and flawed and unconstitutional.

Now we have got to get to what I think is right. And I have tried to put myself into a position where I could understand the mainstream of thinking in California. There is no question in my mind that the major focus around immigration rests around the illegal immigration, the impact it has had on gangs in California, the impact it has had on the workplace, the impact it has had in just sheer numbers. And you have put forward a bill. Our subcommittee has marked it up, and it is waiting for full markup in the Judiciary Committee, but I know you feel it is necessary for the House to take action on a full bill, including the legal part, or our illegal part will not get through.

I do feel a need to state my views with respect to California and illegal immigration. And let me begin—and I do not like to use personal vignettes—but my mother was a young immigrant from Russia, and I remember very much her pride in being naturalized. She did not even have a high school education. My father was a first-generation American whose father fled Poland by himself at the age of 14. He fathered 11 children in this country.

The reason I say this is because I believe that in a sense, my story is typical. I believe that immigrants can do good things. At the very least of those good things, I know they can become a U.S. Senator. And I believe that my family, like countless other families, came to America with hope and optimism and looking for only one thing—an opportunity and very often, an escape from repression.

So America is rooted in a tradition of newcomers. Those newcomers have historically worked hard to build a life for themselves. So this really is our American dream. This really is what the Statue of Liberty stands for.

However, the dream of opportunity for new arrivals needs to be balanced with our efforts to fulfill the dream of millions of Americans, and our immigration policies need to be established through reasoned analysis of the costs and the benefits, the opportunities and the challenges, and not an emotional response.

Today, nearly 1 in 11 Americans are foreign-born. That is a share larger than at any time since the end of World War II. The scope is too big, and the consequences are too large, for discussions and debates that avoid immigration's real consequences for businesses, for individuals, and for families.

The current immigration tension is compounded by the high proportion of recently arriving immigrants. Fully 20 percent of the immigrant population came to the United States within the last 5 years—20 percent of the immigrant population in this country to my knowledge came within the last 5 years. The Census Bureau reports nearly as many immigrants came to this Nation during the first half of the 1990's as came during the entire decade of the 1970's. The economic stagnation, job loss, and business cutbacks of the 1980's have further fueled the antiimmigration backlash which is so typical in my State.

The skills, the background, and the experience of those seeking to immigrate pose an economic challenge to our Nation that we must recognize. For instance, while the immigrant population as a whole is more likely to be well-educated, immigrants are also less likely to have graduated from high school than our national average. The Census Bureau reports 36 percent of immigrants 25 years or older do not have high school degrees—more than twice the rate of the native-born population.

Study after study has catalogued the economic burden an under-educated work force adds to an already strained and more complicated economy in the future. So the less well-educated in our country already face enormous challenges to productively contribute to our society.

Our immigration policy, I believe, must take steps to make their prospects brighter, not bleaker. Immigration reform must create opportunities for them as well. While immigration is a national issue which deserves our attention, it is also a local and important problem in California. California is home to 7.7 million foreign-born individuals, representing more than one-third of all of the immigrants in the United States. Nearly 220,000 legal immigrants settled in California last year alone, 1994. That is more than New York and Florida, the second and third largest destinations of legal immigration, combined.

Today, California has nearly 3 million more immigrants than New York and Florida, the next two largest States, combined. California bears the largest brunt of legal immigration, and its interests must be addressed if we are to preserve hope and opportunity for everyone as well as for future generations.

Today, more than 1.2 million Californians are out of work, jobs are scarce, schoolrooms are filled, and State, local, and Federal budgets are strained. In this atmosphere, today's immigrants must compete for jobs, for education, for health care, for housing, inevitably fueling an already strained sense of competition.

I cannot tell you how many stories teachers tell me about having to teach as many as 87 different languages in California elementary schools. The work of the Jordan Commission has, I believe, helped build consensus on legal immigration reform. And frankly, I support substantial reductions in the overall level of legal immigration, including prudent reductions in the number of refugees

and a tightening of the family and employer preferences to implement the reductions. I believe immigration should not be a conflict between those currently present on our shores and those seeking to join them or be joined by their families. Federal immigration policy should be a hard analysis of where we are as a nation and where we want to be in the next generation and in generations to come and, more significantly, how do we get there, how do we provide the classrooms, how do we provide the housing and the jobs to get people there.

So Mr. Chairman, as you know all too well, immigration presents daunting challenges, and it requires urgent action. This subcommittee has already taken the step I referred to earlier, and I am very hopeful that we will be able to move a bill rapidly. I cannot stress too much how strongly this issue percolates in the public debate of my State.

So I thank you, Mr. Chairman, for this opportunity.

Senator SIMPSON. Thank you, Senator Feinstein.

We will now go forward with the witness, and I would remind all, if I may, to try go give a 5-minute summary so we will have time, since we have an expanded committee, for more questions. There will probably be some periodic interruptions because of roll-call votes. If that is the case, we will continue; I will leave the gavel in the hands of—I know it is hazardous—but I might leave it in the hands of Senator Kennedy, for a few fleeting minutes, carrying all the proxies with me for an immediate telegraphic response. [Laughter.] But we will continue without break; one of us on the panel will conduct the hearing as we have this series of votes.

Let me introduce the panel first. Mary Ryan is Assistant Secretary of State for Consular Affairs at the Department of State in Washington; Doris Meissner is Commissioner, Immigration and Naturalization Service at the Department of Justice; and John Fraser is Deputy Administrator of the Wage and Hour Division of the Department of Labor in Washington.

It is good to have all of you here. And Ms. Meissner, if you will please share your thoughts with us as you have so many times and so powerfully in the past.

PANEL CONSISTING OF DORIS MEISSNER, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC; JOHN FRASER, DEPUTY ADMINISTRATOR, WAGE AND HOUR DIVISION, U.S. DEPARTMENT OF LABOR, WASHINGTON, DC; AND MARY A. RYAN, ASSISTANT SECRETARY OF STATE FOR CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE, WASHINGTON, DC

STATEMENT OF DORIS MEISSNER

Ms. MEISSNER. Thank you, Mr. Chairman and members of the subcommittee.

Mr. Chairman, you and I have had the privilege for many years to work together to build a broad-based, bipartisan understanding of the principles of U.S. immigration policy. For over 15 years, from the Hesburgh Commission to the Jordan Commission, a simple yet fundamental principle has guided legislation reform. That is that

the Nation must control illegal immigration to maintain and benefit from legal immigration.

This administration has already taken unprecedented action to toughen enforcement of our immigration laws against illegal entry. The administration today is proposing to reform legal immigration in ways that are consistent with the Jordan Commission's recommendations to reduce annual levels of immigration and to reach those lower numbers faster.

The President has strongly endorsed the framework set forth by the Jordan Commission, and we have adopted that framework in developing our comments today. We also want to present a few ideas on how to use naturalization to reduce the second preference backlog numbers, which is a priority for the commission and the administration, while maintaining first and third family preferences for reunification of adult children of U.S. citizens.

Last year, with congressional support for the crime bill, the administration launched an historic campaign to toughen security at the border, reform the asylum process, and remove criminal aliens. This year, we have proposed the Immigration Enforcement Improvements Act.

We are poised to do more. Just this week, we announced expansion of our highly successful Operation Hold-the-Line in El Paso as part of multiyear, multiphase Southwest border enforcement efforts that are underway.

We have been working with Congress for several months and are confident that bipartisan agreement can be reached on legislation to control illegal immigration. The President is eager to sign a bill and move ahead with this administration's strong enforcement plan. As a result, we urge that you send a bill to the President before the end of the year.

Two months ago, the President announced his support for reductions in annual levels of legal immigration, consistent with principles that are pro-family, pro-work, and pro-naturalization. These are principles that are reflected in the recommendations of the Jordan Commission and that the President has strongly endorsed.

The administration believes that a balanced package of reforms can be crafted, that excluding refugees and asylees will result in a total reduction of employment and family-based immigration to 490,000 annually. This is slightly lower than the comparable figure of 500,000 recommended by the Jordan Commission. The subcommittee's discussion draft legislation departs significantly from the levels proposed by the administration and the commission in setting a comparable level at 375,000.

Legal immigration has already begun to decline, with a 9.3 percent drop between 1993 and 1994. Last year's reduction in total legal immigration occurred for at least two reasons that are important to a discussion of legal immigration reform. First, the numbers declined because of the end of several special programs created in the 1980's, and there is now, we believe, widespread support, including from the administration, for the elimination of another special program, the diversity program, which was established in the 1990 Act.

But second, legal immigration declined last year because there was a lower-than-anticipated demand for employment visas. This is an important lesson and something that we build into our proposal.

Where family unification has been concerned, that has been the centerpiece of our legal immigration system. For decades, that has been so, and it should remain so. The reason, of course, is that family immigration benefits American citizens.

The Jordan Commission has proposed a level of family based immigration with three components. This administration joins the commission in strongly supporting the reunification of U.S. citizens with their spouses and minor children as the Nation's top priority for legal immigration.

We also share the commission's recommendation to maintain a preference for parents of U.S. citizens.

One of the most difficult issues in this round of legal immigration reform involves the preference categories for adult children of U.S. citizens. The commission recommends eliminating these categories for both married and unmarried adult children. Those are the current first and third preferences. At the same time, it applies 150,000 visa numbers each year for the next 5 years to reduce the backlog among spouses and children of permanent resident aliens, which is the second preference under current law.

The administration seeks to strike a balance between these valid, competing interests. We believe it is possible to retain visa preferences for adult children of U.S. citizens while relying on naturalization to effectively reduce the backlog in second preference. The administration believes that in reforming legal immigration, we must honor to the extent possible the commitments already made to U.S. citizens who have filed petitions to bring their parents or children to the United States.

The administration proposes to rely on naturalization, which will quickly cut into the backlog size. INS estimates that naturalization will cut the second preference backlog by an average of 60,000 people each year, with the largest number occurring in the first few years, then tapering downward. We are already making progress along this path in advance of current efforts to reform legal immigration.

Relying on naturalization to solve the backlog problem also reinforces another principle of legal immigration reform that the Jordan Commission and the administration clearly share. We endorse the commission's call for a strong Americanization movement to facilitate full participation in the social and cultural life of American communities.

The ability to address the backlog through naturalization would not necessarily have been possible before now. The administration's naturalization initiative will remove many of the barriers that had discouraged people beforehand from naturalizing, and the Citizenship U.S.A. initiative that we announced several weeks ago means that by the summer of 1996, eligible people who apply will be able to receive their naturalization within 6 months.

So in sum, the administration strongly endorses the Jordan Commission's recommendations as a framework for moderating the total annual level of immigration. By relying more on naturalization to reduce the backlog in second preference, we also believe

that the benefits for U.S. citizens to reunite with their adult children can be preserved as the total numbers decline.

The administration endorses the Jordan Commission's recommended schedule of congressional review every 5 years to allow the Nation to adjust the levels of immigration to contemporary needs and capacities.

Thank you, and thank you for letting me go over my time.

Senator SIMPSON. Thank you very much.

[The prepared statement of Ms. Meissner follows:]

PREPARED STATEMENT OF DORIS MEISSNER

Good afternoon Mr. Chairman and Members of the Subcommittee. I am pleased to be here and have the opportunity to speak with you about legal immigration reform.

Mr. Chairman, you and I have had the privilege for many years to work together to build a broad-based, bipartisan understanding of the principles of U.S. immigration policy. For over 15 years, from the Hesburgh Commission to the Jordan Commission, a simple, yet fundamental, principle has guided legislative reform: The Nation must control illegal immigration to maintain and benefit from legal immigration. That formula led to passage of both the 1986 Immigration Reform and Control Act, and the 1990 Immigration Act.

This Administration has already taken unprecedented action to toughen enforcement of our immigration laws against illegal entry. The Administration is proposing today to reform legal immigration in ways that are consistent with the Jordan Commission's recommendations, that reduce annual levels of legal immigration, and that reach those lower numbers faster.

The President has strongly endorsed the framework set forth by the Jordan Commission, and we have adopted that framework in developing our comments today. We also want to present a few ideas on how to use naturalization to reduce the second preference backlog numbers, which is a priority for the Commission and the Administration, while maintaining 1st and 3rd family preferences for reunification of adult children of U.S. citizens.

ILLEGAL IMMIGRATION CONTROL

Last year, with Congressional support for the Crime Bill, the Administration launched an historic campaign to toughen security at the border, reform the asylum process, and remove criminal aliens.

This year we have proposed the Immigration Enforcement Improvements Act. It will give us additional tools to:

- continue our efforts to expand the Border Patrol;
- increase the number of inspectors at the ports of entry;
- expand pilot programs to test employment authorization verification;
- streamline deportation;
- expedite exclusion; and,
- expand enforcement against alien smuggling.

We are poised to do still more. Just this week, we announced expansion of our highly successful Operation Hold-the-Line in El Paso to enhance border security west of the city where illegal immigrants, smugglers, and bandits have created new challenges to the safety of local border communities. These efforts are part of our multi-year, multi-phase Southwest border enforcement strategy. As we are doing in El Paso, we are continuing to expand our efforts in California through Operation Gatekeeper to meet new challenges and, as new resources become available, to build upon Operation Safeguard in Arizona.

The Administration is eager to see enactment of legislation to control illegal immigration. We have been working with Congress for several months and are confident that bipartisan agreement can be reached with both the House and Senate. We urge you to send at least a completed illegal immigration enforcement bill to the President before the end of the year, even if you must split the illegal and legal immigration reform provisions into separate legislation to get them through Congress in that timeframe.

LEGAL IMMIGRATION REFORM

The Administration is fully prepared to take the next steps on legal immigration reform. Two months ago, the President announced his support for reductions in an-

nual levels of immigration consistent with principles that are pro-family, pro-work, and pro-naturalization. These are principles that are reflected in the recommendations of the Jordan Commission and that the President has strongly endorsed.

The Administration also has strong interests in refugee admissions and in reforming the nonimmigrant visa system. We understand these are topics of future hearings and look forward to working with the Subcommittee members to improve these components of our legal immigration system. In particular, the Administration plans to call for significant changes in our nonimmigrant system to increase support for American workers and to better serve America's employers in need of unavailable skilled workers.

Reducing total numbers

Next year's limit for legal immigration, excluding refugees and asylees, is 675,000. The Administration endorses the Jordan Commission's recommendations to further reduce the annual levels. The Administration believes that a balanced package of reforms can be crafted that, excluding refugees and asylees, will result in a total reduction of employment and family-based immigration to 490,000 annually. This is slightly lower than the comparable figure of 500,000 recommended by the Jordan Commission. The Subcommittee's discussion draft legislation departs significantly from the levels proposed by the Administration and the Commission by setting the level of comparable visas at 375,000.

The Immigration Act of 1990 anticipated this need to reduce the annual level of legal immigration from the high numbers reached in the last few years. The Act specified a reduction from an annual level of 700,000 in FY94 to 675,000 in FY95. Legal immigration has already begun to decline with a 9.3 percent drop between FY93 and FY94. Last year's reduction in total legal immigration occurred for at least two reasons that we believe are important to a discussion of legal immigration reform. First, the numbers declined because several special programs created in the 1980s to solve systemic problems with short-term fixes came to an end.

There is widespread support, including from the Administration, for elimination of another special program—the diversity program—established in the Immigration Act of 1990. Discontinuation of the program would by itself reduce the annual level of future immigration by 55,000 visas beginning in FY95.

Second, legal immigration declined last year also because there was a lower than anticipated demand for employment visas. This is an important lesson for legal immigration reform—targets do not necessarily fit perfectly the demand for immigration petitions. Therefore, we seek to establish a legal immigration system that depends, within national limits and consistent with the national interest, on market choices by employers and, when it comes to family reunification, on family choices to naturalize and reunite with family members.

Supporting American workers and employers

Sound immigration reform must support American workers and employers. We have concluded that reduction in employment-based visas fully supports the President's efforts to expand job opportunities for American workers. In these times of fundamental change in educational and job skill requirements and in global competitiveness, the Administration supports a balanced immigration policy that strengthens our labor policies and promotes American competitiveness.

The Administration shares with the Jordan Commission the view that employment-based visas should be cut by nearly a third (29%), from 140,000 to 100,000 a year. That lower level exceeds current market demand by employers, raises the skill levels of future immigrants, and supports U.S. workers in fighting unfair competition. My colleague from the Department of Labor will discuss this position in more detail.

Reduction in employment-based visas is a fully justifiable correction. The Immigration Act of 1990 increased employment-based visas from 54,000 to 140,000 because of a common misunderstanding of general shortages of labor in the last half of the 1980s. By the time the 1990 Act passed, expectations of labor shortages, fed by inflated targets for aggregate growth created through deficit-spending, had deflated. The nation faced a new problem: the need to generate long-term, good jobs and to retrain American workers displaced by economic restructuring and military downsizing.

This Administration's view recognizes the need for sustained improvements in productivity, creation of good jobs, investment in education and retraining opportunities for U.S. workers, and open world trade. We seek to teach skills to those who lack them, and to transfer skills from downsizing economic sectors to areas of new job opportunities; we want to import skills only when they are clearly needed.

Supporting American families

Family reunification has been the centerpiece of our legal immigration system for decades, and it should remain so. The reason is that it benefits American citizens. Many people focus in this debate on the people from abroad who are admitted to the United States. Our emphasis is first on the Americans who petition the Federal government to permit their close relatives living abroad to join them. Legal immigration is a response to U.S. citizens seeking to bring close relations to live with them. In proper balance, it benefits and strengthens American families, American employers, and American communities.

The Jordan Commission has proposed a level of family-based immigration with three components: spouses and minor children of U.S. citizens (220,000), parents of U.S. citizens (80,000), and spouses and minor children of legal permanent residents (100,000).

They have also recommended reducing the backlog for spouses and minor children of legal permanent residents, using 150,000 visas each year.

The Administration joins the Commission in strongly supporting the reunification of U.S. citizens with their spouses and minor children as legal immigration's top priority. It helps to strengthen families by ensuring that the core unit is intact. These families provide the resources for educational achievement and economic success, for social stability, and for personal security. In short, this strengthens our nation's communities. In FY94, a rough estimate of 150,000 U.S. citizen families were able to reunite with a spouse or minor child, bringing a total of 193,000 immediate relatives into the country.

We also share the Commission's recommendation to maintain a preference for parents of U.S. citizens, a category in which 56,370 parents were able to rejoin their children in FY94.

One of the most difficult issues in this round of legal immigration reform involves the preference categories for adult children of U.S. citizens. The Commission recommends the elimination of the categories for both married and unmarried adult children, the current 1st and 3rd preferences. At the same time, it proposes to apply 150,000 visas each year for the next five years to reduce the backlog among spouses and children of permanent resident aliens, which is second preference under current law.

The Administration seeks to strike a balance between these valid, competing interests. We believe it is possible to retain visa preferences for adult children of U.S. citizens while relying on naturalization to effectively reduce the backlog in second preference. The Administration believes that in reforming legal immigration we must honor to the extent possible the commitments already made to U.S. citizens who have filed petitions to bring their adult children to the United States. Discontinuation of 1st and 3rd preference categories would mean that several hundred thousand U.S. citizens would be unable to reunite with their adult children. Many of these U.S. citizens would lose the petitions they have already been granted to bring their adult children into the country.

The Administration proposes to rely on naturalization to quickly cut into the backlog size. INS estimates that naturalization will cut the backlog by an average of 60,000 people each year, with the largest number occurring in the first few years, then tapering downward. We are already making progress along this path in advance of current efforts to reform legal immigration. For instance, the sponsors of 25 percent of those currently in the second preference backlog will have naturalized and left the waiting line by the end of FY97, the first year any legislation now under discussion could be implemented.

Relying on naturalization to solve the backlog problem also reinforces another principle of legal immigration reform that the Jordan Commission and the Administration clearly share. We endorse the Commission's call for a strong Americanization movement to facilitate full participation in the social and cultural life of American communities. We believe naturalization is the mechanism to achieve that goal. This approach places the responsibility and opportunity where it belongs—with the immigrant family itself to decide and to take action. Currently, the sponsors of about 80 percent of people in the second preference backlog are eligible or soon will be eligible to naturalize. We want them to step forward affirmatively to become citizens and, as a result, take the opportunity to reunite their families.

The ability to address the backlog through naturalization would not necessarily have been possible before now. The Administration's naturalization initiative will remove many barriers that often discouraged people from naturalizing. We are pleased to see that the Jordan Commission explicitly recognizes and endorses the Immigration and Naturalization Service's efforts to improve the naturalization process. We are doing even more. Two weeks ago, the INS announced a nationwide nat-

uralization initiative, called Citizenship USA, to ensure that by summer 1996, eligible people who apply for citizenship will become new citizens within six months.

In sum, the Administration strongly endorses the Jordan Commission's recommendations as a framework for moderating the total annual level of immigration. By relying more on naturalization to reduce the backlog in second preference, we also believe that benefits for U.S. citizens to reunite with their adult children can be preserved as the total numbers decline. The result is that the average annual level of employment and family visas will decline to 490,000 a year. Through naturalization, an average of 60,000 people a year over the next 7 years from the second preference backlog will rejoin their sponsor, who will have become a U.S. citizen. Annual levels of immigration will fluctuate around this average in response to the speed at which people take advantage of their naturalization opportunity.

No approach to reform will satisfy everyone, and no legal immigration reform proposal can foresee long-term changes in the economy and society. Therefore, the Administration endorses the Jordan Commission's recommended schedule of Congressional review every 5 years to allow the nation to adjust the levels of immigration to contemporary needs and capacities.

The balance of measures we propose simplifies future Congressional review and adjustments. It maintains a broad set of family preference categories that allows Congress to focus its review on the level of immigrants in response to changing economic and social conditions.

Supporting American values

Mr. Chairman, we have had times, and we will have times, when immigration runs higher and times when it should be lower. Leaders must be responsive to insecurities about wages and jobs, pressures on families and on schools, worries about the costs of medical care for elderly parents, and fears of excessive cuts in basic public programs.

But it is all too easy to blame immigrants for all these problems. We need to lead this debate about immigration reform and build upon the convergence of views among the Administration, the Jordan Commission, and many members of Congress from both parties. We must swiftly and effectively press forward on our efforts to eliminate the problems that we agree are caused by illegal immigration. And in moderating the number of legal immigrants, we must reinforce the strength of legal immigrants' contributions to American society.

Legal immigration is first and foremost a fulfillment of the core values that we have as American citizens. Legal immigrants come to the United States because our citizens believe family members should be able to live together. Legal immigrants come to the United States because our employers need special skills within their workforce to increase the productivity and to foster the innovation that create more jobs and wealth for the rest of us. Legal immigrants come to the United States because American citizens understand the humanitarian obligation we have to reach out and protect those who are persecuted. Legal immigration should be a way to bring Americans together, not divide them.

The Administration is pressing ahead to bring Americans together on immigration. We have launched an aggressive enforcement program against illegal immigration that insists on the rule of law. We have also started an unprecedented naturalization initiative that underscores the value of participation in U.S. society and culture.

CONCLUSION

Mr. Chairman, the last time Congress examined legal immigration policy in 1990 there was a general false sense of security about control of illegal immigration. When this Administration came into office, with help from Congress, we took unprecedented steps to confront the problem. The Administration and Congress are now working very hard together to overcome a legacy of neglect and to truly make a difference at America's borders, at worksites, and in removing criminal aliens from the country.

During the debate in 1990, there was also a false sense of unbounded need for imported labor. There is now widespread agreement on the need to make a correction.

We should reduce the overall numbers of legal immigrants, and we must do so in a way that supports American workers and promotes family reunification for U.S. citizens who are the beneficiaries of the legal immigration system. We are here to build on the fundamental principle that guides the nation's immigration policy: toughen enforcement against illegal immigration, and promote the benefits of balanced levels of legal immigration.

Senator SIMPSON. Next, John Fraser, please.

STATEMENT OF JOHN FRASER

Mr. FRASER. Thank you, Mr. Chairman.

Secretary Reich asked me to start today by reminding you of earlier conversations in which he expressed his profound interest in the way immigration policy interacts with domestic work force development policies so critical to our Nation's working people and future competitiveness.

As you know, the Secretary cares and has thought deeply about these issues, and he asked me to tell you that he looks forward to another opportunity to come before you to share his views on these important matters.

Before turning to legal immigration reform issues, let me briefly address a closely related matter. Members of this subcommittee understand and appreciate the need to effectively control illegal immigration to preserve our legal immigration system. The administration strongly believes that enhanced worksite enforcement of both minimum labor standards and employer sanctions are essential components of a comprehensive strategy needed to more effectively control illegal migration.

I bring this matter up this afternoon not only because of its importance to preserving our legal immigration system, but also because the Senate today began its consideration of the Department's 1996 appropriation. And I appreciate having this opportunity to urge all the members of the subcommittee, who have a special responsibility for seeing that our Nation effectively controls illegal immigration, to work to ensure favorable consideration in the Senate for appropriation of the additional labor law enforcement personnel requested by the President.

Turning to employment-based immigration reform, it is our view, Mr. Chairman, that the Nation's goals for employment-based immigration policy must continue to be twofold. First, the policy must provide U.S. employers with needed access to international labor markets to promote our global competitiveness and the high-skill, high-paid job growth the U.S. needs.

Second, it must also assure adequate protections for U.S. workers and employers against unfair domestic competition, while providing real incentives to develop the domestic work force for the high-skilled jobs and the high-performance workplaces of the future.

In light of an increasingly global economy and international work force, U.S. immigration policy must be carefully balanced among these objectives if a viable immigration system is to be maintained.

Consistent with these principles, we believe that any reform of our legal immigration system must also address the nonimmigrant programs which allow temporary entry of individuals to the United States, in many cases for employment purposes. We would urge that the subcommittee's draft bill be expanded to include such provisions, for two main reasons. First, many more foreign workers legally enter the United States for temporary employment than enter or adjust as permanent employment-based immigrants. Second, in most cases, temporary foreign workers become the subject of immigrant petitions, usually after a period of nonimmigrant status, including as students in our universities.

Of the current employment-based immigrants subject to the Department of Labor-administered Permanent Labor Certification Program, over 90 percent are already in the United States, and about two-thirds are already working, sometimes illegally, for the employer that files an immigrant petition on their behalf.

Mr. Chairman, we hope that the views and specific suggestions offered in my written statement will help inform the subcommittee's further deliberations of nonimmigrant program reform, and we look forward to working with the subcommittee and returning to discuss these issues with you in greater detail.

In our view, reform of the employment-based nonimmigrant programs is so integral and so essential to effective reform of our entire system of legal immigration that it simply must be included as a part of such legislation.

With respect to the proposals that have been put forward, the administration supports the Jordan Commission recommendation that the number of employment-based immigrants be reduced from 140,000 under current law to 100,000 per year. The administration also supports the Commission's recommendation, as your draft bill would have, to exclude unskilled immigrants. We also support the Commission's recommendation that the minimum qualifications for certain workers admitted in the labor market-tested category, skilled workers without a bachelor's degree, should be increased from 3 years of specialized work experience.

However, the House bill and the subcommittee's discussion draft bill all propose a new concept in the employment-based immigration system, a concept of conditional status.

The subcommittee's draft bill parallels the Commission's recommendation that such conditional status accrue to all employment-based immigrants subject to a labor market test. The administration believes that this new scheme raises grave concerns and deserves very careful reconsideration.

Under current law, employment-based immigrants gain lawful permanent resident status on entry and all the rights attendant to such status, including freedom in the labor market. The single best protection against potential abuse in the workplace is a worker's freedom to change jobs, or to change employers, or even to change occupation. Conditional status would eliminate that fundamental protection. We would like to work more with you on the desirability of that concept.

Finally, under current law, which would not be changed by H.R. 2202, certain employment-based immigrants are excluded unless the Secretary of Labor certifies that there are no qualified U.S. workers available for the job and that the admission of the immigrant worker will not adversely affect the job opportunities, wages, and working conditions of U.S. workers. These requirements have given rise to what is known as the permanent labor certification system, the current procedure for testing the domestic labor market to avoid adverse impact from employment-based immigration.

Labor certification as it currently operates constitutes a preadmission screening regime that is very expensive for both the taxpayers and employers, who often pass these costs on to their workers. It can impose lengthy delays, and it does little to effectively protect U.S. workers.

As my statement explains, that system is broken, and the Department of Labor is working hard to fix it. And we note that the subcommittee's draft bill would in effect replace it.

Again, my written statement provides some concerns and raises some issues regarding the substitute proposals. Fundamentally, we think the issue is whether the new labor certification system envisioned in the draft bill would serve to adequately assure that employment-based immigrants do not hurt U.S. workers, and we will be examining that question as we look at the commission's report and your bill and continue to work with you.

Thank you, Mr. Chairman. We will be happy to take questions. Senator SIMPSON. Thank you very much, Mr. Fraser.

[The prepared statement of Mr. Fraser follows:]

PREPARED STATEMENT OF JOHN FRASER

Mr. Chairman and Members of the Subcommittee: Thank you for the opportunity to appear today to discuss reform of our Nation's system of legal immigration, including the ideas embodied in the "discussion draft" bill prepared for consideration by the Subcommittee which you shared with us last week. This afternoon I will focus on a few issues of particular interest to the Department of Labor, but Secretary Reich asked me to remind you today of your earlier conversations in which he expressed his profound interest in the way immigration policy interacts with domestic workforce development policies so critical to our Nation's working people and future global competitiveness. As you know, Secretary Reich cares and has thought deeply about these relationships, and he asked me to tell you that he looks forward to another opportunity to come before you to share his views on these important matters. On the Secretary's behalf, let me also express the Department's eagerness to continue working with you on these issues and others which may arise from our ongoing review of the draft bill.

Before turning to legal immigration issues, let me ask your indulgence to address a closely related matter. Members of the Subcommittee understand and appreciate both the need to effectively control illegal immigration in order to preserve our legal immigration system, and the important role that the Department of Labor plays in helping control illegal immigration through worksite enforcement of minimum labor standards. Immigration reform legislation currently being considered in the House—H.R. 2202, the "Immigration in the National Interest Act of 1995"—contains a provision for "Strengthened Enforcement of Wage and Hour Laws" which authorizes (but, unfortunately, does not appropriate funding for) 150 additional staff positions for the Wage and Hour Division to investigate violations of basic labor laws in areas where there are high concentrations of undocumented workers.

This provision parallels the President's FY 1996 budget request, which, as part of the President's comprehensive strategy to more effectively control illegal immigration, called for 202 additional positions for the Department—including 186 for Wage and Hour and 16 for the Solicitor's office to prosecute the most serious labor standards violations arising from our investigators' work.

The Administration supports this provision of H.R. 2202—as did the Commission on Immigration Reform in principle in its recommendations last fall. It appropriately recognizes that the Department of Labor makes an important contribution to reducing incentives for illegal immigration.

Curbing illegal migration and effectively enforcing worker protection laws have a direct if seldom noted policy connection. Illegal immigrants are attractive to some employers and are frequently subjected to exploitation in the form of sub-minimum wages, dangerous workplaces, excessively long hours and other poor working conditions because they are desperate for work and in an extremely weak position to protect their rights. Knowingly hiring illegal workers both reveals and rewards an employer's willingness to break the law, and undermines wages and working conditions for legal workers.

Vigorous enforcement of minimum labor standards serves as a meaningful deterrent to illegal migration by denying some of the unfair business advantage that can be gained through the employment of highly vulnerable and exploitable workers under substandard wages and working conditions. Effective labor standards enforcement—combined with our routine inspection of employers' compliance with their employment eligibility verification obligations—not only helps ensure fairness and minimally acceptable wage and employment conditions in the workplace, but also

helps foster a level competitive playing field for the large majority of honest employers who seek to comply with the law.

The Administration strongly believes that enhanced worksite enforcement of both minimum labor standards and employer sanctions are essential components of the comprehensive strategy proposed by the Administration, and needed, to more effectively control illegal migration—which poses one of the greatest single threats to our system of legal immigration.

As I said, we support this provision of H.R. 2202—indeed, we strongly support the Administration's request for even more Wage and Hour enforcement personnel. I bring the matter up this afternoon not only because of its importance to preserving our legal immigration system, but also because the House has already acted to eliminate the President's request for these additional labor standards enforcement resources (though it approved funding for many other aspects of the President's immigration program) and most importantly because the Senate is just beginning its consideration of the Department's FY 1996 appropriation. I appreciate your letting me take this opportunity to urge all the Members of the Subcommittee—who have a special responsibility for seeing that our Nation effectively controls illegal immigration—to work to ensure favorable consideration in the Senate for appropriation of these additional labor law enforcement resources requested in the President's budget.

Turning to the subject of today's hearing, I will discuss three primary issues relating to employment-based immigration to the U.S.:

(1) the pressing need for reform of the multiplicity of nonimmigrant programs that allow entry of foreign workers for temporary employment in the U.S.;

(2) current proposals for changing the number and mix of employment-based immigrants; and

(3) the process which should be employed for admitting employment-based immigrants.

Let me first offer a general context for discussion of these subjects.

EMPLOYMENT-BASED IMMIGRATION POLICY PRINCIPLES

The Nation's goals for employment-based immigration policy must continue to be twofold. First, the policy must provide U.S. employers with needed access to international labor markets to promote our global competitiveness and high-skill, high-pay job growth in the U.S. Second, it must also assure adequate protections for U.S. workers and employers against unfair domestic competition while providing real incentives to develop the domestic workforce for the high-skill jobs and high-performance workplaces of the future. In light of an increasingly global economy and workforce, U.S. immigration policy must carefully balance these objectives if a viable, relatively receptive immigration system is to be maintained.

In recent years as our immigration system has tilted towards expanding employment-based immigration and to favoring higher-skilled workers, these dual goals have come to be recognized as the general framework for our employment-based immigration policy. However, as our immigration system has evolved within this overall framework, it has treated particular issues in quite different ways. Thus, criteria governing access to immigrant workers vary depending on the preference category, and these criteria differ in kind from those which apply to various employment-based nonimmigrant categories. Similarly, the manner in which the basic policy goals are implemented in law for employment-based nonimmigrants differ significantly among the various programs, some of which lack any labor market protections.

These two guiding policy goals are by no means incompatible, but do contain inherent tensions that must be recognized and appropriately resolved. The evolving efforts to effectively implement immigration programs which provide an appropriate balance between the larger policy goals offer some lessons and raise issues that deserve careful consideration.

First, the need for timely, appropriate access to international labor markets may well warrant shifting the focus from often cumbersome and time-consuming pre-admission screening processes—of, at best, questionable effectiveness, as I will discuss later—to a greater reliance on less intrusive application procedures coupled with post-admission compliance requirements. Moreover, the array of inconsistent employment-based immigrant and nonimmigrant admission processes still require the involvement at various stages of at least three Federal agencies—Labor, Justice/INS, and State. Whether the wide variability of these processes and three separate steps are truly necessary warrants careful reexamination.

Second, we need to consider whether the employment-based immigration system should continue to be employer-driven. If it should be determined that an employer-

driven system should be maintained to reflect real needs in the marketplace and economy, then the system needs to become much less susceptible to manipulation by intending immigrants (and their relatives who are employers) as well as unscrupulous employers who seek to take advantage of the benefits of possible immigration to the U.S. as a means of exploiting their workers. The very real potential of indenture which derives from nonimmigrants—and, under some proposals, certain immigrants being bound to an individual employer poses one of the greatest dangers for serious worker abuse and exploitation in these programs.

EMPLOYMENT-BASED NONIMMIGRANT PROGRAM REFORM

Consistent with these general principles, the Department of Labor believes that any reform of our legal immigration system must also address the nonimmigrant programs which allow temporary entry of individuals to the U.S., in many cases for employment purposes. While many acknowledge this need, few proposals have yet been offered. Perhaps this is because the Commission on Immigration Reform, while looking at the matter, has not yet provided its analysis or made any recommendations. We have been working with the Commission on this and look forward to hearing from it on this important subject. We note that the Subcommittee's "discussion draft" bill contains no provisions affecting employment-based nonimmigrant programs. We would urge that it be expanded to include such provisions, for two main reasons.

First, many more foreign workers legally enter the U.S. for temporary employment—sometimes for as long as six years—than enter (or, more commonly, adjust) as permanent employment-based immigrants. Second, in most cases, temporary foreign workers become the subject of immigrant petitions after a period in nonimmigrant status, which often follows completion of their education at U.S. colleges and universities. Of the current employment-based immigrants who are subject to the Department of Labor-administered permanent labor certification process, we estimate that over 90 percent are already in the U.S. and about two-thirds are already working—sometimes illegally—for the employer which files the immigrant petition on their behalf. Nonimmigrant foreign students and workers already in the U.S. (many previously foreign students) are predominantly those whom U.S. employers subsequently seek for permanent residency for employment purposes. Thus, our employment-based immigrant selection system—whatever its form—in practical terms is mostly a system for deciding which foreign students and temporary workers will be allowed to remain, rather than enter, to live and work permanently in the U.S. The actual employment-based immigrant selection system occurs much earlier in the process when students are admitted to our colleges and universities, and when employers seek temporary nonimmigrant workers from abroad. A coherent employment-based immigration policy—sensitive both to the needs of the marketplace and our obligations to adequately protect U.S. workers and businesses, and provide appropriate job opportunities for the domestic workforce—must recognize these facts and, therefore, address real deficiencies in the nonimmigrant programs through which the first level selection is really made.

We wish to offer several suggestions in this regard and continue to work with the Subcommittee as it considers these matters.

First, the various employment-based nonimmigrant programs could benefit immensely from harmonized, concordant criteria and procedures. These programs need to be consolidated, streamlined, and simplified.

Second, perhaps the best way to accomplish this—while at the same time providing flexibility to deal with rapidly changing conditions in the economy and labor market—may be to return to a more general but coherent statutory framework, with program implementation more through the regulatory process.

Third, to achieve the needed balance between the overall objectives of our employment-based immigration policy, especially with streamlined and expedited admission processes emphasized, there should be basic criteria commonly applicable to all employment-based nonimmigrant programs. The Department of Labor believes that among such basic criteria at least the following should be considered:

- An effective test of the labor market. This would not have to be excessively time-consuming nor performed by the government, but would need to be done honestly and in good faith before the employer seeks approval for admission. Too often, employers use the nonimmigrant system to retain foreign student or illegal immigrant employees even where there is an abundance of available, qualified U.S. workers.
- Lay-off and strike/lockout protections. Access to foreign workers should be prohibited where domestic workers have been or are being laid-off or otherwise displaced, or during a strike/lockout involving the target occupation.

- Significant, extraordinary efforts by the employer to train or otherwise develop domestic workers for the target occupation. Such a requirement is not only sound public policy, but would help thwart the growth of contractor "body shops" with workforces composed predominantly or entirely of nonimmigrant employees—from which we believe the greatest potential for adverse effects on U.S. workers and competing businesses derives. Access to temporary foreign workers should indeed be temporary; employers which use nonimmigrant workers should be seriously discouraged from developing dependency on foreign workers and, rather, be required to reduce any dependency as quickly as possible.
- Meaningful protection against adverse effects on the compensation and working conditions of domestic workers in the same occupation.
- Appropriate restrictions on duration of stay and change of status by non-immigrants to keep the proper focus on meeting employment and economic needs. Again, temporary foreign workers should, in fact, be temporary and certainly not benefit from any period of illegal employment in the U.S. or derive a competitive advantage over U.S. workers through their employment during a temporary admission.
- Restrictions on Access. Access to foreign workers should not be unlimited. Mechanisms that act as a brake on the size and potential growth of these programs and moderate potential adverse effects on the domestic workforce could be considered. Such mechanisms include numerical limitations and user fees, consistent with our international obligations, which would have the program beneficiary bear the program's costs and also provide some disincentive to its use.

These criteria should not be rigid and, particularly if implemented through regulation rather than statutory language, appropriate flexibility could be provided to reflect, for example, differences in skill levels or labor market demand and availability.

I would like to make three more specific points about proposed changes to existing nonimmigrant programs. The first point deals with proposed amendments to the H-1B nonimmigrant program which are supported by the Administration.

In September 1993, Secretary Reich requested Congress to amend the criteria which still apply under the program for admission of nonimmigrant "professionals" for temporary employment in "specialty occupations" (and fashion models of distinguished merit and ability) with H-1B visas. Unfortunately for many U.S. businesses and workers, the Congress has yet to act on his proposals.

Our experience with the operation of the H-1B program has raised serious concerns that what was conceived as a means to meet temporary business needs for unique, highly-skilled professionals from abroad is, in fact, being used by some employers to bring in relatively large numbers of foreign workers who may well be displacing U.S. workers already affected by structural changes in our economy. Some employers, though a minority of those who use the H-1B program, have been using this program to request the admission of scores, even hundreds of workers, especially for work in computer-related and health care occupations. Many of these employers are "job contractors," some of which have a workforce composed predominantly or even entirely of H-1B workers, which then lease these employees to other U.S. companies or use them to provide services previously provided by laid off U.S. workers.

The amendments requested by Secretary Reich were carefully designed to assure continued business access to needed high-skill workers in the international labor market while increasing the likelihood that the H-1B program is not susceptible to use to the detriment of U.S. workers and the businesses which employ them. Briefly stated, the two requested amendments would require employers which seek access to temporary foreign "professional" workers to attest that:

(1) they have not laid off or otherwise displaced U.S. workers in the occupations for which they seek nonimmigrant workers in the periods preceding and following their seeking access to such nonimmigrant workers; and

(2) in certain circumstances, they have taken timely and significant steps to develop, recruit and retain U.S. workers in these occupations.

These amendments were modeled on similar provisions applicable to the temporary admission of foreign registered nurses (which program has just recently expired), and are targeted especially to those employers which seek to obtain relatively low-skilled "professional" workers.

Enactment of these amendments is increasingly critical. First of all, abuses of this program which these amendments would help stem have become increasingly well-documented. Secondly, there appears to be a trend of growth of companies which are predominantly or entirely dependent on nonimmigrant workers and are thus

able to compete unfairly with U.S. companies which employ mostly U.S. workers. Thirdly, the nonimmigrant registered nurses (H-1A) program has recently expired and some foreign nurses will now be entering under the H-1B program, with significantly less protection than under the predecessor program. Finally, I think all would agree that in most situations it is unreasonable that an employer in this country—as a matter of public policy—not only does not have to test the domestic labor market for the availability of qualified U.S. workers before gaining access to foreign workers, but should be able to lay off U.S. workers to replace them with temporary foreign workers in their own employ or through contract. This is exactly what is happening now; our public policy tolerates this situation, perhaps encourages it, and it must change.

In addition to the amendments that the Secretary has already proposed, we would also urge that the allowable period of stay under the H-1B program be reduced from six to three years to better reflect the “temporary” nature of the presumed employment need.

Additionally, if this and other employment-based nonimmigrant programs are really to serve as “probationary” or “test” employment situations to select and transition foreign students and workers into the permanent labor force as employment-based immigrants, then the programs ought to be redesigned to reflect that purpose and not a fiction that they are intended to meet urgent, short-term demand for very highly-skilled, unique individuals who are simply not available in the domestic workforce.

The second specific matter also relates to the H-1B program. The only provision of H.R. 2202 which modifies current law affecting nonimmigrant categories (Title VIII, Section 806) makes a number of changes in the H-1B program. While apparently still evolving, these provisions would:

(1) Overturn a provision of the Department's regulations so that employers of H-1B workers would not be required to have an objective system to determine the actual wages of their workers.

(2) Make certain of the Department's regulations inapplicable to a subset of H-1B program users—“Non-H-1B-Dependent Employers.” Such employers which use relatively few H-1B workers would:

- not be required to provide notice of employment of H-1B workers at multiple worksites within an area of employment for which the employer had filed a Labor Condition Application (LCA);
- not be required to file a new LCA—nor, apparently, comply with any requirements attendant to such LCA—to place any H-1B worker in an area of intended employment for which it has not previously filed an LCA so long as each nonimmigrant worker is not assigned to the new area for more than 45 days in any 12-month period, nor more than 90 days in any 36-month period. Nor would the employer of such H-1B worker be required to pay *per diem* or transportation costs at any specified rate for the worker during such assignment; and
- not be subject to compliance investigation except based on a complaint alleging violations, retroactively effective on January 15, 1995;

(3) Increase the time allowed to adjudicate the LCA of an “H-1B-Dependent” employer.

(4) Require all employers filing H-1B LCAs to attest that they have not laid off workers with substantially similar qualifications and experience in the specific employment for which the nonimmigrant is being sought within the six months preceding the date an H-1B nonimmigrant begins employment, and will not lay off protected individuals within 90 days following the date the nonimmigrant begins employment and for so long as the application remains active or a visa remains in effect—unless the employer pays an actual wage to each nonimmigrant that is at least 110 percent of the mean of the last wage earned by the laid off employees. In addition, a “job contractor” must attest that it will not place an H-1B worker with another employer unless the other employer has executed an attestation that it is complying and will continue to comply with these requirements in the same manner as they apply to the contractor. We perceive the last of these proposed changes to represent a welcome effort to implement one of the modifications in the H-1B program previously requested by Secretary Reich—to prevent U.S. workers from being laid off or otherwise displaced by nonimmigrants—but it does not reflect the language requested by the Secretary and provides a means of circumvention. In other words, this provision would allow a U.S. employer to lay off U.S. workers and replace them with foreign workers in the same job so long as the employer paid the foreign workers more than it had paid its U.S. workers. H.R. 2202 does not include the additional change to the H-1B program requested by the Secretary—the requirement that H-1B employers attest to taking timely and significant steps to recruit and retain U.S. workers in the jobs for which they are seeking foreign workers.

In addition, these proposed changes need to be consistent with U.S. international obligations in the General Agreement on Trade in Services under the World Trade Organization.

While we have a number of serious concerns about the changes to the H-1B program contained in H.R. 2202—and, as I have stated, would like to see legislation address more nonimmigrant programs, and in the broader context of the array of nonimmigrant programs for which the Department has responsibility—we find promise in the general framework provided in the bill and will be working with the Congress and interested parties to address our concerns and attempt to fashion H-1B amendments which the Administration could endorse.

Thirdly, with respect to reform of nonimmigrant programs, there has been some talk about the potential need for a new agricultural guestworker program should the Administration's illegal immigration initiative effectively reduce the flow of illegal migrants across the southwestern border. Apparently, Western growers in particular fear resulting labor shortages and disdain the existing nonimmigrant agricultural worker program—the H-2A program—as inappropriate to their perceived needs. As the Subcommittee Members may know, the President opposes such a new agricultural guestworker program. In June, agreeing strongly with the Commission's recommendation on this subject,¹ the President said: "A new guestworker program is unwarranted for several reasons: It would increase illegal immigration; It would reduce work opportunities for U.S. citizens and other legal residents; It would depress wages and work standards for American workers."

The Department of Labor suggests an analytical framework for examining the need for any new agricultural guestworker program through three questions:

- (1) Is there a problem—a shortage of farmworkers in the U.S.?
- (2) If there is a problem, is a new foreign guestworker program the only way to address it?
- (3) If a foreign guestworker program is the only way to deal with supplying labor to U.S. agriculture, there already exists a temporary farm labor program which provides such a "safety valve." Is there something fundamentally wrong with the existing H-2A nonimmigrant program?

Our careful analysis of these questions concludes that the answer to each is unambiguously "No"—a new agricultural guestworker program is simply not in the national interests of the United States.

Finally, Mr. Chairman, we understand that the Subcommittee may be considering holding another hearing focused on possible reforms of the current nonimmigrant programs. We hope that the views offered today help inform your further deliberations, and we look forward to returning to discuss these issues in greater detail. It is worth repeating though that—in our view—reform of the employment-based non-immigrant programs is so integral and essential to effective reform of our entire system of legal immigration that it should be included in any such legislation. This is yet another reason why the Administration believes that in order to assure passage of a bill this session addressing illegal immigration, it may be best to deal with legal immigration reform as a separate matter in the Congress, and commends the Chairman for his efforts in this regard.

EMPLOYMENT-BASED IMMIGRANTS—CEILINGS AND CATEGORIES

Let me turn now to employment-based immigration and existing proposals to change the number and mix of such immigrants.

The Administration supports the Commission on Immigration Reform's recommendation that the number of employment-based immigrants be reduced from 140,000 under current law—which is nearly three-fold more than prior to the 1990 amendments (54,000)—to 100,000 per year. The Commission acknowledges that this level of employment-based immigration actually represents a modest increase over current market demand when unskilled workers and admissions under the expiring Chinese Student Protection Act are excluded.

H.R. 2202 would allow 135,000 annual employment-based immigrant admissions, an apparent reduction from the current level, but actually a significant increase compared to current demand. The Administration thinks this level is too high.

The Subcommittee's "discussion draft" bill would allow 75,000 annual employment-based admissions, about 50 percent more than prior to the 1990 amendments, but less than current market demand. While we appreciate that this lower level could help tighten the labor market and encourage employer efforts to invest in de-

¹ In June, the Commission said, "The Commission believes that an agricultural guestworker program, sometimes referred to as a revised "bracero" program, is not in the national interest and unanimously and strongly agrees that such a program would be a grievous mistake."

veloping the domestic labor market to meet future skill demands, it may be too low in the short term, especially in light of the increasing globalization of certain labor markets.

The Administration also supports the Commission's recommendation that the annual employment-based admission ceiling exclude unskilled immigrants. This appears to be a consensus change as H.R. 2202 and the Subcommittee's "discussion draft" bill would both do this as well. Since 1990, this category is limited to 10,000 admissions annually and currently has an existing backlog (as of January 1995) of nearly 80,000 approved applicants, or an eight year waiting list. It is indeed hard to understand how a prospective employer could wait eight years to obtain the services of an unskilled foreign worker, so it is highly likely that most of these workers are already living and working in the U.S., in many cases illegally. Nonetheless, these 80,000 approved applicants have already been found eligible for admission through a test of the domestic labor market, albeit several years ago, and some have called for Congress to consider a means to "grandfather" these approved applicants should there be a change in the law.

The Administration supports the Commission's recommendation that the minimum qualifications for certain workers admitted in the "labor market tested" category—skilled workers without a bachelor's degree—should be increased (from three years) to a minimum of five years of specialized work experience.

H.R. 2202 would also raise the minimum standards of training and experience required to qualify for employment-based immigrant admission to a bachelor's degree plus five years of experience, or seven years of combined training and work experience for those without a bachelor's degree. H.R. 2202 does not address the question of whether training and experience gained in the U.S. while an individual worked in nonimmigrant status—or even illegally counts toward meeting the minimum qualification requirements.

On the other hand, the Subcommittee's "discussion draft" bill would raise the minimum qualifications for employment-based immigrant admission to a bachelor's degree plus five years of experience, or five years of experience in skilled labor without a bachelor's degree. In both cases, the immigrant must have obtained the work experience outside the U.S. In this matter, the Administration prefers the approach contained in the Subcommittee's draft bill. However, as this new requirement is likely to garner considerable controversy, the Subcommittee may wish to consider other alternatives such as disallowing any work experience gained with the petitioning employer, and certainly any experience gained if the immigrant resided and worked illegally in the U.S.

There are differences between both bills' minimum requirements for the jobs for which the lowest preference skill-based immigrants can be sought, and the minimum qualifications and experience of the prospective immigrants (which are significantly higher). H.R. 2202 would require that the prospective immigrant be capable of performing skilled labor requiring at least two years of training or experience, which is not of a temporary or seasonal nature, "for which qualified workers are not available in the U.S." The Subcommittee's "discussion draft" bill, however, requires that such immigrants be capable of performing skilled labor which is not of a temporary or seasonal nature, and which requires at least two years of training or experience (or combination of the two), but does not explicitly require any showing that qualified U.S. workers are unavailable to perform the work. In this regard, the Administration prefers the approach contained in H.R. 2202.

Unlike the Subcommittee's "discussion draft" bill, H.R. 2202 retains separate numerical limitations for employment-based immigrant preference categories. (It is not yet clear whether or how the Commission will address this issue.) H.R. 2202 would significantly reduce the annual ceiling on the admission of the most highly qualified and talented employment-based immigrants—those with "extraordinary ability"—while increasing the ceilings for advanced degree professionals, and professional and skilled workers. We understand that these preference category ceilings were established to generally comport with current demand, but we have raised questions about the wisdom of this approach as it reduces future flexibility should demand in the higher preference categories grow unexpectedly. Since all approaches seem to retain the concept that unused visas in higher preference employment categories would be available for use in the lower preferences, such ceilings also seem unnecessary.

The Commission, H.R. 2202, and the Subcommittee's "discussion draft" bill all propose a new concept in the employment-based immigration system—the concept of "conditional status." While H.R. 2202 does this in a very narrow context, the Subcommittee's draft bill seems to parallel the Commission's recommendation that such "conditional" status accrue to all employment-based immigrants subject to the labor market test. While we understand that this approach is based on the "marriage

fraud" precedent, the Administration believes that this new scheme raises grave concerns and deserves very careful reconsideration.

Under current law, employment-based immigrants gain lawful permanent resident status on entry (or adjustment) and all the rights attendant to such status, including freedom in the labor market. In fact, the single best protection against potential abuse in the workplace is a worker's freedom to change jobs, change employers, even change occupations. This "conditional status" construct would eliminate that fundamental protection, binding the immigrant to the employer and to an occupation for two years. Of even greater concern is that at the end of the two year period the immigrant would have to petition for removal of "conditional" status and obtain the cooperation of the employer to appear for a personal interview to prove that the worker remained employed by the employer and had continued to receive the required wage during the prior two year period. This construct could easily foster a great—and entirely avoidable—potential for workplace exploitation.

If one assumes that lawful permanent resident status (and eventually citizenship) is the primary motivation for employment-based immigrants, this "conditional status" gives the employer tremendous power over the worker—extending it beyond any period of illegal employment, or employment in nonimmigrant status during which the worker is also bound to a specific employer—and there are no parties with any interest in preventing or exposing possible exploitation (with the possible exception of any similarly-employed U.S. workers who may become aware of the situation). While the Commission and the Subcommittee's draft bill contemplate the possibility of such exploitation by providing for waiver of the two year employment requirement in the case of an unfair labor practice, both seem to overlook the problem of how such unfair practices would ever be identified (much less the burden of proving same) if there are really no interests at play that would expose such practices. If the bill contemplates that a complaining "conditional" immigrant worker would get earlier conversion to unconditional permanent residency in the event that such labor abuses are exposed and then proven, this might provide a modest incentive. At the same time, it seems to ignore the fact that the troubled employment relationship would either continue while the issue is contested, investigated, and adjudicated, or would—more likely—be terminated by the employer, leaving the worker without a means of support, at least temporarily. Further, since conversion from "conditional" to permanent resident status would require a second adjudication by the INS, the numbers involved pose significant workload and related resource implications that need to be addressed.

While we do have very serious concerns about the effect of such "conditional" status, the Subcommittee should know that it has been our experience that it is not uncommon that employment-based immigrants do change jobs from those for which they were certified within the first few years after gaining permanent status, are frequently not paid the wage that was offered in the labor certification, and often work in a lesser capacity than described in the certification application.

EMPLOYMENT-BASED IMMIGRANT ADMISSION PROCEDURES

Let me now turn to the last general subject I wish to address today—the appropriate procedure for testing the domestic labor market to avoid adverse impact from employment-based immigration. The Commission recommended that individuals admissible as employment-based immigrants be differentiated between those whose admission would be subject to a labor market test, and those who would not. H.R. 2202 and the Subcommittee's "discussion draft" bill would both do this, though in somewhat different ways. The Administration supports this approach generally, though we have some concerns regarding how the lines would be drawn and, as you will hear, the nature of the market test mechanism.

Under current law—which, in this regard, would not be changed by H.R. 2202—certain employment-based immigrants are excluded unless the Secretary of Labor certifies that there are no qualified U.S. workers available for the job and that the admission of the immigrant worker will not adversely affect the job opportunities, wages and working conditions of U.S. workers. These requirements have given rise to what is known as the permanent labor certification system.

The permanent labor certification system is administered by the Employment and Training Administration's United States Employment Service, assisted by State employment security agencies. The labor certification system scrutinizes an employer's efforts to recruit U.S. workers for the job for which it is seeking an immigrant worker and surveys locally prevailing wage rates for such occupations.

Labor certification, as it currently operates, constitutes a pre-admission screening regime that is very expensive for both the taxpayers and employers who often transfer their costs to the foreign worker. It often imposes lengthy delays in processing.

And, the labor certification process does little to effectively protect U.S. workers since so many immigrants being sought for permanent residency are already present and working in the country as students, nonimmigrants, or illegally.

Labor certification begins as a "no win" situation. The employer has necessarily already offered employment to the immigrant when the labor certification application is first filed. Requiring the employer to then recruit U.S. workers in good faith to replace the desired immigrant sets up an adversarial process which is frustrating and incomprehensible to many employers, and ineffective in determining the real availability of qualified U.S. workers. Thus, the chances of a U.S. worker being hired through this process are extremely small. As I said earlier, in over 90 percent of labor certification applications filed, the prospective immigrant is already in the U.S.; in about 65 percent of the cases, the immigrant is already working for the employer, sometimes illegally. In only about one-half-of-one percent of cases does a U.S. worker actually get hired, and this is almost always in a different job than the one for which the immigrant is being sought.

Over 90 percent of all labor certification applications are handled by immigration attorneys. Ironically in what is supposedly an employer-driven system, these attorneys are often representing—and being paid by—the prospective immigrant. In a system that ostensibly delegates authority to U.S. employers to select a good portion of new permanent residents in our country, many employers who should be driving the system have become rather passive participants in the process in that they leave all of the details of meeting certification requirements to the immigrant's attorney, and often are not even aware of what is transpiring. The large numbers of attorneys involved in the process have helped make it more complex, more adversarial, and more time consuming.

There are flagrant abuses of the labor certification process. Abuses by prospective immigrants, their employers, and the representatives and attorneys involved include fictitious employers, accommodation of relatives, nonexistent jobs, shell corporations, overstated job duties and qualifications, and the intentional rejection or discouragement of qualified U.S. workers. In the employment-based permanent immigration system—as well as the nonimmigrant programs—employers can quickly become dependent on the use of foreign workers in an occupation. A major goal of an effective national immigration policy should be to prevent and reduce such dependency.

While the labor certification system can be responsive to the needs of the economy and operate to discourage frivolous applications, it is not too much of an exaggeration to say that the way the current labor certification system operates diminishes the integrity of all of its participants. Employers are forced to engage in a costly recruitment process at a point when they have no interest whatsoever in considering a qualified U.S. worker for the job. Unemployed U.S. workers are "used" and abused in the process when they are referred to jobs for which they have almost no chance of really being considered. The administering State staff must engage in a recruitment process that they know is almost always futile, undermining the goodwill of U.S. workers and employers who they are also trying to serve in other, more legitimate ways. And our Federal staff do a tremendous amount of work with little gain or appreciation from the employers they are trying to serve.

I trust that this depiction cannot be mistaken for a vigorous defense of the labor certification system as it currently operates. In fact, it is an admission that the system is fundamentally broken and urgently needs to be fixed. The Department of Labor is actively undertaking to fix it through a reinvention initiative, as well as through examination of regulatory and possibly legislative changes that may be needed. We are painfully aware of the many deficiencies in the labor certification system and are intent on remedying them, either within the overall context of the current system or through an entirely new one.

To this end, last January the Employment and Training Administration launched a major effort to reengineer the current labor certification system's case processing procedures and prevailing wage policies in order to streamline processes, make the system more efficient and effective, save resources, and improve customer service. This reengineering project is a collaborative effort of Federal and State staff involved in the administration of the system, supported by process reengineering consultants. Through this project, the agency has mapped the current processes, gathered measurement data on the processes, benchmarked the process against the "best" comparable processes, and sought public input through notice in the Federal Register. In the next few months we expect to develop and begin consideration of various options for improving the system, including obtaining the "buy in" of our State partners and stakeholders including outside interest groups.

Despite the very serious problems with the existing system, we cannot lose sight of the essential premise that our Nation's immigration policy, and its implementation, must assure that employment-based immigrants—and nonimmigrants—do not

undermine the job opportunities, wages and working conditions of U.S. workers. A viable immigration policy could not survive such a failure. I know you agree, Mr. Chairman, that it is incumbent on us to examine carefully any proposals to replace the labor certification system to assure that this essential objective is achieved.

In this regard, the Subcommittee's "discussion draft" bill, consistent with many of the Commission's recommendations, would replace the current labor certification requirement with two alternatives.

First, if the Secretary of Labor found and declared that a labor shortage exists in the U.S. in an occupational classification, certification for that occupation would be "deemed to have been issued." On the other hand, if the Secretary found and declared that a labor surplus exists in the U.S. in an occupational classification, certification could not be issued for that occupation.

This system parallels one used under the current labor certification system, though somewhat more ambiguously. In this regard, the Department would support legislation which would codify what we started doing in 1965 through regulation. The difference from current practice embodied in the Subcommittee's draft legislation is that it would require denial of certifications for labor surplus occupations—called "Schedule B" occupations—which had been the Department's practice until 1977 when the courts ruled that the statute requires a determination of able, willing, qualified and available workers. Nonetheless, while the feasibility of the approach contained in the draft bill deserves much more discussion based on our experience with the "labor market information" pilot program a few years ago, it should suffice today to say that, while simple in concept, this approach is terribly complex and difficult in execution given its essential dependency on labor market information which is wholly insufficient for this purpose.

The second alternative contained in the Subcommittee's "discussion draft" bill would replace the labor certification system with one which requires the Secretary of Labor to certify that the prospective employer has:

(1) Paid a fee, equal to 30 percent of the value of the total compensation package it will pay to the immigrant, into a private fund certified by the Secretary as dedicated to the goal of increasing the competitiveness of U.S. workers by making grants for education and training or similar such purposes; and

(2) Attempted to recruit a U.S. worker for the job in which the immigrant would be employed using recruitment procedures that meet industry-wide standards and offering a total compensation package equal in value to at least 110 percent of the prevailing compensation package for such employment.

The draft bill would appropriately preclude the transfer of the cost of the fee from the employer to the immigrant, and provides remedies should this happen.

Without getting into a discussion of the myriad of administrative issues which would have to be worked out to implement such a new certification process, let me raise a few issues which we think may deserve further consideration.

We note that the draft bill would require the Secretary to certify that the prospective employer had attempted to recruit "a" U.S. worker—in the singular—for the job. Certainly you intend that the employer recruit in the domestic labor market, and would not intend to tolerate a situation where, for example, an employer recruited only one U.S. worker who lives in Wyoming for the job in Texas, and told the U.S. worker that she would have to pay her moving expenses to get there. Further, while not clear in the draft bill, we expect that you intend that the employer's domestic recruitment would have to be unsuccessful. The draft legislation does not say this and it is, in our view, too critical a question to leave to speculation or the legislative history. In this regard too, it could be useful if the bill clarified the intended standards against which such unsuccessful recruitment would be measured to address the currently common practice of employers "tailoring" job descriptions to suit only the immigrant worker, thereby assuring that the domestic recruitment will be unsuccessful.

In its recruitment an employer would be required to offer "110 percent of the prevailing compensation for individuals in such employment (including wages, benefits, and all other compensation)." The inherent difficulty of determining prevailing compensation packages for various occupations should not be underestimated. We are exploring the availability of reliable, up-to-date information regarding total compensation by occupation and area, but we know that the development of such information can be extremely costly and burdensome. In addition, the fact that the draft bill does not appear to contemplate that these determinations would be made for the locality would create some undesirable and probably unintended consequences. For example, employers in major metropolitan areas—where wage rates and benefits tend to be higher—could be encouraged to use the system due to their advantage of being able to recruit by offering compensation packages that meet the 110 percent test—against a nationally prevailing standard—but which might well be

less than they actually pay their U.S. workers in those locations. On the other hand, employers in lower wage areas of the country could be discouraged from using the program because they would be seriously disadvantaged by being required to recruit offering a compensation package which satisfies the test but which actually represents much more than 110 percent of what they pay similarly employed U.S. workers in their location. However, requiring determination of prevailing compensation for an occupation only on a locality basis could be extremely resource intensive, so we would suggest that the bill afford the Department the flexibility to require determination of the prevailing compensation package on a local, State-wide, regional or national basis depending on the availability of reliable, up-to date data for various occupations and industries.

Despite these initial concerns about the draft bill's recruitment protocol, it does address a number of weaknesses in the current labor certification system and would provide increased flexibility to allow the Department to revamp the current system.

The amount of the fee that an employer must pay equates to the value of the compensation package it will provide the immigrant employee. Of course, this builds in incentives to keep these compensation costs as low as possible, creating the potential for abuses as well as undermining the wages and benefits offered similarly employed U.S. workers. In addition, it may discourage employers from seeking higher-skilled workers who would normally also be the higher paid employees, which works against the basic thrust of our employment-based immigration policy. Perhaps it would be better to define another baseline for such a fee that would invoke a more desirable set of incentives and disincentives.

The fee an employer would be required to pay would apparently go into a fund with the very general goal of increasing the competitiveness of U.S. workers. Of course, there is nothing inherently problematic with this objective—one that, as you know, is very close to Secretary Reich's heart. Nonetheless, in the context of linkage to our immigration policy goals (and recognizing the complexities which would arise), consideration could be given to requiring payment of such a fee into a fund with the more specific goal of increasing the competitiveness of U.S. workers in the occupation in which the immigrant will be employed. This, we believe, could help prevent the development of dependencies on foreign workers in certain labor market niches, especially considering that unskilled workers would no longer be admissible.

As we have told the Commission and understand they intended in their recommendation, we think your bill could make clear that any such fee should be additional money paid by the employer for this specific purpose. I hope you would join with Secretary Reich in not wanting to encourage employers to simply redirect some of the funds they currently contribute to educational and training endeavors in their own interests and the interests of their employees in order to cover these fees.

The draft bill would require payment of the fee into a "private fund" for the purposes described. We have pointed out to the Commission and call to your attention that—while we agree completely with the goal of not creating any new government program for administering such a fund—this language would appear to preclude an employer from meeting its fee obligation through a contribution to, for example, a State or Federal training program where, in fact, the payment could be more appropriate and useful for the purposes intended.

We trust that the "admission fee" contained in the "discussion draft" bill would not preclude the assessment of additional fees merely to cover the cost of processing the workloads and performing the other functions required of the government. It would be inappropriate, we believe, to have the taxpayers continue to foot the bill for any part of the cost of obtaining the benefits derived by employers and immigrants through this system.

Finally, Mr. Chairman, we must return to the most important question regarding the "discussion draft" bill's proposed new certification system—will it serve to adequately assure that employment-based immigrants do not undermine the job opportunities, wages and working conditions of U.S. workers? This is the fundamental issue the Department will be examining as we review the Commission's report that was just released, as we further consider the Subcommittee's draft bill, and as we continue to work with you on what you know better than most are exceedingly complex, interrelated issues.

We appreciate the interest shown by the Subcommittee staff in our views, and their consideration. We look forward to continuing to work closely and cooperatively with you and your staff as the legislation moves forward.

Mr. Chairman, that concludes my statement and I will be pleased to respond to questions from the Members of the Subcommittee.

Senator SIMPSON. Now, Mary Ryan, please.

STATEMENT OF MARY A. RYAN

Ms. RYAN. Mr. Chairman, members of the committee, thank you for inviting the Bureau of Consular Affairs of the State Department to testify before you on the important issue of legal immigration reform.

It is always a privilege to appear before this subcommittee in view of your expertise on immigration matters and the support which you have long provided to the Department in fulfilling its responsibilities regarding immigration.

I have a longer version of the statement that I would ask to be made a part of the record.

Senator SIMPSON. It is so ordered.

Ms. RYAN. Immigration reform is a complex issue and one which affects many Americans. As you are aware, there is substantial agreement between the approaches taken by the administration's bill regarding enforcement issues and those of your bill, S. 269. I hope we can work together to force a similar consensus on the issue of legal immigration reform, an issue which is bound to generate significant debate.

As my colleague, the Commissioner of the Immigration and Naturalization Service, has noted, the administration agrees with the framework for reform recommended by the Commission on Immigration Reform, so ably chaired by Barbara Jordan. We support reductions in the overall immigration that would continue to promote family reunification, protect the American worker, while providing employers with access to international labor markets, and enhance the value of naturalization.

Your proposal appears to depart, however, from the Commission's recommendation in important respects. We look forward to working with your committee on how we can best reconcile these differences.

We urge that the reforms which are agreed upon take into account procedural needs of the State Department, allow sufficient time for implementation, and that the terms of any new programs be cost-efficient as well as practical.

Mr. Chairman, before I conclude my remarks, I would like to take this opportunity to appeal for your support on an issue of vital importance to the State Department. That issue is our urgent need for the Congress to renew the Department's authority to retain the visa application fee assessed at all posts which issue machine-readable visas. This authorization will expire at the end of this month. Unless the authority is renewed, the Department will lose a critical source of funding for the important border security initiatives we are undertaking.

We received authority to collect the MRV fees in April 1994. Since then, we have collected more than \$70 million in these fees. Utilizing these resources, we have been able to expand at most visa-issuing posts an automated name-check system to screen all visa applicants. We have tripled the number of posts issuing machine-readable visas, and we have begun testing of improved border security technologies.

Mr. Chairman, I would like to emphasize several considerations about the MRV. First, all the improvements I have just discussed

were paid for by the users of U.S. nonimmigrant visa services—that is, aliens desiring to travel here—not by the U.S. taxpayer.

Second, unless the authorization to collect and retain the fees is extended, our border security efforts will face unparalleled financial disaster. Enhancing U.S. border security is not and cannot be a one-time expense. It is clear that in the near term, appropriated funds will not be sufficient to support continued border security efforts.

I hope that the leadership of this committee, in view of your special expertise regarding U.S. border security, will recognize the critical importance of the MRV authority and help to ensure that it is extended. Absent that, we face the real risk of having built a comprehensive border security system without providing the day-to-day financial support necessary for the system to operate.

Mr. Chairman, that concludes my prepared statement. Thank you for this opportunity to appear before you, and I would be happy to answer any questions.

[The prepared statement of Ms. Ryan follows:]

PREPARED STATEMENT OF MARY A. RYAN

Mr. Chairman and Members of the Committee: Thank you for inviting the Bureau of Consular Affairs at the Department of State to testify before you on the important issue of legal immigration reform. It is always a privilege to appear before this subcommittee in view of your expertise on immigration matters and the support which you have long provided to the Department in fulfilling its responsibilities regarding immigration.

Immigration reform is a complex issue and one which affects many Americans. As you are aware, there is substantial agreement between the approaches taken by the Administration's bill regarding enforcement issues and those of your bill, S. 269. I hope that we can work together to forge a similar consensus on the issue of legal immigration reform, an issue which is bound to generate significant debate.

As my colleague from the Immigration and Naturalization Service has noted, the Administration agrees with the framework for reform recommended by the Commission on Immigration Reform so ably chaired by Barbara Jordan. We support reductions in overall immigration that would continue to promote family reunification, protect the American worker while providing employers with access to international labor markets and enhance the value of naturalization. Your proposal appears to depart, however, from the Commission's recommendations in important respects. We look forward to working with your committee on how we can best reconcile these differences.

We urge that reforms which are agreed upon take into account procedural needs of the Department, allow sufficient time for implementation and that the terms of any new programs be cost-efficient as well as practical.

Let me make several observations about important procedural implications for the Department of State. One difficulty we can anticipate is caused by the provision in your bill that visas in the special transition for spouses and children of legal permanent residents on the waiting list shall first be made available to persons whose petitions were not filed by beneficiaries of the legalization programs provided by the Immigration Reform and Control Act of 1986. The waiting list of spouses and minor children of legal permanent residents, which currently encompasses more than 1.1 million applicants, does not distinguish cases according to the basis by which the petitioner acquired resident status. The extensive manual review that would be necessary to add that criterion for case processing would be a very time-consuming and costly undertaking. This problem could be avoided under the plan outlined by Ms. Meissner.

You should also be aware of potential procedural implications of the elimination of immigrant visa categories. If a deadline is set for the completion of all cases in an eliminated category, there could be numerous cases still in the pipeline when the deadline is reached. These cases would be in limbo. Such situations could result either from a backlog in INS properly-filed adjustment of status cases or from cases being processed by overseas posts in which applicants failed to supply the proper documentation in a first visa interview or are following-to-join a principal applicant. We hope that there would be a technical provision in any legislation which would

allow us to process such cases and avoid significant foreign policy and public affairs repercussions.

We note that your draft bill does not address the diversity visa program. If this program continues, it will provide a way for an additional 55,000 people to immigrate to the United States and will continue to impose significant operational costs on the Department of State which we cannot recover from the visa applicants. As Ms. Meissner noted, the Administration supports elimination of this program.

Mr. Chairman, before I conclude my remarks, I would like to take this opportunity to appeal for your support on an issue of vital importance to the Department of State. That issue is our urgent need for the Congress to renew the Department's authority to retain the visa application fee assessed at all posts that issue Machine Readable Visas (MRVs), which will expire at the end of this month. Unless this authority is renewed, the Department will lose a critical source of funding for the important border security initiatives we are undertaking.

We received authority to collect MRV fees in April, 1994. Since then we have collected more than \$70 million in MRV fees. Here is a partial list of our accomplishments thus far:

- By the end of this month, every post issuing visas around the world will have an automated namecheck system which will be used to screen all visa applicants.
- Nearly 190 posts are now issuing Machine Readable Visas. This is almost triple the number which had this capability just sixteen months ago when we began collecting the MRV fees.
- We have also begun testing of new border security enhancement technologies, specifically photodigitization.

Mr. Chairman, I'd like to emphasize several considerations about the MRV. First, all of the improvements I have just discussed were paid for by the users of U.S. non-immigrant visas services—that is, aliens desiring to travel here not the U.S. taxpayers. Second, unless the authorization to collect and retain MRV fees is extended, our border security efforts will face an unparalleled financial disaster. Enhancing U.S. border security is not—and cannot be—a “one-time” expense. It is clear that in the near term appropriated funds will not be sufficient to support the continued border security efforts we have underway because of our ability to use MRV fees.

I hope that the leadership of this Committee—in view of your special expertise regarding U.S. border security—will recognize the critical importance of the MRV authority and help to ensure that it is extended. Absent that, however, we face the real risk of having built a comprehensive border security system without providing the day-to-day financial support necessary for the system to operate.

Mr. Chairman, that concludes my prepared statement. Thank you for this opportunity to appear. I would be happy to answer your questions.

Senator SIMPSON. Thank you very much, all of you on the panel. We will do 5-minute rounds as members, and I will proceed with questions of Doris Meissner first.

Your testimony makes several references to the administration's naturalization initiative. I think we are all aware of the large number of persons who have recently applied for naturalization in this country. Approximately how many applications for naturalization are currently pending with the Service now?

Ms. MEISSNER. We estimate that by the end of this fiscal year, we will have somewhere between 900,000 and 1 million applications filed. That is more than double what the rate has been over the last several years.

Senator SIMPSON. A recent article in the New York Times quoted an INS official as saying that many of these applications for naturalization come from persons who are concerned that Congress is about to cutoff welfare benefits for legal residents; they read that, they know that. We all know the network, which I have often said makes Ma Bell look like they are using two cans and a string, when the word goes out as to what we are doing in this place.

But do you think it is sound policy to create a special naturalization program to naturalize such large numbers of persons, many of whom, after choosing not to naturalize for so many years, con-

sciously, now seek citizenship out of concern for a possible loss of Government benefits, if that is truly occurring.

Ms. MEISSNER. We have no information on why the numbers have increased to the extent that they have increased.

Senator SIMPSON. Do you have a hunch?

Ms. MEISSNER. Well, there are several reasons that we have anticipated and been talking about for quite some years. First off, the legalization population has now become eligible to naturalize, and that is a major reason for an increase. Second, we have been going through a green card replacement program in order to issue more secure green cards for many, many years of a variety of green card documents that have been out there. And the application fee for the green card is very close to the amount of the fee for a naturalization application; many of the people who have applied for their replacement green card have chosen to apply for naturalization instead, because it costs them almost the same.

But it is also the case that our numbers have increased in the last 6 months even more than those two reasons would account for, and from what we are able to tell, they are the range of people; they are people who have been here for 10, 15 years, or people who have been eligible for less time than that. We do not look at the reasons. We know we have a case load that we need to process, and we think we should be giving timely service, and that is what we are trying to do.

Senator SIMPSON. Let me ask you again, are you satisfied that the current naturalization examination adequately reflects the key elements that we expect I think as Congresspersons and that the law requires of persons who seek to become U.S. citizens—and by that, I mean knowledge of U.S. history and principles of U.S. Government, a knowledge of the English language. A recent commentary by journalist Georgianne Geyer, who has followed this issue for many years, and I have high regard for her, notes that “What is left of the citizenship test is usually pathetic.” She goes on to say that in the past 20 years—and I quote her—“As the once sober duties of the Immigration and Naturalization Service have devolved to special interest, church and ethnic groups, not only have the distinctly dumbed-down tests been given by those groups instead of by INS, but many of them pass out the simple questions to would-be citizens with a list of the answers. Then, the petitioner can take the test, which is constantly advertised as being ‘easy, easy, easy,’ as many times as it takes to get a passing grade. Even language tests have become minimal.”

If you could share your response to those concerns about an apparent lessening of the naturalization test and the turning over of the test to special-interest groups. It is hard not to come to a conclusion, shared by some, that we expect a rubber-stamping of hundreds of thousands of persons to become new citizens. Can you respond to that, please?

Ms. MEISSNER. Senator, we take the responsibility for an examination of the naturalization application as a matter of very, very high importance. One of the things that has been critically important to us in developing this naturalization initiative is that we have the kind of staff and the preparation in our staff for these applications to be decided properly.

We need to assure ourselves, as the law states, that the person has been here 5 years, that the person is of good moral character, that the person can demonstrate a knowledge of civics, American Government, and the English language.

That test is a test which from which we ask questions off of 100 test questions, and the test questions, of course, are given out so that people can study and prepare. For me, and I think for everybody on this committee, the most useful thing to see was an ABC special a couple of weeks ago in which the naturalization test that we use was given to a cross-section of native-born Americans. And you would be ashamed as how native-born Americans were not able to answer the questions that our naturalization applicants answer every, single day.

So we are very much concerned with the quality of the examination. In working with the community to carry out the naturalization initiative, we are working with community colleges, we are working with very legitimate institutions of higher education and adult education, and we want to improve the standards and the way those standards are applied.

Senator SIMPSON. I thank you, and if you could share that with me in writing, some of the things you are doing, just to assure us that it is you and the law that you are following, and not the groups who do, as indicated in this article, sometimes tend to dilute a very precious procedure.

Ms. MEISSNER. Yes.

Senator SIMPSON. Senator Kennedy.

Senator KENNEDY. Thank you very much.

Welcome to all of the witnesses. I want to thank Mr. Fraser, as someone who has been interested over a long period of time in the issues of the impact on jobs, the impact that immigrants have, whether it is on minimum wage jobs, the replacement of workers. I do not know whether I will have the chance during this round to get into it with you, but I am going to submit some questions and follow up with you at some time in the future.

As one who has followed the issues on the naturalization test, let me say that I am always enormously impressed with the seriousness with which people take that test. I know this is true in Boston. I have had the opportunity to go down with some of our judges when they have sworn people in at the Old North Church, and it is really an inspiring circumstance I think for any of us.

I would ask Doris Meissner this question. Given a lot of the things that have happened, not just in California, but in other places as well—I am sure parts of my State—where the fanning of the anti-immigration has been started, that people at risk would feel much more comfortable in being citizens. Their concerns about their own safety, their own security, their job security, their children's security, their parents' security, and why they really came to this country, are immeasurably enhanced by the fact that they do become citizens. And as these fires take place in different parts of the country, people think about how they are going to best be protected, as well as their children and their families.

Do you find that this has been a factor, and I do want to move on to other questions.

Ms. MEISSNER. I think all of us would speculate that that is part of it. We do not have any independent information that would systematically corroborate that, but all of the anecdotal evidence would indicate that that is part of the picture.

Senator KENNEDY. Let me move on quickly to three or four other areas, if I could. One is the position of the parents—and I have outlined that in my statement, which is part of the record—and I would like to ask you about whether it is important that Americans continue to be able to bring their parents here even before they are 65, if that is what they consider best for their families. I think many people want their own children as they grow up to be near their grandparents. This is something that people are facing in terms of child care and day care, with two parents working, and the fact that their parents or grandparents can help raise their children; or perhaps they want their widowed mother to come here, and she is still in her fifties; and they want the immigration of their parents to be a family decision, based on what is best for the family, and not one that Government decides using a formula based on how many family members are here.

We hear an awful lot today about family values and about Government interfering and various public policy issues that are dividing families; we are hearing that even on the floor of the Senate now, on welfare, and there are some legitimate issues and questions and some mistakes that have been made that we ought to remedy. But I am just wondering whether in your own thinking, if we set this up, it is going to be the Government making the judgment and decision that we are not going to permit family reunifications, or parents to be able to come in and be a part of a process where people can help and assist their children to grow, or keep an eye on them. Is this a factor in the administration's view about the parents? I understand even the AFL-CIO has indicated support for this concept, and of course, they have been very concerned about the impact on numbers and job placement.

Ms. MEISSNER. Yes, it is. We are arguing for parents to be in the scheme along with adult married and unmarried children, so that that core family unit of spouses, children, parents, will be maintained.

Senator KENNEDY. I was going to ask you about the priorities on adult children and also on siblings, particularly since many of the families have had down payments and fees that have been paid, and how you are going to deal with those issues.

And Mr. Fraser—and the light is on, but I do not feel the steely eyes staring at me just yet; they are beginning to focus in on me—sweatshops. All of us have been appalled by what we have seen recently out in Los Angeles. It has risen to new heights today and is something that has been a part of the work situation in America over a period of years in the twenties and the thirties and all the way through, but now has reached a new place.

Can you tell us what your understanding of that situation is in the workplace out there and what the administration is doing? I know that in recent requests, we have not given you the funds under the appropriations bill to allow you to do the job, and people are going to be complaining about it and demanding that you take steps, and you are not going to have the resources to do it—but

that is another issue. But what is your own assessment, what is the Secretary's assessment, what are you doing about it, and what recommendations, if any, do you have for us to try to deal with it?

Mr. FRASER. Thank you, Senator.

It is a serious problem and, unfortunately, a growing problem. There are a million workers in the country in the garment industry, and while it has been getting slightly smaller, it is still a vital industry. There are about 22,000 manufacturers, production contractors, which is where the substantive violations are. They are heavily dependent upon an immigrant work force, both legal and illegal.

The focus of the problem is not just in California and not just in Southern California, but in seven or eight cities around the country, in New York, in Dallas-Fort Worth, in San Francisco, in Miami, in El Paso. So it is not an isolated problem.

We have been working to try to deal with this problem for the last 3 years. We have focused both on the contractors and the production shops, but we have also been striving to try to get the asset-holders in the industry more involved, to get the manufacturers involved, to take responsibility for their contracting and buying practices, and to start to get the retail industry involved.

The Secretary was in New York yesterday in a summit meeting with major retailers to try to get them to begin to pay attention and use some of their economic clout to deal with this problem. It is a very serious problem.

Labor standards violations in this industry are the rule, not the exception, as in most other industries, and we are struggling mightily to try to deal with it.

Resources is a big issue. Part of the President's budget request that I mentioned before called for 186 additional labor standards enforcement personnel for the seven high immigration States—Illinois, California, New York, New Jersey, Texas, and Florida—to try to focus on this aspects of the problem, and that is why I began today with an appeal to all of you to try to help us ensure that those kinds of resources are available to deal with what is certainly not the only slavery situation in the garment industry in this country, but it is the only one we have found so far.

Senator KENNEDY. Thank you.

Thank you, Mr. Chairman.

Senator SIMPSON. Thank you, Ted.

Senator Kyl, please.

Senator KYL. Thank you, Mr. Chairman.

I would like to begin by reiterating what Ms. Ryan said. I think it is important for us to look at the MRV program. There is a lot of funding available to the State Department there, and it would certainly help them keep a couple of consulates open that we deem to be very important in the Southwest, particularly at Matamoros, and in my case, at Aramaseo. We have visited with undersecretary Moose about that, and he has made the same point, and I think it is certainly worth looking into and pursuing along the lines that Ms. Ryan requested.

Ms. RYAN. Thank you very much, Senator.

Senator KYL. Second, to again compliment Ms. Meissner for the work you are doing with regard to illegal immigration—that is not

the subject of our hearing, but I just want to again express our appreciation for that.

I have read the testimony that Professor Briggs has provided the committee, and there are some intriguing ideas there, and I wanted to ask you a couple of questions about perhaps some slight modifications of the administration policy relative to some suggestions that he had made.

For one thing, he notes that our policy has been pretty much an employment-based policy, and he suggests a lot more flexibility to administer such a policy to respond to the conditions of employment in the country at the time, noting that sometimes we set a policy and rigid numbers and then, by the time it is implemented, our economic conditions, our employment situation, is quite a bit different than when we authorized the numbers.

So he suggests a system that would be more flexible in terms of the employment-based visas. He would also, by the way, I think, have that determined by the Department of Labor. That is another issue, but that would be his thought on that. He would also prohibit—he does not put a limit on it, but I gather at least in the foreseeable future—any more unskilled workers being included within those numbers.

My understanding from your testimony, Ms. Meissner, is that in 1990, the number of employment-based visas was 54,000, it went up to 140,000, and that turned out to be out-of-sync with our employment situation, and that you agree with the proposed legislation that it go back down to 100,000.

What do you think about the idea of perhaps having an overall ceiling in the legislation, be it at 100,000, or perhaps 75,000, or some similar number, but to have an administrative determination performed each year as to the actual number of visas permitted for that purpose; and second, that at least in the foreseeable future, there would be none for unskilled workers, that that be at least administratively determined, but at least for the next year or two, presumably, that would be zero.

Ms. MEISSNER. I am going to make a comment, and then I am going to ask my colleague from the Department of Labor to answer as well.

We are, on the unskilled, agreeing with the commission's proposal to eliminate the unskilled at the present time. But with regard to an overall ceiling at which you then would set an annual level, in concept that is a sensible idea. Whether we have the kind of information that would allow us to predict and set those levels in the timeframes that are required to issue immigrant visas and do the labor tests that are involved in the labor certification, that I am not so certain about, and I think Mr. Fraser should comment further.

Mr. FRASER. If I may, Senator.

Senator KYL. Sure.

Mr. FRASER. The employment-based policy really does have two goals. One is to serve employer's needs for access to international labor markets; the other is to protect workers. An annual ceiling helps as a part of that process, but there are many other components of it as well, some of them embodied in the labor certification or similar types of processes.

The adjustments within those ceilings really should be driven by the market forces within the constraints of the adequate protection so that access to international labor markets is responding to real needs in the economy and not as a means of circumvention because of limitations on family reunification or for other non-legitimate purposes. And I think it is in the context of how the programs are structured that the kinds of constraints you would be looking for, the kinds of adjustments you would be looking for, would most effectively be implemented rather than trying, as Commissioner Meissner said, to figure out what data, where that data is already insufficient, what data would be most useful in deciding how to make that adjustment.

Senator KYL. Well, may I pursue this point, then, further, and it is perhaps a misunderstanding on my part as to how this works or what is being recommended here. But if I understand your testimony correctly, it is that there would be 100,000 employment-based and 390,000 family reunification immigrants, for a total of 490,000 under the administration recommendation. Is that correct, Ms. Meissner?

Ms. MEISSNER. That is correct.

Senator KYL. And if you cannot take in all of the applicants in a year who would theoretically qualify under your more rigid—I should not use the word “rigid”—more limited proposal to support the nuclear family, which I agree with and which the chairman spoke to earlier as well, then they would simply wait until the following year because the numbers would not accommodate them.

But by the same token, the 100,000 for employment-based could be well in excess of that which is called for. It seems to me that it is a lot easier—granted, it is difficult—but it is a lot easier for an administrative determination to be made on a more timely basis than for us to sit up here and divine the appropriate number for 5 years at a time, let us say.

So I guess my question—and I see my time is gone, too—but my question would be wouldn't it at least be an improvement on the situation, although it is still difficult.

Mr. FRASER. If there were a way, Senator, for an intelligent decision to be made. Again, I would emphasize that in some ways, the market makes those decisions. There are 140,000 employment-based visas available under the current system. Last year, only 123,000 of those were used, and of those 123,000, more than 30,000 were used for unskilled workers and under the Chinese Student Protection Act. They were not used really for the skilled employment purposes that we are after at this point.

So the market operated within the ceiling. The difficulty comes when the market is pushing the ceiling and pressures for adjustment on that end, where there is not really good labor market information that allows one to decide how far to push or how far to pull back from a ceiling.

So if the market is operating correctly, and if the package of protections and the package of labor market protections are adequate, these programs can be self-regulating in that sense.

Senator KYL. I appreciate it.

Thank you, Mr. Chairman.

Senator SIMPSON. Thank you.

Senator Feinstein, please.

Senator SIMON. Thank you.

Senator SIMPSON. Senator Simon, I try to do it in order of appearance.

Senator SIMON. Oh, I am sorry. Senator Feinstein was ahead of me. She goes first.

Senator SIMPSON. I think you tie.

Senator FEINSTEIN. I was sitting here, relaxing, thinking I have all this time before I go.

Senator SIMPSON. If you are prepared to go forward, you go forward, Senator Simon.

Senator SIMON. No—well, I am prepared, but—

Senator FEINSTEIN. That means I am not. I had better wait. Go ahead. [Laughter.]

Senator SIMPSON. Well, whatever you want to do is all right with me.

Senator FEINSTEIN. After you, Gaston.

Senator SIMPSON. Senator Paul Simon of Illinois.

Senator SIMON. Thank you, Mr. Chairman.

First of all, let me say, as I have said on other occasions, that I really appreciate the leadership you and Senator Kennedy have been providing. This is an area where Alan Simpson does not get votes in Wyoming, and Ted Kennedy gets very few votes in Massachusetts. It is a public service, and I appreciate it.

Senator SIMPSON. It gets a lot of Irish votes. He dragged me through that one. [Laughter.]

Senator KENNEDY. There is something magical about an Irish vote.

Senator SIMON. If I may have the attention of my colleague from Arizona just for a second, it does seem to me that his suggestion makes some sense, and that you do not need to have all these precise measurements to make decisions. If, all of a sudden, we have 15 percent unemployment, I think we should not have a rigid statutory provision; that you ought to have the ability to reduce that, and that is what you are suggesting, and I have to say I think that makes some sense.

Let me make just a few comments. First, there is huge public confusion between illegal immigration and legal immigration, and the big problem is not legal immigration. The big problem is illegal immigration, and that, we have to go after very vigorously.

In terms of the draft legislation that is before us, the fourth preference—and here, I speak with a conflict of interest, I have to tell you—the person who runs my Chicago office is a Chinese American, Nancy Chen. She came into the United States under the fourth preference. She does a superb job for me. She has two brothers here, one of whom works for AT&T, and I have forgotten whom the other one works for. But they are contributing in a major way.

When we go over these statistics on entitlements—and Senator Simpson has been a leader in this field, where he is pointing out we are going to get so many more people on Social Security than we have people working—I think as we discuss what changes we want in the immigration laws, we should not be discouraging those who may not be older, some of the younger people who have the ability to contribute in our situation.

Senator Feinstein says this is an incendiary issue, and there is no question about that, and the statistics that she cited are accurate. But it is also true that in percentage terms, the percentage of people who are immigrants in our country today is smaller than for most of our Nation's history. Today, it is less than half of what it was in 1920, less than half of what it was in 1910. You know, during those years when we had that immigration, it did not harm our country. So I think we have to try to take a little of the passion out of this issue as we examine it.

Commissioner Meissner—and I have to tell you that I have been impressed by your work. I really feel that you are on top of things—and I do not mean this disrespectfully—but more than any commissioner that I have worked with through the years. But when you say we do not know the reason for so many applications for naturalization, you have been in this business for a long time, and you have an instinct, even if you do not know. What is your instinct?

Ms. MEISSNER. Well, first of all, thank you for your kind comments. And second, I would say that my instinct parallels that which Senator Kennedy stated. I was simply trying to say that we do not have any empirical information that would confirm what our instinct is, but our instinct is that in addition to the factors that I mentioned to Senator Simpson, the explanation that Senator Kennedy gave very much seems to be in evidence with the naturalization caseload. People are now taking the step to become citizens who may have hung back in the past, because they now feel a need for greater security. And on the positive side, I think it is, in addition, a real desire to fully participate in the life of the country. I think people very much understand that this is a democracy, that a democracy involves giving voice, and people want to be able to engage as full members of this Nation.

Senator SIMON. Secretary Ryan—and this is a minor problem in this overall situation—but each of us in the Senate periodically goes through this business where we want to bring my mother in Pakistan, or wherever it is, over for my daughter's wedding. And they give assurances that the mother will go back. And sometimes, we know them, and we know that to be the case; sometimes, we do not.

Have you thought about some way, other than just the arbitrary decision of the consular officer, in terms of how we make that kind of decision?

Ms. RYAN. I think, Senator, it would be very difficult to draw up specific guidelines for every case. I think people who interview applicants try to be compassionate in situations like that. The problem arises very often, if the parent is on an immigrant waiting list, so that the consular officer knows that he or she is an intending immigrant, then the likelihood, at least in the officer's mind, is that that person will not return to his or her own country.

So that how you would define it so that the legitimate cases of people going to a wedding or a christening or something like that could come here and attend the function and then return, and those who would abuse that privilege, I think we have wrestled with this for a very long time, and I do not think we have a very good answer.

Senator SIMON. My own experience is that it is usually not a problem with someone on a waiting list, but it is a problem in a country where we have a high percentage of those who come in on visas who stay. And I see I am about to be gavelled down, but I have the feeling that somehow we have to evolve a better answer than we have now. I do not know what it is.

Thank you, Mr. Chairman.

Senator SIMPSON. Thank you.

Now, Senator Feinstein, please.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

As I understand it, a major difference between the draft Simpson proposal and the Jordan recommendation, which the administration has endorsed, deals with the 1.1 million backlog of immigrant petitions for family members of legal, permanent residents already in this country. It is my understanding that of the 1.1 million, 850,000 are related to formerly undocumented aliens who legalized under programs enacted in 1986.

The commission emphasized the reuniting of the nuclear—not the extended, but the nuclear—family and eliminating the existing backlog by encouraging citizenship of those awaiting immigration. Incidentally, Senator Kennedy and Senator Simon, the lines for naturalization in California have I think at least doubled in the last year. It is just enormous the large numbers of people now who would like to be naturalized.

It is my understanding that the administration would encourage and does encourage naturalization among legal, permanent residents. My question is, How many of the immigration petitions in the backlog are for individuals already present in this country?

Ms. MEISSNER. Our best guess is that most of them are probably already in this country.

Senator FEINSTEIN. Can you give me a number, Commissioner?

Ms. MEISSNER. Well, as you said, the second preference backlog is about 80 percent legalized aliens—I mean, the number that you gave, over 800,000—

Senator FEINSTEIN. So you think 850,000 is right?

Ms. MEISSNER. Exactly. And because the legalization period was followed by a policy that was called the family unity policy, basically, of not removing direct family members of the legalized population, that is the basis for my saying that we believe that most of those people are in this country.

The reason that we are arguing that naturalization makes sense where that second preference backlog is concerned is exactly because that backlog is more than 80 percent IRCA-legalized; they have been here more than 5 years; they are now eligible to naturalize. The final group, the SAW workers, become eligible this fall to naturalize.

So that be exercising their right to naturalize, they then can bring their immediate relatives, their spouses and children, into the country if they are outside the country, or regularize them if they are in the country, without using up precious visa numbers, which we would say should go to persons—

Senator FEINSTEIN. That is my point. Then, how many are they? Doesn't that expand whatever the immigration number is rather exponentially?

Ms. MEISSNER. No, actually, it does not, and we have done a lot of analysis on this, which we would be happy to share with you.

Senator FEINSTEIN. OK.

Ms. MEISSNER. The derivative relatives, the immediate relatives, would in our estimation average about 60,000 a year, and that would occur over a period of about 5 years. And if you just calculate that out up to about 300,000 or so, that does turn out to be less of a transition period or less of a bulge period than the backlog reduction.

Senator FEINSTEIN. So that is the number, and I appreciate that. Thank you very much.

Mr. Fraser, my first job following my finishing this graduate program was with the Industrial Welfare Commission of the State of California, which set minimum wage, hours, working conditions in 11 industries for women and minors in the State of California. In those days, we would have closed down these sweatshops, bingo, right away.

I am wondering if you would take a look at the California situation, particularly with respect to this El Monte situation. I would like to know if the Industrial Welfare Commission of the State ever really cited that facility—there must have been complaints—why it has been permitted to operate for at least 3 years with people essentially as if they are in a prison camp, working. I would very much appreciate any recommendations you might have as to the effectiveness—if this is under the Department of Industrial Relations of the State of California—of this commission at this present day.

Mr. FRASER. Senator, I would be happy to do that. I can tell you that the shop in which these workers were employed and constrained was a licensed shop in the State of California until about a month and a half before the raid occurred. The license had expired. They had not, to my knowledge, been inspected previously by the State, but I can look into that and ascertain.

I would want to say that the raid was a joint raid by the State of California and our division, so that we were working together on that. The State acted very responsibly in that regard, and we appreciated their cooperation and assistance in dealing with that and other garment shops which pervade the area.

So we will look into that and try to get some information for you about the background.

Senator FEINSTEIN. Yes, it would be helpful to know exactly how effective the State is today in terms of at least assuring that minimum wage, hours and working conditions comply with the law.

Mr. FRASER. We will do that for you, Senator.

Senator FEINSTEIN. I appreciate it very much. Thank you.

Commissioner Meissner, I want to ask you another question. The New York Times 3 days ago ran an article which really kind of rang a bell in my head. It was the story of gangs, in this case, Asian gangs. But as we know, they come from many countries. The article related an incident which left a woman from Fujien Province dead in New York City, I believe. And it pointed out the fact that these gangs have multiplied in this country. It is kidnapping; it is murder; it is extortion; it is gambling; it is heroin; it is methamphetamine; it is everything across the board.

I have asked my staff to do a major research job in this area. They have talked to the U.S. attorneys in the various areas. I am finding that there are major strike teams being set up, just aiming at these gangs. I am finding that it is a major problem. I am also finding that most of these people come in under an undocumented status.

I was also told that you have something called the "lookout system," which is a computer system which alerts U.S. officials if an entrant into the United States has a criminal history.

I am also told that it does not work very well and that, whereas the system may be adequate for applicants from well-developed nations, many countries from which some of these people are arriving do not keep track of criminal histories. Therefore many refugees may already be involved in organized criminal activity when they come to this country.

And I am wondering, first, if you would take a look at this, and, second, if I could get a real assessment with some options of what you think you can do, because I can tell you for a fact that in California this is an escalating problem. We have always had domestic gangs, but now there seems to be a new level in terms of murder and extortion and intimidation in the drug areas.

Ms. MEISSNER. We would be happy to share with you the information we have, and we have considerable information, although we would certainly like to have much more. It is a serious problem, it is an escalating problem. Among the new features of it is ethnic-based gangs. They are, as you say, largely coming illegally and with improper documents and so forth.

Our lookout system works exceptionally well for the people who are in the lookout system. I mean, there have been a couple of recent, very spectacular cases, like the case of Mr. Marzuk in New York, the terrorist whom we picked up through our lookout system. And we just picked up an Indian terrorist in Minnesota through law enforcement information-sharing.

But of course, this is all part of the internationalization of crime, of increasing criminal networks that have in the past been involved in activities not so related to immigration, but now becoming more involved in immigration. It is why we are so aggressive where international smuggling and anti-smuggling is concerned.

But from the standpoint of law enforcement, it is a matter of good intelligence, good information-sharing, targeting resources. The FBI is developing increasingly focused efforts where we work cooperatively with them. So we will be happy to work with your staff on this. It is a major concern.

Senator FEINSTEIN. Particularly to go back to my heritage, there is a large Russian community, and there is a real concern that Russian mafia are going to begin to penetrate some of the areas of California. So I would like to just bring this to your attention. It is an issue of major concern for me, and I would appreciate any information I can get on it.

Ms. MEISSNER. We would be happy to. It is something that we work very aggressively on and have been for some time.

Senator FEINSTEIN. Thank you.

Thank you, Mr. Chairman.

Senator SIMPSON. Thank you very much.

I am going to conclude this panel and just share with Mary Ryan that we would be interested in some more figures on the machine-readable visa issue and the collection of that and details as to the technical difficulties involved in distinguishing regular immigration beneficiaries from the legalization beneficiaries. I know you have said that that is a difficult problem.

And then, Doris, if you could look into the SAW applications—we think 50 percent of those are fraudulent, and how will that be addressed as they become eligible to naturalize, if you could share that with the subcommittee.

Ted.

Senator KENNEDY. I would like to ask some questions for the record, if I could submit those, and could I just finally ask Doris Meissner—there were some cases in California with regard to discrimination within the Immigration Service. Do you want to just make a brief comment and then let me know the status of that?

Ms. MEISSNER. That is part of a lawsuit that is in settlement discussions at the present time.

Senator KENNEDY. I see. Could you just let me know?

Ms. MEISSNER. We will give you an update on it, yes.

Senator KENNEDY. Thank you.

Thank you, Mr. Chairman.

Senator SIMPSON. Thank you very much. I thank all of you for coming. You have always been very helpful, and you have again.

We will go now to the next panel, please.

I think Mr. Jeffrey Passel of the Urban Institute has a scheduling problem, so we will ask him to testify first, a little bit out of order.

Vernon Briggs is with the School of Industrial Relations, Cornell University, Ithaca, New York.

Demetrios Papademetriou is with the Carnegie Endowment for International Peace in Washington, DC.

Jeffrey Passel, as I mentioned, is with the Urban Institute.

Michael Teitelbaum is with the Alfred P. Sloan Foundation, New York, NY.

Mr. Passel, I believe you have a schedule problem.

Mr. PASSEL. Yes, I have a plane to catch.

Senator SIMPSON. Please proceed under the time restraint, and thank you so much.

PANEL CONSISTING OF JEFFREY PASSEL, THE URBAN INSTITUTE, WASHINGTON, DC; VERNON M. BRIGGS, JR., SCHOOL OF INDUSTRIAL RELATIONS, CORNELL UNIVERSITY, ITHACA, NY; DEMETRIOS G. PAPADEMETRIOU, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, WASHINGTON, DC; AND MICHAEL S. TEITELBAUM, ALFRED P. SLOAN FOUNDATION, NEW YORK, NY

STATEMENT OF JEFFREY PASSEL

Mr. PASSEL. Thank you for the opportunity to testify, and I do apologize. This is a trip that has been scheduled for about 4 months, and I was not able to change it.

I have a full statement that I would like to provide for the record.

Senator SIMPSON. That statement will be a part of the record.

Mr. PASSEL. Thank you.

I would like to focus today on the proposed numerical limits, rather than changes in labor certification and the petitioning process.

I would first point out that the research that we have done does not point to any optimal level of legal immigration to the United States. There is not really a magic formula out there to calculate exactly what the number should be.

I think it is important that we try to specify what the goals of immigration are so we can determine if the policies that we adopt achieve them, and I do not think numbers should be the sole motivating force. For example, if reducing certain costs associated with immigration is a goal of policy, the current proposal's elimination of low-skilled employment-based immigration may be justified because this is a category of entrants who are likely to be responsible for fiscal cost.

The proposed legislation would cut family and employment-based immigration by at least 40 percent, from somewhere over 600,000 to something probably under 375,000. The reductions which are concentrated among the family preference immigrants would essentially eliminate immigration of adult children and siblings of U.S. citizens, but would retain much if not all of the nuclear family with minor children.

The rationale for these reductions seems to be an interest in reducing so-called chain migration and placing an increased emphasis on the skills of the incoming migrant. Yet the skimpy research that is available on the performance and impact of these immigrants does not provide compelling evidence for choosing family over employment or vice versa.

The role of family members in the immigration process is not well-understood, I do not believe, either in terms of determining who comes to the United States or how they adapt to American society once they arrive.

Since the research shows that family preference immigrants eventually attain parity with the initially more skilled employment preference group, it is possible that the presence of extended family in the United States may be a powerful aid to adaptation and assimilation.

Family based immigration has always played an important role in U.S. immigration. The romanticized and stereotypical immigrant of the 19th and early 20th centuries is what we would now call a "seed immigrant," that is, a young male, setting off to make his fortune in the new country. The proposed legislation encourages just this type of immigration, yet that same historical immigrant, after earning some money here, quite often sends to his home country to bring to America not only his wife, but his brothers and his sisters and his cousins by the dozens. His ability to do so now would be virtually eliminated.

The combined short-term effect of the proposed changes is likely also to be a shift in the composition of what will be a reduced immigrant stream. The reductions of almost 50 percent will affect Asian immigrants with much higher reductions, proportionately, than the 35 to 45 percent reductions we think are likely for Latin

American and Caribbean immigrants. This seems somewhat ironic, since the Asian immigrants have generally done quite well in the United States over the last 30 years, with substantially higher than average incomes and much higher than average education levels, even though many come in under family categories.

The long-term impacts of the proposed legislation are less apparent, I think, than the short-term impacts. It is hard to tell whether the new mix of categories represents tinkering at the margins with immigration policy or a much more fundamental alteration of our policy. It is difficult to predict any of the number of scenarios without some sort of dynamic model of the immigration process. As you know very well, the history of immigration legislation is replete with examples of unintended consequences, words that seem to appear in everybody's testimony today. The scale of Asian immigration following the 1965 Act was certainly not foreseen and probably not intended.

The information that we can piece together about the proposed changes suggests that they may bring about very fundamental changes in the immigration system, and given these uncertainties, we think it would be wise to look into developing more dynamic models that look at immigration scenarios that might result from the proposed changes.

Thank you.

Senator SIMPSON. Thank you very much, Mr. Passel. You may feel free—and I hate to do it because I have some questions, but your schedule is calling.

Mr. PASSEL. It is pretty tight, and I apologize.

Senator SIMPSON. Anyway, thank you very much.

Mr. PASSEL. I would be glad to answer any questions, if you have them, later.

Senator SIMPSON. We will submit questions in writing from the panel. Thank you so much. I am sorry for the delay, and thank you for your courtesy to us.

[The prepared statement of Mr. Passel and Mr. Fix follows:]

PREPARED STATEMENT OF JEFFREY S. PASSEL AND MICHAEL FIX¹

Immigration has been valuable to the United States throughout our history and continues to be so today. This principle, recently enunciated by The Honorable Barbara Jordan, Chair of the U.S. Commission on Immigration Reform, provides a starting point for analyzing Senator Simpson's proposed legislation. Another premise of any analysis must be the fact that the United States, like all countries, has a sovereign right to an orderly immigration process. Thus, appropriate limitations and attention to bottlenecks, such as excessive backlogs, should be prescribed.

Immigration has negative as well as positive impacts on the United States. Our own research at the Urban Institute suggests that the negative labor market and fiscal impacts of immigration tend to be concentrated in specific localities and can be attributed principally to low-skilled immigration. Most, but not all, of these low-skilled immigrants entered the United States illegally, although many have acquired legal status, under the Immigration Reform and Control Act (IRCA). Appropriate reforms need to be undertaken to mitigate potential negative impacts from future immigration.

¹ Jeffrey S. Passel is director of the Program for Research on Immigration Policy at the Urban Institute. Michael Fix directs the Institute's Immigrant Policy Program. The opinions expressed in this statement are those of the authors and should not be ascribed to the officers, directors, or funders of the Urban Institute.

OVERALL LEVEL OF IMMIGRATION

Our research does not point to an "optimal" level of legal immigration to the United States; nor is there a "magic formula" to calculate what this level should be. We can judge the impacts of past immigration and weigh various trade-offs of immigration's costs versus the benefits. Such computations present formidable measurement questions. Costs tend to be identifiable and quantifiable, while the benefits are often hard to measure. Ultimately, the optimal level of immigration is not a directly researchable question.

We can, however, judge contemporary levels of immigration against historical levels in our nation's past and by current international standards. Immigration inflows in the 1990s, averaging about 1.1 million per year (including legal and illegal immigration) are near or beyond the historical peaks attained in the 1905-1914 decade. However, the country today has more than three times the population as then. Thus, the relative demographic impact of today's inflow is less.

The presence of immigrants in the U.S. population is not especially high by historical standards. The foreign-born population, measured at 22.6 million in March 1994, represents 8.7 percent of the American population. This figure is much smaller than the 13-15 percent range that prevailed during the period from 1870 through 1920. (See Figure 1.) The percentage of foreign-born has been on an upward trend since 1970 and seems to disturb many observers. However, as the chart shows, the low level of 5 percent foreign-born reached in 1970 is not at all typical of the U.S. in the last 150 years. This figure was only attained after a long period with very low levels of immigration and a post-war baby boom. Low immigration levels led to numerical decreases in the foreign-born population, while the baby boom greatly increased the native-born proportion. Since 1970, immigration levels have risen and native-born birthrates have fallen.

The percentage of immigrants in the U.S. population cannot be considered high when compared with other countries, either. Countries such as Germany, France, and Sweden are not considered immigrant-receiving countries. Yet the percentage foreign-born in those countries is near or above that found in the United States—7.2, 7.3, and 9.2 percent, respectively. On the other hand, in the few immigrant-receiving countries the percentage of foreign-born is much higher than in the United States—more than 15 percent in Canada and over 20 in Australia. Thus, today's inflow and stock of immigrants are not exceptionally high by U.S. historical standards or by those of Western European nations. This suggests that the basis for adjusting numerical levels of legal immigration should be something other than the numbers alone. If costs of immigration, other impacts, or the ethnic composition of the flow is the basis for making an adjustment, then the resulting immigration flow should reflect—and achieve—such goals. If reducing the overall costs of immigration is a goal, the current proposal's elimination of low-skilled employment-based immigration and reduction in immigration of dependent parents can be justified because they represent categories of entrants who are likely to be responsible for fiscal costs.

FAMILY IMMIGRATION

The proposed legislation reduces family-preference immigration by 161,000 (from 226,000 to 65,000), employment-based preferences by 65,000 (from 140,000 to 75,000), and the immigration of some parents of U.S. citizens by roughly 40,000. The reductions, which are concentrated among family-preference immigrants, would essentially eliminate immigration of adult children and siblings of U.S. citizens, but would retain much (but not all) of nuclear family immigration. The rationale for these reductions, which is not explicitly stated, seems to be an interest in reducing "chain migration" and placing an increased emphasis on the skills of the incoming immigrant.

By recommending substantial reductions in family immigration, the proposed legislation seems to imply a preference for skills-based, employment immigration. Yet, the skimpy research available on performance and impacts of these immigrants does not provide compelling evidence for the superiority of one group over the other. Sorensen et al.² find somewhat mixed results with employment-preference immigrants having positive labor force effects on native blacks and Hispanics, but negative impacts on non-Hispanic whites whereas family-preference immigrants have positive impacts on non-Hispanic whites and no significant impacts on blacks or Hispanics. Although family-preference immigrants initially have lower earnings

²Sorensen, Elaine, Frank D. Bean, Leighton Ku, and Wendy Zimmermann. *Immigrant Categories and the U.S. Job Market: Do They Make a Difference?* Urban Institute Report 92-1. Washington, D.C.: Urban Institute Press, 1992.

than employment-preference immigrants, Duleep and Regets³ find that earnings growth is more rapid for the family-preference group so that in the long run there is no substantial difference in the economic performance of the two groups.

The role of family members in the immigration process is not well understood, either in terms of determining who comes to the United States or how they adapt to American society after they arrive. Since family-preference immigrants eventually attain parity with the initially more skilled employment-preference group, it is possible that the presence of extended family in the United States may be a powerful aid to adaptation and assimilation. Family-based immigration has always played an important role in U.S. immigration. The romanticized, stereotypical immigrant of the 19th and early 20th century is what we would now call a "seed" immigrant, i.e., a young male setting off to make his fortune in America. The proposed legislation encourages this type of immigration. Yet, that same historical immigrant, after earning some money in the United States, quite often sent to his home country to bring to America not only his wife, but his brothers, sisters, aunts, uncles, parents, and cousins. His ability to do so today would be very limited under the proposed legislation.

POSSIBLE SHORT-TERM CHANGES IN IMMIGRATION

Tables 1 through 4 show possible short-run changes in immigration under the proposed legislation compared with fiscal year 1993 immigration levels. These figures assume that the reductions proposed would occur in a manner proportionate to FY 1993 levels, within the specified categories of immigration. For family-preference immigrants (Table 1), the categories of adult children and siblings of U.S. citizens are eliminated; spouses and children of legal permanent residents are reduced from approximately 120,000 to 85,000.

Employment-preference immigrants (Table 3) would be cut from about 140,000 to 75,000 by eliminating the 10,000 slots for unskilled workers and reducing other categories of employment-based immigration. The only change in the category of immediate relatives of U.S. citizens would be to require that parents be over age 65, have most of their children in the United States, and have adequate coverage for medical and long-term care. The figures shown in Table 3 only eliminate those parents under age 65; the likely reductions are much greater than those shown.⁴ Table 4 combines the information from Tables 1 through 3 to compare with FY 1993 totals.

Overall, the proposed legislation would dramatically cut legal immigration under the family and employment categories by 40 percent from 629,000 to somewhat more than 375,000 per year. Although all areas are affected, the geographic region hardest hit by these proposals would be Asia. Immigration from that region would fall by 48 percent or 132,000 from the FY 1993 level of 275,000.

The proposed legislation's regional impacts differ across admissions categories. There is a particularly large drop for family-preference immigrants from Asia. Of the overall reduction of 140,000 in the family-preference category, about 60,000 are Asian. (This high proportion owes, in part, to the fact that Asians rely most heavily on the sibling and adult child categories.) The effects of proposed reductions in employment and parent categories are more balanced, basically having an effect roughly proportionate to the current levels of immigration.

Shifts are also likely to occur within the numerically unlimited category of immediate family members of U.S. citizens. Immigrants in this category are either members of families of U.S. natives who marry abroad or families formed by immigrants (naturalized citizens) who marry after entry.⁵ Naturalized citizens who are likely to make the heaviest use of these preferences will be those who have travelled back to their home countries to find spouses and have children. Thus, there is likely to be a shift within the category of immediate family members of citizens towards areas with a great deal of circular migration and emigration. These areas include Mexico, Canada, the Caribbean, and other parts of Latin America. A shift in the same direction is also likely to occur when even moderate percentages of the huge cohorts of IRCA legalizations undergo naturalization.

The combined effect of the proposed changes is likely to be a shift in the composition of a reduced immigrant stream, with the reductions affecting Asian immigrants

³Duleep, Harriet Orcutt and Mark C. Regets. "Admission Criteria and Immigrant Earnings Profiles." Program for Research on Immigration Policy Paper PRIP-UI-30, April 1994.

⁴Not all of the U.S. citizen children will be able to obtain adequate health insurance or guarantee coverage for long-term care. More importantly, however, with the proposed law eliminating admission of siblings, few older potential immigrants will have most of their children in the United States.

⁵Immigrants who have families when they immigrate can bring their immediate families at the time they immigrate under the same preference category used by the principal immigrants.

more than Latin American and Caribbean immigrants. Asian immigrants have generally done quite well in the United States over the last 30 years. They tend to have higher than average incomes and much higher than average education levels.⁶ Asians are generally some of the most educated and skilled immigrants even though many enter under family categories. Unskilled legal immigrants come disproportionately for Latin America; low-skilled, poorly educated immigrants make up a large share of IRCA's legalized population. Thus, the proposed legislation, while reducing levels of legal immigration substantially, is likely to shift the composition of the immigrant stream even more in the direction of lower-skilled immigrants.

LONG-TERM IMPACTS

The long term impacts of the proposed legislation are less apparent than the short-term effects. We do not know whether the new mix of categories represents "tinkering at the margins of immigration policy" or a much more fundamental alteration of policy. A number of different scenarios seem possible:

- U.S. immigration is put on a permanent downward trajectory—the number of potential immigrants falls because there are few ways for family members to enter and only employment-based principals continue to arrive.
- the origins of immigrants shift dramatically—as discussed above, this is likely to happen, with shifts away from Asia and toward Latin America.
- the numbers fall, but quotas continue to be filled and the geographic origins remain relatively fixed.
- illegal immigration increases as extended family members who want to come to the United States are denied admission.

It is difficult to predict which of these scenarios, or combinations are likely to occur. The shifts in origins seem most likely, but this could be coupled with any of the others as well.

To understand fully the implications of the proposed changes, or any others, we need a dynamic model of the immigration process. We still are not able to predict well where the new immigrants will come from. Has the growth in legal immigration over the last several decades been fueled by "extended family" immigration? If this flow is reduced or eliminated will legal immigration gradually be ratcheted down? Who will be the immediate family members of U.S. citizens admitted under the proposed immigration regime? Will they come predominantly from nearby countries where there is a substantial circular flow of migrants or will they come from countries around the world?

The history of immigration legislation is replete with examples of unintended consequences. The scale of Asian immigration following the 1965 Immigration Act was certainly not foreseen or intended by the framers of the Act or those who voted for its passage. The magnitude of SAW applications under IRCA was completely unexpected. This phenomenon then generated another unintended consequence—the large number of family members and dependents who did not legalize but who now are expecting to immigrate. The information we can piece together about the proposed legislative changes suggests that they may bring about fundamental changes in the U.S. immigration system. Given these uncertainties, we suggest that the Subcommittee charge the relevant government agencies with developing a series of alternative immigration scenarios that might result from the changes proposed here or other policy alternatives.

⁶Lee, Sharon M. and Barry Edmonston. "The Socioeconomic Status and Integration of Asian Immigrants." In Edmonston and Passel (eds.), *Immigration and Ethnicity: The Integration of America's Newest Arrivals*. Washington, D.C.: Urban Institute Press, 1994.

Table 1.
**Family Preference Immigrants by Country:
 FY1993 and Proposed Changes**

Country or Region of Birth	FY 1993 Family Preference	Proposed Family Preference Reductions			Proposed Family Preference Admissions ²	Percent Share of Proposed Reductions ³	Percent Share of Proposed Admissions ³
		Total Reduction	Siblings & Adult Children ¹	Spouses & Children of LPRs ²			
Total.....	226,776	141,776	98,468	43,308	85,000	100	100
Europe & Canada	13,911	11,454	10,202	1,252	2,457	8	3
Asia	83,315	61,089	49,765	11,324	22,226	43	26
China	12,603	10,425	9,315	1,110	2,178	7	3
India	16,381	12,482	10,496	1,986	3,899	9	5
Philippines	16,143	10,504	7,631	2,873	5,639	7	7
Other	38,188	27,678	22,323	5,355	10,510	20	12
North America*	105,951	54,077	27,647	26,430	51,874	38	61
Mexico	33,044	18,729	11,435	7,294	14,315	13	17
Caribbean	47,827	24,627	12,806	11,821	23,200	17	27
D.R.	26,741	12,236	4,845	7,391	14,505	9	17
Other	21,086	12,391	7,961	4,430	8,695	9	10
Central Amer.	25,066	10,717	3,406	7,311	14,349	8	17
South America, Africa, and Oceania	23,599	15,156	10,854	4,302	8,443	11	10

¹ First, third and fourth preferences (adult children and siblings of U.S. citizens) would be *eliminated*.

² Second preference (spouses and children of legal permanent resident aliens) would be *reduced* to 85,000.

³ If the share of proposed admissions exceeds the share of proposed reductions, the country or region is relatively favored by the proposed changes.

* Excludes Canada.

Source: INS Statistical Yearbook, 1994.

Table 2.
**Employment Preference Immigrants by Country:
 FY1993 and Proposed Changes**

Country or Region of Birth	FY1993 Employment Preference	Employment Preference Reduced Under Proposed Changes			Proposed Employment Preference Admissions ²	Percent Share of Proposed Reductions ³	Percent Share of Proposed Admissions ³
		Total Unskilled ¹	Skilled ²				
Total.....	147,012	72,012	9,967	62,045	75,000	100	100
Europe & Canada	27,019	12,480	452	12,028	14,539	17	19
Asia	91,479	42,660	2,275	40,385	48,819	59	65
North America*	14,135	9,310	5,318	3,992	4,825	13	6
South America, Africa, and Oceania	14,379	7,562	1,922	5,640	6,817	11	9

¹ Unskilled workers in the third preferences category would be *eliminated*.

² Skilled employment admissions would be *reduced* to 75,000.

³ If the share of proposed admissions exceeds the share of proposed reductions, the country or region is relatively favored by the proposed changes.

* Excludes Canada.

Source: INS Statistical Yearbook, 1994.

Table 3.
**Immigration of Parents of U.S. Citizens, by Age:
 FY1993**

Country or Region of Birth	Parents of U.S. Citizens			Percentage Distribution of...	
	Total	Under 65 Years Old	65 Years and Over	<65	65+
Total.....	62,428	37,498	24,930	100	100
Europe & Canada	4,023	1,891	2,132	5	9
Asia	38,117	22,261	15,856	59	64
North America*	13,141	8,421	4,720	22	19
South America, Africa, and Oceania	7,147	4,825	2,222	13	9

* Excludes Canada.

Source: Urban Institute tabulations and INS Statistical Yearbook, 1994.

Table 4.
**Family and Employment Immigrants by Region of Birth:
 FY1993 and Proposed Changes**

Country or Region of Birth	Total of Categories	Family Preference	Employment Preference	Immediate Relatives of U.S. Citizens		Percent Distribution of Total
				Spouses & Children	Parents ¹	
Estimate Under Proposed Legislative Changes						
Total.....	377,561	85,000	75,000	192,631	24,930	100
Europe & Canada	55,455	2,457	14,539	36,327	2,132	15
Asia	149,928	22,226	48,819	63,027	15,856	40
North America*	125,457	51,874	4,825	64,038	4,720	33
South America, Africa, and Oceania	46,721	8,443	6,817	29,239	2,222	12
FY 1993 Actual						
Total.....	628,847	226,776	147,012	192,631	62,428	100
Europe & Canada	81,280	13,911	27,019	36,327	4,023	13
Asia	275,938	83,315	91,479	63,027	38,117	44
North America*	197,265	105,951	14,135	64,038	13,141	31
South America, Africa, and Oceania	74,364	23,599	14,379	29,239	7,147	12
Numerical Change in Immigration						
Total.....	-251,286	-141,776	-72,012	0	-37,498	100
Europe & Canada	-25,825	-11,454	-12,480	0	-1,891	10
Asia	-126,010	-61,089	-42,660	0	-22,261	50
North America*	-71,808	-54,077	-9,310	0	-8,421	29
South America, Africa, and Oceania	-27,643	-15,156	-7,562	0	-4,925	11
Percentage Change In Immigration						
Total.....	-40	-63	-49	0	-60	(x)
Europe & Canada	-32	-82	-46	0	-47	(x)
Asia	-46	-73	-47	0	-58	(x)
North America*	-36	-51	-66	0	-64	(x)
South America, Africa, and Oceania	-37	-64	-53	0	-69	(x)

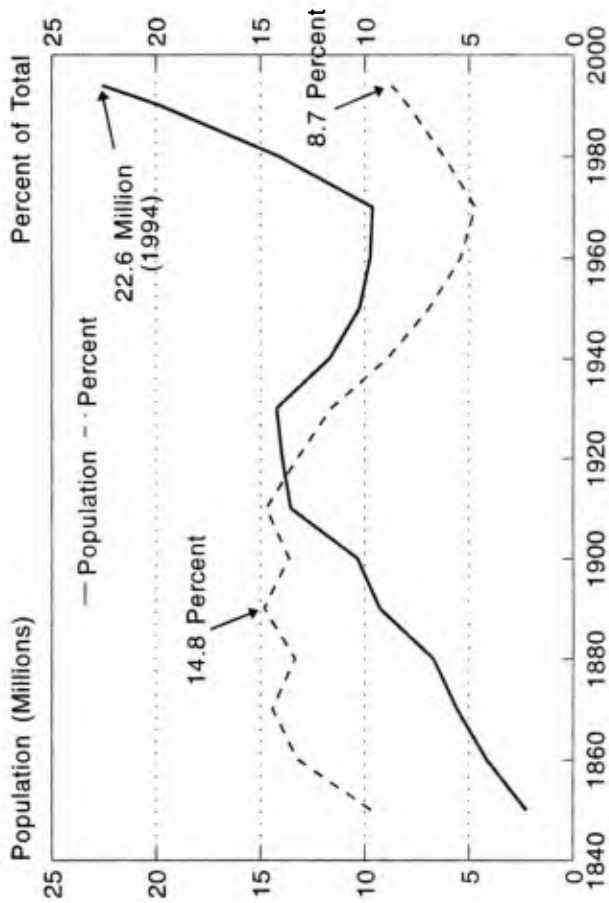
* Excludes Canada.

(x) -- Not applicable.

¹ Assumes parents over 65 admitted. No reductions for insurance or numbers of children.

Source: Tables 1-3 and INS Statistical Yearbook, 1994.

Figure 1.
Foreign-Born Population, 1850-1994



Senator SIMPSON. Vernon Briggs, please.

STATEMENT OF VERNON M. BRIGGS, JR.

Mr. BRIGGS. Thank you, Mr. Chairman.

Let me start with a brief apology. I read the bill when I got it last Friday night and tried to get my testimony in on Monday, but as a nonlawyer, I think I misinterpreted some of the provisions on my first read-through, and when I got an English translation on Tuesday of the legalese, I realized that some of the things I was criticizing you for were in there, and some of the things that I did not criticize you for may not have been in there. So I apologize for the confusion.

Senator SIMPSON. We will accept all the noncriticisms. [Laughter.]

Mr. BRIGGS. OK. Well, I want to humble myself first. As a strong critic of immigration policy, I have to humble myself whenever I appear.

But the factual part, I would like to raise with you. It is true that the foreign-born population of the United States has been rising. What is especially significant, however, I think, is that 10.8 percent of the labor force of the United States is currently foreign-born. That is one out of every nine workers. This is a significant number. It is about the same size as the black labor force in the United States, a group that has, in my view, been historically the most impacted by immigration policy, a subject that is rarely discussed and very rarely represented in these hearings, in the audience, among speakers, and what-have-you. It is one of the most important dimensions of this issue, especially when you turn to the fact that not only is it a significant part of the labor force of the United States—one out of every nine workers is now foreign-born—but the concentration is so extremely heavy in at least five States, and in those central city/urban areas where, again, we have very large concentrations of black workers, Chicano workers, and other minority workers, whom this Congress is very sympathetic toward in many other policies. But I know of no group that has been more adversely affected by our current immigration policy than the low-skilled workers, and I think that comes out in the third paragraph here.

We are talking about one out of every four adult foreign-born workers in the United States has less than a ninth grade education, and 42 percent in 1990, 36 percent the other day, they have come out and said do not have a high school diploma. That is where the big concentration is, in that low-skilled labor market. They are bearing a very heavy proportion of the impact in the labor market of whatever immigration policy we have, legal, illegal, refugee, or what-have-you.

We also have impacts at the other end of the labor market. Let me just say that the unemployment rate in that labor market is about 13 percent, and that is why I have argued for no more unskilled workers coming through the legal immigration system. There cannot be a shortage of unskilled workers when you have an unemployment rate running at that level, and that is the official rate, and we know that it probably understates the real rate of unskilled workers. That is because unskilled workers compete with

everybody. When skilled workers lose their jobs, they move down, and they can take the low-skill jobs. The unskilled workers cannot ever move up.

Senator KENNEDY. What is the unemployment rate with the skilled workers?

Mr. BRIGGS. I believe it is roughly 4.3 percent or so, but it has been rising in the 1990's. The problem with the skilled worker unemployment rate is that that can be understated, too, because they can move down; they will get jobs. People with Ph.D.s will drive taxicabs, and the former taxicab drivers will be out of the labor market.

So even when you see these low unemployment rate figures for skilled workers, that does not mean that today they are not having trouble. And as someone who teaches at a university, I can tell you that some of the skilled workers are having trouble today, or at least some of the future supplies are beginning to sense a quite different labor market than we have known before. That is why the comparisons with the past in my view are so irrelevant.

The great migration movements of the past were before the assembly line was introduced in 1913. That is when the first, earlier waves of immigration came to a stop. And it is a whole different labor market today than it was when those earlier waves came into this labor market. We needed unskilled workers in those times, and our immigration policy gave them to us. We do not need unskilled workers today. I think there is even some concern about the need for skilled workers. Well, I haven't gotten off the first page of my statement yet, so let me just quickly say a few other things.

Senator SIMPSON. Well, you look like you like your work.

Mr. BRIGGS. Well, it is a tough subject, but I do. It is a very important area of public policy.

Again, my view is that the immigration policy should be seen as primarily economic. Immigrants have to work, and if they do not work, they are being supported by people who do. So it is the labor market impact that is so significant, and that is why I argue, at least with the employment-based immigration, that that number should be set administratively rather than legislatively into the legislation.

I also believe very strongly that it ought to be run by the Department of Labor, because I think the Department of Labor is closer to these labor market issues than is the Department of Justice. And please remember that it used to be the Department of Labor. Up until the time the Department of Labor was founded in 1913-1914, that is where it was, and I think that that is where it primarily ought to be back again.

I also believe that when you have unused visas in one part of the legislation that it should not be transferred to another. If the employment-based are not used, those visas should not automatically go into family-based.

Well, maybe I will let you raise the questions with me, because most of what I haven't gotten to yet is where I made some mistakes, and I might as well straighten them out on the floor rather than in what I wrote.

Thank you.

Senator SIMPSON. Thank you very much. We have read your work and your testimony.

[The prepared statement of Mr. Briggs follows:]

PREPARED STATEMENT OF VERNON M. BRIGGS, JR.

The mass immigration that the United States has experienced since the late 1960s has disproportionately affected the nation's labor force. In 1994, for instance, the foreign born accounted for 8.7 percent of the population but constituted 10.8 percent of its labor force (according to official measures which are traditionally too conservative). This means that about one of every nine workers was foreign born.

These percentages are for the nation as a whole, which masks the key descriptive characteristics of the phenomenon: its geographic concentration. Five states (California, New York, Florida, Texas and Illinois) account for 65 percent of the entire foreign born population. These states accounted for 68 percent of all of the foreign born in the U.S. labor force. It is also the case that the foreign born are overwhelmingly concentrated in only a handful of urban areas. But these particular labor markets are among the nation's largest in size, which greatly increases the significance of their concentration. The five metropolitan areas that have the highest concentration of foreign born workers were Los Angeles, New York, Miami, Chicago, and Washington, D.C. Collectively, they accounted for 51 percent of all foreign born workers in 1994.

The flow of immigrants into the United States has tended to be bimodal in terms of their human capital attributes (as measured by educational attainment). The 1990 Census revealed that, on the one hand, the percentage of foreign born adults (25 years and over) who had less than a 9th grade education was 25 percent (compared to only 10 percent for native born adults) and whereas 23 percent of native born adults did not have a high school diploma, 42 percent of foreign born adults did not. On the other hand, both foreign born adults and native born adults had the same percentage of those persons who had a bachelor's degree or higher (20.3 percent and 20.4 percent respectively) but with regard to those who had graduate degrees, foreign born adults had a considerably higher percentage than did the native born, 3.8 percent versus 2.4 percent. Thus, it is at both ends of the U.S. labor force that immigration has its impacts—at the bottom and at the top of the economic ladder. In the low skilled labor market, immigration has increased the competition for whatever jobs are available. In recent years, unskilled jobs have not been increasing as fast as have the number of unskilled workers. As for skilled jobs, immigration can be useful in the short run as a means of providing qualified workers where shortages of qualified domestic workers exist. But, the long term objective should be that these jobs should go to citizen and resident aliens. No industry should have unlimited access to the possibility of recruiting immigrant and non-immigrant workers. Shortages should be signals to the nation's education and training system to provide such workers and for private employers to initiate actions to overcome these shortages.

The effects of the human capital variation between the foreign born and native born, not surprisingly, are reflected in a comparison of their 1994 occupational distributions. Over 42 percent of the foreign born labor force are employed in managerial, professional, technical and administrative occupations (as are 58 percent of the native born work force). Conversely, 26 percent of the foreign born were employed in the low skilled operative, laborer, and farming occupations (compared to 17 percent of the native born work force).

IMMIGRATION POLICY AND LABOR FORCE TRENDS

With immigration at record heights, it is ironic that immigration policy functions with little concern for its congruity with emerging labor market and employment trends. As specified by the Immigration Act of 1990, family-related immigrants account for 71 percent of the available visas. There are no labor market tests applied to these applications. Such immigrants may or may not have human capital characteristics congruent with emerging labor force trends. It is clear that family-based immigrants are most likely to settle in the same communities as the relatives to whom their entry is keyed, whether or not local labor market conditions need such people or not. As for the independent immigrants that account for the other 29 percent of immigrant visas, there is no labor market test associated with diversity immigrants (except that they have a high school diploma). For the 140,000 visas for employment based immigration, the majority of those admitted under this category come as spouses and children. Hence, only a small fraction of those admitted each year are actually admitted on the basis that they have skills that employers claim

they need but cannot find among available citizens and resident alien job seekers. When allowances are made for the estimated 300,000 illegal immigrants who annually enter regardless of whether they are needed or not plus 120,000 or so refugees who are annually admitted and who, obviously are not labor market tested, there is ample reason to conclude that the extant immigration policy is at odds with the national interest.

Needed Reforms

There are a number of reforms necessary to bring immigration policy into congruence with the national interest. Paramount among these is the necessity to recognize that immigration policy at this time in the nation's economic development must be viewed as primarily an instrument of economic policy. Currently, it is primarily a political policy designed to meet the private interests of individual persons, some employers, and a variety of special interests groups. To serve as an economic policy, it must first be flexible in terms of the annual number of people admitted for permanent settlement. The current system is rigid. It cannot respond to changing economic circumstances. A fixed number of immigrants are admitted each year regardless of the prevailing unemployment rate. What sense did it make in 1991 to expand legal immigration to the highest level since a ceiling was first set in 1921 at the precise time that the economy slipped into a deep recession? At the end of 1991 there were a million fewer persons employed in the U.S. than there were at the beginning of the year—yet the immigration level for that year was the highest in all of U.S. history. In my view, the level of immigration should be set annually by administrative action rather than fixed by legislation for whatever period that passes until Congress gets back to this issue. Congress could set an annual ceiling that could not be exceeded but the agency responsible for administering immigration policy should set the annual level (perhaps there could be an annual consultation with the appropriate congressional committee as is currently the case with annual refugee levels).

The government agency primarily responsible for immigration policy ought to be one with an employment mission and a human resource development orientation. As currently structured, the best suited agency is the U.S. Department of Labor. The Department of Labor had responsibility for immigration policy from the time it was set up in 1914 until 1940. Immigration during those years was clearly seen as being a labor issue. It was shifted to the Department of Justice in 1940 as a temporary move during wartime. But it now being 50 years after that war ended, it is time to return responsibility to that agency for this critical labor market policy. It should set the annual level of immigration.

As for immigration admissions, every effort should be made to reduce the current focus on family reunification. While there will always be a necessary element of family reunification involved to accommodate spouses and minor children of visa recipients, every effort should be made to reduce the other relatives entry categories. I believe the recognition given by the U.S. Commission on Immigration Reform in its recent recommendations that the nuclear family, rather than the extended family, as the basis for immigration admission is proper. The elimination of the current preference given to adult brothers and sisters is appropriate. If such adult relatives wish to immigrate, they should qualify on their own merits. They should not have a privileged status. I also agree that the category for adult married and unmarried children of immigrants should be dropped for the same reason.

As for the independent immigrant categories, I agree with the Commission and with the terms proposed in the pending H.R. 1915 that the diversity immigrant category should be eliminated. It is a throw-back to the spirit of the national origins system and it is not labor market related. I would also delete the investor immigrant category because it is too easy to abuse and I do not favor the principle that someone can buy their way to the front of the line.

As for the employment-based immigrants, as noted earlier, I believe that no number should be fixed into law. Rather, it should be annually set administratively, subject to a ceiling that cannot be exceeded. I agree with the Commission and the House bill that the entry of unskilled workers should be prohibited. There is no shortage of unskilled workers in the U.S. The unemployment rate for adults without high school diplomas is more than twice the national average (about 13 percent in 1994).

As for the admission of skilled and educated workers (those adults with a bachelor's degree or more), their unemployment rates have been rising during the early 1990s (although still below the national average). The sudden end of the Cold War has led to major cutbacks by defense contractors as government spending on procurement as well as research and development have taken place. The corporate downsizing in the 1990s—due to increased international competition and the spread

of computer technology that has increased output with less need for inputs—have contributed to the need for more careful monitoring of requests for immigrants to fill such jobs. I favor retention of the labor certification requirement for most of the employment-based visas. But, I believe these requests deserve more careful monitoring by the U.S. Department of Labor. Hopefully, if the numbers of such visas can be reduced (due to prevailing labor market conditions), the labor certification applications can be more carefully scrutinized. I also believe there should be no transfer rights of unused employment-based visas to family related categories. If authorized employment-based visas are not used or issued, they should simply be cancelled.

Relatedly, I think major changes are needed in the nonimmigrant admission categories. There are too many accounts of violations of the B-1 and H-1B programs to allow them to continue in their present form. Stiffer penalties may be in order for violations of a B-1 visas by both U.S. firms and those immigrants found to be employed illegally should be treated as illegal immigrants. As for H-1B visa requests for foreign nationals to work in highly skilled occupational categories, the numerous media accounts of abuse by U.S. firms—especially in the computer software industry indicate that there is a real problem. Unless the Department of Labor can be staffed at a level that allows it to evaluate the validity of these requests, consideration should be given to the elimination of this category. At a minimum, the length of such visas should not be longer than 2 years and the opportunity to adjust status from an H-1B visa to a legal immigrant visa category should be prohibited. A nonimmigrant visa should mean just that. The H-1B category should not be permitted to serve as a holding tank for would-be immigrants.

Lastly, it should go without saying that major changes are needed to tighten current enforcement procedures against illegal immigrants. Proposals by both the Commission on Immigration Reform and in H.R. 1915 for stronger border management in terms of funds for more border patrol officers and support personnel; for improved physical barriers; and for the acquisition of advanced technology are long overdue. The expenditure of funds is the real test of the commitment of Congress to make whatever immigration policy it adopts have true meaning. I support the provision of imposing civil fines on illegal immigrants proposed in H.R. 1915. I also enthusiastically support proposals to increase the number of workplace officials of government empowered to enforce both employer sanctions against the hiring illegal immigrants and fair labor standards with respect to wage, hour, and child labor laws. The growth and spread of "sweatshops," fueled by the hiring of illegal immigrants, represents a seamy side of contemporary American life.

But the greatest weakness in the existing efforts to enforce employers sanctions against the employment of illegal immigrants remains with the identification issue. I doubt whether the creation of either a national registry to verify the authenticity of social security numbers or any form of telephone call-in verification system will prove very effective. I believe it is past time to set up some form of national identification system or labor permit system. A job is the most important single thing that this nation can provide for a citizen and or resident alien. Illegal immigrants steal jobs, to put it bluntly. The fact that jobs for unskilled workers, in particular, are so difficult to find makes it imperative that unskilled workers be protected from all competition with illegal immigration. The issuance of a counter proof card with a picture to all valid holders of a social security card, or something similar, is the only way to make an employer sanctions system work. As Fr. Hesburgh said over ten years ago (in his role as Chairman of the Select Commission on Immigration and Refugee Policy):

"Identification systems to be used for application for a job and for work purposes are no different from other forms of identification required by our society and readily accepted by millions of Americans. Credit cards which must be checked by merchants, identification cards * * * to cash checks; social security cards to open bank accounts, register for school or obtain employment * * * Raising the specter of "Big Brotherhood," calling a worker identification system totalitarian or labeling it "computer taboo" does not further the debate on U.S. immigration policy; it only poisons it", (*New York Times*, September 24, 1982, p. A-26).

It is time to take this necessary step. Otherwise, I can guarantee we will all be here again to debate why illegal immigration continues to undermine the credibility of whatever legal immigration system is in place at that time.

REACTIONS TO PROPOSED SENATE BILL

My most immediate reaction to the senate bill is that it is not anywhere near as comprehensive as I had anticipated. I am assuming, therefore, that this bill does

not preclude the incorporation of many of the major recommendations already made by the Commission on Immigration Reform or that are included in the pending House bill (H.R. 1915). I assume that this bill is essentially designed to raise additional issues.

The proposal to tighten the requirements on who qualifies as "parents" under the immediate relatives category of existing law seems reasonable. There certainly should be minimal labor market impact if such entries are restricted to people over age 65. I certainly support the requirements with respect to closing the loopholes on citizens who renounce their financial obligations to support their immigrant parents and to provide for their health care.

As indicated elsewhere in my testimony, I support most proposals to reduce the number of visas available for family sponsored immigration. Hence, I would support the reduction in the current number of spouses and children of permanent resident aliens to 85,000. As indicated, this would not be my highest priority of reducing such visas but I would not oppose it. I would prefer to see the elimination of all preferences for all adult brothers and sisters of U.S. citizens and for married and unmarried adult children of U.S. citizens.

As for changes proposed in the employment-based preferences, I have serious reservations about the merits of raising the number of admissions of aliens exempt from labor certification to 75,000 by adding an additional category of multi-national executive and managers and including investor immigrants in the existing category for persons of extraordinary ability. I see no reason to do this, if the actual purpose is to admit people of extraordinary ability as defined in current legislation. I would prefer to see more opportunities given to U.S. citizens to become "extraordinary" rather than to use immigration to fill the limited number of senior, high paying, positions at universities or in businesses enterprises and to "brain drain" or "skill drain" the rest of the world of such talent. I have no idea why athletes continue to be included in such an expansion for, after 10 years of participation in a sports life, its hard to imagine that the country would benefit from their presence except to provide a place to retire.

But if the intention is not really to bring in more persons of extraordinary ability but, rather, to use whatever the residual of unused slots is to admit executives and managers of multinational enterprises and investor immigrants, oppose the change. There is ample reason to believe that many multinational firms already have a "glass ceiling" that keeps U.S. citizens and resident aliens from qualifying for the best jobs that foreign-based firms operating in the United States provide. This practice should not be encouraged. In fact, it ought to be legislatively discouraged. Corporate downsizing is already a rampant practice. There is no shortage of which I am aware of, of business executives or managers but there is a substantial desire by foreign-based firms to avoid promoting and developing corporate talent from the available pool of Americans. If foreign based enterprises want to set up business in the U.S., they should hire U.S. workers—whether it be on the shop floor or in the corporate offices. If there are temporary needs to fill such high positions, the non-immigrant L-1 visa program should be the vehicle for its accomplishment.

Likewise, I am vehemently opposed to the inclusion of investor immigrants in this highest priority category. In fact, as noted elsewhere, I do not believe that this category should be anywhere in U.S. immigration systems. It is a category ripe for abuse, it cannot be adequately enforced, and I do not believe that anyone should be able to buy their entry into the United States citizenry. It is the wrong principle to advertise to the world.

As for the proposal to set the number of visas available for less prominent professionals with advanced degrees, professionals with baccalaureate degrees, and skilled workers (all of whom require labor certification) at 75,000, I would still prefer to see the actual number each year be administratively set in accordance with prevailing labor market conditions rather than be set legislatively. All of the occupations in this category possess the likely possibility of competing with members of the citizen labor force. The idea of making their entry "conditional" on the fact that, after 90 days, they are still employed by the employer who "sought" them and are being paid the approved wage rate is novel. In principle, I would support this proposal because it simply says that there should be an official verification to see that what was promised to occur, actually happened. It would be imperative, however, that the additional funds required to monitor and to meet the outlined obligations by INS be provided and that these duties not be added to an already overburdened agency.

As for the labor certification changes, I support the idea that employers who seek to hire immigrant workers should pay a substantial fee for the privilege (30% of the value of the annual compensation package). It would help to validate the authenticity of the employers claim that qualified citizens cannot be found. Under present circumstances, it is often not possible to discern what is a legitimate need by an

employer and what is simply a preference. The earmarking of the proceeds from the fund to be used by the Secretary of Labor for education and training purposes for citizens and resident aliens is certainly laudable.

I do worry about the open-ended nature of the provision that would allow the labor certification requirement to be essentially waived if the Secretary of Labor declares that a labor shortage exists for a specific occupational classification. This could be abused by pressures from special interest groups. If the need is real, a request should be able to pass the labor certification tests. On the other hand, I would support the notion that if a labor surplus is deemed to exist by the Secretary that no certification to admit immigrant labor could be issued for such occupations. This would reduce some of the paperwork burdens on INS and it protects the economic interests of U.S. workers as the law requires.

For present purposes, I have restricted my comments to those proposals that pertain to the level of immigration and that have labor market implications.

Senator SIMPSON. Next, Mr. Demetrios Papademetriou.
Mr. Papademetriou, please.

STATEMENT OF DEMETRIOS G. PAPADEMETRIOU

Mr. PAPADEMETRIOU. Thank you. It is a pleasure to be here, and I thank you for the opportunity to respond to the preliminary work of the staff. It is a difficult task, but one which I know you are eager to undertake, and I pledge to work with you toward a goal that I believe we all share, which is fashioning a framework for choosing immigrants that does what it says it wants to do, that has predictable outcomes for its users, is responsive to the needs of U.S. business, is fair to U.S. workers, and is consistent with core national values and goals. These, it seems to me, are the principles that should guide this reform effort.

What I will try to do in the first 5 minutes is to talk a little bit about a whole set of ideas as to how one might approach the broader goal of reform. Then I will do the foolish thing and take my assignment to heart, and I am going to be, I hope, constructively critical of some of the ideas that appear in the proposed legislation. And then, if I have time, I will at least introduce an alternative way of looking at the immigration of the employment-based people.

I think we all agree there is an extraordinary need for reform at this time. The problems with the system are that its precise policy intentions are unclear, it is grossly deficient in programmatic logic and transparency, it demonstrates extraordinary lapses in definitional integrity and consistency within and across categories, it resists change, it is poorly financed by any standard that I know in comparison to any other country that is also in the immigration business, and it is extraordinarily cumbersome and intrusive, without a commensurate benefit either in efficiency or effectiveness.

I suspect all the things that I have said, this indictment of the system, suggest that we should do something about it, and that is what we are here for.

I suggest that there are four elements to reform. The first one is that the changes must create a system that is demonstrably good for America. I will be happy to talk about each one of these elements later on.

Second is that the system's provisions must meet the needs of U.S. employers without harming the interests of U.S. workers—in other words, the issue of balance.

Third, any changes must enhance the prospects for immigrants to succeed once they are here. It makes no sense to bring people

here and then basically change the terms of engagement, change the rules of the game. At the same time, immigrants should not expect to access programs that were not intended for them, such as affirmative action.

Finally, reforms require a surgeon's scalpel rather than a butcher's cleaver. We need to go after the defects, identify them, try to fix them, and we should not go after the system itself.

In terms of the proposed bill, I am troubled by the fact—and this has been mentioned already by several people—that the discussion is all about numbers. Although numbers are ultimately important, at least in a global sense, what should drive the discussion and the reforms should be ideas and principles.

I know what the idea is. I understand the principles behind much of what I see here in the proposed bill. Sometimes, I understand less some of the ideas and principles behind the commission's proposals, because the bill and the commission are at one level quite similar, but at another level quite dissimilar.

Let me give you some ideas, perhaps. An easy way, if you really wanted to bring down the numbers—and there is a compelling reason for that—perhaps you should look at categories and ask a question. For instance, diversity visas—do we value diversity values today as much as we did in 1990? If we do not, let us drop them. The siblings category—in the general framework of what is more important and less important, what does one do about it? Does it justify the kinds of long waits and 65,000 visas? I would suspect most people would probably argue that, at least in these two categories, you can have general agreement that you can drop those numbers. That saves about 20 percent of the total, or about 120,000 visas.

I have some questions about the elimination of the third preference. I do not see the principle behind it. I think if you wanted to make a case that somehow the numbers are troubling—if only 22,000 people use that system next year, and if you feel like bringing those numbers down because you want to make a statement, I would like to be able to see that this is possible.

On the first preference category, I am having a very hard time with it. There were only 12,000 people who entered last year. I do not think that the Government—or anyone, for that matter—should try to define for anyone what constitutes the immediate family. This is basically where I would go.

On the issue of parents, I think what we have been creating with the discussion and the requirements in the welfare system is a process that will cause pause on the part of individuals. They will take a person like me, and they will force me to ask myself the following questions: Am I steady enough in my job? Is the economy doing well enough? Will I be able to maintain, to support my family, my parents, if I brought them here?

If the answer to those questions is no, I will wait another year. What I am saying is that what we are introducing through the welfare reform proposals is essentially a system that may allow us to fluctuate in numbers on the basis of personal circumstances as well as the overall economy.

I have several more things that I would like to say about the economic stream, but I will play by the rules, of course, before you

gavel me down. I will be very happy to talk about them during the questions.

I would like to beg your indulgence and suggest that at the end of my testimony, I have a proposal—it is the attachment that appears after page 25 in my testimony—which suggests an alternative way of selecting labor market immigrants and discusses some of the ideas that Senator Kyl began to address, some of the discussion that Senator Kennedy talked about, and a lot of the questions that have been discussed here for the last half an hour or so are addressed in that attachment.

Thank you, sir.

Senator SIMPSON. We will be very pleased to review that, and I know what some of that is, and it is something that intrigues me, too.

Thank you.

[The prepared statement of Mr. Papademetriou follows:]

PREPARED STATEMENT OF DEMETRIOS G. PAPADEMETRIOU

Mr. Chairman, Senator Kennedy, Senator Simon, Members of the Subcommittee: Thank you for the opportunity to respond to the Subcommittee Staff's preliminary ideas about how we might reform the U.S. legal immigration system.¹ It is a difficult task but one which I know that you are eager to undertake and I pledge to work with you toward a goal that I believe we all share: fashioning a framework for choosing immigrants that does what it says it wants to do, has predictable outcomes for its users, is responsive to the needs of U.S. business, is fair to U.S. workers, and is consistent with core national values and goals.

As you know, I support such an effort and applaud your initiative. All too often, our failure to make hard choices undermines the very system we are trying to protect. This has certainly been the case with the immigration system. As one who is deeply committed to the idea that immigration has and can continue to serve important U.S. interests well—as I know you are, Mr. Chairman—I am interested in real reforms that reshape the present system in a way that makes it more defensible against the assaults of the fringe element that also concerns you.

You, Mr. Chairman, have an awesome responsibility.

Despite the difficulties, however, I know that you will persevere and that you will succeed. I have never known you to avoid the tough choices, and I know that you will not do so now. And whether one agrees with your specific approach or not, you and Senator Kennedy have earned unparalleled respect as thoughtful and fair-minded reformers in this area for nearly two decades now—a role that I am sure you will continue in the months ahead.

I see my role in this endeavor as one that goes beyond commenting on some of the ideas and methods the draft proposal includes. Rather, I want to be a constructive voice and offer alternatives for you and your colleagues to consider as you finalize the draft bill. Let me thus apologize in advance because some of my criticisms might appear more strident than might have been necessary if we were at an earlier stage in the reform process.

I share many of your concerns and even more of your frustrations with both substance and process. The importance of the undertaking places upon all of us the additional burden of trying to be as right as possible the first time—without, however, implying that we have to get things perfect the first time, and thus allow the perfect to become the enemy of the good. You are not drafting legislation for the all time. The world is changing too fast, presenting far too many challenges to which an immigration system must respond, and many opportunities of which it must take advantage. Immigration policy is thus too important and dynamic an issue for our government to revisit it thoroughly only infrequently. The constant adjustments it requires demands that both the Congress and the Administration invest in building the infrastructure on which better policies can stand. This includes investing in an

¹ All immigration systems are composites of three broad selection streams: (1) the economic stream, which includes immigrants chosen because of their human capital attributes, broadly defined; (2) the social (and partly humanitarian) stream, which incorporates the family reunification categories; and (3) the compassionate stream, which allows the admission of refugees and asylum seekers who meet certain internationally-agreed upon criteria.

agency, the Immigration and Naturalization Service (INS), that at last seems committed to take its responsibilities seriously. Finally, immigration is too complicated an issue—with its own difficult-to-predict dynamic—to pretend that we can solve all its problems in a single piece of legislation.

May I propose, then, that we work as hard as we can to fix as many things as we can but that we remain mindful of our limitations and modest in our expectations—while also making a commitment to stay engaged with the issue.

My testimony today is in four parts. First, I discuss the need for general reform of the U.S. immigration system and summarize some criticisms of the current system. Second, I present three goals that any general reform should attempt to achieve. Third, I offer specific comments on the draft bill. Finally, I summarize key points from a forthcoming Carnegie Endowment report on economic stream immigration that I and my colleague Stephen Yale-Loehr have drafted. The report sets forth principles of economic stream immigration that we think should underlie any legal immigration reform legislation. The report also contains specific proposed economic stream immigrant visa categories and other recommendations. Attached to my testimony is a summary of those proposed categories, as well as hypothetical scenarios suggesting how our proposed categories might play out in the real world.

THE NEED FOR REFORM

Critics of the U.S. immigration system invariably point to the system's apparent lack of a consistent and explainable central policy thrust. This core deficiency results in many provisions that are ad hoc (consider the system's variety of lotteries since 1986), opaque (the system's at times deliberately impenetrable provisions are practically in a class by themselves—and the proposed bill is no exception), unnecessarily complex (the law's labor certification requirements are a study in deliberate ambiguity), and costly—both for the government that administers them and for its users. It is also riddled with countless internal contradictions that serve to further distort—even pervert—the intent of specific categories.

The following specific criticisms of the current immigration system are among the most serious:

- *Its precise policy intentions are unclear.* Despite some rhetoric focusing on specific (and usually narrow) policy aims, it is not clear what we seek to accomplish through our immigration policies. The problem here goes beyond a lack of conceptual rigor and internal consistency. The system and its administration also demonstrate an unnerving tendency toward inflexibility and a slowness to adapt—making the system itself appear as if it were on automatic pilot.
- *It is grossly deficient in programmatic logic and transparency.* The system's regulatory and administrative procedures are neither transparent nor predictable enough to be easily understood by the system's clients. As a result, users can neither make reasonably accurate assessments about whether they meet specific program qualifications nor anticipate how long it will take to complete the process. Processes whose outcomes are not predictable contribute to avoidable system overload. They also invite manipulation and abuse.
- *It demonstrates extraordinary lapses in definitional integrity and consistency within and across categories.* Many of the system's visa categories and provisions do not mean what most persons would conventionally expect them to mean, and administrative rules often do not reflect what the visa categories and the conceptual framework that support them imply.
- *It displays a resistance to change that goes beyond the inertia that typically takes hold of large and bureaucratically complex systems.*
- *It is poorly financed by virtually any measure of comparison, and has been poorly managed, and even mismanaged, at least until recently.*
- *Finally, it is extraordinarily cumbersome and intrusive without a commensurate benefit either in efficiency or effectiveness in meeting the system's stated objectives (such as facilitating businesses' access to certain needed workers or "protecting" the interests of U.S. workers!)*

Notwithstanding recognition of the system's shortcomings, the Congress has not shown a sustained interest in exerting rigorous oversight over the execution of our immigration laws, and the executive branch has shown even less will and capacity to exercise true leadership on immigration policy. This is particularly remarkable when considering that immigration has always been a—if not the—principal ingredient of change in our society: socially, culturally, economically, and, increasingly, even politically.

The immediate challenge is thus as clear as it is compelling, and also very difficult to achieve: that is, to institute changes that reclaim control over immigration substance and process by (a) identifying and correcting weaknesses in policy, pro-

gram, and management; (b) weaknesses, eliminating distortions that pervert the purposes of some immigration categories; and (c) making immigration consistent with national expectations of efficiency, fairness, and cost consciousness.

THE THREE ELEMENTS OF REFORM

Recent demands for an open and honest public discourse on immigration policy can be traced to two sets of events: (a) increased public awareness of the system's weaknesses; and (b) dissatisfaction with Washington's record in devising an immigration system that puts broad U.S. interests first. The first set of issues has been outlined above. The second set is examined here.

It is the government's obligation to propose changes to our immigration practices that will better serve key social and economic priorities, allow it to manage the system more responsibly (thus meeting the classic "stewardship" and accountability tests that democratic societies require), and explain how it intends to address unintended and unexpected consequences quickly and efficiently.

Proposals for change must meet the following three goals:

- *First, the changes must create a system that is demonstrably good for America.*

Meeting this challenge requires that attention be paid to two areas. First, we must admit family immigrants, refugees, and asylum seekers on the basis of principles and procedures that stay true to our core social values and humanitarian principles and to our international legal obligations. Second, we must select economic-stream immigrants who contribute to the creation of American jobs and wealth and help to facilitate commerce and trade. This means that we must select people with strong human capital characteristics, who can operate in and adapt to an always changing global competitive environment.

- *Second, the system's provisions must meet the needs of U.S. employers without harming the interests of U.S. workers.*

This is a complex challenge that goes beyond selecting economic-stream immigrants who can make the strongest economic and labor market contributions. Meeting this challenge also involves two more specific tasks. First, we must devise clear rules that allow U.S. firms to hire qualified foreigners who will make these firms more competitive in the global marketplace. The contributions of such workers generates up- and down-stream economic benefits that, in the long run, serve the interests of U.S. workers best. Second, the government must establish and enforce policies and procedures that eliminate unfair competition by economic stream newcomers—whether such newcomers enter under the permanent or temporary systems.

- *Third, any changes must enhance the prospects for immigrants to succeed once they are here.*

Immigration implies a bargain between the newcomers and the society that receives them, that, once admitted, the immigrants will face a level playing field in which they have a fair chance to succeed by working hard. It does not promise any special advantages. Accordingly, immigrants have no claim on access to government programs such as affirmative action. The other side of the coin is that they should not be disqualified from the social programs that go along with full societal membership in the United States, or to which they must turn because of events such as sickness, disability, or loss of a job that are beyond their control. This is a fundamental equity principle.

Achieving these goals and addressing effectively the various other weaknesses enumerated so far demands nothing less than a strategic vision about the promise and challenge of immigration. Mr. Chairman, unless key leaders on this issue such as you and Senator Kennedy agree on the outlines of a vision and pursue it systematically, even relentlessly, the goal of comprehensive reform will continue to elude us.

OBSTACLES TO COMPREHENSIVE REFORM

It is very easy to underestimate the difficulties associated with accomplishing comprehensive immigration reform. In addition to the issue's breadth and complexity—which makes putting one's conceptual arms around it very difficult—comprehensive reform must also contend with at least seven other serious obstacles:

- Jurisdictional issues in Congress and within the administration that divide control over the issue among many different committees and executive agencies.
- The economics and politics of budgetary reform that are likely to impoverish many immigrants and give lower priority to reforms in areas other than control and enforcement.
- The intense and difficult politics that surround the issue—including constituency politics that can hold politicians hostage—that make a reasoned approach to reform more difficult.

- The emergence of intense partisanship on the issue that inhibits the inter-party cooperation on which successful immigration legislation has traditionally relied. On some aspects of the issue, such as employment-authorizing identification matters, even intra-party cooperation is uncertain.
- A limited political attention span, particularly in light of the approaching 1996 elections (although the upcoming election may in fact enhance the chances for passing some legislation while simultaneously diminishing the probability of thoughtful reforms.
- The lack of adequate data for making sound analytical judgments that inhibits the making of informed policy choices, forces policy prescriptions to rely on often anecdotal or plainly false "evidence," and enables those interested in making political arguments based on dubious facts to do so with relative impunity.
- The INS' institutional culture, which has traditionally prized and rewarded enforcement almost to the exclusion of good management and effective services and has developed an unenviable record for arbitrariness, intrusiveness, and resistance to change.

THE SENATE DRAFT BILL

This is the set of criteria against which I will evaluate the present draft bill. Such an evaluation is in one sense unfair, particularly with regard to the breadth of reform. The bill is much narrower than the global framework I have outlined above in that it fails to address the nonimmigrant system. Nonetheless, it allows me to make some specific observations about the provisions or the bill.

Before I do so, however, I would like to make one or two observations. As I read the bill, I find that I am in general agreement with the bill's choice of issues to address. I agree that these are among the key issue areas that need reforming. I further agree with the definition of the problem as implied by the bill's proposed actions. I am, however, less convinced with the priorities the bill attaches to the various issues it addresses. I part company entirely with many of the bill's specific remedies.

THE FAMILY STREAM

I am troubled by the fact that the draft bill appears to be driven primarily by numbers, rather than principles. While backing away from the expansive framework adopted in the 1990 Act is prudent, it should not drive reform. Certain categories certainly deserve a hardnosed re-consideration. For instance, one should ask whether the principles of diversity that gave rise to the diversity visa lottery in 1990 are still as valued today as they appeared to be then. Similarly, it is legitimate to question whether the fourth family preference (brothers and sisters of U.S. citizens) is a category that delivers what it promises and whether it serves national goals and priorities that are as important as those served by the other family unification categories. I suspect that most observers would agree with divesting the immigration system of both categories. Doing so would reduce total immigration by about 120,000 visas and bring us closer to a range—and to a selection formula—that most people can support. In other words, just by asking some practical questions the numbers can fall substantially—and provide a more robust, realistic, and defensible selection formula to boot.

Similarly, the other family categories can be adjusted without the passion and re-priminations that the Jordan Commission's recommendations cause. If indeed there is a compelling reason to reduce the numbers beyond the levels I have just suggested, why not do so by reducing slightly the visas that are available for adult married children of U.S. citizens (the third family preference)? The numbers are not large to start with, about 23,400, but the message is still loud and clear—and it may in fact be the one the Jordan Commission has given us, namely, that closer household relationships should receive preference over more distant ones. If a backlog develops, so be it. I see no particular principle that such a backlog violates.

The issue is totally different with the elimination of the first family preference (adult unmarried sons and daughters of U.S. citizens). The 23,400 visas allocated to that category are, again, not large. Indeed, only 13,181 people actually entered the United States in that category in fiscal year 1994. The message its elimination sends, however, is that, like the Jordan Commission, the drafters of the proposed bill feel that the government should be able to tell families where a parent's relationship with his or her unmarried children ends. I wonder whether you would want to make such a judgment or, for that matter, whether most Americans who do want the Immigration system tightened would agree with such an arbitrary definition of what constitutes "immediate" family for immigration or any other purpose.

Another of the bill's family stream provisions—concerning the parents of U.S. citizens—puzzles me. I am again in agreement with the issue and its definition: too many elderly immigrants who have contributed little or nothing to our economy have come to rely on our country's social insurance schemes. This raises both an equity and a cost issue at a time that we seem to be asking many of our own native and naturalized citizens to change their personal behaviors and make serious sacrifices. Putting the merits of such welfare reform proposals aside, are the proposed remedies—imposing an age requirement and what I believe the Australians call the "balance of family" test—appropriate?

I think not. However, many of us find acceptable some of the welfare reform provisions that would hold the sponsors of immigrants financially responsible for those whom they sponsor for a period of time. This is not an unfair burden relative to what we ask of other classes of Americans. Such requirements will actually have the effect of giving pause to those wishing to sponsor their relatives. It will thus inevitably take us where the more rigid provisions of this draft bill seems to want to take us: that is, reducing the pace at which people unify with their families and thus allowing the immigration numbers to fluctuate with the personal circumstances of the sponsoring person and, more broadly, with the social and economic conditions of the country. This is something that I see as desirable. I also think, however, that we ought to give these new provisions a chance to work.

In addition, the bill's requirement that sponsors obtain medical insurance for their parents makes the broader restrictions proposed unnecessary. With all these "redundancies," why does it matter who chooses to reunify with their parents and at which age?

Let me make a final observation with regard to the insurance scheme proposed in the bill. Immigrants are clearly caught in a losing battle with those who see them as a source of savings (for those whose primary aim is to cut the deficit) or as a source of "income" (for those who would use these "savings" to finance another component of their welfare reform agenda). The end result for immigrants is the same: they'll have to pay their way.

All of us know how difficult and expensive it is to obtain medical insurance as an individual. In my view, we should think more in terms of a privately-run trust-fund of sorts that would offer a variety of immigration-related insurance services. Participation in it would be voluntary but will gradually become compelling for anyone wishing to reunify or unify with their family members. While issues regarding premiums and related matters would still need to be worked out actuarially, it should be recognized that the trust fund might not be self-sufficient. A decision you might thus want to make on this bill is whether or not a good faith effort to have immigrants contribute the greatest share toward the unanticipated costs associated with their family members is enough.

THE ECONOMIC STREAM

I will again be brief in my reactions to the proposed bill's ideas because I want to take some time to discuss an alternative approach to such immigration that my colleague, Steve Yale-Loehr, and I have developed.

I take no particular issue with the bill's provisions that seek to ensure that those who enter the United States on the basis of their extraordinary talents and abilities are indeed extraordinary. I do wish to note, however, the "redundancies" built into the current system appear to be guided more by the compulsion to stop some isolated fraudulent practices and much less by the need to facilitate the access to the United States by qualified individuals and, where appropriate, by good corporate citizens seeking their services. The primary interest of these corporate citizens is in playing by clear and reasonable rules and in ensuring predictable outcomes, not in "gaming" the system. This almost exclusively "fraudbased" view of the economic stream immigrant categories seems to dominate the bill and finds its apotheosis in the bill's "conditionality" provisions and its definition of a "multinational" firm. Regrettably, in both instances, micromanagement, resource-intensity, and gratuitous interventionism would win out over sound principles of economic stream immigration if the draft bill were enacted without change. appear to have become the bill's ultimate objectives.

My final set of comments on the draft bill concern the proposed labor certification and related functions. I again have no particular issue with the requirements of either professional or skilled workers except to note that the training/experience thresholds for skilled workers are remarkably and peculiarly low, especially considering the overall thrust of the bill. Also, the merits of the conditionality concept and procedures aside, the framework the bill creates in this regard moves in the wrong direction. It would tie the foreign employee to the employer for two years, thus fuel-

ing the preexisting power asymmetry between those two actors and undermining the principles of "protecting" U.S. workers that seem to motivate so many other of the bill's provisions. Similarly, after reinforcing this asymmetry, the bill holds the worker accountable both for leaving the sponsoring employer and for having been paid less than the agreed-upon wages.

Both of these provisions concern me. I appreciate the bill's obvious interest in addressing the fact that immigrants frequently leave their sponsoring employer soon after they arrive in the United States. However, it might be a more promising avenue to focus some investigative resources on employers who seem to petition for employees regularly and for the same or similar jobs, rather than penalize those who in effect will often be "victims," rather than "perpetrators."

Furthermore, I find both the bill's proposals of fees and its occupational surplus/shortages provisions highly troubling. The proposed fees are unreasonable and, in the case of the 30 percent fee, extortionary. The commendable use to which such funds might be put takes nothing away from my evaluation of the proposal. As you will note in the next section of my testimony, I firmly believe that what we need to focus on in reforming the economic immigrant stream is creating a truly level playing field for U.S. workers, not the introduction of punitive measures directed at U.S. businesses that seek to employ the best qualified candidate from among pools of talented individuals.

Finally, I find peculiar the bill's revisiting of the issue of establishing national occupational shortages and surpluses on which to make blanket "certification" decisions. The idea was vetted in the 1990 Act and it was found to have little merit—methodologically, practically, and politically. I would direct you to the March 1990 testimony before the House Immigration Subcommittee by Janet Norwood, who at the time was the highly-respected Commissioner of the Bureau of Labor Statistics, for a discussion of the difficulties associated with such a concept. You may also recall the furor the idea created when the Department of Labor sought to test the authority for a pilot program given to it by the 1990 Act to test the idea's feasibility, and that Department's quick retreat. Shifting the responsibility for putting together the evidence that would be required for such a declaration from the government to private parties does not allow the Department of Labor to escape the responsibility for making such a declaration. I will be happy to share with the Subcommittee staff our extensive evaluation of the idea from our forthcoming Report on these issues, which I have with me.

Revising Economic Stream Selection To Better Promote U.S. National Goals and Priorities

A. Principles of Economic Stream Immigration

Reforming economic stream immigration should have two overall aims. First, reforms should strive to achieve greater consonance among policy intent, legislative language, regulations, and enforcement. Second, they should help create a popular perception that the basic "stewardship" issues regarding the more effective management of all U.S. immigration laws are being addressed.

Specifically, economic stream immigration reforms must emphasize the following: (a) a more realistic—and ultimately more effective—understanding of what constitutes U.S. worker interests in the context of immigration and how best to advance them; (b) the right mix of incentives and disincentives for businesses to play by the rules; (c) the elements of a new habit of cooperation between regulators and the regulated that may serve as a "partnership" model for other contentious areas; and (d) a new resolve to identify, isolate and punish corporate citizens who habitually violate U.S. immigration laws.

The following two general principles should guide the reform effort:

Principle 1: Most economic immigrants should continue to be selected on the basis of their expected contributions to a sponsoring firm. However, they should be selected from a pool of individuals who possess characteristics that enhance the prospects that they will make long-term contributions to the economic strength of the United States, help facilitate international commerce and trade, and generally promote U.S. interests and priorities.

Principle 2: Economic nonimmigrants should be admitted only for the following reasons:

- (1) to fill identified labor needs for a temporary period (up to three years);
- (2) to discharge our international obligations under a variety of trade, however, investment, and cultural exchange regimes;
- (3) to contribute to facilitating international commerce and trade; or
- (4) to enhance the cultural and artistic life of the United States.

In addition to these general principles, certain procedural principles are also necessary to help the United States select economic immigrants and nonimmigrants in

the most efficient way possible. The following four procedural principles should be part of any new immigration system:

Principle 3: The selection process should be efficient, timely, fair and transparent for all parties.

Principle 4: Enforcement, including post-entry enforcement, should become a credible deterrent against fraud and abuse.

Principle 5: Any new immigration selection system should be constantly reviewed to make sure that it continues to accord with the changing economic and labor market needs of the country.

Principle 6: Accurate data are critical to monitor and evaluate the success and impact of any new immigration selection system. They should thus receive the priority they require.

B. Recommendations

1. Immigrants

We propose dividing economic immigrants into three tiers.

- The top tier would be similar to the current EB-1 immigrant visa category.
- The second tier would include an employer sponsorship requirement, a work experience requirement, a wage requirement, and certain selection criteria. The primary effect of these proposed changes would be to substitute work experience, wage requirements, and certain selection criteria for the labor certification function currently used to admit most immigrants in the employment-based second and third preference categories.
- The third tier would be for investors.

We recommend abolishing the labor certification function for permanent immigrants and putting a new mechanism in its place because the function is poorly designed for selecting economic immigrants, does not work as intended, creates massive delays, and provides virtually no protection for U.S. workers. Our review of various studies has shown that: (1) the foreign national is already employed in the majority (71 percent in 1987) of jobs advertised in the labor certification process; (2) only one-half of one percent of U.S. workers referred to jobs advertised in the labor certification process are actually hired; and (3) over 90 percent of labor certification applications involve the use of an attorney. (REA, 1990: 51, 64, 71-73, 124-26; see also Chapter 4 of this Report.) Thus, a majority of labor certification applications revolve around designing the job advertisement to fit the foreign worker and thereby enable the employer to reject U.S. workers as unqualified.

In addition, the labor certification system focuses on the wrong goal: the immediate needs of the labor market. Immigrants are permanent additions to the labor force. It makes little sense to admit them (using labor certification or any other similar system) solely on the basis of a specific job opening that may quickly become redundant or for a function that may offer little long-term benefits for either the employer or the country.

It also makes little sense to admit an immigrant for a particular job based on the unavailability of U.S. workers when he or she may not stay in that position very long. A research study funded by the DOL in the 1970's found that 57 percent of immigrants who obtained labor certification changed occupations—not just jobs—within two years after obtaining their green cards. (1976 House immigration hearing: 60, testimony of Ben Burdetsky, DOL Deputy Ass't Secretary for Manpower). A more recent report done for the Quebec immigration ministry has found that about half of the economic immigrants surveyed who arrived between 1987 and 1991 have changed jobs since their arrival in Quebec. (LeMay, et al, 1994).

Instead, the goal of the economic immigrant selection system should be to satisfy ourselves that those who are admitted into the United States as presumptive members of our society on the basis of on their human capital assets have the proper mix of skills and other attributes, such as experience, education and language, to maximize the probability of long-term success in the labor force. The existing labor certification process would not be able to do so in all but a few cases even if it worked perfectly.

Our recommendation to abolish the labor certification process and replace it with three modest requirements and a selection criteria system would achieve several key objectives. First, it would save the significant resources that are currently spent on an unworkable and intrusive process that actually imposes costs on U.S. workers, as opposed to protecting them. Second, it would select economic immigrants on the basis of characteristics judged to be essential to long-term success in the labor market, as opposed to selection based exclusively on specific current labor shortages. Third, it would protect U.S. workers through the imposition of a wage and work experience requirement, thus eliminating preferring immigrant workers because they

are cheaper and limiting competition for entry-level jobs. Finally, the flexible selection criteria system we propose below could be adjusted to changing economic conditions.

a. First Tier (The Truly Outstanding)

The top tier of the new economic immigrant visa system would be similar to the current EB-1 immigrant visa category for "priority workers." Foreign nationals with extraordinary ability enhance the economic strength/health of the United States. So do outstanding professors and researchers. And foreign executives and managers who currently meet the EB-1-3 subcategory's requirements clearly facilitate international trade with the United States.

The numbers of such priority workers are not large. In FY 1994, the INS admitted just 8,097 principal workers in the EB-1 visa category.

b. Second Tier (Selection Criteria Immigrants)

To qualify for our proposed second tier economic immigrant visa category, foreign nationals would have to satisfy three prerequisites. First, they would have to have a U.S. job offer. Second, they would have to have at least three years' work experience in the same occupation for which they are being sponsored. Third, the sponsoring employer would have to agree to pay them the higher of the actual wage the employer pays to other individuals similarly employed with similar qualifications or the prevailing wage rate for the occupation in the area of employment. Individuals who satisfy these three prerequisites would then also need to qualify under a number of selection criteria.

Employer sponsorship prerequisite. Requiring immigrants in the second tier to have a job ensures that they will be working as soon as they enter the United States. This gives them immediate access to economic opportunity, which in turn facilitates a more complete transition into U.S. society. A job offer is the best single assurance that economic stream immigration occurs in an orderly fashion and, together with the selection criteria suggested below, ensures that the immigrant is indeed likely to make a substantial immediate and long-term contribution to the United States.

More importantly, having an employer sponsorship requirement adds another level of screening to the selection process that costs the government nothing. Before an immigrant is formally "tested" under the second tier of our proposed system, an employer will have reviewed his or her credentials, assessed his or her interpersonal and communications skills and likelihood of career success, and have reached a favorable determination on these issues. By the time the employer begins the actual visa petitioning process, he or she will have already decided that the prospective immigrant will make a needed contribution to the employer's business. The fact that the foreign worker meets the program's other selection criteria means that he or she will also have the tools to make a long-term contribution to the broader economy.

However, we recommend waiving the employer sponsorship requirement for self-employed foreign nationals if they meet three requirements. First, they must have five years of work experience, three of which must be as self-employed. Second, they must have a net income of three times the U.S. poverty income guidelines² for the past three years. Third, they must show evidence of contracts from various U.S. clients for their first year in the United States that will total five times the U.S. poverty income guidelines. Self-employed people who satisfy these three prerequisites would also have to qualify under the general selection criteria discussed below before they could immigrate to the United States.

The five years of work experience is higher than the three years of work experience we require for applicants seeking an immigrant visa through an employer to reflect the additional difficulties of the self-employed to succeed economically. Requiring contracts for future work in the United States also satisfies our concerns that immigrants succeed in this country. And making self-employed foreign nationals satisfy the same selection criteria as other second tier immigrants ensures that they have the potential to make a sustained substantial contribution to the United States.

Experience requirement. As a rule, experienced workers make a more immediate contribution to their employer and to the broader economy than do inexperienced workers. Furthermore, admitting inexperienced economic stream immigrants to the

²The 1995 guideline for one person is \$6,970; for two people, \$9,430; for three people, \$11,890; and for four people, \$14,350. Thus a self-employed foreign national with a spouse and two children would have to show an income of \$43,050 over the last 5 years to meet this test.

United States could create competitive situations with U.S. workers vying for entry level positions. Therefore, we propose that an individual must have at least three years of prior work experience to be eligible for second tier immigrant status. The work experience must be in the same area as the occupation in which he or she is being sponsored.

Wage requirement. We propose that employers sponsoring a second tier immigrant must attest that they will pay the foreign worker the higher of the actual wage the employer pays other individuals similarly employed and with similar qualifications or the prevailing wage rate for the occupation in the area of employment. We suggest such a requirement because nothing in the U.S. economic selection system should encourage employers to "prefer" hiring foreign workers simply because they are cheaper. We need to make sure a level playing field exists between U.S. and foreign workers.

Such an attestation requirement creates a new concept of protection for U.S. workers, one that is consistent with American principles of offering equal opportunities and of rewarding investments in one's human capital. Under this concept, firms become more competitive and profitable when they hire the best candidate for a job considering all of a person's characteristics, not on how low a salary a candidate will accept. Such hires contribute to, rather than affect adversely, the long-term interests of U.S. workers.

A well-managed immigrant selection system is thus compatible both with the broader interests of U.S. workers and with overall national goals as long as it is deliberative and responsive to economic circumstances, and is not built on wage inequalities. Naturally, the system's impacts will vary with the ebbs and flows in the demand for labor, the composition of the domestic labor supply, and transformations in the structure of the U.S. economy as it becomes more and more integrated into the global economy.

Selection criteria. Employer sponsorship, previous work experience and a wage attestation should not be enough to allow a person to immigrate to the United States. Immigrants with the greatest potential for making a sustained substantial contribution to the United States would also have the following characteristics: (1) the language ability and communications skills necessary to interact effectively with colleagues and customers; (2) an educational background that has instilled both specific knowledge or technical skills and a facility for abstract thinking; (3) a broad set of general work skills; (4) a demonstrated commitment to improve one's own human capital endowments; and (5) a familiarity with U.S. culture and economic institutions adequate to allow them to adapt to dramatic labor market changes over their careers.

While these are the best selection criteria that are both practical and objective, we do not believe in creating totally fixed factors for determining which people can immigrate to the United States as second tier economic migrants. Set criteria that are relevant now may make less sense if economic conditions change. Moreover, Congress moves too slowly to enact legislative changes on immigration, particularly on the controversial and highly complex topic of economic stream immigration. Just as we want the economic immigrants we choose to be able to adapt, so too we need flexibility in our economic stream immigration selection system. Hence, immigration officials should be given statutory authority to change both the criteria for selecting economic immigrants and the number of points needed to qualify periodically, as economic conditions change.

Our proposed selection system is better than the current system for a number of reasons. First, it better accords with the principle that economic stream immigration should select immigrants with a mix of skills, experience, education and other characteristics that maximize one's economic value and have the probability of long-term success in the labor force. As discussed in chapter four, the current labor certification system instead only focuses on a short-term goal: trying to determine whether a particular need at a particular company at a particular point in time is "legitimate" and whether it should be filled by a U.S. rather than a foreign worker. The current labor certification system is not effective in satisfying the short-term goal, and makes no effort to consider the broader long-term goal.

Second, our proposed selection criteria system better satisfies the principle that the immigrant selection process should be efficient, timely, fair and transparent for all parties. Everyone agrees that the current labor certification system is too bureaucratic, too slow, and too unfair to U.S. workers. Our proposed system would create less bureaucracy. Instead of having to deal with the complex labor certification system, employers could quickly evaluate a prospective employee to see whether they are likely to qualify under the selection criteria we propose, before investing in the selection process. Immigrating under our proposed selection criteria system would also be quicker than under the current system. In some parts of the country,

such as New York, it can take the Labor Department up to two years to process a labor certification application (AILA Monthly Mailing, 1995:180). By contrast, a foreign worker should be able to immigrate to the United States under our system in a few months.

It is up to Congress to engage the appropriate actors in a dialogue about the precise number of points to be accorded to each factor, and the minimum number of points that should qualify an immigrant under the system. We believe, however, that the following factors are critical to making a sustained economic contribution to the United States, and therefore should be included in any selection criteria system.

1. Education

Education is a key indicator of both adaptability and the potential for making a substantial contribution to the U.S. economy. A good, well-rounded education helps people develop key problem-solving skills—skills that will help them throughout their work lives no matter how many times they change jobs or duties.

The next century's labor market elite will be made up of those whom Labor Secretary Reich calls "symbolic analysts," meaning people who can identify, conceptualize and solve problems. Education is a crucial means by which people obtain these important attributes.

In the United States, earnings are a key measure of one's economic "worth." By that measure, education is the strongest predictor of economic success. In 1990, U.S. workers with professional degrees earned an average of \$59,500 per year, while high school dropouts earned an average of just one-tenth of that (\$5,900 annually) (Kominski and Sutterlin, 1992:14). Moreover, the pay differential between college graduates and others is widening. In 1979, college-educated workers earned 33.2 percent more than high school graduates. By 1989, just 10 years later, that earnings differential had increased to 55.7 percent.

Education will become even more important for success in the workforce in the future. The Labor Department estimates that the number of jobs requiring at least a bachelor's degree is expected to expand by about 40 percent by 2005, while jobs that do not require a college education will grow by only 17 percent during the same time period. (DOL, Report on the American Workforce, 1994:28).

2. Age

Other things being equal, younger workers will have more time to make a contribution to the U.S. economy than older workers will. However, young workers with little or no experience are likely to make a smaller immediate contribution than more experienced workers, while also competing for entry level positions with new or recent U.S. college graduates. The economic immigrant selection formula should take these facts into account.

We should not, however, make preemptive judgments about the age in which a prospective immigrant will make his or her most significant contribution to the U.S. economy. A corporation may need to bring in an experienced manager from a foreign affiliate. A magazine may want to hire a well-respected graphic designer who has 30 years of experience overseas. A computer firm may want to employ a young prodigy. For these reasons, we propose that potential immigrants receive a small but set number of points if they are between the ages of 25–50. Older and younger people would not receive any points for age, but could still qualify under the selection criteria system if they otherwise meet the cut-off mark.

3. Language

A person cannot succeed in today's labor market without being able to conceptualize and communicate in English effectively. But assessing a prospective immigrant's ability to do so must not become a bureaucratic morass.

We propose that second tier economic stream immigrants who present evidence that they have at least a three-year college degree and that the principal language of instruction for that degree was English would automatically receive the maximum number of points awarded for the language factor. All other second tier economic stream immigrants would be required to take a standardized test of English proficiency. The most appropriate such test may be the Test of English for International Communication (TOEIC), which is administered by the Educational Testing Service (ETS). The TOEIC tests on-the-job use of English in a variety of job-related settings, such as the ability to understand a business-related conversation and to read English-language manuals, technical books and correspondence. Many foreign companies and governments use the TOEIC to assess how well their current em-

ployees understand English, to hire new employees, and to track the progress of employees in English-language training programs. Over 700,000 people take the TOEIC annually, according to the ETS.

A standardized test like the TOEIC eliminates the need to personally interview prospective immigrants to directly assess their language proficiency; it also eliminates the subjective measurement problems associated with interviewing.

We also propose awarding extra points to individuals who are fluent in a third language besides their native language and English. Knowledge of three languages makes a person more likely to succeed in the labor force and likely to make a more significant contribution to the U.S. economy, especially in the growing international marketplace.

4. Adaptability

The ability to adapt to changing economic and labor market conditions is particularly important in a rapidly changing economy. One of a point system's inherent weaknesses is the difficulty in identifying proxies for measuring an economic stream immigrant's ability to adapt to changing conditions. Objective characteristics such as education, language, age and experience are important in determining a person's potential for making a significant economic contribution and for economic success. These factors, however, are most useful when used in conjunction with other, more intangible qualities that allow an individual to use these characteristics to full advantage. Intangible qualities such as motivation, adaptability, resourcefulness, personal management skills, teamwork skills and the ability to learn are all crucial in determining long-term economic contributions and personal success.

The subjective nature of these factors, however, makes them hard to test for without creating what our proposal seeks to avoid: a bureaucratic, resource-intensive, fraud-prone, and ultimately unsatisfactory process. Nevertheless, some objective proxy variables can be developed that can help predict likely adaptability. Prospective second tier immigrants might be assessed on the following matters: (1) prior work experience or study for a substantial period of time in the United States or another foreign country other than their own; (2) prior personal or professional development or on-the-job or other training, including language classes, as evidenced by a certificate of completion; (3) any leadership role in teamwork arrangements; and/or (4) prior work in a multi-country team setting. Applicants would receive one or two points for each of these factors they could answer affirmatively and for which they could provide evidence.

Procedural aspects. Once Congress has set the general factors and parameters for the selection formula, the INS would implement regulations detailing the eligibility requirements and threshold cut-off point for the first year. Employers, reviewing those requirements, would make preliminary assessments of potential foreign nationals they want to sponsor for an immigrant visa. Employers would then submit a petition to an INS regional processing center, setting forth documentation about the requisite job offer, the person's work experience, and the wages the person would be paid. Employers would also include documentation on how the potential immigrant meets the selection criteria system threshold. The INS would make an independent determination of whether the individual qualifies under the selection criteria system and conduct the necessary background check to make sure that he or she is not excludable. If the person is already in the United States, he or she could adjust status at an INS office. If he or she is outside the United States, a consular officer or a member of a specially-trained corps of INS examiners (see below) would issue the immigrant visa, as is currently the case.

c. Third Tier (Immigrant Investors)

This tier would be reserved for investors. Investors fit our model because they enhance the economic well-being of the United States through their capital investments in this country. As described in chapter 3, the current EB-5 immigrant visa category allows investors to obtain lawful permanent resident status in the United States under certain conditions. The current requirements for EB-5 status, however, are too onerous and restrictive, as evidenced by the fact that only 157 EB-5 principal immigrants were admitted in FY 1994.

Congress should liberalize the requirements for immigrant investor classification. A major impediment appears to be the requirement that the investment create or keep at least 10 jobs for U.S. workers over a two-year period. No businessperson can know for sure whether his or her investment will work out, and whether it will create a significant number of jobs. Congress created the 10 jobs requirement basically out of thin air, as a political fig leaf to hide the category's true intention: to attract wealthy foreign investors (particularly from Hong Kong) who had been flock-

ing to Canada and Australia under those countries' investor categories. Canada and Australia do not explicitly impose such a requirement, and many successful domestic investments in the United States create far fewer than ten new jobs.

The ten jobs requirement also tends to direct investments toward labor intensive industries, since they are more likely to be able to generate ten new jobs over two years. Investments in the restaurant or lodging industries, for instance, employ primarily low-wage, low-skill workers. Rather than focusing on the number of jobs created or saved, we might consider the quality of the jobs created or saved in evaluating an immigrant investor's contribution to the U.S. economy.

Another component of the current immigrant investor program that may require rethinking and refinement is the grant of conditional residence to the investor for the first two years. At that time the investor must show that he or she has continued to meet the statutory criteria, including creating the required number of jobs and maintaining the requisite amount of capital investment. Foreign investors who do not substantially comply with those requirements lose their status and can be placed into deportation proceedings. These are big risks for any investor, especially in uncertain economic times, and deter many people from applying for immigrant investor status.

In effect, both the statute and the implementing regulations have turned the immigrant investor category into a singularly unsuccessful program. The program's onerous requirements virtually assure that many of the few people who do pursue the visa may in fact be doing so for the very reason legislators and regulators have tried to discourage: using the investment as the price for obtaining a green card, rather than as an investment opportunity that carries with it the important secondary benefit of a U.S. immigrant visa.

We recommend that Congress amend the immigrant investor program by, among other things: (1) reducing the number of jobs that must be created from ten to three; (2) allowing investors who fail to substantially comply with the requirements after two years to remain in the United States in nonimmigrant status; (3) reducing the amount of capital required to be invested to \$750,000; and (4) eliminating the differential investment requirement for different localities.

d. Athletes, Artists and Entertainers

Truly outstanding athletes, artists and entertainers enrich the country's cultural and artistic life through their talents. They also enhance the economic well-being of the United States both directly through their achievements and indirectly through exports of the products of their talents, such as overseas sales of books, movies, records, and broadcasts. For example, the U.S. motion picture industry alone had exports of \$2.53 billion in 1993 (Department of Commerce, Survey of Current Business, Sept. 1994: 118). In addition, the United States has various reciprocal agreements in this area that govern the treatment of such personnel.

Extraordinary athletes and entertainers who qualify for EB-1 status would continue to immigrate in our proposed top tier. Other athletes might qualify under the second tier, depending on their particular characteristics. The remainder might qualify for a nonimmigrant visa, but might not be able to stay here permanently unless they could meet the second tier criteria at a future time.

e. Miscellaneous Immigrants

Currently, about 8,000 immigrants enter the United States each year in the employment-based fourth preference (EB4) immigrant visa category. This category covers such disparate groups as certain religious ministers, certain overseas employees of the U.S. government, former employees of the Panama Canal Company and their families, juveniles who have been declared dependent on a U.S. court, and retired employees of international organizations and their families.

While this category is currently part of the employment-based stream, immigrants who enter under the EB4 category usually are admitted regardless of their employment characteristics. This category is truly a miscellaneous category, and should not be included in the economic stream selection process. Instead, it should be changed to its own "miscellaneous" category. When creating this new miscellaneous category, Congress should consider requiring religious ministers to have at least three years of full-time prior experience abroad and to attest to their planned work in the United States.

ATTACHMENT

Proposed Economic Stream Categories and Hypothetical Scenarios

by

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1. Proposed Immigrant Visa Categories for Economic Stream Immigrants

Category/Name	Requirements/Description
First tier (Truly Outstanding)	Equivalent to current EB-1 category 3 subcategories: <ul style="list-style-type: none"> • Individuals with extraordinary ability • Certain outstanding professors and researchers • Certain multinational executives and managers
Second tier (Selection Criteria Immigrants)	<ul style="list-style-type: none"> • Employer sponsorship requirement¹ • 3 years' work experience requirement • Prevailing wage attestation requirement • Must receive at least 15 out of 23 points under certain selection criteria factors (see below)
Third tier (Immigrant Investors)	<ul style="list-style-type: none"> • Must invest at least \$750,000 • Must create, add or save at least 3 jobs for U.S. workers

¹The employer sponsorship requirement would be waived for self-employed foreign nationals who meet three requirements. First, they must have five years of work experience, three of which must be as self-employed. Second, they must have a net income of three times the U.S. poverty income guidelines for the past three years. Third, they must offer evidence of contracts from various U.S. clients for their first year in the U.S. that will total five times the U.S. poverty income guidelines.

2. Proposed Selection Criteria System Factors (Second Tier Only)

A. Education (maximum 7 points)

High school:	1
Some college:	2
B.A.:	4
Master's/MBA/JD:	6
PhD/MD:	7

Alternative to formal education for certain highly skilled craftspeople (maximum 6 points):²

Completion of a apprenticeship/vocational program plus five years' post-vocational degree experience:	5
Master craftsperson/teacher of trainers:	1

B. Age (maximum 3 points)

< 25	1
25-50	3
>50	1

C. Language (maximum 8 points)³

Functional English:	3
Fluent English:	5
Fluency in a third language besides English and native language:	3

D. Adaptability (maximum 5 points)

1. Has worked or studied for a substantial period of time	2
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²Formal training through rigorous apprenticeship programs, like the ones many skilled workers receive in other advanced industrial societies, is invaluable for learning skills and preparing for occupations in which recurring spot shortages occur in the United States. We propose that such an apprenticeship be combined with at least five years' experience working in progressively more responsible positions following the apprenticeship. An additional point would be accorded to master craftsmen who, in addition to their own economic contributions, can help train U.S. workers in their craft. *Alternatively*, if a labor union and an employer jointly petition for such an individual, it should be considered *prima facie* evidence that allowing such a person to enter the United States meets a labor market need, has no adverse effects on U.S. workers, and serves broader economic interests. Accordingly, in such instances the selection criteria should be waivable on a case-by-case basis.

³Second tier economic stream immigrants who present evidence that they have at least a three-year college degree and that the principal language of instruction for that degree was English would automatically receive the maximum number of points (5) for this factor. All other second tier economic stream immigrants would be required to take a standardized test of English proficiency. We recommend using the Test of English for International Communication (TOEIC), which is administered by the Educational Testing Service (ETS).

in the United States or another foreign country before: ⁴	
2. Has taken advantage of opportunities for personal or professional development, including language classes, or received and completed on-the-job or other training, as evidenced by a certificate of completion: ⁵	1
3. Has taken a leadership role in teamwork arrangements, as evidenced by an affidavit from employer or supervisor: ⁶	1
4. Has worked in a multi-country team setting before, as evidenced by an affidavit from employer or supervisor: ⁷	1
Total maximum points:	23
Proposed pass mark:	15⁸

⁴ Such work or study experience provides a useful knowledge of language, customs, and understanding of other labor markets and business practices. It is thus one of the strongest predictors of success.

⁵ Applicants who satisfy this factor will have demonstrated initiative and a commitment to improving themselves in ways that will serve them, their employers, and the United States well over the long term.

⁶ This factor shows an ability to adapt, to be flexible, and to be a team player—all characteristics that serve both businesses and workers well and traits that successful businesses increasingly demand of all employees.

⁷ Cross-cultural team work is essential in an increasingly global economy.

⁸ The proposed pass mark may need to be modified under certain sets of circumstances not anticipated here. This is why flexibility in the system is crucial.

3. Hypothetical Scenarios

1. Alice Australia graduated three years ago from a U.S. college with a B.A. degree in computer science. She is now 25 years old. Since graduation, she has been working on an H-1 visa for a large U.S. computer software company, where she has received on-the-job training, become a leader on her software team, and has worked in a multi-country setting modifying software for export to Australia and other countries.

Education:	4
Age:	3
Language:	5
Adaptability (nos. 1-4):	5
Total:	17 (passes)

2. Ben Briton just graduated from a U.S. college with a master's degree in plant physiology. He is ineligible for a second tier immigrant visa right away because he has no work experience. He may qualify for an H-1 or other nonimmigrant visa now, and can consider applying for a second tier immigrant visa in three years.

3. Kurt Craftsman is a master craftsman in machine tool die manufacturing in Germany. He is 30 years old, and has six years of experience. A U.S. company wants to hire him to teach U.S. workers his unique skill. The relevant U.S. labor union agrees there is a shortage of U.S. workers with Kurt's skills, and has no objection to his entering the United States. Kurt has a functional but not fluent command of English.

Master craftsman:	6
Age:	3
Language:	3
Adaptability (no. 2):	1*
Total:	13 (fails)

Comments: Additional training in English will allow Kurt to meet the pass mark; alternatively, a "no objection" letter from the plant's union representative allows the INS to waive the selection criteria formula and admit Kurt.

4. Donna Djibouti received a Ph.D. in comparative languages three years ago. Since that time she has been teaching as an assistant Arabic professor at a U.S. college. The college now wants to sponsor her for an immigrant visa. Assume she does not meet the criteria to qualify as an outstanding professor in our proposed first tier. Donna is 27 years old, and speaks fluent English, Arabic and French.

Education:	7
Age:	3
English language:	5
Extra points for knowing third language:	3
Adaptability (no. 1):	2
Total:	20 (passes)

* Kurt's completion of extra training to become a master craftsman is evidence of this adaptability factor.

5. Eddie Ecuador is an up and coming star on the international professional bowling circuit who wants to immigrate to the United States. After three years on the circuit he is earning more than \$100,000 a year and is currently ranked 50th in the world. Eddie has a high school degree and attended college for two years before dropping out to become a professional bowler. He speaks fluent English. He is 24 years old.

Education:	2
Age:	1
English language:	5
Adaptability:	0
Total:	8 (fails)

Comments: Eddie currently does not have extraordinary ability to qualify for our proposed top tier immigrant visa category, although he may in a few years if he continues his rise on the professional bowling circuit. He clearly does not have enough points under our selection criteria to qualify as a second tier immigrant. Our proposed system, however, is not geared to admit every foreign national who wants to immigrate to the United States, no matter how much money they are earning. We should only admit those immigrants who possess characteristics that enhance the prospects that they will make long-term contributions to the economic strength of the United States, help facilitate international business and trade, and generally promote U.S. interests and priorities. Eddie's admission to the United States will primarily add value to himself, rather than anyone else.

6. Francine Franconia is a violinist who graduated three years ago with a degree from a highly respected music conservatory in Paris. Since then she has played for various orchestras in Europe. The Syracuse Symphony wants to hire her as a section violin player. They picked her after doing blind screenings and an audition, where she clearly was the best qualified candidate. Francine speaks fluent English. She is 24 years old.

Education:	4
Age:	1
English language:	5
Adaptability (nos. 1,2):	3 ¹⁰
Total:	13 (fails)

Comments: Francine does not have the extraordinary ability needed to qualify under the first tier immigrant visa category. Nor does she appear to have quite enough points to qualify under our proposed selection criteria for a second tier immigrant visa, although she is close to the 15 point pass mark. Here the INS may want to consider giving Francine three points for her age, instead of just one, because her unique talent is not age sensitive. This hypothetical scenario shows that the INS will need to have flexibility in administering the selection criteria system. Such flexibility should be delegated to the INS by statute, so that the agency is not hampered by statutory roadblocks or congressional micromanagement.

7. Gibert Goalie is a promising goalie on the Boston Bruins' Canadian farm team. Gibert is 22 years old, and speaks only passable English, because he grew up in Quebec. He finished

¹⁰ Francine satisfies adaptability factor number one because she has played in various orchestras around Europe. Assume she qualifies for adaptability factor number two because she has taken advanced masters classes in violin at summer music institutes in Europe since she received her degree.

high school in Quebec before joining the Bruins' farm team three years ago.

Education:	1
Age:	1
English language:	3
Adaptability:	0
Total:	5 (fails)

Comments: At this point in time Gibert clearly does not have enough points to meet the pass mark to be a second tier immigrant. An H-2B nonimmigrant visa is possible for him. He may also qualify for a P visa.

8. Same as No. 7, except that now Gibert has played on the Bruins' Canadian farm team for three years, and his nonimmigrant visa is about to expire. The Bruins think he has matured, and plan to use him as their starting goalie in Boston next year. Assume Gibert has taken English classes during the last three years to improve his English.

Education:	1
Age:	3
English language:	5
Adaptability (nos. 1-4):	5 ¹¹
Total:	14 (fails)

Comments: If Gibert is going to be the Bruins' starting goalie next year, he would qualify for first tier immigrant status as an alien of extraordinary ability. If so, the Bruins will not have to worry about the second tier selection criteria system. If Gibert does not qualify for immigrant visa status as an alien of extraordinary ability, however, he appears to lack enough points for entry under our proposed second tier selection criteria system.

9. Harry Hungarian, 25 years old, is a computer science wizard who came to the United States three years ago on a tourist visa. He was so impressed by the entrepreneurial spirit in the United States that he has stayed ever since. For that reason, he did not complete his bachelor's degree in Hungary. During his stay in the United States Harry has established and built up a successful computer software company. He now employs 15 workers, and his company makes \$100,000 in profits each year. He speaks functional but not fluent English. Because he has been so busy running his company, Harry's only "training" since his arrival in the United States is a self-help course he attended that was given by Anthony Robbins. Harry now wants to legalize his status by getting a green card.

Education:	2
Age:	3
English language:	3
Adaptability (nos. 2, 3):	2 ¹²
Total:	10 (fails)

Comments: Harry lacks extraordinary ability for the first tier immigrant visa category, and does not have enough points for the second tier selection criteria system. Harry conceivably could qualify in the third tier as an immigrant investor, assuming he invests an additional \$750,000 to expand his growing business and creates jobs for an additional three U.S. workers. In any event, and the issue of Harry's illegal overstay aside, unless Congress chooses to reward entrepreneurial spirit and inventiveness separately during the vetting of a system such as the one proposed here, Harry cannot receive an immigrant visa under our second tier selection formula.

¹¹Gibert could qualify for all 5 adaptability points under the following assumptions. First, he worked in the United States whenever the Bruins' farm team played other NHL farm teams in the United States. Second, he has received on-the-job training through instruction from his coaches and by attending special goalie training camps during the off-season. Third, he has assumed a leadership role on the farm team, as evidenced by an affidavit from his coach. Fourth, U.S. hockey players are also on the farm team, thus showing that Gibert has worked in a multi-country team setting.

¹² Harry will receive one adaptability point for his leadership role in starting and running his company. The second adaptability point assumes that the Anthony Robbins self-help course that Harry took qualifies as personal or professional development.

Senator SIMPSON. Next, Michael Teitelbaum, please.

Mr. Teitelbaum, when did you first work as a congressional aide?

Mr. TEITELBAUM. Nineteen seventy-eight. It was a good year, as I remember it.

Senator SIMPSON. It was, indeed.

STATEMENT OF MICHAEL S. TEITELBAUM

Mr. TEITELBAUM. Thank you, Mr. Chairman, Senator Kennedy, Senator Feinstein, ladies and gentlemen.

Like Professor Briggs, I enjoy my work. I am not a professor anymore; I am a foundation executive, and I am also a member of the Commission on Immigration Reform, so I do want to say right up front that I am appearing here at your invitation and in my personal professional capacity, and not on behalf of the Commission on Immigration Reform or, for that matter, on behalf of my employer.

The first thing I would like to do is to offer my congratulations to you all for dealing with immigration issues—and I think the tone of this hearing reflects what I am about to say—in a rational and noninflammatory manner. This is a volatile issue, as Senator Feinstein has pointed out, especially in California. It is all too easy to fan the flames, and I think the Nation must appreciate how careful the members of this subcommittee have been in not contributing to that kind of exaggerated picture.

I looked at the outline of the bill. I think it deals in an honest and realistic manner with many of the serious problems that afflict current policies regarding legal immigration, and I think it deals with them in a national interest framework, the framework that was emphasized by the Commission on Immigration Reform.

In the 4 minutes or so that I have left, I want to focus on a couple of general points and obviously will not deal with any of the details in the time available.

The first general point is to say that on initial reading, the bill, the discussion draft, incorporate numerous provisions that are wholly consistent with the spirit and the intent of the Jordan Commission's recommendations. I know from all too many hours of intensive deliberations on this commission that it includes among its members nearly the full range of American policy views on immigration issues. It is also a completely bipartisan commission, though, as members of this subcommittee know very well, party affiliation does not mean much when it comes to immigration questions.

Given this, I want to emphasize to you that all of the recommendations of the commission regarding legal immigration issues were supported by at least eight of its nine members, and some were supported by all nine.

For me, this means that this draft bill represents points of broad consensus that are held by a very wide range of mainstream American opinion on these difficult and contentious issues. That is my first general point.

The second general point—and I will focus on that for the remainder of my time—has to do with the rationale for substantial numbers of visas, whether they be immigrant or nonimmigrant visas, for foreign nationals possessing high levels of skills.

I see substantially three rationales for substantial numbers of skills-based visas. We often confuse these rationales, or we slip and slide from one to the other. They are all to some extent probably valid, at least in terms of direct impacts.

The first rationale is a human capital rationale. It says that by selecting some immigrants on the basis of skills, we contribute to human capital in the United States, given that overall immigration numbers are dominated numerically by family-based immigration.

The second rationale—and this has been mentioned by previous witnesses—is to improve the economic success potential of immigrants who are moving into an economy in which skills have become nearly essential for success.

And the third, at the corporate and I would say at the university level as well, is to respond to employers who assert that certain skills are so scarce in the U.S. labor force that they need to import them from abroad.

But there are weaknesses in all of these rationales. First, the benefits of such admissions to the immigrants and their employers can be seen clearly and are seen clearly by both, but the harms of such admissions are not visible. They are indirect, they are deferred; many of the people affected do not even know they have been affected. And second, the needs for such immigrants are assessed principally in terms of the direct and immediate, rather than the indirect and incentive, impacts. In fact, the system is not designed to take into account the indirect impacts or the disincentive or incentive effects upon the domestic educational system and labor markets.

Are there incentive and disincentives for U.S. students, whether they be citizens or legal permanent residents, to change their career decisions based upon the relatively remuneration and availability and security of employment? It takes, for example, a lot longer to get a Ph.D. in science or engineering than a law degree. And how do these incentives and disincentives work for U.S. employers? Is it easier for them to petition for visas, to import foreign workers, to craft a job advertisement designed to keep on a foreign-born employee who is already on the job, to engage in intensive national recruitment from the domestic work force, or to train their work force more?

This is an example of what I mean by incentives and disincentives. All of you have heard forecasts of shortfalls and labor shortages of Americans with science and engineering skills; you have been through that, and I have a long discussion of that.

I see the red light, Mr. Chairman. I think I should stop, but I do want to say that I would like to associate myself with the remarks of Mr. Fraser earlier, that the bill could benefit from inclusion of nonimmigrant visas as well as immigrant visas with respect to the skill categories. These are surprisingly numerous, and if you heard his remarks, he did say that a very high percentage of petitions for employment-based permanent visas are applied on behalf of people who are already working in the United States on temporary visas.

So I think we have a system here where we have to pay attention not just to the end point of the system, but to the internal structure of the system.

Thank you, Mr. Chairman.
 [The prepared statement of Mr. Teitelbaum follows:]

PREPARED STATEMENT OF MICHAEL S. TEITELBAUM

Mr. Chairman, Senator Kennedy, Members of the Subcommittee, Ladies and Gentlemen: I am Michael S. Teitelbaum. By background I am a demographer who has done research on human fertility behavior both contemporary and historical, and on international migration and refugee movements around the world. By occupation, I am a foundation executive at the Alfred P. Sloan Foundation in New York. Currently, I am serving as a Commissioner and a Vice Chair of the U.S. Commission on Immigration Reform. I wish to emphasize that I appear before you this afternoon at your invitation and in my personal professional capacity, not on behalf of either the Commission on Immigration Reform or my employer.

First, may I offer my congratulations for dealing with immigration issues in such a rational and non-inflammatory manner. The overall structure of the Bill confronts, in an honest and realistic manner, many of the serious problems that afflict current policies regarding legal immigration. Many of these problems are, alas, of our own making, based upon too-easy acceptance of special pleading by economic, regional or ethnic interest groups. In admirable contrast, the overall framework here is consistent with the national interest emphasized by the Commission on Immigration Reform.

Having said this, I wish to offer comments on two aspects of general directions that underlie current and proposed immigration policy, and then turn briefly to several specific points raised by the discussion draft.

I. IN THE MAINSTREAM

The first matter of general directions is to note that, on initial reading at least, the discussion draft of this bill incorporates numerous provisions that are wholly consistent with the spirit and intent of the recommendations prepared for your consideration by the Commission on Immigration Reform. I know from many hours of intensive deliberations that this Commission includes among its members nearly the full range of American policy views on immigration issues. It is also completely bipartisan, although party ties are a poor guide to a person's views on immigration policy issues. Given this, I want to emphasize that all of the recommendations of this Commission regarding legal immigration issues were embraced by at least 8 of its 9 members, and some by all 9.

For me, this means that this bill represents points of broad consensus held by a very wide range of mainstream American opinion on these difficult and contentious issues.

II. SUBSTANTIAL VISA NUMBERS FOR HIGH-SKILLED IMMIGRANTS

The second matter of general direction concerns the rationale for substantial numbers of visas—whether immigrant or nonimmigrant—for foreign nationals possessing high levels of skills. There are essentially three rationales for the substantial numbers of skills-based immigrants, all of which are probably valid, to some extent at least, in terms of direct impacts.

1. At the aggregate level, to increase the extent to which overall immigration to the U.S. contributes to "human capital" by selecting some immigrants on the basis of skills, given that overall immigration numbers are dominated numerically by family based immigration. In this form, skill-based immigration is seen as a kind of counter-balance to low-skill immigration, entering legally on the basis of family ties and illegally due to ineffective laws and law enforcement.

2. At the individual level, to improve the economic success rate of immigrants, who are moving into an economy in which skills have become nearly essential for success. This represents an implicit recognition that adding low-skill people to an advanced economy with a surplus of low-skilled people is not good for either the immigrants or the native low-skilled.

3. At the corporate and university level, to respond to employers who assert that certain skills are so scarce in the U.S. labor force that they "need" to import them from abroad. This recognizes that there are cases in which claims of "skills mismatch" or temporary shortages of skilled labor are valid.

But the weaknesses are . . .

- While the benefits of such admissions to the immigrants and their employers can be seen clearly, the "harms" of such admissions are assessed quite poorly. Overall, it is actually quite difficult to assess net costs and benefits, since the

costs and benefits accrue to quite different persons, and many (other than the immigrants and their sponsors) are not even aware of them.

- The "needs" for such immigrants are assessed principally in terms of the direct and immediate rather than the indirect and incentive impacts.

In fact, the system is not really designed to pay much attention to the indirect impacts upon the "seed corn" of the domestic educational system and labor markets. For me, the key to any improved system would be to find ways to judge the incentive and disincentive impacts:

- Are there unintended incentives and disincentives for U.S. students (whether citizens or legal permanent residents), based upon the attractiveness of alternative careers in terms of relative remuneration, availability and security of employment? In this regard, it is worth noting that some of these highly-skilled occupations require qualifications that imply enormous investments of money and time—it takes far longer to get a Ph.D. in science or engineering than a law degree, for example, and once completed the new Ph.D. is more likely to face poor employment prospects and low remuneration.
- How do the incentives/disincentives appear for U.S. employers to meet their short-term labor needs? Is it easier to:
 - petition for visas to import foreign workers,
 - craft a job advertisement designed to keep on a foreign-born employee who is already on the job in a temporary capacity,
 - engage in intensive national recruitment from the domestic work force,
 - or
 - design intensive training programs for current less-skilled workers?
- What are the incentive/disincentive effects upon disadvantaged U.S. minorities to make the investments required to enter careers in which they have been historically underrepresented?

Members of this Subcommittee are quite familiar with those who used to point to looming, substantial "shortfalls" or "labor shortages" of Americans with science and engineering skills. Some of these projections were propagated in 1989 and 1990 by officials of a Federal agency. Such claims formed part of the basis for the expansion of the number of visas in such categories in the Immigration Act of 1990.

The Sloan Foundation believes that these are issues of great importance to the future performance of the U.S. economy in an increasingly global market, and hence has supported a number of research projects on these issues over the past 7–8 years. I should emphasize that these projects were selected by peer-review, and undertaken by researchers representing a very wide range of policy opinions. Some studies deal with the scientific and engineering labor markets as such, while other focus on these markets in relation to immigration issues.

On the basis of these studies and my own professional experience, I have concluded that claims of "shortfalls" or "labor shortages" in science and engineering have typically been justified not on the basis of any credible empirical evidence, but rather on outdated data from the 1980s, dubious projections based on flawed assumptions, or a few examples of very specific—even unique—skills that by definition are scarce, both here and abroad.

Although there are not now—and probably never were—substantial shortages of scientists and engineers in the United States, occasions do indeed arise in which a U.S. employer needs to import rare or even unique skills from abroad. Immigration law should be flexible enough to allow the issuance of visas for such rare or uniquely-skilled individuals, and on an expeditious basis to capture the greatest economic value of such skills. At the same time, U.S. policy should not be so naive as to allow this situation to be manipulated by job descriptions tailored to demonstrate a "shortage", or to conflate unique or rare skills with more "generic" skills such as "computer programmer" or "engineer" or "biological scientist", of whom there are literally millions in the United States. To be specific, tabulations of the 1990 Census show there were:

- 1.9 million engineers that year, up nearly 25 percent from 10 years earlier;
- 780,000 math/computer scientists in 1990, up 139 percent from 325,000 in 1980; and
- over 400,000 natural scientists in 1990, up a third from 1980.

In none of these cases did the share of foreign-born persons exceed 13 percent. The realities of recent labor market conditions for engineers and scientists in the United States have turned out to be the very opposite of the "labor shortages" claimed or predicted by witnesses who have appeared before this Committee. Since 1990 (and it has not been very long since then), unpredicted developments have proven how unwise it is to make such claims. There have been reductions in defense procurement, cutbacks in some areas of governmental research funding, and

downsizing of many of the firms that employed large numbers of scientists and engineers.

The result, only a few years after confidently-voiced "shortfall" and "shortage" claims, is clear surpluses of scientists and engineers in the U.S. labor force. My understanding is that when former Federal officials responsible for such claims were later asked by a Congressional committee to justify their projection of "shortfalls", they asserted that the projection was only a simulation, one of many possible futures, not a forecast, etc.

The most negative impacts, naturally, have been felt by those newly entering the science and engineering labor force, after having spent many years and tens of thousands of dollars gaining the skills required. Here I would refer you to a recent report by the Commission on Professionals in Science and Technology, a participating association of the American Association for the Advancement of Science, concerning the labor market conditions currently being faced by young researchers in the fields of chemistry, computer science, geosciences, mathematics, physics, and psychology. Overall, the report concludes that:

The current labor market for researchers recently granted their doctorates has deteriorated over the past five years. It is taking new doctorates longer to find permanent positions and a growing number are taking temporary, low-paying postdoctoral positions for some number of years while they await an opening. This trend should be of concern for three major reasons.

First, as a nation we make substantial investments in the education and training of these doctorates through government support to both individuals and universities. Second, as individuals, these doctorates make substantial personal investments of time and money in their education and training with the assumption there will be work for them in science upon completion. While these doctorates will eventually find employment, it may not be the employment they had expected. While this may not be bad in the long run, it is certainly disconcerting for the PhDs who expected to be bench scientists and there is no room at the bench. Third, the "shelf" or "half" life of knowledge in these fields is likely to introduce additional difficulties for scientists who are out of the lab for relatively long periods of time. They may at some point cease to be employable in their fields.¹

I would add only that long term unemployment is not a likely outcome for the intelligent and highly-skilled young Ph.D.s involved, and they may turn out to be highly productive contributors to the U.S. economy. But one can certainly understand their frustration.

Other recent studies have examined the behavior of American universities in this domain, and conclude that they continue to produce Ph.D.s in science and engineering in numbers that exceed demand for such skills in the U.S. economy. One study by Professor William Massy of Stanford and Dr. Charles A. Goldman of RAND estimates that such excess production exceeds 20 percent annually.² With respect to science Ph.D.s, let me quote briefly from an article entitled "After the Big Crunch", just published this summer in the *Wilson Quarterly* by Professor David L. Goodstein, Vice Provost and Professor of Physics at Cal Tech:

* * * As the growth of science slowed in recent decades, it did not take long for the smarter students to realize that not everyone with a Ph.D. could become a research professor. As a result, the number of the best American students who went on to graduate school in science started to drop around 1970, and has been decreasing ever since.

Despite this decline, research professors have been turning out far more scientists than American universities can employ, indeed, far more scientists—now that the Cold War is over and now that the great corporations such as IBM and AT&T have decided to turn away from basic research—than the U.S. government, industry and academy together can employ.

How have the research professors pulled off this trick? The answer is actually rather simple * * * foreign students have taken the places of the missing American students and now constitute roughly half of the Ph.D. holders that American research professors are turning out.

¹ Commission on Professionals in Science and Technology, *Assessing Imbalance Between Young Researchers and Employment Opportunities*, Washington, May 24, 1995, p. 23.

² William F. Massy and Charles A. Goldman, *The Production and Utilization of Science and Engineering Doctorates in the United States*, Discussion Paper, Stanford University, 1995.

There was one other trick that the professors employed to ward off the effects of the Big Crunch and pretend that it had not occurred. They multiplied the number of postdoctoral research positions, thus creating a kind of holding tank for young scientists that allowed them to put off the unpleasant confrontation with the job market for three to six years, or in some cases even longer.³

This is consistent with the conclusions of another study by David North,⁴ which describes U.S. universities as the principal "gatekeepers" determining the number of foreign students. Surprisingly, North reports that such foreign students disproportionately receive research assistantship funding to finance their graduate studies, most of which comes from U.S. government research grants and contracts.

If Messrs. Goodstein and North are right, the fact that current immigration law effectively delegates to university departments decisions about the issuance of foreign student visas, coupled with the understandable desire of such departments to keep up their graduate enrollments and the availability of U.S. government and/or university funding (research or teaching assistantships) for such students, has created a powerful set of incentives encouraging the admission of more foreign students. Over the same period that employment prospects and remuneration levels have made careers in these fields less attractive to U.S. students, the easy availability of foreign graduate students has allowed Ph.D. production to continue in excess of the demand for such skills in the U.S. labor force.

There is by now a growing realization that this is a system that is out of equilibrium. For me, those that should be of highest concern are the most vulnerable among the science and engineering workforce, particularly young scientists and engineers who have just completed the required degrees after much effort and expenditure, only to emerge into a chilly welcome in the labor market.

For the United States, these young men and women are the "seed corn" of these important fields. Moreover, there are the "incentive" effects mentioned earlier: the difficulties recent graduates are experiencing in seeking stable and remunerative jobs surely are being observed by younger American students who are interested and capable in science and mathematics, but who may conclude that it would be unwise to pursue such careers given what recent graduates have been experiencing. Immigration policy is only one of several reasons that U.S. scientists and engineers are experiencing real difficulties, but given the density of foreign graduate students in these fields it may be an important one.

My personal conclusion: Immigration policy should be framed to allow U.S. employers expeditious access to individuals from abroad who are uniquely-qualified or possess specific skills that are very scarce in the United States. But evidence of a short supply of such individuals does not justify a large number of visas for persons with more "generic" skills in science and engineering, who are in ample supply in the country. It would be particularly unwise to admit large numbers of baccalaureate level engineers to compete with recent B.S. recipients newly entering the labor market, or those (other than certain truly "extraordinary" individuals) who hold Ph.D.s in scientific fields in which entry-level jobs are scarce. Finally, it would be desirable if U.S. universities would re-examine their practices regarding admission and financing of foreign students to assure that they serve national as well as institutional interests.

Now let me turn to several points on which I wish to make specific comments or raise questions, as follows:

1. May I express my compliments to you for including the "Insurance Requirement for Parents" in Section 101(b) and for "Certain Disabled Sons and Daughters" in Section 105(c). In the absence of such a requirement, the alternatives are quite clear. Either many such admitted immigrants would not get the care they need and deserve, or such care would be financed by the American health care system (Medicare, Medicaid, hospitals), already facing terrible fiscal problems, rather than by the sponsor. As you know, the utilization of SSI and Medicaid by immigrant parents has been rising disturbingly rapidly in recent years.

With respect to the responsibilities of sponsors, it is my understanding the S.269 deals with reforming the remarkable deficiencies of the current "affidavit of support". So long as courts and the executive branch continue to treat these Affidavits as not legally binding upon those who sign and submit them, serious financial problems will continue to be experienced by immigrant parents and by Federal, State and local governments alike. This, too, was the subject of a clear recommendation by the Commission on Immigration Reform.

³ David L. Goodstein, "After the Big Crunch", *Wilson Quarterly*, Summer 1995, p. 54-55.

⁴ David S. North, *Soothing the Establishment: The Impact of Foreign-born Scientists and Engineers in America*, Lanham, Md., University Press of America, 1995.

2. I have a concern about the definition of "multinational firm" appearing in Section 103(1)(B)(ii). These visas are intended to admit "certain multinational executives and managers" exempt from any labor certification requirement of any kind. I am assuming that what is intended is the admission of genuine executives/managers of what we all would consider genuinely multinational firms. Under current law and practice, as I understand it, this is not the case: almost any foreign firm that wishes to open an office in the United States is defined as "multinational", even if its U.S. office employs only one or two people and the only office outside its home country.

The definition in this Bill is an improvement, in that it seeks to set a minimum number of employees, both worldwide and in the U.S., as a minimum standard to qualify. However, I wonder if the legal definition proposed here is sufficient to limit eligibility to what all of us have in mind as a genuine "multinational firm". For example, would a small garment manufacturer in Fukian Province, China or the Dominican Republic, employing at very low wages 100 sewers in Fuzhou City or Santo Domingo and 25 in New York, thereby reach the level of what we mean by "multinational firm". The capital investment required (125 sewing machines) and the dollar volume of business done by such a firm might be very small indeed. At the same time, we know that the "snakeheads" (i.e. organized crime) in Fujian Province are charging \$30,000-40,000 per person for either fraudulent entry or illegal entry to the U.S.

As this hypothetical example suggests, it may be worth considering the addition of some required substantial volume of business, in addition to the number of persons employed, to qualify for a category allowing admission exempt from labor certification.

3. With respect to the Investors provision, Section 103(C)(iii) requires such immigrants to engage in a new commercial enterprise which will " * * * create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence (other than the immigrant's spouse, sons, and daughters)."

Presumably the intent of the parenthetical exclusion is to make sure that such investors create or invest in businesses that provide jobs for at least 10 U.S. citizens and legal permanent residents other than his/her family members. I hope you will consider, then, whether the exclusion should extend as well to brothers, sisters, parents, i.e. the extended family as well as the nuclear family of the applicant.

4. With respect to the conditional basis for admission of employment-based immigrants, also recommended by the Commission on Immigration Reform: One objection I have heard to this provision is that it might tie the immigrant unduly to the employer; the pejorative characterization would be "indentured". The Bill seeks admirably to prevent abuses of such employees by unscrupulous employers under the Waiver provisions in Section 103(b)(3)(D).

However, there remains the question of whether there is a need to grant permanent visas to persons entering in response to employers' petitions that current or recent efforts to recruit such workers domestically have not proved successful. As discussed earlier, many of the foreign scientists and engineers admitted over the past few years were admitted on the basis of alleged short-term "shortages" or "shortfalls". Yet they were issued permanent visas, and cannot be asked to return home now because there is no longer a "shortfall" (if ever there was one, in reality or in prospect).

It is not clear to me why visas for permanent immigrants should be provided to employers alleging only a current or short-term "need." I have heard one of your other witnesses, Dr. Philip Martin, speak in a thoughtful way on this question, and would refer you to him for any further suggestions.

5. May I respectfully suggest that the Bill both authorize and mandate the I.N.S., as it administers naturalization applications and immigration petitions by legal permanent residents, to apply serious scrutiny to applicants who legalized under the SAW program. By every report I have heard, there was a remarkably high level of document fraud underlying SAW applications—the guesstimate one hears whispered about is 50 percent of SAW applications based upon fraudulent documents. If this is even close to the truth, it represents more than 500,000 persons granted legal permanent resident status on the basis of fraud. It would not enhance public respect for the U.S. Government or for its immigration policies if such defrauders were now given easy access to U.S. citizenship or family immigration benefits as well.

6. I know that Members of this Subcommittee are abundantly aware of the problems that have been produced by the unintended consequences of past immigration legislation, by errors that have not been corrected, or by the simple inertia of permanent legislation that is not updated as the economic and social conditions of the United States have changed so rapidly since 1965. I believe this inertia is a major reason that immigration policy debates have become so loud and politically volatile

in recent years. For this reason, I would urge you to add a provision to the Bill that would ensure that subsequent Congresses would re-visit and re-assess immigration policy on a regular basis. The Commission on Immigration Reform recommended that this be done every 3-5 years, for example.

7. I did not see in the Discussion Draft a provision to repeal the so-called "Diversity Visas" adopted under the Immigration Act of 1990. The Commission on Immigration Reform concluded that these visas hold far lower priority than do other categories, and hence did not recommend that they be continued. I hope you will agree.

8. Finally, with respect to refugees. I realize that this Bill does not deal with refugee policy per se, and gather that a proposal in S.269 to establish an annual "normal flow" of refugees for U.S. resettlement along the lines proposed by the Commission on Immigration Reform was deleted in Subcommittee markup. I take this opportunity to ask if there is some legislatively effective way in which the Subcommittee could emphasize to the Foreign Relations and other relevant committees the importance of providing U.S. leadership toward international burden sharing: diplomatic efforts to prevent conditions that produce sudden refugee crises, and provision of adequate protection and assistance to the 16+ million refugees located in first asylum countries.

The problem here is both an ethical and political one. By all the evidence I have been able to obtain, the per-capita financial costs of third-country resettlement exceed those of protection and assistance abroad by a very large factor. (The Canadian Government estimates that first-year resettlement costs exceed \$10,000 per person while annual per capita costs of protection and assistance abroad cost less than \$100; these calculations probably exaggerate the differences involved, since resettlement is a front-loaded activity and hence second and third year costs are lower. But the difference is still undoubtedly very large. I am still trying to obtain comparable calculations from the U.S. Government.)

The point is an obvious one, a kind of trade-off among humanitarian "goods". We all know that there are very tight government budgets all around. We also know that many refugees could be protected and assisted in countries of first asylum for the cost of resettling a single refugee in the U.S. Some 99 percent of the world's refugees in need of assistance are located overseas, and U.S. resettlement, as Senator Kennedy has pointed out, is an option for only the tiniest fraction of the world's refugees. The political problem, as noted in passing by Congressman Barney Frank in a June hearing of the House Subcommittee, is that funds available for U.S. resettlement (via specific appropriations, entitlements such as Medicaid and Food Stamps, and state and local support) cannot easily be transferred to the foreign policy accounts to improve protection and assistance for refugees outside the United States. Hence any funds "saved" by reduced U.S. resettlement are "lost" in terms of humanitarian assistance to refugees. Moreover, for a number of reasons, some (not all) NGOs that provide resettlement services to refugees oppose such a reallocation.

My hope is that when this Subcommittee turns its attention to refugee matters, you will be able to find a way to better coordinate your actions with those of other Committees that have jurisdiction relevant to the overwhelming majority of the world's refugees. I don't know if this means the adoption of Committee report language addressed to the other relevant Committees, or other more collaborative approaches. Whatever the best mechanism may be, I do think it would be in the interest of this nation's humanitarian concerns.

Thank you for your invitation to testify, and for your kind attention. I stand ready to clarify any points that I may have stated unclearly.

Senator SIMPSON. I thank you all for very fine presentations. Senator Kennedy was expressing that to me moments ago. He will return. It was necessary for him to go to the floor.

Let me ask kind of a general question and get your thoughts. This current draft has three employment-based immigrant classifications which are subject to the new labor certification requirements of the bill. We have professionals with an advanced degree, we have professionals with a baccalaureate degree, and skilled workers. The first of these has priority over the second, the second over the third—that has been commented on before—in other words, whatever visa numbers are left over after the extraordinary ability classification and multinational executives and so on, would be available first to professionals with an advanced degree. And

only if that demand in that classification does not exceed available numbers would any numbers then be available for immigrants with a lower preference, such as professionals with a baccalaureate degree.

One measure, of course, of the market value of a person's contribution to our economy is his wage, and we have this tremendous variation across occupations and fields, with baccalaureate degree-holders in some occupations and fields earning more than advanced degree-holders in other occupations or fields. It is a complete mix.

So I would ask, do you believe there should be an absolute priority here of professionals with an advanced degree over professionals with a baccalaureate degree, as proposed in the discussion draft, and if not, what would be a better approach? What about a priority for the professionals with either degree over skilled workers? What are your thoughts just quickly, the three of you?

We now have a roll call vote. Senator Feinstein, would you like to vote, and then you can chair the hearing, and I will go vote?

Senator FEINSTEIN. I would be happy to.

Senator SIMPSON. Thank you very much. I appreciate it very much.

Mr. BRIGGS. I would say that I think circumstances can change, and that is why I argue for flexibility. I would much rather the Secretary of Labor have to come here every year and answer that question, based upon some hopeful advice that they have been able to develop from the Department that should be able, given the urgency and the responsibility for this issue, to begin to make those kinds of conclusions.

Some years, you might have one circumstance, the next year, something else. That is my only worry always with this area, that you are trying to write into law certain things that perhaps makes sense with what you are dealing with here, right this moment, but who knows, next year, you may need skilled craftsmen or workers more than others, as opposed to professionals.

I would much rather see not only the level, but these kinds of priorities with respect to labor certification issues, be discussed by the Department of Labor, which would have to defend and which could not take some of the generalities that I think the Immigration and Naturalization Service does when it comes to labor market issues. Now, maybe they will.

Senator SIMPSON. In your testimony, you stated opposition to the draft bill's provisions to authorize the Secretary of Labor to determine labor shortages with respect to certain occupations, which would certainly result in the labor certification being deemed issued. But you express support for authorizing the Secretary to determine labor surpluses, which would mean no labor certification could be issued.

Mr. BRIGGS. That is right.

Senator SIMPSON. What is the reason for those views?

Mr. BRIGGS. Well, the latter was simply for administrative efficiency. That is, you are not going to get applications from people where the Department of Labor says this is a surplus occupation. That was the only reason to do the latter one.

The other one, I just worry that the Secretary of Labor may be under a lot of pressure to declare surpluses in certain occupations and—

Senator SIMPSON. There will be pressure.

Mr. BRIGGS. Yes, right.

Senator SIMPSON. Michael, and then Demetrios, please.

Mr. TEITELBAUM. Well, the recent experience that I was only reading about with the Department of Labor efforts to determine what was in labor shortage were not too encouraging, as you may recall, and the Secretary of Labor himself asked for a revision of the 1990 Immigration Act based on that experience.

I do think Professor Briggs' suggestion about a need for some kind of flexibility, administratively determined, however, is a very sensible idea. The question is whether the U.S. Government is capable of doing this in a professional way, and I would vote agnostic on that question until there is some evidence that there is a capacity in the Department of Labor to do this.

But I think the comments by Administrator Fraser were very sensible, very forthright, and very professional, and I have hopes that this could be done effectively in this Department of Labor.

The priority system you have in mind, as I understand it—and I am not sure I fully understand it—but the notion of having a pure priority system rather than a preference system is a very realistic and sensible way to look at matters. It was, again, something that the Commission on Immigration Reform recommended with respect to the family based immigration, a pure priority system in which you set principles, these are the people who have highest priority—all of them are admitted, and if there are any physicians left open, only then to the visas spill down to lower priority.

Senator SIMPSON. Do you have any thoughts, Demetrios?

Mr. PAPADEMETRIOU. Yes. It seems to me the priority system is trying to have the Government or, for that matter, the immigration formula, determine the people that the economy will need at each given point in time. And I would rather have the economy make this determination, as long as certain other requirements are met.

The particular requirements I have in mind, of course, are that there are going to be education requirements on the part of the employer as a means of making certain that the wages are appropriate, that people would meet certain other prerequisites such as a work experience prerequisite, and that then we would create a pool of immigrants, or prospective immigrants, which I am sure will number in the 50 to 100 million, and you would tell the employer that from that pool, you can choose whatever the required number is, according to the following criteria. This is how we have developed this proposal about something that looks like a point system but is not a point system. It is a set of criteria that we believe will actually serve employers in the United States, in the long term, the best. Those criteria are education, age, language, and then a set of some peculiarly named adaptability criteria. Again, these are determined to show the likelihood that the person who meets these criteria will make the strongest long-term contribution to the employer and the country.

Senator SIMPSON. Let me ask you, Demetrios, in your testimony, you state that changes should be "demonstrably good for America,"

and that is your view. You state that this requires the United States to admit immigrants and refugees on the basis of "principles and procedures that stay true to our core social values and humanitarian principles and to our international legal obligations." You refer to various principles, but you do not anywhere refer to public opinion, to the will of the American people, as to what a majority of U.S. citizens seem to want in immigration policy.

The polls have been the same all the time I have been in the U.S. Senate—70 percent—Roper, Gallup, you name it, whatever poll. So that one change the American people appear to desire over the long term, over the course, is a significant reduction in the number of immigrants admitted into this country. Then, for us, in attempting to design an immigration policy in "the national interest," policyholders have to take that desire into account, into serious account, as an indicator of what would in fact increase the well-being of citizens in this country. And I would think that that would be the case whether the people's concern is based on adverse effects on wages and job opportunities, on excessive population growth, how many people can be in the United States, the impact on communities, or some combination of one or all of those.

And of course, politicians and others who support a continuation of high immigration assert that legislators then should lead and not follow. But when I hear this, I always wonder what makes these individuals so sure that people should be led to place where they do not seem to want to go, and one of the most fundamental rights of any people is to decide who will join them and form the future country in which they and their posterity will live.

So my question is this. Should not the right of the American people to make such decisions be acknowledged and should not the evidence of how they wish to exercise that right be taken into account in the design of any policy? How would you take this soaring, powerful public opinion into account?

Mr. PAPADEMETRIOU. It is an easy question, and I thank you for it. You do take it into account, but it seems to me that what these polls are indicating are the people's final intolerance toward illegal immigration, the muddying of the differences between legal and illegal immigration, the fact that they think that generally, the numbers are too large, and third and I think foremost, the people have had it with how broke the system is. If you wake up practically every day for the past 10 or 15 years—you mentioned Poland—and you hear, in a sense, another bad news story about immigration, whether it is that people are overrunning the border, or people coming in at the airports and beating the asylum system, or people obtaining benefits that they should not, et cetera, et cetera, then you should also be upset about this amorphous thing called "immigration."

And I think that what you are proposing here takes you quite far in that direction. Decreases of about 20 to 30 percent, which is what this bill and this panel and the previous panel were talking about, are indeed being terribly responsive to this generalized concern about numbers.

But I have never heard anybody polling people, and I have never seen that an election has taken place on the specifics of the immigration system. I do not know that anybody went up to Michael

Teitelbaum and asked, "Michael, will you please define for me what the nuclear family is?" At the age of 21 years old, do you abandon your child or not? I do not believe anybody has done that.

So when you get to the specifics of it, I suspect that a lot of this uncertainty disappears, and you say, well, not really.

So if you make a good faith effort to bring the numbers down by 150,000 or 200,000, which I think all of these proposals will bring them down to, then I think you have met this criterion, this demand for change.

Senator SIMPSON. Well, that is a very well-done response. We use issues, and we use names, and we use figures—I would say half of the people in America or more do not understand what a "nuclear family" is. Just the term—what is a "nuclear family"—were they irradiated, or what? They have no idea what that is, and in each culture it is different.

But again, we have to come back to the national interest. And I thought what Barbara Jordan said was powerful stuff. She said this is about America. It is about the Americanization of America. Now, that may be offensive to some, but it sure was not to Barbara Jordan. She said, "I tire of the phrases, 'Irish American,' 'African American,' 'Hispanic American.'" That is what she said. If somebody else had said it 10 years ago, I know the response. But that is what this powerful lady said, and that is where we really are. This is a public culture with a common flag and a common language, and that is what people are intending to see us go to.

Mr. PAPADEMETRIOU. And you will find me a supporter, Senator, on this.

Senator SIMPSON. I must go, because there is a vote on, and I think there may be another quick vote. I thought we would be able to complete the panel first, but we cannot, so we will just have to recess briefly. Thank you.

[Recess.]

Senator SIMPSON. We will come to order again. Thank you. We had two votes, so we had to wait, and I think we are out of the woods for a little while.

I am going to conclude my questioning and submit the remainder in writing, and defer to my colleague from California for a 5-minute round with this panel. Then we will go immediately to the next panel without any further questions. So 5 minutes, Senator Feinstein, and then on to the final panel.

Senator FEINSTEIN. Thank you, Mr. Chairman.

My first question, if I might, is of Mr. Teitelbaum. Mr. Teitelbaum, in light of your testimony concerning the role that universities have come to play in the immigration of highly trained immigrants and their competition with American workers, do you believe that this situation demands examination of the non-immigrant programs which allow students to come to the United States, and if so, what recommendations would you make?

Mr. TEITELBAUM. Yes, Senator, I think—perhaps you had left to vote—I did say to the chairman that I would associate myself with Mr. Fraser's recommendations in the previous panel that the subcommittee consider including attention to the nonimmigrant categories in its deliberations because, as he said, a remarkably high percentage of employment-based petitions are applied to persons

already working in the United States, and an even higher percentage in the United States, some of whom are not working.

So we have a system that we do not really understand very well, but it is a system that is integrated, that is sewn together, in which the petitions on behalf of foreign workers, whom one might normally think of as people somewhere else whose skills are needed in the United States and need to be imported, are actually in the United States already, in many cases working in exactly the jobs for which the petitions are being made.

So I think there does need to be some attention paid to that. I do not think we understand the system well enough myself to recommend any legislative or administrative changes with respect to universities, because this is a very complicated and delicate system in which quality issues are very important, and one would not want to have an unduly heavy hand. But I would hope that university administrators and others would pay attention to these kinds of national interest questions as well as the interests of their institutions.

Senator FEINSTEIN. I thank you for that.

One of the things that struck me was that each one of you referred to skilled skills and the importance of skills in the present workplace, and as David Halberstam points out in his book, "The Twentieth Century," education on a major scale is really going to be necessary even for some of the most rudimentary jobs.

As Senator Simpson was saying, in the bill, the nonskilled category is removed. Part of what we try to do, I think, is make it a fair bill. And I would like to ask each of you if you, working from Senator Simpson's bill, had one thing that you would do in that area vis-a-vis skills, what would it be?

Mr. BRIGGS. One thing with respect to immigration policy, you are talking about?

Senator FEINSTEIN. Yes, that is correct.

Mr. BRIGGS. One thing I would do is what I think this bill is trying to do, and that is try to include some element of flexibility about whether you need particular occupations or not.

Senator FEINSTEIN. How would you do that, Mr. Briggs?

Mr. BRIGGS. Again, in my view, it would go to the Department of Labor primarily to make those cases. I happen to be a professor, and any time you open a search committee today for a faculty position, you can expect 300 to 400 applications, and if you are in foreign languages or English or history, it can be even double that. So when people talk about shortages of people in the academic labor market right at this moment, it is very hard to understand what people are talking about.

In fact, I just sat on a faculty meeting last week, for the first time in the history of our school, seriously talking about cutting back offering Ph.D.'s to students any longer, because they are having such difficulty finding them, in such fields as sociology, labor, economics, and some of these other areas like human resource development and so on. And in my view, this is the finest faculty in the country and the only school of its kind, but we are beginning to recognize that there are not shortages any loner in terms of providing academic jobs at this moment. On the other hand, there are a lot of people trying to get into the United States even in these

occupations. And maybe what I am saying here is simply self-interest, but it is staggering today—if you try to run a search for a position, you are swamped.

Senator FEINSTEIN. So you are saying you would cut back on skilled areas?

Mr. BRIGGS. I am saying certain occupations. All I am saying is that there be flexibility. There could be a surplus of college professors, but there could be a shortage of engineers. Everything I get from engineers says exactly the same thing, too, that engineers are in surplus at the present time, and wages are not going up for engineers.

Senator FEINSTEIN. But in other words, let the Department of Labor make the allocation?

Mr. BRIGGS. That is right. There has been such a big change. I mean, who would have thought the defense industry would be laying off thousands and thousands of people 4 or 5 years ago? It has happened? Who would have thought the Government would be cutting back on research and development expenditure at universities now, after having built up this capacity? It has happened. It is happening every hour. And we are not the worst affected by all this at the university I am at, but a lot of them are, and it has backup implications not only for faculty, but for support people, research people, laboratory people, and all the rest.

There are things that unexpectedly happen. Even the cold war—my whole life has been the cold war, or at least it seemed like it was, and all of a sudden, it is over.

This is why I think the system has got to be flexible. Every once in a while, we talk about allowing Congress to come back every 5 years and look at these things, but can I be sure you will when that 5 years come? I mean, someone else might be sitting up there, and that person might say, "We have something else to do this year, and we do not want to do that."

That is why I would much rather see this thing put on the Secretary of Labor, since these are basically labor questions. Why is it that Australia and Canada can figure out occupations and levels of immigration, and we cannot, our Government people cannot? I think ours could if we tell them to and we tell them to get the capacity to do it, and then we should be able to refine—and it does not just have implications for immigration. It should have implications for education and training systems, too. What occupations are growing, and which ones are oversupplied, and which ones are not? I mean, it has a lot of implications way beyond immigration.

Senator FEINSTEIN. I understand. Thank you very much.

Mr. Teitelbaum.

Mr. TEITELBAUM. I have three quick suggestions, Senator. First, I would urge you to distinguish very sharply between the unique, rare skills that one hears about from legitimate employers, legitimately needing to capture such skills for a development project in a semiconductor industry or whatever, distinguish clearly between those unique and rare skills and more generic skills such as engineer or computer programmer, of whom there are hundreds of thousands, if not millions, all around the world.

Second, I said in my testimony and I would say again that it would be desirable to pay attention not just to the immediate

needs, perceived needs, of employers, but to the incentive effects their actions might have on the decisions of American students in terms of what fields they seek to invest their funds and time going into. And here, I would suggest a concrete thought. It is striking how little we know empirically on a current basis last month, or 2 months ago, or 3 months ago, about the labor market circumstances being faced by new entrants to the skilled labor market. Basically, the empirical data we have are based on surveys that are 2 or 3 years old—always 2 or 3 years old. It is almost as if we had a Consumer Price Index calculated and reported every 2 years, 2 years late. I think that would probably not work very well for the Federal Reserve Board in terms of its policymaking, so I would suggest some very sensitive measures of indicators of how newly graduated Ph.D.'s and M.S. graduates in engineering and so on are faring in the labor market. Basically, all we have now is anecdotes and reports of the kind that Professor Briggs is reporting, and I hear them all the time, every day. There is something true about them, but we do not have empirical data.

Senator FEINSTEIN. Thank you.

Now, I want to do well by your name—Mr. Papademetriou?

Mr. PAPADEMETRIOU. You did very well, at least as well as I do. Thank you.

In the upper reaches of the labor market—I do not know what Michael means by unique skills, because I suspect that if I were an engineer, I may find much more unique skills that I would from the outside, unusual skills. The issue is not surpluses and shortages. The issue is quality.

I think what enrages people who find themselves pushed over in the selection process, and their jobs taken by foreigners, is the sense that there is no level playing field, that somehow they lost because there are some perverse incentives, usually built around wages, that make that individual more desirable to the employer.

So what I would ask Professor Briggs—I have been an academic for a number of years—is how would you vote in this—suppose you were in the English department, and you got 800 applicants. Would you choose the best applicant or the best American applicant? The same thing holds true, it seems to me, for research corporations or, for that matter, for businesses that are in the global business.

So we have to create latitude in the system for those judgments to be made by employers, within parameters that are clear, rules that are transparent, and an enforcement mechanism that we have never had in this country. So if you really wish to reform this system, these are the items of reform.

Senator FEINSTEIN. Thank you.

Thank you, Mr. Chairman.

Senator SIMPSON. Thank you, Senator Feinstein, because what you have come up with there and the responses are very interesting to all of us. I had a question for Michael Teitelbaum, but you asked it very well, about foreign workers and this preference. It harms U.S. scientists and engineers themselves, harms their families, has an undesirable effect on long-term incentives for students to go into those fields, and on incentive for employers to take actions to encourage an appropriate number of Americans, and it also

comes down to getting them on-the-cheap, and that is wrong, too, in that sense. But you really hit one there.

I have some other questions in that area, as well as other questions, and I would ask each of you to reflect on the point system, which was not named here—it was a nameless missive—but the one that Demetrios has attached to his statement; I would like your views on that, because that is used in Canada and Australia, and it is something I want to review. I do not know whether my colleagues will jump into that, but I might get in and get wet all over on that.

Thank you all very much for your excellent help to us, to all of us.

Senator SIMPSON. I would ask the final panel to come forward now. Jackie Bednarz is coordinator of the Business Immigration Coalition in Washington, DC. Antonia Hernandez is president of the Mexican American Legal Defense and Educational Fund, Los Angeles, CA. Rudy Oswald is director of the Department of Economic Research, AFL-CIO, Washington, DC. And Dan Stein is executive director of the Federation for American Immigration Reform in Washington.

I think we will proceed in that order, if we might, meaning Jackie Bednarz, the coordinator of the Business Immigration Coalition, when you are ready to proceed.

And just filling in on a little social note here, on the panel is Antonia Hernandez, and when we started on this, and I started on this, back in 1980—let me see, I have watched now the birth and growth of three children, and we started fresh with nothing at that time. I have watched them grow, and how old is the oldest one now, Antonia?

Ms. HERNANDEZ. Fourteen.

Senator SIMPSON. Fourteen. That is how many years we have talked on this issue. It is always good to see you, and I admire you greatly.

We will start, then, with Jackie Bednarz, please, and with the 5-minute limitation, obviously. You have been very patient, and I thank you all; I really mean that. We cannot avoid it sometimes, and this is just one of those days.

PANEL CONSISTING OF JACKIE A. BEDNARZ, COORDINATOR, BUSINESS IMMIGRATION COALITION, WASHINGTON, DC; ANTONIA HERNANDEZ, PRESIDENT AND GENERAL COUNSEL, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND, LOS ANGELES, CA; RUDY OSWALD, DIRECTOR, DEPARTMENT OF ECONOMIC RESEARCH, AFL-CIO, WASHINGTON, DC; AND DAN STEIN, EXECUTIVE DIRECTOR, FEDERATION FOR AMERICAN IMMIGRATION REFORM, WASHINGTON, DC

STATEMENT OF JACQUELYN A. BEDNARZ

Ms. BEDNARZ. Thank you, Mr. Chairman. It is a privilege to be invited to appear before you to offer some oral testimony. My written statement will be submitted after the hearing.

My message today is on behalf of the American Council on International Personnel, an association of about 250 businesses, most of which are Fortune 500 companies.

Per your invitation and as you know, the American Council on International Personnel is one of many trade associations actively participating in the Business Immigration Coalition, which I do coordinate.

The coalition was formed in 1990 at the time this country last took up legal immigration reform. Business Immigration participants include most of the major business trade associations and their member companies. They represent all industry sectors in American business.

The coalition is interested in promoting a very positive business agenda and immigration agenda and in promoting changes in U.S. laws and regulations which adequately reflect business realities.

The purpose of the coalition is to ensure that laws and regulations on immigration are enacted and put in place that will keep American businesses competitive in a very fiercely competitive global marketplace.

To remain in a competitive posture, U.S. business also is looking for realistic penalties in any of these laws and regulations and would level the playing field because we do not want to be in competition with American businesses who would choose not to play by the rules.

The American Council on International Personnel and the rest of the coalition members are member-driven, and we have not had an opportunity to fully study the draft proposals in your discussion document, nor to vet them with our individual memberships. Therefore, my remarks represent a preliminary assessment of these proposals and are not yet a formal position of the business community. We in the business community look forward, however, to continuing our participation in this legislative process.

First, I want to emphasize that the business community supports legislation that would curb illegal immigration in this country through better controls of our borders, reducing the magnet for undocumented workers in our Nation's workplaces, et cetera.

However, we believe that undertaking reform of both illegal and legal immigration reform at the same time has the potential to cause great misunderstanding, blurring the complex issues of each debate.

We are concerned that changes to our legal immigration system are getting a bit of short shrift, being swept up in the overwhelming popular support to deal with illegal reform. Therefore, we are particularly appreciative to be here today.

I will not delve into the many reasons why legal immigration strengthens and energizes America. Those reasons have been adequately addressed by panelists before me, and by many of you, who have also offered personal anecdotes. I do, however, wish to focus on the importance of employment-based immigration for the business community and draw your attention to the adverse effects that these draft proposals may have on American business.

The business community cannot support legislation which threatens its competitiveness. Preliminary analysis of these proposals indicates that these proposals would in fact choke U.S. businesses'

access to the best and brightest talent which drives U.S. competitiveness.

These proposals seem to erect barriers to hiring international personnel, barriers that our competitors abroad in other countries do not face. Allow me just to point out, before I go into specific analysis of the proposals, that employment-based immigration is used for two basic, broad objectives—one, to fill a need for which domestic supply is inadequate, and second, to groom a globalized work force.

Specifically, I will address some of the proposals which pose the greatest concern to business, beginning with the numbers game that everyone before me has also spoken to.

The level set in the draft document of 75,000 is considerably below the current statutory limit of 140,000 and considerably lower than the usage that the Immigration Service reports for fiscal year 94, that of 123,000. We are concerned with the limit that is set in your discussion paper. We would like to point out that we, too, would be in favor of a flexible system to allow for response to fast-moving market changes.

We would also like to point out that the predictability of what numbers are available is very important to business. The current scheme in the draft proposal has a trickle-down effect, leaving businesses not knowing how many available visas there would be in the lower categories. We would look for some more predictability.

We do appreciate the sensitivity of your staff and of the subcommittee to the fact that a labor market test is inappropriate for many international employees. By their very definition, they are extraordinary, and no U.S. worker could fill the position. So we are very appreciative of that.

In your first employment-based category, those not subject to labor certification, however, we find a concern with the qualitative restrictions that we now see imposed on the multinational executives and managers, and we are wondering what widespread abuses have been reported to you or what empirical data was before you when you considered adding these qualitative restrictions.

The concept of a "function manager" was embraced as a valid business reality back in the Immigration Act of 1990, recognizing that a true manager or executive did not always manage persons, but did manage an important function. So we would ask you to look at that once again.

Second, as we turn to the second employment-based group, those who are subject to labor certification, the business community is quite alarmed with the proposal to have a fee equal to 30 percent of the value of the annual compensation, including wages and the entire benefit package, to be paid to a private fund certified by the Secretary of Labor and dedicated to the goal of increasing the competitiveness of U.S. and lawful permanent resident workers for training or education, concerned because the fee appears to be unfair; it also is a highly visible barrier to competition in the global marketplace and, more importantly, it fails to recognize, in our view, the many voluntary contributions that corporate America already makes to training and educating U.S. workers.

If I may, just by illustration, our corporate members are involved in developing their own universities, tuition reimbursement, man-

datory re-education, mentoring in our high schools, and even the building of elementary schools in the communities where they are involved.

I see the light, and I will hasten to finish. The community is also very concerned with the 110 percent of the prevailing compensation to be paid to the foreign worker, with the additional qualitative standards imposed on the professionals at both the advanced degree level and the baccalaureate level, because this does not seem to embrace business practices and recruiting practices from our U.S. institutions where many foreign-born persons are the creme de la creme graduates of those programs.

We would also again like to offer to work more closely with the committee and to discuss these provisions more fully after our closer attention to them.

Thank you.

Senator SIMPSON. Thank you very much.

[The prepared statement of Ms. Bednarz follows:]

PREPARED STATEMENT OF JACQUELYN A. BEDNARZ

I am Jacquelyn A. Bednarz, Washington Representative of the American Council on International Personnel (ACIP), an organization of 250 businesses, most of which are Fortune 500 companies. It is a privilege to be invited to appear before you today to provide oral testimony. In addition to my oral testimony, my written statement is provided for the hearing record.

As you know, ACIP is one of many trade associations participating in the Business Immigration Coalition (BIC). BIC was formed in 1990, the last time America took up the issue of legal immigration reform. BIC participants include the major business and trade organizations and their member companies, representing all industry sectors. ACIP as well as BIC are interested in promoting changes in U.S. laws and regulations that will enable American businesses to utilize international human resources effectively in a fiercely competitive global marketplace.

ACIP and the other members of the BIC have not had the opportunity to fully study the draft proposals under discussion today. Thus, my remarks represent a preliminary assessment of these proposals and not a formal position of ACIP or the Coalition. We in the business community look forward to continued participation in the legislative process.

First, I wish to emphasize that the business community supports legislation which would curb illegal immigration, by enhancing controls of our borders and reducing the magnet for undocumented workers in our nation's workplace. We support this Congress in its efforts to advance legislation to correct the abuses of unlawful migration to America.

Undertaking reform of both illegal and legal immigration at the same time, however, foments great confusion and misunderstanding, blurring the complex issues of each debate. We are concerned that changes to our legal immigration system are getting short shrift. They are being swept up in the overwhelming popular support to deal with the problems stemming from illegal immigration. Therefore, we are particularly appreciative of this opportunity to speak to you today and voice our concerns.

Legal immigration strengthens and energizes America. Throughout America's history, lawfully admitted immigrants have been a source of strength and vitality to our nation. Immigration policy and worldwide levels of immigration must serve national interests, upholding our values and heritage and maintaining our economic vitality.

The Immigration Act of 1990 established a good balance between the needs of American families and business and the needs of American workers for protections. The administering agencies have not yet finished implementing fully the 1990 legislative provisions and the country is only beginning to benefit from the balance achieved through that legislation.

We endorse an immigration policy which neither inhibits the competitiveness of American business nor allows the hiring of foreign workers below market wages or under substandard conditions. We support immigration policy which is transparent, predictable, and includes enforceable controls and meaningful penalties for those businesses which choose to play outside the prescribed rules of the game.

While we are here today to discuss this critically important issue of immigration policy for America, I wish to focus on the importance of employment-based immigration for the business community and draw your attention to the adverse effects the draft proposals would have on American business. The business community can not support legislation that threatens its competitiveness. Our preliminary analysis indicates these proposals would, in fact, choke U.S. business' ability to supplement our domestic workforce with the best and brightest talent which drives U.S. competitiveness. These proposals erect barriers to hiring international personnel: barriers our competitors in other countries do not face.

Allow me to point out that employment-based immigration is used for two broad objectives by U.S. business: (1) to fill a need for which domestic supply is inadequate (skills are unavailable among American workers or there is a mismatch of skills available to the occupation); and (2) to groom a global workforce.

Specifically, I wish to address how the draft proposals thwart companies' ability to accomplish the above two objectives:

EMPLOYMENT-BASED NUMBERS/VISA ALLOCATION

The Immigration Act of 1990 provided annually for 140,000 employment-based immigrants in five preference classifications. Each classification was allotted a definite piece of the 140,000 pie. The 140,000 level represented a significant increase over [then] existing law which allowed for approximately 50,000 employment-based immigrants. We heralded this increase as recognizing that the technological leadership of the United States and its competitiveness in the global economy require access to the most highly-skilled specialists and the most highly mobile executives in the world.

The global marketplace has become more competitive in the years since enactment of the 1990 law and our companies compete with foreign companies in emerging markets on all continents. America is proud to maintain its leadership in many industries, e.g., telecommunications, biotechnology, software development, consumer products, and financial services. Maintaining a competitive edge and the supremacy of the American worker is inextricably tied to viability in world marketplace and the successful transfer of American technology to these foreign markets. It is essential that U.S. business maintain access to international personnel to remain a leader in the world economy.

The draft proposals allocate only 75,000 employment-based immigrant visas per year. This figure is an alarming reduction of nearly 50% from the current 140,000 level. Many argue that since the 140,000 level has not been reached since its imposition in the 1990 legislation that the visas are not needed. Conversely, we believe this points to the strengths inherent to the current system: flexibility and controls.

The 140,000 level provides flexibility for the market forces to expand without requiring statutory action to meet the needs of the market. Although at the time the 1990 Act was passed, the U.S. economy had begun to slide into recession, today it is rebounding. The 140,000 ceiling provides a "cushion" between current usage and the potential for continued economic expansion. Moreover, such flexibility allows employers to plan future investment that inevitably creates jobs (for American workers and potentially for international employees) and for continued development of global workforces in our U.S.-based companies. Control is properly exercised in the current system as demonstrated by the fact that only those alien employees who qualified under one of the five existing preference categories and only those jobs for which no American worker was available were approved.

The Immigration and Naturalization Service (INS) statistics¹ for the three previous fiscal year periods indicate that the employment-based immigrant visas used are far greater than the proposed 75,000. Moreover, the INS statistics indicate that the numbers allocated to the top three preference categories, those in the high skill areas, exceed 75,000:

¹U.S. Department of Justice, Immigration and Naturalization Service, *Immigration to the United States in Fiscal Year 1994*, June 1995.

Category	FY 1992	FY 1993	FY 1994
Priority Workers	5,456	21,114	21,053
Professionals with Advanced Degrees or Aliens of Ex- ceptional Ability	58,401	29,468	14,432
Skilled Professionals *	37,568	50,774	45,659
Total	101,425	101,356	81,144

* Number represents the number used in the 3rd employment based category less 10,000 for unskilled and less those numbers allocated to aliens under the Chinese Student Protection Act. Accordingly, this number represents only those skilled or professional aliens.

Of equal importance to the numbers themselves is the manner in which they are allocated. The draft proposals envision a "trickle down" scheme in the allocation, visas first going to the aliens of extraordinary ability and the unknown remainder available to alien professionals, etc. Whereas the current employment-based system allocates to each preference category a set amount of visas within the overall 140,000 cap, the lack of predictability in the proposed scheme is problematic for any business. A business must be able to predict if a visa will be available in a given preference category before engaging in the lengthy and costly process of importing a highly-skilled foreign employee.

EMPLOYMENT-BASED IMMIGRANT NOT SUBJECT TO LABOR CERTIFICATION

We appreciate the Subcommittee's sensitivity to the fact that a labor market test is inappropriate for many extraordinary ability aliens and international employees and the proposal to establish two tiers of employment-based immigrants: those exempt from the labor certification requirement and those subject to such requirement.

Section 103(a) of the draft proposal provides for aliens of extraordinary ability, multinationals executives and managers, investors, and special immigrants. We note the imposition of qualitative standards not contained in current law governing the first two of these four subcategories.

Specifically, with reference to aliens of potentially extraordinary ability, the imposition of a requirement that the alien demonstrate such ability over a 10-year period is arbitrary and inflexible. Current legislation requires demonstrated "sustained national or international acclaim." An inflexible 10-year requirement does not serve the best interests of the United States. For example, it would not permit the entry of a young ballerina who after winning a prestigious international student competition is invited to join the New York City Ballet.

Secondly, in the area of multinational executives and managers, the bill requires employment for three (or in some cases four) years abroad in a managerial capacity. We note that multinational firms opening offices in the United States will not necessarily employ twenty workers during the startup period. This concept was embraced in the 1990 legislation as a valid, business reality and underscored the importance of major functions of a business whether or not they are human-resource intensive.

Thirdly, we do not support the elimination of outstanding researchers from the first employment-based immigrant category. The regression of aliens in such high demand into the category requiring a labor market test serves no useful purpose. By definition, there are not enough readily replaceable U.S. workers for the limited numbers of outstanding researchers.

EMPLOYMENT-BASED IMMIGRANTS SUBJECT TO LABOR CERTIFICATION

Many of the proposals set forth under Section 103(b) raise concern as discussed individually below:

Changes in labor certification

Section 104 of the draft proposal amends the present labor certification process. We heartily support Congressional and Administrative efforts to streamline labor certification requirements and seek to continue to work collaboratively in this regard. We also commend the Department of Labor on its on-going effort to re-engineer the process.

We are, however, dismayed with the requirement for employers to pay 110 percent of the prevailing wage rate. To mandate a "premium" above and beyond the compensation they already provide the employment-based immigrant is an unwarranted burden on employers for several reasons.

First, the private sector, unlike the Government, does not rely on readily-determined prevailing wage rates for its employees in given occupations with given levels of seniority in the position, or "time in grade" in Federal employment parlance. Businesses are increasingly using wage ranges or bands. We would be happy to work with the Subcommittee to develop a greater common understanding of how best to incorporate this business reality into a workable labor market test.

Second, by law employers must already pay the prevailing wage plus or minus five percent and the Labor Department will reject applications where the wage is not based on a relevant and accurate survey. Contrary to popular belief, it is not easy to falsify wage data to arrive at a less than prevailing wage. For example, wage surveys that include jobs dissimilar to the job being offered, or that encompass areas outside the area of intended employment are not acceptable.

Third, it is important to note that both the Department of Labor and employers have found determination of a prevailing rate to be extremely difficult, time-consuming, and expensive.

Lastly on this point, it appears to us wrong-headed to legislate greater compensation for the employment-based immigrant than for the American worker similarly employed. Essentially, there would be wage discrimination against the U.S. workers who would earn less money for the same work. This practice would violate the immigration related unfair employment practice provisions of the Immigration Reform and Control Act.

Fee for employment-based immigrants

The draft proposal requires a fee equal to 30% of the value of the annual compensation (wages, benefits, and other compensation) to be paid by the employer to a private fund certified by the Secretary of Labor and dedicated to the goal of increasing the competitiveness of United States citizen or lawful permanent resident workers for training or education. Such a fee is objectionable to U.S. business on many counts.

First, in addition to the normal costs associated with recruitment and labor certification, a fee, or user tax, is a highly visible barrier to competition in the global marketplace. Many of our companies' foreign competitors that vie for the same small pool of highly-skilled international talent are not subjected to similar measures, thus creating an uneven playing field for U.S. business. Success in the international marketplace will not be found with the scales tipped in favor of foreign competition.

More importantly, the draft proposal fails to recognize the considerable commitment of the business community to voluntarily contribute, and contribute heavily, to the education and training of Americans. In a recent poll of our ACIP membership on this issue, we learned that our companies invest 5 to 10 percent of payroll in training and education of its workforce.

A panoply of business contributions illustrates this: some corporations have their own universities, others offer tuition reimbursement programs and mandatory periodic continuing education. Many are involved in mentoring in high schools, and the building of elementary schools. Still others sponsor science fairs in primary and secondary schools, and award scholarships to high school students.

Secondly, a fee imposed on employers is inequitable and, like other levies or taxes, serves to discourage the targeted activity. Increases in taxes on cigarettes, for example, are recommended to discourage smoking. Companies which compete on the global level will continue to require such skills to maintain their competitive posture despite being discouraged from importing the highly-specialized talent they need and will turn to alternatives such as sending work offshore.

We urge the Subcommittee to study more closely the private sector initiatives to educate and train Americans before taking a definite step in this direction. Private sector initiatives to date have proven effective and should not be discouraged through mandated contributions to a government-supervised program.

Finally, any fee imposed on employers should substitute for labor certification, not be imposed in addition to it. The philosophical underpinning of the fee concept is to let market forces determine the need for foreign workers and remove government from the process.

I would also like to address the ACIP concern with the proposal conferring on the Secretary of Labor the onerous responsibility to determine labor shortages and surpluses in a specific occupational area in the United States. This concept has been attempted and abandoned as recently as the failed Labor Market Information Pilot (LMI) enacted under the 1990 legislation.

Not only is this an overwhelming task for the Department of Labor to carry out, but it fails to recognize that market forces ebb and flow far more quickly than any bureaucratic institution can collect and analyze data, make a determination, and promulgate notification of shortage or surplus occupations. Timing will forever be

the mightiest foiler of such a concept. Any system must ultimately enable the employer to specify the minimum qualifications for a particular job and compare those qualifications against the skills of available U.S. workers.

Qualitative standards for professionals and skilled workers

We are seriously concerned with the proposed imposition of de facto foreign residency requirements on foreign national professionals holding advanced degrees, professionals holding baccalaureate degrees, and skilled workers. These qualitative restrictions would serve to deny access to employers of foreign personnel with cutting-edge knowledge essential to the competitiveness of our American businesses. Requiring three and five years of experience for professionals acquired outside the United States subsequent to earning an advanced or baccalaureate degree does not comport to business reality.

U.S. employers in research-driven industries from fish technology to pharmaceuticals recruit widely from universities in this country. Often the most qualified degree candidates graduating from our institutions of higher learning are foreign born and not permanently domiciled in the United States. The foreign national usually attends the institution because of its excellence in the world. Employers recruit the best graduates for the particular position regardless of nationality. Thus the foreign national may be the best graduate of the best school in a particular specialty occupation. A three or five year wait while these employees work abroad in a capacity where leading-edge skills cannot be utilized will render their skills obsolete. The product life cycle of many high technology companies is no longer than 18 months and emerging technological skills are in constant demand. Graduates two or more years out of university bring skill sets to the market place which are already obsolete. Denying U.S. employers access to the best and brightest until they gain experience abroad serves no American interest.

To illustrate this, I indulge you with two examples which, although anecdotal, represent the likely adverse affect of the draft proposals:

1. The University of Massachusetts offers one of the country's only advanced degree programs in plastic engineering. Many of our member companies have a critical need for plastic engineers. When recruiting among the small pool of graduates, they are confronted with many candidates who are non-United States citizens or lawful permanent residents and must begin the long and costly process of sponsoring these candidates for employment-based immigration.

2. An Indian national earned her PhD in a Texas university and was hired by one of our member companies as a foreign student authorized to work on practical training. The employee was hired to work on a logarithm to calibrate lasers for use in treating burn patients. This technology is cutting edge and improves the recovery rate of burn victims. Under the draft proposal, this very critical employee would be unavailable as an advanced degree professional to this well-known medical institution as an employment-based immigrant until she gained 3 years of experience outside the United States. Such a loss of highly-skilled talent would serve no American interest.

As we testified before the House Subcommittee on this issue, requiring experience levels in excess of the job requirements fails to understand another fundamental business reality: employers do not hire over-qualified workers. The draft proposal requires a skilled worker to have 5 years of experience acquired outside the United States to be employed in a position requiring 2 years of experience. Again, we welcome the opportunity to work with you on this issue.

CONDITIONAL PERMANENT RESIDENT STATUS FOR EMPLOYMENT-BASED IMMIGRANTS
SUBJECT TO LABOR CERTIFICATION

The draft proposal to impose conditional permanent resident status on employment-based immigrants is another serious step in the wrong direction. Although we support an increased level of employer-employee loyalty in this country, such loyalty cannot, and ought not, be legislated. The proposal not only adds another bureaucratic step to an already cumbersome process, but is not supported by empirical data evidencing abuses in this area.

Furthermore, conditional permanent residence has essentially proven useless in the marriage context. In the case of employment-based immigrants it will only result in tens of thousands of additional adjudications per year.

Of greatest concern, however, is the infringement on the rights of the employee. One of the greatest protections from misuse or abuse for employees is the right to seek another employer. Removing this right serves no American interest.

ADULT CHILDREN OF IMMIGRANTS

We are concerned with the elimination of the family-sponsored category for adult children of United States citizens and lawful permanent residents. The ability to be reunited with ones children is an important issue to all immigrants, including the employment-based immigrant. The decision to immigrate to this country must be based on both personal and business reasons.

Under current law, the potential exists for reunification with one's adult children, albeit after lengthy waiting periods for a visa to become available. Eliminating this potential for reunification is a serious step in a direction which may not be in the interest of this country. We urge reconsideration of this proposal. At least consideration should be given to those up to age 25—especially where the child is fully dependent upon the parents for support. This can only be determined by following federal income tax standards.

CONCLUSION

I thank the Chairman for once again according me the opportunity to appear before the Subcommittee. We have worked closely with the subcommittee over a long period of time and want to assure the Chairman of our keen interest in assisting the Subcommittee in rectifying what the business community regards as profound deficiencies in the draft proposals.

Senator SIMPSON. Antonia Hernandez, I was just remembering that you came to work here for Senator Kennedy as a staff person, did you not?

Ms. HERNANDEZ. I came in when you came in.

Senator SIMPSON. Yes. We came here together, and we are going to go out. [Laughter.]

If you would please proceed—and I realize, Rudy, you are an old pro back from the 1980's, and we have had you here before us in the 1980's, and you bring a great resource to us; Dan, too—all of you.

So, please proceed, Antonia.

STATEMENT OF ANTONIA HERNANDEZ

Ms. HERNANDEZ. Before I proceed, I would like to say that coming back brings back memories. I see that Chip Wood is back, and of course, seeing Dick Day here is like a lot of things change, but nothing really changes, and of course, with Michael Myers, here we go again.

I thank you for the opportunity to be here today and to testify on this most important issue. My testimony today is not only on behalf of MALDEF, but is also on behalf of LULAC, the National Hispanic Bar Association, and the National Council of La Raza.

What I would like to do with my comments is basically speak on the general principles before I comment on the particulars of the draft legislation.

I think that first and foremost, I would like to commend the chair for beginning a thoughtful debate. As we all know, this issue is fraught with extremes, and I do not believe, in the 20 years that I have been involved in this issue, that there is ever a good time to have a rational debate. But as the debate starts, I would urge you to consider the following.

The first important principle and value is that we clearly maintain family unification as the cornerstone of our immigration policy. It is extremely important that we come to terms with the definition of what is family. As you know, in our society today, we are having an extensive discussion of the value of the family and what it brings in our social environment, and I think that that is a

strength that we must consider, to see family members as a strengthening social body that cannot be limited by categories of what we perceive a family to be.

Second and most important is that we must definitely and clearly to the public distinguish between legal immigration and illegal immigration. The solution to one is definitely not the solution to the other, and in fact, wrong solutions would aggravate the problems in the other.

The third is that the solutions and the obstacles or qualifications must be reasonable and pragmatic, and that in coming forth with requirements, we do not impose requirements that cannot be met by the majority of the would-be beneficiaries.

Next, I really firmly believe that we must pay attention to the naturalization process. It is an important factor, I believe, in the process of incorporating these individuals into our society, and to a large degree, we have begun to see how important citizenship is in our society to our democratic system, and I think naturalization must be given top priority.

And the final one is that once a citizen, everyone should be treated equally. America is known as the great equalizer, and we cannot have classes of citizens. Once we post the restrictions and the requirements for obtaining citizenship, then it should be a level playing field.

Having said that and having reviewed the draft preliminary legislation, let me offer a couple of concerns and comments that we would want to work with the committee. First is the exclusion of certain categories to family members. I am speaking of adult children, both citizens and lawful permanent residents. I will also say that in the end, if restrictions must be imposed and certain categories eliminated, that they be permitted to be continued for citizens. You cannot have a family unit without the hope of ever being reunited. I believe that families would rather wait for extended periods of time than suffer being separated, particularly with adult children, it is an important consideration.

The other issue is parents. Parents are parents whether they are over 65 or under 65. And if in fact the consideration is of one's ability to support oneself or a family, a stricter look should perhaps be given to what is being required of the individual coming in and the sponsoring individual, rather than closing the door altogether for those individuals.

Finally, the numbers. I understand that it is a numbers game and that within the numbers, you are going to have priorities. In that analysis, I think we can disagree as to what one considers to be rational and someone else thinks differently, but I do think that in adding up the numbers, whatever those limits might be, that every category within those numbers must be sufficient to allow people from throughout the world a reasonable expectation of reaching the first on line and being able to process their papers.

I see the red light is on, and I will stop at this point.

Senator SIMPSON. Thank you very much, Antonia.

[The prepared statement of Ms. Hernandez follows:]

PREPARED STATEMENT OF ANTONIA HERNANDEZ

Good afternoon. I want to thank Chairman Alan Simpson for the invitation to testify today before the Senate Subcommittee on Immigration. My name is Antonia Hernandez, and I am the President and General Counsel of the Mexican American Legal Defense and Educational Fund (MALDEF). For more than a quarter of a century, MALDEF has promoted and protected the rights of Latinos through advocacy, litigation, and community outreach and educational programs. Today I speak on behalf of the National Council of La Raza (NCLR) and the Hispanic National Bar Association (HNBA). NCLR, the nation's largest constituency-based Latino organization, represents over 200 community based organizations. The HNBA is a nonprofit, national association of Hispanic attorneys, judges, law professors, and law students, and serves as the national voice for the concerns and opinions of Hispanics in the legal profession.

Throughout the years, our organizations have testified on the issue of immigration on numerous occasions, as it is one of the many critical issues affecting the Latino community. America has been enriched economically, socially, and culturally by the rich mosaic that is our country's immigrant tradition. Consistent with this country's tradition, the principle guiding immigration reform must continue to be family reunification. As such, we will confine our testimony today to those portions of the proposed legislation which deal with family based immigration.

Despite the fact that we are a nation of immigrants, we find ourselves in very difficult times. Those of us who have engaged in the debate concerning immigration for as many years as I have are mindful of the ambivalence—and at times hostility—which has been expressed against newcomers, and those perceived as “foreigners.” Indeed, immigration policy has reflected the cyclical nature of this debate since the 1700s.

In fact, our history is replete with examples when we have adopted such hostile measures, fomented in the political arena and in public opinion. Despite facts which cannot justify this sentiment, the emotional nature of the issue may contribute to adoption of bad policy. The correlation between immigration and the treatment of immigrants in the U.S. must therefore be borne in mind when we take up the legal immigration debate.¹

One instance of how the issue is becoming confused and irrational is the linkage of undocumented and legal immigration. We would not want to witness dramatic cuts in legal immigration because of overriding concerns over undocumented migration. We encourage you, Chairman Simpson, to continue to exercise leadership to ensure that this issue is addressed in a rational manner.

IMMIGRANTS CONTRIBUTE SIGNIFICANTLY

Dramatic cuts in numbers and categories of immigrants ignore the reality that immigrants are a tremendous resource for this country. The economic and social contributions that immigrants have made are well documented. Immigrants earn almost \$300 billion and contribute over \$70 billion in taxes.² Immigrants create more jobs than they fill. In fact, recent immigrants generate as much employment growth as internal migrants from various areas of the U.S.³ The economic contributions of immigrants keep America competitive and functioning in the global economy.

According to the United States Department of Labor, immigrants keep many industries competitive by increasing returns to capital.⁴ In fact, whole industries have remained vibrant because of immigrants. The textile, food processing, and light manufacturing industries of Los Angeles are all competitive because of immigrant employees and entrepreneurs. The billion dollar toy industry—made up of small immigrant-owned businesses has revitalized a deteriorated section of Los Angeles. Latino first and second generation immigrants have been responsible for the revitalization in South Dallas: three fourths of the 800 new businesses that a few years ago was a dying inner city are owned by immigrants. Whole sections of New York City, such as Flushing and Washington Heights, are now revitalized as a result of

¹In the aftermath of California's Prop. 187, for example, hundreds of Latino U.S. citizens and permanent residents were subjected to abuses. We were advised that pharmacists, grocery clerks, restaurant owners, hotel owners, bank clerks, school personnel, among others, demanded that customers and clients produce immigration documents solely based upon “Hispanic” appearance.

²Fix, Michael & Passel, Jeffrey S., *Immigrants and Immigration: Setting the Record Straight*, The Urban Institute (1994), at page 52.

³*Id.* at pages 52-53, citing Enchautegui, Maria E. *Immigration and County Employment Growth* (1992).

⁴U.S. Department of Labor, *The Effects of Immigration on the U.S. Economy and Labor Market Division of Immigration Policy and Research*, Bureau of International Labor Affairs (1989).

immigrants. In Miami, 28,000 businesses are owned by Cuban immigrants, a number which has tripled in less than twenty years.⁵

In fact, research shows that immigrants are more likely to be self-employed than native born citizens and that the longer that an immigrant is a member of our community, the more likely that individual is to be self-employed.⁶ Recent research conducted in connection with Rebuild Los Angeles revealed that many of these businesses are family-owned and run, often by siblings or other family members. What is too often derisively termed "chain migration" is in fact the establishment of strong economic networks. The promise of resurgence in the American economy through self-sufficiency is threatened by this legislation.

These people embody the confidence and optimism that is uniquely American. According to the Chief Executive Officer James Johnson of the Federal National Mortgage Association (FANNIE MAE):

The survey shows that [immigrants] are optimistic about our nation's economic future; and they are willing to work and save to buy a home. That desire translates into millions of American jobs—in homebuilding, real estate, mortgage banking, furniture and appliance manufacturing and the dozens of other industries that are dependent on a strong housing market."⁷

These immigrants arrived as family members of citizens or legal permanent residents, or as refugees, not on an investor visa. As much as every other American, they are certainly the living testament to the American dream.

FAMILY REUNIFICATION AS THE GUIDING POLICY

It is an unwise proposition to reduce the discussion of immigration reform purely to an arbitrary "numbers game." Believing as we do, that the objective of uniting families should continue to be the cornerstone of our immigration policy, the Bill considered today should be measured against the guiding principle of family reunification.

Rather, Congress should be guided by the principle that have been in place for thirty years, and have always been an inextricable element in migration, that of family reunification. In our view, this suggests more than a mere policy preference for certain category of immigrants but rather a signal to the world that our immigration policy is guided, in part, by the primacy of the family. According to the Supreme Court, "[t]he institution of the family is deeply rooted in this nation's history and tradition."⁸ So too, the recognition of the value of family unity is rooted in the immigration laws of the United States.

In American society, the family unit is essential to one's success in our society. The broad concept of the family has been recognized to be important enough to be accorded constitutional protection.⁹ In fact, many successful programs designed to address urban poverty are modelled on the concept of family and community responsibility and connection, including mentoring programs and community-based policing.¹⁰ MALDEF's Parent Leadership programs recognizes this fact in our work as well. As with other areas, the underlying policy decision that supports family reunification is that the newcomer is most likely to be integrated by those who have the greatest interest in his or her successful integration into our society.

As reflected in the U.S. Census, families are integral to the Hispanic community. According to the 1990 Census, Hispanic American families were more likely to have children present than were non-Hispanic families; 63% of Hispanic families had children under 18 living with the family compared to 47% of non-Hispanic families.¹¹ Therefore, changes in family preferences will have an unduly burdensome im-

⁵ See, e.g. *Rebirth in New York*, Wash. Post, Sept. 18, 1993; *Breathing Life into Southland*, Los Angeles Times, Oct. 4, 1993; *The Immigrants: How They're Helping to Revitalize the U.S. Economy*, Business Week, July 13, 1992; *Immigrants' Home Buying on the Rise: Rate Doubled in Decade Harvard Study Finds*, Wash. Post, August 27, 1994; *Give Us Your Best, Your Brightest, Insight*, November 22, 1993.

⁶ Fix & Passel, *supra*, note 2 at page 53.

⁷ Johnson, James A., *What Immigrants Want*, Wall St. J., June 20, 1995 (citing FANNIE MAE Poll).

⁸ *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977).

⁹ *Id.*

¹⁰ Lynn A. Curtis, *The State of Families: Family, Employment and Reconstruction*, Families International Inc. (1995) at page 11.

¹¹ U.S. Dept of Commerce, Bureau of the Census, *Hispanic Americans Today*, U.S. Government Printing Office, Washington, D.C. 1993 at page 8.

fact on communities such as the Hispanic community which place a high priority on family unity.

THE SIMPSON BILL AS PROPOSED

Current law

Present law sets out two components of family immigration: numerically limited categories, including the preference system, and the non-numerically restricted category for immediate relatives of U.S. citizens which includes minor children, spouses and parents of adult U.S. citizens. The system provides a clear hierarchy of interests, yet also provides for some flexibility. By allowing families to reunite, this nation reaffirms fundamental family values.

Proposed changes to family preferences

As written, the Simpson bill recognizes that numerical limits severely damage the intimate family relationship recognized by our immigration laws. With regard to immediate relatives, the Simpson bill continues to reflect the Chairman's past position that Congress protect the "cornerstone of immigration policy by providing for the unrestricted admission of the immediate family of U.S. citizens."¹² However, the number of visas available to the "closest family members of citizens and residents of the United States,"¹³ while seen as furthering family reunification goals in 1990 by the Chairman, have been virtually eliminated in the bill. In other words, a U.S. citizen would no longer be able to sponsor their child if the child is over 21 or married, or their sibling. While this proposed legislation purports to continue to emphasize the importance of the family—in fact it does so in small part. Under no conceivable scenario are sons and daughters, brothers and sisters and parents anything other than an integral part of the nuclear family. This legislation slices families in a way that works hardship and is at base irrational. We find this a disturbing development.

Parents

The bill's attempt to deal with parents of citizens is on its face irrational and, in effect, contrary to the bill's purported intent. While the legislation permits the elderly parent to immigrate, it eliminates all other parents under the age of 65 who presumably are in the prime of their working lives. Parents under 65 are no less part of a family than those over 65. Moreover, America is again deprived of those immigrants who are hardworking, energetic and fully able to contribute to our society.

Requiring that a majority of the parent's children live in the U.S. also makes no sense. That there are more children living in the country of origin does not mean that those children are anymore suited or capable of caring for a parent that the son or daughter seeking to immigrate their parent here. The circumstances of individual families and the choices that they make cannot be reduced to a neat mathematical formula.

This formula will create a bureaucratic and logistical nightmare. The Immigration and Naturalization Service will be compelled to seek cooperation from every other country in the world to determine whether indeed the greatest number of sons and daughters reside in the U.S. There is no provision for continued administration or enforcement of this requirement once a determination has been made, either in favor or against a "qualifying parent." As written, this section provides little in the way of real immigration reform.

Health insurance requirement

We also object to the requirement that U.S. citizens purchase health insurance for their parents before a visa would be granted. Plainly, the effect of this provision is to permit only well-to-do Americans the right to reunite with their elderly parent because of the exorbitant cost of health insurance. We fully agree that efforts should be made to require that sponsors assume greater responsibility for the family members that they sponsor, it is unreasonable to impose a requirement on American families which will be impossible to meet by all but the most wealthy. It is an unfortunate fact that large numbers of immigrants who are gainfully employed are themselves uninsured. In addition, insurance companies have at times placed impediments by denying insurance to those who are limited English speaking. Indeed, the state of Texas only recently prohibited such practices.¹⁴ MALDEF is currently en-

¹² 136 Cong. Rec. S1719 (October 26, 1990) (statement of Sen. Simpson).

¹³ *Id.*

¹⁴ H.B. 1367, 74th Texas Legislature, May, 1995.

gaged in litigation challenging similar policies under California state and Federal law.¹⁵

Requiring health insurance of a parent who is petitioned for by a U.S. citizen undermines the humanitarian principle of family reunification. Such a system only allows parents whose children who can provide significant financial support to immigrate. Yet the insurance requirement does not take into account the other side of the equation: that the parent may be economically important in caring for the petitioner's children. While the income of a petitioner may not be substantial at the point of petition, should the parent reunify with the family and ease the burden of child care, the petitioner's income would likely rise. In addition, the petitioned parent is enabling the entire family unit to reserve its resources and increases the family's economic stability.

Adult children

There is no conceivable justification for eliminating the category of adult children of U.S. citizens and lawful permanent resident aliens. In fact, their elimination ultimately works to our detriment. Obviously, a son or daughter is no less so when they reach the age of majority. They certainly do not cease being a member of the nuclear family, economically nor socially.

Eliminating these preference categories, moreover, deprives an American citizen or lawful permanent resident from having the benefit of that member as part of the family economic unit. America is deprived of the benefit of having hardworking, energetic individuals in the prime of their lives. Parents may be deprived of their children who could be called upon at some time to help support the family, both financially and emotionally. That children may ultimately be called upon to help support their elderly parents is now so prevalent as to recognize them as the "sandwich" generation. It is irrational to slice the family in such a way as to deprive elderly citizens of the support of their children.

We certainly appreciate that the bill makes a humanitarian attempt to accommodate those sons and daughters who are financially dependent upon the parents because of the child's physical infirmities. This legislation should accord the U.S. citizens the same humanitarian consideration. Citizen parents who may become physically or mentally disabled should have the same opportunity for support from family members who may be able to assist them in their later years.

Legal permanent residents

In an apparent effort to address the current backlog, the bill provides for 85,000 visas for the legal permanent residents to sponsor spouses and minor children. Again, one of the difficulties in assessing policy through numbers is whether this number is in any way related to the demand in this category.

We are pleased that the bill has provided a number of visas to address the current backlog for legal permanent resident spouses and minor children. However, this provision contradicts the Commission on Immigration Reform's call to Congress to finally realize the end of the 1986 IRCA legalization program. Numbers are needed to clear up the backlog for legalization beneficiaries as for other legal permanent residents. We do not see any justification for discriminating against those individuals who secured their permanent residency through the legalization program. Absent some compelling justification, these provisions appear to be misguided.

REDUCTION OF FAMILY VISAS IS UNJUSTIFIED

Immigration reform should focus on the nature of the immigrants who are admitted, rather than on some abstract numerical level. If the debate is allowed to focus on the number, we lose sight of the simple fact that any reduction in levels means that American families will be forced to wait in yet longer lines to reunite with their close loved ones. We must approach this legislation with the understanding that it affects real families in very basic ways. Given the choice of whether to eliminate whole categories or force longer waits, however, the latter would be plainly preferable.

Visa cuts are not justified

We believe that there has been no justification proffered to support the substantial cut in visas. The existence of a backlog in the Fourth Preference (brothers and sisters category) has been argued as a basis to eliminate this category. However, it is clear that we know little if anything about the backlog. Even with lengthy wait-

¹⁵ *Kim v. Northwestern Mutual Ins.*, Case No. C95 2178 DLJ (N.D. Cal. 1995) challenging at both federal and state court level the insurance company's policy of denying disability and life insurance to naturalized U.S. citizen widow.

ing lists, U.S. citizens to petition for their siblings. Many of those in the waiting list may change their minds, may have secured adjustment through other means, or may have even died. We believe that, at a minimum, it is necessary reasonable to assess the nature of the backlog and provide for periodic reviews, before its wholesale elimination.

CONCLUSION

In the final analysis, the sweeping changes proposed in the Simpson Bill are in many respects inconsistent with fundamental principles that must guide reform of immigration law and policy. The dramatic restructuring and elimination of the family preference system compromises the fundamental principle of family reunification. For this reason, we respectfully urge the Subcommittee to reconsider and to amend the proposed legislation.

On behalf of MALDEF, NCLR, and HNBA, I thank the Subcommittee for the opportunity to present our views on this important legislation.

Senator SIMPSON. Rudy Oswald, please.

STATEMENT OF RUDY OSWALD

Mr. OSWALD. Mr. Chairman, as you indicated, I am happy to appear again before this committee to discuss this very central issue. We are supportive of a number of the steps you are taking, and we think they are in the right direction, but there are other elements that cause us great concern. And while Antonia ended with the numbers game, perhaps that is an area where I would like to begin.

As she has indicated, the central principle of family reunification has been the cornerstone of U.S. immigration policy for a long time, and we believe it should continue. It is because of that that we are seriously concerned with attempts to reduce the number of family-based visas or an erosion of the definition of family.

The numbers that I am talking about have already left people on waiting lists, and there is a backlog of people under the family-based group that has not been able to come into this country. We think that what is most important is that families who are already here, who are working and who are U.S. citizens, should be able to be reunited. I would also note in that respect that we would maintain and urge you to maintain the four preferences as currently exist, so that the existing priorities would remain.

On the other hand, we support your reduction in the number for the employment-based immigration limit to 75,000. The current limit of 140,000 has not been fully used; we have been using 90,000 to 100,000, and we think that the higher number already allows an urging and a move for people sometimes here on temporary visas to roll them over to become permanent, or other means to try to make use of a category that is not fully filled currently.

I think the shortages have not been demonstrated for broad categories, and you had an earlier discussion of that. I think one needs to be able to demonstrate very extensively a current shortage rather than some past historical shortage. To that extent, we are very supportive of the proposal of the 30 percent employer-paid fee to go for education and training, because I think that is a way to develop U.S. capabilities in the long run.

I must say I am not totally clear in the reading of the language in terms of how that fund is to be. We would hope that it is to be some sort of a public fund. You used the term "private fund." It seems to me it has to be a fund outside the control of the particular

employer that is used for the public interest of training people in this area, and we would like to make sure that that takes place.

We would like to see more Department of Labor certification requirements which apply fairly well across the board for the various types of employment-based immigration, including the notions of people of extraordinary ability, of multinational executives and managers, and others.

We are particularly concerned that the managers not be made so loose that it includes various types of people in that category. It should be much tighter than it is for temporary visas. We are talking about people who will be permanent immigrants, and it should not be somebody who is just being put through the training activities in the United States.

Also, we would like to see a greater role for the Department of Labor in the unfair labor practice situation, and we commend you for looking at a means of not allowing the matter of a worker who has been subject to an unfair wage or to somehow an unfair labor practice being deported and the employer who perpetrated that element somehow being exempt from the ability to pay for that mistake, rather than the immigrant himself, so that we have some incentive for the immigrant to report failure of the employer to do what he has promised to do.

As others have said, Mr. Chairman, the AFL-CIO would be happy to work with you and the committee in terms of moving forward with this piece of legislation. We think it is one that is of concern to all workers in the United States, to all people who are already U.S. citizens and have family abroad, for unification, and we hope that that becomes an important consideration as you move forward.

Thank you.

Senator SIMPSON. Thank you very much.

[The prepared statement of Mr. Oswald follows:]

PREPARED STATEMENT OF RUDY OSWALD

Mr. Chairman, I appreciate this opportunity to present some concerns of the AFL-CIO on immigration. The proposed legislation under consideration today offers some advances but also raises some problems which we hope you will address.

The AFL-CIO has a long-standing commitment to immigration policies and immigration laws that protect the rights of all workers, provide fair opportunities for legal immigration, and insure compassionate and humane treatment for all workers.

Let me briefly discuss some of the major provisions of the draft document, the Immigration Reform Act of 1995.

We support continuation of a humane immigration policy that is based on the principle of family reunification. We oppose any reduction in the number of family-based visas or any erosion in the definition of family.

For these reasons we oppose the discussion draft proposals in Section 101 and 102 to modify the "immediate relative classification" and to change the "family-sponsored preference classification."

We believe United States workers should have a first claim on jobs in the U.S.A. Wages and working conditions in the United States should not be undermined and weakened by workers from other lands, and especially not by imported temporary workers.

Strict numerical controls are necessary on work-based admissions based on real need that cannot be met otherwise in the short run. No temporary admissions should last longer than three years.

For these reasons we support the discussion draft proposal in Section 103 to lower the employment-based immigration limit to 75,000.

Labor certifications by the U.S. Department of Labor are essential for work-based admissions.

Most labor shortage claims—including claims of shortages of highly skilled workers—do not stand up to careful scrutiny and analysis. Employers seeking work-based admission of alien workers should be required to prove extensive recruiting efforts and should be required to prove serious education and training efforts.

For these reasons we are concerned about the draft discussion proposal in Section 103(a)(1) to exempt from Labor Department certification requirements aliens with "extraordinary ability," "certain multinational executives and managers," and investors of \$1 million or more who promise to create 10 or more jobs.

We believe the category of "executives and managers" should be strictly limited to top executives and should not include most "managers." Since this is for permanent residence, a higher standard should apply than for temporary visas. Also we deplore the selling of citizenship to those who can prove they have \$1 million to invest in the U.S.A.

We believe the Labor Department is the logical agency to make determinations on these categories and to certify as to which visa applicants fall in these categories.

We are also concerned about the draft discussion proposal in Section 103(a)(2) relating to "immigrants who are subject to the labor certification requirement."

We support the clear intent that these three categories—members of the professions with advanced degrees, professionals with baccalaureate degrees, and skilled workers with at least five years experience outside the United States—be subject to Labor Department certification.

However, we are concerned about the great potential for laxity in enforcement of the "attested" wage, given the past history of difficulty in checking up on self-serving employer determinations of prevailing wages and promised wages.

We support the intent of the draft discussion proposal to stop an Attorney General action to deport an alien in case of an unfair labor practice—but we believe the determination of an unfair labor practice should be made by the Labor Department and the National Labor Relations Board—not by the Justice Department. It seems obvious to us that the Labor Department and the NLRB are much better qualified to make judgments about unfair labor practices, and do so on a regular basis. Without the protection, employers escape their responsibility in unfair labor practice cases by expelling the alien worker.

In regard to the draft discussion proposal Section 104 relating to changes in labor certification, we support the endorsement of the 30 percent employer-paid fee to go into a fund for education and training to increase the competitiveness of United States workers—but we are shocked at the idea that this could be a private fund rather than a public fund. We most strongly urge that this proposal be changed to assure that the fee goes into a public fund with public accountability. This fee is important for assuring adequate long-term training for American workers and for easing long-term shortage situations.

We welcome and support the draft discussion proposal provisions aimed at making sure that employers do not take the 30 percent fee out of the workers' purse.

We welcome and support the requirement for Labor Department certification of employer recruiting procedures that meet industry-wide standards.

We welcome and support the requirement that "The burden of proving a labor shortage or surplus exists in the United States with respect to an occupational classification shall be on the person or group requesting that the Secretary of Labor make a determination" on labor shortage or surplus. To us it is clear that such labor market analysis belongs in the Labor Department. We expect labor organizations will be among the groups requesting such labor market shortage/surplus determinations.

We recognize the intent of the draft provisions of Section 105(a) through (c), relating to disabled sons or daughters, but we find them objectionable as a matter of humane public policy. These provisions seem mean-spirited in light of the humane image of the United States, and probably would result in very little health care cost-saving.

Mr. Chairman, I appreciate this opportunity to present some of the concerns of the AFL-CIO. We look forward to working with you and your staff further in perfecting immigration legislation.

Senator SIMPSON. Thank you very much.

Now, Dan Stein, please, of FAIR.

STATEMENT OF DAN STEIN

Mr. STEIN. Mr. Chairman, thank you very much, and Senator Feinstein, for the opportunity to be here today.

My name is Dan Stein, and I am the executive director of FAIR, the Federation for American Immigration Reform.

It is, after all these years, an awesome responsibility for one small group of Senators to take upon their shoulders the entire responsibility for understanding an issue of such enormous national importance to the future of this Nation. It is one issue which, unlike many others, does not have an extraordinary amount of local political activity or power in Governors or local school authorities or county officials, and yet the impacts tend to fall very dramatically on those officials. Most of that authority and power, though, to make those decisions, now and in the future, fall in the judiciary committees, and we salute your leadership, Mr. Chairman, in coming up with a very sound exploratory package for what we hope will be comprehensive legislation in this Congress to reform both legal and illegal immigration.

FAIR believes that immigration needs to be substantially reduced. Whether it is legal or illegal, the numbers are too high. We strongly believe that the problems in the legal immigration system are, part and parcel, with past problems in the illegal immigration control apparatus—much of the backlog, much of the growth in the backlog, much of the difficulty in controlling the pressure on Congress to continue to increase the number has its past practice in past illegal immigration.

With the testimony we have heard today, we see the beginning of an emerging consensus, we think the right consensus, a consensus that is sound and morally correct, that the time has come to take a substantial pause or a substantial reduction in overall immigration. It is clear, after 25 years—and in about a month and a half, we will celebrate the 25th anniversary of the 1965 act—that that act has not had the impacts intended by the original sponsors.

While the noble goal of eliminating the National Origins Quota System was clearly sound judgment, the process of creating long, extended family preference chains, long backlogs in the millions and millions of people, has created an immigration system that, from its own momentum and inertia, is impossible to refine, alter, adjust, or in any way or shape to meet our changing national priorities.

Numbers do matter in a sense. With immigration at all-time highs and slated to increase our population by 150 million in the lifetimes of my children, we need to consider the impact of immigration on population growth, density, and coastal population density in high-impact areas like California, impact on water resources and housing and development pressures, impact on the Nation's ability to conserve farmland, wilderness areas, impact on labor market, especially the availability of good jobs with reasonable wages and good working conditions, particularly for those with low skills, impact on the quality of American public education, impact on our health care system, impact on congestion, overall crowding and crime, impact on skills, the income-earning ability and welfare costs of the immigrant flow itself, the impact on American institutions, including our ability to assimilate new immigrants, and the impact on the manageability of the immigration process itself, including the correlation between the sending countries that send

both legal and illegal immigrants—we find that there is a strong correlation between the two.

With that backdrop, we believe that this bill is an essential first step in a long-run restructuring of the immigration system to bring the numbers down and to make the flow more competitive and integrated with our domestic priorities.

In my testimony, I describe growing pressures worldwide, population growth and other pressures that are causing enormous migration pressure on America's borders unlike ever seen. With that in mind, I will comment briefly on some specific elements of the bill.

We believe that the elimination of the extended family preferences is essential to any kind of comprehensive reform of national immigration policy. The nuclear family itself is a proper mode. There is the family that created us and the family that we create, and this bill seeks to reach a strong, bright line between those two in rationalizing the process to allow an immigrant to bring spouse and minor children, with some limits on parents, which we also support.

Mr. Chairman, a country should do its own work. The employment preferences are not working effectively; they are out of control. We do not want to internationalize the process of labor recruitment to the point where every work has to compete with a worldwide labor market in order to get a job in this country, nor should we permit industries to form and capital to be accumulated around the expectation that there will be a persistent foreign labor flow in order to meet those labor requirements. Confining labor importation to extraordinary and universally recognized persons of distinguished merit and ability would appear to us to be the appropriate way to limit this number in a way that would expand the productive potential of the American economy while not simply allowing even high-tech employers to use programmers and others as a modern form of cheap labor.

In conclusion, since I see the yellow light—and I will be happy to answer questions—we believe that you have made good and sound proposals that should be considered within the framework of both S. 269 and this package as one bill. We believe that a moratorium on new applications in the remaining preference and the elimination of additional categories herein described could reduce overall immigration levels that FAIR believes are more appropriate to America's needs today.

However, your proposals do contain some important elements of immigration reform—elimination of extended family preference, worldwide cap, reform of most of the egregious areas of employment-related abuse—although nonimmigrant areas also need some attention. We believe that you, as an experienced hand on these issues, understand the growing pressures on the system and appreciate acutely the urgent need for comprehensive reform in this Congress.

We stand ready to work with you and this Congress as a whole to try to see a meaningful immigration package passed in this Congress.

Thank you, Mr. Chairman.

Senator SIMPSON. Thank you very much.

[The prepared statement of Mr. Stein follows:]

PREPARED STATEMENT OF DAN STEIN

Mr. Chairman and distinguished members of the subcommittee, my name is Dan Stein, and I am the executive director of the Federation for American Immigration Reform, or FAIR. FAIR is a national public interest membership organization working to find solutions to the problems of illegal immigration and to enact a general moratorium on legal immigration. We support a dramatically lower level of immigration, and a restructured immigration policy that again serves the American people and the national interest. With 70,000 members in all 50 states, FAIR has become the leading organization in America working for meaningful reform of our immigration laws.

Mr. Chairman, we want you to know how much we appreciate your continued leadership in this field. At a time when there is growing public concern about an immigration system that has grown out of control, your key leadership is vital in guiding the country to more sane, workable approaches as our nation moves into the next century. With your years of expertise and understanding of the immigration issue, we can think of no one better suited in Congress to take the lead in helping restore the nation's confidence in the credibility of our immigration policy.

WHY YOUR BILL IS SO IMPORTANT

Mr. Chairman, reforming legal immigration policy is just as important as new measures to control illegal immigration. In our view, it would be advantageous for Congress to consider the two areas together, in the same bill. Because the two issues are intertwined and inter-related, Congress needs to act promptly to correct deficiencies in both legal immigration policies and illegal immigration control measures.

Your proposed bill would help break the back of the chain migration system put in place in 1965. Many of the changes proposed in your bill were originally suggested by the Heschburg Select Commission on Immigration and Refugee Policy (SCIRP) in 1979. Had those changes been made at that time, the country would not be in its present dilemma. Today, we have a Commission chaired by former Representative Barbara Jordan, and made up of a blue-ribbon panel of experts, that has also recommended restructuring the law to bring about many of these same changes. Elimination of extended family preferences in the law is an indispensable part of any major immigration reform. Without elimination of these categories, the Congress and the general public are unable to refine, alter and adjust the system to meet the changing needs of the American domestic scene.

The current system that your bill seeks to amend is labeled "family reunification." The term "family reunification" as originally used in the late 1940s and early 1950s implied that a family involuntarily separated by wartime strife would be reunited in the country of final resettlement. It is now used to justify an unworkable and failed system of "family chain" migration.

In 1965, Congress repealed the National Origins Quota system, which was perceived as being discriminatory and favoring Europeans over other nationalities, and instituted an immigration system based on family preferences. At that time, few in Congress thought that these changes would increase the immigration flow, or put more pressure on the immigration system. They were wrong. It was thought that there would be little increase in the numbers since our immigrant base, most of whom had entered around the turn of the century, had aged to a point where they had few relatives to reunite with. In fact, President John F. Kennedy's July 23, 1963 letter to Congress, containing his proposed revision of the immigration laws, promised to allow relatives of families "already here" to reunite, but did not suggest that immigrants could come in the future and petition relatives and, in turn, their relatives, *ad infinitum*. Senator Edward Kennedy in 1965 promised the Senate:

First, our cities will not be flooded with a million immigrants annually. Under the proposed bill, the present level of immigration remains substantially the same. * * *

Secondly, the ethnic mix of this country will not be upset. * * * Contrary to charges in some quarters, [the bill] will not inundate America with immigrants from any one country or area, or the most populated or deprived nations of [of the world]. * * * In the final analysis, the ethnic pattern of immigration is not expected to change as sharply as the critics seem to think."

Senator Kennedy was wrong on just about all counts. But for all of Congress's good intentions in 1965, what we have now is the "chain" migration of almost one million legal immigrants annually, plus a large and growing backlog of relatives

who want to immigrate to the U.S. This immigration system makes a promise we can fulfill only at our peril.

Extended family preference is self-reinforcing and self-promoting; it contains the seeds of its own growth

The system laid out in 1965 has produced results never expressly intended by the Act's original sponsors: Family preference now dominates the immigration flow, producing backlogs of millions of immigrant relatives waiting for years to obtain visas. The current system is unworkable: The typical person has two parents, one or more brothers and sisters, perhaps two children (who may be married with children of their own). Backlogs are close to five million and growing. Over 80 percent of permanent immigrants enter because a relative entered before, and what is called "family preference" has been transformed into a form of nepotistic chain migration. The term "family reunification" is a misnomer. Rather, one family member succeeds in voluntarily immigrating to the U.S., and in turn, acquires a right to bring a large number of relatives. Immigrants come because of who they know, and no systematic overhaul of the preferences by Congress is politically possible with millions of immigrant relatives in backlogs. Even a single employment preference beneficiary is entitled to bring relatives beyond spouses and minor children. Pressure on the immigration system grows as more and more relatives try to get in line to enter. Because most immigrants come from countries with dramatically lower per capita incomes and living standards, the growth momentum in the system increases yearly.

What's wrong with the current system?

(1) In addition to the problem of chain migration, the current process gives too little preference to those with employment skills. Under chain migration, every skilled employee admitted may, in turn, petition a stream of relatives. This makes the current immigration system a VERY inefficient way of meeting labor market needs.

(2) The current system unfairly favors the relatives of recent immigrants. In addition to the geometric pressure of family chain migration, today's laws mean that a huge part of our immigration flow has no basic skills. It also discriminates against persons who have no relatives here, and in a *de facto* sense, it discriminates against countries that have not sent immigrants here recently.

If "family reunification" were the real goal of the migration policies of the nation, they would require an immigrant to return back home where most of his/her relatives initially are.

The current law also creates intolerable backlogs. These backlogs create constant pressure on Congress to increase the numbers further. No reform is possible without eliminating a process that creates immigration backlogs.

The current law never permits a break or pause in immigration. Even a casual reading of American history will reveal that immigration levels averaged much lower than we see today, with long pauses to absorb and assimilate larger waves. Today's laws permit no such break, and seem to create a process that goes on interminably, without end.

Not long before the 1965 law was passed, when an immigrant set forth on a boat to immigrate to the U.S., he or she was truly leaving behind relatives with little hope of seeing them again. However, with the onset of the jet age and our modern communications technology, family reunification is no longer the best solution to keeping families in touch. Airplanes, video messages, telephones lines—these things and many more—provide links with relatives all over the world almost instantaneously and usually without great expense. There is no longer any need to bring over extended families—the ability to remain in close contact with relatives is easily accessible. Even the idea of family unity is no longer the seeming necessity that it once was.

Extended relation preference prevents periodic reassessment of the appropriate level of legal immigration

Post-1970 immigrants and their descendants have been responsible for U.S. population increases of nearly 25 million. Current Census Bureau projections—recently adjusted upward—now call for a U.S. population of nearly 400 million by 2050, instead of the previously planned 300 million projected by the natural increase from 1980 forward.¹ New Census data from the 1994 sample just released show that the

¹The Census Bureau had a series of estimates for likely U.S. population size into the next century. Until 1990, this projection assumed that U.S. population size would stabilize at 290 million by 2100. As a result of the extraordinary rates of immigration, now projected to continue

percentage of foreign born has now reached levels not seen since before World War II. According to the report in the Washington Post, "After a surge in immigration over the past 20 years, the foreign-born population of the United States reached 22.6 million people in 1994, making up 8.78 percent of the total population, the highest proportion since World War II and nearly double the percentage in 1970." (8/29/95) Because of the self-reinforcing nature of the current system, the largest group of foreign born came from Mexico, more than 6.2 million, with the Philippines next at 1 million. Cuba, El Salvador, Canada, Germany, China, the Dominican Republic, Korea, Vietnam and India range from 494,000 to 805,000. Furthermore, in the decade 1980-1990, we had the highest levels of legal immigration since the beginning of the century, and the 1990s show a record breaking pace to date.

The current system, Mr. Chairman, expands immigration pressures almost exponentially. The more people that are allowed into the country, the more relatives that will be eligible to follow, thus increasing the demand for more immigration of more and more relatives. A mathematical force is at work—demand will grow exponentially as long as we are in this mode. The over-emphasis of blood relation—with related backlogs and growth momentum—means that the American people have very little opportunity to decide who and how many will come. The current law is not based on intelligent decision-making but by a perpetuated force with no rationality behind it. The choices are made by previous immigrants in a system on virtual "autopilot." Dips, pauses or breaks in immigration—so vital to past success in absorbing and assimilating immigrants in historic terms—have become virtually impossible when so many relatives have current expectations of a future right to enter.

The built-in expectations created by family chain migration prevent the public and Congress from considering the following domestic factors in formulating policy:

- Impact on domestic population growth density and coastal population density;
- Impact on water resources and housing/development pressure;
- Impact on the nation's ability to conserve farmland and wilderness areas;
- Impact on the labor market, especially on the availability of good jobs with reasonable wage rates/working conditions for lower skilled American workers;
- Impact on quality of, and resources available for, public education;
- Impact on health care;
- Impact on crowding, congestion and crime;
- Impact on skills, income-earning ability and welfare costs of the immigrant flow itself;
- Impact on American institutions, including their ability to assimilate new immigrants;
- Impact on manageability of the immigration process itself (see, e.g., the correlation between countries that send legal immigrants and those that send them illegally).

If the country decides it does not want immigration, family chain migration makes it more difficult to readily stop it

Chain migration creates expectations among millions abroad that they will have a future right to migrate. It adds to the incentive to immigrate illegally when they are in an immigration queue. Only a moratorium on new applications and elimination of backlogs will allow the country to obtain an immigration "time-out" to redesign the system.

Growing pressures worldwide

We should consider the backdrop against which your proposal is highlighted. America's greatest security threat is not a ballistic missile. It is our inability to regulate our borders. Never before have so many people wanted to move to the United States. A recent Gallup poll of public opinion worldwide found that, conservatively, perhaps half a billion people will readily admit they want to move to the United States—now, today. In some countries, perhaps 25 percent of the entire urban population wants to move to the U.S.² Given that we are in the midst of the greatest surge of world population growth in the history of the human race, and that these rapid increases are the single most important reason for the ever-increasing numbers of people trying to come to the U.S. legally and illegally, we must act with

and grow unabated, indefinitely—unless this committee acts now to change the law—tha Census Bureau has revised those estimates to assume that U.S. population will continue to grow well into the 21st century.

² Almost half (45%) of the urban population in Venezuela want to leave their country, with a half of that group (49%) opting for the United States." This Gallup poll provides enough of a sampling to provide a general idea of how many people worldwide want to move to the U.S. Gallup Poll, released by Gallup on June 20, 1995.

speed and deliberation to improve our entry controls and establish more enforceable immigration laws.

In several publications, FAIR has sought to highlight the specific dimensions of this phenomenon. In doing so, we have focused on three points: (1) Rapid population growth puts untenable pressures on the United States. (2) Immigration and U.S. population growth patterns generally are regionally-concentrated, especially in coastal counties. This coastal county growth has far-reaching consequences that affect other parts of the nation and even the rest of the world. (3) Given population and natural resource/environmental pressures, there are now profound, urgent reasons to address immigration within a broader, national population policy framework.

The United Nations estimates that 90 million people are now added to the population of the world each year. In just the next ten years, more people will be added to the population than there were in the entire world in the year 1800. Just two generations ago, total world population was 2.5 billion. That was considered a remarkable number. In 1992, we reached the 5.5 billion mark, and the UN estimates that we will exceed 10 billion in the next century before population levels off.

This demographic force will generate an unprecedented wave of human population in the 21st Century as tens of millions daily seek economic opportunity, escape from environmental disaster, civil strife and repression. The patterns have just begun to emerge and will grow in intensity in decades to come.

In much of the less developed world, we have witnessed the flight from rural to urban areas during the past two generations. Those in the countryside are moving—voting with their feet—in response to poor and declining living conditions. Pushed from the countryside and pulled by the city's bright lights and economic opportunity—real or imagined—tens of millions have elected to crowd into teeming metropolitan areas. Mexico City, for example, with 3.5 million people as recently as 1950, now holds around 18 million. The UN estimates that between 1987 and 2025, the urban population of the Third World will have grown by 2.75 billion—twice the number that were added during the period from 1950 to 1987. In 1950, North America had an urban population of 198 million; Asia (excluding Japan) had an urban population of 175 million. By 1990, the figures were 207 million and 900 million, respectively. By 2025, North America is projected to have 280 million urban dwellers, while Asia will have an urban population of 2.5 billion—roughly the population of the entire world in 1950.³

In other words, by 2025, Asia's urban population will be as large—in itself—as was the population of the entire world in 1950.

In 1990, the entire labor force of the more developed regions was 584 million people. In just the next ten years, the less developed countries will have to produce 372 million jobs to accommodate all the new labor force entrants. These are not projections. The job seekers of the early 21st century are already born. By 2025, another billion people will be seeking employment, a number more than double the present total labor force of the more developed regions.

These figures represent an economic challenge unsurpassed in the history of the human race. They paint a picture of tomorrow's urban sprawl or "megacity". Teeming with uneducated souls, trapped in urban squalor and poverty, who, staring at U.S.-made movies, believe that passage to the United States is the only possible opportunity for an improved state of being.

Mr. Chairman, let us accept, therefore, that the demand to enter far exceeds our capacity as a nation to accommodate. The age of mass migration is over, and nearly all people must "bloom where they're planted."

To that end, we here in the United States have an urgent mission: We need a national debate that underscores the realities mentioned above, and reconsiders the role of immigration in our national future. We must reassert control over our national policy, and render our immigration and deportation laws enforceable. To achieve that, at a minimum, we need to reduce the backlogs and pressure for growth now built within the system. We need a moratorium or "pause" to reduce the volume flowing through the system, and a breather to restructure the current laws to make them more responsive to the national interest. We must determine why we need immigration in the next century, or if we need it at all.

³ See Fox and Mehlman, *Crowding Out the Future, World Population Growth, U.S., Immigration, and Pressure on America's Natural Resources*, Federation for American Immigration Reform. 1992. 64pp.

We recognize these are difficult topics. Limiting immigration when so many wish to come raises a variety of challenging moral and ethical questions.⁴ But regulation of immigration is a challenge faced by all attractive, prosperous nations; indeed immigration demand is a measure of our relative success by any international measure. We have the moral right to limit immigration—or indeed to stop all immigration entirely. That is the very essence of what defines us as a nation. (Or, as George Will said, “A country is more than a hotel.” It is a land, a people and their institutions.) In celebrating our attractiveness as a desirable destination, we must not simultaneously undermine the very factors that make the U.S. a good place to be. In other words, we must, as Lincoln observed, “disenthral ourselves.”

Let us then move forward in a constructive way to better manage immigration flows—halt them entirely if the national interest so dictates. This Congress, under your leadership, Mr. Chairman, represents the best such opportunity in decades.

Essential elements of reform in your proposed bill

Mr. Chairman, your proposed bill make the following important changes to the immigration laws of the land:

1. *Elimination of unfair, burdensome and unworkable family preference structure.* Mr. Chairman, your bill would break the back of the family chain migration structure that has rendered the current system so unworkable. Your proposal would wisely and soundly eliminate the existing preference categories, other than the current family 2A (the spouses and children of aliens lawfully admitted for permanent resident alien status). This category is limited to 85,000 per annum. We support this major change in its entirety, and suggest that consideration be given to eliminating entirely the right of a Permanent Resident Alien to bring spouses where the relationship developed after the primary beneficiary arrived in the United States.

1a. Under your proposal, we estimate immigration levels approximately as follows:

Proposed Bill by Senator Simpson
(Annual Numbers Estimates)

Category	Proposed No.	Current No.	Increase/(reduction)
Spouses of U.S. citizens	¹ 145,000	145,000	0
Minor children of U.S. citizens	² 50,000	46,000	4,000
Children of residents born abroad	³ 2,000	1,900	100
Parents of U.S. citizens	⁴ 45,000	56,000	(11,000)
Family-sponsored immigrants	85,000	464,000	(379,000)
Employment-based immigrants	75,000	123,000	(48,000)
Special immigrants ⁵	5,000	—	5,000
Backlog reduction	150,000	—	150,000
Totals	557,000	835,900	(278,900)

Source: Information Provided by Senator Simpson's office September 8, 1995.

¹ After a jump of more than 13.5% between 1992 and 1993, the number has held firm at about 145,000 for 1993 and 1994 (the most recent year for which statistics are available). This number is a variable that is subject to swings up and down.

² The number of children of United States Citizens is also a variable and has been steadily increasing. The number presented here takes into account the trend for increase.

³ This, too, is a variable number that has remained stable over the past several years.

⁴ Presumably, the requirement for a majority of children residing in the U.S. and purchase of health insurance will reduce the numbers of this category. A reduction of 20% was arbitrarily chosen.

⁵ This number may actually be included in the employment category; the language in the discussion draft is somewhat unclear.

Generally speaking, Mr. Chairman, we believe these numbers are still too high to be sustainable on a permanent basis. Remember that your proposal does not even include asylee/parolee or refugee admissions. The difficulty in dropping numbers further seems to be based on that fact that the current flow through the existing system is so huge. Tailoring back existing categories—while accepting the basic framework and rationality of the current system—makes it very difficult politically to obtain annual immigration levels below 200,000. Therefore, we would urge consideration of more dramatic changes, for example:

- Prohibit immigrants and naturalized citizens from bringing in post-immigration related spouses (where the marriage took place more than one year after entry). Similarly, Lawful Permanent Resident Aliens should not be permitted to bring

⁴ See, e.g., Hardin, Garrett, *The Immigration Dilemma: Avoiding the Tragedy of the Commons*, Federation for American Immigration Reform. 1995. 140 pp.

a spouse where the marriage occurred more than one year after the original alien's entry.

- Eliminate any backlog reduction for the remaining categories. A fair amount of that backlog has been produced by the amnesty Congress passed in 1986. Extending additional visas to that group for backlog reduction accelerates their admission not only faster than what would have occurred without the amnesty, but also faster than what would have occurred in the normal course of events. Congress should have considered that problem when it passed the amnesty originally (goodness knows FAIR tried repeatedly to point this out), and reformed the preference structure at that time. We do appreciate the priority that your proposal places on those Second Preference backlogs that arose through the normal petitioning process, subordinating those arising from the amnesty programs.

Returning to your proposed bill itself:

2. *Limitations on the immigration of parents of U.S. Citizens to sons and daughters who "normally" reside in the United States as nationals/citizens or Lawful Permanent Residents. Requirement for health insurance coverage for parents.* There is no tradition in America that allows immigrants to bring elderly parents here to obtain the expensive taxpayer-supported old-age-related medical care. It would be a responsible policy to require that parents brought into the country be both, insurable and insured. Moreover, since a parent who does become dependent on taxpayer-supported medical care is unlikely to be deported, a complimentary requirement that the child-sponsor be financially liable for the elderly parent's medical expenses is also an important innovation. While your other bill, S.269, addresses the question of enforceable sponsorship pledges, we hope that this bill will be joined to that measure to insure these proposals dovetail properly.

3. *Limits employment-based numbers to 75,000 a year, and establishes the "extraordinary ability" category as the preference priority. Other categories, which include multinational executives and managers, investors, special immigrants, members of the professions holding advanced degrees and skilled workers share the remainder of the visas after demands in the higher-ranked categories has been met. In theory, numbers in lower-ranking categories could not be available because of the overall limitations.* Mr. Chairman, a country should do its own work. The growing reliance by certain U.S. and multinational corporations on imported foreign labor is one of the reasons general public support for immigration is eroding. The steady stream of foreign students who, in turn, remain for full time employment has had a distorting effect on the American labor market, causing normal domestic recruitment processes to atrophy. We strongly support this limit on the numbers admitted annually, and believe that our experience since the 1990 IMMACT was passed supports strongly that we need to reverse directions and bring the numbers back down.

4. *Requiring members of the professions to obtain experience overseas.* We strongly support your inclusion of a requirement that members of the professions holding advanced degrees be required to have obtained three years of experience outside the United States. Too frequently, the experience that underlies current labor certification applications was experience obtained while a foreign employee worked in this country as a temporary (nonimmigrant) worker. The "bootstrapping" of non-immigrant and immigrant categories—the H, F, J, L and even B categories with the occupational preferences—has created a seamless web of labor displacement and wage depression to the prejudice of the American worker. We support it in that requirement in this case, and in the requirements for the professionals with baccalaureate degrees, and in the general skilled worker categories (although we note that requirement is not included in the discussion draft in the latter case).

Respectfully, Mr. Chairman, we believe strongly that the default position should be restored to one where American employers are required to train our workers for the jobs of tomorrow. What incentives does American business have to become directly involved in the quality of American education if it believes a ready supply of foreign workers will be made available to cover the deficiency. The current labor certification process is almost humorous. While Congress sought to streamline the process in 1990, it also enabled the Department of Labor to be overwhelmed with the process of adjudicating so many petitions so quickly. Today, we find such venerable American employers as Hardees trying to petition in short order cooks (and calling them gourmet chefs). The current labor certification process may test the creativity of today's immigration bar, but it does little to enhance the status of American workers in general.

The public has also seen—on television, especially—situations where American workers are fired and replaced with H-1 workers, particularly in computer programming. This reflects the dismal state of labor certification, and the degree to which

it can be gimmicked by artful labor contractors and employers bent on using exploitable, cheap labor.

5. *Creating a fund to retrain and educate American workers; adding a requirement that the employer offer 110% of the prevailing wages.* This is an excellent idea for employer fees, to place them in a fund used to "increase the competitiveness of American workers by providing grants for education and training." This is consistent with recommendations made by the Commission on Immigration Reform, and we believe it is consistent with the idea that American business must meet its responsibility to make recruiting American workers a top priority. The heightened wage requirement is crucial to cutting the incentives that cause American and multinational employers to be able to argue U.S. workers are not available.

Mr. Chairman, we realize that this proposal, like many other employment-related provisions of the bill, will meet with howls of protest from the immigration bar and certain employers who have grown dependent on foreign workers. However, we urge you stand firm on this concept. To import a foreign worker is to obtain a subsidy, in most cases. Labor certification as practiced today operates more as a wage ceiling above which they will not rise. And a recent raid on a virtually slave-sweatshop in Los Angeles—an illegal sweatshop that sold to many higher-scale retailers—reveals the extent to which American business is losing sight of its commitment to promoting fair working opportunities for Americans. So long as employers can ask Congress for imported foreign workers as an alternative to raising wages and attracting American workers, that apparently is what they will do.

6. *Requiring a two-year conditional status for aliens admitted through occupational preferences.* Another excellent idea that parallels your fine work is in the area of marriage fraud. An alien who obtains permanent residence through an occupational preference need not work for that employer more than one day. Constitutionally, any alien admitted for permanent residence may work for whomever he or she wants from the day of admission forward. This problem makes Labor Certification especially susceptible to fraud, through sham businesses, for example. Your requirement that the employer continue to employ the alien for two years, and pay the represented wage is a good one. We expect that you will hear opposition that such a requirement ties an alien to a particular employer in a way that could create a form of indenture. Perhaps this could be modified to require the alien to remain within the same professional field.

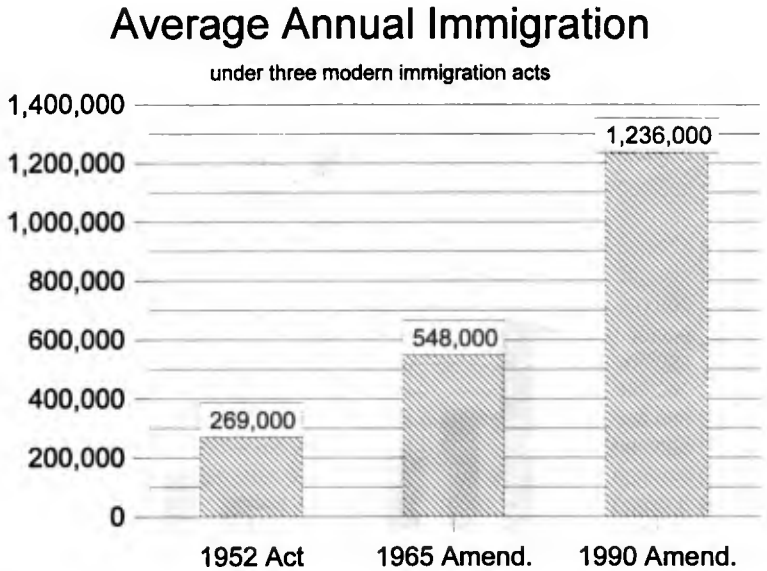
In the final analysis, however, the difficulties of tying the employee to a particular employer for two years demonstrates that sustained, systemic foreign labor recruitment is not a fair way of meeting U.S. labor market needs. In a manner similar to the indentures created when smugglers require an alien to pay off a transportation debt after arrival, labor market immigration programs set up their own failures and repeatedly demonstrate why it is important to confine skilled immigration only to those cases where the alien beneficiary has extraordinary and universally-recognized distinguish merit (or artistic merit) and ability. Americans can be trained for our jobs of tomorrow. We recommend that most of these categories be abolished entirely.

CONCLUSION

In sum, Mr. Chairman, we believe that you have made good and sound proposals that should be considered within the framework of both S.269 and this package as one bill. We believe that a moratorium on new applications in the remaining preference, and the elimination of additional categories herein described could reduce overall immigration to levels that FAIR believes are more appropriate to America's needs today. However, your proposals do contain the most important elements of immigration reform: elimination of the extended family preferences, a worldwide cap, reform of some of the most egregious areas of employment-related visa abuse. We believe that you, as an experienced hand on these issues, understand the growing pressures on the system, and appreciate acutely the urgent need for comprehensive reform in this Congress. We stand ready to work with you and the Congress as a whole to try to see a meaningful immigration reform package pass in this Congress.

Thank you very much for the opportunity to be here today. I would be happy to answer any questions you may have.

Changes to immigration law over the last thirty years have quadrupled the number of immigrants being admitted to the United States.

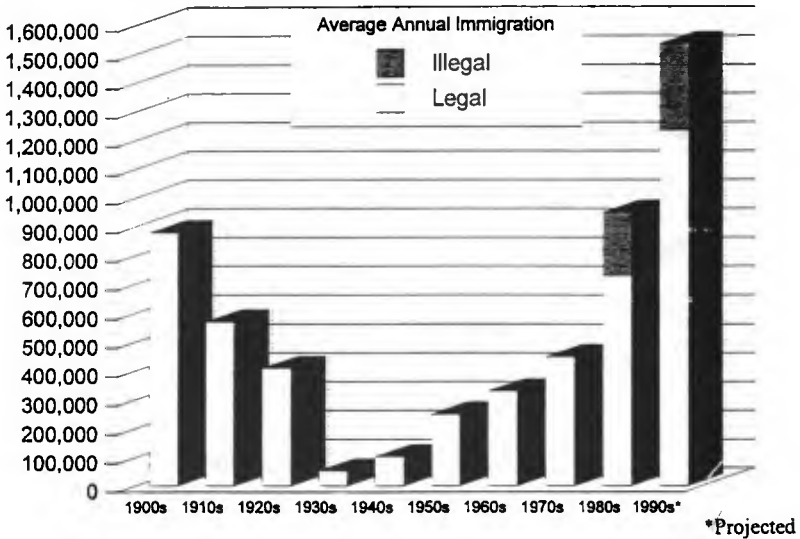


Source: INS Statistics Division.

FAIRChart

from the Federation for American Immigration Reform
1666 Connecticut Ave. NW #400
Washington DC 20009

Immigration at Unprecedented Levels



Over the last fifteen years, immigration to the United States has reached levels far beyond even the great wave of immigrants at the turn of the 19th century.

Source: INS Statistics Division

6/95(SG)

Senator SIMPSON. It is a difficult issue. We all know that, and you at that table know it more than any. It does not seem difficult to the American people—they seem to have a pretty thorough idea of what they want to do—but it seems very difficult when we get here, and it is, because everyone has a particular interest, a serious and particular interest.

But if I might just ask Ms. Bednarz, I think it is your group that is in town, isn't it, that is working over the troops that I noticed in *The Washington Post*. Is this your group—"High-Tech Firms Oppose Major Immigration Cuts"?

Ms. BEDNARZ. We were very tired last night after we had a full day on the Hill; that is correct.

Senator SIMPSON. That is why you did not have your written testimony in—no; I understand—nevertheless it was not here.

But it is interesting to me, because we heard these reports of CBS news months ago, reports of U.S. workers displaced, of wages and working conditions driven downward, most often regarding scientists and engineers. We talked about computer programming. They were looking for a man in Germany who knows everything, I guess, and they will get him here, or her here, whomever it may be. A New Jersey insurance company laid off 260 workers and replaced them with temps from India. A high-tech firm in California was sued for employing a contractor who imported foreign programmers and employed them on terms well below American standards. The *Kansas City Star* reported "Contractor Upgrade at the White House," an Indian contractor, and 850 of the 1,200 workers were imported.

Now, those things are happening, and those things give rise to something else; they give rise to anxiety regarding affirmative action. That is what they do. They feed into that. I would just ask, you say that U.S. business needs the best and brightest, and I think we would all concur with that, but doesn't the presence of foreign workers in the U.S. labor market ensure that wages will be kept low enough that many of the best and brightest U.S. young people will not go into those fields? Isn't there a real element of self-fulfilling prophecy in what your position is?

Ms. BEDNARZ. Well, again, Mr. Chairman, as I stated earlier, corporate America is very committed and deeply committed to retraining and educating American workers beginning at the elementary school level. Our companies are out there, and they are actively involved in this process.

Until there is a sufficient number of U.S. domestic labor market folks available to fill the cutting edge jobs that our companies face to remain competitive, we will need to access labor market beyond the domestic labor market.

And you are right that many of those headlines are very attention grabbing, and we would also love to discuss with you at a later time the distortions that are also contained in those articles and the blurring of the facts, and we would be more than happy to work with you.

Senator SIMPSON. I think we would look forward to that, and we can visit on that. Certainly, we do know this, that when professional positions open up in America, whether in colleges, as was

testified to here not long ago, or wherever it is, there are a huge number of people who apply.

And I always get into a little trouble—I see Dick Day beginning to cringe; I can almost feel the vibrations, like, “What is he up to?”—but there is what I call the Wall Street Journal theory of immigration, and that bring everybody you can get into the United States, pay them the least, and have an open border, which is something I have never ascribed to and I think is repugnant. And at some point in time, you cannot just say you are for America, when what you are really doing is undercutting Americans by looking for the cheapest possible labor, with the best and the brightest from some other land. I do not think that is anything that intrigues me, and it never has.

Well, enough of that editorial comment. I will have to dig out of that one now, for another month.

But let me ask a question of Rudy, if I may. I am a bit surprised to find that the AFL-CIO supports the continuation of all family preference immigrant categories while calling for tight controls on employment-based immigrants, both immigrant and nonimmigrant.

The draft bill, of course, proposes to eliminate some family preferences, and the vast majority of immigrants under those preferences would be adults. And Professor Biggs in his testimony noted that these family immigrants compete for jobs just as directly with U.S. citizens as employment-based immigrants do.

Isn't there an inconsistency there in the position regarding these two classes of immigrants, then?

Mr. OSWALD. Mr. Chairman, our position is based on the earlier principle of family reunification, and for very many families, that notion does not limit it to the Anglo notion of the nuclear family in terms of the very narrow definition of minor children versus adult children and others.

We are not opposed to an overall cap. We think that the current cap is an appropriate level. And it is to that extent that we feel the first principle of family reunification is the one that should apply, and it is clear that any immigrant, even bringing in a 16-year-old, who becomes an adult in a few years and enters the labor force, that that should not override the notion of family reunification.

Senator SIMPSON. Senator Feinstein, you have been very helpful and very patient, and I appreciate it, and if you have a round of questions, please proceed.

Senator FEINSTEIN. On the issue of family, I have come to believe we have to put some limits on it, Mr. Chairman. If not, you know, one person brings in 25-30 other people, and as we are now looking at the welfare bill on the floor, and there is a deeming provision in that bill, as you well know. For California now, I am finding that this impact is enormous. I am trying to remove the deeming provision because of what it does to the State. It is a reason, I think, because even the Governor of California does not support this bill that is on the floor because of the impact if you remove the Federal dollars that go to support welfare, both cash and non-cash grants. The cash grants and the non-cash grants, like Medicaid, are removed in this bill. Well, I find that alone, that is \$100 to \$200 million a year for California of Medicaid funding that goes

to legal immigrants. And that is an issue that we have to deal with. If the money is not going to be there to pay, what happens? With a State with a huge deficit, who picks it up?

So I have really gone full circle on this issue, to say that we need to rethink this. If someone comes to this country on his own, and he has a wife, and he wants to bring the wife, I understand that. If they have minor children, and they want to bring minor children, I understand that. But then you get to aunts and uncles, parents, and on and on and on, and I think this is where one has to begin to take a look at having the ability to support versus the law that opens the door so wide that you present yourself with intractable problems.

Let me ask Mr. Stein, because your organization has done so much research in this area. Have you done anything to take a look at some of these costs with respect to families, since I sense this is going to be a big part of the discussion on the bill? Where do the costs fall and how do they fall?

Mr. STEIN. With respect to legal immigration of families?

Senator FEINSTEIN. Yes.

Mr. STEIN. One of the problems is there is very little empirical data because the census does not enumerate by immigration status, and States are often prohibited from asking information, even in the course of collecting data.

Florida has a pretty good report, I think, showing that 75 or 80 percent of their State-related immigration costs are for legal immigrants. Most of those costs, naturally, are for public education, State-related relief, certain kinds of emergency medical care, housing assistance. Much of that is not reimbursed by the Federal Government because most immigrants are legal immigrants, and immigration increases the dependency ratio or the number of children in public school in an area, for example, and if they bring elderly parents, most of those costs are going to be legal immigration-related costs.

If you recruit a highly skilled worker and let him bring his spouse and minor children only, invariably, their average incomes will do quite well—they will certainly exceed natives in very short order—and the net impact or financial consequences are dramatically different.

Senator FEINSTEIN. Well, for example, one of the things in the welfare bill that is on the floor today would take even a naturalized citizen and say he could never be on welfare, he could never have welfare, Medicaid, or anything else. That obviously creates two classes of citizens, and I am trying to get that changed as well.

Those two provisions, the deeming and the naturalized citizen, are enormous in their scope. It is billions of dollars in California. If it is billions of dollars in California, you then know that the extended family impact in California has to be very dramatic. And I just do not know in the future where all the money will come from to pay these bills, so I am coming at it from a very practical point of view.

If anyone would like to comment on that—Ms. Hernandez, I know you have very strong feelings. I have read your remarks.

Ms. HERNANDEZ. I think that as far as the cost of immigrants, there are plenty of studies all over the map. The issue is one of col-

lecting accurate data. And as I have stated before, holding the sponsor accountable for a period of time is a reasonable requirement in the immigration area.

When you have individuals who have lived in this country for 10, 15, 20 years, then you really raise the issue of taxation without access to the benefits that their taxes pay. And you have to look at it from an economic perspective of any individual, particularly a U.S. citizen, assuming they become citizens, as to what benefits and privileges they are entitled to in this country and at which point an individual, whether citizen or not, has put enough into the public coffers to benefit from that.

I believe that in the last 5 years, a great many changes have taken place to put in restrictions and requirements to prohibit legal residents from receiving certain benefits.

So I would say that I would be very interested in having GAO or another agency look at what those changes have brought about, because what we are seeing are the consequences of policies that have been in place for a long time, and I really do think that timing the requirements of sponsors for a specific period of time, of however many individuals this country allows to come in, is a reasonable requirement.

Senator FEINSTEIN. Let me give you an example. Actually, he is now the new president of an international union. He told me that one of his business agents in Orange County, CA, was organizing immigrants for the health plan. I think there were 795 or 800. Very few wanted to be on the health plan, and he could not understand it. When the business agent asked, he found that they were all on Medicaid and wanted to stay on Medicaid.

Now, that is a very real problem, and for California and particularly, as you know, for Los Angeles, these dollars are big, and I believe they are quantifiable in the welfare debate.

So the way I, frankly, come at it is that I think we have got to make some changes in how we are going because we are simply not going to be able to pay the bill.

But let me discuss one other thing, and that is the issue that you raised. I cannot tell you how many high-tech firms have told me, "We cannot find Americans who are qualified to do the job." And I must tell you that that is a problem, and I understand the need. On the other hand, I really agree with what the chairman just said to you, and I must tell you that very forthrightly.

And on the other hand, you have a situation where the University of California San Francisco had 600 postdoctoral fellows in biotechnology from Japan. They come to this country, we train them, and then they take a whole industry back out of the country, and we lose all of those jobs. And biotechnology was spawned right in my back yard, the whole industry through three companies that started it right out of the University of California.

So I think the key has to be for us more and more, educating our people and letting our people know. Hedrick Smith just spoke to the Democratic Caucus—oh, I see my time is up. Let me just stop there, because this would take a while.

Senator SIMPSON. Oh, I have got to hear that. What did he say?

Senator FEINSTEIN. Well, he spoke on education. He wrote a book called "Rethinking America," which I just went out and bought. He

went to middle class, affluent schools throughout America and then went to their corollaries in Germany or in Japan, with the emphasis on education and what the individual had learned—and these were students who were not going to go on to college, but rather into vocational work—and how much more they know in other countries as opposed to students in our country.

So I think the bottom line of this is a dramatic failure of American education. Yet, I really, sincerely believe the chairman is right—none of us want to come to the Senate to preside over the diminution of the American worker. We want the American worker to be supreme, to do well, to earn well.

So what it comes down to is that education is the key to this thing.

Senator SIMPSON. I was very interested because Hedrick Smith wrote "The Power Game" years ago. He is a very thoughtful journalist and a very indepth kind of a person.

I was going to ask Antonia—obviously, the issue of parents is a thing that you feel strongly about. Yet, let us assume just for a moment, for argument, that we do not have limited numbers for immigrants, and assume that we have to make these choices and set these priorities between and among family members—and it is not pleasant to do that—and those are assumptions we have made in drafting the bill.

How would you make the choices if you were—I think you are going to say, "I wouldn't," but what class of relatives would be the first priority, and where would you place brothers and sisters, or parents, ahead of the spouse and children of persons who are already permanent residents here? And one of the reasons it came up was in testimony, through the Finance Committee and other hearings, about the misuse of SSI by parents. There are people in America who are bringing their parents here and putting them into SSI, which has grown dramatically. SSI was originally for the elderly, blind, and disabled, and now it is subverted by children who are disruptive and dysfunctional, and we have gone all over the place with that one, but parents who are placed intentionally on SSI by persons who bring them here. You need to know where that is coming from.

Ms. HERNANDEZ. You shared that with me before and in fact indicated that you were going to have hearings up in New York to look at this particular issue.

The question that you ask is, assuming that there are limits, where the priorities would be. And I go back to the statement that I made, and that is that there should be categories for U.S. citizens beyond the children and the spouses, and that adult children should also be in that category.

If the committee must, then I would say that the priority, as it has always been, has been U.S. citizen spouses and children and parents; that you have lawful permanent resident spouses and children, as is proposed; that you leave what is known in the old law, the fourth category, the adult. And you have already proposed to eliminate the siblings, which was the old fifth category.

I think that if you keep that priority, then what you are saying in this context to the lawful permanent resident individuals who could only immigrant spouses and children is that one of the bene-

fits of citizenship is the reunification with their parents if they could.

Now, to the issue of abuse, the requirements for sponsorship should be enforced for a period of time, and one should consider that if I were to bring my parents into this country—although it was the reverse for me—and that I provide the sufficient financial requirement, 3 years hence, if my financial situation changes, that I not be held accountable for unforeseen circumstances that changed the conditions under which I brought in my parents. But I think that that can be dealt with under time requirements, rather than an overall exclusion and elimination of categories.

Let me tell you, if I may, about one problem that has come up under the proposal that I would like to bring to the committee's attention. As you know, under the legalization program, we have had individuals who have immigrated and become legal resident aliens. At the time they immigrated, they had adult children, but because there was no provision for it, they went and stood in line for a visa under the fourth category. In the proposal to eliminate that, I would ask the committee to consider making a provision for those children who, during the span of time, have become adults and are already here, and if a provision is not made, you will leave these individuals outside of the law, with no opportunity to immigrate. It is a unique situation, and we would be more than happy to provide the information to the committee, but I do believe it is an issue that needs to be addressed.

Senator SIMPSON. Well, it is a unique condition, and there is another unique one when you deal with this parent issue. You might eliminate the preference of brothers and sisters of the spouse, and then you approve the parent, and the parent petitions for the children of the parent, and you have stuff that gets reworked in the system. Many people know how to do this. There are people who are highly skilled and trained who are advised by people who are highly skilled and trained as to how to gimmick the American immigration laws, "legally"—in quotation marks—and that is one of the things we have to deal with. And we will work with you, and those are very important things.

I always have trouble with the one where people come here illegally, and then there is a lot of compassion and talk about how to reunite them with their loved ones. Well, first of all, they abandoned their loved ones to come here illegally to the United States. So then to say that the whole thing is that they are here illegally and should be reunited with their families—well, who broke up the family? The person came here illegally and made a conscious choice to break up his or her family.

I do not have any problem with that, but there is so much stuff that goes on in this area after 17 years where, again, emotion and these things lead you where you should not go. Hopefully, we can avoid that, and I think all of you have testified that, at least as you perceive this draft, that that is our intent.

I would just ask Mr. Stein a question. On your chart, you document the tremendous increase in U.S. immigration from 269,000 in 1952, 548,000 in 1965 with those amendments, and now over 1.2 million under the 1990 Act; and yet the debate on reform fails to recognize this five-fold increase in immigration and criticizes any

proposal for breathing space or holding off or slowing the growth, criticizes any proposal that would fail to sustain this extraordinary growth.

I just wonder, how do you assure that the public debate reflects those basic facts of immigration history and numbers, which we have to use?

Mr. STEIN. Well, we try to point out that the period from 1880 to 1920 was an extraordinary and exceptional period in American immigration history. It is a period associated with the Industrial Revolution, the division of labor, and an aggressive effort by large-scale manufacturers, coal miners, railroads, that no matter how much we tried to recruit domestically, we simply could not meet those labor needs. But throughout most of American history, our immigration patterns have been more closely related to what we see in the 1952 Act, and what we have done today is an unprecedented step, because there is no end in sight, unlike the wave at the turn of the century. Those who have argued over the years that immigration today is smaller as a percentage of the native-born, well, the new census data is showing that we are at the highest levels of foreign-born since World War II. Perhaps within the next 30 or 40 years, we will find that we have actually reached the levels, or are getting close to the alltime record levels for the percentage of born, certainly in this century.

So perspective is very important to recognize that under your proposals, we are still moving back down to an extraordinarily high level of immigration by our 200- or 400-year history.

Senator SIMPSON. Well, I thank you so much.

I would throw out one thing to Ms. Bednarz. The business community is going to have difficulty with me as I perceive what I think is happening, which is to hire the most inexpensive people. That is going to lose the argument here; somewhere, that is down under here, when we have every corporation downsizing, we have Government downsizing, and there are some splendid people in the United States of America who are making half of what they made before, or one-third less than they made before, and they are out there. And then, to say that American business cannot do that because they will not pay them what they got before, but they will pay them a lot less, or they will pay someone who is a foreigner a great deal less—I just want to send a flare out over the horizon on that one so it kind of dribbles to the ground and illuminates something out there in the business community, because that is not my idea of what we should be about.

Employment-based immigration is difficult. We should have the people we need to be the best country on the Earth, and we are, and we should have the best immigration to attract the brightest and the best, and we are going to have to do numbers; that is the horrible part of it. We have to do that. We do not want to. And if we do not do something rational here in this committee and in this subcommittee, what will get done on the floor will be irrational.

I have said it before, and I think you can perceive it, all of you who care about this issue, because there is not a candidate running for President—not one of any faith that is not doing something about we are going to cut it back, and this is what we are going to do, and we will not allow this to happen. And when you have

every, single candidate including the incumbent President speaking that way, you know that they are hitting the gong; their focus groups are feeding them the meat every night, and as long as they gnaw on that every night, it behooves us to try to do something that will go to the floor, and that we can stick together, and then might look toward those of us in a bipartisan way who at least believe we are trying to do something appropriate. And I am ready to proceed on that basis.

I want to thank Dick Day, who has been with me through all the horrors of this, and Chip Wood, too, as you recognized—there he was—you and Chip have had some spirited conversations through the years, Antonia.

Ms. HERNANDEZ. Yes, we have.

Senator SIMPSON. Let the record show that we would not want to hear any of those. [Laughter.]

And John Nepper and John Rattigan and Mike Myers, the steady one from Ted's staff, and Bill Fleming—we will just continue to work together, and we will disagree strongly on certain points, but when we are finished, I think we will have something that will be appropriate to the heritage of this country.

I thank you all very, very much.

The hearing is concluded.

[Whereupon, at 5:47 p.m., the subcommittee was adjourned.]

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